

Update

Spring 2006



Municipal Zoning Ordinances Requiring Additional Notice Invalid Under MLUL

In April 2004, Edison Township adopted Ordinance No. 0.1407-4004 (Ordinance), requiring applicants for approvals under the Municipal Land Use Law (MLUL) to provide public notice of their application in addition to the notice required by the MLUL. Specifically, the Ordinance required the posting of a minimum 32 square foot sign facing a public street at the project site and the provision of individual notice to all property owners within 300 feet of the project. The MLUL mandates public notice through publication in a newspaper of general circulation and individual notice to all property owners within 200 feet. On May 12, 2004, New York SMSA Limited Partnership, doing business as Verizon Wireless, brought suit challenging the Township's additional notice requirements, maintaining that the Ordinance is beyond the scope of the MLUL. The trial court agreed and Edison Township appealed.

On appeal, the Township argued that its more burdensome notice requirements were permitted under the MLUL, as the MLUL set forth minimum notice requirements, and municipalities were free to impose additional requirements. The Appellate Division affirmed the holding trial court's, findings that a municipality's authority to regulate land through zoning is limited to the power delegated by the Legislature in the MLUL. By adopting more rigorous notice requirements than those required by the MLUL, the Township went beyond its statutory authority and the court found that the limits set forth in the MLUL are clear and unambiguous, and determined that the Legislature's stated intent in enacting the MLUL was to provide for uniform procedures for approval by local land use boards, including notice requirements. A municipality may not adopt notice requirements that are inconsistent with those specifically required under the MLUL.

Delayed Redevelopment Plan Does Not Afford Relief To Property Owners

In 1987, Barry Rosengarten purchased property in Perth Amboy on which he intended to construct a residential development. Those plans were halted when, in 1997, Perth Amboy adopted a redevelopment plan that included Rosengarten's tract in the redevelopment area. Implementation of the redevelopment plan was delayed for several years,

and Rosengarten filed suit in 2001 against Perth Amboy, seeking compensation for inverse condemnation. He claimed that the unrealized redevelopment plan and designation of his property in the redevelopment area precluded him from using the property and constituted a breach of good faith and fair dealing.

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Delayed Redevelopment Plan Does Not Afford Relief To Property Owners (*Continued*)

In November 2003, the trial court granted summary judgment to Perth Amboy, finding that although the city had not implemented the redevelopment plan, it had not abandoned it, and thus, Rosengarten was not entitled to relief under Washington Market Enterprises, Inc. v. Trenton.¹ Rather, the trial court ruled that a municipality cannot be expected to acquire each parcel at the inception of the redevelopment plan and refused to sustain a cause of action to compel condemnation of Rosengarten's property.

The trial court was concerned that sustaining such a cause of action would entitle all similarly situated property owners to file inverse condemnation claims at the outset of the redevelopment process and impair a municipality's ability to act under New Jersey's redevelopment laws. The trial court did not resolve the issue of how much time must lapse before a municipality's inaction

under a redevelopment plan would give rise to a cause of action for inverse condemnation.

In an unpublished opinion, the Appellate Division affirmed the trial court's decision and further addressed the issue of when a compensable taking of property occurs. The court noted that neither lost economic opportunities nor reductions in property values during governmental deliberations, absent extraordinary delay, constitute a taking of property.²

The court further agreed with the trial court that a delay of four years in implementing the redevelopment plan was not unreasonable and that any loss of value could be remedied by setting a proper valuation date during the implementation of a redevelopment plan.

1. 68 N.J. 107 (1975). 2. *Littman v. Gimello*, 115 N.J. 154 (1989).

Developer Liable For Value Of Drainage Easement

After closing on the purchase of his new home from Weathervane Farms, Albert Kilpatrick noted for the first time a culvert system in his backyard. Shortly after moving, he complained to the developer of drainage problems and resulting property damage although Weathervane Farms re-graded the rear yard, the effort did not solve the drainage problem. Weathervane finally requested that Kilpatrick execute an easement granting access to East Greenwich Township for maintenance of the culvert, but Kilpatrick refused to execute the easement unless he was compensated. Weathervane finally initiated suit in November 2002, to compel execution of the easement in favor of the Township and stop Kilpatrick from demanding compensation. Kilpatrick filed a counter claim demanding compensation and contending that Weathervane's grading of the property was negligent.

After hearing testimony, the trial court determined that Kilpatrick was entitled to \$10,799 for the value of the easement and \$380 in damages and further ordered that upon receipt of such amount, Kilpatrick was to execute the easement in favor of the Township. In an unpublished opinion decided January 12, 2005, the appellate court affirmed, holding that (i) Weathervane's failure to raise the issue of waiver and failure to object to Kilpatrick's testimony during the trial precluded Weathervane from raising those issues on appeal; (ii) Kilpatrick could not have waived his right to demand Weathervane correct the drainage problems by closing, as Kilpatrick was not and could not have been aware of any problems as of such date; and (iii) that the trial court's decision was supported by credible evidence.



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