

3. MUNICIPAL LAND USE LAW

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Act Adopted: 1975
Statute: NJSA 40:55D-1 et seq

New Jersey was a founder of land use law in the U.S. and is attributable for several of the early landmark cases dealing with land use law. Land use law in New Jersey has its earliest roots in colonial times, where the law dealt primarily with what we would call site engineering. Today, New Jersey's land use law is codified at NJSA 40:55D-1 et seq. of the New Jersey statutes and is known as the Municipal Land Use Law (MLUL).

The MLUL was first enacted in 1975 and has been amended numerous times throughout the years. It is the legal vehicle that grants municipalities the power to regulate land use on behalf of the State. A key tenant of the United States and New Jersey Constitution is that unless a municipality is specifically granted a regulatory power by the Legislature, that power is reserved for the State, and the municipality may not engage in that activity. In the event that a municipality engages in a regulatory action that is not specifically authorized by the MLUL, the municipality's action will be deemed *ultra vires* or illegal by a court of competent jurisdiction. While the MLUL assigns planning and regulatory authority primarily to municipalities, there is a separate enabling legislation for counties (i.e. the County Planning Act, NJSA 40:27-1 et seq).

The MLUL regulates land use by establishing the broad content and procedural framework for how municipalities enact local zoning laws, review and authorize development projects, and integrate private development with public capital improvement programs. More specifically, the MLUL establishes regulations for creating and enacting the following:

- ▶ a comprehensive master plan;
- ▶ a capital improvement program;
- ▶ an official map;
- ▶ subdivision and site plan ordinance(s);
- ▶ zoning ordinances; and
- ▶ development application submission and review procedures.

Purposes of the MLUL

The MLUL serves a number of purposes, which are set forth in NJSA 40:55D-2. All of the purposes of the MLUL are based on protecting the public health, safety, morals and general welfare. The intent and purpose of the law is to:

- ▶ encourage municipal action to guide the appropriate *use and development* of all land in the State, in a manner that will promote the public health, safety, morals, and general welfare;

- ▶ secure safety from fire, flood, panic, and other natural and manmade disasters;
- ▶ provide adequate light, air and open space;
- ▶ ensure that individual municipal development does not conflict with development of neighboring municipalities;
- ▶ promote establishment of appropriate population densities and distribution;
- ▶ encourage the expenditure of public funds on appropriate projects by coordinating capital programming with land development;
- ▶ provide appropriate lands for all types of uses, in accordance with environmental capacities and meeting the needs of all residents;
- ▶ encourage the appropriate development of transportation facilities and routes that will enhance movement of goods and people;
- ▶ promote a desirable visual environment;
- ▶ promote conservation of historic resources, open space, energy resources, natural resources, and to prevent urban sprawl and degradation

of the environment through improper use of land;

- ▶ encourage planned unit developments;
- ▶ encourage development of senior housing;
- ▶ reduce the cost of development by streamlining the procedures of public and private development;
- ▶ promote the use of renewable energy sources; and
- ▶ promote recovery and recycling of recyclable materials.

It must be stressed that each of the provisions of the MLUL are based *directly* on these goals.

Comprehensive Master Plan

The comprehensive master plan or *master plan* is a proposal for development of the municipality. It guides the use of land throughout the municipality in order to protect the public health and safety and to promote the general welfare. It is comprised of a report or statement on development proposals, along with maps, diagrams and texts, all designed to guide future development of the municipality.

The MLUL sets forth mandatory and discretionary components of the master plan. The master plan must contain: (1) a statement of objectives, principles, assumptions and standards upon which the proposals for the physical, economic and social development as set forth in the master plan are based; and (2) a land use element. The discretionary components that *may* be included in the master plan, are: (1) a housing element; (2) circulation plan; (3) utility service plan; (4) community facility plan; (5) recreation plan; (6) conservation plan; (7) economic plan; (8) historic preservation plan; (9) appendices or separate reports containing the technical foundation for the master plan; (10) a recycling plan; (11) farmland preservation plan; (12) development transfer plan; or (13) an educational facility plan. A municipality may include one or all of the discretionary components as part of its master plan depending on the municipality's needs and appetite.

Land Use Plan Element: The land use plan element is the plan for physical development of the municipality. In short, it is the heart of the comprehensive master plan, bringing together and summarizing all of the other elements. There are four (4) required parts to the land use plan element, which include:

- ▶ a statement setting forth the land use plan element’s relationship to the comprehensive master plan’s overall goals and policies and the components thereof;
- ▶ maps showing extent and intensity of each type of land use planned in the municipality and an explanation of how the land plan relates to the existing and/or proposed zoning ordinance and zoning map;
- ▶ the location of any existing and/or proposed airports and airport safety zones; and
- ▶ an explanation of the population density and development intensity recommended for the municipality.

Housing Element: The housing element is technically a discretionary component, however, it is a required component of the master plan in order for a municipality to enact its zoning ordinance (see *NJSA 40:55D-62a*), and it is also required in order to enter into the Council on Affordable Housing (COAH) process. Since the adoption of the Fair Housing Act of 1985 (*NJSA 52:27D-301 et seq*), the housing plan element has been a required part of the comprehensive master plan if the municipality elects to seek protection from exclusionary zoning litigation through the

COAH process even though it is not a mandatory component of the plan pursuant to the MLUL. As described in the Fair Housing Act, the housing element is meant to broaden the accessibility of affordable housing, with particular emphasis on low- and moderate-income housing. The Fair Housing Act established required parts to the housing element, which have been supplemented by COAH rules (*NJAC 5:93-5.1*). These parts include:

- ▶ a detailed housing inventory by age, condition, value, characteristics and type, including the number of units affordable to low- and moderate-households and the number of substandard units capable of being rehabilitated;
- ▶ a six-year projection of anticipated residential construction, including low- and moderate-income housing, and the municipality’s capacity to accommodate present and prospective housing needs, including those for affordable housing;
- ▶ an analysis of the municipality’s present demographic characteristics, including at least household size, income levels, and age;

- ▶ an analysis of present and probable future municipal employment conditions;
- ▶ a determination of the municipality’s present and prospective “Fair Share” for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its “Fair Share” for low- and moderate-income housing. “Fair Share” is discussed more extensively in the chapter on the Fair Housing Act; and
- ▶ an analysis of the most appropriate locations for development of low- and moderate-income housing.
- ▶ a map of all sites designated by the municipality reserved for low and moderate-income housing and a listing of the owner, acreage, lot and block number of each site.
- ▶ location and capacity of existing and proposed water and sewer infrastructure for these sites;
- ▶ copies of New Jersey Department of Environmental Protection approvals and appropriate sewer-service designations in area water-quality management plans;

- ▶ New Jersey Freshwater Wetlands or National Wetlands Inventory maps, as appropriate;
- ▶ U.S. Geological Society quadrangles including all designated sites; and
- ▶ any other documentation deemed necessary by the council to review the municipal housing element.

Circulation Element: The circulation plan element should describe the location and type of all existing and proposed transportation facilities within the municipality. Specific reference is made to the use of the Federal Highway Administration (FHWA) highway classification system and to the depiction of air, water and rail transportation facilities for the movement of both goods and people.

Utility Service Plan: The utility service plan element analyzes the need for and depicts the location of water supply and distribution facilities, drainage and flood-control facilities, sewerage- and waste-treatment facilities, and solid-waste disposal facilities. The intent of this element is to conduct an infrastructure-capacity and constraints analysis in order to give direction to the municipality's capital improvement program.

A stormwater management plan shall also be included as part of the utility service plan only if a grant for the preparation of the stormwater management plan has been made available to the municipality (*NJSA 40:55D-93*). Despite the fact that the stormwater management plan requirement was enacted in the early 1980s, these grants have never been available.

Community Facilities Plan: The community facilities plan element is intended to depict existing and proposed public, educational, and cultural sites and facilities.

Recreation Plan: The recreation plan element is closely related to the community facilities plan element but envisions “a comprehensive system of areas and public sites for recreation” clearly focusing on parklands, exercise facilities, and other uses not necessarily involving structures.

Conservation Plan: The conservation plan element is intended to “systematically analyze the impact of each of the other components and elements of the Master Plan” with respect to energy, water supply, and a wide range of natural resources and features.

Economic Plan: The economic plan element envisions a comprehensive look at the existing economic diversity, vitality,

and stability of the municipality and a municipality's prospects for economic growth. A clear nexus between the municipality's labor pool and the economic-development activities of the municipality is expected.

Historic Preservation Plan: The historic preservation plan element requires identification of the location and significance of historic sites and districts along with identifying standards for determining the worthiness of a particular site or district as historic. An analysis of the impact of each element of the comprehensive master plan on historic sites and districts is also required.

Recycling Plan: The recycling plan element incorporates the State's recycling plan goals and requires that municipal recycling ordinances correlate to those goals. Recycling programs are required for all single-family developments of 50 or more units, all multi-family residential developments involving 25 or more units and commercial or industrial developments on more than 1,000 square feet of *land* (not floor) area.

Farmland Preservation Plan: The farmland preservation plan element must include a map illustrating significant areas of agricultural land and an inventory of

farm properties; a statement showing that municipal ordinances support and promote agriculture as a business; and a plan for preserving as much farmland as possible in the short term by leveraging farmland-preservation monies through option agreements, installment purchases and donations of permanent development easements.

Development Transfer Plan: The development transfer plan sets forth the public purposes, the locations of sending and receiving zones and the technical details of a development transfer program based on the provisions of *NJSA 40:55D-113 et al* and *NJSA 40:55D-137 et al* related to the establishment of a Transfer of Development Rights program.

Educational Facility Plan: The educational facility plan is required to incorporate the purposes and goals of the “long-range facilities plan” required to be submitted to the Commissioner of Education by a school district pursuant to *NJSA 18A:7g-4*. The long-range facilities plan sets forth the school district’s needs and how those needs will be addressed in the ensuing 5 years.

With the passage of the Educational Facilities Construction and Financing Act in 2000, the MLUL was amended to require

that any long-range school-facilities plan be reviewed by the planning board. The board is required to make findings that the school-facilities plan is “informed by, and consistent with, at least the (comprehensive master plan) land use plan element and the housing element...and such other elements of the municipal master plan as the planning board deems necessary to determine whether the prospective sites for school facilities contained in the long-range facilities plan promote more effective and efficient coordination of school construction with the development efforts of the municipality.” The planning board must devote at least one full meeting to the presentation and review of the long-range facilities plan prior to making these findings.

Relationship to Other Planning Activities: The comprehensive master plan *must* include statements indicating how it relates to:

- ▶ the comprehensive master plans of contiguous municipalities;
- ▶ the county master plan in which the municipality is located;
- ▶ the State Development and Redevelopment Plan; and

- ▶ the county or district solid-waste management plan.

It should be noted that the courts have increasingly focused on the nexus between the comprehensive master plan and implementing regulations. There is a considerable body of law that demonstrates that courts will not second-guess the intent of a community’s planners in establishing sound planning policy unless land use and development regulations are not based on sound policy (or there is no linkage to planning policy), in which case those regulations may be overturned.

Reexamination

At least every six years the planning board is required to reexamine the municipality’s comprehensive master plan and development regulations. If the planning board fails to conduct a reexamination within six years, that failure creates a rebuttal presumption that the development regulations are no longer reasonable (*NJSA 40:550-89.1*).

Official Map: The official map must reflect the appropriate provisions of the municipal comprehensive master plan, but its primary function is to officially delineate the location of streets, drainage ways,

flood-control basins, and other public facilities, whether in place or planned. The delineation of these structures on the official map will be deemed conclusive. (*NJSA 40:55D-32*).

The official map is adopted by ordinance of the municipality's governing body. Prior to a public hearing on the adoption, however, the official map must be referred to the municipal planning board for review and comment. The planning board's role is to review the official map for consistency with the comprehensive management plan and make its recommendations to the governing body with regard to adoption of the official map. The governing body may adopt an official map that is in whole or in part inconsistent with the comprehensive management plan but only upon a majority vote of its full authorized membership and stating the reasons for so acting.

To preserve the integrity of the official map, the municipality's administrative officials cannot issue permits for buildings or structures that would encroach on mapped streets and facilities (*NJSA 40:55D-34*). However, the zoning board of adjustment may direct that the permit be issued if a majority of its full authorized board finds that the specific parcel of land in question "cannot yield a reasonable return to the owner unless a building

permit is granted." Where the board directs that the permit be issued, it will generally impose conditions on the granting of the permit so as to promote the health, morals, safety and general welfare of the public.

Where a mapped street or other facility is situated within, or partially within, a proposed development, the municipality may "reserve" the use of that land for public acquisition and use for the mapped purpose. A reservation of up to one year is provided by statute and can be extended with the approval of the developer. In addition, the developer is entitled to compensation for any "actual loss" caused by the temporary reservation. For the purposes of this section, "just" compensation is defined as "the fair market value of an option to purchase the land reserved for the period of reservation including, at least consideration of the real property taxes apportioned to the land reserved for the period of reservation and the reasonable increased cost of obtaining subdivision approval or site plan approval...caused by the reservation" (*NJSA 40:55D-44*).

The Capital Improvement Program

The Capital Improvement Program (CIP) is another key link between the comprehensive master plan and actual developments in the field. It serves as the municipality's action plan for development of the municipal infrastructure. Here, too, there must be a clear nexus between a municipality's planning policies, as established in the master plan, and "day-to-day" community development activities and practices.

This excerpt has been provided courtesy of the American Planning Association-NJ Chapter. To read more of *The Complete Guide to Planning in New Jersey*, visit <http://www.njplanning.org/books.html>.