

## Summary and Comments - S-2407

NJAPZA is pleased to announce that S-2407, our legislation to certify and professionalize municipal zoning officers and land use board administrators, has been referred to the Budget and Appropriations Committee of the New Jersey Senate. S-2407 originated in 2018-2019 when the NJAPZA, with the assistance of Michael Kates, Esq. and other professionals, formulated the legislation, which remains predominately with its original form and original content.

The legislation accomplishes a goal vigorously articulated before the New Jersey Supreme Court in the case of Dunbar Homes, Inc. v. Zoning Board, 233 N.J. 546 (2018), in which our Supreme Court affirmed the ministerial and discretionary authority of local zoning officials in making determinations on development applications. One of the key arguments in that case was that local planning and zoning officials, though not officially certified, were nevertheless highly skilled, trained professionals holding unique and important knowledge and expertise.

Consonant with the arguments made in Dunbar, in seeking to establish a formal Statewide certification process, NJAPZA engaged the assistance of established and respected experts in the field of land use, planning and zoning and the unique aspects and challenges of the land use approval process to craft proposed legislation which would provide Zoning Officers and Land Use Administrators with a recognized public credential.

S-2407 establishes a certification process for the positions of Zoning Officer and Land Use Board Administrator. A Zoning Officer is defined in the legislation as the designated administrative officer under the Municipal Land Use Law (“MLUL”) authorized to issue permits, certificates, or authorizations thereunder. The legislation acknowledges that, at present, an individual may assume the position of Zoning Officer or Land Use Board Administrator in a municipality without any background or experience. This absence of threshold requirements for these important municipal positions starkly contrasts with other essential municipal positions where State certifications are required.

The legislation further recognizes that, in some circumstances, individuals assume responsibilities as Zoning Officer or Land Use Administrator in more than one municipality, causing potential conflicts of interest or appearances of impropriety and making it difficult or impossible for the individual to satisfactorily perform duties in multiple employments.

Under S-2407, following a transition period of at least two (2) years, a person would not be appointed, reappointed, or continue to serve as a zoning officer, or land use board administrator, unless that person has been issued a Zoning Officer or Land Use Board Administrator certificate by the Department of Community Affairs (“DCA”).

The Commissioner of the DCA (“Commissioner”) shall establish a certification program for zoning officers and land use board administrators within six (6) months of the effective date of the enactment of the legislation. S-2407 would establish minimum standards for applicants seeking certification, including: at least twenty-one (21) years of age, United States Citizenship, good moral character, and a high school diploma or its equivalent. Candidates for certification must also demonstrate completion of at least two (2) years of education at a college of recognized standing, or in lieu thereof, relevant work experience, as well as completion of a course of study in planning and

zoning administration and enforcement. The legislation further permits the Commissioner to establish additional requirements for certification which the Commissioner determines to be reasonable and appropriate to further the professionalism of the positions of Zoning Officer and Land Use Board Administrator.

The legislation also authorizes the Commissioner to establish standards for the curriculum and administration of the course of study in planning and zoning administration in conjunction with the NJAPZA, New Jersey Planning Officials, New Jersey League of Municipalities, and Rutgers University.

Certification shall require at least forty (40) hours of instruction designed to prepare an individual to perform the duties of a Zoning Officer and at least thirty (30) hours of instruction designed to prepare an individual to perform the duties of Land Use Board Administrator, including course work on:

- The technical knowledge and skills necessary to for effective interpretation and enforcement of municipal zoning ordinances and applications for development;
- The Municipal Land Use Law;
- The content and structure of zoning ordinances;
- The content and structure of master plans;
- Site plan and subdivision review, including technical aspects of plan review, administrative processing requirements, planning and engineering terminology;
- Ethical obligations;
- Record keeping and requirements for public access to records; and
- For the Zoning Officer, practical issues, including enforcement actions, conducting site inspections and compliance options.

At the completion of each course, examinations shall be administered to determine if the enrollee has attained a satisfactory level of knowledge. At the completion of the full course of study, certificate candidates must pass a State examination.

Zoning Officer and Land Use Board Administrator certificates will be valid for three (3) years from the date of issuance, and may be renewed for additional three (3) year periods if the applicant complies with continuing education requirements. Applicants for certifications and for renewals would pay a \$50.00 fee.

S-2407 will also require the Commissioner to maintain a registry of Zoning Officer and Land Use Board Administrator certificate holders and provide access to the registry on the DCA website.

The legislation will prohibit a person from accepting an appointment or reappointment as a

Zoning Officer or Land Use Board Administrator without first notifying the Commissioner of the appointment or reappointment. If the prospective appointee serves as a Zoning Officer or Land Use Board Administrator in any other municipality or also serves as a Construction or Subcode Official in the appointing municipality or in any other municipality, the appointee must notify the Commissioner of the terms, conditions, and duties associated with each appointment.

The Commissioner shall determine that an individual is unable to fulfill the terms, conditions, and duties of their municipal employments, and shall be authorized to enter into discussions and agreements with the employing municipalities and the individual in order to ensure that the employment of a Zoning Officer does not result in understaffing in a municipality due to the individual's competing obligations.

The legislation empowers the Commissioner to revoke or suspend a Zoning Officer or Land Use Board Administrator certificate, after due notice and a proper hearing, if the official is found to have engaged in dishonest practices, willful or intentional failure, neglect or refusal to comply with the Constitution of the State of New Jersey or laws relating to the duties of the Zoning Officer or Land Use Board Administrator, or for other good cause. If a Zoning Officer/Land Use Board Administrator certificate is revoked, the official shall be removed from office by the Commissioner, the office shall be declared vacant, and the removed official shall be ineligible to hold that office or make application for re-certification for a period of five (5) years from the date of revocation.

S-2407 does not impact or override civil service requirements and procedures, nor does it supersede the appointing authority of municipalities for the positions of Zoning Officer and Land Use Board Administrator.A

If the membership has questions or concerns with regard to the legislation, I shall be pleased to discuss same.

Very truly yours,

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