

PROPOSAL

HOUSING MADE EASY: NEW JERSEY'S UNIFORM SITE IMPROVEMENTS STANDARDS ACT OF 1993

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I. Introduction

In the State of New Jersey, the cost of residential development is expensive.¹ Housing costs are often driven higher by compli-

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¹ See Ivette Mendez, *Homebuyers In Need To Get State Boost*, THE STAR-LEDGER, Feb. 14, 1995, at 1. The State of New Jersey's newly drafted Housing Policy reports that residential housing costs in the State are nearly double the national average. *Id.* It further reports that in one out of every ten households, housing expenses are equivalent to half of the total household income. *Id.* at 1, 12. Housing advocates have expressed that "the plan, for all its comprehensiveness, will not solve the acute shortage of affordable housing - not in a state where basic housing costs are twice the

cated and redundant permit applications and development standards.² While a residential developer patiently forges through the pre-development stage of a project, months and sometimes years pass before the first shovel is put into the ground.³ A portion of the delay is attributable to the multitude of site standards that are designed by and applicable to each of the 567 municipalities in the State.⁴ A standard curb height in one municipality may differ by as much as 50% from a contiguous municipality's standard.⁵ Barring any special environmental or unique land features between the two municipalities, the variance between site standards for a developer

national average." See *Housing Blueprint*, THE STAR-LEDGER, Feb. 16, 1995, at 22. Detrimental factors such as inadequate zoning laws, building codes, endless bureaucratic red-tape and delays burden the developer and raise the cost to develop housing. *Id.* If the costs associated with redundant regulations and excessive red-tape are lowered "each available dollar will buy more new affordable housing units." *Id.*

² See Dan Weissman, *State Seeks New Deal In Building Site Codes*, THE STAR-LEDGER, Mar. 16, 1995, at 1. Harriet Derman, Commissioner of the New Jersey Department of Community Affairs (DCA), believes that the new site improvement standards law is a common-sense approach to unraveling the bureaucratic red-tape of housing developments. *Id.* She recognizes that "when a builder goes to a community he or she should not be required to ascertain what the standards are for each municipality." *Id.* Many have expressed that the key element of the Governor's new housing policy is the standardization of site requirements. *Id.*

Presently, the State has a uniform construction code covering the areas from the exterior plane of the structure inward. The new law will extend a uniform standard to all activities (site improvements) which are outside the exterior plane of the structure. It also limits the site improvement standards to residential construction. Governor Whitman's plan is to encourage urban renewal by providing affordable housing through needed regulatory reform. See Dunstan McNichol, *Whitman Unveils \$525M Housing Plan*, THE RECORD, Mar. 16, 1995, at A-3.

³ See Weissman, *supra* note 2, at 1. For the past 20 years, builders of residential housing in New Jersey have been vigorously lobbying for legislation to standardize site improvements state-wide. *Id.* An integral component of the strategy is that "the plan would scale back building regulations and state construction codes to encourage residential construction and renovation." McNichol, *supra* note 2, at A-3. Michael Fink, president of Eagle Homes Corporation and the head of the New Jersey Builders Association, stated that the new legislation as a component of the housing policy will "roll [the] regulations back; . . . streamline the process, and . . . deliver housing that the people of New Jersey can afford." *Id.*

⁴ See Weissman, *supra* note 2, at 1 (delineating the exact number of municipalities located in the state). A more uniform housing policy for New Jersey will "eliminate[] confusion due to the hodgepodge of different standards found throughout the State." See N.J. Dep't Comm. Affairs, H-EASY 2000: A Housing Policy for the State of New Jersey, (1995) (on file with the SETON HALL LEGISLATIVE JOURNAL) [hereinafter "H-EASY 2000"].

⁵ See Telephone Interview with Amy Fenwick Frank, Department of Community Affairs, in Trenton, N.J. (July 28, 1995).

building in one town and expanding work into the next, will be both confusing and expensive.⁶

In 1993, as part of a comprehensive housing plan,⁷ New Jersey passed the Uniform Site Improvement Standards Act (USISA).⁸ The new standards provide uniformity in the designs of roads, streets, parking areas, utilities, sidewalks, and drainage structures for newly-constructed residential developments.⁹ In addition to specific physical standards, the new law prescribes that an advisory board be established, that the Board prepare recommendations to the commissioner, establish waiver guidelines, and annually review the regulations for adjustments.¹⁰ The local governments will continue to enforce the administrative and review processes, thereby,

⁶ See H-EASY 2000, *supra* note 4, at 3. The following three factors are directly connected to the high cost of developing residential housing in New Jersey: unnecessary regulations, inconsistent development standards, and an overly complex and onerous permitting process. *Id.*

⁷ See N.J. DEP'T. OF COMM. AFFAIRS, STATE CONSOLIDATED PLAN 1 (1995) (on file with the SETON HALL LEGISLATIVE JOURNAL) [hereinafter "STATE CONSOLIDATED PLAN"]. The STATE CONSOLIDATED PLAN complements both of Governor Whitman's innovative housing and community development plans: the Urban Strategy and H-EASY 2000. *Id.* The H-EASY 2000 Strategy takes a holistic approach regarding low-cost housing, homeownership, economic rejuvenation, social services, educational opportunities, and other factors important to New Jersey neighborhoods. *Id.* The objective of the strategy is to promote "the coordination of services and comprehensive planning in each neighborhood," while simultaneously encouraging the public and private interests to further housing development. *Id.*

Comparatively, the Urban Strategy encourages local municipalities to establish partnerships with the State to focus on neighborhood-by-neighborhood housing and community redevelopment. *Id.* Accordingly, the State targets individual communities and commits funds for their respective unique needs. *Id.* Specifically, Trenton, Asbury Park, Camden and Elizabeth have been chosen for this initiative. *Id.*

The housing policy's primary goal is "to provide families with decent, affordable housing in safe and livable neighborhoods." *Id.* Since the enactment of New Jersey's affordable housing law, only a small percentage of low- and moderate- (income) housing needs have been met and essentially, there has been no progress toward providing more affordable housing for the State's middle-income population. See Mendez, *supra* note 1, at 1.

⁸ N.J. STAT. ANN. § 40:55D-40.1 to -40.7 (West Supp. 1996).

⁹ See N.J. STAT. ANN. § 40:55D-40.1 (West Supp. 1996) (specifying which construction work done to a residential development that is included in site improvements).

¹⁰ See N.J. STAT. ANN. § 40:55D-40.3 (West Supp. 1996) (establishing a Site Improvement Advisory Board); § 40:55D-40.3(a) (West Supp. 1996) (recommending standards to the commissioner); § 40:55D-40.4(c) (West Supp. 1996) (creating waiver guidelines); § 40:55D-40.4(d) (West Supp. 1996) (establishing an annual review of the proffered regulations).

(Editor's Note: At the present time, the newly formed Advisory Board has released a proposal of the site improvements for preliminary review.)

not usurping the traditional powers of municipal enforcement.¹¹ The purpose of the new law is to both provide consistent and predictable requirements for residential site improvements and to eliminate redundant standards.¹² These goals are intended to reduce the cost of housing in New Jersey without sacrificing the health or safety of homeowners.¹³

II. Legislative History

On February 27, 1992, Assemblymen Joseph V. Doria, Jr., Democrat, 31st District, and Garabed "Chuck" Haytaian, Republican, 15th District, introduced Assembly Bill 1030 (A. 1030) which addressed site improvement standards.¹⁴ Approximately one week

¹¹ See Weissman, *supra* note 2, at 1. While builders in New Jersey support the new law, local planning and zoning boards are hesitant to applaud the legislation. *Id.* According to local planning zoning boards, "the adoption of the standards would sharply reduce their discretion to require builders to tailor such things as the width of sidewalks or the spacing of curb cuts to their own standards." *Id.* DCA Commissioner Derman opined that local planning and zoning boards should not be threatened by the new law because the new law is "not meant to challenge home rule." *Id.* Robert Friant, spokesman for the DCA "contend[s] the new requirements will not take away any of the zoning powers of municipalities." *Id.*

¹² See *infra* note 13.

¹³ See H-EASY 2000, *supra* note 4, at 4. The Governor of New Jersey, Christine Todd Whitman said that the "uniform requirements will help builders streamline construction and reduce the cost of housing." See Weissman, *supra* note 2, at 1. The new site improvement standards are a key element in the Governor's ambitious housing initiative for New Jersey. *Id.*

While the new housing policy is accepted as a positive initiative, some advocates do not view the policy as responsive to housing needs. See Mendez, *supra* note 1, at 12. Diane Sterner, executive director of the Affordable Housing Network of New Jersey, has mixed feelings about the policy. *Id.* Ms. Sterner "criticized the policy's emphasis on homeownership and proposed that the state channel its funds to help those who are in immediate need of housing or who live in overpriced, substandard dwellings." *Id.*

The new law is intended to provide for "a rational system that stresses consistency, state-wide standards [which] will add predictability and will result in lower [housing] costs." See H-EASY 2000, *supra* note 4, at 15.

¹⁴ A. 1030, 205th Leg., § 1 (N.J. Feb. 27, 1992). Other sponsors of the bill included: William J. Pacrell, Jr., Democrat, 35th District; C. Richard Kamin, Republican, 24th District; Joseph Charles, Jr., Democrat, 31st District; Nicholas R. Felice, Republican, 40th District; John S. Watson, Democrat, 15th District; Wayne R. Bryant, Democrat, 5th District; David C. Kronick, Democrat, 32d District; Joseph R. Roberts, Jr., Republican, 16th District; Anthony Impreveduto, Democrat, 32d District; Harry A. McEnroe, Democrat, 28th District; Willie B. Brown, Democrat, 29th District; Joseph Azzolina, Republican, 13th District; Robert D. Franks, Republican, 22d District; Assemblywoman Virginia E. Haines, Republican, 10th District; Gary W. Stuhltrager, Republican, 3d District; Assemblywoman Joann H. Smith, Republican, 13th District;

later on March 9, 1992, Senator Joseph L. Bubba, Republican, 34th District, introduced in the Senate, Senate Bill 537 (S. 537), which was identical to A. 1030.¹⁵

On March 30, 1992, the Assembly's Housing Committee approved the bill with amendments.¹⁶ The committee's first amendment substituted the generic "standards" for more specific "site improvement standards."¹⁷ The second committee amendment referred to the Rutgers Model Ordinance, which specifically addressed the site improvement standards relating to "streets, off-street parking, water supply, sanitary sewers and stormwater management."¹⁸ On May 4, 1992, the Senate's Community Affairs Committee approved S. 537 with two minor revisions.¹⁹ The two revisions paralleled those set down by the Assembly.²⁰

On April 13, 1992, the Assembly voted in favor of A. 1030, with revisions.²¹ Nearly eight months later, on December 17, 1992, the Senate also approved the bill.²² Governor James Florio signed the

John S. Penn, Republican, 16th District; George F. Geist, Republican, 4th District; Bernard F. Kenny, Jr., Democrat, 33d District; Gerald H. Zecker, Republican, 34th District; Alex DeCroke, Republican, 26th District; Robert W. Singer, Republican, 30th District; Melvin Cottrell, Republican, 30th District; Assemblywoman Clare M. Faragher, Republican, 12th District; John V. Kelly, Republican, 36th District; Paul DiGaetano, Republican, 36th District; David W. Wolfe, Republican, 10th District; John A. Rocco, Republican, 6th District; Lee A. Solomon, Republican, 6th District; Jose F. Sosa, Republican, 7th District; and Frank Catania, Republican, 35th District. *Id.*

¹⁵ S. 537, 205th Leg., § 1 (N.J. Mar. 9, 1992).

¹⁶ See N.J. ASSEMBLY HOUSING COMMITTEE, STATEMENT TO THE ASSEMBLY 1, (Mar. 30, 1992).

¹⁷ See *id.* at 2. The amendments, written by the Assembly's Housing Committee, specified "in each case where the 'standards' provided for in the bill are mentioned, . . . 'site improvement standards' are meant." *Id.* This change was intended to distinguish between a generic standard of building construction or construction material and a standard of site improvements. See *id.*

¹⁸ See *id.*

¹⁹ N.J. SENATE COMMUNITY AFFAIRS COMMITTEE, STATEMENT TO THE SENATE 1, (May 4, 1992). The Senate Community Affairs Committee "amended the bill to specify that the site improvement standards shall implement the recommendations of the board with respect to streets, off-street parking, water supply, sanitary sewers and stormwater management[.]" and "to clarify that the standards being discussed are site improvement standards." *Id.* at 2.

²⁰ See *id.* The committee statement reported that "Senate Bill No. 537 is identical to Assembly Bill No. 1030." *Id.*

²¹ See Telephone Interview with the Office of Legislative Services, in Trenton, New Jersey (Aug. 22, 1995). The Assembly voted in favor of A.1030 by a vote of 48 to 19. *Id.*

²² See *id.* The Senate voted in favor of the bill by a vote of 24 to 8. *Id.*

bill into law on January 29, 1993.²³

III. *The Barriers to Affordable Housing in New Jersey*

During the 1980's, housing construction was alive and well in New Jersey.²⁴ However, by the end of the decade, the State's new-sale housing market had collapsed.²⁵ By 1992, the residential building construction industry's production level had decreased so significantly that it was in line with levels at the end of the Great Depression.²⁶ Despite the collapse of the new-sale housing market, commentators expected that by 1994, housing sales and starts would increase, and housing production figures would remain in equilibrium.²⁷

While the housing production industry may be in a condition where supply is in pace with demand,²⁸ building costs in New Jersey are still far greater than any other state.²⁹ One of the most serious

²³ See *id.*

²⁴ See *infra* note 25.

²⁵ See Patrick J. O'Keefe, *Housing in New Jersey, Address Before the New Jersey Data Center Conference* (Dec. 1, 1992) in HOUSING & THE ECONOMY, NEW JERSEY IN THE MID-90's 39 (New Jersey State Data Center, June, 1994). Patrick O'Keefe's address to the audience at the Data Center Conference stated that "[s]uffice it to say that toward the end of the 1980's the bubble burst and the State's housing market collapsed." *Id.* See generally John M. Kerekes, Note, *The Housing and Community Development Act of 1992: Affordable Housing Initiatives May Have Found a Home*, 18 SETON HALL LEGIS. J. 683, 701-06 (1994) (discussing the national decline in affordable housing and stating that high regulatory costs are an element of the problem).

²⁶ See *id.*

²⁷ See *id.* at 39-40. O'Keefe noted that the "interest rates are on the upside," and the "likelihood of further downward movement in long term rates" appears to be halted for now. *Id.* O'Keefe predicted that at the beginning of 1994 the market would experience increased sales and starts. He further estimated "a production level somewhere between 30 and 35 thousand units." *Id.* at 40.

²⁸ See *id.* and accompanying text.

²⁹ See STATE CONSOLIDATED PLAN, *supra* note 7, at 81. The 1990 Census placed the median value of a house in New Jersey at \$162,300, compared with the nation as a whole which was \$79,100. *Id.* Median contract rent (excluding utilities) in New Jersey was \$521 per month as compared to \$374 for the rest of the nation. *Id.* While it is true that New Jersey's median household income is 36 percent higher than the national median, the State's median house value is 105 percent higher than the national median. *Id.*

As housing prices soared in the 1980's, "housing became less affordable to more people." *Id.* The Northeast's median resale prices in the 1970's kept pace with the rest of the nation. *Id.* As the 1980's progressed, the Northeast's resale prices soared by nearly 62 percent. *Id.* Those high resale levels are still present today. *Id.*

The comparison of the median home price to the median homeowner income is another indicator of the expense of housing in New Jersey. *Id.* In the 1980's, New

and far-reaching impediments to housing is regulatory inefficiency.³⁰ Each municipality in the State has its own unique set of site improvement standards for streets, walks, storm and sanitary sewers, water supply and parking.³¹ Each set of site improvement standards applies to both residential and non-residential building projects.³² Many of these site improvement standards are "unreasonably restrictive, some are weak, all are different."³³ The USISA of 1993 was enacted to resolve inconsistencies in the multiple and various development standards.³⁴ The State adopted site improvement standards for residential development.³⁵ The new site improvement standards establish the definitive word on the development of: streets, parking, water supply, sewers, and

Jersey's ratio stood at 3.1 to 1. However, by the 1990's the ratio rose to 4 to 1. *Id.* This ratio is tremendously high as compared to the ratios in the rest of the nation, which range from 2.6 to 1.0. *Id.* In fact, in parts of northern New Jersey (Essex and Hudson County) the ratio is 5 to 1. *Id.*

Higher land costs and burdens of excessive regulation add to the already high costs. *See* O'Keefe, *supra* note 25, at 41. Economic theory posits that "markets will adjust with some of the adjustment[s] in prices, some in product substitution, [and] some in the quantity/quality obtained per dollar expended." *Id.* at 42. However, that theory may not be viable in New Jersey, because economic markets are so heavily encumbered that the "market's ability to accommodate . . . changes is highly restricted." *See id.*

³⁰ *See id.* at 42. O'Keefe explained that "[o]ur system of land use planning and approval in New Jersey works with all the efficiency of a clogged drain[,] [a]nd it does so by design." *Id.* Furthermore, the system tends to be a complex puzzle, designed to prevent progress. *See id.*

³¹ *See* THE DEPT. OF STATE OFFICE OF THE BUSINESS OMBUDSMAN, THE STARR REPORT: STRATEGY TO ADVANCE REGULATORY REFORM, A RESPONSE OF THE WHITMAN ADMINISTRATION at II-12 (1995) [hereinafter THE STARR REPORT].

³² *See id.*

³³ *See id.*

³⁴ *See* H-EASY 2000, *supra* note 4, at 15. The regulatory barriers inhibit construction and add significant costs. *Id.* Although it was necessary to ameliorate the duplicative and ineffective regulatory barriers, it could not be done at the expense of the environment, public safety, and health. *Id.*

The State of New Jersey is driven by two factors in developing and implementing an affordable housing strategy. *See id.* at 1. The first is the State's legal and moral responsibility to give its citizen every opportunity to be housed in safe, decent, and affordable housing. *Id.* Secondly, a housing strategy will promote "incentives, remove[] time-consuming regulatory barriers and duplication, and emphasize[] the need to lower housing costs [as] good economic sense." *Id.* The reduction of housing development costs generates a higher volume of available units and is economically efficient. *Id.*

³⁵ *See* H-EASY 2000, *supra* note 4, at 15. An initial solution, to lower the high cost of housing, would start with the legislature promulgating laws to alleviate the burdensome regulation of development standards. *Id.*

stormwater management for residential subdivisions.³⁶ The law demands a uniform administrative process standardizing procedures for site reviews.³⁷ The reviews will be enforced by the local governments.³⁸ The dual purpose of the new law is to reduce higher costs by eliminating those standards that do not provide additional health and safety benefits and to establish uniformity and predictability to the requirements for site improvement standards.³⁹

IV. Analysis of the Uniform Site Improvement Standards Act of 1993

In order to provide for a rational and consistent standard for site improvements, the State Legislature enacted an entirely new section to the Municipal Land Use Law (M.L.U.L.).⁴⁰ The new section provides specific standards for roads, streets, parking, utilities, sidewalks, and drainage structures.⁴¹ By having a state-wide standard, developers may easily predict development expenses, and therefore, plan accordingly to reduce those costs.⁴² The new site improvement standards are not only applicable to municipalities, but also to county, regional, and State agencies.⁴³

The corresponding administrative regulations are to be promulgated by the Commissioner of the Department of Community Affairs (DCA).⁴⁴ At the present, the Commissioner has released a proposal of the new regulations⁴⁵ known as the New Jersey Residential Site Improvement Standards.⁴⁶ The regulations will be broken into eight subchapters: General Provisions; Application

³⁶ See STATE CONSOLIDATED PLAN, *supra* note 7, at 83.

³⁷ See *id.*

³⁸ See *id.*

³⁹ See *id.*; see also H-EASY 2000, *supra* note 4, at 15.

⁴⁰ See N.J. Stat. Ann. § 40:55D-1 to -136.

⁴¹ See § 40:55D-40.1.

⁴² See H-EASY 2000, *supra* note 4, at 15. The local planning and zoning boards will review all the housing development applications based upon the new technical standards. *Id.* The introduction of a new rational system will add to the predictability of future costs, thereby lowering exorbitant costs. *Id.*

⁴³ See *id.* While not expressly addressing the application of the site improvement standards to entities other than municipalities, DCA is taking additional steps to ensure wide-spread application. *Id.*

⁴⁴ See N.J. ADMIN. CODE tit. 5, § 21-1.2 (proposal June 1996) (stating that the Commissioner of DCA promulgated the regulations pursuant to the authority granted in N.J. STAT. ANN. § 40:55D-40.1 *et seq.*)

⁴⁵ See N.J. ADMIN. CODE tit. 5, §§ 21-1.1 to -7.6 (proposal June 1996). (*Editor's Note: Presently, § 5:21-8 is still being processed.*)

⁴⁶ See § 21-1.1(a) (proposal June 1996).

and Review Procedures; Exceptions, Waivers, and Special Area Standards; Streets and Parking; Water Supply; Sanitary Sewers; Stormwater Management; and Reference Standards.⁴⁷

A. General Provisions

The general provisions grant the authority and state the intent and purpose of the regulations in addition to setting forth information including, definitions, scope and applicability, administration and enforcement, approval, violations, effective date, and validity.⁴⁸ These provisions establish the basic requirements and guidelines enabling the new law to further its purpose.

The new regulations clearly set out USISA's intent and purpose.⁴⁹ The regulations satisfy the need for site improvement standards, because the standards are promulgated to fulfill the State's concerns about housing and lower housing costs.⁵⁰ These pro-

⁴⁷ See § 21-1 (proposal June 1996) (General Provisions); § 21-2 (proposal June 1996) (Applications and Review Procedures); § 21-3 (proposal June 1996) (Exceptions, Waivers, and Special Area Standards); § 21-4 (proposal June 1996) (Streets and Parking); § 21-5 (proposal June 1996) (Water Supply); § 21-6 (proposal June 1996) (Sanitary Sewers); § 21-7 (proposal June 1996) (Stormwater Management); and § 21-8 (proposal June 1996) (Referenced Standards).

⁴⁸ See N.J. ADMIN. CODE tit. 5, §§ 21-1.2 to -1.11 (proposal June 1996).

⁴⁹ See § 21-1.3(a) (proposal June 1996). Section 21-1.3 provides:

(a) It is the intent and purpose of these regulations:

1. To reduce the multiplicity of standards for residential subdivisions and site improvements which currently exists in this State in order to eliminate unnecessary increases in the cost of housing where there are noncommensurate gains in the protection of public health and safety.
2. To avoid unnecessary cost in the construction process, and to provide site improvement standards that are both sound and cost effective.
3. To ensure predictability in the site improvement standards applicable to residential construction.
4. To provide for developmental reviews of residential projects that are based, to the greatest extent possible, upon sound objective site improvement standards rather than upon discretionary design standards.
5. To streamline the development approval process and improve the efficiency of the application process by providing a uniform set of technical site improvement standards for land development.
6. To provide the widest possible range of design freedom and promote diversity through performance-oriented site improvement standards.
7. To separate the policy-making aspects of development review from the making of technical determinations.

Id.

⁵⁰ See *id.* § 21-1.3(a) (proposal June 1996).

grams are limited to residential developments.⁵¹ The regulations control actions with respect to site improvements by developers including: construction, repair, addition, demolition, removal, alteration, use, and maintenance.⁵² However, in those instances where mixed-use developments are planned, the new law will be applicable only to the residential component.⁵³

The local municipalities were concerned that the new law would limit their authority to establish and enforce site improvement plans.⁵⁴ The regulations shall not pre-empt or affect the powers of the State or county government.⁵⁵ The intent of the law is not to limit the authority of various levels of government, but rather to provide for the adequate protection of the public's health, safety, and welfare where site improvements are undertaken.⁵⁶

For example, to provide for continuous administration and enforcement of the protection afforded to the public, the regulations mandate that the municipality's planning board shall review any ordinance to ensure compliance.⁵⁷ Similarly, if a site plan

⁵¹ See N.J. ADMIN. CODE tit. 5, § 21-1.5(a) (proposal June 1996). The regulations provide that the new law governs any "residential subdivision, site plan approval, or variance" application, or any other approval required for residential development "by any municipality or agency." *Id.*

⁵² See § 21-1.5(b) (proposal June 1996). The regulations are interpreted to advance the minimum requirement ensuring public health and safety, and the maximum requirement with respect to residential development. *Id.*

⁵³ See § 21-1.5(c) (proposal June 1996). The residential component is understood to be separate and discrete from any planned commercial component including separate building(s), parking, and access features. *Id.*

⁵⁴ See § 21-1.5(d) (proposal June 1996). The regulations did not intend to limit other established powers of a municipality regarding layout, location, or arrangement of trees, landscaping or set-aside of public area for intended public use, § 21-1.5(d)(1), N.J. STAT. ANN. § 40:55D-38 (West Supp. 1996); preservation of natural resources, vehicular and pedestrian circulation, parking, loading, landscaping, screening, structure location, conservation of energy and use of renewable resources, § 21-1.5(d)(2), N.J. STAT. ANN. § 40:55D-41 (West Supp. 1996); or use, bulk and height restrictions, buildable lot percentages, lot sizes, floor area ratios, measures to control development density, or adequate air and light requirements, § 21-1.5(d)(3), N.J. STAT. ANN. § 40:55D-65 (West Supp. 1996).

⁵⁵ See § 21-1.5(e) (proposal June 1996). If State or county laws or regulations provide for differing requirements, the USISA's regulations shall govern unless the other requirement is more restrictive than the USISA's requirement. *Id.*

⁵⁶ See § 21-1.5(g) (proposal June 1996).

⁵⁷ N.J. ADMIN. CODE tit. 5, § 21-1.7(a) (proposal June 1996) (referencing the subdivision and/or site plan approvals pursuant to N.J. STAT. ANN. § 40:55D-37 (West Supp. 1996)).

and/or subdivision approval is created by a Zoning Board of Adjustment, that board must ensure compliance with the regulations prior to preliminary or final approval.⁵⁸ It also follows that all equipment, materials, and devices are to be reviewed and approved in connection with any site plan approval.⁵⁹

The regulations also provide for specific remedies for non-compliance.⁶⁰ Any non-compliance with the new regulations will constitute a violation of the M.L.U.L., and subject the violator to penalties and enforcement procedures as provided.⁶¹

B. *Applications and Review Procedures*

As the regulations provide that municipal authority will not be pre-empted, the procedures governing municipal review on residential development application will also not be pre-empted.⁶² This subchapter also provides for the application form and checklist.⁶³

C. *Exceptions, Waivers and Special Area Standards*

As in the case of any administrative process regarding applications and review procedures, the regulations clearly describe the parameters for exceptions and waivers.⁶⁴ The regulations define the procedures associated with the waiver request, its review process, and the availability for appeal of waiver decisions.⁶⁵ In proposing the new regulations, the Commissioner and the Site Improvement Advisory Board ("Advisory Board") recognized that there are special areas where the new standards may be inapplicable, and as a result set forth procedures to recommend supplement-

⁵⁸ See § 21-1.7(b) (proposal June 1996) (referencing the Zoning Board of Adjustment's authority pursuant to N.J. STAT. ANN. § 40:55D-69 (West 1991) and its approval authority at 40:55D-76(b) (West 1991)).

⁵⁹ See N.J. ADMIN. CODE tit. 5, § 21-1.8(a) (proposal June 1996).

⁶⁰ N.J. ADMIN. CODE tit. 5, § 21-1.9(a) (proposal June 1996). Failure to comply with the regulations with respect to subdivision approval, site plan approval, and zoning approval, will violate the M.L.U.L., N.J. STAT. ANN. § 40:55D-1 *et seq.* N.J. ADMIN. CODE tit. 5, § 21-1.9(a).

⁶¹ See § 21-1.9(a) (proposal June 1996).

⁶² See N.J. ADMIN. CODE tit. 5, § 21-2.1 (proposal June 1996).

⁶³ See N.J. ADMIN. CODE tit. 5, § 21-2.2 (proposal June 1996). (*Editor's Note: The application and checklist have not yet been proposed.*)

⁶⁴ See N.J. ADMIN. CODE tit. 5, §§ 5:21-3.1 to -3.3 (proposal June 1996).

⁶⁵ See N.J. ADMIN. CODE tit. 5, §§ 5:21-3.2 to -3.4 (proposal June 1996).

tary standards.⁶⁶

Although many subdivision or site improvement plans will fall under the purview of the regulations, there is a provision for a possible exception.⁶⁷ Exceptions may be granted where the implementation of the site improvement standards cause impracticability or undue hardship to the developer.⁶⁸ The regulations require that applications for exceptions be filed with the Advisory Board, and if approved, the exception becomes part of the construction document.⁶⁹

Waiver requests, similar to exceptions, may be made by either the developer or the municipality or both.⁷⁰ While exceptions protect the developer against impracticability or undue hardship, the waiver request is based upon ameliorating danger to public health and safety caused by the application of the site improvement standards.⁷¹ As with exceptions, the waiver request must be in writing and sent to the DCA for review.⁷² The waiver request may be sent at any time during the review of the development application, and therefore, municipalities may decide to condition the project approval on the disposition of the waiver request.⁷³

⁶⁶ See N.J. ADMIN. CODE tit. 5, § 21-3.5 (proposal June 1996).

⁶⁷ See N.J. ADMIN. CODE tit. 5, § 21-3.1 (proposal June 1996).

⁶⁸ See § 21-3.1(a) (proposal June 1996). The municipality may grant *de minimis* exceptions which may be reasonable and within the intent and general purpose of the site improvement standards. *Id.*

⁶⁹ See § 21-3.1(b) - (c) (proposal June 1996). The exception application must be filed in writing and include "[a] statement of requirements of the standards from which an exception is sought," § 21-3.1(b)(1); "[a] statement of the manner by which strict compliance . . . would result in practical difficulties," § 21-3.1(b)(2); and "[a] statement of the nature and extent of such practical difficulties. . .," § 21-3.1(b)(3). The authorizing municipality shall retain the records regarding the exception. § 21-3.1(c).

⁷⁰ Compare § 21-3.1(a), (e) and § 21-3.2(c).

⁷¹ See § 21-3.2(b) (proposal June 1996).

⁷² See § 21-3.2(c) - (e) (proposal June 1996). The memorandum to DCA shall include the following information: a description of the project, § 21-3.2(c)(2)(i); a citation to the regulation from which an exception is sought, § 21-3.2(c)(2)(ii); a description explaining the conditions necessitating the request, § 21-3.2(c)(2)(iii); a description of the result if the waiver was refused, § 21-3.2(c)(2)(iv); a contact person for the applicant, § 21-3.2(c)(2)(v); and "a contact person for the municipal approving authority," § 21-3.2(c)(2)(vi). Regardless of whether it is the municipality or the developer requesting the waiver, the applicant must notify the other party involved. § 21-3.2(e).

⁷³ See § 21-3.2(f) (proposal June 1996). More specifically, if the applicant or the municipal approving authority decides during the planning board review procedure that the request for the waiver is appropriate, "the municipal approving authority

Once a waiver request has been received, a preliminary review is undertaken by the Commissioner to determine if the waiver request warrants a complete review.⁷⁴ On preliminary review, it will be determined whether the particular standard is detrimental to public health and safety.⁷⁵ After meeting the requirements for preliminary review, the waiver request is directed to the Site Improvement Advisory Board's technical committee.⁷⁶ The technical committee will decide upon the waiver request within thirty days and propose a waiver resolution which is forwarded to the applicant by the DCA.⁷⁷

Applications which are rejected by the technical committee may be appealed by the applicant to the Site Improvement Advisory Board.⁷⁸ The appeal process is held at a public session presided over by an elected officer.⁷⁹ The hearings are informal, and final decisions are rendered within ten days of the hearing.⁸⁰ Subsequently, appellants are notified by the Advisory Board in writing.⁸¹

While exceptions and waiver requests apply to unique or site specific conditions, special areas are regulated in other ways.⁸² The

shall give consideration whenever possible to the granting of an extension for the purpose of pursuing a waiver." *Id.* When it is simply impracticable for the requesting party to complete the entire waiver process before the time period under the M.L.U.L. expires, the municipal approving authority has the freedom to condition its approval on the waiver disposition. *Id.*

⁷⁴ See N.J. ADMIN. CODE tit. 5, § 21-3.3(a) - (b) (proposal June 1996). If on its face the request is denied, the DCA will contact the applicant promptly and indicate in writing the grounds for rejection. *Id.*

⁷⁵ See § 21-3.3(a) (proposal June 1996).

⁷⁶ See § 21-3.3(b) (proposal June 1996). The technical committee shall consist of representatives of the following organizations: the New Jersey Society of Professional Engineers, the New Jersey Society of Municipal Engineers, and the New Jersey Builders Association. *Id.*; see also N.J. STAT. ANN. § 40:55-D-40.3 (a).

⁷⁷ See § 21-3.3(c) - (f) (proposal June 1996). The resolution shall state the grounds for denying or approving the request for a waiver. § 21-3.3(e).

⁷⁸ See N.J. ADMIN. CODE tit. 5, § 21-3.4 (a) (proposal June 1996).

⁷⁹ See § 21-3.4(a) - (b) (proposal June 1996). The presiding officer shall be elected by a simple majority of the present members. *Id.*

⁸⁰ See § 21-3.4(d) - (f) (proposal June 1996). The rules of evidence are not applicable at the hearings except to the extent that the presiding officer may properly exclude irrelevant, immaterial, or particularly repetitious evidence. § 21-3.4 (d) (proposal June 1996).

⁸¹ See § 21-3.4 (f) (proposal June 1996). The Board's decision shall include all findings and conclusions. *Id.* The municipal approving authority is also entitled to receive a copy of the Board's decision. *Id.*

⁸² See N.J. ADMIN. CODE tit. 5, § 21-3.5 (proposal June 1996).

"Special Area" standards were devised to preserve and/or enhance community character within the State.⁸³ To maintain the community character in municipalities, procedures may be provided to design and recommend supplemental standards.⁸⁴ Municipalities may, by ordinance, designate special areas.⁸⁵ The designated special areas typically evidence a distinctive community character which the municipality has a desire to maintain and further enhance.⁸⁶

The Site Improvement Advisory Board will consider the review of special area standards provided that the special area is: detailed on a land use document, map or ordinance;⁸⁷ incorporated in a master plan;⁸⁸ consistent with the purposes of the Act and reasonable deviations are identified;⁸⁹ and one whose site improvement standards are adopted by ordinance.⁹⁰ The Advisory Board's review shall be limited to streets, off-street parking, sewers, stormwater management, and water supply.⁹¹ The Advisory Board shall review the special area standards for consistency with the intent of the new law; reasonableness; non-detrimental effects to public health and safety; and the recognition of existing infrastructure

⁸³ See § 21-3.5(a) (proposal June 1996). As an issue of policy, the DCA Commissioner and the Site Improvement Advisory Board recognize and appreciate the need to preserve and enhance community character. *Id.*

⁸⁴ See § 21-3.5(a) (proposal June 1996). The Board recognizes that preserving community character in the municipalities of New Jersey is a sound public policy. *Id.*

⁸⁵ See § 21-3.5(b) (proposal June 1996).

⁸⁶ See *id.* (proposal June 1996). Special areas may include the following examples: redevelopment areas described at N.J. STAT. ANN. § 40A:12A-1 to -63. (West Supp. 1996), N.J. ADMIN. CODE tit. 5, § 21-3.5(b)(1); special improvement districts described at N.J. STAT. ANN. § 40:56-65 to -89. (West Supp. 1996), N.J. ADMIN. CODE tit. 5, § 21-3.5(b)(2); historic districts described at N.J. STAT. ANN. § 40:55D-65.1 (West Supp. 1996), N.J. ADMIN. CODE tit. 5, § 21-3.5(b)(3); villages, hamlets, or Office of State Planning designated communities of place, N.J. ADMIN. CODE tit. 5, § 21-3.5(b)(4); urban infill areas, N.J. ADMIN. CODE tit. 5, § 21-3.5(b)(5); and planned unit, planned unit residential, residential cluster developments pursuant to N.J. STAT. ANN. § 40:55D-39 (West Supp. 1996), N.J. ADMIN. CODE tit. 5, § 21-3.5(b)(6).

⁸⁷ See N.J. ADMIN. CODE tit. 5, § 21-3.5(d)(1) (proposal June 1996). The special area should be delineated on the following documents: zoning maps; special improvement district ordinances; adopted redevelopment plans; or other duly authorized ordinances. *Id.*

⁸⁸ See § 21-3.5(d)(2) (proposal June 1996).

⁸⁹ See § 21-3.5(d)(3) (proposal June 1996). For each deviation, a rationale must also be provided. *Id.*

⁹⁰ See § 21-3.5(d)(4) (proposal June 1996).

⁹¹ See § 21-3.5(i) (proposal June 1996); see also N.J. STAT. ANN. § 40:55D-40.4 (West Supp. 1996) (defining the review scope of the Site Improvement Advisory Board).

and potential future development.⁹²

D. *Streets and Parking*

The intended design for streets and parking are clearly delineated in Residential Site Improvement Standards.⁹³ The provisions standardize street hierarchy,⁹⁴ cartway width,⁹⁵ curbs and gutters,⁹⁶ shoulders,⁹⁷ sidewalks and graded areas,⁹⁸ bikeways,⁹⁹ street grades and intersections,¹⁰⁰ underground wiring,¹⁰¹ streets and traffic

⁹² See § 21-3.5(j) (proposal June 1996).

⁹³ See N.J. ADMIN. CODE tit. 5, § 21-4.1 to -4.20 (proposal June 1996).

⁹⁴ See N.J. ADMIN. CODE tit. 5, § 21-4.1 (proposal June 1996); *see also* Exhibits 4.1 - 4.2. The street hierarchy system is defined by the streets' function and the estimate of daily traffic. § 21-4.1(a) - (b) Daily traffic can be determined by analyzing trip generation rates as well as by considering the impact of transit facilities. *Id.* The municipality and developer jointly determine the highest order street required in a certain residential area. § 21-4.1(d) In making that determination, the size of the development, the development of adjacent sites, and proposed streets included in the municipal master plan are considered. § 21-4.1(d)(1) - (3).

⁹⁵ See N.J. ADMIN. CODE tit. 5, § 21-4.2 (proposal June 1996); *see also* Exhibit 4.3. Cartway width is defined as "[t]he actual road surface area from curbline to curbline which may include travel lanes, parking lanes, and deceleration and acceleration lanes." § 21-4.4. The determination of the appropriate cartway width for each street classification is made by analyzing curbing requirements which are based on development intensity. § 21-4.2(a).

⁹⁶ See N.J. ADMIN. CODE tit. 5, § 21-4.3 (proposal June 1996). Curbs and gutters are used for drainage, safety, demarcation, and protection of the edge of pavement and are generally required on streets with on street parking. § 21-4.3(a) - (b). Curb requirements may be waived. § 21-4.3(d). There is some flexibility allowed provided that the curb type serves the proposed drainage system. § 21-4.3(e).

⁹⁷ See N.J. ADMIN. CODE tit. 5, § 21-4.4 (proposal June 1996). Shoulders are required rather than curbs if: they are mandated by the Coastal Area Facility Review Act (CAFRA), topography makes shoulders preferable and/or necessary to preserve the rural character. § 21-4.4(a). The standards set forth shoulder width and construction materials. § 21-4.4(c) - (d).

⁹⁸ See N.J. ADMIN. CODE tit. 5, § 21-4.5 (proposal June 1996); *see also* Exhibit 4.3. Depending on the street classification and intensity of development, sidewalks and/or graded areas are required as provided in Exhibit 4.3. § 21-4.5(a). For further specifications regarding sidewalks and graded areas, *see* § 21-4.5(b) - (f).

⁹⁹ See N.J. ADMIN. CODE tit. 5, § 21-4.6 (proposal June 1996). Bicycle lanes are required only when they are specified in the municipality's master plan. § 21-4.6(a). The specifications for bicycle lanes are included in N.J. ADMIN. CODE tit. 5, § 21-4.18.

¹⁰⁰ See N.J. ADMIN. CODE tit. 5, § 21-4.9 (proposal June 1996). The specifications for street grade and intersection design are included in N.J. ADMIN. CODE tit. 5, § 21-4.19.

¹⁰¹ See N.J. ADMIN. CODE tit. 5, § 21-4.12 (proposal June 1996). All utility wiring such as electric, telephone, and television shall be laid underground on easements or public rights-of-way. § 21-4.12(a). In specific instances of severe geological conditions, overhead lines are acceptable. § 21-4.12(c).

signs,¹⁰² number of parking spaces,¹⁰³ size of parking spaces¹⁰⁴ and parking areas.¹⁰⁵ The regulations provide for the construction standards of: curbs,¹⁰⁶ sidewalks and bikeways,¹⁰⁷ street grades, intersections, pavement and lighting fixtures,¹⁰⁸ and roadway curves.¹⁰⁹ All technical dimensions and capacity limits are delineated and referenced within the forgoing subchapter.¹¹⁰

E. *Water Supply*

The following section is applicable to all site improvements affecting a development's water supply.¹¹¹ The regulations provide for water-system capacities necessary to adequately supply all homes within a development plan.¹¹² The regulations recognize the need for the municipality and developer to equitably allocate the costs associated with an expansion of the water supply system.¹¹³ The regulations require that the water supply system's design and placement protect the public health and safety, meet the construction specifications of New Jersey Department of Environmental Protection regulations, and meet the American Water Works Association standards.¹¹⁴ To further provide for the public's

¹⁰² See N.J. ADMIN. CODE tit.5, § 21-4.13 (proposal June 1996). Design and placement of signs are governed by the "Manual on Uniform Traffic Control Devices for Streets and Highways." § 21-4.13(a). A minimum of two street signs must be placed at every four-way intersection and one must be placed at every "T" intersection. § 21-4.13 (b). Signs shall be clearly visible. *Id.* Where there is a traffic signal, signs must be placed on an overhead arm support with a minimum of 15 feet clearance. § 21-4.13(c).

¹⁰³ See N.J. ADMIN. CODE tit. 5, § 21-4.14 (proposal June 1996); *see also* Exhibit 4.4. The regulations require that an adequate number of both on- and off-street parking be provided to accommodate residents and visitors. § 21-4.14(a).

¹⁰⁴ See N.J. ADMIN. CODE tit. 5, § 21-4.15 (proposal June 1996).

¹⁰⁵ See N.J. ADMIN. CODE tit. 5, § 21-4.16 (proposal June 1996). Parking must be constructed within a reasonable walking distance of the buildings. § 21-4.16(a). There shall be ample mobility and clearance for the safety of vehicles and pedestrians. § 21-4.16(b).

¹⁰⁶ See N.J. ADMIN. CODE tit. 5, § 21-4.17 (proposal June 1996). The specific size requirements are listed in § 21-4.17(b).

¹⁰⁷ See N.J. ADMIN. CODE tit. 5, § 21-4.18 (proposal June 1996).

¹⁰⁸ See N.J. ADMIN. CODE tit. 5, § 21-4.19 (proposal June 1996).

¹⁰⁹ See N.J. ADMIN. CODE tit. 5, § 21-4.20 (proposal June 1996).

¹¹⁰ See *supra* notes 93-109 (detailing construction specifications and diagrams); *see also* Exhibits 4.1 to 4.7.

¹¹¹ See N.J. ADMIN. CODE tit. 5, §§ 21-5.1 to -5.4 (proposal June 1996).

¹¹² See § 21-5.2(a) (proposal June 1996).

¹¹³ See § 21-5.2(b) (proposal June 1996).

¹¹⁴ See N.J. ADMIN. CODE tit. 5, § 21-5.3 (proposal June 1996).

safety, standards have been set as to the specifications of fire hydrants.¹¹⁵

F. Sanitary Sewers

Whereas the water system supplies the water to the residential development, the sanitary sewer system functions to remove waste water from the development.¹¹⁶ If the developer does not initially provide a sewer system, the regulations allow the municipality to require a performance guarantee in lieu of the improvement.¹¹⁷ If a developer undertakes the design and installation of the sanitary sewer, the developer must submit to the municipality or authority, the detailed plans and specifications of the proposed pipes, mains, laterals, joints, and appurtenances for compliance review.¹¹⁸ All technical dimensions and capacity limits are delineated and referenced within the forgoing subchapter.¹¹⁹

G. Stormwater Management

The final regulated site improvement standard is stormwater management.¹²⁰ The regulations of this area require professional designers to develop and design natural drainage strategies.¹²¹ Using the inherent characteristics of the site, rather than man-made structures, will significantly reduce the cost of the development project.¹²² However, certain regulations may prohibit the use of natural drainage strategies in floodplain or wetland areas.¹²³ Where engineered systems must be utilized, the regulations mandate specific requirements¹²⁴ to ensure the public's health and safety. Engineered components covered by this regulation include: detention facilities,¹²⁵ emergency spillways,¹²⁶ dams,¹²⁷ basin berms

¹¹⁵ See N.J. ADMIN. CODE tit. 5, § 21-5.4 (proposal June 1996).

¹¹⁶ See N.J. ADMIN. CODE tit. 5, § 21-6.1 (proposal June 1996); see also Exhibit 6.1.

¹¹⁷ See § 21-6.1(c) (proposal June 1996).

¹¹⁸ See § 21-6.1(e) (proposal June 1996).

¹¹⁹ See *supra* notes 116-118 (detailing construction specifications and diagrams); see also Exhibit 6.1.

¹²⁰ See N.J. ADMIN. CODE tit. 5, §§ 21-7.1 to -7.6 (proposal June 1996).

¹²¹ See § 21-7.1(a) (proposal June 1996).

¹²² See *id.* (proposal June 1996).

¹²³ See § 21-7.1(b) (proposal June 1996).

¹²⁴ See N.J. ADMIN. CODE tit. 5, § 21-7.3 (proposal June 1996).

¹²⁵ See N.J. ADMIN. CODE tit. 5, § 21-7.5 (proposal June 1996).

¹²⁶ See § 21-7.5(f)(3) (proposal June 1996).

¹²⁷ See § 21-7.5(f)(4) (proposal June 1996).

and embankment ponds.¹²⁸ The regulations further prescribe the ownership and maintenance of the drainage basins.¹²⁹ To ensure against non-point pollution, the regulations require a water quality design storm.¹³⁰ The regulations also require that the controlling method implement the best management practices, some of which are detailed within the regulations.¹³¹

V. Conclusion

Development standards, such as fire safety, building and site improvement, and subdivision standards, are enforced to provide the public with a minimal level of protection. These standards for residential and most non-residential building projects facilitate the development process to be more predictable, consistent and timely. However, in the case of site improvement standards, the various municipalities prescribe their own standards for streets, sidewalks, parking, utilities, sewers and stormwater management. This multiplicity of site improvement standards slows the construction process to a crawl and adds additional expenses, driving costs even higher.

The USISA was promulgated to provide state-wide standards for all residential site improvements. By "setting the bar" at a level consistent throughout the State, developers of residential projects are assured greater predictability of site improvement costs. The standardization will allow a greater flexibility of bulk purchase with respect to building materials, thereby, reducing hard construction costs. By eliminating the cost of additional design and planning expenses, the planning of site improvements in northern New Jersey development sites will not differ drastically from the planning of a similar site in southern New Jersey.

While the USISA legislation is a giant step in the right direction, further measures are still needed in order to lower building costs. There are two measures which will accomplish this, each requiring legislation.¹³² The first action should extend the new site improvement standards to non-residential developments.¹³³ The

¹²⁸ See § 21-7.5(f)(5) (proposal June 1996).

¹²⁹ See § 21-7.5(f)(8) (proposal June 1996).

¹³⁰ See N.J. ADMIN. CODE tit. 5, § 21-7.6(b) (proposal June 1996).

¹³¹ See § 21-7.6(c) (proposal June 1996).

¹³² See THE STARR REPORT, *supra* note 31, at II-12.

¹³³ See *id.*

second action should require that the new site improvement standards comply with all other development standards imposed by other governmental agencies.¹³⁴ An extensive reform of the State's permitting process would eliminate the redundancy of reviews and would be in compliance with the new site improvement standards.¹³⁵

¹³⁴ See *id.*

¹³⁵ *Id.* Presently, the new law only impacts upon "relatively straightforward and objective [Department of Environmental Protection] permitting requirements." *Id.* There are legions of permit and review process in the State, and independent reviews by every agency is extremely inefficient. The need to integrate all the governmental concern into a single review, preferably at the municipal level, will expedite the process and lower its high and unseemly costs. *Id.* According to estimates of the New Jersey Builders Association, approximately half of the residential projects are stuck in the morass of the permitting process for more than three years. See STATE CONSOLIDATED PLAN, *supra* note 7, at 82-83. It is estimated that the cost associated with these regulatory impediments is one percent per month. *Id.* at 83. That figure equates to a 30% increase in development costs directly attributable to the state's residential construction permitting process. *Id.*