



MUNICIPAL NEWS



1001 Route 517
Hackettstown, NJ 07840
(908) 852-2600
www.ckclaw.com

This bulletin addresses recent developments affecting municipalities and local governments in New Jersey.

The Firm's Municipal / Local Government practice, headed by Joel A. Kobert, along with Lawrence P. Cohen, Michael S. Selvaggi, Michael B. Lavery, Howard A. Vex, and Katrina L. Campbell, is one of the largest in Northwest New Jersey, representing many school boards, municipalities and local government entities.

Courter, Kobert & Cohen, P.C.

Appellate Division Rejects Open Space Requirements

By Katrina L. Campbell, Esq.

On June 23, 2008 the Appellate Division ruled that municipal governments could not require developers to set aside land for open space or to pay an assessment to the municipality in lieu of the required open space dedication.

The Court's opinion actually addressed two separate lawsuits. The first arose from the New Jersey Shore Builders Association challenge of zoning amendments adopted by Jackson Township. The second suit by the Builders League of South Jersey attacked zoning amendments enacted by Egg Harbor Township. The ordinance amendments in both instances required a dedication of open space as a condition of any residential development approval.

Initially the Court found that the New Jersey Municipal Land Use Law (MLUL) was a comprehensive statute allowing municipalities to adopt ordinances regulating many aspects of land development, provided that such ordinances promoted the public health, safety, morals and general welfare. The

Court agreed that the MLUL acknowledged recreation and open space are important considerations but ruled that the MLUL does not allow local governments to require developers to donate land for open space and recreation as a condition of a residential project approval.

This decision may affect all parties involved in residential development. Municipalities and planning boards in the future may not request developers to designate open space. Developers should be mindful of this ruling when asked by land use boards to dedicate property for open space and recreation.

Additionally, developers who have already obtained approvals requiring the dedication of open space, but have not yet commenced with construction, may want to seriously consider whether or not to challenge this condition of the approval.

THE 93RD ANNUAL LEAGUE OF MUNICIPALITIES
CONFERENCE WILL BE HELD IN THE ATLANTIC
CITY CONVENTION CENTER FROM
TUESDAY, NOVEMBER 18 – FRIDAY, NOVEMBER
21, 2008

New Jersey Permit Extension Act

By Amanda L. Mulvaney, Esq.

On June 23, the New Jersey Legislature passed the Permit Extension Act of 2008. If signed by the Governor, the Act will extend the expiration date of state and local government approvals issued from January 1, 2006 through July 1, 2012. The proposed legislation was adopted in response to the national recession, which has drastically impacted various segments of New Jersey's economy. The Legislature was concerned about the industry-wide decline in real estate development, including reduced demand, declining sales and rentals, layoffs, and problems in the financial markets. The Act is similar to legislation enacted in the early 1990s, which helped the State's economy when it faced a similar economic downturn.

The Legislature has found that the construction industry and related trades are sustaining severe economic losses and that the lapsing of development approvals would exacerbate these losses. By allowing an extension of permits, already approved projects will be able to go ahead once the economy improves. In addition, the extension of permits and approvals will help maintain the value of the collateral to financial institutions throughout the State.

The Act mandates that projects approved on or after January 1, 2006, are exempt from changes in most environmental laws, public health standards, building codes, or local zoning enacted after the approvals were granted. It should be noted, however, that while the Act applies to most government permits and approvals, there are several exemptions.

For example, the Act does not apply to permits issued by the federal government, permits or approvals issued in "environmentally sensitive areas" including, but not limited to the Highlands Preservation Area. Further, there is no extension of approvals granted for residential developments where the master plan and zoning ordinance was amended to rezone the property to industrial or commercial use. Accordingly, builders and developers should not assume that all permits and approvals received by January 1, 2006 are automatically extended. No permit shall be extended more than 6 months after July 1, 2012.

Courter, Kobert and Cohen will continue to monitor this legislation and advise you in a future publication if and when the bill is signed into law. In the meantime, please contact us with any questions about this legislation or any other municipal land use matter.

COURTER, KOBERT & COHEN, P.C.

Counsellors At Law

1001 Route 517
Hackettstown, N.J. 07840
Tel. (908) 852-2600
Fax (908) 852-8225

23 Cattano Ave
Morristown, N.J. 07
Tel. (973) 285-1281

Please visit our website at www.ckclaw.com

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