

## CHAPTER 41

**AN ACT** concerning land use adjacent to military facilities, amending P.L.1975, c.291 and P.L.1995, c.249 and supplementing P.L.1975, c.291 and chapter 18A of Title 52 of the Revised Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.40:55D-12.4 Notice to military facility commander from municipality.

1. a. Any military facility commander interested in receiving notice pursuant to paragraph (2) of subsection h. of section 7.1 of P.L.1975, c.291 (C.40:55D-12) and section 2 of P.L.1995, c.249 (C.40:55D-62.1) may register with the administrative officer of the municipality in which the military facility is situated and any municipality situated within 3,000 feet in all directions of the military facility. The registration shall remain in effect until revoked by the military facility commander.

b. The administrative officer of every municipality in which a military facility is situated or which is situated within 3,000 feet in all directions of a military facility shall adopt a registration form and shall maintain a record of any military facility which has registered with the municipality pursuant to subsection a. of this section. The registration form shall include the name and address of the military facility commander to whom notice shall be forwarded, as required pursuant to paragraph (2) of subsection h. of section 7.1 of P.L.1975, c.291 (C.40:55D-12). The information contained therein shall be made available to any applicant, as provided in subsection c. of section 7.1 of P.L.1975, c.291 (C.40:55D-12).

2. Section 3.2 of P.L.1975, c.291 (C.40:55D-5) is amended to read as follows:

C.40:55D-5 Definitions; M to O.

3.2. "Maintenance guarantee" means any security which may be accepted by a municipality for the maintenance of any improvements required by this act, including but not limited to surety bonds, letters of credit under the circumstances specified in section 16 of P.L.1991, c.256 (C.40:55D-53.5), and cash.

"Major subdivision" means any subdivision not classified as a minor subdivision.

"Master plan" means a composite of one or more written or graphic proposals for the development of the municipality as set forth in and adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28).

"Mayor" means the chief executive of the municipality, whatever his official designation may be, except that in the case of municipalities governed by municipal council and municipal manager the term "mayor" shall not mean the "municipal manager" but shall mean the mayor of such municipality.

"Military facility" means any facility located within the State which is owned or operated by the federal government, and which is used for the purposes of providing logistical, technical, material, training, and any other support to any branch of the United States military.

"Military facility commander" means the chief official, base commander or person in charge at a military facility.

"Minor site plan" means a development plan of one or more lots which (1) proposes new development within the scope of development specifically permitted by ordinance as a minor site plan; (2) does not involve planned development, any new street or extension of any off-tract improvement which is to be prorated pursuant to section 30 of P.L.1975, c.291 (C.40:55D-42); and (3) contains the information reasonably required in order to make an informed determination as to whether the requirements established by ordinance for approval of a minor site plan have been met.

"Minor subdivision" means a subdivision of land for the creation of a number of lots specifically permitted by ordinance as a minor subdivision; provided that such subdivision does not involve (1) a planned development, (2) any new street or (3) the extension of any off-tract improvement, the cost of which is to be prorated pursuant to section 30 of P.L.1975, c.291 (C.40:55D-42).

"Municipality" means any city, borough, town, township or village. "Municipal agency" means a municipal planning board or board of adjustment, or a governing body of a municipality when acting pursuant to this act and any agency which is created by or responsible to one or

more municipalities when such agency is acting pursuant to this act.

"Municipal resident" means a person who is domiciled in the municipality.

"Nonconforming lot" means a lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

"Nonconforming structure" means a structure the size, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

"Nonconforming use" means a use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

"Office of Smart Growth" means the Office of State Planning established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-201).

"Official county map" means the map, with changes and additions thereto, adopted and established, from time to time, by resolution of the board of chosen freeholders of the county pursuant to R.S.40:27-5.

"Official map" means a map adopted by ordinance pursuant to article 5 of P.L.1975, c.291.

"Offsite" means located outside the lot lines of the lot in question but within the property, of which the lot is a part, which is the subject of a development application or the closest half of the street or right-of-way abutting the property of which the lot is a part.

"Off-tract" means not located on the property which is the subject of a development application nor on the closest half of the abutting street or right-of-way.

"Onsite" means located on the lot in question and excluding any abutting street or right-of-way.

"On-tract" means located on the property which is the subject of a development application or on the closest half of an abutting street or right-of-way.

"Open-space" means any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space; provided that such areas may be improved with only those buildings, structures, streets and offstreet parking and other improvements that are designed to be incidental to the natural openness of the land.

3. Section 7.1 of P.L.1975, c.291 (C.40:55D-12) is amended to read as follows:

C.40:55D-12 Notices of application, requirements.

7.1. Notice pursuant to subsections a., b., d., e., f., g. and h. of this section shall be given by the applicant unless a particular municipal officer is so designated by ordinance; provided that nothing contained herein shall prevent the applicant from giving such notice if he so desires. Notice pursuant to subsections a., b., d., e., f., g. and h. of this section shall be given at least 10 days prior to the date of the hearing.

a. Public notice of a hearing shall be given for an extension of approvals for five or more years under subsection d. of section 37 of P.L.1975, c.291 (C.40:55D-49) and subsection b. of section 40 of P.L.1975, c.291 (C.40:55D-52); for modification or elimination of a significant condition or conditions in a memorializing resolution in any situation wherein the application for development for which the memorializing resolution is proposed for adoption required public notice, and for any other applications for development, with the following exceptions: (1) conventional site plan review pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46), (2) minor subdivisions pursuant to section 35 of P.L.1975, c.291 (C.40:55D-47) or (3) final approval pursuant to section 38 of P.L.1975, c.291 (C.40:55D-50); notwithstanding the foregoing, the governing body may by ordinance require public notice for such categories of site plan review as may be specified by ordinance, for appeals of determinations of administrative officers pursuant to subsection a. of section 57 of P.L.1975, c.291 (C.40:55D-70), and for

requests for interpretation pursuant to subsection b. of section 57 of P.L.1975, c.291 (C.40:55D-70). Public notice shall also be given in the event that relief is requested pursuant to section 47 or 63 of P.L.1975, c.291 (C.40:55D-60 or C.40:55D-76) as part of an application for development otherwise excepted herein from public notice.

In addition, public notice shall be given by a public entity seeking to erect an outdoor advertising sign on land owned or controlled by a public entity as required pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31) or, if so provided by ordinance adopted pursuant to subsection g. of section 29.1 of P.L.1975, c.291 (C.40:55D-39), by a private entity seeking to erect an outdoor advertising sign on public land or on land owned by a private entity.

Public notice shall be given by publication in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality.

b. Except as provided in paragraph (2) of subsection h. of this section, notice of a hearing requiring public notice pursuant to subsection a. of this section shall be given to the owners of all real property as shown on the current tax duplicates, located in the State and within 200 feet in all directions of the property which is the subject of such hearing; provided that this requirement shall be deemed satisfied by notice to the (1) condominium association, in the case of any unit owner whose unit has a unit above or below it, or (2) horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it. Notice shall be given by: (1) serving a copy thereof on the property owner as shown on the said current tax duplicate, or his agent in charge of the property, or (2) mailing a copy thereof by certified mail to the property owner at his address as shown on the said current tax duplicate.

Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within 200 feet of the property which is the subject of the hearing, may be made in the same manner as to a corporation without further notice to unit owners, co-owners, or homeowners on account of such common elements or areas.

c. Upon the written request of an applicant, the administrative officer of a municipality shall, within seven days, make and certify a list from said current tax duplicates of names and addresses of owners to whom the applicant is required to give notice pursuant to subsection b. of this section. In addition, the administrative officer shall include on the list the names, addresses and positions of those persons who, not less than seven days prior to the date on which the applicant requested the list, have registered to receive notice pursuant to subsection h. of this section. The applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any owner, to any public utility, cable television company, or local utility or to any military facility commander not on the list shall not invalidate any hearing or proceeding. A sum not to exceed \$0.25 per name, or \$10.00, whichever is greater, may be charged for such list.

d. Notice of hearings on applications for development involving property located within 200 feet of an adjoining municipality shall be given by personal service or certified mail to the clerk of such municipality.

e. Notice shall be given by personal service or certified mail to the county planning board of a hearing on an application for development of property adjacent to an existing county road or proposed road shown on the official county map or on the county master plan, adjoining other county land or situated within 200 feet of a municipal boundary.

f. Notice shall be given by personal service or certified mail to the Commissioner of Transportation of a hearing on an application for development of property adjacent to a State highway.

g. Notice shall be given by personal service or certified mail to the State Planning Commission of a hearing on an application for development of property which exceeds 150 acres or 500 dwelling units. The notice shall include a copy of any maps or documents required to be on file with the municipal clerk pursuant to subsection b. of section 6 of P.L.1975, c.291 (C.40:55D-10).

h. Notice of hearings on applications for approval of a major subdivision or a site plan not

defined as a minor site plan under this act requiring public notice pursuant to subsection a. of this section shall be given: (1) in the case of a public utility, cable television company or local utility which possesses a right-of-way or easement within the municipality and which has registered with the municipality in accordance with section 5 of P.L.1991, c.412 (C.40:55D-12.1), by (I) serving a copy of the notice on the person whose name appears on the registration form on behalf of the public utility, cable television company or local utility or (ii) mailing a copy thereof by certified mail to the person whose name appears on the registration form at the address shown on that form; (2) in the case of a military facility which has registered with the municipality and which is situated within 3,000 feet in all directions of the property which is the subject of the hearing, by (I) serving a copy of the notice on the military facility commander whose name appears on the registration form or (ii) mailing a copy thereof by certified mail to the military facility commander at the address shown on that form.

I. The applicant shall file an affidavit of proof of service with the municipal agency holding the hearing on the application for development in the event that the applicant is required to give notice pursuant to this section.

j. Notice pursuant to subsections d., e., f., g. and h. of this section shall not be deemed to be required, unless public notice pursuant to subsection a. and notice pursuant to subsection b. of this section are required.

4. Section 2 of P.L.1995, c.249 (C.40:55D-62.1) is amended to read as follows:

C.40:55D-62.1 Notice of hearing on amendment to zoning ordinance.

2. Notice of a hearing on an amendment to the zoning ordinance proposing a change to the classification or boundaries of a zoning district, exclusive of classification or boundary changes recommended in a periodic general reexamination of the master plan by the planning board pursuant to section 76 of P.L.1975, c.291 (C.40:55D-89), shall be given at least 10 days prior to the hearing by the municipal clerk to the owners of all real property as shown on the current tax duplicates, located, in the case of a classification change, within the district and within the State within 200 feet in all directions of the boundaries of the district, and located, in the case of a boundary change, in the State within 200 feet in all directions of the proposed new boundaries of the district which is the subject of the hearing.

In addition, such notice shall be provided to any military facility commander who has registered with the municipality pursuant to section 1 of P.L.2005, c.41 (C.40:55D-12.4), if the military facility is situated within the district or within 3,000 feet of all directions of the boundaries of the district or located, in the case of a boundary change, in the State within 3,000 feet in all directions of the proposed new boundaries of the district which is the subject of the hearing.

A notice pursuant to this section shall state the date, time and place of the hearing, the nature of the matter to be considered and an identification of the affected zoning districts and proposed boundary changes, if any, by street names, common names or other identifiable landmarks, and by reference to lot and block numbers as shown on the current tax duplicate in the municipal tax assessor's office.

Notice shall be given by: (1) serving a copy thereof on the property owner as shown on the said current tax duplicate, or his agent in charge of the property, or (2) mailing a copy thereof by certified mail and regular mail to the property owner at his address as shown on the said current tax duplicate. In the case of a change involving a military facility situated within or in proximity to the district as provided herein, notice shall be given by serving a copy thereof on the military facility commander who has registered with the municipality pursuant to section 1 of P.L.2005, c.41 (C.40:55D-12.4) or mailing a copy by certified mail to the military facility commander at the address shown on the registration form.

Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within

200 feet of the boundaries of the district which is the subject of the hearing, may be made in the same manner as to a corporation, in addition to notice to unit owners, co-owners, or homeowners on account of such common elements or areas.

The municipal clerk shall execute affidavits of proof of service of the notices required by this section, and shall keep the affidavits on file along with the proof of publication of the notice of the required public hearing on the proposed zoning ordinance change. Costs of the notice provision shall be the responsibility of the proponent of the amendment.

C.52:18A-201.1 "Military facility," "military facility commander," notification of land use plan.

5. a. As used in this section: "military facility" means any facility located within the State which is owned or operated by the federal government, and which is used for the purposes of providing logistical, technical, material, training, and any other support to any branch of the United States military; and "military facility commander" means the chief official, base commander or person in charge at a military facility.

b. Whenever any State department, office, agency, authority, or commission proposes a plan that would impact the use of land within 3,000 feet in all directions of any military facility, it shall notify the Director of the Office of State Planning in the Department of Community Affairs prior to finalizing its plan. The director shall contact the appropriate military facility commander in order to solicit comments addressing any land use compatibility issues which may be of concern to the military and shall forward those comments to the appropriate State department, office, agency, authority, or commission. The State department, office, agency, authority, or commission shall not finalize its plan until it has reviewed any comments submitted by the military facility commander on its proposed plan.

c. The Adjutant General of the Department of Military and Veterans' Affairs shall, within 30 days of the effective date of P.L.2005, c.41 (C.40:55D-12.4 et al.), forward a list of military facilities to the Director of the Office of State Planning. The director shall circulate the list to each State department, office, agency, authority or commission.

d. The Director of the Office of State Planning, upon receiving the list of military facilities from the Adjutant General, shall forthwith notify those municipalities and State departments, offices, agencies, authorities and commissions of the requirements of this section.

6. This act shall take effect immediately.

Approved March 7, 2005.