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Commentary

A Modest Prescription for Land Use Reform

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New Jersey's real estate development community weathered a relatively brutal year in 2004 in Trenton — one it does not want repeated.

First, the Department of Environmental Protection published stormwater management rules, which, among other things, create huge barriers by banning development within 300 feet of either side of a designated stream.

Then came passage of the Highlands Water Protection and Planning Act, which took about 800,000 acres of land out of development. Finally, there is the proposed repeal of the "fast track" bill and the "big-box" ban, pending in the Legislature.

For all the hurdles thrown in the way of real estate development in New Jersey, fairness dictates that applications that survive such hurdles at least be immune to last-minute zoning changes and reviewed by knowledgeable professionals.

Three bills pending in the state Legislature would move toward rationalizing the municipal land use approval process, thus achieving the laudable objectives of the "smart

growth" legislative and regulatory agenda.

Time of Decision Rule. At present, a municipality can change a tract's zoning until the moment its planning board grants approval for development.

Since municipalities require extraordinarily detailed plans before they declare an application ready for consideration, a developer may spend hundreds of thousands of dollars to file an application for a permitted use, only to have the property rezoned. The Municipal Land Use Law requires proper master planning, rather than this type of reactionary zoning.

New Jersey should amend the MLUL to follow the standard elsewhere: once a complete application is filed with a planning board, the municipality should be barred from changing zoning, site plan and subdivision regulations applicable to that property.

This year, Sen. Ronald Rice, D-Essex, introduced *S-2118*. Among other things, it states that if an application meets development regulations in effect when it is considered complete, those regulations will govern its review. But because it is difficult to meet all requirements at the initial submission, the municipality is likely to have a chance to change zoning ordinances.

Moreover, the developer must start construction within a year to be protected from subsequent zone changes.

The bill needs revision to achieve sound planning and fairness. First, the application should not have to con-

form to every zoning, site plan and division regulation at the initial filing in order to obtain protection from ordinance changes. Second, the developer should be allowed to wait up to three years before beginning construction.

Mandatory Land Use Education. New Jersey is a very affluent and densely populated state, leading to lots of land-use contests. Municipal land use law in New Jersey is ever changing and controversial. As a result, the land use bar is no longer the realm of generalists, but of specialists.

In contrast, land use decisions are made by citizen boards and heard by judges who often know little about land use law. This leads to confusion, unnecessary litigation and conflicting case law. As attorneys who regularly represent applicants before municipal boards and agencies, and in court, we have learned that people who don't practice this complex area of the law every day — whether they are board members, lawyers or judges — don't necessarily "get it."

As a result, we support *S-2133*, another bill recently introduced by Rice, which requires course instruction for planning and zoning board members. Given the weighty decisions they make, it is essential they obtain proper education about the ordinances, statutes and procedures.

Creation of a Land Use Court. Finally, the Legislature should adopt *S-1490*, sponsored by State Sens. Martha Bark, R-Burlington, and Leonard

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Lance, R-Hunterdon, which provides for a land use court within the Superior Court. Modeled after the state's Tax Court, a land use court would further assure that this complex area have a consistent, coherent and understandable body of law.

While some judges understand land

use law, many do not, and the quality and timeliness of decisions varies greatly.

If New Jersey's economy is to keep growing, if its residents are to have access to housing near their jobs and stores close to their homes, if they are to spend less time in traffic and more productive time elsewhere, the Legislature

must begin the process by enacting all three bills. In that way, the state would provide greater certainty for developers who play by the rules and simply ask that their applications be considered by knowledgeable professionals under laws and regulations that are not moving targets. ■