

Legal & Legislative Update

By Michael J. Gross, Esq. & Steven M. Dalton, Esq.

JACKSON TOWNSHIP TREE REMOVAL ORDINANCE

In July 2003, the Superior Court declared Jackson Township's 2001 tree removal ordinance ultra vires and unenforceable on its face, finding the ordinance improperly allowed for discrimination treating developers differently from other applicants with no apparent rational basis for such discrimination. In response to SBA's motion for Relief to Litigant, the Court issued a February 23, 2004 Order requiring the Township to issue tree removal permits for specific projects consistent with the decision. In May 2004, SBA filed and served a complaint challenging a subsequent Jackson Township tree save ordinance. The ordinance was adopted to regulate and control the removal of trees within the Township and delegates authority to the Township Forester and Shade Tree Commission. The ordinance is ultra vires, void, unlawful and unenforceable as it fails to provide clear standards for compliance and unreasonably discriminates against smaller lots and new developments. Trial was conducted on July 18 and 19, 2005. Peter Steck testified on behalf of SBA as an expert. Written summations are being prepared for submission to the court.

JACKSON TOWNSHIP OPEN SPACE AND RECREATIONAL STANDARDS ORDINANCE 06-03

SBA asserted in a May 12, 2003 complaint that the open space requirements of the ordinance are inconsistent with the Municipal Land Use Law ("MLUL"), and the recreational requirements are arbitrary and ambiguous, and improperly target new development. Peter G. Steck, P.P. was retained to provide expert services regarding recreational standards for residential development. The Township attorney and Planner suggested a settlement approach at the time of the scheduled trial on June 3, 2004, and the trial has been adjourned to allow time for settlement discussions. The parties are negotiating the terms of a replacement ordinance modeled after an open space ordinance adopted by the Township of East Greenwich in Gloucester County. SBA reviewed the Township's proposed draft Ordinance, and counter-proposed that the ordinance be limited to residential developments of 50 units or more, as modeled after the Township of East Greenwich Ordinance. SBA has requested that NJBA participate in the litigation.

JACKSON TOWNSHIP INSPECTIONS

SBA filed a complaint on September 4, 2003 challenging the Township's building inspection procedures and practices as in violation of the Uniform Construction Code Act, its excessive inspection fees, and its Noise Control Ordinance, which is preempted by the Noise Control Act of 1971. A case management conference was conducted on July 15, 2005. SBA brought successful motions compelling the production of public documents under the Open Public Record Act and Jackson hired a consultant to review the operations of its building department. SBA and the Township are engaged in settlement discussion that would resolve the litigation. SBA forwarded a proposed settlement agreement to the Township that would place time limitations on the Township to complete

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building inspections, review prototype building permits and review and act upon all building permits based on approved prototypes. In the event SBA is unable to reach a settlement, it will proceed to trial. The parties will report to the Court in September 2005 as to whether the Township has made progress in correcting the problems with its inspection process.

HOWELL TOWNSHIP RIPARIAN BUFFER/WOODLAND MANAGEMENT ORDINANCES

On September 21, 2004, the Township adopted Ordinance No. 0-04-46 entitled “Riparian Buffers”, which regulates and controls activities including land disturbance and any development in riparian buffers. “Riparian Buffers” are defined to include a 300-foot area adjacent to either side of water bodies. The Ordinance also contains restrictive woodlands management provisions associated with riparian buffers. SBA filed a complaint challenging the Ordinance as vague and ambiguous as it does not specifically define the “waters” to which the restrictions apply and lacks specificity with respect to the activities that are restricted under the Ordinance. Additionally, the Ordinance unreasonably prohibits development in the “riparian buffer” areas, irrespective of the size of a development and the potential impact of the development on the area. Additionally, the Ordinance attempts to regulate areas under the jurisdiction of the State pursuant to the Freshwater Wetlands Protection Act and Flood Hazard Area Control Act. The matter is in discovery, and SBA has served the Township with interrogatories. SBA has requested that NJBA participate in the litigation.

MARLBORO TOWNSHIP ORDINANCE NO. 2004.4

SBA filed a complaint against the Township of Marlboro challenging a May 13, 2005 Ordinance requiring applicants for land use approvals to provide individual notice to all property owners within 300 feet of the subject property, as opposed to the 200 feet called for by the MLUL. The ordinance also required that a sign be posted on the subject property throughout the duration of the application as an additional means of notice. The trial court granted SBA’s motion for summary judgment declaring the Ordinance ultra vires, void and unlawful as inconsistent with mandatory notice provisions of the MLUL. A similar case involving an Edison Township Ordinance is being reviewed in the Appellate Division.

JACKSON TOWNSHIP 600 FOOT CORRIDOR ORDINANCE

Jackson Township adopted Ordinance 47-04 establishing a 600 foot buffer along the Toms River and Ridgeway ranch within the Pinelands National Reserve in Jackson Township. SBA filed a complaint challenging the Ordinance as being vague and ambiguous, lacking standards, allowing excessive discretion to the Planning Board, and inconsistent with the Township Master Plan. The matter is scheduled for trial March 2006. SBA is seeking proposals from experts to assist in the litigation. SBA filed a pre-trial memorandum with the Court on July 6, 2005. On August 12, 2005, SBA filed an Amended Complaint with the Court. The Complaint was amended to include a count challenging Ordinance No. 27-05 adopted by Jackson Township on July 11, 2005, which amends the original ordinance 47-04.

This information is not to be construed as legal advice. If you have any questions please do not hesitate to contact any of the following attorneys:

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