

**RECIPE FOR PLANNING AND DEFENSE
OF RESOURCE MANAGEMENT ZONING**

**Howard D. Cohen, Esq.
Parker, McCay & Criscuolo, P.A.
1009 Lenox Drive, Suite 102A
Building Four East
Lawrenceville, New Jersey 08648
Tele # (609) 620-7820 Fax (609) 896-0490
e-mail: hcohen@pmclaw.com**

Significant Recent Court Decisions Upholding Resource Management Zoning

F.W. Kirby v. Tp. Of Bedminster, 341 N.J. Super. 276 (App. Div. 2001)

Mt. Olive Complex v. Tp. Of Mt. Olive, 340 N.J. Super. 511 (App. Div. 2001)

Sod Farm Associates v. Springfield Tp. Plan. Bd., 298 N.J. Super. 84 (Law Div. 1995),
aff'd 297 N.J. Super. 584 (App. Div. 1996)

1. Preparation of an Adequate Record – Master Plan and Master Plan History

- no easy quick fixes
- need well documented planning rationale in Master Plan supported by underlying studies and analyses and competent expert opinion
- to articulate public policy to conserve countryside, rural character, natural resources, promote agricultural retention, protect scenic resources and provide open space, among other planning objectives. See Kirby

2. Compliance with Riggs – Riggs v. Long Beach Tp., 109 N.J. 601 (1988) – zoning ordinance must:

- advance one of the zoning purposes in the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-2
- be consistent with Land Use and Housing Plan Elements in Master Plan or designed to effectuate those elements

- comport with constitutional constraints on the zoning power (i.e. due process; equal protection; prohibition against confiscation (i.e. taking without just compensation)
 - the “regulatory taking” issue: so long as the zoning ordinance advances a legitimate state interest (i.e. a valid zoning purpose based upon sound planning – and does not deny the property owner of substantially all economically beneficial use of its land – a compensable regulatory taking does not occur.
 - mere diminution in land value resulting from zoning rooted in sound planning does not give rise to a compensable taking
 - property owner is not entitled to most profitable use of its land
 - only where regulatory action unreasonably interferes with an owner’s reasonable investment-backed expectations is there potential exposure
- be adopted in accordance with statutory and municipal procedural requirements

2. MLUL Zoning Purposes Compatible with Resource Management Planning-N.J.S.A. 40:55D-2 – Subsections including:

- (a) guide appropriate land use to promote public health and welfare
- (c) provide open space
- (d) ensure development does not conflict with neighboring towns, country and State as a whole
- (e) establish appropriate population densities
- (g) provide sufficient space for agricultural, residential and open space uses
- (i) promote desirable visual environment
- (j) promote conservation of open space and valuable natural resources and prevent sprawl and degradation of the environment

3. Defined Growth Areas:

- to show balanced zoning (development/preservation opportunities)

4. Affordable Housing Compliance:

- Mt. Laurel II 92 N.J. 158 (1983) – Once a municipality has satisfied its affordable housing obligation, it may engage in measures such as “large lot zoning” to “maintain its beauty and communal character” Mt. Laurel “is not designed to sweep away all land use restrictions or leave our open spaces and natural resources prey to speculators ... Municipalities consisting largely of conservation, agricultural or

environmentally sensitive will not be required to grow because of Mt. Laurel (92 N.J. at 219-220)

- COAH Substantive Certification creates a presumption of validity in municipal Housing Element and Fair Share Plan. Presumption can be only overcome by clear and convincing evidence. N.J.S.A. 52:27D-317(a)

5. The State Plan as a Planning Tool:

- not a regulatory instrument, but
- consistency with State Plan goals and objectives can be used to support reasonableness of zoning ordinances
- “[M]unicipality’s voluntary compliance with the State Plan should be a significant factor in reviewing court’s determination respecting the validity of a zoning or rezoning ordinance.” See Mt. Olive Complex; Kirby; Sod Farm

6. Relationship between Zoning and Planning and Sewer Service:

- sewer follows zoning and planning – not vice versa – N.J.S.A. 7:15-15.18

7. Public Participation in Planning and Zoning Process:

Beginning – middle – end:

- the more, the better
- invest the public and stakeholders in the process
- address and accommodate concerns, where possible, without sacrificing significant resource management goals and objectives

8. Putting it All Together:

- prepare, prepare and prepare some more
- engage appropriate consultants and experts to fortify record (i.e. planners, engineers, appraisers, economists, wastewater management planning experts, traffic engineers, ecologists, hydrogeologists, soils scientists, etc.)

- use demonstrative exhibits to tell the story – a picture’s worth a thousand words – digitized aerials/GIS overlays showing critical features affecting land use (i.e. open space; preserved farmland; rivers and streams; zoning; agricultural use; woodlands; steep slopes; sensitive environmental areas; County Agricultural Development Area; planning areas in State Plan; severe soils for septic suitability; sewer service areas; rural road network; growth corridors, etc.) and annotated digitized photographic tours.
- ask for judicial tour to help understand the evidence, Lazovitz v. Bd. Of Adjustment, 213 N.J. Super. 376 (App. Div. 1986)
- hire competent counsel to guide you in the planning process and defend, if sued.