

Chapter 3

Pre-Meeting Activities

Introduction

This chapter describes processing an application for development and its relationship to planning or zoning board action. It includes logging in and indexing the application, setting up case files, serving notice, and circulating application materials to various municipal departments and officials for comment. Finally, it covers preparing board members and offers tips on records management, including managing paper flow, preparing case files for litigation, and records retention and disposal.

Accepting an Application and Assigning It to the Appropriate Board

Someone has just come into your office and left a carton full of forms, plans, and other documents connected with an application for development for submission to the planning board or the zoning board of adjustment. There are several steps that should be taken immediately to begin processing the application in accordance with the provisions of the Municipal Land Use Law.

The first step in the process is to date stamp all material and log in the receipt of the application. Whatever method chosen, it needs to be consistent with all applications received. It may be done on the board copy of the application form, in a notebook kept for this purpose, on an index card, a computer spreadsheet or database program, or in a different way. The date an application is filed is particularly important since all time limits set forth in the MLUL are calculated from that date. The administrative officer has to review an application within 45 days of its receipt and certify it complete in accordance with the checklists adopted by ordinance, or to notify the applicant that the application is incomplete by specifying the checklist items that have not been provided (N.J.S.A. 40:55D-10.3). If the applicant is not notified of the application's incompleteness within the 45-day period, the application is automatically complete, and the time during which the board has to hear the application begins.

Secondly, an administrative review of the application is done if the property taxes are current, to determine if adequate application fees and escrow payments (which cover the costs of professional services for review of documents and other services provided to the municipality) have been filed with the application. Deposit the payments (see Chapter 4) and assign an application number. In order to assign the number, you must first determine which board has jurisdiction over the application. The applicant may specify on the application form the board for which the application is intended; however, the accuracy of this should be verified. You may have met with the applicant prior to filing an application and indicated which board has jurisdiction, or jurisdiction needs to be determined as part of a discussion with the zoning officer and possibly the board attorney. In assigning application numbers, one system that works well is to include the year and the escrow number assigned as part of the number (i.e., 99-01 or 01-99) with each number preceded by a "P" or "Z" to differentiate between the zoning and planning boards.

The third step is to create a tracking mechanism for all applications which includes entering the application number, type of application and deadline/decision dates, due dates for reports, scheduling, etc. This tracking form of all filed applications is an invaluable resource for everyone - the boards, other municipal offices, property owners, and the public. The tracking document should include the application number; property address, block and lot numbers; applicant's name; and the action of the board (approved, denied, or dismissed). You may have tracking documents for each board or a combined index. The properties may be indexed either by block and lot number, street address, or both.

Chapter 1 deals with the powers of each board and the resulting jurisdiction over the various types of applications. For assistance in making a determination, you also may consult N.J.S.A. 40:55D-25 and 60, which discuss the powers of the planning board, and N.J.S.A. 40:55D- 70, for powers of the zoning board of adjustment. In cases where jurisdiction is not clear, you should consult your municipal zoning officer first and then your board attorney. If the issue remains unresolved, the applicant may apply to the board of adjustment under N.J.S.A. 40:55D-70b for an interpretation of the type of application involved and the jurisdiction.

Setting up an Application File

A separate file should be created for each planning board or zoning board application. The file should be labeled with the applicant name, street address, type of application, block and lot number(s) of the subject property and filed accordingly. The best practice in filing active applications would be by applicant name (this includes applications through compliance review). Correspondence, fees, reports, and submissions can be separated within the file or maintained as one chronological file. A cross-reference index also should be created for ease in researching the history of each property. Since planning board and zoning board application files contain a myriad of forms, it is helpful to create a "File Checklist" sheet to be attached to the inside front cover of the file. A file checklist appears in Appendix A, Form No. 1.

Reviewing an Application for Completeness

The completeness review for all applications must be completed within 45 days from the date the application is filed is done by the Administrative Officer. Keep in mind that this review must be based on a checklist adopted by ordinance. Your municipality may have a checklist for each type of application, or there may be an all-encompassing checklist that indicates items required for each type of application. In comparing the submission to checklist requirements, you may only declare an application incomplete if a required item is not included. Incorrect data, unacceptable design of drainage systems, parking layouts or the like do not constitute a basis for calling an application incomplete. Any such problems would be addressed in the subsequent technical review of the application. For example, if a floor plan and an elevation plan are required and they are submitted, the fact that they are inconsistent does not make the application incomplete.

If you are not the Administrative Officer who conducts the completeness review, you should forward the application to the appropriate person as soon as possible so that the review takes

place within the 45-day period. Give them your notes on your administrative review so if there are missing items it can be included in the letter deeming the application incomplete.

The completeness review can be handled many ways. Often the board secretary is responsible for the administrative portion of the checklist, and the technical portions are handled by the planner, engineer, and/or a technical review committee or the Board of jurisdiction. The tracking document should note deadline date for the 45-day review period in order to ensure the applicant is notified prior to that date if the application is incomplete.

When an application is incomplete and the applicant has been notified within the 45-day period, a subsequent submission, or submissions, will follow. An additional 45-day period from the date of the resubmission is given to conduct a new completeness review. Once again, either certify the application complete and provide the applicant with a hearing date or notify the applicant of the incompleteness and specify the items on the checklist that are still incomplete.

An applicant has the right to request waivers of checklist requirements. The board or its authorized committee has 45 days to act on any checklist waiver requests, or it is presumed to have been granted. The power to grant checklist waivers can be delegated to a committee of the board as this helps to keep the regular meeting agendas clear for public hearings or, in the case of the planning board, planning matters. If the requested waivers are granted, these items are considered complete. If any or all of the waiver requests are denied, the application is incomplete and the applicant must be notified in writing.

Once an application has been determined complete, the board hearing the application has a specific deadline in which to render a decision on the application (see below). Even though an application is determined to be complete, the board still may request additional information it feels necessary to make an informed decision on the application. A request for additional information may be a part of the reports issued by the board's professional staff (engineer, planner, etc.) or it may be made by the board during the course of the public hearing.

Application Calendar: Deadlines for Decisions after Completeness Review

Minor Subdivision (N.J.S.A. 40:55D-47c)

- Determination within 45 days

Major Preliminary Subdivision (N.J.S.A. 40:55D-48c)

- Fewer than 10 lots: determination within 45 days
- 10 or more lots: determination within 95 days

Major Final Subdivision (N.J.S.A. 40:55D-50)

- Determination within 45 days

Minor Site Plan (N.J.S.A. 40:55D-46.1a)

- Determination within 45 days

Major Site Plan-Preliminary and Final (N.J.S.A. 40:55D-46c; 40:55D-50c)

- Less than 10 acres, less than 10 dwelling units: determination within 45 days
- 10 acres or more, 10 dwelling units or more: determination within 95 days

Conditional Use (N.J.S.A. 40:55D-67a)

- Determination within 95 days

Any application with associated variances (N.J.S.A. 40:55D-61; 40:55D-73)

- Determination within 120 days

Appeals (N.J.S.A. 40:55D-73)

- Determination within 120 days from the decision of an administrative officer

The amount of time given to a board cannot exceed 120 days. The time frames are not cumulative and the length of time is determined by the type of application with the longest time period (i.e., minor site plan with conditional use has a 95-day determination period). Failure to render a decision within these time periods, or within such time period as may be consented to by the applicant, constitutes a decision favorable to the applicant, also known as complete by default.

Circulating the Application

Once an application has been deemed complete and scheduled for public hearing, copies of the application package must be distributed. The distribution list varies from municipality to municipality. To start, there should always be a complete set of applicant originals creating the public board file. A comprehensive policy for distribution should include complete a complete set of material for each board member; the board attorney, board engineer, board planner, , police chief, fire chief, health officer, sewer department, and public works department. In addition, towns may utilize advisory committees/commissions (historic (if in a district), shade tree, traffic/complete streets) for reports to the board on the application. Some municipalities also provide a public review copy that is readily available for public inspection so that the board's official file is not subject to rearrangement or loss of documents during review by members of the public.

In addition, external distribution of an application may be required. For example, the applicant either may provide the board with sets of the application to be mailed to the county planning board and the soil conservation district, or may submit proof to the board office that such applications were filed, if required. While the requirements may vary from county to county, they all include county planning board approval of all development applications affecting county roads or drainage facilities, and soil conservation district certification of various types of projects that involve the disturbance of more than 5,000 square feet of soil.

Legal Notices and Certified Lists: Responsibilities of the Applicant and the Municipality

For all applications requiring notice, it is the responsibility of the applicant, or the attorney representing the applicant, to prepare the legal notice. The notice must state the date, time, and place of the hearing; the nature of the matters to be considered; identification of the property by

street address and reference to block and lot numbers as shown on the current tax duplicate in the municipal tax assessor's office; and the location and times at which any maps and documents may be examined by the public. Many towns provide sample notice of hearing forms providing guidance to the applicants (N.J.S.A. 40:55D-11, 12).

Upon the written request by the applicant, the administrative officer of a municipality must, within seven days of the request, prepare and certify a list from the current tax duplicates of property owners within 200 feet of all borders of the subject property (whether located within the municipality or in adjoining municipalities within the state) and include utilities registered with the municipality (N.J.S.A. 40:55D-12.1 et al). A fee pursuant to N.J.S.A. 40:55D-12c may be charged for such list. In some cases, the certified tax list may also contain the names and addresses of clerks of adjoining municipalities, county planning boards, NJ Department of Transportation, office of planning advocacy, partnerships, corporations, condominium associations, public utilities, and cable television companies. The applicant must serve notice via personal service or certified mail at least 10 days prior to the hearing. It is preferable to serve notice via certified mail to eliminate the problem of trying to determine the identity of a given property owner or agent. If the notice is sent via certified mail, it is not required that a return receipt be obtained. Any notice made by certified mail is deemed complete upon mailing in accordance with N.J.S.A. 40: 55D-14. Should any question arise regarding notification, the applicant is entitled to rely upon the information contained in the certified tax list. Failure to give notice to any property owner, public utility, cable television company, or local utility not on the list does not invalidate the hearing or proceeding (N.J.S.A. 40:55D-12.3).

In addition to the notification to property owners, the applicant must place a legal notice in an official newspaper of the municipality so designated by the board at least 10 days prior to the hearing. Upon completion of noticing, the applicant must file an affidavit showing proof of service with the municipal agency holding the hearing. In some cases, an applicant may hand deliver notices to establish proof that notice has been given. It is good practice to have the applicant provide you with its material at least five business days prior to the hearing as this gives you a chance to ensure the notice is accurate and all parties on the certified list were sent notification.

The applicant or a municipal officer designated by ordinance arranges for the publication of a brief notice of the decision in the official newspaper designated by the board. There is a 45 day (calendar) period during which an appeal of the decision may be filed which runs from the date of first published the notice of board's decision.

Preparing for the Board Meeting: Keeping a Calendar and Setting an Agenda

Either, within seven days of the annual organizational meeting or no later than January 10, the board of adjustment and the planning board must adopt a yearly calendar establishing the dates, times, and locations of all regular meetings that must be held at least once a month. These meetings should be held as scheduled unless cancelled due to a lack of applications. The calendar should be sent to the two official newspapers designated by the board or boards shortly after adoption. The calendar(s) also should be posted in a public place reserved for notices. The planning or zoning board may also provide for special meetings. The chair may call these

meetings or they can occur through the request of any two board members. Notice of the special meetings must be given to board members and the public in accordance with municipal regulations (N.J.S.A. 40:55-9a).

The board secretary or administrator should keep a calendar of the hearing dates assigned to each application. It also may be helpful to keep other information about each application on this calendar, such as the time for decision and consents to extension of time for decision, eligibility on voting should applications be continued, etc.

The board secretary or administrative officer prepares the agenda for each meeting working with the board chair. The agenda should include the date and time of the meeting, a statement of Open Public Meetings Act compliance (to be read into the record at the meeting), roll call, and all applications to be considered or discussions to be held. Cases carried from a previous meeting normally take precedence over new applications on the agenda and, when possible, cases that are less controversial should be scheduled before larger ones. The agenda also may include other items such as approval of minutes, an open period for questions or comments from the public, memorialization of resolutions, and executive sessions.

A copy of each agenda must be posted on the municipal bulletin board and distributed to the board's designated official newspaper(s), the municipal clerk, all board members, consultants, and applicants and their attorneys – it does not have to be published. Agenda distribution varies in each municipality, and the list may include the members of the governing body, code enforcement officer, construction official, environmental commission, public library, etc. It is a good practice to attach minutes, applications, staff and consultant reports, and other supporting documents to the agenda. Also, ensure that sufficient copies are available in advance of and at the board meeting for the public to review. This material may also be placed on the municipality's website for viewing or downloading. Case files on development applications are be open to the public for inspection during normal business hours upon completion. There is nothing secret about information related to public planning and zoning. Especially with controversial applications, it is good practice to ask those members of the public reviewing the material to complete an Open Public Meetings Act (OPRA) request.

Record Keeping

Filing Systems

All application files should be prominently labeled. Depending where the application is in the process will determine the best way to file the material: starting with submission through compliance, it is best to keep this material in one location and file by applicant's name or street address; once the application file has closed (signed off, withdrawn, denied), then it should be filed by street address to enable easy future retrieval. The activity level assigned to an application file determines its activity, storage, and retrieval requirements. The two definitions of records activity are current (or active) and semi-current. Current are files referenced more than once per month per file drawer. Semi-current are files referenced less than once per month per file drawer. Current files should be kept in the main working area.

Removing semi-current files from your current files is one of the best ways to enhance the efficiency of the active file system and should be done on a regular basis. Files should be streamlined by keeping only one copy of documents and one copy of the latest revised plans in the file as required by law, rather than several copies.

Keep track of borrowed files that other municipal staff may use. Charge-out systems involve the use of a printed card that is inserted in place of a borrowed file. There is space on the card for the borrower to sign and enter the date of removal. Charge-out cards save much wasted time and frustration searching for a missing file.

Paper Flow

It is the responsibility of the board secretary to ensure a smooth paper flow. The secretary must distribute copies of each application package to board members, staff members and consultants and make sure that all the information needed to review the application is included. Copies of the reports from the board's consultants should be distributed to each board member and the applicant, or attorney for the applicant, prior to the hearing. The secretary also must handle all general correspondence for the board in a timely manner and may be responsible for newspaper publication of the public notice as well as the notice of decision, depending on the specific language in the municipal ordinance.

Documentation

In order for the board secretary to track each application from start to completion, it is extremely important to document all aspects of the application by keeping copies of transmittal letters in the file. Documentation should begin as soon as an application is received and should include recording the date an application is received, deemed complete, and distributed to the board and consultants. The deadline for board action should be recorded along with any consents to extension of time for the board's decision. All correspondence should be dated as received. Documentation also should be retained concerning the receipt of revised plans. A transmittal letter describing the revisions should be obtained from the engineer or architect responsible for them. It also is important to document the status or satisfaction of each of the conditions of an approval.

The board secretary must keep an accurate record of the meeting dates for each application and the attendance of each board member in order to determine voting eligibility. If a board member listens to the recording, views the meeting video or reads the transcripts of a meeting he or she did not attend, the member must sign an affidavit that the board secretary prepares to qualify to vote on a matter; such documentation becomes a part of the record. In the absence of accurate record keeping, the board's action could be invalidated due to the vote of an unqualified member.

Forms, Form Letters, and Notices

Since each application requires the submission of similar information, forms and form letters help to speed the process. Sample forms are contained in New Jersey Zoning and Land Use Administration by William M. Cox, published annually by Gann Law Books. The sample forms can be tailored to meet the needs of your municipality.

Preparing Files for a Court Case

When an appeal of the board's decision is made, an officer of the county sheriff's department usually serves a subpoena, in person, to the board secretary. The secretary must sign for acceptance of the subpoena and should immediately notify the board attorney, chairman, and members, and provide them with a copy of the subpoena. Copies of all ongoing correspondence regarding the appeal should be distributed to the board members.

The party filing the appeal is responsible for paying for and providing a copy of the certified transcripts of all meetings to the board secretary and judge. The secretary should make a photocopy of the transcripts for the board file before turning the original transcripts over to the board attorney, or create the transcript, at the applicant's cost, from a recording. As the court date nears, the attorney for the applicant will contact the board secretary to request the original board file, including all exhibits, to be provided to the judge. The board secretary must make and retain a photocopy of the entire application file before releasing the original file to the judge. The board members should be notified of the date, time, and place of the court proceedings in case any of them wish to attend. Notice of the decision of the judge should immediately be forwarded to the board members.

Shortly after the judge has rendered a decision, the board secretary should contact the applicant's attorney to request the return of the original file. The secretary should check to be sure all the documents have been returned. Once the original documents have been returned, the photocopied contents of the file may be destroyed.

Records Retention and Disposal

You have limited space in your office and a mound of papers and drawings for each application. There are also minutes, books and files, notice files, correspondence files, pieces of evidence from public hearings, and any number of other documents related to the activities of the boards. Help is at hand in the form of the New Jersey Department of State's Division Revenue and Enterprise Services (DORES), which has formulated a schedule listing the various types of municipal land use documents and classifying them as permanent or setting forth the length of time you must retain a document. This schedule was developed specifically for land use office purposes. The most current retention schedule is available on the Department of Treasury's website. Originally, the only schedule available addressed other segments of municipal and county government, such as financial records, personnel records, insurance records, general administrative records, reports, and publications. The transfer of records is now handled electronically through Artemis. Your municipal clerk will provide you with login information for access.

As long as you know where to look for the information, you do not need to memorize the many categories of documents and their respective retention periods. However, you should be aware that you must retain some things permanently such as final approved minutes, final approved site plans, and final approved subdivision plans. In addition, while the state regulations permit you to discard case files for applications that are denied, it is recommended that you retain these files (at least the application form), any drawings, and the resolution. If you have the space it is

helpful to keep, for future reference by municipal officials and members of the public, the basic file documents mentioned above for all applications. If you are severely pressed for space, your local library may be a willing repository for the files that can be discarded.

The State of New Jersey requires that your municipality utilize Artemis for all documents you intend to discard or transfer. After receiving the State's approval, disposal may be made by physical destruction, such as discarding in the trash, recycling, or shredding, or by transferring ownership to a body such as your local library. There are a number of benefits to be derived from complying with the disposal process, including:

- monetary savings in purchase and maintenance of space, both physical/building space and storage cabinet space;
- increased efficiency gained from removal of unnecessary files; and
- protection for the municipality in case legal issues arise in the future regarding discarded documents.

