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Time of Application Rule

May 5, 2010

On Wednesday, May 5, 2010, Governor Christie signed Senate Bill 82 (Assembly 437), commonly known as the "Time of Application" bill. This addition to New Jersey's Municipal Land Use Law, (N.J.S.A. 40:55D-1, et. seq.), provides:

> Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development. Any provisions of an ordinance, except those relating to health and public safety, that are adopted subsequent to the date of submission of an application for development, shall not be applicable to that application for development.

While not taking effect for one year, this statute will modify the judicially created "Time of Decision Rule," which allows a land use board to apply the law in effect at the time a land use application is decided, rather than at the time that application was made. This doctrine has allowed municipalities to amend their land use ordinances after an application for development has been filed, often in reaction to a specific plan for development.

The fundamental difficulties created by the application of this doctrine, which the newly enacted legislation was designed to correct, were perhaps best summarized by Governor Christie at the May 5 signing ceremony:

> Prior to the signing of this legislation, the system allowed for those rules [governing land development] to be changed in the middle of the process, even after an application has been submitted. This legislation makes common sense changes to improve the application process and move New Jersey in the right direction of providing a friendlier environment for job creation, while keeping safeguards for public health and safety in place.

The legislation's primary sponsors were: Sen. Ronald Rice (D-Essex), Sen. Jeff Van Drew (D-Cape May) and Assembly members Jerry Green (D-Union), Allison McHose (R-Sussex) and Charlotte Vandervalk (R-Bergen).

If you have questions about the information contained in this alert, contact a member of the Real Estate and Land Use Practice Group at Flaster Greenberg.

ATTORNEYS MENTIONED

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