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New Jersey Appellate Division Rules Public Notices in Land Use Cases Need Clear Description of All Uses Proposed

On February 5, the New Jersey Appellate Division decided the case of *Lakewood Realty Associates v. Lakewood Township Planning Board & RD Lakewood LLC*. The decision is noteworthy because it further clarifies the extent to which the public notice for a development application must describe the proposed uses within a project.

RD Lakewood LLC sought site plan and bulk variance approval from the Township of Lakewood Planning Board for a mixed-use development that included a hotel and a bank. The proposed hotel would also contain a restaurant, bar and banquet hall. During the course of the public hearing before the planning board, Lakewood Realty Associates (LRA) objected to the application. In spite of LRA's objections, the planning board unanimously approved the application. Thereafter, LRA filed a prerogative writ action challenging the board's decision.

At the trial court level, LRA argued, among other things, that the public notice for the development application was defective because it did not indicate there would be a restaurant, bar and banquet hall associated with the hotel. The public notice simply stated, in part, that the applicant proposed "to construct a hotel as well as a bank which are both permitted uses within said zone." The trial court ruled in favor of RD Lakewood, determining, among other things, that the notice stating a hotel was proposed was sufficient given that the architectural plans on file with the planning board clearly indicated the proposed hotel would also include a restaurant with a bar, banquet facilities and meeting rooms, which the judge noted "are common amenities in a hotel of this size associated with a national brand."

LRA subsequently filed an appeal challenging the trial court's decision. After reviewing the facts and applicable law, the Appellate Division overturned the trial court's decision, finding that the public notice did not adequately describe the proposed use. The Appellate Division deemed the notice deficient because it did not describe the hotel's restaurant, banquet facilities and intention to obtain a liquor license, which could raise particular public concerns. Citing *Pond Run Watershed v. Hamilton Township*, the Appellate Division noted that traffic and public safety issues associated with a facility serving intoxicating beverages would reasonably be of concern to surrounding residents and property owners. Moreover, the Appellate Division took judicial notice that not all hotels contain a restaurant with a bar and a liquor license, nor do they all operate a banquet facility or a conference center. The Appellate Division reviewed the definitions in the Lakewood Zoning Ordinance of "hotel" (which did not include reference to banquet facilities, meeting rooms or restaurants) and "restaurant" and determined the notice should have disclosed that the applicant envisioned the hotel to function as a conference center, which was also a permitted use in the zone where the property was located. The Appellate Division specifically stated that "[a]ppropriate public notice serves an important gatekeeping function in land-use matters. It is not sufficient for an applicant to circulate and publish an uninformative and vague notice and expect local residents to go down to municipal offices to inspect the plans in order to ascertain the critical features of the proposal."

The lesson here is that public notice for a development project should identify all the significant uses associated with it—not just the principal use. The decision confirms that uses typically deemed as customary and incidental to a principal use should also be identified in the public notice. Moreover, an applicant cannot rely on making plans available for public inspection that include additional information about a proposed development to save an otherwise defective notice that does not properly describe the significant components of a proposed use. The Appellate Division's decision further suggests that any application proposing a use that involves the serving of alcohol, even if ancillary to the principal use, should identify such use in the notice.

This alert serves only as a summary of the case. For more information or questions, please contact the authors or any member of the Day Pitney real estate team.

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