

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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