

# Opinion: Some Good News for Developers

By *Thomas Jay Hall, Kevin J. Moore and Ted Zangari*

**“The legislature must begin the process by enacting all three bills to provide greater certainty for developers who play by the rules.”**



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Sills Cummis in the News

With all the hurdles thrown in the way of real estate development in New Jersey the past few years, it's refreshing to see legislation brewing in Trenton that would immunize those development applications which survive such hurdles from last-minute zoning changes and ensure that development applications are reviewed by professionals who are knowledgeable about the fundamentals of land use law.

### ON THE AGENDA

The Public Affairs Steering Committee of the New Jersey Chapter of NAIOP has issued its priorities for 2005 on public policy issues, including legislation, regulations and related activity. High priority issues include:

- New Jersey Department of Environmental Protection soil cleanup standards
- Transportation funding mechanisms and infrastructure support
- Property tax reform.

Also on the agenda, but considered of lesser import by the committee are such issues as the fast-tracking of “smart growth” area permits, the creation of storm water utilities to fund the management of storm water, and port area congestion relief, including the siting and expansion of warehouse and distribution centers.

Three bills recently introduced in the New Jersey legislature at the urging of the state government relations committee of the International Council of Shopping Centers would correct such inequities and, in the process, promote the state's “smart growth” legislative and regulatory agenda. A summary:

### TIME OF DECISION RULE

Under New Jersey's current “time of decision” rule, a municipality can completely change the zoning of a piece of property right up until the very moment that its planning board grants approval for the development of that property. So when neighbors protest a development – even where the land has long been designated for the proposed use – a municipality is free to rezone. This kind of reactionary zoning erodes the “global” vision for the overall development of a town set forth in its master plan.

As a result, under current law, a property owner cannot rely on the zoning of their property. And since all municipalities require extraordinarily detailed plans and reports before they will even declare an application for development “complete,” and consider it, an applicant may spend hundreds of thousands of dollars to file a complete application for a permitted use, only to have the municipality rezone the property for a different use in the face of neighborhood opposition.

Previous legislation intended to change the law was so heavily amended in committee that even

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the original supporters of the bill withdrew their backing. However, State Senator Ronald Rice (D-Essex County) recently introduced Senate Bill S-2118 in a new attempt to reform the time of decision rule.

The bill, with some proposed amendments, would amend the state's Municipal Land Use Law to follow the standard that many other jurisdictions adhere to: Once an applicant files a complete application for development with a planning board, the municipality would be forestalled from changing the zoning, site plan and subdivision regulations applicable to that property.

S-2118 would greatly promote sound planning and fairness in the municipal approval process.

### **MANDATORY LAND USE EDUCATION**

Municipal land use law in New Jersey is ever changing, with a constant stream of new legislation, regulation and court decisions aimed at preserving the Garden State's open space, promoting affordable housing, alleviating congestion, improving water quality and the like. It is also heavily dependent upon the hyper-technical details of engineering reports, traffic studies and architectural design elements.

And, by its very nature, land use law is controversial, to say the least. As a result, the state's land use bar is no longer the realm of generalists, but of specialized practitioners.

In contrast to the experienced land use bar, the state's land use decision-makers – the citizen-volunteer members of zoning and planning boards who decide the fate of applications – often know little about land use law. This leads to confusion and unnecessary litigation, making it next to impossible for land use attorneys to counsel their clients on the “rules of the road.”

Attorneys who regularly represent applicants that go before municipal boards and agencies know all too well that this area of law is very complex. At the same time, people who don't practice it every day – whether they are board members or board counsel – don't necessarily “get it.”

Toward that end, another bill that was recently introduced in the legislature by Senator Rice, Senate Bill S-2133, requires that educational course instruction be given for planning and zoning board

members. Given the weighty decisions that are being made by these citizen-volunteers – often significantly affecting the lives and property of many people in their community and beyond the borders of their town – it is essential that they obtain proper education on the ordinances and statutes they must apply and the procedures they must follow.

### **CREATION OF A LAND USE COURT**

Members of the state's land use bar also know that judges, like board members, are often unfamiliar with the land use law they must apply. While a few judges like and understand land use law, many others do not. Quality and timeliness of decisions vary greatly from vicinage to vicinage.

The result? Conflicting case law that further blurs the “rules of road” for land use attorneys seeking to counsel their clients. And more delays.

Senate Bill S-1490, sponsored by State Senators Marta Bark and Leonard Lance, provides for a land use court within the State Superior Court. Modeled after the state's Tax Court structure, a land use court would further assure that this complex area of the law have a consistent, coherent and understandable body of law. A land use court would assure a uniform body of law as well as uniform justice, uniform results and quicker decisions.

If New Jersey's economy is to keep growing, if its future residents are to have access to housing close to where they work and stores close to where they live, if New Jerseyans are to spend less time in traffic and more productive time elsewhere – in short, if our state's future growth is going to be smart growth – then the state legislature must begin the process by enacting all three bills to provide greater certainty for those developers who play by the rules and simply ask that their applications be considered by knowledgeable professionals under laws and regulations that are not moving targets. -RENJ

The views expressed here are those of the authors and not of Real Estate Media Inc. or its publications.

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