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New Jersey DCA Issues Guidance for Remote Hearings

April 8, 2020

The manner in which local land-use hearings are to be conducted is one of the many challenges being faced by local governments as a result of the COVID-19 pandemic. On April 3, 2020, the New Jersey Department of Community Affairs' (DCA) Division of Local Government Services (DLGS) issued a guidance document intended to assist local land use boards in conducting remote hearings while satisfying all of the various requirements of the Municipal Land Use Law (MLUL). The MLUL process is designed to ensure that interested members of the public have an adequate opportunity to review applications, to ask questions of witnesses and to comment at public hearings. The guidance document recognizes that local land use boards must satisfy the standard while also adhering to "appropriate social distancing and health measures". The DLGS document includes the following suggestions:

- Local boards should require that plans and applications be submitted electronically (many boards already require this) which should then be made available for public review on a municipal website, by way of a Dropbox or some other online service that is available to the public free of charge.
- Electronic notices should include contact information for the board secretary so that members of the public who wish to review the application in person or, if the municipal building is closed, to obtain a hard copy of the plans and applications may do so, subject to any standard fees or charges.
- The public notice should state that individuals lacking the resources or know how to access records electronically should contact the board secretary for assistance.
- The guidance document indicates that hearings may be held remotely and electronically, provided that the platform that is chosen gives members of the public the opportunity to ask questions, to cross-examine witnesses and to offer comments. There are numerous videoconferencing technologies that allow this to occur.
- The guidance recommends that all proposed exhibits to be introduced at the hearing be available to the public beginning 48 hours prior to the hearing and during the hearing itself. The guidance document does not explain what will happen if exhibits are introduced for the first time at the hearing, which commonly occurs. The document recommends that the board, it's professionals and staff will need to coordinate closely with the applicant to ensure that this process runs smoothly. This may require a dry run in many cases with the professionals never the board members themselves.
- The guidance recognizes that facilitating and managing public comment and questioning may be more difficult in a remote setting. To this end, it recommends that the board chair limit redundant comments and questions to ensure orderly participation.
- Members of the public should be encouraged to advise the board in advance, if possible, via email or phone of their intention to undertake cross-examination, so that the board can ensure the technological needs are accommodated and documents that are referenced be available for review by all participants.

Some of these suggestions will be difficult to put in the practice. Most land use boards throughout the state are already coming to grips with how to best conduct remote hearings that meet the requirements of the MLUL. The New Jersey League of Municipalities will no doubt be taking a lead in assisting its members as they go forward. The bottom line for the development community is that, while remote hearings are legal, everyone is going to have to go to great lengths to ensure that they are properly conducted and pass legal muster.

If you have questions feel free to contact Neil Yoskin at (609) 279-0900 or via email at NYoskin@cullenllp.com or Jeffrey A. Zenn at (201) 488-1300 or via email at JZenn@cullenllp.com.

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