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# **County Planning in New Jersey: A Review of Existing Law**

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for New Jersey Future



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## **Acknowledgements**

This paper was prepared by Francis A. Weber as a summer internship project in collaboration with New Jersey Future Senior Fellow Ingrid W. Reed. This is the first part of a two-part study of county planning, focusing on statutory requirements for county planning. The second part will review current county planning best practices.

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# Contents

<b>Introduction.....</b>	<b>Page 4</b>
<b>Composition and Funding of County Planning Boards.....</b>	<b>Page 5</b>
<b>Duties of County Planning Boards .....</b>	<b>Page 6</b>
1. Adoption of a Master Plan .....	6
2. Adoption of a County Map .....	7
3. Review and Approval of Subdivisions and Site Plans .....	7
4. Appeals .....	8
5. Duties Relating to Municipal Planning and Zoning Decisions .....	9
a) Notice Provisions .....	9
b) Transfer of Development Right Ordinances .....	10
<b>Duties Conferred by State Legislation and Regulation .....</b>	<b>Page 11</b>
1. Cross-Acceptance .....	11
2. Stormwater Regulations.....	11
3. Water Quality Management Planning Regulations.....	12
<b>Conclusion .....</b>	<b>Page 13</b>

## Introduction

In 1935, with the passage of the County Planning Enabling Act,<sup>1</sup> New Jersey paved the way for its counties to form county planning boards. Before the statute, all planning functions took place at the municipal level. The act was last revised in 1968.

County planning boards also derive power from New Jersey's Municipal Land Use Law (MLUL).<sup>2</sup> As one would expect, the MLUL largely provides land-use regulations applicable to municipalities, but it includes some provisions applicable to county planning boards. Finally, county planning boards are given powers in state legislation, such as the State Planning Act, as well as in administrative regulations, mainly those promulgated by the Department of Environmental Protection.

This paper seeks to answer the question, "What can county planning boards in New Jersey do?" by outlining the legal framework – formed by the County Planning Enabling Act, MLUL, and other state legislation and regulation – within which county planning boards operate.

In addition, the comment sections in italics throughout this paper highlight where the legal framework is unclear or where it appears to be inconsistent with 21<sup>st</sup>-century planning principles and practice. These comments include the perspectives of the author, as well as those derived from conversations with members of the county planning community.

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<sup>1</sup> New Jersey Statute (N.J.S.A.) 40:27-1 *et seq.*

<sup>2</sup> N.J.S.A. 40:55D-1 *et seq.*

## Composition and Funding of County Planning Boards

A county is not required to form a planning board, but those that do must conform to the provisions of the County Planning Enabling Act. If a county does not form a county planning board, the county is not obligated to perform any of the statute's requirements; however, each of the 21 counties in New Jersey has an established planning board.

In terms of composition, a county planning board must have between five and nine members, two of whom must be county freeholders and the remaining must be members of the public, although the county engineer is a member of the board when a board has seven or more members. Members of the county planning board may not hold other county office.

As with many other county departments, planning boards are funded through the county's general fund, although a county may take out bonds to pay for additional expenses when a board is drafting its master plan.<sup>3</sup>

**Comments:** 1. The statute is silent on the election of officers, so county planning boards elect chairmen and vice-chairmen in accordance with county bylaws, which vary from county to county. 2. There also are no requirements that the members of the public appointed to planning boards have any specific background or experience or represent a broad range of municipalities in a county. 3. Since county planning board members may not hold any other county office, it might make sense to review whether the county engineer should serve on the board, especially since his or her work often comes before the board as part of the approval process.

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<sup>3</sup> N.J.S.A. 40:27-3.

# Duties of County Planning Boards

## 1. Adoption of a Master Plan

The statute requires a county planning board to “make and adopt a master plan for the physical development of the county.”<sup>4</sup> The chief goal of a master plan is to make recommendations for the future development of a county, and the statute provides that the following aspects should be considered in a county’s plan:

“Streets and roads, viaducts, waterway and waterfront development, parkways, playgrounds, forests, reservations, parks, airports, and other public ways, grounds, places and spaces; and forests, agricultural areas, and open-development areas.”

***Comment:** While some of these components remain important considerations in modern-day planning, this list includes several inconsequential characteristics and lacks universally accepted, 21<sup>st</sup>-century planning principles. In contrast, for example, Pennsylvania’s Municipalities Planning Code requires county comprehensive plans to include several elements that far surpass the level of detail required by New Jersey’s statute.<sup>5</sup> It is also important to note that while Pennsylvania county comprehensive plans must be reviewed every 10 years, New Jersey county planning boards have no such obligation. As a result, the decision to update a county plan in New Jersey is wholly voluntary, which has resulted in variation among the county boards. Some counties have updated their plans in the last 10 years; others follow plans adopted much earlier.*

The New Jersey statute encourages county planning boards to involve local governments “in any matters whatsoever which may concern the integrity of the county master plan.”<sup>6</sup>

***Comment:** This language leaves much open to interpretation – which type of land-use decisions would concern the integrity of the county plan? – allowing some counties to read it as an invitation to become proactive in working with their municipalities, while others comment only when their municipalities approach the county planning staff or board.*

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<sup>4</sup> N.J.S.A. 40:27-2.

<sup>5</sup> See the Pennsylvania Municipalities Planning Code, Section 301. Such elements include housing needs, density and intensity of future development, transportation concerns (including but not limited to roads, bikeway systems and public transit), location of public infrastructure and buildings, preservation of natural and historic resources and prime agricultural lands, and large developments that have a regional impact.

<sup>6</sup> N.J.S.A. 40:27-2

## 2. Adoption of a County Map.

The board of freeholders may adopt and establish an official county map “showing the highways, roadways, parks, parkways, and sites for public buildings or works, under county jurisdiction, or in the acquisition, financing, or construction of which the county has participated or may be called upon to participate.”<sup>7</sup> It can do so only after receiving advice from the county planning board. Revision of the county map also requires advice from the planning board, but if the county planning board advises against revision, the board of freeholders must approve the revision by a majority vote. The approved county map is binding on the board of freeholders and other county boards. The county planning board is not specified as one of these boards. The county map does not restrict the board of freeholders from investing in infrastructure not shown on the county map.

***Comment:** The existence of a county map and the role of the county planning board in its creation and revision did not emerge in the initial research conducted for this report, nor in discussion with county planning board officials, except in one case where the county official reported that a county map was not pursued in that county.*

## 3. Review and Approval of Subdivisions and Site Plans

The authority to approve applications for site plans and the subdivision of land is a major responsibility of county planning boards in New Jersey. The board of freeholders must adopt county subdivision and site plan regulations in order for the county planning board to carry out its review and approval powers. For subdivisions subject to county approval, a board must make its decision within 30 days of the receipt of an application. Failure to take action within the time period implies approval of the subdivision application. For site plans, the time stamp for approvals is dependent on the specific procedures and standards adopted by the board of freeholders of the county.

The distinction between a subdivision and a site plan is important. The former is defined as a division of a lot into two or more lots, while the latter is defined as a development on an existing lot. A slight difference in the wording of the statute has created an important distinction between which site plans and subdivisions a county planning board may review.

While a county planning board has the power to approve or disapprove applications for subdivisions of land that “*affect* county roads and drainage facilities,” it has jurisdiction only over site plans that “*are*

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<sup>7</sup> N.J.S.A. 40:27-5

along county roads or affect county drainage facilities.”<sup>8</sup> Site plans involving less than 1 acre of impervious surfaces are exempt from the county approval and review process altogether.<sup>9</sup>

The variation in wording has not been lost on the state’s courts, which have read the difference to mean that county planning boards have approval powers over site plans in fewer instances than they do over subdivisions. For example, a subdivision that is not along a county road still may be subject to approval by a county planning board if it has the potential to result in increased traffic on the county road system, but a site plan in the same location with similar potential impacts is not subject to review.

***Comment:** In New Jersey, suburbs are already largely built-out and less eager for new large-scale residential development, so there is less subdivision activity. Site plans have become more prevalent because of an increasing trend toward development and redevelopment on existing lots. This distinction between site plans and subdivisions limits the ability of county planning boards to review and approve developments that have the potential to affect their counties.*

In addition to granting only limited approval powers over subdivisions and site plans, the statute restricts the factors that a county planning board can take into consideration when reviewing these applications. The review factors differ slightly for subdivisions and site plans, but both include requirements for dedicating drainage facilities and easements, providing various improvements that increase traffic safety, and for the developer to pay for related infrastructure improvements.

#### 4. Appeals

The statute allows “aggrieved persons” to appeal a planning decision made at the county level. The following table shows the appeals process:

<b>Appeal From the Decision of:</b>	<b>Appeal Heard By:</b>
County Planning Director and Committee	County Planning Board
County Planning Board	Board of Freeholders
Board of Freeholders	New Jersey Superior Court

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<sup>8</sup> N.J.S.A. 40:27-6.6(e)

<sup>9</sup> N.J.S.A. 40:27-6.6(e)

***Comment:*** *The role of the county freeholders in the appeals process deserves consideration for its potential conflict of interest. The county’s board of freeholders appoints the planning board members and two of the freeholders serve on the board, but the freeholders also hear appeals from decisions of the county planning board. It is not clear, however, how frequently an appeal occurs. One county planner reported that there has not been an appeal from his county’s planning board for more than 20 years, pointing out that his staff works with applicants to resolve any problems before the board acts, in order to limit the possibility of an appeal.*

## 5. Duties Relating to Municipal Zoning and Planning Decisions

A county planning board has no approval powers over any amendment, repeal or adoption of a municipality’s zoning ordinance or master plan. There are instances, however, in which a county planning board has the option to comment on municipal land-use actions. The opportunity to comment should not be confused with “review power” because county planning boards are not required to review and make decisions.

*a. Notice Provisions:* The notice provision by a municipality to a county planning board is 10 days before a municipality’s public hearing takes place for:

- A proposed adoption, revision or amendment of any municipal development regulation (i.e. a site plan or subdivision ordinance);<sup>10</sup>
- An amendment of a municipality’s zoning ordinance that “affects lands adjoining county roads, or other county lands, or lands lying within 200 feet of a municipal boundary, or facilities or public lands shown on the county master plan or official county map;”<sup>11</sup>
- A property that is the subject of an application to a municipality’s zoning board of adjustment and “fronts upon an existing county road shown on the official county map or on the county master plan, adjoins other county lands, or is situated within 200 feet of a municipal boundary;”<sup>12</sup> and
- A proposed amendment, revision, or adoption of a municipal master plan.<sup>13</sup>

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<sup>10</sup> N.J.S.A. 40:55D-15

<sup>11</sup> N.J.S.A. 40:27-6.10

<sup>12</sup> N.J.S.A. 40:27-6.11

<sup>13</sup> N.J.S.A. 40:55D-13

**Comment:** *Several county planners have noted that this 10-day notice requirement negatively affects planning at both the county and municipal level. From the county's perspective, a county plan carries more weight when it is coordinated with the plans of its municipalities. A longer comment period – and perhaps even the obligation to review municipal master plans early in the draft stage – would allow the county planning staff to collaborate with municipalities to achieve consistency between the plans. A longer period would also benefit municipal planning since the county planning staff – most of whom have GIS capabilities – could help with gathering data and analyzing issues. The short time period also limits the level of detail with which the county can review the plan. As a comparison, municipalities in Pennsylvania must give their county planning commissions 45 days' notice before adopting or revising a municipal plan, and the plans are subject to a formal review process.*

*b. Transfer of Development Rights Ordinances:* When a municipality in New Jersey is drafting a transfer of development rights (TDR) ordinance, the MLUL grants its county planning board the power to approve the TDR ordinance before it is adopted by the municipality.<sup>14</sup>

A county planning board must either recommend or not recommend a municipality's TDR ordinance within 60 days of the draft ordinance's receipt. Among the review criteria is "consistency with the adopted master plan of the county,"<sup>15</sup> a rare mention of the need for consistency with the county comprehensive plan. Failure to recommend a municipality's ordinance starts another 30-day period in which the municipality and county planning board attempt to resolve the reasons that resulted in the board's decision to not recommend the ordinance. If a resolution cannot be reached, a municipality may petition the state's Office Smart Growth (now the Office of Planning Advocacy) for approval of the ordinance.

Upon adoption of the TDR ordinance, the MLUL requires that the municipality provide its county planning board with an annual report on the transactions that have occurred. In addition, every five years, a municipality must offer a more detailed report to its county planning board that describes the success (or lack thereof) of the program and whether it can be improved in the future.

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<sup>14</sup> A transfer of development rights program allows development rights from one part of a municipality (most often agricultural and natural resource lands) to be transferred and sold to developers who can use these additional development rights to build beyond various provisions of the municipality's zoning code in other areas of the municipality (most often, areas that can support the increased density). TDR programs offer a way to preserve farmland and natural resources while simultaneously promoting density and development.

<sup>15</sup> N.J.S.A. 40:55D-149(b)(1)

# Duties Conferred by Legislation and Administrative Regulations

## 1. Cross-Acceptance

The New Jersey State Planning Act preserves the limited role of county planning boards in municipal land-use decisions, but it invites counties to aid in the preparation and update of the State Development and Redevelopment Plan and serve as a mediator between their municipalities and the State Planning Commission.

The preface of the State Plan released in 2000 indicates the extent to which counties participated in its formation. All 21 counties were involved in drafting the preliminary and final plan and as a result, “947 policy issues and map changes were negotiated with over 76 percent resulting in agreement between the State Planning Commission and counties and municipalities.”<sup>16</sup>

Counties serve as mediator between the state and municipalities in part by negotiating “cross-acceptance among the local planning bodies within the county.”<sup>17</sup> Cross-acceptance involves accepting and implementing the goals, policies, and objectives of the State Plan into the county master plan and municipalities’ master plans.

***Comment:** County planning boards take different approaches to this process since counties have different numbers of municipalities and different physical environments (i.e. urban, suburban, and rural), as well as variations in staff, other resources such as technology and a current county plan.*

## 2. Stormwater Regulations

The Stormwater Management Act requires that each municipality adopt a stormwater management plan, which is then reviewed by a county review agency appointed by the board of freeholders. The review agency can be either a county planning agency or county water resources association. The county review agency must review and then approve, approve conditionally or disapprove the plan within 60 calendar days of receipt of the plan and ordinances. Failure to do so results in automatic approval.

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<sup>16</sup> *The New Jersey State Development and Redevelopment Plan*. New Jersey State Planning Commission. March 1, 2001: Page X

<sup>17</sup> N.J.S.A.A. 52:18A-202(b)

### 3. Water Quality Management Planning Regulations

When the New Jersey Department of Environmental Protection (DEP) updated its Water Quality Management Planning (WQMP) regulations in 2008, it created a significant role for county planning staff. Rather than allowing municipalities or regional authorities to submit wastewater management plans (WMPs), as was done in the past, the DEP transferred the responsibility to the 21 county freeholder boards.<sup>18</sup> In most counties, the planning departments assumed responsibility for working with the DEP to apply the rule requirements for designating “sewer service areas” and for protecting water quality in the remaining “septic management areas.” This work is done on a detailed, parcel-by-parcel basis, and involves sophisticated GIS tools, as well as interaction with the municipalities and property owners. A combination of county planning staff and consultants are conducting the work, supported by approximately \$4 million in grants from the DEP.

***Comment:** In contrast to the approval process for the county master plan, the county planning board does not approve the wastewater management plan; this power is reserved for the DEP. As one planner put it, the county planning staff has “all of the responsibility,” but the county planning board has “none of the authority.” The evolving standards and deadlines promulgated by the DEP are a challenge for the county staff to implement, and deserve attention.*

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<sup>18</sup> The DEP allowed municipalities to assume this responsibility if the county failed to submit an updated county-wide WMP within the specified time period.

## **Conclusion**

County planning has been an option for counties in New Jersey for more than 75 years, with each county implementing the requirements as it sees fit within the given legal framework, often with little visibility. Citizens are likely to be served very differently by county planning boards and staffs depending on the county in which they live, because the staff, responsibilities and relations with municipalities vary among the 21 counties. The diverse county planning capacity reflected in number of staff members, types of responsibilities and relationships with municipalities will need to be understood as the state relies increasingly on counties as a source of data and coordination with municipalities in creating and implementing state policies and regulations.

This paper is designed both to inform and further discussion that may contribute to the future effectiveness of the role of county planning.