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Legislature, Courts Lend a Hand to Proponents of Economic Development, and Other News

No one is singing "Happy Days Are Here Again" yet. The economy is still struggling, and the real estate development industry in particular still faces very challenging economic conditions.

But the New Jersey Legislature has begun to realize that some legislative relief is required if our economy is to recover. Those advocating pro-growth policies are being heard more clearly in Trenton, and those displaying knee-jerk opposition to growth are finding it more difficult to carry out their agendas.

A sterling example is provided by the Permit Extension Act, which was signed into law this past fall. That legislation explicitly recognizes that the current state of economic affairs justifies an extension of permits and approvals obtained for countless developments throughout New Jersey. We provide in this issue an article summarizing that legislation, as well as an analysis of the permits and approvals to which the legislation does, and does not, apply.

The Legislature has also been busy with other legislation designed to boost economic development, such as a bill that would allow for the easier conversion of age-restricted developments to those that can be marketed to families (also discussed in this issue), and legislation granting more autonomy to licensed site professionals, thereby making permitting more efficient. Those bills have not been signed into law as of this writing, but the legislative trend is clearly positive. Indeed, the New Jersey Legislature *and* the United States Congress have moved to provide relief to cost-burdened homeowners so that the troubling deluge of foreclosures can be mitigated.

Our New Jersey Supreme Court has also provided some relief in the past year, particularly with respect to a case, discussed in this issue, that invalidated a downzoning as "inverse spot zoning." That opinion will be most helpful in the future when resisting arbitrary downzonings that are not supported by sound planning.

In the regulatory realm, a new day dawns at the Council on Affordable Housing, which is now processing hundreds of "third round" fair share plans that will provide increased densities and development opportunities. We discuss those opportunities in this issue as well.

To be sure, not all legislative and regulatory news in New Jersey for the development industry has been good. It never is. Each passing year brings more oppressive land use regulations that temper the positive news we can report. We nevertheless strive in this, the ABC Special Edition of our firm's *Quarterly,* to present the highlights of where matters currently stand from a legal perspective—the good, the bad, and the ugly—so that our readers are fully informed of the legal trends we see.

We hope you find this issue informative and useful, and we look forward to receiving your comments and inquiries.

– Thomas F. Carroll, III

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Living With COAH's New Rules

by Stephen M. Eisdorfer

On December 31, 2008, New Jersey's implementation of the *Mount Laurel* mandate to create affordable housing opportunities in our suburban communities entered a new era. By that date, most towns that wished to remain within the protective jurisdiction of the New Jersey Council on Affordable Housing (COAH) were required to file new housing plans with COAH and petition the agency for review of those plans. More than 230 towns filed new plans with COAH. The only class of towns not obligated to file by December 31, 2008 were towns in the Highlands, for whom the deadline was extended until December 2009.

This is a new era because, for the first time since 1999, towns have been assigned specific numerical housing obligations and been required to formulate plans that meet those obligations. It is also the first time since 1999 that municipalities that wish to recruit private sector builders to assist them in meeting their housing obligations have been required to designate sites and to rezone those sites for multi-family housing.

Exclusionary Zoning Litigation

It is also a new era because, for the first time since 1999, it is practical for builders to bring exclusionary zoning suits against municipalities that are not meeting their post-1999 housing obligations. At least 250 towns outside the Highlands area have not filed with COAH and are not otherwise immune from litigation. These towns are potentially vulnerable to exclusionary zoning suits that could result in site-specific builder's remedies. A chart showing municipal housing obligations under the current COAH rules is posted on the website of Hill Wallack LLP at http//www.hillwallack.com/web-content/pdf/affordable%20housing%20obligation%20chart.pdf. A list of towns that have filed with COAH is posted on COAH's website at http://www.state.nj.us/dca/affiliates/coah/reports/newthirdround.xls.

Prior to filing an exclusionary zoning case, a builder must make a good faith effort to induce the town to voluntarily rezone his or her property for inclusionary development and must do so without threatening exclusionary zoning litigation. The town is not permitted to use the builder's effort to induce voluntary compliance as an opportunity to hastily file with COAH.

COAH's Administrative Process

For towns that have filed with COAH, COAH has 45 days to determine whether the filing is complete. If the filing is deemed incomplete, the town has another 45 days to correct any deficiencies. If the town fails to correct the deficiencies, it is automatically deemed dismissed from COAH's jurisdiction and becomes vulnerable to exclusionary zoning litigation.

Once a town's petition is deemed complete, the town must give public notice of its filing. That notice opens a 45-day period for property owners, builders, and other interested persons to file written objections to the petition, with those objections to point out deficiencies in the fair share plan and identify sites proposed for favorable rezoning. The new regulations establish detailed requirements for a proper objection. If an objection does not satisfy the requirements, COAH may deem the objection incomplete. If so, objectors will have 14 days to correct any deficiencies. The filing of an objection is a critical step. By filing an objection, the property owner or builder assures that he or she will have the right to be involved in all subsequent stages of the agency proceeding. A property owner or builder who fails to file an objection at this point may or may not be able to intervene in the process later on.

Where objections are filed, the town and the objectors are obligated to participate in mediation over the objections. This is the next real opportunity for a property owner or builder to induce the town to include a proposed project in the town's housing plan. In principle, mediation is to

begin 45 days after the end of the objection period.

Once it starts, mediation is to be completed within 90 days, although this deadline can be extended. Again, however, the end result of the mediation process may be a favorable rezoning for objecting builders, since all towns will have to bring their plans into compliance with the new regulations and satisfy their fair share obligations.

COAH Standards for Inclusionary Zoning

COAH's new standards for inclusionary zoning set the following presumptive minimum densities that vary depending upon the location of property: 8 units per acre in State Development and Redevelopment Plan Planning Area 1, 6 units per acre in Planning Area 2 and designated "centers," 4 units per acre in sewered areas outside of Planning Areas 1 and 2, and a 40 percent increase over existing zoning elsewhere. The standards also impose a presumptive maximum set-aside in the "high growth" Planning Areas of 25 percent, i.e, that no more than 25 percent of the total units be set aside for low and moderate income families and children. For projects in which the affordable units will be rented, the minimum presumptive density is 12 units per acre everywhere, with a presumptive maximum 20 percent of the units to be set aside for low and moderate income families and individuals. In addition, for rental projects, 10 percent of the affordable units are to be set aside for very low income households—homes with incomes at or below 30 percent of the regional median income.

Although the promulgation of these standards by COAH in October 2008 represents a great step forward from COAH's December 2004 regulations and its June 2008 regulations, there is still much in them for builders not to like. The NJBA, represented by **Hill Wallack LLP,** has brought suit in the Appellate Division of the New Jersey Superior Court challenging the constitutionality of these standards. The suit contends that the standards do not create incentives for builders that are sufficient to create realistic housing opportunities, as mandated by the New Jersey Supreme Court in the *Mount Laurel* decision. The standards are particularly problematic in places where existing permitted densities may already be higher than the COAH-prescribed densities and in places where NJDEP regulations make the COAH-prescribed densities unattainable. Indeed, even COAH recognizes that these densities and set-asides may not be sufficient in some instances.

Conclusion

COAH regulations offer a variety of possible routes for securing more workable densities and set-asides. None of those routes, however, is automatic. This new era creates new opportunities for builders, but taking advantage of those opportunities will usually require the filing of litigation or maneuvering through COAH's review and mediation processes. As noted above, filing objections with COAH by the "objections deadline" is optimum, but it should also be stressed that COAH is obligated to accept and consider objections whenever they are filed—filing them late essentially means that an objector cannot formally participate in the COAH review and mediation process, but even late filing of objections can yield favorable rezonings in certain cases.

Identifying opportunities presented by the COAH process and the *Mount Laurel* doctrine often requires considerable knowledge and sophistication. The **Land Use Division** attorneys at **Hill Wallack LLP** would be glad to provide assistance to those seeking to further explore the COAH process. ■

"COAH regulations offer a variety of possible routes for securing more workable densities and set-asides."

Permit Extension Act Extends Many Approvals Throughout the State (Except in the Highlands Region?)

by Thomas F. Carroll, III

In a major victory for the development industry and other growth advocates, the New Jersey Legislature enacted the Permit Extension Act in the summer of 2008. It will preserve many permits and approvals throughout New Jersey so that those permits and approvals do not lapse during the economic downturn we are currently experiencing. However, it is important to recognize that, per the terms of the legislation itself, the Permit Extension Act does not extend all permits and approvals and, as to the Highlands Region, the Highlands Council has essentially declared that the legislation does not apply in the Highlands (at least not now). This article discusses the Permit Extension Act and some of the circumstances under which it does not operate to extend permits and approvals.

The Permit Extension Act

The Permit Extension Act (PEA) became effective when signed by Governor Corzine on September 6, 2008. The PEA applies to extend (or "toll") such permits that otherwise lapsed on or after January 1, 2007, and extends them through at least July 1, 2010 (and possibly up to six months thereafter as well, depending on application of the tolling language of the bill).

The PEA extends a wide variety of permits and approvals, including many state-issued permits and site plan and subdivision approvals issued by local planning boards and zoning boards. Essentially, all State, county, regional and municipal permits and approvals are extended (but not federal permits) unless excluded by specific language in the act.

Permits are not extended per the PEA if the lands subject to the permits are located in "environmentally sensitive areas" as defined in the PEA. "Environmentally sensitive areas" are defined in the PEA to include lands within State Plan Planning Areas 4B and 5 as of the effective date of the PEA, "critical environmental sites," the Highlands Region, except for lands designated for growth in the Highlands Regional Master Plan, and non-growth Pinelands areas. Other significant categories of permits not extended by the PEA include federal permits, certifications or approvals or water quality management plan approvals issued pursuant to the Water Quality Planning Act, center designations per CAFRA or the State Planning Act, certain DOT permits, and Flood Hazard Area Control Act permits (unless work has commenced).

"The PEA extends a wide variety of permits and approvals, including many state-issued permits and site plan and subdivision approvals…"

Whether the PEA operates to extend any given permits and approvals should be explored with counsel, but it is clear that countless permits and approvals throughout the state will benefit by the act.

The PEA in the Highlands Region

The Highlands Council has essentially decreed that the PEA does

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Redevelopment Law: The *Gallenthin* Decision and Beyond

by Kenneth E. Meiser

In *Gallenthin Realty Development, Inc. v. Borough of Paulsboro,* issued June 13, 2007, the New Jersey Supreme Court declared that property cannot qualify for inclusion in a redevelopment area merely because the property is not being used for its most optimal purpose. The Court also required more vigorous judicial review of designations of areas in need of redevelopment.

The Supreme Court overturned Paulsboro's designation of the Gallenthin land as a property in need of redevelopment, the first step in making the property part of a redevelopment plan and making the properties subject to possible condemnation. The Supreme Court found that the classification of the Gallenthin property was made solely because Paulsboro determined that the property's unimproved condition rendered it "not fully productive." The Court held that a redevelopment classification on this basis alone was invalid because New Jersey law permits redevelopment of such lands only where they are *both* stagnant and not fully productive because of issues of title, diversity of ownership or other similar conditions.

The Court's View of Section 5(e) of the Redevelopment Law

The 1992 New Jersey Local Redevelopment Housing Law ("LRHL") provides eight separate grounds for declaring property to be in need of redevelopment, although there is a degree of interplay among the criteria. One section of New Jersey's initial redevelopment law, in effect before 1992, required property in need of redevelopment to be both stagnant *and* unproductive. According to the Supreme Court, although the meaning of blight has evolved over time, the term blight retains the characteristic of deterioration or stagnation that negatively affects surrounding properties.

In *Gallenthin,* the Supreme Court rejected the possibility that Section 5(e) could be construed to permit a redevelopment designation for any property simply because it was not fully productive, for such a result could permit a blight designation of virtually every property in the State. Thus, the Supreme Court declared: "We need not examine every shade of gray coloring a concept as elusive as blight to conclude that the term's meaning cannot be extended as far as Paulsboro contends." Thus, Section 5(e) cannot be applied to lands that merely are not operated in an optimal manner. If the area proposed for blight designation does not satisfy both criteria—stagnation as well as lack of full productivity—then the Section 5(e) criteria cannot be applied and such land can be deemed in need of redevelopment only if it fits within one of the other statutory criteria for redevelopment.

"Greater care up-front could eliminate problems down the road, especially if there is litigation challenging the redevelopment designation."

Prohibition Against "Net Opinions"

The *Gallenthin* Court retained the traditional rule that municipal redevelopment designations are entitled to a presumption of validity if they are supported by substantial evidence on the record. The Court stressed that this does not mean, however, that the net opinion of an expert or the "bland recitation of applicable statutory criteria and a declaration that those criteria are met" will suffice. Many courts prior to the *Gallenthin* decision had been giving almost complete deference to the conclusions of planners that the statutory criteria had been established. In the post-*Gallenthin* era, however, redevelopment designations will be upheld by the courts only if the underlying planning reports are properly drafted, and only if the attorneys involved in the process properly couch the designation in the applicable statutory language. Greater care up-front could eliminate problems down the road, especially if there is litigation challenging the redevelopment designation.

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What's the Stink with NJDEP's New Sewer and Septic Rules?

by Henry T. Chou

> *"...the new rules have taken away a large measure of local autonomy in the land use decision-making process..."*

In the summer of 2008, the New Jersey Department of Environmental Protection (NJDEP) adopted amendments to its regulations that compel counties and municipalities to reduce the availability of wastewater treatment service and increase the regulation of septic systems. The dramatic effects of these new rules will not be felt until they are fully implemented as early as mid-2009.

While NJDEP insists that the new rules serve to improve water quality and protect environmentally sensitive areas, it is clear that they represent an attempt by NJDEP to interfere with local planning processes for purposes of thwarting development. Many county and municipal officials are just as dismayed as the development community, as the new rules have taken away a large measure of local autonomy in the land use decision-making process, and because they impose onerous obligations on county government.

The New Requirements Imposed by NJDEP

The new rules reassign wastewater management planning responsibility from municipalities and local agencies to the county governments. This regional approach reduces the number of sewer planning entities from 161 to 21. For the first time, NJDEP will require mandatory updates of all wastewater management plans (WMPs)—the plans that govern which properties may be served by public sewer. The compliance period under the new rules is very short. Counties must submit a revised WMP by early April 2009. If, for any reason, a county fails to submit a revised WMP by then, each municipality within the county will have an additional 90 days, until early July 2009, to prepare their own WMPs.

If there is no compliance within the additional 90-day period, then NJDEP reserves the right to withdraw the sewer service designation for the entire county, with the exception of the municipalities that prepared their own WMP within the 90-day period. Without a sewer service designation, developers cannot obtain sewer hook-ups for new development, resulting in a county-wide sewer moratorium. Sewer service area designations will only be restored when the county or municipalities adopt appropriate wastewater management plans. As of last year, nearly 450 municipalities had either outdated wastewater management plans or no plans at all.

The new rules require counties to consider a limitation on development based upon existing zoning ordinances and build-out under those ordinances. They also require downzoning in sewer service areas where treatment capacity would be limited without an expansion of facilities. Definitions are also being changed to reduce the availability of treatment capacity. For example, the new definition of an "equivalent dwelling unit" (EDU) assumes that a single family home with three bedrooms and three residents will use 500 gallons per day (gpd) of wastewater capacity. This assumption is not consistent with the actual average use of wastewater by a

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Beyond Active Adult: Conversion of Age-Restricted Communities and Other Options

by Stephen M. Eisdorfer

For the past decade, perceived market demand and the preference of local elected officials have made active adult housing an attractive development option. For many areas of New Jersey, however, demand for this type of housing has been satiated. Builders have delayed or halted construction of approved projects. They have cut prices of already constructed units. Over the short run, builders are unavoidably seeking alternatives to active adult development. Pending legislation may make conversion of such communities more achievable, and there are other options as well.

Removing the Active Adult Designation

One option is to change projects from age-restricted to non-age-restricted. As of this writing, legislation allowing for the conversion of such communities has passed both houses of the New Jersey Legislature and is awaiting the Governor's signature. If the Governor signs the bill into law, developers of age-restricted communities will have the option of asking planning boards to convert the community to "family" housing pursuant to criteria that are set forth in the bill. The bill is limited to projects that have not been constructed and in which no units have been sold. The bill also provides that those seeking to convert age-restricted developments to family housing must agree to provide up to 20% of the total units as low and moderate income homes.

If that legislation does not become law, conversion of such developments will still be feasible, although more cumbersome. Where no units have been constructed or sold, conversion would require amendment of the local development approvals and any offering statement filed with the Department of Community Affairs. Where the local zoning requires that the projects be age-restricted, it may also require zoning amendments or variances. Some municipalities, including Bound Brook, Hackettstown, Maplewood, Fort Lee and Morris Township, have approved the necessary amendments to permit the lifting of restrictions on previously approved plans. In the absence of a state-wide legislative authorization for the lifting of local restrictions, these issues must be resolved locally for each age-restricted project.

For projects in which units have actually been sold or occupied, the process is much more complex. Not only must the local land use issues be resolved, but the rights of purchasers and occupants must be respected. This may, for example, require a vote by the homeowners association to amend the association bylaws, or consent by individual homeowners or purchasers to an amendment of the master deed. Lifting restrictions may also require resolution of issues under the Federal Fair Housing Act and the New Jersey Law Against Discrimination. These laws, which require that at least 80 percent of the units in age-restricted projects be restricted to senior citizens, create significant obstacles to a partial lifting of restrictions.

"Pending legislation may make conversion of such communities more achievable, and there are other options as well."

Multi-Tiered Communities

A different option, especially for projects that have not yet secured approvals, is to move toward a portion of the senior citizen market that is less fully saturated. One example is so-called multi-tiered communities. Multi-tiered communities offer ordinary residential units, commonly referred to as independent living units; additional fee-based services, such as congregate dining, housecleaning services; and assisted living facilities—all on one site. The distinguishing feature of the multi-tiered community is that, although all these options are on one site, residents of independent living units are not guaranteed places

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The Year in Review: Recent Legal Developments Affecting the Real Estate Industries

by Michael J. Lipari

This edition of the *Quarterly* provides summaries of the most significant decisions issued since last year's Atlantic Builders Conference. While some of the most important cases are addressed at length throughout this edition of the *Quarterly,* this article highlights other noteworthy rulings.

Downzonings

In an important victory for builders and other landowners, *Riya Finnegan, LLC v. Township Council of the Township of South Brunswick,* the Supreme Court of New Jersey revived a seldom used doctrine known as "inverse spot zoning" to invalidate a municipal downzoning that was adopted to halt a particular commercial development. Inverse spot zoning occurs when a zoning designation is arbitrarily applied to a specific parcel of land and results in less favorable treatment of that land compared to neighboring lands. The Township had rezoned the land amid a public campaign to prevent any development on the site. The Supreme Court decision addressed two important issues: the standards against which courts test the sufficiency of the reasons given by a municipality for rezoning a parcel of land inconsistent with the master plan; and under what circumstances a rezoning of a single parcel constitutes impermissible inverse spot zoning. The Court stressed that "the power to zone cannot be wielded arbitrarily." The Court emphasized the need to use sound planning principles before enacting any such ordinance and warned that "[c]omplying with the formalities of the statute alone will not shield a decision that lacks such a basis."

Off-Site Improvements

Builders and developers scored a victory in the consolidated cases of *New Jersey Shore Builders Association v. Township of Jackson* and *Builders League of South Jersey v. Egg Harbor Township, et al.,* decided by the Appellate Division on June 23, 2008. The court held that municipalities cannot condition development approval on the requirement that developers set aside land to be used for recreation areas or facilities, open space, or require payments in lieu of a set aside. The Appellate Division struck down two municipal ordinances that required such conditions, finding that both were in contradiction of the Municipal Land Use Law. The rationale behind the court's decision was that the provision of public open space and recreational facilities is something that the public should enjoy as a whole and should not entirely burden a specific development project.

Highlands Act

In the case of *OFP, LLC v. State of New Jersey,* the New Jersey Supreme Court upheld an Appellate Division decision that dismissed a challenge to the Highlands Water Protection and Planning Act (Highlands Act). In hearing its first challenge to the Highlands Act, our Supreme Court was faced with a challenge that the Act's restrictions, as applied to a project that was fully approved before the Highlands Act was adopted, was an unconstitutional taking without just compensation. The Supreme Court upheld the Appellate Division ruling that the plaintiff must first exhaust all of the available administrative remedies prior to filing suit alleging a taking. Property owners in the Highlands Region can file for a hardship waiver, which would then be determined on a case-by-case basis. The Court found that this provision was sufficient to render a regulatory taking claim premature. The Supreme Court further upheld the Appellate Division holding that the retroactive application of the Highlands Act restrictions to the property in question was valid.

In a challenge brought by the New Jersey Farm Bureau, the Appellate Division upheld the validity of a certain Highland Water Protection and Planning Act rule but remanded the matter to NJDEP for an evidentiary hearing before the Office of Administrative Law. At issue was the validity of the septic-density rule, which prohibits more than one individual subsurface disposal system per 88 acres of any lot in the preservation area that is "forested" or per 25 acres of any lot that is not forested. Although a challenge to the validity of an administrative regulation usually is determined on the record developed before the agency, a court can remand to supplement the record and demand an evidentiary hearing if it finds it necessary for a proper determination of the challenge to the regulation. In *In re Highlands Water Protection and Planning Act Rules N.J.A.C. 7:38-1 et seq.,* the Appellate Division concluded that a remand was appropriate because the Farm Bureau had raised "substantial questions" regarding the reasonableness of the methodology on which NJDEP relied in establishing the septic-density standards.

Approvals and Variances

In *Mountain Hill, LLC v. Zoning Board of Adjustment of the Township of Middletown,* the Appellate Division held that cross-zone driveways merely serve the purpose of reducing traffic impact on public streets from movement within the planned unit development, and that a use variance is not required for such driveways in a planned unit development where the parking in each zone sufficiently accommodates all of the uses in that zone and the driveways are not necessary to access either zone from a public street.

Unless a county planning board can establish that the delay was inadvertent or unintentional, an applicant is subject to an automatic approval if the board fails to render a timely decision on a complete land use application within the time limits set forth in N.J.S.A. 40:27-6.7 of the County Planning Act. This was the case in *Amerada Hess Corp. v. Burlington County Planning Board,* where the county planning board argued that it mistakenly believed that it had been given an extension to review the applicant's site plan. The Supreme Court held that the Legislature enacted this time limit, which is "of great institutional value," to prevent unnecessary and intentional delay by counties when reviewing site plan and subdivision applications. While an automatic approval should rarely be granted, said the Court, its issuance is proper when there is no evidence of mistake, inadvertence, or other unintentional delay.

In *Pond Run Watershed Association v. Township of Hamilton Zoning Board of Adjustment,* an applicant proposed in its published and mailed notice of a use variance, a "mixed-use active adult community and commercial development" in an RD zone. The applicant used the term "commercial development" to describe a 5,000-square-foot, 168-seat restaurant with a potential liquor license. The court invalidated the approvals on the basis that the notice was inadequate under N.J.S.A. 40:55D-11 because it did not mention the anticipated restaurant. The Appellate Division further held that, although the trial court correctly found that the applicant's payment of $476,000 toward an off-site municipal amphitheater was an illegal exaction, the matter should have been remanded to the Zoning Board instead of merely eliminating that element of the project.

In a decision approved for publication on October 6, 2008, the Appellate Division expanded the application of the "time of decision rule" to newly enacted zoning ordinances that are not yet effective. The court held that the time-of-decision rule required that the municipal land use board consider the applicant's subdivision application under the new ordinance and not under the pre-amendment ordinance, when the municipal governing body already had amended its zoning ordinance but where the amendments had not yet taken effect. In *Maragliano v. Land Use Board of the Township of Wantage,* a contract purchaser of property received subdivision approval three days before the new zoning ordinance became effective. The board's resolution was adopted three months later. The court found that the time of decision rule also applies when a new ordinance is adopted but not yet effective. The court suggested that land use boards "not rush to grant development approvals" where new ordinances have been adopted and will soon take effect. The court further held that the approval did not receive the two-year statutory protection from zoning changes because the date runs from the time that the resolution is adopted, not from the date of approval.

Developer's Agreements

In *Toll Brothers, Inc. v. Board of Chosen Freeholders of the County of Burlington,* the Supreme Court held that it is a violation of the Municipal Land Use Law to require a developer to contribute more than its *pro rata* share of off-site improvements. Moreover, a developer may modify or reform any such obligation contained in a developer's agreement if the project and/or obligations have changed. Toll Brothers acquired land in foreclosure with municipal and county approvals and, as a condition subsequent, entered into developer's agreements with the town and county to memorialize its agreement to complete off-site roadway improvements. Toll Brothers substantially decreased the scope of the development while the cost of the required off-site improvements increased nearly $3,000,000. Toll Brothers was unsuccessful in renegotiating the agreements with the township and county and lawsuits were filed. The Supreme Court held that, under the MLUL, "a planning board may only impose off-site improvements on a developer if they are necessitated by the development" and a "developer cannot be compelled to shoulder more than its *pro rata* share of the cost of such improvements."

Conclusion

During the past year, the courts have produced a wide variety of important legal developments. Please note that the summaries contained herein can only generally describe the rulings provided in these cases. Readers of this article are encouraged to seek more detailed information from counsel with regard to these issues and their impact on any particular matter. At **Hill Wallack LLP,** we look forward to discussing any of these recent legal developments with you at your convenience. ■

It's Not Easy Being Green: Increased Green Regulation Requires More Attention From Builders

by Michael J. Lipari

With the increasing pressure on builders, architects, planners and designers to develop environmentally friendly or "green" projects, it is important to stay on top of the multitude of regulations being implemented at the state and local levels. With so many bills affecting green construction being introduced in the Legislature, as well as municipalities adopting ordinances regulating the same, the uncharted territory of green regulation now requires the full attention of building professionals. Furthermore, until the Legislature adopts a standard set of regulations, the type and breadth of green elements permitted in a project may vary significantly from one municipality to the next.

New Jersey Leading the Charge

New Jersey, which is quickly becoming a pioneer in the world of renewable energy, has already enacted legislation that promises to significantly reduce greenhouse gases and provide 22.5% of its energy through renewable sources by 2020. The State is also set to construct the nation's first offshore wind farm, which will provide alternative energy to approximately 110,000 homes from a series of turbines located some twenty miles off the coast of Avalon. Governor Corzine has stated his desire to develop additional wind farms within the boundaries of the State in an effort to maximize renewable energy sources and help end the State's dependence on foreign oil.

The Legislature is currently considering several bills that, if enacted, would further advance the implementation of alternative energy. One piece of legislation recently enacted in New Jersey allows a municipality to adopt a "green buildings and environmental sustainability" component to its master plan that would have a substantial impact on municipal land use. Several other bills are in the works, and should be closely monitored.

Legislative Initiatives

Wind and solar energy are at the forefront of the green movement. Examples of some pending bills include the requirement of solar energy systems in all new public schools (A-3208), green building standards in all new affordable housing (A-1626), solar panels on noise barriers erected on roads and highways (A-3347) and solar energy fields on preserved farm land (A-2859), as well as in industrial zones (A-2550). However, the proposed legislation with the sharpest teeth is aimed at new home building.

Of particular interest to building professionals is the "Residential Development Solar Energy Systems Act" (A-1558), which has been passed by both the Assembly and the Senate and, as of this writing, awaits the signature of the Governor. This bill requires that any developer of "25 or more dwelling units" offer to install, or provide for the installation of, a solar energy system at the point that the "prospective owner enters into negotiations with the developer to purchase the unit." This obligation will, if enacted, have a significant impact on the planning and building stages of a residential development. Building professionals will be faced with new variables that will need to be addressed at the early stages of the development process.

This bill would also require developers to "disclose in any advertising" 1) that a prospective owner may have a solar energy system installed in their unit; 2) the total cost of the system installation; and 3) an estimate of the potential savings associated with the solar energy system as opposed to the standard gas or electric system. The bill also offers some technical challenges, such as how to meet the bill's requirements when a home does not have a southern exposure.

Another legislative initiative that may cause a change in the approach taken with regard to environmental building design is A-2994, which would amend the Municipal Land Use Law to authorize municipalities to require the use of solar energy in new development projects. If enacted, this bill would authorize local land use boards to condition approval of a site plan or a subdivision upon compliance with those solar energy standards included in the master plan. This poses many new and previously unexplored issues to builders and developers who may not have planned for such conditions. Building professionals must prepare for municipalities that could implement such green elements into their master plans. If there is a green element, builders will need to bring themselves up to speed on these areas of emerging technology and prepare for the possibility that such conditions are imposed.

Municipal Regulation

While everyone purports to be in favor of green energy initiatives, some municipalities are more concerned with potential downsides, such as aesthetics and noise, and have adopted ordinances that impede the growth of renewable energy sources. For example, Lower Township is one municipality that has rescinded an ordinance that allowed residents to erect windmills upon obtaining a simple permit. The Township governing body felt that, in light of the increased demand for green energy sources, the ordinance, which became effective in 1981, did not provide enough regulation.

Some municipalities have limited the areas in which windmills or wind turbines may be used. Wayne Township has banned the use of wind turbines in certain zone districts within the Township. After one business owner sought to erect a turbine on the top of his carwash, the governing body adopted an ordinance that banned such use within 1,640 feet of residential neighborhoods, schools and day-care centers. The council cited noise and health concerns for their decision. The Township of Brick also banned the use of turbines in areas outside of business and industrial zones, and has imposed substantial setback requirements.

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Mitigating Wetlands: What You Need to Know About NJDEP's New General Permitting Requirements

by Henry T. Chou

On October 6, 2008, the New Jersey Department of Environmental Protection (NJDEP) both adopted and proposed new standards for certain general permits concerning the disturbance of wetlands. Viewed separately, each of these new permitting requirements appears to be relatively manageable. However, the cumulative effect of all the new requirements is that development applications will be further delayed and developable areas will be further reduced, as described below.

Wetlands Letter of Interpretation Submission Requirement

The new rules give municipal and county planning boards the authority to require a NJDEP wetlands letter of interpretation (LOI) as an administrative completeness checklist item. This new requirement allows planning boards to withhold "completeness" determinations and delay public hearings on otherwise complete applications until the applicant obtains an LOI for the subject property from NJDEP. The practical effect of this rule is that local development applications could be delayed indefinitely while NJDEP moves at a glacial pace to issue LOIs.

General Permit Wetlands Fill Requirements

The acreage limit for projects requiring a General Permit No. 6 (GP 6) for isolated wetland fill, if combined with other general permits (such as those for road crossings and utility lines) will be reduced from 1.0 to 0.5 acres. If the amount of isolated wetlands to be filled exceeds 0.5 acres, then a GP 6 remains available for that fill, but no other filling can be authorized under a general permit. Instead, an individual permit—which is much more difficult to obtain—will be required. The imposition of an individual permit requirement where only a General Permit was required in the past is clearly a new obstacle to development.

General Permit Plan Submission Requirements

The new rules require that general permit applications include a plan depicting the extent of wetlands on the entirety of the property, regardless of the size of the property or the amount of proposed disturbance. This requirement will increase applicants' engineering costs, as well as increase the preparation time needed by the site engineer to prepare plans.

Transition Area Application Requirements

NJDEP has also codified its current practice of requiring new Transition Area applications if a project has not been constructed during the initial five year permit period, even in cases where wetlands transition area limits have been deed restricted and recorded. This new rule may not have a significant impact because NJDEP implemented the same procedure on an informal basis years ago, and developers are already familiar with the procedure.

Permit Modification Application Requirements

The prior rules required a permit modification if and when a permit is transferred from one party to another, but the rule was generally not adhered to or enforced. The new rules now impose significantly expanded application requirements for such modifications. While this new rule does not impact applicants substantively, it does have the effect of creating another procedural hoop for applicants to jump through.

Proposed New Mitigation Measures Associated with General Permits

NJDEP has proposed rule amendments that would require mitigation measures for certain general permits. These rule amendments—slated for adoption in early 2009—were proposed to bring NJDEP standards into conformance with the U.S. Environmental Protection Agency's 2007 regulatory changes governing nationwide permits, the federal equivalent of NJDEP's general permits. NJDEP's proposed rule amendments would impose new mitigation requirements for 6 types of general permits for minor disturbances of wetlands related to the installation of underground utility lines, non-surface water connected wetlands, minor road crossings, outfall structures and above ground utility lines. All of these standards have the effect of reducing the developable area of properties encumbered by wetlands.

Conclusion

In order to properly gauge the impact of NJDEP's newly adopted and proposed regulations on their individual projects, property owners and developers should consult with appropriate professionals, including a site engineer who is current with NJDEP standards and a land use attorney with experience with NJDEP permitting issues. ■

"the cumulative effect of all the new requirements is that development applications will be further delayed and developable areas will be further reduced."

Permit Extension Act Extends Many Approvals Throughout the State (Except in the Highlands Region?) *(continued from page 4)*

not apply within the Highlands Region—even within the Highlands Region lands where development is to take place per the Highlands Act. Whether the Highlands Council decree was lawful is highly suspect, but the Council's action must be noted, as follows.

In a notice appearing in the October 6, 2008 edition of the *New Jersey Register,* the Highlands Council has unilaterally declared that no approvals in the Highlands Region are subject to the PEA. This rather remarkable edict applies, in the opinion of the Highlands Council, to both the Highlands Preservation Area and the Highlands Planning Area.

No less remarkable is the Highlands Council's reasoning for its decree—the Highlands Council now states that there are *no* areas designated for growth in the Highlands Regional Master Plan (RMP). From a purely legal perspective, it is highly questionable whether the Highlands Council has the legal authority to decide where legislation does, or does not, apply.

As noted above, the Legislature decided, through the PEA, that permits would not be extended in "environmentally sensitive areas," with such areas defined to include the Highlands Region, except for lands designated for growth in the Highlands RMP. Put another way, the Legislature decided that permits and approvals within the Highlands Region *would* be extended if the affected lands are lands designated for growth within the RMP.

The RMP and its mapping lead readers to conclude that, at least on their face, there are some areas designated for growth within the Highlands Region. Indeed, the legality of the RMP itself is highly questionable, for a number of reasons, if it lacks *any* areas designated for growth, even within the Highlands Planning Area. Nevertheless, the Highlands Council "provided notice" in the October 6, 2008 New Jersey Register that the PEA does not apply anywhere within the 88 municipalities comprising the Highlands Region because the RMP does not contain any areas designated for growth.

The October 6 notice further states that the PEA will not apply in the Highlands Region "until such time as the Highlands Council designates growth areas in the" RMP. The notice further points to a "policy" in the RMP which states that "provisions and standards relating to regional growth activities which increase the intensity of development shall be discretionary for conforming municipalities and counties." Thus, it is apparently envisioned that municipalities and counties will seek "conformance" from the Highlands Council as to their Planning Area lands, and that the PEA may therefore apply to some unspecified Highlands Region lands if the Highlands Council should "at some future date, designate growth areas" in the RMP during the extension period of the PEA. The October 6 notice also seems to rely, in defense of the Highlands Council's decree concerning the PEA, on the Governor's "ordering of additional protections" within the Highlands Region through his Executive Order 114.

The Bottom Line

The Permit Extension Act has already operated to "save" many projects that would otherwise have been torpedoed due to the lapsing of permits and approvals, and more such projects will undoubtedly be saved as time goes on. While economic conditions currently prevent many approved developments from going forward, it is hoped that conditions will improve within the "tolling period" offered by the PEA so that such economic development can take place without the need to re-acquire approvals, cope with intervening changes in the law, etc.

As to the Highlands Region, through its October 6 notice the Highlands Council has taken it upon itself to "rule" that the PEA simply does not apply to the 88 towns within the Highlands Region because of the way it has chosen to characterize the RMP. Even as to mapped Existing Community Zones within the Highlands Planning Area, the Highlands Council has advised, through its October 6 notice, that lands within those zones are not "designated for growth" and that the PEA does not apply therein. The Highlands Council's position means, for example, that Morristown and Dover are not areas designated for growth in the RMP, and that the PEA therefore does not apply to permits and approvals issued in those towns, or in any other Highlands towns.

The plan conformance process is not obligatory in the Planning Area per the Highlands Act, and will likely take years even if pursued by given municipalities, with the end result of the plan conformance process being uncertain at best. Litigation contesting the terms of the October 6 notice may be the only alternative if permits and approvals are to be preserved. Among the types of development to be negatively affected by the October 6 notice may be developments approved to assist municipalities in meeting their *Mount Laurel* obligations.

Finally, readers should be advised that the October 6, 2008 *New Jersey Register* also contains a notice concerning the effect of the PEA within the Pinelands Area. ■

Redevelopment Law: The *Gallenthin* Decision . . .

cont. *(continued from page 5)*

The Harrison Case: New Notice Requirements

Harrison Redevelopment Agency v. DeRose is an Appellate Division case which makes it much easier for a property owner to raise *Gallenthin*-type challenges to redevelopment designations that had been made years ago. The redevelopment agency in the *Harrison* case sought to condemn a property owner's land. The property owner had operated a truck repair service for thirty-six years. He moved his business to a property which he purchased in Harrison on September 8, 1997. On August 27, 1997, Harrison adopted a resolution designating the study area which included his property as a redevelopment area. In November 1998, a redevelopment plan was adopted. The property owner was aware of the redevelopment plans, but testified that he did not learn of the planned condemnation of his property until 2004. At the time the condemnation action was brought against the property owner in 2006, the town attorney represented to the court that "at least tens of millions, and perhaps hundreds of millions, of dollars have already been expended in the redevelopment effort."

The property owner objected to the condemnation because he never received an individual notice of the blight designation or the adoption of the redevelopment plan or the amended plan. The court held that, as a matter of constitutional due process, a property owner was entitled to such specific notice before the municipality could cut off or limit the owner's right to challenge a condemnation or a designation of a redevelopment area. The notice must provide the following information: it must inform the property owners that the blight designation operates as a conclusive finding of a public purpose to authorize the government to condemn their property; it must require that owners be apprised of time limitations for contesting a blight designation; and it must notify the property owners that the governing body has designated their premises as "in need of redevelopment."

Unless all of those things are provided in a notice, the ordinarily applicable 45-day time period for challenging the designation may be inapplicable and the owner's right to contest a blight declaration in the future will not be extinguished. On the other hand, if the notice is given, a plaintiff cannot ordinarily wait to raise objections as a defense in a future condemnation action. This presumption of a time limitation for a property owner who received such notice shall be especially strong with respect to general attacks on the redevelopment designation that are not specific to the owner's parcel of land. By giving such notice, the Legislature's goal of having at least generalized attacks on the redevelopment effort litigated to conclusion before the municipality completes the time-consuming and expensive process of acquiring each parcel in the redevelopment plan can be promoted.

Gallenthin involved a recently adopted designation of an area in need of redevelopment and the designation was challenged within 45 days of adoption. *Harrison,* however, extends the right to challenge redevelopment designations that were adopted many years ago. Indeed, that was the case in *Harrison*. Thus, decisions to redevelop land today should include a review of the redevelopment procedures used years ago by the town in question. Identifying flaws early in the investment process may result in the ability to undo the damage of procedural errors that may have been made in the past, and will allow a proposed redeveloper to learn whether or not litigation contesting the redevelopment would be timely.

The *Long Branch* Case

The combination of *Harrison* and *Gallenthin* has resulted in numerous cases invalidating or remanding designations of an area in need of redevelopment. The case that has gotten the most attention is *City of Long Branch v. Anzalone*. A number of homeowners challenged the attempt to condemn their properties. The plan had been adopted more than ten years ago. The homeowners claimed that there was no redevelopment plan for condemnation of their homes, but rather for infill. The court remanded on this matter. It also remanded on the question whether the city acted arbitrarily in including the neighborhood property owners in the redevelopment area. The court also found that a survey, standing alone, was insufficient to constitute substantial evidence that the buildings were in such state of decay as to qualify for designation in the redevelopment area. In view of these numerous questions, the matter was remanded for further consideration. After the opinion was rendered, Long Branch determined to abandon its efforts to condemn those homes.

Ongoing Caution is Justified

Similar decisions have been rendered in a number of other cases, finding that the planner's determination that an area was in need of redevelopment was not sufficiently detailed and did not comply with *Gallenthin*. The only opportunity given to municipalities in these cases is that the municipality could present new testimony to supplement whatever findings it had made years ago in determining that the property was in need of redevelopment to satisfy the *Gallenthin* dictates. Even so, they will be subject to the new stricter review.

Some municipalities are attempting to avoid litigation by having hearings which are on notice to the public to establish that their designation is consistent with *Gallenthin* principles. Other municipalities that are faced with litigation are taking advantage of the opportunity to supplement the record before the court as authorized by the *Harrison* opinion. In any event, if an analysis shows that the *Gallenthin* criteria cannot be satisfied, then the municipality may be unable to overcome a challenge to condemnation by a property owner. It is critical that redevelopers, including those who are midstream in the redevelopment process, do their own analysis to know whether the condemnation of properties will be feasible under the new legal principles applicable in New Jersey. ■

…New Sewer and Septic Rules cont. *(continued from page 6)*

family of three in a single family home, which is closer to 250-300 gpd.

Additionally, "environmentally sensitive" land must be removed from sewer service areas. The NJDEP's definition of "environmentally sensitive" land is broad and includes 25-acre contiguous areas of wetlands, steep slopes, buffers of "Category One" waterbodies, riparian zones, habitats of threatened and endangered species and natural heritage priority sites. These areas will have to be serviced by individual on-site septic systems. While NJDEP claims to support the objectives of the State Development and Redevelopment Plan (State Plan), the rule amendments actually authorize NJDEP to disregard the development designations of the State Plan which NJDEP deems to conflict with its environmental policies.

The new rules also change the regulation of septic systems in two significant ways. First, they require municipalities to adopt ordinances regulating septic maintenance of developments that will generate a cumulative total of more than 2,000 gpd of wastewater. Second, new septic systems must meet a standard of 2 mg/l of nitrates, whereas drinking water standards remain at a lower standard of 10 mg/l.

Impacts of the Rule Amendments

If a county does not adopt a WMP by April 2009 and municipalities within the county do not adopt their own plans by July 2009, NJDEP has the ability to declare a moratorium on all new sewer connections in that county. All lands within the WMP's geographic boundaries not yet receiving sewer service could be automatically re-designated as septic areas with planning flows of 2,000 gpd or less. This would significantly impede the ability to develop property by requiring large average minimum lot sizes. Instead of objecting to such a moratorium, certain counties and municipalities that embrace non-growth policies may purposely choose to not comply with the new rules in order to trigger a moratorium.

While NJDEP states that the goal of its new septic requirements is to ensure that the density of septic systems will not degrade water quality, the practical effect of the rules is to create large lot developments that will promote sprawl and pose barriers to the extension of utilities, as well as imposing a significant expense upon homeowners with septic systems and upon municipalities that must create new regulatory bureaucracies. The increased use of septic systems also poses the risk of groundwater degradation in areas deprived of access to public sewer service by the rule amendments.

The new definition of the EDU has the effect of reducing the treatment capacity of sewer plants throughout the State. As noted above, instead of assuming that each 3-bedroom, single family home uses 250-300 gpd of sewer capacity, treatment facilities will now have to assume that each home uses the unrealistically high number of 500 gpd. The limitation on development based on existing zoning also has the effect of stopping all future development not currently contemplated in current zoning ordinances. Additionally, the removal of "environmentally sensitive" lands from sewer service areas, per the new rule definitions, could eliminate up to 40% of New Jersey's vacant developable land.

Conflicts with Other State Policies

Ironically, NJDEP's new rules directly conflict with several of the State's important public policy directives. For example, when sewer service is made unavailable, municipalities will lose the ability to adopt new ordinances providing for higher density "inclusionary" developments, which the New Jersey Council on Affordable Housing (COAH) has promoted as an important mechanism for providing low and moderate income housing. The new rules also call for lower density zoning, i.e., downzoning, which conflicts with the provisions of COAH's rules that direct municipalities to implement higher density zoning at presumptive minimum densities.

The courts may soon have to address the question of whether NJDEP has the power to compel a municipality to downzone the very same property that could otherwise be used by a municipality to satisfy its affordable housing obligations. In their current form, NJDEP's rules could serve as a convenient tool for those municipalities that seek to evade their affordable housing obligations. The potential for conflict between the rules of two state agencies, NJDEP and COAH, will have to be resolved if the State is to have coherent growth policies.

Conclusion

Property owners and developers should monitor municipal, county and NJDEP actions closely to ascertain how properties of interest are characterized in new WMPs, and to determine whether NJDEP actually implements the draconian measures discussed above. As this article went to press, revised, proposed sewer service area maps are starting to appear, and they should be carefully analyzed to determine how they would affect properties of interest. The NJDEP, counties and municipalities should be placed on notice of all proposed arbitrary or otherwise unlawful sewer mapping decisions, especially where such decisions would impede municipalities' ability to satisfy their COAH obligations. ■

Beyond Active Adult: Conversion of Age-Restricted Communities and Other Options cont. (continued from page 7)

in the assisted living facility if they can no longer function in their independent living units.

Multi-tiered communities target a much older population than active adult communities, one that is less well-served in the existing market. Such facilities have been deemed by the New Jersey courts to be "inherently beneficial uses." Under New Jersey land use law, application for a variance for an "inherently beneficial use" is governed by much more favorable legal standards than other variances. As a result, it is often practical to get use variances to permit the construction of these facilities, even where the municipality is unwilling to rezone for such a use.

Continuing Care Retirement Communities

New Jersey law especially favors one particular type of multi-tiered community, so-called "continuing care retirement communities." CCRCs typically include independent living units, congregate dining and for-fee services, an assisted living facility, and skilled nursing beds. The distinguishing feature of a CCRC is that the resident enters into a contract, which may be for a period of years or for life, that guarantees that he or she can move from the independent living unit to the assisted living facility or a skilled nursing bed, as required. Because of this contractual element, CCRCs are closely regulated by the State under the Continuing Care Retirement Community Regulation and Financial Disclosure Act.

Like other multi-tiered communities, CCRCs are inherently beneficial uses under New Jersey zoning law. They may also be protected uses under the Federal Fair Housing Act. Under the recently adopted Statewide Non-Residential Development Fee Act (which may or may not survive legislative efforts to delay or repeal the fee), CCRCs are not required to pay the 2.5 percent affordable housing fee required of other non-residential developments. In addition, the portion of the CCRC devoted to health care, such as the skilled nursing beds, is exempt from local property taxes. For some types of CCRCs, including those operated for profit, state and federal construction subsidies are available.

Multi-tiered communities, including CCRCs, are more complex than active adult communities because they involve the ongoing provision of services. Their profitability depends critically upon maintaining consumer satisfaction with these services. Typically, a developer partners with an experienced facility operator to construct and operate this type of development.

Conclusion

None of these options is simple or automatic. Market conditions that make active adult development unattractive inevitably require builders to pursue options that are more complex and call for greater sophistication. The pending legislation allowing for conversion of age-restricted communities will, if signed into law, certainly make conversion a more straightforward matter. But whether or not that bill becomes law, there are a number of options available for builders willing to provide housing and other services for the ever-increasing aged sector of our population. ■

Fort Monmouth Redevelopment Planning Efforts Move Forward in Anticipation of Base Closing in 2011

In anticipation of the closing of Fort Monmouth in 2011, the Fort Monmouth Economic Revitalization Planning Authority (FMERPA) moved promptly to adopt its "Fort Monmouth Revitalization Plan" on September 3, 2008. The Revitalization Plan provides proposals for the reuse of the base and calls for various types of development, including commercial, industrial, agricultural, recreational, educational and residential uses. In December 2008, FMERPA entered into a Memorandum of Understanding with the New Jersey Council on Affordable Housing, through which the two agencies pledged to cooperate to ensure that adequate affordable housing will be part of the redevelopment efforts.

The Revitalization Plan also describes the supporting infrastructure, phasing schedule, and capital improvement programs needed to implement the land use proposals. While representatives of the local community assisted in formulating the proposals contained in the Revitalization Plan, the Department of Defense is responsible for identifying the final property disposal mechanisms. It is expected that the Department of Defense will turn over control of the base property to State and local authorities promptly after the closing of the base in 2011. Numerous redevelopment opportunities should become available.

If you are interested in following the latest developments of the Fort Monmouth redevelopment process, visit **Hill Wallack LLP's** Fort Monmouth Redevelopment blog at **www.landuselaw.com**.

– Henry T. Chou

It's Not Easy Being Green... cont. *(continued from page 10)*

Other municipalities allow for wind turbines, provided that the site in which they are constructed is large enough. Galloway Township in Atlantic County will permit such use on residential lots no smaller than one acre, with a fall-zone setback equal to the height of the structure. In Hillsborough Township in Somerset County, the minimum lot size for such elements is ten acres.

Matters Under Study

While some municipalities have moved quickly to adopt ordinances affecting green development, others have put plans on hold until studies can be done to determine the feasibility of such projects. Stafford Township in Ocean County is currently collecting data on wind powered energy and has constructed a test mill site to determine whether it would be feasible to implement a large scale windmill farm within the Township. While the Township plans to implement new ordinances regarding wind and solar power, no timetable has been set.

Other municipalities have also jumped on the windmill bandwagon. The City of Bayonne plans to undertake studies on whether a wind turbine would be able to completely eliminate the energy costs associated with pumping out the City's sewage. Similarly, Barnegat Township recently voted to seek planning board assistance in drafting an ordinance to regulate wind turbines. In doing so, Barnegat will erect an anemometer to measure wind on Township property near the bay front. Positive results could result in wind powered homes and businesses.

Conclusion

As it becomes clearer that renewable forms of energy, including wind and solar power, are here to stay, one should expect an even sharper increase in regulation at all levels of government. The State of New Jersey continues the push to turn these renewable sources into long-term cost-effective options in both commercial and residential use. The legislative proposals and municipal ordinances discussed above, with others to come, may also present obstacles directly impacting building professionals by creating new challenges that require a change in the approach taken on every type of development.

Legislators are aggressively moving to implement regulations that will require and/or limit the types of green elements in all types of construction as they work toward their overall goal of achieving a greener New Jersey. Municipalities are also implementing green regulations. Some ordinances are designed to ease the burden on green building and some to outright ban it. It must now be a priority for building professionals to carefully monitor these regulations that will have a substantial impact on all new development projects. A thorough understanding of the rapidly changing legal environment affecting this dynamic area is the first step toward successful green development. ■

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