

# ASSEMBLY, No. 3218

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JULY 30, 2012

**Sponsored by:**

**Assemblywoman ALISON LITTELL MCHOSE**

**District 24 (Morris, Sussex and Warren)**

**Assemblyman PARKER SPACE**

**District 24 (Morris, Sussex and Warren)**

**Assemblyman GARY R. CHIUSANO**

**District 24 (Morris, Sussex and Warren)**

**SYNOPSIS**

Modifies “inherently beneficial use” definition for purposes of zoning variance to discourage siting of wind and solar energy facilities on agricultural land and open space.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 3/22/2013)

1 AN ACT concerning wind and solar energy facilities under local  
2 zoning and amending P.L.1975, c.291.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 3 of P.L.1975, c.291 (C.40:55D-3) is amended to  
8 read as follows:

9 3. For the purposes of this act, unless the context clearly  
10 indicates a different meaning:

11 The term "shall" indicates a mandatory requirement, and the term  
12 "may" indicates a permissive action.

13 "Administrative officer" means the clerk of the municipality,  
14 unless a different municipal official or officials are designated by  
15 ordinance or statute.

16 "Agricultural land" means "farmland" as defined pursuant to  
17 section 3 of P.L.1999, c.152 (C.13:8C-3).

18 "Applicant" means a developer submitting an application for  
19 development.

20 "Application for development" means the application form and  
21 all accompanying documents required by ordinance for approval of  
22 a subdivision plat, site plan, planned development, conditional use,  
23 zoning variance or direction of the issuance of a permit pursuant to  
24 section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or  
25 C.40:55D-36).

26 "Approving authority" means the planning board of the  
27 municipality, unless a different agency is designated by ordinance  
28 when acting pursuant to the authority of P.L.1975, c.291  
29 (C.40:55D-1 et seq.).

30 "Board of adjustment" means the board established pursuant to  
31 section 56 of P.L.1975, c.291 (C.40:55D-69).

32 "Brownfield" means any former or current commercial or  
33 industrial site that is currently vacant or underutilized and on which  
34 there has been, or there is suspected to have been, a discharge of  
35 contaminant, as included in the "Brownfields Redevelopment Task  
36 Force" inventory, developed pursuant to section 5 of P.L.1997,  
37 c.278 (C.58:10B-23).

38 "Building" means a combination of materials to form a  
39 construction adapted to permanent, temporary, or continuous  
40 occupancy and having a roof.

41 "Cable television company" means a cable television company as  
42 defined pursuant to subsection g. of section 3 of P.L.1972, c.186  
43 (C.48:5A-3).

44 "Capital improvement" means a governmental acquisition of real  
45 property or major construction project.

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

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1 "Circulation" means systems, structures and physical  
2 improvements for the movement of people, goods, water, air,  
3 sewage or power by such means as streets, highways, railways,  
4 waterways, towers, airways, pipes and conduits, and the handling of  
5 people and goods by such means as terminals, stations, warehouses,  
6 and other storage buildings or transshipment points.

7 "Common open space" means an open space area within or  
8 related to a site designated as a development, and designed and  
9 intended for the use or enjoyment of residents and owners of the  
10 development. Common open space may contain such  
11 complementary structures and improvements as are necessary and  
12 appropriate for the use or enjoyment of residents and owners of the  
13 development.

14 "Conditional use" means a use permitted in a particular zoning  
15 district only upon a showing that such use in a specified location  
16 will comply with the conditions and standards for the location or  
17 operation of such use as contained in the zoning ordinance, and  
18 upon the issuance of an authorization therefor by the planning  
19 board.

20 "Conventional" means development other than planned  
21 development.

22 "County agriculture development board" or "CADB" means a  
23 county agriculture development board established by a county  
24 pursuant to the provisions of section 7 of P.L.1983, c.32 (C.4:1C-  
25 14).

26 "County master plan" means a composite of the master plan for  
27 the physical development of the county in which the municipality is  
28 located, with the accompanying maps, plats, charts and descriptive  
29 and explanatory matter adopted by the county planning board  
30 pursuant to R.S.40:27-2 and R.S.40:27-4.

31 "County planning board" means the county planning board, as  
32 defined in section 1 of P.L.1968, c.285 (C.40:27-6.1), of the county  
33 in which the land or development is located.  
34 (cf: P.L.2004, c.2, s.32)

35

36 2. Section 3.1 of P.L.1975, c.291 (C.40:55D-4) is amended to  
37 read as follows:

38 3.1. "Days" means calendar days.

39 "Density" means the permitted number of dwelling units per  
40 gross area of land to be developed.

41 "Developer" means the legal or beneficial owner or owners of a  
42 lot or of any land proposed to be included in a proposed  
43 development, including the holder of an option or contract to  
44 purchase, or other person having an enforceable proprietary interest  
45 in such land.

46 "Development" means the division of a parcel of land into two or  
47 more parcels, the construction, reconstruction, conversion,  
48 structural alteration, relocation or enlargement of any building or  
49 other structure, or of any mining excavation or landfill, and any use

1 or change in the use of any building or other structure, or land or  
2 extension of use of land, for which permission may be required  
3 pursuant to this act.

4 "Development potential" means the maximum number of  
5 dwelling units or square feet of nonresidential floor area that may  
6 be constructed on a specified lot or in a specified zone under the  
7 master plan and land use regulations in effect on the date of the  
8 adoption of the development transfer ordinance, and in accordance  
9 with recognized environmental constraints.

10 "Development regulation" means a zoning ordinance,  
11 subdivision ordinance, site plan ordinance, official map ordinance  
12 or other municipal regulation of the use and development of land, or  
13 amendment thereto adopted and filed pursuant to this act.

14 "Development transfer" or "development potential transfer"  
15 means the conveyance of development potential, or the permission  
16 for development, from one or more lots to one or more other lots by  
17 deed, easement, or other means as authorized by ordinance.

18 "Development transfer bank" means a development transfer bank  
19 established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158)  
20 or the State TDR Bank.

21 "Drainage" means the removal of surface water or groundwater  
22 from land by drains, grading or other means and includes control of  
23 runoff during and after construction or development to minimize  
24 erosion and sedimentation, to assure the adequacy of existing and  
25 proposed culverts and bridges, to induce water recharge into the  
26 ground where practical, to lessen nonpoint pollution, to maintain  
27 the integrity of stream channels for their biological functions as  
28 well as for drainage, and the means necessary for water supply  
29 preservation or prevention or alleviation of flooding.

30 "Environmental commission" means a municipal advisory body  
31 created pursuant to P.L.1968, c.245 (C.40:56A-1 et seq.).

32 "Erosion" means the detachment and movement of soil or rock  
33 fragments by water, wind, ice and gravity.

34 "Final approval" means the official action of the planning board  
35 taken on a preliminarily approved major subdivision or site plan,  
36 after all conditions, engineering plans and other requirements have  
37 been completed or fulfilled and the required improvements have  
38 been installed or guarantees properly posted for their completion, or  
39 approval conditioned upon the posting of such guarantees.

40 "Floor area ratio" means the sum of the area of all floors of  
41 buildings or structures compared to the total area of the site.

42 "General development plan" means a comprehensive plan for the  
43 development of a planned development, as provided in section 4 of  
44 P.L.1987, c.129 (C.40:55D-45.2).

45 "Governing body" means the chief legislative body of the  
46 municipality. In municipalities having a board of public works,  
47 "governing body" means such board.

1 "Historic district" means one or more historic sites and  
2 intervening or surrounding property significantly affecting or  
3 affected by the quality and character of the historic site or sites.

4 "Historic site" means any real property, man-made structure,  
5 natural object or configuration or any portion or group of the  
6 foregoing of historical, archeological, cultural, scenic or  
7 architectural significance.

8 "Inherently beneficial use" means a use which is universally  
9 considered of value to the community because it fundamentally  
10 serves the public good and promotes the general welfare. Such a  
11 use includes, but is not limited to, a hospital, school, child care  
12 center, group home, or a wind, solar or photovoltaic energy facility  
13 or structure so long as the wind, solar or photovoltaic energy  
14 facility or structure is located on or above a parking lot, rooftop, or  
15 brownfield, and not within agricultural land or open space.

16 "Instrument" means the easement, credit, or other deed  
17 restriction used to record a development transfer.

18 "Interested party" means: (a) in a criminal or quasi-criminal  
19 proceeding, any citizen of the State of New Jersey; and (b) in the  
20 case of a civil proceeding in any court or in an administrative  
21 proceeding before a municipal agency, any person, whether residing  
22 within or without the municipality, whose right to use, acquire, or  
23 enjoy property is or may be affected by any action taken under this  
24 act, or whose rights to use, acquire, or enjoy property under this act,  
25 or under any other law of this State or of the United States have  
26 been denied, violated or infringed by an action or a failure to act  
27 under this act.

28 "Land" includes improvements and fixtures on, above or below  
29 the surface.

30 "Local utility" means any sewerage authority created pursuant to  
31 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et  
32 seq.); any utilities authority created pursuant to the "municipal and  
33 county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et  
34 seq.); or any utility, authority, commission, special district or other  
35 corporate entity not regulated by the Board of Regulatory  
36 Commissioners under Title 48 of the Revised Statutes that provides  
37 gas, electricity, heat, power, water or sewer service to a  
38 municipality or the residents thereof.

39 "Lot" means a designated parcel, tract or area of land established  
40 by a plat or otherwise, as permitted by law and to be used,  
41 developed or built upon as a unit.  
42 (cf: P.L.2009, c.146, s.1)

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44 3. This act shall take effect immediately.

STATEMENT

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This bill would modify the definition of “inherently beneficial use” in the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.) so that wind and solar or photovoltaic energy facilities are only included if located on or above a parking lot, rooftop, or brownfield, and not within agricultural land or open space.

If a use is held to be inherently beneficial, it presumptively satisfies the positive criteria for the grant of a use variance under subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70), which is required when the proposed use is inconsistent with the zoning plan. Presently, “inherently beneficial use” is defined as “a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to, a hospital, school, child care center, group home, or a wind, solar or photovoltaic energy facility or structure.”

This bill narrows that definition so that wind and solar or photovoltaic energy facilities are only included if located on or above a parking lot, rooftop, or brownfield, and not within agricultural land or open space. This modification would help to restore balance between the State’s effort to encourage alternative energy development, and the equally important goal of preserving open space.