

COMMUNITY AFFAIRS

DIVISION OF LOCAL GOVERNMENT SERVICES

Development and Redevelopment Activities

Proposed Readoption: N.J.A.C. 5:36-3 and 4

Authorized By: Charles A. Richman, Acting Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 40:55D-53a and 46:3C-4 and 5

Calendar: Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-346.

Submit written comments by January 15, 2010 to:

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Deputy Director

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The agency proposal follows.

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, Subchapters 3 and 4 of the Development and Redevelopment Activities rules, N.J.A.C. 5:36, are scheduled to expire on August 21, 2010. The Department has reviewed these rules and finds that Subchapters 3 and 4 continue to be necessary for the purposes for which they were promulgated and is therefore proposing that they be readopted without change.

The purpose of Subchapter 1 is to establish procedures for municipality to follow in creating a Revenue Allocation District (RAD) and otherwise implement the Revenue Allocation District Financing Act, sections 11 through 41 of P.L. 2001, c. 310 (N.J.S.A. 52:27D-459 et seq.). A RAD is an area within a municipality that has been designated for development and in which projects may be financed through the issuance of bonds that are to be repaid by future tax revenue generated by the project. However, section 13 of P.L. 2009, c. 90, effective July 28, 2009 and operative October 1, 2009, provides that the Revenue Allocation District Financing Act shall be inoperative and without effect for new applications, as well as for any applications approved prior to the effective date of P.L. 2009, c. 90, but for which financing has not been approved prior to that date. Since the rules in Subchapter 1, aside from one provision that just restates a statutory provision, concern an application procedure that will no longer be used, they are no longer needed and therefore are not being proposed for re-adoption.

Subchapter 2 is reserved.

The purpose of Subchapter 3 is to implement the “New Residential Construction Off-Site Conditions Disclosure Act,” P.L. 1995, c. 253 (N.J.S.A. 46:3C-1 et seq.). This act was adopted in order “to define the entirety of the disclosure duties of the sellers or newly-constructed residential real estate and to create a public repository of relevant off-site conditions which may be accessed by purchasers of such real estate.” The act and these rules list the off-site conditions that are required to be listed because they may materially affect the value of residential properties. These include the following: hazardous discharge sites included on Federal and State lists, overhead electric utility transmission lines conducting 240,000 volts or more, electrical transformer substations, underground gas transmission lines, sewer pump stations with at least 500,000 gallons/day capacity, sewer trunk lines more than 15 inches in diameter, sanitary landfill

facilities, public wastewater facilities and airport safety zones. Persons who own, lease or maintain any such off-site conditions must notify the municipal clerk as to the location of such sites within the municipality. The clerk must, in turn, make the information available to the public.

Subchapter 3 is divided into seven sections, entitled as follows: purpose; correspondence and inquiries; definitions; information required to be made available; submission of lists by owners; submission of maps in lieu of lists by owners; and submission of information generally. The rules also include the form that is required to be completed by facility owners and filed with the clerk for the following all facilities subject to the act other than hazardous discharge sites on Federal or State lists, sanitary landfill facilities and airport safety zones.

Subchapter 4 contains standardized forms for the performance guarantees, maintenance guarantees and letters of credit that may be required by land use approving authorities under section 41 of the “Municipal Land Use Law” (N.J.S.A. 40:55D-53). Under P.L. 1999, c. 68 (N.J.S.A. 40:55D-53a. et seq.), the Department of Community Affairs is required to adopt such standardized forms by rule. Section 41 provides that, before recording of a final subdivision plat, or as a condition of final site plan approval, or as a condition to the issuance of a zoning permit under N.J.S.A. 40:55D-65d (use variances), the approving authority may require a developer to provide guarantees to assure the installation, and the maintenance for up to two years, of on-site improvements.

The Department has therefore adopted prescribed, standard forms for performance and maintenance surety bonds and letters of credit, the texts of which constitute the subchapter being proposed for readoption.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Readoption of the rules in Subchapter 3 would continue the positive public impact of allowing purchasers of new homes to readily obtain information about the existence and location of off-site conditions that could adversely affect the value, and their use and enjoyment, of their properties. Potential purchasers are thus afforded a broader framework for making a major investment decision.

The use of the standardized forms provided in Subchapter 4 is intended to eliminate delay in the approval process due to varying municipal requirements.

Economic Impact

The existence of Subchapter 3 enables both homebuilders and those who purchase homes from them to make informed decisions as to the location of new housing. Though the initial cost of compliance with the rules may have been costly for some owners of off-site conditions, this work was done years ago and the cost of updating the information on an annual basis in order to report any changes should be minimal.

Use of the standardized forms provided in Subchapter 4 is intended to reduce costs to developers by eliminating the need to prepare different forms for each municipality and to negotiate with banks and surety companies in order to meet differing municipal requirements. Municipalities no longer have to incur costs for the drafting of their own forms.

Federal Standards Statement

Although Subchapter 3 cites the National Priorities List, prepared in accordance with 42 U.S.C. §§9601 et seq., as a reference for known contaminated sites, and 49 CFR 192.3 as a

source for identifying underground gas transmission lines, these citations are for identification only. There are no Federal standards applicable to the rules in Subchapter 4. Therefore, no Federal standards analysis is required because this subchapter is not being readopted under the authority of, or in order to implement, comply with or participate in any program established under, Federal law or a State statute that incorporates or refers to Federal law, standards or requirements.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the readoption of these two subchapters.

Agriculture Industry Impact

The Department does not anticipate any impact upon the agricultural industry as a result of the readoption of these two subchapters.

Regulatory Flexibility Analysis

The reporting requirements imposed by these rules have not had any significant impact upon “small businesses,” as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While, at the outset, some utility companies reported that compliance with Subchapter 3 was costly, due to the time and expense involved in mapping the location of certain off-site conditions, no such impact was reported by any “small businesses,” such as builders or developers. In effect, the act and these rules require that the seller of residential real estate inform prospective buyers that an off-site conditions list can be obtained from the municipal clerk. They impose no further burden on the seller. There are no additional reporting, recordkeeping or compliance requirements imposed upon “small businesses” by this subchapter.

The rules in Subchapter 4 implement a statute that is intended to reduce the regulatory burden on developers, including those that qualify as "small businesses" under the New Jersey Regulatory Flexibility Act. The use of standardized forms will reduce the need for legal services for drafting forms. These rules do not impose any reporting, recordkeeping or compliance obligations upon such "small businesses."

Smart Growth Impact

The purpose of the rules in subchapter 3 is to assist purchasers of residential real estate in making informed decisions. To the extent that it has the effect of discouraging residential construction at locations that may be adversely impacted by off-site conditions, it is consistent with the implementation of the State Development and Redevelopment Plan (State Plan) and the achievement of smart growth. The rules proposed for readoption in Subchapter 4 will not have any impact upon either the achievement of smart growth or the implementation of the State Plan.

Housing Affordability Impact

This notice of proposal is intended to readopt rules concerning disclosure of off-site conditions affecting new residential construction, and standardized forms for performance and maintenance guarantees for site improvements. It would be most unlikely to have any impact upon housing production costs or to affect affordability, except to the extent that the required use of standardized forms would continue to reduce compliance costs for developers seeking land use approval.

Smart Growth Development Impact

This notice of proposal is intended to readopt rules concerning disclosure of off-site conditions affecting new residential construction, and standardized forms for performance and maintenance guarantees for site improvements. The rules in Subchapters 3 and 4 concern

disclosure of off-site conditions and standardized forms for bonds and letters of credit issued by developers, and would be most unlikely to have any impact upon housing production within Planning Areas 1 and 2 or within designated centers under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:36-3 and 4.