

How the NJNG Southern Reliability Link Petition to the NJ BPU Runs Rough-Shod Over Municipal Land Use Law (Zoning and Planning Ordinances)

I. FUNDAMENTAL ZONING AND LAND USE ACTIONS¹

A. Historical Perspective

In New Jersey, the authority of the State to enact land use laws, including zoning, is derived directly from Article III of the New Jersey Constitution, which grants the State Legislature the power to regulate the uses of land within the State. Additionally, Article IV §6¶2 of the New Jersey Constitution authorizes the State Legislature to delegate some of this land use power to municipalities. These amendments to the New Jersey Constitution were the result of the United States Supreme Court's landmark decision in *Village of Euclid, Ohio, et al. v Ambler Realty Co.*, 272 US 365, 47S.Ct. 114 (1926) holding that property owners do not have an unlimited right to use their land. This established the doctrine of reasonable use, reasonable return. Specifically, the doctrine of reasonable use, reasonable return is based on the premise that while property owners are not necessarily entitled to maximum profits, they are protected against the deprivation of all use and rights. Accordingly, the basic standards of zoning that were established in *Euclid* still apply.

B. The Municipal Land Use of 1975

The Municipal Land Use Law, N.J.S.A. 40:55D, et seq. ("MLUL") is the statutory scheme that sets forth the basic framework associated with establishing and regulating land use in New Jersey. Specifically, the MLUL permits a municipality to enact a Master Plan with a Land Use Element as defined under the statute. Upon the adoption of the Master Plan with a Land Use Element, a municipality may enact a zoning ordinance. Municipal zoning power remains [subject] to three (3) major constraints:

- (1) Exercise may not conflict with federal and state constitutions:
- (2) Authority may not be exercised in conflict with authority of power of county, state and federal governments (including the super-planning areas such as New Jersey Meadowlands, Pinelands and newly-created Highlands).
- (3) Authority must be exercised in strict conformance with the MLUL.

The MLUL provides for the following general purposes:

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;

¹ <http://fliphtml5.com/abag/ngmf/basic>

- b. **To secure safety from fire, flood, panic and other natural and man-made disasters;**
- c. To provide adequate light, air and open space;
- d. To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole;
- e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;
- f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;
- g. **To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;**
- h. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;
- i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;
- j. **To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;**

- k. To encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site;
- l. To encourage senior citizen community housing construction;
- m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;
- n. **To promote utilization of renewable energy resources; and**
- o. To promote the maximum practicable recovery and recycling of recyclable materials from municipal solid waste through the use of planning practices designed to incorporate the State Recycling Plan goals and to complement municipal recycling programs.

*(Above excerpted from a paper entitled and authored thus: **Current Issues in Zoning / By Reginald Long¹**)*

New Jersey Natural Gas Company (NJNG), in its Petition for this project, asks to have it “fast-tracked”, in effect, to minimize public outcry against it, and that it be granted full waiver of any and all MLUL rules, regulations, or local zoning and planning ordinances.

NOWHERE in the above (Fundamental Zoning and Land Use Actions) does the State appear to intend to give permission or authority to ANY body of its own creation (NJ Board of Public Utilities [NJ BPU or BPU] in this case) to unilaterally decide that Zoning and other Municipal Land Use Law (Zoning and Planning Ordinances) in any of the New Jersey municipalities shall not be vigorously applied and adhered to by all individuals or corporate entities who may make application, or allowing unbridled and poorly considered proposals and plans to result in construction of projects that do NOT conform to the intent as described in the foregoing.

You will note that in **a.** and **b.** of the list of general purposes of the MLUL, the subject of appropriateness and the security of safety and public health are first and foremost the center of concern. To give waivers of any local regulations or to circumvent the totality of the MLUL at the local level is illegal and immoral when observed in the light of these stated purposes.

General purpose **g.** seeks to assure that adequate provision is made for all types of land use that will each be in conformance with the respective environmental requirements to meet the needs of ALL New Jersey citizens. NJNG is not serving ALL New Jersey citizens; it serves a subset of them just as do the several other utilities that operate in New Jersey. This does not say that municipalities must allow gas transmission pipelines to run within their jurisdictional boundaries in order that the needs of ALL New Jersey citizens be met. On the contrary, where something is NOT stated in law, it does not mean that which is unstated automatically is assumed to be operational. Nor is the concept that ALL New Jersey citizens’ needs will be met since the state and the municipalities provide the franchise and the tariff structure for any particular utility to operate in any particular or

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several municipalities. However, as we know, there are municipalities and even portions of municipalities where the citizens are not ALL serviced by the franchised utility, so the argument becomes shallow and specious at best.

General purpose **j.** of the MLUL is concerned with the preservation of historic sites and districts, advocates for the conservation of energy and natural resources, and to prevent the degradation of the environment through the improper use of land. Surely running a large gas transmission pipeline in extremely close proximity to such features (of which there is ample proof in a number of on-line resources) is an absolutely blatant disregard for this general purpose of the MLUL.

Finally, general purpose **n.** is concerned with promoting renewable energy resources – a recurring theme throughout the MLUL. A gas transmission pipeline does NOT promote the renewable energy resource, but only forestalls it until the day when the fossil fuel runs short. By then it will be too late.

The bottom line is this: NJNG is seeking to run rough-shod over the communities through which it plans to locate its Southern Reliability Link large-diameter and high-pressure gas TRANSMISSION pipeline; it has no regard nor has it made any exhaustive environmental impact study for the entire length of the route to account for the multiplicity of effects that such construction would have; it seeks to compromise the safety, health and general welfare of a number of citizens, residential and commercial structures, public infrastructure, sacred grounds, and open spaces; it has not shown need nor has its argument regarding catastrophic loss of service to its serving area due to major storms been supported with any substantial evidence. And, as evidenced in filings with the Securities and Exchange Commission in 2013, the pitch of this Southern Reliability Link then was minimally considered to be a resiliency thing but it was maximally sited as a system growth thing that would allow increase in service area and taking on of new customers.

Your Demand to the NJ BPU is this: This proposed project -- the two Petitions now before the NJ BPU -- should be **denied**. The citizens of the affected communities are NOT in favor of having this anywhere near their properties or businesses or in their sole ingress and egress roadways. Considering the potential for leaks, explosion or, during its construction, the major destruction of a vibrantly historic, ecologically sensitive, paleontologically significant, agricultural, and visually pleasant section of the Great State of New Jersey, it has no business being located as proposed.

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