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NJ Appellate Division Reverses Trial Court in Interpretation of MLUL Notice Requirements

On June 28, the New Jersey Appellate Division reversed a trial court decision and ruled that a notice of public hearing was sufficient under the Municipal Land Use Law (MLUL) even though the notice did not state that a proposed multifamily residential project would be age-restricted.

At issue in *Paterson v. Combined Planning Board/Zoning Board of Adjustment of the Borough of Garwood* was whether the notice of public hearing met the legal requirements under the MLUL. In *Paterson,* the applicant before the Board of Adjustment sought a use variance to construct a multifamily residential project, along with several other bulk variances. The applicant's notice stated that the board would be considering an application for use and bulk variances for the proposed construction of multifamily residential units and identified the number of structures proposed. The notice did not, however, state that the occupancy of the units would be age-restricted, which was first offered by the applicant at the public hearing and ultimately included as a condition of approval.

Objectors challenged the approval, arguing that the notice was deficient because the reference in the notice to "multifamily use" was not specific enough to inform the public of the proposed use, and that it is reasonable to believe additional individuals may have attended the meeting to object had they been properly notified about the age restriction. The trial court agreed and invalidated the approval for defective notice under the MLUL.

The *Paterson* trial court decision sent shockwaves through the land use community due to the potential requirement that applicants re-notice for a development application when changes were made to an application during the hearing process. The issue was important enough that the New Jersey State Bar Association participated as an amicus curiae at the appellate level, supporting a reversal of the trial court decision.

On appeal, the Appellate Division reversed the trial court's determination that notice was deficient. The Appellate Division held that the notice provided sufficient information to the public concerning the nature and character of the proposed development. Specifically, the Appellate Division reasoned that the fact units would be age-restricted did not raise a "heightened concern" to the public and did not affect the essential use of the property, number of buildings to be constructed, or the other building features for which variances were requested.

The Appellate Division decision and reversal of the trial court should give comfort to developers and applicants before land use boards concerning the notice requirements for development applications. It remains to be seen whether the plaintiffs will appeal to the New Jersey Supreme Court.

Should you have any questions concerning this decision or land use matters in general, please contact Craig M. Gianetti or any member of the Day Pitney land use team.

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