

# **LAND USE CITATOR**

**Fourteenth Edition**

**GREGORY D. MEESE, ESQ  
EDITOR**

## THE NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION

For over 50 years, the New Jersey Institute for Continuing Legal Education, a division of the NJSBA, has served the needs of the New Jersey bench and bar. From seminars and legal manuals to CLE on-demand videos and other educational tools, our products are designed to provide the latest strategies, expert advice and guidance to practitioners at every stage in their career.

Our success in providing the legal community with the highest quality educational products would not be possible without the countless attorneys, doctors, dignitaries and other legal experts who volunteer their efforts to serve as lecturers and authors. NJICLE is proud to be the conduit through which they share their knowledge, skills, and expertise with their fellow professionals.

For more information about NJICLE seminars and publications, please visit [NJICLE.com](http://NJICLE.com).

**The material contained in this publication is for educational purposes only and is not intended to serve as a substitute for the professional services an attorney would normally provide to a client, including up to the minute legal research.**

**©2021 New Jersey State Bar Association. All rights reserved. Any copying of material herein, in whole or in part, and by any means without written permission is prohibited. Requests for such permission should be sent to NJICLE, a Division of the New Jersey State Bar Association, New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901-1520.**

## EDITOR'S NOTE

The land use practitioner faces a panoply of issues in their daily practice. In addition to site plan, subdivision and variance applications covered by the MLUL, there are issues involving public bidding, open meetings, public records, real estate agents, public employee conflicts, real estate purchases and sales, title, easements and restrictions, state and federal preemption, condemnation, environmental permitting, environmental cleanup, constitutional rights, agency rulemaking, regulatory compliance, litigation, etc. In 2020, we were challenged to do all of this remotely due to the COVID-19 pandemic. And we did.

Land use law is dynamic and the practice both challenging and rewarding. The Citator contains the laws, regulations and cases that I believe will be useful to many of our colleagues, but if you feel that the topics covered are either too broad, or too narrow, I'd like to hear from you. In addition, the Citator had gotten quite large so the unreported cases that were more than five years old have been dropped from this volume.

A compilation of the case summaries of the 2020 judicial decisions has been provided for use during the ICLE seminars. In addition, the 2020 cases are cited in **bold** in the body of the Citator. The link to the Google Scholar citation is provided below the case name.

A special thanks to Jennifer Gutierrez for her help throughout the year in obtaining copies of all of the court decisions, completing the index and coordinating the finalization of the Citator.

If you are involved in a significant case that does not get reported but you believe should be included, please send me a quick note at [gmeese@pricemeese.com](mailto:gmeese@pricemeese.com).

Gregory D. Meese, Esq.  
Price, Meese, Shulman & D'Arminio, P.C.  
50 Tice Boulevard  
Woodcliff Lake, NJ 07677  
(201)391-3737  
[gmeese@pricemeese.com](mailto:gmeese@pricemeese.com)

January 2021

## ABOUT THE EDITOR

**Gregory D. Meese** is a principal at Price, Meese, Shulman & D'Arminio, P.C. He concentrates his practice in the areas of land use and environmental law, with an emphasis in communications law, and maintains an active practice throughout New Jersey and New York. He litigates significant land use issues in state and federal court and counsels clients in matters of compliance with state and federal land use and environmental legislation.

Mr. Meese is a former Chairman of the Board of Directors of the New Jersey State Bar Association Land Use Law Section, former Counsel to the Builders Association of Northern New Jersey, and former Co-chair of the Environmental Law Section of the Bergen County Bar Association. He is the Editor of the Land Use Citator, an annual compendium of case law and statutory and regulatory enactments that impact land development and property rights in New Jersey published by the New Jersey Institute of Continuing Legal Education. He has authored a chapter on the zoning of telecommunications facilities for Matthew Bender's national zoning treatise *Zoning and Land Use Controls*. In addition, he was the Special Editor of the June 1999 issue of *New Jersey Lawyer Magazine* that focused on telecommunications and utility law issues and has written several articles regarding land use issues. Mr. Meese currently serves as the Vice President of the New Jersey Wireless Association and is Co-Chair of its Government Affairs/Education Committee.

Mr. Meese is a graduate of Rutgers College and received his law degree from the Washington College of Law at American University in Washington D.C. where he was the Managing Editor of the *ASILS International Law Journal*. He is admitted to practice law in New Jersey, New York, various federal courts and before the United States Supreme Court. His accomplishments have been recognized in *Who's Who in American Law*, he has been awarded an AV rating in Martindale Hubbell and been included in the list of "Super Lawyers," "Best Lawyers in New Jersey" and "Best Lawyers in America." Meese was named Best Lawyers' 2017 Hackensack Real Estate Law "Lawyer of the Year." Best Lawyers® and The Best Lawyers in America© are registered trademarks of Woodward/White, Inc. No aspect of this advertisement has been approved by the Supreme Court of New Jersey.

**Price, Meese, Shulman & D'Arminio, P.C.** maintains offices in Woodcliff Lake and Morristown, New Jersey and White Plains, New York. Mr. Meese can be reached at [gmeese@pricemeese.com](mailto:gmeese@pricemeese.com)

## TABLE OF CONTENTS

New Case Summary 2020.....	i - xxxiv
Annual Legislative Update .....	A-1
Annual Regulatory Update .....	A-4
Challenges to Zoning Ordinances.....	1
Presumption of Correctness .....	1
Procedural .....	4
Time Limitations.....	4
Notice.....	6
Standing .....	9
Exhaustion of Administrative Remedies .....	10
Mootness.....	12
Conflict of Interest .....	13
Constitutional Requirements.....	14
Free Speech/Religion/Association .....	14
Due Process & Equal Protection.....	20
Vagueness .....	25
Statutory Requirements.....	25
Consistency with MLUL.....	25
Purposes of Zoning .....	31
Consistency with Master Plan and/or Housing Element.....	32
Statutory Requisites .....	34
Municipal Exemption.....	37
Regional Needs .....	37
Preemption .....	38
Spot Zoning, Reverse Spot Zoning & Contract Zoning .....	43
Time of Application Rule/Vested Rights.....	45
Ordinance Interpretation .....	49
Estoppel.....	54
Challenges to Board Decisions .....	56
Jurisdiction.....	56
Procedural .....	59
Time Limitation .....	59
Notice.....	62
Application Completeness .....	66
Standing .....	67
Board Member’s Tenure, Participation & Conflict of Interest.....	70
Open Public Meetings Act (“OPMA”) .....	79
Adequacy of Hearing/Transcript.....	83
Estoppel.....	85
Automatic Approval.....	86
Res Judicata .....	88

## LAND USE CITATOR

Constitutional Challenges .....	90
Antitrust .....	91
Site Plan Approval .....	92
Subdivision Approval .....	97
Conditional Uses .....	101
Variances.....	106
Bulk & Height (C) Variances .....	106
Use Variances and Other D Variances.....	112
Use Variances – Inherently Beneficial Uses.....	126
Decision, Resolution & Conditions of Approval.....	130
Time-of-Decision Rule/Vested Rights.....	140
Open Public Records Act (OPRA) .....	144
Condemnation & Redevelopment.....	159
Legislative Takings.....	159
Regulatory Takings.....	173
Redevelopment .....	178
Nonconforming Uses & Structures.....	181
Off-Site Exactions and Impact Fees .....	187
Official Map.....	189
Extension of Approvals.....	190
Stop Work Orders .....	191
Residential Site Improvement Standards (RSIS).....	192
County Planning Boards .....	193
State Development and Redevelopment Plan .....	195
Fair Housing Act, Mount Laurel & COAH .....	196
Administrative Agency Action .....	209
Department of Environmental Protection .....	209

**TABLE OF CONTENTS**

Pinelands .....224  
Highlands .....224  
New Jersey Meadowlands.....227  
Other Agency Action .....228

Litigation & Settlement.....234

Miscellaneous .....256  
    Americans with Disabilities Act & New Jersey Law Against Discrimination.....256  
    Public Bidding & Contracting .....259  
    Consumer Fraud Act (CFA).....261  
    Easements & Restrictions .....266  
    Green Acres .....277  
    Condominiums and Common Interest Communities.....278  
    Premises Liability .....286  
    Statute of Repose .....296  
    Real Estate Brokers.....297  
    Other .....301

Table of Cases.....351