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ADJUDICATORY HEARINGS

I/M/O Riverview Development

The Appellate Division reaffirmed that third-party objectors have limited rights to adjudicatory hearings.

A property owners' association requested a hearing to challenge Riverview's waterfront development permit. The development is along the Hudson River. The objectors argued the development would block their views of the Hudson River and the Manhattan skyline, negatively impact property values, and negatively impact traffic.

The court affirmed the denial of the hearing request. Third parties must have a statutory right to a hearing, or a constitutional right based on a "particularized property right" affected by the agency action. The particularized property right standard is strictly applied, and courts have often found that no such rights exist even where objectors own property adjacent to a proposed development. The court noted that the State permit process should not be "bogged down by time consuming and costly formal hearings in the OAL." Allowing "formal hearings routinely in every instance where a local resident raises some objection to a proposed State permit could produce enormous delays... and could easily consume substantial public and private resources." Allowing broad scale hearing rights would convert the "administrative review process into a veritable litigation battleground."

Here, the viewshed and reduction of property values did not constitute a particularized property right. In the absence of a restrictive covenant, property owners' lack the right to an unobstructed view across neighboring land.

Developers face numerous obstacles throughout the development application process. This decision reaffirming limited third party hearing rights should help to deter such actions and provide some much needed certainty in the development approval process.

OBJECTOR LAWSUITS

Friends of Liberty State Park v. NJDEP

This case involved an action by an objector group to challenge a DEP approval filed in Superior Court. Friends of Liberty State Park appealed DEP's issuance of a Waterfront Development Coastal General Permit authorization for construction of the New Jersey September 11, 2001 Memorial in Liberty State Park. The Appellate Division dismissed the appeal as untimely as it was not filed within 45 days of DEP's notice of publication of the decision in the DEP Bulletin or from receipt of actual notice of the decision. Appeal of the final agency decision must be made within 45 days of receipt of notice of the action, with only limited exceptions. R. 2:4-4. The objector's could not satisfy any of the exceptions and the court strictly applied the 45-day rule.

Strict application of the 45-day rule should aid developers facing challenges to development approvals brought by individuals, environmental organizations or third-party objectors.

WQMP's

DEP Commissioner Martin issued an Administrative Order effective March 24, 2010 extending the deadline for counties or municipalities to update wastewater management plans until April 7, 2011. The deadline had already passed, but DEP has granted extensions on a request-specific basis. The Order provides that sewer service areas will not be withdrawn prior to April 7, 2011. Properties in existing sewer service areas will not be removed from the sewer service area if a valid preliminary or final site plan or subdivision approval or a municipal construction permit and a treatment works approval, if required, exist.

The Order requires wastewater management planning agencies to publish draft wastewater service area mapping on the web and accept public comments before DEP will act upon required environmental build-out analyses.

Property owners may request to have properties included in the future sewer service areas and the Order provides that properties shall be included in the sewer service areas by DEP where a property owner demonstrates consistency with local zoning or master planning, the existence of a building permit or site plan or subdivision approval granted based on the provision of sewer service, and satisfaction of various provisions of the regulations including the delineation of sewer service areas. The Order requires DEP to respond to individual requests for inclusion in the future sewer service areas. DEP has been making property owners submit requests to the counties.

Environmental organizations have threatened suit to challenge the administrative order. SBACNJ encourages its members to review their sites make requests to DEP for inclusion within the sewer service area as appropriate.

COAH TASKFORCE

On March 19, 2010, Governor Christie rescinded Executive Order (EO 12) that had imposed a moratorium on actions by COAH. EO 12 had been stayed by the Appellate Division based on a challenge by the Fair Share Housing Center. The Housing Opportunity Task Force completed its report of findings and recommendations regarding a review of the State's Affordable Housing Program, recommending, among other things, the elimination of COAH and the absorption of affordable housing planning into the municipal master planning process. As these issues continue evolve, more detailed updates will be provided.

