

Green Design Checklist

Legal Implications

Timothy J. DeHaut, Esq., LEED AP



Timothy J. DeHaut, Esq., LEED AP

Giordano, Halleran & Ciesla, P.C.

Timothy J. DeHaut is a construction and real estate attorney who focuses his legal practice on development, construction and sustainability. He is also a LEED AP, accredited by the US Green Building Council.

MLUL

VS.

Construction

Code

Municipal Land Use Law: N.J.S.A. 40:55D-28

“(a)The planning board may prepare and, after public hearing, adopt or amend a master plan or component parts thereof, to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare.

(b) The master plan shall generally comprise a report or statement and land use and development proposals, with maps, diagrams and text, presenting, at least the following elements (1) and (2) and, where appropriate, the following elements (3) through (16):

(16) A green buildings and environmental sustainability plan element, which shall provide for, encourage, and promote the efficient use of natural resources and the installation and usage of renewable energy systems; consider the impact of buildings on the local, regional and global environment; allow ecosystems to function naturally; conserve and reuse water; treat storm water on-site; and optimize climatic conditions through site orientation and design.”

New Jersey Construction Code: N.J.A.C. 5:23-2.2:

“(e) Where provisions herein specify requirements for structural, fire and sanitary safety, no provision of any municipal zoning or other municipal code shall conflict, govern, or have effect.

Where the provisions herein specify requirements with respect to location, use, permissible area and height, and the municipal zoning code establishes requirements as well, then the more restrictive requirements of this code of the zoning code shall govern.”

Example of **Impermissible** Ordinance:

“All major site plan and major subdivision applications are required to employ sustainable development methods, materials and practices. All proposed new development as part of any major site plan or major subdivision application shall be ‘certified’ in accordance with the LEED green building rating system.”

Examples of **Permissible** Ordinances:

- “Sustainable Building and Design Standards must be applied to every new construction and rehabilitation project in order to qualify for either the short term or long term tax abatement.”
- “Township funded building projects shall meet a minimum of LEED Certified rating.”
- Redevelopment and negotiated deals.

Green Checklists:

Permissible:

To encourage development projects to incorporate sustainable building and design measures, applicants for site plan and subdivision applications are required to fill out the sustainability checklist as a completeness item.

Impermissible:

Required to build to a standard as a condition of approval.

The Future:

Changes to the construction code in the next few years may allow for municipalities to incorporate sustainable requirements as part of land use approvals.

Ex: International Green Construction Code (IgCC) overlay

Questions?

Feel free to email me at tdehaut@ghclaw.com

