

Zoning and Land Use Approval For Wireless Facilities in New Jersey
Rights of Way

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Overview of the MLUL

Definitions

“Development” is defined in the MLUL to include the construction, alteration and/or enlargement of any building or structure as well as the use or change in use of any building or structure for which permission may be required. N.J.S.A. 40:55D-4.

A “site plan” under the MLUL is a plan showing all existing and proposed structures including utilities as well as all other information that may be reasonable required in order to make an informed determination pursuant to an ordinance requiring review and approval of site plans. N.J.S.A. 40:55D-7.

Zoning Ordinances

- Municipal Ordinances Generally
- Garofalo v. Burlington Township, 212 N.J. Super. 458, 461
(Law Div. 1985)

Are Certain Types of Uses or Users Exempt from Site Plan Approval under the MLUL?

- Argument Regarding Collocation
 - *See* N.J.S.A. 40:55D-46.2
- Argument regarding Public Utility Status
 - *See* N.J.S.A. 40:55D-19
- The Appellate Division has held that “Public Utilities are subject to municipal zoning power.”
 - *See* New Jersey Nat. Gas. Co. v. Borough of Red Bank, 438 N.J. Super. 164, 180 (App. Div. 2014).

Are Certain Types of Uses or Users Exempt from Site Plan Approval under Federal Law?

A word about Section 6409 of the Middle Class Relief and
Job Creation Act of 2012, 47 U.S.C. 1455

Waiver of Site Plan Procedure

- Site Plan Review and Approval Process may be time consuming. Some municipalities have ordinances which allow for a waiver of site plan review and approval.
- Consideration of certain criteria is necessary. The most common criteria are:
 - Previous site plan approval was secured and the proposed development will have insignificant impact on the previously approved site plan.
 - The proposed development involves normal repair, maintenance or replacement.
 - The proposed development will not affect existing circulation, parking, drainage, building arrangements, landscaping, buffering, lighting and other consideration of site plan review.

Question

- In New Jersey Nat. Gas. Co. v. Borough of Red Bank the Appellate Division ruled that public utilities are subject to _____?
- A. Municipal taxing power
- B. Municipal zoning Power
- C. Municipal police Power
- D. Judicial Review

Methods for Applying Zoning to Wireless Facilities in Rights of Way

- Options
 - Master license
 - Site specific license
 - Non-site specific license
 - General consent to make land use board applications
- Preference for ordinances versus resolutions.

Don't Forget About Standing

- The MLUL defines “applicant” in N.J.S.A. 40:55D-3 as “a developer submitting an application for development.” And, the MLUL defines “developer” in N.J.S.A. 40:55D-3 to mean “the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development.”
- Consent by the municipality, pole owner (if collocating) and underlying landowner (if any) is required to proceed through the zoning process.