

TOWNSHIP OF MONTCLAIR, NEW JERSEY
RULES OF THE PLANNING BOARD

Adopted August 8, 2016

Amended June 21, 2021.

Preamble: The purposes of, formalities, requirements and work undertaken by the Planning Board of the Township of Montclair (the “Board”) arise from the Municipal Land Use Law of the State of New Jersey (the “MLUL,” with specific sections cited as “N.J.S.A. 40:55D- ”) and, where appropriate, from its predecessors and the common law. Additionally, the Board is governed by the Ordinances of the Township of Montclair (“Ordinances” or “Ordinance”), as amended, Chapters 202, 281, 301 and 347.

In relevant part, N.J.S.A. 40:55D-8 states that a planning board “shall adopt and may amend reasonable rules and regulations, not inconsistent with this act or with any applicable ordinance, for the administration of its functions, powers and duties, and shall furnish a copy thereof to any person upon request and may charge a reasonable fee for such copy.” Ordinance § 202-7 provides that “The Planning Board shall adopt rules and regulations as may be necessary to carry into effect the provisions and purposes of this chapter.”

The following Rules of the Planning Board of the Township of Montclair (“Rules”) are intended to supplement – but not supplant or otherwise contradict – State law and the Ordinances. Wherever a conflict occurs between the Rules and State law/Township of Montclair Ordinance, the latter shall control.

PART I: RULES GOVERNING INTERNAL AFFAIRS

Rule 1.1. Officers, Employees, Annual Meeting

- 1:1-1. Annual Meeting, Election of Officers
- 1:1-2. Appointment of Secretary
- 1:1-3. Appointment of Board Attorney
- 1:1-4. Appointment of Planner
- 1:1-5. Appointment of Engineer

Rule 1:2. Duties

- 1:2-1. Chairperson
- 1:2-2. Vice-Chairperson
- 1:2-3. Recording Secretary

Rule 1:3. Meetings

- 1:3.1. Regular Meetings/Work Sessions
- 1:3-2. Special Meetings
- 1:3-3. Quorum
- 1:3-4. Voting
- 1:3-5. Absent Members
- 1:3-6. Absent Members; Unexcused
- 1:3-7. Rules Violations
- 1:3-8. Potential Conflicts
- 1:3-9. Order of Business

- 1:3-10. Open Meetings
- 1:3-11. Communication Outside of Open Meetings

Rule 1:4 Committees

- 1:4-1. Standing Committees
- 1:4-2. Committee Composition
- 1:4-3. Special Committees

PART II: APPLICATION AND HEARINGS

Rule 2:1. Commencement of Action

- 2:1-1. Filing
- 2:1-2. Filing Requirements: Informal Reviews
- 2:1-3. Assignment of Numbers: Complete and Incomplete Applications
- 2:1-4. Assignment of Hearing Date; Notice

Rule 2:2. Procedure For Hearing Applications

- 2:2-1. Appearance By Parties
- 2:2-2. Swearing of Persons Giving Testimony
- 2:2-3. Order of Presentation
- 2:2-4. Closing of Hearing; Continuances
- 2:2-5. Evidence
- 2:2-6. Burden of Proof
- 2:2-7. Dismissal Without Prejudice
- 2:2-8. Reports From Departments
- 2:2-9. Testimony From Board-Employed Expert Witnesses

PART III: DECISION MAKING

Rule 3:1. Post Hearing Procedures

- 3:1-1. Decision Making, Resolution; Time
- 3:1-2. Contents of Resolution; Publication
- 3:1-3. Failure to Render Decision Within Statutory Time Limit
- 3:1-4. Effectiveness of Decisions; Additional Filings

PART IV: MISCELLANEOUS

Rule 4:1. Fees, Record of Proceeding and Miscellaneous Matters

- 4:1-1. Transcript of Proceedings
- 4:1-2. Costs for Special Meetings
- 4:1-3. Subpoena
- 4:1-4. Perjury
- 4:1-5. Payment of Taxes
- 4:1-6. Partners/Shareholders: 10% interest

Rule 4:2. Amendments

- 4:2-1. Amendments

PART I: RULES GOVERNING INTERNAL AFFAIRS

Rule 1:1. Officers, Employees, Annual Meeting

1:1-1. Annual Meeting; Election of Officers. At the Board's first meeting following January 1st of each year, the Board shall elect from its members a Chairperson and Vice-Chairperson. The Chairperson and Vice-Chairperson shall be elected from the members of Class IV but shall not be an alternate member. These officers shall serve for the calendar year and until their successors have been duly elected.

1:1-2. Appointment of Recording Secretary. At the Board's first meeting following January 1st of each year or at any other time deemed by the Board to be appropriate, the Board shall select and appoint a Recording Secretary. The Recording Secretary may be a municipal employee, but may not be a member of the Board or alternate member of the Board. The Recording Secretary shall serve for the calendar year and until a successor has been appointed.

1:1-3. Appointment of Board Attorney. At the Board's first meeting following January 1st of each year or at any other time deemed by the Board to be appropriate, the Board shall select and appoint a member of the New Jersey bar, who is familiar with zoning and planning matters, as Attorney for the Board and shall fix compensation for the Attorney (within the amount prescribed by the Governing Body). The Board Attorney shall serve for the calendar year and until a successor has been appointed.

1:1-4. Appointment of Planner. At the Board's first meeting following January 1st of each year or at any other time deemed by the Board to be appropriate, the Board may appoint and fix compensation (within the amount prescribed by the Governing Body) for a Planner. The Planner shall serve for the (duration of the) calendar year and until a successor has been appointed.

1:1-5. Appointment of Engineer. At the Board's first meeting following January 1st of each year or at any other time deemed by the Board to be appropriate, the Board may appoint and fix compensation (within the amount prescribed by the Governing Body) for an Engineer. The Engineer shall serve for the duration of the calendar year and until a successor has been appointed. In the absence or incapacity of the Recording Secretary, or other person designated by the Board, the Engineer may serve as the Board's designee for the declaration of completeness of an application for development.

1:1-6. Appointment of Other Experts and Staff. At the Board's first meeting following January 1st of each year or at any other time deemed by the Board to be appropriate, the Board may appoint and fix compensation (within the amount prescribed by the Governing Body) for experts, other staff and services.

Rule 1:2. Duties

1:2-1. Chairperson. The Chairperson shall preside at all meetings and hearings of the Board, decide all points of order and matters of procedure governing meetings or hearings, and perform all the duties normally appertaining to the office as required by the Ordinance, these Rules or by the Board. The Chairperson shall be an *ex officio* member of all committees and subcommittees of the Board. A vote by 2/3rds of the Members present may overturn the decision of the Chairperson.

1:2-2. Vice-Chairperson. The Vice-Chairperson shall preside at all Board meetings and hearings in the absence or disqualification of the Chairperson and shall have all of the powers of the Chairperson under such circumstances.

1:2-3. Recording Secretary. The Recording Secretary, under the direction of the Chairperson, shall be the Board's designee for the declaration of the completeness of an application for development and generally perform the secretarial work of the Board, including, but not limited to the following:

(a) Conduct all official correspondence; compile the required records; keep and maintain, in order, the necessary files and indices with respect to the operation of the Board; give all notice of meetings required to be given by the Open Public Meetings Act ("OPMA"), the MLUL or any other applicable law or ordinance.

(b) Attend all meetings of the Board; have custody and take care of all records, documents, maps, plans and papers of the Board; provide for the care and custody of items for which no provision is made otherwise by statute; take roll call votes and note on the official record the yeas, nays or abstentions of each member as he or she votes.

(c) Make or provide for a transcription record of the proceedings of each hearing of the Board in accordance with the MLUL and these Rules and keep minutes of the proceedings of each meeting and hearing held by the Board.

(d) Cause to be mailed or otherwise transmitted to each member of the Board, to his/her residence or electronic address, and to the Board Attorney, copies of all submissions made by applicants at least one week prior to the hearing date and a true copy of the minutes of meetings at least one week prior to adoption.

(e) Perform such other duties as usually appertain to this office.

1:2-4. Board Attorney. In addition to attending all public meetings of the Board, the Board Attorney shall prosecute and defend litigation and appeals on behalf of the Board.

1:2-5. Board Engineer. The Board Engineer shall be a licensed professional engineer in the State of New Jersey who shall review and report on the applications and other matters pending before the Board at the Board's direction. The Engineer shall attend Board meetings unless otherwise instructed.

Rule 1:3. Meetings

1:3-1. Regular Meetings. Regular meetings and work sessions of the Board are to be held in the Council Chambers of the Municipal Building at 7:30 p.m., usually on Mondays. The first regular meeting after January 1st of each year will constitute the annual reorganization meeting of the Board. The reorganization meeting shall occur before January 15 of any given year. At the reorganization meeting, the Board shall consider and vote upon a meeting schedule for the year which (a) shall be published in accordance with the OPMA as soon thereafter as is practicable and (b) shall state that formal action may be taken at any or all such meetings. The time and place of any or all meetings may be changed, if necessary, subject to OPMA requirements, by direction of the Chairperson or by vote of the Board. Notice of meetings that are canceled due to exigent circumstances or the lack of a quorum shall be published by the Board

Secretary (or designee) in a conspicuous place stating the reason for the cancellation, the fact that all pending matters will be heard at the Board's next scheduled meeting, and provide the next meeting's date, time and place.

The Board generally will not hear a new application nor conduct new business or begin any new witness's testimony after 10:30 p.m.

1:3-2. Special Meetings. Special meetings, as permitted by law, may be called by the Chairperson or, in his/her absence, by the Vice-Chairperson, at any time or upon the written request of two members, provided that notice of the special meeting shall be subject to OPMA requirements and be given to the public as required by the MLUL and the Ordinances.

1:3-3. Quorum. At all meetings of the Board, a quorum for the conduct of any business shall consist of five (5) members. In the absence of a quorum, the members present shall adjourn the meeting, the hearing on any application, motion or all other Board business requiring a quorum, to the next date in the Board's schedule.

1:3-4. Voting. When voting on matters (except in the case of a motion for adjournment when a quorum is not present), the following number of votes is required, so long as a quorum is present:

(a) In all matters, actions may be authorized by a majority of the members present at the meeting.

(b) If a motion to approve an application for development does not receive the number of required votes, as set forth in subsection (a) of this Rule, such failure shall be deemed an action denying the application.

Abstentions are disfavored except for good cause. An abstention shall be deemed as an assent to the vote of the majority, but an abstaining member shall not vote on the memorialization of the Resolution. A tie vote shall defeat an application and abstentions shall not be construed to approve an application and shall not be construed to create a tie.

1:3-5. Absent Members. When any hearing before the Board shall carry over more than one meeting, a member of the Board who was absent for one or more of the meetings or who was not a Board member when the hearing began shall be eligible to vote on the matter upon which the hearing is conducted, notwithstanding his/her absence or non-membership, provided that the Board member certifies, in writing, to the Board that he/she has read the transcript or listened to a recording of the portion of the meeting pertaining to the application for which he/she was absent. This Rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Board is present.

1:3-6. Absent Members; Unexcused. A Board member who has missed three regularly scheduled meetings in the preceding twelve (12) months, in the absence of a reasonable and accepted excuse for the last such absence, shall be notified that the Board may consider and recommend termination of the member from the Board at its next regularly scheduled meeting. The determination of the acceptance of any excuse for absence shall be made by the Chairperson or, in his/her absence, by the Vice-Chairperson. In the case of the Chairperson's absence(s), the determination of the

acceptance of the Chairperson's excuse shall be made by the Vice-Chairperson. If a recommendation of termination from the Board is warranted, the Chairperson (or Vice-Chairperson, as appropriate) shall direct the Board Attorney to submit a complaint to the Governing Body which shall then determine the matter.

With the exception of an exigent circumstance that prevents it, a member has the affirmative obligation to notify the Chairperson and Recording Secretary by email of an anticipated absence at the earliest practicable time. The determination of the reasonableness for any excuse for absence shall be made by the Chairperson.

1:3-7. Rules Violations. Where the Board determines that a violation(s) of these Rules are of sufficient magnitude, it may admonish a member and/or recommend termination from the Board employing the procedure discussed in 1:3-6.

1:3-8. Potential Conflicts. Conflicts of an ethical nature can arise between Board members and applicants in at least the following contexts: neighboring landowner or resident (certainly within 200 feet); family member; relationships arising from business, financial or employment involvements; or personal involvements. No member shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. The test shall be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the Board member to depart from his/her sworn duty.

A member has the affirmative duty and obligation to notify the Chairperson and the Board Attorney of the potential for a conflict before the application or a potentially-conflicting matter is heard by the Board. Conflict of interest determinations will be made in accordance with the MLUL, the common law, the Local Government Ethics Law (N.J.S.A. 40A:9-22.1, *et seq.*) and the Ordinances. Whenever reasonably possible, the reason for a disqualification shall be stated.

1.3-9. Order of Business. The order of business of all regular meetings of the Board will be as follows:

- (a) Call to order
- (b) Statement of compliance with OPMA
- (c) Roll call
- (d) Approval of minutes of previous meetings
- (e) Old business
 - (1) Memorialization of resolutions
 - (2) Cases begun at a previous meeting(s)
- (f) New business
 - (1) Hearing of new cases
- (g) Reports/updates from subcommittees
- (h) Action on other business
- (i) Comments/correspondence, payments of bills and adjournment

The Board may alter this sequence by public announcement at a meeting.

1:3-10. Open Meetings.

(a) The Board's meetings will be held in accordance with the MLUL and the OPMA, popularly known as the "Sunshine Law". The intent of the OPMA is to have government meetings conducted in the open, to the greatest extent possible, consistent with the public interest and without invading individual privacy. As such, all regular meetings, special meetings, and hearings of the Board shall be open to the public. The public shall be afforded an opportunity to comment on development applications that are before the Board. On all other matters, the public may be afforded the opportunity to comment at the discretion of the Board.

(b) In the exercise of its authority to act on applications, the Board performs a role similar to that of a judge in court. Board hearings are referred to as "quasi-judicial proceedings," and like judges, Board members in the performance of their public duty during hearings on development applications are constrained to consider only the evidence, statements and other expressions or opinions presented in support of and against such matters only at Board meetings. Acting as a Board, the decisions and determinations of the members must be based on the same information and opinion that is developed at the hearing and/or meeting.

(c) Board members must avoid any circumstance in which a bias prevents fair consideration of the evidence presented at a hearing or from which any prejudgement or preconception of an application may be inferred.

(d) Executive sessions of the Board, authorized by the MLUL and OPMA for the purpose of discussing and studying any appropriate matters to come before the Board, may be closed to the public.

(e) A violation of the OPMA occurs when a quorum engages in verbal or written communication (including electronic communication), in any manner or forum, among Board members or with members of the public in which the substance or merits of the Board's work is discussed. All such communications by a quorum, whether expressed over/on/through the Township's communications systems or over/on/through a Board member's private communications capabilities, may be subject to disclosure in judicial or other quasi-judicial proceedings. Should a Board member perceive that such a discussion is occurring or imminent, the best approach is to (i) refrain from engaging in such discussion, and (ii) if a member of the public proposes to initiate such discussion, advise that person when the next public Board hearing will be held and indicate that any facts or opinions concerning the matter should only be conveyed during a public meeting.

(f) Routine administrative matters, such as scheduling issues and non-substantive typographical/grammatical changes to Board draft minutes, may be handled electronically among a quorum. Additionally, draft resolutions and Board members' proposed edits to draft resolutions, may be circulated electronically in advance of public meetings, but all votes on resolutions must occur only at public meetings.

1:3-11. Communications Outside of Open Meetings

(a) The Board recognizes that the proliferation of technology, especially in the areas of communications and social media, has provided the public with numerous opportunities and avenues to communicate and express thoughts and opinions about matters being heard or to be heard by public officials, including by the Board and its members. All citizens enjoy the right of free speech guaranteed by the Constitutions of the United States and New Jersey. Board members, however, are not permitted to comment publicly on pending applications except during a Board meeting properly noticed pursuant to the OPMA.

(b) **When communications by Board members are not allowed.** Once an application for development is submitted to the Board (and, thus, even before the first public hearing on the application has been convened), Board members should have no communication with each other or with members of the public regarding the subject of the application, except at Board meetings. If a Board member were to engage in public or private communications about pending applications outside of a Board meeting, the Board's work may be cast in a negative light and the Board's consideration of the application may become subject to criticism or challenge.

(c) **When communications by Board members are allowed.** With respect to all matters other than submitted and pending applications for development described in 1:3-11(a), nothing shall preclude Board members from discussing the work of the Board among themselves or with members of the public, provided such discussions do not involve a quorum of the Board as described in 1:3-10(e). For avoidance of doubt, this means that individual Board members may engage in discussions regarding referrals from the governing body required or permitted under the MLUL, drafts or or revisions to the Master Plan, and Board subcommittee meetings.

Rule 1:4. Committees

1:4-1. Standing Committees. There shall be the following standing committees of the Board:

(a) **Nominating Committee.** The purpose of the Nominating Committee is to nominate the Chair, Vice Chair, Secretary and Assistant Secretary to the Board.

(b) **Personnel Committee.** The purpose of the Personnel Committee is to identify personnel needs for the Board, work with the Planning Director to prepare requests for proposals, review proposals and make recommendations to the Board on personnel selection.

(c) **Revisions Committee.** The purpose of the Revisions Committee is to review non-material revisions to approved development applications to determine if the revisions are consistent with the Board's approval or if they require submission of a plan amendment to the full Board.

(d) **Redevelopment Committee.** The purpose of the Redevelopment Committee is to provide input and guidance in the preparation of redevelopment studies and redevelopment plans.

(e) Master Plan Committee. The purpose of the Master Plan Committee is to provide input and guidance in the preparation of various plan elements of the master plan and the master plan reexamination report.

(f) Development Review Committee. The purpose of the Development Review Committee is to review all site plan applications or requests for review presented to either the Planning Board or the Zoning Board of Adjustment, which may include holding public hearings on minor site plan applications that require no variances in accordance with the Development Review Committee Ordinance.

(g) Zoning Committee. The purpose of the Zoning Committee is to provide input and guidance in the preparation of amendments to the Township's land development ordinances.

1:4-2. Committee Composition. The standing committees shall not comprise more than an effective majority of the Board. The Board shall annually appoint the members of each committee for a one (1) year term. Vacancies shall be filled at or by the next regular session of the Board. Not more than one alternate member may serve on any standing committee.

1:4-3. Special Committees. Special committees may be established by a vote of the majority of the full membership of the Board. The Chair shall appoint the members of such committee, who shall serve for a term to be determined by the Board when it acts to establish such committee.

PART II: APPLICATION AND HEARINGS

Rule 2:1. Commencement of Action

2:1-1. Filing. An application for subdivision approval, site plan review, conditional use approval or any other relief over which the Board has jurisdiction, shall be commenced by filing an original application, filed in accordance with the Ordinance check-list requirements described below. These documents shall be filed with the Recording Secretary.

2:1-2. Filing Requirements: Informal Reviews.

(a) Upon request, the Recording Secretary will provide a developer, either in hardcopy or electronic PDF format, with application forms and a check-list of required submissions. The applicant shall file the application with the Recording Secretary in accordance with the "Subdivision Ordinance" or "Site Plan Ordinance," whichever is appropriate, and in accordance with the timing and check-list requirements of the applicable Ordinance. Application forms shall be completely filled in and shall supply any and all other information and data that may be required for the relief sought by the applicant. All applications shall be filed on the forms provided by the Recording Secretary. All application material shall additionally be submitted electronically. All statutory time periods for action by the Board commence to run only upon the filing of an application deemed complete by the Recording Secretary.

(b) At the request of an applicant, the Board or its designee may grant an informal review of a conceptual plan for development. The applicant shall not be required to

submit any fees for such an informal review and no party shall be bound by the results of or any discussion in regard to such a review.

2:1-3. Assignment of Numbers; Complete and Incomplete Applications. Upon receipt of an application by the Recording Secretary, the application shall be assigned a number, which shall thereafter appear on all subsequent papers filed in the case. The application will be considered following receipt of the application, application fee and escrow funds. The Recording Secretary (and/or the Engineer, if designated) shall then review the application for its completeness, in accordance with the definition of a "complete application" as contained in N.J.S.A. 40:55D-10.3. In the event the application is found to be incomplete, the applicant shall be notified by the Recording Secretary within forty-five (45) days of the filing of such application. Such notification shall be in writing (via letter or email, if an email address has been provided) and shall set forth the reasons that the application has been found to be incomplete. In the event of a failure to notify the applicant in writing that the application is incomplete within the forty-five (45) day period, the application shall be deemed complete.

2:1-4. Assignment of Hearing Date; Notice. As soon as a complete application is filed with the Recording Secretary in accordance with the appropriate Ordinances, the case shall be assigned a hearing date, with public notice, if required, in accordance with N.J.S.A. 40:55D-12, and the applicant shall be notified. The applicant shall be responsible to advertise and notify the property owners within 200' if notification is required. If public notice is given, as required by the MLUL, and is deemed inadequate at the time of the hearing, the application will be considered incomplete, notwithstanding an earlier certification of completeness, until the applicant has given proper statutory notice.

Rule 2:2. Procedure for Hearing Applications

2:2-1. Appearance By Parties. At the time of the hearing on the application, the applicant, or any other party, shall appear in person or such persons or entities may be represented by an attorney-at-law admitted to practice in the State of New Jersey. Every corporation, limited liability company, or partnership appearing before the Board shall be represented by an attorney-at-law admitted to practice in the State of New Jersey.

2:2-2. Swearing of Persons Giving Testimony. All persons, including proposed experts and members of the public giving testimony at the hearing shall be sworn before giving any testimony.

2:2-3. Order of Presentation. When a case is called by the Chairperson, the following shall be the order of presentation.

(a) The applicant may present and identify herself/himself/itself and be sworn. The applicant shall then indicate the relief sought from the Board. If the applicant is represented by an attorney, the attorney shall identify himself/herself, the law office, his/her client and then proceed with opening remarks if desired.

(b) The applicant or its attorney shall then present the testimony of its witnesses. Experts shall be qualified as such through the presentation and acceptance of their credentials. Documentary evidence or exhibits upon which the applicant intends to rely

to establish the right to the relief sought in the application shall be presented and marked for identification. The application and documents submitted by the applicant in connection with the completeness determination may be pre-marked as exhibits by the Recording Secretary.

(c) Apart from direct examination, the Chairperson will direct the order of all questioning of witnesses, including the cross-examination of witnesses produced by the applicant. The Chairperson shall allow Board members and other interested parties to ask questions of the witnesses having testified, and may permit reasonable cross-examination by an attorney representing an objector and/or by the public in attendance. The applicant shall have the right to cross-examine any witnesses.

(d) Where a group of interested parties is represented by an attorney, the attorney shall present to the Chairperson a list of the persons represented and their addresses. Such persons shall participate in the proceedings only through their attorney. Where a group of interested parties is not represented by an attorney, such group shall participate in the proceedings through one spokesperson.

(e) At the time the applicant has submitted all evidence or support for the application, the attorney for any objector(s) may then offer the documentary or other evidence upon which his/her client will rely in objection. Each such witness may be subject to reasonable cross-examination by the applicant or applicant's attorney, and the Chairperson shall allow the Board or any members of the public to ask questions of such witnesses.

(f) After all of the evidence has been presented to the Board in support of or in opposition to the relief sought by the applicant, the Chairperson shall then open the floor to the public, to allow any member of the public to make any statement relative to the application before the Board. Such member of the public shall identify himself/herself by providing his/her name and residence and/or business address. Rebuttal testimony or evidence may then be admitted in such order as the Chairperson shall determine.

(g) Any member of the Board may offer evidence before the Board as to any relevant matter of which he/she has personal or official knowledge, for the purpose of amplifying the record, including facts ascertained from a viewing of the premises in question and the general area.

(h) The Board shall have the right to rely upon its professionals and may call, as witnesses, those persons or other municipal officials to testify as to particular facts concerning any application.

2:2-4. Closing of Hearing; Continuances. When the applicant and all interested persons have had a reasonable opportunity to be heard, the Chairperson shall determine if the hearing shall be closed. The applicant, or any other interested person, may request from the Board a continuance of the hearing for the purpose of presenting further relevant evidence. The Board, acting in its sole discretion, may either grant or deny that request. In cases where the Board feels that testimony or other evidence should be received in the public interest from any municipal, county, or state official or from any other persons to assist the Board in rendering a just decision, the Board, on its own motion, may continue the hearing to another date certain for such purposes. The

Board, in considering a request to continue any hearing, will consider the effect of the MLUL time limits for decision and the prejudice, if any, to the applicant. In the absence of any request to continue the hearing, the Chairperson shall declare the hearing to be closed and, therefore, no further evidence will be received in the matter.

2:2-5. Evidence. Formal rules of evidence are not enforced before the Board. However, no decision shall be based upon any facts not proved or on matters which are not in the record, unless they be such items of which the Board is entitled to take judicial notice.¹ When any documents or exhibits are admitted into evidence during a hearing, they shall be marked and shall be retained by the Board as part of the permanent file. Letters, emails and/or petitions in support of or in objection to shall not be admissible as evidence unless the author of the correspondence and/or at least one signatory to a petition is present and testifies. After the Board has rendered its decision and the time for the filing of any appeal has expired, the Board's Recording Secretary may return any such exhibits or documents to the person who offered them upon his/her written request, provided the same are not essential for or material to the resolution. Any evidence presented, whether by testimony or by documents and exhibits presented at the hearing, which are not questioned or controverted by any other person appearing or by any member of the Board, may be deemed to be true by the Board in its decision-making process and findings of fact.

2:2-6. Burden of Proof. The burden of proof is on the applicant, and it is the applicant's responsibility to supply competent and credible evidence in order that the Board might determine the nature and degree of the relief sought by the applicant. The applicant must establish to the Board's satisfaction that it is, pursuant to statutory and Ordinance provisions, entitled to the relief being sought.

2:2-7. Dismissal Without Prejudice. In addition to the dismissal of inactive applications allowed under the Ordinances, the Board on its own motion may dismiss any matter, without prejudice, if neither the applicant, nor anyone on its behalf, appears at the time set for the hearing of the application. Further, the Board, on its own motion, may dismiss, without prejudice, any application for failure to comply with the provisions of the appropriate ordinance. Any applicant, at any time before the commencement of the hearing, may voluntarily withdraw its application, in which case, the application shall be dismissed, without prejudice.

2:2-8. Reports from Departments. The Board, on its own motion, may at any time request a written report on any particular matter from any department within the Township in connection with a pending case; provided, however, that a copy of such report shall be made available to the applicant, who shall, if it so requests, have an

¹ In its entirety, N.J. Rule of Evidence 201(b) states as follows:

Facts which may be judicially noticed include (1) such specific facts and propositions of generalized knowledge as are so universally known that they cannot reasonably be the subject of dispute, (2) such facts as are so generally known or are of such common notoriety within the area pertinent to the event that they cannot reasonably be the subject of dispute, (3) specific facts and propositions of generalized knowledge which are capable of immediate determination by resort to sources whose accuracy cannot reasonably be questioned, and (4) records of the court in which the action is pending and of any other court of this state or federal court sitting for this state.

opportunity to question the maker of such report as to any fact or conclusion contained therein. The Board may also refer any application to any appropriate agency for its review and report; provided, however, that the applicant shall be notified of such action and shall be informed of when such agency will hold its meeting on the referral so the applicant may arrange to be present, if it so desires. Should the Board request such a report or make such a referral, such action shall not extend the period of time within which the Board shall act, unless consent for an extension of time has been granted by the applicant.

2:2-9. Testimony From Board-Employed Expert Witnesses. The Board, on its own motion, may arrange to take the testimony of any expert witness employed by it.

PART III. DECISION MAKING

Rule 3:1. Post Hearing Procedures

3:1-1. Decision Making; Resolution: Time. Decisions rendered by the Board shall be adopted in the form of a motion duly seconded and adopted by a quorum of the Board, as required by N.J.S.A. 40:55D-10(g), including occasions where an application is denied because a motion to approve the application did not receive the required number of votes (Rule 1:3-4(b)). The Resolution memorializing the Board's decision shall be adopted within forty-five (45) days of that meeting. The memorializing Resolution shall be adopted upon a majority vote of the members of the Board who voted in favor of the action previously taken. **NO OTHER MEMBER SHALL VOTE THEREON.** If the memorializing Resolution is not adopted within forty-five (45) days of the Board's action, any interested party may apply to the Superior Court in summary manner to compel the Board to reduce its findings and conclusions to a writing within a stated time and the cost of such application, including attorney's fees, shall be assessed against the Township pursuant to the provisions of N.J.S.A. 40:55D-10(g)(2). Municipal action is deemed to have taken place at the original meeting where the vote was actually taken and not on the date at which the memorializing Resolution is adopted, except that the date of the adoption shall constitute the date of decision for the required mailing of a copy of the Board's decision to the applicant and for the placing of a publication of the Board's decision with the official newspaper of the Township and may be published on the Township website. The Board will publish a brief notice of every final decision of all matters or may direct the applicant to do so. The decisions of the Board, upon submission of a complete application, shall be made as follows:

(a) For preliminary site plan approval:

- (1) For a minor site plan, or for a site plan involving ten (10) acres of land or less, or ten (10) dwelling units or less – forty-five (45) days
- (2) For more than ten (10) acres, or more than ten (10) dwelling units – ninety-five (95) days

(b) For preliminary major subdivisions:

- (1) For ten lots or fewer – forty-five (45) days
- (2) For more than ten lots – ninety-five (95) days

- (c) For final approval of a site plan and major subdivision – forty-five (45) days
- (d) For minor subdivision approval – forty-five (45) days
- (e) For conditional use applications – forty-five (45) days
- (f) For combined application:
 - (1) Those meeting the requirements of N.J.S.A. 40:55D-51(c), the longest time period applicable (i.e., simultaneous review of subdivision, site plan, conditional use)
 - (2) For those applications meeting the requirements of N.J.S.A. 40:55D-67 –ninety-five (95) days (conditional use and site plan)
 - (3) For those applications meeting the requirements of N.J.S.A. 40:55D-61– ninety-five (95) days (variance)

3:1-2. Contents of Resolution; Publication. A copy of the Board's Resolution shall be furnished to the applicant and his/her/its attorney within ten (10) days from the date of the Board's adoption of it. The resolution of the Board shall contain:

(a) A statement of the Board's findings of fact and its conclusions of law, the Board's decision, and any conditions imposed under the relief granted or other provisions as the Board may deem appropriate and necessary.

(b) Where the Board has determined to impose conditions on the relief granted, such conditions shall be clearly set forth in the Resolution. The Board, when it deems it necessary to protect the public interest, may specifically provide in its Resolution for the retention of jurisdiction over the matter for a reasonable time. Such time may be specifically set forth or may be conditioned on the happening of a certain event. The purposes of such retention of jurisdiction shall include enabling the Board to vary the terms of any conditions therein imposed or to impose additional conditions, in the public interest, at an open public meeting, in light of the then-existing circumstances; to refer the matter to the Board's Revisions Subcommittee; or to permit the Board to finalize its actions with respect to any powers granted by statute. The role of the Revisions Subcommittee is to review proposed minimal changes to an approved site plan to determine if the changes are in fact minimal and do not require resubmission to the Board.

(c) The resolution shall set forth, with specificity, the relief granted to the applicant. The Board may grant such relief as it deems appropriate and in keeping with the intent and purpose of the appropriate Ordinances, as the case may be, although the relief granted may be different in kind or degree from that requested in the application.

(d) The Recording Secretary may direct the applicant or its attorney to publish a statement that the Resolution was memorialized in the official newspaper(s) of the Township. The Recording Secretary shall cause publication of a statement that a resolution of denial was memorialized in the official newspaper of the Township.

3:1-3. Failure to Render Decision Within Statutory Time Limit. The failure of the Board to render a decision within the time period set forth in Rule 3:1-1, or within such

other time as may be consented to either in writing or on the record at the hearing of the Board by the applicant, shall constitute a favorable action and the applicant shall request an appropriate certificate pursuant to the appropriate statutory requirement.

3:1-4. Effectiveness of Decisions; Additional Filings. The actions taken by the Board and the decisions made by it shall be effective pursuant to appropriate Ordinance and statutory provisions. Where required by appropriate statutory provisions, it shall be the applicant's duty to make the filings with the County Recording Officer. In the case where the Board in the exercise of its ancillary powers has granted a variance to the applicant, that variance shall be valid and subsisting in accordance with the MLUL and Ordinances.

PART IV. MISCELLANEOUS

Rule 4:1. Fees, Record of Proceeding and Miscellaneous Matters

4:1-1. Transcript of Proceedings. In accordance with N.J.S.A. 40:55D-10[f], the Board shall provide for the verbatim recording of its proceedings. A duplicate recording shall be furnished to any interested party upon request and payment of the actual cost of preparing it. Requests for copies of the verbatim record should be made to the Recording Secretary within a reasonable time after the date on which the hearing was held.

4:1-2. Costs for Special Meetings. Should an applicant request that the Board consider his/her/its application at other than a regular meeting of the Board, the applicant, in addition to any fees required to be paid, shall pay the fee as specified by the Ordinance fee schedule for a special meeting.

4:1-3. Subpoena. Pursuant to N.J.S.A. 40:55D-10[c] and the Ordinance, the Chairperson or Vice-Chairperson of the Board or designee presiding at a hearing may issue subpoenas to compel the attendance of witnesses and the production of relevant evidence. Upon failure of a person or entity under such subpoena to comply with its requirements, in accordance with N.J.S.A. 2A:67A-3 (the County and Municipal Investigations Law), the Board may apply to the Superior Court for an order to compel him/her/it to do so.

4:1-4. Perjury. The Board is authorized and required by law to conduct hearings, take testimony and make determinations affecting the rights, property or obligations of persons; as such it has the power to administer oaths and to examine witnesses subject to the penalties, provisions and limitations of the County and Municipal Investigations Law. Accordingly, any person who shall willfully give false testimony under oath in the course of such examination shall be guilty of perjury as provided in N.J.S.A. 2A:67A-2 of the County and Municipal Investigations Law.

4:1-5. Payment of Taxes. The applicant, at the time of filing the application for development, shall file with the Board a certificate of the Tax Collector that the taxes and/or assessments against the property in question have been paid to current. In the event that taxes and/or assessments on the property affected by the application for development are unpaid, the applicant shall submit, in lieu of the certificate of payment of taxes and/or assessments, a request that the Board take action and shall agree, in writing, to be bound by the following procedure:

(a) The Board's approval shall be subject to the payment of taxes and/or assessments.

(b) The taxes and/or assessments must be paid on or before the due date of the following quarter's taxes.

(c) Assuming an approval for an application, the map, plat and/or deed will be signed by the Chairperson and Recording Secretary, and shall be delivered to the attorney for the applicant or, if none, to the applicant, to be held in escrow. The Board Attorney shall prepare a sufficient escrow agreement setting forth that the action of the Board is subject to the payment of outstanding taxes and/or assessments, setting forth the specific sum due and remaining unpaid, and indicating that the map, plat and/or deed shall be released from the escrow only upon the payment of said specific sum. The applicant's attorney or, if none, the applicant shall forthwith return the signed escrow agreement to the Board Attorney.

(d) If the funds are not available to pay the taxes and/or assessments before the due date of the next quarterly installment of taxes as assessed, then the application is deemed to have been denied and the applicant's attorney shall forthwith return the map, plat and/or deed to the Board Attorney.

(e) Upon payment of the taxes and/or assessments, as aforesaid, the action of the Board shall become effective and final as of the date the map, plat and/or deed was signed.

(f) In the event that the application is for a minor subdivision, only the deed will be forwarded to applicant's attorney or, if none, the applicant, in escrow. The map(s) will be held by the Recording Secretary, although signed, to be dated and delivered upon the payment of taxes and/or assessments.

(g) Resolutions setting forth the Board's action shall contain, as a condition, the payment of taxes and/or assessments. Failure to pay such taxes and/or assessments, as aforesaid, shall be deemed a denial of the application.

4:1-6. Partners/Shareholders: 10% Interest. The Board reiterates the requirements of the Municipal Land Use Law (i.e., N.J.S.A. 40:55D-48.1 and N.J.S.A. 40:55D-48.2) that the names and addresses of all partners or shareholders owning a 10% or more interest in the applicant be set forth on the application. The statute provides that no application shall be approved which does not comply with this requirement (N.J.S.A. 40:55D-48.3).

Rule 4:2. Amendments

4:2-1. Amendments. The Board may, from time to time, amend any part or parts of these Rules at any meeting, provided notice of such amendment has been given in writing to each member of the Board at least three days prior to such meeting. In no case, however, shall any Rule, as amended, be applicable to any action commenced prior to the adoption of such amendment, where the application thereof would result in surprise, hardship or injustice to the applicant or any other interested persons.