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New Jersey Protections for Virtual Land Use Approvals

On September 24, Governor Murphy signed bill A4881/S3744 into law, prohibiting appeals of a land use decision based on grounds attributable to holding the public hearing meeting electronically. The Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 et seq., requires municipal governing bodies, planning boards, and boards of adjustment to meet, consider, and take action on land development applications within specific time frames. As New Jersey COVID-19 emergency declarations imposed social distancing restrictions limiting or prohibiting in-person public meetings, municipal agencies have necessarily transitioned to conducting virtual meetings and proceedings, pursuant to the emergency rules and regulations promulgated by the New Jersey Department of Community Affairs (NJDCA).

Recognizing the vulnerability of land use approvals obtained during COVID-19 under virtual constraints, the new law protects the decision of a municipal agency under the MLUL that is based, in whole or in part, on a virtual meeting or proceeding. Pursuant to the new law, these decisions are not appealable on grounds attributable to convening the meeting or proceeding virtually under certain circumstances, including, but not limited to (i) lack of a physical quorum; (ii) lack of proper notice; (iii) the conduct of the meeting or proceeding itself; or (iv) lack of a reasonable opportunity to be heard (so long as there was reasonable public notice and the provision for public input).

To be protected by this new law, the notice of the meeting or proceeding, and the conduct of the meeting or proceeding, must be consistent with bill A4881/S3744 and the rules or regulations promulgated by NJDCA. All the required MLUL notices must include directions for remote access by the public, which are to be sent to the applicant by the municipal agency.

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Should you have any questions concerning this legislation or land use matters in general, please contact the authors of this alert or any of the Day Pitney real estate team.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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