August 28, 2017

Appellate Division Clarifies State University's Qualified Immunity From Local Land Use Regulation

The Appellate Division recently reaffirmed and clarified the concept of a public university's qualified immunity from local land use regulations initially espoused in the New Jersey Supreme Court's seminal decision in *Rutgers University v. Piluso*, 60 N.J. 142 (1972). In this recent opinion, *Montclair State University v. County of Passaic*, Docket No. A-3318-15T3 (August 23, 2017), the court reviewed the nature and extent of local and county review with regard to a connector road proposed by Montclair State University (MSU) from its campus to Passaic County Route 621 (Valley Road) in Clifton. MSU spent approximately six years consulting with defendants Passaic County and the City of Clifton regarding the proposed road and working through objections and concerns raised by both the county and the city.

Ultimately, MSU believed it had satisfied defendants' concerns and in 2014 submitted an application to the county for approvals relating to the proposed intersection with County Route 621. The county failed to respond, and MSU filed a complaint for declaratory judgment with the Law Division seeking a determination that the county's refusal to issue the permit was inconsistent with settled law which granted MSU qualified immunity. The trial judge ordered MSU to provide updated traffic studies, and to appear before both the city and county planning boards in connection with the road project. After MSU produced an updated traffic study, the county refused to issue a permit because it believed the roadway design did not meet the governing engineering standards, and because the city's approval was required for a traffic signal which would impact local roadways.

The dispute returned again to the Law Division, which had retained jurisdiction, with MSU arguing that it had sole jurisdiction over the roadway and neither the city nor the county could impose any requirements with regard to its design and construction. The trial judge dismissed MSU's complaint, finding that there did not exist a sufficient record below because MSU had not appeared before the county's or city's planning boards.

MSU appealed, arguing that the Law Division abused its discretion by dismissing the complaint without determining whether MSU met its obligations under *Rutgers*. Under *Rutgers*, a "state university's 'immunity [from regulation] is not completely unbridled' and 'must not be exercised in an unreasonable fashion so as to arbitrarily override all important legitimate local interests.'" In that regard, "Like other state agencies immune from local regulation under similar circumstances, a state university must 'weigh conscientiously local interests, to examine carefully whether the proposed...facility is compatible with the surrounding land uses and to consult the local ordinances and authorities in making its ... decision."

The Appellate Division noted, "To satisfy its obligation [under *Rutgers*], a state university 'ought to consult with the local authorities and sympathetically listen and give every consideration to local objections, problems and suggestions in order to minimize the conflict as much as possible.'" However, the court also noted, "A difference of opinion as to the best method to address a local traffic study concern alone, however, does not support a finding that the state university acted unreasonably." Significantly, the Appellate Division found that in order to satisfy its obligations under *Rutgers*, MSU "is not obligated to appear before local land use boards." In fact, in such a case, the city's planning board lacked standing or jurisdiction over the project because local zoning and planning regulations have no effect on the state's own land. Finally, the Appellate Division observed "that the record contains substantial evidence of the parties' efforts to identify and address local concerns over many years, which the trial judge may rely upon in his discretion in determining whether MSU satisfied its duty."

The Appellate Division, having found that MSU had no obligation to appear before local planning agencies, and that the record contained substantial evidence of MSU's attempts to satisfy its obligations under *Rutgers*, reversed the Law Division,

reinstated MSU's complaint and remanded for a hearing, if necessary, by the trial judge to determine whether MSU satisfied its obligations under *Rutgers*.

Authors



C. John DeSimone III
Partner

Parsippany, NJ | (973) 966-8299

cjdesimone@daypitney.com



Christopher John Stracco
Of Counsel

Parsippany, NJ | (973) 966-8220

cstracco@daypitney.com



Craig M. Gianetti
Partner

Parsippany, NJ | (973) 966-8053

cgianetti@daypitney.com



Katharine A. Coffey
Partner

Parsippany, NJ | (973) 966-8323

kcoffey@daypitney.com



Peter J. Wolfson
Partner

Parsippany, NJ | (973) 966-8298

pwolfson@daypitney.com



Thomas J. Malman
Partner

Parsippany, NJ | (973) 966-8179

tmalman@daypitney.com