

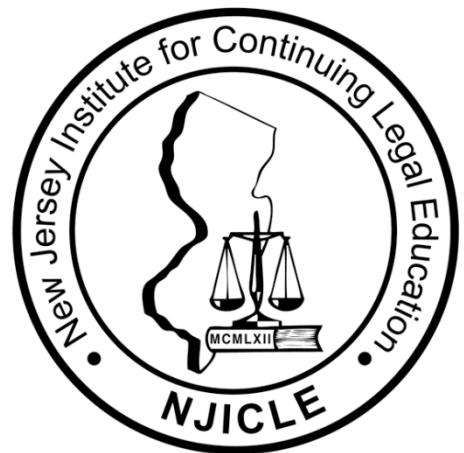
LAND USE UPDATE – BOTH SESSIONS

2026 Seminar Material

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LAND USE UPDATE – BOTH SESSIONS

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2025 ANNUAL LEGISLATIVE UPDATE

An Act concerning the New Jersey Aspire Program, amending P.L.2020, c.156 and P.L.2023, c.98, and supplementing P.L.2020, c.156.

<https://www.njleg.state.nj.us/bill-search/2024/S1323/bill-text?f=PL25&n=2>

Revises various provisions of the Aspire Program and surrender of tax credits to reimburse a developer for a portion of the project financing gap of a redevelopment project issued under New Jersey Economic Recovery Act of 2020.

An Act concerning fire safety by making changes to certain licensure requirements, equipment requirements, advisory committee memberships, penalties, and fees and amending P.L.1991, c.92, P.L.2001, c.289, and P.L.1983, c.383.

<https://www.njleg.state.nj.us/bill-search/2024/A3894/bill-text?f=PL25&n=19>

Amends various fire safety statutes to update licensure and equipment requirements and liability, fee, and penalty provisions.

AN ACT allowing the publication of required public notices and legal advertisements in certain newspapers for extended period regardless of format, requiring the submission of certain data, and amending P.L.2024, c.106.

<https://www.njleg.state.nj.us/bill-search/2024/S4136/bill-text?f=PL25&n=22>

Authorizes public bodies to continue using newspapers for required public notices and legal advertisements from January 1, 2025 until June 30, 2025, whether the newspaper's publication is in print or electronic format.

An Act concerning housing for resident farm employees on commercial farms, and amending and supplementing P.L.1983, c.31.

<https://www.njleg.state.nj.us/bill-search/2024/S3353/bill-text?f=PL25&n=55>

Directs State Agriculture Development Committee to adopt agricultural management practice for housing resident farm employees on commercial farms and establishes such housing as eligible for "Right to Farm" protection. A municipality shall not deny or withhold the issuance of a certificate of occupancy for housing for a resident farm employee if the housing complies with the provisions of this section and the agricultural management practice adopted by the committee; housing constructed, installed, or provided pursuant to this section shall be used only as housing for a resident farm employee; and a resident farm employee shall not be charged rent to live in resident farm employee housing.

An Act concerning State regulation of cooperative sober living residences and boarding houses generally, amending and supplementing P.L.1979, c.496, and making an appropriation.

<https://www.njleg.state.nj.us/bill-search/2024/A4535/bill-text?f=PL25&n=60>

Modifies the regulation of cooperative sober living residences and boarding houses.

An Act concerning publication of required legal notices, supplementing Title 35 of the Revised Statutes, and amending various parts of the statutory law.

<https://www.njleg.state.nj.us/bill-search/2024/S4654/bill-text?f=PL25&n=72>

Requires publication of legal notices on government Internet websites and through certain online news publications.

“a. After March 1, 2026, whenever a public entity is required by law or by order or rule of any court to publish or advertise a legal notice, the public entity shall publish or advertise the legal notice on the public entity’s official Internet website. The public entity’s official Internet website shall be accessible and available to the public free of charge. A direct hyperlink to legal notices published on the public entity’s official Internet website shall be conspicuously placed on the website’s homepage.

b. No later than March 1, 2026, the Secretary of State, with support from the Office of Information Technology and any other State agency the secretary deems necessary, shall establish an Internet webpage on which shall be included hyperlinks to the legal notices webpage of each public entity created pursuant to subsection a. of this section. The legal notices hyperlink webpage established by the secretary shall be accessible and available to the public free of charge and shall be accessible by direct hyperlink conspicuously placed on the Secretary of State’s Internet homepage. Each public entity shall submit the hyperlink to the Secretary of State and provide any updates thereto prior to effectuation.

c. No later than March 1, 2026, a public entity shall maintain an Internet archive of legal notices that are no longer displayed, which shall be kept for at least one year. The archive shall not be subject to any records retention schedule adopted by the State Records Committee nor to the "Destruction of Public Records Law (1953)," P.L.1953, c.410 (C.47:3-15 et seq.). A public entity shall display a legal notice on its legal notices Internet webpage for at least one week, or other time period as required by law, before transferring the publication to the public entity’s Internet archive. A local government unit shall initially publish an Internet archive no later than July 1, 2026 and shall maintain the archive thereafter.

d. A local government unit may, in addition to the publication on its official Internet website pursuant to subsection a. of this section, publish or advertise a legal notice separately on an eligible online news publication that meets the criteria of subsection b. of section 3 of P.L.2025, c.72 (C.35:3-3). The local government unit shall provide a notice in a prominent location on its official Internet website if it publishes or advertises its legal notices in an online news publication and shall publish a hyperlink to the online news publication.”

An Act revising the process for a property tax lien holder to foreclose the right to redeem a property tax lien, amending various parts of the statutory law, and supplementing chapter 5 of Title 54 of the Revised Statutes and P.L.1948, c.96 (C.54:5-

104.29 et seq.).

<https://www.njleg.state.nj.us/bill-search/2024/A3772/bill-text?f=PL24&n=39>

Revises process for property tax lien holder to foreclose right to redeem a property tax lien; allows property owner to protect remaining equity.

An Act concerning discriminatory practices in real estate appraisals and supplementing and amending P.L.1991, c.68.

<https://www.njleg.state.nj.us/bill-search/2024/A2280/bill-text?f=PL24&n=63>

Codifies prohibition of discriminatory practices in real estate appraisals and requires real estate appraisers to complete anti-bias training.

An Act concerning lead-based paint hazards in residential rental property, including establishing lead-based paint hazard programs, amending P.L.2021, c.182, and repealing section 1 of P.L.2007, c.251.

<https://www.njleg.state.nj.us/bill-search/2024/S3368/bill-text?f=PL24&n=74>

Amends law protecting residential tenants from lead-based paint hazards.

AN ACT concerning the rights of employees under the prevailing wage law and amending P.L.1963, c.150.

<https://pub.njleg.state.nj.us/Bills/2024/AL24/93 .PDF>

Requires contractor subject to prevailing wage law to conduct an orientation meeting for each employee that explains the employee's wages under the New Jersey Prevailing Wage Act and the employee's classification under that law unless the employer has entered into a collective bargaining agreement with the employee's labor organization.

AN ACT concerning inspection of construction by an enforcing agency and amending P.L.1975, c.217.

https://www.njleg.state.nj.us/bill-search/2024/A5130/bill-text?f=A5500&n=5130_R1

Requires enforcing agency to conduct inspection of construction within a four hour time window.

ANNUAL REGULATORY UPDATE

COMMUNITY AFFAIRS , DIVISION OF CODES AND STANDARDS;_Adopted

Amendments: N.J.A.C. 5:27-1.5, 1.6, 1.9, 2.1, 4.6, 4.7, and 6.1; Adopted New Rules: N.J.A.C. 5:27-13.1, 13.2, and 13.3.

Amends rules relative to sober living facilities. 57 N.J.R. 13(b)

ENVIRONMENTAL PROTECTION, WATER RESOURCE MANAGEMENT, DIVISION OF WATER MONITORING, STANDARDS, AND PESTICIDE CONTROL; Adopted Amendments: N.J.A.C. 7:9C-1.7, 1.9, and 7:9C Appendix Table 1; and 7:26D-7.2.

Adopts amendments to the Ground Water Quality Standards (GWQS), N.J.A.C. 7:9C, to update the specific ground water quality criteria and/or practical quantitation levels (PQLs) for 73 constituents of Class II-A ground water based on United States Environmental Protection Agency (USEPA) methodologies. 57 N.J.R. 234(a).

AGRICULTURE, STATE AGRICULTURE DEVELOPMENT COMMITTEE; Adopted New Rules: N.J.A.C. 2:76-25 and 25A.

Adopts new rules applicable to premises subject to farmland preservation deed restrictions recorded pursuant to the Agriculture Retention and Development Act, P.L. 1983, c. 32 (N.J.S.A. 4:1C-11 et seq.), and enrolled in the State's farmland preservation program. The rules define what activities on the premises constitute soil disturbance and establish a soil disturbance limitation. Exceeding the soil disturbance limitation will constitute a violation of the deed of easement which prohibits activities detrimental to soil conservation and detrimental to the continued agricultural use of the premises in accordance with N.J.A.C. 2:76-6.15(a)7. 57 N.J.R. 345(a).

ENVIRONMENTAL PROTECTION, OFFICE OF CLIMATE RESILIENCE, BUREAU OF CLIMATE RESILIENCE PLANNING; Notice of Acceptance of New and Changed State Plan Policy Map Planning Area Boundaries and Community Development Boundaries Formally Approved by the New Jersey State Planning Commission as the Boundaries for Coastal Planning Areas and CAFRA Centers and CAFRA Nodes Pursuant to N.J.A.C. 7:7-13.16; N.J.A.C. 7:7 Appendix I.

Acceptance of new and changed Community Development boundaries for certain municipalities (Bridgeton, Lawrence & Eagleswood) that were formally approved by the State Planning Commission on June 1, 2022, as the changed CAFRA center, core, and node boundaries in the coastal zone. 57 N.J.R. 566(a).

ENVIRONMENTAL PROTECTION, OFFICE OF CLIMATE RESILIENCE, BUREAU OF CLIMATE RESILIENCE PLANNING; Notice of Acceptance of New and Changed State Plan Policy Map Planning Area Boundaries and Community Development Boundaries Formally Approved by the New Jersey State Planning Commission as the Boundaries for Coastal Planning Areas and CAFRA Centers and CAFRA Nodes Pursuant to N.J.A.C. 7:7-13.16; Appendix I.

Acceptance of new and changed Community Development boundaries for 16 municipalities (Avalon Borough, Cape May Point Borough, City of Ocean City, Stone Harbor Borough, Wildwood City, North Wildwood City, Wildwood Crest Borough, and West Wildwood Borough, Millville, Asbury Park City, Atlantic Highlands Borough, Manasquan Borough, Red Bank Borough, Little Egg Harbor Township, Tuckerton Borough, Ocean Township, Seaside Heights Borough) 57 N.J.R. 567(a).

PUBLIC UTILITIES, BOARD OF PUBLIC UTILITIES; Adopted Amendments: N.J.A.C. 14:8-9.2, 9.5, 9.6, 9.7, 9.9, 11.2, 11.4, and 11.5.

Modifies rules for community solar projects related to mining sites and co-located net metered facilities. 57 N.J.R. 594(a).

ENVIRONMENTAL PROTECTION, WATERSHED AND LAND MANAGEMENT, DIVISION OF LAND RESOURCE PROTECTION; N.J.A.C. 7:7 Appendix I.

Acceptance of new and changed Planning Area boundaries, and new and changed Community Development boundaries for Middle Township. 57 N.J.R. 700(a).

ENVIRONMENTAL PROTECTION, WATER RESOURCE MANAGEMENT, DIVISION OF WATER QUALITY; Adopted Amendments: N.J.A.C. 7:9A-2.1 and 8.3.

Amendments to the Standards for Individual Subsurface Sewage Disposal Systems to expand the scope of permitted pretreatment devices. 57 N.J.R. 837(a).

ENVIRONMENTAL PROTECTION, AIR, ENERGY, AND MATERIALS

SUSTAINABILITY, BUREAU OF RELEASE PREVENTION; Adopted Amendments:

N.J.A.C. 7:1E-1.6, 1.7, 2.2, 2.3, 2.4, 2.7, 2.9, 2.10, 2.12, 2.14, 2.15, 2.16, 3.2, 3.4, 3.5, 4.2 through 4.6, 4.8, 4.9, 4.10, 4.11, 5.2, 5.3, 5.5, 5.6, 5.7, 5.8, 5.9, 6.3, 6.5, 6.6, 6.7, 6.8, 6.9, and 7:1E Appendices A and B; Adopted New Rule: N.J.A.C. 7:1E-3.5; Adopted Repeals: N.J.A.C. 7:1E-8.9 and 8.10.

Amends Spill Act rules to update the list of substances that constitute "hazardous substances" at N.J.A.C. 7:1E Appendix A, amend the operational and notification responsibility requirements for major facilities, and modify the DPHS requirements as they pertain to transmission pipelines. The rules also amend requirements for the submission, approval, renewal, and certification of discharge prevention, containment and countermeasure (DPCC) plans, and discharge cleanup and removal (DCR) plans, including how frequently the facilities must submit the plans to the DEP; and revise requirements regarding discharge notification and response and discharge confirmation reports, increase the penalties, and address grace periods for penalties. 57 N.J.R. 1253(b).

ENVIRONMENTAL PROTECTION, CONTAMINATED SITE REMEDIATION AND REDEVELOPMENT; N.J.A.C. 7:26D Appendix 1.

Updates the soil and soil leachate remediation standards for the migration to ground water exposure pathway, based on revisions to the Ground Water Quality Standards at N.J.A.C. 7:9. 57 N.J.R. 1690(a).

COMMUNITY AFFAIRS, DIVISION OF CODES AND STANDARDS; Adopted Amendments: N.J.A.C. 5:23-2.7, 2.14, 2.15, 2.17A, 2.18, 3.4, 3.14, 3.15, 3.16, 3.20, 3.21, 3.22, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, and 6.32.

Amends construction code standards for certain work. 57 N.J.R. 1817(a).

OTHER AGENCIES, FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY; Adopted Amendments: N.J.A.C. 19:31C-3.1, 3.2, 3.4, and 3.8.

Amends land use regulations in the Fort Monmouth redevelopment area. 57 N.J.R. 2504(a).

ENVIRONMENTAL PROTECTION, CONTAMINATED SITE REMEDIATION AND

REDEVELOPMENT; Adopted Amendments: N.J.A.C. 7:26B-1.10; 7:26C-1.2, 1.3, 1.4, 1.6, 1.7, 2.2, 2.3, 3.1, 3.3, 3.5, 4.5, 4.6, 5.1, 5.2, 5.5, 5.6, 5.9 through 5.13, 6.2, 6.4, 7.1, 7.11, 7.12, 7.13, 9.5, 9.10, 9.12, 10.6, 14.2, 16.2, and 7:26C Appendices B, C, and D; 7:26E-1.1, 1.5, 1.6, 1.7, 1.8, 1.11, 1.12, 1.14, 1.15, 2.1, 3.7, 3.12, 4.1, 4.2, 4.3, 4.5, 4.7, 4.9, 5.1, 5.2, 5.7, and 7:26E Appendix A; and 7:26F-3.7 and 4.3; Adopted Repeal and New Rule: N.J.A.C. 7:26C-7.7; Adopted New Rules: N.J.A.C. 7:26C-5.14, 7.5, and 7.10; Adopted Repeals: N.J.A.C. 7:26C-7.8 and 7.9; Adopted Recodifications with Amendments: N.J.A.C. 7:26C-7.2 and 7.3 as 7.3 and 7.4, Respectively, and 7.4, 7.5, 7.6, and 7.10 as 7.2, 7.8, 7.9, and 7.6, Respectively.

Amendments to Industrial Site Recovery Act Rules, administrative requirements for the remediation of contaminated sites, technical requirements for site remediation and heating oil tank system remediation rules. 57 N.J.R. 2574(a).

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A. CHALLENGES TO ZONING ORDINANCES

***Gonzalez v. Twp of West Windsor*, A-1539-23 (Sep. 25, 2025)**

https://scholar.google.com/scholar_case?case=11150371760815520863&q=Gonzalez+v.+Twp+of+West+Windsor&hl=en&as_sdt=6,47

Challenge to ordinance two (2) years after adoption was untimely and where the plaintiffs were simply private parties, there was no basis to extend the time to appeal the ordinance.

***Gonzalez v. Twp of West Windsor*, A-1539-23 (Sep. 25, 2025)**

https://scholar.google.com/scholar_case?case=11150371760815520863&q=Gonzalez+v.+Twp+of+West+Windsor&hl=en&as_sdt=6,47

Where part of a master plan reexamination, no personal notice was required to be served on an adjoining property owner with respect to a rezoning.

***Garden State Outdoor, LLC v. Egg Harbor Twp*, A-2830-23 (June 10, 2025)**

https://scholar.google.com/scholar_case?case=17507041181211440283&q=Garden+State+Outdoor,+LLC+v.+Egg+Harbor&hl=en&as_sdt=6,47&as_vlo=2025

When a governmental entity restricts speech, it must do more than simply invoke government interests that have been recognized over time as substantial. In other words, there must be a modicum of support for the invoked government interest. Here, the Appellate Division held that the lower court put undue weight on the generic ordinance language and reversed its upholding of same against a constitutional challenge.

***SB Bldg. Assocs., LP v. The Planning Bd. of the Borough of Milltown*, A-3253-22 (Feb. 25, 2025)**

https://scholar.google.com/scholar_case?case=16313146350698147800&q=+SB+Bldg.+Assocs.,+LP+v.+The+Planning+Bd.+of+the+Borough+of+Milltown&hl=en&as_sdt=6,47

Ordinance adopting revisions to a redevelopment plan providing the same number of affordable units while less residential units overall, with more open space, was substantially consistent with the master plan and was not arbitrary, capricious or unreasonable. Among other things, the ordinance was well supported by expert testimony presented to the Planning Board explaining the rationale for the modifications to the site. Open space at the property was explicitly provided for within the land use element of the master plan. It is not inconsistent with that objective that the Planning Board sought to expand the open space element at this location and further promote environmental values. The reduction in market units was reasonably adopted, in recognition of the reduction in land devoted to residential purposes.

***Jersey Shore Beach & Boardwalk Co., Inc. v. Borough of Keansburg*, A-2379-22 (Jan. 13, 2025)**

https://scholar.google.com/scholar_case?case=13874548542320613302&q=+Jersey+Shore+Beach+%26+Boardwalk+Co.,+Inc.+v.+Borough+of+Keansburg&hl=en&as_sdt=6,47

The Board's consistency determination is entitled to deference and great weight.

***State v. Ruhnke*, A-1549-23 (June 18, 2025)**

https://scholar.google.com/scholar_case?case=9883883432034076958&q=ruhnke&hl=en&as_sdt=4,31

The issuance of a license from the Department of Community Affairs to operate a sober living facility does not obviate the need to obtain local zoning approval.

Gonzalez v. Twp of West Windsor, A-1539-23 (Sep. 25, 2025)

https://scholar.google.com/scholar_case?case=11150371760815520863&q=Gonzalez+v.+Twp+of+W+est+Windsor&hl=en&as_sdt=6,47

Ordinance adopted pursuant to an approved affordable housing plan and settlement was not spot zoning.

Gloucester Solar I, LLC v. Twp. of Franklin Zoning Bd. of Adjustment, A-2602-22 (Feb. 24, 2025)

https://scholar.google.com/scholar_case?case=2265367365085410803&q=Gloucester+Solar+I,+LLC+v.+Twp.+of+Franklin+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,47

A zoning board's interpretation of an ordinance is not entitled to any particular deference and is reviewed de novo because the interpretation of an ordinance is a purely legal matter as to which the administrative agency has no particular skill superior to the courts. Appellate Division reverses trial court, finding that there was no basis for the court's finding that the Township's light business district is an "industrial district" where solar panels would be automatically permitted by operation of state statute.

Berman v. Borough of Rumson Planning Board, A-1409-23 (March 19, 2025)

https://scholar.google.com/scholar_case?case=7385904388289033669&q=Berman+v.+Borough+of+Rumson+Planning+Board&hl=en&as_sdt=4,31

Pursuant to the local code, zoning board property interpreted building height to be measured from the design grade and not from the existing condition grade.

Kaylor v. Bacallao, et al., A-3740-23 (Oct. 9, 2025)

https://scholar.google.com/scholar_case?case=3179297499221092371&q=Jessica+Hoffer+Kaylor+vs.+Teresa+Bacallao&hl=en&as_sdt=6,47

With respect to whether, pursuant to the municipality's Rent Control Ordinance, a backyard falls under the ordinance's definitions of "dwelling," "housing space," or "service," or whether the yard can be rented separately, the Appellate Division concluded the subject yard was none of those three definitions and not subject to the ordinance.

529 Waterfront Properties, LP v. Gargiulo, et al. A-2009-23, A-2700-23 (Nov. 10, 2025)

https://scholar.google.com/scholar_case?case=9542867777815511437&q=529+Waterfront+Properties+LP+vs.+Michael+Gargiulo&hl=en&as_sdt=6,47

With respect to a municipal tree removal ordinance that requires the conservation officer to consider ten factors, the Court did not interpret same as requiring the conservation officer to discuss or weigh every factor when forming his decision.

B. CHALLENGES TO BOARD DECISIONS

Daly v. Exch. Place All. Dist. Mgmt. Corp., A-4021-23 (Oct. 17, 2025)

https://scholar.google.com/scholar_case?case=5862340221194391646&q=daly+v+exchange&hl=en&as_sdt=4,31

Challenge to renovation project moot where the renovation project has been completed and plaintiffs are not seeking to dismantle the project.

Valentine v. Zoning Bd. of the Twp. of Monroe, A-0737-23 (April 19, 2025)

https://scholar.google.com/scholar_case?case=7365104814507844051&q=Valentine+v.+Zoning+Bd.+of+the+Twp.+of+Monroe&hl=en&as_sdt=6,47&as_ylo=2025

Notice, which set forth the relief that was requested, but not the actual structure/use to be approved by way of the requested use variance was adequate.

Diminni v. Seaside Plan. Bd., A-2859-23 (May 23, 2025)

https://scholar.google.com/scholar_case?case=14580201490785565711&q=diminni&hl=en&as_sdt=4,31

Notice not invalid where it listed the former address of the municipal building where the plans could be reviewed and a sign was on the building directing the public to the new building.

Czyzewski v. Planning Bd. of the City of Garfield, A-0418-24 (Nov. 6, 2025)

https://scholar.google.com/scholar_case?case=4044499090972258349&q=Czyzewski+v.+Planning+Bd.+of+the+City+of+Garfield&hl=en&as_sdt=6,47

Trial court correctly dismissed action in lieu of prerogative writs for failure to provide copies of the transcript pursuant to Rule 4:69-4. While a resolution may evidence what the municipal agency considered, it is not determinative. To find an arbitrary and capricious action, the trial court must review the transcripts of the proceedings.

Evars v. Holtzman, A-2771-23 (March 20, 2025)

https://scholar.google.com/scholar_case?case=12611419551983339404&q=Evers+v.+Holtzman&hl=en&as_sdt=6,47

Where a Board in its approval states that it did not rely on an erroneous rendering in making its decision, the trial court was correct to exclude that rendering from evidence during trial.

Cole v. City of Estell Manor Planning/Zoning Bd., A-3436-22 (July 2, 2025)

https://scholar.google.com/scholar_case?case=15879586587328436307&q=Cole+v.+city+of+estell&hl=en&as_sdt=4,31

“The Board erred in applying the res judicata doctrine to deny Cole's application. We reach this determination . . . based on the Board's failure to view Cole's application liberally. Viewed from a more liberal perspective, Cole's application substantially differs from Mitchell's by eliminating: (1) a driveway; (2) the breezeway; (3) and the pole barn. In addition, Cole's application substantially reduced the clear cutting. Therefore, the trial court erred in dismissing Cole's complaint.”

C. CONSTITUTIONAL CHALLENGES

Breakwater Treatment v. City of Asbury Park, 23-3661 (MAS) (JTQ) (Jan. 31, 2025)

https://scholar.google.com/scholar_case?case=11835445144703418020&q=Breakwater+Treatment+%26+Wellness+Corp.+v.+The+City+of+Asbury+Park&hl=en&as_sdt=6,47

Plaintiff fails to allege adequate facts that the application/hearing process before the Zoning Board of Adjustment for a satellite cannabis alternative treatment center adequately “shocks the conscience” and thus violated Plaintiff's 14th Amendment due process rights. Likewise, Plaintiff's equal protection claim with respect to municipality's treatment of competing alternative treatment center application is without merit.

KDLi9 LLC v. City of Jersey City Zoning Bd. of Adjustment, A-01424-24 (Oct. 8, 2025)

https://scholar.google.com/scholar_case?case=930358465466475017&q=KDLi9+LLC+v.+The+City+of+Jersey+City+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,47

Where the Board denied a use variance for a prayer/worship space, Plaintiff's RLUIPA claim failed because Plaintiff had failed to raise same before the ZBA and create the factual record necessary to support such a claim.

D. ANTITRUST

NO NEW CASES

E. SITE PLAN APPROVAL

Oldmans Creek Holdings, LLC v. Joint Land Use Bd. of the Twp. of Woolwich, A-1402-24 (Dec. 17, 2025)

https://scholar.google.com/scholar_case?case=6786758701184074254&q=oldmans+creek&hl=en&as_sdt=4,31

Board did not err in denying a conforming site plan that abutted a county road where the board's traffic engineer testified about ingress and egress concerns. "The record shows the Board's traffic engineer requested information on the [old] traffic study on several occasions and plaintiff failed to provide evidence its study reasonably and contemporaneously assessed the traffic on the road." "Automatic approval was not required."

F. SUBDIVISION APPROVAL

Besadar Holdings, LLC v. Twp. of Lakewood Plan. Bd., A-2075-23 (Aug. 27, 2025)

https://scholar.google.com/scholar_case?case=2029343397351554105&q=Besadar+Holdings&hl=en&as_sdt=6,47

Board did not have the authority to deny a subdivision because of an anticipated detrimental impact of off-street traffic conditions where plaintiffs had complied with both road-widening requirements and the off-street parking requirements of the zoning code.

G. CONDITIONAL USES

Hoboken for Responsible Cannabis, Inc. v. City of Hoboken Planning Bd., 480 N.J. Super. 357 (App. Div. 2024)

https://scholar.google.com/scholar_case?case=16212195405040989290&q=+Hoboken+for+Responsible+Cannabis,+Inc.+v.+City+of+Hoboken+Planning+Bd.&hl=en&as_sdt=6,47

Where an cannabis retail application is filed with a municipality's cannabis review board before an ordinance regulating cannabis goes into effect, the time of application rule applies, and the planning board correctly granted conditional use approval of the application, notwithstanding apparent non-compliance with the new ordinance.

H. VARIANCES

Wokas v. Mattina, A-2915-22 (Jan. 7, 2025)

https://scholar.google.com/scholar_case?case=5449531734663213991&q=Wokas+v.+Mattina&hl=en&as_sdt=6,47

Where an ordinance defines an accessor use as being "generally located on the same lot," a driveway to service a single-family home that crosses across another lot is still a permitted accessory use and not a

second principal use on the lot that it crosses.

***Kaja v. Borough of W. Long Branch Planning Bd.*, A-3680-22 (Feb. 3, 2025)**

https://scholar.google.com/scholar_case?case=16734402064981601825&q=Kaja+v.+Borough+of+W.+Long+Branch+Planning+Bd.&hl=en&as_sdt=6,47

Because plaintiff had not demonstrated the positive criteria necessary for a (c)(2) variance, i.e. that grant of approval would "actually benefit the community in that it presents a better zoning alternative for the property," and the facts showed that only plaintiff would benefit from the subdivision, the Appellate Division upheld the Board's denial of a subdivision variance to create two (2) non-conforming lots.

***Diminni v. Seaside Plan. Bd.*, A-2859-23 (May 23, 2025)**

https://scholar.google.com/scholar_case?case=14580201490785565711&q=diminni&hl=en&as_sdt=4,31

"Plaintiff [objector] further argues that One Ocean Terrace failed to show how the decreased '[five]-foot setbacks promote public health, safety and welfare in a way that [ten]-foot setbacks do not.' Plaintiff, and not One Ocean Terrace, however, has the burden of proof to establish the Planning Board's decision as arbitrary, capricious, and unreasonable. Plaintiff's unsupported claims fail to satisfy this standard. See *Bressman v. Gash*, 131 N.J. 517, 530, 621 A.2d 476 (1993) (holding that the record does not have to compel the grant of a variance for the Planning Board to grant a variation within their discretion)."

***Lema v. Borough of Garwood*, A-3086-23 (Nov. 21, 2025)**

https://scholar.google.com/scholar_case?case=9076935749672266689&q=A-3086-23&hl=en&as_sdt=4,31

Board correctly determined that it had no jurisdiction to hear a request for interpretation when, in reality, the Plaintiff was effectively appealing the decision of the zoning officer.

***JD Jamestowne, LLC v. Toms River Twp. Zoning Bd. of Adjustment*, A-0937-23 (May 14, 2025)**

https://scholar.google.com/scholar_case?case=6545547271694448974&q=JD+Jamestowne,+LLC+v.+Toms+River+Twp.+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,47

Board's decision to deny plaintiff's application for a d(5) density variance, and other relief, was supported by sufficient evidence in the record and was not arbitrary, capricious, or unreasonable. The court held that with respect to density variances, the positive criteria are present if "the applicant's proofs demonstrate 'that the site will accommodate the problems associated with a proposed use with [a greater density] than permitted by the ordinance'" and "that despite the proposed increase in density ... the project nonetheless serve[s] one or more of the purposes of zoning and was consistent with the overall goals of the [Municipal Land Use Law]."

***Diminni v. Seaside Plan. Bd.*, A-2859-23 (May 23, 2025)**

https://scholar.google.com/scholar_case?case=14580201490785565711&q=diminni&hl=en&as_sdt=4,31

"Generally, there are sufficient 'special reasons' for the grant of a [(d)] variance under two broad circumstances: (1) when the refusal to allow the project would impose on the applicant an undue hardship[] and/or (2) when a proposed project carries out a purpose of zoning as defined in N.J.S.A. 40:55D-2.'" A successful applicant for a density variance therefore must show that despite the proposed increase in density above the zone's restrictions, and, thus, the increased intensity in the use of the site, the project nonetheless served one or more of the purposes of zoning and was consistent with the overall goals of the MLUL." "An applicant seeking a height variance must establish that: (1) the applicant can show special reasons for the increased height, and (2) the increased height will not cause "substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance." The fact that the property abutted the boardwalk supported the height variance

because the property was “unique in that it is near the boardwalk which is elevated and where adjacent structures to the boardwalk are elevated.” Thus, the judge noted “all things are relative,” and the increased height “was part of the design calcul[us] ensuring corridors with enough open space to allow for views, light and air through the corridors crossing the property and benefiting the western properties.”

***Ammermuller v. Borough of Belmar Zoning Bd. of Adjust.*, A-0953-23; A-0977-23 (Feb. 25, 2025)**

https://scholar.google.com/scholar_case?case=8737734176936920988&q=ammermuller&hl=en&as_sdt=4,31

Use and bulk variances to allow a four-story multi-family use in a single-family zone upheld because it was shown to be less intensive than the existing rooming house that it would replace.

***Nfi Real Estate, LLC v. Florence Township Zon. Bd. of Adjust.*, A-1054-23; A-2189-23 (April 23, 2025)**

https://scholar.google.com/scholar_case?case=17517398886634852118&q=nfi+real&hl=en&as_sdt=4,31

“Where property is split between two municipalities, the land use boards in both municipalities ‘must consider the situation of the entire tract of land, not just the portion which happens to lie within its own boundary.’ Cox & Koenig, *New Jersey Zoning & Land Use Administration*, § 30-3, at 459 (2024). ‘Without a cooperative response from both municipalities, the property may not be susceptible to development. This fact may bear on the determination of whether a special reason exists under N.J.S.A. 40:55D-70(d), militating in favor of a variance.’ Ferraro v. Zoning Bd. of Adj. of Holmdel, 119 N.J. 61, 73, 574 A.2d 38 (1990). The fact the proposed use is permitted in the adjoining municipality “may suggest that the property in [the subject municipality] is uniquely suited for the proposed use.’ Ibid. Thus, the subject municipality ‘is obligated to give significant weight to the zoning ordinance and plan of the adjacent municipality . . . as well as to the character and uses of [the] surrounding property’ in both municipalities.”

“The Board did not have to accord the Mansfield ordinance significant weight pursuant to Ferraro, because the use here was permitted in Florence. The issue here was the increased intensity caused by the height variance as to which the Board was not required to ignore its own ordinance in favor of the Mansfield ordinance.”

***KDLi9 LLC v. City of Jersey City Zoning Bd. of Adjustment*, A-01424-24 (Oct. 8, 2025)**

https://scholar.google.com/scholar_case?case=930358465466475017&q=KDLi9+LLC+v.+The+City+of+Jersey+City+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,47

Proposed prayer/worship use was not inherently beneficial because it was not the sole use on the property but only 1 use of 3 uses (the other 2 being residential and commercial).

***Monarch Cmtv., LLC v. Twp. of Montville*, A-0929-23 (Feb 3, 2025)**

https://scholar.google.com/scholar_case?case=14699432861805926971&q=Monarch+Cmtv.,+LLC+v.+Twp.+of+Montville&hl=en&as_sdt=6,47

Senior living facility is an inherently beneficial use.

***66 Kinderkamack, LLC v. Borough of Oradell Zoning Bd. of Adjust.*, A-0705-23 (May 5, 2025)**

https://scholar.google.com/scholar_case?case=6661718858716850867&q=66+Kinderkamack&hl=en&as_sdt=4,31

The addition of affordable units to a proposed development in which most of the proposed units are market-rate housing does not make the entire project inherently beneficial. With regard to establishing the positive criteria of a (d)(4) FAR variance, an applicant “need not show that the site is particularly suited for more intensive development” but rather “that the site will accommodate the problems associated with

a proposed use with larger floor area than permitted by the ordinance."

I. DECISION, RESOLUTION & CONDITIONS OF APPROVAL

In the Matter of the Application of the Twp. of Wayne, A-019923, A-0220-23 (April 24, 2025)

https://scholar.google.com/scholar_case?case=15671387550073535359&q=in+the+matter+of+the+to+wnship+of+wayne&hl=en&as_sdt=6,47&as_vlo=2025

Facts did not support trial court's decision that Board had acted in bad faith in failing to approve resolution required by settlement agreement.

J. TIME-OF-DECISION RULE/VESTED RIGHTS

NO NEW CASES

K. OPEN PUBLIC RECORDS ACT (OPRA)

Mary O'Shea v. Borough of Englewood Cliffs, A-0674-24 (Nov. 26, 2025)

https://scholar.google.com/scholar_case?case=6506355828831047257&q=Mary+O%27Shea+vs.+Borough+of+Englewood+Cliffs&hl=en&as_sdt=6,47

Appellate Division reversed \$73,500 sanction for councilman's failure to provide required records because that amount exceeded the amount permitted under the applicable court rules (Rule 1:10-1) and the OPRA.

Vele v. Borough of Englewood Cliffs, A-3905-23 (Oct. 15, 2025)

https://scholar.google.com/scholar_case?case=15255813155467607270&q=Vele+v.+Borough+of+Englewood+Cliffs&hl=en&as_sdt=6,47

Court had personal jurisdiction over former Mayor, even though he himself was not directly a party to an OPRA litigation matter, where the former mayor refused to provide required email documents.

Rosetti v. Ramapo-Indian Hills Reg'l High Sch. Bd. of Educ., A-1466-23 (Jan. 27, 2025)

https://scholar.google.com/scholar_case?case=1305224573274146607&q=Rosetti+v.+Ramapo-Indian+Hills&hl=en&as_sdt=6,47

Email logs on public officials' personal computers discussing public business are government records under OPRA.

L. CONDEMNATION & REDEVELOPMENT

SB Bldg. Assocs., LP v. The Planning Bd. of the Borough of Milltown, A-3253-22 (Feb. 25, 2025)

https://scholar.google.com/scholar_case?case=16313146350698147800&q=+SB+Bldg.+Assocs.,+LP+v.+The+Planning+Bd.+of+the+Borough+of+Milltown&hl=en&as_sdt=6,47

Ordinance adopting revisions to a redevelopment plan providing the same number of affordable units while less residential units overall, with more open space, was substantially consistent with the master plan and was not arbitrary, capricious or unreasonable. Among other things, the ordinance was well supported by expert testimony presented to the Planning Board explaining the rationale for the modifications to the site. Open space at the property was explicitly provided for within the land use element of the master plan. It is not inconsistent with that objective that the Planning Board sought to expand the open space element at this location and further promote environmental values. The reduction in market units was reasonably adopted, in recognition of the reduction in land devoted to residential purposes.

***Beach Haven Auto., Inc. v. Borough of Beach Haven*, A-3860-23 (June 2, 2025)**

https://scholar.google.com/scholar_case?case=16545297164238064148&q=Beach+Haven+Auto.,+Inc.+v.+Borough+of+Beach+Haven&hl=en&as_sdt=6,47&as_vlo=2025

Because of plaintiff's active remediation of the property, under the direction and supervision of the NJDEP, the state of the property was not categorically "detrimental to the safety, health, morals, or welfare of the community" and thus not eligible to be deemed an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-5(d). Furthermore, because the record was lacking with respect to whether the actual use of the property conformed with local zoning requirements, the Appellate Division remanded the matter to the trial court to determine whether there was a "discontinuance" of use of the property that would permit the property to be deemed an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-5(b).

***Blackridge Realty, Inc. v. City of Long Branch*, 481 N.J. Super. 183 (App. Div. 2025)**

https://scholar.google.com/scholar_case?case=10109796249036210410&q=Blackridge+Realty,+Inc.+v.+City+of+Long+Branch&hl=en&as_sdt=6,47

Plaintiff challenged the legality of a redevelopment plan amendment where the amendment called for a \$2 million payment to the municipality. The Court concluded that said payment was a lawful, negotiated fee intended to defray the municipality's costs as authorized in N.J.S.A. 40A:12A-8(f) of the Local Housing and Redevelopment Law ("LRHL"). Court held that the LRHL does not impose any restrictions limiting payments to the recovery of costs the municipality will incur as a direct result of the redevelopment project, as long as the fee is negotiated at arm's length and collected to effectuate the purposes of the LRHL and the municipal Master Plan.

***Milltown-Ford Ave. Redevelopment Agency v. SB Bldg. Assoc., L.P.*, 19-21494 (RK) (RLS) (Jan. 30, 2025)**

https://scholar.google.com/scholar_case?case=4728719491431024962&q=Milltown-Ford+Ave.+Redevelopment+Agency+v.+SB+Bldg.+Assoc.,+L.P.&hl=en&as_sdt=6,47&as_vlo=2025

There is no statutory basis to award compensation on the basis of diminished rental income as a result of a property being found to be an area in need of redevelopment.

***Twp. of Jackson v. Getzel Bee, LLC*, A-0590-23, A-0594-23 (Jan. 31, 2025), certif. granted 261 N.J. 554 (2025)**

https://scholar.google.com/scholar_case?case=16976549085996985489&q=Twp.+of+Jackson+v.+Getzel+Bee,+LLC&hl=en&as_sdt=6,47

Municipality failed to show the statutorily required necessity for condemnation where it did not actually seek to condemn the properties for open space purposes but, rather, to swap said properties for another parcel to be used for open space. Furthermore, a land swap agreement that included the parcels is not enforceable because the municipality did not, in fact, own the subject parcels.

Borough of Monmouth Beach v. Tsakiris, A-0356-23 (Jan. 24, 2025)

https://scholar.google.com/scholar_case?case=17344067457724879477&q=Borough+of+Monmouth+Beach+v.+Tsakiris&hl=en&as_sdt=6,47&as_ylo=2024

Trial court correctly permitted municipality to amend its complaint to correct the location of the easement to be taken, even after final judgment had been granted and condemnation commissioners appointed, where same would not have increased the amount of land taken or substantively burdened the defendant any more than prior to the amendment.

M. NONCONFORMING USES & STRUCTURES

NO NEW CASES

N. OFF-SITE EXACTIONS AND IMPACT FEES

NO NEW CASES

O. OFFICIAL MAP

NO NEW CASES

P. EXTENSION OF APPROVALS

Cape Jetty, LLC v. City of Cape May, et al. A-3934-23 (Nov. 3, 2025)

https://scholar.google.com/scholar_case?case=6137481041066749329&q=Cape+Jetty,+LLC+vs.+City+of+Cape+May&hl=en&as_sdt=6,47

Where the plaintiff failed to provide any justification or rationale for its delay in commencing construction to the Planning Board, the record supported the Board's denial of plaintiff's request for extension of approvals.

Q. STOP WORK ORDERS

NO NEW CASES

R. RESIDENTIAL SITE IMPROVEMENT STANDARDS (RSIS)

NO NEW CASES

S. COUNTY PLANNING BOARDS

NO NEW CASES

T. STATE DEVELOPMENT AND REDEVELOPMENT PLAN

NO NEW CASES

U. FAIR HOUSING ACT, MOUNT LAUREL & COAH

Hightide Brielle, LLC v. Borough of Brielle, A-0453-24 (July 23, 2025)

https://scholar.google.com/scholar_case?case=3003929947853120341&q=,+A-0453-24&hl=en&as_sdt=4,31

To establish a right to intervene under Rule 4:33-1, a moving party must: (1) claim an interest relating to the property or transaction which is the subject of the transaction, (2) show [that the movant] is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, (3) demonstrate that the [movant's] interest is not adequately represented by existing parties, and (4) make a timely application to intervene. Here, denial of citizen group objector's motion to intervene in a builder's remedy lawsuit was upheld where the lower court ruled that the municipality was adequately representing their interests in same.

Borough of Hopewell v. Township of Hopewell, A-3086-22 (August 21, 2025)

https://scholar.google.com/scholar_case?case=629290332226209622&q=A-3086-22+&hl=en&as_sdt=4,31

New Jersey constitution and jurisprudence recognizes tax exemptions as important tools to facilitate the construction of affordable housing.

In the Matter of the Application of the Borough of Emerson, etc. A-0238-23 (Sep. 5, 2025)

https://scholar.google.com/scholar_case?case=7937131575033359079&q=borough+of+emerson&hl=en&as_sdt=6,47&as_vlo=2025

Where a municipality has been granted a judgement of compliance and repose, notwithstanding many years of affordable housing non-compliance, a court will not supersede local zoning by way of a motion in aid of litigant's rights where the requested relief (the ability to supersede use variance approval) is not required by the municipality's HEFSP or its settlement with the developer.

V. ADMINISTRATIVE AGENCY ACTION

Jersey Shore Beach & Boardwalk Co., Inc. v. Borough of Keansburg, A-2379-22 (Jan. 13, 2025)

https://scholar.google.com/scholar_case?case=13874548542320613302&q=+Jersey+Shore+Beach+%26+Boardwalk+Co.,+Inc.+v.+Borough+of+Keansburg&hl=en&as_sdt=6,47

Plaintiff's allegation that redevelopment plan abutting the Atlantic Ocean violated the public access doctrine was premature because whether adequate public access would be provided was a matter subject to the NJDEP's determination after an actual development had been proposed.

State v. 2.150-Acres of Land in the Borough of Point Pleasant Beach, A-2438-24 (Nov. 24, 2025)

https://scholar.google.com/scholar_case?case=10340497245126996810&q=State+v.+2.150-Acres+of+Land+in+the+Borough+of+Point+Pleasant+Beach&hl=en&as_sdt=6,47

Here, the HOA members sought damages related to the diminution in value of *their* beneficial property interests caused by the takings of the HOA beach front property. HOA members have valid claim for damages related to NJDEP's taking of their HOA's beachfront property notwithstanding the fact that the HOA had already been granted compensation for the taking.

***In the Matter of Adoption of Amendment to the Ne. Water Quality Mgmt. Plan*, A-0198-23 (July 7, 2025)**

https://scholar.google.com/scholar_case?case=5335575129187224003&q=In+the+Matter+of+Adoption+of+Amendment+to+the+Ne.+Water+Quality+Mgmt.+Plan&hl=en&as_sdt=6,47&as_ylo=2025

Water Quality Management Plan that removed a large portion of plaintiff's property from sewer service area violates plaintiff's settlement with the NJDEP.

In Re Appeal of the New Jersey Dep't of Env't'l Prot.'s Sept. 6, 2022 Denial of Request for Adjudicatory Hearing Under N.J.A.C. 7:26C-9.10, 260 N.J. 256 (2025)

https://scholar.google.com/scholar_case?case=5348118736196370512&q=Appeal+of+the+New+Jersey+Sept.+6,+2022+Denial+of+Request+for+Adjudicatory+Hearing&hl=en&as_sdt=6,47&as_ylo=2025

The NJDEP's initial grant of the waiver did not create a property interest in the continued suspension of Plaintiff's remediation obligations. Neither the controlling statutes and regulations nor a mutually explicit understanding between the parties provided an entitlement to the indefinite continuance of the waiver; to the contrary, the governing laws and agency materials all anticipate the DEP's ability to enforce remediation obligations in the future.

In the Matter of Flood Hazard Area Verification, A-1639-22 (December 27, 2024)

https://scholar.google.com/scholar_case?case=11616375323717945165&q=In+the+Matter+of+Flood+Hazard+Area+Verification+%26+Flood+Hazard+Area+Individual+Permit&hl=en&as_sdt=6,47&as_ylo=2024

Court invalidates NJDEP's Flood Hazard Area Individual Permit allowing for the construction of culvert because the Applicant had failed to demonstrate why a bridge could not be constructed instead of a culvert for feasibility reasons per N.J.A.C. 7:13-11.1(c).

Seven County Infrastructure Coalition v. Eagle County Colorado, 605 U.S. 168 (2025)

https://www.supremecourt.gov/opinions/24pdf/605us1r34_h3ci.pdf

D. C. Circuit failed to afford the U.S. Surface Transportation Board the substantial judicial deference required in NEPA cases and incorrectly interpreted NEPA to require the Board to consider the environmental effects of upstream and downstream projects that are separate in time or place from the proposed railway.

Pub. Serv. Elec. & Gas Co. v. Town of Westfield, A-3602-22 (April 14, 2025)

https://scholar.google.com/scholar_case?case=7574809563738876995&q=+Pub.+Serv.+Elec.+%26+Gas+Co.+v.+Town+of+Westfield&hl=en&as_sdt=6,47&as_ylo=2025

As applied to utility transmission infrastructure that runs across a number of municipalities, a municipal ordinance that sought to regulate utility pole height and diameter is preempted by Title 48 of the Revised Statutes.

W. LITIGATION & SETTLEMENT

Township of Gloucester vs. Harry's Tires, LLC, A-1179-23 (Dec. 2, 2025)

https://scholar.google.com/scholar_case?case=18024200104184798578&q=Township+of+Gloucester+vs.+Harry%27s+Tires+&hl=en&as_sdt=6,47

Pursuant to Rule 4:50-1(a), a defendant seeking to reopen a default judgment because of excusable neglect must show that the failure to answer was excusable under the circumstances and that a meritorious defense is available. Here, where the Defendant argues that the excusable neglect was that he hired an attorney and expected him to protect Defendant's interests but Defendant provides no such affidavit attesting to said facts, the trial court correctly refused to reopen the default judgment.

***PA Builders, LLC v. Twp. of Toms River*, A-1585-23 (May 7, 2025)**

https://scholar.google.com/scholar_case?case=14003197768802949091&q=PA+Builders,+LLC+v.+Twp.+of+Toms+River&hl=en&as_sdt=6,47&as_ylo=2025

An action in lieu or prerogative writs, and not a declaratory judgment action, is the appropriate method to challenge an alleged change in position of a municipal zoning officer with respect to whether flood hazard requirements required that Plaintiff's home be elevated. Further, the statute of limitations under the New Jersey Civil Rights Act is two (2) years.

***Borough of Englewood Cliffs v. Trautner*, 260 N.J. 410 (2025)**

https://scholar.google.com/scholar_case?case=15172437210913986419&q=Borough+of+Englewood+Cliffs+v.+Trautner&hl=en&as_sdt=6,47&as_ylo=2025

A municipality is not exempt from sanctions under the Frivolous Litigation Statute.

***Nelson v. Sirois*, A-0845-23 (Feb. 14, 2025)**

https://scholar.google.com/scholar_case?case=11814972934610886773&q=Nelson+v.+Sirois&hl=en&as_sdt=6,47

Where an applicant publishes notice of a board's action before the board publishes same, the time period to appeal the action commences on applicant's publication. Here the Appellate Division affirmed the court's decision not to extend the time to file the appeal where the error was made by a non-lawyer office manager. N.J.S.A. 40:55D-10(i) provides that "[t]he period of time in which an appeal of the decision may be made shall run from the first publication of the decision, whether arranged by the municipality or the applicant.

***Miller v. Zagranichny*, 261 N.J. 194 (2025)**

https://scholar.google.com/scholar_case?case=7601355440840857876&q=Miller+v.+Zagranichny&hl=en&as_sdt=6,47&as_ylo=2025

Defendants were not bona fide purchasers with respect to a portion of their property which was previously subdivided and granted to their neighbor where they had constructive notice of frontage discrepancies between various title documents prior to purchase.

***Lokal Stockton LLC v. City of Cape May*, A-3372-23, A-0234-24 (Dec. 22, 2025)**

2025 N.J. Super. Unpub. LEXIS 2628 * | 2025 LX 589022

Pursuant to R. 4:10-2(a), parties may obtain discovery regarding any non-privileged matter that is relevant to the subject of a pending action or is reasonably calculated to lead to the discovery of admissible evidence. A nonparty may be compelled by subpoena to produce "books, papers, documents, electronically stored information, or other objects designated therein." R. 1:9-2. "In determining whether a document is protected from disclosure by the work-product privilege, the threshold question is whether the document was 'prepared in anticipation of litigation or for trial.'" "If a document was prepared 'in the ordinary course of business' rather than in anticipation of litigation, it is not entitled to protection as work product." Documents prepared by plaintiff's expert in the hearing before the HPC were not privileged because they were not prepared in anticipation of litigation.

X. MISCELLANEOUS

AMERICANS WITH DISABILITIES ACT & NEW JERSEY LAW AGAINST DISCRIMINATION

Oxford House, Inc. v. Twp. of North Bergen, 158 F.4th 486 (3rd Cir. 2025)

https://scholar.google.com/scholar_case?case=14707425090502721030&q=Oxford+House,+Inc.+v.+Twp.+of+N.+Bergen&hl=en&as_sdt=6,47&as_vlo=2025

In order to bring a disparate treatment claim under the Fair Housing Act, Plaintiff must not only allege that the zoning officer and the municipal attorney had two different rationale for the denial of a zoning permit for a sober living home, there must be some allegation that the denial was motivated by discriminatory animus.

Nature's Touch Med v. City of Hoboken, A-0722-24 (Dec. 30, 2025)

https://scholar.google.com/scholar_case?case=13834550896115640437&q=A-0722-24+&hl=en&as_sdt=4,31

Where an applicant for a cannabis license was not aware of an alleged bribe to mayor to refuse to sign off on application, the time limitation for the issuance of a tort claim notice for tortious interference did not commence until applicant was aware of said alleged bribery by way of a separate lawsuit.

PUBLIC BIDDING & CONTRACTING

NO NEW CASES

CONSUMER FRAUD ACT (CFA)

NO NEW CASES

EASEMENTS & RESTRICTIONS

River Drive Dev., LLC v. Borough of Elmwood Park, A-2604-22 (Jan. 9, 2025)

https://scholar.google.com/scholar_case?case=5490788203051616603&q=River+Drive+Dev.,+LLC+v.+Borough+of+Elmwood+Park&hl=en&as_sdt=6,47&as_vlo=2024

Appellate Division affirmed lower court's decision that two roads that provided access to plaintiffs' property were public roads that had been dedicated to and accepted by the Borough under N.J.S.A. 40:55D-53(j). The Court found that because the (1) the roads were dedicated to the Borough; (2) the Roads were inspected and approved by the Borough's engineer; (3) the Borough released plaintiffs' performance bonds after the roads had been constructed and improved; 4) the tax map showed the roads as public roadways; and 5) nowhere on the Borough's official map were the roads shows as "private," same demonstrated the offer and acceptance of the road for public use.

Gallo v. Hafner, A-1843-23 (Nov. 19, 2025)

https://scholar.google.com/scholar_case?case=6426961843676811681&q=Gallo+v+hafner&hl=en&as_sdt=4,31

Defendant's contention that the original purpose of a deed restriction, to preserve an open view to the ocean from plaintiffs' lot, is now impossible due to the government-built sand dunes which completely obscure the ocean from the ground level, is misplaced because the purpose of the deed restriction is to preserve "an open view to the ocean" which can still be accomplished because "the deed was meant to include the surrounding landscape and wildlife leading to the ocean."

GREEN ACRES

NO NEW CASES

LANDLORD TENANT

***Rojas-Gomez v. Tyliczka*, A-0606-23 (Jan. 23, 2025) certif. denied 261 N.J. 598 (2025)**

https://scholar.google.com/scholar_case?case=11543713644898956386&q=Rojas-Gomez+v.+Tyliczka&hl=en&as_sdt=6,47&as_ylo=2024

New Jersey law does not contain an "implied warranty of legality" akin to an "implied warranty of habitability." Consequently, Plaintiff still owed rent to landlord Defendant notwithstanding that the leased premises did not have a certificate of occupancy and was illegal.

***Fairkings Partners, LLC v. Daniels*, A-2972-23 (Dec. 8, 2025) Approved for Publication**

https://scholar.google.com/scholar_case?case=7491693530471176641&q=+Fairkings+Partners+v.+Essence+L.+Daniels+&hl=en&as_sdt=6,47

Effective March 1, 2020, the Legislature amended the Fair Eviction Notice Act to allow tenants who are about to be evicted for non-payment of rent, "to submit a rent payment," and thereby avoid eviction, also known as the "Stack Amendment." This appeal presented the issue of whether the rent payment must be in the amount set forth in the judgment of possession or the amount of rent due at the time the tenant makes the payment. The Appellate Division interpreted the Stack Amendment to allow the tenant to pay the amount set forth in the judgement, because the judgment is the judicial determination that allows a landlord to evict a tenant under the Anti-Eviction Act.

***VL North LLC v. Allen*, A-1187-23 (Sep. 3, 2025)**

https://scholar.google.com/scholar_case?case=11344934895399485638&q=VL+North+LLC+vs.+Sean+Allen&hl=en&as_sdt=6,47&as_ylo=2025

Appellate Division affirmed lower court decision that concession charge back provisions of a lease were enforceable because the amount plaintiff sought to recover was tied to the precise amount of the previously conferred rent concession. It did not exceed the cost of the rent concession and limited the recovery to the concessions plaintiff provided "as consideration" for defendants' agreement to lease the property and fulfill their obligations during the full term of the lease.

***Main St. Neal, LLC v. JM40, LLC*, A-011-24 (July 31, 2025)**

https://scholar.google.com/scholar_case?case=13206629024954029944&q=Main+St.+Neal,+LLC+v.+JM40,+LLC&hl=en&as_sdt=6,47

Appellate Division affirms trial court decision that Defendant did not violate the parties' Lease by failing to maintain and repair the leasehold, however, the Court vacated the order of dismissal because it concluded that the trial court erred in not considering the non-waiver clause under the Lease.

Universal Dev. & Constr. II, LLC v. European Car Care LLC, A-2449-23 (June 4, 2025)

https://scholar.google.com/scholar_case?case=4747538749474685002&q=Universal+Dev.+%26+Constr.+II,+LLC+v.+European+Car+Care&hl=en&as_sdt=6,47&as_ylo=2025

Despite the fact that a lease contained a number of typographical errors with respect to the address to provide notice to the parties, the Appellate Division affirmed trial court's decision that the law implies a covenant of good faith and fair dealing in contractual relations, and that it should not impose unintended consequences upon parties nor destroy the mutual benefits created by the Lease Agreement. Applying these principles, the court concluded the plaintiff Landlord violated the implied covenant by knowingly depriving the defendant Tenant of their right to exercise their extension of the Lease Agreement based on those typographical errors.

Merkin v. Belyi, 23-cv-23393 (Dec. 12, 2024)

https://scholar.google.com/scholar_case?case=6581327939672130041&q=+Merkin+v.+Belvi&hl=en&as_sdt=6,47&as_ylo=2024

Defendants failed to establish federal jurisdiction since ejectment actions did not arise under federal law.

CONDOMINIUMS AND COMMON INTEREST COMMUNITIES***Estates at Layton's Lakes Homeowners Ass'n, Inc. v. Watson, A-3123-23 (May 7, 2025)***

https://scholar.google.com/scholar_case?case=17696643871599013290&q=The+Estates+at+Layton+%27s+Lakes+Homeowners+Ass%27n,+Inc.+v.+Watson&hl=en&as_sdt=6,47&as_ylo=2025

Court interrupted the HOA's by-laws and determined that Defendant's fence was governed by a particular section of same and there did not have to comply with the municipality's zoning setback requirements for structures.

Wedgewood Gardens Condo. Ass'n, Inc. v. Wedgewood Gardens Developers, Inc., A-0699-23 (Feb. 5, 2025)

https://scholar.google.com/scholar_case?case=13364544960352497670&q=Wedgewood+Gardens+Condo.+Ass%27n,+Inc.+v.+Wedgewood+Gardens+Developers,+Inc.&hl=en&as_sdt=6,47&as_ylo=2025

Unit which, according to the by-laws, as intended to be occupied by the development's residence manager was not a "common unit," and Defendants had adequate title to transfer same.

Gerstmann v. Executive House Condo. Ass'n, A-0860-22 (Jan. 17, 2025)

https://scholar.google.com/scholar_case?case=18089055976289290424&q=Gerstmann+v.+Executive+House&hl=en&as_sdt=6,47&as_ylo=2024

Appellate Division upholds trial court decision that HOA was authorized to enter into a bulk-billing agreement with Cablevision, which required unit owners to pay for cable services as part of their common charges.

PREMISES LIABILITY**NO NEW CASES**

INSURANCE***NO NEW CASES*****STATUTE OF REPOSE*****NO NEW CASES*****REAL ESTATE BROKERS*****NO NEW CASES*****TAX**

Greater New Jersey Annual Conference of the United Methodist Church v. Borough of Stratford, 000354-2024 (NJ Tax May 30, 2025)

https://scholar.google.com/scholar_case?case=942056394520411567&q=Greater+New+Jersey+Annual+Conference+of+the+United+Methodist+Church+v.+Borough+of+Stratford&hl=en&as_sdt=6,47&as_ylo=2025

Storage of religious artifacts qualifies as tax-exempt use (use for religious purposes).

Madison Bulldog Leasing Co. v. Paterson City, 007271-2021, 005248-2022, 005150-2023 and 001389-2024 (NJ Tax Jan. 31, 2025)

https://scholar.google.com/scholar_case?case=13075388546130738408&q=Madison+Bulldog+Leasing+Co.+v.+Paterson+City&hl=en&as_sdt=6,47&as_ylo=2025

With respect to a multi-family residential development subject to a PILOT, court found that plaintiff presented sufficient evidence to overcome the presumption of validity of the original assessments.

257-261 20th Ave. Realty, LLC v. Roberto, 259 N.J. 417 (2025)

https://scholar.google.com/scholar_case?case=672203390091451512&q=+257-261+20th+Ave.+Realty,+LLC+v.+Roberto&hl=en&as_sdt=6,47&as_ylo=2024

New Jersey Supreme Court affirmed Appellate Division decision that, influenced by the U.S. Supreme Court's decision in *Tyler v. Hennepin County*, 598 U.S. 631, found New Jersey's tax foreclosure scheme unconstitutional.

OTHER**HISTORIC PRESERVATION**

Taylor v. Zoning Bd. of the Twp. of Neptune, A-3709-22 (Feb. 5, 2025)

https://scholar.google.com/scholar_case?case=9617941907364071772&q=Taylor+v.+Zoning+Bd.+of+the+Twp.+of+Neptune&hl=en&as_sdt=6,47&as_ylo=2025

Ordinance which provided for an appeal mechanism related to a decision of the Historic

Preservation Commission to the Zoning Board of Adjustment was not only permitted under, but authorized by, the New Jersey Municipal Land Use Law. Appellate Division further upheld decision by the ZBA to uphold an HPC's denial of a certificate of appropriateness related to a sidewalk installation.

CONTRACTUAL DISPUTES

Villas at Manville LLC v. Brooks Townhouses LLC, A-1414-24 (Nov. 13, 2025)

https://scholar.google.com/scholar_case?case=17955005739829646112&q=Villas+at+Manville+LLC+vs.+Brooks+Townhouses+LLC+&hl=en&as_sdt=6,47

Appellate Division upholds the trial court's decision to enforce a settlement agreement that stemmed from a dispute arising from a purchase and sale agreement.

2430 Morris Ave., LLC v. Grammer, A-0017-23 (Oct. 8, 2025)

https://scholar.google.com/scholar_case?case=10424794428203400445&q=2430+Morris+Ave.,+LLC+v.+Grammer&hl=en&as_sdt=6,47

To succeed on a claim of breach of the covenant of good faith and fair dealing, plaintiff must not only show that the defendant has injured its right to receive the "contractual benefits" but "must also prove the defendant's 'bad motive or intention.'"

422 West Fourth Street, LLC vs. Allstates Title Service, A-2439-23 (Aug. 7, 2025)

https://scholar.google.com/scholar_case?case=6421265671998935865&q=422+West+Fourth+Street,+LLC+vs.+Allstates+Title+Service+&hl=en&as_sdt=6,47

Plaintiff violated the New Jersey Tax Sale Law by failing to intervene in the underlying foreclosure action as a third-party investor.

Invel Capital, LLC v. 45 William Urban Renewal LLC, A-3385-23 (July 7, 2025)

https://scholar.google.com/scholar_case?case=6314261759899335989&q=+Invel+Capital,+LLC+v.+45+William+Urban+Renewal+LLC&hl=en&as_sdt=6,47&as_ylo=2025

Buyer of a commercial/residential building can terminate a purchase and sales agreement due to the buyer's pre-closing receipt of an unacceptable estoppel certificate by one of the property's commercial tenants, citing to the seller's default of the tenant's lease agreement and changes to the lease agreement.

Weinmeier v. Garzone, A-2395-21 (Feb. 4, 2025)

https://scholar.google.com/scholar_case?case=17962704828695395029&q=Weinmeier+v.+Garzone&hl=en&as_sdt=6,47

Appellate Division affirmed trial court decision that without expert testimony establishing when the mold began to germinate, plaintiff purchaser could not prove defendant buyers' actions proximately caused her damages related to the existence of mold in the home she had purchased. Court also affirmed the trial court's decision regarding the fraud claim against seller defendant because plaintiff purchaser lacked clear evidence that sellers made affirmative material misrepresentations or intentional omissions of a presently existing or past fact concerning the mold.

Schwartz v. Menas, A-2481-22, A-2482-22 (Jan 2, 2025)

https://scholar.google.com/scholar_case?case=9581219205681379995&q=Schwartz+v.+Menas&hl=en&as_sdt=6,47&as_ylo=2024

With respect to damages related to allege attorney malpractice related to legal advice to a non-developer related to obtaining tax credits to construct an affordable housing project, Plaintiff fell far short of establishing his alleged lost profits damages with a reasonable degree of certainty. At most, plaintiff established a possibility he might, as a novice entering a new enterprise, have been able to develop these large, extremely expensive, and heavily regulated construction projects. A showing of "reasonable certainly" requires significantly more than a mere possibility. Where, as here, a new business seeks lost profits that are remote, uncertain, or speculative, the trial court should bar the evidence supporting the claim.

SEWER

In the Matter of Treatment Works Approval, A-2802-22 (Aug. 26, 2025)

https://scholar.google.com/scholar_case?case=974348605947304464&q=In+the+matter+of+Treatment+Works+Approval+&hl=en&as_sdt=6,47

With respect to a TWA application for a cannabis cultivation facility, the NJDEP determined that a “factory/warehouse” designation and not a “commercial use/warehouse” area designation was applicable to the cultivation area. Appellate Division affirmed same.

ANNEXATION

Whiteman v. Twp Council of Berkeley, 261 N.J. 106 (2025)

https://scholar.google.com/scholar_case?case=14848096879096201936&q=whiteman+v.+berkeley+wp&hl=en&as_sdt=4,31

N.J.S.A. 40A:7-12 requires a planning board to independently evaluate the merits of a de-annexation petition and make an objective recommendation to the municipality's governing body. Here, the New Jersey Supreme Court held that the Township’s planning board worked with the local governing body to deny the deannexation request. Plaintiffs met their burden of proof with respect to all three prongs of N.J.S.A. 40A:7-12.1, and the trial court properly ordered deannexation.

MERGER

NO NEW CASES

OWNERSHIP DISPUTE

Patierno v. Ahmed, A-2163-23 (April 24, 2025)

https://scholar.google.com/scholar_case?case=182442348954038928&q=Patierno+v.+Ahmed&hl=en&as_sdt=6,47&as_vlo=2025

Where boundary commissioners determine to change the boundary between two (2) lots that are back to back, same does not change the boundaries of the adjacent back to back lots whose boundary line has not changed.

NUISANCE

Asdal v. Chester Twp., A-0229-21 (Dec. 31, 2024)

https://scholar.google.com/scholar_case?case=14549907593309050208&q=Asdal+v.+Chester+Twp.&hl=en&as_sdt=6,47

Complaint seeking mandamus relief with respect to municipality's failure to enforce stormwater regulations related to a commercial farm was not time barred. Furthermore, mandamus relief to force stormwater regulation enforcement was appropriate where the County Agricultural Board had asked the Township Engineer to opine on whether the commercial farm was compliant and the Township Engineer refused to do same.

Lema v. Borough of Garwood, A-3086-23 (Nov. 21, 2025)

https://scholar.google.com/scholar_case?case=9076935749672266689&q=A-3086-23&hl=en&as_sdt=4,31

Public and private nuisance claim against zoning officer and municipality for failure to enforce zoning code correctly dismissed where Plaintiff failed to file a tort claims notice.

WIRELESS COMMUNICATIONS

NO NEW CASES

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<i>West Palm Beach Hotel, LLC v. Atlanta Underground, LLC</i> , Civ. No. 14-4113 (3rd. Cir., Aug. 14, 2015)	411
<i>White Castle System, Inc. Planning Board of the Twp. of Middletown</i> , A-3938-12T1 (June 3, 2015)	137
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<i>WHS Realty v. Town of Morristown</i> , 146 N.J. 627 (1996).....	25
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<i>Williams v. City of Asbury Park</i> , A-2756-19 (Mar. 15, 2021)	51
<i>Williamson v. Ernst</i> , A-3162-14T1 (Nov. 3, 2016)	349
<i>Willoughby v. Planning Bd. of Twp. of Deptford</i> , 306 N.J. Super. 266 (App. Div. 1997)	5, 56, 72, 178
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<i>Willow Ridge Apartments, LLC v. Union Cnty Rent Stabilization Board</i> , A-3578-20 (July 2022)	358

<i>Wilmington Sav. Fund v. Daw</i> , A-0829-19 (Oct. 22, 2021)	385
<i>Wilson v. Brick Twp. Zoning Bd.</i> , 405 N.J. Super. 189 (App. Div. 2009).....	136
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<i>Winks/Krug Landscaping Services, LLC v. Stonebridge at Wayne Homeowners Association</i> , A-3220-15T3 (Aug. 23, 2017)	310
<i>Winters v. Twp. of Voorhees</i> , 320 N.J. Super. 150 (Law Div. 1998)	222
<i>Wisseh v. Aquino</i> , A-4767-18T2 (Dec. 9, 2020)	445
<i>Witt v. Bor. of Maywood</i> , 328 N.J. Super. 432 (Law Div. 1998), <i>aff'd</i> , 328 N.J. Super. 343 (App. Div. 2000)	135
<i>Wokas v. Mattina</i>, A-2915-22 (Jan. 7, 2025)	142
<i>Wolf v. Mayor & Borough Council of Shrewsbury</i> , 182 N.J. Super. 289 (App. Div. 1981), <i>certif. denied</i> , 89 N.J. 440 (1982).....	7
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<i>Wolosky v. Fredon Twp.</i> , Nos. 008267-2016, 009548-2017, 010326-2018, (N.J. Tax, Dec. 18, 2019)	315
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<i>Woodcliff Lake Citizens Against Overdevelopment, Inc. v. Borough of Woodcliff Lake</i> , Civ. No. 20-cv-16003 (MSH) (JSA) (Mar. 24, 2022)	101
<i>Woodlands Community Association, Inc. v. Mitchell</i> , 450 N.J. Super. 310 (App. Div. 2017)	367
<i>Woodmont Properties, LLC v. Township of Westampton</i> , A-4453-19 (Feb. 7, 2022)	447
<i>World Wheat Foundation, Inc. v. Planning Board of the Township of Saddle Brook</i> , A-5716-14T3 (July 20, 2017)	138
<i>Wreden v. Township of Lafayette</i> , 436 N.J. Super. 117 (App. Div. 2014).....	300, 375
<i>Wronko v. MC Tuscany II Property</i> , 254 N.J. 200 (2023)	141
<i>Wronko v. Township of Jackson</i> , A-5127-15T2 (Dec. 12, 2017)	194
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<i>Yadav v. New Jersey Department of Environmental Protection</i> , A-4035-15T2 (Dec. 15, 2017)	273
<i>Yanel v. Board of Adjust. of Jamesburg</i> , 79 N.J. Super. 509 (App. Div. 1963).....	161
<i>Yellen v. Kassir</i> , 416 N.J. Super. 113 (App. Div. 2010)	341
<i>Yildizican v. Jimenez-Cruz</i> , A-0199-22 (App. Div. 2023)	359
<i>Yu v. Toms River Planning Board</i> , A-0203-16T1 (Jan. 18, 2018)	139
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<i>Yuri Inv. & Dev., Inc. v. 322 Commercial Ave. LLC</i> , A-0484-20 (May 3, 2024)	453

◇ Z ◇

<i>Zafar v. Zoning Board of Adjustment, Bor. of Tenafly</i> , A-1608-18T4 (Dec. 24, 2019)	234, 439
<i>Zaman v. Felton</i> , 219 N.J. 199 (2014)	337, 388, 406
<i>Zarour v. JPMorgan Chase Bank, N.A.</i> , No. 14-cv-06261-NLH-AMD (D.N.J., Feb. 21, 2017)	307
<i>Zheng v. Santos</i> , A-1361-13T4 (Feb. 23, 2015)	375
<i>Zilinsky v. Zoning Bd. of Adj. of Verona</i> , 105 N.J. 363 (1987)	1
<i>Zimmer v. Castellano</i> , 432 N.J. Super. 412 (App. Div. 2013)	406
<i>Zitter v. Petruccelli</i> , Civ. No. 15-6488 (NLH/KMW)(May 8, 2017)	308
<i>Zlotkin v. Leora Dubrovsky Realty Group, LLC</i> , A-0604-14T2 (Sept. 14, 2016)	418
<i>ZRB, LLC v. New Jersey Department of Environmental Protection</i> , 403 N.J. Super. 531 (App. Div. 2008)	267

CHALLENGES TO ZONING ORDINANCES

1. PRESUMPTION OF CORRECTNESS

Euclid v. Ambler Realty Co., 272 U.S. 365 (1926)

http://scholar.google.com/scholar_case?case=8376015914752485063&q=Euclid+v.+Ambler+Realty+Co.&hl=en&as_sdt=2,31

Zoning is constitutional exercise of government power.

Thornton v. Village of Ridgewood, 17 N.J. 499 (1955)

http://scholar.google.com/scholar_case?case=2214091318078639670&q=Thornton+v.+Village+of+Ridgewood&hl=en&as_sdt=2,31

Bibb v. Navajo Freight Lines, 359 U.S. 520 (1959)

http://scholar.google.com/scholar_case?case=6371682157977652912&q=Bibb+v.+Navajo+Freight+Lines&hl=en&as_sdt=2,31

If legislation is enacted within the municipality's police power it is presumed to be constitutionally valid.

Kramer v. Board of Adjustment, 45 N.J. 268 (1965)

http://scholar.google.com/scholar_case?case=3698557451558798993&q=Kramer+v.+Board+of+Adjustment&hl=en&as_sdt=2,31

Actions taken by municipalities are presumed to be valid.

Bow & Arrow Manor v. Town of West Orange, 63 N.J. 335 (1973)

http://scholar.google.com/scholar_case?case=16812911035367785879&q=Bow+%26+Arrow+Manor+v.+Town+of+West+Orange&hl=en&as_sdt=2,31

Municipality is presumed to be correct.

Zilinsky v. Zoning Bd. of Adj. of Verona, 105 N.J. 363 (1987)

http://scholar.google.com/scholar_case?case=2970629748743087593&q=Zilinsky+v.+Zoning+Bd.+of+Adj.+of+Verona&hl=en&as_sdt=2,31

Sod Farm Associates v. Springfield Twp. Planning Board, 297 N.J. Super. 584 (App. Div. 1996), *certif. denied*, 149 N.J. 36 (1997)

http://scholar.google.com/scholar_case?case=2672695426086563527&q=Sod+Farm+Associates+v.+Springfield+Twp.+Planning+Board&hl=en&as_sdt=2,31

Municipality's decision to exclude plaintiff's property from the wastewater management plan and thus from sewer and water connections was permissible, even though this decision was inconsistent with the master plan. Municipality demonstrated that they had compelling reasons for doing so.

Gallo v. Mayor and Twp. Council, Lawrence Twp., 328 N.J. Super. 117 (App. Div. 2000)

http://scholar.google.com/scholar_case?case=12380573655259931333&q=Gallo+v.+Mayor+and+Twp.+Council,+Lawrence+Twp.,+&hl=en&as_sdt=2,31

Kirby v. Twp. Committee of Bedminster, 341 N.J. Super. 276 (App. Div. 2000)

http://scholar.google.com/scholar_case?case=13862343508254168284&q=Kirby+v.+Twp.+Committee+of+Bedminster&hl=en&as_sdt=2,31

Validity of two ordinances that changed the minimum lot area requirement from three to ten acres sustained where substantial evidence supporting the conclusion that changes are prudent planning measures in aid of valid municipal purposes and goals.

CHALLENGES TO ZONING ORDINANCES

Garretson v. The Borough of West Long Branch, A-5506-98T5 (App. Div. 2000)
Rezoning of property from commercial to residential was presumed to be reasonable.

Victor Recchia Res. Const. Corp. v. Zoning Bd. of Adjust, Twp. of Cedar Grove, 338 N.J. Super. 242 (App. Div. 2001)
http://scholar.google.com/scholar_case?case=4568300361346299636&q=Victor+Recchia+v.+Cedar+Grove&hl=en&as_sdt=4,31

Pheasant Bridge Corp. v. Township of Warren, 169 N.J. 282 (2001), cert. den. 535 U.S. 1077 (2002)
http://scholar.google.com/scholar_case?case=7629936155511401158&q=Pheasant+Bridge+Corp.+v.+Township+of+Warren&hl=en&as_sdt=4,31

Manzo and Morgan Estates, L.L.C. v. Township of Marlboro, 365 N.J. Super. 186 (Law Div. 2002)
http://scholar.google.com/scholar_case?case=15706997970390658186&q=Manzo+and+Morgan+Estates,+L.L.C.+v.+Township+of+Marlboro&hl=en&as_sdt=4,31
Stated reason for the new zone which lowered density, *i.e.*, to protect a brook and reservoir, served a valid zoning purpose, was not inconsistent with the Township's master plan, and court would not disturb it if there was any reasonable basis to uphold it.

Rumson Estates v. Mayor of Fair Haven, 177 N.J. 338 (2003)
http://scholar.google.com/scholar_case?case=14262657760722724648&q=Rumson+Estates+v.+Mayor+of+Fair+Haven&hl=en&as_sdt=4,31

Bailes v. Twp. of East Brunswick, 380 N.J. Super. 336 (App. Div. 2005)
http://scholar.google.com/scholar_case?case=13145725938585386156&q=Bailes+v.+Twp.+of+East+Brunswick&hl=en&as_sdt=4,31
Presumption of validity overcome where down zoning of property not shown to serve the stated purposes of the ordinance and does not reflect the reasonable consideration of the character of the areas surrounding plaintiffs' property and not required to implement state zoning plan.

Salem Management Co. v. Township of Lopatcong, 387 N.J. Super. 573 (App. Div. 2006)
http://scholar.google.com/scholar_case?case=7956970064640989603&q=Salem+Management+Co.+v.+Township+of+Lopatcong&hl=en&as_sdt=2,31
Rent control ordinance presumed to be valid. Plaintiff failed to meet the burden to establish lack of rational basis for township's determination that the unregulated competition in the rental housing market was not operating in the public interest. Application of rent control to vacant units was rational and constitutionally sustainable.

Riya Finnegan, LLC v. Twp. Council of South Brunswick, 394 N.J. Super. 303 (App. Div. 2007)
http://scholar.google.com/scholar_case?case=14581236812914556022&q=Riya+Finnegan,+LLC+v.+Twp.+Council+of+South+Brunswick&hl=en&as_sdt=2,31

Zoning ordinances are presumed valid, unless an opponent establishes that they are "clearly arbitrary, capricious, or unreasonable, or plainly contrary to fundamental principles of zoning or the [zoning] statute." "Because the enactment of, or amendment to, a zoning ordinance is a legislative act, the Township's governing body is permitted to enact an amendment in response to objections to a proposed use of land as long as the amendment is consistent with the Municipal Land Use Law." In contrast to a zoning board which performs a quasi-judicial function, a township council in performing a purely legislative function, such as the enactment of a zoning ordinance, is entitled to rely on the sentiments of its constituency and does not need to rely upon expert testimony.

CHALLENGES TO ZONING ORDINANCES

New Jersey Shore Builders Association v. Twp. of Jackson, 199 N.J. 38 (2009)

http://scholar.google.com/scholar_case?case=5363690394281202616&q=New+Jersey+Shore+Builders+Association+v.+Twp.+of+Jackson&hl=en&as_sdt=2,31

The proper test for the validity of an ordinance enacted pursuant to the police power is the “rational basis” test. “The police power does not have its genesis in a written constitution. It is an element of the social compact, an attribute of sovereignty itself, possessed by the states before the adoption of the Federal Constitution.” citing, *Roselle v. Wright*, 21 N.J. 400 (1965). “N.J. Const. Art. IV serves only to lift a limit that had been judicially imposed upon the exercise of the police power, which remains the wellspring from which the power to plan and zone flows.” Tree removal ordinance enacted pursuant to the police power, which has as its purpose the amelioration of the evils of tree cutting, and also the maintenance of the biomass of the municipality with benefits to habitat, tree canopy and oxygen production found to be valid – it is a generic environmental regulation, and not a planning or zoning initiative – and not subject to the limits of the MLUL. “Factual support for the legislative judgment will be presumed and, absent a sufficient showing to the contrary, it will be assumed that the statute rested ‘upon some rational basis within the knowledge and experience of the Legislature.’” citing, *Burton v. Sills*, 53 N.J. 86, 95 (1968). “The presumption of validity can only be overcome by proofs that preclude the possibility that there could have been any set of facts known or assumed to be known by the drafters that would, in the exercise of reason and common sense, have allowed them to conclude that the enactment would advance the interest sought to be achieved.”

Hillsborough Properties, L.L.C. v. Twp. of Hillsborough, A-2209-13T2 (June 23, 2015)

https://scholar.google.com/scholar_case?case=13910392512516641901&q=Hillsborough+Properties&hl=en&as_sdt=4,31

Twenty-five acre zoning as applied to plaintiff’s property invalidated as not consistent with the Township’s rationale for its implementation where the uses permitted in the new zone are similar to those in other zoning districts where the required lot size range from one to five acres. However, the trial court erred in ordering the Township to adopt a five-acre minimum lot size because the matter should be remanded to the Township for its determination, “in the first instance,” what minimum lot size is reasonable to achieve the purpose and goals of the zone.

The Matheny School and Hospital, Inc. v. The Land Use Board of the Bor. of Peapack and Gladstone, A-5008-13T1 (Jan. 24, 2017)

https://scholar.google.com/scholar_case?case=10985856370004990735&q=A-5008-13T1&hl=en&as_sdt=4,31

A board’s interpretation of an ordinance is entitled to limited deference and is reviewed by the court de novo.

Cona v. Township of Washington, A-5067-15T3, A-5615-15T3, A-0443-16T3 (Aug. 29, 2018)

https://scholar.google.com/scholar_case?case=12486020922954749700&q=Cona+v+township&hl=en&as_sdt=4,31

Ordinances requiring fees for rental properties upheld as reasonably related to the municipalities’ exercise of their obligation to promote the safety and welfare of their residents because they covered the cost of inspection of the rentals before they were occupied by a new tenant. *Timber Glen* distinguished.

CHALLENGES TO ZONING ORDINANCES

Sharp v. Township of Branchburg, A-0843-16T1 (Dec. 13, 2018)

https://scholar.google.com/scholar_case?case=11658349165627097617&q=sharp+v.+township+of+branchburg&hl=en&as_sdt=4,31

Zoning ordinances are presumed valid and the challenging party has the burden of overcoming the presumption of validity notwithstanding the fact that an ordinance may be contrary to the State Plan.

Steve's Auto Body & Repair, LLC v. Twp. of Gloucester, A- 0620-20 (July 14, 2022)

https://scholar.google.com/scholar_case?case=102417963466781809&q=Steve%27s+Auto+Body+%26+Repair,+LLC+v.+Twp.+of+Gloucester&hl=en&as_sdt=6,31

"Municipal ordinances are presumed to be valid and reasonable, and "[t]he burden of proof to establish that they are arbitrary and unreasonable rests on the party seeking to overturn them." (citation omitted). "Legislative bodies are presumed to act on the basis of adequate factual support and, absent a sufficient showing to the contrary, it will be assumed that their enactments rest upon some rational basis within their knowledge and experience." (citation omitted). "The underlying policy and wisdom of ordinances are the responsibility of the governing body, and if any state of facts may reasonably be conceived to justify the ordinance, it will not be set aside."

2. Procedural

A. Time Limitations

Kent v. Borough of Mendham, 11 N.J. Super. 67 (App. Div. 1970)

http://scholar.google.com/scholar_case?case=10320014098126409314&q=Kent+v.+Borough+of+Mendham&hl=en&as_sdt=2,31

Reahl v. Randolph Twp. Municipal Util. Auth., 163 N.J. Super. 501 (App. Div. 1978), certif. den. 81 N.J. 45 (1979)

http://scholar.google.com/scholar_case?case=7453075809687612223&q=Reahl+v.+Randolph+Twp.+Municipal+Util.++Auth&hl=en&as_sdt=2,31

Wolf v. Shrewsbury, 182 N.J. Super. 289 (App. Div. 1981), certif. den. 89 N.J. 440 (1982)

http://scholar.google.com/scholar_case?case=14778325544101135385&q=Wolf+v.+Shrewsbury&hl=en&as_sdt=2,31

Direct attack upon an ordinance generally must be brought within 45 days of its adoption

Matlack v. Burlington Cty. Freeholder Bd., 191 N.J. Super. 236 (Law Div. 1982), *aff'd*, 194 N.J. Super. 359 (App. Div.), certif. den. 99 N.J. 191 (1984)

http://scholar.google.com/scholar_case?case=600257975901914122&q=Matlack+v.+Burlington+Cty.+Freeholder+Bd&hl=en&as_sdt=2,31

Reilly v. Brice, 109 N.J. 555 (1988)

http://scholar.google.com/scholar_case?case=3049361472364683234&q=Reilly+v.+Brice&hl=en&as_sdt=2,31

Enlargement of time within discretion of court

CHALLENGES TO ZONING ORDINANCES

Trust Co. of N.J. v. Planning Bd., 244 N.J. Super. 553 (App. Div. 1990)

http://scholar.google.com/scholar_case?case=8087319346236890791&q=Trust+Co.+of+N.J.+v.+Planning+Bd&hl=en&as_sdt=2,31

Alexander's v. Paramus Bor., 243 N.J. Super. 157 (App. Div. 1990), *aff'd*, 125 N.J. 100 (1991)

http://scholar.google.com/scholar_case?case=2086275835920143921&q=Alexander%E2%80%99s+v.+Paramus+Bor&hl=en&as_sdt=2,31

Ocean County v. Long Beach Twp., 252 N.J. Super. 443 (Law Div. 1991)

http://scholar.google.com/scholar_case?case=11317122864981058418&q=Ocean+County+v.+Long+Beach+Twp&hl=en&as_sdt=2,31

Ballantyne House Assoc. v. Newark, 269 N.J. Super. 322 (App. Div. 1993)

http://scholar.google.com/scholar_case?case=12230602189091884008&q=Ballantyne+House+Assoc.+v.+Newark&hl=en&as_sdt=2,31

Challenge to municipal ordinance maintainable as declaratory judgment actions under N.J.S.A. 2A:16-50

Faulhaber v. Twp. Committee of Twp. of Howell, 274 N.J. Super. 83 (Law Div. 1994)

http://scholar.google.com/scholar_case?case=1652564696391718559&q=Faulhaber+v.+Twp.+Committee+of+Twp.+of+Howell&hl=en&as_sdt=2,31

Time limit to challenge ordinance begins when notice advising of its adoption is given, not when it is filed with the County.

Island Club Condominium Homeowner's Association v. The City of Atlantic City, 298 N.J. Super. 516 (Law Div. 1995) Notice of decision.

http://scholar.google.com/scholar_case?case=12644539855497420893&q=Island+Club+Condominium+Homeowners+Association+v.+The+City+of+Atlantic+City&hl=en&as_sdt=4,31

Damurjian v. Board of Adjustment of the Township of Colts Neck, 299 N.J. Super. 84 (App. Div. 1996)

http://scholar.google.com/scholar_case?case=8222397193703450517&q=Damurjian+v.+Board+of+Adjustment+of+the+Township+of+Colts+Neck&hl=en&as_sdt=4,31

Enlargement of 45-day time period.

Willoughby v. Planning Bd. of Twp. of Deptford, 306 N.J. Super. 266 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=5501418020198240281&q=Willoughby+v.+Planning+Bd.+of+Twp.+of+Deptford&hl=en&as_sdt=4,31

Extension of 45-day limitation warranted where zoning ordinance was central issue in municipal election.

Southport Development Group, Inc. v. Township of Wall, 310 N.J. Super. 548 (App. Div. 1998), *certif. denied*, 156 N.J. 384 (1998)

http://scholar.google.com/scholar_case?case=9301178487022152320&q=Southport+Development+Group,+Inc.+v.+Township+of+Wall,&hl=en&as_sdt=4,31

Challenge to development fee ordinance time barred due to impact on municipal planning and budget development.

CHALLENGES TO ZONING ORDINANCES

Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy, 349 N.J. Super. 418 (App. Div.), cert. denied, 174 N.J. 189 (2002)

http://scholar.google.com/scholar_case?case=2761673726721641314&q=Tri-State++Ship+Repair+%26+Dry+Dock+Co.+v.+City+of+Perth+Amboy&hl=en&as_sdt=4,31

Inclusion of property in redevelopment zone did not present novel or constitutional issues warranting enlargement of time

Rocky Hill Citizens for Responsible Growth v. Planning Bd., Bor. of Rocky Hill, 406 N.J. Super. 384 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=4263232474486513205&q=Rocky+Hill+Citizens+for+Responsible+Growth+v.+Planning+Bd.,+Bor.+of+Rocky+Hill&hl=en&as_sdt=4,31

Challenge to ordinance time barred because it was not filed within forty-five days of the adoption of the ordinance and none of the exceptions to the rule which permit enlargement of the time period are applicable. One cannot delay in bringing a challenge to an ordinance until after the planning board provides its interpretation of the ordinance.

Price v. City of Union City, A-0103-14T3 (May 10, 2016)

https://scholar.google.com/scholar_case?case=10788897226888595499&q=No.A-0103-14T3&hl=en&as_sdt=4,31

Applicants who sought to take advantage of an ordinance within the forty-five day period for a challenge could not reasonably rely upon it and any approvals issued pursuant to the ordinance were voided by the court declaring the ordinance invalid.

Smith v. South Brunswick Township, A-1218-15T2, A-3014-15T2 (May 18, 2017)

https://scholar.google.com/scholar_case?case=4904603233611267227&q=A-1218-15T2.&hl=en&as_sdt=4,31

Complaint challenging ordinances 12 years after their adoption barred by the doctrines of laches and equitable estoppel where developer made significant investments in, and improvements on, the property. “The doctrine of laches is an equitable defense which may be interposed even in the absence of a specific statute of limitations. [] Laches ‘precludes relief when there is an ‘unexplainable and inexcusable delay’ in exercising a right, which results in prejudice to another party.’”

Concerned Citizens of Livingston v. Twp. of Livingston, A-4171-15T3 (June 1, 2018)

https://scholar.google.com/scholar_case?case=7841373089924393852&q=A-4171-15T3&hl=en&as_sdt=4,31

Where property owners did not receive certified mail notice of an ordinance amendment as required by N.J.S.A. 40:55D-62.1 and the published newspaper notice “gave no clue” about the subject or content of the ordinance and did not provide the information required by Section 62.1, the “interest of justice” standard for enlargement of time under R. 4:69-6(c) was satisfied.

Ratan Palace, LLC v. Township of North Bergen, A-4059-16T1 (Aug. 20, 2018)

https://scholar.google.com/scholar_case?case=5754284821217655892&q=ratan+palace&hl=en&as_sdt=4,31

A challenge to an ordinance must be commenced within 45 days of the publication of the notice of its enactment, which period may only be enlarged in “cases involving: (1) important novel or constitutional questions; (2) informal or ex parte determinations of legal questions by administrative officials; and (3) important public rather than private interests which require adjudication or clarification.” “[W]ithout the Township as a party to the action, there can be no challenge to the ordinance.”

CHALLENGES TO ZONING ORDINANCES

Glanzberg & Nelson Realty v. Borough of Bergenfield Economic Special Improvement District, Inc., A-4808-17T3 (April 10, 2019)

https://scholar.google.com/scholar_case?case=5216682556730739995&q=A-4808-17T3&hl=en&as_sdt=4,31

Plaintiff's challenge to an ordinance creating a special improvement district time-barred by Rule 4:69-6(c) because Complaint filed more than 45 days following enactment of ordinance.

8 Erie St., JC LLC v. City of Jersey City, No. 19-cv-9351 (D. N.J. May 21, 2020)

https://scholar.google.com/scholar_case?case=5357125815708982685&q=8+Erie+St.+JC+LLC+v.+City+of+Jersey+City&hl=en&as_sdt=6,31&as_ylo=2020

A facial challenge to an ordinance accrues on the date that it is adopted. Section 1983 has no statute of limitations of its own, but is governed by the New Jersey two-year statute of limitations for personal injury torts.

Casella Farms Homeowners Ass'n, Inc. v. Twp. of Harrison, A-3880-22 (Oct. 31, 2024)

https://scholar.google.com/scholar_case?case=147698077254521257&q=Casella+Farms+Homeowners+v.+Harrison&hl=en&as_sdt=6,47

Where an untimely challenge was made to an ordinance, the trial court correctly refused to extend time pursuant to Rule 4:69-6(c) where there were no public funds involved, no political upheavals, no significant impact on density, traffic, ratables or any interest other than the concerns expressed by the individual plaintiffs and their supporters and no constitutional implications.

Botteon v. Borough of Highland Park, A-1227-22 (May 1, 2024)

https://scholar.google.com/scholar_case?case=17093849965462203066&q=Botteon+v.+Borough+of+Highland&hl=en&as_sdt=6,47

Where Plaintiffs challenge two ordinances permitting various cannabis establishments and one was untimely, the court found that because the matter is of real public importance given the amount of tax funds that would be due to the Defendant municipality after adoption, and because only one of two ordinances was out of time, it was reasonable to permit the challenge to both ordinances, including the one that was otherwise out of time.

Gonzalez v. Twp of West Windsor, A-1539-23 (Sep. 25, 2025)

https://scholar.google.com/scholar_case?case=11150371760815520863&q=Gonzalez+v.+Twp+of+West+Windsor&hl=en&as_sdt=6,47

Challenge to ordinance two (2) years after adoption was untimely and where the plaintiffs were simply private parties, there was no basis to extend the time to appeal the ordinance.

B. NOTICE

Wolf v. Mayor & Borough Council of Shrewsbury, 182 N.J. Super. 289 (App. Div. 1981), certif. denied, 89 N.J. 440 (1982)

http://scholar.google.com/scholar_case?case=14778325544101135385&q=Wolf+v.+Mayor+%26+Borough+Council+of+Shrewsbury&hl=en&as_sdt=4,31

Notice of zoning change must be sufficient to alert a reasonably intelligent reader as to the nature and import of the substantial changes in the zone plan proposed.

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Gallo v. Lawrence Township, 328 N.J. Super. 117 (App. Div. 2000)

http://scholar.google.com/scholar_case?case=12380573655259931333&q=Gallo+v.+Lawrence+Township&hl=en&as_sdt=4,31

Zoning changes that result from a planning board's re-examination requirement are not subject to the personal notice requirements.

Cotler v. Township of Pilesgrove, 393 N.J. Super. 377 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=6018651326135115386&q=Cotler+v.+Township+of+Pilesgrove&hl=en&as_sdt=4,31

Personal notice of an amendment to a zoning ordinance not required where changes in zoning classification were not specifically recommended in a reexamination report, but resulted from a periodic general reexamination of the master plan. The amendment was not an isolated zoning change, but instead a result of a broad-based review of a municipality's entire zoning scheme which could be adopted without the personal notice to affected property owners required by N.J.S.A. 40:55D-62.1 and 63. Published notice invalid because it did not contain sufficient information concerning the nature and scope of the changes to the municipality's zoning which would result from the amendment.

Robert James Pacilli Homes, L.L.C. v. Twp. of Woolwich, 394 N.J. Super. 319 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=6744975317440484261&q=Robert+James+Pacilli+Homes,+L.L.C.+v.+Twp.+of+Woolwich&hl=en&as_sdt=4,31

An ordinance that changes density and bulk standards and increases the amount of open space for subdivisions within three residential zones, but which did not change the use classifications in the zones, was found to make such a substantial change as to amount to a change in classification requiring personal notice. The term "classification" is not defined in MLUL, and court determined that "the type of notice to be provided on the occasion of a proposed amendment to a zoning ordinance should focus on the substantive effect of the amendment rather than the appellation given to the zone." The changes at issue would "dramatically alter the intensity of the residential use with each zone and promised to affect the character of the future development in both zones."

Rockaway Shoprite Associates, Inc. v. City of Linden, 424 N.J. Super. 337 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=2096533545068950337&q=Rockaway+Shoprite+Associates&hl=en&as_sdt=4,31

N.J.S.A. 40:49-2.1 allows for publication by summary in the case of ordinances of six or more pages in length. Notice of a zoning ordinance creating new zones and uses applicable to an area must identify and briefly describe these new zones and uses. It must be sufficient to inform "interested persons of the nature and extent of the change or whether it was consequential enough to warrant their attendance at, and participation in, the ensuing public hearing." "Strict compliance with statutory notice requirements are mandatory and jurisdictional, and non-conformity renders the governing body's action a nullity." "The public's entitlement to such notice may not be waived by those individual members of the public who actually attend the improperly noticed hearing."

Mahwah Realty Associates, Inc. v. Township of Mahwah, 430 N.J. Super. 247 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=10142978362749512647&q=A-4360-11T4&hl=en&as_sdt=4,31

An ordinance that "adds commercial recreation, medical services, retail sales, and educational facilities into zoning districts designed for manufacturing, trucking and the like . . . represents a fundamental alternation of – and therefore a change in the classification of uses permitted in – the . . . zoning districts." The notice of a change in zoning classification need only provide the identification of the zoning district affected by the classification change. The notice requirements of N.J.S.A. 40:55D-62.1 that require the "street names, common names or other identifiable

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landmarks, and by reference to lot and block numbers” only pertain to ordinances that propose changes in the zone boundary.

Village Supermarkets, Inc. v. Township of Egg Harbor, A-5370-12T4 (April 8, 2015)

https://scholar.google.com/scholar_case?case=8661082786403048940&q=A-5370-12T4&hl=en&as_sdt=4,31

Personal notice under N.J.S.A. 40:55D-62.1 not required where ordinance found not to change any classification in regional shopping center zone. “Given the wide array of uses already permitted in this RCD zone, ranging from commercial to industrial, the addition of fast-food restaurants and drive-in banks simply cannot be fairly characterized as a fundamental alternation of the character of the zones or the intensity of use.” Changes in buffer requirements and basin dimensions did not result in a fundamental change to the character or intensity of use requiring personal notice.

Smith v. South Brunswick Township, A-1218-15T2, A-3014-15T2 (May 18, 2017)

https://scholar.google.com/scholar_case?case=4904603233611267227&q=A-1218-15T2.&hl=en&as_sdt=4,31

A public notice that summarizes the proposed ordinance as “the addition of Office/Corporate District” and does not list any of the permitted uses within the newly created zone, is nevertheless adequate as it conveys the ordinance’s main objective as required by N.J.S.A. 40:49-2.1(a).

Marinelli v. Township of Lopatcong, A-5124-13T3, A-3132-14T3 (April 18, 2017)

https://scholar.google.com/scholar_case?case=12448248542399309905&q=A-3132-14T3&hl=en&as_sdt=4,31

“N.J.S.A. 40:49-2 sets forth the general rule as to notice of proposed and adopted land use ordinances. N.J.S.A. 40:49-2.1(a) provides an alternative form of notice for ordinances that are ‘in length, six or more octavo pages of ordinary print[.]’ [citation omitted]. Both statutes require a municipality to provide public notice in a newspaper of a proposed ordinance. N.J.S.A. 40:49-2(a); N.J.S.A. 40:49-2.1. Under N.J.S.A. 40:49-2(a), the notice must include the full text of the proposed ordinance or include its title and a summary. N.J.S.A. 40:49-2.1(a) allows for ‘a brief summary of the main objectives or provisions of’ the proposed ordinance in lieu of the entire text when the proposed ordinance is six or more pages in length. . . Upon passage of an ordinance, N.J.S.A. 40:49-2(d) requires the ‘ordinance, or the title, or the title and a summary’ to be published ‘at least once in a newspaper circulating in the municipality, if there be one, and if not, in a newspaper printed in the county and circulating in the municipality[.]’”

Concerned Citizens of Livingston v. Twp. of Livingston, A-4171-15T3 (June 1, 2018)

https://scholar.google.com/scholar_case?case=7841373089924393852&q=A-4171-15T3&hl=en&as_sdt=4,31

“N.J.S.A. 40:55D-62.1 ‘directs that all property owners within a zoning district shall receive personal notice if the municipal body seeks to change the classification or boundaries of a zoning district.’ [citation omitted]. An ordinance amendment which changes the uses permitted in a zone or makes “sweeping” changes to the bulk and density requirements in a zone and “effects a fundamental alteration of the character of this zoning district” or are “discordant” from the existing zoning requirements, will require certified mail notices to all property owners within the affected zone. A published newspaper notice that “gave no clue” about the subject or content of the ordinance and does not provide the information required by Section 62.1, satisfies the “interest of justice” standard for enlargement of time under R. 4:69-6(c).

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Lipton v. Twp. Council of Berkeley Twp., A-2933-21 (April 2, 2024)

https://scholar.google.com/scholar_case?case=8891662229161095250&q=Lipton+v.+Twp.+Council+of+Berkeley+Twp.&hl=en&as_sdt=6,47

The fact that the governing body did not respond to Plaintiff's questions with respect to various questions, is not a violation of OPMA.

Casino Beach Pier, LLC v. Borough of Seaside Heights, A-1072-21, A-1282-21 (Nov. 19, 2024)

https://scholar.google.com/scholar_case?case=18002302474352938314&q=Casino+Beach+Pier,+LLC+v.+Borough+of+Seaside+Heights&hl=en&as_sdt=6,47

Where a parcel had never been placed within a zoning district, the placement within an adjacent district was a boundary change and the notice compliant with N.J.S.A. 40:55D-62.1.

Gonzalez v. Twp of West Windsor, A-1539-23 (Sep. 25, 2025)

https://scholar.google.com/scholar_case?case=11150371760815520863&q=Gonzalez+v.+Twp+of+West+Windsor&hl=en&as_sdt=6,47

Where part of a master plan reexamination, no personal notice was required to be served on an adjoining property owner with respect to a rezoning.

C. STANDING

Cresskill v. Dumont, 28 N.J. Super. 26 (Law Div. 1953)

http://scholar.google.com/scholar_case?case=17013696233868705346&q=Cresskill+v.+Dumont&hl=en&as_sdt=4,31

Al Walker, Inc. v. Borough of Stanhope, 23 N.J. 657 (1957)

http://scholar.google.com/scholar_case?case=10867006428139506922&q=Al+Walker,+Inc.+v.+Borough+of+Stanhope&hl=en&as_sdt=4,31

Dover Twp. Homeowners & Tenants Ass'n v. Dover Twp., 114 N.J. Super. 270 (App. Div. 1971)

http://scholar.google.com/scholar_case?case=10985086323861669397&q=Dover+Twp.+Homeowners+%26+Tenants+Ass%E2%80%99n+v.+Dover+Twp&hl=en&as_sdt=4,31

Southern Burlington County N.A.A.C.P. v. Mount Laurel Twp., 67 N.J. 151 (1975)

http://scholar.google.com/scholar_case?case=18137465806589985912&q=Southern+Burlington+County+N.A.A.C.P.+v.+Mount+Laurel+Twp&hl=en&as_sdt=4,31

Marlboro Twp. v. Holmdel Planning Board, 279 N.J. Super. 638 (App. Div. 1995)

http://scholar.google.com/scholar_case?case=1751426922903580486&q=Marlboro+Twp.+v.+Holmdel+Planning+Board&hl=en&as_sdt=4,31

Hirth v. City of Hoboken, 337 N.J. Super. 149 (App. Div. 2001)

http://scholar.google.com/scholar_case?case=5483709124321801046&q=Hirth+v.+City+of+Hoboken&hl=en&as_sdt=4,31

People for Open Government v. Roberts, 397 N.J. Super. 502 (2008)

http://scholar.google.com/scholar_case?case=16721992086829062288&q=People+for+Open+Government+v.+Roberts&hl=en&as_sdt=4,31

Individual plaintiffs and organization in which they are members, who were personally involved with the unsuccessful effort to have Council enact pay-for-play reform as well as initiative which resulted in forcing the matter onto the ballot had standing to challenge lack of enforcement of City's

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pay-to-play ordinance. “If Hoboken, through its elected officials, chooses to forego enforcement of this law, then who will force them to do so?”

Jennings v. Borough of Highlands, 418 N.J. Super. 405 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=4256477101377950780&q=Jennings+v.+Borough+of+Highlands&hl=en&as_sdt=2,31

Individual condominium unit owners may not oppose zoning amendments through a protest petition pursuant to N.J.S.A. 40:55D-63. The right to decide whether to engage in an MLUL protest petition resides with the condominium association. The obligation of a governing body to review a report of a planning board pursuant to N.J.S.A. 40:55D-26(a) requires, at minimum, an acknowledgment on the record that the report was reviewed.

Feld v. City of Orange, A-3911-12T3, A-4880-12T1 (March 26, 2015)

https://scholar.google.com/scholar_case?case=14262613555437133272&q=feld+v.+city+of+orange&hl=en&as_sdt=4,31

Resident of the county, but not the municipality, does not have standing to challenge certain tax exemptions granted by the municipality, but does have standing under OPMA which confers standing on any member of the public to seek remedies for violations of the Act.

Feld v. City of Newark, A-1272-16T4 (May 30, 2019)

https://scholar.google.com/scholar_case?case=12180783616930320219&q=1272-16T4&hl=en&as_sdt=4,31

Plaintiff who neither resided in nor paid real estate taxes in Newark lacked standing to challenge a tax abatement awarded by the City. “[P]laintiff has demonstrated he is the quintessential interloper courts have historically found lack standing to challenge an action taken by a municipality. He does not have a legally cognizable stake in Newark's decision to award this tax abatement nor a substantial likelihood he will experience some harm if the court returns an unfavorable decision.”

Lepore v. Borough of Sea Bright, A-4370-17T4 (Jan. 14, 2020)

https://scholar.google.com/scholar_case?case=14834415266741249061&q=A-4370&hl=en&as_sdt=4,31

Plaintiff lacked standing as a member of the general public that did not reside in the municipality to challenge ordinance vacating public right of access to a river where amendment to ordinance maintained the public's access.

Save Long Beach Island v. U.S. Dep't of Commerce, Civ. No. 23-1886 (D.N.J. Feb. 29, 2024)

https://scholar.google.com/scholar_case?case=14929705809352942951&q=Save+Long+Beach+Island+v.+U.S.+Dep%27t+of+Commerce&hl=en&as_sdt=6,47&as_ylo=2024

Challenge to the construction of windfarms by various individuals and non-profits did not allege the windfarms would lower their property values or cause any harm, consequently the parties did not have standing to bring the complaint. Court also noted that a non-profit could not allege economic damages.

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D. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Fischer v. Twp. of Bedminster, 5 N.J. 534 (1950)

http://scholar.google.com/scholar_case?case=8751783542822251680&q=Fischer+v.+Twp.+of+Bedminster&hl=en&as_sdt=2,31

Plaintiff need not exhaust administrative remedies where the constitutionality of the Township's zoning ordinance was challenged

Harris v. Salem County Planning Bd., 123 N.J. Super. 304 (App. Div. 1973)

http://scholar.google.com/scholar_case?case=15253400573911893676&q=Harris+v.+Salem+County+Planning+Bd&hl=en&as_sdt=2,31

Brunetti v. Borough of New Milford, 68 N.J. 576 (1975)

http://scholar.google.com/scholar_case?case=8818456002938743832&q=Brunetti+v.+Borough+of+New+Milford&hl=en&as_sdt=2,31

Exhaustion not required where interests of justice relief

Trenkamp v. Twp. of Burlington, 170 N.J. Super. 251 (Law Div. 1979)

http://scholar.google.com/scholar_case?case=5617455860774223631&q=Trenkamp+v.+Twp.+of+Burlington&hl=en&as_sdt=2,31

Exception to exhaustion requirement where issues are primarily legal in nature

Route 15 Associates v. Jefferson Twp., 187 N.J. Super. 481 (App. Div. 1982)

http://scholar.google.com/scholar_case?case=15670005679891745648&q=Route+15+Associates+v.+Jefferson+Twp&hl=en&as_sdt=2,31

Exxon Corp. v. Twp. of East Brunswick, 192 N.J. Super. 329 (App. Div. 1983), certif. denied 96 N.J. 312 (1984)

http://scholar.google.com/scholar_case?case=3846868870894732584&q=Exxon+Corp.+v.+Twp.+of+East+Brunswick&hl=en&as_sdt=2,31

Riggs v. Long Beach Twp., 101 N.J. 515 (1986)

http://scholar.google.com/scholar_case?case=6160438577272716412&q=Riggs+v.+Long+Beach+Twp&hl=en&as_sdt=2,31

Warrenville Plaza v. Warren Twp., 230 N.J. Super. 461 (App. Div. 1989)

http://scholar.google.com/scholar_case?case=10359548113488959016&q=Warrenville+Plaza+v.+Warren+Twp&hl=en&as_sdt=2,31

Exhaustion not required where pursuit of remedy would have been futile

41 Maple Assoc. v. Common Council, 276 N.J. Super. 613 (App. Div. 1994)

http://scholar.google.com/scholar_case?case=3263648945698673034&q=41+Maple+Assoc.+v.+Common+Council&hl=en&as_sdt=2,31

966 Video v. Mayor & Twp. Committee, 299 N.J. Super. 501 (Law Div. 1995)

http://scholar.google.com/scholar_case?case=12744511970181025788&q=966+Video+v.+Mayor+%26+Twp.+Committee&hl=en&as_sdt=2,31

Exhaustion required prior to constitutional challenge to ordinance

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Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282 (2001), cert. den. 535 U.S. 1077 (2002)
http://scholar.google.com/scholar_case?case=7629936155511401158&q=Pheasant+Bridge+Corp.+v.+Twp.+of+Warren&hl=en&as_sdt=2,31

Exhaustion not required

Sartoga v. Borough of West Paterson, 346 N.J. Super. 569 (App. Div.), certif. denied 172 N.J. 357 (2002)
http://scholar.google.com/scholar_case?case=10728269183117589604&q=Sartoga+v.+Borough+of+West+Paterson&hl=en&as_sdt=2,31

Exhaustion not required

Deland v. Twp. of Berkeley, 361 N.J. Super. 1 (App. Div.), certif. denied 178 N.J. 32 (2003)
http://scholar.google.com/scholar_case?case=13571660714492218697&q=Deland+v.+Twp.+of+Berkeley&hl=en&as_sdt=2,31

Exhaustion doesn't apply to Mt. Laurel challenge where municipality has not filed a fair share plan and housing element with COAH

Bailes v. Twp. of East Brunswick, 380 N.J. Super. 336 (App. Div. 2005), certif. denied 185 N.J. 596 (2005)
http://scholar.google.com/scholar_case?case=13145725938585386156&q=Bailes+v.+Twp.+of+East+Brunswick&hl=en&as_sdt=2,31

Exhaustion not required

Gripenburg v. Township of Ocean, 220 N.J. 239 (2015)
https://scholar.google.com/scholar_case?case=16328445268254705197&q=Gripenburg+v.+Township+of+Ocean&hl=en&as_sdt=4,31

Ordinance that rezoned plaintiffs' property from residential and commercial use to an Environmental Conservation district upheld against plaintiffs' as-applied challenge. Plaintiffs were simply landowners, not developers, and had no development application pending before any board yet the Court held that the ordinance represented a legitimate exercise of the municipality's zoning power that was consistent with the "municipality's comprehensive smart growth development plan, which concentrated development in a town center surrounded by a green-zone buffer." The Court "reassert[ed] the importance of exhausting administrative remedies and conclude[d] that plaintiffs' claim for redress for the downzoning of their property is better addressed through their inverse condemnation claim, which, as the trial court held, plaintiffs may pursue if they are denied a variance." "Thus, notwithstanding *Pheasant Bridge* [citation omitted], landowners challenging the validity of a municipal ordinance as to their property should normally first seek a variance in accordance with these principles."

Matula v. Township of Berkeley Heights, A-5705-12T1 (Aug. 21, 2015)
https://scholar.google.com/scholar_case?case=629559341928275057&q=matula&hl=en&as_sdt=4,31

"A court will only review final municipal actions, declining review even if that municipality is about to act. . . The exhaustion rule is intended to ensure that claims will initially be heard by a body with expertise in the area, permit administrative resolution to eliminate the need for suit, and create a factual record for appellate review. . . In addition to wrongful municipal action, actions in lieu of prerogative writs permit judicial intervention in cases of municipal inaction. . . . In the case of inaction, a plaintiff can challenge an official's failure to perform a public duty. . . where a plaintiff can demonstrate (1) a clear violation of a municipal ordinance or duty that has especially affected the plaintiff; (2) the municipality failed to take appropriate action despite having had its attention

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brought to the matter; and (3) the party seeking judicial intervention shows that an adequate and realistic alternative form of relief is unavailable.”

Liberty Storage, LLC v. City of Jersey City, A-5288-14T1 (Feb. 10, 2017)

https://scholar.google.com/scholar_case?case=8153923987957638430&q=Liberty+storage&hl=en&as_sdt=4,31

An "interested party" may bring an action under N.J.S.A. 40:55D-18 of the Municipal Land Use Law to enforce a zoning ordinance. Unlike prerogative writ actions, in actions for injunctive relief brought under N.J.S.A. 40:55D-18, the exhaustion of remedies doctrine does not apply.

First Avenue Realty, LLC v. The City of Asbury Park, A-2603-15T2 (July 12, 2017)

https://scholar.google.com/scholar_case?case=17308337145157791500&q=A-2603-15T2&hl=en&as_sdt=4,31

"Under the exhaustion doctrine, parties must 'pursue available internal proceedings to conclusions before seeking judicial intervention.'" While an exception exists where the administrative remedy would be futile, "uncertainty of result is not synonymous with 'futile.'"

New Jersey Chinese Community Center v. Township of Warren, No. 16-4020, 3rd Cir. (Oct. 6, 2017)

https://scholar.google.com/scholar_case?case=15807149334322451064&q=No.+16-4020&hl=en&as_sdt=3,31

Property owners' constitutional claims based on land use decisions are not ripe for judicial review where the owners are denied permits by the initial decision-makers but do not apply for a use variance and obtain a final decision from the municipality.

Sharp v. Township of Branchburg, A-0843-16T1 (Dec. 13, 2018)

https://scholar.google.com/scholar_case?case=11658349165627097617&q=sharp+v.+township+of+branchburg&hl=en&as_sdt=4,31

Exhaustion not required where the tract of land so large that the zoning board lacked jurisdiction to grant variance relief because to do so would constitute de facto zoning.

E. MOOTNESS

Tumpson v. Farina, 431 N.J. Super. 164 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=10362232308341439805&q=A-5454-10T4&hl=en&as_sdt=2,31

"While the [United States] Supreme Court is 'limited by the case-or-controversy requirement of Art. III to adjudication of actual disputes between adverse parties,' [citations omitted], our State Constitution does not impose a similar restraint on the exercise of our judicial power. [citation omitted]. Rather, we look to 'a sufficient stake and real adverseness' in the litigants, . . . or to 'issues of great public importance.'" "Even when issues presented are technically moot, we may nonetheless address them on their merits when they involve matters of particular public interest. [citation omitted]. This is particularly true when the issue is one likely to recur, yet likely to evade judicial review."

F. CONFLICT OF INTEREST

Speroni v. Borough of Point Pleasant Beach, A-5356-12T3, A-5357-12T3, A-5430-12T3, A-5431-12T3, A-5760-12T3, A-3770-13T3 (July 6, 2015)

https://scholar.google.com/scholar_case?case=8985668849545105143&q=5431-12T3&hl=en&as_sdt=4,31

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Councilman who was a licensed realtor and owner of the real estate business that had several rental units that would benefit from a proposed parking ordinance, had a disqualifying conflict of interest in voting for the ordinance. He argued for the passage of the ordinance on the ground that it would make properties easier to rent and “acknowledged that would receive commissions on those rentals, and could potentially financially benefit from the ordinances.”

Committee to Stop Mahwah Mall v. Township of Mahwah, A-0671-13T1 (July 20, 2015)

https://scholar.google.com/scholar_case?case=3442948808372297078&q=A-0671-13T1+&hl=en&as_sdt=4,31

Councilman, who served for one year on the school foundation development committee, did not have a disqualifying conflict of interest when he voted for an ordinance that benefitted a developer that gave yearly contributions to the foundation. His service as a member of the committee “does not per se indicate he solicited or was directly involved with the solicitation of funds” from the developer.

Councilman, whose wife was the Township’s Recreation Director, did not have a disqualifying conflict when he voted on an ordinance that allowed for a development that included a recreational component where there was no evidence that the wife was aware of the recreational component or would receive any tangible benefit from the same.

Matula v. Township of Berkeley Heights, A-5705-12T1 (Aug. 21, 2015)

https://scholar.google.com/scholar_case?case=629559341928275057&q=matula&hl=en&as_sdt=4,31

“In a conflict of interest dispute where an organizational association is the source of the dispute, the inquiry is twofold: (1) does the organization or church have an interest in the outcome of a proceeding, and (2) is the organization's interest in the outcome of a proceeding imputed to the officials in the local government? Organizations that are either applicants or objectors clearly have interests in the outcome of a proceeding. While the outer boundaries of what level of involvement will impute an organization's interests to an official have not yet been defined, at the very least an individual ‘who holds, or who will imminently hold, a position of substantive leadership in an organization reasonably is understood to share its interest in the outcome of a zoning dispute.’”

Mollica v. Township of Bloomfield, A-2467-14T3 (Oct. 17, 2016)

https://scholar.google.com/scholar_case?case=13779287068638379613&q=A-2467-14T3+&hl=en&as_sdt=4,31

Councilman who owned a home bordering property that the Township Council voted to acquire had a disqualifying conflict of interest. “[T]he remedy is that the Ordinance must be invalidated.”

Matula v. Township of Berkeley Heights, A-4470-15T1 (Sept. 11, 2018)

https://scholar.google.com/scholar_case?case=6122351775343356886&q=A-4470-15T1+&hl=en&as_sdt=4,31

The general rule is that members of a church congregation are conflicted from taking action that would impact their church. A party challenging municipal action must demonstrate that the members of the church “were sufficiently active in their congregation and aware of its interest in the [subject matter] that the church’s interest could justly be imputed to them.”

Academy Hill Inc., v. City of Lambertville, A-4674-18 (April 20, 2021)

https://scholar.google.com/scholar_case?case=223136938119574969&q=academy+v.+lambertville&hl=en&as_sdt=6,31&as_ylo=2021

Under the appearance of impropriety standard, where a municipality’s mayor is the director of development for a land development company, that fact alone, is not sufficient to prove a violation

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of the Local Government Ethics Law or the Municipal Land Use Law with respect to the mayor's official action over land development in the municipality.

Pinelands Pres. Alliance v. Burlington County Bd. of Chosen Freeholders, A-4192-19 (Oct. 28, 2021)

https://scholar.google.com/scholar_case?case=14274469705223240972&q=pinelands+preservation+alliance+v.+burlington&hl=en&as_sdt=6,31&as_ylo=2021

Members of the County Board of Chosen Freeholders did not have a conflict of interest when voting on a resolution that authorized the county engineer to close county roads that would be affected by a gas pipeline. Although their employer, a trade union, had urged the approval of the gas pipeline in other fora, the pipeline had already been approved and therefore the union would not derive any benefit from the road closure.

The Ridge at Back Brook, LLC v. The E. Amwell Twp. Planning Bd., A-3710-19 (July 20, 2021)

https://scholar.google.com/scholar_case?case=15369759742027698749&q=in+ridge+at+back+brook&hl=en&as_sdt=6,31&as_ylo=2021

A Mayor's public statements directed at property owner regarding its helistop application and tax appeals, as well as unsubstantiated corruption allegations, followed by the drafting and passage of an ordinance clearly meant to negatively impact the property owner's golf course operations, viewed objectively, present circumstances that could reasonably be interpreted to show the Mayor's personal bias that required recusal under the Local Government Ethics Law with respect to the proposed and adopted ordinance.

VNO 1105 State Hwy 36, LLC v. Twp. of Hazlet, A-5070-18, A-0153-19 (Sept. 20, 2021)

https://scholar.google.com/scholar_case?case=17108527882479316790&q=VNO+1105&hl=en&as_sdt=6,31&as_ylo=2021

No tax law or regulation, including the Local Government Ethics Law, expressly bars an assessor in one municipality from testifying in Tax Court for a private taxpayer from another town.

Twp. of W. Caldwell v. Carant Ltd. P'ship, A-3536-19 (April 16, 2021)

https://scholar.google.com/scholar_case?case=1998345284936111575&q=west+caldwell+v.+carant&hl=en&as_sdt=6,31

County construction board of appeals is not permitted to transfer an appeal to another county board even where conflicts and timing constraint create a situation where it is not possible to have five (5) voting members on an appeal. The remedies provided by N.J.A.C. 5:23A-2.2(c) are limited to: (i) a mandatory adjournment or (ii) a continuation of the hearing before the construction board, provided neither party requested an adjournment and a quorum is present. "After exhausting its administrative remedies by securing a denial from the [County] Board, [the applicant] should have appealed the Township construction official's decision to the Law Division in an action in lieu of prerogative writs under Rule 4:69-6, rather than the [County] Board transferring the matter to yet another county construction board of appeals."

In the Matter of the Application of the Borough of Englewood Cliffs, A-3119-20 (July 15, 2022)

https://scholar.google.com/scholar_case?case=16326638372729882728&q=in+the+Matter+of+the+Application+of+the+Borough+of+Englewood+Cliffs&hl=en&as_sdt=6,31&as_ylo=2022

Where two (2) council members had interest in property located within two hundred (200) feet of a property proposed to be placed in the municipality's fair share plan, the two (2) council members could vote on a settlement agreement with Fair Share Housing Center that included the inclusion of said property. The Court reasoned that no conflict existed because the settlement agreement was municipality-wide and not limited to one particular property, thus no council-

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member had an interest that was any different than a municipal resident.

State v. O'Donnell, 471 N.J. Super. 360 (App. Div. 2022)

https://scholar.google.com/scholar_case?case=273217486447875679&q=State+v.+O%27Donnell&hl=en&as_sdt=6,31&as_ylo=2022

N.J.S.A. 2C:27-2 imposes criminal liability on "person[s]" who offer or accept from another "[a]ny benefit as consideration" for, among many things, the performance of official duties. An unsuccessful candidate for public office who allegedly agreed to accept "street money" from an attorney in exchange for becoming the city's tax attorney may still be found guilty under the statute, notwithstanding the fact that he was an unsuccessful candidate for public office.

In the Matter of the Twp of Bordentown, 471 N.J. Super. 196 (March 14, 2022)

https://scholar.google.com/scholar_case?case=4575842921858595623&q=bordentown&hl=en&as_sdt=6,31&as_ylo=2022

Where a court's affordable housing special master, and her planning firm, are simultaneously representing dozens of municipalities with respect to various affordable housing matters, but neither the special master or her planning have a financial interest in the subject case, same does not constitute a conflict of interest.

Borough of Englewood Cliffs v. Surenian, A-3441-20 (Nov. 2, 2022)

https://scholar.google.com/scholar_case?case=2240768059719122980&q=Englewood+Cliffs+v.+Surenian+&hl=en&as_sdt=6,31

An attorney's file is the client's property and absent a valid imposition of a retaining lien, a client is entitled to a return of its file and papers on demand. See RPC 1.16(d).

Armstead v. Local Fin. Bd., A-3476 -21 (Jan. 18 2024)

https://scholar.google.com/scholar_case?case=7383857373278615532&q=Armstead+v.+Local+&hl=en&as_sdt=6,47&as_ylo=2024

Local government officer must be aware of the conflict of interest for recusal to be required pursuant to N.J.S.A. 40A:9-22.5(d). Here, where two local governing body members, who were Union County employees, were unaware that the individual that they appointed as prosecutor was also a Union County commissioner, there was no requirement to recuse under the LGEL.

SJ 660 LLC v. Borough of Edgewater, A-0788-22 (Aug. 13, 2024)

https://scholar.google.com/scholar_case?case=6188024727846132766&q=SJ+660&hl=en&as_sdt=4,31,131

The fact that a Board's planner had previously worked for the proposed redeveloper was not a conflict that would invalidate a property's designation as an area in need of redevelopment because the Board, and not the planner, actually took action to recommend a parcel be deemed an area in need.

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3. CONSTITUTIONAL REQUIREMENTS

A. FREE SPEECH/RELIGION/ASSOCIATION

The Berg Agency v. Twp. of Maplewood, 163 N.J. Super. 542 (Law Div. 1978)

http://scholar.google.com/scholar_case?case=4494898553074238198&q=163+N.J.+Super.+542+&hl=en&as_sdt=2,31

Real estate brokers signs

State v. Miller, 83 N.J. 402 (1980)

http://scholar.google.com/scholar_case?case=17953789815357784781&q=83+N.J.+402+&hl=en&as_sdt=2,31

Sign regulations

Trombetta v. Atlantic City, 181 N.J. Super. 203 (Law Div. 1981), *aff'd o.b.*, 187 N.J. Super. 351 (App. Div. 1982)

http://scholar.google.com/scholar_case?case=2752593455278405322&q=181+N.J.+Super.+203+&hl=en&as_sdt=2,31

Farhi v. Deal Bor. Comm'rs, 204 N.J. Super. 575 (Law Div. 1985)

http://scholar.google.com/scholar_case?case=3578630194639289943&q=Farhi+v.+Deal+Bor.+Comm%E2%80%99rs&hl=en&scisbd=2&as_sdt=2,31

Religion

East Wind Realty v. Wall Bd. of Adjust., 218 N.J. Super. 412 (App. Div. 1987)

http://scholar.google.com/scholar_case?case=6152998921861187049&q=218+N.J.+Super.+412+&hl=en&as_sdt=2,31

L.I.M.A. Partners v. Borough of Northvale, 219 N.J. Super. 512 (App. Div. 1987)

http://scholar.google.com/scholar_case?case=1573740582061849823&q=219+N.J.+Super.+512+&hl=en&as_sdt=2,31

Satellite dish antennas implicate First Amendment rights

Jehovah's Witnesses v. Woolwich Twp., 220 N.J. Super. 381 (Law Div. 1987)

http://scholar.google.com/scholar_case?case=15571782802411586565&q=220+N.J.+Super.+381+&hl=en&as_sdt=2,31

Religion

Bell v. Stafford, 110 N.J. 384 (1988)

http://scholar.google.com/scholar_case?case=4324806710263202158&q=Bell+v.+Stafford&hl=en&scisbd=2&as_sdt=2,31&as_ylo=1988&as_yhi=1988

Signs

State v. Malcolm Konner Chevrolet, 226 N.J. Super. 692 (Law Div. 1988)

http://scholar.google.com/scholar_case?case=16647805293010580374&q=State+v.+Malcolm+Konner+Chevrolet&hl=en&scisbd=2&as_sdt=2,31&as_ylo=1988&as_yhi=1988

Flags

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Gannett Satellite Information Network v. Township of Pennsauken, 709 F. Supp. 530 (D.N.J. 1989)
http://scholar.google.com/scholar_case?case=9029754814279565317&q=Gannett+Satellite+Information+Network+v.+Township+of+Pennsauken&hl=en&scisbd=2&as_sdt=2,31

News racks

Burlington Assem. of God v. Zoning Bd., 238 N.J. Super. 634 (Law Div. 1989)
http://scholar.google.com/scholar_case?case=17893007462698168509&q=Burlington+Assem.+of+God+v.+Zoning+Bd&hl=en&scisbd=2&as_sdt=4,31

Church sponsored radio towers implicate both First Amendment free speech and freedom of religion

Lakewood Residents Association v. Congregation Zichran Schneur, 239 N.J. Super. 89 (Law Div. 1989)
http://scholar.google.com/scholar_case?case=10969181943765043375&q=239+N.J.+Super.+89+&hl=en&as_sdt=2,31

Citizens United for Free Speech II v. Long Beach Twp. Bd. of Comm'rs, 802 F. Supp. 1223 (D.N.J. 1992)
http://scholar.google.com/scholar_case?case=8730272933928101660&q=802+F.Supp.+1223+&hl=en&as_sdt=2,31

Kali Bari Temple v. Board of Adjust., Twp. of Readington, 271 N.J. Super. 241 (App. Div. 1994)
http://scholar.google.com/scholar_case?case=16095989591555621606&q=271+N.J.+Super.+241+&hl=en&as_sdt=2,31

Macedonian Church v. Planning Bd., Randolph, 269 N.J. Super. 562 (App. Div. 1994)
http://scholar.google.com/scholar_case?case=2504244235028788950&q=Macedonian+Church+v.+Planning+Bd.,+Randolph&hl=en&scisbd=2&as_sdt=2,31

Church use may be subject to reasonable regulations regarding traffic and parking.

Pica v. Sarno, 907 F. Supp. 795 (D.N.J. 1995)
http://scholar.google.com/scholar_case?case=15914975429649996075&q=Pica+v.+Sarno&hl=en&scisbd=2&as_sdt=3,31

Signs

966 Video v. Mayor & Twp. Committee, 299 N.J. Super. 501 (Law Div. 1995)
http://scholar.google.com/scholar_case?case=12744511970181025788&q=966+Video+v.+Mayor+%26+Tp.+Committee&hl=en&scisbd=2&as_sdt=2,31

Intervine Outdoor Advertising, Inc. v. Gloucester City Zoning Bd., 290 N.J. Super. 78 (App. Div. 1996), *certif. denied*, 146 N.J. 68 (1996), *cert. denied*, 117 S.Ct. 764 (1997)
http://scholar.google.com/scholar_case?case=3443450104759024747&q=Intervine+Outdoor+Advertising,+Inc.+v.+Gloucester+City+Zoning+Bd&hl=en&scisbd=2&as_sdt=2,31

Portion of zoning ordinance regulating political content of billboards is a content-based as opposed to content-neutral regulation, and therefore unconstitutional.

State v. Calabria, Gillette Liquors, 301 N.J. Super. 96 (Law Div. 1997)
http://scholar.google.com/scholar_case?case=18168494433356031576&q=State+v.+Calabria,+Gillette+Liquors&hl=en&scisbd=2&as_sdt=2,31

Neon signs

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Township of Saddle Brook v. A.B. Family Center, Inc., 156 N.J. 587 (1999)

http://scholar.google.com/scholar_case?case=12883154077786518608&q=Saddle++Brook+v.+A.B.+Family+Center,+Inc&hl=en&scisbd=2&as_sdt=4,31

Statute restricting available locations for sexually oriented businesses is not unconstitutional merely because no locations are available for such business within that municipality. The constitutionality of the statute as applied depends on whether there are adequate alternative locations for the business within the relevant market area.

Twp. of Pennsauken v. Schad, 160 N.J. 156 (1999)

http://scholar.google.com/scholar_case?case=5327535876374756078&q=Twp.+of+Pennsauken+v.+Schad&hl=en&scisbd=2&as_sdt=4,31&as_ylo=1999&as_yhi=1999

Municipal sign ordinance was not unconstitutional.

United Prop. Owners Assoc. of Belmar v. Borough of Belmar, 343 N.J. Super. 1 (App. Div. 2001), *certif. denied*, 2001 N.J. LEXIS 1535 (Dec. 5, 2001)

http://scholar.google.com/scholar_case?case=12522352642134932036&q=United+Prop.+Owner+s+Assoc.+of+Belmar++v.+Borough+of+Belmar&hl=en&scisbd=2&as_sdt=2,31

Congregation Kol Ami v. Abington Township, 309 F.3d 120 (3d Cir. 2002)

http://scholar.google.com/scholar_case?case=15863931619920316510&q=Congregation+Kol+Ami+v.+Abington+Township&hl=en&as_sdt=2,31

Court can't make blanket determination that religious institutions are inherently compatible with family or residential uses.

Secure Heritage v. City of Cape May, 361 N.J. Super. 281, (App. Div.), *certif. den.*, 178 N.J. 32 (2003)

http://scholar.google.com/scholar_case?case=9113481217344286652&q=Secure+Heritage+v.+City+of+Cape+May,&hl=en&as_sdt=2,31

It was a denial of equal protection not to allow lodging industry to transfer beach passes; limiting the number of passes per person was constitutional; and the matter was remanded as to the reasonableness of the fees for the maintenance of the beaches.

Barker's Trailer Court v. Lakehurst, 371 N.J. Super. 432 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=3285307647205045296&q=Barker%E2%80%99s+Trailer+Court+v.+Lakehurst&hl=en&as_sdt=2,31

Mobile home park was not a qualified private community which would have a statutory right to receive solid waste collection services from borough, but borough's failure to provide garbage collection violated equal protection.

House of Fire Christian Church v. Zoning Bd. of Adjustment of City of Clifton, 379 N.J. Super. 526 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=11109685254467004080&q=House+of+Fire+Christian+Church+v.+Zoning+Bd.+of+Adjustment+of+City+of+Clifton&hl=en&as_sdt=2,31

To prevail on RLUIPA claim, plaintiff has the initial burden of demonstrating that the land use regulation actually imposes a substantial burden on religious exercise. If plaintiff makes such a showing, then burden shifts to local government to demonstrate that challenged regulation is in furtherance of compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

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St. Joseph's Korean Catholic Church v. Zoning Bd. of Adjustment of Rockleigh, A-6860-03T2 (May 16, 2006); 2006 W.L. 1320089 (2006), appeal dismissed 191 NJ 308 (2007)

Plaintiff failed to sustain its burden that land use ordinances or board's decision to deny application constituted a substantial burden on its religious exercise where houses of worship are permitted conditional uses in the public zone. Plaintiff's contention that the public zone contained land which was owned by the town and county and unavailable was not supported by sufficient evidence and no evidence of any attempt to lease or purchase any land in that zone was submitted. The fact that there is a scarcity of affordable land available for development, and that it took four and a half years to find the land, does not impose a substantial burden on religion.

Salem Management Co. v. Twp. of Lopatcong, 387 N.J. Super. 573 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=7956970064640989603&q=Salem+Management+Co.+v.+Twp.+of+Lopatcong&hl=en&as_sdt=2,31

Rent control ordinance presumed to be valid and application of rent control to vacant units was rational and constitutionally sustainable.

Lighthouse Institute for Evangelism, Inc. v. City of Long Branch, 510 F.3d 253 (3rd Cir. 2007)

http://scholar.google.com/scholar_case?case=6076718229968306598&q=Lighthouse+Institute+for+Evangelism,+Inc.+v.+City+of+Long+Branch&hl=en&as_sdt=2,31

A plaintiff raising a claim under the Equal Terms provision, Sec. (2)(b)(1), of RLUIPA does not need to show that the challenged land-use regulation imposes a "substantial burden" on its exercise of religion. RLUIPA's Equal Terms provision requires the court to review the challenged regulation's objectives: a regulation will violate the Equal Terms provision only if it treats religious assemblies or institutions less well than secular assemblies or institutions that are similarly situated as to the regulatory purpose. A plaintiff asserting a claim under the RLUIPA Equal Terms provision must show (1) it is a religious assembly or institution, (2) subject to a land use regulation, which regulation (3) treats the religious assembly on less than equal terms with (4) a nonreligious assembly or institution (5) that causes no lesser harm to the interests the regulation seeks to advance.

State v. DeAngelo, 197 N.J. 478 (2009)

http://scholar.google.com/scholar_case?case=1495838224015625727&q=State+v.+DeAngelo&hl=en&as_sdt=4,31

Municipal sign ordinance violates the First Amendment right to free speech and is over broad where it prohibits a union from displaying as part of a labor protest a large inflatable rat, which is a symbol of labor unrest, but would allow such a sign as part of a grand opening. It is therefore content based, and favors commercial speech over other speech. As it does not advance a compelling governmental interest, and is not narrowly tailored to achieve its objective, it is invalid.

Twp. of Cinnaminson v. Bertino, 405 N.J. Super. 521 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=3620720482825352839&q=Twp.+of+Cinnaminson+v.+Bertino&hl=en&as_sdt=4,31

"Laws 'enacted for the purpose of restraining speech on the basis of its content presumptively violate the First Amendment.'" *Citing, City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986). "A statute regulating the time, place, or manner of protected speech is permissible so long as the statute: 1) does not restrain speech on the basis of its content; 2) serves a substantial governmental interest; and 3) does not unreasonably limit alternative avenues of communication." The generalized invocation of "common sense" is not sufficient to meet the burden of establishing that an ordinance promotes a substantial governmental interest. "The evidence must provide a rational, objective basis from which a reviewing court can ascertain the existence of a substantial

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governmental interest underpinning the legislation.” The municipality has the burden of demonstrating that available alternative avenues of communication are left open to defendants.

Borough of Sayreville v. 35 Club, L.L.C., 416 N.J. Super. 315 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=7971796139191464698&q=Borough+of+Sayreville+v.+35+Club&hl=en&as_sdt=2,31

The fact that a sexually oriented business is conducted within 1000 feet of a public park and/or residential zone in violation of state statute “only begins the analysis required to determine whether such restrictions, as applied, are constitutional. As applied to the defendant, the constitutionality will depend on whether there are adequate alternative channels of communication within the relevant market area. There must be an in depth review of the various zoning schemes of the alternative sites to see if they truly are available. “Neither the residents of Sayreville nor our State’s citizens as a whole have an electoral voice in the affairs of Staten Island. The abridgment of constitutionally protected speech, no matter how seemingly unpopular or morally undesirable it may be, cannot be sustained when the alternative suitable sites for the expression of that speech are located outside the electoral reach of the people affected by such abridgment.” With respect to the internet as an alternative forum, the “experience offered by Club 35 cannot be completely replicated in cyberspace.”

D. Russo, Inc. v. Township of Union, 417 N.J. Super. 382 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=3615320444583381177&q=D.+Russo,+Inc.+v.+To wnship+of+Union&hl=en&as_sdt=2,31

A party who brings an action under the New Jersey Civil rights Act, N.J.S.A. 10:6-1 to -2, that is shown to have been a “catalyst” for the cessation of conduct alleged to violate the Act may qualify as a prevailing party entitled to an award of attorney’s fees, even though the action is dismissed as moot.

Masdabrook Commons Homeowners’ Association, v. Khan, A-6106-08T3 (Sept. 1, 2010) affirmed, 210 N.J. 482 (2012)

http://scholar.google.com/scholar_case?case=12733277962969839099&q=A-6106-08T3+&hl=en&as_sdt=2,31

Condominium association’s sign regulation unconstitutional where it imposes a total ban upon the placement of signs, other than one “For Sale” sign on the interior of the unit. The court finds that the regulation is not content neutral as it favors commercial speech and regulates the free speech rights of residents within their units.

D. Russo, Inc. v. Township of Union, 417 N.J. Super. 384 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=12417340742684835987&q=D.+Russo,+Inc.+v.+T ownship+of+Union&hl=en&as_sdt=4,31

A party who brings an action that is shown to have been a “catalyst” for the cessation of conduct alleged to violate the Civil Rights Act may qualify as a prevailing party entitled to an award of attorney’s fees.

D. Russo Inc. v. Romankow, A-3483-10T1 (Dec. 2, 2011), certif. denied 210 N.J. 217 (2012)

http://scholar.google.com/scholar_case?case=10319336110557504019&q=D.+Russo+Inc.+v.+R omankow&hl=en&as_sdt=4,31

Challenge to constitutionality of N.J.S.A. 2C:34-7, which governs where sexually oriented businesses can be located, rejected because plaintiffs’ rights are protected - there are alternative communicative sites reasonably available to plaintiffs within the relevant area. Reasonable alternative sites for a protected activity need not be commercially viable - the test is whether sexually oriented businesses were prohibited in the relevant municipalities, under either state or

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local laws, as well as whether there was public access to these sites and whether there were physical impediments to their development.

Borough of Sayreville v. 35 Club, L.L.C., 208 N.J. 491 (2012)

http://scholar.google.com/scholar_case?case=15107671571866619926&q=Borough+of+Sayreville+v.+35+Club&hl=en&as_sdt=2,31

In evaluating whether there are sufficient alternative avenues of communication to sustain a municipality's refusal to permit a sexually-oriented business to operate at a particular site, a trial court may consider a relevant market that includes alternatives that are located in a neighboring state.

E & J Equities, LLC v. Board of Adjustment of the Township of Franklin, 437 N.J. Super. 490 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=6727606007014860209&q=E%26J+Equities&hl=en&as_sdt=4,31

Digital billboard ban was a content-neutral regulation justified on Township's interest in aesthetics and traffic safety. "[T]ime, place or manner restrictions are valid, provided they satisfy three criteria: (1) they 'are justified without reference to the content of the regulated speech,' (2) 'they are narrowly tailored to serve a significant governmental interest,' and (3) 'they leave open ample alternative channels for communication of the information.'" *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

Freedom From Religion Foundation v. Morris County Board of Chosen Freeholders, 232 N.J. 543 (2018)

https://scholar.google.com/scholar_case?case=11630993482913454439&q=079277&hl=en&as_sdt=4,31

The Religious Aid Clause, N.J. Const. art. 1, ¶ 3, bars the use of taxpayer funds to repair and restore churches and such prohibition does not violate the Free Exercise Clause of the United States Constitution.

Turco v. City of Englewood, No. 17-3716 (3rd Cir., Aug. 19, 2019)

https://scholar.google.com/scholar_case?case=17616594257938054159&q=No.+17-3716&hl=en&as_sdt=3,31

"Intermediate scrutiny" required in review of ordinance where the First Amendment protects the speech at issue and the restrictions are content-neutral." To withstand scrutiny, the ordinance must be "narrowly tailored to serve a significant governmental interest." Party challenging an ordinance as overbroad bears the burden of demonstrating, "from the text of [the law], and from actual fact," that substantial overbreadth exists." Summary judgment invalidating ordinance that created buffer zone around abortion clinic vacated where "record is essentially devoid of any factual development concerning the 'legitimate sweep' of the buffer zone."

Reagan National Advertising v. City of Austin, 972 F.3d 696 (5th Cir. 2020), cert. granted, 141 S.Ct. 2849 (2021)

https://scholar.google.com/scholar_case?case=2350311351689342139&q=national+advertising+of+austin+v+city+of+austin&hl=en&as_sdt=6,31&as_ylo=2021

Sign code that permits on-premises sign owners to install digital sign faces that allow the copy to be changed electronically, while off-premises sign owners are forbidden from using this technology is content-based and subject to strict scrutiny. The Sign Code defines off-premises signs by their purpose: advertising or directing attention to a business, product, activity, institution, etc., not located at the same location as the sign. "To determine whether a sign is 'off-premises' and

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therefore unable to be digitized, government officials must read it. This is an ‘obvious content-based inquiry,’ and it ‘does not evade strict scrutiny’ simply because a location is involved.”

Khal Anshei Tallymawr Inc. v. Twp. of Toms River, 21-2716 (Dec. 3, 2021)

<https://casetext.com/case/khal-anshei-tallymawr-inc-v-twp-of-toms-river>

Defendant Township revised its zoning code to make places of worship a prohibited use in the subject zone and Plaintiff appealed a zoning permit denial for same to the Zoning Board of Adjustment, arguing that the prohibition was unlawful under RLUIPA and NJLAD. The Board denied the appeal and Plaintiff challenged same, along with the code itself. Subsequent to the appeal, the Township revised its code to make places of worship conditionally permitted in the subject zone. On appeal, the District Court held that, because the suite included a claim for damages, regardless of the code change, the matter was not moot. The Court further held that Plaintiff’s request to reverse the Board’s permit denial was not ripe because amended code now conditionally permits places of worship and the Plaintiff could apply for same.

Houston Community College Systems v. Wilson, 142 S.Ct. 1253 (2022)

https://scholar.google.com/scholar_case?case=13097141860058516253&q=Houston+Community+College+Systems+v.+Wilso&hl=en&as_sdt=6,31

An elected official does not possess an actionable First Amendment claim arising from being censured by the board to which he was elected. “The First Amendment surely promises an elected representative like Mr. Wilson the right to speak freely on questions of government policy, but it cannot be used as a weapon to silence other representatives seeking to do the same. The censure at issue before us was a form of speech by elected representatives concerning the public conduct of another elected representative. Everyone involved was an equal member of the same deliberative body.”

City of Austin v. Reagan National Advertising, 142 S. Ct. 1464 (2022)

https://scholar.google.com/scholar_case?case=13828530541825443786&q=City+of+Austin+v.+Reagan+National+Advertising&hl=en&as_sdt=6,31

City’s prohibition against digitizing off-premises signs, but not on-premises signs, did not violate the First Amendment’s Free Speech Clause. It was facially content-neutral, did not single out any topic or subject matter for differential treatment, and the message on the sign mattered only to the extent that it informed the sign’s relative location.

Garden State Outdoor, LLC v. Egg Harbor Twp, A-2830-23 (June 10, 2025)

https://scholar.google.com/scholar_case?case=17507041181211440283&q=Garden+State+Outdoor,+LLC+v.+Egg+Harbor&hl=en&as_sdt=6,47&as_vlo=2025

When a governmental entity restricts speech, it must do more than simply invoke government interests that have been recognized over time as substantial. In other words, there must be a modicum of support for the invoked government interest. Here, the Appellate Division held that the lower court put undue weight on the generic ordinance language and reversed its upholding of of said ordinance against a constitutional challenge.

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B. DUE PROCESS & EQUAL PROTECTION

WHS Realty v. Town of Morristown, 146 N.J. 627 (1996)

http://scholar.google.com/scholar_case?case=349144347942712096&q=WHS+Realty+v.+Town+of+Morristown&hl=en&as_sdt=2,31

State v. Baker, 81 N.J. 99 (1979)

http://scholar.google.com/scholar_case?case=7489332430906079423&q=State+v.+Baker&hl=en&as_sdt=2,31

Cherry Hill Twp. v. Oxford House, 263 N.J. Super. 25 (App. Div. 1993)

http://scholar.google.com/scholar_case?case=16370232202638049859&q=Cherry+Hill+Tp.+v.+Oxford+House&hl=en&as_sdt=2,31

United Prop. Owners Assoc. of Belmar v. Borough of Belmar, 343 N.J. Super. 1 (App. Div. 2001), certif. denied, 2001 N.J. LEXIS 1535 (Dec. 5, 2001)

http://scholar.google.com/scholar_case?case=12522352642134932036&q=United+Prop.+Owner+s+Assoc.+of+Belmar+v.+Borough+of+Belmar&hl=en&as_sdt=2,31

Summer beach rentals.

Congregation Kol Ami v. Abington Township, 309 F.3d 120 (3d Cir. 2002)

http://scholar.google.com/scholar_case?case=15863931619920316510&q=Congregation+Kol+Ami+v.+Abington+Township&hl=en&as_sdt=2,31

United Artists Theatre Circuit, Inc. v. Twp. of Warrington, 316 F.3d 392 (3d Cir. 2003)

http://scholar.google.com/scholar_case?case=5939419513288487093&q=United+Artists+Theatre+Circuit,+Inc.+v.+Twp.+of+Warrington&hl=en&as_sdt=2,31

Standard for determining whether a municipal land use decision violated a plaintiff's substantive due process rights is whether the action "shocks the conscience."

Secure Heritage, Inc., et al. v. City of Cape May, et al., 361 N.J. Super. 281 (App. Div. 2003), certif. denied, 178 N.J. 32 (2003)

http://scholar.google.com/scholar_case?case=9113481217344286652&q=361+N.J.+Super.+281+&hl=en&as_sdt=2,31

Sale of seasonal beach tags.

Singer v. Twp. of Princeton, 373 N.J. Super. 10 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=13029346906391511510&q=Singer+v.+Twp.+of+Princeton&hl=en&as_sdt=2,31

Township ordinance prohibiting knowing feeding of wild deer did not violate due process.

Infinity Broadcasting Corp. v. New Jersey Meadowlands Com'n, 377 N.J. Super. 209 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=15790684310760630230&q=Infinity+Broadcasting+Corp.+v.+New+Jersey+Meadowlands&hl=en&as_sdt=2,31

Claims of due process violation for adoption of amendments to a redevelopment agreement without making specific findings about impact of amendments on appellants rejected by court. When the administrative determination in question is quasi-legislative, rather than quasi-adjudicative, such as a municipality's adoption of a zoning ordinance or a redevelopment plan, overturning the decision requires it to be not merely "debatable," but arbitrary or capricious, contrary to law, or

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unconstitutional. Principles of due process require an administrative agency to provide some form of hearing, meaning an opportunity to be heard at a meaningful time and in a meaningful manner, before a person is finally deprived of a property interest. This is not a requirement for a quasi-judicial, contested case, or hearing – agency is not required to act on the basis of findings of fact and conclusions of law supported by the record. Due process requires only the publication of notice and the holding of public hearings.

832 Corporation v. Gloucester Twp., 404 F. Supp. 2d 614 (D.N.J. 2005)

http://scholar.google.com/scholar_case?case=475111464205037896&q=832+Corporation+v.+Gloucester+Twp&hl=en&as_sdt=2,31

Challenge to ordinance which created a comprehensive licensing scheme to regulate adult establishments fails. Protection of privacy encompassed in the constitutional right to due process does not extend to sexual activities conducted in public places. Sexual conduct is not protected expression. Plaintiff who has not engaged in some form of expressive conduct cannot bring a facial challenge to a licensing ordinance that may impact the First Amendment rights of other parties not before the court. Ordinance is not rendered unconstitutional by the omission of a definition of “completed application.”

Rezem Family Association, LP v. The Bor. of Millstone, 423 N.J. Super. 103 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=16765174383597068340&q=Rezem+Family+Association,+LP+v.+The+Bor.+of+Millstone&hl=en&as_sdt=2,31

Claim of substantive due process violation requires both government conduct that “shocks the conscience” and exhaustion of administrative remedies.

New Providence Apartments Co., L.L.C. v. Mayor and Council of Borough of New Providence, 423 N.J. Super. 210 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=16592684491371540244&q=New+Providence+Apartments+Co.,+L.L.C.+v.+Mayor+and+Council+of+Borough+of+New+Providence&hl=en&as_sdt=2,31

A municipal ordinance that imposes an annual fee per apartment unit for sewer service on owners of apartment houses, but does not impose this fee on owners of single-family houses, complies with the statutory mandate that sewer fees shall be “uniform and equitable for the same types and classes of use and service” and the equal protection guarantees of the U.S. and N.J. constitutions, because the fee is reasonably designed to reduce the disparity in the contributions to the costs of sewer service derived from real estate taxes paid by apartment owners and owners of single-family houses. “Under the equal protection guarantees of both the [US and NJ] Constitutions, the only question is whether a legislative classification related to the imposition of a tax ‘bear[s] some rational relationship to legitimate state purposes,’ or objective.

Vurimindi v. City of Philadelphia, 521 Fed. Appx. 62 (3d Cir. 2013)

http://scholar.google.com/scholar_case?case=4744958885220960562&q=Vurimindi+v.+City+of+Philadelphia,&hl=en&as_sdt=3,31

Plaintiff, a native of India who practices Hindu, was not denied procedural or substantive due process or equal protection under the laws. “Assuming arguendo that Vurimindi has been deprived of a protected property interest, . . . he failed to state a procedural due process claim. . . . [H]e has pursued some, but not all, of the administrative and state court remedies available to him to challenge the defendants’ allegedly improper bad acts. Vurimindi’s failure to avail himself of all of the available state court appeals, . . . does not suggest that the City’s post-deprivation remedies are inadequate.”

“To state a substantive due process claim, Vurimindi must show that the City Defendants deprived him of a protected property interest and that such deprivation ‘shocks the conscience.’ [citations

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omitted]. "[O]nly the most egregious official conduct" shocks the conscience. [citation omitted]. What is shocking depends on the factual context, [citation omitted], but, in the land use context, the standard is sufficiently high to 'avoid converting federal courts into super zoning tribunals.' *Eichenlaub v. Twp. of Indiana*, 385 F.3d 274, 285 (3d Cir. 2004) [citation omitted]. In *Eichenlaub*, we held that allegations of inconsistent application of zoning requirements, unnecessary inspections, delaying permits and approvals, improperly increasing tax assessments, and 'malign[ing] and muzzl[ing]' a property owner were not enough to shock the conscience, particularly where '[t]he local officials are not accused of seeking to hamper development in order to interfere with otherwise constitutionally protected activity at the project site, or because of some bias against an ethnic group.' We noted that complaints related to zoning requirements, inspections, and permits were 'frequent in [land use] planning disputes' and that, while adversely affected property owners can couch such complaints as abuses of legal authority, such complaints do not rise to the level of substantive due process violations."

"To state an equal protection claim, Vurimindi must demonstrate that he received different treatment than other similarly situated persons and that the disparate treatment was based on his protected class status. [citation omitted] To be 'similarly situated,' parties must be 'alike in all relevant aspects.' [citation omitted]. Although Vurimindi alleged that he was treated differently from other developers who have purchased property in the City, he did not adequately identify any such person in his lengthy complaint. Absent specific allegations as to the allegedly similarly situated parties, he has not made plausible the conclusion that those parties exist and that they are like him in all relevant aspects. Accordingly, Vurimindi failed to state an equal protection claim."

Simmermon v. Gabbianelli, 932 F.Supp.2d 626 (D.N.J. 2013)

http://scholar.google.com/scholar_case?case=15268610300401236811&q=simmermon+&hl=en&as_sdt=3,31

To demonstrate an equal protect claim for discriminatory or selective enforcement of zoning laws, "[p]laintiffs must show two elements . . . : they must show that a reasonable jury could conclude that they were treated differently from other similarly situated individuals and that a reasonable jury could conclude that this selective treatment was based on an arbitrary factor or intended to prevent the exercise of a fundamental right." This test does not require plaintiffs to prove that there is no rational basis for the difference in treatment.

Kiejdan Family, LLC v. Borough of Woodbine, A-3178-12T2 (May 26, 2015)

https://scholar.google.com/scholar_case?case=10026141885461299722&q=Kiejdan&hl=en&as_sdt=4,31

A municipality that provides solid waste collection services to multifamily dwellings, rather than reimbursing them for the cost of providing this service under N.J.S.A. 40:66-1.3(a), "must be 'designed to enhance rather than undermine public safety, health and welfare.' . . . [I]f a municipality insists on curbside pickup at a multifamily, garden apartment complex, and the owner has made a clear showing that the municipality's 'curbside' collection method as to that complex bears no rational relation to the legislative policy of 'shielding the public from the hazards associated with accumulating refuse[,] the municipality's policy as applied to such complex is a violation of due process, arbitrary and not a viable option under N.J.S.A. 4:66-1.3(a)."

Patterson v. Strippoli, 639 Fed. Appx. 137 (3rd Cir., Jan. 20, 2016)

https://scholar.google.com/scholar_case?case=622587758287222310&q=patterson+v+strippoli&hl=en&as_sdt=3,31

An interracial couple had adduced sufficient evidence to support an equal protection claim based upon the alleged selective prosecution of municipal ordinances at the behest of a councilman. A selective prosecution claim under the Equal Protection Clause may be established by a 'single

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discriminatory act” and therefore the claim accrues at the time of the discriminatory act. “A plaintiff may pursue an equal protection selective enforcement claim under a traditional theory, which protects a plaintiff from discriminatory treatment based on membership in a protected class. [Citation omitted]. In contrast, a plaintiff may pursue an equal protection claim under a ‘class of one’ theory by showing that a state actor treated him differently from similarly situated individuals without a rational basis for the different treatment.” “Persons are similarly situated under the Equal Protection Clause when they are alike ‘in all relevant aspects.’” “[S]imilarly situated persons here are other Lindenwold property owners deserving of ‘the attention of the police and/or code enforcement officers for the condition of their properties.’” The fact that other property owners were cited for similar violations after plaintiffs filed suit, are not probative of whether [plaintiffs] were treated differently before the suit was filed.”

Ecotone Farm LLC v. Ward, 639 Fed. Appx. 118 (3rd Cir. Jan. 28, 2016)

https://scholar.google.com/scholar_case?case=7672435383850901450&q=14-3625&hl=en&as_sdt=3,31

“Under the ‘class-of-one’ theory recognized in *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000), a plaintiff may state an equal protection claim by alleging that ‘(1) the defendant treated him differently from others similarly situated, (2) the defendant did so intentionally, and (3) there was no rational basis for the difference in treatment.’” “Land ownership ‘is a property interest worthy of substantive due process protection.’ [citation omitted]. Executive action (as distinguished from legislation) violates substantive due process protections ‘only when it shocks the conscience . . . the meaning of [which] varies depending on the factual context.’” “The plaintiffs accuse [a member of the Township Committee] and [the township engineer] of conspiring to use their government positions to harass them repeatedly and obstruct full enjoyment of their land over the course of several years, motivated by personal vendettas and the expectation that their own private interests would be advanced (in [the committeeman’s case, gaining greater control over his easement, and in [the engineer’s] case, collecting large fees throughout the process and currying favor with [others] who provide him with work). These accusations rise above the mere allegation of an ‘improper’ motive and depict corruption and repeated abuse of government power with the deliberate aim of harming someone. They are conscience-shocking and sufficient to sustain a substantive due process claim at the pleadings stage.” The actions of the township were attributable to the Township because he was the final policymaker in enforcing the soil disturbance ordinance.

Harz v. Borough of Spring Lake, A-5133-13T4 (Nov. 21, 2015)

https://scholar.google.com/scholar_case?case=16149272625793568365&q=A-5133-13T4&hl=en&as_sdt=4,31

Plaintiff’s claims that the zoning officer improperly issued zoning permits to her neighbor and subsequent action to deprive her of her right to challenge the permits supported a claim under the New Jersey Civil Rights Act (CRA). “[T]he CRA, like Section 1983, protects against the violation of rights, as opposed to violations of laws, . . . [and to support a CRA claim] a plaintiff must establish (1) the Legislature intended the statute at issue to ‘confer a benefit’ on the plaintiff; (2) ‘the statutory right . . . is not so vague [or] amorphous that its enforcement would strain judicial competence’; and (3) the statute ‘unambiguously impose[s] a binding obligation’ on the governmental actor.” “The right denied here is not the right to enforce the local zoning ordinance or to be free from zoning violations. We do not suggest that any zoning violation is remediable under the CRA. Arguably, entertaining such actions would be antithetical to the comprehensive scheme established by the land use law. The right violated in this case pertains to obtaining a board’s review of an alleged zoning violation.” “[I]t is for the Board, not the zoning officer, to determine whether an appeal is timely filed.”

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Harz v. Borough of Spring Lake, 234 N.J. 317 (2018)

https://scholar.google.com/scholar_case?case=13168869371300761821&q=Harz+v+Borough+of+Spring&hl=en&as_sdt=4,31

“The right of an interested party to appeal the issuance of a zoning permit — to have her concerns ‘heard’ — is rooted in principles of property rights, specifically the right to not be deprived of an interest in one’s property without process. Thus, ‘any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be affected by any action taken under [the MLUL]’ is an ‘interested party.’ N.J.S.A. 40:55D-4; see also N.J. Const. art. I, ¶ 1 (guaranteeing right to acquire, possess, and protect property). Because an adjacent property owner’s rights ‘may be affected’ by construction on neighboring property, the adjacent owner — as an interested party under the MLUL — has a right to have her concerns heard in some form.” “[B]ecause an interested party’s right to be heard is inextricably tied to a party’s property rights, we find that the MLUL right to be heard is substantive, not procedural.” However, where the Borough did not deprive plaintiff of her right to appeal to the Board, but she instead opted to file an appeal with the court, the Borough did not violate a substantive right under the New Jersey Civil Rights Act.

Beauvil v. City of Asbury Park, No. 18-991 (D.N.J. June 1, 2018)

https://scholar.google.com/scholar_case?case=16160219755672026645&q=18-991&hl=en&as_sdt=3,31

“To state a procedural due process claim, [a plaintiff] must establish (1) that it was deprived of an individual interest that is encompassed within the Fourteenth Amendment’s protection of life, liberty and property, and (2) that the procedures available to it did not provide due process of law.” “Courts must balance three factors to determine whether the procedural protections were sufficient: (1) the private interest at stake; (2) the risk of erroneous deprivation of that interest through the procedures used and the probable value of different procedures; and (3) the government’s interest.” A local government may be sued under §1983 only for acts implementing official policy, practice or custom and not under a *respondeat superior* theory. Plaintiff’s broad speculative allegations that that the City is undergoing gentrification and as part of that process it has engaged in discriminatory practices, “requires the Court to do more than accept concrete factual allegations as true to find a plausible violation and therefore does not meet the federal pleading standard.”

Grafas v. Borough of Brielle, No. 3:19-cv-9467-BRM-LHG (D.N.J. May 19, 2020)

https://scholar.google.com/scholar_case?case=10625257988904672867&q=Grafas+v.+Borough+of+Brielle&hl=en&as_sdt=6,31&as_ylo=2020

“The Younger abstention doctrines gives a federal court the ‘discretion to abstain from exercising jurisdiction over a particular claim where resolution of that claim in federal court would offend the principles of comity by interfering with an ongoing state proceeding.’” [citation omitted]. “Younger abstention is only appropriate where the following three requirements are satisfied: (1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise the federal claims.” “As a threshold matter, a court must first, before analyzing the above-listed [] factors, determine whether the parallel state action falls within one of ‘three exceptional categories’: (1) criminal prosecutions, (2) ‘certain civil enforcement proceedings,’ and (3) ‘civil proceedings involving certain orders uniquely in furtherance of the state courts’ ability to perform their judicial functions.’” To be considered a “civil enforcement proceeding,” the state proceeding must generally be “akin to a criminal prosecution” and a Superior Court prerogative writs action to review a denial of a site plan application is not “quasicriminal” in nature.

“[T]he entire controversy doctrine applies only when a prior action based on the same transactional

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facts has been [1] tried to judgment or [2] settled."

"[A] single decision of a municipal legislative body can form the basis of a § 1983 claim."

Iron Bar, LLC v. Dougherty, No. 19-9170 (D. N.J. Feb. 3, 2021)

https://scholar.google.com/scholar_case?case=17306471260477199804&q=iron+bar+v.+dougherty&hl=en&as_sdt=6,31&as_ylo=2020

Where a plaintiff business owner alleges that municipal officials engaged in targeted harassment because of his refusal to make a member of the Mayor's family a business partner, refusing to support the Mayor politically and also plaintiff's decision to challenge and appeal various municipal decisions, such a claim may rise to a violation of due process and equal protection and should not be dismissed through a motion for summary judgment.

C. VAGUENESS

State v. Powell, 250 N.J. Super. 1 (1991)

Lionshead Woods v. Kaplan Bros., 250 N.J. Super. 545 (Law Div. 1991)

http://scholar.google.com/scholar_case?case=5587855020817461890&q=Lionshead+Woods+v.+Kaplan+Bros&hl=en&as_sdt=2,31

Damurjian v. Board of Adjust, Twp. of Colts Neck, 299 N.J. Super. 84 (App. Div. 1996)

http://scholar.google.com/scholar_case?case=8222397193703450517&q=299+N.J.+Super.+84+&hl=en&as_sdt=2,31

Portion of zoning ordinance is vague and ambiguous in that the material terms are not defined.

State of New Jersey v. Badr, 415 N.J. Super. 455 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=6818099006693227422&q=State+of+New+Jersey+v.+Badr&hl=en&as_sdt=4,31

Smoke-Free Air Act, *N.J.S.A.* 26:3D-55 to -64, not unconstitutionally vague or over broad where the definition of "smoking" contained in the statute includes "any other matter that can be smoked."

State of New Jersey v. Heine, 424 N.J. Super. 48 (App. Div. 2012), certif. granted, 211 N.J. 608 (2012)

http://scholar.google.com/scholar_case?case=10039739888049539917&q=state+of+new+jersey+v.+ellen+heine&hl=en&as_sdt=4,31

"Administrative searches are controlled by the Fourth Amendment, and they are presumed invalid unless authorized by a search warrant." "The only exceptions to the warrant requirement for administrative searches arise when (1) consent is obtained; (2) the subject matter is in an area of long-term, traditional governmental regulation, a so-called closely-regulated industry; or (3) an emergency or public health danger is presented." By exercising her constitutional right to refuse to participate in an unwarranted inspection, the defendant cannot "be deemed to have created the circumstances that would criminalize her conduct and cause the forfeiture of the very rights she sought to exercise" and therefore cannot be prosecuted for the same. The ordinance that allowed for such searches is unconstitutional as applied. "A statute is facially vague only if it is vague in all its applications, while a statute is vague as applied only if it is vague when applied to the circumstances of a specific case."

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Rosedale & Rosehill Cemetery Ass'n v. Twp. of Reading, 510 F. Supp. 3d 250 (D. N.J. 2020)
[https://scholar.google.com/scholar_case?case=7567165509555941036&q=Rosedale+510+F.+Supp.+3d+250+\(D.+N.J.&hl=en&as_sdt=3,31&as_ylo=2020](https://scholar.google.com/scholar_case?case=7567165509555941036&q=Rosedale+510+F.+Supp.+3d+250+(D.+N.J.&hl=en&as_sdt=3,31&as_ylo=2020)

Because the Cemetery Act, specifically N.J.S.A. 45:27-25(a), requires municipal consent before a cemetery can commence operations, and the law sets forth no objective standards to govern municipal decision-making with respect to same, it is unconstitutionally vague.

4. STATUTORY REQUIREMENTS

A. CONSISTENCY WITH MLUL

New Jersey Builders Ass'n v. Bernards Twp., 108 N.J. 223 (1987)
http://scholar.google.com/scholar_case?case=14361649223089990270&q=New+Jersey+Builders+Ass%E2%80%99n+v.+Bernards+&hl=en&as_sdt=2,31

Municipal requirements for off-site improvements exceeded authority granted by MLUL.

Avalon Home & Land Owners v. Bor. of Avalon, 111 N.J. 205 (1988)
http://scholar.google.com/scholar_case?case=4609590847340437309&q=Avalon+Home+%26+Land+Owners+v.+Bor.+of+Avalon&hl=en&as_sdt=2,31

Ordinance permitting restoration of nonconforming use in the event of total destruction invalid because MLUL permits restoration only when “partial destruction.”

Nickels v. City of Wildwood, 140 N.J. 261 (1995)
http://scholar.google.com/scholar_case?case=15551685734060343848&q=Nickels+v.+City+of+Wildwood&hl=en&as_sdt=2,31

Ordinance which authorized expansion of nonconforming piers invalid as usurping authority granted to board of adjustment in MLUL. Council could have rezoned piers to make them conforming, but did not.

Toll Bros., Inc. v. West Windsor Twp., 312 N.J. Super. 540 (App. Div. 1998), cert. denied, 157 N.J. 543 (1998)
http://scholar.google.com/scholar_case?case=10266114832067003403&q=Toll+Bros.,+Inc.+v.+West+Windsor+Twp&hl=en&as_sdt=2,31

“Timed growth” found to be an illegal moratorium.

Do-Wop Corp. v. City of Rahway, 168 N.J. 191 (2001)
http://scholar.google.com/scholar_case?case=7066811727175228134&q=Do-Wop+Corp.+v.+City+of+Rahway.&hl=en&as_sdt=2,31

Nonconforming use protection of N.J.S.A. 40:55D-68 does not protect uses from changes in state regulatory statutes.

Sartoga v. Borough of West Paterson, 346 N.J. Super. 569 (App. Div. 2002)
http://scholar.google.com/scholar_case?case=10728269183117589604&q=Sartoga+v.+Borough+of+West+Paterson&hl=en&as_sdt=2,31

Zoning ordinance that provides housing for lower-income families is not insulated from challenge where it may conflict with other purposes of Municipal Land Use Law.

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Mountain Hill, LLC v. Middletown Twp., 353 N.J. Super. 57 (App. Div.), *certif. denied*, 175 N.J. 78 (2002)

http://scholar.google.com/scholar_case?case=6755008165828683335&q=Mountain+Hill,+LLC+v.+Middletown+Twp.&hl=en&as_sdt=2,31

A protested zoning change under *N.J.S.A.* 40:55D-63 that requires a favorable vote of two-thirds of all the members of the governing body means a favorable vote of two-thirds of the full membership and not a reduced number because of the disqualification of one of the members.

Cerebral Palsy Center, Bergen County, Inc. v. Mayor and Council, Bor. of Fair Lawn, 374 N.J. Super. 437 (App. Div.), *certif. denied*, 183 N.J. 586 (2005)

http://scholar.google.com/scholar_case?case=6568290787254108100&q=Cerebral+Palsy+Center,+Bergen+County,+Inc.+v.+Mayor+and+Council,+Bor.+of+Fair+Lawn&hl=en&as_sdt=2,31

Borough lacked statutory authority to enact ordinance which required applicants to pay costs of public advocate.

Talcott Fromkin Freehold Associates v. Freehold Twp., 383 N.J. Super. 298 (Law Div. 2005)

http://scholar.google.com/scholar_case?case=13473523755275323943&q=Talcott+Fromkin+Freehold+Associates+v.+Freehold+Twp.&hl=en&as_sdt=2,31

Ordinance requiring ten-year maintenance fee for detention basin accepted by municipality is reasonable.

New York SMSA Ltd. Partnership v. Township Council of Twp. of Edison, 382 N.J. Super. 541 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=3485594014810276489&q=New+York+SMSA+Ltd.+Partnership+v.+Township+Council+of+Twp.+of+Edison&hl=en&as_sdt=2,31

Township lacked authority under MLUL to adopt zoning ordinance amendments which required applicants for development to give notice of the hearing on their applications which exceeded notice required under the MLUL.

Ramapo River Reserve Homeowners Ass'n v. Borough of Oakland, 186 N.J. 439 (2006)

http://scholar.google.com/scholar_case?case=10589036205711589952&q=Ramapo+River+Reserve+Homeowners+Ass%E2%80%99n+v.+Borough+of+Oakland&hl=en&as_sdt=2,31

Developer of a planned residential development agreed to maintain the roadways within the development until the dedication of the roadways for public use was completed. Homeowners Association sued Borough, alleging that under the Municipal Services Act the Borough is required to remove ice and snow as it does to all residents, or reimburse the cost of such services. Court determines that nothing in either the MLUL or the Municipal Services Act prohibits a limited bargained-for delegation of a municipality's obligations to a developer and, under a properly adopted development agreement as provided in the MLUL, a municipality may delegate to a developer the obligation to provide or pay for the municipal services until such time as the developer's control of the executive board of a homeowner's association terminates.

Builders League of South Jersey, Inc. v. Twp. of Franklin, 395 N.J. Super. 46 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=8124613007530876223&q=%22Builders+League%22+of+South+Jersey,+Inc.+v.+Twp.+of+Franklin&hl=en&as_sdt=2,31

A municipality may not adopt a transfer of development rights ordinance other than as authorized by the State Transfer of Development Rights Act.

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DEG, LLC v. Township of Fairfield, 398 N.J. Super. 59 (App. Div. 2008), reversed, 198 N.J. 242 (2009)

http://scholar.google.com/scholar_case?case=11807065601554714614&q=DEG,+LLC+v.+Township+of+Fairfield&hl=en&as_sdt=2,31

Township could not allow a use to be protected as a nonconforming use pursuant to N.J.S.A. 40:55D-68 by way of a settlement agreement without adopting an applicable zoning ordinance.

New Jersey Shore Builders Ass'n. v. Twp. of Jackson, 401 N.J. Super. 152 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=5959264717383047483&q=New+Jersey+Shore+Builders+Ass%E2%80%99n.+v.+Twp.+of+Jackson&hl=en&as_sdt=2,31

The MLUL does not authorize a municipality to require a developer to set aside land for common open space or recreational areas and facilities or to make payments in lieu of set-asides, except with regard to applications for planned developments.

Price v. Strategic Capital Partners, LLC, 404 N.J. Super. 295 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=10717319409743239988&q=404+N.J.+Super.+295+&hl=en&as_sdt=4,31

Ordinance cannot limit authority of zoning board to grant a variance.

New Jersey Shore Builders v. Township of Jackson, 199 N.J. 449 (2009)

http://scholar.google.com/scholar_case?case=5385758608340460200&q=New+Jersey+Shore+Builders+v.+Township+of+Jackson&hl=en&as_sdt=4,31

“The MLUL is a carefully constructed and comprehensive framework governing the powers of municipalities relating to land use and development. As we have previously held, municipalities must exercise their powers relating to zoning and land use in a manner that will strictly conform with that statute’s provisions.” The MLUL permits “municipalities to require that open space be set aside as part of a PUD design, . . . but made no similar grant of authority relating to other development applications.”

Trenton Ordinance, In re 09-02, 201 N.J. 349 (2010)

http://scholar.google.com/scholar_case?case=4944825833306945151&q=In+re+Trenton+Ordinance+09-02&hl=en&as_sdt=4,31

Ordinance which authorized the sale of city’s water utility to a private entity was subject to referendum under the Faulkner Act.

Rockaway Shoprite Associates, Inc. v. City of Linden, 424 N.J. Super. 337 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=15048197315892523483&q=Rockaway+Shoprite+Associates,+Inc.+v.+City+of+Linden&hl=en&as_sdt=4,31

Even though the ordinance uses the term “planned commercial development,” that does not automatically trigger the requirements for such a development under the MLUL. A municipality may define the same term differently than in the MLUL, so the ordinance may be valid if it otherwise conforms to the requirements of conventional zoning even though it is called PCD zoning.

Mahwah Realty Associates, Inc. v. Township of Mahwah, 420 N.J. Super. 341 (App. Div.) certif. denied, 208 N.J. 599 (2011)

http://scholar.google.com/scholar_case?case=15967369861032568067&q=Mahwah+Realty+Associates,+Inc.+v.+Township+of+Mahwah&hl=en&as_sdt=4,31

Council’s minutes which failed to set forth the reasons for the adoption of an ordinance that was inconsistent with the township master plan were sufficient to meet the requirements of N.J.S.A.

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40:55D-62a where the reasons for the adoption of the ordinance were set forth in a resolution – requiring the reasons to be set forth in both the resolution and the minutes “exalts form over substance.”

Reeves v. Township of Marlboro, A-2781-10T4 (June 18, 2012), certif. denied, 212 N.J. 455 (2012) http://scholar.google.com/scholar_case?case=12829804219738223760&q=reeves+v.+township+of+marlboro&hl=en&as_sdt=2,31

The MLUL’s uniformity clause “does not prohibit classifications within a district so long as they are reasonable.” “Rational regulations based on different conditions within a zone are permissible so long as similarly situated property is treated the same.”

388 Route 22 Readington Realty Holdings, LLC v. Township of Readington, 221 N.J. 318 (2015) https://scholar.google.com/scholar_case?case=8591925307621278665&q=388+Route+22&hl=en&as_sdt=4,31

A township may not have a blanket policy of not repurchasing allocated, but unused sewer capacity. It must examine the reasons given by each entity for not utilizing the capacity assigned to it. “A policy of not recapturing unused sewer capacity is the functional equivalent of a moratorium on development.” “The MLUL requires that townships exercise their authority to develop lands ‘in a manner which will promote the . . . general welfare, N.J.S.A. 40:55D-2(a), and the repurchase provision of the sewer allocation ordinance was a means to that end.”

Hope and Comfort v. Egg Harbor Twp. Zoning Bd. of Adjust., A-4286-13T2 (June 19, 2015) https://scholar.google.com/scholar_case?case=15790928063067224136&q=Hope+and+Comfort&hl=en&as_sdt=4,31

Qualified hospices may only be subject to the requirements a municipality imposes upon a single-family dwelling in the zone under N.J.S.A. 40:55D-66.1. “Without reservation, the MLUL exempts single-family dwellings from site plan review.” “As such, under the MLUL, plaintiff’s proposed hospice was not required to submit an application for site plan review to the Planning Board.”

Fieldstone Associates, L.P. v. Joint Land Use Board of the Bor. of Merchantville, A-1239-13T3 (April 17, 2015) https://scholar.google.com/scholar_case?case=11441762300493916774&q=A-1239-13T3&hl=en&as_sdt=4,31

Redeveloper could not compel the municipality by specific performance to adopt its specific redevelopment plan.

Fieldstone Associates, L.P. v. Joint Land Use Board of the Bor. of Merchantville, A-3437-13T3 (April 17, 2015) https://scholar.google.com/scholar_case?case=16942235917004339545&q=A-3437-13T3&hl=en&as_sdt=4,31

“N.J.S.A. 40A:12A-7e makes perfectly clear that the only consequence of the Board’s failure to transmit its recommendation [to reject a redevelopment plan amendment] to the governing body within the forty-five day timeframe is to relieve that body of considering the Board’s recommendation and explaining its reasons for disregarding any aspect of it. Nothing in the statute prohibits the governing body from considering an untimely report from the Board.”

Speroni v. Borough of Point Pleasant Beach, A-5356-12T3, A-5357-12T3, A-5430-12T3, A-5431-12T3, A-5760-12T3, A-3770-13T3 (July 6, 2015) https://scholar.google.com/scholar_case?case=8985668849545105143&q=5431-12T3&hl=en&as_sdt=4,31

“An ‘ordinance’ is defined as “any act or regulation of the governing body of any municipality

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required to be reduced to writing and read at more than one meeting thereof and published.’ N.J.S.A. 40:49-1. A municipal council may “pass, adopt, amend and repeal any ordinance . . . for any purpose required for the government of the municipality or for the accomplishment of any public purpose for which the municipality is authorized to act under general law[.]” N.J.S.A. 40A:60-6(b)(1). ‘No ordinance shall be passed . . . except by a vote of a majority of the members of the council present at the meeting, provided that at least three affirmative votes shall be required for such purpose, the mayor voting only in the case of a tie.’ N.J.S.A. 40A:60-5(e).

An ordinance must be ‘passed’ by the governing body at a first reading in order to be published and advanced to a second reading. . . A second reading of the ordinance is statutorily required. N.J.S.A. 40:49-1; see also N.J.S.A. 40:49-2(c) . . . At the second reading the ordinance ‘may be passed with or without amendments, or rejected.’ N.J.S.A. 40:49-2(c). . . . Once the governing body passes an ordinance, ‘within five days after its passage,’ the ordinance must be presented to the mayor who ‘shall, within ten days after receiving the ordinance, . . . either approve the ordinance . . . or return it to the council . . . with a statement setting forth his objections thereto.’ N.J.S.A. 40A:60-5(d). The ordinance shall not ‘take effect without the mayor’s approval, unless the mayor fails to return the ordinance to the council . . . or unless the council, upon consideration of the ordinance following its return, shall, by a vote of two-thirds of all members of council, resolve to override the veto.’

The statutory scheme clearly requires at least two readings of an ordinance. N.J.S.A. 40:49-1. At each reading, the governing body may ‘pass, adopt, amend and repeal any ordinance[.]’ N.J.S.A. 40A:60-6(b)(1). The ordinance ‘shall [not] be passed’ at either reading ‘except by a vote of a majority of the members of the council present at the meeting, provided that at least three affirmative votes shall be required for such purpose[.]’ N.J.S.A. 40A:60-5(e).

Here, the Legislature used the word ‘passed’ with respect to all readings of an ordinance. N.J.S.A. 40:49-2(a) and (c). We are satisfied that the Legislature intended the word ‘passed’ in N.J.S.A. 40A:60-5(e) to apply to all readings of an ordinance and that there must be three affirmative votes at each reading for passage.” An ordinance that does not pass by three affirmative votes at the first reading, is invalid.

Paige Land Development Corp. v. Borough of Riverdale, A-0500-12T4 (March 23, 2016)

https://scholar.google.com/scholar_case?case=15483835532074559966&q=A-0500-12T4&hl=en&as_sdt=4,31

Ordinance requiring property owner to pay a non-user fee to reserve sewer capacity held to be invalid as it exceeded the delegated authority under the Municipal and County Sewerage Act, the Municipal and County Utilities Authorities Law and the Sewerage Authorities Law. Notwithstanding the invalidity of the ordinance, the owner was not entitled to a refund of fees paid. “There is [] a well-established exception to the assumption of a refund of a payment made to a governmental entity. That exception is known as the ‘volunteer rule.’ The volunteer rule ‘provides that where a party, without mistake of fact, or fraud, duress or extortion, voluntarily pays money on a demand which is not enforceable against him [or her], he [or she] cannot recover it back.”

Jerman v. Township of Manchester, A-1040-14T3 (Sept. 9, 2016)

https://scholar.google.com/scholar_case?case=1714619820085857208&q=A-1040-14T3&hl=en&as_sdt=4,31

Ordinance amending requirements for building single-family homes on undersized lots did not violate the MLUL’s uniformity requirements even though it reduced the height of homes on undersized lots from two and one half stories to one and one half stories. The court found that the “ordinance reasonably classifies single-family homes on different sized lots consistent with the uniformity requirements of N.J.S.A. 40:55D-62(a).”

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Marinelli v. Township of Lopatcong, A-5124-13T3, A-3132-14T3 (April 18, 2017)
https://scholar.google.com/scholar_case?case=12448248542399309905&q=A-3132-14T3&hl=en&as_sdt=4,31

Where a use has been interpreted as being permitted in the zone and a new ordinance make it a conditional use, it is consistent with the master plan where the master plan does not contain an exhaustive list of permitted uses. Where the use is consistent with the master plan, the governing body does not have to place its rationale in a resolution as required by N.J.S.A. 40:55D-62(a) for ordinances that are inconsistent with the master plan. The ordinance establishing conditional uses did not offend the uniformity provision of the MLUL where the variations of uses permitted in the zone were rationally related to the characteristics of the land. An ordinance that “promoted commercial and industrial growth near major roadways, encouraged fiscal balance, a stable tax base and job creation, and allowed for renewable energy resource centers,” was consistent with the purposes set forth in the MLUL.

DeSanctis v. Borough of Belmar, 455 N.J. Super. 316 (App. Div. 2018)
https://scholar.google.com/scholar_case?case=4327484635633233760&q=A-1074-16T3&hl=en&as_sdt=4,31

An interpretive statement of an ordinance submitted to a county clerk must fairly interpret the public question, not be misleading or biased and must be approved by resolution of the governing body. An interpretive statement that does not comply with these requirements violates the New Jersey Civil Rights Act.

Shipyard Associates, L.P. v. City of Hoboken, 242 N.J. 23 (2020)
https://scholar.google.com/scholar_case?case=1038999959355898464&q=Shipyard+Assocs.,+L.P.+v.+City+of+Hoboken&hl=en&as_sdt=6,31&as_ylo=2020

“[M]unicipalities do not have the inherent power to zone; rather, ‘[z]oning is a police power that is vested in the legislative branch of government.’” [citation omitted]. “Consequently, a municipality’s zoning power must ‘be exercised in strict conformity with the delegating enactment — the MLUL.’” [citation omitted]. City’s flood control ordinance passed after Sandy that was modeled after the DEP’s Model Flood Damage Prevention Ordinance was determined to be a zoning ordinance subject to the MLUL. “[E]ven if a zoning ordinance has an effect on public health and safety, or is motivated by health and public safety concerns, that does not re-characterize a zoning ordinance as a general police power ordinance.” . . . [in construing the enactment the court] will consider not only how the municipality characterizes the ordinance, but also how the ordinance functions in practice.” The flood control ordinance was a “planning or zoning initiative” because it changed the zoning of land, specifies floor heights, construction materials and methods, mandates design of utilities, and regulates the manner of subdivision and new developments.

Section 52(a) “does not provide an exception for municipalities to retroactively apply changes in zoning laws relating to public health and safety to final approvals.” “Section 10.5, in contrast, explicitly allows for the retroactive application of ordinances relating to health and public safety to applications for development. See N.J.S.A. 40:55D-10.5 (“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.”). Section 49 contains a similar, albeit more limited, exception for preliminary approvals of major subdivisions. See N.J.S.A. 40:55D-49(a) (“[N]othing herein shall be construed to prevent the municipality from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety....”). We decline to read the exceptions from Sections 10.5 and 49 — allowing municipalities to retroactively apply zoning ordinances affecting public health and safety — into Section 52(a).” “[T]he plain language of Section 52(a) provides the holder of a final approval with vested rights for two years against any changes in zoning requirements.”

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The City's litigation against the developer which has prevented the proposed construction tolled the two-year period of protection against changes in zoning requirements under Section 52(a).

Two Daughters, LLC v. Harbour Bay, LLC, A-0388-19T3 (Oct. 7, 2020)

https://scholar.google.com/scholar_case?case=5990593337537199089&q=Two+Daughters,+LLC+v.+Harbour&hl=en&as_sdt=6,31&as_ylo=2020

The court's "role in reviewing zoning ordinances is narrow." Courts defer to the judgment of local officials who know their communities and presume that a governing body's actions are valid "so long as its decision is supported by the record and is not so arbitrary, unreasonable or capricious as to amount to an abuse of discretion." If an ordinance is "debatable, it should be upheld." A municipality may amend a zoning ordinance while a site-plan application is pending; it may amend an ordinance in direct response to a pending application. The amendment simply must be consistent with the MLUL.

Am. Outdoor Advertising, LLC v. Edison Twp. Zoning Bd. of Adjust., A-3954-21 (Dec. 4, 2024)

https://scholar.google.com/scholar_case?case=17561925795773039840&q=+Am.+Outdoor+Advertising,+LLC+v.+Edison+Twp.+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,47

With respect to the negative criteria analysis of this use variance billboard case, the trial court ruled the subject zoning ordinance invalid after it took judicial notice that the municipality did not adopt a master plan reexamination report within ten (10) years as required by N.J.S.A. 40:55D-89.1. The court also reviewed the NJDOT billboard regulations in lieu of the invalidated ordinance. The Appellate Division reversed, finding that the trial court erred by invalidating the ordinance pursuant to N.J.S.A. 40:55D-89.1 (which only creates a rebuttable presumption that the ordinance is unreasonable) and replacing the ordinance with NJDOT regulations with respect to the negative criteria analysis.

(1) PURPOSES OF ZONING

A&P Co. v. Mayor, Pt. Pleasant Beach, 220 N.J. Super. 119 (App. Div. 1987)

http://scholar.google.com/scholar_case?case=14975365871052071755&q=A%26P+Co.+v.+Mayor,+Pt.+Pleasant+Beach&hl=en&as_sdt=4,31

Riggs v. Long Beach Twp., 109 N.J. 601 (1988)

http://scholar.google.com/scholar_case?case=7235784120364707825&q=Riggs+v.+Long+Beach+Twp&hl=en&as_sdt=4,31

The purpose of the ordinance was to devalue property and is therefore not lawful.

Ciba-Geigy v. Dover Twp., 230 N.J. Super. 317 (Law Div. 1989)

http://scholar.google.com/scholar_case?case=11205884547977725821&q=Ciba-Geigy+v.+Dover+Twp&hl=en&as_sdt=4,31

Sprint Spectrum L.P. v. Bor. of Ringwood Zoning Bd. of Adjust., 386 N.J. Super. 62 (Law Div. 2005)

http://scholar.google.com/scholar_case?case=79483019313173855&q=386+N.J.+Super.+62+&hl=en&as_sdt=4,31

Ordinance requiring cell tower to be on municipal property invalid. Raising revenue is not within any of the zoning purposes in the MLUL.

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Lepore v. Borough of Sea Bright, A-4370-17T4 (Jan. 14, 2020)

https://scholar.google.com/scholar_case?case=14834415266741249061&q=A-4370&hl=en&as_sdt=4,31

The decision to vacate a paper street “lies in the sound discretion of the governing body and that power is subject to limited review by the courts.” “[I]n light of the stated public purpose, improving defendant’s tax base, there was no evidence that vacating the paper street violated the statute or was otherwise arbitrary, capricious or unreasonable.”

29 E 29 St. Holdings, LLC v. City of Bayonne, A-3316-21 (Feb. 26, 2024)

https://scholar.google.com/scholar_case?case=7864103771783140448&q=29+E+29+St.+Holdings,+LLC+v.+City+of+Bayonne&hl=en&as_sdt=6,47&as_ylo=2024

N.J.S.A. 40:55D-62(a) (the “Uniformity Clause”) requires that regulations in zoning ordinances “be uniform throughout each district for each class... of buildings....” The Court held that an ordinance that consolidated the zoning of Bayonne Hospital in such a way that permitted the existing hospital use but, at the same time, prohibited nursing homes ran afoul of the Uniformity Clause because the distinction between the two uses was unreasonable.

(2) CONSISTENCY WITH MASTER PLAN AND/OR HOUSING ELEMENT

Odabash v. Mayor and Council, Bor. of Dumont, 65 N.J. 115 (1974)

http://scholar.google.com/scholar_case?case=8971468831920145550&q=Odabash+v.+Mayor+and+Council,+Bor.+of+Dumont&hl=en&as_sdt=2,31

Ordinance which made predominant existing use in zone illegal found to be invalid

Rolfe v. Borough of Emerson, 141 N.J. Super. 341 (Law Div. 1976)

http://scholar.google.com/scholar_case?case=16446115403196610728&q=Rolfe+v.+Borough+of+Emerson&hl=en&as_sdt=2,31

Medici v. BPR Co., 107 N.J. 1 (1987)

http://scholar.google.com/scholar_case?case=7670763351877702884&q=Medici+v.+BPR+Co&hl=en&as_sdt=2,31

State Supreme Court expounds on town planning as basis for decisions, requires “enhanced quality of proof.”

East Mill Assoc. v. Twp. Council of East Brunswick, 241 N.J. Super. 403 (Ch. 1990)

http://scholar.google.com/scholar_case?case=9995580367665414363&q=East+Mill+Assoc.+v.+Twp.+Council+of+East+Brunswick&hl=en&as_sdt=2,31

Willoughby v. Planning Bd., Twp. of Deptford, 332 N.J. Super. 223 (App. Div. 2000), *certif. denied*, 165 N.J. 603 (2001)

http://scholar.google.com/scholar_case?case=11156054947025421889&q=Willoughby+v.+Planning+Bd.,+Twp.+of+Deptford&hl=en&as_sdt=2,31

Zoning ordinance invalid because planning board did not expressly recognize inconsistency with the master plan before adoption.

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Medical Center at Princeton v. Twp. of Princeton Zoning Bd. of Adjust., 343 N.J. Super. 177 (App. Div. 2001)

http://scholar.google.com/scholar_case?case=13003529754834371495&q=343+N.J.+Super.+177+&hl=en&as_sdt=4,31

Rumson Estates v. Mayor & Council, Bor. of Fair Haven, 350 N.J. Super. 324 (App. Div.), *aff'd*, 177 N.J. 338 (2003)

http://scholar.google.com/scholar_case?case=6250232451287723435&q=Rumson+Estates+v.+Mayor+%26+Council.+Bor.+of+Fair+Haven&hl=en&as_sdt=2,31

Mount Laurel Twp. v. Mipro Homes, L.L.C. 379 N.J. Super. 358 (App. Div. 2005), *aff'd*, 188 N.J. 531 (2006)

http://scholar.google.com/scholar_case?case=14136660171677450059&q=Mount+Laurel+Twp.+v.+Mipro+Homes&hl=en&as_sdt=2,31

MLUL requires a zoning ordinance to be substantially consistent with the land use plan element and the housing plan element of the master plan, but zoning ordinance is not required to be substantially consistent with the conservation element of the master plan.

Riya Finnegan v. Twp. Council of South Brunswick, 386 N.J. Super. 255 (Law Div. 2006), *rev'd* on other grounds, 394 N.J. Super. 303 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=11861543247143697791&q=Riya+Finnegan+v.+Twp.+Council+of+South+Brunswick&hl=en&as_sdt=4,31

Township's rezoning of land from commercial to office which prevented plaintiff's retail center was procedurally correct in that it was referred to the planning board, the inconsistencies with the master plan were noted and the state of reasons for the inconsistency were recited.

Albano v. City of Vineland, A-3711-05T1 (Dec. 14, 2006), *certif. denied*, 190 N.J. 254 (2007)

http://scholar.google.com/scholar_case?case=4566691071246283478&q=Albano+v.+City+of+Vineland&hl=en&as_sdt=2,31

Court found that amending redevelopment plan to eliminate maximum store size and reduce minimum acreage requirement to accommodate a Wal-Mart not arbitrary because it furthered one of the goals of the MLUL by "providing sufficient space in appropriate locations for a variety of . . . commercial . . . uses." The amendment was not inconsistent with the master plan because it specified a minimum, not a maximum, store size.

Mahwah Realty Associates, Inc. v. Township of Mahwah, 420 N.J. Super. 341 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=15967369861032568067&q=Mahwah+Realty+Associates,+Inc.+v.+Township+of+Mahwah&hl=en&as_sdt=2,31

Council's minutes which failed to set forth the reasons for the adoption of an ordinance that was inconsistent with the township master plan were sufficient to meet the requirements of N.J.S.A. 40:55D-62a where the reasons for the adoption of the ordinance were set forth in a resolution – requiring the reasons to be set forth in both the resolution and the minutes "exalts form over substance."

Myers v. Ocean City Zoning Board of Adjustment, 439 N.J. Super. 96 (App. Div. 2015)

https://scholar.google.com/scholar_case?case=7272135308974728025&q=A-2568-13T2+&hl=en&as_sdt=4,31

Section 62(a) does not require a governing body to affirmatively act in response to a reexamination report. "Under the statutory scheme requiring reexamination of the master plan, a pre-existing zoning ordinance may become inconsistent with one aspect of a reexamination report. However,

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the statute does not expressly require action. It requires a majority vote and a statement of reasons only if the governing body thereafter adopts an inconsistent ordinance or amendment. In other words, only when a governing body acts affirmatively to adopt a zoning ordinance or amendment that is inconsistent with the then-existing master plan is the majority vote and statement of reasons requirement triggered.” The court observed that this holding does not “render a master plan reexamination a nullity. If a governing body chooses not to act in the wake of a master plan revision, it does so at its peril; its zoning ordinance must nonetheless remain ‘substantially consistent’ with the master plan.”

426 Royal, LLC v. Township of South Brunswick, A-0461-13T3 (July 27, 2015)
https://scholar.google.com/scholar_case?case=15398632705883985140&q=A-0461-13T3+&hl=en&as_sdt=4,31

“It is reasonably debatable among experts as to whether there is consistency between an ordinance on the one hand, and the Master Plan and MLUL on the other, the validity of the ordinance must be sustained.”

“As with any other legislative enactment, municipal ordinances are to be construed according to their plain meaning.”

Jungkunst v. Mayor and Twp. Council, Twp. of Ocean, A-0038-18T4 (Sept. 4, 2020)
https://scholar.google.com/scholar_case?case=12935857482673615138&q=Jungkunst+v.+ocean&hl=en&as_sdt=6,31&as_ylo=2020

Although an ordinance must be substantially consistent with the land-use plan element and the housing plan element of the Master Plan, some inconsistency is permitted, provided it does not substantially or materially undermine or distort the basic provisions and objectives of the Master Plan.

Old Orchard Vill. Homeowners Ass'n, Inc. v. Municipality of Princeton, A-4005-19 (Nov. 3, 2021)
https://scholar.google.com/scholar_case?case=18340703452619237763&q=old+orchard+village&hl=en&as_sdt=4,31&as_ylo=2021

Appellate Division upheld a trial court’s determination an ordinance rezoning a site for affordable housing was substantially consistent with the municipal master plan and housing element at the time the ordinance was adopted where the master plan generally spoke to a need to promote affordable housing and the Township Council had determined that the ordinance was substantially consistent with the Master Plan.

In the Matter of New Jersey Sports & Exposition Auth. Resolution, A-2868-19 (Jan. 27, 2022)
https://scholar.google.com/scholar_case?case=10143841648913316321&q=New+Jersey+Sports+%26+Exposition+Auth.+Resolution+&hl=en&as_sdt=6,31&as_ylo=2022

“[T]he HMAA dictates the required elements of the comprehensive District Master Plan. They are (1) issuance of ‘a report presenting the objectives, assumptions, standards, and principles, as set forth in the master plan’ that ‘shall be a composite of . . . written proposals recommending the physical development of the lands within the district, in its entirety or a portion thereof,’ prepared by the NJSEA following consultation ‘with any federal or State agency having an interest in the district’; (2) consideration of ‘existing patterns of the development in constituent municipalities’; and (3) ‘provisions or criteria for the location and use of buildings, structures, facilities, and land for solid waste disposal and recycling.’ N.J.S.A. 5:10A-10(a) to-10(e).” It does not require adoption of a District Transportation Plan or completion of a regional transportation study prior to adoption of the District Master Plan.

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Concerned Citizens of Hopewell and Ewing, Inc. v. Twp. of Hopewell, A-1264-20 (Oct. 3, 2022)
https://scholar.google.com/scholar_case?case=16770045306540709188&q=affordable+housing&hl=en&as_sdt=4,31&as_ylo=2022

Zoning ordinance upheld because, while it may have not complied with the Township's master plan, it met the requirements of N.J.S.A. 40:55D-62(a) by being adopted through an affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes when adopting such a zoning ordinance. "Neither the plain text of the statute nor the cases cited support plaintiffs' contention that municipalities must provide "detailed reasons" for adopting zoning ordinances inconsistent with their master plans."

Jersey Shore Beach & Boardwalk Co., Inc. v. Borough of Keansburg, A-2379-22 (Jan. 13, 2025)

https://scholar.google.com/scholar_case?case=13874548542320613302&q=+Jersey+Shore+Beach+%26+Boardwalk+Co.,+Inc.+v.+Borough+of+Keansburg&hl=en&as_sdt=6,47

The Board's consistency determination is entitled to deference and great weight.

SB Bldg. Assocs., LP v. The Planning Bd. of the Borough of Milltown, A-3253-22 (Feb. 25, 2025)

https://scholar.google.com/scholar_case?case=16313146350698147800&q=+SB+Bldg.+Assoc s.,+LP+v.+The+Planning+Bd.+of+the+Borough+of+Milltown&hl=en&as_sdt=6,47

Ordinance adopting revisions to a redevelopment plan providing the same number of affordable units while less residential units overall, with more open space, was substantially consistent with the master plan and was not arbitrary, capricious or unreasonable. Among other things, the ordinance was well supported by expert testimony presented to the Planning Board explaining the rationale for the modifications to the site. Open space at the property was explicitly provided for within the land use element of the master plan. It is not inconsistent with that objective that the Planning Board sought to expand the open space element at this location and further promote environmental values. The reduction in market units was reasonably adopted, in recognition of the reduction in land devoted to residential purposes.

(3) STATUTORY REQUISITES

Quinton v. Edison Park Dev. Corp., 59 N.J. 571 (1971)

http://scholar.google.com/scholar_case?case=12328534030854410057&q=Quinton+v.+Edison+Park+Dev.+Corp&hl=en&as_sdt=2,31

Uniformity.

Medici v. BPR Co., 107 N.J. 1 (1987)

http://scholar.google.com/scholar_case?case=7670763351877702884&q=Medici+v.+BPR+Co&hl=en&as_sdt=2,31

Enhanced quality of proof.

Great Atlantic & Pacific Tea Co. v. Pt. Pleasant, 137 N.J. 136 (1994)

http://scholar.google.com/scholar_case?case=654482476839357693&q=Great+Atlantic+%26+Pacific+Tea+Co.+v.+Pt.+Pleasant&hl=en&as_sdt=2,31

Referendum.

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Toll Bros. v. West Windsor Twp., 312 N.J. Super. 540 (App. Div.), *certif. denied*, 157 N.J. 543 (1998)

http://scholar.google.com/scholar_case?case=1696268204249904018&q=Toll+Bros.+v.+West+Windsor+Twp&hl=en&as_sdt=2,31

Mountain Hill v. Middletown Twp., 353 N.J. Super. 57 (App. Div.) *certif. denied*, 175 N.J. 78 (2002)

http://scholar.google.com/scholar_case?case=6755008165828683335&q=Mountain+Hill+v.+Middletown+Twp&hl=en&as_sdt=2,31

To pass an amended zoning ordinance pursuant to *N.J.S.A.* 40:55D-63 over a validly filed protest, the required affirmative vote is two-thirds of all members of the governing body.

Repair Master, Inc. v. Bor. of Paulsboro, 352 N.J. Super. 1 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=91158498839109445556&q=Repair+Master,+Inc.+v.+Bor.+of+Paulsboro&hl=en&as_sdt=2,31

Borough had no power to regulate the nature of the occupancy of residential properties under either the general police power or the municipal land use regulatory power and attempt to impose a moratorium on new non-owner occupied tenancies was improper.

Congregation Kol Ami v. Abington Twp., 309 F.3d 120 (3d Cir. 2002)

http://scholar.google.com/scholar_case?case=15863931619920316510&q=Congregation+Kol+Ami+v.+Abington+Twp&hl=en&as_sdt=2,31

Pennsylvania case in which Third Circuit held appeal of District Court's opinion had not been rendered moot because the Township "suffered an ongoing injury" that may be remedied on appeal. District Court remanded to hold special exception hearing based upon a finding that the Township's zoning ordinance was unconstitutional. Township held hearing on, and granted, synagogue's application for special exception.

Campbell v. Bor. of North Plainfield, 404 N.J. Super. 337 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=7867689328743952886&q=Campbell+v.+Bor.+of+North+Plainfield&hl=en&as_sdt=2,31

The validity of an amendatory ordinance depends on the validity of the ordinance that it amends. An ordinance which is adopted pursuant to a reexamination of the master plan is exempt from the personal notice requirement but the citizens still have the right of protest in accordance with *N.J.S.A.* 40:55D-63. "The purpose of the protest provision is . . . to better enable affected property owners to maintain the stability and continuity of zoning regulations and to therefore make it more difficult, if they protest, for those changes to be enacted." Once a valid protest is file, the ordinance requires "the favorable vote of two-thirds of all the members of the government body . . ." All of the members of the governing body means "the full membership commanded by the act, and not a reduced body, however occurring."

CBS Outdoor, Inc. v. Borough of Lebanon Planning Bd./Bd. of Adjust., 414 N.J. Super. 563 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=2311026004098044039&q=CBS+Outdoor,+Inc.+v.+Borough+of+Lebanon+Planning+&hl=en&as_sdt=2,31

Municipality estopped from arguing that its own ordinance is not valid after applying it to application before the board and it was later discovered that it wasn't filed with the County as required by the MLUL. Under "turn square corners" doctrine, township may not seek litigation advantage as a result of its own error.

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In Re: Petition for Referendum to Repeal Ordinance 2010-27 of the City of Margate City, Atlantic County, New Jersey, 424 N.J. Super. 242 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=1354914195283181160&q=In+Re:+Petition+for+Referendum+to+Repeal+Ordinance+2010-27+of+the+City+of+Margate+City,+Atlantic+County,+New+Jersey&hl=en&as_sdt=2,31

Residents of a municipality organized under the Walsh Act have the right to petition for a referendum regarding an ordinance authorizing the incurring of indebtedness under the Home Rule Act, N.J.S.A. 40:49-27. The qualification of the exception from the referendum provision of N.J.S.A. 40:74-5 which states “where other requirements are made by law” is construed as a codification of the holding in Wethling v. Board of Commissioners of the City of Orange, 94 N.J.L. 36 (Sup Ct. 1920).

Roseff v. Byram Township, 432 N.J. Super. 8 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=13631055087726040459&q=roseff&hl=en&as_sdt=4,31

A budget ordinance is not subject to a referendum under the Faulkner Act.

Committee of Petitioners for the Repeal of Ordinance Number 522 (2013) of the Borough of West Wildwood v. Frederick, 435 N.J. Super. 552 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=2779833141579332138&q=petitioners+frederick&hl=en&as_sdt=4,31

A petition seeking referendum of a proposed bond ordinance must be filed within twenty days from the date of publication, after final passage of the challenged ordinance. Further, Rule 4:69-6(b)(11), which governs actions in lieu of prerogative writs, (including any challenge to review a municipal resolution or ordinance authorizing the issuance of notes or bonds) requires a complaint be filed within twenty days from the date of the publication following final passage of the ordinance. Upon the expiration of this twenty-day period, consideration of a challenge to a bond ordinance is generally barred. N.J.S.A. 40A:2-49. However, where the petition was only four days late and concerned important public questions, the court enlarged the time to consider the complaint. The Home Rule Act is restricted to indebtedness challenges and it does not require the naming of the committee of petitioners and the failure to list the names was not fatal even though the listing of 5 petitioners is required under the Walsh Act. The municipal clerk cannot reject a petition for notary errors without informing the petitioners what is required to correct the petition.

Initiative Petition for the Adoption of an Ordinance to Amend the Jackson Township Administrative Code, In the Matter of a 437 N.J. Super. 203 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=4594170421470182389&q=437+N.J.+Super.+203&hl=en&as_sdt=4,31

Pre-election judicial review of the validity of an initiative ordinance is limited to whether it is defective on its face, or the petitioners have failed to follow the statutory requirements. Initiative petitions under the Faulkner Act should reach the voters in substantially the same form as presented to the petitioners and the court should not sever part of the ordinance and order that a revised ordinance be placed on the ballot.

Borough of Avalon v. The Marina at Avalon Anchorage, LLC, A-4817-15T2 (June 5, 2017)

https://scholar.google.com/scholar_case?case=1801475630251098294&q=A-4817-15T2&hl=en&as_sdt=4,31

Municipality’s suit to invalidate a street vacation or, in the alternative, to compel the construction of public benefit improvements that the property owner’s predecessor agreed to build in return for

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the vacation denied where the property owner had no knowledge of the prior agreement. The municipality could have conditioned the vacation on the landowner's agreement to construct and maintain the public benefit improvements, but it failed to do so and "the Recording Act shields the subsequent purchaser from having to construct the improvements having never been noticed of any such obligation."

MEPT Journal Square Urban Renewal, LLC v. City of Jersey City, 455 N.J. Super. 608 (App. Div. 2018)

https://scholar.google.com/scholar_case?case=18260764451955821551&q=A-2281-16T4&hl=en&as_sdt=4,31

The Long Term Tax Exemption Law did not authorize a municipality to condition the grant of a tax abatement upon an agreement to prepay a portion of its annual service charge. "Where the statute sets forth the procedure to be followed, no governing body, or subdivision thereof, has the power to adopt any other method of procedure." [citation omitted].

6-8 Hoffman Place, LLC v. Twp. of Irvington, A-2141-19 (Mar. 5, 2021)

https://scholar.google.com/scholar_case?case=18203638788958637386&q=hoffman+place+v.+irvington&hl=en&as_sdt=6,31

A municipal ordinance regulating maximum permissible weight on a connecting street with another municipality required NJDOT approval to become effective despite the fact that the municipality believed that the street was "self contained."

In re Borough of Leonia Ordinance Nos. 2018-14, 2018-15, and 2018-17, A-0777-20 (April 29, 2022)

https://scholar.google.com/scholar_case?case=16390977316357347372&q=Borough+of+Leonia+Ordinance+Nos.+2018-14,+2018-15,+and+2018-17&hl=en&as_sdt=6,31&as_ylo=2022

The Commissioner of the Department of Transportation's disapproval of certain ordinances enacted by the Borough of Leonia was upheld because the ordinances were "not in the interest of safety and the expedition of traffic on the public highways[.]" Furthermore, the Borough's justifications for implementing the ordinances were based on outdated traffic data, New Jersey has a longstanding prohibition on "no through street ordinances." and the traffic patterns through the borough during rush hour were not attributable to commuters cutting through the borough to get to the George Washington Bridge.

New Jersey Landscapers Association v. Twp of Maplewood, Civ. No. 17-8820 (MAH April 26, 2022)

[HTTPS://SCHOLAR.GOOGLE.COM/SCHOLAR_CASE?CASE=12072688175840928854&Q=NEW+JERSEY+LANDSCAPERS+ASSOCIATION+v.+TWP+OF+MAPLEWOOD&HL=EN&AS_SDT=6,31](https://scholar.google.com/scholar_case?case=12072688175840928854&q=NEW+JERSEY+LANDSCAPERS+ASSOCIATION+v.+TWP+OF+MAPLEWOOD&hl=en&as_sdt=6,31)

Plaintiffs not entitled to an award of ATTORNEYS' fees because as a result of their challenge to the leaf blower ordinance, Defendants' behavior was not altered in a way that "directly benefits" Plaintiffs. The Amended Ordinance eliminated the ban's distinction between commercial entities and residents, but that didn't directly benefit Plaintiffs and the terms of the Amended Ordinance are objectively worse for Plaintiffs because the ban on the use of gas-powered leaf blowers was extended by two weeks.

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(4) MUNICIPAL EXEMPTION

Hills of Troy Neighborhood Association v. Twp. of Parsippany-Troy Hills, 392 N.J. Super. 593 (Law Div. 2005)

http://scholar.google.com/scholar_case?case=18051419748439494195&q=%22Hills+of+Troy%22+Neighborhood+Association+v.+Twp.+of+Parsippany-Troy+Hills&hl=en&as_sdt=2,31

Municipality is exempt from its zoning regulations, subject to reasonable exercise of such exemption, and FCC-licenses communications carriers share in that exemption because their private benefit is secondary and outweighed by the public interest served – a police headquarters and communications tower for emergency services.

(5) REGIONAL NEEDS

Southern Burlington County N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158 (1983)

http://scholar.google.com/scholar_case?case=8856555144826492191&q=Southern+Burlington+County+N.A.A.C.P.+v.+Mount+Laurel+Twp&hl=en&as_sdt=2,31

Wyzykowski v. Rizas, 132 N.J. 509 (1993)

http://scholar.google.com/scholar_case?case=13125028163977254988&q=Wyzykowski+v.+Rizas&hl=en&as_sdt=2,31

Howell Properties v. Twp. of Brick, 347 N.J. Super. 573 (App. Div.) *certif. denied*, 174 N.J. 192 (2002)

http://scholar.google.com/scholar_case?case=8190426078752603667&q=Howell+Properties+v.+Twp.+of+Brick&hl=en&as_sdt=2,31

A municipality may not vacate streets which extend to a proposed major subdivision situated in an adjoining municipality the result of which renders the property landlocked because it is part of the municipality's obligation to consider the welfare of the region when the governing body exercises its legislative authority.

Rumson Estates v. Mayor & Council of Fair Haven, 350 N.J. Super. 324 (App. Div. 2002), *aff'd* 177 N.J. 338 (2003)

http://scholar.google.com/scholar_case?case=6250232451287723435&q=Rumson+Estates+v.+Mayor+%26+Council+of+Fair+Haven&hl=en&as_sdt=2,31

Land use ordinance which establishes a maximum habitable floor area of 2200 square feet is valid exercise of municipal authority under *N.J.S.A. 40:55D-65(b)* because it is reasonably related to the goal of providing reasonably priced homes and is uniform in its applicability within the zoning district. *Manalapan Builders* distinguished.

Menk Corporation v. Twp. Committee of Barnegat, 389 N.J. Super. 263 (Law Div. 2006)

http://scholar.google.com/scholar_case?case=13020465015606617864&q=Menk+Corporation+v.+Twp.+Committee+of+Barnegat&hl=en&as_sdt=2,31

Plaintiff sought to compel Township to adopt an ordinance vacating three public streets to allow it to proceed with a Mt. Laurel development. Court noted that the general rule is that the vacation of a public street is a legislative function and that the decision lies in the discretion of the governing body subject to limited judicial review. The Township argued that plaintiff could redesign the layout and still build its Mt. Laurel project without the street vacation, but plaintiff countered that altering the plan would involve delay, substantial cost and may result in a street layout which would not conform to the R.S.I.S. Relying on *Howell Properties v. Twp. of Brick*, 347 N.J. Super. 573

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(App. Div.) *certif. denied*, 174 N.J. 192 (2002), the court found that the “controlling criterion under the statute is whether the vacation of a street will serve the ‘public interest.’” In Howell, the town vacated a street to impede the construction of affordable housing. Here, the court found that the Township refusal to vacate the streets has Mt. Laurel implications and that there was no public interest in maintaining the street. Rather, there is a strong public policy interest in eliminating the streets to allow for the construction of affordable housing quickly and without unnecessary costs. The court also found that the Township was not entitled to compensation for the bed of the street because a municipality generally has no ownership in the bed of streets. The presumption is that title to one-half of the road bed lies in the abutting property owner subject to the public’s right of way or easement.

5. PREEMPTION

Overlook Terrace v. HMFA, 71 N.J. 451 (1976)

http://scholar.google.com/scholar_case?case=3613234660143162250&q=71+N.J.+451+&hl=en&as_sdt=2,31

Murnick v. Bd. of Ed., 235 N.J. Super. 225 (App. Div. 1989), *certif. denied*, 118 N.J. 201 (1989)

http://scholar.google.com/scholar_case?case=17182532692668097421&q=235+N.J.+Super.+225+&hl=en&as_sdt=2,31

Alsar Technology v. Z.B.A., 235 N.J. Super. 471 (Law Div. 1989)

http://scholar.google.com/scholar_case?case=7510751196829235553&q=235+N.J.+Super.+471+&hl=en&as_sdt=2,31

Pfeuffer v. Sculco, 242 N.J. Super. 181 (App. Div. 1990)

http://scholar.google.com/scholar_case?case=8295254741398345612&q=242+N.J.+Super.+181+&hl=en&as_sdt=2,31

Nationwide Satellite Co. v. Z.B.A., 243 N.J. Super. 18 (App. Div. 1990)

http://scholar.google.com/scholar_case?case=1385288504000943466&q=243+N.J.+Super.+18+&hl=en&as_sdt=2,31

Anfuso v. Seeley, 243 N.J. Super. 349 (App. Div. 1990)

http://scholar.google.com/scholar_case?case=12253790227439713017&q=243+N.J.+Super.+349+&hl=en&as_sdt=2,31

Ocean County Board of Realtors v. Long Beach Twp., 248 N.J. Super. 241 (Law Div. 1991)

http://scholar.google.com/scholar_case?case=11084010688136510966&q=248+N.J.+Super.+241+&hl=en&as_sdt=2,31

Cherry Hill Twp. v. Oxford House Inc., 263 N.J. Super. 25 (App. Div. 1993)

http://scholar.google.com/scholar_case?case=16370232202638049859&q=263+N.J.+Super.+25+&hl=en&as_sdt=2,31

New Brunswick Cellular Tel. v. Old Bridge Twp. Planning Bd., 270 N.J. Super. 122 (App. Div. 1993)

Radiation Protection Act preemption.

http://scholar.google.com/scholar_case?case=15331239603215946860&q=270+N.J.+Super.+122+&hl=en&as_sdt=2,31

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Holgate Property Associates v. Twp. of Howell, 145 N.J. 590 (1996)

http://scholar.google.com/scholar_case?case=9892960053094977880&q=145+N.J.+590+&hl=en&as_sdt=2,31

Twp. of Howell v. Fred McDowell, Inc., 300 N.J. Super. 491 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=5012105933641725634&q=300+N.J.+Super.+491+&hl=en&as_sdt=2,31

Twp. of Saddle Brook v. A.B. Family Center, 307 N.J. Super. 16 (App. Div. 1998), *aff'd*, 156 N.J. 587 (1999)

http://scholar.google.com/scholar_case?case=742060335963499068&q=307+N.J.+Super.+16+&hl=en&as_sdt=2,31

Total ban on adult video stores preempted.

Tumino v. Long Beach Twp., 319 N.J. Super. 514 (App. Div.), *certif. denied*, 161 N.J. 332 (1999)

http://scholar.google.com/scholar_case?case=15363458368666250042&q=319+N.J.+Super.+514+&hl=en&as_sdt=2,31

Dock construction preempted by the Waterfront Development Act.

Twp. of Franklin v. Den Hollander, 338 N.J. Super. 373 (App. Div. 2001), *aff'd* 172 N.J. 147 (2002)

http://scholar.google.com/scholar_case?case=5524795324928659055&q=Twp.+of+Franklin+v.+Den+Hollander&hl=en&as_sdt=2,31

Right to Farm Act preemption.

Trinity Cemetery Ass'n, Inc. v. Twp. of Wall, 170 N.J. 39 (2001)

http://scholar.google.com/scholar_case?case=10735453035956855062&q=Trinity+Cemetery+Ass%E2%80%99n,+Inc.+v.+Twp.+of+Wall&hl=en&as_sdt=2,31

Cemetery Act preemption.

Ocean County Cellular Tel. v. Twp. of Lakewood Bd. of Adjust., 352 N.J. Super. 514, *certif. denied*, 175 N.J. 75 (2002)

http://scholar.google.com/scholar_case?case=4700717662186267318&q=Ocean+County+Cellular+Tel.+v.+Twp.+of+Lakewood+Bd.&hl=en&as_sdt=2,31

FCC preemption.

Borough of Closter v. Abram Demaree Homestead, Inc. 365 N.J. Super. 338, *certif. denied*, 179 N.J. 372 (2004)

http://scholar.google.com/scholar_case?case=7981792076084012527&q=Borough+of+Closter+v.+Abram+Demaree+Homestead&hl=en&as_sdt=2,31

Right to Farm Act preemption.

Hi Tech Trans., LLC v. New Jersey, 382 F.3d 295

http://scholar.google.com/scholar_case?case=9857055891090945676&q=Hi+Tech+Trans.,+LLC+v.+New+Jersey&hl=en&as_sdt=2,31

Owner of solid waste disposal facility's claim of pre-emption rejected with respect to New Jersey DEP's enforcement of Solid Waste Management Act as facility did not involve "transportation by rail carrier" which would be within the exclusive jurisdiction of the Surface Transportation Board.

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Sprint Spectrum L.P. v. Bor. of Ringwood Zoning Bd. of Adjust., 386 N.J. Super. 62 (Law Div. 2005)

http://scholar.google.com/scholar_case?case=79483019313173855&q=386+N.J.+Super.+62+&hl=en&as_sdt=2,31

Ordinance requiring cell tower on municipal property preempted by Telecommunications Act of 1996.

State of New Jersey v. Krause, 399 N.J. Super. 579 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=8418532966461403840&q=State+of+New+Jersey+v.+%22Krause%22&hl=en&as_sdt=4,31

Municipal noise ordinance not preempted where there was no evidence submitted to show that the ordinance was not more stringent than any regulation issued under the Noise Control Act, N.J.S.A. 13:1G-21 or that it wasn't submitted to the NJDEP for approval as required by statute.

McGovern v. Bor. of Harvey Cedars, 401 N.J. Super. 136 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=1256061369902213550&q=McGovern+v.+Bor.+of+Harvey+Cedars&hl=en&as_sdt=4,31

CAFRA does not preempt municipal building line ordinance that prohibits construction east of a defined geographic line adjacent to the ocean-side perimeter of the town.

G.H. v. Twp. of Galloway, 401 N.J. Super. 392 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=17976962825732277997&q=G.H.+v.+Twp.+of+Galloway&hl=en&as_sdt=4,31

Municipal ordinance that prohibited a sex offender from living near a school, park, playground, etc., preempted by Meghan's Law.

Twp. of Readington v. Solberg Aviation Co., 409 N.J. Super. 282 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=9822672851399352897&q=Twp.+of+Readington+v.+Solberg+Aviation+Co&hl=en&as_sdt=2,31

Air Safety and Zoning Act, N.J.S.A. 6:1-80 to -89, and the State Aviation Act, N.J.S.A. 6:1-20 to -44, did not entirely preempt municipality's ability to regulate land use within an airport safety zone, but municipality's authority is narrowly circumscribed.

Lake Valley Associates, LLC v. Twp. of Pemberton, 411 N.J. Super. 501 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=14890569745586428351&q=Lake+Valley+Associates,+LLC+v.+Twp.+of+Pemberton&hl=en&as_sdt=2,31

Township ordinance that imposes registration obligations and other regulatory requirements on landlords not preempted by the Hotel and Multiple Dwelling Law ("H&MD Law"), N.J.S.A. 55:13A-1 to 28, because the H&MD Law explicitly states that it does not preempt municipal enactments that are more restrictive than it.

Club 35, L.L.C. v. Borough of Sayreville, 420 N.J. Super. 231 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=10739325878596652869&q=Club+35,+L.L.C.+v.+Borough+of+Sayreville&hl=en&as_sdt=2,31

A municipality may prohibit BYOB in all commercial unlicensed premises and exempt from that prohibition a clearly, objectively and rationally defined class of commercial unlicensed premises, such as restaurants. But, in those places where a municipality permits BYOB, it may not regulate the practice because the Legislature reserved nothing more than a municipal right to prohibit the practice.

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City of Arlington, Texas v. Federal Communications Commission, 133 S.Ct. 1863 (2013)
http://scholar.google.com/scholar_case?case=18206154580187840539&q=133+S.Ct.+1863&hl=en&as_sdt=3,31

“In the Telecommunications Act of 1996, Congress ‘impose[d] specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of such facilities,’ [citation omitted]. . . Section 201(b) of that Act empowers the Federal Communications Commission to ‘prescribe such rules and regulations as may be necessary in the public interest to carry out [its] provisions.’ [citation omitted]. The Act imposes five substantive limitations, which are codified in 47 U.S.C. § 332(c)(7)(B); only one of them, § 332(c)(7)(B)(ii), is at issue here. That provision requires state or local governments to act on wireless siting applications ‘within a reasonable period of time after the request is duly filed.’ . . . In November 2009, the Commission, relying on its broad statutory authority to implement the provisions of the Communications Act, issued a declaratory ruling [and held that] [a] ‘reasonable period of time’ under § 332(c)(7)(B)(ii) . . . is presumptively (but rebuttably) 90 days to process a collocation application (that is, an application to place a new antenna on an existing tower) and 150 days to process all other applications.” The FCC’s declaratory ruling is upheld because a court must defer to an agency’s interpretation of a statutory ambiguity that concerns the scope of the agency’s jurisdiction.”

Lozano v. City of Hazelton, 724 F.3d 297 (3rd Cir. 2013)
http://scholar.google.com/scholar_case?case=14697052635552847733&q=724+F.3d+297&hl=en&as_sdt=3,31

City’s ordinance attempting to regulate the employment of unauthorized aliens, and the provision of rental housing to aliens lacking lawful immigration status preempted. Employment provisions were preempted under the doctrine of conflict preemption; housing provisions were field preempted and conflict preempted; and rental registration requirements were field preempted.

Schroeder v. County of Atlantic, 440 N.J. Super. 251 (Law Div. 2015)
https://scholar.google.com/scholar_case?case=12414114773996772315&q=L-2291-14&hl=en&as_sdt=4,31

N.J.S.A. 40A:11-51 “conferred not only the power to enact pay-to-play ordinances on counties, but also ensured that these ordinances were not considered preempted by the state law.”

Township of Fairfield v. State, Department of Transportation, A-2390-13T1 (April 10, 2015)
https://scholar.google.com/scholar_case?case=9499097426173536160&q=A-2390-13T1&hl=en&as_sdt=4,31

The DOT has “the ultimate authority as to the placement of aeronautical facilities.” A municipality may pass an ordinance restricting a heliport, but “they must not exercise their zoning authority so as to collide with expressed policy goals of the State legislation, N.J.S.A. 6:1-20.” The DOT must “weigh conscientiously local interests, to examine carefully whether the proposed navigation facility is compatible with the surrounding land uses and to consult the local ordinances and authorities in making its licensing decision” but may approve a facility over a municipality’s objection.

Timber Glen Phase III, LLC v. Township of Hamilton, A-1775-13T1 (Aug. 6, 2015)
https://scholar.google.com/scholar_case?case=17012703707892333771&q=1775-13T1&hl=en&as_sdt=4,31

Ordinance assessing an annual licensing fee on residential apartment units which provide tenancies of 175 days or more is beyond the authority granted to municipal governments under the Licensing Act, N.J.S.A. 40:52-1. “The presumption of the validity of local legislative action, however, is

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constrained by the obvious understanding that ‘[a] statute has supremacy over an ordinance,’ [citation omitted], and ‘a local municipality is but a creature of the State, capable of exercising only those powers granted to it by the Legislature.’” “The power to regulate and to license, although related, are discrete.”

Casella v. Postorivo, A-5166-14T1 (Feb. 2, 2017)

https://scholar.google.com/scholar_case?case=567685070653412570&q=A-5166-14T1&hl=en&as_sdt=4,31

The Right to Farm Act controls “the relationship between commercial farming activities . . . and the right of municipalities to enforce local zoning and land use ordinances enacted pursuant to the Municipal Land Use Law (MLUL)[,]’ . . . and ‘preempts municipal land use authority over commercial farms.” The Act also established “administrative procedures to be followed by a person ‘aggrieved by the operation of a commercial farm,’ who may file a complaint before the county agriculture development board, N.J.S.A. 4:1C-10.1(a), whose determination is appealed to the State Agriculture Development Committee, N.J.S.A. 4:1C-10.1(d), with the right of direct appeal to this court, N.J.S.A. 4:1C-10.1(e). See R. 2:2-3(a)(2).”

Peg Leg Webb, LLC v. New Jersey Pinelands Commission, A-4016-15T4 (Oct. 11, 2017)

https://scholar.google.com/scholar_case?case=1960228168764874352&q=A-4016-15T4&hl=en&as_sdt=4,31

“To the extent that the [Pinelands Protection Act and the Comprehensive Management Plan] are inconsistent with the MLUL, the former prevail” and site plan approval granted under a local ordinance that is inconsistent with the CMP may be voided by the Commission.

Gross v. Iannuzzi, A-0018-16T2 (June 5, 2019)

https://scholar.google.com/scholar_case?case=12156959726275306137&q=A-0018-16T2&hl=en&as_sdt=4,31

N.J.S.A. 58:16A-103, concerning flood-safe construction, preempts a homeowner’s associations restrictions and any local development regulations that might otherwise prevent a property owner from elevating a dwelling. A land use application is not required even where raising the dwelling would be inconsistent with the development’s original site plan approvals. “We further reject plaintiffs’ argument that, even if Iannuzzi is permitted to raise the elevation of the townhome’s first floor, he must maintain the existing height of the roofline by reducing the living space within the townhome. That cramped interpretation would defeat the legislative purpose to encourage flood-safe construction. In the circumstances presented here, Iannuzzi’s right to protect his property from flood hazards outweighs his neighbors’ right to preserve their ocean views.”

Lakeview Memorial Park Association v. Burlington County Construction Board of Appeals, 463 N.J. Super. 459 (Law Div. 2019)

https://scholar.google.com/scholar_case?case=3660595126325151442&q=Lakeview+v.+Burlington+County+Board+of+Appeals&hl=en&as_sdt=6,31&as_ylo=2019

By failing to apply for a zoning permit prior to filing for a building permit, plaintiff failed to exhaust administrative remedies. The Cemetery Act, “N.J.S.A. 45:27-27(e) ensures that municipalities will not enforce their own construction codes for mausoleum construction by stating that ‘[a] municipality may enact zoning ordinances which provide for reasonable height and setback requirements in keeping with standards established for property immediately abutting a cemetery, but any other ordinance regulating the construction of mausoleums shall be of no effect.’ Thus, a plain reading of N.J.S.A. 45:27-27 indicates that the Legislature granted approval authority of construction plans and structural specifications as relates to public health or safety to the DCA, conferred oversight of the project to the municipality through the construction official’s permit approval and supervision of construction, and ensured that the municipality does not enact its own

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construction code for public mausoleums.” “When reading the Cemetery Act alongside the MLUL, this court finds that the Cemetery Act does not contradict local site plan review but merely provides another form of regulation. The Cemetery Act provides additional regulations for the construction of mausoleums, specifically the requirement that a cemetery company must seek approval from the DCA. N.J.S.A. 45:27-27(b). It also requires the cemetery company to obtain the municipality's permission to develop and use the land in such a way. N.J.S.A. 45:27-27(a). The MLUL and local ordinances thus outline how that permission should be sought and what is needed to obtain said permission.”

Demarest Farm and Orchard, LLC v. Borough of Hillsdale, A-0538-18T3 (March 12, 2020)

https://scholar.google.com/scholar_case?case=14971136017570691520&q=Demarest+Farm+%26+Orchard,+LLC+v.+Borough+of+Hillsdale&hl=en&as_sdt=6,31&as_ylo=2019

Ordinance that restricted parking near farm to address safety concerns did not directly interfere with farming practices and thus did not violate the Right To Farm Act.

Extenet Systems, Inc. v. City of East Orange, 2:19-cv-21291 (Dec. 9, 2020)

https://scholar.google.com/scholar_case?case=10362479864409270805&q=extenet+v.+east+orange&hl=en&as_sdt=6,31

With respect to an application to install small wireless facilities in the municipal rights-of-way, the City Council's decision to deny same, which was not reduced to writing, does not effectuate a denial pursuant to the Federal Telecommunications Act (the “Act”). 47 U.S.C. § 332(c)(7)(B)(iii). Consequently, the City did not act on the applications. Furthermore, the City's non-action itself was a violation of the Act because no action was taken on the applications within the “presumptively reasonable timeframe” set forth by the Act and the applicable Federal Communications Commission regulations.

Builders League of S. Jersey v. Borough of Haddonfield, A-5588-18 (Mar. 3, 2021)

https://scholar.google.com/scholar_case?case=1611528880649510032&q=Builders+v.+haddonfield&hl=en&as_sdt=6,31&as_ylo=2021

A municipal stormwater ordinance that regulates single-family and two-family homes that would not qualify as “major developments” under the NJDEP's stormwater regulations is preempted by the MLUL and RSIS and also acts as a de facto site plan review process for which such uses are exempt.

Williams v. City of Asbury Park, A-2756-19 (Mar. 15, 2021)

https://scholar.google.com/scholar_case?case=7899876805032440366&q=williams+v.+asbury+park&hl=en&as_sdt=6,31&as_ylo=2020

A municipal licensing ordinance that regulated short term rentals was lawfully adopted because same was a “subject matter” ordinance appropriate for police power regulation, as opposed to a “zoning ordinance” that limits how and where one can build. Consequently, the municipality was not required to comply with provisions of the MLUL when adopting same and the ordinance was lawfully enacted.

Kumar v. Twp of Piscataway, A-0227-21 (Aug. 23, 2022)

https://scholar.google.com/scholar_case?case=8399325827715723075&q=Kumar+v.+Twp+of+Piscataway&hl=en&as_sdt=6,31

A municipality is not authorized by N.J.S.A. 19:37-1 to place non-binding public opinion questions before the electorate when initiative petitions concerning the identical issues are on the same ballot. Under N.J.S.A. 19:37-1, the governing body may only approve a non-binding public question if “no other statute” can “ascertain the sentiment of the ... voters of the municipality.”

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Botteon v. Borough of Highland Park, A-1227-22 (May 1, 2024)

https://scholar.google.com/scholar_case?case=17093849965462203066&q=Botteon+v.+Borough+of+Highland&hl=en&as_sdt=6,47

CREAMMA, the State statute permitting the cultivation, processing and sale of cannabis in New Jersey, is not preempted by the federal Controlled Substances Act ("CSA"), 21 U.S.C. § 801.

Twp. of Deptford v. Malachite Group, LTD., A-0943-22 (June 20, 2024)

https://scholar.google.com/scholar_case?case=11797556448621519270&q=Twp.+of+Deptford+v.+Malachite+Group,+LTD.,&hl=en&as_sdt=6,47

A municipal code's directive to impose a fine for "each day" of the violation was not in compliance with N.J.S.A. 40:49-5, which only permits the Township to impose an "additional fine" for "a repeated violation of any municipal ordinance" that may not exceed the statutory maximum of \$2,000 or be less than the statutory minimum of \$100. Consequently, the Court held the "per day" fine was superseded by state law and of no effect.

State v. Ruhnke, A-1549-23 (June 18, 2025)

https://scholar.google.com/scholar_case?case=9883883432034076958&q=ruhnke&hl=en&as_sdt=4,31

The issuance of a license from the Department of Community Affairs to operate a sober living facility does not obviate the need to obtain local zoning approval.

6. OPMA

Lipton v. Twp. Council of Berkeley Twp., A-2933-21 (April 2, 2024)

https://scholar.google.com/scholar_case?case=8891662229161095250&q=Lipton+v.+Twp.+Council+of+Berkeley+Twp.&hl=en&as_sdt=6,47

The fact that the governing body did not respond to Plaintiff's questions with respect to various matters, is not a violation of OPMA.

7. SPOT ZONING, REVERSE SPOT ZONING & CONTRACT ZONING

Manalapan Realty L.P. v. Twp. of Manalapan, 272 N.J. Super. 1 (App. Div. 1994), *aff'd*, 140 N.J. 366 (1995)

http://scholar.google.com/scholar_case?case=4275728497051528774&q=Manalapan+Realty+L.P.+v.+Twp.+of+Manalapan&hl=en&as_sdt=2,31

Ordinance adopted in response to public opposition valid.

Ellentuch v. Twp. of Raritan, A-5609-98T2 (App. Div. 2000), *certif. denied*, 167 N.J. 86 (2001)

Zoning amendment not spot zoning where the use on plaintiff's lot was entirely consistent with the nature and zoning of a neighborhood tract.

Gallo v. Lawrence Twp., 328 N.J. Super. 117 (App. Div. 2000)

http://scholar.google.com/scholar_case?case=12380573655259931333&q=Gallo+v.+Lawrence+Twp.&hl=en&as_sdt=2,31

Plaintiffs failed to satisfy their burden to prove that municipality's decision to change density requirements in specific zone at developer's request constituted spot zoning.

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Medical Ctr. at Princeton v. Twp. of Princeton Zoning Bd. of Adjust., 343 N.J. Super. 177 (App. Div. 2001)

http://scholar.google.com/scholar_case?case=13003529754834371495&q=Medical+Ctr.+at+Princeton+v.+Twp.+of+Princeton+&hl=en&as_sdt=2,31

A municipality may change its zoning ordinances during pendency of a site plan application as long as the amendment is consistent with Municipal Land Use Law.

Riya Finnegan, LLC v. Twp. Council of South Brunswick, 394 N.J. Super. 303 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=13600762789558056381&q=Riya+Finnegan,+LLC+v.+Twp.+Council+of+South+Brunswick+&hl=en&as_sdt=2,31

To determine whether a municipality has engaged in spot zoning, a court must determine whether a “particular provision of the zoning ordinance is made with the purpose or effect of furthering a comprehensive scheme or whether it is designed merely to relieve a lot or lots from the burden of a general regulation.” *Palisades Props., Inc. v. Brunetti*, 44 N.J. 117, 134 (1965). Inverse spot zoning occurs when the spot zoning only negatively affects a specific piece of land. The fact that the rezoning only affected plaintiff’s property was not found to be dispositive on the issue of inverse spot zoning because plaintiff’s property was much larger than the required lot in the zone; the intent of the zone was to allow for small commercial “villages” and not a large shopping center which could be constructed on plaintiff’s property; and the rezoning furthered the purposes of the zone scheme.

Riya Finnegan LLC v. Twp. Council of South Brunswick, 197 N.J. 207 (2008)

http://scholar.google.com/scholar_case?case=14581236812914556022&q=Riya+Finnegan,+LLC+v.+Twp.+Council+of+South+Brunswick+&hl=en&as_sdt=2,31

The reasons expressed by the governing body for rezoning land in a manner inconsistent with master plan insufficient where traffic issues not shown to be different than uses consistent with master plan, and no explanation given as to why the property became appropriate for new zone which was designed for different part of municipality. Decision to rezone constituted inverse spot zoning because combination of facts, taken together, show the action was arbitrary and capricious. Facts showed that zoning was changed, it will now be more difficult for the owner to develop property and that owner’s proposed plan was completely in accord with previously-designated zone, neighboring property owners were the impetus for the change, new zone was originally designed for entirely different part of the town and for different planning purposes, new zone does not further a comprehensive plan, and both planning board and governing body acted without input from experts.

Rocky Hill Citizens For Responsible Growth v. Planning Bd., Bor. of Rocky Hill, 406 N.J. Super. 384 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=4263232474486513205&q=Rocky+Hill+Citizens+For+Responsible+Growth+v.+Planning+Bd.,+Bor.+of+Rocky+Hill+&hl=en&as_sdt=2,311

Spot zoning is “a rezoning of a lot or parcel of land to benefit an owner for use incompatible with surrounding uses and not for the purpose or effect of furthering the comprehensive plan.” No spot zoning where zoning served the collective interest of the municipality.

The Great Atlantic & Pacific Tea Company, Inc. v. Borough of Closter Planning Board, A-1374-13T3, A-1421-13T3 (March 23, 2015)

https://scholar.google.com/scholar_case?case=7272507099743994688&q=A-1374-13T3+&hl=en&as_sdt=4,31

A zoning amendment that was initiated by, and benefitted one property owner, did not constitute spot zoning where it was consistent with the master plan and did not result in “the elevation of

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private interests over those of the public at large.”

Village Supermarkets, Inv. v. Township of Egg Harbor, A-5370-12T4 (April 8, 2015)
https://scholar.google.com/scholar_case?case=8661082786403048940&q=A-5370-12T4&hl=en&as_sdt=4,31

Ordinance enactment did not constitute spot zoning where it impacted other properties beyond the applicant’s property, notwithstanding the fact that the application may have provided the impetus for the ordinance.

Smith v. South Brunswick Township, A-1218-15T2, A-3014-15T2 (May 18, 2017)
https://scholar.google.com/scholar_case?case=4904603233611267227&q=A-1218-15T2,&hl=en&as_sdt=4,31

Where the record does not support a finding that the ordinance was inconsistent with the comprehensive zoning plan, it was not spot zoning.

S/K Old York Road Associates v. The Township of Branchburg, A-3741-17T3 (Dec. 24, 2019)
https://scholar.google.com/scholar_case?case=13420083633126435888&q=A-3741-17T3&hl=en&as_sdt=4,31

Rezoning municipal property to allow for affordable housing is not spot zoning because the ordinance advances the general welfare of the community and the State and not private interests.

Old Orchard Vill. Homeowners Ass’n, Inc. v. Municipality of Princeton, A-4005-19 (Nov. 3, 2021)
https://scholar.google.com/scholar_case?case=18340703452619237763&q=old+orchard+v.+princeton&hl=en&as_sdt=6,31&as_ylo=2021

Where a municipality adopts re-zones a single parcel to permit affordable housing, same is not considered “spot zoning” because the ordinance was not adopted to benefit a private party but to provide the municipality with appropriately located and sited affordable housing which also helped meet the municipality’s Mount Laurel obligation.

Moss v. Borough of Franklin, A-1812-19 (Feb. 24, 2021)
https://scholar.google.com/scholar_case?case=16812208850460775359&q=moss+v.+franklin+&hl=en&as_sdt=6,31&as_ylo=2021

A prerogative writ challenge alleging spot zoning, two years after the re-zoning had taken place, is not permitted as timely pursuant to R. 4:69-6(a).

UMDASCH Real Estate USA, LTD, v. Borough of Wallington, No. 2:20-cv-16346 (D. N.J. Mar. 19, 2021)
https://scholar.google.com/scholar_case?case=6603633620255176695&q=umdasch+v.+wallington&hl=en&as_sdt=6,31

A complaint alleging spot zoning will survive a 12(b)(6) motion to dismiss because, while such an allegation does not define the statutory source of the “substantive right” that is being deprived, a zoning ordinance is validly attacked, as a matter of law, without raising civil rights claims.

Meredith v. Mayor & Borough Council of the Borough of Somerdale, A-1933-20 (June 3, 2022)
https://scholar.google.com/scholar_case?case=4521484277245309915&q=Meredith+v.+Mayor+%26+Borough+Council+of+the+Borough+of+Somerdale&hl=en&as_sdt=6,31

Plaintiff did not meet his burden of proving that the ordinance constitutes illegal spot zoning. “He provided no evidence that the ordinance did not further the Borough’s Master Plan. Although Lidl benefited from the ordinance, the Borough had determined that a grocery store was a desired

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component of the Kennedy Plan well before Lidl's proposed development and before the plan was amended by the ordinance.”

Lipton v. Twp. Council of Berkeley Twp., A-2933-21 (April 2, 2024)

https://scholar.google.com/scholar_case?case=8891662229161095250&q=Lipton+v.+Twp.+Council+of+Berkeley+Twp.&hl=en&as_sdt=6,47

Just because an ordinance is enacted at the request of a private party, does not automatically make it spot zoning. Citing *Gallo v. Mayor of Lawrence Township*, “[a]n ordinance enacted to advance the general welfare by means of a comprehensive plan is unobjectionable even if the ordinance was initially proposed by private parties and these parties are in fact its ultimate beneficiaries.” 328 N.J. Super. 117, 127 (App. Div. 2007).

SJ 660 LLC v. Borough of Edgewater, A-0788-22 (Aug. 13, 2024)

https://scholar.google.com/scholar_case?case=6188024727846132766&q=SJ+660&hl=en&as_sdt=4,31,131

Because the designation of a property as an area in need of redevelopment was not “predetermined” in the settlement agreement, there was no violation of the LRHL or MLUL.

Gonzalez v. Twp of West Windsor, A-1539-23 (Sep. 25, 2025)

https://scholar.google.com/scholar_case?case=11150371760815520863&q=Gonzalez+v.+Twp+of+West+Windsor&hl=en&as_sdt=6,47

Ordinance adopted pursuant to an approved affordable housing plan and settlement was not spot zoning.

8. TIME OF APPLICATION RULE/VESTED RIGHTS

Tremarco Corp. v. Garzio, 32 N.J. 448 (1960)

http://scholar.google.com/scholar_case?case=5340447164563426406&q=32+N.J.+448+&hl=en&as_sdt=2,31

Morris v. Postma, 41 N.J. 354 (1964)

http://scholar.google.com/scholar_case?case=16947891832130324698&q=41+N.J.+354+&hl=en&as_sdt=2,31

Donadio v. Cunningham, 58 N.J. 309 (1971)

http://scholar.google.com/scholar_case?case=7530103158731211922&q=58+N.J.+309+&hl=en&as_sdt=2,31

Gruber v. Mayor and Twp. Committee of Raritan Twp., 39 N.J. 1 (1962)

http://scholar.google.com/scholar_case?case=5736832017488068012&q=39+N.J.+1+&hl=en&as_sdt=2,31

Hilton Acres v. Klein, 35 N.J. 570 (1961)

http://scholar.google.com/scholar_case?case=3991290547237604526&q=35+N.J.+570+&hl=en&as_sdt=2,31

Bleznak v. Evesham Twp., 170 N.J. Super. 216 (Law Div. 1979)

http://scholar.google.com/scholar_case?case=4232177102077684352&q=170+N.J.+Super.+216+&hl=en&as_sdt=2,31

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Kruvant v. Mayor and Council of Cedar Grove Twp., 82 N.J. 435 (1980)

http://scholar.google.com/scholar_case?case=589789869545191750&q=82+N.J.+435+&hl=en&as_sdt=2,31

Urban Farms, Inc. v. Borough of Franklin Lakes, 179 N.J. Super. 203 (App. Div. 1981)

http://scholar.google.com/scholar_case?case=13954182081192254811&q=179+N.J.+Super.+203+&hl=en&as_sdt=2,31

Lizak v. Faria, 96 N.J. 482 (1984)

http://scholar.google.com/scholar_case?case=14320131162996490608&q=96+N.J.+482+&hl=en&as_sdt=2,31

S.T.C. Corp. v. Planning Bd., Hillsborough, 194 N.J. Super. 333 (App. Div. 1984)

http://scholar.google.com/scholar_case?case=12944951955784855844&q=194+N.J.+Super.+333+&hl=en&as_sdt=2,31

Ordinance adopted after unlawful denial does not apply.

Lake Shore Estates v. Denville Twp., 255 N.J. Super. 580 (App. Div. 1991), *aff'd* 127 N.J. 394 (1992)

http://scholar.google.com/scholar_case?case=758819044384947648&q=255+N.J.+Super.+580+&hl=en&as_sdt=2,31

M. Alfieri Co. v. State, DEPE, 269 N.J. Super. 545 (App. Div. 1994), *aff'd o.b.*, 138 N.J. 642 (1995)

http://scholar.google.com/scholar_case?case=11612471821877120564&q=269+N.J.+Super.+545+&hl=en&as_sdt=2,31

Manalapan Realty v. Township Committee, Twp. of Manalapan, 140 N.J. 366 (1995)

http://scholar.google.com/scholar_case?case=4275728497051528774&q=140+N.J.+366+&hl=en&as_sdt=2,31

Willoughby v. Planning Board, 306 N.J. 266 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=5501418020198240281&q=306+N.J.+266+&hl=en&as_sdt=2,31

Rogers v. Zoning Bd. of Ridgewood, 309 N.J. Super. 630 (App. Div. 1998), *aff'd o.b.*, 158 N.J. 11 (1999)

http://scholar.google.com/scholar_case?case=15199665343472988715&q=309+N.J.+Super.+630+&hl=en&as_sdt=2,31

Dinizo v. Planning Bd. of Westfield, 312 N.J. Super. 225 (Law Div. 1998)

http://scholar.google.com/scholar_case?case=12645729255966469483&q=312+N.J.+Super.+225+&hl=en&as_sdt=2,31

Lake Shore Estates, Inc. v. Denville Twp., 127 N.J. 394 (1992)

http://scholar.google.com/scholar_case?case=10557574596235902296&q=127+N.J.+394+&hl=en&as_sdt=2,31

Musconetcong Foundrymen Historical Society v. Planning Bd. of Netcong, A-3699-98T3 (App. Div.) *certif. den.* 165 N.J. 528 (2000)

Challenge to use variance moot where, while appeal was pending, ordinance amended to permit

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use.

W.L. Goodfellows and Co. of Turnersville, Inc. v. Washington Twp. Planning Bd., 345 N.J. Super. 109 (App. Div. 2001)

http://scholar.google.com/scholar_case?case=13136394356054207952&q=W.L.+Goodfellows+and+Co.+of+Turnersville,+Inc.+v.+Washington+Twp.+Planning+Bd.,+&hl=en&as_sdt=2,31

Neu v. Planning Bd., Twp. of Union, 352 N.J. Super. 544 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=6060095140364156435&q=Neu+v.+Planning+Bd.,+Twp.+of+Union&hl=en&as_sdt=2,31

Eastampton Center, LLC v. Planning Bd., Twp. of Eastampton, 354 N.J. Super. 171 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=11137574347175123796&q=Eastampton+Center,+LLC+v.+Planning+Bd.,+Twp.+of+Eastampton&hl=en&as_sdt=2,31

Developer, aware of a pending “open space preservation” ordinance which would dramatically downzone its 200+ acre tract, attempted to gain long term protection from such zoning changes through the submission of a General Development Plan (GDP). Appellate Division held that under the “time of decision rule,” the “balancing test” weighed in favor of applying the now adopted open space preservation ordinance to any developer reapplication.

House of Fire Christian Church v. Zoning Bd. of Adjust., City of Clifton, 379 N.J. Super. 526 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=11109685254467004080&q=379+N.J.+Super.+526+&hl=en&as_sdt=2,31

Municipality may change its zoning ordinance during the pendency of a site plan application, even if the ordinance is amended in direct response to a particular application.

Britwood Urban Renewal, LLC v. City of Asbury Park, 376 N.J. Super. 552 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=14450473945903516143&q=Britwood+Urban+Renewal,+LLC+v.+City+of+Asbury+Park&hl=en&as_sdt=2,31

Time-of-decision rule did not require the application of an ordinance after final site plan approval granted.

CBS Outdoor, Inc. v. Borough of Lebanon Planning Bd./Bd. of Adjust., 414 N.J. Super. 563 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=2311026004098044039&q=CBS+Outdoor,+Inc.+v.+Borough+of+Lebanon+&hl=en&as_sdt=2,31

Court declines to repudiate time of decision rule prior to effective date of L. 2010, c.9 (N.J.S.A. 40:55D-10.5) where there was no demonstration of a significant public benefit in doing so.

Price v. Martinetti, 421 N.J. Super. 290 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=6783685253212153807&q=Price+v.+Martinetti&hl=en&as_sdt=2,31

Complaint against construction official that sought demolition of structures moot where board granted variances for nonconforming structures.

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Rupe, LLC v. Planning Board of the Twp. of Hamilton, A-4794-13T1 (Nov. 23, 2015)

https://scholar.google.com/scholar_case?case=15276697064892034508&q=rupe,+llc&hl=en&as_sdt=4,31

Notwithstanding the enactment of the “time of application rule”, where there is a change in the law favorable to the developer, there is nothing that prevents the developer from withdrawing a development application to avail itself of the favorable change in law.

Jai Sai Ram, LLC v. The Planning/Zoning Board of South Toms River, 446 N.J. Super. 338 (App. Div. 2016)

https://scholar.google.com/scholar_case?case=4662268700999096378&q=A-2075-14T2&hl=en&as_sdt=4,31

The “time of application rule” “does not apply where the local zoning is amended to specifically permit the use which is the subject of a variance application. In that situation, the variance is no longer necessary, and it would be absurd, as well as contrary to the Legislature’s purpose, to hold the applicant to the less favorable standards of the pre-existing ordinance.”

Dunbar Homes, Inc. v. The Zoning Board of Adjustment of the Twp. of Franklin, A-3637-14T1 (Feb. 14, 2017)

https://scholar.google.com/scholar_case?case=7152242436457057535&q=A-3637-14T1&hl=en&as_sdt=4,31

To trigger the time of application rule, an “application for development” need not be “deemed complete” pursuant to N.J.S.A. 40:55D-10.3, but it must include the “application form and all accompanying documents required by ordinance for approval” as required by the definition of “application for development.” N.J.S.A. 40:55D-3.

Dunbar Homes, Inc. v. Zoning Bd of Adjust., Twp. of Franklin, 233 N.J. 546 (2018)

https://scholar.google.com/scholar_case?case=12822712125170587853&q=Dunbar+homes+&hl=en&as_sdt=4,31

The terms used in the TOA Rule are construed in accordance with the definitions set forth in the MLUL. “Thus, the term ‘application for development’ must be interpreted to mean ‘the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, cluster development, conditional use, zoning variance or direction of the issuance of a permit.’ N.J.S.A. 40:55D-3.” If the local ordinance contains a checklist of the requirements for a complete application, to benefit from the protections of the TOA Rule, an application must contain the information and documents listed on the checklist. However, “an application is not rendered ‘incomplete’ simply because a municipality requires ‘correction of any information found to be in error and submission of additional information not specified in the ordinance or any revisions in the accompanying documents.’ N.J.S.A. 40:55D-10.3. Further, in the event information required by local ordinance is not pertinent, the applicant may request a waiver as to that information or those documents it finds extraneous. The applicant’s submission will provisionally trigger the TOA Rule if a waiver request for one or more items accompanies all other required materials; if the Board grants the waiver, then the application will be deemed complete. If the Board denies the waiver, its decision will be subject to review under the customary ‘arbitrary and capricious or unreasonable’ standard.

Baduini v. Land Use Board of Independence Township, A-2487-16T2 (July 31, 2018)

https://scholar.google.com/scholar_case?case=14246423416938623172&q=A-2487-16T2&hl=en&as_sdt=4,31

“[U]nder N.J.S.A. 40:55D-10.5, the ‘time-of-application’ rule, the court must consider the law in effect when an application to the Board was made. Since Section 255-3 was amended after defendants’ interpretation application, its current iteration should not be considered to determine

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whether the project is permissible under the ordinance.”

Shipyard Associates v. City of Hoboken, A-1085-17T3 (Jan. 7, 2019)

https://scholar.google.com/scholar_case?case=5989133467572271576&q=shipyard+associates+lp+v+city+of+hoboken&hl=en&as_sdt=4,31

The health and safety exception to the time of application rule allows for modification of the terms and conditions of preliminary approval by ordinance. “The term ‘modifying’ suggests a change, revision, or tweak to the ‘general terms and conditions’ of a preliminary approval, not the revocation of the approval in its entirety” and cannot be used to change the uses which are permitted under a previously granted final approval.

Price v. Martinetti, A-4434-18T4 (Sept. 11, 2020)

https://scholar.google.com/scholar_case?case=9215562641573406663&q=Price+v.+martinetti&hl=en&as_sdt=4,31

Construction permit issued in 2018 based upon site plan approval granted in 2004 was invalid because the zoning had changed and the use was no longer valid and no work in connection with the approval had taken place in several years.

Gloucester Solar I, LLC v. Twp. of Franklin Zoning Bd. of Adjustment, A-2602-22 (Feb. 24, 2025)

https://scholar.google.com/scholar_case?case=2265367365085410803&q=Gloucester+Solar+I,+LLC+v.+Twp.+of+Franklin+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,47

A zoning board's interpretation of an ordinance is not entitled to any particular deference and is reviewed de novo because the interpretation of an ordinance is a purely legal matter as to which the administrative agency has no particular skill superior to the courts. Appellate Division reverses trial court, finding that there was no basis for the court's finding that the Township's light business district is an “industrial district” where solar panels would be automatically permitted by operation of state statute.

Berman v. Borough of Rumson Planning Board, A-1409-23 (March 19, 2025)

https://scholar.google.com/scholar_case?case=7385904388289033669&q=Berman+v.+Borough+of+Rumson+Planning+Board&hl=en&as_sdt=4,31

Pursuant to the local code, zoning board property interpreted building height to be measured from the design grade and not from the existing condition grade.

Kaylor v. Bacallao, et al., A-3740-23 (Oct. 9, 2025)

https://scholar.google.com/scholar_case?case=3179297499221092371&q=Jessica+Hoffer+Kaylor+vs.+Teresa+Bacallao&hl=en&as_sdt=6,47

With respect to whether, pursuant to the municipality’s Rent Control Ordinance, a backyard falls under the ordinance's definitions of “dwelling,” “housing space,” or “service,” or whether the yard can be rented separately, the Appellate Division concluded the subject yard was none of those three definitions and not subject to the ordinance.

529 Waterfront Properties, LP v. Gargiulo, et al. A-2009-23, A-2700-23 (Nov. 10, 2025)

https://scholar.google.com/scholar_case?case=9542867777815511437&q=529+Waterfront+Properties+LP+vs.+Michael+Gargiulo&hl=en&as_sdt=6,47

With respect to a municipal tree removal ordinance that requires the conservation officer to consider ten factors, the Court did not interpret same as requiring the conservation officer to discuss or weigh every factor when forming his decision.

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9. ORDINANCE INTERPRETATION

Caputo v. The Best Foods, 17 N.J. 259 (1955)

http://scholar.google.com/scholar_case?case=15871896589603027374&q=17+N.J.+259+&hl=en&as_sdt=2,31

Clifton v. Passaic County Board of Taxation, 28 N.J. 411 (1958)

http://scholar.google.com/scholar_case?case=12670713384116968319&q=28+N.J.+411+&hl=en&as_sdt=2,31

N.J. Builders, Owners and Managers Ass'n v. Blair, 60 N.J. 330 (1972)

http://scholar.google.com/scholar_case?case=12866338182508222853&q=60+N.J.+330+&hl=en&as_sdt=2,31

State v. Dalglish, 86 N.J. 503 (1981)

http://scholar.google.com/scholar_case?case=8447414806828321439&q=86+N.J.+503+&hl=en&as_sdt=2,31

Gauntt v. City of Bridgeton, 194 N.J. Super. 468 (App. Div. (1984)

http://scholar.google.com/scholar_case?case=16876113973231069770&q=194+N.J.+Super.+468+&hl=en&as_sdt=2,31

James R. Ientile, Inc. v. ZBA, Colts Neck, 271 N.J. Super. 326 (App. Div. 1994)

Sun Company, Inc. v. ZBA, Borough of Avalon, 286 N.J. Super. 440 (App. Div.) *certif. den.* 144 N.J. 376 (1996)

http://scholar.google.com/scholar_case?case=1519747192162639278&q=271+N.J.+Super.+326+&hl=en&as_sdt=2,31

Tanis v. Twp. of Hampton, 306 N.J. Super. 588 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=17547208173611491397&q=306+N.J.+Super.+588+&hl=en&as_sdt=2,31

Adams v. Del Monte, 309 N.J. Super. 572 (App. Div. 1998)

http://scholar.google.com/scholar_case?case=16419321611664383425&q=309+N.J.+Super.+572+&hl=en&as_sdt=2,31

Atlantic Container v. Planning Board, 321 N.J. Super. 261 (App. Div. 1999)

http://scholar.google.com/scholar_case?case=8424283096240792754&q=321+N.J.+Super.+261+&hl=en&as_sdt=2,31

Twp. of Pennsauken v. Schad, 160 N.J. 156 (1999)

http://scholar.google.com/scholar_case?case=5327535876374756078&q=160+N.J.+156+&hl=en&as_sdt=2,31

Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282 (2001)

http://scholar.google.com/scholar_case?case=7629936155511401158&q=Pheasant+Bridge+Corp.+v.+Twp.+of+Warren&hl=en&as_sdt=2,31

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Scully-Bozarth Post 1817 VFW v. Planning Bd., City of Burlington, 362 N.J. Super. 296 (App. Div. 2003)

http://scholar.google.com/scholar_case?case=17609867416945511841&q=Scully-Bozarth+Post+1817+VFW+v.+Planning+Bd.,+City+of+Burlington&hl=en&as_sdt=2,31

Conselice v. Bor. of Seaside Park and Planning Board of Seaside Park, 358 N.J. Super. 327 (App. Div. 2003)

http://scholar.google.com/scholar_case?case=9752714702341968884&q=Conselice+v.+Bor.+of+Seaside+Park+and+Planning+Board+of+Seaside+Park&hl=en&as_sdt=2,31

Use variance required for the expansion of a pre-existing non-conforming integrated mixed use, residence and real estate office, because the expansion of the permitted residential use also expands the mixed use of the property.

DePetro v. Township of Wayne Planning Board, 367 N.J. Super. 161 (App Div. 2004)

http://scholar.google.com/scholar_case?case=451389573608072718&q=DePetro+v.+Township+of+Wayne+Planning+Board&hl=en&as_sdt=2,31

Proposed self-storage facility was a permitted “consumer service” and not a prohibited “commercial storage warehouse” under the Wayne Zoning Ordinance.

Fallone Properties v. Bethlehem Planning Board, 369 N.J. Super. 552 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=14959056775354964959&q=Fallone+Properties+v.+Bethlehem+Planning+Board&hl=en&as_sdt=2,31

Acorn Montessori School v. Bethlehem Twp. Planning Bd., 380 N.J. Super. 216 (Law Div. 2005)

http://scholar.google.com/scholar_case?case=8320954507151753171&q=Acorn+Montessori+School+v.+Bethlehem+Twp.+Planning+&hl=en&as_sdt=2,31

Court affirms planning board’s rejection of the request for a personal residence on the premises for an employee of the school, holding that the residential use is not one that is customarily incidental to the non-residential use; but reverses that portion of the board’s decision which denied the request for inclusion of pre-school, after school, and summer school programs, finding that education was either the primary purpose of these programs or that the programs were an accessory to the educational purpose.

DaPurificacao v. Zoning Bd. of Adjust. of Twp. of Union, 377 N.J. Super. 436 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=10120664801687608315&q=DaPurificacao+v.+Zoning+Bd.+of+Adjust.+of+Twp.+of+Union&hl=en&as_sdt=2,31

The housing of racing pigeons on residential property is not a customary incidental accessory use.

Mountain Hill, L.L.C. v. Zoning Bd. of Adjust. Twp. of Middletown, 403 N.J. Super. 210 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=4042065849513536539&q=Mountain+Hill&hl=en&as_sdt=4,31

Trial judge’s determination with respect to ordinance interpretation is not entitled to any special deference by appellate court because the issue is one of law that is always subject to de novo review. Legislative intent is paramount when interpreting ordinance; best indicator is language of ordinance; words should be given their ordinary meaning; should be read to give sense to the whole; should not resort to extrinsic interpretative aids when language is clear and unambiguous; may resort to extrinsic evidence, including legislative history, reports, and contemporaneous construction where there is ambiguity; zoning ordinances are to be liberally construed in favor of municipality, but are restrictive of property rights and ought not to be too broadly interpreted

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against the owner; limitations on the use of property must be clearly and expressly imposed, and should not be inferred; doubts are resolved in favor of the property owner.

Term “essentially unimproved” in definition of “open space” does not mean “essentially undisturbed.”

Driveways are permitted accessory structures and uses in every zone. A driveway which crosses zone lines may require a use variance where (1) the driveway is essential to the use (i.e., there are no other access ways), and (2) the nonconforming use of the driveway must threaten the permitted use (i.e., it threatens the character of the permitted use).

Building which straddles zone line requires a use variance where uses in building not permitted in both zones even where uses are segregated and limited to those permitted to the respective zone.

The Presbyterian Home at Pennington, Inc. v. The Borough of Pennington, 406 N.J. Super. 166 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=4487625853496976447&q=The+Presbyterian+Home+at+Pennington,+Inc.+v.+The+Borough+of+Pennington&hl=en&as_sdt=2,31

“Only if the language of a statute is silent or ambiguous, or if it is plain but ambiguous with respect to the ‘how the Legislature intended the statute to apply in particular circumstances,’ should a court look to the statute’s legislative history or other extrinsic evidence to discern the intended meaning behind the Legislature’s chosen words.”

Board of Education of the City of Clifton v. Zoning Board of Adjust., City of Clifton, 409 N.J. Super. 389 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=7088765724024941242&q=409+N.J.+Super.+389+&hl=en&as_sdt=4,31

Department of Education has no special role in interpretation of the MLUL because it is not part of the education law statute under which it has authority. Requirement of planning board referral under N.J.S.A. 40:55D-31 only applies if the governing body has authorized the planning board to prepare a program of municipal capital improvement projects in accordance with N.J.S.A. 40:55D-29. Where there is no such delegation, referral to the planning board is improper.

Reich v. Borough of Fort Lee Zoning Bd. of Adjust., 414 N.J. Super. 483 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=5841857068979449792&q=414+N.J.+Super.+483+&hl=en&as_sdt=2,31

“A board’s interpretation of an ordinance is not entitled to any particular deference and is reviewed de novo because ‘the interpretation of an ordinance is a purely legal matter as to which the administrative agency has no particular skill superior to the courts.’” citing, *Jantausch v. Borough of Verona*, 41 N.J. Super. 89, 96 (Law Div. 1956), *aff’d*, 24 N.J. 326 (1957).

Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489 (2011)

http://scholar.google.com/scholar_case?case=13428982221850351045&q=Fair+Share+Housing+Center,+Inc.+v.+New+Jersey+State+League+of+Municipalities&hl=en&as_sdt=2,31

“When interpreting a statute, ‘generally, the best indicator of [the Legislature’s] intent is the statutory language’ itself. [citation omitted]. We must read a statute’s ‘words and phrases’ within ‘their context’ and give them ‘their generally accepted meaning.’ [citation omitted]. If the statute’s plain language reveals the Legislature’s intent, we need proceed no further. [citation omitted]. However, we do not look at words and phrases in a vacuum; ‘statutes must be read in their entirety’ and construed in harmony with one another so that a proper meaning can be given to the whole of an enactment. [citation omitted]. Second, we will not insert an ‘additional qualification’ into a clearly written statute when ‘the Legislature pointedly omitted’ doing so. [citation omitted]. Last, we presume that the Legislature is familiar with laws it already has enacted when choosing particular language for inclusion in a new statute.”

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Norfolk Southern Railway Company v. Intermodal Properties, LLC, 215 N.J. 142 (2013)
http://scholar.google.com/scholar_case?case=5901086288769789088&q=norfolk+southern+v.+intermodal&hl=en&as_sdt=4,31

Court does not apply modern dictionary definition that apparently fits the overall statutory intent where there are conflicting dictionary definitions and the language of the statute is old and there were court decisions that defined the language contemporaneously with the adoption of the statute. The term “exigencies of business” as used in statutes governing the formation of railroads, “has been understood to describe generally the needs of business, or the ordinary course of business, rather than to allude to an emergent, urgent, immediate, or pressing need.”

612 Associates, LLC v. North Bergen Municipal Utilities Authority, 215 N.J. 3 (2013)
http://scholar.google.com/scholar_case?case=16745688790741051329&q=A-13+September+Term+2011&hl=en&as_sdt=4,31

The ‘canons of construction . . . must yield to the paramount canon – that of legislative intent.’”

Mahwah Realty Associates, Inc. v. Township of Mahwah, 430 N.J. Super. 247 (App. Div. 2013)
http://scholar.google.com/scholar_case?case=10142978362749512647&q=A-4360-11T4&hl=en&as_sdt=4,31

“[A] general rule of statutory construction [is] that ‘a modifying phrase applies to the last antecedent phrase, absent contrary intent.’” Where the statute can only be understood as applying to two events, the modifying phrase “if any” “was intended to distance those requirements that follow from one of the two applicable circumstances or it was intended to apply to only one of the two possible events, but not both.”

Schroeder v. County of Atlantic, 440 N.J. Super. 251 (Law Div. 2015)
https://scholar.google.com/scholar_case?case=12414114773996772315&q=L-2291-14&hl=en&as_sdt=4,31

The public policy of Atlantic City’s pay-to-play ordinance, “is to maintain public trust in the awarding of contracts and avoid the perception or reality that political donations have an effect on the government of contracting system. In other words . . . pay-to-play is directed at keeping honest the government contracting system. The relationship between a prospective contractor/donor and an elected county official does not change, regardless of what campaign the donations are being made to.” “It is the relationship between a donor that obtains a public contract and an elected official that received the political donation that gives rise to the implication that money has been exchanged for some advantage over other eligible private contractors. Campaign contributions to the state campaign of an elected county official running for state office does not remove the taint and possibility of influence that an elected county official may choose to exhibit in favor of a contributor within his capacity as a county official.”

“While contemporaneous sponsor statements are frequently used as extrinsic aids to legislative intent, post-enactment statements of legislators on legislative intent have been disapproved; they are of limited legal value to understanding the clear meaning and legal effect of statutes.”

Nelson’s Corner Associates, LLC v. Township of Hillsborough, A-1333-14T4 (Mar. 24, 2016)
https://scholar.google.com/scholar_case?case=11487597128164954223&q=A-1333-14T4&hl=en&as_sdt=6,31

Ordinance which defines a “shopping center” as a collection of “business enterprises” and does not restrict those enterprises to retail stores, allows a kidney dialysis center as a permitted use.

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Hare v. Township of Barnegat Planning Board, A-0989-14T3 (Mar. 30, 2016)

https://scholar.google.com/scholar_case?case=14264479285715202255&q=A-0989-14T3&hl=en&as_sdt=6,31

A planning board has the inherent authority to interpret a zoning ordinance in the course of considering a site plan application.

Carine v. Planning Board of the Borough of Monmouth Beach, A-2412-14T1 (Aug. 8, 2016)

https://scholar.google.com/scholar_case?case=4857476303946296952&q=A-2412-14T1&hl=en&as_sdt=4,31

The canons of statutory construction direct that a specific statute generally overrides a general statute.

The Matheny School and Hospital, Inc. v. The Land Use Board of the Bor. of Peapack and Gladstone, A-5008-13T1 (Jan. 24, 2017)

https://scholar.google.com/scholar_case?case=10985856370004990735&q=A-5008-13T1&hl=en&as_sdt=4,31

“In the absence of the ‘definite specifications and standards’ required by N.J.S.A. 40:55D-67(a), ‘the ordinance is ‘void’ and therefore does not confer authority upon the board to approve a [conditional] use of land thereunder.’” The Board exceeded its authority in declaring a term in the zoning code void for vagueness as that action “trod upon the authority of the Borough to ‘adopt or amend a zoning ordinance.’” Rather, the Board was required to construe the language by taking testimony to “provide historical context and information regarding local considerations” . . . review standard dictionary definitions, definitions contained in the ordinance and “applying the doctrine of in pari materia, definitions used” by state agencies. A board’s interpretation of an ordinance is entitled to limited deference and is reviewed by the court de novo. Notwithstanding the fact that the Board had approved previous applications involving the applicant, where the issue of use was never actually “litigated” in those prior applications, the Board was not bound by its prior actions - “having never probed the basis” for its conclusion that the facility was a permitted conditional use.

Kash v. The Mayor and Council of The Borough of Freehold, A-2569-15T1 (May 5, 2017)

https://scholar.google.com/scholar_case?case=9589573892191576449&q=A-2569&hl=en&as_sdt=4,31

“When a municipal body interprets an ordinance, the reviewing court need not provide deference to the municipal body and can review the ordinance anew.” “Municipal body actions are presumed valid when making discretionary decisions, [citation omitted], and a trial court cannot substitute its judgment for that of the municipal body unless it is proven the body’s action was arbitrary, unreasonable, or capricious. [citation omitted]. However, appellate review is ‘plenary’ when interpreting legislative enactments.”

Friends of Rahway Business, LLC v. Rahway Municipal Council, A1335-15T1 (July 5, 2017)

https://scholar.google.com/scholar_case?case=1893074634456710196&q=A-1335-15T1&hl=en&as_sdt=4,31

The SID statute does not specifically prohibit a citywide SID and a SID is not limited to downtown business districts.

De Sapio Properties #Six, Inc. v. Alexandria Township Board of Adjustment, A-5585-15T2 (Aug. 28, 2018)

https://scholar.google.com/scholar_case?case=6320829079562465347&q=de+sapio+properties+%23Six&hl=en&as_sdt=4,31

The term “shall include” in an ordinance listing of permitted uses is not intended to be exclusive or

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to have a restrictive meaning. A “service business” is one that provides intangible products – “a commercial enterprise that provides work performed in an expert manner by an individual or team for the benefit of its customers.”

Mordini v. Haworth Zoning Board of Adjustment, A-2321-17T4 (Jan. 28, 2019)

https://scholar.google.com/scholar_case?case=9587649409678288338&q=A-2321-17T4&hl=en&as_sdt=4,31

The rules of statutory construction govern the interpretation of a municipal ordinance which are liberally construed in favor of the municipality. “A tenet of statutory construction is that ‘[d]ifferent words used in the same . . . statute are assigned different meanings whenever possible.’”

A-Z Venue Management, LLC v. Zon. Bd. of Adjust., Tp. of West Amwell, A-1388-17T1 (July 15, 2019)

https://scholar.google.com/scholar_case?case=14936197159599261778&q=A-1388-17T1&hl=en&as_sdt=4,31

Court finds that a wedding venue’s use of a tent over a tennis court to hold receptions met the conditional use requirement of the ordinance. “The series-qualifier canon, . . . provides that ‘when there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive . . . modifier normally applies to the entire series,’ Black’s Law Dictionary 1574 (10th ed. 2014). The canon will normally apply where ‘the nouns and verbs are listed without any intervening modifiers.’ [citation omitted]. We apply the canon here. Ordinance 109-4’s definition of ‘assembly’ [as ‘a use which is a permanent facility, building, structure, or installation’ which provides for ‘assemblage purposes.’] provides an uninterrupted series of nouns that are modified by the prepositive adjective ‘permanent,’ and are uninterrupted by an intervening modifier. Therefore, we hold that ‘assembly,’ as defined by Ordinance 109-4, requires that any qualifying facility, building, structure or installation be permanent.”

“The ordinance states that a ‘permanent facility, building, structure, or installation’ must ‘provid[e] for . . . assemblage purposes.’ It does not require that the ‘facility, building, structure, or installation’ ‘contain’ or ‘house’ the use, and ‘[w]e cannot write in an additional qualification which the Legislature pointedly omitted in drafting its own enactment.’”

Sternas v. DMH2, LLC, A-0036-19T3 (April 2, 2020)

https://scholar.google.com/scholar_case?case=3111819407317996161&q=Sternas+v.+DMH2.&hl=en&as_sdt=6,31&as_ylo=2019

Board did not err in concluding that an S-shaped lot was not a corner lot under the terms of the ordinance when the definition of corner lot contemplated a four-sided lot. Zoning ordinances are liberally construed in favor of the municipality.

Reger v. Fair Haven Zoning Bd. of Adjustment, A-2755-19 (June 30, 2021)

https://scholar.google.com/scholar_case?case=16592177751248530024&q=regger+v.+fair+haven&hl=en&as_sdt=6,31&as_ylo=2021

The Appellate Division, affirming the lower court, upheld a zoning board of adjustment’s interpretation of municipal ordinance provisions regarding restaurants, holding that, under the applicable code, a Dunkin’ Donuts is not a drive through restaurant-even though most food and drink is consumed off-site.

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Healey v. Moorestown Twp. Zoning Bd. of Adjustment, A-4219-19 (June 2, 2021)

https://scholar.google.com/scholar_case?case=12473660578075636866&q=Healey+v.+Moorestown&hl=en&as_sdt=6,31

Where a municipal zoning ordinance defines a single family detached dwelling as “[a] wholly detached building constructed or adapted for use exclusively as a place of residence for one family only” and the term “family” is defined in the code to include “domestic employees,” the trial court correctly upheld a zoning board of adjustment’s determination that a proposal to build an entirely separate living unit for an au pair over a detached garage would constitute an impermissible second single family detached dwelling and that same would not constitute an “accessory use” under the zoning code.

Borough of Lincoln Park v. AG Construction Corps, A-0439-21/A-1444-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=15908742859711696661&q=Borough+of+Lincoln+Park+v.+A.G.&hl=en&as_sdt=6,47

Defendant property owner discovered the existence of an ordinance that would permit the contested use and municipality provided no contrary evidence. As a result, the court granted summary judgment to the property owner.

State of New Jersey v. Saddle Mountain LP, A-2868-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=17394999857618056230&q=State+v.+Saddle+Mountain&hl=en&as_sdt=6,31

Local ordinance prohibited the operation of a quarry before 7:00 a.m. and defined the term “quarry” as “all real property upon which a quarry is located.” Interpreting the above, the Court held that trucks lining up before 7:00 a.m. upon a driveway located on the subject property before 7:00 a.m. violated the ordinance’s time limits.

Dash v. Twp. of Sparta Zoning Hearing Bd. of Adjust., A-1268-22 (April 16, 2024)

https://scholar.google.com/scholar_case?case=703260981513335527&q=dash+v+sparta&hl=en&as_sdt=6,47&as_ylo=2024

Where a site plan application is pending before a planning board and a question of whether the subject use is permitted or conditionally permitted or prohibited is raised, the Planning Board maintains jurisdiction over that question and not the Zoning Board, even where, pursuant to N.J.S.A. 40:55D-70(b), a request for interpretation on that same issue is made to the Zoning Board at the same time.

Atlantic Pier Co., Inc. v. Borough of Bay Head Planning Bd., A-0899-22 (July 2, 2024)

https://scholar.google.com/scholar_case?case=14761415733562946050&q=Pier+v.+Borough+of+Bay+Head&hl=en&as_sdt=6,47&as_ylo=2024

“In interpreting a municipal ordinance, neither the Board nor the trial judge is entitled to deference on this question of law. See Dunbar Homes, 448 N.J. Super. at 595. “The established rules of statutory construction govern the interpretation of a municipal ordinance.” State, Twp. of Pennsauken v. Schad, 160 N.J. 156, 170 (1999). “[W]e focus on the plain language of the statute and use common sense ‘to effectuate the legislative purpose[.]’” Dunbar Homes, 448 N.J. Super. at 598 (quoting Morristown Assocs. v. Grant Oil Co., 220 N.J. 360, 380 (2015)). If the text, however, is susceptible to different interpretations, the court considers extrinsic factors, such as the statute’s purpose, legislative history, and statutory context to ascertain the Legislature’s intent. Schad, 160 N.J. at 170. ‘Zoning ordinances generally are liberally construed in favor of the municipality.’ Id. at 171 (quoting Place v. Bd. of Adjustment of Borough of Saddle River, 42 N.J. 324, 328 (1964)). ‘However, “[z]oning regulations are restrictive of property rights and ought not to be too broadly

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interpreted against the possessor thereof.' Mountain Hill, LLC v. Zoning Bd. of Adjustment of Twp. of Middletown, 403 N.J. Super. 210, 236 (App. Div. 2008) (alteration in original) (quoting Skinner v. Zoning Bd. of Adjustment of Twp. of Cherry Hill, 80 N.J. Super. 380, 388 (App. Div. 1963)). 'Thus, '[r]estrictions in zoning ordinances must be clearly expressed and doubts are resolved in favor of the property owner.' Ibid. (alteration in original) (quoting Graves v. Bloomfield Planning Bd., 97 N.J. Super. 306, 312 (Law Div. 1967))."

MRP Indus. NE, LLC v. The Land Dev. Bd. of the Twp. of Westampton, A-1517-22, A-1520-22 (Nov. 25, 2024)

https://scholar.google.com/scholar_case?case=4468700271095674022&q=+MRP+v.+Westampton&hl=en&as_sdt=6,47

Planning Board erred when it determined that it lacked jurisdiction over a site plan application for a permitted use on a property that already contained two uses where the ordinance allowed multiple uses in the zone and a "d" variance was therefore not required.

10. ESTOPPEL

Jantausch v. Borough of Verona, 41 N.J. Super. 89 (Law Div. 1956), *aff'd* 24 N.J. 326 (1957)

http://scholar.google.com/scholar_case?case=9432199182225026923&q=41+N.J.+Super.+89+&hl=en&as_sdt=2,31

Bonsall v. Tp. of Mendham, 116 N.J. Super. 337 (App. Div.), *certif. denied*, 59 N.J. 529 (1971)

http://scholar.google.com/scholar_case?case=16813139854023635640&q=116+N.J.+Super.+337+&hl=en&as_sdt=2,31

Howland v. Freehold, 143 N.J. Super. 484 (App. Div.), *certif. denied*, 72 N.J. 466 (1976)

http://scholar.google.com/scholar_case?case=12408683563467986799&q=143+N.J.+Super.+484+&hl=en&as_sdt=2,31

Irwin v. Twp. of Neptune, 305 N.J. Super. 652 (App. Div. 1997), *certif. dismissed*, 157 N.J. 539 (1998)

http://scholar.google.com/scholar_case?case=7817936854230360903&q=305+N.J.+Super.+652+&hl=en&as_sdt=2,31

Township not estopped from issuing stop-work order where it acted without a reasonable basis in granting developer permits to proceed with conversion of abandoned hotel, which was a nonconforming use, into an apartment building.

Scardigli v. Bor. of Haddonfield, 300 N.J. Super. 314 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=16830796984013291781&q=300+N.J.+Super.+314+&hl=en&as_sdt=2,31

Failure of municipality to object to sale of one of two undersized lots owned by the same person on the basis of merger precluded challenge by third party to sale several years later of second lot on basis of merger.

Bonaventure International v. Spring Lake, 350 N.J. Super. 420 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=6421048928919288901&q=350+N.J.+Super.+420+&hl=en&as_sdt=2,31

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Grasso v. Bor. of Spring Lake Heights, 375 N.J. Super. 187 (Law Div. 2003), aff'd, 375 N.J. Super. 41 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=17208865545511716104&q=Grasso+v.+Bor.+of+Spring+Lake+Heights&hl=en&as_sdt=2,31

State v. Zaccarino, A-0778-22 (April 26, 2024)

https://scholar.google.com/scholar_case?case=6001391032881828175&q=state+v.+zaccarino&hl=en&as_sdt=6,47&as_ylo=2024

Municipality was not estopped from enforcing its zoning ordinance against a non-permitted landscaping business where the previous owner had only received approvals for a nursesey use but had, apparently, operated the landscaping business there for many years in direct contravention of the prior approval and the zoning ordinance. The fact that the previous owner had, in the contract for sale, attested (falsely) that the landscaping use complied with all municipal ordinances, did not prevent the Township (who had never approved the landscaping use) from enforcing its code against Defendant.

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1. JURISDICTION

Fischer v. Twp. of Bedminster, 5 N.J. 534 (1950)

http://scholar.google.com/scholar_case?case=8751783542822251680&q=5+N.J.+534+&hl=en&as_sdt=2,31

Board has no authority to declare zoning ordinance unreasonable.

Dallenbach Sand Co. v. Mayor and Council of So. Brunswick Twp., 90 N.J. Super. 218 (App. Div. 1996)

http://scholar.google.com/scholar_case?case=10587226490198689696&q=90+N.J.+Super.+218+&hl=en&as_sdt=2,31

Twp. of Dover v. Board of Adj., Dover Twp., 158 N.J. Super. 401 (App. Div. 1978)

http://scholar.google.com/scholar_case?case=17166621051853119359&q=158+N.J.+Super.+401+&hl=en&as_sdt=2,31

Arrogation of township's zoning power by its zoning board is beyond ZBA's authority and is actionable by the governing body.

Schride Assoc. v. Wall Twp., 190 N.J. Super. 589 (App. Div. 1983)

http://scholar.google.com/scholar_case?case=8229524123484140664&q=190+N.J.+Super.+589+&hl=en&as_sdt=2,31

AT&T Communications v. Bedminster Bd. of Adjust., 216 N.J. Super. 340 (Law Div. 1986)

http://scholar.google.com/scholar_case?case=4264071606385272928&q=216+N.J.+Super.+340+&hl=en&as_sdt=2,31

Fact that on-site banking facility in office complex would be operated by a private banking company rather than AT&T employees did not affect the "use" of the property.

Chesterbrooke v. Planning Bd., 237 N.J. Super. 118 (App. Div.) *certif. denied*, 118 N.J. 234 (1989)

http://scholar.google.com/scholar_case?case=14481709726804383007&q=Chesterbrooke+v.+Planning+Bd&hl=en&as_sdt=2,31

Feiler v. Fort Lee Bd. of Adjust., 240 N.J. Super. 250 (App. Div. 1990), *certif. denied*, 127 N.J. 325 (1991)

http://scholar.google.com/scholar_case?case=1327067152964899541&q=240+N.J.+Super.+250+&hl=en&as_sdt=2,31

Inappropriate zoning is not a reason to grant a variance that would have the affect of rezoning a neighborhood.

Kline v. Bernardsville Ass'n, 267 N.J. Super. 473 (App. Div. 1993)

http://scholar.google.com/scholar_case?case=4295362378327939944&q=267+N.J.+Super.+473+&hl=en&as_sdt=2,31

Board had no jurisdiction to compel relocation of an easement of a non-applicant.

Vidal v. Lisanti Foods, 292 N.J. Super. 555 (App. Div. 1996)

http://scholar.google.com/scholar_case?case=16831680770671248637&q=292+N.J.+Super.+555+&hl=en&as_sdt=2,31

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Irwin v. Twp. of Neptune, 305 N.J. Super. 652 (App. Div. 1997), *certif. dismissed*, 157 N.J. 539 (1998)

http://scholar.google.com/scholar_case?case=7817936854230360903&q=305+N.J.+Super.+652+&hl=en&as_sdt=2,31

Paruszewski v. Twp. of Elsinboro, 154 N.J. 45 (1998)

http://scholar.google.com/scholar_case?case=2132417171944906215&q=154+N.J.+45+&hl=en&as_sdt=2,31

Boards may exercise only those powers conferred by statute.

ML Plainsboro, LP v. Twp. of Plainsboro, 316 N.J. Super. 200 (App. Div. 1998)

http://scholar.google.com/scholar_case?case=13933653413311072365&q=316+N.J.+Super.+200+&hl=en&as_sdt=2,31

TWC Realty Partnership v. Zoning Bd. of Adjust. of Edison, 315 N.J. Super. 205 (Law Div. 1998), *aff'd*, 321 N.J. Super. 216 (App. Div. 1999)

http://scholar.google.com/scholar_case?case=14098092293950310845&q=TWC+Realty+Partner+ship+v.+Zoning+Bd.+of+Adjust.+of+Edison.&hl=en&as_sdt=2,31

Zoning board improperly determined that it lacked jurisdiction to hear and decide plaintiff's complete application for use variance for multi-unit congregate care elderly housing facility.

Stafford v. Stafford Zoning Bd., 154 N.J. 62 (1998)

http://scholar.google.com/scholar_case?case=6031875748543129225&q=Stafford+v.+Stafford+Zoning+Bd&hl=en&as_sdt=2,31

Failure to provide notice in accordance with *N.J.S.A.* 40:55D-12 removes zoning board's jurisdiction to hear land use application, even though the subject matter was within its statutory power.

Cellular Telephone v. Zoning Bd. of Adjust. Bor. of Harrington Park, 90 F. Supp. 2d 557 (2000)

http://scholar.google.com/scholar_case?case=1190598657908932989&q=90+F.Supp.2d+557+&hl=en&as_sdt=2,31

Wireless carrier not required to pay for health expert retained by board to evaluate long-term health effect of electromagnetic radiation which was an issue board lacked authority to consider.

Chicalese v. Monroe Twp. Planning Bd., 334 N.J. Super. 413 (Law Div. 2000)

http://scholar.google.com/scholar_case?case=15886875623881118787&q=Chicalese+v.+Monroe+Twp.+Planning+Bd&hl=en&as_sdt=2,31

By making a development application to the Planning Board, plaintiff has impliedly acknowledged that there was a need for a subdivision and that the two lots were not merged, and therefore waived the right to collaterally challenge the Board's acceptance of jurisdiction in Superior Court.

Builders League of South Jersey, Inc. v. Burlington County Planning Bd., 353 N.J. Super. 4 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=6183538777786972446&q=Builders+League+of+South+Jersey,+Inc.+v.+Burlington+County+Planning+Bd&hl=en&as_sdt=2,31

Under County Planning Enabling Act, *N.J.S.A.* 40:27- 1, *et seq.*, county's jurisdiction to review site plans limited to those that were along a county road or affected county drainage facility and the county's jurisdiction over subdivisions included review and imposition of conditions on subdivisions that did not about a county road if subdivision adversely impacted traffic concerns.

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DePetro v. Twp. of Wayne Planning Bd., 367 N.J. Super. 167 (App. Div.), *certif. denied*, 181 N.J. 544 (2004)

http://scholar.google.com/scholar_case?case=451389573608072718&q=DePetro+v.+Twp.+of+Wayne+Planning+&hl=en&as_sdt=2,31

Board of adjustment, rather than planning board, has jurisdiction to hear challenge to ordinance interpretation.

Mintz v. Township of Millstone, 374 N.J. Super. 396 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=3202610635517063474&q=Mintz+v.+Township+of+Millstone&hl=en&as_sdt=2,31

Planning board could not refuse subdivision application based on unrecorded restriction against subdividing land.

Twp. of North Brunswick v. Zoning Bd. of Adjust., Twp. of North Brunswick, 378 N.J. Super. 485 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=8740046999007560452&q=378+N.J.+Super.+485+&hl=en&as_sdt=4,31

Zoning Board usurped Township's exclusive zoning power by approving 85-unit apartment building in single-family residential zone.

ML Plainsboro v. Plainsboro, 316 N.J. Super. 200 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=13933653413311072365&q=316+N.J.+Super.+200+&hl=en&as_sdt=2,31

Plaintiff did not need planning board approval to sell office/conference center to separate buyers, or to have transients in the center who are not employees. The Planning Board cannot dictate who can use, buy, own or rent the properties as a single or multiple owner. But any changes in the nature of the use or the physical structures could legitimately implicate site plan or other code concerns under local law, which could require planning board or other municipal approvals.

Isihos Brothers Partnership v. Twp. of Franklin, 376 N.J. Super. 591 (Law Div. 2005)

http://scholar.google.com/scholar_case?case=9347608863894730252&q=Isihos+Brothers+Partnership+v.+Twp.+of+Franklin&hl=en&as_sdt=2,31

Board of Adjustment lacked regulatory authority to require landowner to obtain a use variance for septic system on lot non-contiguous to the restaurant the system would serve. DEP has exclusive jurisdiction over landowner's septic system design, construction and operation, and permits issued by DEP and local board of health were all that was required to construct septic system.

Weeden v. City Council of the City of Trenton, 391 N.J. Super. 214 (App. Div. 2007), *certif. denied*, 192 N.J. 68 (2007)

http://scholar.google.com/scholar_case?case=3282071016878049549&q=Weeden+v.+City+Council+of+the+City+of+Trenton&hl=en&as_sdt=2,31

Zoning board has jurisdiction to grant a use variance from a redevelopment plan where the redevelopment plan is an overlay to the underlying zoning. "We specifically recognized that the LRHL does not supersede the MLUL with respect to the functions of the planning board; both statutes provide that planning boards will review site plan applications . . . We see no reason to reach a different result with respect to the function of the zoning board, which is entrusted by the MLUL with the authority to grant exceptions to zoning requirements in individual cases."

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Nouhan v. Bd. of Adjust., City of Clifton, 392 N.J. Super. 283 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=11574409842295196162&q=Nouhan+v.+Bd.+of+Adjust.,+City+of+Clifton&hl=en&as_sdt=2,31

The issuance of a license by the governing body to a regulated business does not authorize a use of land that is not permitted under the zoning ordinance. “The regulation of land uses under the MLUL and the licensing and regulation of businesses under N.J.S.A. 40:52-1 constitute two separate spheres of municipal regulation.”

Najduch v. Twp. of Independence Planning Bd., 411 N.J. Super. 268 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=9509647173981449339&q=Najduch+v.+Twp.+of+Independence+Planning+Bd&hl=en&as_sdt=2,31

A planning board does not have authority to grant an application for site plan approval for a project that involves a use prohibited in the zoning district. The zoning board of adjustment has the exclusive authority to grant site plan approval in connection with a use variance and the “exclusive authority cannot be circumvented by an applicant simply declining to apply for a use variance, . . . [as] it would be contrary to the objectives of the MLUL to provide for ‘one-stop shopping’ provided by its concept of ancillary jurisdiction in each board.”

Board of Education of the City of Clifton v. Zoning Board of Adjust., City of Clifton, 409 N.J. Super. 389 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=7088765724024941242&q=409+N.J.+Super.+389+&hl=en&as_sdt=2,31

Local school boards are bound only by the use restrictions of municipal zoning ordinances, not by regulations regarding “such matters as height, setbacks, parking and site plan approval.” EFCFA gave the DOE jurisdiction over off-site safety issues.

Cicchine v. Township of Woodbridge, 413 N.J. Super. 393 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=1105551997847666631&q=Cicchine+v.+Township+of+Woodbridge&hl=en&as_sdt=2,31

Upon the filing of a complaint with the law division, a land use board is divested of jurisdiction to modify a prior action that is the subject of the appeal, absent a remand.

2. PROCEDURAL

A. TIME LIMITATION

Willoughby v. Planning Bd. of Twp. of Deptford, 306 N.J. Super. 266 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=5501418020198240281&q=306+N.J.+Super.+266+&hl=en&as_sdt=2,31

Harris v. Bor. of Fair Haven, 317 N.J. Super. 226 (Ch. Div. 1998)

http://scholar.google.com/scholar_case?case=1410580217116006732&q=317+N.J.+Super.+226+&hl=en&as_sdt=2,31

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Adams v. DelMonte, 309 N.J. Super. 572 (App. Div. 1998)

http://scholar.google.com/scholar_case?case=16419321611664383425&q=309+N.J.+Super.+572+&hl=en&as_sdt=2,31

Dolente v. Bor. of Pine Hill, 313 N.J. Super. 410 (App. Div. 1998)

http://scholar.google.com/scholar_case?case=8220419486175743094&q=313+N.J.+Super.+410+&hl=en&as_sdt=2,31

K-Land Corp. v. Landis Sewerage Authority, 173 N.J. 59 (2002)

http://scholar.google.com/scholar_case?case=2272580735765029658&q=K-Land+Corp.+v.+Landis+Sewerage+Authority&hl=en&as_sdt=2,31

Builders League of South Jersey, Inc. v. Burlington County Planning Bd., 353 N.J. Super. 4 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=6183538777786972446&q=Builders+League+of+South.+v.+Burlington+County+Planning+Bd.&hl=en&as_sdt=2,31

Eastampton Center, LLC v. Planning Bd., Twp. of Eastampton, 354 N.J. Super. 171 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=11137574347175123796&q=Eastampton+Center,+LLC+v.+Planning+Bd.,+Twp.+of+Eastampton,&hl=en&as_sdt=2,31

Cohen v. Thoft, 368 N.J. Super. 338 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=15372839366656930430&q=%22368+N.J.+Super.+338%22&hl=en&as_sdt=2,31

Opponent of zoning board's approval of homeowner's variance application was entitled, in interest of justice, to three-day enlargement of 45-day period to file action challenging board's decision, even though action did not fall within recognized exception to the time limit; homeowners did not inform anyone that they published notice of board's decision, thereby triggering 45-day period, two weeks before municipal zoning officer published notice, and did not respond to letter from zoning officer notifying them of his publication, and opponent's action was filed within 45 days after zoning officer's publication, and within three days after opponent learned of homeowner's publication. Homeowners' publication of notice of zoning board's approval of their variance application, one day after zoning board meeting at which application was approved, triggered 45-day period for bringing an action to challenge zoning board's decision, even if final resolution reflecting amendments adopted at the board meeting was not formally drafted until after publication of the notice; statute provided that date of zoning board's decision, for purposes of publication requirement, was date resolution was adopted, rather than date ministerial task of drafting the resolution was completed.

Infinity Outdoor, Inc. v. Delaware and Raritan Canal Com'n, 388 N.J. Super. 278 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=12972487725847024991&q=Infinity+Outdoor,+Inc.+v.+Delaware+and+Raritan+Canal&hl=en&as_sdt=2,31

DRCC's action was not untimely where petitioner sought continuances, amended its application which started the 45-day clock anew, and again amended its application by withdrawing its revision and sought approval of the prior application – which restarted the 45-day clock.

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Gregory v. Bor. of Avalon, 391 N.J. Super. 181 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=4914469930745608566&q=Gregory+v.+Bor.+of+Avalon&hl=en&as_sdt=2,31

Even if a case involves purely private interests, a court may enlarge the forty-five day period to bring suit in the “interest of justice.” In such a case, the court must “weigh the public and private interests that favor an enlargement against ‘the important policy of repose expressed in the forty-five day rule.’” Here, it was appropriate to enlarge the time to challenge a resolution of the governing body that allowed for encroachments on a public beach area and a dedicated street because the resolution authorizing such encroachments was relied upon by the planning board in granting the land use approvals that were timely challenged by plaintiff.

Najduch v. Twp. of Independence Planning Bd., 411 N.J. Super. 268 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=9509647173981449339&q=Najduch+v.+Twp.+of+Independence+Planning+Bd&hl=en&as_sdt=2,31

Even where the 45-day time limitation of Rule 4:69-6 has expired, an action that was utterly void is subject to collateral attack at any time.

Goldsmith v. Camden County Surrogate’s Office, 408 N.J. Super. 376 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=13948225792715518530&q=Goldsmith+v.+Camden+County+Surrogate%E2%80%99s+Office&hl=en&as_sdt=2,31

Unjust enrichment action against county surrogate’s office which alleged that surrogate charged excessive copying fees for records is governed by the 45-day limitations period for actions in lieu of prerogative writs.

Cortesini v. Hamilton Twp. Planning Bd., 417 N.J. Super. 210 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=15368817115793701367&q=Cortesini+v.+Hamilton+Twp.+Planning+Bd&hl=en&as_sdt=2,31

Nonconforming condition of existing parking lot, for which a variance was required but not applied for or received at time of site plan approval granted years earlier, did not require a new variance where new site plan application for site renovations did not impact existing nonconforming condition. Plaintiff’s challenge to site plan approval on ground that variance was required determined to be an untimely collateral attack upon the earlier land use approvals granted by the board.

Hopewell Valley Citizens Group v. Berwind Property Group Development Co., L.P., 204 N.J. 569 (2011)

http://scholar.google.com/scholar_case?case=2555445360250231394&q=Hopewell+Valley+Citizens+Group+v.+Berwind+Property+Group+Development+&hl=en&as_sdt=2,31

Plaintiff was entitled to enlargement of time under Rule 4:69-6(c) to file complaint where he contacted the board secretary and was inadvertently misled regarding the date of publication of the decision and the six-day delay was not prejudicial to the developer.

Pagano v. Woolwich Township Joint Land Use Board, A-4432-13T2 (Aug. 7, 2015)

http://scholar.google.com/scholar_case?case=6811583178666926540&q=4432-13T2&hl=en&as_sdt=4,31

Challenge to original General Development Plan approval untimely where complaint filed years later following amendment to GPD. “The MLUL permits a municipality to authorize the planning board to grant GDP approval ‘to promote the increased flexibility desirable to promote mutual agreement between the applicant and the planning board on the basic scheme of a planned development . . .’ N.J.S.A. 40:55D-39(c)(1). The statute does not set forth any specific language that the municipality must use or specify where in its ordinances the authorization must be placed.”

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“Once a GDP has been approved, the developer may amend the plan, but must apply to the planning board and receive its approval to do so. N.J.S.A. 40:55D-45.6(a). . . . [A] t the GDP stage of the process, an applicant is [not] required to submit a specific plan for the entire site. Such an obligation is inconsistent with the structure and purpose of the statute, which requires boards to consider applications ‘in a general manner.’”

In The Matter of Application by Pineville Brunswick Development, A-2126-13T3 (June 15, 2016)
https://scholar.google.com/scholar_case?case=18245677360009773547&q=A-2126-13T3&hl=en&as_sdt=4,31

Challenge to approval issued by Delaware and Raritan Canal Commission out of time where Commission incorporated prior unchallenged waivers and approvals without re-reviewing its prior approvals in approving Phase II of a project. Although current regulations prohibit detention basin in stream corridor, it was permitted as part of prior approval and developer had entered into an easement which authorized the detention basin and had proceeded with certain construction activities in reliance upon those approvals.

Hernandez v. SAS Properties of Old Bridge, LLC, A-2156-14T4 (June 17, 2016)
https://scholar.google.com/scholar_case?case=13914742122568669955&q=A-2156-14T4&hl=en&as_sdt=4,31

Objector’s challenge to use of property out of time where use approved 14 years earlier and applicant sought amended site plan approval.

In the Matter of the New Jersey Sports and Exposition Authority Resolution 2016-20, A-2602-15T4, A-2815-15T4 (Nov. 9, 2017)
https://scholar.google.com/scholar_case?case=6095631826555224338&q=Matter+of+New+Jersey+Sports+and+Exposition+Authority+Resolution+2016-70+&hl=en&as_sdt=6,31

Appeals must be taken from final decisions or actions of state administrative agencies within forty-five days after “the date of service of the decision or notice of the action taken.” Rule 2:4-1(b). When an appeal is not filed within the time prescribed by the rule, the court lacks jurisdiction to decide the matter on the merits.

Evers v. The Zoning Board of the City of Hoboken, A-3915-15T1 (Dec. 13, 2017)
https://scholar.google.com/scholar_case?case=769983346956038623&q=Evers+v.+The+Zoning+Board+of+the+City+of+Hoboken&hl=en&as_sdt=6,31

The 20-day time limit of N.J.S.A. 40:55D-72(a) and the 45-day time limit of Rule 4:69-6(a) run from when the plaintiff knew or should have known of the issuance of the building permit at issue.

Tirpak v. Bor. of Point Pleasant Beach Bd. of Adj., 457 N.J. Super. 441 (App. Div. 2019)
https://scholar.google.com/scholar_case?case=7355188727747707420&q=A-5147-17T1&hl=en&as_sdt=4,31

Variance condition that required one unit of a two-family dwelling to be occupied by the owner and not rented to a third-party tenant discriminated against renters and is invalid. The zoning authority is limited to the regulation of land uses and not with the person who owns or occupies the land. “[B] because this lawsuit implicates important public values and involves a perpetual restriction on the identity of the premises’ occupants, we endorse the trial court’s election to adjudicate the merits of this case under the ‘interests of justice’ exception to the forty-five-day time bar in Rule 4:69-6(c).”

CHALLENGES TO BOARD DECISIONS

Hoffman's Rest. v. The Bd. of Chosen Freeholders of Cnty. of Monmouth Constr. Bd. of Appeals, No. A-3395-19 (Sept. 7, 2021)

https://scholar.google.com/scholar_case?case=3535767541357581998&q=Hoffman%27s+Rest.+v.+Freeholders&hl=en&as_sdt=4,31

"N.J.A.C. 5:23A-2.1 provides that any person 'aggrieved' by an order issued under the Uniform Fire Code may file an application for a hearing with the Board 'by the [fifteenth] day after receipt' of the order." N.J.A.C. 5:70-2.11(b) provides that "[t]he date of personal service or the third day after mailing shall be considered the day of service. Plaintiff's appeal was untimely where it was filed beyond 15 days from the date of the actual receipt of the order, notwithstanding the fact that the appeal was filed within 18 days of the date of that the order was mailed.

Squicciarini v. Borough of Closter, No. A-0822-19 (July 2, 2021)

https://scholar.google.com/scholar_case?case=6400851718442205061&q=Squicciarini+v.+Borough+of+Closter&hl=en&as_sdt=6,31

Plaintiff could not contest the zoning officer's decision without a timely appeal to the ZBA by pursuing a challenge as an action in lieu of prerogative writs as that would nullify the 20-day time constraint provided by N.J.S.A. 40:55D-72(a).

Hassan v. Borough of Emerson, No. A-4895-18 (Feb. 10, 2021)

https://scholar.google.com/scholar_case?case=10628510167215353408&q=hassan+v+emerson&hl=en&as_sdt=6,31&as_ylo=2021

Filing of prerogative writs action seeking to invalidate site plan approval of a redevelopment application must be filed within forty-five (45) days of publication of notice of adoption per Rule 4:69-6(a). The court did not err in refusing to grant an enlargement of time where Plaintiff failed to provide an explanation for his failure to file on time, nor identify any important public interests at stake, especially where the relief sought was in reality a challenge to the 14-year-old redevelopment designation, rather than the site plan approval.

Dimarco v. Zoning Bd. of Adjust., Bor. of Edgewater, A-0416-21 (May 18, 2022)

https://scholar.google.com/scholar_case?case=7367268023342984165&q=Dimarco+v.+Zoning+Board+of+Adjustment+of+the+Borough+of+Edgewater&hl=en&as_sdt=6,31

Where Appellant filed an action in lieu of prerogative writs thirty (30) days late, and Appellant certified that the delay was due to being unable to comprehend the scale of the development application because of only being able to review document virtually during the pandemic and not in person, the trial court judge abused its discretion when deciding not to enlarge the time Appellant had to file challenge to Board approval pursuant to Rule 4:69-6(c).

Tripsas v. Borough of Oradell, A-0649-20 (March 25, 2022)

https://scholar.google.com/scholar_case?case=2435315264300663762&q=tripsas+v.+oradell&hl=en&as_sdt=6,31

"[P]ursuant to Rule 4:69-6(b)(3), a party seeking the court's review of 'a determination of a planning board or board of adjustment' must commence its action in lieu of prerogative writs within forty-five days of publication of the memorializing resolution." Similarly, "[a] complaint alleging an OPMA violation must be brought within forty-five days 'after the action sought to be voided has been made public[.]'" "Constructive notice is the standard."

CHALLENGES TO BOARD DECISIONS

Grimm v. Wall Twp Zoning Board of Adj., A-3944-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=8495106139852617693&q=grimm+v.+wall&hl=en&as_sdt=6,47&as_ylo=2023

Where Plaintiff was had complained about the smell of a paint spraying booth, Plaintiff was aware/or should have been aware that a zoning permit had been issued for same. Thus, her failure to appeal that zoning permit within 20 days of becoming aware of its issuance (as required by N.J.S.A. 40:55D-72(a)), prevented her from challenging that approval later when the Applicant sought an additional variance.

Daly v. Exch. Place All. Dist. Mgmt. Corp., A-4021-23 (Oct. 17, 2025)

https://scholar.google.com/scholar_case?case=5862340221194391646&q=daly+v+exchange&hl=en&as_sdt=4,31

Challenge to renovation project moot where the renovation project has been completed and plaintiffs are not seeking to dismantle the project.

B. NOTICE

Brower Dev. Corp. v. Planning Bd. of Clinton, 255 N.J. Super. 262 (App. Div. 1992)

http://scholar.google.com/scholar_case?case=13989846419254441067&q=255+N.J.+Super.+262+&hl=en&as_sdt=4,31

Property included in development for notice purposes includes land giving access to lot upon which the construction will occur.

Perlmart of Lacey, Inc. v. Lacey Twp. Planning Bd., 295 N.J. Super. 234 (App. Div. 1996)

http://scholar.google.com/scholar_case?case=7653044807708869132&q=295+N.J.+Super.+234+&hl=en&as_sdt=4,31

Stafford v. Stafford Zoning Bd., 154 N.J. 62 (1998)

http://scholar.google.com/scholar_case?case=6031875748543129225&q=154+N.J.+62+&hl=en&as_sdt=4,31

Notice required for application for certification of a non-conforming use.

Stewart v. Planning Bd. of Manalapan, 334 N.J. Super. 123 (Law Div. 2000)

http://scholar.google.com/scholar_case?case=2505229595001865356&q=334+N.J.+Super.+123+&hl=en&as_sdt=4,31

Discussing issues of consequence to site plan application at informal review with planning board creates an appearance of impropriety and is improper since notice to interested parties was not provided and such issues are reserved for an applicant's hearing.

1900 R70 Assocs., LLC v. Lowe's Home Center, Inc., A-3520-99T2 (2001), *certif. denied*, 169 N.J. 605 (2001)

Lowe's Home Center received preliminary and final site plan approval, a condition of which was that Lowe's obtain permission from adjacent property owners to gain access to a road that will be constructed by the adjacent property owners. Plaintiff's challenge to the approvals, on the basis that all property owners within 200 feet of the unconstructed road should have been notified of the application, was properly denied as the access road was not within the boundaries of the site plan application.

CHALLENGES TO BOARD DECISIONS

Garden State Land Co. v. City of Vineland, 368 N.J. Super. 369 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=7340933997087205168&q=Garden+State+Land+Co.+v.+City+of+Vineland.&hl=en&as_sdt=2,31

Statute's definition of "parties in interest" entitled to notice of hearing on a building in disrepair as parties "who have interests of record in a building and any who are in actual possession thereof" did not require a party to possess an interest of record and also be in actual possession.

Holualoa Whiting, LLC v. Manchester Twp. Planning Bd., 182 N.J. Super. 630 (Law Div. 2005)

http://scholar.google.com/scholar_case?case=3210893522641942489&q=Holualoa+Whiting&hl=en&as_sdt=2,31

Where two applications were filed by same applicant, with two separate fees and engineering reports, with two separate notices, board's decision to hear the applications concurrently did not render notices invalid; where nature of use was specified (gas station), notice isn't deficient, even though it did not state that a conditional use was required.

New York SMSA Limited Partnership v. Twp. Council of Twp. of Edison, 382 N.J. Super. 541 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=3485594014810276489&q=New+York+SMSA+Limited+Partnership+v.+Twp.+Council+of+Twp.+of+Edison&hl=en&as_sdt=2,31

Ordinance requiring notification to all property owners within 300 feet of the subject property conflicts with the MLUL 200-foot requirement and is therefore invalid.

Rinaldo v. RLR Investment, LLC, 387 N.J. Super. 387 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=8325424890775430547&q=Rinaldo+v.+RLR+Investment&hl=en&as_sdt=2,31

Applicant was required to give notice to property owners within 200 feet of the property on which its wetlands mitigation project was to be constructed, notwithstanding the fact that it wasn't the property upon which the applicant sought the permit related to its development application, because under the Freshwater Wetlands Protection Act the term "regulated activity" includes disturbance to existing wetlands, even though the mitigation project sought to enhance the wetlands. As a result, the court reversed the DEP's approval of the wetlands mitigation project (notwithstanding the fact that the project was complete) and remand to the DEP for reconsideration of the application on notice to plaintiffs.

Grove v. Steinhauer, A-1435-06T1 (Dec. 14, 2007), certif. denied, 194 N.J. 443 (2008)

http://scholar.google.com/scholar_case?case=4829254437855730444&hl=en&as_sdt=2,33

N.J.S.A. 40:55D-12a gives municipalities the discretion to adopt ordinances requiring public notice for such things as "appeals of determinations of administrative officers." Absent an ordinance requiring such notice, notice is not required to be given in connection with appeals to the Zoning Board from administrative officers or requests for interpretations.

Pond Run Watershed Ass'n. v. Twp. of Hamilton Zoning Bd., 397 N.J. Super. 335 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=14934983218583171593&q=Pond+Run+Watershed+Ass%E2%80%99n.+v.+Twp.+of+Hamilton+Zoning+&hl=en&as_sdt=2,31

Typographical error in legal notice that listed the incorrect block number for the property held to be inconsequential under the circumstances because area property owners would reasonably be aware of which property was involved. There is no statutory requirement that additional notices be provided if an application is carried to another meeting, the statute only requires that notice be given for the initial meeting. Notice was deficient where it did not mention a 5000 square foot restaurant which would possibly serve alcohol, but simply stated "retail/office units."

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Shakoor Supermarkets, Inc. v. Old Bridge Twp. Planning Bd., 420 N.J. Super. 193 (App. Div. 2011)
http://scholar.google.com/scholar_case?case=7356598067855359732&q=Shakoor+Supermarkets,+Inc.+v.+Old+Bridge+Twp.+Planning+Bd&hl=en&as_sdt=2,31

Notice of a proposed “main retail store of 150,000 s.f.” adequately informed the public that a “big box” retailer was proposed and did not have to call out that it was a Mal-Mart. A garden center that does not have a roof is not part of the building for square footage purposes.

Northgate Condominium Association, Inc. v. Borough of Hillsdale Planning Board, 214 N.J. 120 (2013)

http://scholar.google.com/scholar_case?case=8738681213286813626&q=Northgate&hl=en&as_sdt=4,31

A notice that identifies the parcel by common name, and refers to the location of the parcel, was not defective notwithstanding the fact that the lot numbers given were incorrect. The court employs a facts and circumstances test to see whether the notice overall would provide the public with sufficient information to identify the property.

Schroeder v. County of Atlantic, 440 N.J. Super. 251 (Law Div. 2015)

https://scholar.google.com/scholar_case?case=12414114773996772315&q=L-2291-14&hl=en&as_sdt=4,31

“The law is clear that the doctrine of laches shall not apply if the complaint is filed within the time proscribed by [Rule 4:69-1], unless there are overwhelming equitable concerns.” No overwhelming concerns found that would require dismissal of suit challenging the award of a contract to an accounting firm that allegedly violated the City’s pay-to-play ordinance, where the audit was performed by the accounting firm prior to the filing of the Complaint, but within the 45-day period, where the accounting firm was aware that at least one freeholder had expressed reservation about the award of the contract.

Hensfoot Development Corporation v. Clinton Township Board of Adjustment, A-2399-14T3 (Aug. 1, 2016)

https://scholar.google.com/scholar_case?case=6081412307205783354&q=A-2399-14T3&hl=en&as_sdt=4,31

Notice sufficient where it listed certain specific variances, but also stated it was seeking “all other necessary variances or waivers required by the plans on file.”

1959 Highway 34, LLC v. Township of Wall, No. 007899-2016 (NJ Tax Oct. 31, 2016)

https://scholar.google.com/scholar_case?case=5442594691152264640&q=007899-2016&hl=en&as_sdt=4,31

“[A]ll direct appeals to the Tax Court must be filed by the later of April 1 or 45 days from the date of bulk mailing of assessment notices, regardless of the type of action that generated the assessments, i.e., whether imposed by a reassessment or a district-wide revaluation, having left to the participant-county the implementation of the necessary mechanics and procedures for imposing the assessments.” However, because the instructions on the Notice of Assessment referenced the New Jersey court’s website and it failed to adequately notify taxpayers of the requirements for filing a direct appeal to the Tax Court and the deadline to do so, “[t] his error jeopardized plaintiff’s due process rights and violated the mandate in N.J.S.A. 54:4-38.1.”

CHALLENGES TO BOARD DECISIONS

Paterson v. Combined Planning Board, A-2328-15T1 (June 28, 2017)

https://scholar.google.com/scholar_case?case=522346973058237929&q=A-2328&hl=en&as_sdt=4,31

“The notice made clear that the applicant was seeking to construct multi-family structures on property zoned for residential single-family dwellings . . . [T]he fact that the units will be age-restricted does not raise a ‘heightened concern’ to the public regarding the application. . . . Indeed, the restriction of occupancy to persons aged fifty-five or older would not affect the essential use of the property for multi-family structures. The age restriction also would not affect the number of buildings to be constructed, or the other building features for which variances were requested.” The notice provided a “common-sense description of the proposed development and its impact” and “fairly apprised” the public with information concerning the “nature and character of the proposed development.”

Shaked v. Board of Adjust., Twp. of North Bergen, A-4634-15T2 (May 23, 2018)

https://scholar.google.com/scholar_case?case=8038475547208120950&q=A-4634-15T2&hl=en&as_sdt=4,31

Re-notice not required for amended application “so long as the ‘central focus’ of the matter has not changed.” “[T]he central focus remained the density variance, or increase in units, and the setback variance, as the 2014 application noted no other changes from the Original Approval. Accordingly, no notice was required, given that the 2014 application, compared to the Original Approval, was an amended application and evidence revealed that the additional 20,100 residential square footage [created by splitting the ninth floor in half and inserting a floor] did not enlarge the proposed building itself.”

DiDonato v. Cape May Planning Board, A-2583-16T4 (Dec. 14, 2018)

https://scholar.google.com/scholar_case?case=17592103603230640812&q=DiDonato+v.+Cape+May&hl=en&as_sdt=4,31

Notice for a variance pursuant to N.J.S.A. 40:55D-35 and 36 to develop property along a private street and not abutting a public street need only be given to owners of property within 200 feet of the lot, not 200 feet of the entire length of the road.

Lakewood Realty Associates v. Lakewood Township Planning Board, A-3750-16T4 (Feb. 5, 2019)

https://scholar.google.com/scholar_case?case=6063161816266949931&q=A-3750-16T4&hl=en&as_sdt=4,31

Notice that described proposed uses as a hotel and a bank, but did not include the fact that a restaurant with a liquor license and banquet facilities was proposed within the hotel found to be deficient.

Quick Plus Realty, LLC v. City of Bridgeton Zoning Board, A-4509-17T4 (June 13, 2019)

https://scholar.google.com/scholar_case?case=2314092781071892596&q=A-4509-17T4&hl=en&as_sdt=4,31

“The MLUL only requires ‘a common sense description of the nature of the application, such that the ordinary layperson could understand its potential impact upon him or her’ [citation omitted]. . . . We also reject, . . . any claim that advising the public all relevant documents were available for inspection at the Board’s office was insufficient because it did not provide the Board’s address. Common sense dictates that any member of the public concerned about the application could easily find the address of the Board.”

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Sadowe v. Autozone Northeast, LLC, A-0585-18T3 (Sept. 2, 2020)

https://scholar.google.com/scholar_case?case=909206221402389362&q=Sadowe+v.+Autozone&hl=en&as_sdt=6,31&as_ylo=2020

A notice's overbreadth did not make it useless where it still identified the nature of the matters to be considered and the overinclusive list of relief "was likely to provide greater public interest." A new notice for a continued hearing is generally not required.

Gonzalez v. Odunlami, A-3212-19 (April 23, 2021)

https://scholar.google.com/scholar_case?case=6554829694410216129&q=Gonzalez+v.+Odunlami&hl=en&as_sdt=6,31

Where a Board's hearing is re-scheduled, an application can nevertheless be carried to a future meeting where public notices are posted and published regarding the carried application. No further mailed notice is required.

Lakewood Realty Assocs., LLC v. Zoning Bd. of Adjust., Twp. of Lakewood, A-1981-20 (July 5, 2022)

https://scholar.google.com/scholar_case?case=15760052352807483174&q=Lakewood+Realty+Assocs.,+LLC+v.+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,31

The public notice did not need to include reference to the lot over which an existing driveway that provided the only access to the development parcel because there was no development proposed on the driveway. It was also uncontested that all property owners within 200 feet of the driveway parcel had received notice.

Concerned Citizens of Tenaflly, Inc. v. Borough of Tenaflly Planning Board, A-1989-21 certif den 255 N.J. 444 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=15316178969208978819&q=tenaflly+v.+tenaflly&hl=en&as_sdt=6,47&as_ylo=2023

Failure to indicate that the public right-of-way was proposed to be used as part of developer's loading operations did not impair the required notice.

Grimm v. Wall Twp Zoning Board of Adj., A-3944-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=8495106139852617693&q=grimm+v.+wall&hl=en&as_sdt=6,47&as_ylo=2023

Applicant obtained a use variance for a woodworking shop and afterwards installed a paint spraying booth by way of a zoning permit. Some time thereafter, Applicant filed for a d(2) use variance to expand the woodworking shop and to install a second floor office. Applicant's notice with respect to this new application did not reference the existence of the booth. Plaintiff, who resided nearby, appeared at the board hearing and complained about the odor created by the booth. After the Board had granted Applicant's d(2) use variance, Plaintiff argued that its notice was deficient by not referencing the booth. The Court held that notice was proper because it sufficiently apprised the public as to what improvements were proposed and failure to call out the booth (which was already approved) did not impair same.

Lakewood Realty v. Twp of Lakewood Planning Board, A-1899-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=426115229292580515&q=lakewood+realty+v.+lakewood&hl=en&as_sdt=6,47&as_ylo=2023

Although the municipal zoning code defined the term "hotel" to include a "banquet hall" use, where an applicant provided notice for the hotel but not the banquet hall-same represents defective notice because such an approach fails to convey to the public the impactful activities that will be authorized on the site.

CHALLENGES TO BOARD DECISIONS

KBS Mt. Prospect LLC v. Lakewood Twp. Planning Bd., A-1978-22 (June 12, 2024)

https://scholar.google.com/scholar_case?case=1551093498335835944&q=KBS+v.+lakewood&hl=en&as_sdt=6,47

While the notice for a subdivision application mistakenly stated that one particular lot would remain unchanged when, in reality, a relatively minor lot line change was proposed, same constituted a minor error and did not deprive the Board of jurisdiction.

Jackson v. 319 Penn Dev., LLC, A-1351-22, (July 23, 2024)

https://scholar.google.com/scholar_case?case=665264889569119279&q=Jackson+v.+319+Penn&hl=en&as_sdt=6,47

The MLUL requires neighboring property owners "be given" notice. It does not require receipt of same.

The Alliance for Sustainable Communities Mercer-Monmouth v. Robbinsville Twp. Zoning Bd., A-2509-21 (July 25, 2024)

https://scholar.google.com/scholar_case?case=5273810853399215474&q=Mercer-Monmouth+v.+Robbinsville&hl=en&as_sdt=6,47

In response to objectors' argument that notice did not disclose possible impacts of development, the Appellate Division adopted the trial court's ruling that notice was adequate where it provides a common-sense description of the proposed development sufficient to alert residents that the subject application included proposed building two large warehouse facilities on the property that is intended to permit trucks to transport goods to and from the warehouses. The Court held that same was acceptable because a layperson could reasonably discern from the notices that warehouses (of the size proposed) would pose traffic, noise, and environmental concerns.

Valentine v. Zoning Bd. of the Twp. of Monroe, A-0737-23 (April 19, 2025)

https://scholar.google.com/scholar_case?case=7365104814507844051&q=Valentine+v.+Zoning+Bd.+of+the+Twp.+of+Monroe&hl=en&as_sdt=6,47&as_vlo=2025

Notice, which set forth the relief that was requested, but not the actual structure/use to be approved by way of the requested use variance, was adequate.

Diminni v. Seaside Plan. Bd., A-2859-23 (May 23, 2025)

https://scholar.google.com/scholar_case?case=14580201490785565711&q=diminni&hl=en&as_sdt=4,31

Notice not invalid where it listed the former address of the municipal building where the plans could be reviewed and a sign was on the building directing the public to the new building.

C. APPLICATION COMPLETENESS

Gassaway v. South Amboy, 101 N.J. 86 (1985)

http://scholar.google.com/scholar_case?case=11217051113725166873&q=101+N.J.+86+&hl=en&as_sdt=2,31

Purwin v. Bernards Twp. Planning Bd., 221 N.J. Super. 243 (Law Div. 1987)

http://scholar.google.com/scholar_case?case=11540586530204607924&q=221+N.J.+Super.+243+&hl=en&as_sdt=2,31

Applicant had no obligation to comply with requirements set forth in a resolution, rather than an ordinance.

CHALLENGES TO BOARD DECISIONS

Gatto Design & Dev. v. Colts Neck, 316 N.J. Super. 110 (App. Div. 1998)

http://scholar.google.com/scholar_case?case=5480569527967146147&q=316+N.J.+Super.+110+&hl=en&as_sdt=2,31

Sprint Spectrum v. Twp. of Warren Planning Bd., 325 N.J. Super. 61 (Law Div. 1999)

http://scholar.google.com/scholar_case?case=12447115289354851648&q=Sprint+Spectrum+v.+Twp.+of+Warren+Planning&hl=en&as_sdt=2,31

MLUL does not preclude requirement in municipal ordinance that applicant obtain approval from municipal board of health prior to consideration of application by planning board.

Eastampton Center, LLC v. Planning Board, Twp. of Eastampton, 354 N.J. Super. 171 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=11137574347175123796&q=Eastampton+Center,+LLC+v.+Planning+Board,+Twp.+of+Eastampton&hl=en&as_sdt=2,31

A municipality may incorporate by reference to the MLUL the specific requirements for submission of a General Development Plan, which then would become the municipality's "checklist" for a developer's submission of such a plan.

Fallone Properties, L.L.C. v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=14959056775354964959&q=Fallone+Properties,+L.L.C.+v.+Bethlehem+Twp.+Planning+&hl=en&as_sdt=2,31

DiMauro v. Monroe Twp. Planning Bd., A-0619-22 (Feb. 14, 2024)

https://scholar.google.com/scholar_case?case=7551326484777512358&q=DiMauro+v.+Monroe&hl=en&as_sdt=6,47&as_ylo=2024

While the Board conducted a hearing to correct procedural issues related to a virtual hearing while a challenge was pending to its approval, same did not mean that a newly effective stormwater control ordinance had become applicable to the application because, under the time of application rule, the application had been deemed complete well before the corrective hearing and before the new ordinance went into effect.

3. STANDING

Twp. of Dover v. Bd. of Adjust. of Dover, 158 N.J. Super. 401 (App. Div. 1978)

http://scholar.google.com/scholar_case?case=17166621051853119359&q=Twp.+of+%22Dover%22+v.+Bd.+of+Adjustment+of+Dover&hl=en&as_sdt=2,31

When a zoning board grants a variance that affects the integrity of the zoning ordinance, it arrogates to itself the authority to zone that is vested in the municipality. In such cases, the municipality has standing to challenge the action.

Exxon Co. v. Bernardsville Bd. of Adj., 196 N.J. Super. 183 (Law Div. 1984)

http://scholar.google.com/scholar_case?case=5270695870394447388&q=196+N.J.+Super.+183+&hl=en&as_sdt=2,31

Paramus Multiplex Corp. v. Hartz Mountain Industries, Inc. 236 N.J. Super. 104 (Law Div. 1989)

http://scholar.google.com/scholar_case?case=10465076341677896145&q=236+N.J.+Super.+104++&hl=en&as_sdt=2,31

Nonresident business competitor does not have standing where no impact on property rights
Shown

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Ric-Cic Co. v. Bassinder, 252 N.J. Super. 334 (App. Div. 1991)

http://scholar.google.com/scholar_case?case=7570802601303024837&q=252+N.J.+Super.+334+&hl=en&as_sdt=2,31

Holder of 99 year lease has standing to make land use application

Aronowitz v. Lakewood Planning Bd., 257 N.J. Super. 347 (Law Div. 1992)

[http://scholar.google.com/scholar_case?case=324012099428181385&q=257+N.J.+Super.+347+\(&hl=en&as_sdt=2,31](http://scholar.google.com/scholar_case?case=324012099428181385&q=257+N.J.+Super.+347+(&hl=en&as_sdt=2,31)

Village Supermarkets v. Mayfair, 269 N.J. Super. 224 (Law Div. 1993)

http://scholar.google.com/scholar_case?case=12395591970637459596&q=269+N.J.+Super.+224+&hl=en&as_sdt=2,31

Car Spa, Inc. v. High Tech. of S & C, 267 N.J. Super. 422 (App. Div. 1993), certif. denied, 135 N.J. 304 (1994)

http://scholar.google.com/scholar_case?case=3905253431880138049&q=267+N.J.+Super.+422+&hl=en&as_sdt=2,31

Non-resident competitor not an “interested party” and lacked standing

Paruszewski v. Township of Elsinboro, 154 N.J. 45 (1998)

http://scholar.google.com/scholar_case?case=2132417171944906215&q=154+N.J.+45+&hl=en&as_sdt=2,31

Township has standing before zoning board where there is “a substantial public interest in protecting the integrity of the zoning scheme.”

ML Plainsboro, LP v. Twp. of Plainsboro, 316 N.J. Super. 200 (App. Div. 1998)

http://scholar.google.com/scholar_case?case=13933653413311072365&q=316+N.J.+Super.+200+&hl=en&as_sdt=2,31

Funeral Home Management v. Basralian, 319 N.J. Super. 200 (App. Div. 1999)

http://scholar.google.com/scholar_case?case=750744958638032273&q=319+N.J.+Super.+200+&hl=en&as_sdt=2,31

Competitor within one mile of site had standing as an “interested party”

Neu v. Planning Bd., Twp. of Union, 352 N.J. Super. 544 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=6060095140364156435&q=Neu+v.+Planning+Bd.,+Twp.+of+Union&hl=en&as_sdt=2,31

Owners of property located in an adjacent rural township and within 3500 feet of a proposed subdivision had standing to bring an action in lieu of prerogative writ to challenge subdivision and site plan approval granted to developer because they may be affected by decisions concerning water supply and on-site wells.

Spinnaker Condominium Corp. v. Zoning Bd., City of Sea Isle City, 357 N.J. Super. 105 (App. Div. 2003)

http://scholar.google.com/scholar_case?case=12745366138919577091&q=Spinnaker+Condominium+Corp.+v.+Zoning+Bd.,+City+of+Sea+Isle+City&hl=en&as_sdt=2,31

Condo corporation intending to lease roof space to telecommunications company for antenna facility lacked standing to appeal zoning board’s denial of conditional use variance to telecommunications company because board’s decision did not intrude upon any statutory right held by condo corporation to install or operate antennas, as condo corporation was not licensed telecommunications provider and condo corporation had no financial interest in outcome of

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litigation after telecommunications provider chose not to appeal board's denial and terminated its lease with condo corporation.

Storino v. Bor. of Point Pleasant Beach, 322 F.3d 293 (3d Cir. 2003)

http://scholar.google.com/scholar_case?case=18058128211378071876&q=Storino+v.+Bor.+of+Point+Pleasant+Beach&hl=en&as_sdt=2,31

Court of Appeals dismissed the case, ruling: a) that the prospective necessity of a variance application was an "allegation of future damage . . . insufficient to accord standing to assert federal claim"; and b) plaintiffs did not have third party standing as they are not in fact a member of the class of persons they are seeking to protect and they have not, in the first instance established an "injury in fact." As they lacked standing to prosecute their federal claim, they could not pursue any pendant state claims in federal court.

DePetro v. Twp. of Wayne Planning Bd., 367 N.J. Super. 161 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=451389573608072718&q=DePetro+v.+Twp.+of+Wayne+Planning+Bd&hl=en&as_sdt=2,31

Court affirmed objector's standing to bring an action in lieu of prerogative writs since plaintiff's objections to a nearby competitor's site plan application were not based solely on competition grounds but rather that the proposed use is prohibited by the governing zoning ordinance.

Twp. of North Brunswick v. Zoning Bd. of Adjust., Twp. of North Brunswick, 378 N.J. Super. 485, certif. denied, 185 N.J. 266 (2005)

http://scholar.google.com/scholar_case?case=8740046999007560452&q=378+N.J.+Super.+485&hl=en&as_sdt=2,31

A municipality may sue to protect the integrity of its own legislatively conferred powers, *i.e.*, sue when a board has exceeded its statutory authority and attempted through a use variance to impose its own view as to the most appropriate use for a portion of a municipality. To determine standing, court must consider whether the requested variance would substantially alter the character of the district as set forth in the zoning ordinance, taking into account (1) the size of the tract; (2) the size of the tract relative to the size and character of the district in which it is located and of the municipality as a whole; (3) the number of parcels into which the tract will be subdivided; and (4) the nature and extent of the variation from district regulations.

Campus Associates L.L.C. v. Zoning Bd. of Adjust., Twp. of Hillsborough, 413 N.J. Super. 527 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=2075238110908293582&q=Campus+Associates+L.L.C+v.+Zoning+Bd&hl=en&as_sdt=2,31

Property owner has standing to appeal a denial of an application brought by a contract purchaser where the application depended on property specific proofs and not factors unique to the applicant. The court determined that since a variance runs with the land, and the owner would have had the benefit of the grant of a variance, the converse is also true, *i.e.*, where application is denied, the property owner was denied the benefit of the variance. The court distinguished *Spinnaker Condo. Corp.* where the application was dependent upon a wireless carrier's need to fill its coverage gap.

Village Supermarkets, Inc. v. Planning Board of the Township of Hanover, A-5651-13T4 (Dec. 14, 2015)

[HTTPS://SCHOLAR.GOOGLE.COM/SCHOLAR_CASE?CASE=3092549563153600018&q=5651-13T4&HL=EN&AS_SDT=4,31](https://scholar.google.com/scholar_case?case=3092549563153600018&q=5651-13T4&hl=en&as_sdt=4,31)

A taxpayer, property owner, and business owner in the Township has standing to challenge the land use approvals given to a competitor.

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Cherokee LCP Land, LLC v. City of Linden Planning Board, A-3614-14T2 (Mar. 2, 2017)
https://scholar.google.com/scholar_case?case=8963492609178981152&q=A-3614-14T2&hl=en&as_sdt=4,31

Holder of quit claim deed to lot adjacent to subject property lacked standing to challenge site plan approval where title search revealed that party which conveyed the deed lacked any ownership interest in the property. “Appearing at a planning board hearing and claiming, without challenge, ownership of a neighboring property does not automatically confer standing [when it is later shown that the party lacked any ownership interest].” Owner of a tax sale certificate “is not always an ‘interested party’ with standing to be heard concerning all matters affecting the property.” “[O]nly on the entry of a final judgment of a foreclosure does the purchaser of a sales certificate become the owner of the real property.”

Montclair State University v. County of Passaic, 451 N.J. Super. 523 (App. Div. 2017) aff’d as modif. 234 N.J. 434 (2018)
https://scholar.google.com/scholar_case?case=11687433002142847814&q=A-3318-15T3&hl=en&as_sdt=4,31

A state university is not obligated to appear before local land use boards, but it must consider local interests in making its land use decisions. A municipal planning board “lacks standing and jurisdiction over the development project [because] generally, local zoning and planning regulations cannot affect the State’s authority to carry out public functions for the benefit of all the people of the State, especially on the State’s own land.” [citation omitted]. “Unlike judicial review of a land use board’s final decision that requires a trial on the record developed before a local board, disputes as to whether a state university satisfied its obligation to consider local concerns is a matter to be determined based upon a record developed at a trial.”

Cherokee LCP Land, LLC v. City of Linden Planning Board, 234 N.J. 403 (2018)
https://scholar.google.com/scholar_case?case=10875454767668491774&q=A-82-16&hl=en&as_sdt=4,31

A holder of a tax sale certificate “who can show that its ‘right to use, acquire or enjoy property is or may be affected’ if the application is granted is an interested party and therefore may have standing to challenge a planning board’s approval of a land use application.”

Montclair State University v. County of Passaic, 234 N.J. 434 (2018)
https://scholar.google.com/scholar_case?case=11218615795853761594&q=A-16+September+Term+2017,+080084&hl=en&as_sdt=4,31

Under the qualified immunity recognized in *Rutgers v. Piluso*, 60 N.J. 142 (1972), “a state agency must be able to demonstrate both that the planned action is reasonable and that the agency reasonably consulted with local authorities and took into consideration legitimate local concerns. Second, although an otherwise immune state entity may not be compelled to submit to review before a planning board, when its improvement directly affects off-site property and implicates a safety concern raised by a local governmental entity responsible to protect public safety with respect to that off-site property, special judicial review and action is required. . . . [A] judicial finding that the cited public safety concern has been reasonably addressed shall be a necessary additional requirement before a court may either compel local regulatory action or grant declaratory relief that the planned action is exempt from land use regulation. . . . [T]he trial court should determine, on a case-by-case basis, whether it could make such a finding via a summary proceeding or whether a more fulsome proceeding is necessary.”

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Vinegrad v. Miller, A-0896-15T2, A-1844-17T2 (March 12, 2019)

https://scholar.google.com/scholar_case?case=11455895222389200794&q=Vinegrad+v.+Miller,+A-0896-15T2,+A-1844-17T2+&hl=en&as_sdt=6,31

“The MLUL does not state that the applicant or developer must be the legal or beneficial owner of all the land [that is the subject of the development application]; rather, the statute provides that the applicant or developer must have a proprietary interest in “any land proposed to be included in a proposed development.” N.J.S.A. 40:55D-4.

Dimarco v. Zoning Bd. of Adjust., Bor. of Edgewater, A-0416-21 (May 18, 2022)

https://scholar.google.com/scholar_case?case=7367268023342984165&q=Dimarco+v.+Zoning+Board+of+Adjustment+of+the+Borough+of+Edgewater&hl=en&as_sdt=6,31

The courts take a liberal approach to standing in zoning cases and construe the MLUL’s definition of “interested party” broadly.

Dimarco v. Zoning Bd. of Adj. of the Borough of Edgewater, A-2060-21, A-2283-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=15242942537864971762&q=DiMarco+v.+Zoning+B&hl=en&as_sdt=6,47&as_ylo=2023

A neighboring municipality that is concerned with the impact of a 225-foot-tall residential development on its views of New York City has standing to challenge the Board’s approval because the MLUL provides that an interested party need only be someone “whose rights to use, acquire, or enjoy property” have been affected pursuant to N.J.S.A. 40:55D-4. And, here, the neighboring municipality met that threshold.

Riverside Development Studies LLC v. N. Bergen Bd. of Adj., A-1364-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=11644016655149492980&q=riverside+v+north+bergen&hl=en&as_sdt=6,31

An objector entity does not have standing to prosecute the appeal of an approval where neither the record below, nor the filed complaint, state with any specificity the individuals whose interests the objector entity represents.

4. BOARD MEMBER’S TENURE, PARTICIPATION & CONFLICT OF INTEREST

Cobble Close Farm v. Board of Adj. of Middletown Twp., 10 N.J. 442 (1952)

http://scholar.google.com/scholar_case?case=16487940102885369455&q=10+N.J.+442+&hl=en&as_sdt=2,31

Van Itallie v. Franklin Lakes, 28 N.J. 258 (1958)

http://scholar.google.com/scholar_case?case=16562003383648421886&q=28+N.J.+258+&hl=en&as_sdt=2,31

Common law test for conflict of interest.

McNamara v. Bor. of Saddle River, 60 N.J. Super. 367 (Law Div. 1960), *aff’d*, 64 N.J. Super 426 (App. Div. 1960)

http://scholar.google.com/scholar_case?case=17497599640608682215&q=60+N.J.+Super.+367+&hl=en&as_sdt=2,31

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Place v. Zoning Bd. of Adjust., Saddle River, 42 N.J. 324 (1964)

http://scholar.google.com/scholar_case?case=8456520346066903961&q=42+N.J.+324+&hl=en&as_sdt=2,31

Olive v. Garfield, 1 N.J. 184 (1986)

Where the board has insufficient members to transact business, the court may order that the vacancies be filled.

Smith v. Ghigliotty, 219 N.J. Super. 231 (Law Div. 1987)

http://scholar.google.com/scholar_case?case=14711229581075323735&q=219+N.J.+Super.+231+&hl=en&as_sdt=2,31

Leonia Planning Bd. v. Leonia Bor. Council, 222 N.J. Super. 207 (Law Div. 1987)

http://scholar.google.com/scholar_case?case=14206353764299858481&q=222+N.J.+Super.+207+&hl=en&as_sdt=2,31

Council may be ordered to fill Planning Board Engineer's vacancy

Barret v. Union Twp. Committee, 230 N.J. Super. 195 (App. Div. 1989)

http://scholar.google.com/scholar_case?case=17996798090464475543&q=230+N.J.+Super.+195+&hl=en&as_sdt=2,31

Lincoln Heights Ass'n v. Planning Bd., Cranford, 314 N.J. Super. 366 (Law Div. 1998)

http://scholar.google.com/scholar_case?case=13608655926282671112&q=314+N.J.+Super.+366+&hl=en&as_sdt=2,31

Baghdikian v. Ramsey Bd. of Adjust., 247 N.J. Super. 45 (App. Div. 1991)

http://scholar.google.com/scholar_case?case=7609683248274309632&q=247+N.J.+Super.+45+&hl=en&as_sdt=2,31

Szoke v. Bd. of Adjust., Bor. of Monmouth Beach, 260 N.J. Super. 341 (App. Div. 1992)

http://scholar.google.com/scholar_case?case=3005533151466833794&q=260+N.J.+Super.+341+&hl=en&as_sdt=2,31

Wyzykowski v. Rizas, 132 N.J. 509 (1993)

http://scholar.google.com/scholar_case?case=13125028163977254988&q=132+N.J.+509+&hl=en&as_sdt=2,31

South Brunswick Assoc. v. Twp. Council, 285 N.J. Super. 377 (Law Div. 1994)

http://scholar.google.com/scholar_case?case=3033678492050660050&q=285+N.J.+Super.+377+&hl=en&as_sdt=2,31

Patel v. Planning Board of the Twp. of Woodbridge, 258 N.J. Super. 437 (Law Div. 1992), overruled in part, *Mercurio v. Delvecchio*, 285 N.J. Super. 328 (App. Div. 1995), certif. denied, 144 N.J. 377 (1996)

http://scholar.google.com/scholar_case?case=7167272575747889080&q=258+N.J.+Super.+437+&hl=en&as_sdt=2,31

Petrick v. Planning Bd. of Jersey City, 287 N.J. Super. 325 (App. Div. 1996)

http://scholar.google.com/scholar_case?case=5903452161751972281&q=287+N.J.+Super.+325+&hl=en&as_sdt=2,31

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Mercurio v. Delvecchio, 285 N.J. Super. 328 (App. Div. 1995), certif. denied, 144 N.J. 377 (1996)
http://scholar.google.com/scholar_case?case=1499127257591699299&q=285+N.J.+Super.+328+&hl=en&as_sdt=2,31

Jock v. Shire Realty, Inc., 295 N.J. Super. 67 (App. Div. 1996), certif. denied, 148 N.J. 462 (1997)
http://scholar.google.com/scholar_case?case=4540767199879098638&q=295+N.J.+Super.+67+&hl=en&as_sdt=2,31

Care of Tenaflly, Inc. v. Tenaflly Zoning Bd. of Adjust., 307 N.J. Super. 362 (App. Div. 1998), certif. denied, 154 N.J. 609 (1998)
http://scholar.google.com/scholar_case?case=5667910592059887485&q=307+N.J.+Super.+362+&hl=en&as_sdt=2,31

Paruszewski v. Twp. of Elsinboro, 154 N.J. 45 (1998)
http://scholar.google.com/scholar_case?case=2132417171944906215&q=Paruszewski+v.+Twp.+of+Elsinboro&hl=en&as_sdt=2,31

Where there is a substantial public interest in protecting the integrity of the master plan or zoning scheme an appearance by the municipal attorney before the zoning board may be proper.

Berkeley Twp. Zoning Bd. of Adjust. v. Rowe, 320 N.J. Super. 164 (Law Div. 1999)
http://scholar.google.com/scholar_case?case=9416717933084813210&q=Berkeley+Twp.+Zonin g+Bd&hl=en&as_sdt=2,31

Gunthner v. Planning Bd., Bor. of Bay Head, 335 N.J. Super. 452 (Law Div. 2000)
http://scholar.google.com/scholar_case?case=13448693138916874659&q=Gunthner&hl=en&as_sdt=2,31

Where disqualification resulted in an inability to obtain a quorum, the disqualified board members would be permitted to act on the application because there are no procedures within the statute to provide additional voting members of the board in this situation, and the only other result is to allow a default approval, which is more undesirable than allowing disqualified members to vote.

City of Hoboken v. City of Jersey City, 347 N.J. Super. 279 (Law Div. 2001)
http://scholar.google.com/scholar_case?case=534595872931248762&q=City+of+Hoboken+v.+C ity+of+Jersey+City,+347+N.J.+Super.+279+&hl=en&as_sdt=2,31

Mountain Hill, LLC v. Middletown Twp., 353 N.J. Super. 57 (App. Div.), certif. denied, 175 N.J. 78 (2002)
http://scholar.google.com/scholar_case?case=6755008165828683335&q=Mountain+Hill,+LLC+ v.+Middletown+Twp&hl=en&as_sdt=2,31

A protested zoning change under *N.J.S.A.* 40:55D-63 that requires a favorable vote of two-thirds of all the members of the governing body means a favorable vote of two-thirds of the full membership and not a reduced number because of the disqualification of one of the members.

Abraham v. Twp. of Teaneck Ethics Board, 349 N.J. Super. 374 (App. Div.), certif. denied, 174 N.J. 42 (2002)
http://scholar.google.com/scholar_case?case=4212895218666641861&q=Abraham+v.+Twp.+of +Teaneck+Ethics+Board&hl=en&as_sdt=2,31

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Deland v. Twp. of Berkeley Heights, 361 N.J. Super. 1 (App. Div. 2003)

http://scholar.google.com/scholar_case?case=13571660714492218697&q=Deland+v.+Twp.+of+Berkeley+Heights&hl=en&as_sdt=2,31

A Mount Laurel special master is subject to substantially the same conflict of interest rules as judge.

Shapiro v. Mertz, 368 N.J. Super. 46 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=2935288097564623334&q=Shapiro+v.+Mertz&hl=en&as_sdt=2,31

Township council member's vote for husband's appointment to planning board violated the Local Government Ethics Law.

DeMaria v. JEB Brook, LLC, 372 N.J. Super. 138 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=479370759690698238&q=DeMaria+v.+JEB+Brook&hl=en&as_sdt=2,31

Chairman of planning board did not violate statute prohibiting vote of any board member who did not make required certification that he listed to the tapes of the hearing, where chairman did not vote, nor had it been established that he improperly attempted in some manner to influence vote of board members who were eligible, and chairman was not in conflict position, he merely failed to take necessary steps to achieve eligibility to vote on application.

John F. Zisa, Mayor, City of Hackensack, In the Matter of 385 N.J. Super. 188 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=11375006735785317906&q=In+the+Matter+of+John+F.+Zisa,+Mayor,+City+of+Hackensack&hl=en&as_sdt=2,31

Mayor did not violate Local Government Ethics Law when he voted to award a paving contract for a parking lot that the Mayor had leased to a tenant because he received no extra benefit or unwarranted privilege or advantage. Mayor was also entitled to the defense of advice of counsel in the context of this case. The four relevant factors supporting that defense are: (1) that the approval or advice was received prior to the action being taken; (2) that the individual who offered the advice or approval relied upon possessed authority or responsibility with regard to ethical issues; (3) that the individual seeking advice or approval made a full disclosure of all pertinent facts */*--and circumstances; and (4) that the individual comply with the advice received, including any restrictions it might contain.

Hughes v. Monmouth University, 394 N.J. Super. 193 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=13197969256793435104&q=Hughes+v.+Monmouth+University&hl=en&as_sdt=2,31

No conflict of interest found where board members participated in site plan application for university who were alumnus of the university, but had received their degrees many years earlier, were not active alumni, did not substantially contribute to the university or otherwise evidence any special attachment to the school, and none of their children were students at the school. Fact that board members participated in university events, such as concerts and wine tastings that were open to the public were not disqualifying events. A board member who disqualified herself because she had missed some of the meetings, was not precluded from commenting on those issues for which she was prepared.

Meyer v. MW Red Bank, LLC, 401 N.J. Super. 482 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=12468720895349317660&q=Meyer+v.+MW+Red+Bank&hl=en&as_sdt=2,31

No conflict of interest found where board member's father was "of counsel" to law firm which represented applicant 2 years prior. "In the context of a familial relationship that may trigger a disqualifying interest, the pivotal issue is not the degree of relationship to the board member, but,

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rather, ‘the type of association the relative had with the interested organization and the amount of interest the relative had in the official’s actions.’ Citing, Kremer v. Plainfield, 101 N.J. Super. 346 (Law Div. 1968).

Mountain Hill, L.L.C. v Twp. of Middletown, (Mountain Hill V) 403 N.J. Super. 146 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=4042065849513536539&q=Mountain+Hill,+L.L.C.+v+Twp.+of+Middletown&hl=en&as_sdt=2,31

Under Ethics Law, disqualifying financial or personal “involvement” need not be contemporaneous with the public official’s discharge of public duties. The issue is whether the involvement had the capacity to impair objectivity or independence of judgment evaluated through the eyes of a reasonably informed member of the public.

Gooch v. Dawkins, A-6233-06T2 (May 9, 2008), certif. denied, 957 N.J. 461 (2008)

http://scholar.google.com/scholar_case?case=11423094919235698268&q=Gooch+v.+Dawkins&hl=en&as_sdt=2,31

Law firm had disqualifying conflict where attorneys in the firm represented both plaintiffs and defendants in connection with the same property, development proposal, zoning issue, objectives and neighbors, even though representation was not concurrent.

Klug v. Bridgewater Twp. Planning Bd., 407 N.J. Super. (App. Div. 2009)

http://scholar.google.com/scholar_case?case=3840676977144324942&q=Klug+v.+Bridgewater+Twp.+Planning+&hl=en&as_sdt=2,31

Taint of conflict removed where matter considered as a new application on remand and board did not rely upon report prepared by planner with a conflict. Gap in a transcript was not of sufficient magnitude to preclude the trial court from engaging in a meaningful review of the record where the minutes described what had transpired.

Schmidhausler v. Planning Bd., Bor. of Lake Como, 408 N.J. Super. 1 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=9773804178704254604&q=Schmidhausler+v.+Planning+Bd.,+Bor.+of+Lake+Como&hl=en&as_sdt=2,31

Where a board member is ineligible to vote because he failed to certify that he read the transcript or listen to the tape as required by N.J.S.A. 40:55D-10.2, the proper remedy is to remand to the board for a revote.

D. Lobi Enterprises, Inc. v. Planning/Zoning Bd., Bor. of Sea Bright, 408 N.J. Super. 345 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=17648831181250204931&q=D.+Lobi+Enterprises.+Inc.+v.+Planning/Zoning+Bd.,+Bor.+of+Sea+Bright&hl=en&as_sdt=2,31

Five out of seven votes required for approval of “d” variance made to nine-member planning board serving as a board of adjustment because Class I and III members are barred from voting.

Randolph v. City of Brigantine Planning Bd., 405 N.J. Super. 215 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=3963020994849859794&q=Randolph+v.+City+of+Brigantine&hl=en&as_sdt=2,31

A member of the planning board who has a personal relationship with, and owns a home jointly with, the principal of the engineering firm that employs the planning board engineer, had a conflict of interest which required the voiding and setting aside of the board’s decision. “If, from the perspective of an informed citizen, the independent judgment of a municipal officer may be influenced by her relationship with one of the board’s professionals, ‘there is a reasonable basis to conclude that an appearance of impropriety exists.’” “It is not necessary to establish that she did not

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exercise her independent judgment, it is only the potential that she may fail to exercise her judgment that need be shown.”

Cortesini v. Hamilton Twp. Planning Bd., 417 N.J. Super. 210 (2010)

http://scholar.google.com/scholar_case?case=15368817115793701367&q=Cortesini+v.+Hamilton+Twp.+Planning+&hl=en&as_sdt=2,31

No conflict of interest found where former board planner testified before the board on behalf of applicant. As an employee, planner not subject to restrictions of N.J.S.A. 40A:9-22.5(b) which only applies to former “members” of a local authority.

Kane Properties, L.L.C. v. City of Hoboken, 423 N.J. Super. 49 (2011)

http://scholar.google.com/scholar_case?case=11595417546608541661&q=Kane+Properties,+L.L.C.+v.+City+of+Hoboken&hl=en&as_sdt=2,31

City attorney had conflict of interest that tainted City Council’s review of zoning board’s grant of use variance. “We focus on the Council as decision-maker, rather than . . . its attorney. The question is whether, . . . a municipal decision-maker that receives advice, directly or indirectly, from an attorney with a conflict of interest, and that allows the attorney to participate in a Council meeting at which he should not even have been present, taints its resulting decision.” The court held that the attorney should have been “absolutely and completely screened” from the application; no advice with his name on it should have gone to the Council, the attorney should not have been in the room when the Council was voting on the application, and he shouldn’t have given any advice about it, procedural or otherwise.

Kane Properties, LLC v. City of Hoboken, 214 N.J. 199 (2013)

http://scholar.google.com/scholar_case?case=9252120366574876795&q=kane+properties+v+city+of+hoboken&hl=en&as_sdt=4,31

The appearance of impropriety standard remains applicable to municipal officials acting in a quasi-judicial capacity. Governing body’s attorney’s recusal in an appeal of the grant of a use variance to the governing body must be complete to avoid an appearance of impropriety. To remedy the conflict, the court remands to the Law Division, rather than to the governing body. The Law Division is directed to conduct a de novo review of the zoning board resolution, and “to entertain such arguments or supplements to the record that may be presented on behalf of the City Council and that bear upon its own ‘expertise and knowledge’ of the zoning scheme . . . [and to] give due consideration to the expressions that illuminate the City Council’s evaluation of whether the proposed use variances satisfy the positive and negative criteria imposed by the MLUL.”

Grabowsky v. Township of Montclair, 221 N.J. 536 (2015)

https://scholar.google.com/scholar_case?case=9213935880000518022&q=Grabowsky&hl=en&as_sdt=4,31

“When a church or other organization owns property within 200 feet of a site that is the subject of a zoning application, public officials who currently serve in substantive leadership positions in the organization, or who will imminently assume such positions, are disqualified from voting on the application.”

Village Supermarkets, Inv. v. Township of Egg Harbor, A-5370-12T4 (April 8, 2015)

https://scholar.google.com/scholar_case?case=8661082786403048940&q=A-5370-12T4&hl=en&as_sdt=4,31

Township Administrator and Class II board member did not have a conflict where no personal or financial interest is alleged, notwithstanding his active involvement in pursuing zoning changes that impacted a development application while the application was pending before the Board upon which he sits.

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Fieldstone Associates, L.P. v. Joint Land Use Board of the Bor. of Merchantville, A-3437-13T3 (April 17, 2015)

https://scholar.google.com/scholar_case?case=16942235917004339545&q=A-3437-13T3&hl=en&as_sdt=4,31

“[T]he Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 to-49, [does not] require[] members of a planning board living within 200 feet of a redevelopment area to recuse themselves from participation in a consistency review of a proposed amendment to a redevelopment plan pursuant to N.J.S.A. 40A:12A-7e” because it “does not require individual notice to anyone outside the area targeted for redevelopment.”

Bhalla v. Local Finance Board, A-2384-14T4 (June 22, 2016)

https://scholar.google.com/scholar_case?case=6071851784864265503&q=A-2384-14T4&hl=en&as_sdt=4,31

Board’s decision ultra vires because it lacked sufficient membership to constitute a quorum. The statutory language requiring “no less than two-thirds of all members of the board” required two thirds of the eight statutorily commanded members.

Munico Associates, LP v. Inserra Supermarkets, Inc., A-0701-14T1 (Aug. 18, 2016)

https://scholar.google.com/scholar_case?case=7006551063233414670&q=A-0701-14T1&hl=en&as_sdt=4,31

Where the Board’s traffic consultant may have had a conflict of interest, the Board took the necessary remedial steps by terminating his retention and hiring a new consultant who furnished a new report in which he certified that he did not rely upon any of the prior consultant’s report or testimony. In such instance, the proceedings need not have started anew.

Collins v. Presbyterian Church, A-5003-15T2 (Jan. 17, 2018)

https://scholar.google.com/scholar_case?case=3761023182630311682&q=A-5003-15T2&hl=en&as_sdt=4,31

Board was not arbitrary, capricious or unreasonable in adjourning a hearing on use variance application and continuing the vote at the subsequent hearing where six Board members were present, the applicant’s attorney agreed to a vote on the application, with the expectation that all six members present would be voting, but a Board member abstained after five other members voted, and before the vote, she did not indicate that she would abstain.

Shaked v. Board of Adjust., Twp. of North Bergen, A-4634-15T2 (May 23, 2018)

https://scholar.google.com/scholar_case?case=8038475547208120950&q=A-4634-15T2&hl=en&as_sdt=4,31

Mayor’s Chief of Staff was not barred from serving on the zoning board because he did not hold any elected office and N.J.S.A. 40:55D-69 specifies that Board members may not hold any “elective office or position under the municipality.” “The statute does not, expressly or impliedly, prohibit Board members from holding positions or offices that are appointive, salaried, or under the municipality.”

Bergen Ridge Homeowners Association, Inc. v. Township of North Bergen Planning Board, A-0206-15T1 (Aug. 30, 2018)

https://scholar.google.com/scholar_case?case=4691097413666386539&q=A-0206-15T1&hl=en&as_sdt=4,31

The payment of a \$150 special meeting fee to board members to attend a special meeting did not create a conflict of interest.

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Piscitelli v. City of Garfield, 237 N.J. 333 (2019)

[https://scholar.google.com/scholar_case?case=129370709362722330&q=Piscitelli+v.+City+of+Garfield,+237+N.J.+333+\(2019\)&hl=en&as_sdt=6,31](https://scholar.google.com/scholar_case?case=129370709362722330&q=Piscitelli+v.+City+of+Garfield,+237+N.J.+333+(2019)&hl=en&as_sdt=6,31)

A conflict of interest would exist if any member of the Board had a “meaningful patient-physician relationship” with the applicant or if the applicant had the authority to vote on significant employment matters involving the Board member of a family member.

Crosby-Hurling, A-5528-16T2, A-0172-17T3 (Jan. 18, 2019)

https://scholar.google.com/scholar_case?case=12946911344748210994&q=5528-16T2&hl=en&as_sdt=4,31

The Local Government Ethics Law, N.J.S.A. 40A:9-22.1 to-22.25, prohibits governmental officers' or employees' use or attempt to use their official position, but only when done for the purpose "to secure unwarranted privileges or advantages for himself or others."

Sternas v. DMH2, LLC, A-2051-16T4 (Feb. 4, 2019)

https://scholar.google.com/scholar_case?case=12111500456431477004&q=2051-16T4&hl=en&as_sdt=4,31

There should not be ex parte communications with board members pertaining to the merits of an application. If there are, that board member must recuse himself.

Mondsini v. Local Finance Board, 458 N.J. Super. 290 (App. Div. 2019)

https://scholar.google.com/scholar_case?case=14802515489715732520&q=A-4482-16T4&hl=en&as_sdt=4,31

Sewer authority employee who authorized another employee to use authority gasoline to fuel his personal vehicle during Super Storm Sandy did not violate the Local Government Ethics Law. “[A] public official or employee only violates this provision of the LGEL if she uses or attempts to use her official position with the intent to secure unwarranted advantages or privileges for herself or another. In this case, the ALJ found as a fact that Mondsini lacked such a purpose, and that her only purpose in allowing MacNeal to use the Authority's gasoline was to keep the Authority operating during the crisis.” “[T]he mere public perception of impropriety does not violate subsection (c); a violation requires proof that the public official intended to use his or her office for a specific purpose.”

VNO 1105 State Hwy 36, LLC v. Township of Hazlet, 31 N.J. Tax 112 (2019)

https://scholar.google.com/scholar_case?case=8637981823517997202&q=004038-2013,&hl=en&as_sdt=4,31

Tax assessor had a conflict of interest because adverse testimony by an assessor in a different municipality in the Tax Court causes an appearance of impropriety and impairs the integrity of an important constitutional-sensitive public office of an assessor.

In The Matter of Hawthorne Borough, A-4347-16T4 (April 8, 2019)

https://scholar.google.com/scholar_case?case=4863247624467269720&q=4347-16t4&hl=en&as_sdt=4,31

Under the common law quorum rule (which applies absent a contrary statutory requirement), vacancies are not counted in determining if a legal quorum exists; a majority of the remaining members constitutes a quorum.

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Voci v. Hard Cheese AC, LLC, A-5916-17T1 (July 11, 2019)

https://scholar.google.com/scholar_case?case=1725481453180175135&q=A-5916-17T1&hl=en&as_sdt=4,31

Where it is not alleged that any member of the board who voted on the application had a conflict, there was no conflict created by the Mayor who appeared and testified in favor of the application as a member of the public. “[T]he Mayor is not prohibited from testifying by the LGEL, the MLUL, or the common law since he took no official action, such as voting, on behalf of the application.”

Central 25, LLC v. Zoning Board of the City of Union City, A-0263-17T1 (July 24, 2019)

https://scholar.google.com/scholar_case?case=2235052489231547053&q=Central+25,+LLC+v.+Union&hl=en&as_sdt=4,31

Where two members of the board were high ranking members of a civic association that bore the mayor’s name and the mayor actively advocated against the application, the trial court should conduct an evidentiary hearing to determine whether the board members had a disqualifying conflict of interest.

Lambert v. Borough of Beach Haven, A-0555-19T4 (May 20, 2020)

https://scholar.google.com/scholar_case?case=560963828611100262&q=Lambert+v.+Borough+of+Beach+Haven&hl=en&as_sdt=6,31&as_ylo=2019

“N.J.S.A. 40:55D-49(a) ‘expressly authorizes planning boards to impose general terms, conditions, and requirements peculiar to site plan approval as related to public health and safety.’” [citation omitted]. A planning board has inherent power to reconsider, reopen and rehear prior decisions in the absence of any legislative restriction to the contrary, limited by considerations of reasonableness, fairness and good cause. “It was improper for the Board to approve the application without having all members of the Board explicitly state their votes at the reconsideration hearing, and it should not have considered a prior vote from a member who was absent during the substantive reconsideration.” N.J.S.A. 40:55D-8(a).

4 Watchung Avenue, LLC v. The Zon. Bd. of Adjust., Boro of Chatham, A-1075-18T2 (Jan. 31, 2020)

https://scholar.google.com/scholar_case?case=14573768037749821726&q=A-1075-18T2&hl=en&as_sdt=6,31

Board’s planner who was also the author of the municipal master plan did not have a conflict of interest because there were not “contradictory desires tugging the official in opposite directions.”

Montenero v. Toms River Township Planning Board, A-5767-17T4 (March 9, 2020)

[https://scholar.google.com/scholar_case?case=10970008899627433798&q=Montenero+v.+Tims+River+Twp&hl=en&as_sdt=6,31&as_ylo=2019](https://scholar.google.com/scholar_case?case=10970008899627433798&q=Montenero+v.+Toms+River+Twp&hl=en&as_sdt=6,31&as_ylo=2019)

“The Legislature anticipated that members of planning boards and other municipal agencies would be unable to attend every meeting and provided a mechanism for absent members to become informed of the business transacted at any missed meeting before voting at a meeting at which a quorum is present. Thus, voting is the action that requires a quorum, not the conduct of other business that is recorded for later review. See N.J.S.A. 40:55D-10(f). There was, therefore, a quorum present throughout all proceedings, including the Board’s vote,” notwithstanding the fact that one of the members missed the first meeting and didn’t listen to the tape of that meeting before attending the second meeting, but did listen to it before the third meeting where the vote was taken.

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11 Mt. Pleasant, J.V. LLC v. East Hanover Planning Board, A-3164-19T2 (App. Div. 2020)
https://scholar.google.com/scholar_case?case=8149498260571768977&q=A-3164-19T2&hl=en&as_sdt=6,31

Board attempted to usurp the Township's power when it denied plaintiff's application based on offsite traffic where the use was permitted under a redevelopment plan and the plan expressly addressed the treatment of off-site improvements. In addition, the testimony of all witnesses must be taken under oath. N.J.S.A. 40:55D-10(d). "Where a planning board's chairman and vice chairman effectively provided their own unqualified expert testimony related to traffic and landscaping, and also set forth other unsworn factual statements, same represented reversible error because local boards must make factual determinations and decide issues of credibility in proceedings that include general procedural safeguards not unlike (but not as extensive as) those controlling judicial proceedings and also board proceedings must also be governed by a spirit of impartiality uninfluenced by considerations [outside] the record. In this case, given the problematic actions of the board, the Appellate Division held that remand would be "futile."

In the Matter of the Twp. of East Brunswick, A-3115-19A-3125-19 (July 30, 2021)
https://scholar.google.com/scholar_case?case=6490114044634801366&q=in+the+matter+of+tow+nship+of+east+brunswick&hl=en&as_sdt=6,31&as_ylo=2021

A mayor's comments regarding his general opposition to affordable housing developments are not tantamount to a conflict of interest regarding the developer's complex or any other development pending before the Planning Board due to his direct or indirect pecuniary or personal interest having a likely capacity to tempt him to depart from his sworn public duty. Thus, the Mayor would not be in violation of the Local Government Ethics Law, the MLUL or common law with respect to conflict. Consequently, a trial court decision barring the Mayor from participating in the Board's review of any application which is part of the municipality's housing element and fair share plan must be reversed.

Concerned Citizens of Tenaflly, Inc. v. Borough of Tenaflly Planning Board, A-1989-21 certif den 255 N.J. 444 (App. Div. 2023)
https://scholar.google.com/scholar_case?case=15316178969208978819&q=tenafly+v.+tenafly&hl=en&as_sdt=6,47&as_ylo=2023

Where a mayor recused himself from an application due to his strong feelings with respect to an application, his involvement in the proceeding as a citizen (and not as a planning board member) did not "improperly influence" the Board.

Dimarco v. Zoning Bd. of Adj. of the Borough of Edgewater, A-2060-21, A-2283-21 (App. Div. 2023)
https://scholar.google.com/scholar_case?case=15242942537864971762&q=DiMarco+v.+Zoning+B&hl=en&as_sdt=6,47&as_ylo=2023

In order to overturn a decision on the basis of conflict of interest, Plaintiff must show impermissible bias that led to a prejudgment of the matter. Here, where Board Chairman made certain comments questioning the validity of a neighboring municipal objector's concerns regarding the development's impact on the viewshed, same did not rise to the level of demonstrating "prejudgement" and thus there was no conflict of interest.

5. OPEN PUBLIC MEETINGS ACT (“OPMA”)

Accardi v. Mayor and Council of City of North Wildwood, 145 N.J. Super. 532 (Law Div. 1976)
http://scholar.google.com/scholar_case?case=1283594840306000669&q=145+N.J.+Super.+532+&hl=en&as_sdt=2,31

Polillo v. Deane, 74 N.J. 562 (1977)
http://scholar.google.com/scholar_case?case=13161295614000320698&q=74+N.J.+562+&hl=en&as_sdt=2,31

Action taken at meeting which violated OPMA void.

Caldwell v. Lambrou, 161 N.J. Super. 284 (Law Div. 1978)
http://scholar.google.com/scholar_case?case=5256470164878871693&q=161+N.J.+Super.+284+&hl=en&as_sdt=2,31

Commercial Realty v. First Atlantic, 235 N.J. Super. 577 (App. Div. 1989), *aff'd* 122 N.J. 546 (1991)
http://scholar.google.com/scholar_case?case=8330045333077526514&q=235+N.J.+Super.+577+&hl=en&as_sdt=2,31

Aronowitz v. Planning Bd. of Twp. of Lakewood, 257 N.J. Super. 347 (Law Div. 1992)
http://scholar.google.com/scholar_case?case=324012099428181385&q=257+N.J.+Super.+347+&hl=en&as_sdt=2,31

Liebeskind v. Mayor and Municipal Council, 265 N.J. Super. 389 (App. Div. 1992)
http://scholar.google.com/scholar_case?case=5314207024930359380&q=265+N.J.+Super.+389+&hl=en&as_sdt=2,31

Actions taken at meeting with technical violations of OPMA not void

Roman v. Twp. of South Hackensack, 302 N.J. Super. 568 (App. Div.), *certif. denied*, 152 N.J. 191 (1997)
http://scholar.google.com/scholar_case?case=11461822408417800386&q=302+N.J.+Super.+568+&hl=en&as_sdt=2,31

Lakewood Citizens v. Twp. Committee, 306 N.J. Super. 500 (Law Div. 1997)
http://scholar.google.com/scholar_case?case=9937818522724816043&q=306+N.J.+Super.+500+&hl=en&as_sdt=2,31

Dolente v. Borough of Pine Hill, 313 N.J. Super. 410 (App. Div. 1998)
http://scholar.google.com/scholar_case?case=8220419486175743094&q=313+N.J.+Super.+410+&hl=en&as_sdt=2,31

Stewart v. Planning Bd. of Manalapan, 334 N.J. Super. 123 (Law Div. 1999)
http://scholar.google.com/scholar_case?case=2505229595001865356&q=334+N.J.+Super.+123+&hl=en&as_sdt=2,31

Neu v. Planning Board of the Twp. of Union, 352 N.J. Super. 544 (App. Div. 2002)
http://scholar.google.com/scholar_case?case=6060095140364156435&q=%22Neu%22+v.+Plann+ing+Board+of+the+Twp.+of+Union&hl=en&as_sdt=2,31

An ex-parte meeting involving two members of the Planning Board and representatives of the developer did not violate the Open Public Meetings Act because the matters discussed were the

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subject of subsequent public hearings at which the Planning Board rendered its decision.

Gandolfi v. Town of Hammonton, 367 N.J. Super. 527 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=4568882342448090668&q=Gandolfi+v.+Town+of+Hammonton&hl=en&as_sdt=2,31

Hartz Mountain Industries, Inc. v. New Jersey Sports & Exposition Authority, 369 N.J. Super. 175 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=17134524652427660488&q=Hartz+Mountain+Industries,+Inc.+v.+New+Jersey+Sports+%26+Exposition+Authority&hl=en&as_sdt=2,31

Open Public Meetings Act must be interpreted to promote purpose of requiring government bodies to conduct their business in public, and the stated statutory exemptions permitting closure must be strictly construed. Even where closure is permitted, minutes of the closed meeting, as full as permitted by the nature of the exemption, must be promptly made available. Trial court was appropriate forum for consideration of suit for access to public records under OPMA which are withheld by state agency as privileged or confidential, even though state agency decision to withhold records is subject to direct Appellate Division review; court is obligated to inspect challenged records in camera and make fact-finding record, including verbatim recording of arguments by parties, that are appropriately handled by trial court.

Fallone Properties, LLC v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=14959056775354964959&q=Fallone+Properties,+LLC+v.+Bethlehem+Twp.+Planning&hl=en&as_sdt=2,31

Invalidation of public action is an extreme remedy which should be reserved for violations of the basic purposes underlying the Open Public Meeting Act. Automatic land use approval statutes are to be applied with caution.

The Times of Trenton Pub. Corp. v. Lafayette Yard Community Development Corp., 183 N.J. 519 (2005)

http://scholar.google.com/scholar_case?case=48429742841848079&q=The+Times+of+Trenton+Pub.+Corp.+v.+Lafayette+Yard+Community+Development+&hl=en&as_sdt=2,31

Private non-profit corporation designated as redeveloper of municipal property was “public body” subject to requirements of Open Public Meetings Act.

Riya Finnegan v. Twp. Council of South Brunswick, 386 N.J. Super. 255 (Law Div. 2006), rev’d on other grounds, 394 N.J. Super. 303 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=11861543247143697791&q=Riya+Finnegan+v.+Twp.+Council+of+South+Brunswick&hl=en&as_sdt=2,31

In dicta, court finds possible violation of OPMA where subcommittee of three members of board met to discuss change in zoning with township planner. Court reasons that: (1) the board consists of nine members; (2) no action can be taken at any meeting without a quorum being present; (3) a quorum of a nine member board is five; (4) all action must be taken by a majority vote of the members of the municipal agency present at the meeting; (5) therefore the effective majority (the number of members needed to take action) is three; and (6) if only a bare quorum were present when the recommendations to change the zoning was adopted, these same three members could control the outcome.

Tarus v. Borough of Pine Hill, 189 N.J. 497 (2007)

http://scholar.google.com/scholar_case?case=5167937070704849689&q=Tarus+v.+Borough+of+Pine+Hill,+189+N.J.+497&hl=en&as_sdt=2,31

There is a common law right to videotape a municipal council meeting subject to reasonable

restrictions.

Mountain Hill, L.L.C. v. Twp. of Middletown, 399 N.J. Super. 486 (App. Div. 2008) (Mountain Hill III)

http://scholar.google.com/scholar_case?case=4042065849513536539&q=Mountain+Hill,+L.L.C.+v.+Twp.+of+Middletown&hl=en&as_sdt=2,31

Any exception to full disclosure under OPMA must be strictly construed. Typical partisan caucus meetings are exempt from OPMA and where members of the township committee attended the caucus meeting to discuss the political implications of plaintiff's project, which was a significant project in the township, but did not discuss township committee business in general, and no township experts attended the caucus, there was no violation of OPMA even though enough members of the township counsel attended to constitute a quorum of the council.

Harrison Redev. Agency v. Amaral Auto Center, Inc. 398 N.J. Super. 361 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=14197375872764482779&q=Harrison+Redev.+Agency+v.+Amaral+Auto+Center&hl=en&as_sdt=2,31

A violation of OPMA renders the action voidable, not void. "A voidable action is one which may be avoided, but until this is done, in the regular course of judicial proceedings, the action stands in full force and effect. . . A void act is one that is of no validity or effect, [it is] a complete nullity." citing, *Houman v. Mayor or Pompton Lakes*, 155 N.J. Super. 129, 159 (Law Div. 1977).

Burnett v. Gloucester County Bd. of Chosen Freeholders, 409 N.J. Super. 219 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=18032814287677013996&q=Burnett+v.+Gloucester+County+Bd.+of+Chosen+Freeholders&hl=en&as_sdt=2,31

Discussion during closed session of board regarding on-going litigation and settlement qualified as exception to OPMA, but discussion as to whether to let city use courtroom did not. Evidence of OPMA violations to support injunctive relief not limited to board actions which occurred within 45 days of the filing of the complaint.

McGovern v. Rutgers, The State University of New Jersey, 418 N.J. Super. 458 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=11813845183223604375&q=McGovern+v.+Rutgers+418+N.J.+Super.+458+&hl=en&as_sdt=2,31

Meeting notice provided to the public contained insufficient description of the types of matters expected to be considered in closed session. The notice is required to contain as much information as is consistent with full public knowledge without doing any harm to the public interest. Merely stating that the board would meet in closed session "to discuss matters falling within contract negotiation and attorney-client privilege" was insufficient. The board's regular practice of sequencing a brief open session, followed by a closed session of indeterminate length, followed by another open session, runs afoul of OPMA.

McGovern v. Rutgers, the State University of New Jersey, 211 N.J. 94 (2012)

http://scholar.google.com/scholar_case?case=10087352001442188587&hl=en&as_sdt=2,31

University's board of governors violated OPMA because it was obligated to include as part of its notice of a closed session the agenda of that meeting to the extent that it was known. It did not violate OPMA in conducting its meeting in a sequential fashion by having an open meeting followed by a closed meeting followed by an open meeting. Plaintiff has no remedy because the board took no action at the meeting that the court voided.

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The Great Atlantic & Pacific Tea Company, Inc. v. Borough of Closter Planning Board, A-1374-13T3, A-1421-13T3 (March 23, 2015)

https://scholar.google.com/scholar_case?case=7272507099743994688&q=A-1374-13T3&hl=en&as_sdt=4,31

Discussions between a developer and public officials did not violate OPMA where there was no quorum of the board present at the meetings.

Graceffo v. Zoning Board of Adjustment of the Borough of Point Pleasant Beach, A-2182-13T4 (March 26, 2015)

https://scholar.google.com/scholar_case?case=6845707488118972811&q=A-2182-13T4&hl=en&as_sdt=4,31

Board violated OPMA by holding a closed-door meeting prior to a public meeting that included a discussion of an issue which was relevant to the application pending before it that night.

Pennsgrove Associates, LP v. Carneys Point Township Planning Board, A-1779-13T1 (July 2, 2015)

https://scholar.google.com/scholar_case?case=6059089824814356666&q=A-1779-13T1&hl=en&as_sdt=4,31

OPMA claim dismissed as untimely where it was filed more than forty-five days after the date the action sought to be voided was made public.

Opderbeck v. Midland Park Board of Education, A-2520-13T3 (Aug. 18, 2015)

https://scholar.google.com/scholar_case?case=1520712728248554575&q=opderbeck&hl=en&as_sdt=4,31

The term “agenda” as used in the OPMA does not require public bodies to provide copies of any appendices, attachments, reports, or other documents referred to in the agenda.

In The Matter of Princeton Branch Railway Station, A-6009-12T1 (Feb. 17, 2016)

https://scholar.google.com/scholar_case?case=13185098456159570172&q=A-6009-12T1&hl=en&as_sdt=4,31

The Board of Directors of NJ Transit did not violate OPMA by having a meeting which certain board members appeared via telephone and voted on a resolution introduced at the meeting.

Kelley v. Township of Rockaway Board of Adjustment, A-4471-13T1 (July 28, 2016)

https://scholar.google.com/scholar_case?case=2348012135982846959&q=A-4471-13T1&hl=en&as_sdt=4,31

Zoning board did not violate OPMA by going into executive session to confer with counsel regarding “the applicable law, particularly the burden of proof” in the pending application, where the minutes reveal that the board “did not deliberate on plaintiff’s appeal or engage in any substantive decision-making.”

Marinelli v. Township of Lopatcong, A-5124-13T3, A-3132-14T3 (April 18, 2017)

https://scholar.google.com/scholar_case?case=12448248542399309905&q=A-3132-14T3&hl=en&as_sdt=4,31

OPMA violation did not require invalidation of action where there was no intentional concealment of the hearing from the public and a separate MLUL notice provided details of the meeting.

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Kean Feder. Of Teachers v. Morell, 448 N.J. Super. 520 (App. Div. 2017)
https://scholar.google.com/scholar_case?case=6374272716845149466&q=A-5481-14T3&hl=en&as_sdt=4,31

"The words 'promptly available' in N.J.S.A. 10:4-14 require public bodies to approve and make their meeting minutes available to the public in a manner that fulfills the Legislature's commitment to transparency in public affairs. It requires a public body to adopt a protocol that makes the availability of its meeting minutes a priority. The approval of meeting minutes cannot be treated as a mere ministerial function, or worse yet, a technical annoyance. The expeditious release of meeting minutes is a vital part of the OPMA's promise to bring public affairs from obscurity to the light of day. This requires those who agree to serve on public bodies to act without delay and take the action required to make the meeting minutes promptly available to the public." "[W]aiting two or three months to release the minutes does not comply with the mandate of the statute."

JSTAR, LLC v. Brick Township Zoning Board of Adjustment, A-0858-18T2 (June 4, 2020)
https://scholar.google.com/scholar_case?case=9847470546274502904&q=JSTAR+LLC+v.+Brick+Tw&hl=en&as_sdt=6,31&as_ylo=2020

"N.J.S.A. 10:4-18 requires that a public body, such as the Board, mail the annual meeting notice to at least two newspapers designated by the public body pursuant to N.J.S.A. 10:4-8(d)(2)." If notice is not properly given, "[t]he law mandates the Board's actions be declared void." "[T]he Board's violations were technical ones, related to the newspaper-notice requirement of the OPMA; it complied with the posting and submission requirements of N.J.S.A. 10:4-8(d)(1) and N.J.S.A. 10:4-8(d)(3). As the trial court observed, 'plaintiff has been able to participate, enter its objections and otherwise have its interest protected in connection with the matter in which the Board conducted itself,' and has not been excluded from participation in any Board meeting at which the RTS application was considered. . . . The Board's remedial actions appear to have been good-faith attempts to rectify the mistakes made at the early January meetings. Its readoption of the meeting schedule and the appointments were de novo actions. Unfortunately, although notice of the February meeting at which the annual meeting schedule was readopted was proper, the Board never mailed the schedule to two newspapers. The schedule was twice published in The Press, but it was never sent to The Ocean Star. Hence, any regular meeting on that schedule was never properly noticed. The remedial action of readopting the Board's appointments that took place at the August and September meetings, therefore, did not take place 'at a public meeting held in conformity with [the OPMA],' as required by N.J.S.A. 10:4-15(a). The Board's corrective actions did not satisfy the OPMA's purposes or cure the notice-defect."

Montana Constr. Corp. v. Jersey City Mun. Util. Auth., No. A-3730-19, A-3754-19 (April 15, 2021)
https://scholar.google.com/scholar_case?case=11674143137389353806&q=montana+construction+v.+jersey&hl=en&as_sdt=4,31

Utilities authority did not violate the OPMA when it went into executive session to discuss a bid protest where it anticipated that the award of the contract would result in litigation, but did not take action to reject or award the bids until it returned to public session.

Woodcliff Lake Citizens Against Overdevelopment, Inc. v. Borough of Woodcliff Lake, Civ. No. 20-cv-16003 (MSH) (JSA) (Mar. 24, 2022)
https://Scholar.Google.Com/Scholar_Case?Case=12551332611446789273&Q=Woodcliff+Lake+Citizens+Against+Overdevelopment,+Inc.+V.+Borough+Of+Woodcliff+Lake+&Hl=En&As_Sdt=6,31&As_Ylo=2022

Borough complied with the amendments to OPMA, effective March 20, 2020, enacted in response to the COVID-19 pandemic in its adoption of a court-involved settlement agreement. "The amendments provide that during 'a period declared pursuant to the laws of this State as a state of emergency, public health emergency, or state of local disaster emergency,' a public body is

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permitted to perform certain tasks ‘by means of communication or other electronic equipment,’ including: (i) conducting meetings; (ii) causing a meeting to be open to the public; (iii) voting; or (iv) receiving public comment. N.J.S.A. 10:4-9.3(a). The amendments also permit a public body to ‘elect to provide electronic notice . . . in lieu of the adequate notice required’ under N.J.S.A. 10:4-8(a), and clarify that the entity ‘shall not be deemed to have violated any provision of the law thereunder in providing such electronic notice.’ N.J.S.A. 10:4-9.3(b).” “OPMA grants public bodies the discretion to ‘permit, prohibit, or regulate the active participation of the public at any meeting,’ requiring only that ‘a portion of every meeting’ be set aside for public comment during meetings and, even then, public bodies have the discretion to determine “the length of th[at] portion.’ N.J.S.A. 10:4-12(a).”

Tripsas v. Borough of Oradell, A-0649-20 (March 25, 2022)

https://scholar.google.com/scholar_case?case=2435315264300663762&q=tripsas+v.+oradell&hl=en&as_sdt=6,31

"A complaint alleging an OPMA violation must be brought within forty-five days `after the action sought to be voided has been made public[.]'" "Constructive notice is the standard."

In re Approval of a Financing Commitment for the Project Known as Norman Towers, A-4583-19 (May 31, 2022)

https://scholar.google.com/scholar_case?case=8005274492710945500&q=Financing+Commitment+for+the+Project+Known+as+Norman+Towers&hl=en&as_sdt=6,31

"OPMA mandates that no public body shall hold a meeting unless adequate notice is given to the public. N.J.S.A. 10:4-9(a). The statute defines ‘[a]dequate notice’ as ‘written advance notice of at least [forty-eight] hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken....’ N.J.S.A. 10:4-8(d). OPMA also requires meetings be open to the public unless they fall within exceptions under N.J.S.A. 10:4-12(b). Among those exceptions is a ‘pending litigation’ exception. N.J.S.A. 10:4-12(b)(7). That exception empowers a public body to exclude the public from all or a portion of a meeting where the public body discusses ‘[a]ny pending or anticipated litigation or contract negotiation... in which the public body is, or may become, a party, or matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer....’"

Concerned Residents of Englewood Cliffs v. Borough of Englewood Cliffs, A-1680-20 (March 11, 2022)

https://scholar.google.com/scholar_case?case=17721240316110945275&q=affordable+housing&hl=en&as_sdt=4,31&as_ylo=2022

While a virtual public meeting did not initially have the capacity to permit all interested persons from attending the meeting, same did not violate OPMA because the DCA’s applicable regulations provided "[p]articipant capacity on the selected platform should be consistent with the reasonable expectation of the public body for public meetings of the type being held and shall not be limited to fewer than [fifty] public participants (beyond those persons required to conduct business at the meeting)." The Borough clerk certified that Council meeting attendance "averaged between [sixty] to [eighty-five] people since the Borough began conducting the meeting using the [Zoom] platform." Therefore, the Borough complied with OPMA when it began the meeting with a participant limit of 100 individuals.

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Sosis v. Twp. of Mansfield Comm., A-2661-21 (Jan. 18, 2024)

https://scholar.google.com/scholar_case?case=16544239251075374920&q=Sosis+v.+Twp.+of+Mansfield+Comm&hl=en&as_sdt=6,47&as_ylo=2024

A public body is only required to send its annual notice of meetings to two (2) newspapers within seven (7) days of their reorganization meeting but same does not have to be published by the newspapers in order to comply with the OPMA. Furthermore, where an annual notice is provided, a public body need not provide additional notice forty-eight (48) hours in advance. Failure to provide notice when meetings converted from virtual to in person was not a “pattern or practice” warranting declaratory or injunctive relief.

Brennan v. Bay Head Planning Bd., A-3984-21 (May 1, 2024)

https://scholar.google.com/scholar_case?case=11138716002761001273&q=Brennan+v.+Bay+Head&hl=en&as_sdt=6,47

There is no First Amendment violation where a court orders a party to cease disseminating privileged executive minute documents that were transmitted to the party, via an OPRA request, by accident.

6. ADEQUACY OF HEARING/TRANSCRIPT

Commons v. Westwood Zoning Bd. of Adjust., 81 N.J. 597 (1980)

http://scholar.google.com/scholar_case?case=1193022744382455512&q=81+N.J.+597+&hl=en&as_sdt=2,31

High Horizons Dev. v. Dept. of Transportation, 120 N.J. 40 (1990)

http://scholar.google.com/scholar_case?case=3347855125984030420&q=120+N.J.+40+&hl=en&as_sdt=2,31

Village Supermarket v. Mayfair, 269 N.J. Super. 224 (Law Div. 1993)

http://scholar.google.com/scholar_case?case=12395591970637459596&q=269+N.J.+Super.+224+&hl=en&as_sdt=2,31

Mun. Council v. Zoning Bd., 288 N.J. Super. 420 (App. Div. 1996)

http://scholar.google.com/scholar_case?case=13716319415946500751&q=288+N.J.+Super.+420+&hl=en&as_sdt=2,31

Zoning Board cannot charge more than \$1.50 for each page of original and \$0.50 per page for each copy of the transcript for zoning board hearings.

Shim v. Washington Twp. Planning Bd., 298 N.J. Super. 395 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=3578612019408489750&q=298+N.J.+Super.+395+&hl=en&as_sdt=2,31

Scardigli v. Bor. of Haddonfield, 300 N.J. Super. 314 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=16830796984013291781&q=300+N.J.+Super.+314+&hl=en&as_sdt=2,31

Missing transcript from third hearing must be reconstructed before trial judge can rule on the merits of appeal from zoning board hearing.

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Lincoln Heights v. Cranford Planning Bd., 314 N.J. Super. 366 (Law Div. 1998), *aff'd* o.b. 321 N.J. Super. 355 (App. Div.), *certif. denied*, 162 N.J. 131 (1999)

http://scholar.google.com/scholar_case?case=13608655926282671112&q=314+N.J.+Super.+366+&hl=en&as_sdt=2,31

Smith v. Fair Haven Zoning Bd., 335 N.J. Super. 111 (App. Div. 2000)

http://scholar.google.com/scholar_case?case=603316066302341471&q=Smith+v.+Fair+Haven+Zoning+&hl=en&as_sdt=2,31

Deegan v. Perth Amboy Redevelopment, 374 N.J. Super. 80 (App. Div.), *certif. denied*, 183 N.J. 217 (2005)

http://scholar.google.com/scholar_case?case=10091111875202989379&q=Deegan+v.+Perth+Amboy+Redevelopmnet&hl=en&as_sdt=2,31&as_ylo=2004&as_yhi=2005

Reich v. Borough of Fort Lee Zoning Bd. of Adjust., 414 N.J. Super. 483 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=5841857068979449792&q=Reich+v.+Borough+of+Fort+Lee&hl=en&as_sdt=2,31

Although the board is not bound to accept the testimony of an expert witness, its determination to reject the expert testimony must be made on a rational basis.

Rupe, LLC v. Planning Board of the Twp. of Hamilton, A-4794-13T1 (Nov. 23, 2015)

http://scholar.google.com/scholar_case?case=15276697064892034508&q=rupe,+llc&hl=en&as_sdt=4,31

"The net opinion rule is a corollary of N.J.R.E. 703 . . . which forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data." . . . Although the net opinion is grounded in our rules of evidence, the rules of evidence do not apply to planning board hearings. N.J.S.A. 40:55D-10(e) . . . [A] board is restricted from relying on net opinion not because the Rules of Evidence govern, but because unsubstantiated expert testimony, or net opinion, may be unhelpful to a factfinder. . . . Consequently, the question presented is not whether the opinions of the experts were admissible pursuant to N.J.R.E. 703, and strict application of the 'net opinion rule'; the question is whether the opinions were sufficiently supported by data and other evidence, so that reliance on the opinions was not arbitrary or unreasonable, and the Board's ultimate decision was supported by sufficient credible evidence."

Liebler v. City of Hoboken, Civ. No. 15-8182 (D.N.J., July 12, 2016)

[https://scholar.google.com/scholar_case?case=7729127736529337524&q=15-8182+\(KM\)&hl=en&as_sdt=3,31](https://scholar.google.com/scholar_case?case=7729127736529337524&q=15-8182+(KM)&hl=en&as_sdt=3,31)

"A public space, such as the town square, is the quintessential public forum. A public meeting, or the public portion of a City Council meeting, is considered a 'limited public forum.' [citation omitted]. In such a limited public forum, any restrictions on speech must be narrowly drawn, and 'designed to confine the forum to the limited and legitimate purpose for which it was created.'" [citation omitted]. "Thus content-neutral restrictions to keep the meeting on-topic or avoid disruptions are permitted. What is forbidden is view-point-based discrimination."

"But whether action taken against a speaker is motivated by permissible considerations, or by that person's message, cannot be settled on a motion to dismiss, even one that attaches a video recording of the session. Whether the speaker or the moderator is to blame for a disruption, or whether the speaker was disruptive at all, is a judgment call for a fact finder. Nor can the litigants jump the gun and bring what amounts to a summary judgment motion, even if the proceedings were recorded."

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Delco, LLC v. Middle Township Planning Board, A-1200-17T4 (Jan. 31, 2019)

https://scholar.google.com/scholar_case?case=17529010597438466925&q=1200-17T4&hl=en&as_sdt=4,31

There was no error for the Board to continue a hearing after voting on individual variances, but not the entire application, because an applicant has the “right to modify a filed application or clarify any relief requested.”

S/K Old York Road Associates v. The Township of Branchburg, A-3741-17T3 (Dec. 24, 2019)

https://scholar.google.com/scholar_case?case=13420083633126435888&q=A-3741-17T3&hl=en&as_sdt=4,31

An objector does not have an absolute right to call witnesses and the Board did not abuse its discretion by concluding the application without hearing from an objector’s expert who was unable to attend the hearing.

Sadowe v. Autozone Northeast, LLC, A-0585-18T3 (Sept. 2, 2020)

https://scholar.google.com/scholar_case?case=909206221402389362&q=Sadowe+v.+Autozone&hl=en&as_sdt=6,31&as_ylo=2020

“The Rules of Evidence are not binding on a planning board. N.J.S.A. 40:55D-10(e). The Board’s reasonable judgement to accept or reject an expert’s testimony is binding on appeal.”

Jungkunst v. Mayor and Twp. Council, Twp. of Ocean, A-0038-18T4 (Sept. 4, 2020)

https://scholar.google.com/scholar_case?case=12935857482673615138&q=Jungkunst+v.+ocean&hl=en&as_sdt=6,31&as_ylo=2020

Public bodies are given wide discretion in how they conduct meetings. Although the Council set a five minute time limit for comments, that was within its discretion.

Two Daughters, LLC v. Harbour Bay, LLC, A-0388-19T3 (Oct. 7, 2020)

https://scholar.google.com/scholar_case?case=5990593337537199089&q=Two+Daughters,+LLC+v.+Harbour&hl=en&as_sdt=6,31&as_ylo=2020

It was within the Board’s discretion to waive the requirement of a written traffic study “when the expert who would author that study would be available at the hearing and could be questioned by members of the Board and the public.

Furey v. Voorhees Twp. Bd. of Adjust., A-2098-22 (Mar. 27, 2024)

https://scholar.google.com/scholar_case?case=7979733304452017515&q=Furey+v.+Voorhees&hl=en&as_sdt=6,47

Objectors’ counsel not entitled to *voir dire* of applicant’s experts before they are accepted by the Board.

Evars v. Holtzman, A-2771-23 (March 20, 2025)

https://scholar.google.com/scholar_case?case=12611419551983339404&q=Evers+v.+Holtzman&hl=en&as_sdt=6,47

Where a Board in its approval states that it did not rely on an erroneous rendering in making its decision, the trial court was correct to exclude that rendering from evidence during trial.

Czyzewski v. Planning Bd. of the City of Garfield, A-0418-24 (Nov. 6, 2025)

https://scholar.google.com/scholar_case?case=4044499090972258349&q=Czyzewski+v.+Planning+Bd.+of+the+City+of+Garfield&hl=en&as_sdt=6,47

Trial court correctly dismissed action in lieu of prerogative writs for failure to provide copies of the transcript pursuant to Rule 4:69-4. While a resolution may evidence what the

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municipal agency considered, it is not determinative. To find an arbitrary and capricious action, the trial court must review the transcripts of the proceedings.

7. ESTOPPEL

Simeone v. Zoning Bd. of Adjust., Twp. of East Hanover, 377 N.J. Super. 417 (App. Div. 2005)
http://scholar.google.com/scholar_case?case=4811991017874704153&q=Simeone+v.+Zoning+Bd&hl=en&as_sdt=2,31

Denial of variance application affirmed where proposed frontage and side yards were substantially less than the zone requirements. Although the original subdivision of the land may have been illegal, the municipality's treatment of the property as a separate lot estopped it from arguing this as a defense.

Bray v. Cape May City Zoning Bd. of Adjust., 378 N.J. Super. 160 (App. Div. 2005)
http://scholar.google.com/scholar_case?case=16689341062435667803&q=Bray+v.+Cape+May+City+Zoning+Bd&hl=en&as_sdt=2,31

Doctrine of judicial estoppel bars a party who has successfully asserted a position before a court or other tribunal from asserting an inconsistent position in the same or a subsequent proceeding. Applicant barred from claiming that facility from which they obtained site plan approval as "tourist/guest house" was actually "hotel" in which they could operate public restaurant as accessory use when applicants repeatedly represented in their original application for site plan approval that the proposed development would be a permitted "tourist/guest house."

Eltrym Euneva, LLC v. Keansburg Planning Bd. of Adjust., 407 N.J. Super. 432 (Law Div. 2008)
http://scholar.google.com/scholar_case?case=9709398798364905650&q=Eltrym+Euneva,+LLC+v.+Keansburg+Planning+Bd&hl=en&as_sdt=2,31

Equitable estoppel invoked against municipality where municipal records and statement of municipal officials relied upon in purchasing and renovating property.

Romo's Rockaway Realty, LLC v. Rockaway Township Planning Board, A-3675-14T4 (Jan. 13, 2017)
https://scholar.google.com/scholar_case?case=2531132758441035146&q=romo%27s&hl=en&as_sdt=4,31

Board's decision to require a new site plan application for an approved, but not built restaurant as a result of a DOT taking and its subsequent denial of the application upheld. The subsequent purchaser of the property could not rely upon letters from the Township Land Use Administrator or Township Engineer that the DOT taking would have no impact on the prior approval. Neither the Land Use Administrator nor the Engineer had the authority to bind the board. In addition, the Board attorney, was "authorized to provide legal advice to the Board. [But] did not, however, have authority to render any decision on behalf of the Board, or bind the Board members to his view of the effect that the NJDOT's land acquisition might or might not have upon the Board's site plan approval. The Board "should not be held responsible for plaintiff's failure to confirm with the Board pre-acquisition that the creation of a second traffic lane would not invalidate the approval."

ADS Env'tl. Inc. v. Twp. of Bethlehem, A-2545-20 (Aug. 16, 2022)
https://scholar.google.com/scholar_case?case=1800058888481705667&q=ADS+Env'tl.+Inc.+v.+Twp.+of+Bethlehem&hl=en&as_sdt=6,31&as_ylo=2022

"Estoppel requires proof of four elements: (1) the building permit was issued in good faith, (2) the building inspector acted 'within the ambit of [his] duty' in issuing the permit, (3) a sufficient

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question of interpretation of the relevant statutes or zoning ordinances as to ‘render doubtful a charge that the ... official acted without any reasonable basis’ for issuing the permit, and (4) there was ‘proper good faith reliance’ on the issuance of the permit.”

8. AUTOMATIC APPROVAL

Precision Indus. Design Co., Inc. v. Beckwith, 185 N.J. Super. 9 (App. Div. 1982)

http://scholar.google.com/scholar_case?case=261853711282777677&q=185+N.J.+Super.+9+&hl=en&as_sdt=2,31

Manalapan Holding Co., Inc. v. Planning Bd. of Hamilton Twp., 92 N.J. 466 (1983)

http://scholar.google.com/scholar_case?case=12532556434421813888&q=92+N.J.+466+&hl=en&as_sdt=2,31

Lizak v. Faria, 96 N.J. 482 (1984)

http://scholar.google.com/scholar_case?case=14320131162996490608&q=96+N.J.+482+&hl=en&as_sdt=2,31

Allied Realty, Ltd. v. Bor. of Upper Saddle River, 221 N.J. Super. 407 (1987)

http://scholar.google.com/scholar_case?case=15917658241925929748&q=221+N.J.+Super.+407+&hl=en&as_sdt=2,31

D'Anna v. Planning Bd. of Washington Twp., 256 N.J. Super. 78, *certif. denied*, 130 N.J. 18 (1992)

http://scholar.google.com/scholar_case?case=11644034163171081664&q=256+N.J.+Super.+78+&hl=en&as_sdt=2,31

Star Enterprise v. Wilder, 268 N.J. Super. 371 (App. Div. 1995)

http://scholar.google.com/scholar_case?case=2950161298577690274&q=268+N.J.+Super.+371+&hl=en&as_sdt=2,31

Eastampton Center v. Planning Bd., Twp. of Eastampton, 354 N.J. Super. 171 (App. Div. 2002)

<http://lawlibrary.rutgers.edu/courts/appellate/a1172-00.opn.html>

South Plainfield Properties v. Middlesex County Planning Bd., 372 N.J. Super. 410 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=8074152107590557541&q=372+N.J.+Super.+410+&hl=en&as_sdt=2,31

Failure to act on and report to a municipal approving authority on a subdivision application within the requisite time constitutes a waiver of the county board’s right to review, approve, or disapprove the subdivision.

Fallone Properties v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=14959056775354964959&q=369+N.J.+Super.+552+&hl=en&as_sdt=2,31

Invalidation of public action is an extreme remedy which should be reserved for violations of the basic purposes underlying the Open Public Meeting Act. Automatic land use approval statutes are to be applied with caution.

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Infinity Outdoor v. Delaware and Raritan Canal Com'n, 388 N.J. Super. 278 (App. Div. 2006)
http://scholar.google.com/scholar_case?case=12972487725847024991&q=388+N.J.+Super.+278+&hl=en&as_sdt=2,31

Automatic approval statutes are to be “applied with caution.” Courts have denied automatic approval where the failure to act within the statutory deadline was technical or inadvertent, or where there was no evidence of intentional delay or inattention to the application. Automatic approval not imposed where delay caused by the petitioner.

Amerada Hess Corp. v. Burlington Cty. Planning Bd., 195 N.J. 616 (2008)
http://scholar.google.com/scholar_case?case=13902680442722128299&q=195+N.J.+616+&hl=en&as_sdt=2,31

The Legislature “has made the policy judgment that timely disposition is of great institutional value such that automatic approval is the proper remedy for delay. Under *Manalapan*, the statutory timetables are to be strictly enforced; permissive interpretation is unwarranted; and only where delay is inadvertent or unintentional will a public entity be excused from automatic approval. Absent mistake, inadvertence, or other unintentional delay, there should be no reluctance for a court to affirm an automatic approval.”

Johnson v. Ocean City Planning Bd., 196 N.J. 342 (2008)
http://scholar.google.com/scholar_case?case=10966272410461771870&q=%22196+N.J.+342+%22&hl=en&as_sdt=2,31

Where board intentionally delays action on an application beyond statutory timeframes to wait for the adoption of a pending ordinance change, the applicant is entitled to automatic default approval.

Cicchine v. Township of Woodbridge, 413 N.J. Super. 393 (App. Div. 2010)
http://scholar.google.com/scholar_case?case=1105551997847666631&q=413+N.J.+Super.+393+&hl=en&as_sdt=2,31

When automatic approval is claimed, an application must first be made to the administrative officer of the township for a certificate of automatic approval. If the officer refuses to issue the certificate, an application can then be made to the court. “The automatic approval is intended to remedy bad faith or overreaching or dilatory conduct of the Board. It should not be applied when the inaction was inadvertent or where there is no evidence of intentional delay or inattention to the application.” “While it is better practice to require an extension of time either in writing or by so stating on the record, the MLUL does not dictate any specific procedure.” Thus, when an applicant acquiesces to an adjournment, there is an implied consent “to whatever extension of time was required to resume the proceedings.”

Bright and Varick Urban Renewal Company, LLC v. Jersey City Planning Board, A-2040-14T1 (May 4, 2017)
https://scholar.google.com/scholar_case?case=9595717950510090705&q=A-2040-14T1&hl=en&as_sdt=4,31

Developer entitled to automatic approval after board failed to act within 95-days upon an application that was determined to be substantially complete.

Shipyard Associates, L.P. v. Hoboken Planning Board, A-4637-14T3, A-4763-14T3 (Aug. 2, 2017)
https://scholar.google.com/scholar_case?case=11196085176459614706&q=A-4504-14T3&hl=en&as_sdt=4,31

Where board “reveals its expressed intent to circumvent the automatic approval statute by ‘denying’ [the] application ‘without prejudice’ [rather than deciding it within the time set forth by statute]. . . the board was unlawfully granting itself an extension of time to hear the application,” and the applicant was entitled to automatic approval.

CHALLENGES TO BOARD DECISIONS

Silverman Group v. Morristown Planning Board, A-0009-21, certif den, 255 N.J. 369 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=9207374511199896850&q=he+Silverman+Group+v.+Morristown&hl=en&as_sdt=6,31

Jurisdiction is a threshold issue before a court can determine whether an application has been automatically approved pursuant to N.J.S.A. 40:55D-61. So, where a matter is filed with the planning board, and the board's planner indicated that jurisdiction lay with the zoning board, a failure of the planning board to act on the application does not trigger automatic approval.

9. RES JUDICATA

Ten Stary Dom Partnership v. Mauro, 216 N.J. 16 (2013)

http://scholar.google.com/scholar_case?case=13513702275209909133&q=ten+stary+dom+partn+ership&hl=en&as_sdt=2,31

"If an applicant files an application similar or substantially similar to a prior application, the application involves the same parties or parties in privity with them, there are no substantial changes in the current application or conditions affecting the property from the prior application, there was a prior adjudication on the merits of the application, and both applications seek the same relief, the later application may be barred. It is for the Board to make that determination in the first instance." A trial judge must affirm, reverse or modify the decision of the Board, not affirm a denial without prejudice allowing the applicant to bring the same application to the Board.

Glenn v. City of Cape May Planning Board, A-5504-15T3 (Sept. 11, 2017)

https://scholar.google.com/scholar_case?case=9220389341331200518&q=A-5504-15T3&hl=en&as_sdt=4,31

"[E]ven where an application is 'closely similar' to a prior application, if the applicant demonstrates changed circumstances, 'it is within the discretion of the board whether to reject the application on the ground of res judicata, and the exercise of that discretion may not be overturned on appeal in the absence of a showing of unreasonableness.'"

Pennington v. Planning Board of Borough of Monmouth Beach, A-3322-16T4 (May 3, 2018)

https://scholar.google.com/scholar_case?case=3846779026872477731&q=A-3322-16T4&hl=en&as_sdt=4,31

Denial of application on grounds of res judicata must be reversed where the "Board did not comprehend it possessed broad discretionary authority to consider whatever testimony it thought was appropriate and did not necessarily have to first decide whether res judicata applied without hearing the merits of plaintiffs' application. This included potential testimony regarding changes in the surrounding community during the twenty-four years since the last application was denied, the level of support among surrounding property owners, who witnessed this lot lay fallow for more than three decades, and Leber's testimony regarding the lot's creation, i.e., whether its non-conformity preceded enactment of the municipality's zoning regulations, and what, if any, impact that may have upon the Board's decision to ultimately grant a variance."

Usechak v. Borough of Shrewsbury Planning Board, A-2857-16T4 (Dec. 7, 2018)

https://scholar.google.com/scholar_case?case=6400401376124862204&q=Usechak+&hl=en&as_sdt=4,31

Subsequent owners of property were in privity with owners who made initial subdivision application and were considered the same parties for purposes of res judicata. Movement of subdivision line 21 feet was a substantial change because it changed both the size of the two lots and the variance relief required. In addition, there were substantial changes in the conditions

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affecting the property because a nearby development changed the character of the neighborhood resulting in smaller lot sizes which the second application more closely conformed to and the development is now subject to stormwater management regulations that were not in effect at the time of the initial application.

Village of Ridgefield Park v. Outfront Media, LLC, A-1135-20 (Oct. 7, 2022)

https://scholar.google.com/scholar_case?case=13168393638593273854&q=Ridgefield+Park+v.+outfront+&hl=en&as_sdt=6,31&as_ylo=2022

Res judicata and collateral estoppel do not apply on remand where the appellate division vacated the Board's first resolution. "The Board was not bound to interpret the zoning ordinance in the same manner as it had at the first hearing."

Cole v. City of Estell Manor Planning/Zoning Bd., A-3436-22 (July 2, 2025)

https://scholar.google.com/scholar_case?case=15879586587328436307&q=Cole+v.+city+of+estell&hl=en&as_sdt=4,31

"The Board erred in applying the res judicata doctrine to deny Cole's application. We reach this determination . . . based on the Board's failure to view Cole's application liberally. Viewed from a more liberal perspective, Cole's application substantially differs from Mitchell's by eliminating: (1) a driveway; (2) the breezeway; (3) and the pole barn. In addition, Cole's application substantially reduced the clear cutting. Therefore, the trial court erred in dismissing Cole's complaint."

CONSTITUTIONAL CHALLENGES

United Artists Theatre Circuit, Inc. v. Township of Warrington, 316 F.3d 392 (3d Cir. 2003)
http://scholar.google.com/scholar_case?case=5939419513288487093&q=316+F.3d+392+&hl=en&as_sdt=2,31

Standard in determining whether a municipal land use decision violates substantive due process rights is whether the action “shocks the conscience.”

Plemmons v. Blue Chip Ins., 387 N.J. Super. 551 (App. Div. 2006)
http://scholar.google.com/scholar_case?case=575537321745145442&q=387+N.J.+Super.+551+&hl=en&as_sdt=2,31

Plaintiff claims due process violation for the issuance of a stop work order which delayed his construction and the delay in the adoption of a memorializing resolution resulting from his delay in paying outstanding escrow fees. The court holds that the Due Process Clause provides both “a guarantee of fair procedure” and a “substantive component that bars certain arbitrary, wrongful government actions.” To assert a claim for a deprivation of property without procedural due process, “the claimant must either avail himself of the remedies provided by state law or prove that the available remedies are inadequate.” Here, the New Jersey statutes provide administrative and judicial remedies for the alleged actions of the municipal defendants. The Uniform Construction Code Act, *N.J.S.A.* 52:27D-119 to -141 provides a right of appeal to a construction board of appeals from construction officials “refusal to grant an application or refusal to act upon an application for a construction permit.” The MLUL provides a remedy should the resolution of a land use board’s action not be memorialized in 45 days. The availability of such remedies satisfy due process. As for substantive due process, the claim must be based on official action which “shocks the conscience.” A municipality may be held liable under § 1983 for an employee’s violation of a claimant’s constitutional rights in only three circumstances: (1) if an employee acted pursuant to a formal government policy; (2) if the employee had final policy-making authority; and (3) if an employee with final policy-making authority has ratified the unconstitutional actions of a subordinate.

Blum v. Township of Lakewood, A-1962-17T1 (Jan. 7, 2020)
https://scholar.google.com/scholar_case?case=4941375261024810107&q=Blum+v.+Twp.+of+Lakewood&hl=en&as_sdt=6,31&as_vis=1

Housing voucher which expired by its terms could not support a § 1983 claim because there was no state action that deprived plaintiffs of a constitutionally protected interest.

WR Prop. LLC v. Twp. of Jackson, No. 17-3226 (MAS) (DEA) (D.N.J. May 5, 2021)
https://scholar.google.com/scholar_case?case=6900033801982533556&q=WR+PROP.+LLC+V.+TWP.+OF+JACKSON&hl=en&as_sdt=6,31&as_ylo=2021

Where a plaintiff sets forth evidence that a municipality adopted ordinances prohibiting dormitories, eruvim, schools, and other uses required by those practicing Orthodox Judaism, with a discriminatory purpose, the District Court found sufficient basis to grant a preliminary injunction blocking enforcement of said ordinances.

CONSTITUTIONAL CHALLENGES

James v. Vornlocker, No. 3:19 Civ. 13690 (Aug. 31, 2022)

https://scholar.google.com/scholar_case?case=488144213460710662&q=James+v.+Vornlocker&hl=en&as_sdt=6,31

Plaintiff's claims against the municipality and various municipal officials dismissed. Allegations of delays by municipal actors (2 years for Planning Board to approve plaintiff's subdivision application and to issue zoning and construction permits, etc.) leading to loss of land through foreclosure failed to establish any connection between the alleged "taking," (i.e., the foreclosure), and defendants' actions. Plaintiff's equal protection claims failed because she offered no evidence of unequal treatment.

Gage v. N.J. Dep't of Env'tl. Prot., Civ. No. 21-10763 (MAS)(LHG) (Jan. 27, 2022)

https://scholar.google.com/scholar_case?case=14508953576855966815&q=Gage+v.+Department+of+environmental+&hl=en&as_sdt=6,31&as_ylo=2022

Under the Eleventh Amendment, private parties cannot sue states in federal court and this immunity extends to state agencies.

388 Route 22 Readington Realty Holdings, LLC v. Twp. of Readington, A-1826-18 (Feb. 8, 2022)

https://scholar.google.com/scholar_case?case=3748901344395865141&q=388+route+22&hl=en&as_sdt=6,31&as_ylo=2022

N.J.S.A. 40:55D-90(b), which generally prohibits development moratoria by municipalities, creates a substantive right for property owners to develop their property free from such development moratoria. Where a municipality restricts development by choosing to not recapture unused sewer capacity, same represents a development moratorium in violation of N.J.S.A. 40:55D-90(b). Finally, such a substantive right is protected by the New Jersey Civil Rights Act (N.J.S.A. 10:6-1 to-2).

Braggin v. Borough of Ramsey, A-3698-19 (Jan. 6, 2022)

https://scholar.google.com/scholar_case?case=17159554547129203721&q=braggin+v.+borough+of+ramsey&hl=en&as_sdt=6,31

Constitutional retaliation claims are analyzed under a three-part test articulated in *Eichenlaub v. Township of Indiana*, 385 F.3d 274 (3d Cir. 2004). Specifically, plaintiff "must prove (1) that he engaged in constitutionally-protected activity; (2) that the government responded with retaliation; and (3) that the protected activity caused the retaliation." "The threshold requirement is that the plaintiff identify the protected activity that allegedly spurred the retaliation."

Valentine v. Monroe Township, 22-4384 (RMB/MJS); Civil No. 22-5562 (D.N.J. 2023)

https://scholar.google.com/scholar_case?case=7436046831263703527&q=Valentine+v.+Monroe+&hl=en&as_sdt=6,47&as_ylo=2023

Plaintiff fails to bring a selective enforcement claim where facts do not adequately plead that the municipality treated *similarly situated* persons differently. Additionally, while the municipality may have misapplied or misstated certain ordinance requirements, same does not rise to the level of "shocking the conscience" and thus creates a plausible substantive due process claim.

Deptford Commons v. Township of Deptford, Docket No. 22-4931 (D.N.J. 2023)

https://scholar.google.com/scholar_case?case=15609002439196388202&q=Deptford+Commons,+LLC+v.+Twp.+of+Deptford&hl=en&as_sdt=6,47&as_ylo=2023

While Plaintiff alleged substantive due process violations against a Fire District where same had issued the Hazard Notice during Rosh Hashanah (and the Plaintiff was Jewish); threatened arrest and apparently spread false information about Plaintiff, directed Plaintiffs' tenants to vacate the Property while they replaced fire hydrants on site; and graffiti and anti-Semitic statements and images were found on Plaintiff's property, same did not raise to the level of a "substantive due

process” violation on the facts plead.

Sheetz v. County of El Dorado, 144. S. Ct. 893 (2024)

https://scholar.google.com/scholar_case?case=7306713880912265726&q=sheetz+v+county+of+el+dorado&hl=en&as_sdt=6,47

An extraction fee for offsite improvements in exchange for a development permit must have some foundation in the negative impact of the proposed development.

Affinity Healthcare Group Voorhees, LLC v. Twp. of Voorhees, Civ No. 22-2769 (3d Cir. Jan. 18, 2024).

https://scholar.google.com/scholar_case?case=5033881266495942693&q=Affinity+Healthcare+Group+Voorhees,+LLC+v.+Twp.&hl=en&as_sdt=6,47&as_ylo=2024

Where a claim is made under the ADA and Rehabilitation Act for discrimination against the disabled with respect to a denial to construct a methadone treatment facility, Plaintiff must show some evidence of discriminatory intent or motives, particularly where there is ample planning testimony related to why the application should be denied.

Bais Brucha Inc. v. Twp. of Toms River, Civ. No. 21-3239 (D.N.J. Feb. 29, 2024)

https://scholar.google.com/scholar_case?case=8098188845621088229&q=Bais+Brucha+Inc.+v.+Twp.+of+Toms+River&hl=en&as_sdt=6,47

While the municipality may amend its ordinances to permit the use its Board had previously denied, which had become the subject of RLUIPA litigation, same did not moot Plaintiff’s ability to recover monetary damages related to the initial denial. Similarly, the “safe harbor” provision set forth in RLUIPA does not project the municipality from damages claims.

Quick v. Twp. of Bernards, Civ. No. 17-05595 (D.N.J. Aug. 30, 2024)

https://scholar.google.com/scholar_case?case=12521223534212074788&q=quick+v.+bernards&hl=en&as_sdt=6,47&as_ylo=2024

Planning Board entered into settlement agreement with developer of a mosque which included a requirement that the Board not permit any reference to “Islam or Muslims” during the Whispering Wood hearing. Objectors objected to this language and were informed by the Board that, to the extent that comment referencing those terms dealt with legitimate site plan issues, that type of public comment would be permitted. Notwithstanding this assurance, objectors did not comment for fear of “prosecution” and challenged the settlement on First Amendment grounds. The court held that the objectors lacked standing to challenge the agreement on First Amendment grounds because they were, effectively, trying to manufacture standing by imposing damages on themselves.

Brennan v. Bay Head Planning Bd., A-3984-21 (May 1, 2024)

https://scholar.google.com/scholar_case?case=11138716002761001273&q=Brennan+v.+Bay+Head&hl=en&as_sdt=6,47

There is no First Amendment violation where a court orders a party to cease disseminating privileged executive minute documents that were transmitted to the party, via an OPRA request, by accident.

Breakwater Treatment v. City of Asbury Park, 23-3661 (MAS) (JTQ) (Jan. 31, 2025)

https://scholar.google.com/scholar_case?case=11835445144703418020&q=Breakwater+Treatment+%26+Wellness+Corp.+v.+The+City+of+Asbury+Park&hl=en&as_sdt=6,47

Plaintiff fails to allege adequate facts that the application/hearing process before the Zoning Board of Adjustment for a satellite cannabis alternative treatment center adequately “shocks

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the conscience” and thus violated Plaintiff’s 14th Amendment due process rights. Likewise, Plaintiff’s equal protection claim with respect to municipality’s treatment of competing alternative treatment center application is without merit.

KDLi9 LLC v. City of Jersey City Zoning Bd. of Adjustment, A-01424-24 (Oct. 8, 2025)
https://scholar.google.com/scholar_case?case=930358465466475017&q=KDLi9+LLC+v.+The+City+of+Jersey+City+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,47

Where the Board denied a use variance for a prayer/worship space, Plaintiff’s RLUIPA claim failed because Plaintiff had failed to raise same before the ZBA and create the factual record necessary to support such a claim.

ANTITRUST

Hanover 3201 Realty, LLC v. Village Supermarkets, Inc., 806 F.3d 162 (3rd Cir. 2015), cert. denied 136 S.Ct. 2451 (2016)

https://scholar.google.com/scholar_case?case=6241195802164781844&q=hanover+3201+realty+llc+v+village+supermarkets+inc&hl=en&as_sdt=3,31

Plaintiff lessor had standing to bring an antitrust suit under the Sherman Act with respect to its claim that defendants' attempted to monopolize the market for full-service supermarkets due to objections to land use approvals lodged by defendants "without regard to the merits of the claims and for the purpose of using the governmental process to restrain trade."

Inserra Supermarkets, Inc. v. The Stop & Shop Supermarket Co., No. 16-01697 (D.N.J. Feb. 28, 2017)

https://scholar.google.com/scholar_case?case=1484877165125048328&q=16-01697&hl=en&as_sdt=3,31

Plaintiff plead a plausible cause of action under the Sherman Act and the New Jersey Antitrust Act, for anticompetitive behavior of competitor due to "sheer volume of objections, the manner in which many objections were filed indicated that Defendant intended to prolong and complicate the approval process." "In the context of a continuing conspiracy to violate the antitrust laws . . . each time a plaintiff is injured by an act of the defendants a cause of action accrues [] to recover the damages caused by that act and . . . as to those damages, the statute of limitations runs from the commission of the act." "Whether there is a 'dangerous probability' of Defendant obtaining monopoly power depends on several factors: Defendant's market share, its anticompetitive practices, general barriers to entry, strength of competition, probable development of the industry, and the elasticity of consumer demand." "The Noerr-Pennington doctrine 'safeguards the First Amendment right to 'petition the government for a redress of grievances' . . . by immunizing citizens from the liability that may attend the exercise of that right.' [Citation omitted]. As the Third Circuit has observed, however, Noerr-Pennington does not protect 'petitioning activity [that] is a 'mere sham to cover what is actually nothing more than an attempt to interfere directly with the business relationships of a competitor.'" "When a party has filed 'a whole series of lawsuits and other legal actions,' the appropriate question is whether they were filed 'without regard to merit and for the purpose of using the governmental process . . . to harm a market rival and restrain trade.'"

Main Street at Woolwich, LLC v. Ammons Supermarket, Inc., A-0713-15T3 (July 25, 2017)

https://scholar.google.com/scholar_case?case=5071025714755919381&q=136+S.+Ct.+2451&hl=en&as_sdt=4,31

"The Noerr-Pennington doctrine holds that petitioners for 'government ... redress are generally immune from antitrust liability' when defending against antitrust claims predicated on this petitioning activity. . . . "However, the Noerr-Pennington doctrine does not provide putative plaintiffs with an unlimited right to challenge competitors. Sham litigation receives no protection, and the presumption of immunity is dispelled when a lawsuit is 'objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits' and is brought with the specific intent to further wrongful conduct 'through the 'use [of] the governmental process—as opposed to the outcome of that process.'" The filing of a series of lawsuits and other legal actions without regard to the merits may suggest sham litigation. "The gist of the tort of malicious abuse of process is... the misuse, or 'misapplying process justified in itself for an end other than that which it was designed to accomplish.'"

ANTITRUST

Stavola Asphalt Co., Inc. v. Twp. of Howell Zoning Bd. of Adjust., A-2830-21, A-3320-21 (June 17, 2024)

https://scholar.google.com/scholar_case?case=553270855187838359&q=Stavola+v.+Howell&hl=en&as_sdt=6,47

Because an objector is a neighbor to applicant's property, the objector has standing as an "interested party," notwithstanding the fact that the neighbor is also a business competitor to the applicant.

SITE PLAN APPROVAL

Hill Homeowners Ass'n v. Zoning Bd. of Adjust., City of Passaic, 129 N.J. Super. 170 (Law Div. 1974)

http://scholar.google.com/scholar_case?case=130795355405534498&q=129+N.J.+Super.+170+&hl=en&as_sdt=2,31

Lionel's Appliance Center, Inc. v. Citta, 156 N.J. Super. 257 (Law Div. 1978)

http://scholar.google.com/scholar_case?case=17565832805222526477&q=156+N.J.+Super.+257+&hl=en&as_sdt=2,31

Dunkin Donuts of N.J. v. Twp. of North Brunswick, 193 N.J. Super. 513 (App. Div. 1984)

http://scholar.google.com/scholar_case?case=4909793850199067714&q=193+N.J.+Super.+513+&hl=en&as_sdt=2,31

Morris County Fair Housing Council v. Boonton Township, 230 N.J. Super. 345 (App. Div. 1989)

http://scholar.google.com/scholar_case?case=16118374535254596569&q=230+N.J.+Super.+345+&hl=en&as_sdt=2,31

"A planning board cannot deny an application for site plan approval based on architectural considerations if the application is limited to determining whether the plan conforms with the municipality's zoning and site plan ordinance."

River Vale v. E & R Office Interiors, 241 N.J. Super. 391 (App. Div. 1990)

http://scholar.google.com/scholar_case?case=8746569409962108092&q=241+N.J.+Super.+391+&hl=en&as_sdt=2,31

Shim v. Washington Township Planning Bd., 298 N.J. Super. 395 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=3578612019408489750&q=298+N.J.+Super.+395+&hl=en&as_sdt=2,31

Sprint Spectrum v. Twp. of Warren Planning Bd., 325 N.J. Super. 61 (Law Div. 1999)

http://scholar.google.com/scholar_case?case=12447115289354851648&q=325+N.J.+Super.+61+&hl=en&as_sdt=2,31

Davis v. Planning Bd. of City of Somers Point, 327 N.J. Super. 535 (App. Div. 2000)

http://scholar.google.com/scholar_case?case=7576012867508061134&q=327+N.J.+Super.+535+&hl=en&as_sdt=2,31

W.L. Goodfellows and Co. of Turnersville, Inc. v. Washington Twp. Planning Bd., 345 N.J. Super. 109 (App. Div. 2001)

http://scholar.google.com/scholar_case?case=13136394356054207952&q=345+N.J.+Super.+109+&hl=en&as_sdt=2,31

Stochel v. Planning Bd. of Edison Twp., 348 N.J. Super. 636 (Law Div. 2002)

http://scholar.google.com/scholar_case?case=12640614556918962040&q=348+N.J.+Super.+636+&hl=en&as_sdt=2,31

Sartoga v. Bor. of West Paterson, 346 N.J. Super. 569 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=10728269183117589604&q=346+N.J.+Super.+569+&hl=en&as_sdt=2,31

SITE PLAN APPROVAL

Builders League of South Jersey, Inc. v. Burlington County Planning Bd., 353 N.J. Super. 4 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=6183538777786972446&q=353+N.J.+Super.+4+&hl=en&as_sdt=2,31

Meridian Quality Care, Inc. v. Board of Adjust., Twp. of Wall, 355 N.J. Super. 328 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=13036148527667618103&q=355+N.J.+Super.+328+&hl=en&as_sdt=2,31

Crown Car Wash of Hillsborough, Inc. v. Twp. of Hillsborough Planning Bd., 182 N.J. Super. 152 (App. Div. 2004), cert. denied, 182 N.J. 147 (2004)

http://scholar.google.com/scholar_case?case=11758566658918976794&q=Crown+Car+Wash+of+Hillsborough,+&hl=en&as_sdt=4,31

Law division's order upholding planning board's preliminary and final major site plan and conditional use approval reversed because planning board lacked jurisdiction where "d" variance required for access driveway and detention basin in adjacent residential zone where use was not permitted.

Park Center at Route 35, Inc. v. The Zoning Bd. of Adjust. of Twp. of Woodbridge, 365 N.J. Super. 284 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=12000533449610847363&q=365+N.J.+Super.+284+&hl=en&as_sdt=2,31

Appellate Division upheld the trial court's affirmation of the board's denial of an application for amended minor site plan approval. Plaintiff sought to amend the prior approval to eliminate Phase II of the proposal which involved the demolition of a building for additional parking and safety concerns. The court upheld the trial court's finding that the board's decision was not arbitrary, unreasonable, capricious or unreasonable as the approval was conditioned upon the completion of Phase II and that there was insufficient change in circumstances to warrant a departure from the earlier requirement that Phase II be completed.

DeMaria v. JEB Brook, LLC, 372 N.J. Super. 138 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=479370759690698238&q=372+N.J.+Super.+138+&hl=en&as_sdt=2,31

When site plan application conforms in all respects with applicable ordinances, a planning board may cajole or use its powers of persuasion in its dealings with developer so as to achieve the best development from a planning perspective, but it may not deny the application. Courts cannot, nor should they, "micromanage" the manner in which municipal agencies conduct their hearings; rather, it is only when there has been a denial of fundamental fairness that courts have authority to interfere.

Rukh Enterprises, Inc. v. Planning Bd. of Twp. of Edison, A-4802-02T1 (Feb. 23, 2005)

Board's denial of site plan application affirmed where plaintiff advised that a hearing on the taking of a portion of the property was scheduled for the next week which could impact parking and plaintiff refused to grant 30-day extension of time.

DeClement v. Twp. of Elk, A-2199-04T2 (2005)

Court rejects a belated challenge to an hours of operation limitation on site plan approval for a gas station in a commercial zone. "Board did not deny a permitted use. Rather, it reaffirmed a safeguarding condition by reason of the nature, location and incidents of the particular use. Such action did not contravene and was not inconsistent with any municipal ordinance" –

notwithstanding the fact the municipality had no hours of operation limitation.

Levin Properties v. Hamilton Twp. Planning Bd., A-3815-04T1 (July 12, 2006), certif. granted, 188 N.J. 493 (2006)

http://scholar.google.com/scholar_case?case=18172067966367637012&q=%22Levin+Properties+%22v.+Hamilton+Twp.+Planning+&hl=en&as_sdt=2,31

Applicant proposed a fully conforming site plan for a shopping center with variances for signage which was denied by the board and reversed by the trial court. The Appellate Division found that the site plan should have been approved because it was fully conforming to the zoning ordinance and that the board's conclusions as to drainage, noise, and traffic were not supported by the record and were arbitrary, capricious and unreasonable. However, the sign variances were properly denied where the applicant did not present sufficient evidence to justify why the benefits to the additional signage outweighed the benefits.

Bobal v. Cackowski, A-1446-04T5 (July 24, 2007)

Inaccurate site plan which allegedly shows encroachment upon adjacent property does not give one any substantive rights in another's property. To resolve property line dispute action should be brought to quiet title in accordance with N.J.S.A. 2:62-1.

7-Eleven, Inc. v. Planning Bd. of Bor. of Elmwood Park, A-5809-05T3; A-5918-05T3 (Feb. 28, 2008)

"For site plan applications, as a prerequisite to a planning board's valid exercise of its discretionary powers, the [MLUL] requires a municipality to establish, by ordinance, definite and clear standards for site plan review and approval. [citations omitted] If the applicant meets those standards, the planning board lacks the authority to deny approval of the site plan." A general purpose statement in a site plan ordinance regarding safe and efficient vehicular and pedestrian circulation is not sufficient for a board to deny a site plan based on traffic concerns; there must be standards exhibiting "sufficient certainty and definiteness." Denial of a site plan for a permitted use cannot be based on off-site conditions. Board cannot deny a site plan for a permitted use based on the nature and appropriateness of the use as that exceeds the board's authority.

Jack Pedowitz Enterprises, Inc. v. Twp. of Branchburg Planning Bd., A-4948-06T3 (May 2, 2008)

Planning Board does not have the authority to deny site plan application for a permitted use which meets all conditions of the ordinance. It may not use the township noise ordinance as a vehicle to deny a permitted use, but may only impose conditions on the grant thereof.

Twp. of West Milford Planning Bd. v. TCR NJ/PA Land Acquisition L.P., A-2573-06T5; A-2587-06T5 (July 24, 2008)

If final site plan is substantially similar to preliminary site plan it must be approved by the board.

Heritage at Towne Lake, LLC v. Planning Bd., Bor. of Sayreville, 422 N.J. Super. 75 (Law Div. 2010).

http://scholar.google.com/scholar_case?case=1535121731685309909&q=422+N.J.+Super.+75+&hl=en&as_sdt=2,31

Trial court reversed the denial of an application for conversion of age restricted units to nonage restricted units in accordance with the conversion statute, N.J.S.A. 45:22A-46.3 to 46.16. "It is clearly the intent of the legislature that if conditions are to be imposed on the grant of site plan approval, the approving board should first grant preliminary approval, leaving final approval after all conditions have been satisfied." Because the conversion statute allows a developer to apply for a conversion after preliminary approval has been granted, the board can't deny conversion claiming that because conditions remain outstanding, no approval exists. "The intent of the conversion

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statute is to allow the conversion of age-restricted housing to nonage-restricted housing, and to provide low and moderate income housing to another segment of society.” “The conversion statute makes clear that the use as approved, and to be converted, is to be deemed permitted,” even if the original age-restricted development received a density bonus under the zoning code and the project would be inconsistent with the master plan.

Nuckel v. Borough of Little Ferry Planning Bd., A-2699-08T3 (April 21, 2010)

http://scholar.google.com/scholar_case?case=14776764567537769262&q=2699-08T3&hl=en&as_sdt=2,31

“A planning board considering an application for site plan approval is charged with the responsibility to review, among other considerations, the vegetation, landscaping, signage, lighting and screening devices that are proposed to be included, *N.J.S.A.* 40:55D-7,” even when the board is considering a driveway which is under the jurisdiction of the NJDOT pursuant to the State Highway Access Management Act.

Sloo Investors, LLC v. Planning Bd., Bor. of Tinton Falls, A-2782-08T1 (June 18, 2010)

http://scholar.google.com/scholar_case?case=12352059947342422814&q=2782-08T1&hl=en&as_sdt=2,31

Board properly denied waiver from a flood plain ordinance where plaintiff proposed an elevated roadway in the flood plain and was unable to provide any information about the intensity of a storm that would render the proposed homes inaccessible. “The Board was concerned about its responsibility to maintain the road once constructed, the fact that the roadway would be in an area difficult to reach, potentially isolating homeowners during a storm, in addition to their concern about disturbance to the wetlands, the effect on adjoining property owners’ land conditions, and the appearance of the road.” Plaintiff had the burden of showing undue hardship and its engineer was unable to state whether the property would be rendered inutile if the waiver application was denied.

Wilcox v. Township of Wall Planning Board, A-3711-08T2 (July 28, 2010)

http://scholar.google.com/scholar_case?case=15313527206604354827&q=3711-08T2&hl=en&as_sdt=2,31

Site plan requiring variances properly denied even though site plan complied with site plan ordinance where plaintiff did not bifurcate the application and the variances sought were inextricably related to the location of the buildings and means of ingress and egress.

Courter v. Absecon Planning Board, A-4344-11T4 (June 6, 2013)

http://scholar.google.com/scholar_case?case=3876710539758512412&q=A-4344-11T4&hl=en&as_sdt=2,31

Amendment to previously approved age-restricted site plan in a redevelopment area that proposed height and use variances and the removal of the age restriction could be approved by the planning board on condition that the governing body amends the height and use restrictions. “[A]ny ‘variances’ from use and height must be obtained through Council’s amendment to the Redevelopment Plan. Nothing in the LHRL, the MLUL, or the Redevelopment Plan expressly prohibit such a sequence.” The Conversion Law allows for reasonable revisions of the original plan in the event of conversion.

Village Supermarkets, Inv. v. Township of Egg Harbor, A-5370-12T4 (April 8, 2015)

https://scholar.google.com/scholar_case?case=8661082786403048940&q=A-5370-12T4&hl=en&as_sdt=4,31

“A planning board has the authority to grant waivers from design standards set forth in subdivision and site plan ordinances when adherence is impractical.”

K. Hovnanian Shore Acquisitions, LLC v. Marlboro Township Planning Board, A-1074-14T1 (Mar. 18, 2016)

https://scholar.google.com/scholar_case?case=6582127543147247546&q=A-1074-14T1&hl=en&as_sdt=6,31

Under the “Conversion Act,” “the use as approved, and to be converted [from age-restricted to non-age-restricted], is to be deemed permitted” and where the impervious coverage was to be reduced, there was no reason for the board to review any stormwater issues.

N.J. Highlands Coalition v. New Jersey Department of Environmental Protection, A-3180-14T1 (Aug. 4, 2017)

https://scholar.google.com/scholar_case?case=11212981650574848085&q=A-3180&hl=en&as_sdt=4,31

“The MLUL defines ‘final approval’ as: the official action of the planning board taken on a preliminarily approved major subdivision or site plan, after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed or guarantees properly posted for their completion, or approval conditioned upon the posting of such guarantees.” N.J.S.A. 40:55D-4. Where conditions are still outstanding, the approval is not yet final.

1 Mem'l Drive LLC v. 160 West Broadway Assoc., LP, A-0511-19, A-0636-19 (Aug. 13, 2021)

https://scholar.google.com/scholar_case?case=14631100846996496447&q=160+west+broadway&hl=en&as_sdt=6,31

Where the resolution is deficient and record demonstrates that the Board's approval of the application was arbitrary, capricious, and unreasonable, compelling a reversal of the Board's actions, the court declined to remand for reconsideration and specific factual findings and a new resolution. A Board's grant of site plan approval was arbitrary, capricious and unreasonable where its approving resolution made no findings of fact with respect to testimony provided by expert witnesses heard by the Board, conflicting expert testimony was not reconciled, and applicant's proposed circulation plan which required the blocking of a public street, violated state law.

Monmouth Commerce Ctr. v. Howell Twp. Planning Bd., A-0012-21 (May 12, 2022)

https://scholar.google.com/scholar_case?case=15448208845303076037&q=Monmouth+Commerce+Ctr.+v.+Howell+Twp.+Planning+&hl=en&as_sdt=6,31

Board's denial of a site plan application not unreasonable where it found that ingress and egress to the property was unsafe for tractor trailers and the applicant's traffic engineer relied upon information from a third party and failed to provide a sketch to demonstrate that the access was safe.

Dimarco v. Zoning Bd. of Adj. of the Borough of Edgewater, Docket No. A-2060-21, A-2283-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=15242942537864971762&q=DiMarco+v.+Zoning+B&hl=en&as_sdt=6,47&as_ylo=2023

With respect to a Board's decision to bifurcate an application, the Court upheld the Board's decision because the discretion to decide whether "the use variance and site plan issues [are] so interrelated that both applications should be considered in a single administrative proceeding rests with the board.”

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Sackman Enter., Inc. v. Mayor & Council of the Borough of Belmar, 478 N.J. Super. 68 (App. Div. 2024)

https://scholar.google.com/scholar_case?case=617233561184630457&q=sackman+Enter.,+Inc.+v.+Mayor+%26+Council&hl=en&as_sdt=6,47&as_ylo=2024

EV credits (as permitted by the “EV Statute,” N.J.S.A. 40:55D-66.20) are to be applied when determining a concept plan's consistency with a redevelopment plan. Furthermore, when applying EV credits to the total number of calculated spaces and that number includes any decimal, based on the plain language of the statute, the calculation must be rounded up to the next whole parking spot. Additionally, a rounded-up EV credit cannot reduce the total required parking by more than the ten percent limit set forth under section (e) of the EV Statute, which is more specific than section (f) and therefore controls.

Berley Assoc. LTD v. Town of Morristown, A-1650-22 (Aug. 12, 2024)

https://scholar.google.com/scholar_case?case=4667714786403740314&q=Berley+Assoc.+LTD+v.+Town+of+Morristown&hl=en&as_sdt=6,47

In upholding Board's site plan approval for residential development, the Appellate Division affirms that same was not arbitrary, capricious and unreasonable and that same complied with the subject municipality's parking ordinance.

Oldmans Creek Holdings, LLC v. Joint Land Use Bd. of the Twp. of Woolwich, A-1402-24 (Dec. 17, 2025)

https://scholar.google.com/scholar_case?case=6786758701184074254&q=oldmans+creek&hl=en&as_sdt=4,31

Board did not err in denying a conforming site plan that abutted a county road where the board's traffic engineer testified about ingress and egress concerns. “The record shows the Board's traffic engineer requested information on the [old] traffic study on several occasions and plaintiff failed to provide evidence its study reasonably and contemporaneously assessed the traffic on the road.” “Automatic approval was not required.”

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Chicchino v. Twp. of Berkeley Heights, 237 N.J. Super. 175 (App. Div. 1989)

http://scholar.google.com/scholar_case?case=4514295667484572860&q=237+N.J.+Super.+175&hl=en&as_sdt=2,31

Kaplan v. City of Linwood, 252 N.J. Super. 538 (Law Div. 1991)

http://scholar.google.com/scholar_case?case=5941743666335844652&q=252+N.J.+Super.+538+&hl=en&as_sdt=2,31

Urban v. Pl. Bd. of Manasquan, 238 N.J. Super. 105 (App. Div. 1990), *aff'd*, 124 N.J. 651 (1991)

http://scholar.google.com/scholar_case?case=16871210486599045814&q=238+N.J.+Super.+105+&hl=en&as_sdt=2,31

Razberry's, Inc. v. Kingwood Twp. Planning Bd., 250 N.J. Super. 324 (App. Div. 1991)

http://scholar.google.com/scholar_case?case=1330170960632075647&q=250+N.J.+Super.+324+&hl=en&as_sdt=2,31

Use variance required to subdivide lot containing a nonconforming use.

El Shaer v. Planning Bd. of Twp. of Lawrence, 249 N.J. Super. 323 (App. Div. 1991) *certif. denied*, 127 N.J. 546 (1991)

http://scholar.google.com/scholar_case?case=5621160663067067528&q=249+N.J.+Super.+323+&hl=en&as_sdt=2,31

N.J. Shore Builders Assn. v. Twp. of Marlboro, 248 N.J. Super. 508 (App. Div. 1991)

http://scholar.google.com/scholar_case?case=2598897254477045350&q=248+N.J.+Super.+508+&hl=en&as_sdt=2,31

Aronowitz v. Planning Bd. of Twp. of Lakewood, 257 N.J. Super. 347 (Law Div. 1992)

http://scholar.google.com/scholar_case?case=324012099428181385&q=257+N.J.+Super.+347+&hl=en&as_sdt=2,31

Pizzo Mantin Group v. Twp. of Randolph, 137 N.J. 216 (1994)

http://scholar.google.com/scholar_case?case=1371296685016304847&q=137+N.J.+216+&hl=en&as_sdt=2,31

Planning boards do not have the authority to deny an application for subdivision approval “based on considerations of the general welfare, the purposes of the Municipal Land Use Law, and sound planning.” Planning board must approve a subdivision unless it fails to comport with specific requirements delineated in subdivision or zoning ordinance.

Menlo Park Plaza v. Woodbridge, 316 N.J. Super. 451 (App. Div. 1998) *certif. denied*, 160 N.J. 88 (1999)

http://scholar.google.com/scholar_case?case=7230744669200179596&q=316+N.J.+Super.+451+&hl=en&as_sdt=2,31

Green Meadows at Montville v. Planning Bd., Twp. of Montville, 329 N.J. Super. 12 (App. Div. 2000)

http://scholar.google.com/scholar_case?case=5715629978217617149&q=329+N.J.+Super.+12+&hl=en&as_sdt=2,31

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Kirby v. Twp. Committee of Twp. of Bedminster, 341 N.J. Super. 276 (App. Div. 2000)
http://scholar.google.com/scholar_case?case=13862343508254168284&q=341+N.J.+Super.+276+&hl=en&as_sdt=2,31

Builders League of South Jersey, Inc. v. Burlington County Planning Bd., 353 N.J. Super. 4 (App. Div. 2002)
http://scholar.google.com/scholar_case?case=6183538777786972446&q=353+N.J.+Super.+4+&hl=en&as_sdt=2,31

Toll Bros., Inc. v. The Planning Bd., Twp. of Pohatcong, 177 N.J. 492 (2003)
http://scholar.google.com/scholar_case?case=3233878875768179370&q=Toll+Bros.,+Inc.+v.+T+he+Planning+Bd.,+Twp.+of+Pohatcong&hl=en&as_sdt=2,31

D.L. Real Estate Holdings, LLC v. Point Pleasant Planning Bd., 176 N.J. 125 (2003)
http://scholar.google.com/scholar_case?case=6395019531807364899&q=176+N.J.+126+&hl=en&as_sdt=2,31

R.J.P. Builders, Inc. v. Twp. of Woolwich, 361 N.J. 207 (App. Div. 2003)
http://scholar.google.com/scholar_case?case=15195088956040202202&q=R.J.P.+Builders,+Inc.+v.+Twp.+of+Woolwich&hl=en&as_sdt=2,31

South Plainfield Properties v. Middlesex County Planning Bd., 372 N.J. Super. 410 (App. Div. 2004)
http://scholar.google.com/scholar_case?case=8074152107590557541&q=372+N.J.+Super.+410+&hl=en&as_sdt=2,31

Failure to act on and report to a municipal approving authority on a subdivision application within the requisite time constitutes a waiver of the county board's right to review, approve, or disapprove the subdivision.

Puleio v. North Brunswick Twp. Bd. of Adjust., 375 N.J. Super. 613 (App. Div. 2005)
http://scholar.google.com/scholar_case?case=14573668894120212593&q=375+N.J.+Super.+613+&hl=en&as_sdt=2,31

Subdivision of land which previously received a use variance only requires a majority vote for approval. It is not a (d) variance, either as a "new" d(1) variance or as an expansion of a nonconforming use. Application must go to the same board which granted the use variance, as the court essentially treated it as a bifurcated application for use variance/subdivision.

Talcott Fromkin Freehold Associates v. Freehold Twp., 383 N.J. Super. 298 (Law Div. 2005)
http://scholar.google.com/scholar_case?case=13473523755275323943&q=383+N.J.+Super.+298+&hl=en&as_sdt=2,31

Township is not required to accept dedication of any improvement other than certain roadways that meet municipal standards and certain public utilities. There is no legal requirement that a municipality accept any other improvements including detention basins. By offering to dedicate the basins on terms and conditions that induce the township to accept the dedication, the developer voluntarily obliged itself to pay the maintenance fee. Developer's agreements are valid contracts. Developer is estopped from denying its maintenance obligation, and its challenge is time barred, and barred by laches. Township is entitled to attorneys' fees.

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Sigismondi v. City of Ventor Planning Bd., A-5305-04T5 (June 8, 2006), certif. denied, 188 N.J. 357 (2006)

http://scholar.google.com/scholar_case?case=16639113475376176360&q=Sigismondi+v.+City+of+Ventor+Planning+&hl=en&as_sdt=2,31

Grant of subdivision with variances upheld where sufficient evidence in the record to support lot width variance and lot area variance which would become unnecessary after the construction of a bulkhead. Irregular shape of property, density, and character of surrounding neighborhood supported grant of variances under both C-1 and C-2 criteria.

Dowel Associates v. Harmony Twp. Land Use Board, 403 N.J. Super. 1 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=6476973359717538727&q=403+N.J.+Super.+1&hl=en&as_sdt=2,31

Where town had entered into a settlement agreement and stipulation of dismissal of plaintiff's litigation which had contested the township's housing element and fair share plan, and township received protection from Builders' remedy actions as a result of its rezoning of plaintiff's property for an inclusionary development, plaintiff's subdivision should have been approved subject to DEP approval of sewage disposal and stormwater management systems.

Clarke v. Hopewell Twp. Planning Bd., A-4354-06T2 (Dec. 15, 2008), certif. denied, 198 N.J. 473 (2009)

http://scholar.google.com/scholar_case?case=13348093314627876351&q=Clarke+v.+Hopewell+Twp.+Planning+Bd&hl=en&as_sdt=2,31

Board properly granted minor subdivision that required no variances despite the lack of a reason for the subdivision being stated by the applicant.

Simone v. Township of Wayne, A-1299-14T4 (May 18, 2016)

https://scholar.google.com/scholar_case?case=16588981513851991503&q=A-1299-14T4&hl=en&as_sdt=4,31

Court rejects plaintiff's argument that creating two lots, neither of which is conforming, from an existing conforming lot, advances the purposes of the zoning plan because the surrounding lots were themselves undersized where the "Board specifically found that the minimum lot size requirement was adopted more than fifty years earlier after specifically rejecting a lesser minimum lot size that it chose to apply in other residential zones. Creating two non-conforming lots from a single conforming lot obviously failed to advance the purposes of the zoning scheme. The subdivision also impaired the intent of the zoning plan essentially to advance plaintiff's private interests."

Short v. Borough Council of Borough of Avalon, A-3620-15T1 (June 27, 2017)

https://scholar.google.com/scholar_case?case=11265080668843307376&q=A-3620-15T1&hl=en&as_sdt=4,31

Court holds that merger did not occur where defendant owned a conforming lot, purchased an adjacent nonconforming lot that enjoyed the benefit of a grandfather ordinance and an access easement from the municipality, then sold the conforming lot retaining the nonconforming lot for development.

Hedvat v. Tenafly Planning Board, A-0111-15T2 (Aug. 9, 2017)

https://scholar.google.com/scholar_case?case=791611219893659364&q=A-0111-15T2&hl=en&as_sdt=4,31

Minor subdivision that required a lot width variance denial upheld where the application did not comply with RSIS or with minimum design and safety standards and the conditions of the property were not unique.

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Walsh v. City of Cape May Planning Board, A-0170-16T4 (Oct. 17, 2017)

https://scholar.google.com/scholar_case?case=4560226552024673925&q=A-0170-16T4&hl=en&as_sdt=4,31

Subdivision application with (c)(2) variance to divide 12,000 sf lot into two nonconforming 6,000 sf lots where a minimum lot area of 6500 sf is required properly denied because the board found that the street was a narrow street prone to flooding, the development would be contrary to the master plan and the variance would only benefit the applicant, not the general public. Where the applicant failed to discuss the elimination of a nonconforming guesthouse on the property during the planning board application, that issue could not be relied upon by the court.

Hadaya v. Princeton Planning Board, A-3830-16T4 (June 1, 2018)

https://scholar.google.com/scholar_case?case=8174175077746526073&q=A-3830-16T4&hl=en&as_sdt=4,31

A code provision that provides that “insofar as is practical, side lot lines shall be at right angles or radial to street lines” is sufficiently specific to pass the Pizzo Mantin test for reasonableness.

Monaghan v. Township of Teaneck Planning Board, A-2239-18T4 (May 8, 2020)

https://scholar.google.com/scholar_case?case=11066139462615508057&q=Monaghan+v.+Twp.+of+Teaneck+&hl=en&as_sdt=6,31&as_ylo=2020

“[A] ‘planning board shall, if the proposed subdivision complies with the ordinance and this act, grant preliminary approval to the subdivision.’ N.J.S.A. 40:55D-48(b). Where the proposed subdivision is not in compliance, planning boards also have the power to grant variances under N.J.S.A. 40:55D-70(c), commonly called ‘(c)’ variances.” “Under subsection (c)(1), an applicant must show that exceptional or undue hardship will result if the variance is not granted. [citation omitted]. What is essential is that the unique condition of the property must be the cause of the hardship claimed by the applicant. [citation omitted]. The hardship criteria of a (c)(1) variance is unaffected by personal hardship, financial or otherwise. [citation omitted]. The focus is ‘whether the strict enforcement of the ordinance would cause undue hardship because of the unique or exceptional conditions of the specific property.’ [citation omitted]. The hardship standard does not require the applicant to prove that without the variance the property would be zoned into inutility. The applicant need only demonstrate that the property’s unique characteristics inhibit the extent to which the property can be used.” A (c)(2) variance “is not based upon the ‘hardship’ but ‘requires a balancing of the benefits and detriments from the grant of the variance.’ [citation omitted]. The analysis focuses on advancing the purposes of the MLUL and the benefits to the community.”

“Normally, we would not disturb a board’s rejection of expert testimony. While expert testimony is often presented, the board is not bound to accept the testimony. [citation omitted]. However, here, the reasons for the Board’s rejection of the expert testimony, or for its factual findings and legal conclusions, were not articulated in its February 8, 2018 resolution. Given the absence of reasons supporting the Board’s rejection, the Law Division properly declined to defer to its findings and remanded to the Board for additional findings.”

Cherry v. Hadaya, A-0384-19 (Oct. 29, 2021)

https://scholar.google.com/scholar_case?case=17068242984123215473&q=Cherry+v.+Hadaya&hl=en&as_sdt=6,31&as_ylo=2021

The existence of a neighborhood scheme enforceable through deed restrictions is a question of fact to be answered not only by the wording of the deeds but by the surrounding circumstances and the acts of the parties. “Deed restrictions evidenced a clear intent to establish a neighborhood scheme because they: (1) applied to all lots of like character within the scheme; (2) are a benefit to all lots involved that are subject to the restrictions; and (3) are reasonably uniform as to the restrictions imposed.”

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Morgan v. West Cape May Combined Zoning & Planning Bd., A-4573-19 (Feb. 24, 2021)
https://scholar.google.com/scholar_case?case=9436254975125752647&q=Morgan+v.+west+cape&hl=en&as_sdt=6,31&as_ylo=2021

Board's decision to approve the subdivision of an oversized lot into two conforming lots, along with other minor dimensional variances, should be upheld as same was supported by sufficient credible evidence in the record and is not arbitrary, capricious or unreasonable. It was immaterial whether the Board erred by not referring this application to the Historic Preservation Committee (as alleged by Plaintiff) because N.J.S.A. 40:55D-110 provides that failure to refer such an application will not invalidate "any hearing or proceeding," same would not invalidate the Board's approval.

Malone v. City of Brigantine, A-0365-19 (July 16, 2021)
https://scholar.google.com/scholar_case?case=4278875363968837021&q=malone+v.+brigantine&hl=en&as_sdt=6,31&as_ylo=2021

Although a resolution of subdivision approval was not recorded and, consequently, a title searcher would not have discovered that Appellant's lot was encumbered with an open space restriction, Appellant was nevertheless on inquiry notice because she had purchased the seaside property by quitclaim deed for \$1 and obtained constructive notice of the restriction because of language contained in the filed plat.

Laks v. Herzog, A-2288-19 (Feb. 25, 2022)
https://scholar.google.com/scholar_case?case=8910686041988364616&q=laks+v.+herzog&hl=en&as_sdt=6,31

"[U]nder the MLUL, if no variance is required, the Board must grant subdivision approval to a development application that complies with the design standards and other requirements of a municipality's subdivision ordinance and the MLUL."

Franco v. Planning Bd. of the Borough of Little Silver, A-0972-22 (Jan. 16, 2024)
https://scholar.google.com/scholar_case?case=16220679964599678281&q=Franco+v.+Planning&hl=en&as_sdt=6,47&as_ylo=2024

With respect to the Board's denial of a c(2) variance for lot frontage related to a subdivision, the court affirmed the Board's determination that applicant's planner's testimony that the existing lot was "grossly oversized" did not meet the positive criteria requirement which must be "rooted in the purposes of the zoning ordinance rather than the advancement of the purposes of the property owner."

Besadar Holdings, LLC v. Twp. of Lakewood Plan. Bd., A-2075-23 (Aug. 27, 2025)
https://scholar.google.com/scholar_case?case=2029343397351554105&q=Besadar+Holdings&hl=en&as_sdt=6,47

Board did not have the authority to deny a subdivision because of an anticipated detrimental impact of off-street traffic conditions where plaintiffs had complied with both road-widening requirements and the off-street parking requirements of the zoning code.

CONDITIONAL USES

CONDITIONAL USES

Value Oil v. Town of Livingston, 152 N.J. Super. 354 (Law Div.), *affirmed*, 164 N.J. Super. 419, *certif. denied*. 79 N.J. 501 (1977)

http://scholar.google.com/scholar_case?case=13806321484363275400&q=152+N.J.+Super.+354+&hl=en&as_sdt=2,31

Conditional use distinguished from variance.

Darrell v. Governing Body of Twp. of Clark, 169 N.J. Super. 127 (App. Div. 1979) *aff'd*, 82 N.J. 426 (1980)

http://scholar.google.com/scholar_case?case=6663714365838109811&q=169+N.J.+Super.+127+&hl=en&as_sdt=2,31

Exxon Co., U.S.A. v. Livingston Twp., 199 N.J. Super. 470 (App. Div. 1985)

http://scholar.google.com/scholar_case?case=1771125640807599430&q=199+N.J.+Super.+470+&hl=en&as_sdt=2,31

Distance/proximity regulations found to be invalid

PRB Enterprises, Inv. v. So. Brunswick Planning Bd., 105 N.J. 1 (1987)

http://scholar.google.com/scholar_case?case=8758507405888468675&q=105+N.J.+1+&hl=en&as_sdt=2,31

Conditional use ordinance must have clearly established standards – stated purpose of ordinance in preamble that only “low traffic generating” uses permitted not sufficient

Cardinal Properties v. Borough of Westwood, 227 N.J. Super. 284 (App. Div. 1988)

http://scholar.google.com/scholar_case?case=16236747430764802798&q=227+N.J.+Super.+284+&hl=en&as_sdt=2,31

Conditional use ordinance which provided that the use must be “reasonably necessary for the convenience of the public in the location proposed” invalid attempt to control commercial competition.

Macedonian Orthodox Church v. Planning Bd., Randolph Twp., 269 N.J. Super. 562 (App. Div. 1994)

http://scholar.google.com/scholar_case?case=2504244235028788950&q=269+N.J.+Super.+562+&hl=en&as_sdt=2,31

Distinguishes conditional use approval from site plan approval.

Coventry Square v. Westwood Zoning Bd. of Adjust., 138 N.J. 285 (1994)

http://scholar.google.com/scholar_case?case=17399765633193391037&q=138+N.J.+285+&hl=en&as_sdt=2,31

Less stringent standard of proof for a d(3) conditional use variance because a conditional use is allowed in the zone under certain conditions, whereas a use variance is the introduction of a nonpermitted use into the zone. Proofs to support a conditional use variance need only justify the municipality’s continued permission for a use notwithstanding a deviation from one or more of the conditions. The focus of the negative criteria is on the impact of the deviation, not the impact of the use.

Lincoln Heights v. Twp. of Cranford, 314 N.J. Super. 366 (Law Div. 1998) *aff'd*, 321 N.J. Super. 355 (App. Div.), *certif. denied*, 162 N.J. 131 (1999)

http://scholar.google.com/scholar_case?case=13608655926282671112&q=314+N.J.+Super.+366+&hl=en&as_sdt=2,31

Meridian Quality Care, Inc. v. Board of Adjust., Twp. of Wall, 355 N.J. Super. 328 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=13036148527667618103&q=355+N.J.+Super.+328+&hl=en&as_sdt=2,31

Meszaros v. Planning Bd., City of South Amboy, 371 N.J. Super. 134 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=16157263586564887831&q=371+N.J.+Super.+134+&hl=en&as_sdt=2,31

Conditional use clause in a zoning ordinance must have clarity and specificity. Where conditional use ordinance lacks specifying conditions, it is void and planning board lacked authority to review conditional use application and matter must be reviewed as a variance before zoning board.

Brinker v. Brigantine City Planning Bd., A-3498-03T2 (Mar. 7, 2005)

Reversal of board's denial of variance application overturned where board properly considered the positive and negative criteria regarding lot size and frontage requirements pertaining to proposed conditional use, a duplex residence.

Bell v. Zoning Board of Adjust., Bor. of Ramsey, A-1463-03T2 (App. Div. 2005)

Court reaffirmed applicable burden of proof for applicant seeking "d" variance for non-compliance with a conditional use criteria, and held that denial of conditional use variance for car wash was appropriate where insufficient vehicle stacking provided, such that waiting cars might extend into busy roadway.

House of Fire Christian Church v. Zoning Bd. of Adjust., City of Clifton, 379 N.J. Super. 526 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=11109685254467004080&q=379+N.J.+Super.+526+&hl=en&as_sdt=2,31

In bifurcated application, where it indecipherable whether the board was considering the conditional use application, the site plan, or both, remand for an unbifurcated hearing is appropriate.

Twin Oaks Realty Development, LLC v. Zoning Board of Adjust., Twp. of Cranford, A-2687-04T5 (Jan. 30, 2006)

Court affirms denial of multiple variances for townhouse development, including density variance, where use was conditional use in zone.

Muslim Center of Somerset County v. Bor. of Somerville Zoning Bd. of Adjust., 2006 WL 1344323 (N.J. Super. L.)

Court sustains the denial of conditional use variances for religious organization to use a two-family home as a place of worship. Although the use is inherently beneficial, thereby satisfying the first prong of the *Sica* balancing test, there were several detrimental impacts to locating the house of worship in the subject location which either could not be ameliorated or to which plaintiff objected to taking steps to lessen the impact of the proposal. Denial did not violate RLUIPA where organization admitted that it was holding larger services at other locations and did not show any particular reason why the mosque had to be located at the subject location.

Dalrymple v. A & L, A-1625-05T3 (Aug. 15, 2006)

Where ordinance allows, as a conditional use, two residential apartments to be constructed above a commercial space, and application sought eight residential units, the court held that the board, in granting the application, erred by considering that the principal use of the proposed structure was commercial and not residential. The court noted that the square footage of the residential space was four times greater than that of the commercial space; that 16 of 18 parking spaces were devoted

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to residential use; two of the three stories were residential; and the predominant use disclosed by a view on three sides was residential. The court held that where a board proceeds on an erroneous understanding of the nature of a project and bases its determination upon that misapprehension, its decision will be viewed as arbitrary, capricious and unreasonable.

St. Gabriel's Syrian Orthodox Church v. Planning Bd., Bor. of Haworth, BER-5660-05 (Dec. 5, 2006)

Planning board lacked jurisdiction to hear a conditional use application where ordinance contained provisions which provided that "every conditional use shall meet all bulk requirements for the zone in which it is located" and the application required variances. Variances, not waivers, are required for bulk requirements listed in zoning ordinance.

Nouhan v. Board of Adjust., City of Clifton, 392 N.J. Super. 283 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=11574409842295196162&q=392+N.J.+Super.+283+&hl=en&as_sdt=2,31

A special exception granted under the former Municipal Planning Act, N.J.S.A. 40:55D-39b, to operate a restaurant did not include permission to operate a night club, even following the issuance of a license granted by the governing body, where the night club use is not permitted under the zoning ordinance. The night club expanded the use granted pursuant to the special exception.

CBS Outdoor, Inc. v. Borough of Lebanon Planning Bd./Bd. of Adjust., 414 N.J. Super. 563 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=2311026004098044039&q=414+N.J.+Super.+563+&hl=en&as_sdt=2,31

Board failed to follow Coventry Square when it considered conditional use variances because it failed to focus upon the "specific deviation[s]" from the conditional use standards and whether those deviations affected the suitability of the site for the purposed use. "Unless a variance was requested, conditional uses must satisfy all of the ordinance standards and specifications relating to the conditional use, even if those requirements are numerous." Demonstration of compliance with a conditional use standard cannot be deferred to site plan review. Where an applicant does not seek bifurcation of its application into separate applications for conditional use variances and site plan approval, it is required to demonstrate complete compliance with both the conditional use requirements and the site plan requirements, or seek variances.

Jackson Holdings, LLC v. Jackson Twp. Planning Bd., 414 N.J. Super. 342 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=2607380405334110556&q=414+N.J.+Super.+342+&hl=en&as_sdt=2,31

A governing body may not delegate its zoning power to its planning board by authorizing the board to approve conditional uses without providing clear and ascertainable standards with respect to the same. Ordinances which do not contain such standards are void. In a suit involving an ordinance which does not contain sufficiently clear conditional use standards, the court should join the governing body as a party.

Columbro v. Lebanon Township Zoning Bd. of Adjustment, 424 N.J. Super. 501 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=18007201963499145462&q=A-4558-10T3&hl=en&as_sdt=2,31

Board properly granted conditional use approval, with conditional use variances, to allow for a welding business as a home occupation because of the expansiveness of the definition of "home occupation" in the local zoning code.

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TSI East Brunswick, LLC v. Zoning Board of Adjust., Twp. of East Brunswick, A-2879-10T2 (March 1, 2012)

http://scholar.google.com/scholar_case?case=13062069149430816257&q=A-2879-10T2&hl=en&as_sdt=2,31

Board properly determined that a d(3) variance and not a d(1) variance was required where ordinance conditionally permitted health and fitness facilities in the zone but only if operated by non-profit entities and applicant was a for profit enterprise. Court determined that it was unclear whether Medici's enhanced quality of proof is required for conditional use variances and didn't reach the issue because the applicant satisfied that criteria even if required.

TSI East Brunswick, LLC v. Zoning Board of Adjust., Twp. of East Brunswick, 215 N.J. 26 (2013)

http://scholar.google.com/scholar_case?case=3448033978296135536&q=tsi+east+brunswick&hl=en&as_sdt=4,31

The enhanced quality of proof standard has no application in the evaluation of an application for a conditional use variance. A conditional use, if it complies with the stated conditions, is permitted. The "focus for the zoning board is one of evaluating 'the specific project at the designated site' to determine whether granting relief from one of the conditions can be reconciled with the governing body's imposition of the condition in the zone."

Rector, Wardens & Vestrymen of St. Bernard's Protestant Episcopal Church v. Bernards Township Planning Board, A-0070-12T2 (Jan. 16, 2015)

https://scholar.google.com/scholar_case?case=108607228439991850&q=A-0070-12T2+&hl=en&as_sdt=4,31

Board properly denied subdivision and variance application where applicant did not present sufficient proof to demonstrate its entitlement to steep slope variance. The applicant's planner's argument that the subdivision created lots that were more in keeping with the character of the neighborhood than the existing lot failed where he did not present any evidence establishing the characteristics of the neighborhood.

Hillsborough Towne Center Associates, LLC v. Board of Adjustment of the Township of Hillsborough, A-1444-13T1 (Sept. 15, 2015)

https://scholar.google.com/scholar_case?case=8343187149846526961&q=A-1444-13T1+&hl=en&as_sdt=4,31

A (d)(3) conditional use variance, not a (d)(1) use variance, was required for a proposed mixed use development where the uses were all permitted in the mixed use zone but they were not proposed in the configuration (e.g., freestanding, ground floor vs. upper level) outlined in the ordinance. A (d)(5) density variance required for proposal to construct more residential units than the number of units permitted by ordinance. And for a (d)(3) variance for a conditional use that deviates from enacted conditions or a (d)(5) variance from density restrictions must satisfy less stringent standards to satisfy the "special reasons" than an applicant for a (d)(1) use variance because the use is not a prohibited use. In addition, "an applicant for a conditional use variance is subject to a more relaxed standard of proof than the standard applicable to a (d)(1) variance when proving the negative criteria because the "enhanced quality of proofs standard" required by Medici does not apply to the negative criteria in an application for a conditional use variance.

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Goehring v. City of Elizabeth Zoning Board of Adjustment, A-5686-13T3 (Jan. 11, 2016)

https://scholar.google.com/scholar_case?case=2026232478447789066&q=A-5686-13T3&hl=en&as_sdt=4,31

In application for a conditional use variance to permit a fourth residential unit, the applicant did not have to demonstrate need for the additional unit but only that the site would accommodate the use. “The Board also noted its concern that the apartment may be put to illegal use at some point in the future. This speculative concern, without any additional supporting evidence, is insufficient grounds for denying plaintiff’s application, especially given his willingness to agree to restrictions on such use.”

St. Paul’s Outreach, Inc. v. Bd. of Adjust., Tp. Of South Orange Village, A-0339-1711 (Jan. 28, 2019)

https://scholar.google.com/scholar_case?case=8736795337650091863&q=A-0264-17T1&hl=en&as_sdt=4,31

Case remanded to board for consideration of what uses and conditions may be acceptable on application for an inherently beneficial religious use in a residential zone that failed to provide testimony on the nature and extent of a state-wide office that intended to occupy the premises.

AMEE @ 46, LLC v. Township of Denville, A-5282-17T3 (June 25, 2019)

https://scholar.google.com/scholar_case?case=105274309694425794&q=A-5282-17T3&hl=en&as_sdt=4,31

A conditional use ordinance must have clarity and specificity and if it does not contain "definite specifications and standards" consistent with N.J.S.A. 40:55D-67(a), "the ordinance is 'void' and therefore does not confer authority upon the board to approve" variances under the ordinance. [citation omitted]. Where one provision of the ordinance lacked "definite specifications and standards" sufficient “to enable plaintiff to know the limit and extent of the Ordinance’s provisions to satisfy the conditional use requirement” it “is void, and the Board’s denial of plaintiff’s application based on the void provision was arbitrary and capricious.” The court must also consider whether the invalid provision can be severed from the remainder of the ordinance without eviscerating the entire ordinance. To do so, the “court must interpret the ordinance and its legislative history to determine ‘whether the particular provision is so interwoven with the invalid clauses as that it cannot stand alone.’”

Idon Media, LLC v. Borough of Eatontown Zoning Board of Adj., A3290-19 (Oct. 18, 2021)

https://scholar.google.com/scholar_case?case=17204064731028893457&q=idon+media&hl=en&as_sdt=6,31&as_ylo=2021

Even though the Board required a d(1) use variance for a billboard, rather than a d(3) conditional use variance, the resolution did not need to be vacated because the Board found the plaintiff "has not attempted to present any special reasons as to why the limitations of the zoning ordinance should be waived. Further, the Board found the site not particularly suitable for a digital billboard because it is located too close to a residential zone, residential neighbors would be faced with an annoyance, and nearby properties would be burdened by the light emanating from the billboard.”

111 10th Avenue Assoc. v. Borough of Belmar Zoning Bd. of Adjust., A-0456-19 (April 12, 2022)

https://scholar.google.com/scholar_case?case=10322117652057876298&q=111+10th+Avenue+Assoc.+v.+Borough+of+Belmar+Zoning+Board+&hl=en&as_sdt=6,31&as_ylo=2022

Board’s denial of conditional use variances upheld where the application was unable to comply with the ordinance’s conditions for lot size, diameter, frontage and permitted structures of not less than four nor more than five "townhouse style" side-by-side residential clusters and the noncompliance materially affected the appropriateness of the site for the conditionally permitted use.

Mahwah BP, LLC v. Zoning Bd of Adj. of the Twp of Mahwah, A-1675-2021 (App. Div. 2023)
https://scholar.google.com/scholar_case?case=4010734549235969526&q=mahwah+bp+v.+mahwah&hl=en&as_sdt=6,47&as_ylo=2023

To establish entitlement to a conditional use variance under N.J.S.A. 40:55D-70(d)(3), an applicant must establish "that the site will accommodate the problems associated with the use even though the proposal does not comply with the conditions the ordinance established to address those problems," and "that the variance can be granted 'without substantial detriment to the public good,'" and "will not 'substantially impair the intent and purpose of the zone plan and zoning ordinance.'" See *Coventry Square v. Westwood Zoning Board of Adjustment*, 138 N.J. 285 (N.J. 1994). In this case, the Board incorrectly considered environmental safety concerns related to the impact of the proposed development on a closed landfill, a policy area solely within the NJDEP's jurisdiction.

***Hoboken for Responsible Cannabis, Inc. v. City of Hoboken Planning Bd.*, 480 N.J. Super. 357 (App. Div. 2024)**

https://scholar.google.com/scholar_case?case=16212195405040989290&q=+Hoboken+for+Responsible+Cannabis,+Inc.+v.+City+of+Hoboken+Planning+Bd.&hl=en&as_sdt=6,47

Where an cannabis retail application is filed with a municipality's cannabis review board before an ordinance regulating cannabis goes into effect, the time of application rule applies, and the planning board correctly granted conditional use approval of the application, notwithstanding apparent non-compliance with the new ordinance.

VARIANCES

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1. BULK & HEIGHT (C) VARIANCES

Kaufman v. Planning Bd. for Warren Twp., 110 N.J. 551 (1981)

http://scholar.google.com/scholar_case?case=15839558486177191373&q=110+N.J.+551+&hl=en&as_sdt=2,31

“By definition, no c(2) variance should be granted when merely the purposes of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus on a c(2) case, then, will be not on the characteristics of the land that, in light of current zoning requirements, create a ‘hardship’ on the owner warranting a relaxation of standards, but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.”

Nash v. Bd. of Adjust., Morris Twp., 96 N.J. 97 (1984)

http://scholar.google.com/scholar_case?case=7960206659941618496&q=96+N.J.+97+&hl=en&as_sdt=2,31

The applicant has burden of proof.

Terner v. Spyco, 226 N.J. Super. 532 (App. Div. 1988)

http://scholar.google.com/scholar_case?case=44237652177531561&q=226+N.J.+Super.+532+&hl=en&as_sdt=2,31

Hardship must be peculiar to the subject lot.

Valenti v. Planning Bd. of Absecon, 244 N.J. Super. 77 (App. Div. 1990)

http://scholar.google.com/scholar_case?case=5222804274058747615&q=244+N.J.+Super.+77+&hl=en&as_sdt=2,31

Commercial Realty v. First Atlantic, 122 N.J. 546 (1991)

http://scholar.google.com/scholar_case?case=14527842177883854657&q=122+N.J.+546+&hl=en&as_sdt=2,31

Height is a "c" variance.

Hawrylo v. Harding Twp. Bd. of Adjust., 249 N.J. Super. 568 (App. Div. 1991)

http://scholar.google.com/scholar_case?case=6147192748722191574&q=249+N.J.+Super.+568+&hl=en&as_sdt=2,31

Location of existing foundation within setback justified granting of hardship variance.

Kogene Building & Development v. Edison Board of Adjust., 249 N.J. Super. 445 (App. Div. 1991)

http://scholar.google.com/scholar_case?case=17511890898395858451&q=249+N.J.+Super.+445+&hl=en&as_sdt=2,31

Aldrich v. Schwartz, 258 N.J. Super. 300 (App. Div. 1992)

http://scholar.google.com/scholar_case?case=2297206648238577785&q=258+N.J.+Super.+300+&hl=en&as_sdt=2,31

Ketchenick v. Mtn. Lakes Bd. of Adjust., 256 N.J. Super. 647 (App. Div. 1992)

http://scholar.google.com/scholar_case?case=5353310240075353307&q=256+N.J.+Super.+647+&hl=en&as_sdt=2,31

Bressman v. Gash, 131 N.J. 517 (1993)

http://scholar.google.com/scholar_case?case=15341489499995587222&q=131+N.J.+517+&hl=en&as_sdt=2,31

Moroney v. Mayor and Council of the Bor. of Old Tappan, 268 N.J. Super. 458 (App. Div. 1993), certif. denied, 136 N.J. 295 (1994)

http://scholar.google.com/scholar_case?case=12506469147870681839&q=268+N.J.+Super.+458+&hl=en&as_sdt=2,31

Somol v. Bd. of Adjust., Morris Plains, 277 N.J. Super. 220 (Law Div. 1994)

http://scholar.google.com/scholar_case?case=4103938160181495664&q=277+N.J.+Super.+220+&hl=en&as_sdt=2,31morri

New Brunswick Cellular Telephone Co. v. Old Bridge Twp. Planning Bd., 270 N.J. Super. 122 (Law Div. 1993)

http://scholar.google.com/scholar_case?case=15331239603215946860&q=270+N.J.+Super.+122+&hl=en&as_sdt=2,31

Tower not a principal structure and therefore planning board has jurisdiction over height variance

Pullen v. Twp. of South Plainfield Planning Bd., 291 N.J. Super. 1 (App. Div. 1996)

http://scholar.google.com/scholar_case?case=17703326232443141581&q=291+N.J.+Super.+1+&hl=en&as_sdt=2,31

Menlo Park Plaza v. Woodbridge, 316 N.J. Super. 451 (App. Div. 1998)

http://scholar.google.com/scholar_case?case=7230744669200179596&q=316+N.J.+Super.+451+&hl=en&as_sdt=2,31

Lang v. Zoning Bd. of Adjust., Bor. North Caldwell, 160 N.J. 41 (1999)

http://scholar.google.com/scholar_case?case=6240304459081875635&q=160+N.J.+41+&hl=en&as_sdt=2,31

In hardship variance case, applicant must demonstrate that the property's unique characteristics inhibit the extent to which the property can be used. The size of the structure is also important and it must not be so unusually large that its size, rather than the unique condition of the property, causes the need for a variance.

Witt v. Bor. of Maywood, 328 N.J. Super. 432 (Law Div. 1998), *aff'd*, 328 N.J. Super. 343 (App. Div. 2000)

http://scholar.google.com/scholar_case?case=16445971208258142010&q=328+N.J.+Super.+432+&hl=en&as_sdt=2,31

Smith v. Fair Haven Zoning Bd. of Adjust., 335 N.J. Super. 111 (App. Div. 2000)

http://scholar.google.com/scholar_case?case=603316066302341471&q=335+N.J.+Super.+111+&hl=en&as_sdt=2,31

Simeone v. Zoning Bd. Of Adjust., Twp. Of East Hanover, 377 N.J. Super. 417 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=4811991017874704153&q=377+N.J.+Super.+417+&hl=en&as_sdt=2,31

Undersized lot case where denial of bulk variances upheld because proposed house (32-foot wide house on 50-foot wide lot) too large for lot and not in keeping with pattern of development in neighborhood.

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Jock v. Zoning Bd. Of Adjust., Twp. Of Wall, 184 N.J. 562 (2005)

http://scholar.google.com/scholar_case?case=11469954117639509053&q=184+N.J.+562+&hl=en&as_sdt=2,31

Undue hardship refers solely to the particular physical condition of the property, not personal hardship to its owner, financial or otherwise. A self-created hardship requires an affirmative action by the landowner or a predecessor in title that brings an otherwise conforming property into nonconformity. Here, when the lot was created, it complied with then existing zoning laws. The hardship associated with it was created later when the zoning ordinance was changed. By taking the two adjoining lots in separate titles, the owners did nothing to create or enhance the hardship connected with the lots. Purchasing and keeping property in diverse ownership to preserve a zoning advantage is an acceptable strategy.

Nash v. Bd. of Adjust., Morris Twp., 96 N.J. 97 (1984).

The conditional variance required plaintiffs to accept or reject an offer by the owners of the adjoining lot to purchase plaintiffs' lot at a price determined by the board to represent the fair market value of the lot with a variance. If plaintiffs accepted the offer, they had to close title. If they rejected the offer, the variances granted by the board would lapse and be void. The court sustained the board and the trial court finding that the board properly balanced the interest of the property owner and the adjacent owner and the municipality by imposing a reasonable condition on the grant of the variance.

Price v. Strategic Capital Partners, LLC, 404 N.J. Super. 295 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=10717319409743239988&q=404+N.J.+Super.+295+&hl=en&as_sdt=2,31

Variances must be limited to "particular case" and not a problem common in the zone.

Fay v. Belmar Zoning Bd. of Adjust., A-4695-06T2 (May 7, 2008), certif. denied, 957 N.J. 461 (2008)

http://scholar.google.com/scholar_case?case=5025076812268769865&q=Fay+v.+Belmar+Zonin+g+Bd&hl=en&as_sdt=2,31

Judges may visit the site if the visit will aid in understanding the evidence presented to the board, but may not rely on private knowledge or personal observations. Applicant not required to demonstrate that the claimed hardship would result in the inability to make any use of the property, only that it may inhibit the extent to which the property can be used. The analysis is not whether the applicant could have constructed a conforming structure, only whether the lot configuration required the variances sought. Where the applicant's home would have conformed had the lot not been narrow, the board acted within its discretion in finding that the applicant met the hardship criteria for a variance. The c(2) variance was supported by the reduction of the existing nonconforming setbacks.

Wilson v. Brick Twp. Zoning Bd., 405 N.J. Super. 189 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=14249831555168208892&q=405+N.J.+Super.+189+&hl=en&as_sdt=2,31

The Legislature's use of the term "or" in N.J.S.A. 40:55D-70(c)(1)(c) between the phrases "peculiar and exceptional practical difficulties" and "exceptional and undue hardships" is disjunctive. Therefore, a developer may seek a variance under either phrase, provided the other relevant criteria are met. To hold otherwise would render the phrase superfluous. Variance for rear yard demonstrated in connection with proposed construction of deck as a result of the location of the lawfully existing home which would only allow for a 3' wide deck if it conformed to the ordinance.

Egeland v. Zoning Bd. of Adjust., Twp. of Colts Neck, 405 N.J. Super. 329 (App. Div. 2009)
http://scholar.google.com/scholar_case?case=2794316736124193027&q=405+N.J.+Super.+329+&hl=en&as_sdt=2,31

Division of property by testamentary devise, although permitted, is a self-created hardship for the purposes of an application for a hardship variance pursuant to N.J.S.A. 40:55D-70(c).

Kinderkamack Road Associates, LLC v. Mayor and Council, Bor. of Oradell, 421 N.J. Super. 8 (App. Div. 2011)
http://scholar.google.com/scholar_case?case=15157930037527413491&q=421+N.J.+Super.+8+&hl=en&as_sdt=2,31

Plaintiff failed to satisfy “particular suitability” for use variance to use a residential lot as a buffer to a commercial development. “Rather than establishing Lot 9’s particular suitability as a landscaped buffer zone, plaintiff’s arguments regarding symmetry and efficiency suggest a basis to modify the Oradell zoning map, a remedy that is beyond the scope of this case.” The applicant also failed to satisfy the negative criteria because the proposal would allow the commercial development to encroach closer to the residential uses and allow for a more intensive development of the commercial lots.

Ten Stary Dom Partnership v. Mauro, 216 N.J. 16 (2013)
http://scholar.google.com/scholar_case?case=13513702275209909133&q=ten+stary+dom+partnership&hl=en&as_sdt=2,31

“[C]are must be taken [by the Board] to direct the evaluation of a request for a bulk variance to those purposes of zoning that are actually implicated or triggered by the requested relief . . . not every deviation from prescribed bulk standards implicates the same concerns. Thus, if an applicant seeks a variance from setback requirements, traditional zoning concerns such as preservation of light, air, and open space may be valid inquiries in an assessment of the impact of the requested variance. If an applicant seeks a variance from lot coverage requirements, drainage may be a valid inquiry in an assessment of the impact of the requested variance on the surrounding properties. . . On the other hand, some variances from prescribed bulk requirements may not implicate some of the otherwise valid zoning purposes advanced by other bulk variances. For example, a minor deviation from a height restriction has no impact on lot coverage and the valid goal of maintaining sufficient undeveloped area on a lot to foster light, air, and open space. A deviation from prescribed lot frontage may have no impact on any valid zoning purpose other than the stated public interest in location of all lots on a public street.” The Board cannot utilize the occasion of a request for a variance to delve into other concerns that can be adequately addressed in another fashion, such as the building inspector’s review of the building permit application.

White Castle System, Inc. Planning Board of the Twp. of Middletown, A-3938-12T1 (June 3, 2015)
https://scholar.google.com/scholar_case?case=7430877066373197949&q=A-3938-12T1&hl=en&as_sdt=4,31

Proposed development of fast food restaurant that complied with the conditional use standards, but required waivers under N.J.S.A. 40:55D-51(b) from the site plan ordinance, including a waiver from the buffer requirement, properly denied. Impracticability under the ordinance is based on the purposes of the ordinance requirement, not the economic impact upon the applicant, or inconvenience to the patrons of the restaurant.

Ottawa House, LLC v. Borough of Hasbrouck Heights, A-3876-13T1 (Oct. 30, 2015)
https://scholar.google.com/scholar_case?case=14232097477419699749&q=A-3876-13T1+&hl=en&as_sdt=4,31

Parking variance upheld here traffic engineer’s “testimony was supported by the ITE data which has previously been accepted as a reliable and authoritative source of data regarding traffic

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generation. [citation omitted]. In addition, the State Highway Access Code requires that every traffic impact study submitted to the NJDOT for its review must include ITE traffic data. See N.J.A.C. 16:47-1.1 to 9.1.”

426 Royal, LLC v. Planning Board of Township of South Brunswick, A-1334-14T4 (June 15, 2016)
https://scholar.google.com/scholar_case?case=1359767793632519978&q=A-1334-14T4&hl=en&as_sdt=4,31

A “Land Use” ordinance that provides for site plan standards and requirements relating to safe and efficient vehicular and pedestrian circulation, parking and loading in a subsection of its “Zoning” section entitled "Off-Street Parking and Loading Design Standards" is ambiguous and the Board and trial court properly found the standards to be design standards which could be waived, rather than zoning standards for which variances were required.

Galaxy Towers Condominium Association, Inc. v. Township of North Bergen, A-3583-13T3, A-0184-14T2, A-0519-14T2 (Aug. 8, 2016)
https://scholar.google.com/scholar_case?case=17742136956527193570&q=A-0184-14T2&hl=en&as_sdt=4,31

“Although a purchase offer is relevant to the decision to afford variance relief, it is not dispositive.”

Rosenblum v. Closter Planning Board, A-3243-14T2 (Aug. 12, 2016)
https://scholar.google.com/scholar_case?case=8940362682655709735&q=A-3243-14T2+&hl=en&as_sdt=4,31

Expansion of nonconforming structures require a “c” bulk variance and not a “d” use variance. Notwithstanding the fact that the zoning regulations were in conflict with the MLUL, the applicant was not required to ask the ZBA for an interpretation.

Smith v. South Brunswick Township, A-1218-15T2, A-3014-15T2 (May 18, 2017)
https://scholar.google.com/scholar_case?case=4904603233611267227&q=A-1218-15T2.&hl=en&as_sdt=4,31

Variance from a 200’ buffer requirement to allow PSE&G to build a substation was properly granted where the variance only impacted one property owner (who did not object) and the facility was needed to preserve power reliability. PSE&G was not required to demonstrate hardship to support a (c)(2) variance and any hardship on PSE&G as a result of not being able to acquire additional land from the property owner was not self-created.

World Wheat Foundation, Inc. v. Planning Board of the Township of Saddle Brook, A-5716-14T3 (July 20, 2017)
https://scholar.google.com/scholar_case?case=15243248438623761508&q=A-5716-14T3&hl=en&as_sdt=4,31

Parking variance properly denied. It is immaterial how many spaces the prior use which predated the current parking requirement would have required in comparison to the proposed use.

Glenn v. City of Cape May Planning Board, A-5504-15T3 (Sept. 11, 2017)
https://scholar.google.com/scholar_case?case=9220389341331200518&q=A-5504-15T3&hl=en&as_sdt=4,31

Board decision to grant (c)(2) variance to allow demolition of restaurant and construction of new restaurant and motel units above it upheld where Board found that the plan would promote the efficient use of the land and lessen the cost of development because it added to an already existing hotel, rather than creating a new structure and would serve environmental interests by obviating the need to increase the impervious coverage.

Yu v. Toms River Planning Board, A-0203-16T1 (Jan. 18, 2018)

https://scholar.google.com/scholar_case?case=3698307207954395482&q=A-0203-16T1&hl=en&as_sdt=4,31

Subdivision requiring c(1) hardship variance should have been denied because the claimed hardship was self-created. "It is undisputed that the Schoelens previously subdivided their seven-acre parcel, creating the two lots that now exist. The two lots are thus configured exactly as they designed. When they applied to further subdivide the property, seeking hardship variance relief based on the placement of the existing homes, sheds and driveways, it was incumbent on the Board to consider whether the claimed hardship was one of the Schoelens' own making."

CT TR Holdings, LLC v. Toms River Planning Board, A-3839-16T1 (Aug. 9, 2018)

https://scholar.google.com/scholar_case?case=5207692570621246542&q=A-3839-16T1&hl=en&as_sdt=4,31

Restriction on number of floors was distinct requirement from height restriction and required proof to support (c)(1) or (c)(2) variance.

Bergen Ridge Homeowners Association, Inc. v. Township of North Bergen Planning Board, A-0206-15T1 (Aug. 30, 2018)

https://scholar.google.com/scholar_case?case=4691097413666386539&q=A-0206-15T1&hl=en&as_sdt=4,31

Hardship variance properly granted where evidence demonstrated that the property was unusually long, narrow and mostly under water.

Campana v. Township of Long Beach Land Use Board, A-0762-17T1 (July 29, 2019)

https://scholar.google.com/scholar_case?case=4266634830055716621&q=A-0762-17T1&hl=en&as_sdt=4,31

A (c)(1) variance requires a demonstration of hardship due to the physical characteristics of the lot, is unaffected by personal hardship, but "financial hardship is not irrelevant when determining whether a variance grant is warranted." [citation omitted]. A (c)(1) variance does not require a demonstration that the claimed hardship would result in the inability to make any use of the property, but only that it may "inhibit the extent to which the property can be used." [citation omitted]. "Moreover, the analysis for a (c)(1) variance is not properly predicated on whether the applicant could have constructed a conforming structure. [citation omitted] Instead, the focus should be on whether the narrowness of the lot required the setback and building coverage variances sought by the applicant."

"In contrast, a (c)(2) variance, often referred to as the flexible (c) variance, allows departure from the zoning requirement when application of the zone plan is not advanced and the benefits of the deviation substantially outweigh any detriment due to the physical characteristics of the property. [citation omitted]. A (c)(2) variance is not justified when "merely the purposes of the owner will be advanced." [citation omitted]. Rather, the community must actually receive a benefit due to the fact that the variance represents a better zoning alternative for the property."

"In addition to the positive criteria, an applicant for either a (c)(1) or a (c)(2) variance must also satisfy the negative criteria required under N.J.S.A. 40:55D-70(d): '[T]hat such variance . . . can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.' The negative criteria focuses on the impact that the variance will have on the specific adjacent properties affected by the deviations from the ordinance, [citation omitted] as well as any detriment to the zoning plan."

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Patel v. City of South Amboy Planning Board, A-3744-18T1 (March 9, 2020)

https://scholar.google.com/scholar_case?case=5883001911060809598&q=+Patel+v.+City+of+S.+Amboy&hl=en&as_sdt=6,31&as_ylo=2019

“In general, a planning board has the authority to waive certain requirements for site plan approval where their application would result in “undue hardship” because of conditions unique to the property. N.J.S.A. 40:55D-51(b). The primary distinction between waivers and variances is that waivers are exceptions from requirements contained in a site plan ordinance, whereas variances are exceptions from a municipal zoning ordinance.” There is no requirement for an applicant to “adopt a site plan that eliminated the need for variances or waivers and no error by the Planning Board or trial court for failing to impose such a requirement.” “This is not a requirement for granting a (c)(2) variance.”

Renaissance Beverages III LLC v. Township of Lower Planning Board, A-3611-18T3 (July 9, 2020)

https://scholar.google.com/scholar_case?case=15277656535821993599&q=Renaissance+Beverages+v.+lower&hl=en&as_sdt=6,31&as_ylo=2020

Variance for outdoor displays at shopping center upheld as an aesthetic enhancement which is a valid purpose of zoning. The negative criteria were met because landscaping around the shopping center would help to shield the view of the displays and since numerous other displays exist in the community, it would not substantially impair the intent of the zoning plan. Variance relief for additional signage was upheld because the board found that “the proposed signs will enhance traffic safety and circulation, especially for summertime visitors who are not familiar with the area.” And the signs would enhance the aesthetics of the shopping center by covering blank spaces on walls and windows. In addition, the graphic sign was more decorative in nature than the typical signage.

Sadowe v. Autozone Northeast, LLC, A-0585-18T3 (Sept. 2, 2020)

https://scholar.google.com/scholar_case?case=909206221402389362&q=Sadowe+v.+Autozone&hl=en&as_sdt=6,31&as_ylo=2020

Proof needed for a (c)(1) hardship variance must be based on the property’s condition, but does not require a showing that “no alternative economic use of the Property was possible, or that it would have ‘complete inutility’ without the variance.” The applicant demonstrated justification for a (c)(2) side yard variance where the proposed use was permitted and replaced a use that was permitted by variance.

I Mem’l Drive LLC v. 160 West Broadway Assoc., LP, A-0511-19, A-0636-19 (Aug. 13, 2021)

https://scholar.google.com/scholar_case?case=14631100846996496447&q=160+west+broadway&hl=en&as_sdt=6,31

A Planning Board’s grant of bulk variances is arbitrary capricious and unreasonable where the Board resolution provides no independent findings of fact, and merely parrots the Board Planner’s memorandum.

In the Matter of the Twp. of East Brunswick, A-3115-19A-3125-19 (July 30, 2021)

https://scholar.google.com/scholar_case?case=6490114044634801366&q=in+the+matter+of+township+of+east+brunswick&hl=en&as_sdt=6,31&as_ylo=2021

“[A] planning board’s authority in reviewing a site plan application is limited to determining whether the plan conforms with the municipality’s zoning and site plan ordinances.” [citations omitted]. Planning Board’s violation of settlement agreement (and the MLUL) by demanding that Plaintiff pay for road improvements beyond the traffic increase related to the proposed development required reversal.

Gonzalez v. Odunlami, A-3212-19 (April 23, 2021)

https://scholar.google.com/scholar_case?case=6554829694410216129&q=Gonzalez+v.+Odunlami&hl=en&as_sdt=6,31&as_ylo=2021

Where there is adequate uncontroverted planning evidence in the record to support the Board's grant of (c)(1) variance relief, a reviewing court will not disturb same.

Concerned Citizens of Tenaflly, Inc. v. Borough of Tenaflly Planning Board, A-1989-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=15316178969208978819&q=tenaflly+v.+tenaflly&hl=en&as_sdt=6,47&as_ylo=2023

Because a flag pole is an accessory use, c variance relief, and not d(6) height variance relief, is required.

Wronko v. MC Tuscany II Property, 254 N.J. 200 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=14644866280110178160&q=Wronko+v.+MC+Tuscany+&hl=en&as_sdt=6,31

Due to the County requiring additional right-of-way after Applicant had obtained its initial municipal approval, amended approval, with variance relief, was required for lot width, lot area and front yard setback variances. Under subsection (c)(1), an applicant must show that exceptional or undue hardship will result if the variance is not granted. *Chirichello v. Zoning Bd. of Adjustment*, 78 N.J. 544, 552 (1979). What is essential is that the unique condition of the property must be the cause of the hardship claimed by the applicant. The hardship criteria of a (c)(1) variance is unaffected by personal hardship, financial or otherwise. Appellate Division upheld the trial court's decision that the Board had adequate basis to hold that c(1) relief should be granted and that the County's increased need for right-of-way was not a "self created" hardship.

Ebury Re, LLC v. Twp of Mount Olive Planning Board, A-1630-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=7687165759443079463&q=Ebury+Re,+LLC+v.+Twp.+of+Mount+Olive+&hl=en&as_sdt=6,47&as_ylo=2023

It is incumbent on an applicant for a (c)(1) hardship variance to establish how the hardship was created. Here, because the applicant failed to explain how the subject undersized lot was created, the Board was correct to conclude that the hardship was "self created" and therefore had adequate basis to deny applicant's variance to construct a single family home on an undersized lot.

355 Route 9, LLC v. The CrownPoint Group, LLC., No. A-1513-22 (Mar. 13, 2024)

https://scholar.google.com/scholar_case?case=12291799598663253742&q=355+route+9&hl=en&as_sdt=6,47&as_ylo=2024

With respect to this application for a 3 story/34' tall self-storage facility, the maximum height limitations of the subject zone were thirty-five feet or two and one-half stories, whichever is less. Appellate Division confirmed that height variance relief was correctly obtained as a c(1) and c(2) variance and that a d(6) variance was not required.

Valentine v. City of Cape May Zoning Bd. of Adjustment, A-1126-23 (Oct. 29, 2024)

https://scholar.google.com/scholar_case?case=9653793088266845020&q=Valentine+v.+City+of+Cape+May+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,47&as_ylo=2024

Because a home was constructed prior to the existing setback being adopted, same represents an existing "hardship" warranting a c(1) variance setback variance to install a pool. Neighbor's general objections related to high intensity of the use does not outweigh contrary expert opinions. Furthermore, a c(2) variance was also warranted in the record due to the number of improvements proposed by applicant to lessen existing non-conformities.

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Liberty Storage, LLC v. City of Jersey City Planning Bd., A-0613-22 (Nov. 4, 2024)

https://scholar.google.com/scholar_case?case=381076725375742481&q=+Liberty+Storage,+LLC+v.+City+of+Jersey+City+Planning+Bd.&hl=en&as_sdt=6,47

Record supports the Board's determination that applicant established entitlement to both a (c)(1) hardship variance and a (c)(2) variance for the setback of a single handicap-accessible parking space.

Wokas v. Mattina, A-2915-22 (Jan. 7, 2025)

https://scholar.google.com/scholar_case?case=5449531734663213991&q=Wokas+v.+Mattina&hl=en&as_sdt=6,47

Where an ordinance defines an accessor use as being “generally located on the same lot,” a driveway to service a single-family home that crosses across another lot is still a permitted accessory use and not a second principal use on the lot that it crosses.

Kaja v. Borough of W. Long Branch Planning Bd., A-3680-22 (Feb. 3, 2025)

https://scholar.google.com/scholar_case?case=16734402064981601825&q=Kaja+v.+Borough+of+W.+Long+Branch+Planning+Bd.&hl=en&as_sdt=6,47

Because plaintiff had not demonstrated the positive criteria necessary for a (c)(2) variance, i.e. that grant of approval would “actually benefit the community in that it presents a better zoning alternative for the property,” and the facts showed that only plaintiff would benefit from the subdivision, the Appellate Division upheld the Board’s denial of a subdivision variance to create two (2) non-conforming lots.

Diminni v. Seaside Plan. Bd., A-2859-23 (May 23, 2025)

https://scholar.google.com/scholar_case?case=14580201490785565711&q=diminni&hl=en&as_sdt=4,31

“Plaintiff [objector] further argues that One Ocean Terrace failed to show how the decreased ‘[five]-foot setbacks promote public health, safety and welfare in a way that [ten]-foot setbacks do not.’ Plaintiff, and not One Ocean Terrace, however, has the burden of proof to establish the Planning Board's decision as arbitrary, capricious, and unreasonable. Plaintiff's unsupported claims fail to satisfy this standard. See *Bressman v. Gash*, 131 N.J. 517, 530, 621 A.2d 476 (1993) (holding that the record does not have to compel the grant of a variance for the Planning Board to grant a variation within their discretion).”

2. ACCESSORY USE VARIANCES

Red Oaks Homeowner's Ass'n, LLC v. Planning Bd. of the Twp. of Lakewood, A-2146-22 (May 6, 2024)

https://scholar.google.com/scholar_case?case=4559509476681852801&q=red+oaks&hl=en&as_sdt=6,47&as_ylo=2024

A dormitory is not a common, customary, incidental, or obvious in relationship to a school as a primary use of a property because schools commonly exist without dormitories.

3. USE VARIANCES AND OTHER D VARIANCES

Kohl v. Mayor and Council of Fair Lawn, 50 N.J. 268 (1967)

http://scholar.google.com/scholar_case?case=5504573919255489294&q=50+N.J.+268+&hl=en&as_sdt=2,31

Medici v. B.P.R. Co., 107 N.J. 1 (1987)

http://scholar.google.com/scholar_case?case=7670763351877702884&q=107+N.J.+1&hl=en&as_sdt=2,31

The applicant must prove, and the board must find, that the use promotes the general welfare because the proposed site is particularly suited for the proposed use. Applicant for commercial use variance must bear "enhanced burden of proof that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance, proof which must reconcile the proposed use variance with the zoning ordinance's omission of the use from those permitted in the district."

Burbridge v. Mine Hill Twp., 117 N.J. 376 (1990)

http://scholar.google.com/scholar_case?case=10102413958017806155&q=117+N.J.+376+&hl=en&as_sdt=2,31

Aesthetics is "special reason."

Pagano v. Zoning Bd. of Adjust., Twp. of Edison, 257 N.J. Super. 382 (Law Div. 1992)

http://scholar.google.com/scholar_case?case=5975599791573284546&q=257+N.J.+Super.+382+&hl=en&as_sdt=2,31

Eagle Group of Princeton v. Hamilton, 274 N.J. Super. 551 (App. Div. 1994)

http://scholar.google.com/scholar_case?case=13892357166999619301&q=274+N.J.+Super.+551+&hl=en&as_sdt=2,31

Elco v. R.C. Maxwell Co., 292 N.J. Super. 118 (App. Div. 1996)

http://scholar.google.com/scholar_case?case=3634717913167741664&q=292+N.J.+Super.+118+&hl=en&as_sdt=2,31

Vidal v. Lisanti Foods, Inc., 292 N.J. Super. 555 (App. Div. 1996)

http://scholar.google.com/scholar_case?case=16831680770671248637&q=292+N.J.+Super.+555&hl=en&as_sdt=2,31

Funeral Home Management, Inc. v. Basralian, 319 N.J. Super. 200 (App. Div. 1999)

http://scholar.google.com/scholar_case?case=750744958638032273&q=319+N.J.+Super.+200+&hl=en&as_sdt=2,31

Randolph Town Center v. Twp. of Randolph, 324 N.J. Super. 412 (App. Div. 1999)

http://scholar.google.com/scholar_case?case=2493031870702722048&q=324+N.J.+Super.+412+&hl=en&as_sdt=2,31

Standard for FAR variance. Court holds that pursuant to *Coventry Square* that an applicant for a FAR (d)(4) variance need not show that the site is particularly suited for more intensive development.

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Meridian Hospital v. Bor. of Point Pleasant, 325 N.J. Super. 490 (App. Div. 1999), *certif. denied*, 163 N.J. 80 (2000)

http://scholar.google.com/scholar_case?case=3850261340189306923&q=325+N.J.+Super.+490+&hl=en&as_sdt=2,31

New York SMSA Ltd. Partnership v. Bd. of Adj. of Twp. of Bernards, 324 N.J. Super. 149 (App. Div.), *certif. denied*, 162 N.J. 488 (1999)

http://scholar.google.com/scholar_case?case=5381984667642996082&q=324+N.J.+Super.+149+&hl=en&as_sdt=2,31

New York SMSA Ltd. Partnership v. Bd. of Adjust. of Twp. of Middletown, 423 N.J. Super. 166 (App. Div.), *certif. denied*, 162 N.J. 488 (1999)

http://scholar.google.com/scholar_case?case=18137465806589985912&q=423+N.J.+Super.+166+&hl=en&as_sdt=2,31

AWACS v. Clemonton Bd. of Adjust., 160 N.J. 21 (1999)

http://scholar.google.com/scholar_case?case=10909867200949897562&q=160+N.J.+21+&hl=en&as_sdt=2,31

New Brunswick Cellular Telephone Co. v. Bor. of South Plainfield Bd. of Adjust., 160 N.J. 1 (1999)

[http://scholar.google.com/scholar_case?case=4671607337309792720&q=160+N.J.+1+\(1999\)&hl=en&as_sdt=2,31](http://scholar.google.com/scholar_case?case=4671607337309792720&q=160+N.J.+1+(1999)&hl=en&as_sdt=2,31)

Cellular Tel. v. Zoning Bd. of Adjust. of Ho-Ho-Kus, 197 F.3d 64 (3d Cir. 1999)

http://scholar.google.com/scholar_case?case=802900572378102574&q=197+F.3d+64+&hl=en&as_sdt=2,31

Northeast Towers v. Zoning Bd. of Adjust., 327 N.J. Super. 476 (App. Div. 2000)

http://scholar.google.com/scholar_case?case=14040963637425129097&q=327+N.J.+Super.+476+&hl=en&as_sdt=2,31

Stop & Shop Supermarket v. Board of Adjust., Twp. of Springfield, 162 N.J. 418 (2000)

http://scholar.google.com/scholar_case?case=18305059790674549999&q=162+N.J.+418+&hl=en&as_sdt=2,31

Supermarket had the right to use variance granted to predecessor in title which allowed parking for retail store in residential zone because both uses were retail uses under the ordinance.

Kerr, Jr. v. Zoning Bd. of Adjust. of Princeton, A-874-99T1 (App. Div.), *certif. denied*, 165 N.J. 135 (2000)

Omnipoint Communication, Inc. v. Board of Adjust., Twp. of Bedminster, 337 N.J. Super. 398 (App. Div. 2001), *certif. denied*, 169 N.J. 607 (2001)

http://scholar.google.com/scholar_case?case=4487821152781655286&q=337+N.J.+Super.+398+&hl=en&as_sdt=2,31

Munisteri v. Bd. of Adjust., Jersey City, A-6708-99T3 (App. Div. 2001)

Variance upheld because the approval would “benefit the neighborhood in that it represents a better zoning alternative for the property.”

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Bell Atlantic-New Jersey, Inc. v. Riverdale Zoning Bd. of Adjust., 352 N.J. Super. 407 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=1331117236666234348&q=352+N.J.+Super.+407+&hl=en&as_sdt=2,31

Reversed denial of use variance to permit parking for 40 Verizon employees on an adjacent lot with non-conforming use because board's improper perception of Verizon as a solely commercial venture seeking purely private economic goals fatally infected its application of the positive and negative criteria to the facts and its weighing of those criteria.

Ocean County Cellular Tel. d/b/a Comcast Cellular One v. Twp. of Lakewood Bd. of Adjust., 175 N.J. 75 (2002)

Reversal of denial of use variance for a rooftop wireless facility upheld as evidence clearly demonstrated that the site was particularly well-suited and Comcast made a reasonable and good faith effort, without success, to find an available and suitable alternative site.

Sprint Spectrum v. Borough of Upper Saddle River Bd. of Adjust., 352 N.J. Super. 575 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=18253032667720354559&q=352+N.J.+Super.+575+&hl=en&as_sdt=2,31

Reversed and remanded for order requiring board to approve use variance for 155' 3-carrier monopole on volunteer fire department property. Trial court erred in finding that a volunteer fire department had no power to enter into a lease with plaintiffs. Court found that volunteer fire departments are private nonprofit corporations with the right to lease its real property to a commercial enterprise. De novo review of record conducted with respect to the claim that board's denial has resulted in the prohibition of wireless services pursuant to § 332C(7)(B)(i)(II) of the TCA, demonstrated that: (1) a significant gap in coverage existed as the gap was not being serviced by another wireless carrier; (2) the site was the least intrusive means of closing the gap; and (3) any further attempts to secure approvals to construct a facility capability of filling the gap would be a futile.

Conselice v. Bor. of Seaside Park and Planning Bd. of Seaside Park, 358 N.J. Super. 327 (App. Div. 2003)

http://scholar.google.com/scholar_case?case=9752714702341968884&q=358+N.J.+Super.+327+&hl=en&as_sdt=2,31

Court affirmed decision of trial court finding the appellant required a use variance for the proposed expansion of a pre-existing non-conforming integrated mixed use, residence and real estate office. The court found that the expansion of the residential use not only expands that use, but also expands the mixed use of the property.

Scully-Bozarth Post v. Planning Bd. of City of Burlington, 362 N.J. Super. 296 (App. Div. 2003)

http://scholar.google.com/scholar_case?case=17609867416945511841&q=Scully-Bozarth+Post+v.+Planning+Bd.+Of+City+of+Burlington&hl=en&as_sdt=2,31

Denial of variance to place 52-ton army tank on front lawn of VFW Hall located in residential zone and historic district upheld.

Sprint Spectrum v. Zoning Bd. of Adjust., Borough of Leonia, 360 N.J. Super. 373 (App. Div. 2003)

http://scholar.google.com/scholar_case?case=18333136047919422347&q=360+N.J.+Super.+373+&hl=en&as_sdt=2,31

Proposed installation of telecommunications antennas and equipment on roof of apartment building satisfied positive criteria for use variance where company was licensed by FCC, there was a gap in service, placement of antennas at the proposed site would fill the gap, and there was no other

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suitable site in the borough. The negative criteria were satisfied because antenna installation would not have detrimental effects on residential zone.

New York SMSA LTD d/b/a Bell Atlantic Mobile (now Verizon Wireless), et al. v. Twp. of Mendham, et al., 366 N.J. Super. 141 (App. Div.), aff'd 181 N.J. 387 (2004)

http://scholar.google.com/scholar_case?case=9193167750621443109&q=366+N.J.+Super.+141+&hl=en&as_sdt=2,31

New York SMSA Limited Partnership v. Bd. of Adjust., Twp. of Weehawken, 370 N.J. Super. 319 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=8653617948628338679&q=370+N.J.+Super.+319+&hl=en&as_sdt=2,31

Because the interpretation of a statute or ordinance presents essentially a legal issue, conclusions of a municipal zoning board on matters of statutory interpretation are not entitled to any particular deference in judicial review. While a municipal zoning board may reject expert testimony, it may not do so unreasonably, based only upon bare allegations or unsubstantiated beliefs.

Grasso v. Bor. of Spring Lake, 375 N.J. Super. 41 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=6872189427030327621&q=375+N.J.+Super.+41+&hl=en&as_sdt=2,31

Court extends *Coventry Square's* less stringent review standards to d(6) height variances. An applicant for a d(6) height variance can meet its burden of establishing the positive criteria and "special reasons" by two methods. First, applicants for a d(6) variance on grounds of hardship can show that the height restriction in effect prohibits utilization of the property for a conforming structure, or applicants could prove that a taller structure than permitted by ordinance would nonetheless be consistent with the surrounding neighborhood and would not offend any of the purposes of the height limitation established for that zone.

Puleio v. North Brunswick Twp. Bd. of Adjust., 375 N.J. 613 (2005)

http://scholar.google.com/scholar_case?case=14573668894120212593&q=375+N.J.+613+&hl=en&as_sdt=2,31

Subdivision of land which previously received a use variance only requires a majority vote for approval. It is not a (d) variance, either as a "new" d(1) variance or as an expansion of a nonconforming use. Application must go to the same board which granted the use variance, as the court essentially treated it as a bifurcated application for use variance/subdivision.

Twp. of North Brunswick v. Zoning Bd. of Adjust., Twp. of North Brunswick, 378 N.J. Super. 485 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=8740046999007560452&q=378+N.J.+Super.+485+&hl=en&as_sdt=2,31

Use variance not appropriate where variance will substantially alter the character of the district as that character has been prescribed by the zoning ordinance.

Saddle Brook Realty v. Twp. of Saddle Brook Zoning Bd., 388 N.J. Super. 67 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=9165285407105566525&q=388+N.J.+Super.+67+&hl=en&as_sdt=2,31

Zoning board's findings were found to be insufficient to support conclusion that proposed location in strip mall for fast food restaurant was particularly suitable for the use as "special reasons" required for use variances, given that the board did not find that the location was more suitable than any other location in the commercial district. Board's finding that "there is no substantial distinction between the proposed Wendy's restaurant and a traditional restaurant" is not relevant to

the question of particular site suitability, but only reflects the board's disagreement with the governing body's policy decision to make the distinction. Proofs did not satisfy *Medici's* enhanced quality of proof. The use is not simply an omitted use, but an expressly prohibited use and there was no evidence of a substantial change in the character of the neighborhood.

Grubbs v. Slothower, 389 N.J. Super. 377 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=10971109266995651386&q=Grubbs+v.+Slothower&hl=en&as_sdt=2,31

A density variance is required in connection with a subdivision that proposes more than the allowable units per acre as measured by the lot size requirement in the applicable zone, even though the zoning ordinance did not have a specific density criteria. The relaxed standard of review enunciated in *Coventry Square* should be applied to variance applications seeking deviations from the density requirement in a particular zone pursuant to *N.J.S.A. 40:55D-70d(5)*. A density variance seeks a departure from certain regulations applicable to a use the municipality has chosen to permit, not prohibit, in the zone, and therefore the more stringent *Medici* standards should not apply. An applicant need not demonstrate that the property is "particularly suited for more intensive development" in order to prove "special reasons", but rather the focus should be on whether the applicant's proofs demonstrate that the site will accommodate the problems associates with a proposed use with a greater density than permitted by the ordinance. The applicant must show that despite the proposed increase in density, and the increased intensity of the use of the site, the project nevertheless served one or more of the purposes of zoning and was consistent with the overall goals of the MLUL. In addressing the negative criteria, the applicant must demonstrate that the increase in density would not have a more detrimental effect on the neighborhood than construction of the project in a manner consistent with the zone's restrictions.

Gooch v. Dawkins, A-6233-06T2 (May 9, 2008), certif. denied, 957 N.J. 461 (2008)

http://scholar.google.com/scholar_case?case=11423094919235698268&q=Gooch+v.+Dawkins&hl=en&as_sdt=2,31

Use variance to demolish an existing pool house on 10-acre riverfront estate and replace it with larger accessory residential structure for caretaker supported by special reasons including aesthetic improvements, improved security which would assist the Borough's police efforts, and decreased traffic because the caretaker would live on the premises. The demonstration of need is not a statutory requirement for the grant of a use variance. "While the surrounding community's need for a certain use variance may weigh in favor of granting an application, such a showing is not necessary, as long as special reasons are otherwise demonstrated."

Homes of Hope, Inc. v. Eastampton Twp. Land Use Planning Bd., 409 N.J. Super. 330 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=9364478533835945438&q=409+N.J.+Super.+330+&hl=en&as_sdt=2,31

A municipality's compliance with the Fair Housing Act by meeting its fair share obligation does not impact affordable housing's inherently beneficial use status for purpose of obtaining a use variance.

Shri Sai Voorhees, LLC v. Twp. of Voorhees, 406 N.J. Super. 497 (Law Div. 2009)

http://scholar.google.com/scholar_case?case=5712880379750508567&q=406+N.J.+Super.+497+&hl=en&as_sdt=2,31

"D" variance required for proposed 55-foot tall hotel in zone which permitted structures only 50-feet in height – court holds that statute requires special reasons variance where height exceeds limit by exactly ten percent.

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Saadala v. East Brunswick Zoning Bd. of Adjust., 412 N.J. Super. 541 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=12802638979421569126&q=412+N.J.+Super.+541+&hl=en&as_sdt=2,31

An application for a use variance for establishment of a combined convenience store and retail gas station, to replace two separate and independent nonconforming uses consisting of a convenience store and gas station, constitutes a new use which is subject to the Medici standard of review, rather than the more liberal Burbridge standard of review applicable to an expansion of an existing nonconforming use.

Reich v. Borough of Fort Lee Zoning Bd. of Adjust., 414 N.J. Super. 483 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=5841857068979449792&q=414+N.J.+Super.+483+&hl=en&as_sdt=2,31

The addition of another dentist to a dental office, without increasing the footprint, where the ordinance does not regulate the number of professionals that can occupy the space, is not an intensification of the nonconforming use.

Nuckel v. Borough of Little Ferry Planning Bd., 208 N.J. 95 (2011)

http://scholar.google.com/scholar_case?case=12371953637073903853&q=208+N.J.+95+&hl=en&as_sdt=2,31

A use variance is required where a developer proposes to place a driveway on an undersized lot, that houses a nonconforming use, to service a use on an adjacent lot, because the proposed driveway is not an accessory use under the relevant zoning ordinance, it constitutes a second principal use, prohibited by the zoning ordinance. In addition, because the proposed driveway will reduce the buffers between the nonconforming use and a conforming use, presumably intensifying the discordance between the uses, a (d)(2) variance is required unless the zoning authority determines that the intensification of the nonconformity is insubstantial. “Although we have applied the de minimis rationale in connection with an expansion of a nonconforming use . . . , we have never done so in considering the need for a use variance under N.J.S.A. 40:5D-70(d)(1) to permit an otherwise prohibited use. There is good reason for that. Where, as here, the zoning ordinance permits only one principal use, the addition of an entirely new principal use is prohibited and, by its very nature, cannot be inconsequential.”

T-Mobile Northeast LLC v. Borough of Leonia Zoning Board of Adjust., 942 F. Supp. 2d 474 (D.N.J. 2013)

http://scholar.google.com/scholar_case?case=13479199065685447035&q=No.+11-2341+&hl=en&as_sdt=3,31

Board’s decision to deny application of FCC-licensed wireless provider to collocate antennas on roof of apartment building where another carrier already had antennas violated Section 332(c)(7)(B) of the Telecommunications Act of 1996 because it (1) resulted in unreasonable discrimination against plaintiff; (2) had the effect of prohibiting wireless services; and (3) was not supported by substantial evidence in the record.

Price v. Himeji, LLC, 214 N.J. 263 (2013)

http://scholar.google.com/scholar_case?case=9615862703858357334&q=A-46+September+term+2011&hl=en&as_sdt=4,31

The particular suitability standard does not require proof that the site be the only possible location for the particular project. The standard is met by employing a more flexible, fact-specific and site-specific approach that demonstrates that the general welfare is served because the use is peculiarly fitted to the particular location for which the variance is sought. “Although the availability of alternative locations is relevant to the analysis, demonstrating that a property is particularly suitable for a use does not require proof that there is no other potential location for the use nor does it

demand evidence that the project ‘must’ be built in a particular location.” Bulk variances are subsumed within the grant of the use variance where the board evaluated the total impact of the development as part of its review of the use variance and site plan application.

TSI East Brunswick, LLC v. Zoning Board of Adjust., Twp. Of East Brunswick, 215 N.J. 26 (2013)

http://scholar.google.com/scholar_case?case=3448033978296135536&q=tsi+east+brunswick&hl=en&as_sdt=4,31

The enhanced quality of proof standard has no application in the evaluation of an application for a conditional use variance. A conditional use, if it complies with the stated conditions, is permitted. The “focus for the zoning board is one of evaluating ‘the specific project at the designated site’ to determine whether granting relief from one of the conditions can be reconciled with the governing body’s imposition of the condition in the zone.”

Advance at Branchburg II, LLC v. Township of Branchburg Bd. of Adjust., 433 N.J. Super. 247 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=4882219210100171706&q=advance+at+branchburg&hl=en&as_sdt=4,31

Inclusion of affordable housing in a large, predominantly market rate housing development does not transform it into an inherently beneficial use.

Sprint Spectrum L.P. v. Zoning Board of Adjustment of the Borough of Paramus, 21 F. Supp. 3d 381 (2014)

http://scholar.google.com/scholar_case?case=17463336668060031949&q=Civ.+No.+09-04940&hl=en&as_sdt=3,31

A distributed antenna system, or DAS, “is not a feasible alternative [to a monopole or macro site] because it will not offer comparable wireless service when measured against the coverage that can be provided by the proposed macro facility. A DAS has significant reliability concerns associated with its deployment on utility poles, its small coverage areas per node, and its vulnerability to disruption.” “The Carriers do not bear the burden of proving that every potential alternative, no matter how speculative, is unavailable. The proper inquiry for an effective prohibition claim is whether ‘a good faith effort has been made to identify and evaluate less intrusive alternatives, e.g., that the provider has considered less sensitive sites, alternative system designs, alternative tower designs, placement of antennae on existing structures, etc.’” The denial of the variance application therefore constituted a prohibition of service in violation of 47 U.S.C. § 332(c)(7)(B)(i)(11) and was not supported by substantial evidence in violation of 47 U.S.C. § 332(c)(7)(B)(iii).

Arsalan v. Toms River Twp. Planning Bd., A-2445-13T1 (Mar. 19, 2015)

https://scholar.google.com/scholar_case?case=1353468410724027340&q=A-2445-13T1+&hl=en&as_sdt=4,31

Board properly granted c(2) variance for rear yard setback even though a conforming structure could be built where it was demonstrated that the “proposed layout provides for a better planning alternative than strict adherence to the Zoning Ordinance” because the structure would serve to buffer vehicular traffic and noise from the residential homes to the rear.

206 Acorn Associates, Inc. v. Planning Board of the Twp. of Byram, A-0199-13T3 (March 31, 2015)

https://scholar.google.com/scholar_case?case=16787792248081381462&q=A-0199-13T3+&hl=en&as_sdt=4,31

Medici’s enhanced standard of proof satisfied in application for drive-thru at CVS pharmacy. The drive-thru promoted the public health and general welfare by making prescription medication more

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accessible to customers and the drive-thru service was consistent with the goals of the Master Plan to support economic development and to vary land usage.

New York SMSA Limited Partnership, d/b/a Verizon Wireless v. Board of Adjust., Bor. of Bernardsville, A-4174-12T4 (April 8, 2015)

https://scholar.google.com/scholar_case?case=10972858188534622904&q=A-4174&hl=en&as_sdt=4,31

Denial of use variance for cell tower in residential zone upheld where expert testimony supported conclusion that tower would have significant negative impact and the proposed radio coverage would only cover a small, sparsely populated area and lightly traveled roads and there appeared to be other technologies and/or locations that would have a less severe impact on the local zoning.

Sprint Spectrum, L.P. v. Zoning Board of Adjust., Bor. of Paramus, 606 Fed. Appx. 669 (3rd Cir. 2015)

https://scholar.google.com/scholar_case?case=9152896394197195261&q=14-2954&hl=en&as_sdt=3,31

A land use board has effectively prohibited the provision of wireless services where a carrier has demonstrated that (1) its facility will fill a significant gap in service, and (2) the manner in which it proposes to fill the significant gap in service is the least intrusive on the values that the denial sought to serve. This requires a showing that a good faith effort has been made to evaluate less intrusive alternatives, which includes considerations of alternative sites, tower designs, and system designs. Whether a state or local government's regulation violates the effective prohibition provision of the TCA is reviewed de novo, and is not limited to the record compiled by the state or local authority. A monopoly is the least intrusive means where DAS was found not to be feasible for the coverage area in question "because it is more susceptible than a monopoly to outages due to falling trees, less flexible and therefore less able to cover multiple carriers, and designed to cover a smaller gap than required." The carriers "do not bear the burden of proving that every potential alternative, no matter how speculative, is unavailable. The proper inquiry for an effective prohibition claim is whether a good faith effort has been made to identify and evaluate less intrusive alternatives."

Stoupas v. Zoning Board of Adjust., Twp. of Edison, A-3469-13T3 (Oct. 9, 2015)

https://scholar.google.com/scholar_case?case=17133304954705954566&q=A-3469-13T3&hl=en&as_sdt=4,31

The board's findings regarding particular site suitability did not support that grant of a use variance for a gas station where the court found "nothing about the site's topography, size or shape that made it 'especially well-suited' for this purpose," as opposed to a use permitted in the zone. "[M]erely being located near a highway does not distinguish a proposed site from any other property in the vicinity of the highway, and does not demonstrate that the proposed site is 'particularly suitable' for" a gas station. With respect to the Medici enhanced quality of proof required for non-inherently beneficial commercial uses, the Board's "only comment on 'reconciliation' conclude[d] that the application as proposed can be reconciled with the master plan." As the judge observed, "[s]uch a generalization is an inadequate finding, and does not address the Medici standard." In 2011, the Board specifically rezoned the site to one that did not permit gasoline stations. The Board did not identify any changes in the character of the area in the short period between that rezoning and the filing of Blueberry's application that would justify departure from the local legislation, or present a cogent rationale to serve as a foundation for the enhanced quality of proofs required by Medici."

Jacoby v. Zoning Board of Adjust., Boro of Englewood Cliffs, A-0007-13T1, A-0259-13T1, A-0404-13T1 (Oct. 21, 2015)

https://scholar.google.com/scholar_case?case=1920290743924398001&q=A-0007-13T1&hl=en&as_sdt=4,31

“[W]here a structure substantially exceeds the local height restriction, that in determining whether the height of a building would be ‘consistent with the surrounding neighborhood[,]’ a zoning board is obligated to consider the impact that the structure would have on more than the municipality itself or the immediate vicinity of the structure. The ‘special reasons’ necessary to establish a height variance ‘must be tailored to the purpose for imposing height restrictions in the zoning ordinance.’” Where the proposed structure is in close proximity to an important resource, “and can be seen well beyond the immediate vicinity or municipality, established principles of zoning law direct that ‘surrounding neighborhood’ means all reasonable visual vantage points.” In reviewing the negative criteria, the board must make meaningful findings as to the intent and purpose of the zone plan and zoning ordinance as required by *Grasso*. “The board was obligated to consider the reason for the [] height limitation and make specific findings as to how the proposed variance conforms to the intent and purpose of the zoning plan.”

T-Mobile Northeast, LLC v. Borough of Mendham Zoning Board of Adjustment, A-1357-13T3 (Feb. 16, 2016)

https://scholar.google.com/scholar_case?case=13572236612203196334&q=1357-13T3&hl=en&as_sdt=4,31

In a conditional use variance case, the focus is on the effect on surrounding properties with respect to the specific deviations from the conditional use standards. Qualified expert testimony is required to support a finding that the conditional use variance sought would have an adverse effect on adjacent properties. News stories regarding safety hazards are not a substitute for qualified expert testimony.

Lavelle Investments, Inc. v. Shoffler, A-4171-14T2 (July 13, 2016)

https://scholar.google.com/scholar_case?case=8360403859202541797&q=A-4171-14T2&hl=en&as_sdt=4,31

Use variance for a parking lot in a residential zone which was accessory to a marina which was located in a conditionally permitted zone, was properly approved. The Board found that “a parking lot served the general welfare and is particularly suitable for the site. A marina could not be developed without the parking lot. . . . It supported this finding by noting that because the property was close to a property that could be used as a marina and the State of New Jersey had expressed a desire to encourage such use of shoreline property, the variance advanced the statutory goals of the zoning laws.” “‘Statewide policies are relevant to zoning decisions because municipalities exercise zoning power only through delegation of the State’s authority and they must consider the welfare of all the State’s citizens, not just the interest of the inhabitants in the particular locality.’”

Kelley v. Township of Rockaway Board of Adjustment, A-4471-13T1 (July 28, 2016)

https://scholar.google.com/scholar_case?case=2348012135982846959&q=A-4471-13T1&hl=en&as_sdt=4,31

“N.J.S.A. 40:55D-68 could not have provided the Township’s zoning officer with authority to approve the nonconforming use since, at the time that statute took effect, more than one year had already passed since the Township enacted the ordinance which made the [] use [] nonconforming.” His issuance of construction permits was ultra vires and void and Township was not estopped from revoking the permits.

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AB JC Investments, LLC v. Borough of Franklin Lakes Zoning Board of Adjustment, A-2022-14T2 (July 29, 2016)

https://scholar.google.com/scholar_case?case=3980769521634325837&q=A-2022-14T2&hl=en&as_sdt=4,31

“What constitutes an inherently beneficial use is decided based on the criteria of the MLUL, not based on a municipality’s compliance or lack thereof with the FHA.” A residential project that proposes twenty percent affordable units does not make the entire project inherently beneficial. “Any application for a use variance based on the particular suitability standard has always called for an analysis that is inherently site-specific.”

Richmond URF, LLC v. Zoning Board of Adjustment of the City of Jersey City, A-2977-14T1 (Aug. 15, 2016)

https://scholar.google.com/scholar_case?case=17021118635596460044&q=A-2977-14T1&hl=en&as_sdt=4,31

FEMA’s post Superstorm Sandy regulations that require that the first habitable floor of a building to be thirteen feet above sea level did not support the grant of (d)(6) height variance based on hardship, but special reasons were demonstrated by fact that the proposed height would be consistent with the surrounding neighborhood and would not offend any of the purposes of the height limitation. The Court distinguished *Jacoby* because the 8.5 foot (21.25%) height deviation at issue was determined to not be substantial because it “posed no problem beyond its immediate vicinity.”

Caro v. 28 McWhorter Street, LLC, A-3648-13T3 (Aug. 19, 2016)

https://scholar.google.com/scholar_case?case=2003538161158520862&q=A-3648-13T3&hl=en&as_sdt=4,31

Grant of use variance for parking lot reversed where the property characteristics are characteristics common to all properties in the zone and not particular to the subject parcel and contrary to the master plan. An economic downturn does not constitute changed circumstances where there is no showing that it resulted in undue hardship from an inability to put the lot to a conforming use.

Aurigemma Family Trust v. Borough of Wood-Ridge Planning Board, A-0105-15T4 (Feb. 2, 2017)

https://scholar.google.com/scholar_case?case=2612033888169519713&q=Aurigemma&hl=en&as_sdt=4,31

Medici’s enhanced quality of proof is not required for an expansion of a nonconforming use under d(2).

Coaches Realty, LLC v. Zon. Bd. of Adjust., Bor. of Wallington, A-0844-15T1 (March 29, 2017)

https://scholar.google.com/scholar_case?case=12607297178436924041&q=coaches+realty&hl=en&as_sdt=4,31

Grant of use and height variances to construct an apartment building reversed no competent evidence supported the grant. “A ‘board cannot rely upon unsubstantiated allegations, nor can it rely upon net opinions that are unsupported by any studies or data.’” *Medici’s* enhanced quality of proof not met where there as “no evidence of what the intent and purpose of the master plan and zoning ordinance was . . . making impossible a finding the proposed variance would not be inconsistent with the intent and purpose of the plan and zoning ordinance.”

Howell Associates, LLC v. Zoning Board of Adjust., Twp. of Howell, A-5110-14T3 (June 15, 2017)

https://scholar.google.com/scholar_case?case=97260264416211941&q=A-5110-14T3&hl=en&as_sdt=4,31

Use and height variance for hotel upheld where the Board conducted a site-specific evaluation and “found the Property was particularly suitable to the ‘hotel/conference center/banquet facility use’

because there was need for such a facility in the Township; the Property's proximity to two major highways 'represent[ed] a particularly appropriate location for this proposed use'; the proposed use would generate less traffic than (sic) 'retail or office uses permitted as of right in the HD-1 zone'; the particular physical characteristics of the Property 'constrained' the amount of developable area; and all of those factors 'significantly distinguish[ed]' the property from others in the HD-1 zone, which applied to much of the Route 9 corridor." The Board did not arrogate to itself the legislative zoning power notwithstanding the fact that the Council had removed hotels from the list of conditionally permitted uses in the zone, because the master plan continued to express a need for a hotel and the hotel would not alter the overall character of the zone. The height variance was "necessary to accommodate the number of hotel rooms, and that, in turn, was necessary to attract a first-class operator for the hotel."

New Cingular Wireless PCS, LLC v. The Zoning Board of Adjustment of the Township of Chatham, A-2467-15T1 (Aug. 16, 2017)

https://scholar.google.com/scholar_case?case=15173235254593162285&q=A-2467-15T1&hl=en&as_sdt=4,31

Plaintiff did not have to prove the existence of a "significant" gap in service in order to satisfy the positive criteria, or that it used the least intrusive means to address the gap in coverage. "However, in conducting the Sica balancing test applicable to the negative criteria, a board is entitled to consider the extent of the need for an additional cell tower — that is, the gap in service — balanced against the extent of the harm that will be caused by locating the cell tower in an area where its presence contravenes the local zoning ordinance."

Bartonek v. Township of Edison, A-2035-15T1 (Sept. 21, 2017)

https://scholar.google.com/scholar_case?case=9084456684693360789&q=A-2035-15T1&hl=en&as_sdt=4,31

Use variance for pet grooming business in nonconforming dwelling in industrial zone upheld where it was demonstrated that the property was particularly suited for the proposed because it was undersized, and the proposed use was less intensive than permitted uses. "The Board found that the grant of the variance could be reconciled with the zoning ordinance because it would 'permit a significantly less intense use on [the] small property.'"

PL Squared, LLC v. Zoning Board of Adjustment, Twp. of Hopewell, A-5104-15T3 (Oct. 5, 2017)

https://scholar.google.com/scholar_case?case=17215755186350537414&q=A-5104-15T3&hl=en&as_sdt=4,31

"Economic inutility of a parcel of land, resulting from the parcel not being reasonably adapted to a conforming use, is recognized as an undue hardship, and thus, can constitute grounds for a [use] variance." Where the surrounding uses are residential, open space and abandoned commercial uses, there is no credible basis to conclude that the purported economic inutility amounts to a special reason to allow for the conversion of a single-family dwelling into a convenience store and gas station. The applicant also failed to satisfy the negative criteria where the use would be contrary to the master plan in which the township maintained "a commitment to limit and discourage highway dependent commercial uses where such uses do not already exist."

Bairan v. Borough of Closter Zoning Board of Adjustment, A-3114-14T3 (Nov. 21, 2017)

https://scholar.google.com/scholar_case?case=1490069937158390413&q=A-3114-14T3&hl=en&as_sdt=4,31

Undue hardship not established where plaintiff's architect testified that it was possible to alleviate the physical limitations creating the alleged hardship. "Proof of undue hardship requires proof 'that the property is not reasonably adapted to a conforming use.'"

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Van Schoick v. Jackson Twp. Zon. Bd. of Adjust., A-1119-15T1 (Jan. 16, 2018)

https://scholar.google.com/scholar?hl=en&as_sdt=4%2C31&q=A-1119-15T1&btnG

Use variance to expand an existing business onto an adjacent lot following a rezoning of the property improperly denied where the lot “‘could not reasonably be developed in accordance with the MF [z]oning requirements’ because the MF zone had a ten-acre minimum lot requirement” and the PQ had only 1.3 acres of developable land.

Holloway v. Township of Jackson, A-2963-16T4 (July 16, 2018)

https://scholar.google.com/scholar_case?case=4017697561675122984&q=A-2963-16T4&hl=en&as_sdt=4,31

Zoning Board’s approval to allow a density variance to permit seven residential lots where application was for thirteen residential lots was supported by the Board’s determination that the unimproved private easement that gave access to the lots was not suitable for thirteen lots.

Avalonbay Communities, Inc. v. Twp. of So. Brunswick Zon. Bd. of Adjust., A-2655-16T3 (Aug. 2, 2018)

https://scholar.google.com/scholar_case?case=6361497766811555028&q=A-2655-16T3&hl=en&as_sdt=4,31

Variance from the requirement that housing must be for persons 55 years of age or older properly denied because applicant failed to demonstrate that the property was particularly well suited for non-age-restricted housing and the inclusion of a relatively small affordable housing component of a larger development does not transform the project into an inherently beneficial use for purposes of obtaining a (d)(1) variance. “Plaintiff was required to prove that, even if there were a need for its proposed use, ‘the general welfare is served because the use is peculiarly fitted to the particular location for which the variance is sought.’” Plaintiff also failed to satisfy the negative criteria. “In light of the pertinent language in the master plan, which makes clear the township seeks to provide affordable housing for low and moderate income senior citizens, and the language in the subject zoning ordinance, which states the permitted uses are limited to age-restricted housing for seniors, plaintiff clearly failed to carry its burden of showing the proposed use will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.” “If a party considers a zoning ordinance outdated or arbitrary, it may go before a municipality’s governing body and seek an amendment to the zoning ordinance. In fact, if, as plaintiff alleges here, the alleged deficiency is common to all or other areas of the municipality, the appropriate remedy is to seek relief from the governing body.”

Barnaskas v. Zoning Board of Adjustment, Twp. of Jackson, A-4349-15T3 (Aug. 2, 2018)

https://scholar.google.com/scholar_case?case=14809282818561736176&q=A-4349-15T3&hl=en&as_sdt=4,31

“Any application for a use variance based on the particularly suitable standard has always called for an analysis that is inherently site-specific.” A six-acre site supported finding of particular suitability for funeral home and substantially undersized to construct condominiums where the zone required 100 acres. “The funeral home would continue the residential feel of the surrounding area while providing a buffer between the commercial and residential uses.” Attorney’s office and financial planner’s office within funeral home were accessory uses where they were not permitted to work on outside matters or have clients who were not also clients of the funeral home.

Quick Plus Realty, LLC v. City of Bridgeton Zoning Board, A-4509-17T4 (June 13, 2019)

https://scholar.google.com/scholar_case?case=2314092781071892596&q=A-4509-17T4&hl=en&as_sdt=4,31

“[T]he type and degree of economic inutility that satisfies the positive criteria has no definitive interpretation, and ‘the exact boundaries within which a zoning board may consider economic

inutility have not been clearly drawn.” “To meet the burden of establishing peculiar suitability, an applicant must show the particular site is the one that, with the variance approved, would advance the public welfare.” “Here, the Board considered the long-standing, existing commercial use of the property in a residential zone, and its ‘vacant and deteriorating state’ It noted the property’s ‘close proximity to the C-4 District’ and its ‘existing site improvements,’ i.e., a large impermeable parking lot, making it unlikely “to be developed into a single[-]family residence.”

PMG New Jersey II, LLC v. 113 Colonia, LLC, A-4235-16T2 (July 22, 2019)

https://scholar.google.com/scholar_case?case=1188631796231723270&q=A-4235-16T2&hl=en&as_sdt=4,31

Use variances for gas station, convenience store and Dunkin Donuts supported by special reasons where it was demonstrated that “(1) the site was particularly suited for the proposed use; (2) the public would benefit from the environmental remediation attendant with the updating of the underground fuel storage tanks; (3) the use of the land would be efficient because it would be replacing the existing fuel station with an updated one rather than building on a completely new site; (4) the improved landscaping would provide a buffer to the surrounding residences that was not previously there; and (5) the site is not likely to be developed for a use permitted in an R-40 zone.” The applicant also satisfied the *Medici* enhanced standard of proof by demonstrating that “the approval of the application is reconciled with the master plan which emphasizes the importance of a stable viable commercial base and encouraging commercial development proximate to major highways.” Generally, “c” variances are subsumed in the grant of a “d” variance.

Holloway v. The Zoning Bd. of Adjust., City of Jersey City, A-4405-15T4 (Oct. 30, 2019)

https://scholar.google.com/scholar_case?case=9542351740997467672&q=A-4405-15T4&hl=en&as_sdt=4,31

“For a (d)(6) or height variance, an applicant can establish the positive criteria by demonstrating undue hardship, that is, ‘the property for which the variance is sought cannot reasonably accommodate a structure that conforms to, or only slightly exceeds, the height permitted by the ordinance. Stated differently, the applicant for a (d)(6) variance on grounds of hardship must show that the height restriction in effect prohibits utilization of the property for a conforming structure.’ [Citation omitted]. Alternatively, an applicant can demonstrate that the proposed structure’s height will not offend the zoning ordinance’s purpose for the height restriction and will ‘nonetheless be consistent with the surrounding neighborhood.’ [Citation omitted]. A zoning board must also ‘consider the effect of the proposed height variance on the surrounding municipalities affected by the decision.’” [Citation omitted].

Highview Homes v. Paramus Zoning Board of Adjustment, A-1744-18T4 (Nov. 21, 2019)

https://scholar.google.com/scholar_case?case=8153246946119145982&q=A-1744-18T4&hl=en&as_sdt=4,31

Use variance to construct a multi-family development in a single-family zone properly denied where there was no showing that it would 1) fill an unmet need, 2) that there was no other location for it, or 3) the land’s topography, location, or shape were well fitted for such use.

Peters v. Zoning Board of Adjustment, Borough of Fort Lee, A-3067-18T2 (May 28, 2020)

https://scholar.google.com/scholar_case?case=6783903549801634489&q=Peters+v.+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,31&as_ylo=2020

Use variance to replace existing nonconforming two-family home with larger two-unit dwelling properly supported by evidence that: “(1) the new development would not increase the residential density of the area because there was already a non-conforming two-family unit on the property;

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(2) the neighborhood already had a mix of one- and two-family homes, (3) the variances were needed to accommodate the sloped topography and corner layout of the property; and (4) the property could physically accommodate the variances.”

Depetris Family, LLC v. Medford Twp., Zon. Bd. of Adjust., A-6009-17T1 (April 21, 2020)
https://scholar.google.com/scholar_case?case=16433644594343111215&q=Depetris+Family,+L+LC+v.+Medford&hl=en&as_sdt=6,31&as_ylo=2020

“[I]n considering whether to grant a use variance application, a zoning board has a right to consider existing traffic conditions and the impact that the proposed use would have on those conditions and may . . . rely on ‘their own peculiar knowledge of traffic conditions’ in rejecting the application for the use variance.” “The Board previously approved drive-throughs in the [shopping] center for a Rite-Aid and for a bank. The Board contends that these previous approvals do not require them to now approve a Dunkin’ Donuts drive-through in the same shopping center. We agree. Just because a proposed use fits within the scheme of an existing shopping center does not necessarily support the assertion that a particular location would be suitable for a fast food restaurant.”

Saitz v. City of Ventnor Planning Board, A-4734-18T2 (July 10, 2020)
https://scholar.google.com/scholar_case?case=2069650364654952255&q=saitz+v.+ventnor&hl=en&as_sdt=6,31&as_ylo=2020

Use variance to replace a bungalow with a duplex properly granted where evidence demonstrated that the “property was well suited for the construction of a duplex, given that the structure would meet all open space and light requirements of the zone and would be no larger than a single-family home permitted on the site by zoning regulations. In addition, there are existing multi-[] family uses in the property’s neighborhood, including immediately adjacent to the rear of the property. The record contains no evidence of a substantial detriment to the public good from development of the property with a duplex. To the contrary, the proposed construction would replace a dilapidated bungalow on an overgrown lot with a new home on a landscaped plot with on-site parking, lessening the parking density burden addressed in the city’s redevelopment plan. The new structure also meets federal flood damage prevention regulations, further benefiting the neighborhood. Finally, there is support in the record for the Board’s determination that the duplex would not substantially impede the intent and purpose of the zone, which contemplates existing multi-family uses, and a variety of uses other than single-family homes.”

Camacho v. City of Jersey City Zoning Bd. of Adjustment, A-3387-19 (June 17, 2021)
https://scholar.google.com/scholar_case?case=8218143336645407493&q=camacho+v.+jersey+city&hl=en&as_sdt=6,31

Grant of use variance upheld for an apartment building where the 1) lack of a “shadow study” by the Board’s experts did not demonstrate that their testimony was a “net opinion;” and 2) that the applicant had, under the *Medici* test, reconciled the proposed use with the prevailing ordinance, which did not permit same, by pointing out that the proposed development was less dense and actually conformed with the necessary parking requirements, in comparison to prior development on the property.

Depetris Family Assocs. 2, LLC v. Medford Twp Zoning Bd of Adj. A-1287-20 (May 17, 2021)
https://Scholar.Google.Com/Scholar_Case?Case=2773846814479239369&Q=Depetris+Family+Assocs.+2,+Llc+V.+Medford+Twp.+Zoning+Bd.+Of+Adjustment&Hl=En&As_Sdt=6,31&As_Ylo=2021

Where a Zoning Board of Adjustment denied a use variance application in large part due to negative criteria concerns related to traffic patterns, and the Applicant agreed to a substantial change to the site’s traffic patterns (here prohibiting left hand turns for set hours, seven days a week) but the Board’s denying resolution didn’t consider that change at all in its analysis—the omission is

grounds for reversal.

Twp. of Deptford v. Deptford Commons, LLC, A-3383-19, A-0573-20, (Sept. 28, 2021)

https://scholar.google.com/scholar_case?case=8595049704723867211

With respect to the zoning board's denial of Appellant's application for a use variance to permit warehouse parking next to an Amazon facility, the board had ample basis to determine that the Appellant had not met its burden under the positive and negative criteria analysis. Furthermore, where Appellant did not raise an objection before the Chancery court related its order to vacate premises, the Appellant could not, after the fact, allege that same represented a violation of its due process.

Bellante v. Borough of Wanaque, A-2759-18 (June 25, 2021)

https://scholar.google.com/scholar_case?case=11283662771007677918&q=BELLANTE+V.+BO+ROUGH+OF+WANAQUE&hl=en&as_sdt=6,31&as_ylo=2021

Where the applicant had provided evidence and a zoning board of adjustment found that outdoor service on the subject property was a pre-existing nonconforming use that was amply supported by the record, the board's decision to grant a variance was not arbitrary, capricious, or unreasonable.

Rantz v. The Planning Bd. of the Borough of Bay Head, A-2847-19 (Sept. 8, 2021)

https://scholar.google.com/scholar_case?case=17343209111907003039&q=rantz+v.+bay+head&hl=en&as_sdt=6,31

An applicant for a certification of a pre-existing non-conforming use related to a second detached dwelling on a property provided testimony from a plumber that certain bathroom plumbing fixtures dated from around 1940, and while other testimony was provided by prior tenants of the property stating that said fixtures were inoperable from time to time-the trial court held that the zoning board of adjustment had ample evidence to find that the owner never intended to abandon the use of the fixtures and properly granted the certification.

Old Tennent Cemetery Ass'n v. Twp. of Manalapan Planning Bd., A-2961-19 (Oct. 20, 2021)

https://scholar.google.com/scholar_case?case=8884616075094868441&q=Old+Tennent+Cemete+ry&hl=en&as_sdt=6,31&as_ylo=2021

Accessory uses, like a crematorium in a cemetery, which are either not permitted by ordinance or which are accessory to a nonconforming principal use can only be allowed by way of variance pursuant to' N.J.S.A. 40:55D-70(d).

ADS Envtl. Inc. v. Twp. of Bethlehem, A-2545-20 (Aug. 16, 2022)

https://scholar.google.com/scholar_case?case=1800058888481705667&q=ADS+Envtl.+Inc.+v.+Twp.+of+Bethlehem&hl=en&as_sdt=6,31&as_ylo=2022

Where a zoning officer issued a letter confirming a continued nonconforming use and the Zoning Board of Adjustment finds that the nonconforming use was extinguished, it was reversible error for the trial court to sever Appellant's equitable estoppel claim against the municipality on the basis of the letter and its challenge to the Board's finding.

Raritan Partners, LLC v. Raritan Twp. Bd. of Adjust., A-1563 (Feb. 7, 2022)

https://scholar.google.com/scholar_case?case=17546950458772782597&q=Raritan+Partners,+LL+c,+Plaintiffappellant,+V.+Raritan+Township+&hl=en&as_sdt=6,31

Zoning Board's determination that a combined Wawa retail store (which was a permitted use) and gasoline station (which was a conditional use) required a use variance because the ordinance didn't permit multiple principal uses upheld. The fact that the Planning Board had approved two similar uses without requiring a use variance was not dispositive where the question of the need for a use

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variance was not raised in the prior application. “[T] the Board correctly found that boards of adjustment, not planning boards, interpret ordinances. N.J.S.A. 40:55D-70b.”

MSO, Inc. v. The Planning Board of the Borough of Glen Rock, A-3430-19 (Feb. 18, 2022)

https://scholar.google.com/scholar_case?case=8714591180147323568&q=MSO+v.+glen+rock&hl=en&as_sdt=6,31&as_ylo=2022

Where the governing body has chosen to regulate "maximum building coverage" limitations rather than "floor area ratio" limitations and the definition of "[m]aximum building coverage" under the ordinance is different from "floor area ratio" in N.J.S.A. 40:55D-4, the planning board and not the zoning board had jurisdiction to review the application.

Nissenbaum v. Trustees of Princeton Univ, Docket No. A-2721-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=9589468260438355365&q=Nissenbaum+v.+Princeton&hl=en&as_sdt=6,47

Zoning ordinances which permit “customarily incidental” accessory uses to the principal use permit, by implication, any use that logic and reason dictate are necessary or expected in conjunction with the principal use of the property. Here, a building that both housed athletic operations and also geo-thermal heating facilities was an accessory use permitted by the ordinance as “customary and incidental.”

Dimarco v. Zoning Bd. of Adj. of the Borough of Edgewater, A-2060-21, A-2283-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=15242942537864971762&q=DiMarco+v.+Zoning+B&hl=en&as_sdt=6,47&as_ylo=2023

Despite the fact that the developer proposed to construct a multi-family residential building substantially in excess of the height permitted in the zone, when viewed in the overall scheme where one similar structure existed and another had been approved, the proposed structure, despite its considerable height, would not necessarily give the appearance of disharmony or overcrowding that was the main concern in *Grasso v. Borough of Spring Lake Heights*, 375 N.J. Super. 41, 53-54 (App. Div. 2004). Consequently, the Board’s determination with respect to the negative criteria analysis in granting a d(6) variance had adequate underpinnings.

Concerned Citizens of Tenaflly, Inc. v. Borough of Tenaflly Planning Board, Docket No. A-1989-21 certif den 255 N.J. 444 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=15316178969208978819&q=tenafly+v.+tenafly&hl=en&as_sdt=6,47&as_ylo=2023

Because a flag pole is an accessory use, c variance relief, and not d(6) height variance relief, is required.

148 First St. Urban Renewal, LLC v. 144 First Holdings, LLC, A-2329-20 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=1716439838580627854&q=148+First+St.+Urban+Renewal,+LLC+v.+144+First+Holdings+LLC&hl=en&as_sdt=6,47&as_ylo=2023

Where a redevelopment plan does not set forth any FAR standard, none apply to the subject application, and jurisdiction was correctly before the planning board.

Furey v. Voorhees Twp. Bd. of Adjustment, A-2098-22 (Mar. 7, 2024)

https://scholar.google.com/scholar_case?case=7979733304452017515&q=Furey+v.+Voorhees&hl=en&as_sdt=6,47

The Board’s findings of fact and determinations of law with respect to granting a d(1) use variance for a convenience store were found in the record.

KBS Mt. Prospect LLC v. Lakewood Twp. Planning Bd., A-1978-22 (June 12, 2024)

https://scholar.google.com/scholar_case?case=1551093498335835944&q=KBS+v.+lakewood&hl=en&as_sdt=6,47

Unlike the case of *Nuckel v. Borough of Little Ferry Planning Board*, 208 N.J. 95, 101 (2011), where the construction of an access drive across an undersized lot that contained a non-conforming use to service a hotel constituted a new use in and of itself, where a subdivision is proposed and access drives are proposed to a landlocked and undeveloped (and will continue to be undeveloped) property, same is not considered a new "use."

Stavola Asphalt Co., Inc. v. Twp. of Howell Zoning Bd. of Adjust., A-2830-21, A-3320-21 (June 17, 2024)

https://scholar.google.com/scholar_case?case=553270855187838359&q=Stavola+v.+Howell&hl=en&as_sdt=6,47

Trial court improperly reversed Board's grant of use variance. In zoning matters, arbitrary and capricious means "contrary to fundamental principles of zoning or the [zoning] statute" and not simply a finding of error." In reviewing the record, the Appellate Division determined that the record demonstrated adequate proofs to grant a d(1) use variance for an asphalt manufacturing plant in an industrial zone.

Atlantic Pier Co., Inc. v. Borough of Bay Head Planning Bd., A-0899-22 (July 2, 2024)

https://scholar.google.com/scholar_case?case=14761415733562946050&q=Pier+v.+Borough+of+Bay+Head&hl=en&as_sdt=6,47&as_ylo=2024

With respect to whether a use variance is required as part of amended site plan approval, the Board must not only review the zoning code but must also review the original site plan approval resolution and the changes and relief received then to determine whether the newly proposed conditions do not comply with the ordinance.

Jackson v. 319 Penn Dev., LLC, A-1351-22, (July 23, 2024)

https://scholar.google.com/scholar_case?case=665264889569119279&q=Jackson+v.+319+Penn&hl=en&as_sdt=6,47

Board's decision was supported by the record, as established during the hearings, and was not arbitrary, capricious, or unreasonable.

The Alliance for Sustainable Communities Mercer-Monmouth v. Robbinsville Twp. Zoning Bd., A-2509-21 (July 25, 2024)

https://scholar.google.com/scholar_case?case=5273810853399215474&q=Mercer-Monmouth+v.+Robbinsville&hl=en&as_sdt=6,47

Board was entitled to rely on Applicant's planner's expert testimony concerning the Master Plan and zoning ordinance, which was supported by the testimony of the Board's planner.

Am. Outdoor Advertising, LLC v. Edison Twp. Zoning Bd. of Adjust., A-3954-21 (Dec. 4, 2024)

https://scholar.google.com/scholar_case?case=17561925795773039840&q=+Am.+Outdoor+Advertising,+LLC+v.+Edison+Twp.+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,47

With respect to the negative criteria analysis of this use variance billboard case, the trial court ruled the subject zoning ordinance invalid after it took judicial notice that the municipality did not adopt a master plan reexamination report within ten (10) years as required by to *N.J.S.A.* 40:55D-89.1. The court substituted the NJDOT billboard regulations in lieu of the invalidated ordinance. The Appellate Division reversed, finding that the trial court erred by invalidating the ordinance pursuant to *N.J.S.A.* 40:55D-89.1 (which only creates a rebuttable presumption that the ordinance is

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unreasonable) and replacing the ordinance with NJDOT regulations as regards the negative criteria analysis.

Ferris Farms of E. Brunswick, LLC v. Twp. of E. Brunswick, A-0034-22 (Dec. 26, 2023)
https://scholar.google.com/scholar_case?case=7421218575341943984&q=Ferris+Farms+of+E.+Brunswick,+LLC+v.+&hl=en&as_sdt=6,47&as_ylo=2023

While the trial court correctly reversed the Zoning Board's denial because the record failed to make adequate determinations under the applicable law, the court erred in ordering the Board to approve the application and should have remanded back to the Board for further consideration. Furthermore, and with respect to the positive criteria for a d(5) density variance, an applicant does not have to show "particular suitability" of the land but must need only show that the particular site will "accommodate the problems associated with the proposed use with [a greater density] than permitted by the ordinance.

Ammermuller v. Borough of Belmar Zoning Bd. of Adjust., A-0953-23; A-0977-23 (Feb. 25, 2025)

https://scholar.google.com/scholar_case?case=8737734176936920988&q=ammermuller&hl=en&as_sdt=4,31

Use and bulk variances to allow a four-story multi-family use in a single-family zone upheld because it was shown to be less intensive than the existing rooming house that it would replace.

Nfi Real Estate, LLC v. Florence Township Zon. Bd. of Adjust., A-1054-23; A-2189-23 (April 23, 2025)

https://scholar.google.com/scholar_case?case=17517398886634852118&q=nfi+real&hl=en&as_sdt=4,31

"Where property is split between two municipalities, the land use boards in both municipalities 'must consider the situation of the entire tract of land, not just the portion which happens to lie within its own boundary.' Cox & Koenig, *New Jersey Zoning & Land Use Administration*, § 30-3, at 459 (2024). 'Without a cooperative response from both municipalities, the property may not be susceptible to development. This fact may bear on the determination of whether a special reason exists under N.J.S.A. 40:55D-70(d), militating in favor of a variance.' *Ferraro v. Zoning Bd. of Adj. of Holmdel*, 119 N.J. 61, 73, 574 A.2d 38 (1990). The fact the proposed use is permitted in the adjoining municipality "may suggest that the property in [the subject municipality] is uniquely suited for the proposed use.' Ibid. Thus, the subject municipality 'is obligated to give significant weight to the zoning ordinance and plan of the adjacent municipality . . . as well as to the character and uses of [the] surrounding property' in both municipalities."

"The Board did not have to accord the Mansfield ordinance significant weight pursuant to *Ferraro*, because the use here was permitted in Florence. The issue here was the increased intensity caused by the height variance as to which the Board was not required to ignore its own ordinance in favor of the Mansfield ordinance."

JD Jamestowne, LLC v. Toms River Twp. Zoning Bd. of Adjustment, A-0937-23 (May 14, 2025)
https://scholar.google.com/scholar_case?case=6545547271694448974&q=JD+Jamestowne,+LLC+v.+Toms+River+Twp.+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,47

Board's decision to deny plaintiff's application for a d(5) density variance, and other relief, was supported by sufficient evidence in the record and was not arbitrary, capricious, or unreasonable. The court held that with respect to density variances, the positive criteria are present if "the applicant's proofs demonstrate `that the site will accommodate the problems

associated with a proposed use with [a greater density] than permitted by the ordinance" and "that despite the proposed increase in density ... the project nonetheless serve[s] one or more of the purposes of zoning and was consistent with the overall goals of the [Municipal Land Use Law]."

Diminni v. Seaside Plan. Bd., A-2859-23 (May 23, 2025)

https://scholar.google.com/scholar_case?case=14580201490785565711&q=diminni&hl=en&as_sdt=4,31

"Generally, there are sufficient 'special reasons' for the grant of a [(d)] variance under two broad circumstances: (1) when the refusal to allow the project would impose on the applicant an undue hardship[] and/or (2) when a proposed project carries out a purpose of zoning as defined in N.J.S.A. 40:55D-2." "A successful applicant for a density variance therefore must show that despite the proposed increase in density above the zone's restrictions, and, thus, the increased intensity in the use of the site, the project nonetheless served one or more of the purposes of zoning and was consistent with the overall goals of the MLUL." "An applicant seeking a height variance must establish that: (1) the applicant can show special reasons for the increased height, and (2) the increased height will not cause "substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance." The fact that the property abutted the boardwalk supported the height variance because the property was "unique in that it is near the boardwalk which is elevated and where adjacent structures to the boardwalk are elevated." Thus, the judge noted "all things are relative," and the increased height "was part of the design calcul[]us ensuring corridors with enough open space to allow for views, light and air through the corridors crossing the property and benefiting the western properties."

Lema v. Borough of Garwood, A-3086-23 (Nov. 21, 2025)

https://scholar.google.com/scholar_case?case=9076935749672266689&q=A-3086-23&hl=en&as_sdt=4,31

Board correctly determined that it had no jurisdiction to hear a request for interpretation when same was a *de facto* appeal of the zoning officer's decision.

A. USE VARIANCES – INHERENTLY BENEFICIAL USES

Andrews v. Board of Adjust., Ocean Twp., 30 N.J. 245 (1959)

http://scholar.google.com/scholar_case?case=3616516054757203330&q=30+N.J.+245&hl=en&as_sdt=2,31

Parochial school.

Black v. Town of Montclair, 34 N.J. 105 (1961)

http://scholar.google.com/scholar_case?case=7845244156024372839&q=34+N.J.+105+&hl=en&as_sdt=2,31

Parochial school.

Yanel v. Board of Adjustment of Jamesburg, 79 N.J. Super. 509 (App. Div. 1963)

http://scholar.google.com/scholar?q=79+N.J.+Super.+509+&btnG=&hl=en&as_sdt=2%2C31

Telephone equipment building.

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Kunzler v. Hoffman, 48 N.J. 277 (1966)

http://scholar.google.com/scholar_case?case=10720483297123893226&q=48+N.J.+277+&hl=en&as_sdt=2,31

Private hospital for the emotionally disturbed.

DeSimone v. Greater Englewood Housing Corp. No. 1, 56 N.J. 428 (1970)

http://scholar.google.com/scholar_case?case=17580780650588687031&q=56+N.J.+428+&hl=en&as_sdt=2,31

Low income housing.

Homes of Hope, Inc. v. Mount Holly Twp. Zoning Bd. Of Adjust., 236 N.J. Super. 584 (App. Div. 1989)

http://scholar.google.com/scholar_case?case=14962598899405348968&q=236+N.J.+Super.+584+&hl=en&as_sdt=2,31

Jayber v. Mun. Council, 238 N.J. Super. 165 (App. Div. 1990), *certif. denied*, 122 N.J. 142 (1990)

http://scholar.google.com/scholar_case?case=8320044525956468602&q=238+N.J.+Super.+165+&hl=en&as_sdt=2,31

Sica v. Wall Twp., 127 N.J. 152 (1992)

http://scholar.google.com/scholar_case?case=16303506447011406886&q=127+N.J.+152+&hl=en&as_sdt=2,31

Four-step balancing test to determine if the negative criteria is met: the board must (1) identify the public interest at stake (some inherently beneficial uses are more compelling than others; (2) identify the detrimental effects that would ensue from the grant of the variance; (3) whether the imposition of reasonable conditions can ameliorate the detrimental effects; and (4) weigh the positive and negative criteria (the public interest against the public detriment) and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good.

New Brunswick Cellular Telephone Co. V. Old Bridge Twp. Planning Bd., 270 N.J. Super. 122 (Law Div. 1994)

http://scholar.google.com/scholar_case?case=15331239603215946860&q=270+N.J.+Super.+122+&hl=en&as_sdt=2,31

Cellular tower.

Nynex Mobile v. Hazlet, 276 N.J. Super. 598 (App. Div. 1994)

http://scholar.google.com/scholar_case?case=2527702440177079573&q=276+N.J.+Super.+598+&hl=en&as_sdt=2,31

Cellular tower.

Kali Bari Temple v. Bd. of Adjust., Twp. of Readington, 271 N.J. Super. 241 (App. Div. 1994)

http://scholar.google.com/scholar_case?case=16095989591555621606&q=271+N.J.+Super.+241+&hl=en&as_sdt=2,31

Religious temple.

Mercurio v. Delvecchio, 285 N.J. Super. 328 (App. Div. 1995), *certif. denied*, 144 N.J. 377 (1996)

http://scholar.google.com/scholar_case?case=1499127257591699299&q=285+N.J.+Super.+328+&hl=en&as_sdt=2,31

Nursing home.

Children's Inst. v. Verona Twp. Bd. of Adjust., 290 N.J. Super. 350 (App. Div. 1996)
http://scholar.google.com/scholar_case?case=7935613233808881396&q=290+N.J.+Super.+350+&hl=en&as_sdt=2,31

Day school for handicapped children.

New Brunswick Cellular Tel. Co. v. Twp. of Edison, 300 N.J. Super. 456 (Law Div. 1997)
http://scholar.google.com/scholar_case?case=5640907290349392102&q=300+N.J.+Super.+456+&hl=en&as_sdt=2,31

Pierce Estates Corp., Inc. v. Bridgewater Twp. Zoning Bd. of Adjust., 303 N.J. Super. 507 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=329548176761053084&q=303+N.J.+Super.+507+&hl=en&as_sdt=2,31

Smart SMR of New York, Inc. v. Bor. of Fair Lawn Bd. of Adjust., 152 N.J. 309 (1998)
http://scholar.google.com/scholar_case?case=17516912415033988989&q=152+N.J.+309+&hl=en&as_sdt=2,31

Proposed mobile communications facility which required the construction of a monopole was not inherently beneficial, but Nextel Communications was entitled to use variance for 140-foot telecommunications monopole in an industrial zone because the facility would serve the general welfare without substantial detriment to the public good.

New Brunswick Cellular Telephone Co. v. Bor. of So. Plainfield, 160 N.J. 1 (1999)
http://scholar.google.com/scholar_case?case=16304175706027332947&q=160+N.J.+1+&hl=en&as_sdt=2,31

Medici standard does not apply to cell tower application.

Scholastic Bus Co., Inc. v. Zoning Bd. of Bor. of Fair Lawn, 740 A.2d 657 (App. Div. 1999)
http://scholar.google.com/scholar_case?case=2418966753667078845&q=740+A.2d+657+&hl=en&as_sdt=2,31

Because board failed to consider imposition of reasonable conditions on proposed school bus facility, which use is inherently beneficial, in denying use variance application, the court remands for additional fact finding.

Medical Ctr. at Princeton v. Twp. of Princeton Zoning Bd. of Adjust., 343 N.J. Super. 177 (App. Div. 2001)

http://scholar.google.com/scholar_case?case=13003529754834371495&q=343+N.J.+Super.+177+&hl=en&as_sdt=2,31

Appellate Division remanded a hospital's application for use variance for support offices on properties in a residential zone finding that a board may consider the location of the proposed use in its analysis of whether the proposed use falls within the scope of the original use and that in assessing the umbrella effect of the inherently beneficial use status of a hospital's support offices the township zoning board was required to consider applications not collectively, but by individualized function, and this imposed a burden on the hospital to present the necessary proofs to specifically establish: (1) the nature of the particular function; (2) how such function is integrated into the core function of the wholly beneficial use; and (3) why the location of each particular function is critical to fulfilling the mission and primary objective of the inherently beneficial use.

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Board of Education of the City of Clifton v. Zoning Board of Adjust., City of Clifton, 409 N.J. Super. 389 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=7088765724024941242&q=409+N.J.+Super.+389+&hl=en&as_sdt=4,31

School an inherently beneficial use thereby satisfying the positive criteria and the satisfaction of the negative criteria does not involve an enhanced quality of proof., but rather the *Sica* balancing test.

Bergen Passaic LTACH, LLC v. City of Hackensack Zoning Board of Adjustment, A-0702-13T3 (May 7, 2015)

https://scholar.google.com/scholar_case?case=7108645611278958134&q=0702-13T3&hl=en&as_sdt=4,31

In review of an application for an inherently beneficial use, a “board must balance the benefits and burdens of the requested variance” under the *Sica* balancing test. Where the board reasonably concludes that the proposed use is “much bigger than the site would accommodate and would detrimentally affect the neighboring residential properties . . . and could not be reconciled with the City’s master plan and zoning ordinance . . .” the application was properly denied. It was not improper for the Board’s planner to testify with respect to site design features which relied upon the testimony of traffic engineers. “The safety and design features of the proposal that were the subject of . . . of his testimony regarding vehicular traffic are not the same as the conclusions about the volume of traffic and safety of drivers . . .” “Members of a governing body may appear as parties before a zoning board without calling into question the board’s independence.”

Shinn v. Zoning Board of Adjustment of Township of Cherry Hill, A-2920-13T4 (July 24, 2015)

https://scholar.google.com/scholar_case?case=17561101031750907556&q=A-2920-13T4+&hl=en&as_sdt=4,31

Grant of use variance to permit twelve buildings containing 171 residential apartments at former lumber store property was not an illegal usurpation of legislative power where property only occupied a small percentage of the zone and there were other residential properties in the immediately adjacent to the site, notwithstanding the fact that the council had recently amended its zoning and had left the commercial zoning intact for the subject site. The court found that the rezoning of a nearby commercial property with an overlay zone that permitted affordable housing “was powerful evidence regarding the negative criteria, because it established that residential affordable housing in a business zone was not totally inconsistent with the overall zoning scheme...”

Regency Gardens Nursing Homes v. Zoning Board of Adjust., Twp. of Wayne, A-2283-13T1 (Aug. 27, 2015)

https://scholar.google.com/scholar_case?case=8310933534937531725&q=2283-13T1&hl=en&as_sdt=4,31

Inpatient rehabilitation facility an inherently beneficial use for which use and bulk variances properly granted. “The one detriment identified during the use variance hearing – that there will be an increase in traffic – can hardly be characterized as substantial when the traffic will be less than that caused by a permitted use.”

Sunrise Development, Inc. v. Princeton Zoning Board of Adjustment, A-5717-18T2 (June 24, 2020)

https://scholar.google.com/scholar_case?case=9957017307284441013&q=+Sunrise+Dev.,+Inc.+v.+Princeton+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,31&as_ylo=2020

In evaluating an application for an assisted living facility, the board “properly evaluated the second factor in *Sica* by identifying ‘the detrimental effect that will ensue from the grant of the variance[s].’ The Board correctly found that granting the use variances would constitute a ‘rezoning of the

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Property' because the entire R-SM zone would be eliminated." "[A]llowing the assisted living facility would effectively eliminate the R-SM zone's purpose, which is to provide housing for active senior citizens. In that regard, the Board noted that the Property was adjacent to the Princeton Shopping Center, which active senior citizens would be likely to use, whereas the residents of an assisted living facility would be unlikely to benefit from the shopping center."

Kensington Senior Development, LLC v. Township of Verona, A-1010-19 (Dec. 1, 2021).

https://scholar.google.com/scholar_case?case=10497996710084330907&q=Kensington+senior+developer+v.+township+of+verona&hl=en&as_sdt=6,31&as_vis=1

While a three-story assisted living facility may be an inherently beneficial use, pursuant to the *Sica* balancing test, because the proposed use was irreconcilable with the business center zone and the type of "vibrant commercial activity envisioned by the Township's governing body," the Board correctly denied the variance application due to concerns related to the negative impact of the proposed project on the zone plan and zone ordinance.

Monarch Cmty., LLC v. Twp. of Montville, A-0929-23 (Feb 3, 2025), Certif. Granted, 260 N.J. 614 (2025)

https://scholar.google.com/scholar_case?case=14699432861805926971&q=Monarch+Cmty.,+LLC+v.+Twp.+of+Montville&hl=en&as_sdt=6,47

Senior living facility is an inherently beneficial use.

66 Kinderkamack, LLC v. Borough of Oradell Zoning Bd. of Adjust., A-0705-23 (May 5, 2025)

https://scholar.google.com/scholar_case?case=6661718858716850867&q=66+Kinderkamack&hl=en&as_sdt=4,31

The addition of affordable units to a proposed development in which most of the proposed units are market-rate housing does not make the entire project inherently beneficial. With regard to establishing the positive criteria of a (d)(4) FAR variance, an applicant "need not show that the site is particularly suited for more intensive development" but rather "that the site will accommodate the problems associated with a proposed use with larger floor area than permitted by the ordinance."

KDLi9 LLC v. City of Jersey City Zoning Bd. of Adjustment, A-01424-24 (Oct. 8, 2025)

https://scholar.google.com/scholar_case?case=930358465466475017&q=KDLi9+LLC+v.+The+City+of+Jersey+City+Zoning+Bd.+of+Adjustment&hl=en&as_sdt=6,47

Proposed prayer/worship use was not inherently beneficial because it was not the sole use on the property but only 1 use of 3 uses (the other 2 being residential and commercial).

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Home Builders Ass'n of Northern N.J. v. Paramus Bor., 7 N.J. 335 (1951)

http://scholar.google.com/scholar_case?case=16045145099849501336&q=7+N.J.+335+&hl=en&as_sdt=4,31

Board has discretion to grant such relief as it deems proper and does not have to either grant or deny the exact variance requested.

Kunzler v. Hoffman, 48 N.J. 277 (1966)

http://scholar.google.com/scholar_case?case=10720483297123893226&q=48+N.J.+277+&hl=en&as_sdt=4,31

Conditions valid.

Houdaille Con. Mats. Inc. v. Bd. of Adjust., Tewksbury Twp., 92 N.J. Super. 293 (App. Div. 1966)

http://scholar.google.com/scholar_case?case=5946349948597485114&q=92+N.J.+Super.+293+&hl=en&as_sdt=4,31

Certain conditions valid and certain conditions invalid.

Grand Land Co. v. Twp. of Bethlehem, 196 N.J. Super. 547 (App. Div. 1984), certif. denied, 101 N.J. 253 (1985)

http://scholar.google.com/scholar_case?case=2121247073515561596&q=196+N.J.+Super.+547+&hl=en&as_sdt=4,31

Sheston Oil Co. v. Borough of Avalon Planning Bd., 214 N.J. Super. 593 (App. Div.), certif. denied, 107 N.J. 134 (1987)

http://scholar.google.com/scholar_case?case=1206010334183231234&q=214+N.J.+Super.+593+&hl=en&as_sdt=4,31

Condition on preliminary site plan approval that required “aesthetic compliance with neighborhood” invalidated.

Orloski v. Planning Bd., Bor. Ship Bottom, 226 N.J. Super. 666 (Law Div. 1988), aff'd, 234 N.J. Super. 1 (App. Div. 1989)

http://scholar.google.com/scholar_case?case=8741897670999959831&q=226+N.J.+Super.+666+&hl=en&as_sdt=4,31

Loscalzo v. Pini, 228 N.J. Super. 291 (App. Div. 1988), certif. denied, 118 N.J. 216 (1989)

http://scholar.google.com/scholar_case?case=4765535758404023702&q=228+N.J.+Super.+291+&hl=en&as_sdt=4,31

Mere recitals of testimony do not satisfy a board's statutory responsibility to make findings of fact.

Downs Ford, Inc. v. Dover Twp., 230 N.J. Super. 623 (Ch. Div. 1989)

http://scholar.google.com/scholar_case?case=11995967924627118206&q=230+N.J.+Super.+623+&hl=en&as_sdt=4,31

Sherman v. Zoning Bd. of Adj., 242 N.J. Super. 421 (App. Div.), certif. denied, 122 N.J. 404 (1990)

http://scholar.google.com/scholar_case?case=3020099986100120413&q=242+N.J.+Super.+421+&hl=en&as_sdt=4,31

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Anfuso v. Seeley, 243 N.J. Super. 349 (App. Div. 1990)

http://scholar.google.com/scholar_case?case=12253790227439713017&q=243+N.J.+Super.+349+&hl=en&as_sdt=4,31

Holmdel Builders Ass'n v. Twp. of Holmdel, 121 N.J. 550 (1990)

http://scholar.google.com/scholar_case?case=17978713641579309810&q=121+N.J.+550+&hl=en&as_sdt=4,31

Affordable housing fee.

Berninger v. Board of Adjust., Bor. of Midland Park, 254 N.J. Super. 401 (1991), *aff'd*, 127 N.J. 226 (1992)

http://scholar.google.com/scholar_case?case=11371787937545086738&q=254+N.J.+Super.+401+&hl=en&as_sdt=4,31

Aldrich v. Schwartz, 258 N.J. Super. 300 (App. Div. 1992)

http://scholar.google.com/scholar_case?case=2297206648238577785&q=258+N.J.+Super.+300+&hl=en&as_sdt=4,31

Tennis Club Assoc. v. Planning Bd, Twp. of Teaneck, 262 N.J. Super. 422 (App. Div. 1992)

http://scholar.google.com/scholar_case?case=9247922742694546811&q=262+N.J.+Super.+422+&hl=en&as_sdt=4,31

Applicant cannot be required to purchase off-tract property and make improvements on it.

Kali Bari Temple v. Board of Adjust., Twp. of Readington, 271 N.J. Super. 241 (App. Div. 1994)

http://scholar.google.com/scholar_case?case=16095989591555621606&q=271+N.J.+Super.+241+&hl=en&as_sdt=4,31

Eagle Group of Princeton v. Hamilton, 274 N.J. Super. 551 (App. Div. 1994)

http://scholar.google.com/scholar_case?case=13892357166999619301&q=274+N.J.+Super.+551+&hl=en&as_sdt=4,31

Meridian Hospital v. Point Pleasant, 325 N.J. Super. 490 (App. Div. 1999), *certif. denied*, 163 N.J. 80 (2000)

http://scholar.google.com/scholar_case?case=3850261340189306923&q=325+N.J.+Super.+490+&hl=en&as_sdt=4,31

Fieramosca v. Twp. of Barnegat, 335 N.J. Super. 526 (Law Div. 2000)

http://scholar.google.com/scholar_case?case=5754362493652699260&q=335+N.J.+Super.+526+&hl=en&as_sdt=4,31

Condition of major site plan approval requiring property owner to install a drainage pipe on his property prior to construction of marina is valid and enforceable, even though condition was inadvertently omitted from memorializing resolution, where board clearly intended to require, and property owner was aware of, the condition.

Scully-Bozarth Post v. Planning Bd. of City of Burlington, 297 N.J. Super. 296 (App. Div. 2003)

Even if board members did not have opportunity to study draft of resolution rejecting application for variance before they voted on it, any possible deficiency was rectified when board entertained property owner's reconsideration motion.

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Park Center at Route 35, Inc. v. Zoning Bd. of Adjust., Twp. of Woodbridge, 365 N.J. Super. 284 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=12000533449610847363&q=365+N.J.+Super.+284+&hl=en&as_sdt=4,31

Gayatriji v. Bor. of Seaside Height Planning Bd., 372 N.J. Super. 203 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=7438985877197360677&q=372+N.J.+Super.+203+&hl=en&as_sdt=4,31

Conditions attached to land use approvals imposed must be directly related to and incidental to the proposed use of the land and must be without regard to the person who owns or occupies the land. To be valid, conditions must: (1) not offend any provision of the zoning ordinance; (2) not require illegal conduct on the part of the permitted; (3) be in the public interest; (4) be reasonably calculated to achieve some legitimate objective of the zoning ordinance; and (5) not be unnecessarily burdensome to the landowner.

Meszaros v. Planning Bd. of the City of South Amboy, 371 N.J. Super. 134 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=16157263586564887831&q=371+N.J.+Super.+134+&hl=en&as_sdt=4,31

Where record of the local agency differs from the resolution memorializing the local agency's action, the record is given controlling effect.

New York SMSA Limited Partnership v. Bd. of Adjust., Twp. of Weehawken, 370 N.J. Super. 319 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=8653617948628338679&q=370+N.J.+Super.+319+&hl=en&as_sdt=4,31

Resolution was legally insufficient and facially invalid where it was dated prior to actual date of board's vote on application, and failed to contain findings of fact and conclusions based on proofs submitted. Remarks made by individual municipal zoning board members during course of hearing on application for variance represent informal verbalizations of the speaker's transitory thoughts, and they cannot be equated to deliberative findings of fact required in resolution granting or denying the variance.

Mintz v. Twp. Of Middletown, 374 N.J. Super. 396 (App. Div.), *certif. denied*, 183 N.J. 590 (2005)

http://scholar.google.com/scholar_case?case=3202610635517063474&q=374+N.J.+Super.+396+&hl=en&as_sdt=4,31

Save Hamilton Open Space v. Hamilton Twp. Planning Bd., A-0066-05T1 (July 14, 2006), *certif. denied*, 188 N.J. 576 (2006), *reversed*, 404 N.J. Super. 278 (2008)

http://scholar.google.com/scholar_case?case=16768435354398064436&q=Save+Hamilton+Open+Space+v.+Hamilton+Twp&hl=en&as_sdt=4,31

Board properly conditioned subdivision approval on NJDEP stormwater approval. Appellate Division exercised its original jurisdiction to order that the lots not be sold until NJDEP approval and until planning board has reviewed and approved the plans at a public meeting.

Toll Bros. v. Bd. of Chosen Freeholders of the County of Burlington, 388 N.J. Super. 103 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=791727976701325997&q=388+N.J.+Super.+103+&hl=en&as_sdt=4,31

Court holds that where plaintiff voluntarily enters into developer's agreements with municipalities and county which include promises to pay more than its pro rata share of off-site improvements, the agreements may not be invalidated by the developer as being contrary to public policy. The

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agreements do not violate any zoning ordinances or require illegal conduct. The agreements further the public interest by seeking to achieve a legitimate land use objective, the building of road improvements necessitated by the development. The court employs contract principals to enforce the agreements according to their terms and reaches different results with respect to the agreement with the county and the agreement with one of the municipalities.

Toll Bros. v. Bd. of Chosen Freeholders of the County of Burlington, 194 N.J. 223 (2008)

http://scholar.google.com/scholar_case?case=8884619835259500865&q=194+N.J.+223+&hl=en&as_sdt=4,31

A developer cannot contract to pay more than its pro-rata share for off-tract improvements that are authorized by the MLUL. “A developer’s agreement is a contract between the developer and the municipality that details the manner in which the conditions of approval will be fulfilled. It is ancillary to those conditions and is only enforceable to the extent that the conditions on which it is based are enforceable.” If the scope of the project is materially reduced, the developer is entitled to a reduction in the pro-rata share of the costs of necessary improvements and “the fact that the developer has entered into a developer’s agreement is of no consequence to that entitlement.”

Pond Run Watershed Ass’n. v. Twp. of Hamilton Zoning Bd., 397 N.J. Super. 335 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=14934983218583171593&q=397+N.J.+Super.+335+&hl=en&as_sdt=4,31

Developer’s agreement to contribute to adjacent park an invalid condition where the record was devoid of any proof as to the method by which the amount of the contribution was derived, the improvements which would be constructed in the park, or whether the residents of the project would utilize the park.

Save Hamilton Open Space v. Hamilton Twp. Planning Bd., 404 N.J. Super. 278 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=16768435354398064436&q=404+N.J.+Super.+278+&hl=en&as_sdt=4,311

Where it is the municipal land use agency’s responsibility to review compliance with NJDEP’s stormwater regulations, rather than DEP’s responsibility, it was error for board to condition approval on compliance with the regulations without having made findings with respect to such compliance.

Rocky Hill Citizens For Responsible Growth v. Planning Bd., Bor. of Rocky Hill, 406 N.J. Super. 384 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=4263232474486513205&q=406+N.J.+Super.+384+&hl=en&as_sdt=4,31

The statements of individual planning board members merely represent “informal verbalizations of the speaker’s transitory thoughts, they cannot be equated to deliberative findings of fact. It is the Resolution, and not board members’ deliberations, that provides the statutorily required findings of fact and conclusions.” *Citing, New York SMSA, L.P. v. Bd. of Adj. of Weehawken*, 370 N.J. Super. 319 (App. Div. 2004)

Board of Education of the City of Clifton v. Zoning Board of Adjust., City of Clifton, 409 N.J. Super. 389 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=7088765724024941242&q=409+N.J.+Super.+389+&hl=en&as_sdt=4,31

The rules of evidence are not binding on a zoning board, but evidentiary concepts are still pertinent. Why a planning board resolution may be submitted to a zoning board, it is improper for the zoning board to rely upon the facts in the resolution if the facts are in dispute. A zoning board may choose which witness or expert to believe, but the choice must be explained, particularly where the board

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rejects the testimony of facially reasonable witnesses. The board cannot rely upon unsubstantiated allegations, nor can it rely upon net opinions that are unsupported by any studies or data.

Darst v. Blairstown Twp. Zon. Bd. of Adjust., 410 N.J. Super. 314 (App. Div. 2009)
http://scholar.google.com/scholar_case?case=1234200078778546279&q=410+N.J.++Super.+314+&hl=en&as_sdt=4,31

Litigation brought in good faith, but which was unsuccessful, tolled the two-year period of protection for final site plan approval under N.J.S.A. 40:5D-52(a). Conditions precedent to approval are those intended to be fulfilled before approval takes effect and are not governed by the two-year requirement.

Najduch v. Twp. of Independence Planning Bd., 411 N.J. Super. 268 (App. Div. 2009)
http://scholar.google.com/scholar_case?case=9509647173981449339&q=411+N.J.+Super.+268+&hl=en&as_sdt=4,31

A planning board does not have the authority to grant site plan approval for a development that is prohibited in the zone by conditioning its approval upon the applicant obtaining a use variance or a change of use.

American Dream at Marlboro, LLC v. Planning Bd., Twp. of Marlboro, A-0738-09T3 (Jan. 20, 2011), *aff'd as modified*, 209 N.J. 161 (2012)
http://scholar.google.com/scholar_case?case=5501318973219788964&q=A-0738-09T3+&hl=en&as_sdt=4,31

Board condition, and subsequent imposition of restrictive covenant, can be lifted where it is no longer necessary to achieve the purpose originally intended.

American Dream at Marlboro, L.L.C. v. The Planning Board of the Twp. of Marlboro, 209 N.J. 161 (2012)
http://scholar.google.com/scholar_case?case=15369237987078301692&q=american+dream+at+marlboro+&hl=en&as_sdt=4,31

The planning board lacked the power to eliminate a previously-imposed, but never recorded deed restriction. Only the courts have the “equitable power to modify or terminate” such a restriction. The test to apply to “a claim of changes circumstances requires the applicant to demonstrate that it has become ‘impossible as a practical matter to accomplish the purpose for which’ a servitude or restrictive covenant was created. When a “servitude is terminated under this rule, it is ordinarily clear that the continuance of the servitude would serve no useful purpose and would create unnecessary harm to the owner of the servient estate.” Since this is an equitable remedy, the doctrine of unclean hands is applicable.

Township of Pemberton v. Uthman, A-3755-12T4 (March 17, 2015)
https://scholar.google.com/scholar_case?case=7421466764073577667&q=A-3755-12T4+&hl=en&as_sdt=4,31

“When a variance is granted the use permitted thereby becomes a conforming use and is in the nature of a vested right.” “A violation of a condition of the variance does not nullify or rescind the variance. Rather, the municipality has the right to enforce the condition in the same way as it may enforce any zoning violation, by means of legal action in court.” “Similar to the vested right to a variance, the condition imposed on a variance also run with the land.” “Nevertheless, when the original or a succeeding landowner violates the conditions of a variance, the variance is not automatically forfeited.” “Instead, a ‘condition is enforced via a complaint for injunctive relief, specific performance or other appropriate action brought by the municipality.’” “If the failure to comply persists despite legal action to enforce compliance, then the remedies may include a declaration that the variance has been forfeited and the use is unlawful.”

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206 Acorn Associates, Inc. v. Planning Board of the Twp. of Byram, A-0199-13T3 (March 31, 2015)

https://scholar.google.com/scholar_case?case=16787792248081381462&q=A-0199-13T3+&hl=en&as_sdt=4,31

It is the resolution and not statements of individual board members that provide the statutorily required findings of fact and conclusions.

Pavilion Homeowners Association v. Brick Township Planning Board, A-3907-13T4 (June 8, 2015)

https://scholar.google.com/scholar_case?case=10751642511165797948&q=A-3907-13T4+&hl=en&as_sdt=4,31

The Board properly approved a development application where the applicant demonstrated by expert testimony that its drainage design would meet established standards.

Pennsgrove Associates, LP v. Carneys Point Township Planning Board, A-1779-13T1 (July 2, 2015)

https://scholar.google.com/scholar_case?case=6059089824814356666&q=A-1779-13T1+&hl=en&as_sdt=4,31

Payment of the township's legal fees incurred in prior litigation with the applicant not a quid pro quo for the board's approval of the application because the fees were authorized by the LRHL, approval was not conditioned on the payment of the fees, the litigation had been dismissed and payment was a condition of the settlement, and the project required no variances.

Hillsborough Towne Center Associates, LLC v. Board of Adjustment of the Township of Hillsborough, A-1444-13T1 (Sept. 15, 2015)

https://scholar.google.com/scholar_case?case=8343187149846526961&q=A-1444-13T1+&hl=en&as_sdt=4,31

Resolution must explain why the Board credited its planning and traffic experts' testimony and why it rejected the developer's experts' testimony. With respect to a (d)(3) variance, the resolution must focus on the impact of the deviation from the conditional use standard and explain why it would impair the intent and the purpose of the zone plan and zoning ordinance.

Galaxy Towers Condominium Association, Inc. v. Township of North Bergen, A-3583-13T3, A-0184-14T2, A-0519-14T2 (Aug. 8, 2016)

https://scholar.google.com/scholar_case?case=17742136956527193570&q=A-0184-14T2+&hl=en&as_sdt=4,31

With respect to expert testimony, "the question is not whether an opinion is admissible pursuant to the net opinion rule; rather, the question is whether the opinion is sufficiently supported by data and other evidence, so that reliance on the opinion is not arbitrary or unreasonable, and the Board's ultimate decision was supported by sufficient credible evidence." The technical rules of evidence are not applicable to hearings of land use boards. N.J.S.A. 40:55D-10(e).

Hearings were not tainted because board members were paid to attend special hearings because payment is authorized by N.J.S.A. 40:55D-8(b) and the municipal ordinance.

Freedberg v. Zon. Bd. of Adjust. Bor. of Ramsey, A-3161-15T1 (Mar. 31, 2017)

https://scholar.google.com/scholar_case?case=659103407238711202&q=A-3161-15T1+&hl=en&as_sdt=4,31

The Municipal Land Use Law expressly rejects adherence to the rules of evidence in zoning board hearings and "a zoning board may consider an opinion when the data and other evidence establish that it is not arbitrary or unreasonable." Board's reliance on zoning officer's opinion that was based

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on a review of the plans and familiarity of the zoning code was not arbitrary or unreasonable. Where an ordinance does not qualify the number of uses permit, the court will not add any numerical limitation to the ordinance.

Kash v. The Mayor and Council of the Borough of Freehold, A-2569-15T1 (May 5, 2017)

https://scholar.google.com/scholar_case?case=9589573892191576449&q=A-2569&hl=en&as_sdt=4,31

Resolution prepared in advance of council vote and approved simultaneously with the vote was not arbitrary where it isn't demonstrated that resolution differed from the council's intended findings or lacked adequate factual findings.

Allen & Bubenick, Inc. v. Township of Piscataway, A-1309-13T4, A-5649-13T4, A-3471-14T4

(May 30, 2017)

https://scholar.google.com/scholar_case?case=1027333728635784562&q=A-3471-14T4&hl=en&as_sdt=4,31

Municipal authorities acted properly in denying a zoning permit to seller of property where seller had not complied with conditions to various planning board approvals granted years earlier. In addition, when plaintiff complied with the conditions, and the permit was issued, it rendered his claims moot.

514 Milburn Avenue, LLC v. Planning Board of Township of Millburn, A-0227-16T3 (Nov. 21, 2017)

https://scholar.google.com/scholar_case?case=6194500431079656688&q=A-0227-16T3&hl=en&as_sdt=4,31

A planning board should consider the impact of a development application upon a neighboring municipality, but need not abdicate its own zoning ordinances and master plan in favor of the adjacent municipality's zoning scheme.

Barnaskas v. Zoning Board of Adjustment, Twp. of Jackson, A-4349-15T3 (Aug. 2, 2018)

https://scholar.google.com/scholar_case?case=14809282818561736176&q=A-4349-15T3&hl=en&as_sdt=4,31

Resolution containing "explicit nullifying language, specifically, that any variances granted in connection with the age-restricted condominiums would expire if they were not constructed within five years," required the nullification of the variances when the construction of the project did not commence in five years.

Klein Outdoor Advertising, Inc. v. City of Jersey City Zoning Board of Adjustment, A-2280-16T3 (Oct. 2, 2018)

https://scholar.google.com/scholar_case?case=4974992464359657916&q=A-2280-16T3&hl=en&as_sdt=4,31

Where resolution fails to include factual findings and conclusions based thereon, it is not for the court to evaluate the evidence and make its own factual findings. Rather, the court must remand to the Board for it to discharge its responsibilities pursuant to N.J.S.A. 40:55D-10(g).

Chen-Oster v. Zoning Bd. of Adjust., Tp. of Middletown, A-0037-17T3 (Jan. 11, 2019)

https://scholar.google.com/scholar_case?case=13549178629393493509&q=A-0037-17T3&hl=en&as_sdt=4,31

Board is collaterally estopped from making contrary findings with respect to the conditions of the property that had not changed from a prior application.

DECISION, RESOLUTION & CONDITIONS OF APPROVAL

Tirpak v. Bor. of Point Pleasant Beach Bd. of Adj., 457 N.J. Super. 441 (App. Div. 2019)
https://scholar.google.com/scholar_case?case=7355188727747707420&q=A-5147-17T1&hl=en&as_sdt=4,31

Variance condition that required one unit of a two-family dwelling to be occupied by the owner and not rented to a third-party tenant discriminated against renters and is invalid. The zoning authority is limited to the regulation of land uses and not with the person who owns or occupies the land.

Outfront Media, LLC v. Planning/Zoning Bd., Bor. of Bogota, A-1654-17T4 (July 19, 2019)
https://scholar.google.com/scholar_case?case=15791811396464069986&q=A-1654-17T4&hl=en&as_sdt=4,31

Where the Board's factual findings were not linked to the evidence in the record and conclusions of law were "conclusory statements that merely parroted the language of various laws, and the conclusions were devoid of any analysis or explanation of how its decision complies with the standards . . . the Board's resolution impairs our ability to evaluate the basis for and determine the propriety of its decision. Therefore, we reverse the trial court's order and vacate the Board's resolution."

PMG New Jersey II, LLC v. 133 Colonia, LLC, A-4235-16T2 (July 22, 2019)
https://scholar.google.com/scholar_case?case=1188631796231723270&q=A-4235-16T2&hl=en&as_sdt=4,31

"There is no requirement that the Board list every single piece of evidence it reviewed and cite every single factual statement it found in its decision. Rather, the standard of review is whether there is sufficient credible evidence in the record to support the Board's findings, and we will not disturb a Board's factual findings unless there is a clear abuse of discretion." "The Board's resolution was adequate. It specified all of the exhibits and which portions of testimony the Board relied upon to make its factual findings and set forth the evidence and factual findings in detail. The Board made factual findings after considering all the evidence presented and explained how its findings supported its ultimate legal conclusion."

Barry v. New Jersey Depart. Of Environmental Protection, A-2428-17T2 (Aug. 6, 2019)
https://scholar.google.com/scholar_case?case=7123779579869573255&q=A-2428-17T2&hl=en&as_sdt=4,31

Petitioner waived his ability to challenge the permit conditions by proceeding with construction.

Kiehn v. Mongey, A-1860-17T4 (Sept. 13, 2019)
https://scholar.google.com/scholar_case?case=13755630783392853271&q=A-1860-17T4&hl=en&as_sdt=4,31

Condition of approval requiring owner-occupancy was unlawful and because there was substantial doubt as to whether the board would have granted the approval without the condition, the resolution was vacated and the matter remanded to the board.

Fitzpatrick v. Planning Bd., Twp. of Freehold, A-3659-18T3 (Jan. 17, 2020)
https://scholar.google.com/scholar_case?case=12712082027410951682&q=A-3659&hl=en&as_sdt=4,31

Court upheld a condition imposed on a prior subdivision approval that a lot not be further subdivided even though the lots proposed in the new application would meet the dimensional requirements of the zoning code because there was no showing of changed circumstances.

DECISION, RESOLUTION & CONDITIONS OF APPROVAL

440 Company-Carriage House, LP, v. Zoning Bd. of Adjust., Bor. of Palisades Park, A-1562-18T1 (Jan. 22, 2020)

https://scholar.google.com/scholar_case?case=15090528049952249962&q=A-1562&hl=en&as_sdt=4,31

Variance application for high-rise building set aside where extent of application reduced sue sponte by the Board and resolution failed to explain why “a reduction in floors and units to 14 and 121, meets the criteria, when 17 and 154 did not.” “[T]he Board did not grant the requested variances. Nor did it approve Berkeley’s application. Instead, the Board approved building fourteen stories and 121 units – without any rationale provided as to why this number of stories and units met the criteria for variance relief or why Berkeley’s proposed building did not.” “[I]ts sua sponte, unsupported modification was a de facto denial of Berkeley’s application. Without any explanation for its determination, we must conclude the Board’s actions were arbitrary and capricious.”

Montenero v. Toms River Township Planning Board, A-5767-17T4 (March 9, 2020)

https://scholar.google.com/scholar_case?case=10970008899627433798&q=Montenero+v.+Tims+River+Twp&hl=en&as_sdt=6,31&as_ylo=2019

Court remanded application to Planning Board where the Board failed to explain why it approved waivers to allow driveway setbacks of 2’ where setbacks of 5’ were required and how “the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question. N.J.S.A. 40:55D-51(a). . . . The bald conclusions set forth in the resolution are inadequate to support the grant of the waiver.”

Patel v. City of South Amboy Planning Board, A-3744-18T1 (March 9, 2020)

https://scholar.google.com/scholar_case?case=5883001911060809598&q=+Patel+v.+City+of+S.+Amboy&hl=en&as_sdt=6,31&as_ylo=2019

“Despite the [court’s] de novo review of municipal ordinances, this court has observed that, because a planning board is required to approve a master plan as well as a zoning ordinance, ‘the Planning Board can be expected to have more than a passing knowledge of the legislative intent at the time of the enactment.’ [citation omitted]. Therefore, our courts have given ‘deference to a municipality’s informed interpretation of its ordinances, while nevertheless construing the ordinance de novo.’” It was reasonable for the board to conclude that no buffer zone was required in a redevelopment plan that allowed for zero setbacks, but the underlying zoning required a buffer between commercial and residential uses. It was reasonable for the board to exclude into evidence a planning report on a prior application for a use variance that predated the adoption of the redevelopment plan that made the use a permitted use.

Monaghan v. Township of Teaneck Planning Board, A-2239-18T4 (May 8, 2020)

https://scholar.google.com/scholar_case?case=11066139462615508057&q=Monaghan+v.+Twp.+of+Teaneck+&hl=en&as_sdt=6,31&as_ylo=2020

Where the Board’s factual findings set forth in the resolution are so deficient as to prevent appellate review, the court must remand to the Board for further findings. It is not sufficient that the resolution came to its legal conclusions without referencing which ordinances, standards, or provision of the municipal master plan would have conflicted with the subdivision. The resolution must state why the Board concluded the subdivision “would be ‘in conflict with the character of the neighborhood,’ which is one of single[-]family homes.” But, a reversal of the Board was not “clearly compel[led] by the record, and . . . neither party ‘cites to those provisions of the Master Plan on which the Township relies or cites to the specific language of the Zoning Ordinances which will support either the granting or denial of the variances and subdivision.”

DECISION, RESOLUTION & CONDITIONS OF APPROVAL

Klein Outdoor Advertising, Inc. v. City of Jersey City Zoning Bd. of Adjust., A-1425-19T1 (Dec. 8, 2020)

https://scholar.google.com/scholar_case?case=10016323456800072644&q=klein+v.+jersey+city&hl=en&as_sdt=6,31&as_ylo=2020

It was not error for a trial judge to cite to comments of board members were the board's resolution contained sufficient factual findings to support its conclusion.

1 Mem'l Drive LLC v. 160 West Broadway Assoc., LP, A-0511-19, A-0636-19 (Aug. 13, 2021)

https://scholar.google.com/scholar_case?case=14631100846996496447&q=160+west+broadway&hl=en&as_sdt=6,31

"A land use board's decision regarding the relief requested by an applicant must be embodied in the form of a written resolution, which includes findings of fact and conclusions of law." Where the resolution is simply a verbatim recitation of the Board's planner's report, with no independent findings of fact, it does not satisfy the requirements of N.J.S.A. 40:55D-10. In addition, where there are competing experts, the Board must explain in the resolution what testimony it chose to accept and why it chose to accept the testimony of that expert, over the testimony of the other. The resolution must also explain the reasons why the applicant satisfied the positive and negative criteria for the granting of the variance, a mere recital of the statutory language is not enough.

Moini v. Freehold Twp. Planning Bd., A-3427-19 (April 20, 2022)

https://scholar.google.com/scholar_case?case=6580833301325546953&q=Moini+v.+Freehold&hl=en&as_sdt=6,31&as_ylo=2022

Use variance extinguished where appellant failed to comply with owner-occupancy condition of use variance. "Successive owners are bound by lawfully imposed conditions attached to variances obtained by their predecessors in title; the variances cannot be unilaterally altered without a further application to the land use board."

Ultimate Force, LLC v. Zoning Bd. of Adjustment of the Twp. of Rochelle Park, A-0563-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=14898913493240838099&q=Ultimate+Force,+LLC+v.+rochelle+park&hl=en&as_sdt=6,31

With respect to a board that does not adopt a resolution within the statutorily required period of time, the language of N.J.S.A. 40:55D-10(g)(2) is mandatory as to the grant of Plaintiff's attorneys' fees for litigation compelling adoption.

Big Smoke LLC v. Twp. of W. Milford, 478 N.J. Super. 203 (App. Div. 2024)

https://scholar.google.com/scholar_case?case=17670526114977269517&q=big+smoke&hl=en&as_sdt=6,47&as_ylo=2024

Where, pursuant to a municipality's ordinance related to what items will be placed on the local governing body's agenda, the governing body refuses to consider an applicant's request for a resolution of support related to obtaining their State cannabis license due to concerns about compliance with the municipality's buffering requirements, the court will not disturb same.

Weldon Materials, Inc. v. Planning Bd. of the Borough of Watchung, A-0990-22 (Mar. 20, 2024)

https://scholar.google.com/scholar_case?case=2398298999784689439&q=Weldon+Materials,+Inc.+v.+Planning&hl=en&as_sdt=6,47&as_ylo=2024

The Board's approval of applicant's multi-family development included a condition that the County approve a traffic light proposed by applicant and, if same was not approved, that the applicant would have to return to the Board. Objector challenged the approval on other grounds but, during the pendency of the appeal, the County's traffic light approval was reversed by the NJDOT.

DECISION, RESOLUTION &
CONDITIONS OF APPROVAL

Consequently, the challenged approval was no longer effective, and the appeal was now moot.

In the Matter of the Application of the Twp. of Wayne, A-019923, A-0220-23 (April 24, 2025)
https://scholar.google.com/scholar_case?case=15671387550073535359&q=in+the+matter+of+the+township+of+wayne&hl=en&as_sdt=6,47&as_ylo=2025

Facts did not support trial court's decision that Board had acted in bad faith in failing to approve resolution required by settlement agreement.

TIME-OF-DECISION
RULE/VESTED RIGHTS

TIME-OF-DECISION RULE/VESTED RIGHTS

Tremarco Corp. v. Garzio, 32 N.J. 448 (1960)

http://scholar.google.com/scholar_case?case=5340447164563426406&q=32+N.J.+448+&hl=en&as_sdt=4,31

Morris v. Postma, 41 N.J. 354 (1964)

http://scholar.google.com/scholar_case?case=16947891832130324698&q=41+N.J.+354+&hl=en&as_sdt=4,31

Donadio v. Cunningham, 58 N.J. 309 (1971)

http://scholar.google.com/scholar_case?case=7530103158731211922&q=58+N.J.+309+&hl=en&as_sdt=4,31

Gruber v. Mayor and Twp. Committee of Raritan Twp., 39 N.J. 1 (1962)

http://scholar.google.com/scholar_case?case=5736832017488068012&q=39+N.J.+1+&hl=en&as_sdt=4,31

Hilton Acres v. Klein, 35 N.J. 570 (1961)

http://scholar.google.com/scholar_case?case=3991290547237604526&q=35+N.J.+570+&hl=en&as_sdt=4,31

Bleznak v. Evesham Twp., 170 N.J. Super. 216 (Law Div. 1979)

http://scholar.google.com/scholar_case?case=4232177102077684352&q=170+N.J.+Super.+216+&hl=en&as_sdt=4,31

Kruvant v. Mayor and Council of Cedar Grove Twp., 82 N.J. 435 (1980)

http://scholar.google.com/scholar_case?case=589789869545191750&q=82+N.J.+435+&hl=en&as_sdt=4,31

Urban Farms, Inc. v. Borough of Franklin Lakes, 179 N.J. Super. 203 (App. Div. 1981)

http://scholar.google.com/scholar_case?case=13954182081192254811&q=179+N.J.+Super.+203+&hl=en&as_sdt=4,31

Lizak v. Faria, 96 N.J. 482 (1984)

http://scholar.google.com/scholar_case?case=14320131162996490608&q=96+N.J.+482+&hl=en&as_sdt=4,31

S.T.C. Corp. v. Planning Bd., Hillsborough, 194 N.J. Super. 333 (App. Div. 1984)

http://scholar.google.com/scholar_case?case=12944951955784855844&q=194+N.J.+Super.+333+&hl=en&as_sdt=4,31

Ordinance adopted after unlawful denial does not apply.

B & W Assocs. v. Planning Bd., Hackettstown, 242 N.J. Super. 1 (App. Div. 1990)

http://scholar.google.com/scholar_case?case=16355398315701788628&q=242+N.J.+Super.+1+&hl=en&as_sdt=4,31

Subdivision vests use of land.

TIME-OF-DECISION RULE/VESTED RIGHTS

Lake Shore Estates v. Denville Twp., 255 N.J. Super. 580 (App. Div. 1991), *aff'd*, 127 N.J. 394 (1992)

http://scholar.google.com/scholar_case?case=758819044384947648&q=255+N.J.+Super.+580+&hl=en&as_sdt=4,31

Palatine v. Planning Bd. of the Twp. of Montville, 133 N.J. 546 (1993)

http://scholar.google.com/scholar_case?case=17229870927109730583&q=133+N.J.+546+&hl=en&as_sdt=4,31

Right to build under approval continues until the ordinance changes.

M. Alfieri Co. v. State, DEPE, 269 N.J. Super. 545 (App. Div. 1994), *aff'd*, 138 N.J. 642 (1995)

http://scholar.google.com/scholar_case?case=11612471821877120564&q=269+N.J.+Super.+545+&hl=en&as_sdt=4,31

Manalapan Realty v. Township Committee, Twp. of Manalapan, 140 N.J. 366 (1995)

http://scholar.google.com/scholar_case?case=4275728497051528774&q=140+N.J.+366+&hl=en&as_sdt=4,31

Willoughby v. Planning Bd., Twp. of Deptford, 306 N.J. 266 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=5501418020198240281&q=306+N.J.+266+&hl=en&as_sdt=4,31

Dinizo v. Planning Bd. of Westfield, 312 N.J. Super. 225 (Law Div. 1998)

http://scholar.google.com/scholar_case?case=12645729255966469483&q=312+N.J.+Super.+225+&hl=en&as_sdt=4,31

Rogers v. Zoning Bd. of Ridgewood, 309 N.J. Super. 630 (App. Div. 1998), *aff'd*, 158 N.J. 11 (1999)

http://scholar.google.com/scholar_case?case=15199665343472988715&q=309+N.J.+Super.+630+&hl=en&as_sdt=4,31

W.L. Goodfellows and Co. of Turnersville, Inc. v. Washington Twp. Planning Bd., 345 N.J. Super. 109 (App. Div. 2001)

http://scholar.google.com/scholar_case?case=13136394356054207952&q=345+N.J.+Super.+109+&hl=en&as_sdt=4,31

Builders League of South Jersey, Inc. v. Burlington County Planning Bd., et al., 353 N.J. Super. 4 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=618353877786972446&q=353+N.J.+Super.+4+&hl=en&as_sdt=4,31

Neu v. Planning Bd., Twp. of Union, 352 N.J. Super. 544 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=6060095140364156435&q=352+N.J.+Super.+544+&hl=en&as_sdt=4,31

Eastampton Center, LLC v. Planning Bd., Twp. of Eastampton, 354 N.J. Super. 171 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=11137574347175123796&q=354+N.J.+Super.+171+&hl=en&as_sdt=4,31

Developer, aware of a pending “open space preservation” ordinance which would dramatically downzone its 200+ acre tract, attempted to gain long term protection from such zoning changes

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through the submission of a General Development Plan (GDP). Appellate Division held that under the “time of decision rule,” the “balancing test” weighed in favor of applying the now adopted open space preservation ordinance to any developer reapplication.

D.L. Real Estate Holdings, LLC v. Point Pleasant Planning Bd., 176 N.J. 125 (2003)
http://scholar.google.com/scholar_case?case=6395019531807364899&q=D.L.+Real+Estate+Holdings,+LLC+v.+Point+Pleasant+&hl=en&as_sdt=4,31

Centex Homes, LLC v. Twp. Committee of Twp. of Mansfield, 372 N.J. Super. 186 (App. Div. 2004)
http://scholar.google.com/scholar_case?case=9570904139056087172&q=372+N.J.+Super.+186+&hl=en&as_sdt=4,31

House of Fire Christian Church v. Zoning Bd. of Adjust., City of Clifton, 379 N.J. Super. 526 (App. Div. 2005)
http://scholar.google.com/scholar_case?case=11109685254467004080&q=379+N.J.+Super.+526+&hl=en&as_sdt=4,31

Municipality may change its zoning ordinance during the pendency of a site plan application, even if the ordinance is amended in direct response to a particular application.

Britwood Urban Renewal, LLC v. City of Asbury Park, 376 N.J. Super. 552 (App. Div. 2005)
http://scholar.google.com/scholar_case?case=14450473945903516143&q=376+N.J.+Super.+552+&hl=en&as_sdt=4,31

Time-of-decision rule did not require the application of an ordinance after final site plan approval granted.

DKM Residential Properties v. Twp. of Montgomery, 182 N.J. 296 (2005)
http://scholar.google.com/scholar_case?case=3881548758119814551&q=182+N.J.+296+&hl=en&as_sdt=4,31

Construction official could cite developer for violations despite conveyance of property and issuance of certificate of occupancy.

University Cottage Club of Princeton New Jersey Corp. v. New Jersey Dept. of Environ. Protect., 191 N.J. 38 (2007)
http://scholar.google.com/scholar_case?case=7386690902812672154&q=191+N.J.+38+&hl=en&as_sdt=4,31

Application of private eating club for certification as a tax- exempt historic site was entitled to have its tax-exempt status evaluated based on its satisfaction of the standards in effect at the time of the administrative adjudication because the Commissioner’s denial was invalid. The denial was based on new and undeclared standards for public access to historic sites that were not adopted in accordance with the Administrative Procedures Act. Therefore, the intervening statutory requirements, which applied by their own terms only to certifications that occur after the Act’s effective date, did not have to be met by the plaintiff.

Maragliano v. Land Use Bd., Twp. of Wantage, 403 N.J. Super. 80 (App. Div. 2008)
http://scholar.google.com/scholar_case?case=9929368312386368583&q=403+N.J.+Super.+80+&hl=en&as_sdt=4,31

Application filed after the adoption of a new zoning ordinance, but before its effective date, and decided by the board prior to the effective date, but resolution of approval not adopted until after the effective date of the ordinance is subject to the time of decision rule and does not enjoy vested rights protection. The board should have required the applicant to submit an application that conformed to the new ordinance, “rather than rushing to approve his application before the

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ordinance's effective date."

Friends of Peapack-Gladstone v. Borough of Peapack-Gladstone Land Use Bd., 407 N.J. Super. 404 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=7919493649469693738&q=407+N.J.+Super.+404+&hl=en&as_sdt=4,31

Time limit of protection afforded developer under preliminary approval terminated by operation of law when developer obtained final site plan approval. A developer that secures final approval may obtain up to five years of additional protection from subsequent zoning changes pursuant to N.J.S.A. 40:55D-52(a). In addition, the period of protection is tolled in the event the developer is barred or prevented, directly or indirectly, from proceeding with the development by a legal action instituted to protect the public health or welfare and the developer is otherwise ready, willing and able to proceed. The zoning official's action in declining to issue permits tolled the period of protection, as did the lawsuit filed by the objector notwithstanding the fact that the court did not issue a temporary restraining order or preliminary injunction. The board was not authorized to issue a six year extension to the developer where the extension was of final approval as the statute only authorizes up to five years.

Jai Sai Ram, LLC v. The Planning/Zoning Board of South Toms River, 446 N.J. Super. 338 (App. Div. 2016)

https://scholar.google.com/scholar_case?case=4662268700999096378&q=A-2075-14T2&hl=en&as_sdt=4,31

The "time of application rule" "does not apply where the local zoning is amended to specifically permit the use which is the subject of a variance application. In that situation, the variance is no longer necessary, and it would be absurd, as well as contrary to the Legislature's purpose, to hold the applicant to the less favorable standards of the pre-existing ordinance."

PMG New Jersey II, LLC v. 113 Colonia, LLC, A-4235-16T2 (July 22, 2019)

https://scholar.google.com/scholar_case?case=1188631796231723270&q=A-4235-16T2&hl=en&as_sdt=4,31

Following the grant of "d" variances, an amendment to the zoning ordinance that made the nonpermitted uses permitted and conditionally permitted in the zone, resulted in the challenge to the grant of the variances becoming moot.

OPEN PUBLIC RECORDS
ACT (OPRA)

OPEN PUBLIC RECORDS ACT (OPRA)

Lakewood Citizens v. Twp. Committee, 306 N.J. Super. 500 (Law Div. 1977)
http://scholar.google.com/scholar_case?case=9937818522724816043&q=306+N.J.+Super.+500+&hl=en&as_sdt=2,31

Polillo v. Deane, 74 N.J. 562 (1977)
http://scholar.google.com/scholar_case?case=13161295614000320698&q=74+N.J.+562+&hl=en&as_sdt=2,31

Action taken by board at a meeting which violates OPMA is void.

Precision Industrial Design v. Beckwith, 185 N.J. Super. 9 (App. Div.) *certif. denied*, 91 N.J. 545 (1982)
http://scholar.google.com/scholar_case?case=261853711282777677&q=185+N.J.+Super.+9&hl=en&as_sdt=2,31

Technical violation of OPMA does not trigger automatic approval.

Reilly v. Brice, 109 N.J. 555 (1988)
http://scholar.google.com/scholar_case?case=3049361472364683234&q=109+N.J.+555+&hl=en&as_sdt=2,31

Roman v. Twp. of South Hackensack, 302 N.J. Super. 568 (App. Div.) *certif. denied*, 152 N.J. 191 (1997)
http://scholar.google.com/scholar_case?case=11461822408417800386&q=302+N.J.+Super.+568+&hl=en&as_sdt=2,31

Bergen County Imp. Authority v. North Jersey Media Group, Inc., 370 N.J. Super. 504 (App. Div. 2004)
http://scholar.google.com/scholar_case?case=12754623988873106847&q=370+N.J.+Super.+504+&hl=en&as_sdt=2,31

Common law definition of “public record” is broader than the statutory definition of “government record” contained in the Open Public Meetings Act. Exclusions from definition of “government record” enumerated in the OPRA do not limit a citizen’s common law right of access.

The Times of Trenton Pub. Corp. v. Lafayette Yard Community Development Corp., 183 N.J. 519 (2005)
http://scholar.google.com/scholar_case?case=10607642515665053361&q=183+N.J.+519&hl=en&as_sdt=2,31

Private non-profit corporation designated as redeveloper of municipal property was an instrumentality or agency created by a political subdivision under OPRA.

Paff v. Byrnes, 385 N.J. Super. 574 (App. Div. 2006)
http://scholar.google.com/scholar_case?case=4044950235141617924&q=Paff+v.+Byrnes&hl=en&as_sdt=2,31

An attorney’s disclosure of his Certificate of Ethical Conduct as a condition of employment as municipal attorney was a voluntary and intentional relinquishment of his right to maintain the confidentiality of his ethical history. Once released to public employer, attorney may no longer restrict the public entity’s dissemination of professional information it had required him to disclose as a condition of employment.

OPEN PUBLIC RECORDS ACT (OPRA)

Libertarian Party of Central New Jersey v. Murphy, 384 N.J. Super. 136 (App. Div. 2006)
http://scholar.google.com/scholar_case?case=8011503316209351589&q=384+N.J.+Super.+136+&hl=en&as_sdt=2,31

\$55 fee for duplicating the minutes of a township council meeting onto a computer diskette is unreasonable and unsanctioned by OPRA. The fee should reflect the actual cost of duplication.

New Jerseyans for a Death Penalty Moratorium v. New Jersey Department of Correction, 185 N.J. 137 (2005)
http://scholar.google.com/scholar_case?case=4914461635990011124&q=185+N.J.+137+&hl=en&as_sdt=2,31

Advocacy group sought attorneys' fees related to OPRA request to Department of Corrections. Court finds that purpose underlying the fee shifting statute is to ensure "that plaintiffs with bona fide claims are able to find lawyers to represent them . . . to attract competent counsel in cases involving statutory rights. . . and to ensure justice for all citizens." Citing *Coleman v. Fiore Bros.*, 113 N.J. 594 (1989). "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate," a calculation known as the lodestar. The lodestar may be reduced if the level of success achieved in the litigation is limited as compared to the relief sought. The critical factor is the degree of success obtained. Because of the Department's unsupported claim of privilege, which required greater time and effort to be spent to achieve the release of records, the group was entitled to full legal fees even though only 70 percent of the records sought were released. In addition, when a prevailing party faces a substantial risk of nonpayment in its attempt to secure the release of government records, a fee enhancement may be appropriate.

McGuire v. Township of Waterford, A-3196-05T5 (Feb. 28, 2007), *certif. denied*, 192 N.J. 68 (2007)
http://scholar.google.com/scholar_case?case=14854911863452980107&q=McGuire+v.+Township+of+Waterford&hl=en&as_sdt=2,31

OPRA allows individuals to request records anonymously, but it does not allow for a private cause of action for damages.

O'Shea v. West Milford Board of Ed., 391 N.J. Super. 534 (App. Div. 2007)
http://scholar.google.com/scholar_case?case=13175108583546222983&q=391+N.J.+Super.+534+&hl=en&as_sdt=4,31

Board secretary's notes are not "government records" subject to disclosure. The secretary's "official business" is the preparation of the formal minutes, not the preparation of handwritten notes.

Mason v. City of Hoboken, 196 N.J. 51 (2008)
http://scholar.google.com/scholar_case?case=3898272275566101849&q=,+196+N.J.+51+&hl=en&as_sdt=4,31

OPRA and common law right of access actions filed in Superior Court have a 45-day statute of limitations. Attorney's fees should be awarded where the requestor can establish a "causal nexus" between the lawsuit and the production of requested records.

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Burnett v. County of Bergen, 402 N.J. Super. 319 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=16011165687226937266&q=402+N.J.+Super.+319+&hl=en&as_sdt=4,31

The term “government record” does not include that portion of any document that discloses a person’s social security number. Prior to allowing access to a government record, the record’s custodian must redact the SSN unless the SSN is part of a record “required by law to be made, maintained or kept on file by a public agency.” Even when this exception exists, there must be a balancing of the interests of the individuals’ right to privacy under the New Jersey Constitution and the need for the information.

Fisher v. Division of Law, 400 N.J. Super. 61 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=4164880281444397940&q=400+N.J.+Super.+61+&hl=en&as_sdt=4,31

A public agency may charge a special service charge that is reasonable and based upon the actual cost of providing the copy or copies pursuant to N.J.S.A. 47:1A-5(c). It was reasonable for the Division of Law to assign responsibility for the retrieval of emails and computer files response to an OPRA request to the attorneys who prepared those records and to charge their time based upon their salaries.

Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=8542644587542776567&q=403+N.J.+Super.+609+&hl=en&as_sdt=4,31

A party is not denied access to a governmental record where the governmental agency fails to supply a record which the party already has. Consulting with an attorney is not a willful violation of OPRA.

Education Law Center v. New Jersey Department of Education, 198 N.J. 274 (2009)

http://scholar.google.com/scholar_case?case=10010237398074315338&q=198+N.J.+274+&hl=en&as_sdt=4,31

A government record which contains factual components (a memo prepared by DOE that outlines state aid simulation results for different funding formulas) is subject to the deliberative process exception to OPRA when it is used in the decision-making process and its disclosure would reveal the nature of the deliberations that occurred during the process.

Burnett v. County of Bergen, 198 N.J. 408 (2009)

http://scholar.google.com/scholar_case?case=8012670211541995983&q=198+N.J.+408+&hl=en&as_sdt=4,31

Social security numbers must be redacted from the land title documents sought by the requestor before they are the records are released. The cost of the redaction to be at the expense of the requestor.

Wilson v. Brown, 404 N.J. Super. 557 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=9863779368632182443&q=,404+N.J.+Super.+557+&hl=en&as_sdt=4,31

Executive privilege properly asserted by Governor Corzine to protect from disclosure emails between the governor and Carla Katz, the president of the Communications Workers of America Local 1034. Allegations of suspicious conduct and flawed judgment which does not implicate criminal conduct is insufficient to overcome the privilege.

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North Jersey Media Group, Inc. v. Bergen County Prosecutor's Office, 405 N.J. Super. 386 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=17308007462549546461&q=405+N.J.+Super.+386+&hl=en&as_sdt=4,31

Records of prosecutor's office involving employees who sought approval for employment outside of the office properly withheld to protect the employees' privacy because they might be subjected to threats of harm.

Constantine v. Township of Bass River, 406 N.J. Super 305 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=12947365797844597746&q=406+N.J.+super+305+&hl=en&as_sdt=4,31

OPRA fee schedule for obtaining discovery in municipal court matters is inappropriate, but the issue of what fees may be charged is appropriately reserved for the Executive branch or the Supreme Court in its supervisory role over all matters of practice before the courts.

Bart v. Passaic County Public Housing Agency, 406 N.J. Super. 445 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=6601336779495802163&q=406+N.J.+Super.+445+&hl=en&as_sdt=4,31

Access to records not unlawfully denied where request failed to identify records with specificity and required the custodian of records to conduct research to determine what records were requested.

Paff v. City of East Orange, 407 N.J. Super. 221 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=6000638841129534747&q=407+N.J.+Super.+221+&hl=en&as_sdt=4,31

The records custodian may adopt a form for requesting access to a government record which includes specific directions and procedures for requesting a record provided the procedure does not impose an unreasonable obstacle to the transmission of a request.

Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=11265370289614698552&q=407+N.J.+Super.+230+&hl=en&as_sdt=4,31

All requests for OPRA records must be in writing. Such requests must utilize forms provided by the custodian of the records, but they may not be withheld if the request is not on the official form yet contain the information required by N.J.S.A. 47:1A-5(f).

Goldsmith v. Camden County Surrogate's Office, 408 N.J. Super. 376 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=13948225792715518530&q=408+N.J.+Super.+376+&hl=en&as_sdt=4,31

Unjust enrichment action against county surrogate's office which alleged that surrogate charged excessive copying fees for records is governed by the 45-day limitations period for actions in lieu of prerogative writs.

O'Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=6984490415598282097&q=410+N.J.+Super.+371+&hl=en&as_sdt=4,31

A decision of the GRC does not have value as a precedent for any case initiated in the Superior Court. "Use of force" documents that must be kept pursuant to Attorney General guidelines are subject to release under OPRA.

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Asbury Park Press v. County of Monmouth, 201 N.J. 5 (2010)

http://scholar.google.com/scholar_case?case=10783010111612405793&q=201+N.J.+5&hl=en&as_sdt=4,31

OPRA requires disclosure of a settlement agreement between a governmental agency and an employee who filed a lawsuit claiming sex discrimination. Disclosure does not violate any reasonable expectation of privacy because the employee filed a public lawsuit.

Paragon Contractors, Inc. v. Peachtree Condominium Ass'n., 202 N.J. 415 (2010)

http://scholar.google.com/scholar_case?case=5198636861795827516&q=202+N.J.+415+&hl=en&as_sdt=4,31

The Affidavit of Merit statute applies to all actions for damages based on professional malpractice and the failure of the court to hold a *Ferreira* conference does not toll the time period for the filing of the affidavit of merit in suit against engineering firm (although relief given due to confusion in the courts).

Smith v. Hudson County Register, 411 N.J. Super. 538 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=10681525032750004521&q=411+N.J.+Super.+538&hl=en&as_sdt=4,31

Governmental agencies must charge requesters of public records no more than the reasonably approximate “actual costs” of copying records requested pursuant to OPRA. Ruling given prospective effect because of fiscal and administrative impact on counties.

Paff v. Division of Law, 412 N.J. Super. 140 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=902097357751221199&q=412+N.J.+Super.+140+&hl=en&as_sdt=4,31

“State agencies requesting legal advice from their attorneys concerning the exercise of the statutory responsibilities they are required by law to discharge are entitled to receive legal advice from their attorneys on a confidential basis.” As a result, legal advice rendered by the Division of Law in the form of an unpublished Administrative Agency Advice letters are exempt from disclosure under OPRA as within the attorney-client exemption.

Fair Share Housing Center, Inc. v. New Jersey League of Municipalities, 413 N.J. Super. 423 (App. Div. 2010) Decision reversed in 207 N.J. 489 (2011).

http://scholar.google.com/scholar_case?case=17249337908956752050&q=413+N.J.+Super.+423+&hl=en&as_sdt=4,31

The League of Municipalities is not subject to OPRA. Even though the League’s membership consists of municipalities, this does not make the League a “combination of political subdivision” within the intent of OPRA. The League does not provide any functions that would be characterized as government service, but rather acts as an advocate for municipal government.

Slaughter v. Government Records Council, 413 N.J. Super. 544 (App. Div. 2010)

[http://scholar.google.com/scholar_case?case=17231063015853596157&q=413+N.J.+Super.+544+\(&hl=en&as_sdt=4,31](http://scholar.google.com/scholar_case?case=17231063015853596157&q=413+N.J.+Super.+544+(&hl=en&as_sdt=4,31)

An exemption from a right of public access to a government record can be established not only by administrative rule but also by Executive Order of the Governor. However, interim exemption contained in Executive Order issued at time of adoption of OPRA and not later adopted in accordance with the APA has expired. Note that the exemption has been extended by Executive Order No. 47 (2010), 42 N.J.R. 2830, until such time as formal rules can be adopted pursuant to the APA.

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Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=3105701514240101975&q=415+N.J.+Super.+506+&hl=en&as_sdt=4,31

Agreements settling claims between claimants and governmental entities constitute government records made in the course of official business notwithstanding the fact that the settlements were executed by a third party (outside attorney or insurance adjusters) on behalf of the governmental entity and the requested documents were not in the entity's actual possession. The fact that the request was for settlement agreements and releases without specifying the matters to which the pertained did not render the request a general request for information obtained through research, rather than a request for a specific record because "it is the documents, themselves, that have been requested, and their retrieval requires a search, not research."

Tractenberg v. Township of West Orange, 416 N.J. Super. 354 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=7614149170605969644&q=416+N.J.+Super.+354+&hl=en&as_sdt=4,31

Property appraisals performed by a private appraiser at the behest of a township governing body are not subject to the deliberative process exemption under OPRA "because (1) they have not been used in the 'decision making process' and (2) their disclosure will not 'reveal deliberations that occurred during the decision making process.'"

Sussex Commons Associates, LLC v. Rutgers, The State University, 416 N.J. Super. 537 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=11464921409083154968&q=416+N.J.+Super.+537+&hl=en&as_sdt=4,31

Rutgers Environmental Law Clinic is subject to OPRA and is not entitled to a blanket exemption. It may be entitled to OPRA's exemptions on a case by case basis, including its "broad protections to institutions of higher education, the protection afforded to attorney-client communications and to a public agency's deliberative process, . . ." Note, legislation has been introduced to overturn the decision. A-3263 would add to OPRA a provision that legal clinic files "that relate to the handling of any case, the representation of any client, or the instruction of any student shall be considered confidential" and are not government records.

Spectraserv, Inc. v. Middlesex County Utilities Authority, 416 N.J. Super. 565 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=14098320490062498112&q=416+N.J.+Super.+565+&hl=en&as_sdt=4,31

Where OPRA request is overly broad and generalized and improper under OPRA, counsel fees are not awarded to the requesting party. Although a party's right to access public records is not abridged when it is involved in litigation with the governmental agency, OPRA cannot be used "as a calculated, tactical discovery weapon in pending litigation to obtain the reward of 'prevailing party' fees . . ."

McGee v. Township of East Amwell, 416 N.J. Super. 602 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=43937192660718893&q=416+N.J.+Super.+602+&hl=en&as_sdt=4,31

"Personnel records" exception is not limited to the items included in a personnel file. An exclusion from the "personnel records" exception is that "personnel or pension records of any individual shall be accessible . . . when authorized by an individual in interest . . ." N.J.S.A. 47:1A-10. To claim the "deliberative process" exception, the custodian must satisfy two requirements: that the document is "pre-decisional," or "generated before the adoption of an agency's policy or decision," and that the document is "deliberative in nature, containing opinions, recommendations, or advice

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about agency policies.” Satisfaction of these two prerequisites creates a presumption of confidentiality. Communication about official government business in which a recent former official participated could constitute “inter-agency or intra-agency” deliberation.

Communications Workers of America v. Rousseau, 417 N.J. Super. 341 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=10939496116637572951&q=A-4194-07T3+&hl=en&as_sdt=4,31

Investment agreements made by the New Jersey Division of Investment in private equity funds are trade secrets as well as proprietary commercial financial information not subject to disclosure under OPRA because only the general and limited partners have access to the agreements, each agreement contains a provision for sanctions for those who breach confidentiality and the agreements are not filed with any public agency or made available to the public. In addition, the release of the agreements would provide a competitive advantage to other investors.

Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489 (2011)

http://scholar.google.com/scholar_case?case=13519053356083824014&q=207+N.J.+489+&hl=en&as_sdt=4,31

The League of Municipalities is a “public agency” under OPRA. A “public agency” includes an instrumentality created by a combination of political subdivisions. The League is an instrumentality of a combination of political subdivisions because it provides a function on behalf of all 566 municipalities and is controlled by elected or appointed officials from the municipalities that it represents. The definition of “public agency” lacks a government function test.

Voellinger v. Dow, 420 N.J. Super. 480 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=16240111344541700533&q=420+N.J.+Super.+480+&hl=en&as_sdt=4,31

Division of Criminal Justice was a gratuitous bailee with respect to documents that it took possession of pursuant to a valid search warrant once the criminal prosecution concluded. The Division was not liable for the subsequent loss of the documents absent a showing of gross negligence.

Drinker, Biddle & Reath LLP v. New Jersey Department of Law and Public Safety, Division of Law, 421 N.J. Super. 489 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=16428289179812220808&q=421+N.J.+Super.+489+&hl=en&as_sdt=4,31

Unfiled discovery documents (e.g., pretrial depositions and interrogatories) are not public components of a civil trial, are afforded confidentiality and are not subject to access under OPRA. However, the common law right of access can reach a wider array of documents than OPRA, and the court must review the three-part analysis set forth in *Keddie v. Rutgers, The State Univ.*, 148 N.J. 36 (1997) to determine whether the documents must be released (i.e., (1) the records must be common-law public documents; (2) the person seeking access must establish an interest in the subject matter of the material; and (3) the citizen’s right to access must be balanced against the State’s interest in preventing disclosure.)

Livecchia v. Borough of Mount Arlington, 421 N.J. Super. 24 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=2431094239870583500&q=421+N.J.+Super.+24+&hl=en&as_sdt=4,31

When limiting a public record request, OPRA’s emphasis on access mandates the public entity clearly demonstrate a claim of privacy in all redacted information. Although OPRA recognizes a privacy interest in telephone numbers to protect the identity of the caller, there is no privacy interest in the destination location of the calls made by a public official using a government issued cell

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phones.

Smith v. Hudson County Register, 422 N.J. Super. 387 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=13774090513993396462&q=422+N.J.+Super.+387+&hl=en&as_sdt=4,31

“To be entitled to counsel fees under OPRA, a plaintiff must be a prevailing party in a lawsuit, or in an administrative action before the GRC, that was brought to enforce his or her rights.” Plaintiff entitled to counsel fees because he persuaded the court to overturn the voluntary rule which enhanced the right of access to the public. “By successfully advocating their construction of the law, Smith and the other appellants were a catalyst for change. There were decidedly prevailing parties.”

Sussex Commons Associates, LLC v. Rutgers, 210 N.J. 531 (2012)

http://scholar.google.com/scholar_case?case=911716534749275603&q=067232&hl=en&as_sdt=2,31

Records related to cases at public laws school clinics are not subject to OPRA. “Clinical legal programs, . . . do not perform any government functions. They conduct no official business and do not assist in any aspect of State or local government.” “Because clinical professors at public law schools do not act as public officers or conduct official business when they represent private clients at a law school clinic, the common law right of access does not extend to records maintained in that setting.”

O’Boyle v. Borough of Longport, 426 N.J. Super. 1 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=13576180956937529818&q=o%27boyle+v+longport&hl=en&as_sdt=2,31

OPRA does not abrogate any grant of confidentiality or recognized work product as defined in Rule 4:10-2(c), which “protect[s] against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a part concerning the litigation” or materials prepared “in anticipation of litigation.” The “common interest rule” “protects communications made to a non-party who shares the client’s interests.” In order for the common interest rule to apply, “(1) the disclosure is made due to actual or anticipated litigation; (2) for the purposes of furthering a common interest; and (3) the disclosure is made in a manner not inconsistent with maintaining confidentiality against adverse parties.” Under the common law right of access, an attorney’s letters and work product are not public records if they were not created “at the behest of [] public officials,” and were created for litigation purposes, which is a private, not a public, function. And even if they are public records, the requestor must show a “particularized need” for the documents. Which requires the court to analyze “(1) the extent to which the information may be available for other sources; (2) the degree of harm that the litigant will suffer from its unavailability; and (3) the possible prejudice to the [public officer].”

Paff v. New Jersey State Fireman’s Association, 431 N.J. Super. 278 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=12905710646983951965&q=A-4111-11T3&hl=en&as_sdt=4,31

The New Jersey State Firemen’s Association is a public agency under OPRA. “The Association owes its existence to state law, which authorized its creation, granted it powers, including powers over local associations, and barred the creation of a competing state association.” “The Association’s financial activities implicate OPRA’s aim to shed light on the fiscal affairs of government, and to combat waste, misconduct and corruption. The Association is the direct recipient of substantial revenues from specific taxes imposed on insurance premiums. It is delegated authority to assure those funds are spent in accord with statutory strictures.” An Attorney

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General's Formal Opinion has determined that it is a "political subdivision" of the State under the Destruction of Public Records Law.

Bozzi v. City of Atlantic City, 434 N.J. Super. 326 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=6182078857324716237&q=bozzi&hl=en&as_sdt=4,31

OPRA requests must be in writing to be enforceable. *N.J.S.A.* 47:1A-5(g). Bid specifications for maintenance services over a 33 month period were subject to OPRA.

O'Boyle v. Borough of Longport, 218 N.J. 168 (2014)

http://scholar.google.com/scholar_case?case=12501537389352347711&q=A-16+September+Term+2012&hl=en&as_sdt=4,31

Court adopts the common interest rule as articulated in *LaPorta v. Gloucester County Board of Chosen Freeholders*, 340 N.J. Super. 254 (App. Div. 2001), and determines that the common interest rule extends the confidentiality of attorney-client communications and attorney work product to information shared with attorneys representing separate clients, one being a municipal attorney, in the context of a request for production of public records pursuant to OPRA and the common law right to access government records.

American Civil Liberties Union of New Jersey v. New Jersey Division of Criminal Justice, 435 N.J. Super. 533 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=2274377519947863649&q=A-3381-12T1&hl=en&as_sdt=4,31

A government agency may not redact from a responsive document information that the agency deems to be outside the scope of the request. Redaction is not statutorily authorized under an OPRA exemption or a claim of confidentiality under the common law. "Absent a legally recognized exception to disclosure, a citizen's right of access to public information is unfettered."

Gilleran v. Township of Bloomfield, A-5640-13T4 (May 13, 2015)

https://scholar.google.com/scholar_case?case=15142880894472180379&q=A-5640-13T4&hl=en&as_sdt=4,31

Township administrator's certification was insufficient to justify withholding of tape recordings from security camera at municipal building where only "conclusory and general allegations of exemption" were provided, rather than specific information to justify a risk to the safety of any person or property.

Brooks v. Tabernacle Rescue Squad, A-4685-13T1 (July 1, 2015)

https://scholar.google.com/scholar_case?case=17040873841704831632&q=A-4685-13T1&hl=en&as_sdt=4,31

A rescue squad founded by private individuals and conducting its operations free of municipal control, is a not a "public agency" subject to OPRA notwithstanding the fact that it obtains financial support from the municipality.

Shipyard Associates, L.P. v. City of Hoboken, A-3794-13T1 (Sept. 1, 2015)

https://scholar.google.com/scholar_case?case=7387150012739801861&q=A-3794-13T1&hl=en&as_sdt=4,31

"If access to a government record is denied by the custodian, the requestor may challenge that decision by filing an action in Superior Court or a complaint with the Government Records Council (GRC). *N.J.S.A.* 47:1A-6. OPRA proceedings are to be conducted in a 'summary or expedited manner.' This means that a trial court is to proceed under the procedures prescribed in Rule 4:67-1(a). The action is commenced by an order to show cause supported by a verified complaint.

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[citation omitted]. If the court finds the application is sufficient, "[it] shall order the defendant to show cause ... [and] try the case on the return date.' 'Unlike Rule 4:67-2(b), which allows for conversion of a plenary action into a summary action, and, therefore, may require an elaborated record, Rule 4:67-2(a), which governs OPRA actions, does not permit the record to be supplemented by depositions or other forms of discovery.' In short, actions brought under Rule 4:67-2(a), as are OPRA proceedings, may not be supplemented by discovery absent some legitimate need."

While an exact definition of an impermissibly overly broad request is abstract, courts have found requests that require a custodian to exercise his discretion, survey employees or undertake research to determine whether a record is responsive are overly broad and not encompassed by OPRA. We have concluded requests for 'any and all documents and data ... relied upon, considered, reviewed or otherwise utilized' were impermissibly over broad. Whether any particular record was 'relied upon, reviewed or otherwise utilized' by the agency required the custodian to survey employees, possibly requiring the custodian to exercise discretion, and was therefore overly broad."

A blanket request for access to an entire type of record over an unlimited period of time is over broad. "It requested not only 'any and all' information, but included the language 'not limited to.' This broad application lacks specificity and would require the clerk to conduct research to uncover 'any and all' documents 'concerning' the ordinances. As such, it was an improper request."

Once an agency determines a request is over broad, OPRA also requires '[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.' N.J.S.A. 47:1A-5(g)."

A.A. v. Gramiccioni, A-0946-13T3 (Sept. 17, 2015)

https://scholar.google.com/scholar_case?case=13765247376182433217&q=A-0946-13T3+&hl=en&as_sdt=4,31

An OPRA complaint must be filed in accordance with R. 4:67-2(a), which requires the filing of an OTSC and verified complaint. A party may not proceed anonymously. The lack of a verified complaint renders the complaint a nullity, and a non-verified complaint is insufficient to invoke the court's jurisdiction. If a party wishes to proceed anonymously, the litigant must file a non-anonymous complaint and move to seek to seal all or parts of the record pursuant to R. 1:38-11 and must show compelling reasons why identification would be improper.

Paff v. Office of the Prosecutor, County of Warren, A-2426-13T3 (Dec. 9, 2015)

https://scholar.google.com/scholar_case?case=8255607844028306591&q=A-2426-13T3&hl=en&as_sdt=4,31

"OPRA also provides that '[n]othing contained in [OPRA] shall be construed as limiting the common law right of access to a government record, including criminal investigatory records of a law enforcement agency.'" N.J.S.A. 47:1A-8. For the deliberative process privilege to apply, "the governmental entity claiming the privilege bears the burden of establishing that the document in question was in fact pre-decisional and that it is deliberative in nature, containing opinions, recommendations, or advice about agency policies." . . . Moreover, "[p]urely factual material that does not reflect deliberative processes is not protected."

Gilleran v. Township of Bloomfield, (A-15-15)(076114)(N.J. Nov. 22, 2016)

https://scholar.google.com/scholar_case?case=4145714115387251587&q=076114&hl=en&as_sdt=4,31

"Compelling release on demand of security surveillance video [from a stationary security camera at a town hall] would be contrary to the legislative intent motivating OPRA's exemptions based on security concerns. The Township's explanation for denying the request for the footage was

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adequate. Requests for video from surveillance cameras protecting public facilities are better analyzed under the common law right of access.”

Paff v. Galloway Township, 445 N.J. Super. 495 (App. Div.), certif. granted 227 N.J. 24 (2016)
https://scholar.google.com/scholar_case?case=517503883396685119&q=A-0125-14T4&hl=en&as_sdt=4,31

Plaintiff not entitle to receive logs of emails under OPRA because OPRA does not require public agencies to create records that do not already exist.

New York Public Radio v. Office of the Governor, A-0565-15T3 (July 13, 2016)
https://scholar.google.com/scholar_case?case=8823320461542962505&q=A-0565-15T3&hl=en&as_sdt=4,31

“Outside Agency Questionnaires” were not discoverable under common law right of access (which is broader than OPRA) because they contained confidential information regarding state employees which were paramount to plaintiff’s limited interest in disclosure. “Town Priority List” (a list of “key towns whose support for the Governor could grow”) was not discoverable under OPRA because it was a “key component of defendant’s deliberative process when making policy decisions” and thus fell within the “deliberative-material exemption of OPRA.”

Johnson v. Borough of Oceanport, A-3165-14T1 (Oct. 27, 2016)
https://scholar.google.com/scholar?q=A-3165-14T1&btnG=&hl=en&as_sdt=4%2C31

Requests for reconsideration must be filed within 10 business days following receipt of a decision of the Government Records Council. N.J.A.C. 5:105-2.10(b).

Stern v. Lakewood Volunteer Fire Department, A-5085-14T2 (Dec. 8, 2016)
https://scholar.google.com/scholar_case?case=6662539440244137015&q=A-5085-14T2&hl=en&as_sdt=4,31

Volunteer fire companies were public agencies subject to OPRA. In determining reasonableness of attorneys’ fees, “Rules of Professional Conduct 1.5(a) requires the court to consider:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent.”

Paff v. Galloway Township, 229 N.J. 340 (2017)
https://scholar.google.com/scholar_case?case=7427362749182364903&q=NOs.+A-88&hl=en&as_sdt=4,31

Government records include electronically stored information. “A document is nothing more than a compilation of information — discrete facts and data. By OPRA’s language, information in electronic form, even if part of a larger document, is itself a government record. Thus, electronically stored information extracted from an email is not the creation of a new record or new information; it is a government record.” “The Township does not dispute that the emails requested by Paff are government records. Instead, it argues that Paff can have the entirety of those emails or nothing. According to the Township, Paff is not entitled to fields of information — such as ‘sender,’ ‘recipient,’ ‘date,’ and ‘subject’ — divorced from the emails themselves. . . The records custodian

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did not have to make a subjective judgment to determine the nature of the information covered by the request. The custodian simply had to search for — not research the identity of — the records requested. . . . With respect to electronically stored information by a municipality or other public entity, we reject the Appellate Division's statement that 'OPRA only allows requests for records, not requests for information.'

OPRA provides that "[a] decision of the [GRC] shall not have value as a precedent for any case initiated in Superior Court.' N.J.S.A. 47:1A-7(e). That statutory provision clearly indicates that in proceedings initiated in Superior Court concerning an OPRA request, GRC decisions are not entitled to any deference."

North Jersey Media Group, Inc. v. Township of Lyndhurst, 229 N.J. 541 (2017)

https://scholar.google.com/scholar_case?case=13520497162336607838&q=NOs.+076184.&hl=en&as_sdt=4,31

"To qualify for OPRA's criminal investigatory records exception—and be exempt from disclosure—a record (1) must not be "required by law to be made," and (2) must "pertain[] to a criminal investigation." N.J.S.A. 47:1A-1.1. "To avail itself of the ongoing investigation exception, a public agency must show that (1) the requested records "pertain to an investigation in progress by any public agency," (2) disclosure will "be inimical to the public interest," and (3) the records were not available to the public before the investigation began. N.J.S.A. 47:1A-3(a)."

Scheeler v. Office of the Governor, 448 N.J. Super. 333 (App. Div. 2017)

https://scholar.google.com/scholar_case?case=15866404032612888592&q=A-1236-14T3.&hl=en&as_sdt=4,31

Third party OPRA requests are government records subject to disclosure under OPRA. "[A] citizen submitting an OPRA request ordinarily would not have a reasonable expectation that the request will not be disclosed to others. . . . OPRA requests are 'government records' and there is no OPRA exemption, legislative resolution, executive order or court rule that precludes their disclosure."

The Stop & Shop Supermarket Company, LLC v. The County of Bergen, A-2134-14T1, A4630-14T1 (April 6, 2017)

https://scholar.google.com/scholar_case?case=6926572391406573260&q=A-2134-14T1&hl=en&as_sdt=4,31

Once the documents that are requested are produced, a claim for relief under OPRA is moot. A litigant is not entitled to counsel fees when the records were produced prior to the filing of suit because the litigant was not the catalyst for its receipt of the records.

Grieco v. Borough of Haddon Heights, 449 N.J. Super. 513 (Law Div. 2017)

https://scholar.google.com/scholar_case?case=3762135829439164909&q=Grieco+v.+borough+of+haddon&hl=en&as_sdt=4,31

Plaintiff not entitled to attorneys' fees when Borough Clerk responded to OPRA request, but inadvertently omitted one year of records, plaintiff did not communicate with Clerk before filing suit and additional year of records immediately released after suit filed. Court found that plaintiff was not the catalyst for the release of the records because the failure to release all records was not intentional and was quickly remedied upon learning of the oversight.

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Wolosky v. Somerset County, A-1024-15T4 (Feb. 28, 2017)

https://scholar.google.com/scholar_case?case=14413974783841235805&q=Wolosky&hl=en&as_sdt=4,31

An OPRA requester does not have a right to access the email and home addresses of persons who submit OPRA requests because “email and home addresses are essentially private information.” “When a citizen's ‘reasonable expectation of privacy’ is at issue, the government agency must consider the following factors in determining whether access should be denied: (1) the type of record requested; (2) the information it does or might contain; (3) the potential for harm in any subsequent nonconsensual disclosure; (4) the injury from disclosure to the relationship in which the record was generated; (5) the adequacy of safeguards to prevent unauthorized disclosure; (6) the degree of need for access; and (7) whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating toward access.”

Serringer v. Choose New Jersey, A-0208-15T1 (March 31, 2017)

https://scholar.google.com/scholar_case?case=7765816281959198549&q=A-0208-15T1&hl=en&as_sdt=4,31

Choose New Jersey, Inc., a privately funded nonprofit corporation was not required to comply with OPRA. “Participation in a ‘public-private’ partnership does not render the private partner a public agency where, as here, it was created through independent incorporation and not created or authorized by governmental action.” “It is funded by contributions from private organizations and individuals and receives no public funding. Its Board of Directors includes representatives from businesses throughout New Jersey; none of the representatives or Board members are employed by the State or local government. Directors and officers are chosen with no governmental representative or entity playing any role in nominating, electing, or removing defendant's directors and officers. . . . No governmental entity has any claim or right to its assets if Choose NJ were to dissolve; its assets would be distributed based on the certificate of incorporation and bylaws passed by the Board of Directors.”

Serringer v. Office of the Governor of the State of New Jersey, A-0837-15T2 (June 16, 2017)

https://scholar.google.com/scholar_case?case=455777674250106559&q=No.+A-0837-15T2&hl=en&as_sdt=4,31

“OPRA does not ‘authorize a party to make a blanket request for every document’ a public agency has on file. . . . Rather, a party requesting access to a public record under OPRA must specifically describe the document sought.” “Blanket requests for unspecified documents are not ‘a proper request under OPRA[. The request] must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents.’”

North Jersey Media Group, Inc. v. State of New Jersey Office of the Governor, A-3947-14T3, A-3948-14T3 (Aug. 3, 2017)

https://scholar.google.com/scholar_case?case=7460516020090135839&q=A-3947-14T3&hl=en&as_sdt=4,31

The Superior Court has the authority to impose civil penalties for a knowing and willful violation of OPRA.

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Bay Head-Mantoloking Land Company v. Konopada, A-4347-15T1 (Aug. 14, 2017)

https://scholar.google.com/scholar_case?case=74188974783250967&q=Konopada&hl=en&as_sdt=4,31

Draft appraisals prepared on behalf of the government in anticipation of eminent domain cases were protected from disclosure under the work product privilege and the deliberative process privilege. “Defendants’ assertion of the work product privilege is also bolstered by the policies reflected in Rule 4:10-2(d)(1), which was specifically amended in 2002 on the recommendation of the Civil Practice Committee so as to insulate draft expert reports as well as related oral and written communication between the attorney and the expert.” “The drafts are also clearly pre-decisional, as they were generated before both (1) a decision by the government to rely upon (or reject) the expert’s work in eminent domain negotiations and litigation, and (2) future decisions by the government agencies in response to any counter-proposals that might be made by the individual property owners.”

Kennedy v. Montclair Center Corp. Business Improvement District, A-5422-14T4 (Nov. 27, 2017)

https://scholar.google.com/scholar_case?case=18167079902621126090&q=A-5422-14T4&hl=en&as_sdt=4,31

Plaintiff not entitled to recover counsel fees incurred to secure a declaratory judgment that OPRA applied to defendant after defendant satisfied plaintiff’s document request.

Wronko v. Township of Jackson, A-5127-15T2 (Dec. 12, 2017)

https://scholar.google.com/scholar_case?case=4192168443388607191&q=Wronko+v.+Twp.+of+Jackson&hl=en&as_sdt=6,31

Plaintiff’s request for “[c]opies of all attorney invoices for Jackson Township from January 1, 2015 through December 31, 2015,” and “[c]opies of all litigation settlement agreements from January 1, 2010 through December 19, 2015 for Holmdel Township” was not overly broad.

Scheeler v. Atlantic County Municipal Joint Insurance Fund, 454 N.J. Super. 621 (App. Div. 2018)

https://scholar.google.com/scholar_case?case=2957449302510862192&q=A-2092-15T2&hl=en&as_sdt=4,31

The right to request records under OPRA is not limited to citizens of New Jersey.

Carter v. New Jersey Department of Community Affairs, A-0483-18T1 (Dec. 10, 2019)

https://scholar.google.com/scholar_case?case=4767223373328819227&q=A-0483-18T1&hl=en&as_sdt=4,31

Blanket requests for unspecified documents are not proper under OPRA. A valid request “requires a search, not research.” A request that sought information that would require the custodian to manually identify matters, locate records and review each for potentially applicable records goes beyond what OPRA requires.

Hill v. Township of Moorestown, Tax No. 009783-2008 (Jan. 10, 2020)

https://scholar.google.com/scholar_case?case=10626982525043456727&q=Hill+v.+Twp.+of+Moorestown&hl=en&as_sdt=6,31&as_vis=1

“Court records . . . as defined by R. 1:38-2 . . . and within the custody and control of the judiciary are open for public inspection and copying except” under limited exceptions. Taxpayers argued that they have a constitutional right to equal treatment in local property taxation and shouldn’t be required to forfeit their right to privacy in their home to protect their right to equal treatment in taxation. The court concludes that private email addresses and details of home security systems

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may be redacted but “the public interest in disclosure of appraisal reports submitted to, and used by, this court to determine true market value is significant and outweighs plaintiffs’ purported privacy interest in these documents.”

Frega v. Borough of Saddle River, A-2252-18T3 (Jan. 27, 2020)

https://scholar.google.com/scholar_case?case=3615518741443921132&q=Frega+v.+Borough+of+Saddle+River+&hl=en&as_sdt=6,31&as_ylo=2020

“OPRA does not contain a broad-based exception for the disclosure of names and home addresses that appear in government records.’ [citation omitted] The statute does impose a duty upon a public agency ‘to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy.’ N.J.S.A. 47:1A-1.” When a records request is denied, the agency “must present ‘specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality.’”

Ramshur v. Department of Environmental Protection, A-1527-18T3 (Feb. 9, 2020)

https://scholar.google.com/scholar_case?case=13758413668356377266&q=A-1527-18T3&hl=en&as_sdt=4,31

Notwithstanding a public bid that provided that “[t]he entire content of every proposal that is opened and read shall become a public record,” a party requesting to inspect the was still required to file an OPRA request and thus OPRA’s exemptions for trade secrets, competitive advantage and security were still applicable. A golf course’s design may be sufficiently valuable and secret to afford a potential economic advantage over others. OPRA’s competitive advantage exemption protects from disclosure “information which, if disclosed, would give an advantage to competitors or bidders.” The security exemption protects “emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein” and is not limited to public buildings.

Bozzi v. Borough of Roselle Park, 262 N.J. Super. 415 (App. Div. 2020)

https://scholar.google.com/scholar_case?case=899895029335883670&q=Bozzi+v.+borough&hl=en&as_sdt=4,31

OPRA request filed by home improvement contractor who installs invisible fences for dog owners seeking the name and address of dog owners in order to solicit them, should have been granted. “OPRA affords no ‘overarching exception for the disclosure of names or home addresses’ contained in government records and no specific exemption for a person’s identity and address when it is received by a municipality from a dog license application. A person “seeking records for commercial reasons therefore has the same right to them as anyone else.” The rulings of the GRC have no precedential value in the court’s consideration of OPRA appeals.

Nuckel v. New Jersey Economic Development Authority, A-0859-17T2 (May 19, 2020)

https://scholar.google.com/scholar_case?case=13555691623393224987&q=Nuckel+v.+New+Jersey+&hl=en&as_sdt=6,31&as_ylo=2019

OPRA plaintiff did not establish the elements of the catalyst theory to enable it to obtain an award of attorneys’ fees where the documents that were requested were provided in response to a subpoena served in an unrelated case.

Smith v. Moorestown Township, A-0168-19T1 (June 10, 2020)

https://scholar.google.com/scholar_case?case=10415966611178167788&q=Smith+v.+Moorestown+&hl=en&as_sdt=6,31&as_ylo=2020

Complaint filed 5 days after filing of OPRA request dismissed where records sought were provided on day 6 and OPRA allows 7 business days for the custodian to grant or deny the request. The requirement under N.J.S.A. 47:1A-5(i) that the custodian must grant or deny access to a

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government record “as soon as possible,” but not later than seven business days after receiving the request did not support a cause of action alleging that the custodian didn’t respond “as soon as possible.”

Simmons v. Mercado, 247 N.J. 24 (2021)

https://scholar.google.com/scholar_case?case=5290184081340823737&q=simmons+v.+mercado&hl=en&as_sdt=6,31&as_ylo=2021

Because the police department “made” the requested complaint and summons records, even though same was inputted into a court database, the requested document was a “record” subject to OPRA because “if a government official makes, maintains, or keeps on file electronic information in the course of his or her official business, it is a ‘government record’ subject to OPRA. See N.J.S.A. 47:1A-1.1.”

Bozzi v. City of Jersey City, 248 N.J. 274 (2021)

https://scholar.google.com/scholar_case?case=11946277489945344895&q=Bozzi+v.+City+of+Jersey+City.&hl=en&as_sdt=6,31&as_ylo=2021

Because an individual has no reasonable expectation of privacy with respect to municipal dog licensing information because owning a dog is a “public endeavor,” the Defendant City was wrong to deny the release of the information based on privacy concerns.

Rosario v. Port Auth. of New York & New Jersey, A-4533-19 (July 21, 2021)

https://scholar.google.com/scholar_case?case=15952420846480868547&q=rosario+v.+port+authority&hl=en&as_sdt=6,31&as_ylo=2021

Where an OPRA request is in an attorney’s name and the attorney prosecutes their own appeal of denial, and is successful, said attorney is entitled to OPRA fees.

Caroff v. Rutgers, A-3773-20 (Aug. 16, 2022)

https://scholar.google.com/scholar_case?case=7289553359728112327&q=Caroff+v.+Rutgers&hl=en&as_sdt=6,31&as_ylo=2022

Plaintiff’s request to produce a video of a university football game properly denied under the OPRA exemptions for proprietary information, competitive advantage and federal-law (Copyright Act).

Malanga v. Twp of West Orange, A-2287-19 (May 3, 2022)

https://scholar.google.com/scholar_case?case=8469592905954289019&q=Malanga+v.+Twp+of+West+Orange&hl=en&as_sdt=6,31&as_ylo=2022

Township counsel’s email communications with the planner retained by the Township planning board were not protected from disclosure under OPRA because the planner did not serve as a necessary intermediary for the purposes of engaging in privileged communications between the Township’s counsel and its client, the Township.

Mears v. Borough of Lawnside, A-2956-19 (Feb. 8, 2022)

https://scholar.google.com/scholar_case?case=12412326201596362173&q=mears+v.+lawnside&hl=en&as_sdt=6,31&as_ylo=2022

The attorney-client privilege ordinarily does not apply to lawyer’s bills for services to a public entity, and the invoices may only be redacted to remove confidential information, trial strategy, or work product.

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Underwood Properties, LLC v. City of Hackensack, 470 N.J. Super. 2020 (App. Div. 2022)
https://scholar.google.com/scholar_case?case=9996388813894260589&q=underwood+v.+hackensack&hl=en&as_sdt=6,31

The exception for confidential attorney-client communications extends to "consultations with third parties whose presence and advice are necessary to the legal representation," such as the City's financial planner.

Flood v. City of Ocean City, A-0219-22 (App. Div. 2023)
https://scholar.google.com/scholar_case?case=11471200234040657230&q=flood+v.+city+of+ocean+city&hl=en&as_sdt=6,47&as_ylo=2023

Apart from not adequately demonstrating requestor's particularized need for records requested by way of a common law request, the subject records were exempt from disclosure under the attorney work product and attorney-client privilege.

American Civil Liberties Union v. County Prosecutor's Association of New Jersey, 474 N.J. Super. 243 (App. Div. 2022)
https://scholar.google.com/scholar_case?case=10886259721066115322&q=A-2572-20&hl=en&as_sdt=4,31

County prosecutors are not "political subdivisions" of the state and, consequently, the County Prosecutor's Association is not an "instrumentality" of "political subdivisions" that would otherwise be subject to OPRA.

In re Adoption of N.J.A.C. 5:105-1.6 (a) (1), 479 N.J. Super. 301 (App. Div. 2024)
[https://scholar.google.com/scholar_case?case=15954159435411220954&q=+In+re+Adoption+of+N.J.A.C.+5:105-1.6+\(a\)+\(1\)&hl=en&as_sdt=6,47](https://scholar.google.com/scholar_case?case=15954159435411220954&q=+In+re+Adoption+of+N.J.A.C.+5:105-1.6+(a)+(1)&hl=en&as_sdt=6,47)

Rulemaking by the GRC to make dispute filings exempt from disclosure under OPRA contrary to law.

Association for Governmental Responsibility, Ethics & Transparency v. Borough of Mantoloking, (App. Div. 2024)
https://scholar.google.com/scholar_case?case=1339167298537771212&q=Governmental+Responsibility,+Ethics+%26+Transparency+v.+Borough+of+Mantoloking&hl=en&as_sdt=6,47

An email from a private attorney responding to a legal question sent by a friend/colleague who is a municipal prosecutor is exempt under OPRA and the common law from disclosure because same is not a government record and, even if it were a government record, would be exempt as work product and fall under confidentiality exemptions pursuant to N.J.S.A. 47:1A-9(b).

Kratovil v. City of New Brunswick, Docket No. A-0216-23 (App. Div. 2024)
https://scholar.google.com/scholar_case?case=14626797177238363890&q=kratovil+v.+city&hl=en&as_sdt=6,47&as_ylo=2024

Daniel's law, the law that prohibits the disclosure of certain public official's home addresses, does not violate the First Amendment, as applied to a reporter.

Rosetti v. Ramapo-Indian Hills Reg'l High Sch. Bd. of Educ., A-1466-23 (Jan. 27, 2025)
https://scholar.google.com/scholar_case?case=1305224573274146607&q=Rosetti+v.+Ramapo-Indian+Hills&hl=en&as_sdt=6,47

Email logs on public officials' personal computers discussing public business are government records under OPRA.

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Vele v. Borough of Englewood Cliffs, A-3905-23 (Oct. 15, 2025)

https://scholar.google.com/scholar_case?case=15255813155467607270&q=Vele+v.+Borough+of+Englewood+Cliffs&hl=en&as_sdt=6,47

Court had personal jurisdiction over former Mayor, even though he himself was not directly a party to an OPRA litigation matter, where the former mayor refused to provide required email documents.

Mary O'Shea v. Borough of Englewood Cliffs, A-0674-24 (Nov. 26, 2025)

https://scholar.google.com/scholar_case?case=6506355828831047257&q=Mary+O%27Shea+vs.+Borough+of+Englewood+Cliffs&hl=en&as_sdt=6,47

Appellate Division reversed \$73,500 sanction for councilman's failure to provide required records because that amount exceeded the amount permitted under the applicable court rules (Rule 1:10-1) and the OPRA.

CONDEMNATION & REDEVELOPMENT

A. LEGISLATIVE TAKINGS

Nectow v. City of Cambridge, 277 U.S. 183 (1928)

http://scholar.google.com/scholar_case?case=8150987839983950379&q=277+U.S.+183+&hl=en&as_sdt=2,31

Limit to zoning power.

Morris County Land v. Parsippany-Troy Hills Twp., 40 N.J. 539 (1963)

http://scholar.google.com/scholar_case?case=7297307311507495341&q=40+N.J.+539+&hl=en&as_sdt=2,31

Limit on permitted regulation.

Levin v. Twp. Comm. Of Bridgewater, 57 N.J. 506, *app. dismissed*, , 92 S.Ct. 58, 30 L. Ed. 2d 25 (1971)

http://scholar.google.com/scholar_case?case=11426058309806161450&q=57+N.J.+506&hl=en&as_sdt=2,31

American Dredging Company v. State, 169 N.J. Super. 18 (App. Div. 1979)

http://scholar.google.com/scholar_case?case=2407105090942770551&q=169+N.J.+Super.+18+&hl=en&as_sdt=2,31

Sheerr v. Evesham Twp., 184 N.J. Super. 11 (Law Div. 1982)

http://scholar.google.com/scholar_case?case=7100734657157853731&q=184+N.J.+Super.+11+&hl=en&as_sdt=2,31

Patzau v. N.J.D.O.T., 271 N.J. Super. 294 (App. Div. 1994) *certif. denied*, 138 N.J. 268 (1994)

http://scholar.google.com/scholar_case?case=5855824994986788076&q=271+N.J.+Super.+294+&hl=en&as_sdt=2,31

Air Safety and Zoning Act is not unconstitutional.

Littman v. Gimello, 115 N.J. 154 (1989) *cert. denied*, 493 U.S. 934, 110 S.Ct. 324, 107 L.Ed.2d 314 (1989)

http://scholar.google.com/scholar_case?case=11330908383306190765&q=115+N.J.+154+&hl=en&as_sdt=2,31

Bernardsville Quarry, Inc. v. Bor. of Bernardsville, 129 N.J. 221 (1992)

http://scholar.google.com/scholar_case?case=18135508496731554899&q=129+N.J.+221+&hl=en&as_sdt=2,31

287 Corporate Center Associates v. Twp. of Bridgewater, 101 F.3d 320 (3d Cir. 1996)

http://scholar.google.com/scholar_case?case=10298185486658852022&q=101+F.3d+320+&hl=en&as_sdt=2,31

Pinkowski v. Twp. of Montclair, 299 N.J. Super. 557 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=408449979822158725&q=299+N.J.+Super.+557+&hl=en&as_sdt=2,31

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Elizabeth Bd. of Educ. v. New Jersey Transit Corp., 342 N.J. Super. 262 (App. Div. 2001)
http://scholar.google.com/scholar_case?case=16922128828395766694&q=342+N.J.+Super.+262+&hl=en&as_sdt=2,31

City of Orange Twp. v. Empire Mortgage Serv., Inc., 341 N.J. Super. 216 (App. Div. 2001)
http://scholar.google.com/scholar_case?case=16491388104218958050&q=341+N.J.+Super.+216+&hl=en&as_sdt=2,31

Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282 (2001)
http://scholar.google.com/scholar_case?case=7629936155511401158&q=169+N.J.+282+&hl=en&as_sdt=2,31

Twp. of Windsor v. Nierenberg, 345 N.J. Super. 472 (App. Div. 2001)
http://scholar.google.com/scholar_case?case=7640871692638802083&q=345+N.J.+Super.+472+&hl=en&as_sdt=2,31

Law Division did not abuse its discretion in awarding prejudgment and post-judgment interest to the defendant condemnee calculated on the prime rate compounded annually as opposed to the lower simple interest rates under *N.J.S.A.* 20:3-32 or New Jersey Court Rule 4:42-11.

Twp. of West Orange v. 769 Associates, 172 N.J. 564 (2002)
http://scholar.google.com/scholar_case?case=5794138476340663267&q=172+N.J.+564+&hl=en&as_sdt=2,31

Condemnation of property for use as a public road is a valid public use despite the fact that the road will principally serve a private development.

ERETC, LLC v. City of Perth Amboy, 381 N.J. Super. 268 (App. Div. 2005)
http://scholar.google.com/scholar_case?case=14147192992441057842&q=381+N.J.+Super.+268+&hl=en&as_sdt=2,31

Borough of Milford v. Arnold, 382 N.J. Super. 83 (Law Div. 2005)
http://scholar.google.com/scholar_case?case=14862572733893809312&q=382+N.J.+Super.+83+&hl=en&as_sdt=2,31

Once street is dedicated, it remains in effect forever until there is an affirmative act of rejection by legislative action, notwithstanding long period of non-acceptance. A dedication is not abandoned by mistake of the agents or by their misapprehension of the right of the public. Acceptance can occur through municipal conduct and does not require formal legislative action.

Twp. of Pemberton v. Berardi, 378 N.J. Super. 430 (App. Div. 2005)
http://scholar.google.com/scholar_case?case=16581736919639478797&q=378+N.J.+Super.+430+&hl=en&as_sdt=2,31

In condemnation action where an application is made by a condemnee pursuant to *N.J.S.A.* 20:3-25 for an order compelling a condemnor to either file a declaration of taking and make the required deposit of compensation offered the condemnee or abandon the proceedings, the court is mandated to grant the relief request notwithstanding that the statute uses the term “may.”

Rosengarten v. The Council of the City of Perth Amboy, A-3316-03T1 (Feb. 1, 2005), certif. denied, 185 N.J. 295 (2005)
http://scholar.google.com/scholar_case?case=1716176097083083077&q=Rosengarten+v.+The+Council+of+the+City+of+Perth+Amboy&hl=en&as_sdt=2,31

Suit for inverse condemnation denied where delay in city implementing its redevelopment plan not unreasonable, and loss of value resulting from delay would be remedied by setting a proper

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valuation date.

Mount Laurel Twp. v. Mipro Homes, L.L.C. 188 N.J. 531 (2006)

http://scholar.google.com/scholar_case?case=14136660171677450059&q=188+N.J.+531+&hl=en&as_sdt=2,31

A municipality has statutory authority to condemn property for open space. Its selection of a property which has recently secured subdivision approval for a residential development is a proper exercise of the eminent domain power because it is consistent with the public interest in the acquisition and preservation of open space. The property should be valued at its fair market value, including value associated with the final subdivision approval obtained 22 days before the filing of the declaration of taking.

City of Passaic v. Shennett, 390 N.J. Super. 475 (2007)

http://scholar.google.com/scholar_case?case=10856141204107784498&q=City+of+Passaic+v.+Shennett&hl=en&as_sdt=2,31

Court grants leave to appeal out of time after entry of a judgment appointing commissioners in a condemnation action where defendant property owner's address was known to the City, but he was not properly served with the offer to purchase the property, which is a prerequisite to a condemnation complaint pursuant to N.J.S.A. 20:3-6, nor was he properly served with the complaint and order to show cause filed by the City, or a notice of the commissioners' hearing as required by N.J.S.A. 20:3-12(c). Compliance with the prelitigation requirements of the statute is jurisdictional, and failure of the condemnor to comply with them will result in dismissal of the complaint. Due process requires an opportunity to be heard at a meaningful time and in a meaningful manner.

Fanaro v. Borough and Council of South Bound Brook, A-2429-05T5 (Nov. 14, 2007), certif. denied, 194 N.J. 264 (2008)

http://scholar.google.com/scholar_case?case=500647162327987089&q=Fanaro+v.+Borough+and+Council+of+South+&hl=en&as_sdt=2,31

Redevelopment designations, like all municipal actions, are vested with a presumption of validity. The court may not evaluate other possible redevelopment avenues that could have been taken by the municipality. Plaintiffs, as challengers to the municipal action, have the burden of demonstrating that the redevelopment plan designation was not supported by substantial evidence, and instead is the result of arbitrary or capricious conduct on the part of the municipal authorities.

Cramer Hill Residents Association v. Primas, 395 N.J. Super. 1 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=17982264804567289599&q=395+N.J.+Super.+1+&hl=en&as_sdt=4,31

Under the Fair Housing Act, a municipality may acquire property for the construction of affordable housing without first obtaining substantive certification from COAH. However, because the FHA enlarged a municipality's power to take private property by eminent domain, it must be demonstrated that the taking is necessary or useful for the construction or rehabilitation of low or moderate income housing. The municipality must demonstrate that there is a "rational nexus between the exercise of the power of eminent domain, and an increase in the number of affordable housing units. The City's mere unsupported assertion in the body of the ordinance, that its governing body has determined that the exercise of eminent domain her is 'necessary or useful' is insufficient."

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Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 N.J. 344 (2007)

http://scholar.google.com/scholar_case?case=3100771550691661563&q=191+N.J.+344+&hl=en&as_sdt=4,31

The Blighted Areas Clause of the New Jersey Constitution authorizes governmental entities to exercise eminent domain power in respect of “blighted areas.” The Local Redevelopment and Housing Law (LRHL) includes eight subsections any one of which may be the basis for designating property as “in need of redevelopment” N.J.S.A. 40A:12A-5 subsection (e) only applies to property that has become stagnant because of issues of title, diversity of ownership, or other similar conditions. Therefore, a property may not be declared to be “in need of redevelopment” simply because it is not being utilized in a fully productive manner or not operated in an optimal manner.

Carteret Industrial Project v. Borough Council, Bor. of Carteret, A-1893-05T1 (Jan. 23, 2007), certif. denied, 190 N.J. 392 (2007)

http://scholar.google.com/scholar_case?case=5673322519403766316&q=Carteret+Industrial+Project+v.+Borough+Council+&hl=en&as_sdt=4,31

Plaintiff’s challenge to redevelopment designation untimely where plaintiff did not challenge the designation within the forty-five days provided in the LRHL, N.J.S.A. 40A:12A-6(b)(7), but waiting until the adoption of a redevelopment plan. The redevelopment plan notice met the requirements of the LRHL because it was published in a newspaper circulating in the municipality; cited the proposed ordinance by title; summarized its provisions; informed where one could read it; and reported the time and place of further consideration.

West Orange v. 769 Associates, LLC, 397 N.J. Super. 244 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=10603041962849129792&q=397+N.J.+Super.+244+&hl=en&as_sdt=4,31

Property owner entitled to reimbursement of costs and professional fees incurred in township’s abandonment of condemnation action, but fees must be incurred by owner in direct response to being named in the condemnation action. Fees incurred in pre-litigation activities or in collateral actions are not recoverable.

Township of Piscataway v. South Washington Avenue, LLC, 400 N.J. Super. 358 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=15978111286126557337&q=400+N.J.+Super.+358+&hl=en&as_sdt=4,31

A condemnee’s withdrawal of the deposit made with the declaration of taking is a waiver of all rights except for the right to litigate the amount of compensation. When property increases in value between the date the complaint is filed and the date the declaration of taking is filed and the deposit made, and the increase is due to market forces rather than government action, the date of valuation is the date that the deposit is made.

Harrison Redev. Agency v. DeRosa, 398 N.J. Super. 361 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=14197375872764482779&q=398+N.J.+Super.+361+&hl=en&as_sdt=4,31

The minimal notice that a property owner receives under Section 6 of the LRHL when a property is being considered for designation as in need of redevelopment falls short of the constitutional requirements of due process. Therefore, a property owner that receives no more than minimal notice preserves the right to contest the property’s blight determination by way of a defense in a condemnation action brought by the municipality or the redeveloper. To cut off this right, the property owner must receive notice (1) that the property has been designated by the governing body for redevelopment (2) that the designation operates as a finding of public purpose and authorizes the municipality to take the property against the owner’s will; and (3) that the presumptive time limit within which the owner may take legal action to challenge the designation.

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Twp. of Hamilton v. Fieldstone Associates, L.L.P., A-3577-06T2; A-3754-06T2 (April 24, 2008), certif. denied, 196 N.J. 343 (2008)

http://scholar.google.com/scholar_case?case=18194160793865623019&q=Twp.+of+Hamilton+v.+Fieldstone+Associates&hl=en&as_sdt=2,31

Once having filed a condemnation action, a municipality commits itself to paying the judgment that will eventually result after the condemnation trial. A municipality may limit its potential liability by entering into a consent order which stipulates to the value of the property, thus settling the case.

RAR Development Associates v. New Jersey Schools Construction Corp., A-0057-06T1 (July 9, 2008), cert. denied, 130 S.Ct. 188 (2009)

http://scholar.google.com/scholar_case?case=15124712809305709322&q=RAR+Development+Associates+v.+New+Jersey+Schools&hl=en&as_sdt=2,31

The inclusion in a lease of an option to renew granting the tenant the right to extend the lease is a property right compensable to the tenant in a condemnation action. However, it is not a compensable property interest of the landlord because “no interest attaches to the mere expectation, based on past experience,” that the lease will be renewed.

City of Long Branch v. Anzalone, A-0067-06T2l; A-0191-06T2; A-0192-06T2; A-0195-06T2; A-0196-06T2; A-0197-06T2; A-0198-06T2; A-0654-06T2 (Aug. 7, 2008), certif. denied, 199 N.J. 129 (2009)

http://scholar.google.com/scholar_case?case=6363178179092274326&q=City+of+Long+Branch+v.+Anzalone&hl=en&as_sdt=2,31

Gallenthin’s heightened standard applied to each of the five criteria for a finding that the property was “in need of redevelopment” under N.J.S.A. 40A-12A-5. A municipality must find that “the physical condition of the properties at issue was contributing to social problems not only within the redevelopment area, but also in nearby areas.” The term “diversity of ownership” in N.J.S.A. 40A:12A-5(e) only applies to individual parcels and not the redevelopment area in general. The substantial evidence standard requires “more than a bland recitation of applicable statutory criteria and a declaration that those criteria are met” and “findings that are supported by only the net opinion of an expert.”

Whether the municipality engaged in bona fide negotiations depends on the conduct of both parties. “While the condemning authority does not always discharge its statutory obligation of bona fide negotiations simply by making an offer and describing its valuation method, the obligation to do more depends on the condemnee’s apparent willingness to negotiate and the quality of the condemnee’s evidence that the condemnor’s offer is unreasonably low.”

Township of Montville v. MCA Associates, L.P., A-4327-06T2 (Aug. 18, 2008), certif. denied, 197 N.J. 13 (2008)

http://scholar.google.com/scholar_case?case=3674415733966180971&q=Township+of+Montville+v.+MCA+Associates&hl=en&as_sdt=2,31

Party lacked standing to assert an inverse condemnation claim against the DEP because it did not have title to the property when it filed the complaint. Title to the property passed to the township when the township filed the declaration of taking.

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Township of Haddon v. Morgan Brothers, Inc. A-6605-06T3 (Oct. 30, 2008), *certif. denied*, 197 N.J. 475 (2009)

http://scholar.google.com/scholar_case?case=12925807493020686889&q=Township+of+Haddon+v.+Morgan+Brothers&hl=en&as_sdt=2,31

The holder of a tax sale certificate succeeds to the interest of the taxing authority and its lien may be satisfied from any surplus funds in court which are left over after the property is remediated, but it may not obtain payment from the condemnation proceeds being held for environmental remediation.

City of Englewood v. Exxon Mobile Corp., 406 N.J. 110 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=8943220135295995818&q=406+N.J.+110+&hl=en&as_sdt=2,31

Once a declaration of taking is filed and just compensation deposited into court, the mortgagee simultaneously assumes a right to those proceeds by operation of the mortgage, thereby extinguishing the obligations of the parties to the mortgage. Interest runs on the award from the date of the commencement of the action until the date of payment of compensation. A mortgagee is not entitled to collect the contractual rate of interest (as opposed to the court rate) on the principal amount of the mortgage debt beyond a reasonable period of time (45-day period) for the mortgagee to apply for withdrawal of the funds deposited and to obtain a decision thereon. Funds are “available” once the deposit is made and there is no impediment preventing the mortgagee from applying for withdrawal of the funds, where or not there are delays in obtaining the release of the funds.

Iron Mountain Information Management, Inc. v. City of Newark, 405 N.J. Super. 599 (App. Div. 2009), *affirmed*, 202 N.J. 74 (2010)

http://scholar.google.com/scholar_case?case=7306296508488586285&q=405+N.J.+Super.+599+&hl=en&as_sdt=2,31

A commercial tenant is not entitled to the same individual notice with regard to blight designations that must be afforded to the property owner as required in *DeRose*, unless its unit is noted in the tax assessor’s records. Therefore, a commercial tenant must comply with the forty-five day filing requirement of R. 4:69-6(a) in order to challenge a blight designation.

Twp. of Readington v. Solberg Aviation Co., 409 N.J. Super. 282 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=9822672851399352897&q=409+N.J.+Super.+282+&hl=en&as_sdt=2,31

Issue as to whether township’s stated purpose for condemnation were pretext for improper purpose of securing control over airport expansion precluded summary judgment.

Iron Mountain Information Management, Inc. v. City of Newark, 202 N.J. 74 (2010)

http://scholar.google.com/scholar_case?case=11863091266270164693&q=202+N.J.+74+&hl=en&as_sdt=2,31

The Legislature intended to limit the right to actual notice in the blight designation context to owners of record and those whose names appear on the tax assessor’s records.

City of Long Branch v. Jui Yung Liu, 203 N.J. 464 (2010)

http://scholar.google.com/scholar_case?case=12355014105552244661&q=203+N.J.+464+&hl=en&as_sdt=2,31

The highest and best use of the property at the time of taking in order to establish fair market value is dependent upon the uses that are legally permissible under current zoning.

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Powerhouse Arts District Neighborhood Assoc. v. City Council, City of Jersey City, 413 N.J. Super. 322 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=1896107678691790000&q=413+N.J.+Super.+322+&hl=en&as_sdt=2,31

“Substantial evidence” standard of review applies to blight designation and other decisions involving individualized fact finding. The “arbitrary or capricious, contrary to law, or unconstitutional” standard is applied to discretionary decision, such as the adoption of a zoning ordinance, or a redevelopment plan. A redevelopment plan which is inconsistent with or not designed to effectuate the master plan may be adopted by a governing body by an affirmative vote of a majority of its full authorized membership provided the reasons for so acting are set forth in the redevelopment plan. “An area designated in need of redevelopment is not indivisible and may be joined with other areas or parts of other areas already blighted for redevelopment purposes.”

New Jersey Schools Construction Corporation v. Lopez, 412 N.J. Super. 298 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=15725193413493947015&q=412+N.J.+Super.+298+&hl=en&as_sdt=2,31

School development authority’s notice of interest letter, which informed property owner that his property was being considered for development, but which stated that no final decision had been made with respect to the same, was insufficient to trigger a duty on the part of the owner to either disclose the letter to the zoning board in a pending zoning application, or abandon his development plans.

Town of Kearny v. Discount City of Old Bridge, Inc., 205 N.J. 386 (2011)

http://scholar.google.com/scholar_case?case=13899040398510550189&q=205+N.J.+386+&hl=en&as_sdt=2,31

The Legislature “differentiated between the classes of persons entitled to general notice and those warranting specific notice.” Non-record owners of property subject to a redevelopment proposal are entitled to general notice only.

State ex rel. Com’r of Transportation v. 200 Route 17, L.L.C., 421 N.J. Super. 168 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=6437222807771498353&q=421+N.J.+Super.+168+&hl=en&as_sdt=2,31

In valuing property for condemnation, speculative improvements to the property, that do not exist on the valuation date, cannot be considered without a risk premium being considered. “What would a willing buyer pay a willing seller, without compulsion, for a substandard building, knowing that the buyer would be obligated to obtain appropriate land use and building approvals, as well as spend 1.5 million dollars for the property to achieve its highest and best use? This is different from defendant’s expert’s approach, which entailed simply assuming that the building was already improved and then deducting the costs of improvement. To suggest that the two values are the same fails to account for the issues and costs involved in such a venture. Perhaps a buyer might pay a premium if it knew that such an investment would result in the property’s highest and best use, but to suggest that the buyer would pay “full value” is speculative at best. “Rather, the State is required to pay for the building “as is,” considering the reasonable probability of future renovations and approvals required to improve the property to its highest and best use, discounted by the risks and costs of such venture, just as a buyer would pay for the building in its current condition, then make any improvements necessary to bring the building to the buyer’s desired use.”

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Borough of Saddle River v. 66 East Allendale, LLC, 424 N.J. Super. 66 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=8806129908494175490&q=A-2886-10T3&hl=en&as_sdt=2,31

The Court has developed a two-step standard governing the consideration of evidence of zoning changes affecting the future use of property. The judge must be satisfied that the evidence is sufficient to warrant a determination that such a zoning change is reasonably probable (based on a review of other similarly situated properties and prior board decisions) and then the jury may consider the change in fixing the just compensation. “Although it is preferable for a judge to make a threshold determination prior to the commencement of the trial,” where the judge estimated that it would take a seven-day evidentiary hearing to make the determination that the zoning change is reasonably probable, the judge did not abuse his discretion by performing this gatekeeping function at trial, before summation. The Legislature has not provided for a uniform rate of interest in condemnation actions and as a result, the Court has broad discretion in setting the interest rate on a judgment in such cases.

Norfolk Southern Railway Company v. Intermodal Properties, L.L.C., 424 N.J. Super 106 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=14620871009136086609&q=norfolk+southern+v.+intermodal+properties&hl=en&as_sdt=4,31

Railroads and other public utilities may take property by condemnation if “reasonably necessary for the service, accommodation, convenience or safety of the public, and [] the taking of such land . . . is not incompatible with the public interest and would not unduly injure the owners of private property.” *N.J.S.A.* 48:3-17.7. In addition, a railroad may take land by condemnation only “as exigencies of business may demand” – construed to mean “as the needs of its business may reasonably demand” and does not require an emergency situation. The railroad must also demonstrate that it does not have property on its site that is suitable for the specific use of the property to be taken. The property owner cannot invoke the public use doctrine which precludes the “exercise of the power of condemnation where the proposed use will destroy an existing public use unless the authority to do so has been expressly given by the Legislature or must necessarily be implied” because the property wasn’t devoted to a public use at the time of the filing of the petition. A party whose property is to be taken has the burden of proof on the issue of whether the proposed taking would cause it to suffer undue hardship.

Borough of Harvey Cedars v. Haran, 425 N.J. Super. 155 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=6481502743981388560&q=A-4555-10T3&hl=en&as_sdt=2,31

“In certain very limited circumstances, the project for which the condemnation is being undertaken confers a special benefit on the remainder. In those unusual cases, the value of the special benefit may offset the award to which the defendant would otherwise be entitled for damage to the remainder.” “A special benefit is a benefit particular to the property that is the subject of the condemnation and not the type of benefit that was the object of the project.” The condemnation of defendant’s land for the construction of a coastal dune did not confer a special benefit. “While defendant’s property may be benefited in somewhat “greater ... degree” than its inland neighbors, because it is closer to the ocean and therefore in somewhat greater danger of incurring storm damage, that is not a legally cognizable “special benefit” for purposes of valuation in a condemnation case.” “The benefit conferred on defendants’ property—added protection from damage due to storms—was the object of the dune project, was not different in kind from the benefit conferred on the island as a whole, and was only potentially different in degree from the benefit conferred on properties located further inland.”

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Dock Street Seafood, Inc. v. City of Wildwood, 425 N.J. Super. 590 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=7410688986328111169&q=dock+street+seafood&hl=en&as_sdt=2,31

Informal discussion with municipal officials, who dissuaded plaintiff from filing a redevelopment application, did not satisfy plaintiff's obligation to exhaust administrative remedies. Plaintiff's failure to proceed with an application to redevelop its own property defeats plaintiff's argument that it was denied all beneficial use of the property. "Although the redevelopment plan may have some adverse effect upon the properties located in the redevelopment area, the plan, akin to zoning restrictions that regulate the use of land, does not deny plaintiff all beneficial use of its property and consequently is not a taking in the constitutional sense."

Borough of Paulsboro v. Essex Chemical, 427 N.J. Super. 123 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=16428495582889124160&q=A-5248-10T4+&hl=en&as_sdt=2,31

The special methodology for valuing contaminated property in an eminent domain action set forth in *Suydam* does not apply where the property has been remediated and the owner is not subject to any additional liability for remediation of the site and thus will receive the full fair market value of its property as determined by ordinary valuation methodologies.

Borough of Harvey Cedars v. Karan, 214 N.J. 384 (2013)

http://scholar.google.com/scholar_case?case=1297938703043193369&q=karan&hl=en&as_sdt=4,31

Benefit that homeowners obtain from storm protection resulting from dune construction is required to be included in calculation of just compensation in condemnation action.

Norfolk Southern Railway Company v. Intermodal Properties, LLC, 215 N.J. 142 (2013)

http://scholar.google.com/scholar_case?case=5901086288769789088&q=norfolk+southern+v.+intermodal&hl=en&as_sdt=4,31

A property owner that devotes its property to a public purpose cannot avail itself of the protections of the "prior public use doctrine" to challenge a proposed condemnation unless it also has the power to condemn. If the prior public use doctrine does not apply, "no comparative evaluation of two public uses, one existing and one proposed, need be undertaken in order to determine which should prevail as the paramount use."

Borough of Saddle River v. 66 East Allendale, L.L.C., 216 N.J. 115 (2013)

http://scholar.google.com/scholar_case?case=17140333115029723189&q=No.+070525&hl=en&as_sdt=4,31

"Just compensation is a function of the value of the property in light of its highest and best use, which is ordinarily evaluated in accordance with current zoning ordinances. Certain circumstances may permit valuation to include an assessment of a change in the permitted use of a property, but only if there is a reasonable probability that a zoning change would be granted. . . . However, the jury in a condemnation action may not speculate about such a change in a property's use. If valuation of a property based on another use is to be considered by a jury, the determination of reasonable probability of a zoning change must be made by the judge before the evidence is presented to the jury, and it must be made clearly to enable appellate review."

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Borough of Merchantville v. Malik & Son, LLC, 429 N.J. Super. 416 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=17868800092592067740&q=A-3745-11T4&hl=en&as_sdt=2,31

“[A] condemning authority is not obligated under N.J.S.A. 20:3-6 to negotiate with the assignee of a mortgagee which has obtained a final judgment of foreclosure on the subject property. Moreover, the property owner's express ‘formal notification of [its] rejection’ of the condemnor's offer to purchase its property and vague invitation to discuss ‘more reasonable compensation in an amount which would satisfy all liens and encumbrances on the property’ is inadequate evidence that the property is worth more than the amount offered, and constitutes a sufficient rejection of the condemnor's bona fide one-price offer to permit the condemnor to proceed with litigation.”

State v. Shalom Money Street, LLC, 432 N.J. Super. 1 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=6599913627366121713&q=A-4205-11T2&hl=en&as_sdt=4,31

Trial court may not reinstate the commissioners’ award over the parties’ objection after dismissing their appeal because the commissioners’ award only becomes a final judgment if no timely objection is made. The filing of an appeal renders the commissioners’ award “nugatory.”

Petrozzi v. City of Ocean City, 433 N.J. Super. 290 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=1366151609476359905&q=Petrozzi&hl=en&as_sdt=4,31

Municipality that entered into an easement agreement for the construction of dunes with a limitation of three feet in height “excused from performance” of obligation to keep dunes that height where dunes grew in height due to natural accretion and DEP denied the municipality’s CAFRA permit application to reduce the size of the dunes. “Impossibility or impracticability of performance are complete defenses where a fact essential to performance is assumed by the parties but does not exist at the time of performance.” “A party cannot render contract performance legally impossible by its own actions, [citation omitted]. However, Ocean City, as promisor, neither caused non-performance of its promise nor reasonably contemplated the change in the law that rendered its performance impossible or impracticable.” “Not only were the CAFRA amendments and DEP’s subsequent disapproval of Ocean City’s permit application beyond the municipality’s control, they were also not reasonably foreseeable events.” However, because “plaintiffs surrendered their right to compensation in reliance on Ocean City’s promise to protect their ocean views” they are entitled to restitution because “[a]bsent that reliance, Ocean City would have had to pay plaintiffs for depriving them of their views. If Ocean City may retain the benefit of this bargain despite its failure to perform its promise — even if performance was impracticable — without consequence, the municipality would reap a windfall at plaintiffs’ expense and plaintiffs would have given ‘something for nothing.’” “[T]he fixing of an appropriate restitutionary amount must consider the value of that which plaintiffs have been deprived, including loss of, or interference with, their ocean views due to the accretive effects. But offset against the burdens suffered by plaintiffs are the potential gains conferred by the partial consideration performed by Ocean City to date, namely the non-speculative, reasonably calculable benefits arising from the municipality’s dune project. These may include the added wave/storm surge protection afforded by the accretive effect of the dunes.”

New Jersey Transit Corp. v. Mori, 435 N.J. Super. 425 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=4492194109413706971&q=new+jersey+transit+mori&hl=en&as_sdt=4,31

The Army Corps of Engineers’ determination that the taking area was wetlands under its exclusive jurisdiction was dispositive and not reviewable by a federal court, or a state court, and may only be appealed pursuant to the administrative procedures set forth in 33 C.F.R. § 331 (2014). Because the land was wetlands, it had to be valued as such and the court was required to make a

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determination as to whether there as a reasonable probability that the ACOE would have granted a Section 404 permit for the development of the property.

Borough of Merchantville v. Malik & Son, LLC, 218 N.J. 556 (2014)

http://scholar.google.com/scholar_case?case=7665775450938907837&q=072255&hl=en&as_sdt=4,31

A condemning authority has an obligation to engage in bona fide negotiations with no party other than the title owner of the property sought to be condemned; it does not have to present an offer to, or negotiate with, a mortgage holder that has obtained a final judgment of foreclosure.

The condemning authority has an obligation to conduct good faith negotiations which does not end with making an offer and furnishing the appraisal on which the offer was formulated. “Rather, even when the property owner rejects the offer, the condemning authority may have an obligation to continue to discuss the offering price when the response provides credible information supporting its opinion that the offer is too low and invites ‘further discussion based on a reasonable expectation that [the condemning authority] would take a more ‘realistic’ view of the property’s worth.” “Although the duty to continue negotiations does not cease simply because the positions of the parties on the issue of value are widely disparate, the condemning authority has no obligation to continue to negotiate if the other party refuses to do so.”

R. Neumann & Co. v. City of Hoboken, 437 N.J. Super. 384 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=14658247630588200579&q=A-2775-12T1+&hl=en&as_sdt=4,31

Resolution which delineated an area in need of rehabilitation vacated where it incorrectly set forth the statutory standard related to aging water and sewer infrastructure. N.J.S.A. 40A:12A-14, requires that “a majority of the water and sewer infrastructure in the delineated area is at least fifty years old AND is in need of repair or substantial maintenance.” “[T]he delineation of an [area in need of rehabilitation] has no immediate effect. In order to exercise the powers granted in N.J.S.A. 40A:12A-8, other than the power of eminent domain that is not granted with respect to an [area in need of rehabilitation], the governing body must adopt a ‘redevelopment plan’ in conformity with N.J.S.A. 40A:12A-7.

62-64 Main Street, L.L.C. v. Mayor and Council of the City of Hackensack, 221 N.J. 129 (2015)

https://scholar.google.com/scholar_case?case=6143918329585171668&q=62-64+main&hl=en&as_sdt=4,31

Gallenthin did not establish a heightened constitutional standard for blight applicable to ever subsection of the Redevelopment Law. *Gallenthin* only addressed subsection (e) of N.J.S.A. 40A:12A-5 which defines blight as the nonproductive use of property. *Gallenthin* did not hold that the definitions of blight in subsections (a), (b), and (d) of N.J.S.A. 40A:12A-5 were constitutionally inadequate.

Borough of Harvey Cedars v. New Imper Realty, A-5744-13T2 (May 5, 2016)

https://scholar.google.com/scholar_case?case=5531887302974808061&q=A-5744-13T2&hl=en&as_sdt=4,31

“An expert’s conclusions must ‘be founded in facts or data’ and those facts must be ‘reasonably relied upon by [other] experts in the field.’” An expert’s opinion on the value of an easement taken for a beach restoration project was “inherently speculative” where it was based on the value of a potential inverse condemnation award arising from a denial of a potential variance application (which was never filed) challenging an ordinance that was claimed to have effectively deprived the oceanfront property of substantially all economic use. “As an inverse condemnation claim was not yet ripe, expert reports that are predicated on such a claim can only speculate regarding the success of that claim.”

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Township of Montclair v. Cerino, A-0753-15T1 (May 9, 2017)

https://scholar.google.com/scholar_case?case=4705619231666952109&q=A-0753-15T1&hl=en&as_sdt=4,31

N.J.S.A. 20:3-29 allows for severance damages “if prior to the taking two or more parcels are functionally united, so that each is ‘reasonably necessary to the use and enjoyment of the other, . . .’” Any disagreement regarding the method of valuation and the resulting damages is an issue for the commissioners, and is not a valid basis to deny the entry of a judgment for condemnation.

State, Department of Environmental Protection v. North Beach 1003, LLC, A-3393-15T4, et al (June 22, 2017)

https://scholar.google.com/scholar_case?case=16661027454935978993&q=North+Beach+1003&hl=en&as_sdt=4,31

NJDEP has the authority to condemn private property for perpetual easements for shore protection without taking the entire fee and it may allow for public access and use to the same. “The power of eminent domain, under which the State may take private property for a public purpose, ‘is an inherent and a necessary right of the sovereignty of the state.’”

County of Essex v. Rubin, A-1651-14T4 (Aug. 2, 2017)

https://scholar.google.com/scholar_case?case=6443790489161548605&q=A-1651-14T4&hl=en&as_sdt=4,31

The date upon which just compensation is to be fixed is the “earliest of the following events: (a) the date possession of the property being condemned is taken by the condemnor in whole or in part; (b) the date of the commencement of the action; (c) the date on which action is taken by the condemnor which substantially affects the use and enjoyment of the property by the condemnee; or (d) the date of the declaration of blight by the governing body. . . .

[N.J.S.A. 20:3-30.]” Date set by condemnee’s expert arbitrary where it was not supported by evidence that demonstrated that the condemnor’s action on that date had a substantial direct affect that “unequivocally, and immediately stimulated an upward or downward fluctuation in value.”

Ratan Hotel Plaza, LLC v. Zoning Board of the City of East Orange, A-2064-15T1 (Oct. 11, 2017)

https://scholar.google.com/scholar_case?case=7977845329471098990&q=A-2064-15T1&hl=en&as_sdt=4,31

“[T]he Redevelopment Plan’s provision that ‘site plan review shall be conducted by the Planning Board in accordance with N.J.S.A. 40:55D-1 et seq.’ permitted the zoning board to hear” an application for a use variance. Where the Redevelopment Plan was amended to permit the proposed use, “the propriety of the Board’s grant of those variances has become wholly academic, and thus moot.”

Tradewinds Marina, Inc. v. Borough of Toms River, A-0273-16T2 (Nov. 28, 2017)

https://scholar.google.com/scholar_case?case=16857102535710455886&q=A-0273-16T2&hl=en&as_sdt=4,31

The LRHL does not require the Planning Board or the Council to permit cross-examination of witnesses at the public hearings on whether an area should be designated as an area in need of redevelopment. The Planning Board did not abuse its discretion by refusing to permit the owner’s architect to testify about future development plans when the subject of the hearing was whether the area was in need of redevelopment.

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Township of Piscataway v. South Washington Avenue, LLC, A-1380-14T3, A-1781-14T3 (Dec. 28, 2017)

https://scholar.google.com/scholar_case?case=5584149803163438451&q=A-1380-14T3,&hl=en&as_sdt=4,31

Notwithstanding the fact that the municipality condemned the property under the Open Space Act for use as a park, for purposes of valuation of contaminated property, the escrow for the estimated costs of environmental cleanup should be based on the remediation necessary for residential use which is the highest and best use of the property. In a condemnation action, interest should accrue on the deposited funds until distribution to the property owner where the municipality repeatedly moved to stay the withdrawal of the funds.

Gallenthin v. Borough of Paulsboro, A-3295-16T3 (June 26, 2018)

https://scholar.google.com/scholar_case?case=2834677263617180926&q=A-3295-16T3&hl=en&as_sdt=4,31

There was no unconstitutional taking where plaintiff's property was designated as an area in need of rehabilitation, as opposed to a redevelopment area, because N.J.S.A. 40A:12A-15 precludes a municipality from exercising the power of eminent domain.

Minke Family Trust v. Township of Long Beach, A-2660-15T3, A-4036-15T3 (Aug. 20, 2018)

https://scholar.google.com/scholar_case?case=7661451855581591058&q=A-4036-15T3&hl=en&as_sdt=4,31

Condemnation of beach access easement approved because "courts review an eminent domain ordinance only for 'fraud, bad faith or manifest abuse.'"

Glassboro v. Grossman, 457 N.J. Super. 416 (App. Div. 2019)

https://scholar.google.com/scholar_case?case=11229702885865790390&q=Borough+of+Glassboro+v.+Grossman&hl=en&as_sdt=4,31

The Local Redevelopment and Housing Law authorizes a municipality or redevelopment agency to acquire by condemnation lands or buildings which are "necessary for the redevelopment project." N.J.S.A. 40A:12A-8(c). "[I]f a landowner within the redevelopment area contests the necessity of a condemnation pursuant to N.J.S.A. 40A:12A-8(c), the statute logically requires the condemning authority to articulate a definitive need to acquire the parcel for an identified redevelopment project. That articulated need must be more specific than the mere "stockpiling" of real estate that might, hypothetically, be useful for a redevelopment project in the future. In addition, the condemning authority in such a contested case must present to the court at least some evidence — consisting of facts, expert opinion, or both — that provides reasonable substantiation of the need."

Casino Reinvestment Development Authority v. Birnbaum, 458 N.J. Super. 173 (App. Div. 2019)

https://scholar.google.com/scholar_case?case=18425421775166470474&q=A-0019&hl=en&as_sdt=4,31

"[T]he proposed stockpiling of land for future redevelopment does not suffice to establish a taking is reasonably necessary."

Township of Manalapan v. Gentile, 242 N.J. 295 (2020)

https://scholar.google.com/scholar_case?case=724635377874639577&q=Manalapan+v.+Gentile&hl=en&as_sdt=6,31&as_ylo=2020

A Rule 104 hearing is necessary to make a finding as to the likelihood of obtaining variances before accepting testimony as to a hypothetical highest and best use.

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Jersey City Redevelopment Agency v. RJ Woodward, L-005231-17 (Jan. 30, 2020)

https://scholar.google.com/scholar_case?case=11516364052644176386&q=Jersey+City+Redev+elopment+Agency+v.+RJ+Woodward&hl=en&as_sdt=6,31&as_ylo=2019

“[A] commissioners' report filed without the required commissioners' oath plainly does not comply with the statutory requirements; it is invalid and ineffective.” The twenty-day time for appeal did not run until the report was filed with the oath, which the commissioners filed during the time for an appeal. “This does not suggest that a property owner has no remedy when an invalid or incomplete report is filed. Nor is there an unlimited, indefinite period of time within which to file an appeal when an oath is not filed. In that instance, the property owner's or the condemning body's remedy is clear: it may challenge the incomplete commissioners' report on its face and have it set aside as invalid for failing to comply with the statute's requirements.”

Parking Authority of the City of Camden v. Estate of Milton Rubin, A-5335-17T3 (Feb. 11, 2020).

https://scholar.google.com/scholar_case?case=7916096733278828900&q=A-5335&hl=en&as_sdt=4,31

“The Eminent Domain Act of 1971 requires that just compensation be calculated as of the earliest of several dates: (a) [t]he date possession of the property being condemned is taken by the condemnor in whole or in part; (b) the date of the commencement of the action; (c) the date on which action is taken by the condemnor which substantially affects the use and enjoyment of the property by the condemnee; or (d) the date of the declaration of blight[.] N.J.S.A. 20:3-30. “[A]rbitrary application of N.J.S.A. 20:3-30 to set the valuation date ... as of the date the ... condemnation action was filed is not required where application of the statute would result in unjust compensation to the property owner.” A property's highest and best use must be determined in light of any zoning restrictions. Parking conditions may be protected as a nonconforming use. The redevelopment plan, adopted pursuant to the Local Redevelopment Housing Law, does not supersede the MLUL. “[S]ince the two statutes deal with the same subjects of zoning and land development, ... we construe the two statutes in *pari materia*.” Citations omitted. Construing the LRHL and the MLUL together, we perceive no issue with applying the MLUL's protection for nonconforming uses where a municipality has adopted a redevelopment plan that does not explicitly provide for the same protection.”

Township of Montclair v. Cerino, A-2531-18T3 (Feb. 28, 2020)

https://scholar.google.com/scholar_case?case=1062545652246416047&q=Twp.+of+Montclair+v.+Cerino+&hl=en&as_sdt=6,31&as_ylo=2019

The trial court erred by granting property owner's motion to exclude Township's appraisal report as not establishing value as of the date of taking and dismissing the complaint with prejudice, rather than order that the appraisal be updated.

State of New Jersey v. 10.041 Acres of Land in the Borough of Point Pleasant Beach, 463 N.J. Super. 292 (App. Div. 2020)

https://scholar.google.com/scholar_case?case=7974736320809716219&q=New+Jersey+Dep+v.+10.041+Acres+of+Land+in+the+Borough+of+Point+Pleasant+Beach&hl=en&as_sdt=6,31&as_ylo=2020

DEP's condemnation of easement on beachfront land with the right of the DEP to operate a public beach was necessary to guarantee public access which was a requirement of federal funding for beach replenishment project. The condition was found to be reasonable, notwithstanding the fact that defendants operated commercial public beaches on the property, because it preserved such use in the future.

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State of New Jersey v. Midway Beach Condo Ass'n., 463 N.J. Super. 346 (App. Div. 2020)
https://scholar.google.com/scholar_case?case=10883825783857800244&q=New+Jersey+v.+Midway+Beach&hl=en&as_sdt=6,31&as_ylo=2020

A plenary hearing was not required in condemnation action where there is no genuine issue as to any material fact. “N.J.S.A. 12:3-64 expressly authorizes DEP to condemn properties for shore protection and to acquire ‘any type of property interest,’ including a perpetual easement to protect the coastline. DEP engaged in bona fide negotiations when it sent an offer letter, notwithstanding the fact that it offered only nominal consideration because the beach replenishment project would increase the value of the land.

State of New Jersey v. 1 Howe St. Bay Head, LLC, 463 N.J. Super. 312 (App. Div. 2020)
https://scholar.google.com/scholar_case?case=15001146382609885625&q=New+Jersey+v.+1+Howe+St.+Bay+Head+&hl=en&as_sdt=6,31&as_ylo=2020

“The exercise of DEP’s discretion will only be interfered with upon a showing of fraud, bad faith, or arbitrary or capricious action. [Citation omitted]. Absent that showing, the judge may not reverse a condemnation even if defendants disagree with DEP’s reason for the takings.” A privately funded revetment provided more of a private than a public benefit, inasmuch as the revetment protected properties that abutted it, but did not protect the beach or landward structures and thus DEP’s shore protection project was reasonable. “The fact that DEP condemned properties to effectuate the largely federally funded Project is not indicative of fraud, bad faith, or arbitrary or capricious action. DEP legitimately took the properties to qualify for the federal funds that would enable greater shore protection—a communal benefit.” The State holds “‘ownership, dominion and sovereignty’ over tidally flowed lands ‘in trust for the people.’ [citation omitted]. Access to the sea encompasses ‘access to and use of privately[]owned dry sand areas as reasonably necessary.’ [citation omitted] . . . the public trust doctrine requires the public to have access to the beaches.”

Friends of Historic Flemington, LLC v. Borough of Flemington, A-0613-18T3 (May 6, 2020)
https://scholar.google.com/scholar_case?case=10699960536902704056&q=Friends+of+Historic+Flemington,+LLC+v.+Borough+of+Flemington&hl=en&as_sdt=6,31&as_ylo=2020

Non-blighted properties may be included in a redevelopment plan if necessary for rehabilitation of a larger blighted area.

City of Burlington v. Hall, A-0246-19T2 (Oct. 27, 2020)
https://scholar.google.com/scholar_case?case=16212248602890257936&q=burlington+v.+hall&hl=en&as_sdt=6,31&as_ylo=2020

“A condemnation action involves the issuance of two final judgments by the Superior Court: one declares that ‘the condemnor is duly vested with and has duly exercised its authority to acquire the property being condemned,’ N.J.S.A. 20:3-8, N.J.S.A. 20:3-2(j), and appoints ‘three commissioners to determine the compensation to be paid by reason of the exercise of such power.’ N.J.S.A. 20:3-12(b). The other deals exclusively with the valuation of the condemned property. N.J.S.A. 20:3-12(g)-(h).” “All other judgments shall be interlocutory or final, according to law, or as may be prescribed by the rules.”

In The Matter Of Salas, A-4810-17T1 (Jan. 28, 2020)
https://scholar.google.com/scholar_case?case=15163732523111642907&q=A-4810-17T1&hl=en&as_sdt=4,31

Where DEP determines that its regulatory standards may result in a taking of property without just compensation, it may exercise its power of amelioration to avoid a taking without the necessity of a court first finding that a taking has occurred. The DEP is not bound by its initial decision to deny the permit and may reconsider the application as part of the amelioration process. An expired Letter of Interpretation did not defeat a purchaser’s investment backed expectations that the property

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could be developed.

Penn East Pipeline Co., LLC v. New Jersey, 141 S. Ct. 2244 (2021)

https://scholar.google.com/scholar_case?case=15464010776641838107&q=penn+east+v.+new+jersey&hl=en&as_sdt=6,31&as_ylo=2021

The Federal Government can constitutionally confer on pipeline companies the authority to condemn necessary rights-of-way in which a State has an interest. Although nonconsenting States are generally immune from suit, they surrendered their immunity from the exercise of the federal eminent domain power when they ratified the Constitution. That power carries with it the ability to condemn property in court. Because the Natural Gas Act delegates the federal eminent domain power to private parties, those parties can initiate condemnation proceedings, including against state-owned property.

11 Mt. Pleasant, J.V. LLC, v. East Hanover Planning Board, A-3164-19T2 (Dec. 14, 2020)

https://scholar.google.com/scholar_case?case=8149498260571768977&q=A-3164-19T2&hl=en&as_sdt=4,31

Where a planning board denied site plan approval to a redeveloper based on its own opinions with respect to traffic considerations and not based on the requirements of a redevelopment plan, such an action unlawfully usurped the power of the governing body and required reversal.

Tadros v. Stack, No. 2:2020cv12546 (Aug. 30, 2021)

https://scholar.google.com/scholar_case?case=14055769175050128116&q=tadros+v.+stack&hl=en&as_sdt=6,31&as_ylo=2021

Plaintiff's §1983 claim brought as a result of defendants' taking control of his property pursuant to the Multifamily Housing Preservation and Receivership Act, was time barred as the claim was not brought within two years of plaintiff being displaced from the property.

State v. Estate of Salerno, A-2630-19 (March 16, 2021)

https://scholar.google.com/scholar_case?case=11433525515228655384&q=state+v.+salerno&hl=en&as_sdt=6,31&as_ylo=2020

Introduction of evidence related to a recent sale of the subject property in a condemnation action was permissible and not unduly prejudicial even though the facts of the sale indicate that, for property tax assessment purposes, same would not have been a "usable sale" because the seller was motivated to sell and did not consider other buyers, provided that the background of the transaction was adequately explained to the jurors.

Wilson v. Twp. of W. Amwell, No. 19-16039 (April 29, 2021)

https://scholar.google.com/scholar_case?case=1208786007910086309&q=wilson+v.+amwell&hl=en&as_sdt=6,31&as_ylo=2021

A Plaintiff landowner's regulatory takings claim was not ripe for adjudication where the property had been placed in the municipal Defendant's Housing Element and Fair Share Plan and slated for condemnation even where such actions had made the property virtually impossible to market for sale.

Borough of Seaside Park v. Shree Jyoti, LLC, A-1915-22 (May 29, 2024)

https://scholar.google.com/scholar_case?case=7590782563258166097&q=Borough+of+Seaside+Park+v.+Shree+Jyoti&hl=en&as_sdt=6,47&as_ylo=2024

"N.J.S.A. 40A:12-5(a), the statute that established the mechanism for municipal eminent domain authority, does not require that the ordinance authorizing the condemnation of property specify the public use and purpose to which the municipality intends to put the property. In addition, the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 to-50, which provides the uniform procedures to be

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followed by all entities that have the power to condemn does not require the condemning entity to specify the public use or purpose to which the property will be put in the authorizing ordinance. Rule 4:73-1, which sets forth the requirements for a condemnation complaint, also does not require an identification of an ordinance that details the specific public use and purpose to which the property that is the subject of the complaint will be put.”

State v. 550B Duncan Ave., LLC, A-3605-21 (June 12, 2024)

https://scholar.google.com/scholar_case?case=14848853024361090897&q=State+v.+550B+Duncan&hl=en&as_sdt=6,47

Pursuant to N.J.S.A. 20:3-37, if as a result of a partial taking of property, the property remaining consists of a parcel or parcels of land having little or no economic value, the condemnor, in its own discretion or at the request of the condemnee, shall acquire the entire parcel.

Milltown-Ford Ave. Redevelopment Agency v. SB Bldg. Assoc., L.P., 19-21494 (RK) (RLS) (Jan. 30, 2025)

https://scholar.google.com/scholar_case?case=4728719491431024962&q=Milltown-Ford+Ave.+Redevelopment+Agency+v.+SB+Bldg.+Assoc.,+L.P.&hl=en&as_sdt=6,47&as_ylo=2025

There is no statutory basis to award compensation on the basis of diminished rental income as a result of a property being found to be an area in need of redevelopment.

Blackridge Realty, Inc. v. City of Long Branch, 481 N.J. Super. 183 (App. Div. 2025)

https://scholar.google.com/scholar_case?case=10109796249036210410&q=Blackridge+Realty,+Inc.+v.+City+of+Long+Branch&hl=en&as_sdt=6,47

Plaintiff challenged the legality of a redevelopment plan amendment where the amendment called for a \$2 million payment to the municipality. The Court concluded that said payment was a lawful, negotiated fee intended to defray the municipality’s costs as authorized in N.J.S.A. 40A:12A-8(f) of the Local Housing and Redevelopment Law (“LRHL”). Court held that the LRHL does not impose any restrictions limiting payments to the recovery of costs the municipality will incur as a direct result of the redevelopment project, as long as the fee is negotiated at arm’s length and collected to effectuate the purposes of the LRHL and the municipal Master Plan.

Twp. of Jackson v. Getzel Bee, LLC, A-0590-23, A-0594-23 (Jan. 31, 2025), certif. granted 261 N.J. 554 (2025)

https://scholar.google.com/scholar_case?case=16976549085996985489&q=Twp.+of+Jackson+v.+Getzel+Bee,+LLC&hl=en&as_sdt=6,47

Municipality failed to show the statutorily required necessity for condemnation where it did not actually seek to condemn the properties for open space purposes but, rather, to swap said properties for another parcel to be used for open space. Furthermore, a land swap agreement that included the parcels is not enforceable because the municipality did not, in fact, own the subject parcels.

Borough of Monmouth Beach v. Tsakiris, A-0356-23 (Jan. 24, 2025)

https://scholar.google.com/scholar_case?case=17344067457724879477&q=Borough+of+Monmouth+Beach+v.+Tsakiris&hl=en&as_sdt=6,47&as_ylo=2024

Trial court correctly permitted municipality to amend its complaint to correct the location of the easement to be taken, even after final judgment had been granted and condemnation commissioners appointed, where same would not have increased the amount of land taken or

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substantively burdened the defendant any more than prior to the amendment.

SB Bldg. Assocs., LP v. The Planning Bd. of the Borough of Milltown, A-3253-22 (Feb. 25, 2025)

https://scholar.google.com/scholar_case?case=16313146350698147800&q=+SB+Bldg.+Assoc s.,+LP+v.+The+Planning+Bd.+of+the+Borough+of+Milltown&hl=en&as_sdt=6,47

Ordinance adopting revisions to a redevelopment plan providing the same number of affordable units while less residential units overall, with more open space, was substantially consistent with the master plan and was not arbitrary, capricious or unreasonable. Among other things, the ordinance was well supported by expert testimony presented to the Planning Board explaining the rationale for the modifications to the site. Open space at the property was explicitly provided for within the land use element of the master plan. It is not inconsistent with that objective that the Planning Board sought to expand the open space element at this location and further promote environmental values. The reduction in market units was reasonably adopted, in recognition of the reduction in land devoted to residential purposes.

Beach Haven Auto., Inc. v. Borough of Beach Haven, A-3860-23 (June 2, 2025)

https://scholar.google.com/scholar_case?case=16545297164238064148&q=Beach+Haven+Auto.,+Inc.+v.+Borough+of+Beach+Haven&hl=en&as_sdt=6,47&as_vlo=2025

Because of plaintiff's active remediation of the property, under the direction and supervision of the NJDEP, the state of the property was not categorically "detrimental to the safety, health, morals, or welfare of the community" and thus not eligible to be deemed an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-5(d). Furthermore, because the record was lacking with respect to whether the actual use of the property conformed with local zoning requirements, the Appellate Division remanded the matter to the trial court to determine whether there was a "discontinuance" of use of the property that would permit the property to be deemed an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-5(b).

B. REGULATORY TAKINGS

Spiegle v. Beach Haven, 46 N.J. 479 (1966), *cert. denied*, 385 U.S. 831, 87 S.Ct. 63, 17 L.Ed.2d 64 (1966)

http://scholar.google.com/scholar_case?case=9926658662921551602&q=46+N.J.+479+&hl=en&as_sdt=2,31

Usdin v. Environmental Protection Department of N.J., 179 N.J. Super. 113 (App. Div. 1981)

http://scholar.google.com/scholar_case?case=9950651831486095351&q=179+N.J.+Super.+113+&hl=en&as_sdt=2,31

First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304 (1987)

http://scholar.google.com/scholar_case?case=5858523458892549380&q=482+U.S.+304+&hl=en&as_sdt=2,31

Nollan v. California Coastal Comm., 483 U.S. 825 (1987)

http://scholar.google.com/scholar_case?case=10841693014473793601&q=483+U.S.+825+&hl=en&as_sdt=2,31

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Pappas v. Bd. of Adjust., Bor. of Leonia, 254 N.J. Super. 52 (App. Div. 1992), *certif. denied*, 130 N.J. 9 (1990)

http://scholar.google.com/scholar_case?case=11689757551910609259&q=254+N.J.+Super.+52+&hl=en&as_sdt=2,31

Gardner v. N.J. Pinelands Commission, 125 N.J. 193 (1991)

http://scholar.google.com/scholar_case?case=4895570138542514412&q=125+N.J.+193+&hl=en&as_sdt=2,31

A 40-acre zoning is not a "taking."

Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992)

http://scholar.google.com/scholar_case?case=659168721517750079&q=505+U.S.+1003&hl=en&as_sdt=2,31

Government must compensate owner for 100 percent taking.

Loveladies Harbor, Inc. v. United States, 28 F.3d 1171 (3d Cir. 1994)

http://scholar.google.com/scholar_case?case=10768461123194626631&q=28+F.3d+1171+&hl=en&as_sdt=2,31

Award of \$2.5M for denial of wetlands permit upheld.

Dolan v. City of Tigard, 114 S.Ct. 2309 (1994)

http://scholar.google.com/scholar_case?case=8551511773686011796&q=114+S.Ct.+2309+&hl=en&as_sdt=2,31

Burden is on government to show that "taking" is "roughly proportionate" to benefit.

East Cape May Assoc. v. State D.E.P., 300 N.J. Super. 325 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=7869808987483951749&q=.,+300+N.J.+Super.+325+&hl=en&as_sdt=2,31

Developer, which was denied wetlands development permit, could not succeed in takings action where developer had not conferred with the DEP about realistic prospects for development. Until a developer has sought and obtained this guidance from the DEP, or the DEP has failed or refused to provide it, no permanent taking has occurred.

MHF Holding Co. v. DEP, 314 N.J. Super. 87 (Law Div. 1997)

http://scholar.google.com/scholar_case?case=16609741798131195347&q=314+N.J.+Super.+87+&hl=en&as_sdt=2,31

DEP, which asserted that plaintiffs' regulatory taking claim was not ripe for decision, is entitled to summary judgment based on plaintiffs' failure to seek an individual freshwater wetlands permit, which was the relevant form of administrative relief available for the proposed project, despite the unlikelihood that DEP would issue the permit.

Karam v. State of New Jersey, Department of Environmental Protection, 308 N.J. Super. 225 (App. Div. 1998), *aff'd*, 157 N.J. 187 (1999), *cert. denied*, 518 U.S. 814, 120 S.Ct. 51, 145 L.Ed.2d 45 (2000)

http://scholar.google.com/scholar_case?case=17543284848476473849&q=308+N.J.+Super.+225+&hl=en&as_sdt=2,31

DEP's denial of waterfront development permit on riparian lot did not constitute a taking without compensation because: (1) property has not been deprived of all beneficial use when the upland lot, which contains a home, and the riparian lot are viewed together; and (2) property owners did not have reasonable investment-backed expectation of constructing a dock on the riparian lot.

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City of Ocean City v. Maffucci, 1999 WL 1086896 (App. Div. 1999), *certif. denied*, 162 N.J. 485 (1999)

http://scholar.google.com/scholar_case?case=12672950363674265096&q=City+of+Ocean+City+v.+Maffucci&hl=en&as_sdt=2,31

Loss of ocean view and access are properly considered elements of damages in a takings case.

Palazzolo v. Rhode Island, 533 U.S. 606 (2001)

http://scholar.google.com/scholar_case?case=16252252438303095036&q=533+U.S.+606+&hl=en&as_sdt=2,31

A regulatory takings claim is not barred by the mere fact that title was acquired after the effective date of the state-imposed restriction where the steps necessary to make the claim ripe were not taken and could not have been taken, by a previous owner; however, regardless of this reversal, plaintiff's claim is barred because the property is not deprived of all economically beneficial use by the taking.

East Cape May Assoc. v. New Jersey Dept. of Env'tl. Prot., 343 N.J. Super. 110 (App. Div. 2001), *certif. denied*, 170 N.J. 211 (Oct. 30, 2001)

http://scholar.google.com/scholar_case?case=834881282905059509&q=343+N.J.+Super.+110+&hl=en&as_sdt=2,31

In an inverse condemnation action involving a regulatory taking arising from the enforcement of the Freshwater Wetlands Protection Act, *N.J.S.A.* 22B permits the Department of Environmental Protection to "modify its actions" so as to nullify a taking claim. However, rulemaking is required to guide the DEP in making its proposal allowing a viable, economically beneficial use of the property.

Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282, *cert. denied*, 535 U.S. 1077 (2002)

http://scholar.google.com/scholar_case?case=7629936155511401158&q=169+N.J.+282&hl=en&as_sdt=2,31

Court sustained trial court's decision that "there cannot be an inverse condemnation claim for the city's actions in the zoning ordinance which was declared invalid." In addition, "having been subjected to an invalid ordinance during the time it took to challenge successfully the ordinance's application does not constitute even a temporary taking." However, the court held that plaintiff's claim against the city's building inspector for negligently performing his duties by ordering the demolition of the building should not have been dismissed by the trial court. The court found that the city "will be responsible for the negligence of its employees acting within the scope of their employment to the same extent as would a private employer. *N.J.S.A.* 59:2-2a."

Mansoldo v. State of New Jersey, 187 N.J. 50 (2006)

http://scholar.google.com/scholar_case?case=17143408900401890114&q=187+N.J.+50&hl=en&as_sdt=4,31

Plaintiff sought compensation for alleged inverse condemnation of land located in Hackensack River floodway. Flood Hazard Area Control Act Rules prevented the construction of two single family homes which were permitted under local zoning. Court holds that both lower courts misapplied the appropriate standards and remanded to trial court. Trial court must determine whether DEP regulation denies all economically beneficial use of the property and therefore effects a taking under *Lucas v. South Carolina Coastal Commission*. Court must conduct its own fact finding and not rely upon ALJ's finding in related administrative matter. If the court finds that the regulation denied plaintiff of all economically beneficial use of his property, then the state is required to pay just compensation unless the court determines that background principles of property and nuisance law preclude the intended use of the property. If the court concludes that the regulation does not deny all economically beneficial use of the land, then it must determine

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whether there was a compensable taking under the factors set forth in *Penn Central Transportation Co. v. New York City*, including the “economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations.”

Klumpp v. Bor. Of Avalon, 202 N.J. 390 (2010)

http://scholar.google.com/scholar_case?case=7972691950690165722&q=202+N.J.+390+&hl=en&as_sdt=2,31

When a government entity takes property without initiating a condemnation action the burden shifts to the property owner to bring an inverse condemnation action. The cause of action for the inverse condemnation begins to accrue on the date the owner becomes aware, or should become aware, that he has been deprived of all reasonable beneficial use of the property. However, it would be unjust to deprive plaintiffs of their property and deny them compensation when the government entity maintained for years that no taking had occurred and only changed its position after suit was filed and it attempted to “hide behind the six-year statute of limitations to claim that plaintiffs have no rights to an inverse condemnation action.” Plaintiffs are therefore entitled to the value of the property as of the date of taking in 1962, plus interest.

Smith v. Jersey Central Power & Light Company, 421 N.J. Super. 374 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=93758689004080123&q=421+N.J.+Super.+374+&hl=en&as_sdt=2,31

“If a physical invasion of property falls short of a permanent occupation, a ‘balancing process’ that includes consideration of the degree of interference with the property owner’s use of his land is required to determine whether a taking has occurred.” *Citing Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 432 (1982). The elements of a claim for inverse condemnation where there has been no permanent physical occupation of the landowner’s property are significantly different from the elements of a nuisance claim. To prevail on a nuisance claim, a plaintiff is not required to show that an interference with the use of his property was permanent and there is no right to a jury trial on an inverse condemnation claim.

State Ex. Rel. Commissioner of Trans. v. Marlton Plaza Associates, L.P., 426 N.J. Super. 337 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=15579082063375446642&q=state+of+new+jersey,+marlton+plaza+associates,+L.P.&hl=en&as_sdt=2,31

“While a property owner has a right of reasonable access to the State’s highway system, he or she does not have an absolute right to access the highway from any particular point on his or her property. *N.J.S.A. 27:7-90*.” “That property owners’ interests in any particular access point are not sufficiently bound up with their reasonable expectations of ownership to constitute ‘property’ for Fifth Amendment purposes. Thus, modification or revocation of an access point, so long as free and reasonable access remains, does not constitute a taking.” Therefore, the property owner was only entitled to severance damages that arose directly from the property actually taken and not from the loss of the highway access.

Koontz v. St. Johns River Water Management District, 133 S.Ct. 2586 (2013)

http://scholar.google.com/scholar_case?case=15091881919262804570&q=No.+11-1447&hl=en&as_sdt=2,31

The requirements of Nollan and Dolan don’t change depending on whether the government approves a permit on the condition that the applicant give up property or denies a permit because the applicant refuses to do so. The government’s demand for property from a land use permit applicant must satisfy the Nollan and Dolan requirements even when the demand is for money. There must be a nexus and rough proportionality to the effects of the proposed use of the property

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at issue.

Golowski v. City of Trenton, A-1990-14T2 (Nov. 23, 2016)

https://scholar.google.com/scholar_case?case=11450480575214766958&q=A-1990-14T2&hl=en&as_sdt=4,31

Delay damages for a temporary taking of property allowed in isolated undersized lot case where the Board denied variance relief at the urging of the City, the trial court remanded the case to the Board with instructions to address the confiscatory impact of the denial of the variances, the City did not withdraw its opposition and the Board ignored the court's instructions and issues another denial of plaintiff's application.

Murr v. Wisconsin, 137 S.Ct. 1933 (2017)

https://scholar.google.com/scholar_case?case=15314919795156307447&q=murr+v.+wisconsin&hl=en&as_sdt=3,31

In determining the proper unit of property against which to assess the effect of a challenged governmental action, the court should conduct an objective inquiry to determine whether reasonable expectations about property ownership would lead a property owner to anticipate that his land would be treated as one parcel or as separate parcels. The parcel should not be limited to that portion targeted by the challenged regulation. "[C]ourts must consider a number of factors. These include the treatment of the land under state and local law; the physical characteristics of the land; and the prospective value of the regulated land. The endeavor should determine whether reasonable expectations about property ownership would lead a landowner to anticipate that his holdings would be treated as one parcel, or, instead, as separate tracts. The inquiry is objective, and the reasonable expectations at issue derive from background customs and the whole of our legal tradition." "Under the appropriate multifactor standard, it follows that for purposes of determining whether a regulatory taking has occurred," the merger of the two lots under state law "informs the reasonable expectation they will be treated as a single property."

Romo's Rockaway Realty, LLC v. Rockaway Township Planning Board, A-3675-14T4 (Jan. 13, 2017)

https://scholar.google.com/scholar_case?case=2531132758441035146&q=romo%27s&hl=en&as_sdt=4,31

Plaintiff's failure to exhaust available administrative remedies (by applying for a traffic light) precluded him from asserting a claim of inverse condemnation.

Fisher v. Easthampton Board of Education, A-4377-14T2 (Feb. 2, 2017)

https://scholar.google.com/scholar_case?case=17116048551301763992&q=A-4377-14T2&hl=en&as_sdt=4,31

The statute of limitation for inverse condemnation is six years.

Stavros, Inc. v. State of New Jersey, A-0959-17T2 (Sept. 12, 2019)

https://scholar.google.com/scholar_case?case=13606737245997300533&q=A-0959-17T2&hl=en&as_sdt=4,31

When the DOT "seeks to acquire 'any right of access to any highway,' [it must] do so by 'purchase or condemnation.'" N.J.S.A. 27:7-98." It may not revoke access until an alternative access is provided. Where it does not provide reasonable alternative access which "resulted in no reasonable access . . . from April 2009 to November 2011, [it] deprived [plaintiff] of the beneficial use of its right of access and property, and constituted a de facto taking of [plaintiff's] property for which an inverse condemnation claim lies." Plaintiff has a right to reasonable access to its property during construction of the reasonable alternative access. For a commercial property owner, "alternative access exists if the property has reasonable access onto a street, road or driveway 'of sufficient

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design to support commercial traffic . . . so situated that motorists will have a convenient, direct, and well-marked means of . . . reaching the business . . . and returning to the highway.’ N.J.S.A. 27:7-94(c)(1).”

Cedar Point Nursery v. Hassid, 141 S. Ct. 2063 (2021)

https://scholar.google.com/scholar_case?case=12921109561082906397&q=cedar+point+v.+hassid&hl=en&as_sdt=6,31&as_ylo=2021

A federal regulation that granted labor organizations a “right to take access” to farmers’ properties, appropriated a right to invade the farmers’ properties, and therefore constitutes a *per se* physical taking.

Iron Bar, LLC v. Dougherty, No.19-9170 (Feb. 3, 2021)

https://scholar.google.com/scholar_case?case=17306471260477199804&q=iron+bar+v.+dougherty&hl=en&as_sdt=6,31&as_ylo=2020

A municipality’s refusal to grant a liquor license cannot be considered a “regulatory taking” because plaintiff never held the license. In addition, a regulatory taking does not exist because the refusal to grant a liquor license does not deprive the property owner of all economically beneficial use of his property, only one potential use.

JWC Fitness, LLC v. Murphy, A-0639-20 (Oct. 18, 2021)

https://scholar.google.com/scholar_case?case=11235964511946258683&q=JWC+Fitness&hl=en&as_sdt=6,31&as_ylo=2021

Executive orders issued during the COVID-19 pandemic that limited or shut down the operations of health clubs was merely a police regulation, not a “commandeering,” of the property. Consequently, no compensation is required under the state’s Disaster Control Act or the Federal or New Jersey Constitutions.

Nekrilov v. City of Jersey City, 45 F.4th 662 (3rd Cir. 2022)

https://scholar.google.com/scholar_case?case=7148508653935745372&q=Nekrilov+v.+jersey+city&hl=en&as_sdt=3,31&as_ylo=2022

The Constitution protects property interests, it does not create property interests. The Court does not “recognize a general right to do business as a property interest cognizable under the Takings Clause.” As a result, “plaintiffs’ forward-looking right to pursue their short-term rental businesses is not cognizable under the Takings Clause.” “The comparative disadvantage of long-term rentals does not amount to an allegation that long-term rentals are not an economically beneficial use of the property. The plaintiffs are, as the District Court recognized, attempting to argue that without the benefit of short-term rentals, they have been denied all profitable use of their properties. But the central question for a total taking is not “whether the regulation allows operation of the property as ‘a profitable enterprise’ for the owners, but whether others ‘might be interested in purchasing all or part of the land’ for permitted uses.” “Zoning regulations are the ‘classic example’ of permissible regulations that do not require compensation even where they “prohibit[] the most beneficial use of the property.”

James v. Vornlocker, No. 3:19 Civ. 13690 (Aug. 31, 2022)

https://scholar.google.com/scholar_case?case=488144213460710662&q=James+v.+Vornlocker&hl=en&as_sdt=6,31

Plaintiff’s claims against the municipality and various municipal officials dismissed. Allegations of delays by municipal actors (2 years for Planning Board to approve plaintiff’s subdivision application and to issue zoning and construction permits, etc.) leading to loss of land through foreclosure failed to establish any connection between the alleged “taking,” (i.e., the foreclosure),

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and defendants' actions. Plaintiff's equal protection claims failed because she offered no evidence of unequal treatment.

Rockleigh Country Club v. Hartford Ins. Group, A-2615-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=16036975573143055149&q=Rockleigh+Country+Club+v.+Hartford&hl=en&as_sdt=6,31&as_ylo=2023

A regulatory taking occurs where "the owner of real property has been called upon to sacrifice all economically beneficial uses" of its property. An exception to the State's duty to pay just compensation for a regulatory taking applies where "the court determines that background principles of property and nuisance law [otherwise] preclude [the owner's] intended use of the property." *Mansoldo v. State*, 187 N.J. 50, 62 (2006). In other words, "restrictions that background principles of the State's law of property and nuisance already place upon land ownership such as the State's power to abate nuisances that affect the public generally or forestall other grave threats to the lives and property of others are not compensable." Here, the State had no duty to compensate Plaintiff for the taking related to the inability to use their property because of restrictions created by the Governor's Executive Order 107 because same constituted an exercise of the State's police power that was reasonably necessary to abate an imminent public danger and preserve public safety in the face of the Covid-19 pandemic.

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Spruce Manor Enterprises v. Bor. of Bellmawr, 315 N.J. Super. 286 (Law Div. 1998)

http://scholar.google.com/scholar_case?case=70568967565503988&q=315+N.J.+Super.+286+&hl=en&as_sdt=2,31

Winters v. Twp. of Voorhees, 320 N.J. Super. 150 (Law Div. 1998)

http://scholar.google.com/scholar_case?case=6973389971014969568&q=320+N.J.+Super.+150+&hl=en&as_sdt=2,31

Forbes v. Board of Trustees, 312 N.J. Super. 519 (App. Div.), *certif. denied*, 156 N.J. 411 (1998)

http://scholar.google.com/scholar_case?case=17555856956765977434&q=312+N.J.+Super.+519+&hl=en&as_sdt=2,31

Municipality's decision that property in question was blighted and in need of redevelopment was supported by substantial evidence in the record.

Hirth v. City of Hoboken, 337 N.J. Super. 149 (App. Div. 2001)

http://scholar.google.com/scholar_case?case=5483709124321801046&q=337+N.J.+Super.+149+&hl=en&as_sdt=2,31

GDT, LLC v. Twp. of Bordentown, A-0761-03T5 (Nov. 9, 2004)

http://scholar.google.com/scholar_case?case=10442491954581435690&q=GDT,+LLC+v.+Twp.+of+Bordentown&hl=en&as_sdt=2,31

A municipality's decision to decline to vote on a request to vacate paper streets was within its discretion where municipality was considering turning all of its paper streets into green space – the court found no authority to order the municipality to conduct a hearing and take a formal vote on the proposal.

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Concerned Citizens of Princeton, Inc. v. Mayor and Council of Bor. of Princeton, 370 N.J. Super. 429 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=12865458892744007927&q=370+N.J.+Super.+429+&hl=en&as_sdt=2,31

Brnicevic v. Bor. of Bound Brook, A-3334-03T3 (Mar. 8, 2005)

http://scholar.google.com/scholar_case?case=3219093363144172321&q=Brnicevic+v.+Bor.+of+Bound+Brook&hl=en&as_sdt=2,31

Challenge to redevelopment plan rejected where provisions met requirements of Redevelopment Law.

Deegan v. Perth Amboy Redevelopment Agency, 374 N.J. Super. 80 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=10091111875202989379&q=374+N.J.+Super.+80+&hl=en&as_sdt=2,31

Procedural requirements of the Municipal Land Use Law did not apply to redevelopment agency.

First Montclair Partner, L.P. v. Herod Redevelopment I, L.L.C., 381 N.J. Super. 298 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=7104950897948413500&q=381+N.J.+Super.+298+&hl=en&as_sdt=2,31

Planning board's interpretation relative to the height of the proposed structure made pursuant to the redevelopment plan is entitled to judicial deference, notwithstanding the fact that the local zoning ordinance may suggest a different interpretation.

Jersey Urban Renewal v. City of Asbury Park, 377 N.J. Super. 232 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=10389966059109099134&q=377+N.J.+Super.+232+&hl=en&as_sdt=2,31

Procedural requirements of Redevelopment Plan, including requirement that plaintiff obtain status as a subsequent developer, approval of the Technical Review Committee and approval of the Mayor and City Council, required before plaintiff could file a site plan application before planning board to redevelop apartment building to condominiums affirmed.

Britwood Urban Renewal v. City of Asbury Park, 376 N.J. Super. 552 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=14450473945903516143&q=376+N.J.+Super.+552+&hl=en&as_sdt=2,31

Case involves interplay between Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1 to 49 (LRHL), and MLUL with respect to contributions for off-site improvements. Apart from the specific authorization in the LRHL that permits the redevelopment entity to collect funds from a redeveloper, the LRHL does not permit the public body to require contributions to off-site infrastructure costs. Where property owner not a redeveloper, City lacked authority to require off-site contributions. MLUL is not superseded by the LRHL, but the MLUL independently governs review and approval of site plan applications. Time-of-decision rule did not require the application of an ordinance after final site plan approval granted.

ERETC, L.L.C. v. City of Perth Amboy, 381 N.J. Super. 268 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=14147192992441057842&q=ERETC,+L.L.C.+v.+City+of+Perth+&hl=en&as_sdt=2,31

Court reverses a determination that plaintiff's property should be included in an area designated as one in need of redevelopment pursuant to the Local Redevelopment and Housing Law because the decision was not based upon substantial evidence.

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City of Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=3537871488563380083&q=388+N.J.+Super.+1+&hl=en&as_sdt=2,31

A private entity which has contracted with a city to be the master redeveloper of a redevelopment area, and which is contractually obligated to pay the amount of a condemnation award is not entitled to intervene as a party in the condemnation action and participate in a plenary manner in the valuation proceedings either as of right pursuant to *R. 4:33-1* or permissively pursuant to *R. 4:33-2*, where there is no showing that the city as condemning authority does not adequately represent its interest.

Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 N.J. 344 (2007)

http://scholar.google.com/scholar_case?case=3100771550691661563&q=191+N.J.+344+&hl=en&as_sdt=2,31

Because the New Jersey Constitution, N.J. Const. art VIII, §3, ¶1., authorizes government redevelopment of only “blighted” areas, the Legislature did not intend *N.J.S.A.* 40A:12A-5(e) to apply in circumstances where the sole basis for redevelopment is that the property is “not fully productive.” The Legislature intended *N.J.S.A.* 40A:12A-5(e) to apply only to property that has become stagnant because of issues of title, diversity of ownership, or other similar conditions. A municipal redevelopment designation is entitled to deference provided that it is supported by substantial evidence. The substantial evidence standard is not met if a municipality’s decision is supported by only the net opinion of an expert.

Milford Mill 128, LLC v. Borough of Milford, 400 N.J. Super. 96 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=5227365791128808868&q=400+N.J.+Super.+96+&hl=en&as_sdt=2,31

Redevelopment plan that requires the developer to file for a consistency review with the governing body prior to filing for site plan review by the planning board is proper exercise of legislative authority. Challenge to redevelopment plan brought two years after its adoption is untimely. Use variance not appropriate mechanism to attempt to develop an entire redevelopment zone in a manner inconsistent with the redevelopment plan (distinguishing *Weeden* as a minor exception to the redevelopment plan).

Mack-Cali Realty Corp. v. State, 466 N.J. Super. 402 (App. Div. 2021)

https://scholar.google.com/scholar_case?case=535746703745698807&q=mack-cali+v.+state&hl=en&as_sdt=6,31&as_ylo=2021

Among other arguments, Plaintiffs opposed a municipal payroll tax arguing that same was a “surrogate” or “substitute” real estate tax precluded by their PILOT agreements and that the tax unconstitutionally impaired their contract rights because under the Long Term Tax Exemption Law and individual financial agreements, the City did not reserve the right to impose such a tax. The Appellate Division, upholding the trial court, held that there was no legal basis for Plaintiffs to argue that such PILOT agreements insulated Plaintiffs from anything other than real property taxes. However, the Court refused to rule on the validity of the payroll tax, remanding same to the trial court for further fact finding related to Plaintiff’s argument that the tax represented “double taxation.”

Matrix Development Group v. City of Newark, No. 2:2020CV03166 (D.N.J. July 30 2021)

https://scholar.google.com/scholar_case?case=9562909367640753860&q=matrix+redevelopment+&hl=en&as_sdt=6,31&as_ylo=2021

Where a municipality adopts an ordinance that requires project labor agreements for redevelopment projects, same is permissible because the municipality is acting as a “market participant” and not a

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“regulator” even though the redevelopment financing may be by way of non-recourse bonds that are held by others-and not the municipality itself.

City of Camden v. Victor Urban Renewal, LLC, No. CAM-L-4612-18 (March 29, 2021)

https://scholar.google.com/scholar_case?case=8327279149868750071&q=city+of+camden+v.+victor&hl=en&as_sdt=6,31&as_ylo=2021

Under the Long Term Tax Exemption Law (“LTTEL”), “the entity” for the purposes of calculating “total project costs” pursuant to N.J.S.A. § 40A:20-3(h) means an urban renewal entity. Thus, where an urban renewal entity enters into a ground lease with another entity to develop and manage the project and the ground lease places all costs on the other entity, those costs cannot be factored into “total project costs” for the purposes of determining what excess net profit is owed to a municipality under a financial agreement. Also, a municipality is unable to waive the annual reporting requirements mandated by the LTTEL.

Malanga v. Twp of West Orange, No. 0178-20 (July 6, 2021)

https://scholar.google.com/scholar_case?case=14495541226378896539&q=Malanga+v.+Twp+of+West+Orange&hl=en&as_sdt=6,31&as_ylo=2021

Adopting the dictionary definition of “obsolescence”, the Appellate Division affirmed the trial court’s ruling that a library can meet the definition of an “area in need of redevelopment” because its “obsolescence” was demonstrated by structural problems and the need to upgrade its “information and technology” capabilities.

Dobco, Inc. v. Bergen Cnty. Improvement Auth., A-2202-20 (July 21, 2021)

https://scholar.google.com/scholar_case?case=6719998006811980392&q=Dobco,+Inc.+v.+Bergen&hl=en&as_sdt=6,31&as_ylo=2021

County improvement authorities, when acting as a designated redevelopment entities pursuant to the County Improvement Authorities Law, must comply with the public bidding requirements of the Local Public Contract Law (“LPCL”) when obtaining goods and services related to same. Here, the county improvement authority, acting as the redevelopment entity, violated the LPCL by selecting a “redeveloper” without first going to bid.

I-78 Logistics Park Lopatcong Urban Renewal, LLC v. Lopatcong Twp., No. 006903-2020 (Tax July 22, 2021)

https://scholar.google.com/scholar_case?case=3228958809305774961&q=I-78+logistics&hl=en&as_sdt=6,31&as_ylo=2021

Pursuant to the Long Term Tax Exemption Law where a financial agreement does not exempt the underlying land from assessment, then the property owner or the municipality has standing to challenge the assessment of same and is not prohibited pursuant to N.J.S.A. 54:3-21(b).

Saddlewood Court, LLC v. City of Jersey City, A-2665-20 (Nov. 2, 2022)

https://scholar.google.com/scholar_case?case=7194471130069410931&q=saddlewood+court+v.+jersey+city&hl=en&as_sdt=6,31

The absence of an interior inspection does not render a planner's opinion "fatally defective," especially when many of "[t]he conditions leading to the determination of redevelopment need ... are, by and large, externally observable...." The testimony of homeowners' was accepted by the Board and found to be “reasonable, and the trial judge did not err in basing his decision in part on that testimony.”

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240 Half Mile Road, LLC v. Twp. of Middletown, A-2029-2020 (June 7, 2022)

https://scholar.google.com/scholar_case?case=17500523020711178209&q=240+Half+Mile+Road,+LLC+v.+Twp.+of+Middletown&hl=en&as_sdt=6,31

Plaintiff's challenge to Redevelopment Plan was untimely and the trial court did not abuse its discretion by not enlarging the time under Rule 4:69-6 because the "Redevelopment Plan does not involve public financing, tax abatement, or condemnation, and does not involve plaintiff's property. No constitutional issues are presented. Plaintiff was not entitled to any additional notice under the LRHL and was not misinformed of the date of the published notices. Plaintiff's reliance on the notice required under the MLUL is misplaced. The LRHL supersedes the notice requirements imposed by the MLUL."

Estate of Carroll v. Prism Green Assocs. IV, Docket No. A-3020-20 (App. Div. 2022)

https://scholar.google.com/scholar_case?case=16078308508325660134&q=Estate+of+Carroll+v.+Prism+Green+&hl=en&as_sdt=6,31

A third-party may only enforce a contract if they are an intended beneficiary, rather than an incidental beneficiary, of the agreement. Just because a property is within a redevelopment area does not make the owner of the property an intended beneficiary of the redevelopment agreement between the Township and the redeveloper.

Meredith v. Mayor & Borough Council of the Borough of Somerdale, A-1933-20 (June 3, 2022)

https://scholar.google.com/scholar_case?case=4521484277245309915&q=Meredith+v.+Mayor+%26+Borough+Council+of+the+Borough+of+Somerdale&hl=en&as_sdt=6,31

The ordinance couldn't be found to have exceeded the LRHL's statutory authority given to the Mayor and Borough due to the fact that it restricted the Board's ability to grant variances "[b]ecause Lidl never sought any variances, the Board did not have to consider the ordinance's provision that no variances should 'substantially depart from the standards established' in the ordinance. Thus, the argument was correctly dismissed as moot because there was no dispute regarding the Board's action on a variance."

In re Approval of a Financing Commitment for the Project Known as Norman Towers, A-4583-19 (May 31, 2022)

https://scholar.google.com/scholar_case?case=8005274492710945500&q=Financing+Commitment+for+the+Project+Known+as+Norman+Towers&hl=en&as_sdt=6,31

"When considering whether a statute has been expressly repealed, 'it is not essential to identify a specific provision in order to effect its express repeal, [however] it is necessary to describe the provision with reasonable certainty.'" To determine whether a statute has been repealed by implication, clear and compelling evidence of legislative intent, free from reasonable doubt, must be shown. The Long-Term Tax Exemption Law (LTTEL), N.J.S.A. 40A:20-1 to-22, did not explicitly or impliedly repealed N.J.S.A. 55:14K-37(b),

Dobco, Inc. v. Bergen County Improvement Auth., 250 N.J. 396 (2022)

https://scholar.google.com/scholar_case?case=15180750636792886306&q=Dobco,+Inc.+v.+Bergen+County+Improvement&hl=en&as_sdt=6,31&as_ylo=2022

The County Improvement Authorities Law, N.J.S.A. 40:37A-44 to 135, requires a county improvement authority to comply with the Local Public Contracts Law, even as a redevelopment entity, when it exercises its power "[t]o enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority or to carry out any power expressly given in this act." N.J.S.A. 40:37A-55(t). Thus, the authority was required to "bid" the contract for a "redeveloper" to make improvements to the Bergen County Courthouse.

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Jimenez v. Union County Improvement Auth., A-0764-21 (Feb. 15, 2022)

https://scholar.google.com/scholar_case?case=4816016832132583913&q=jimenez+v.+union&hl=en&as_sdt=6,31&as_ylo=2022

Court enjoins construction of public project where bidding requirements not properly followed. “[T]he public interest is presumptively served when public entities abide by the LPCL. The judge concluded the monies already spent by the UCIA, and the delays and additional costs alleged to be incurred if public bidding were now required, outweighed the public's interest in compliance with the law. Yet, we cannot know what the result of public bidding Phase 2 of the project might be; we only know it will not violate the law. The entry of temporary restraints enjoining Phase 2 clearly and convincingly serves the public interest.”

Township of Cinnaminson v. Cove House, LLC, A-0576-23 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=3535129972015106395&q=cinnaminson+v.+cove+&hl=en&as_sdt=6,47&as_ylo=2023

The “substantial evidence” standard required to deem an area in need of redevelopment requires not just “some evidence in the record” to support a need-of-redevelopment determination but substantial evidence. Here, the planner’s report made conclusory statements without providing the factual basis for same. Consequently, the report failed to meet the “substantial evidence” standard.

Benjamin More & Co. v. City of Newark, A-1213-19 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=8598467936370558736&q=Benjamin+Moore+%26+Co.+v.+City+of+Newark&hl=en&as_sdt=6,31

A facial challenge to the designation of a property as an area in need of redevelopment (with the right to condemn) based on improper notice, more than 50 years after said designation was made, was untimely. However, were the municipality to file an action to condemn the subject property, a challenge with respect to the designation may proceed as an “as applied” challenge.

DeSilvio v. Borough of Glassboro, A-1628-20 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=4510152732476546815&q=DeSilvio+v.+Borough+of+Glassboro&hl=en&as_sdt=6,31

Municipality has broad discretion with respect to the timeframe to select a redeveloper and a property owner has no constitutional right to be appointed redeveloper of their property.

Milltown-Ford Redevelopment Agency v. United States, Civil Action No. 19-21494 (ZNQ) (DEA) (D.N.J. 2023)

https://scholar.google.com/scholar_case?case=3304694267505983987&q=Milltown-Ford+Redevelopment+Agency+&hl=en&as_sdt=6,31&as_ylo=2023

Where a municipality and redeveloper enter into a new redevelopment agreement which states that a new redevelopment plan will be adopted, same does not nullify the then existing redevelopment plan. Consequently, the condemnation of the subject property can proceed.

148 First St. Urban Renewal, LLC v. 144 First Holdings, LLC, A-2329-20 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=1716439838580627854&q=148+First+St.+Urban+Renewal,+LLC+v.+144+First+Holdings+LLC&hl=en&as_sdt=6,47&as_ylo=2023

Where a redevelopment plan does not set forth any FAR standard, none apply to the subject application, and jurisdiction was correctly before the planning board.

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McGillvary v. Scutari, Civ. No. 23-cv-22605 (D.N.J. Aug. 12, 2024)

https://scholar.google.com/scholar_case?case=5653705882383787079&q=McGillvary+v.+Scutari&hl=en&as_sdt=6,47&as_ylo=2024

Court dismisses allegation of “bid rigging” with respect to the redevelopment Fort Monmouth by Netflix.

Sackman Enter., Inc. v. Mayor & Council of the Bor. of Belmar, 478 N.J. Super. 68 (App. Di. 2024)

https://scholar.google.com/scholar_case?case=617233561184630457&q=sackman+Enter.,+Inc.+v.+Mayor+%26+Council&hl=en&as_sdt=6,47&as_ylo=2024

EV credits (as permitted by N.J.S.A. 40:55D-66.20) are to be applied when determining a concept plan's consistency with a redevelopment plan.

Feld v. City of Newark, A-3689-22 (Oct. 29, 2024)

https://scholar.google.com/scholar_case?case=15014175191130138587&q=Feld+v.+City+of+Newark&hl=en&as_sdt=6,47&as_ylo=2024

Appellate Division affirms trial court's dismissal of Plaintiff's challenge with respect to a PILOT agreement for lack of standing.

SJ 660 LLC v. Borough of Edgewater, A-0788-22 (Aug. 13, 2024)

https://scholar.google.com/scholar_case?case=6188024727846132766&q=SJ+660&hl=en&as_sdt=4,31,131

Designating a portion of a parcel (which contained no buildings) as an area in need of redevelopment is lawful because: a) there were certain remaining structures and infrastructure that had been associated with a prior industrial use; and b) it would be an unduly narrow interpretation of the LRHL to preclude its application to recently demolished buildings that had posed a public safety hazard.

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State v. Casper, 5 N.J. Super. 150 (App. Div. 1949)

Barbarisi v. Bd. of Adjust., 30 N.J. Super. 11 (App. Div. 1954)

http://scholar.google.com/scholar_case?case=14267826308172836559&q=30+N.J.+Super.+11+&hl=en&as_sdt=4,31

Martin v. Cestone, 33 N.J. Super. 267 (App. Div. 1956)

http://scholar.google.com/scholar_case?case=2561853332299914606&q=33+N.J.+Super.+267+&hl=en&as_sdt=4,31

Ranney v. Istituto Pontificio Delle Maestre Filippini, 20 N.J. 189 (1955)

http://scholar.google.com/scholar_case?case=4328453869620312640&q=20+N.J.+189+&hl=en&as_sdt=4,31

Industrial Lessors, Inc. v. City of Garfield, 119 N.J. Super. 181 (App. Div. 1972)

http://scholar.google.com/scholar_case?case=9106862430137231637&q=119+N.J.+Super.+181+&hl=en&as_sdt=4,31

Use created by variance could be rebuilt if destroyed.

Lacey Twp. v. Mahr, 119 N.J. Super. 135 (App. Div. 1972)

http://scholar.google.com/scholar_case?case=5789065209534875051&q=119+N.J.+Super.+135+&hl=en&as_sdt=4,31

Nonconforming use could not be rebuilt if destroyed.

Foster-Hyatt Group of Companies, Inc. v. West Caldwell Planning Bd., 174 N.J. Super. 10 (App. Div. 1980)

http://scholar.google.com/scholar_case?case=10439153322847596892&q=174+N.J.+Super.+10+&hl=en&as_sdt=4,31

Ianieri v. Zoning Bd. of Adjust., East Brunswick Twp., 192 N.J. Super. 15 (Law Div. 1982)

http://scholar.google.com/scholar_case?case=7233901217155889647&q=192+N.J.+Super.+15+&hl=en&as_sdt=4,31

Use must be lawful at the time it commenced.

Camara v. Bd. of Adjust. of Belleville, 239 N.J. Super. 51 (App. Div. 1990), *implicitly overruled by Rogers v. Zoning Bd. of Adjust., Village of Ridgewood*, 158 N.J. 11 (1999)

http://scholar.google.com/scholar_case?case=5687855919333361546&q=239+N.J.+Super.+51+&hl=en&as_sdt=4,31

Razberry's Inc. v. Kingwood P. Bd., 250 N.J. Super. 324 (App. Div. 1991)

http://scholar.google.com/scholar_case?case=1330170960632075647&q=250+N.J.+Super.+324+&hl=en&as_sdt=4,31

Grungo v. Robles, 256 N.J. Super. 23 (Law Div. 1992)

http://scholar.google.com/scholar_case?case=16145574065772044465&q=256+N.J.+Super.+23+&hl=en&as_sdt=4,31

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Ketchenick v. Bor. of Mountain Lakes, 256 N.J. Super. 647 (App. Div. 1992)
http://scholar.google.com/scholar_case?case=5353310240075353307&q=256+N.J.+Super.+647+&hl=en&as_sdt=4,31

Bernardsville Quarry v. Bernardsville Bor., 129 N.J. 221 (1992)
http://scholar.google.com/scholar_case?case=18135508496731554899&q=129+N.J.+221+&hl=en&as_sdt=4,31

Police power may limit rights to continue use.

Villari v. Zoning Bd. of Adjust., Deptford Twp., 277 N.J. Super. 130 (App. Div. 1994)
http://scholar.google.com/scholar_case?case=8461706113479583179&q=277+N.J.+Super.+130+&hl=en&as_sdt=4,31

Pig farm abandoned by conduct.

Poulathas v. Atlantic City Zoning Bd. of Adjust., 282 N.J. Super. 310 (App. Div. 1995)
http://scholar.google.com/scholar_case?case=17471396896828709954&q=282+N.J.+Super.+310+&hl=en&as_sdt=4,31

Illegal expansion of a nonconforming use from three apartments to five apartments did not constitute abandonment of the nonconforming use. Abandonment is a matter of intent.

Nickels v. City of Wildwood, 140 N.J. 261 (1995)
http://scholar.google.com/scholar_case?case=15551685734060343848&q=140+N.J.+261+&hl=en&as_sdt=4,31

Municipality may not expand a nonconforming use by ordinance.

DeBlasio v. West Amwell Twp., 53 F.3d 592 (3d Cir. 1995) *reh'g and sugg'n for reh'g in banc denied, cert. denied*, 116 S. Ct 352 (1995)

A property owner states a claim for substantive due process by alleging that a municipality's decision limiting use of the property in the context of land use regulation was arbitrarily or irrationally reached.

Children's Institute v. Verona Twp. Bd. of Adjust., 290 N.J. Super. 350 (App. Div. 1996)
http://scholar.google.com/scholar_case?case=7935613233808881396&q=290+N.J.+Super.+350+&hl=en&as_sdt=4,31

Paruszewski v. Twp. of Elsinboro, 297 N.J. Super. 531 (App. Div. 1997)
http://scholar.google.com/scholar_case?case=7859376961612843490&q=297+N.J.+Super.+531+&hl=en&as_sdt=4,31

Engleside at West Condominium Ass'n v. Land Use Bd., Bor. of Beach Haven, 301 N.J. Super. 628 (Law Div. 1997)
http://scholar.google.com/scholar_case?case=17441030093845678842&q=301+N.J.+Super.+628+&hl=en&as_sdt=4,31

Rogers v. Zoning Bd. of Adjust. of Village of Ridgewood, 309 N.J. Super. 630 (App. Div. 1998), *aff'd*, 158 N.J. 11 (1999)
http://scholar.google.com/scholar_case?case=15199665343472988715&q=309+N.J.+Super.+630+&hl=en&as_sdt=4,31

Court, declining to follow *Camara v. Board of Adjustment of Twp. of Belleville*, 239 N.J. Super. 51 (App. Div. 1990), found that nonconforming sign does not lose its protected nonconforming status

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merely because message on sign changes to advertise new and different business operating on the property where the new business is a permitted use under municipality's zoning ordinance.

Ferraro v. Zoning Bd. of Keansburg, 321 N.J. Super. 288 (App. Div. 1999)

http://scholar.google.com/scholar_case?case=7462030416314237311&q=321+N.J.+Super.+288+&hl=en&as_sdt=4,31

Zoning Board's refusal to certify unoccupied second residential structure on single lot as a nonconforming use was proper where there was insufficient evidence that structure had been in existence as a lawful use prior to adoption of municipality's zoning ordinance.

Fred McDowell, Inc. v. Bd. of Adjust., Twp. of Wall, 334 N.J. Super. 201 (App. Div. 2000), *certif. denied*, 167 N.J. 88 (2001)

http://scholar.google.com/scholar_case?case=551166365417616120&q=334+N.J.+Super.+201+&hl=en&as_sdt=4,31

Contiguity and common ownership alone does not evidence intent to expand nor otherwise warrant expansion of a prior nonconforming use; in setting limits to the expansion of a prior nonconforming use to extract a diminishing asset, a zoning board should consider, *inter alia*, the size of the parcel, the rate of extraction, and evidence of intent to expand.

Do-Wop Corp. v. City of Rahway, 168 N.J. 191 (2001)

http://scholar.google.com/scholar_case?case=7066811727175228134&q=168+N.J.+191+&hl=en&as_sdt=4,31

Bonaventure International v. Bor. of Spring Lake, 350 N.J. Super. 420 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=6421048928919288901&q=350+N.J.+Super.+420+&hl=en&as_sdt=4,31

Conselice v. Borough of Seaside Park and Planning Bd. of Seaside Park, 358 N.J. Super. 327 (App. Div. 2003)

http://scholar.google.com/scholar_case?case=9752714702341968884&q=358+N.J.+Super.+327+&hl=en&as_sdt=4,31

Court affirmed decision of trial court finding the appellant required a use variance for the proposed expansion of a pre-existing nonconforming integrated mixed use, residence and real estate office. The court found that the expansion of the residential use not only expands that use, but also expands the mixed use of the property.

S&S Auto Sales, Inc. v. Zoning Bd. of Adjust., Bor. of Stratford, 373 N.J. Super. 603 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=14240992554442480104&q=373+N.J.+Super.+603+&hl=en&as_sdt=4,31

In determining whether a nonconforming use has been abandoned, the passage of time during a cessation of active use must be considered in conjunction with all circumstances, including those that caused the cessation, the nature and quality of efforts being made to resume the use, and any other objective manifestations supporting or negating the owner's expressed intention to continue the use; a municipality cannot lawfully adopt an ordinance providing for automatic termination of a nonconforming use after nonuse for a stated period without regard to intent to abandon.

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Eltrym Euneva, LLC v. Keansburg Planning Bd. of Adjust., 407 N.J. Super. 432 (Law Div. 2008)
http://scholar.google.com/scholar_case?case=9709398798364905650&q=407+N.J.+Super.+432+&hl=en&as_sdt=2,31

Nonconforming use demonstrated through municipal tax records and existing condition of property that did not show evidence of intent to abandon use.

Berkeley Square Association, Inc. v. Zoning Bd. of Adjust., City of Trenton, 410 N.J. Super. 255 (App. Div. 2009)
http://scholar.google.com/scholar_case?case=3276018081580648085&q=410+N.J.+Super.+255+&hl=en&as_sdt=2,31

“The property owner has the ultimate burden with respect to the issue of abandonment as well as the existence of a nonconforming use. However, . . . while the applicant has the ultimate burden of proof the objector must initially come forward with sufficient evidence of temporal or physical abandonment to require the property owner to sustain its ultimate burden on the issue [of abandonment].”

Reich v. Borough of Fort Lee Zoning Bd. of Adjust., 414 N.J. Super. 483 (App. Div. 2010)
http://scholar.google.com/scholar_case?case=5841857068979449792&q=414+N.J.+Super.+483+&hl=en&as_sdt=2,31

Parking nonconforming is a protected use that runs with the land. The addition of another dentist to a dental office where the footprint of the use is not enlarged is not an expansion of the nonconforming use requiring a variance when the ordinance does not regulate the number of professionals that can occupy the space.

Motley v. Borough of Seaside Park Zoning Board of Adjust., 430 N.J. Super. 132 (App. Div. 2013), certif. den. 215 N.J. 485 (2013)
http://scholar.google.com/scholar_case?case=9780808559651857221&q=A-3214-11T4+&hl=en&as_sdt=4,31

“N.J.S.A. 40:55D-68 allows a nonconforming structure to be rebuilt only if it has been partially destroyed.” Where plaintiff undertook a renovation of the entire structure that went beyond the scope of the zoning permit and resulted in the structure being merely a shell, the Borough properly issued a stop work order.

Mikhail v. Lauritsen, A-4269-15T3 (Jan. 18, 2018)
https://scholar.google.com/scholar_case?case=8259322795140895360&q=A-4269-15T3&hl=en&as_sdt=4,31

Nonconforming boarding house building that was damaged by fire not permitted to be reconstructed. N.J.S.A. 40:55D-68 permits the restoration or repair of a nonconforming structure in the event of a partial destruction thereof, but “[t]he question ‘what is total destruction’ has been the subject of controversy since the enactment of the statute as it is not defined in N.J.S.A. 40:55D-68. “The MLUL defines ‘structure’ as ‘a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.’ N.J.S.A. 40:55D-7. ‘The term ‘structures’ includes not only ‘floors,’ but garage and parking lots.’ *Mountain Hill, LLC v. Zoning Bd. of Adj.*, 403 N.J. Super. 210, 221 n.2 (App. Div. 2008) (citing N.J.S.A. 40:55D-3; N.J.S.A. 40:55D-7). Under this definition, distinct floors are considered separate structures. Consequently, under N.J.S.A. 40:55D-68, the upper levels of Building 11 are considered independent ‘structures’ separate and apart from Building 11 as a whole” and since those floors were almost completely damaged, there was no right to rebuild. Because distinct floors are considered separate structures, an analysis considering the destruction of only the second and third floors is appropriate.

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Matthews v. Ehrman, A-1868-17T4 (Feb. 20, 2019)

https://scholar.google.com/scholar_case?case=15368009380137870452&q=1868-17T4&hl=en&as_sdt=4,31

“The MLUL does not require an owner to apply for a certificate of nonconforming use. If, however, a nonconforming use is challenged, the owner will be required to defend that use as a pre-existing, nonconforming use.” A zoning permit issued by the zoning officer in derogation of the ordinance is void. “It is the permit [that is issued], not the application, which governs the permissible uses.”

Scholder v. Bd. of Adjust., Tp. Of Rockaway, A-3649-17T2 (March 12, 2019)

https://scholar.google.com/scholar_case?case=11513162379079383843&q=A-3649-17T2&hl=en&as_sdt=4,31

“An increase in business activity associated with a pre-existing, nonconforming use is permissible so long as it is the same kind of use.” An equipment upgrade is not an expansion.

El Properties, Inc. v. Township of Neptune, A-2604-17T2 (July 3, 2019)

https://scholar.google.com/scholar_case?case=14842495594531717000&q=A-2604-17T2&hl=en&as_sdt=4,31

Plaintiff not entitled to a property-wide certificate of nonconforming use as a “light industrial flex park” because the ordinance never listed “light industrial flex park” as a permitted use and at the time of the application for a certificate of nonconforming use, some of the uses on the property were conforming uses. Moreover, “plaintiff’s decision to rent the Property to tenants engaged in conforming uses, the change of use throughout the Property to predominantly conforming uses, and the substantial passage of time since many of the nonconforming uses last operated, all support the conclusion that plaintiff intended to abandon the nonconforming uses that are no longer operating on the Property. [citation omitted]. Accordingly, plaintiff was only entitled to certificates for the specific pre-existing, nonconforming uses that still operate at the Property.”

1419 West Camplain, LLC v. Joint Land Use Board, Bor. of Manville, A-0145-18T2 (Nov. 21, 2019)

https://scholar.google.com/scholar_case?case=18229253634124559659&q=A-0145-18T2&hl=en&as_sdt=4,31

Abandonment of a nonconforming use “requires the concurrence of two factors: 1) an intention to abandon, and 2) some overt act or failure to act which carries a sufficient implication that the owner neither claims nor retains any interest in the subject matter of the abandonment.” Prior owner’s failure to complete renovations of a preexisting nonconforming two-family home for over a decade after the issuance of permits and the fact that the property changed hands without the project complete, served as proof of the intention to abandon.

PMG New Jersey II, LLC v. 113 Colonia, LLC, A-4235-16T2 (July 22, 2019)

https://scholar.google.com/scholar_case?case=1188631796231723270&q=A-4235-16T2&hl=en&as_sdt=4,31

An upgrade to an existing driveway to “replace and upgrade the current fencing, buffer zones, and gate securing the access road leading to the adjacent residential area . . . would not necessarily be considered an expansion of a non-conforming pre-existing use . . .”

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Zafar v. Zoning Board of Adjustment, Bor. of Tenafly, A-1608-18T4 (Dec. 24, 2019)
https://scholar.google.com/scholar_case?case=14878632669370935845&q=A-1608-18T4&hl=en&as_sdt=4,31

Preexisting nonconforming use established by proof of prior planning board approval of expansion of parking lot which inferred that it was a permitted use, because an expansion of a non-permitted use would have had to have been approved by the zoning board and by aerial photographs that showed that the use had existed with minimal change since before the ordinance made the use nonconforming.

4 Watchung Avenue, LLC v. The Zon. Bd. of Adjust., Boro of Chatham, A-1075-18T2 (Jan. 31, 2020)
https://scholar.google.com/scholar_case?case=14573768037749821726&q=A-1075-18T2&hl=en&as_sdt=6,31

Notwithstanding decades of use, plaintiff failed to prove legality of preexisting nonconforming use where, under the old Municipal Planning Act, it was able to produce a resolution of the zoning board recommending that the variance be approved, but not a resolution of the governing body that approved the zoning board's recommendation. The Board's decision is entitled to a strong presumption of validity and the only issue before the court was whether on the record before it, the Board could reasonably reach its decision that plaintiff failed to prove that its predecessor obtained a use variance in 1971.

Parking Authority of the City of Camden v. Estate of Milton Rubin, A-5335-17T3 (Feb. 11, 2020).
https://scholar.google.com/scholar_case?case=7916096733278828900&q=A-5335&hl=en&as_sdt=4,31

Parking conditions may be protected as a nonconforming use. A redevelopment plan, adopted pursuant to the Local Redevelopment Housing Law, does not supersede the MLUL. "[S]ince the two statutes deal with the same subjects of zoning and land development, ... we construe the two statutes in *pari materia*." Citations omitted. Construing the LRHL and the MLUL together, we perceive no issue with applying the MLUL's protection for nonconforming uses where a municipality has adopted a redevelopment plan that does not explicitly provide for the same protection." Where property destruction is at issue, the court's analysis must be guided by the "discrete facts presented," as our Legislature has not defined either total or partial destruction. "Prior cases have construed total destruction to mean 'substantially totally destroyed.'" Where the property's use was neither abandoned nor totally destroyed, was not in operation but was "previously used as office space for a substantial period of time, defendant had not used it for any other purpose, and defendant had planned to renovate it for further use as office space, [and] had maintained the property by paying the property taxes and replacing the roof [and the] proposed renovations would not have resulted in total destruction of the property because the foundation, roof, and structural members would have all remained intact throughout the proposed renovations," it was a protected nonconforming use.

Hidden Oak Woods, LLC v. P&F Giancola, No. A-2604-19 (July 26, 2021)
https://scholar.google.com/scholar_case?case=5657243251492542384&q=hidden+oak+woods&hl=en&as_sdt=6,31&as_ylo=2021

Nonconforming junkyard could not be expanded to include front yard parking and other uses that were not part of the original use without applying for additional variance relief.

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& STRUCTURES

Vallata Gardens, LLC v. Borough of Lavallette, A-0485-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=1778318840253935024&q=Vallata+Gardens,+LLC+v.+Borough+of+Lavallette&hl=en&as_sdt=6,31&as_ylo=2023

A structure, which was damaged by Super Storm Sandy, was not demolished to the point of terminating the pre-existing non-conforming use. Consequently, the property owner had the right to re-construct the structure pursuant to the Sandy statute (N.J.S.A. 58:16A-103) that authorizes approvals without having to obtain same from a zoning board of adjustment.

OFF-SITE EXACTIONS AND IMPACT FEES

OFF-SITE EXACTIONS AND IMPACT FEES

Nollan v. Calif. Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 2677 (1978)
http://scholar.google.com/scholar_case?case=10841693014473793601&q=483+U.S.+825&hl=en&as_sdt=2,31

Nunziato v. Edgewater Planning Bd., 225 N.J. Super. 124 (App. Div. 1988)
http://scholar.google.com/scholar_case?case=17228580718617753530&q=225+N.J.+Super.+124+&hl=en&as_sdt=2,31

Kode Harbor Development v. Atlantic County, 230 N.J. Super. 430 (App Div. 1989)
http://scholar.google.com/scholar_case?case=1471676010692582434&q=230+N.J.+Super.+430+&hl=en&as_sdt=2,31

Holmdel Builders v. Twp. of Holmdel, 121 N.J. 550 (1990)
http://scholar.google.com/scholar_case?case=17978713641579309810&q=121+N.J.+550+&hl=en&as_sdt=2,31

Cameron & Cameron Inc. v. Planning Bd. of Warren, 250 N.J. Super. 296 (App. Div. 1991)
http://scholar.google.com/scholar_case?case=10379763261022127464&q=250+N.J.+Super.+296+&hl=en&as_sdt=2,31

Squires Gate v. County. of Monmouth, 247 N.J. Super. 1 (App. Div. 1991)
http://scholar.google.com/scholar_case?case=8548916364067201158&q=247+N.J.+Super.+1+&hl=en&as_sdt=2,31

Vrabel v. Mayor & Council, 253 N.J. Super. 109 (App. Div. 1992)
http://scholar.google.com/scholar_case?case=16475887495449780802&q=253+N.J.+Super.+109+&hl=en&as_sdt=2,31

Berninger v. Bd. of Adjust. Midland Park, 254 N.J. Super. 401 (App. Div. 1991), *aff'd*, 127 N.J. 226 (1992)
http://scholar.google.com/scholar_case?case=11371787937545086738&q=254+N.J.+Super.+401+&hl=en&as_sdt=2,31

Tennis Club Associates v. Planning Bd., Twp. of Teaneck, 262 N.J. Super. 422 (App. Div. 1993)

Frank Greek v. South Brunswick, 257 N.J. Super. 94 (App. Div. 1992), *certif. denied*, 130 N.J. 602 (1992), *cert. denied by Morris Indus. Builders, Inc. v. Twp. of South Brunswick*, 507 U.S. 1031, 113 S.Ct. 1848, 123 L.Ed.2d 472 (1993)
http://scholar.google.com/scholar_case?case=9247922742694546811&q=262+N.J.+Super.+422+&hl=en&as_sdt=2,31

Dolan v. Tigard, 114 S.Ct. 2309 (1994)
http://scholar.google.com/scholar_case?case=8551511773686011796&q=114+S.Ct.+2309+&hl=en&as_sdt=2,31

Exaction must pass "rough proportionality" test; burden is on government.

OFF-SITE EXACTIONS AND IMPACT FEES

Marlboro Twp. v. Holmdel Plan. Bd., 279 N.J. Super. 638 (App. Div.), *certif. denied*, 141 N.J. 98 (1995)

http://scholar.google.com/scholar_case?case=1751426922903580486&q=279+N.J.+Super.+638+&hl=en&as_sdt=2,31

Cash contributions for off-site improvements required by the Planning Board from developers as a condition for the approval of the development of two office complexes are illegal. The conditions are void, and the approvals are valid.

Toll Bros. v. Bd. of Chosen Freeholders of the County of Burlington, 194 N.J. 223 (2008)

http://scholar.google.com/scholar_case?case=8884619835259500865&q=194+N.J.+223+&hl=en&as_sdt=2,31

A developer cannot contract to pay more than its pro-rata share for off-tract improvements that are authorized by the MLUL. “A developer’s agreement is a contract between the developer and the municipality that details the manner in which the conditions of approval will be fulfilled. It is ancillary to those conditions and is only enforceable to the extent that the conditions on which it is based are enforceable.” If the scope of the project is materially reduced, the developer is entitled to a reduction in the pro-rata share of the costs of necessary improvements and “the fact that the developer has entered into a developer’s agreement is of no consequence to that entitlement.”

New Jersey Shore Builders Ass’n. v. Twp. of Jackson, 401 N.J. Super. 152 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=5959264717383047483&q=,+401+N.J.+Super.+152+&hl=en&as_sdt=2,31

The MLUL does not authorize a municipality to require a developer to set aside land for common open space or recreational areas and facilities or to make payments in lieu of set-asides, except with regard to applications for planned developments.

SB Building Associates, L.P. v. Planning Board of the Borough of Milltown, A-0200-14T1 (Jan. 6, 2017)

https://scholar.google.com/scholar_case?case=12392126843376230020&q=A-0200-14T1&hl=en&as_sdt=4,31

The Local Redevelopment and Housing Law recognizes that the MLUL is fully applicable to all activity undertaken pursuant to the LRHL. Developer contributions to off-tract improvements as a condition to subdivision or site plan approval are governed by N.J.S.A. 40:55D-42. A land use board's imposition of a financial contribution for an off-tract purpose must be authorized by a pre-existing municipal ordinance that does not exceed what is allowed by statute. The statute expressly limits contributions toward "off-tract improvements to water, sewer, drainage, and street improvements only" and the imposition of a condition requiring a contribution to off-tract electrical improvements was *ultra vires*. A planning board cannot remedy defects in the ordinance by resorting to a requirement that impact fees be paid through a developer’s agreement. “A developer's agreement is not a private contract completely independent of the MLUL, but rather a contract with a public agency, which was a creature of statute that prevented the agency from agreeing to contract provisions that exceeded its statutory authority.”

OFFICIAL MAP

Nigro v. Planning Bd., Bor. of Saddle River, 122 N.J. 270 (1991)

http://scholar.google.com/scholar_case?case=4965913694242097286&q=122+N.J.+270+&hl=en&as_sdt=2,31

Bubis v. Kassir, 323 N.J. Super. 601 (App. Div. 1999)

http://scholar.google.com/scholar_case?case=15751154245005462994&q=323+N.J.+Super.+601+&hl=en&as_sdt=2,31

Private right of way to beach referenced in map creating lots was not extinguished due to beach being entirely below the mean high water line.

EXTENSION OF APPROVALS

EXTENSION OF APPROVALS

Aronowitz v. Lakewood Planning Bd., 257 N.J. Super. 347 (Law Div. 1992)

http://scholar.google.com/scholar_case?case=324012099428181385&q=257+N.J.+Super.+347+&hl=en&as_sdt=2,31

Jordan v. Brigantine Planning Board, 256 N.J. Super. 676 (App. Div. 1992)

http://scholar.google.com/scholar_case?case=3882727346084942435&q=256+N.J.+Super.+676+&hl=en&as_sdt=2,31

Frank's Realty Co. v. Zoning Bd. of Adjustment of the City of Vineland, A-2842-19 (March 17, 2021)

https://scholar.google.com/scholar_case?case=10463770769814881941&q=frank%27s+v.+vineland&hl=en&as_sdt=6,31&as_ylo=2020

A zoning board is authorized to waive a local ordinance one-year timing requirement to commence the use where the request for the extension resulted from site plan approval delays caused by a backlog of reviews with the Board's professional staff.

Cape Jetty, LLC v. Cape May City Planning Bd., A-1418-22 (April 8, 2024)

https://scholar.google.com/scholar_case?case=12266710660012309925&q=cape+jetty+v.+cape+may&hl=en&as_sdt=6,47&as_ylo=2024

An ordinance that states that final approvals shall expire two (2) years from the date of final approval and that the applicant may request an extension from the planning board for a third year is lawful and comports with N.J.S.A. 40:55D-52 and Aronowitz v. Planning Bd. of Twp. of Lakewood, 257 N.J. Super. 347 (Law Div. 1992).

Cape Jetty, LLC v. City of Cape May, et al. A-3934-23 (Nov. 3, 2025)

https://scholar.google.com/scholar_case?case=6137481041066749329&q=Cape+Jetty,+LLC+vs.+City+of+Cape+May&hl=en&as_sdt=6,47

Where the plaintiff failed to provide any justification or rationale for its delay in commencing construction to the Planning Board, the record supported the Board's denial of plaintiff's request for extension of approvals.

STOP WORK ORDERS

STOP WORK ORDERS

Irwin v. Twp. of Neptune, 305 N.J. Super. 652 (App. Div.) *certif. denied*, 157 N.J. 539 (1995)
http://scholar.google.com/scholar_case?case=7817936854230360903&q=305+N.J.+Super.+652+&hl=en&as_sdt=2,31

Marjac, LLC v. Trenk, Civ. Action No. 06-1440 (JAG) (D.N.J. 2006)
http://scholar.google.com/scholar_case?case=648086398521054056&q=Civ.+Action+No.+06-1440+&hl=en&as_sdt=2,31

On motion to dismiss complaint for failure to state a claim upon which relief can be granted, or alternatively for a more definite statement, court reviews elements of numerous causes of action alleged against numerous township defendants, including Township Counsel, Planning Board, Mayor, Building Department Planning Board Director, Building Sub-Code Official, Health Department, and Health Inspector. Causes of action reviewed by the court as a result of the imposition of a stop work order include tortious interference with prospective economic advantage; tortious interference with contractual relations; violation of 42 U.S.S. § 1983; violation of New Jersey Civil Rights Act, breach of fiduciary duty; legal malpractice; civil conspiracy; intentional infliction of emotional distress; estoppel; and racketeering.

Plemmons v. Blue Chip Ins., 387 N.J. Super. 551 (App. Div. 2006)
http://scholar.google.com/scholar_case?case=575537321745145442&q=387+N.J.+Super.+551+&hl=en&as_sdt=2,31

Plaintiff's claim of due process violation resulting from the issuance of a stop work order rejected by the court. The fact that the chairman of the land use board informed the construction official that the plaintiff may be performing work without having obtained site plan approval does not give rise to liability, nor does withholding the resolution of approval until outstanding escrows paid.

Motley v. Borough of Seaside Park Zoning Board of Adjust., 430 N.J. Super. 132 (App. Div. 2013)
http://scholar.google.com/scholar_case?case=9780808559651857221&q=A-3214-11T4+&hl=en&as_sdt=4,31

"N.J.S.A. 40:55D-68 allows a nonconforming structure to be rebuilt only if it has been partially destroyed." Where plaintiff undertook a renovation of the entire structure that went beyond the scope of the zoning permit and resulted in the structure being merely a shell, the Borough properly issued a stop work order.

Twp. of Deptford v. Malachite Group, LTD., A-0943-22 (June 20, 2024)
https://scholar.google.com/scholar_case?case=11797556448621519270&q=Twp.+of+Deptford+v.+Malachite+Group,+LTD..&hl=en&as_sdt=6,47

A municipal code's directive to impose a fine for "each day" of the violation was not in compliance with N.J.S.A. 40:49-5, which only permits the Township to impose an "additional fine" for "a repeated violation of any municipal ordinance" that may not exceed the statutory maximum of \$2,000 or be less than the statutory minimum of \$100. Consequently, the Court held the "per day" fine was superseded by state law and of no effect.

State v. Ottilio, A-0227-23 (Oct. 23, 2024)
https://scholar.google.com/scholar_case?case=16981283947287623301&q=State+v.+Ottilio&hl=en&as_sdt=6,47&as_ylo=2024

Court upheld Defendant's conviction of zoning violation ordinance, where the municipality had not issued a notice of violation before issuing summons and complaint, because the record showed

STOP WORK ORDERS

that the zoning officer had, on multiple occasions, informed Defendant of his existing zoning violation.

RESIDENTIAL SITE IMPROVEMENT STANDARDS (RSIS)

RESIDENTIAL SITE IMPROVEMENT STANDARDS (RSIS)

New Jersey League of Municipalities v. Department of Community Affairs, 158 N.J. 211 (1999)

http://scholar.google.com/scholar_case?case=10859638117054930375&q=158+N.J.+211&hl=en&as_sdt=4,31

The Legislature, in enacting the Residential Site Improvement Standards Act, intended for the DCA to adopt regulations requiring municipalities to impose uniform technical standards for site improvements, and the DCA's regulations are consistent with that authority.

Northgate Condominium Association, Inc. v. Borough of Hillsdale Planning Board, 214 N.J. 120 (2013)

http://scholar.google.com/scholar_case?case=8738681213286813626&q=Northgate&hl=en&as_sdt=4,31

Rounding techniques cannot be used to alter RSIS standards relating to density.

King v. Harmony, A-6255-12T1 (Aug. 18, 2015)

https://scholar.google.com/scholar_case?case=11781536895604226587&q=A-6255-12T1&hl=en&as_sdt=4,31

A development within the ambit of DEP's RSIS regulations must only comply with the DEP's stormwater regulations because the DEP's stormwater regulations preempt any municipal ordinance and serve as the only metric for whether a Special Water Resource Protection Area is required for the development.

Builders League of S. Jersey v. Borough of Haddonfield, A-5588-18 (Mar. 3, 2021)

https://scholar.google.com/scholar_case?case=1611528880649510032&q=Builders+v.+haddonfield&hl=en&as_sdt=6,31&as_ylo=2021

A municipal stormwater ordinance that regulates single-family and two-family homes that would not qualify as "major developments" under the NJDEP's stormwater regulations is preempted by the MLUL and RSIS and also acts as a de facto site plan review process for which such uses are exempt.

COUNTY PLANNING BOARDS

COUNTY PLANNING BOARDS

Harris v. Salem County Planning Bd., 123 N.J. Super. 304 (App. Div. 1973)

http://scholar.google.com/scholar_case?case=15253400573911893676&q=123+N.J.+Super.+304+&hl=en&as_sdt=4,31

181 Inc. v. Salem County Planning Bd., 140 N.J. Super. 247 (App. Div. 1976)

http://scholar.google.com/scholar_case?case=15347538405216009085&q=140+N.J.+Super.+247+&hl=en&as_sdt=4,31

County cannot require roadway dedication without demonstration of need and immediacy of proposed improvement.

Manalapan Holding Co. v. Planning Bd. of Hamilton Twp., 92 N.J. 466 (1983)

http://scholar.google.com/scholar_case?case=12532556434421813888&q=92+N.J.+466+&hl=en&as_sdt=4,31

Kode Harbor Development v. County of Atlantic, 230 N.J. Super. 430 (App. Div. 1989)

http://scholar.google.com/scholar_case?case=1471676010692582434&q=230+N.J.+Super.+430+&hl=en&as_sdt=4,31

County planning board cannot require roadway improvements where sole jurisdiction is drainage.

Squires Gate v. County of Monmouth, 247 N.J. Super. 1 (App. Div. 1991)

http://scholar.google.com/scholar_case?case=8548916364067201158&q=247+N.J.+Super.+1+&hl=en&as_sdt=4,31

Approval of planned development can be conditioned upon off-site improvements even though no specific enabling legislation was in place to allow the same.

Builders League of South Jersey v. Burlington County Planning Bd., 353 N.J. Super. 4 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=6183538777786972446&q=353+N.J.+Super.+4+&hl=en&as_sdt=4,31

Under County Planning Enabling Act, *N.J.S.A. 40:27- 1, et seq.*, county's jurisdiction to review site plans limited to those that were along a county road or affected county drainage facility and the county's jurisdiction over subdivisions included review and imposition of conditions on subdivisions that did not abut a county road if subdivision adversely impacted traffic concerns. If county's jurisdiction rests only with drainage, it may only impose conditions related to drainage.

South Plainfield Properties v. Middlesex County Planning Bd., 372 N.J. Super. 410 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=8074152107590557541&q=372+N.J.+Super.+410+&hl=en&as_sdt=4,31

Failure to act on and report to a municipal approving authority on a subdivision application within the requisite time constitutes a waiver of the county board's right to review, approve, or disapprove the subdivision.

Amerada Hess Corp. v. Burlington County Planning Bd., 195 N.J. 616 (2008)

http://scholar.google.com/scholar_case?case=13902680442722128299&q=195+N.J.+616+&hl=en&as_sdt=4,31

Under County Planning Act, *N.J.S.A. 40:27-6.7*, a land use application is automatically deemed approved if the county planning board fails to take official action within thirty days, or within sixty days if both the municipal planning board and the applicant consent. There is no provision for an

COUNTY PLANNING BOARDS

extension of those time limits. “. . . the applicant unilaterally can neither extend nor waive the time limits in the CPA, and that a planning board cannot delay beyond the statutory limits without exposing itself to automatic approval.

The Stop & Shop Supermarket Company, LLC v. The County of Bergen, 450 N.J. Super. 286 (App. Div. 2017)

https://scholar.google.com/scholar_case?case=3332883790304370105&q=A-2134-14T1&hl=en&as_sdt=4,31

“County Planning Board jurisdiction, in sharp contrast to the plenary zoning and planning authority accorded to municipalities under the MLUL, is limited depending on whether the proposed project . . . abuts a county road[.]’ [citation omitted]. Here, the County Planning Board’s jurisdiction required it to consider only the effect of the project on the county road, not on the local streets and parking lots considered by the Township Board.” Although the County Planning Act does not contain provisions for off-tract contributions, it was not arbitrary for the County Planning Board to condition approval on a post-construction pro rata contribution for a traffic light, “as determined by a traffic study after the project was completed.”

Shipyards Associates, L.P. v. Hoboken Planning Board, A-4637-14T3, A-4763-14T3 (Aug. 2, 2017)

https://scholar.google.com/scholar_case?case=11196085176459614706&q=A-4504-14T3&hl=en&as_sdt=4,31

“The County Board’s jurisdiction is very limited. Its responsibility is limited to ‘assuring a safe and efficient county road system,’ including drainage issues affecting county roads. N.J.S.A. 40:27-6.6, -6.6(e). . . . [Once the applicant] modified the project’s internal road system to eliminate a proposed connection between an internal walkway/emergency roadway (the walkway) and [the County road], the Board had no jurisdiction over any alleged traffic or emergency access issues concerning the walkway.”

STATE DEVELOPMENT AND
REDEVELOPMENT PLAN

STATE DEVELOPMENT AND REDEVELOPMENT PLAN

New Jersey Builders Ass'n. v. N.J.D.E.P., 306 N.J. Super. 93 (App. Div. 1997)

http://scholar.google.com/scholar_case?case=14872903838721993695&q=306+N.J.+Super.+93+&hl=en&as_sdt=4,31

DEP order 1996-06, directing DEP assistant commissioners to apply departmental policies and regulations in a manner consistent with the State Development and Redevelopment Plan, was an intra-agency statement and not a rule subject to the formal rule-making process of the Administrative Procedures Act.

Beattystown Community Council v. DEP, 313 N.J. Super. 236 (App. Div. 1998)

http://scholar.google.com/scholar_case?case=11808719304344645224&q=313+N.J.+Super.+236+&hl=en&as_sdt=4,31

Review by DEP and the Historic Sites Council of proposed improvements to intersection that would encroach upon Beattystown Historic District did not require specific consideration of the State Plan, since the State Plan explicitly states that it should not be used in review of applications regarding specific tracts of land.

Bailes v. Twp. of East Brunswick, 380 N.J. Super. 336 (App. Div.), *certif. denied*, 185 N.J. 596 (2005)

http://scholar.google.com/scholar_case?case=13145725938585386156&q=380+N.J.+Super.+336+&hl=en&as_sdt=4,31

Down zoning of property from one unit per acre to one unit to six acres not required to implement state plan.

Centex Homes, LLC, In re 411 N.J. Super. 244 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=9006780642056817889&q=411+N.J.+Super.+244+&hl=en&as_sdt=4,31

BPU's Main Extension Regulations improperly gave regulatory effect to the State Plan and are *ultra vires*. The regulatory authority of the BPU to incorporate smart growth principles must be derived from its "enabling statute or, if expressed in a general statutory provision, the authority must identify its intent to delegate additional or incidental powers to the administrative agency granted such authority." The State Plan carries no regulatory effect and "does not increase the authority of the state agencies to regulate land use."

Sharp v. Township of Branchburg, A-0843-16T1 (Dec. 13, 2018)

https://scholar.google.com/scholar_case?case=11658349165627097617&q=sharp+v.+township+of+branchburg&hl=en&as_sdt=4,31

The New Jersey State Planning Act does not bind municipalities to follow the State Plan, which is "not intended either to validate or invalidate specific ordinances." [citations omitted].

FAIR HOUSING ACT, MOUNT LAUREL
& COAH

FAIR HOUSING ACT, MOUNT LAUREL & COAH

So. Burlington County N.A.A.C.P. v. Twp. of Mount Laurel, 67 N.J. 151 (1975) (Mount Laurel I)
http://scholar.google.com/scholar_case?case=18137465806589985912&q=67+N.J.+151+&hl=en&as_sdt=4,31

So. Burlington County N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158 (1983) (Mount Laurel II)
http://scholar.google.com/scholar_case?case=8856555144826492191&q=92+N.J.+158+&hl=en&as_sdt=4,31

Morris County Fair Housing Council v. Boonton Twp., 209 N.J. Super. 393 (Law Div.), *aff'd in part, reversed in part on other grounds*, 103 N.J. 1 (1985)
http://scholar.google.com/scholar_case?case=1278417370135623284&q=209+N.J.+Super.+393+&hl=en&as_sdt=4,31

Van Dalen v. Washington Twp., 120 N.J. 234 (1990)
http://scholar.google.com/scholar_case?case=15161895522181529280&q=120+N.J.+234+&hl=en&as_sdt=4,31

Quad Enterprises v. Paramus, 250 N.J. Super. 256 (App. Div. 1991)
http://scholar.google.com/scholar_case?case=4594271307078088208&q=250+N.J.+Super.+256+&hl=en&as_sdt=4,31

AQN v. Twp. of Florence, 248 N.J. Super. 597 (App. Div. 1991), *certif. denied*, 126 N.J. 385 (1991)
http://scholar.google.com/scholar_case?case=3803095839098004527&q=248+N.J.+Super.+597+&hl=en&as_sdt=4,31

Alexander's Dept. Stores of New Jersey v. Bor. of Paramus, 125 N.J. 100 (1991)
http://scholar.google.com/scholar_case?case=2086275835920143921&q=125+N.J.+100+&hl=en&as_sdt=4,31

In re Petition for Substantive Certification filed by Twp. of Warren, 132 N.J. 1 (1993)
http://scholar.google.com/scholar_case?case=17549757827577055966&q=132+N.J.+1+&hl=en&as_sdt=4,31

Non-Profit Affordable Housing Network of New Jersey v. New Jersey Council on Affordable Housing, 265 N.J. Super. 475 (App. Div. 1993)
http://scholar.google.com/scholar_case?case=15705135356186373209&q=265+N.J.+Super.+475+&hl=en&as_sdt=4,31

Dynasty Building Corporation v. Bor. of Upper Saddle River, 267 N.J. Super. 611 (App. Div. 1993), *certif. denied*, 135 N.J. 467 (1994)
http://scholar.google.com/scholar_case?case=12776341370883799852&q=267+N.J.+Super.+611+&hl=en&as_sdt=4,31

FAIR HOUSING ACT, MOUNT LAUREL
& COAH

Quarry Hills Development Corporation v. New Jersey Department of Transportation, 267 N.J. Super. 1 (App. Div. 1994)

http://scholar.google.com/scholar_case?case=14673558030112056415&q=267+N.J.+Super.+1+&hl=en&as_sdt=4,31

Toll Bros. v. Twp. of West Windsor, 303 N.J. Super. 518 (Law Div.), *affirmed*, 334 N.J. Super. 109, *certif. granted in part*, 67 N.J. 599, *certif. granted in part*, 167 N.J. 600, *affirmed*, 173 N.J. 502 (1996)

http://scholar.google.com/scholar_case?case=17615508421485332893&q=303+N.J.+Super.+518+&hl=en&as_sdt=4,31

Samaritan Ctr., Inc. v. Bor. of Englishtown, 294 N.J. Super. 437 (Law Div. 1996)

http://scholar.google.com/scholar_case?case=16514144290655897351&q=294+N.J.+Super.+437+&hl=en&as_sdt=4,31

Southport Dev. Group v. Twp. of Wall, 295 N.J. Super. 421 (Law Div. 1996), *aff'd on other grounds*, 310 N.J. Super. 548 (App. Div. 1998), *certif. denied*, 156 N.J. 384 (1998)

http://scholar.google.com/scholar_case?case=9547860833441379529&q=295+N.J.+Super.+421+&hl=en&as_sdt=4,31

Rosenhein Assoc. v. Bor. of Palisades Park, 304 N.J. Super. 438 (App. Div. 1997), *certif. denied*, 156 N.J. 380 (1998), *appeal dismissed*, 155 N.J. 586 (1998)

http://scholar.google.com/scholar_case?case=11474906208579169002&q=304+N.J.+Super.+438++&hl=en&as_sdt=4,31

Livingston Builders, Inc. v. Twp. of Livingston, 309 N.J. Super. 370 (App. Div. 1998)

http://scholar.google.com/scholar_case?case=18352784088237816362&q=309+N.J.+Super.+370+&hl=en&as_sdt=4,31

Shire Inn, Inc. v. Bor. of Avon-By-The-Sea, 321 N.J. Super. 462 (App. Div.), *certif. denied*, 162 N.J. 132 (1999)

http://scholar.google.com/scholar_case?case=14017505684918525044&q=321+N.J.+Super.+462+&hl=en&as_sdt=4,31

Toll Bros. v. Twp. of West Windsor, 334 N.J. Super. 77 (App. Div.), *certif. denied*, 168 N.J. 295 (2000)

http://scholar.google.com/scholar_case?case=13483693672948327921&q=334+N.J.+Super.+77+&hl=en&as_sdt=4,31

Adoption of Amendments to N.J.A.C. 5:93-1.3 and 5:93-5.3 by the New Jersey Council on Affordable Housing, In re 339 N.J. Super. 371 (App. Div. 2001)

http://scholar.google.com/scholar_case?case=3070936431612731789&q=339+N.J.+Super.+371+&hl=en&as_sdt=4,31

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

http://scholar.google.com/scholar_case?case=16825482228909746653&q=340+N.J.+Super.+511+&hl=en&as_sdt=4,31

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Twp. of Howell Petition for Substantive Certification, In re A-1586-98T2 (2001), *certif. denied*, 169 N.J. 608 (2001)

http://scholar.google.com/scholar_case?case=2599405663128246318&q=371+N.J.+Super.+167+&hl=en&as_sdt=4,31

Sartoga v. Bor. of West Paterson, 346 N.J. Super. 569 (App. Div.), *certif. denied*, 172 N.J. 357 (2002)

http://scholar.google.com/scholar_case?case=10728269183117589604&q=346+N.J.+Super.+569+&hl=en&as_sdt=4,31

Bi-County Development of Clinton, Inc. v. Borough of High Bridge, 174 N.J. 301 (2002)

http://scholar.google.com/scholar_case?case=12475675655059528945&q=174+N.J.+301+&hl=en&as_sdt=4,31

Payment of a development fee in lieu of constructing affordable housing does not justify disturbing the general rule that a municipality is not obligated to provide access to its sewer system to residents of a neighboring municipality.

Fair Share Housing Center, Inc., et al. v. Twp. of Cherry Hill, 173 N.J. 393 (2002)

http://scholar.google.com/scholar_case?case=13977726075967510536&q=173+N.J.+393+&hl=en&as_sdt=4,31

A township cannot be granted substantive certification until COAH has determined that the township is able to satisfy its allocated fair share obligation. The substantive certification process requires consideration of all appropriate sites in the municipality. A municipality may not exempt property from consideration by imposing a development fee on the parcel.

Deland et al. v. Twp. of Berkeley, 361 N.J. Super 1 (App. Div. 2003)

http://scholar.google.com/scholar_case?case=13571660714492218697&q=Deland+v.+Twp.+of+Berkeley&hl=en&as_sdt=4,31

Property owners in Berkeley Township brought Mount Laurel suit against the town. The settlement of that matter included a developer's agreement for affordable housing. The special master was sought to be removed based upon a conflict of interest. The Appellate Division held: A Mount Laurel special master is subject to substantially the same conflict of interest rules as judge; and a municipality may take property by eminent domain which has been designated and zoned for affordable housing pursuant to a developer's agreement. Fair compensation must be paid.

Sod Farm Associates, v. Twp. of Springfield, 366 N.J. Super. 116 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=3743725172247204886&q=366+N.J.+Super.+116+&hl=en&as_sdt=4,31

Appellate Division reverses trial court decision upholding a challenge by a real estate developer of the adoption of an affordable housing ordinance. Court ruled that the developer must first exhaust administrative remedies before COAH remedies and that the Appellate Division not the Law Division has sole jurisdiction to hear challenges of COAH actions.

In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super. 61 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=16222122488465074632&q=372+N.J.+Super.+61+&hl=en&as_sdt=4,31

Regulations promulgated by COAH that allowed municipalities to extend substantive certifications of their fair share housing plans under the state Fair Housing Act if such certifications were about to expire were invalid; the review process for granting such an extension was ministerial in nature, and thus, the process lacked the proper standards and procedures required under FHA so as to give

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interested parties notice and an opportunity for comment.

Petition of Howell Twp., Monmouth County, In re 371 N.J. Super. 167 (App. Div.), *certif. denied*, 182 N.J. 140 (2004)

http://scholar.google.com/scholar_case?case=2599405663128246318&q=371+N.J.+Super.+167+&hl=en&as_sdt=4,31

If state administrative agency (here, COAH) fails to complete its proceedings in a timely manner, a party adversely affected by inaction may apply to the Appellate Division for an order to compel the agency to act; such an application does not seek to compel a specific form of agency action, but only seeks a remedy for arbitrary inaction.

Elon Associates, LLC v. Twp. of Howell, 370 N.J. Super. 475 (App. Div.), *certif. denied*, 182 N.J. 149 (2004)

http://scholar.google.com/scholar_case?case=17063045876214646055&q=370+N.J.+Super.+475+&hl=en&as_sdt=4,31

Provision of Fair Housing Act establishing six-month period for COAH to complete review and mediation process did not require COAH to complete its administrative process within six months of either filing of property owner's Mt. Laurel complaint or remand to COAH of township's petition for substantive certification of its affordable housing compliance plan. A municipality that adopts a resolution of participation and fair share plan and housing element before Mount Laurel litigation involving alleged exclusionary zoning is instituted may require exhaustion of COAH administrative procedures before it can be compelled to defend the action.

New Jersey Farm Bureau, Inc. v. Twp. of East Amwell, 380 N.J. Super. 325 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=13069505080489928403&q=380+N.J.+Super.+325+&hl=en&as_sdt=4,31

Ordinance designed to encourage agricultural use of land was not invalid as creating exclusionary zoning under *Mount Laurel* doctrine given that town was not a growth area and once it satisfied its requirement to provide low and moderate income housing it had not further obligations under *Mount Laurel* doctrine.

Menk Corporation v. Twp. Committee of Barnegat, 389 N.J. Super. 263 (Law Div. 2006)

http://scholar.google.com/scholar_case?case=13020465015606617864&q=389+N.J.+Super.+263+&hl=en&as_sdt=4,31

Plaintiff sought to compel township to vacate three public streets to allow it to proceed with a Mt. Laurel development. Court noted that the general rule is that the vacation of a public street is a legislative function and that the decision lies in the discretion of the governing body subject to limited judicial review. The township argued that plaintiff could redesign the layout and still build its Mt. Laurel project without the street vacation, but plaintiff countered that altering the plan would involve delay, substantial cost and may result in a street layout which would not conform to the R.S.I.S. Relying on *Howell Properties v. Twp. of Brick*, 347 N.J. Super. 573 (App. Div. 2002), the court found that the "controlling criterion under the statute is whether the vacation of a street will serve the 'public interest.'" In *Howell*, the town vacated a street to impede the construction of affordable housing. Here, the court found that the township refusal to vacate the streets has Mt. Laurel implications and that there was no public interest in maintaining the street. Rather, there is a strong public policy interest in eliminating the streets to allow for the construction of affordable housing quickly and without unnecessary costs. The court also found that the township was not entitled to compensation for the bed of the street because a municipality generally has no ownership in the bed of streets. The presumption is that title to one half of the road bed lies in the abutting property owner subject to the public's right of way or easement.

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In re Petition for Substantive Certification of Bor. of Montvale, 386 N.J. Super. 119 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=7208956796263633434&q=386+N.J.+Super.+119+&hl=en&as_sdt=4,31

Property owner challenges COAH grant of substantive certification claiming that he was entitled to an OAL hearing on whether DEP stormwater regulations would reduce his ability to develop his property which COAH had denied. Court affirms COAH's denial of hearing because property owner presented no evidence, and failed to raise the issue during COAH mediation. Court distinguishes *Hills Development v. Bernards Twp.*, 229 N.J. Super. 318 (App. Div. 1988) where the objector had submitted an expert report which raised environmental issues concerning the property. Court also rejects objection to the amendment of the zoning ordinance to remove the "payment in lieu" option. The court found that there were rational reasons for the Borough to remove this option and that while it was a permissive approach, it is not one that the Borough or COAH had to employ to meet its fair share obligations.

Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing, 390 N.J. Super. 1 (2007)

http://scholar.google.com/scholar_case?case=3710758925914148774&q=A-5998-05T5+&hl=en&as_sdt=4,31

Court invalidates Third Round Rules and sends back to COAH for amendments.

In re Adoption of Uniform Housing Affordability Controls by the New Jersey Housing and Mortgage Finance Agency, 390 N.J. Super. 89 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=18285904498354073277&q=390+N.J.+Super.+89+&hl=en&as_sdt=4,31

HMFA's regulation establishing affordability ranges for the provision of Mt. Laurel housing sustained against challenge that the regulations failed to meet HMFA's constitutional obligation to benefit both low- and moderate-income households.

In the Matter of the Adoption of N.J.A.C. 19:3, 19:4, 19:5 and 19:6 by the New Jersey Meadowlands Commission, 393 N.J. Super. 173 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=12992630484754205413&q=393+N.J.+Super.+173+&hl=en&as_sdt=4,31

The New Jersey Sports and Exposition Authority has no obligation to plan for affordable housing. The Meadowlands Commission has no direct Mount Laurel responsibilities, but it is constitutionally obligated to do more than merely assist municipalities in implementing their Mount Laurel quotas. The Commission should consider "whether, and if so, to what extent, further development in the district should be avoided pending adoption of the new zoning rules [by COAH]."

Fair Lawn Borough, In the Matter of 406 N.J. Super. 433 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=2821988012191082314&q=406+N.J.+Super.+433+&hl=en&as_sdt=2,31

COAH's decision to dismiss a municipality's third round petition affirmed where the municipality persistently failed to comply with the terms of its second round certification and has not actually satisfied its previously-unmet need for affordable housing. COAH was correct in not allowing the municipality to remove from its plan a viable site that has been included for over a decade as part of its vacant land inventory.

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Tanenbaum v. Twp. of Wall Bd. of Adjust., 407 N.J. Super. 446 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=10938481016485205745&q=407+N.J.+Super.+446+&hl=en&as_sdt=2,31

Homeowners in a Mount Laurel development constructed pursuant to a settlement of a builder's remedy suit were not entitled to utilize the small-lot zoning applicable to the developer when they sought to subdivide their property as it would increase the density agreed upon. A consent order memorializes an agreement between the township and the developer and is not binding on third parties.

Adoption of N.J.A.C. 5:96 and 5:97, In re 416 N.J. Super. 462 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=7364458136987647274&q=416+N.J.+Super.+462+&hl=en&as_sdt=2,31

Court again invalidates substantial portions of COAH's third round rules, including the growth share methodology for determining the prospective need for affordable housing and directs COAH to adopt new third round rules that use a methodology similar to that used in the first and second rounds within five months. Other parts of the rules that were invalidated include the rule that allows a municipality to obtain substantive certification of a plan that proposes to construct municipally-funded housing without any specifics regarding the location of the site or source of funding; the lack of incentives for the construction of inclusionary developments; the rules that govern rental bonuses for prior round obligations; and those which authorize compliance bonuses for units approved from December 20, 2004 to June 2, 2008.

In re Highlands Master Plan, Executive Order 114, Memorandum of Understanding Between the Highlands Council and the Council on Affordable Housing, November 12, 2008 Resolution Extending Deadlines for 99 Municipalities, August 12, 2009 Resolution Extending Deadlines, and Adoption of Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan, 421 N.J. Super. 614 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=128394234926690216&q=421+N.J.+Super.+614+&hl=en&as_sdt=2,31

COAH's August 12, 2009 resolution that waived parts of the revised third round rules as applied to municipalities in the Highlands and instead directed those municipalities to follow the procedures and standards set forth in the Guidance document constituted an amendment to COAH's revised third round rules that was required to be adopted in accordance with the APA. A Governor's executive order may not direct a state agency to take action that is inconsistent with the enabling legislation under which it operates or its own rules and regulations.

Denial of Regional Contribution Agreement Between Galloway Twp. and City of Bridgeton, In Re 418 N.J. Super. 94 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=14328340859166326742&q=418+N.J.+Super.+94+&hl=en&as_sdt=2,31

COAH had no authority to review RCA after statutory amendment prohibiting any approval of RCAs after July 17, 2008. The law of the case does not apply when new law enacted dealing with issue.

Adoption of Regional Affordable Housing Development Program Guidelines by the Council on Affordable Housing, In re 418 N.J. Super. 387 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=11719258565141989346&q=418+N.J.+Super.+387+&hl=en&as_sdt=2,31

Guidelines adopted by COAH were rules that were required to be adopted pursuant to the APA because they were a "statement of general applicability and continuing effect that implements or

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interprets law or policy." The court reviewed the six factors set forth in *Metromedia, Inc. v. Director, Division of Taxation*, 97 N.J. 313 (1984), that should be considered in determining whether an agency pronouncement is an administrative rule.

US Bank, N.A. v. Hough, 210 N.J. 187 (2012)

http://scholar.google.com/scholar_case?case=7181437739637269214&q=us+bank,+n.a.+v.+hough&hl=en&as_sdt=2,31

Pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 to -329, and the rules promulgated there under, a lending institution is prohibited from issuing a loan secured by an affordable housing unit that "exceed[s] 95 percent of the maximum allowable resale price of that unit." N.J.A.C. 5:80-26.8(b). "Any loan issued in violation of [the regulations] shall be void as against public policy." N.J.A.C. 5:80-26.18(e). As a result, any portion of a loan exceeding the permissible limits is "void and not collectible." The remainder of the loan is secured by the affordable housing unit.

In Re Plan for the Abolition of The Council on Affordable Housing, 424 N.J. Super. 410 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=5878699993625445424&q=A-6301-10T4&hl=en&as_sdt=2,31

The Executive Reorganization Act of 1969, N.J.S.A. 52:14C-1 to -11 does not grant the Governor the power to abolish a legislatively created, representative, independent authority that is "in but not of" the Executive Branch or any department in that branch of government. "[T]he application of the Reorganization Act requires an explicit legislative mandate to warrant the abolition of an independent agency, rather than generic language, in order to subject such agencies to reorganization or, as here, to abolition."

Wayne Property Holdings, L.L.C. v. Township of Wayne, 427 N.J. Super. 133 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=2687063105172125040&q=A-3478-10T4&hl=en&as_sdt=2,31

Where the township has invoked COAH's jurisdiction by filing its housing element and fair share plan and is seeking substantive certification, the challenging the township's ordinance on Mount Laurel grounds must first exhaust their administrative remedies before the trial court proceedings can go forward. To require exhaustion of administrative remedies serves the purpose of "bring[ing] an administrative agency into the process of enforcing municipalities' Mount Laurel obligations and 'to get the courts out of that field.'" The potential loss of a builder's remedy by requiring exhaustion of remedies before the lawsuit may proceed is not a "manifest injustice."

In re Plan for Abolition of Council on Affordable Housing, 214 N.J. 444 (2013)

http://scholar.google.com/scholar_case?case=15814325800041586878&q=Abolition+of+Council+on+Affordable+Housing,+&hl=en&as_sdt=4,31

The Governor lacks statutory authority under the Reorganization Act to abolish COAH which is an agency "in, but not of" the Executive Branch.

In The Matter of Adoption of NJAC 5:96 and 5:97, by the New Jersey Council on Affordable Housing, 215 N.J. 578 (2013)

http://scholar.google.com/scholar_case?case=16946587919653206606&q=067126&hl=en&as_sdt=4,31

Appellate Division's invalidation of COAH's Third Round Rules affirmed. The growth share methodology adopted by COAH is not consistent with the FHA and beyond the rulemaking authority delegated to COAH. The Court notes that the specific approach to provide affordable housing ordered by the Court in 1983 and embodied in the FHA may not be the only remedy that

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is consistent with the constitutional obligation to provide affordable housing, but that it is for the legislature, not the Court or COAH, to propose such solutions.

In the Matter of Adoption of N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015)

https://scholar.google.com/scholar_case?case=4262142895040096364&q=M-392&hl=en&as_sdt=4,31

As a result of COAH's failure to comply with prior orders of the Supreme Court, the Court removed the review of a municipality's compliance with its constitutional obligation to provide a realistic opportunity for the construction of its fair share of affordable housing from COAH, dissolved the FHA's exhaustion of administrative remedies requirement, and established a new judicial procedure for the review of Mt. Laurel compliance in the first instance.

Nobility Crest at Brick, LLC v. Township of Brick, A-4140-13T2 (July 1, 2015)

https://scholar.google.com/scholar_case?case=15433083765598642341&q=A-4140-13T2&hl=en&as_sdt=4,31

A consent order that stated "there will be no affordable housing obligation imposed with respect to the development of the Property" did not prevent the municipality from imposing its development fee ordinance on plaintiff/developer. COAH regulations provide that "affordable housing developments shall be exempt from development fees. All other new construction may be subject to development fees."

Fair Share Housing Center, Inc. v. The Zoning Board of the City of Hoboken, A-1535-12T2, A-1537-12T2, A-1538-12T2, A-1731-12T2, A-1732-12T2, (July 28, 2015)

https://scholar.google.com/scholar_case?case=4092380776056409632&q=A-1535-12T2&hl=en&as_sdt=4,31

"There is no provision in the FHA or regulations promulgated by COAH requiring municipalities to submit all ordinances that impact a municipality's affordable housing obligation to COAH for approval. The 'substantive certification' provided by COAH to those municipalities seeking its protection from builder's remedy suits is entirely voluntary. N.J.S.A. 52:27D-313(a)." A municipality may permit "payments in lieu" of onsite construction of affordable housing without COAH approval, as opposed to the collection of development fees which would be reviewed by in connection with its petition for substantive certification.

In Re Marlboro Township, A-0243-10T4 (Aug. 7, 2015)

https://scholar.google.com/scholar_case?case=14751095484030548712&q=A-0243-10T4+&hl=en&as_sdt=4,31

Municipality is not a "participating municipality" where COAH dismissed it from its jurisdiction after concluding that it failed to act in good faith in the completion of its second-round obligations and in its submission for third-round certification.

In Re Adoption of the Monroe Township Housing Element and Fair Share Plan and Implementing Ordinances, MID-L-3365-15 (Law Div. 2015) N.J. Super LEXIS 176

DCA's motion to intervene denied where it is unable to demonstrate an interest in the constitutional compliance action, and unable to demonstrate that the disposition of the litigation will irreparably impede or impair its rights. Even if DCA was permitted to intervene, its counterclaim seeking a transfer of municipal trust fund monies would be futile. The 4-year period for the municipality to spend or commit its funds cannot be triggered in light of COAH's failure to carry out its regulatory function. "To suggest that a municipality, such as Monroe Township – that was lawfully barred from spending or committing its fund monies unless and until COAH approved the specific request to spend or commit – should now be required to forfeit over \$10 million because of that entity's inaction, is a 'Catch 22' of the most rudimentary sort."

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Society Hill at Piscataway v. Township of Piscataway, 445 N.J. Super. 435 (Law Div. 2016)
https://scholar.google.com/scholar_case?case=10203868538776724518&q=L-4192-15&hl=en&as_sdt=4,31

And affordable unit whose control period (duration of resale and rental prices restrictions) was created or governed by a grant of substantive certification, judgment or grant agreement or contract prior to the adoption of the Uniform Housing Affordability Controls (UHAC) is entitled to the “carve out” in N.J.A.C. 5:80-26.5(a) and the Township lacked authority to unilaterally extend the resale and rental controls stated in the agreement applicable to such unit.

Cranford Development Associates, LLC v. Township of Cranford, 445 N.J. Super. 220 (App. Div.), (2016)
https://scholar.google.com/scholar_case?case=5309629327654851255&q=Cranford+A-5822-12T2&hl=en&as_sdt=4,31

Developer engaged in good faith negotiations prior to filing builders remedy suit where it attended 3 meetings of the Township Council and the Council failed to put the matter on the agenda or meet with the developer. The Council could not require the developer to submit its plan to the Planning Board for review where the Board had no authority to address whether the Township violated the Mount Laurel doctrine. “Municipalities cannot in the guise of good faith negotiations require that a builder plaintiff exhaust any local administrative remedy.” *Mount Laurel II*, 92 N.J. 158, 342 n. 73 (1983).

“[A] developer may be entitled to a builder's remedy, even if a municipality has begun moving toward compliance before or during the developer's lawsuit, provided the lawsuit demonstrates the municipality's current failure to comply with its affordable housing obligations.” A developer need not prove, as a separate element of its case, that the litigation was a catalyst where the lawsuit was filed before the municipality filed a revised fair share plan with COAH, and the developer proved in the lawsuit that the municipality was currently not in compliance with its fair share obligations. The New Jersey Civil Rights Act did not authorize a fee award in a builder's remedy suit because the builder's remedy was developed not for the benefit of builders but to advance the constitutional interest in affordable housing. “In this situation, the developer has not been ‘deprived’ of a constitutional right, within the meaning of the CRA, because no such right has been ‘conferred’ on it.”

In Re Declaratory Judgment Actions Filed by Various Municipalities, County of Ocean, Pursuant to the Supreme Court's Decision in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015), 446 N.J. Super. 259 (App. Div. 2016).
https://scholar.google.com/scholar_case?case=4809584636727847017&q=A-3323-15T1&hl=en&as_sdt=4,31

“The FHA does not require a municipality to retroactively calculate a new ‘separate and discrete’ affordable housing obligation arising during the gap period [1999 to 2015]. Pursuant to *In re N.J.A.C. 5:96 II*, ‘previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional affordable housing need,’ and prior round unfulfilled obligations ‘should be the starting point for a determination of a municipality's fair share responsibility.’” The imposition of a new retrospective calculation, designed to establish affordable housing need during the gap period “is best left for consideration by the Legislative and Executive branches of government, where public policy issues associated with such an additional ‘separate and discrete’ obligation can be fairly and fully debated in the public forum.”

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Hollyview Development Corporation I v. Township of Deerfield, A-4449-13T2 (Dec. 14, 2016)
https://scholar.google.com/scholar_case?case=17878546597012516881&q=A-4449-13T2&hl=en&as_sdt=4,31

Due to the 16-year delay in plaintiff prosecuting its suit, plaintiff was not entitled to rely upon the status of the municipality's compliance with its Mount Laurel obligations at the time of the filing of its complaint (distinguishing *Cranford Development*). "Principles of laches estop Hollyview from seeking a [builder's] remedy based on the state of affairs that existed when it filed its complaint" and the court cannot ignore the 285 new affordable housing units that the Township has constructed in the interim. Notwithstanding, the trial court erred in concluding that the Township was in compliance with its Mount Laurel obligations when there exists "problematic provisions of the Township's ordinance, the failure to quantify present and future needs, and the absence of evidence, particularly contemporary expert evidence, that the Township has met or will meet those needs."

In Re Declaratory Judgment Actions Filed By Various Municipalities, County Of Ocean, Pursuant To The Supreme Court's Decision In In re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015), 227 N.J. 508 (2017)

https://scholar.google.com/scholar_case?case=15889660298242135585&q=In+Re+Declaratory+Judgment+Actions+Filed+by+various+municipalities&hl=en&as_sdt=4,31

The New Jersey Supreme Court holds that municipalities are constitutionally obligated to provide a realistic opportunity for their fair share of affordable housing for low- and moderate-income households formed during the gap period. "As to the fundamental disagreement — whether the gap period must be addressed — we waste no time in settling that issue. There is no fair reading of this Court's prior decisions that supports disregarding the constitutional obligation to address pent-up affordable housing need for low- and moderate-income households that formed during the years in which COAH was unable to promulgate valid Third Round rules." "A present-need analysis therefore must be expanded in current circumstances. It must include, in addition to a calculation of overcrowded and deficient housing units, an analytic component that addresses the affordable housing need of low- and moderate-income households created since 1999, provided that the households remain income-eligible and situated in New Jersey, and are not calculated in a way that includes persons now deceased or whose households may be already captured through the historic practice of assessing deficient housing units within the municipality."

The Matheny School and Hospital, Inc. v. The Land Use Board of the Bor. of Peapack and Gladstone, A-5008-13T1 (Jan. 24, 2017)

https://scholar.google.com/scholar_case?case=10985856370004990735&q=A-5008-13T1&hl=en&as_sdt=4,31

In an FHAA reasonable accommodation case involving an expansion of an existing facility, the applicant had to show that the size of the building proposed was required to provide the handicapped with the requisite equal opportunity, i.e., "that the size of its proposed facility is required to make it financially viable or medically effective."

Avalonbay Communities, Inc. v. Borough of Roseland, A-1433-15T1 (Mar. 2, 2017)

https://scholar.google.com/scholar_case?case=9754192044350165762&q=A-1433-15T1&hl=en&as_sdt=4,31

Developer entitled to a credit for a development fee that was paid by a prior owner for the sole purpose providing affordable housing. Complaint in lieu of prerogative writs not out of time where complaint filed within 45 days of developer's counsel concluding that further negotiations for credit on prior payment would be futile.

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Avalon Princeton, LLC v. Princeton, A-1992-15T2 (June 13, 2017)

https://scholar.google.com/scholar_case?case=13385101032910667269&q=A-1992-15T2&hl=en&as_sdt=4,31

Pursuant to statute and regulation, Uniform Housing Affordability Controls (UHAC) on rental units are to remain for a minimum control period of thirty years. A municipal code provision or developers' agreement provision that is inconsistent with the statute and regulation are preempted.

Squiretown Properties LLC v. Township of Livingston, A-0528-15T3 (June 16, 2017)

https://scholar.google.com/scholar_case?case=17580759816719710661&q=A-0528-15T3&hl=en&as_sdt=4,31

Sewer "connection fees must be calculated to effect a fair and reasonable contribution toward the costs of the system by all users." An "as applied" challenge to ordinances that increased sewer connection fees alleging that the ordinances affected plaintiff's ability to market units within an inclusionary development requires "a detailed factual analysis of all the circumstances underlying the enactment of the ordinances and their application to [the] inclusionary project." A challenge based upon a violation of a builder's remedy order relating to "unnecessary cost-generative features" must have evidentiary support where the judgment of repose did not include such fees as unnecessary cost-generative features.

901 Ernston Road, LLC v. Borough of Sayreville Zoning Board, No. 18-2442 (May 11, 2018)

https://scholar.google.com/scholar_case?case=15865860486092523265&q=18-2442&hl=en&as_sdt=3,31

Drug and alcohol addiction is an impairment and thus a handicap under the FHA. Plaintiff entitled to a preliminary injunction as a result of Defendant's NIMBY discrimination in its denial of an application to site an addiction treatment facility at a former nursing home. Evidence of discriminatory treatment found where a motivating factor in the Board's denial was the fact that the intended occupants were recovering addicts. A disparate impact established "insofar as Defendant Board's conduct has affected RCA and its recovering addict patients differently than Sayreville Nursing and is elderly patients." The Board failed to make a reasonable accommodation by not granting the variance because the use was not allowed anywhere in Sayreville and the variance request was reasonable.

Curto v. A Country Place Condominium Association, Inc., 921 F.3d 405 (3rd Cir. 2019)

https://scholar.google.com/scholar_case?case=9966087647966349071&q=18-1212&hl=en&as_sdt=3,31

Condominium rules that segregate use of the communal pool by sex found to violate the FHA.

Blake Gardens, LLC v. State of New Jersey, No. 17-cv-033228 (PGS)(LHG) Oct. 9, 2019

https://scholar.google.com/scholar_case?case=16005186841933987677&q=17-cv-03228+&hl=en&as_sdt=3,31

Statute that regulated the development of Alzheimer's residences, and reclassified such residences as health care facilities, and had the effect of changing the zoning of a residence for a person with Alzheimer's from a conditionally permitted use to a use requiring a use variance violated the Fair Housing Act.

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431 E Palisade Avenue Real Estate, LLC v. City of Englewood, No. 2:19-cv-14515-BRM-JAD (Oct. 10, 2019)

https://scholar.google.com/scholar_case?case=8312774501504447993&q=2:19-cv-14515-BRM-JAD&hl=en&as_sdt=3,31

Preliminary injunction granted because plaintiff likely to succeed on its claim that City's zoning ordinance is discriminatory on its face because it treats handicapped residence needing congregate care differently from other individuals by restricting assisted-living facilities to only one non-residential district.

Township of Robbinsville v. Mercer MHC, LLC, A-5655-17T3 (Mar. 25, 2019)

https://scholar.google.com/scholar_case?case=6570765739910906447&q=5655-17T3&hl=en&as_sdt=4,31

A municipality may condemn a mobile home park to fulfill its affordable housing obligation under its eminent domain power and pursuant to the FHA. N.J.S.A. 52:27D-325.

Manufacturers and Traders Trust Company v. Marina Bay, A-5879-17T2 (Oct.22, 2019)

https://scholar.google.com/scholar_case?case=17105086484221819241&q=A-5879-17T2&hl=en&as_sdt=4,31

The rent and occupancy restrictions imposed by the New Jersey Housing and Finance Agency in connection with an award of low income housing tax credits are extinguished by foreclosure, but the court properly exercised its equitable powers under the County Improvement Authorities Law to impose revised restrictions for low-income residents because the restrictions were justified to save the viability of the project.

431 East Palisade Avenue Real Estate, LLC v. City of Englewood, 977 F.3d 277 (3rd Cir. 2020)

https://scholar.google.com/scholar_case?case=2779582683564293437&q=431+E.+Palisade+Ave.+Real+Estate,+LLC+v.+City+of+Englewood&hl=en&as_sdt=6,31&as_ylo=2020

City's zoning ordinance that only permitted assisted living facilities in one zone was not facially invalid. "First, assisted living facilities are not identified on the ordinance's face in the relevant R-AAA [single-family zone], the proper scope of our inquiry." "In the absence of any language referring to individuals with disabilities, the language of the R-AAA {zone} does not facially discriminate in violation of the FHAA. "Second, even if considered, the RIM zone's allowance of assisted living facilities as of right does not render the ordinance facially discriminatory." "Failure to permit a land use as of right is not tantamount to an express prohibition, and indeed the terms of the RIM zone on their face do not purport to allow, restrict, or otherwise regulate 'assisted living facilities' in any other zone, including the R-AAA zone." "The expressly permitted land uses in the R-AAA zone nowhere mention disability or assisted living facilities and are not inconsistent with uses by individuals both with and without disabilities. Similarly, Palisade's proposed assisted living facility is but one of many land uses prohibited in the R-AAA zone. There is no indication that disabled status, rather than, for example, the building size or the commercial character of the development, is the dispositive trait, singled out for different treatment. Palisade argues that these restrictions make it all but impossible for their proposed business to operate in the R-AAA zone, adversely affecting the individuals with disabilities. And that may be so. But this argument is not a claim that the City's zoning ordinance discriminates on its face against individuals with disabilities. Rather, it is a claim that the facially neutral commercial and use restrictions in the R-AAA zone, by preventing the development of commercial assisted living facilities, disproportionately limits housing access for individuals with disabilities. This argument, then, appears to be more in line with a disparate impact claim, which is not currently before the Court."

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Arocho v. New Jersey Department Of Community Affairs, A-4639-17T2 (Jan. 9, 2020)
https://scholar.google.com/scholar_case?case=8473811809049010789&q=A-4639-17T2&hl=en&as_sdt=4,31

An OAL hearing was required where low income residents challenged the resale restrictions on their homes as not complying with the “fair return” requirement under federal law as this was a contested factual issue.

State v. Reiter, A-216-18T3 (Jan. 15, 2020)
https://scholar.google.com/scholar_case?case=2353926591784468360&q=State+v.+Reiter+&hl=en&as_sdt=6,31&as_ylo=2019&as_vis=1

Distinguishing *Society Hill*, the court held that the Township could unilaterally extend affordability controls from 20 to 30 years because the Affordable Housing Agreement which defendants signed stated that it could be extended by the municipality, as did the Master Deed. Defendant wife who had moved out of the unit, forfeited her interest and the court awarded the Township an interest as tenants in common with the remaining defendant. The court modified the trial court decision which granted the Township an interest as tenants by the entirety, holding that a township cannot be a tenant by the entirety because that status is available only to a spouse.

In Re Clinton Township Compliance with Third Round Mount Laurel Affordable Housing Obligation, A-2633-18T1 (Jan. 30, 2020)
https://scholar.google.com/scholar_case?case=4579430024529823174&q=In+re+Clinton+Twp.+Compliance+with+Third+Round+Mount+Laurel+Affordable+Housing+Obligation,&hl=en&as_sdt=6,31&as_ylo=2020

Township’s fair share plan presented a realistic opportunity for the development of affordable housing and Township was not required to over-zone in the event the developments were not constructed because it reasonably determined that it was unnecessary and unwarranted and the Township is required to adjust its plan if certain benchmarks are not met.

Sisters of Charity of Saint Elizabeth v. Twp. of Morris, No. A-0226-20 (June 24, 2021)
https://scholar.google.com/scholar_case?case=3827121351141708130&q=sisters+of+charity+v.+morris&hl=en&as_sdt=6,31&as_ylo=2021

Where the contract seller for parcels that would consist of an inclusionary development filed an order to show cause for a permanent injunction, arguing that an adjacent municipality was obligated to take over operations of its private sewer mains and pump stations and the trial court granted said relief—the Appellate Division reversed, finding that the law with respect to having a municipality take over responsibility for maintaining sewer mains and pump stations outside of its boundaries for an inclusionary development was uncertain and the record didn’t support the court’s findings.

In the Matter of the Twp. of East Brunswick, A-3115-19A-3125-19 (July 30, 2021)
https://scholar.google.com/scholar_case?case=6490114044634801366&q=in+the+matter+of+township+of+east+brunswick&hl=en&as_sdt=6,31&as_ylo=2021

Where the subject property was placed in the municipality’s affordable housing settlement agreement, the Planning Board’s denial of Plaintiff’s site plan application for development on the property represented a violation of that settlement agreement. Furthermore, because of the Board’s denial, the trial court judge correctly denied, without prejudice, Fair Share Housing Center’s motion to remove certain rental bonus credits from a Judgement of Compliance and Repose.

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Old Orchard Vill. Homeowners Ass'n, Inc. v. Municipality of Princeton, A-4005-19 (Nov. 3, 2021)
https://scholar.google.com/scholar_case?case=18340703452619237763&q=old+orchard+v.+prin+ceon&hl=en&as_sdt=6,31&as_ylo=2021

Where a municipality rezones a single parcel to permit affordable housing, same is not considered “spot zoning” because the ordinance was not adopted to benefit a private party but to provide the municipality with appropriately located and sited affordable housing which also helped meet the municipality’s *Mount Laurel* obligation.

In the Matter of the Twp of Bordentown, 471 N.J. Super. 196 (March 14, 2022)
https://scholar.google.com/scholar_case?case=4575842921858595623&q=bordentown&hl=en&as_sdt=6,31&as_ylo=2022

Where a trial court did not permit an objector to testify at a municipality’s fair share hearing because the testimony was solely related to his own personal objections and not whether the plan met the municipality’s obligation to create a “reasonable opportunity” for affordable housing, same was not reversible error. In doing so, the trial court had broad “discretion to ‘employ the procedures that it perceives will best permit it to evaluate the fairness of the settlement.’ [citation omitted].”

Concerned Citizens of Hopewell and Ewing, Inc. v. Twp. of Hopewell, A-1264-20 (Oct. 3, 2022)
https://scholar.google.com/scholar_case?case=16770045306540709188&q=affordable+housing&hl=en&as_sdt=4,31&as_ylo=2022

In upholding a zoning ordinance which implemented the Defendant municipality’s fair share plan, the trial court was not required to make findings of fact and law on the basis of *Mount Laurel II*.

IMO the Application of the Borough of Saddle River, BER-L-6120-15 (Law. Div. 2023)
<https://www.saddleriver.org/vertical/sites/%7B2E7E07BD-0A79-4A05-9B79-960D47AACDC0%7D/uploads/2023-03-14-Order-Deny-SRI-Litigants-Rights-Extend-Immunity-to-March-31.pdf>

Plaintiff’s property was included in the municipality’s affordable housing plan by way of settlement agreement with the municipality. The settlement agreement provided that the municipality would be in default if the planning board failed to approve Plaintiff’s application to develop the property. After a number of hearings, the planning board denied the application based on concerns related to storm water and vehicle circulation. Plaintiff filed a motion to enforce litigant’s rights with respect to the denial, arguing that same violated the settlement agreement, and the application should be automatically approved. The Court held that proper resolution of the issue required a conclusion of Plaintiff’s pending prerogative writs appeal of the denial and a determination of whether that planning board’s denial was arbitrary, capricious and unreasonable.

In the Matter of the Application of the Twp. of Readington, A-2756-21 (App. Div. 2023)
https://scholar.google.com/scholar_case?case=8303402464456433637&q=in+the+matter+of+the+application+of+township+of+readington&hl=en&as_sdt=6,47&as_ylo=2023

A municipality has satisfied its *Mount Laurel* obligation if it has “provided a realistic opportunity for the construction of its fair share of low and moderate income housing.” Where the record shows extensive review by the special master and other experts related to the feasibility of the projects included in the subject housing element and fair share plan, the Appellate Division will not disturb same.

In the Matter of the Application of the Twp. of S. Brunswick, A-3344-20 (App. Div. 2023)
https://scholar.google.com/scholar_case?case=2691181841101355672&q=In+the+Matter+of+the+Application+of+the+Twp.+of+S.Brunswick&hl=en&as_sdt=6,47&as_ylo=2023

Pursuant to *N.J.S.A.* 52:27D-307(e), the Legislature intended to cap a municipality’s entire fair share obligation at 1,000 units during the ten years following the approval of a municipality’s

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Housing Element and Fair Share Plan. Court deemed the statutory language clear and unambiguous, with the result that the trial court erred in redefining the statutory cap as applicable every ten years at a rate of 100 units per year, which allowed imposition of an additional fair share obligation on municipalities. Instead, the statute ties the cap to the ten years following substantive certification, and an excess obligation can be imposed only upon consideration of the number of occupancy certificates issued by the municipality in the preceding ten years.

In the Matter of the Appointment of the Council on Affordable Housing, 477 N.J. Super. 576 (App. Div. 2024)

https://scholar.google.com/scholar_case?case=3979132137888729504&q=In+re+Clinton+Twp.+Compliance+with+Third+Round+Mount+Laurel+Aff&hl=en&as_sdt=6,47&as_ylo=2024

The Appellate Division held that, with respect to the defunct status of COAH, the governor's refusal to appoint members was inconsistent with the legislative goals for the creation of the COAH but there was no legislative intent to obligate the governor to appoint members to the COAH. Consequently, the Court could not order the Governor to make those appointments.

Borough of Englewood Cliffs v. Trautner, 478 N.J. Super. 426 (App. Div. 2024)

https://scholar.google.com/scholar_case?case=574970343982416096&q=borough+of+englewood+cliffs+v.+trautner&hl=en&as_sdt=6,47&as_ylo=2024

A municipality retained a number of attorneys to represent it in an affordable housing matter and, when political control changed, then sued those same attorneys for professional malpractice, breach of contract, unjust enrichment, civil conspiracy, and aiding and abetting arising from their representation of the Borough in the litigation. The case was dismissed with prejudice and the court also sanctioned the municipality, ordering the municipality to pay their attorney's fees and costs for filing a frivolous lawsuit under the Frivolous Lawsuit Statute (N.J.S.A. 2A:15-59.1). Despite the municipality's arguments to the contrary, the Appellate Division agreed with the trial court that a municipality could be subject to sanction under the Frivolous Lawsuit Statute.

In re Clinton Twp. Compliance with Third Round Mount Laurel Affordable Hous. Obligation, A-1632-21 (Feb. 16, 2024)

https://scholar.google.com/scholar_case?case=6239235587550655283&q=third+round+mount+laurel&hl=en&as_sdt=6,47&as_ylo=2024

Appellate Division affirms trial court's determination that the municipality made its prima facie case that its amended fair share plan was fair to low- and moderate-income persons in the region, and resulted in the likelihood that affordable units would be constructed.

In the Matter of the Application of the Borough of Madison, A-3702-22 (June 5, 2024)

https://scholar.google.com/scholar_case?case=6208413880051711511&q=In+the+Matter+of+the+Application+of+the+Borough+of+Madison&hl=en&as_sdt=6,47&as_ylo=2024

Trial judge granted Drew University's motion to intervene to try to add certain vacant land to the municipality's existing settlement agreement with FSHC. Thereafter, the contract purchaser/developer of the Drew parcels sought to intervene. Appellate Division upheld denial of same pursuant to Rule 4:33-1 because its interests were "adequately represented" by Drew and FSHC.

TG Acquisitions, LLC v. Borough of Freehold, A-0989-22 (July 2, 2024)

https://scholar.google.com/scholar_case?case=15577219423702954353&q=TG+Acquisitions,+LLC+v.+Borough+of+Freehold&hl=en&as_sdt=6,47&as_ylo=2024

A developer is required to negotiate with a municipality before filing for a builder's remedy suit.

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Adoni Prop. Group, LLC v. Twp. of Middletown, A-1117-23 (Aug. 23, 2024)

https://scholar.google.com/scholar_case?case=12462006128595656246&q=Adoni+Prop.+Group,+LLC+v.+Twp.+of+Middletown&hl=en&as_sdt=6,47

A municipality that abuts a proposed affordable housing project in another municipality does not have standing to intervene in the early stages of the other municipality's affordable housing case where compliance with its constitutional obligation is being determined and the affordable housing project has not reached the development approvals stage.

Hightide Brielle, LLC v. Borough of Brielle, A-0453-24 (July 23, 2025)

https://scholar.google.com/scholar_case?case=3003929947853120341&q=,+A-0453-24&hl=en&as_sdt=4,31

To establish a right to intervene under Rule 4:33-1, a moving party must: (1) claim an interest relating to the property or transaction which is the subject of the transaction, (2) show [that the movant] is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, (3) demonstrate that the [movant's] interest is not adequately represented by existing parties, and (4) make a timely application to intervene. Here, denial of citizen group objector's motion to intervene in a builder's remedy lawsuit was upheld where the lower court ruled that the municipality was adequately representing their interests in same.

Borough of Hopewell v. Township of Hopewell, A-3086-22 (August 21, 2025)

https://scholar.google.com/scholar_case?case=629290332226209622&q=A-3086-22+&hl=en&as_sdt=4,31

New Jersey constitution and jurisprudence recognizes tax exemptions as important tools to facilitate the construction of affordable housing.

In the Matter of the Application of the Borough of Emerson, etc. A-0238-23 (Sep. 5, 2025)

https://scholar.google.com/scholar_case?case=7937131575033359079&q=borough+of+emerson&hl=en&as_sdt=6,47&as_vlo=2025

Where a municipality has been granted a judgement of compliance and repose, notwithstanding many years of affordable housing non-compliance, a court will not supersede local zoning by way of a motion in aid of litigant's rights where the requested relief (the ability to supersede use variance approval) is not required by the municipality's HEFSP or its settlement with the developer.

ADMINISTRATIVE AGENCY ACTION

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A. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Freshwater Wetlands Rules, In Matter of 238 N.J. Super. 516 (App. Div. 1989)
http://scholar.google.com/scholar_case?case=6705045665509526880&q=238+N.J.+Super.+516+&hl=en&as_sdt=2,31

Appeal of Adoption of N.J.A.C. 7:7A-1.4, 118 N.J. 552 (1990)
http://scholar.google.com/scholar_case?case=9733416270400789908&q=118+N.J.+552+&hl=en&as_sdt=2,31

Long Beach Twp. Oceanfront Property Owner Assn. v. D.E.P., 245 N.J. Super. 143 (App. Div. 1990)
http://scholar.google.com/scholar_case?case=10513773542478208282&q=245+N.J.+Super.+143+&hl=en&as_sdt=2,31

NAIOP v. D.E.P., 241 N.J. Super. 145 (App. Div. 1990), *certif. denied*, 122 N.J. 374 (1990)
http://scholar.google.com/scholar_case?case=13863076734218123209&q=241+N.J.+Super.+145+&hl=en&as_sdt=2,31

In re Stemark Associates, 247 N.J. Super. 13 (App. Div. 1991)
http://scholar.google.com/scholar_case?case=12747174067159717439&q=247+N.J.+Super.+13+&hl=en&as_sdt=2,31

Last Chance Development Partnership v. Kean, 119 N.J. 425 (1991)
http://scholar.google.com/scholar_case?case=15381560253931489555&q=119+N.J.+425+&hl=en&as_sdt=2,31

A.R. Criscuolo Assoc. v. D.E.P., 249 N.J. Super. 290 (App. Div. 1991)
http://scholar.google.com/scholar_case?case=12285760273391620890&q=249+N.J.+Super.+290+&hl=en&as_sdt=2,31

Matter of Waterfront Development, 257 N.J. Super. 524 (App. Div. 1992)
http://scholar.google.com/scholar_case?case=15665562524151983787&q=257+N.J.+Super.+524+&hl=en&as_sdt=2,31

Morich v. N.J.D.E.P., 269 N.J. Super. 240 (App. Div. 1994), *certif. denied*, 133 N.J. 428 (1992)
http://scholar.google.com/scholar_case?case=11943362411522231266&q=269+N.J.+Super.+240+&hl=en&as_sdt=2,31

MCG Assoc. v. D.E.P., 278 N.J. Super. 108 (App. Div. 1994)
http://scholar.google.com/scholar_case?case=13601820966724266483&q=278+N.J.+Super.+108+&hl=en&as_sdt=2,31

SMB Associates, New Jersey Department of Environmental Protection, In the Matter of 137 N.J. 58 (1994)
http://scholar.google.com/scholar_case?case=4543152364435449733&q=137+N.J.+58+&hl=en&as_sdt=2,31

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N.J.D.E.P. v. Twp. of Warren, 270 N.J. Super. 546 (App. Div. 1994)

http://scholar.google.com/scholar_case?case=6553911348438034488&q=270+N.J.+Super.+546+&hl=en&as_sdt=2,31

No jurisdiction to enforce soil and sediment control.

Distributec, Inc. v. DEPE, 274 N.J. Super. 1 (App. Div. 1994), *aff'd*, 139 N.J. 431 (1995)

http://scholar.google.com/scholar_case?case=1523974607077276488&q=274+N.J.+Super.+1+&hl=en&as_sdt=2,31

M. Alfieri Co. v. State DEPE, 269 N.J. Super. 545 (App. Div. 1994), *aff'd*, 138 N.J. 642 (1995)

http://scholar.google.com/scholar_case?case=11612471821877120564&q=269+N.J.+Super.+545+&hl=en&as_sdt=2,31

City of Newark v. Twp. of Hardyston, 285 N.J. Super. 385 (App. Div. 1995), *certif. denied*, 143 N.J. 518 (1996)

http://scholar.google.com/scholar_case?case=2924806068090433702&q=285+N.J.+Super.+385+&hl=en&as_sdt=2,31

State v. Robertson, 287 N.J. Super. 240 (App. Div. 1996)

http://scholar.google.com/scholar_case?case=6181479441971753392&q=287+N.J.+Super.+240+&hl=en&as_sdt=2,31

In re CAFRA Permit No. 87-0959-5 Issued to Gateway Assocs., 152 N.J. 287 (1997)

http://scholar.google.com/scholar_case?case=4932977044446836067&q=152+N.J.+287+&hl=en&as_sdt=2,31

N.J.D.E.P. v. Alden Leeds, Inc., 153 N.J. 272 (1998)

http://scholar.google.com/scholar_case?case=9322400157382826318&q=153+N.J.+272+&hl=en&as_sdt=2,31

IMO Tidelands License 96-0114-T, 1999 WL 1086898 (N.J. A.D.)

Beattystown Community Council v. DEP, 313 N.J. Super. 236 (App. Div. 1998)

http://scholar.google.com/scholar_case?case=11808719304344645224&q=313+N.J.+Super.+236+&hl=en&as_sdt=2,31

Bubis v. Kassin, 323 N.J. Super. 601 (App. Div. 1999)

http://scholar.google.com/scholar_case?case=15751154245005462994&q=323+N.J.+Super.+601+&hl=en&as_sdt=2,31

CAFRA regulations do not impose an absolute prohibition on development that interferes with the view of inland property owners.

Mutschler v. NJDEP, 337 N.J. Super. 1 (App. Div. 2001), *certif. denied*, 168 N.J. 292 (2001)

http://scholar.google.com/scholar_case?case=5058326983617711691&q=337+N.J.+Super.+1+&hl=en&as_sdt=2,31

Plaintiffs were subject to a condition of a CAFRA permit issued to municipality for the development of a sewer system that required certain properties to obtain approval from NJDEP prior to being allowed to tie in to the sewer system, even though the municipal ordinance identifying all such properties that had been adopted to comply with the condition did not include plaintiffs'

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property.

Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, 531 U.S. 159 (2001)

http://scholar.google.com/scholar_case?case=9631308632076296452&q=531+U.S.+159+&hl=en&as_sdt=2,31

The United States Army Corps of Engineers lacks authority to obtain jurisdiction under Section 404(a) of the Clean Water Act over ponds that are not adjacent to open waters.

Twp. Of Kearny v. Hackensack Meadowlands Dev. Comm'n, 344 N.J. Super. 55 (App. Div. 2001)

http://scholar.google.com/scholar_case?case=17031465539077208738&q=344+N.J.+Super.+55+&hl=en&as_sdt=2,31

Pursuant to the Solid Waste Management Act, the Department of Environmental Protection has exclusive jurisdiction to determine whether a municipality in which an access road to a transfer station is located is entitled to a “host community benefit” payment under *N.J.S.A.* 13:1E-28.1.

South Camden Citizens in Action v. New Jersey Dep’t of Env’tl. Prot., 274 F.3d. 771 (3d Cir. 2001)

http://scholar.google.com/scholar_case?case=10977304158602878386&q=274+F.3d.+771+&hl=en&as_sdt=2,31

District court’s order granting injunctive relief to the plaintiffs regarding the issuance of an air quality permit for a cement plant reversed and remanded holding that an administrative regulation could not create an interest enforceable under 47 U.S.C. § 1983 unless the interest already was implicit in the statute authorizing the regulation. Accordingly, inasmuch as Title VI proscribed only intentional discrimination, the plaintiffs did not have a right enforceable through a § 1983 action under the EPA’s disparate impact discrimination regulations.

Freshwater Wetlands Protection Act Rules, A-796-01T5, *In the Matter of* (Feb. 13, 2003), rev’d, 180 N.J. 478 (2004)

Regulations regarding residential development projects – the buffer on the buffer, vernal habits and drained farmlands upheld.

Adopted Amendments to N.J.A.C. 7:7A-2.4, In the Matter of 365 N.J. Super. 255 (2003)

http://scholar.google.com/scholar_case?case=3927305549657656076&q=365+N.J.+Super.+255+&hl=en&as_sdt=2,31

Affirming the validity of DEP’s adoption of the “Landscape Project” method of classifying those wetlands which support the habitats of threatened or endangered species [replacing “the past, species, sighting-specific areas of documentation”] based upon the definition of “documented habitat” as set forth in *N.J.S.A.* 13:9B-7(a)(2) of the Freshwater Wetlands Protection Act.

Freshwater Wetlands Protection Act Rules, In the Matter of 180 N.J. 478 (2004)

http://scholar.google.com/scholar_case?case=4403341779026348456&q=In+the+Matter+of+Fres+water+Wetlands+Protection+Act+Rules&hl=en&as_sdt=2,31

Regulations regarding residential development projects – the buffer on the buffer, vernal habits and drained farmlands invalidated.

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Island Venture Associates v. New Jersey Department of Environmental Protection, 179 N.J. 485 (2004)

http://scholar.google.com/scholar_case?case=15908850486242285259&q=179+N.J.+485+&hl=en&as_sdt=2,31

Policies underlying the Recording Act outweigh those reflected in the Coastal Area Facility Review Act. As a result, petitioner was not bound to a 1989 water-dependent use restriction on its land that was imposed by the DEP as part of a coastal permit issued to the petitioner's predecessor in title.

U.S. Sportsmen's Alliance Foundation v. New Jersey Dept. of Environmental Protection, 182 N.J. 461 (2005)

http://scholar.google.com/scholar_case?case=11970537932520662994&q=182+N.J.+461+&hl=en&as_sdt=2,31

In the absence of approved comprehensive policies, the Fish and Game Council could not promulgate regulations authorizing the bear hunt.

New Jersey Dept. of Environmental Protection/Hazardous Waste Compliance and Enforcement v. Marisol, Inc., 367 N.J. Super. 614 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=7103805740301290908&q=367+N.J.+Super.+614+&hl=en&as_sdt=2,31

Under the Grace Period Law, the legislature intended, in the case of minor violations of the environmental laws, that the DEP should redirect its past reliance upon monetary penalties to prompt voluntary remediation of the violation in order to increase overall compliance with the environmental laws, to more promptly ameliorate soil, water and air pollution, and to minimize administrative costs and litigation expenses incident to the imposition of monetary penalties.

IMO Freshwater Protection Act Rules, Statewide General Permit, Cranberry Expansion, 351 N.J. Super. 362 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=1758703411041325301&q=351+N.J.+Super.+362+&hl=en&as_sdt=2,31

General Permit 23, *N.J.A.C.* 7:7A-5.23, permitting the limited expansion of existing cranberry growing operations in the Pinelands National Reserve, does not violate provisions of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.A. Sec. 1344, the Freshwater Wetlands Protection Act, *N.J.S.A.* 13:9B-1 to 30, or the state's Surface Water Quality Standards *N.J.A.C.*, 7:9B-1.1 *et seq.*

IMO Freshwater Wetlands Protection Act Rules, IMO Freshwater Wetlands Protection Act Rules, Statewide General Permit, Cranberry Expansion, 180 N.J. 415 (2004)

http://scholar.google.com/scholar_case?case=7903371253615869823&q=180+N.J.+415+&hl=en&as_sdt=2,31

DEP's attempt to expand the reach of the Freshwater Protection Act through "residential development project" rules is *ultra vires* and invalidated (the additional 20' buffer on buffer). DEP also exceeded its statutory authority by attempting to incorporate a vernal habitat ban on General Permit 6 activities.

S. Rotondi & Sons, Inc. v. N.J.D.E.P., A-1819-02T1 (Oct. 5, 2004), certif. denied, 182 N.J. 426 (2005)

http://scholar.google.com/scholar_case?case=5743937190075820676&q=S.+Rotondi+%26+Sons.+Inc.+v.+NJ&hl=en&as_sdt=2,31

Regulations upheld which require 1,000-foot buffer between recycling center which accepts grass clippings and any areas of human use and occupancy.

ADMINISTRATIVE AGENCY ACTION

Freshwater Wetlands General Permits, In re 372 N.J. Super. 578 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=5894450744415340303&q=372+N.J.+Super.+578+&hl=en&as_sdt=2,31

Remand of the DEP's decision to issue an LOI and a freshwater wetlands general permit to developer was necessary so that DEP could conduct more fact-finding as to whether the wetlands were isolated where the record contained an abundance of factual material that supported conservation group's claim that wetlands were part of a surface water tributary system due to overland flow and DEP never explained in its decision why it considered the overland flow to be sheet flow, which flow would have allowed issuance of permit, as opposed to concentrated flow, which type of flow would have precluded the issuance of permit.

SJC Builders, LLC v. State of New Jersey Dept. of Environmental Protection, 378 N.J. Super. 50 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=5084476769752191826&q=378+N.J.+Super.+50+&hl=en&as_sdt=2,31

Court affirms DEP determination that plaintiff required a NJPDES permit for a proposed housing development where plaintiff structured project to attempt to circumvent DEP regulations in that one project which would discharge 6,000 gallons per day was proposed to be serviced by several individual septic systems which would discharge less than 2,000 gpd.

Stormwater Management Rules, In the Matter of 384 N.J. Super. 451 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=9066744014742822892&q=In+the+Matter+of+Stormwater+Management+Rules&hl=en&as_sdt=2,31

Court upholds Stormwater Management Rules as promulgated.

In re NJPDES Permit No. NJ0025241 Issued to Asbury Park City, 185 N.J. 474 (2006)

http://scholar.google.com/scholar_case?case=2883389161445746121&q=185+N.J.+474+&hl=en&as_sdt=2,31

Environmental organization's objections to the renewal of a NJPDES permit were policy disputes, rather than factual disputes or deficiencies based on legal standards that would impact permit determination and therefore the organization did not meet the requirements for "party" status under WPCA and was not entitled to an adjudicatory hearing before an ALJ.

IMO Freshwater Wetlands Statewide General Permits, 185 N.J. 452 (2006)

http://scholar.google.com/scholar_case?case=5975888431228290981&q=185+N.J.+452+&hl=en&as_sdt=2,31

Neighboring property owners and community organization sought review of DEP's denial of an adversarial, adjudicatory hearing before ALJ in regard to the issuance of a permit issued to a developer to fill an isolated wetlands. Court holds that DEP's administrative procedures satisfied constitutional demands of due process and that property owners did not possess a particularized property interest entitling them to a trial-type hearing. The court found that DEP conducted a two-year review process, which entailed consideration of the objector's accounts of flooding, review of expert reports, on-site visits, and meeting with property owners, and significantly, that the objectors received an adversarial, trial-type hearing on the issue of stormwater drainage before the local planning board. Because the threat of flooding of the objectors' property is speculative, they did not possess the type of "particularized property interest" that entitled them to a trial-type hearing before ALJ.

ADMINISTRATIVE AGENCY ACTION

New Jersey Department of Environmental Protection and Administrator, New Jersey Spill Compensation Fund v. Exxon Mobil Corporation, 393 N.J. Super. 388 (App. Div. 2007)
http://scholar.google.com/scholar_case?case=3232427939400232344&q=393+N.J.+Super.+388+&hl=en&as_sdt=2,31

DEP has authority to seek compensation not just for physical injury to natural resources, but also for their loss of use and the benefit they provide.

University Cottage Club of Princeton New Jersey Corp. v. New Jersey Dept. of Environ. Protect., 191 N.J. 38 (2007)
http://scholar.google.com/scholar_case?case=7386690902812672154&q=191+N.J.+38+&hl=en&as_sdt=2,31

Application of private eating club for tax exemption at historic site was entitled to have its tax-exempt status evaluated based on its satisfaction of the standards in effect at the time of the administrative adjudication because the Commissioner's denial was invalid. The denial was based on new and undeclared standards for public access to historic sites which were not adopted in accordance with the Administrative Procedures Act. The standards met the requirements of rulemaking enunciated in *Metromedia, Inc. v. Director, Division of Taxation*, 97 N.J. 313 (1984) which required the NJDEP to comply with the APA.

Doyal v. New Jersey Department of Environmental Protection, 390 N.J. Super. 185 (App. Div. 2007)
http://scholar.google.com/scholar_case?case=13387137995943467395&q=390+N.J.+Super.+185+&hl=en&as_sdt=2,31

N.J.S.A. 13:9B-23(b) prohibits the issuance of a general permit for a regulated activity on any wetlands that discharge into a river or stream, regardless of whether it is non-tidal or tidal.

In re Stream Encroachment Permit, 402 N.J. Super. 587 (App. Div. 2008)
http://scholar.google.com/scholar_case?case=16596949021846649375&q=402+N.J.+Super.+587+&hl=en&as_sdt=2,31

Regulations regarding issuance of waterfront development permit, water quality certificate, coastal zone consistency determination, and stream encroachment permit allow conditions to be placed on approvals. NJDEP's two-part approach to approving permits for mixed use project not arbitrary or capricious.

ZRB, LLC v. New Jersey Department of Environmental Protection, 403 N.J. Super. 531 (App. Div. 2008)
http://scholar.google.com/scholar_case?case=12128685283178207603&q=403+N.J.+Super.+531+&hl=en&as_sdt=2,31

DEP has authority to designate and protect threatened as well as endangered species under the Freshwater Wetlands Protection Act and the Endangered Species Act.

Borough of Avalon v. New Jersey Department of Environmental Protection, 403 N.J. Super. 590 (App. Div. 2008)
http://scholar.google.com/scholar_case?case=10980107011889313613&q=403+N.J.+Super.+590+&hl=en&as_sdt=2,31

DEP's Public Access Rules, which include rule requiring any municipality located on a tidal waterway to allow public access to tidal waterways and their shores, N.J.A.C. 7:7E-8.11(f), and rule which requires any municipality that seeks an appropriation from the "Shore Protection Fund" to provide additional parking spaces and restroom facilities invalidated as not being authorized by statute. The broad general police power delegated to municipalities under N.J.S.A. 40:48-2 extends to municipally-owned beaches which have "exclusive control" over such beaches.

ADMINISTRATIVE AGENCY ACTION

Review and Revision of the Decision to Deny Freshwater General Permit No. 7, In re 405 N.J. Super. 405 (App. Div. 2009)

DEP has the authority to reconsider a denial of a General Permit and to settle issues regarding the issuance of a permit. An objector to the issuance of a permit is not entitled to an adjudicatory hearing.

Dragon v. New Jersey Department of Environmental Protection, 405 N.J. Super. 478 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=2318452030552699270&q=405+N.J.+Super.+478+&hl=en&as_sdt=2,31

An agency may not give itself authority not legislatively delegated. CAFRA did not give DEP either the express or implied power to authorize a development in the coastal region in a settlement agreement “in lieu of” a formal permit. DEP cannot use the settlement process to circumvent CAFRA’s substantive permitting requirements. There are only two ways to develop under CAFRA: (1) apply for and receive a permit or (2) propose a development that is expressly exempted or excluded from the statutory scheme.

In re Agricultural, Aquacultural, and Horticultural Water Usage Certification Rules, 410 N.J. Super. 209 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=1082061909002962844&q=410+N.J.+Super.+209+&hl=en&as_sdt=2,31

Water Supply Act Rules mostly upheld, but some found to be *ultra vires*. There is a legislative mandate to preclude unnecessarily onerous regulation of agricultural activities, but agricultural uses are exempt from regulations only where specifically stated in the statute. DEP’s change to the role of the county agent was *ultra vires* and its remedy involving “mitigation” over broad.

State of New Jersey Dept. of Environ. Protect. v. Mazza and Sons, Inc., 406 N.J. Super. 13 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=16140279872018150300&q=406+N.J.+Super.+13+&hl=en&as_sdt=2,31

A statutory time limit for requesting an administrative hearing is mandatory and jurisdictional. In order to challenge a final administrative agency action, a party must file a notice of appeal to the Appellate Division within 45 days of service of the agency’s action pursuant to R. 2:4-1(b). A challenge to the action may not be brought at the time the agency brings an enforcement action pursuant to R. 4:67-6. R. 4:67-6 provides that “the validity of an agency order shall not be justiciable in an enforcement proceeding.” However, an enforcement action under R. 4:67-6 is analogous to a motion for enforcement of litigant’s right under R. 1:10-3 and an agency seeking enforcement must show that the defendant has failed to comply with the order and that the court’s assistance is necessary.

Adoption of N.J.A.C. 7:15-5.24(b) and N.J.A.C. 7:15-5.25(e), In re 420 N.J. Super. 552 (App. Div. 2011)

[http://scholar.google.com/scholar_case?case=3811384621887410267&q=420+N.J.+Super.+552+\(&hl=en&as_sdt=2,31](http://scholar.google.com/scholar_case?case=3811384621887410267&q=420+N.J.+Super.+552+(&hl=en&as_sdt=2,31)

Water Quality Management Planning Rules (WQMP Rules), which set policies and procedures for State, County and area water quality management planning, upheld.

ADMINISTRATIVE AGENCY ACTION

New Jersey Department of Environmental Protection v. Mercer County Soil Conservation District, 425 N.J. Super. 208 (Ch. 2009)

http://scholar.google.com/scholar_case?case=2259286217310981695&q=C-100-08++&hl=en&as_sdt=2,31

To determine whether a person is an "owner" of a dam or impoundment pursuant to the Dam Safety Act, N.J.S.A. 58:4-1 to 11, the following factors must be considered: (1) the nature and extent of any legal title to the underlying real property; (2) whether the alleged owner constructed or participated in the structure's construction; (3) whether the alleged owner controls, ever controlled, or participated in the control of the structure to more than a *de minimis* extent; and (4) whether the alleged owner has legal authority to exercise control of the structure.

Asdal Builders, LLC v. New Jersey Department of Environmental Protection, 426 N.J. Super. 564 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=10019269755807108928&q=asdal+builders,+llc&hl=en&as_sdt=2,31

FHACA provides that no rule or regulation shall prevent the repair or rebuilding within a flood hazard area of any lawful preexisting structure that was damaged by a flood or by any other means. N.J.S.A. 58:16A-55.1. The concept of abandonment is not defined in the FHACA and use of MLUL analogy is therefore appropriate. Mere passage of time during a cessation of active use does not constitute abandonment.

Where DEP recognized a nunc pro tunc permitting process, it may not reject the permit because it was sought after the work began.

The regulations' inclusion of a "net fill" concept in the flood fringe and exclusion of it in the floodway was intentional. However, enlargement and expansion of pre-existing uses in a floodway may occur when the activity does not present further obstruction to flow. The Commissioner erred by failing to consider the property as a whole when assessing whether any increase obstruction to flow resulted from the reconstruction and restoration of the pre-existing use.

Resumption of pre-existing farming operations after being abandoned for over five years constitutes newly undertaken farming under FWPA and is not exempt.

Where a statute does not impose liability on a corporate officer, the DEP may not impose individual liability on the corporate officer.

Where Commissioner modifies decision of ALJ on factual matters he must first determine that the ALJ's factual findings are arbitrary, capricious or unreasonable or unsupported by credible evidence.

New Jersey Department of Environmental Protection v. Huber, 213 N.J. 338 (2013)

http://scholar.google.com/scholar_case?case=3130323426309452721&q=No.+A-116+September+Term+2010+065540&hl=en&as_sdt=2,31

"[B]ased on the FWPA's integrated scheme governing freshwater wetlands in New Jersey, land subject to FWPA restrictions so important as to be required by law to be filed of record, which was done here, is subject to the statutory, reasonable right of entry and inspection. In exercising that right, the DEP must comply with its processes, which require presentation of credentials before seeking consent to entry at reasonable times. If entry is denied, the Commissioner may order that entry be provided, N.J.S.A. 13:9B-21(b), and the DEP shall be entitled, pursuant to the rules of court, to judicial process to compel access to the property subject to the FWPA permit, see N.J.S.A. 13:9B-21(c)."

ADMINISTRATIVE AGENCY ACTION

N.J.A.C. 7:1B-1.1 Et Seq., In Re 431 N.J. Super. 100 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=13272401634095443870&q=+In+Re+N.J.A.C.+7:1B-1.1&hl=en&as_sdt=4,31

“Waiver Rule” upheld as a valid exercise of DEP’s implied authority. Court recognized “the inherent authority of state agencies to waive their regulatory requirements through regulations adopted pursuant to the APA and which establish appropriate standards for the exercise of the agency’s waiver decision-making, while still honoring requirements imposed by statutes or by federal law.” However, DEP’s postings of “guidance” documents on its website that go beyond merely facilitating administrative implementation of the rules and announce new substantive requirements, were de facto rulemaking in violation of the APA’s notice and comment requirements and are invalidated by the court.

Adoption of Amendments to the Northeast, Upper Raritan, Sussex County and Upper Delaware Water Quality Management Plans, In The Matter of 435 N.J. Super. 571 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=6703483710115359477&q=Northeast,+Upper+Raritan&hl=en&as_sdt=4,31

On the issue of the quality of drinking water, the court defers to the expertise of the DEP and affirms DEP’s decision that it would be impracticable for North Jersey District Water Supply Commission to implement an as-needed-treatment program to limit phosphorus content of effluent discharged into the Passaic River.

Pinelands Preservation Alliance v. State of New Jersey Department of Environmental Protection, 436 N.J. 510 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=17485634361400110327&q=pinelands+preservation+alliance&hl=en&as_sdt=4,31

DEP is not prohibited from using a “net” computation for assessing the impact of construction on endangered or threatened species habitat under CAFRA. Applicant may propose off-site mitigation in order to reduce potential impact from project on endangered and threatened species habitat. DEP’s review of impacts must be assessed against the entire regional population of the threatened or endangered species. “DEP’s interpretation of scientific data, although not binding, ‘is entitled to substantial weight.’” DEP erred in treating application as an amendment of a previously denied application because its rules require that once denied, a resubmitted application must be treated as a new application. N.J.A.C. 7:7-4.9(b). The resubmitted application had to comply with changes to the rules that were adopted after the filing of the original application, but prior to the resubmission.

Morristown Associates v. Grant Oil Company, 220 N.J. 360 (2015)

https://scholar.google.com/scholar_case?case=2585778784398300879&q=morristown+associates+2015&hl=en&as_sdt=4,31

There is no statute of limitations defense to Spill Act contribution claims.

New Jersey Department of Environmental Protection v. Alloway Township, 438 N.J. Super. 501 (App. Div. 2015)

https://scholar.google.com/scholar_case?case=9971952613139584776&q=A-3835-12T3+&hl=en&as_sdt=4,31

The Safe Dam Act applies to (1) dam owners; (2) reservoir owners; (3) those who control the dam; and (4) those who control the reservoir.

ADMINISTRATIVE AGENCY ACTION

In Re Borough of Spring Lake Coastal Jurisdictional Determination 1300-04-0010.3, A-6034-12T3 (Feb. 4, 2015)

https://scholar.google.com/scholar_case?case=12891527887484430835&q=A-6034-12T3&hl=en&as_sdt=4,31

Reconstruction of pavilion within same footprint as former building was an activity covered by DEP's CAFRA permit-by-rule. Additional structures that were build outside of the prior footprint of the pavilion, but landward and perpendicular to the mean high water line (i.e., within the pavilion's widest shore-parallel points) were also permitted because the pavilion was an intervening structure. The court rejected the argument that once the original pavilion was demolished it could no longer be an intervening structure, or that it had to remain intact while the additional structures were constructed.

CD&L Realty, LLC v. State, Department of Environmental Protection, A-4066-13T3 (July 30, 2015)

https://scholar.google.com/scholar_case?case=16976999988299885815&q=4066-13T3&hl=en&as_sdt=4,31

"Rule 2:2-3(a)(2) states that appeals may be taken to the Appellate Division '[a]s of right . . . to review final decisions or actions of any state administrative agency. . . .' That right of review also extends to agency inaction. The longstanding rule is that 'every proceeding to review the action or inaction of a local administrative action [is] by complaint in the Law Division and that every proceeding to review the action or inaction of a state administrative agency [is] by appeal to the Appellate Division.'" "[R]elief in the nature of mandamus 'is only appropriate where the party seeks to compel a governmental agency to perform a duty [that] is ministerial and wholly free from doubt or to compel the exercise of discretion, but not in a specific manner.'"

In Re Rodriques, A-3773-13T1, A-4447-13T1 (Oct. 1, 2015)

https://scholar.google.com/scholar_case?case=10156108122970449369&q=A-4447-13T1&hl=en&as_sdt=4,31

When a regulation conflicts with a statute, the regulation is void as a matter of law. A statutory time limit for requesting an adjudicatory hearing is mandatory and jurisdictional.

New Jersey Department of Environmental Protection v. Hood Finishing Products, Inc., A-3955-14T1 (Nov. 31, 2016)

https://scholar.google.com/scholar_case?case=3357139987174005634&q=A-3955-14T1&hl=en&as_sdt=4,31

"ISRA requires owners or operators of an industrial establishment to notify DEP before closing, selling, or transferring operations. *N.J.S.A.* 13:1K-9(a). Owners and operators must then 'remediate the industrial establishment . . . in accordance with criteria, procedures, and time schedules established by the [DEP].' *N.J.S.A.* 13:1K-9(b)(1)."

When defendant ceased its operation, it was required to give notice and engage in remediation under ISRA. *N.J.S.A.* 13:1K-9. The GIN submitted by defendant did not fulfill all of the ISRA requirements because it is undisputed that no remediation took place at that time. Although the defendant eventually hired an LSRP and remediated the property, it did so only years later after DEP took enforcement action. As a result, the assessment of \$40,000 in penalties and fees was found to be appropriate.

ADMINISTRATIVE AGENCY ACTION

In the Matter of Shipyard Associates LP, A-4873-13T4, A-5004-13T4 (Feb. 3, 2017)

https://scholar.google.com/scholar_case?case=9021765409118346417&q=A-4873-13T4&hl=en&as_sdt=4,31

Water quality certificate issued under the Waterfront Development Act is not a “permit” under N.J.S.A. 58:10A-7 affording an objector a right to an evidentiary hearing. “In the absence of an enforceable deed restriction or easement, property owners do not have a property interest in unobstructed scenic views.”

Matejek v. Watson, A-4683-14T1 (Mar. 3, 2017)

https://scholar.google.com/scholar_case?case=3564738576655816149&q=A-4683-14T1&hl=en&as_sdt=4,31

In suit brought by an alleged contaminator, the Spill Act allows the court to order all other alleged contaminators to retain an LSRP to investigate the cause of the contamination.

In Re CAFRA Permit No. 1512-08-0020.1CAF080001 Railroad Avenue, Lacey Township, Ocean County, New Jersey, A-1088-14T2 (March 29, 2017)

https://scholar.google.com/scholar_case?case=14330585029783375803&q=A-1088-14T2&hl=en&as_sdt=4,31

“In evaluating whether an agency’s determination [amounts to a new] rule triggering the notice requirement, court consider whether the determination: (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy.” “In the absence of some legislative restriction, administrative agencies have the inherent power to reopen or to modify and to rehear orders that have been entered.” However, “an agency is not ‘free to disregard completely issues that were fully and fairly resolved’ in its earlier decision,” but must explain its reason for the divergence from its prior decision and must ‘balance . . . such factors as new developments or even new evidence of old developments, the advantages of repose, party reliance, the thoroughness of the earlier decision and the showing of illegality, fraud, mistake and the like.’”

R&K Associates, LLC v. New Jersey Department of Environmental Protection, A-4177-14T1 (April 10, 2017)

https://scholar.google.com/scholar_case?case=10002252652486129015&q=A-4177-14T1&hl=en&as_sdt=4,31

Former owner of property may apply for a De Minimis Quantity Exception under ISRA. “it would be inequitable to construe the statutory scheme to deprive former owners of contaminated sites, who can be held liable retrospectively under ISRA for those conditions, of the opportunity to pursue DQEs or other exemptions that may be enjoyed by current owners. If liability under ISRA can extend to a former ‘owner’ then the avenue for an exemption equitably and logically should extend reciprocally to qualified former owners, as well.” The owner did not waive its right to seek a DQE because its consultant did not seek one at the time the owner held title to the property. “A party must have full knowledge of its legal rights and an intent to waive those rights for the waiver to be effective.”

In Re Final Surface Water Renewal Permit Action NJPDES Permit No. NJ0102563, A-5803-13T1 (May 1, 2017)

https://scholar.google.com/scholar_case?case=13782087208167803180&q=A-5803-13T1&hl=en&as_sdt=4,31

In all decisions affecting a planning area, the DEP shall give “great consideration and weight” to the RMP and “shall not issue any permit the DEP determines, in consultation with the Highlands Council, to be incompatible with the resource protection goals in the RMP.” “To ensure the DEP does not grant a permit that is incompatible with the RMP’s goals, the DEP must consult with the Highlands Council on permit applications for the planning area.”

Cedar Knolls 2006, LLC v. New Jersey Department of Environmental Protection, A-1405-15T3 (Sept. 20, 2017)

https://scholar.google.com/scholar_case?case=11504503949391364832&q=A-1405-15T3&hl=en&as_sdt=4,31

Property’s transfer to trusts among family members does not constitute a change in ownership under ISRA and therefore does not defeat plaintiff’s claim to be a person under the Brownfield Act eligible to apply for an innocent party grant. “The definitional section concerning changes of ownership in N.J.S.A. 13:1K-8, especially with respect to what is not a change of ownership, reflects the Legislature’s concern that there be a basic continuity of beneficial ownership between the entities, retention of the prior entity’s liability by the resulting entity, and preservation of the prior entity’s available assets by the resulting entity to meet its remediation responsibilities.”

New Jersey Department of Environmental Protection v. Cheyenne Corporation, A-4547-15T4 (Oct. 27, 2017)

https://scholar.google.com/scholar?hl=en&as_sdt=4%2C31&q=A-4547-15T4&btnG=

“NJDEP may ‘waive the strict compliance with any of its rules’ in the case of ‘(1) [c]onflicting rules; (2) [t]he strict compliance with the rule would be unduly burdensome; (3) [a] net environmental benefit; or (4) [a] public emergency.’” N.J.A.C. 7:1B-2.1. Expensive compliance that does not rise to the level of unduly burdensome is not sufficient to support a waiver.

Yadav v. New Jersey Department of Environmental Protection, A-4035-15T2 (Dec. 15, 2017)

https://scholar.google.com/scholar_case?case=10228421099012087488&q=A-4035-15T2&hl=en&as_sdt=4,31

Petitioners not exempt from the FWPA under N.J.S.A. 13:9B-4(d) for application being approved prior to June 8, 1987 because when the DEP assumed federal jurisdiction over the wetlands in 1994, the exemption was abolished, but the exemption continues to apply to the State’s requirements for transition areas because the federal program does not regulate buffers.

Chemistry Council of New Jersey v. New Jersey Department of Environmental Protection, A-1439-15T4, A-1442-15T1, A-1917-15T1 (Dec. 19, 2017)

https://scholar.google.com/scholar_case?case=3202859156772927329&q=A-1439-15T4&hl=en&as_sdt=4,31

Interim rules declared invalid where existing for three years without formal rulemaking.

New Jersey Department of Environmental Protection v. Exxon Mobil Corporation, 453 N.J. Super. 272 (App. Div. 2018)

https://scholar.google.com/scholar_case?case=3004587477532951404&q=A-0668-15T1&hl=en&as_sdt=4,31

The Environmental Rights Act does not provide a private cause of action to sue a polluter to recover natural resource damages under the Spill Act.

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New Jersey Department of Environmental Protection v. Bleimaier, A-0001-16T3 (Mar. 28, 2018)
https://scholar.google.com/scholar_case?case=9173893092728300582&q=A-0001-16T3&hl=en&as_sdt=4,31

Placement of fill above the five-yard-limit in a flood hazard area that changes the existing topography requires a permit. “The test in reviewing administrative sanctions is whether the punishment is so disproportionate to the offense, in light of the circumstances, as to be shocking to one’s sense of fairness.”

US Masters Residential Property (USA) Fund v. New Jersey Department of Environmental Protection, A-3632-15T2 (April 3, 2018)
https://scholar.google.com/scholar_case?case=17556874375175110420&q=A-3632-15T2&hl=en&as_sdt=4,31

ALJ’s arbitration decision denying Spill Act reimbursement claim upheld where petitioner failed to prove a post-Spill Act discharge and there were facts in the record to support a contrary finding of historic fill.

New Jersey Department of Environmental Protection v. Foster, A-2569-16T3 (May 16, 2018)
https://scholar.google.com/scholar_case?case=3261401119611102773&q=A-2569-16T3&hl=en&as_sdt=4,31

The New Jersey Turnpike Authority, who disposed of used tires at defendant’s facility, was not a responsible party from whom the DEP or defendant could recover under the Tire Management and Clean Up Act (TMCUA), N.J.S.A. 13:1E-225(c). The TMCUA does not authorize anyone other than the DEP to recover under the act and limits liability only to the "site owner" or anyone who permits the accumulation of tires at the site. It does not allow for a private cause of action or any other means for a responsible person to recover from third parties or any right to contribution.

State v. Bernardi, A-0752-17T3 (Aug. 28, 2018)
https://scholar.google.com/scholar_case?case=17839182614753714732&q=A-0752-17T3&hl=en&as_sdt=4,31

An Administrative Consent Order is a “government contract.” “The inclusion of the parties’ agreement into a binding order does not render the ACO something other than a contract.” N.J.S.A. 2C:21-34(b), provides that “[a] person commits a crime if the person knowingly makes a material representation that is false in connection with the negotiation, award or performance of a government contract. A person may also be guilty of theft by deception, N.J.S.A. 2C:20-4(a), by committing a theft of the ACO. “[T]o establish a violation . . . the State was required to show that the NJDEP had a ‘legal interest’ in contract rights that it transferred to defendants in the ACO, N.J.S.A. 2C:20-1(h), and that the contract rights had value, N.J.S.A. 2C:20-1(g).”

New Jersey Department of Environmental Protection v. Warrington, A-1173-16T1 (Aug. 17, 2018)
https://scholar.google.com/scholar_case?case=14340890354705321227&q=A-1173-16T1&hl=en&as_sdt=4,31

Under the residuum rule, N.J.A.C. 1:1-15.5.5(b), hearsay is admissible in administrative hearings to corroborate other, non-hearsay evidence.

LH Wagner Realty Corporation v. Martin, A-5575-16T2 (Sept. 19, 2018)
https://scholar.google.com/scholar_case?case=4002311882180918992&q=A-5575-16T2&hl=en&as_sdt=4,31

The lack of recording of a conservation restriction does not shield one who has actual notice of the Administrative Consent Order that imposed the restrictions.

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New Jersey Department of Environmental Protection v. Raritan Shopping Center, LP, A-1150-16T1 (Oct. 17, 2018)

https://scholar.google.com/scholar_case?case=9698510855407862469&q=A-1150-16T1&hl=en&as_sdt=4,31

Property owner who was not an innocent purchaser responsible for remediation of discharge that occurred prior to the enactment of the Spill Act. J.T. Baker distinguished.

New Jersey Department of Environmental Protection v. Radiation Data, Inc., A-1777-17T3 (Nov. 2, 2018)

https://scholar.google.com/scholar_case?case=6415920960098287245&q=A-1777-17T3&hl=en&as_sdt=4,31

DEP's regulation of "affiliate" technicians invalid under Metromedia because DEP did not adopt the policy pursuant to a formal rulemaking under the APA.

Radiation Data, Inc. v. New Jersey Department of Environmental Protection, A-0707-17T2 (Nov. 2, 2018)

https://scholar.google.com/scholar_case?case=364758738412550485&q=Radiation+data,+inc.&hl=en&as_sdt=4,31

Qualified immunity shields government officials from civil liability unless a plaintiff demonstrates "(1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." "A government official's conduct violates clearly established law when, at the time of the challenged conduct, '[t]he contours of [a] right [are] sufficiently clear that a reasonable official understands that what he is doing violates that right.'" The "substantive component of the Due Process Clause is violated by executive action only when it 'can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense.'"

Perri v. State, A-3926-16T3 (Nov. 28, 2018)

https://scholar.google.com/scholar_case?case=3783965647327842345&q=Perri+v.+State&hl=en&as_sdt=4,31

State's riparian grant conveyed land, including land underwater, to plaintiff and while the State reserved the right to require a permit for the development of the land, it did not reserve the right to charge a license fee to do so as the State retained no ownership interest in the land.

Terranova v. General Electric Pension Trust, 457 N.J. Super. 404 (App. Div. 2019)

https://scholar.google.com/scholar_case?case=16594861652275862382&q=A-5699-16T3&hl=en&as_sdt=4,31

Judicial estoppel is a defense to a Spill Act claim. Property owners must seek contribution from dischargers which are known or reasonably knowable in a single action.

In the Matter of Lacey Township CAFRA Permit, A-3173-16T3 (April 26, 2019)

https://scholar.google.com/scholar_case?case=5359654926012144574&q=A-3173-16T3&hl=en&as_sdt=4,31

CAFRA permit properly granted to allow installation of a gabion wall in place of rip-rap along shoreline of town park following Superstorm Sandy. The Coastal Engineering Rule, N.J.A.C. 7:7-15.11, establishes a hierarchy in shore protection projects that has a preference for non-structural measures, but "if non-structural measures are 'not feasible or practicable[,] the agency's next preference is that the permittee employ a 'hybrid' combination of structural and non-structural elements."

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State of New Jersey Department of Environmental Protection v. Alsol Corporation, A-3546-17T1 (Nov. 13, 2019)

https://scholar.google.com/scholar_case?case=12381345559943136752&q=A-3546-17T1&hl=en&as_sdt=4,31

“[M]unicipal courts have jurisdiction pursuant to N.J.S.A. 58:10-23.11u(d) to impose civil penalties under the Spill Act in a summary proceeding conducted pursuant to the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 to-12.”

PPG Industries, Inc. v. Unites States, 957 F.3d 395 (3d Cir. 2020)

https://scholar.google.com/scholar_case?case=505984006569027336&q=PPG+Indus+v.+U.S&hl=en&as_sdt=6,31&as_ylo=2020

“[O]perator liability [under CERCLA] only extends to those who ‘manage, direct, or conduct operations specifically related to pollution, that is, operations having to do with the leakage or disposal of hazardous waste or decisions about compliance with environmental regulations.’” [citation omitted]. To prevail on an operator liability claim against the government requires something more than general wartime control over an industry; it must be shown that the government exercised control over the facility’s polluting activities.

In the Matter of Hunterdon County, Borough of Flemington, Sale of 90-96 Main Street, A-2658-17T2 (Feb. 24, 2020)

https://scholar.google.com/scholar_case?case=968365339406416902&q=A-2658&hl=en&as_sdt=6,31

DEP regulation that requires that an application be denied if the applicant fails to respond within 60 days following a determination of incompleteness, did not result in automatic denial where the applicant responded within 60 days but further information was still requested by DEP. The agency action is supported by a strong presumption of reasonableness and where the decision is debatable, the decision must stand. The court also gives substantial deference to DEP’s interpretation of its regulations.

New Jersey Department of Environmental Protection v. Hess Corporation, A-2893-18T2 (April 7, 2020)

https://scholar.google.com/scholar_case?case=17638728202823198178&q=DEP+V.+hess&hl=en&as_sdt=6,31&as_ylo=2019

The Spill Act did not subsume DEP’s common law claims; it expressly stating the remedies provided under the Spill Act are in addition to those provided by existing common or statutory law, subject only to a prohibition against double recovery for the same damages or cleanup costs. The Spill Act permits the DEP to pursue remedies under both the common law and the Spill Act because the Spill Act “establishes new remedies for activities recognized as tortious both under prior statutes and the common law.”

In the Matter of JSTAR, LLC v. New Jersey Department of Environmental Protection, A-4483-17T2 (April 27, 2020)

https://scholar.google.com/scholar_case?case=6532719948524401122&q=+JSTAR,+LLC+v.+D&hl=en&as_sdt=6,31&as_ylo=2020

The notice provisions of the CZM rules govern CAFRA applications. N.J.A.C. 7:7-24.3 and-24.4. “[T]he CZM rules define the notice’s content and only adopt the MLUL’s provisions as they relate to how the notices must be served on the neighboring property owners. As to the notice’s content, the CZM rules incorporate CAFRA’s definition of “development,” which limits the description to a brief explanation of the work to be performed on site.” Where the developer was not proposing to perform any work on an existing street that provided access, there was no obligation for it to

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include reference to the street in the notice. “According to the APA, ‘all interested persons are afforded reasonable opportunity to submit data, views or arguments, orally or in writing, during any proceedings involving a permit decision.’ N.J.S.A. 52:14B-3.1(a). An ‘interested person,’ while not defined under the APA, is a property owner with an interest in a proposed development who stands to be ‘adversely affected.’” The DEP is under no obligation to contact an objector to respond to each objection.

New Jersey Department of Environmental Protection v. American Thermoplastics Corp., No. 18-2865 & 19-2243 (June 1, 2020)

https://scholar.google.com/scholar_case?case=9371974938735019344&q=NJDEP+v+AM.+the+rmoplastics&hl=en&as_sdt=3,31

A polluting party’s settlement with the NJDEP did not discharge its liabilities to the USEPA or protect it from others seeking contribution toward expenditures made by the USEPA. “We interpret the matters addressed in a [settlement] agreement narrowly when determining whether settlement with one sovereign covers the claims of another. Carter Day entered the NJDEP Settlement to cover all claims ‘with respect to the [Site]’ and those ‘arising out of or related to the [Site].’ Although this language is broad, the Settlement, by its own terms, concerns only liability to the NJDEP. . . Thus, despite its broad language referring to all remedial costs connected to the Site, the agreement’s specific language regarding the NJDEP ties only to the State’s expenditures.”

Moss v. State, Department of Environmental Protection, A-1607-19T2 (Nov. 2, 2020)

https://scholar.google.com/scholar_case?case=10064957896513592874&q=moss+v.+dep&hl=en&as_sdt=6,31&as_ylo=2020

“[M]andamus-like relief is available ‘to compel only clearly mandated ministerial obligations, which do not require an evaluative judgment in the exercise of discretion.’”

County of Maui v. Hawaii Wildlife Fund, 140 S.Ct. 1462 (2020)

https://scholar.google.com/scholar_case?case=375141810380080689&q=hawaii+wildlife+fund&hl=en&as_sdt=3,31&as_ylo=2020

The Federal Clean Water Act requires a permit when there is a direct discharge from a point source into navigable waters or when there is the functional equivalent of a direct discharge.

Brg Harrison Lofts Urban Renewal Llc V. Gen. Elec. Co., 2:16-cv-06577 (SRC), 2:17-CV-01584 (Feb. 5, 2021)

https://scholar.google.com/scholar_case?case=6725573854558507433&q=harrison+lofts+v&hl=en&as_sdt=6,31&as_ylo=2021

Court grants third party impleaded defendants motion to dismiss environmental joint tort complaint by applying the general rule that when multiple putative joint tortfeasors all failed the same client with the same failure (failing to timely file the deed and mortgage in the same transaction) and caused the same injury to that client, joint tortfeasor contribution liability was rightly apportioned among them; but when multiple putative joint tortfeasors inflicted different injuries on the same client, they were not joint tortfeasors under New Jersey’s Joint Tortfeasors Contribution Act. Because the court found that the latter scenario better captured the facts of this case, the court held that dismissal was appropriate.

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Lincoln Harbor Enter., LLC v. Hartz Mountain Indus., Inc. 19-12520 (KM) (Feb. 5, 2021)
https://scholar.google.com/scholar_case?case=12124853926301265700&Q=Lincoln+Harbor+V.+Hartz+Mountain&hl=en&as_sdt=6,31&as_ylo=2021

Where a developer constructs a marina that includes recreational boating facilities, alongside ferry facilities, and where the ferry activities negatively impact the operations of the recreational boating facilities and the flore and fauna that reside nearby, a basis exists to maintain a marina operator's suit against the developer on the basis of violation of the New Jersey Environmental Rights Act.

Dorrell v. Woodruff Energy, Inc., A-3144-17 (March 11, 2021)
https://scholar.google.com/scholar_case?case=6543054599019327062&q=dorrell+v.+woodruff&hl=en&as_sdt=6,31&as_ylo=2020

The mere fact that a defendant sold fuel to Plaintiff was not sufficient to trigger responsibility under the Spill Act.

Keegan v. Town Of Kearny, A-0309-19, (June 21, 2021)
https://scholar.google.com/scholar_case?case=1503588924931884553&Q=Keegan+V.+Town+Of+Kearny&hl=en&as_sdt=6,31&as_ylo=2021

While another entity may have operated a landfill, because a municipal defendant owned the landfill, exercised control over it, was involved in decision-making pertaining to it, and benefited financially from it, the municipal defendant is considered a "landfill operator" under the Closure Act and liable for remediation costs.

In The Matter Of Challenge Of Delaware Riverkeeper Network, A-0709-19, (June 23, 2021)
https://scholar.google.com/scholar_case?case=8580703759224032231&q=n+The+Matter+Of+Challenge+Of+Delaware+Riverkeeper+Network&hl=en&as_sdt=6,31&as_ylo=2021

Appellate Division upholds the DEP's determination that, under CAFRA, a dock used to transport natural gas and other liquefied energy products should not be evaluated as an "energy facility" or "liquefied natural gas facility."

Cayre v. New Jersey Dep't of Env'tl Prot., A-0223-19, (June 24, 2021)
https://scholar.google.com/scholar_case?case=431095229623742806&q=Cayre+v.+New+Jersey&hl=en&as_sdt=6,31&as_ylo=2021

Where a property owner of shoreline property constructs a pavilion and revetment without CAFRA approval, and the pavilion and revetment did not meet the setback requirement in the Coastal Bluffs Rule, and the pavilion did not fall within the shore protection exemption as set forth in the Coastal Engineering Rule because the rule favors nonstructural solutions to shoreline erosion issues over structural solutions, the NJDEP properly denied the owner's CAFRA permit application.

Malone v. City of Brigantine, A-0365-19, (July 16, 2021)
https://scholar.google.com/scholar_case?case=4278875363968837021&q=malone+v.+brigantine&hl=en&as_sdt=6,31&as_ylo=2021

Pursuant to CAFRA, boat storage is not permitted on a lot required to be maintained as "open space."

Borough of Edgewater v. Waterside Constr., LLC, 14-5060 (July 19, 2021)
https://scholar.google.com/scholar_case?case=13921254005451923741&q=borough+of+edgewater+v.+waterside&hl=en&as_sdt=6,31&as_ylo=2021

An unjust enrichment claim is cognizable and survives summary judgement where Defendant's contaminated fill was transported onto another property thus sparing the Defendant the costs of remediating its property.

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In re Truesdale, A-5696-18 (July 29, 2021)

https://scholar.google.com/scholar_case?case=16919673084734262546&q=truesdale&hl=en&as_sdt=6,31&as_ylo=2021

Neighboring objectors to a CAFRA permit approval lacked a "particularized property interest sufficient to require a hearing on constitutional or statutory grounds" before an administrative law judge pursuant to N.J.S.A. 52:14B-3.2(c).

In the Matter of the Denial of Hearing Request, A-2341-19, (Sept. 8, 2021)

https://scholar.google.com/scholar_case?case=10620970825597965925&q=municipal+utilities+authority&hl=en&as_sdt=6,31&as_ylo=2021

A municipal utilities authority has no right to an adjudicatory hearing with respect to its NJPDES fee calculations.

New Jersey Department of Environmental Protection v. River Lookout Associates, A-2464-19 (Oct. 19, 2021)

https://scholar.google.com/scholar_case?case=8118053842903892222&q=river+look+out+&hl=en&as_sdt=6,31&as_ylo=2021

Appellate Division affirms the trial court's levying of civil penalties pursuant to the Waterfront Development Act where Defendants did not comply with the terms of an administrative consent order.

In re Flood Hazard Area Verification, A-5637-18 (Nov. 24, 2021)

https://scholar.google.com/scholar_case?case=12200102100474547512&q=+In+re+Flood+Hazard+Area+Verification,+&hl=en&as_sdt=6,31&as_ylo=2021

Challenge to an NJDEP flood hazard area applicability determination remanded to the agency for further comment with respect to whether a flood hazard area verification was necessary.

In the Matter of the New Jersey Dep't of Envi'l Prot. Waterfront Dev. Permit, A-5525-17, A-2208-18. (Nov. 24, 2021)

https://scholar.google.com/scholar_case?case=9770407339284735085&q=waterfront+development+permit&hl=en&as_sdt=6,31&as_ylo=2021

With respect to a challenge of the NJDEP's issuance of a "general permit" to the NJDOT to permit certain dredging pursuant to the Freshwater Wetlands Protection Act, and because the facts were not clear whether an "individual permit" should have been issued instead, the Court remands same back to the NJDEP for further fact finding related to the matter.

Colen v. Dep't of Env'tl. Prot., A-2880-19. (Dec. 3, 2021)

https://scholar.google.com/scholar_case?case=4595921113381767262&q=colen+v.+department&hl=en&as_sdt=6,31&as_ylo=2021

Appellate Division remands matter for further fact finding related to property owner's claim that the "infill exception" requires that the NJDEP grant a CAFRA permit for his proposed residential remodeling.

Cozzoli Machine Co. v. Crown Real Estate Holdings, Inc., A-1733-19 (Dec. 7, 2021)

https://scholar.google.com/scholar_case?case=17174768118497679245&q=Cozzoli+Machine+v.+crown&hl=en&as_sdt=6,31&as_ylo=2021

Where a property owner's predecessor in interest had consented to a site's remediation through engineering and institutional controls of historic fill, under applicable NJDEP rules, the property owner could not then refuse a recording of a notice reflecting same and require that the polluter clean up the property to residential standards.

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Shark River Cleanup Coalition v. Twp of Wall, 21-2060 (Aug. 24, 2022)

https://scholar.google.com/scholar_case?case=12042730889404788043&q=Shark+River+Cleanu+p+Coal.+v.+Twp.+of+Wall&hl=en&as_sdt=6,31&as_ylo=2022

The Clean Water Act empowers citizens to sue for violations of the Act, 33 U.S.C. § 1365(a)(1), subject to one key condition. Before going to federal court, a citizen-suit plaintiff must "give[] notice of the alleged violation" to the "alleged violator," and also to the U.S. Environmental Protection Agency and to the state in which the alleged violation occurs. 33 U.S.C. § 1365(b)(1)(A).

In the matter of the Adoption of Amendments to N.J.A.C. 7:9B, A-3545-19, A-3554-19 (July 20, 2022)

https://scholar.google.com/scholar_case?case=1554750961077645060&q=In+the+Matter+of+the+Adoption+of+Amendments+to+N.J.A.C.+7:9B&hl=en&as_sdt=6,31&as_ylo=2022

Appellate Division upheld NJDEP's new Surface Water Quality Standards (SWQS), N.J.A.C. 7:9B-1.4 and 1.15, regulating upgrading various waterways to Category One (C1) antidegradation status.

In the Matter of Proposed Construction of Compressor Station, A-44 (April 11, 2022)

https://scholar.google.com/scholar_case?case=1952629438144414839&q=Proposed+Constructio+n+of+Compressor+Station+&hl=en&as_sdt=6,31&as_ylo=2022

Where an environmental groups appealed the issuance of a Highlands Applicability and Water Quality Management Plan Consistency Determination (HAD) issued to a natural gas company by NJDEP, the company should have been included as an "interested party" pursuant to Rule 2:5-1(d) when the groups filed their initial Notice of Appeal and Case Information Statement in the Appellate Division.

Sunway Equity, LLC v. Suburban Propane, LP, A-4360-19 (Jan. 12, 2022)

https://scholar.google.com/scholar_case?case=7121530730232229219&q=sunway+v.+suburban&hl=en&as_sdt=6,31

With respect to a Spill Act Claim, the six (6) year statute of limitation commenced when Plaintiff purchased the property and obtained information regarding environmental cleanup on same—not from the date that a new tenant discovered the contamination some fifteen (15) years later. Furthermore, because Defendant environmental consultant, who had been hired by the previous owner, owed no duty to the present owner, Plaintiff's tort claims were correctly dismissed.

Twp. of W. Caldwell v. Carant Limited Partnership, A-1956-21, A-2983-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=18293367426756793582&q=carant&hl=en&as_sdt=6,47&as_ylo=2023

The Environmental Rights Act ("ERA") creates a private cause of action for declaratory and injunctive relief to protect the environment against 'pollution, impairment and destruction.' However, the ERA only grants a private person standing to enforce an environmental protection statute as an alternative to inaction by the government, which retains primary prosecutorial responsibility.

Section 4 of the ERA creates a private cause of action under two significantly different circumstances. Section 4a allows an action alleging a violation of an existing "statute, regulation or ordinance," whereas "Section 4b allows an action for equitable relief in those circumstances where no specific violation of a statutory or regulatory standard can be alleged, but environmental harm . . . is allegedly threatened."

Here, because Plaintiff municipality could prove no violation of an existing statute, regulation or ordinance or environmental harm related to the storing of recycled asphalt paving on the subject property, the Court affirmed dismissal of ERA complaint.

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In the Matter of Permit Number XXX-XX-XXXX.1LUP210001, A-1897-21, A-2270-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=16373765015286944615&q=a-1897-21&hl=en&as_sdt=4,31

Where Applicant proposed a rail line to facilitate the transloading of liquified natural gas, and other products, from trains onto ships on the Delaware River, the approval of the Federal Energy Regulatory Commission (“FERC”) is not required as a first step to obtaining state level CAFRA and other permits.

Musconetcong Watershed Ass’n v. New Jersey Dep’t of Env’t Prot., 476 N.J. Super. 465 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=11252464883720885262&q=+Musconetcong+Watershed+Ass%27n+v.+New+Jersey+Dept.+&hl=en&as_sdt=6,47&as_ylo=2023

DEP’s Flood Hazard Area Applicability Determination became a final agency decision subject to appeal when the DEP denied an objector’s request for an adjudicatory hearing to challenge the FHA Determination. In addition, objector did not have a right to an adjudicatory hearing because no statute conferred that right on the objector, which is a third-party, and the objector did not have a particularized property interest warranting a hearing.

Sackett v. Env. Prot. Agency, 143 S. Ct. 1322 (2023)

https://scholar.google.com/scholar_case?case=11304670053042264842&q=sackett+v+environmental+protection+agency&hl=en&as_sdt=6,31&as_ylo=2023

The Clean Water Act extends only to wetlands that have a continuous surface connection with “waters” of the United States — i.e., with a relatively permanent body of water connected to traditional interstate navigable waters. 33 U.S.C. § 1362(7).

Scaduto v. New Jersey Dep’t of Env. Prot., 474 N.J. Super. 427 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=7711877424630179654&q=Scaduto+v.+New+Jersey+&hl=en&as_sdt=6,31&as_ylo=2023

Plaintiffs’ recreation easements do not provide them the right to a private beach. While Plaintiffs are free to argue in the condemnation action that they are entitled to damages because the State’s partial taking reduced the value of their homes by impairing their appurtenant easements in their association’s beach lot, they may not mislead the jury as to the extent of those easements prior to the taking.

Laudeman v. N.J. Dep’t of Env’t Prot., A-0315-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=10810198670168938160&q=laudeman+v.+environmental&hl=en&as_sdt=6,31&as_ylo=2023

Court upholds DEP’s denial of a CAFRA General Permit 5 that would permit the reconstruction of a single family home because, at the time the permit was applied for, the subject home had been demolished a number of years previously.

Save Long Beach Island v. U.S. Dep’t of Commerce, Civ. No. 23-1886 (D.N.J. Feb. 29, 2024)

https://scholar.google.com/scholar_case?case=14929705809352942951&q=Save+Long+Beach+Island+v.+U.S.+Dep%27t+of+Commerce&hl=en&as_sdt=6,47&as_ylo=2024

Challenge against the construction of windfarms by various individuals and non-profits did not allege the windfarms would lower their property values or cause any harm, consequently the parties did not have standing to bring the complaint.

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Gage v. N. J. Dep't of Env'tl. Prot., Civ. No. 23-21264 (D.N.J. Mar. 12, 2024)

https://scholar.google.com/scholar_case?case=3661952550053528138&q=gage+v.+new+jersey&hl=en&as_sdt=6,47&as_ylo=2024

In lieu of appealing an LOI from the NJDEP stating that Plaintiff's parcel included wetlands areas, Plaintiff filed suit in federal court under various theories of liability against the NJDEP and other parties. Because Plaintiff failed to state a claim, and allowing plaintiff to correct the complaint would needlessly continue this litigation, the Court dismissed with prejudice.

New Jersey Dep't of Env'tl. Prot. v. E.I. DuPont de Nemours & Co. Inc., Civ. No. 19-14766 (D.N.J. Nov. 19, 2024)

https://scholar.google.com/scholar_case?case=6170271377254583466&q=New+Jersey+v.+Nemours+&hl=en&as_sdt=6,47&as_ylo=2024

Municipality's interests were adequately represented by the NJDEP with respect to this resource damages complaint and its request to intervene was denied.

In re Appeal of NJDEP's Sept. 6, 2022 Denial of Request for Adjudicatory Hearing Under N.J.A.C. 7:26C-9.10, 477 N.J. Super. 618 (App. Div. 2024)

https://scholar.google.com/scholar_case?case=10482494943279805625&q=Appeal+of+NJDEP%27s+Sept.+6,+2022&hl=en&as_sdt=6,47&as_ylo=2023

Under the Industrial Site Recover Act, a Remediation in Progress waiver (RIP waiver) issued by the NJDEP does not convey a constitutionally projected property interest to the recipient. Consequently, the NJDEP's revocation of the RIP, without an adjudicatory hearing, was appropriate.

In the Matter of Nicosia Flood Hazard Gen. Permit, 479 N.J. Super. 360 (App. Div. 2024)

https://scholar.google.com/scholar_case?case=10702419775107479359&q=Nicosia+Flood+Hazard&hl=en&as_sdt=6,47&as_ylo=2024

Appellate Division affirmed NJDEP's decision to not require an applicant seeking to replace a lawfully existing structure to prove that the structure was damaged, decayed, or unusable was not arbitrary, capricious, or contrary to law in order to obtain a flood hazard general area permit to replace an existing single family home adjacent to the shoreline.

Dunn v. New Jersey Dep't of Env'tl. Prot., A-1392-22 (Mar. 28, 2024)

https://scholar.google.com/scholar_case?case=5003167772034580068&q=Dunn+v.+New+Jersey+Dep%27t+of+Envt&hl=en&as_sdt=6,47&as_ylo=2024

While the replacement of a "legacy" pier under the to the Waterfront Development Law is exempt from obtaining Coastal Zone Management permits, where the pier is shifted from its original location, same loses its exemption and permits must be obtained.

In The Matter Of Reauthorization. Of The Freshwater Wetlands Gen. Permit #1 & Permit Modifications, A-2758-21, A-2804-21 (June 7, 2024)

https://scholar.google.com/scholar_case?case=16904131831585899004&q=In+The+Matter+Of+Reauthorization.+Of+The+Freshwater+Wetlands+Gen.+Permit+%231+%26+Permit+Modifications&hl=en&as_sdt=6,47&as_ylo=2024

Because the NJDOT had expanded a confined disposal facility beyond what had been approved by way of a GP-1, same was no longer effective and the NJDOT was required to seek additional approvals from the NJDEP.

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State v. 550B Duncan Ave., LLC, No. A-3605-21 (June 12, 2024)

https://scholar.google.com/scholar_case?case=14848853024361090897&q=State+v.+550B+Duncan&hl=en&as_sdt=6,47

With respect to property demarcation along tidal waters, the owner of oceanfront property takes title to dry land added by accretion but loses to the State title over land that becomes tidally flowed as a result of erosion. However, when there is a rapid and easily perceptible change with respect to the tidal water moving onto or further away from upland owner's property, the mean high water line does not shift and remains the same.

State v. 1.581-Acres of Land, A-1761-22 (Nov. 4, 2024)

https://scholar.google.com/scholar_case?case=6009209292599572589&q=State+v.+1.581-Acres+of+Land&hl=en&as_sdt=6,47

With respect to the jury award for just compensation for the taking of beach front property to create a dune, the Court found the jury's award was supported by credible evidence and did not shock the judicial conscience.

In the Matter of Hartz Mountain Indus. Waterfront Dev. Individual Permit, A-4009-19 (Dec. 9, 2024)

https://scholar.google.com/scholar_case?case=15111757616723914198&q=hartz+mountain&hl=en&as_sdt=6,47&as_ylo=2024

On remand after a third party appealed waterfront development individual permit, because the NJDEP did not provide adequate notice to the third party and other interested parties regarding same, the Appellate Division vacated the approved permit.

Seven County Infrastructure Coalition v. Eagle County Colorado, 605 U.S. 168 (2025)

https://www.supremecourt.gov/opinions/24pdf/605us1r34_h3ci.pdf

D. C. Circuit failed to afford the U.S. Surface Transportation Board the substantial judicial deference required in NEPA cases and incorrectly interpreted NEPA to require the Board to consider the environmental effects of upstream and downstream projects that are separate in time or place from the proposed railway.

In Re Appeal of the New Jersey Dep't of Env't'l Prot.'s Sept. 6, 2022 Denial of Request for Adjudicatory Hearing Under N.J.A.C. 7:26C-9.10, 260 N.J. 256 (2025)

https://scholar.google.com/scholar_case?case=5348118736196370512&q=Appeal+of+the+New+Jersey+Sept.+6,+2022+Denial+of+Request+for+Adjudicatory+Hearing&hl=en&as_sdt=6,47&as_ylo=2025

The NJDEP's initial grant of the waiver did not create a property interest in the continued suspension of Plaintiff's remediation obligations. Neither the controlling statutes and regulations nor a mutually explicit understanding between the parties provided an entitlement to the indefinite continuance of the waiver; to the contrary, the governing laws and agency materials all anticipate the DEP's ability to enforce remediation obligations in the future.

Jersey Shore Beach & Boardwalk Co., Inc. v. Borough of Keansburg, A-2379-22 (Jan. 13, 2025)

https://scholar.google.com/scholar_case?case=13874548542320613302&q=+Jersey+Shore+Beach+%26+Boardwalk+Co.,+Inc.+v.+Borough+of+Keansburg&hl=en&as_sdt=6,47

Plaintiff's allegation that redevelopment plan abutting the Atlantic Ocean violated the public access doctrine was premature because whether adequate public access would be provided was a matter subject to the NJDEP's determination after an actual development had been

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proposed.

In the Matter of Adoption of Amendment to the Ne. Water Quality Mgmt. Plan, A-0198-23 (July 7, 2025)

https://scholar.google.com/scholar_case?case=5335575129187224003&q=In+the+Matter+of+Adoption+of+Amendment+to+the+Ne.+Water+Quality+Mgmt.+Plan&hl=en&as_sdt=6,47&as_vlo=2025

Water Quality Management Plan that removed a large portion of plaintiff's property from sewer service area violates plaintiff's settlement with the NJDEP.

State v. 2.150-Acres of Land in the Borough of Point Pleasant Beach, A-2438-24 (Nov. 24, 2025)

https://scholar.google.com/scholar_case?case=10340497245126996810&q=State+v.+2.150-Acres+of+Land+in+the+Borough+of+Point+Pleasant+Beach&hl=en&as_sdt=6,47

Here, the HOA members sought damages related to the diminution in value of *their* beneficial property interests caused by the takings of the HOA beach front property. HOA members have valid claim for damages related to NJDEP's taking of their HOA's beachfront property notwithstanding the fact that the HOA had already been granted compensation for the taking.

In the Matter of Flood Hazard Area Verification, A-1639-22 (December 27, 2024)

https://scholar.google.com/scholar_case?case=11616375323717945165&q=In+the+Matter+of+Flood+Hazard+Area+Verification+%26+Flood+Hazard+Area+Individual+Permit&hl=en&as_sdt=6,47&as_vlo=2024

Court invalidates NJDEP's Flood Hazard Area Individual Permit allowing for the construction of culvert because the Applicant had failed to demonstrate why a bridge could not be constructed instead of a culvert for feasibility reasons per N.J.A.C. 7:13-11.1(c).

B. PINELANDS

In the Matter of Freshwater Wetlands Protection Act Rules, Statewide General Permit, Cranberry Expansion, 180 N.J. 415 (2004)

http://scholar.google.com/scholar_case?case=7903371253615869823&q=180+N.J.+415+&hl=en&as_sdt=2,31

General Permit 23, N.J.A.C. 7:7A-5.23, permitting the limited expansion of existing cranberry growing operations in the Pinelands National Reserve, does not violate provisions of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.A. Sec. 1344, the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 to 30, or the state's Surface Water Quality Standards, N.J.A.C. 7:9B-1.1 *et seq.*

Petrella v. New Jersey Pinelands Com'n, A-2970-04T1 (Nov. 3, 2006), certif. denied, 192 N.J. 68 (2007)

http://scholar.google.com/scholar_case?case=10717192690274595599&q=Petrella+v.+New+Jersey+Pinelands+&hl=en&as_sdt=2,31

A waiver application based on extraordinary hardship must include all property in common ownership on or after July 14, 1981. Appellant's property was in common ownership with three other properties as of that date. Based on that common ownership, the lots were treated as one overall parcel for purposes of development. Due to appellant's failure to include the three other

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parcels (which he did not now own) in his application, the application to construct a dwelling was denied. Court upholds the denial as a property exercise of the Commission's discretion. No taking occurred because appellant failed to demonstrate that the property is incapable of having a minimum beneficial use, particularly in light of the possibility that appellant could use the property in the township's density transfer program authorized in the Pinelands' CMP.

In the Matter of New Jersey Pinelands Comm'n's Approval of New Jersey's Natural Gas's Application, A-4997-16 (April 29, 2021)

https://scholar.google.com/scholar_case?case=16437337633836631796&q=new+jersey+pinelands&hl=en&as_sdt=6,31&as_ylo=2021

Where the Pinelands Commission set forth a process to review its staff's comprehensive management plan consistency determinations pursuant to a remand from the Appellate Division, such an action is not *de facto* rulemaking and is permitted by the Pinelands Preservation Act.

Phoenix Pinelands Corp. v. Davidoff, A-2823-16 (April 29, 2021)

https://scholar.google.com/scholar_case?case=12167305378061842549&q=phoenix+v+davidoff&hl=en&as_sdt=6,31&as_ylo=2021

Where a mining company sought to dispossess the state's ownership over parcels located in the Pinelands by identifying and exploiting flaws in the state's chain of title, same was unconscionable and clearly violated public policy, thereby barring the company from any remedy in a court of equity.

C. HIGHLANDS

OFP, L.L.C. v. State of New Jersey, 395 N.J. 571 (App. Div. 2007), *aff'd*, 197 N.J. 418 (2008)

http://scholar.google.com/scholar_case?case=8450289098464420695&q=OFP,+L.L.C.+v.+State+of+New+Jersey&hl=en&as_sdt=2,31

Highlands Act, which allows for exemptions and hardship waivers, and transfer of development rights is constitutional under taking principles; is constitutional notwithstanding its retroactive effect; withstands due process and equal protection challenges; vested rights under MLUL trumped by state Act, which has public safety as purpose; plaintiff must have exhausted administrative remedies that will be made available in the future under the terms of the Act.

Highlands Water Protection and Planning Act Rules, In Re N.J.A.C 7:38-1 et seq., 401 N.J. Super. 587 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=5363148966119447026&q=401+N.J.+Super.+587+&hl=en&as_sdt=2,31

Water allocation rule adopted within Highlands Act rules held to be valid, but substantial questions raised regarding the reasonableness of the methodology used by NJDEP in establishing the septic density standards required a remand for an evidentiary hearing.

OFP, L.L.C. v. The State of New Jersey, 197 N.J. 418 (2008)

Judgment of App Div. affirmed as reported in 395 N.J. Super. 571 (2007).

http://scholar.google.com/scholar_case?case=11819808238138176100&q=OFP,+L.L.C.+v.+The+State+of+New+Jersey+&hl=en&as_sdt=2,31

ABD Independence, Inc. v. Township of Independence, A-5264-06T1 (July 31, 2008)

When a project is exempt from the Highlands Act, it is exempt from all requirements of the Act. "When this provision is read in *pari materia* with subsection a, it is clear that the exemptions are meant to exempt the designated development from all provisions of the Highlands Act, including

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the 300 foot buffer regulations.”

County of Warren v. State of New Jersey, 409 N.J. Super. 495 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=7176362330977829805&q=409+N.J.+Super.+495+&hl=en&as_sdt=2,31

Failure of Highlands Council to adopt a master plan within 18-month statutory period did not render master plan invalid. Core preservation area did not violate due process or equal protection rights of farmers because its boundaries lacked a scientific basis.

In re: NJDEP ex rel. Christ Church, 414 N.J. Super. 592 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=5697846585983520680&q=414+N.J.+Super.+592+&hl=en&as_sdt=2,31

“Reconstruction” within the meaning of the Highlands Act permits the reconstruction of a property for any reason provided that it does not exceed 125% of the footprint of the lawfully existing impervious surface. “Footprint of the lawfully existing impervious surface” refers to the area covered by all impervious surfaces. “125% of the existing impervious surface: is determined as follows: “proposed additional impervious surface plus lawfully existing impervious surface, divided by lawfully existing impervious surface times one hundred. As long as the total proposed impervious surface is less than 125, the project will be considered to cover less than 125% of the footprint of the existing impervious surface.” Wetlands that were filled on the property without obtaining a permit from the Corps could be included in the calculation of lawfully existing impervious surfaces where there had been no enforcement action and the Corp reported that the fill was deemed acceptable.

Lakeside Manor v. State of New Jersey Department of Environmental Protection, 421 N.J. Super. 362 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=145542097068775618&q=421+N.J.+Super.+362+&hl=en&as_sdt=2,31

An applicant for an exemption under N.J.S.A. 13:20-28(a)(3) is only required to show that it received one of the DEP permits listed N.J.S.A. 13:20-28(a)(3)(b) before March 29, 2004. A violation of a condition of a permit may provide grounds for its revocation, but revocation does not occur automatically. The agency must bring a proceeding on notice to the permittee seeking revocation. Even if a permit is revoked, this does not mean that the permit ceased to exist as of the date the condition was violated or that any action taken in reliance on the permit before its revocation is invalid.

Highlands Master Plan, Executive Order 114, Memorandum of Understanding Between the Highlands Council and the Council on Affordable Housing, November 12, 2008 Resolution Extending Deadlines for 99 Municipalities, August 12, 2009 Resolution Extending Deadlines, and Adoption of Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan, In Re 421 N.J. Super. 614 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=128394234926690216&q=421+N.J.+Super.+614+&hl=en&as_sdt=2,31

Highlands Council was not required to follow the rule-making procedures of the APA in adopting the RMP and therefore the RMP is valid. COAH’s August 12, 2009 resolution that waived parts of the revised third round rules as applied to municipalities in the Highlands and instead directed those municipalities to follow the procedures and standards set forth in the Guidance document constituted an amendment to COAH’s revised third round rules that was required to be adopted in accordance with the APA. A Governor’s executive order may not direct a state agency to take action that is inconsistent with the enabling legislation under which it operates or its own rules and regulations.

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New Jersey Department of Environmental Protection Conditional Highlands Applicability Determination, Program Interest No. 435434, In the Matter of 433 N.J. Super. 223 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=1791051951361211773&q=A-3236-10T1&hl=en&as_sdt=4,31

“An issue is ‘moot’ when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy. . . . However, an appeal will not be moot when ‘a party still suffers from the adverse consequences . . . caused by [the prior] proceeding.’ “[A]n agency action does not become final until all avenues of internal administrative review have been exhausted.” “It was not until the DEP issued its final decision, reaffirming its determination regarding the application of the exemption and concluding that the condition in the Amended [Highlands Applicability Determination] were satisfied, that the agency decision became final.” DEP was not required to give deference to the Highlands Council’s recommendations because the statute vested authority in the DEP and the Council exceeded its authority in issuing recommendations.

In Re Cranford Development Associates, LLC, A2157-14T2 (April 26, 2016)

https://scholar.google.com/scholar_case?case=4330327595558753353&q=2157-14T2&hl=en&as_sdt=4,31

Township not entitled to adjudicatory hearing on DEP issuance of flood hazard permits where the municipality had opportunities in other proceedings to voice its concerns.

Peg Leg Webb, LLC v. New Jersey Pinelands Commission, A-4016-15T4 (Oct. 11, 2017)

https://scholar.google.com/scholar_case?case=1960228168764874352&q=A-4016-15T4&hl=en&as_sdt=4,31

“To the extent that the [Pinelands Protection Act and the Comprehensive Management Plan] are inconsistent with the MLUL, the former prevail” and site plan approval granted under a local ordinance that is inconsistent with the CMP may be voided by the Commission.

N.J. Highlands Coalition v. New Jersey Department of Environmental Protection, 236 N.J. 208 (2018)

https://scholar.google.com/scholar_case?case=17159958673120149143&q=N.J.+Highlands+Coalition+v.+New&hl=en&as_sdt=4,31

“The plain language of the Highlands Act requires ‘all final approvals’ to have been obtained in order to trigger the three-year period after which the exemption is lost if ‘construction beyond site preparation’ is not accomplished. N.J.S.A. 13:20-28(a)(17) (emphasis added). The Legislature used the plural form when referencing ‘approvals’ and further emphasized that there is not just one ‘final approval’ for purposes of Exemption 17 by adding the word ‘all’ to underscore that point. We do not see in Exemption 17’s distinctly different language a legislative intent to import the MLUL definition of ‘final approval.’” “With the very clear literal difference between the MLUL’s defined term, ‘final approval,’ and the terminology in Exemption 17 of the Highlands Act, we see no basis to equate the two when deciding this case. The Highlands Act’s reference is not to the definition of ‘final approval’ under the MLUL and we will not rewrite the Legislature’s words.”

In re New Jersey Highlands Water Prot. Council’s Approval of Resolution, A-2605-19, (May 13, 2021)

https://scholar.google.com/scholar_case?case=3844225580988968712&q=new+jersey+highlands+water+resolution&hl=en&as_sdt=6,31&as_ylo=2021

Court upheld the Highlands Council’s designation of a municipality as a Highlands Center where the Council had found that most of the municipality was developed and not part of a protection zone and also where the Council evidently balanced the need for smart growth with comprehensive

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planning.

IMO Proposed Construction of a Compressor Station, 476 N.J. Super. 556 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=2066381712065419282&q=Matter+of+Proposed+Constr.+of+Compressor+Station&hl=en&as_sdt=6,47&as_ylo=2023

The Department of Environmental Protection issued a Highlands Applicability Determination to a pipeline company exempting construction of a new compressor station in the Highlands Preservation Area from permitting review under N.J.S.A. 13:20-28(a)(11) (Exemption 11). Exemption 11 relieves a public utility from having to obtain a Highlands Preservation Area Approval for "routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems," so long as "the activity is consistent with the goals and purposes of" the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 to -35. The Department issued the HAD without a determination as to whether the new compressor station qualifies as a "routine upgrade" to Tennessee's existing gas pipeline system because the DEP interpreted the term "routine" in Exemption 11 as a modifier for only "maintenance and operations" and not as a modifier of "upgrade." The Court, using the maxim *noscitur a sociis*, determined that DEP's interpretation was incorrect and that the term "routine" should be read to apply to the various terms that follow. Consequently, the DEP should have determined whether what was being proposed was a "routine . . . upgrade" in order to fall within exemption 11.

In the Matter of Proposed Construction of Compressor Station, 258 N.J. 312 (N.J. 2024)

https://scholar.google.com/scholar_case?case=5964284413162102638&q=In+the+Matter+of+Proposed+Construction+of+Compressor+Station&hl=en&as_sdt=6,47&as_ylo=2024

The installation of a gas compressor station was not a "routine upgrade" that would exempt the development from the Highlands Water Protection and Planning Act.

D. NEW JERSEY MEADOWLANDS

Twp. of Kearny v. Hackensack Meadowlands Dev. Com'n, 344 N.J. Super. 55 (App. Div. 2001)

http://scholar.google.com/scholar_case?case=17031465539077208738&q=344+N.J.+Super.+55+&hl=en&as_sdt=2,31

Pursuant to the Solid Waste Management Act, the Department of Environmental Protection has exclusive jurisdiction to determine whether a municipality in which an access road to a transfer station is located is entitled to a "host community benefit" payment under *N.J.S.A. 13:1E-28.1*.

Amico/Tunnel Carwash, In Re 371 N.J. Super. 199 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=12750803187039417845&q=371+N.J.+Super.+199+&hl=en&as_sdt=2,31

Although amendment to the Administrative Procedures Act (APA) prohibits adoption of any rule or regulation that allows a third party "to appeal" a permit decision, the legislature's intent in enacting amendment was not to interfere with the constitutionally protected right to appeal an agency decision to appellate court, but, rather, to prohibit an administrative rule or regulation that authorizes a party to obtain a contested case hearing before the Office of Administrative Law (OAL). The determination whether to grant a variance is not simply a ministerial act, but, rather, a quasi-judicial determination that requires an agency empowered to grant such relief to evaluate the factual materials presented in support of the application in light of controlling legal standards. Hackensack Meadowlands Reclamation and Development Act does not confer authority upon the New Jersey Meadowlands Commission (NJMC) to delegate the power to grant a variance to its staff, and therefore, although the NJMC may assign its staff responsibility to assemble information

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relevant to a variance application, and to conduct any hearing that may be appropriate and make recommendations based on the record at such a hearing, the final decision whether to grant or deny a variance application must be made by the members of the NJMC themselves.

Infinity Broadcasting Corp. v. New Jersey Meadowlands Com'n, 377 N.J. Super. 209 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=15946589098849037924&q=377+N.J.+Super.+209+&hl=en&as_sdt=2,31

Claims of due process violation for adoption of amendments to a redevelopment agreement without making specific findings about impact of amendments on appellants rejected by court. When the administrative determination in question is quasi-legislative, rather than quasi-adjudicative, such as a municipality's adoption of a zoning ordinance or a redevelopment plan, overturning the decision requires it to be not merely "debatable," but arbitrary or capricious, contrary to law, or unconstitutional. Principles of due process require an administrative agency to provide some form of hearing, meaning an opportunity to be heard at a meaningful time and in a meaningful manner, before a person is finally deprived of a property interest. This is not a requirement for a quasi-judicial, contested case, hearing – agency is not required to act on the basis of findings of fact and conclusions of law supported by the record. Due process requires only the publication of notice and the holding of public hearings.

Nuckel v. The New Jersey Meadowlands Com'n, A-4707-04T2 (Aug. 8, 2006), certif. denied, 190 N.J. 254 (2007)

http://scholar.google.com/scholar_case?case=15672477267431434803&q=Nuckel+v.+The+New+Jersey+Meadowlands&hl=en&as_sdt=2,31

Although plaintiffs had standing to assert their own interests before the NJMC, they did not have standing to the Mount Laurel rights of others. The housing rights of low and moderate income persons can be asserted only by the persons themselves, by public interest organizations representing their interests, or by developers offering to build affordable housing.

Infinity Broadcasting v. New Jersey Meadowlands Com'n, 187 N.J. 212 (2006)

http://scholar.google.com/scholar_case?case=15790684310760630230&q=187+N.J.+212+&hl=en&as_sdt=2,31

With the specific exception of actions in condemnation or inverse condemnation, venue for which lie in the Law Division of the Superior Court, the Meadowlands Commission's actions are state agency actions reviewable as of right in the Appellate Division. The Appellate Division retains the discretion to retain jurisdiction in an appeal from the action of a state agency, but to refer the matter to the Law Division or to the agency for additional fact-finding. The court disavows the "single locality" exception set forth in *Mathesius v. Mercer County Improvement Authority*, 177 N.J. Super. (App. Div.), certif. denied, 87 N.J. 425 (1981). Review of quasi-legislative exercise requires no more than an ability to understand what action the agency took and why it did so, and therefore elaborate findings are not required.

Hartz/Damascus Bakery, In re 404 N.J. Super. 49 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=11401022753967783486&q=404+N.J.+Super.+49+&hl=en&as_sdt=2,31

Meadowlands Commission has exclusive jurisdiction over development in the Meadowlands District.

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In The Matter of Towers Associates Motion, A-0621-17T2 (App. Div. 2019)

https://scholar.google.com/scholar_case?case=7004024613072930137&q=A-0621-17T2&hl=en&as_sdt=4,31

Applicant could withdraw its application, without prejudice and without payment of the objector's fees. Rule 4:37-1(b) does not apply to administrative agency actions. "[O]ften in land use hearings applicants amend, withdraw and resubmit applications in order to address concerns raised by others. The Board observed that such action allows the concerns of the objectors to be addressed while at the same time protecting the rights of property owners, and 'to suggest that an applicant may not withdraw an application to address such concerns would discourage cooperation and defeat NJSEA's ability to perform its stated mission.'"

In the Matter of New Jersey Sports & Exposition Auth. Resolution, A-2868-19 (Jan.27, 2022)

https://scholar.google.com/scholar_case?case=10143841648913316321&q=Matter+of+New+Jersey+Sports+%26+Exposition&hl=en&as_sdt=6,31&as_ylo=2022

"[T]he HMAA dictates the required elements of the comprehensive District Master Plan. They are (1) issuance of 'a report presenting the objectives, assumptions, standards, and principles, as set forth in the master plan' that 'shall be a composite of . . . written proposals recommending the physical development of the lands within the district, in its entirety or a portion thereof,' prepared 'by the NJSEA following consultation 'with any federal or State agency having an interest in the 'district'; (2) consideration of 'existing patterns of the development in constituent municipalities'; and (3) 'provisions or criteria for the location and use of buildings, structures, facilities, and land for solid waste disposal and recycling.' N.J.S.A. 5:10A-10(a) to-10(e)." The Plan was therefore not deficient because it did not contain a regional transportation study.

In the Matter of the Challenge of the Town of Secaucus to Readoption of N.J.A.C. 19:7, A-0701-22 (July 30, 2024)

https://scholar.google.com/scholar_case?case=16408140982468685785&q=Challenge+of+the+Town+of+Secaucus&hl=en&as_sdt=6,47&as_ylo=2024

NJSEA transportation regulation upheld over municipal challenge of same.

E. OTHER AGENCY ACTION

Infinity Outdoor v. Delaware and Raritan Canal Com'n, 388 N.J. Super. 278 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=12972487725847024991&q=388+N.J.+Super.+278+&hl=en&as_sdt=2,31

DRCC's review of proposed projects within its review zone is the final administrative determination prior to judicial review of a contested case. The DRCC, and not the DEP, qualifies as the agency head under the Administrative Procedure Act for contested cases. DRCC's action was not untimely where petitioner sought continuances, amended its application which started the 45-day clock anew, and again amended its application by withdrawing its revision and sought approval of the prior application – which restarted the 45-day clock. Automatic approval statutes are to be "applied with caution." Courts have denied automatic approval where the failure to act within the statutory deadline was technical or inadvertent, or where there was no evidence of intentional delay or inattention to the application. Automatic approval not imposed where delay caused by the petitioner. DRCC's determination to deny waiver of visual screening requirement not arbitrary where proposed landscaping failed to disclose the height or spacing of trees and where petitioner admits that "it was not possible to make the billboard's [sic] completely invisible to the users of [] park."

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Aqua Beach Condominium Ass'n v. Department of Community Affairs, Bureau of Homeowner Protection, 186 N.J. 5 (2006)

http://scholar.google.com/scholar_case?case=258578777014646478&q=186+N.J.+5+&hl=en&as_sdt=2,31

Agencies have no superior ability to resolve purely legal questions, and a court is not bound by an agency's determination of a legal issue.

Proposed Xanadu Redevelopment Project, In the Matter of 402 N.J. Super. 607 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=11452744742894282467&q=402+N.J.+Super.+607+&hl=en&as_sdt=2,31

Statutorily required interagency consultation requires more than "informal conferences," but "consult with" does not mean "obtain approval of." Consultation requires a hearing, on notice to the public, which should be conducted as a quasi-legislative hearing in which all interested parties are permitted to present their views. Interagency consultation must result in the agency giving "every consideration" to the concerns and conditions raised in the other agencies' opinions, but their recommendations do not directly bind the agency. Scope of judicial review is limited to determining whether statutorily mandated and judicially mandated procedures have been complied with and "a review of any opinion and recommendation given by the agency to determine if it was based on sufficient proofs to support its conclusions and recommendations, giving due deference to the agency's expertise, and whether the recommendations are 'palpably arbitrary.'" The term "arbitrary and capricious" means having no rational basis and in connection with administrative agencies it means "willful and unreasoning action, without consideration and in disregard of circumstances." An agency's recommendations and opinions may have conditions attached to them.

In The Matter of the Issuance of Access Conforming Lot Permit No. A-17-N-N040-2007 by the New Jersey Department of Transportation for Block 136, Lots 2 and 3 in Mahwah Twp., NJ, 417 N.J. Super. 115 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=14739693842954036204&q=417+N.J.Super.+115+&hl=en&as_sdt=2,31

The Department of Transportation is required to consider data and argument submitted by interested persons when reviewing an application for a highway access permit under the State Highway Access Management Act. A competitor and owner of property abutting the highway to which the applicant seeks an access permit has a sufficient interest in issuance of the permit to qualify as an interested person.

Jersey Central Power & Light Company v. Melcar Utility Company, 212 N.J. 576 (2013)

http://scholar.google.com/scholar_case?case=1173831246619648118&q=No.+A-96&hl=en&as_sdt=4,31

Underground Facility Protection Act is unconstitutional as written because it requires mandatory arbitration and denies private litigants their constitutionally guaranteed right to a trial by jury for a common-law cause of action in negligence. The Office of Dispute Resolution cannot save the statute by claiming that it will recognize a right to a de novo trial should its arbitration process prove unsuccessful in resolving the dispute because an administrative agency can only act within the scope of its delegated authority and cannot alter the terms of a statute.

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Kain v. Gloucester City, 436 N.J. Super. 466 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=18173215165695201169&q=A-4854-12T2&hl=en&as_sdt=4,31

The plan or design immunity provision of the Tort Claims Act applies to injuries caused by a dangerous condition of a pier designed by the Coast Guard because the Coast Guard is “some other body” under N.J.S.A. 59:4-6(a). The term “some other body” “is broad and almost unlimited in scope, clearly designed to apply to entities that do not fall within the definition of ‘public entity’ yet perform the type of governmental function covered by the design immunity.” “Once effective, the immunity is perpetual, and cannot be lost if later knowledge shows a design or plan to be dangerous, or later circumstances render it dangerous.”

Charitable immunity is an affirmative defense. “The entity that claims immunity under the Charitable Immunity Act must demonstrate it “(1) was formed for nonprofit purposes; (2) is organized exclusively for religious, charitable or educational purposes; and (3) was promoting such objectives and purposes at the time of the injury to plaintiff who was then a beneficiary of the charitable works.” When the injured party is a direct recipient of the charity’s work or accompanies a beneficiary to the event, the charitable immunity defense is available.

United States Army Corps of Engineers v. Hawkes Co., Inc., 136 S.Ct. 1807 (2016)

https://scholar.google.com/scholar_case?case=18123948263996525085&q=No.+15-290&hl=en&as_sdt=3,31

Corps of Engineers’ “jurisdictional determination” under Clean Water Act was final agency action under the Administrative Procedure Act because it (1) “marks the consummation” of the Corps’ decision making on the question whether a particular property does or does not contain waters of the United States and (2) it “gives rise to direct and appreciable legal consequences.” “Parties need not await enforcement proceedings before challenging final agency action where such proceedings carry the risk of serious criminal and civil penalties.”

In The Matter of the Revocation of the Access of Block #613, Lots #4 & 5, Township of Toms River, 224 N.J. 53 (2016)

https://scholar.google.com/scholar_case?case=2803625980419770257&q=074011&hl=en&as_sdt=4,31

The State Highway Access Management Act “permits the Commissioner to revoke access to a state highway ‘after determining that alternative access is available which meets the standards’ for the property based on its use or zoning. N.J.S.A. 27:7-94(a). For property zoned or used for commercial purposes, “[a]lternative access shall be assumed to exist if the property owner enjoys reasonable access to the general system of streets and highways in the State and in addition ... (1) access onto any parallel or perpendicular street, highway, easement, service road or common driveway... is so situated that motorists will have a convenient, direct, and well-marked means of both reaching the business or use and returning to the highway.” The DOT bears the burden of proving that the alternative access is reasonable and that it “provides a convenient, direct, and well-marked route to enter the property and to return to the state highway. The Commissioner must also compare any alternative plan advanced by the property owner with the plan advanced by the agency and explain why the agency proposal better advances the statutory and regulatory scheme.” A plan advanced by the property owner that requires the direct purchase or condemnation of the owner’s property is not an alternative access plan for the property owner. “It is a different design plan that furthers the property owner’s personal commercial interests rather than the public interest.”

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In the Matter of the Issuance of Access Conforming Lot Permit No. A-17-N-0028-2013, A-3552-14T2 (July 25, 2016)

https://scholar.google.com/scholar_case?case=17090154273044293204&q=A-3552-14T2&hl=en&as_sdt=4,31

“‘Alternative access’ is defined as ‘the ability of any vehicle to enter a State highway indirectly through another improved roadway instead of directly from a lot across its State highway frontage.’ *N.J.A.C.* 16:47-1.1.” It was reasonable for NJDOT to construe “any vehicle” to mean that alternative access exists as long as one type of vehicle is able to exit the site to the highway. Where a property has two separate proposed uses (a convenience store and office), it was reasonable for NJDOT to separate the square footage of the uses as recommended in the ITE guidelines. A permit requirement that the developer build an auxiliary lane on the highway was not an unlawful quid pro quo because the Highway Access Code allows the DOT to request an applicant to contribute to capacity improvements necessitated by traffic attributed to the development of the lot.

In The Matter of the Application of JLJ/GWJ, LLC, A-3967-12T3 (July 29, 2016)

https://scholar.google.com/scholar_case?case=5399505618309656757&q=A-3967-12T3&hl=en&as_sdt=4,31

The DOT has “‘the ultimate authority as to the placement of aeronautical facilities. [citation omitted].’ A municipality cannot exercise its zoning authority ‘so as to collide with expressed policy goals of the State legislation, . . . and the DOT is not required to ‘give controlling weight to local zoning provisions.’” “A hearing is not necessary every time the DOT is considering whether or not to grant a license.” An objecting property owners’ group “does not have a sufficient property interest to entitle it to a contested case hearing.”

In the Matter of the Issuance of Access Street Intersection Permit No. S-10-N-0002-2013, A-4339-14T4 (Aug. 1, 2016)

https://scholar.google.com/scholar_case?case=8402630387439911278&q=A-4339-14T4&hl=en&as_sdt=4,31

Standing conferred upon taxpayer to challenge grant of DOT permit because “[t]he jughandle does impact those in the area who travel the roadway, which is sufficient public interest . . .” The court’s review of NJDOT’s determinations is limited. “We will not upset the determination of an administrative agency absent a showing that it was arbitrary, capricious or unreasonable; that it lacked fair support through substantial evidence; or that it violated legislative policies expressed or implied in the act governing the agency.” Challenge to methodology used to measure traffic counts rebuffed because “[a] reasonable interpretation of *N.J.A.C.* 16:47-4.37(e) allows NJDOT to accept any counting program that ‘conform[s] to the intent’ of the code provision governing traffic counts.” It was not unreasonable for NJDOT to consider “diverted link trips” as “pass-by trips” where the same was authorized in the ITE “Trip Generation” publication. Notwithstanding evidence that political pressure was applied to NJDOT to approve the project, the same was inconsequential where no evidence was presented that it had any meaningful impact and the decision was supported by credible evidence in the record.

In the Matter of the SADC Resolution FY2015R12(2), A-4379-14T1 (May 16, 2017)

https://scholar.google.com/scholar_case?case=13960574419306798329&q=A-4379-14T1&hl=en&as_sdt=4,31

A “trial-type hearing” is required where an agency is acting upon an application in a judicial or quasi-judicial capacity in which it relies upon expert testimony. The hearing is required to allow the applicant to contest the bases of the opinion and allow for appellate review.

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Princeton Battlefield Area Preservation Society v. Institute For Advanced Study, A-3428-14T3 (July 7, 2017)

https://scholar.google.com/scholar_case?case=11114610445095746609&q=A-3428-14T3&hl=en&as_sdt=4,31

“[A]n administrative agency has inherent power to reconsider, reopen and rehear prior decisions in the absence of any legislative restriction to the contrary.” A finding of fraud, or a material change of fact or law is not required – “the only limitations are the considerations of reasonableness, fairness and good cause.”

New Jersey Election Law Enforcement Commission v. Divincenzo, A-4131-15T3 (Sept. 8, 2017)

https://scholar.google.com/scholar_case?case=15565548339158124442&q=A-4131-15T3&hl=en&as_sdt=4,31

ALJs "have no independent decisional authority." "The ALJs' responsibilities — to conduct hearings, make factual findings and recommend decisions — frame the scope of their authority." "Judicial review of administrative agency action is a matter of constitutional right in New Jersey." "By instituting an automatic approval provision triggered by agency inaction within the designated period of time, N.J.S.A. 52:14B-10(c) was designed 'to thwart undue delay in agency action' and 'encourage prompt consideration and disposition of contested cases.' [citation omitted]. There is nothing in the language of the statute or its legislative history to support the notion that the Legislature intended to preclude judicial review of an ALJ's initial decision that was made final pursuant to the deemed-adopted provision when the agency was unable to discharge its decisional authority as a result of unfilled vacancies. We will not infer such intent, which would subvert our constitutionally-sanctioned mandate, where it has not been clearly demonstrated."

In Re Petition of Jersey Central Power & Light Co., A-2183-17T3 (Nov. 1, 2019)

https://scholar.google.com/scholar_case?case=466761614102773437&q=A-2183-17T3&hl=en&as_sdt=4,31

"BPU is authorized by statute to approve a public utility's proposed use of its property without the need to comply with ordinances or regulations enacted pursuant to the MLUL. . . . When making a determination under the statute, BPU must weigh the interests of all parties. Where the interests are equal, 'the utility is entitled to the preference, because the legislative intent is clear that the broad public interest to be served is greater than local considerations.' [citation omitted]. A utility need not prove that a proposed project is 'absolutely or indispensably[] necessary' but only that it is 'reasonably necessary' for the service, convenience, or welfare of the public."

In Re Leonia Borough Ordinances Numbers 2018-15, 2018-14, and 2018-17, A-2095-18T4 (March 6, 2020)

https://scholar.google.com/scholar_case?case=14920600692085320498&q=+Leonia+Borough+Ordinance+Nos.+2018-15,+2018-14+and+2018-17,+&hl=en&as_sdt=6,31&as_ylo=2019

Commissioner of DOT erred in holding municipal ordinances invalid "on their face" and that the municipality did not have the authority to adopt ordinances that created "no through" streets. The court found that "[t]he plain language of N.J.S.A. 39:4-8(a) contemplates that municipalities may pass measures—including ordinances—governing traffic conditions on its highways," [and that] the Legislature contemplated that traffic ordinances would be passed and submitted to the Commissioner. N.J.S.A. 39:4-8(a)." "We are convinced the Legislature clearly set forth a comprehensive plan for a municipality to present traffic problems to the Commissioner for a thorough review of its proposed solution, as set forth in a proposed ordinance, and for the submitted support for its proposal. The Commissioner is statutorily obligated to review, not only the ordinance, but also the statutorily-mandated submissions, and to analyze same under the statute's criteria, before approving or invalidating the ordinance. That statutory scheme—set forth in the statutes that we have perpended—recognizes that local governments may perceive problems that

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impact on more than its local streets, as well as the authority of the Commissioner to evaluate the problem and proposed solution. The review procedure set forth in N.J.S.A. 39:4-8(a) allows the Commissioner to exercise that authority while allowing municipalities to present its traffic concerns. That procedure, as mandated by the Legislature, requires more than a cursory review of the ordinances' language, although, to the extent suggested by the Borough's merits brief, a hearing is not part of the statutory review scheme."

Kammerman's Marine, Inc. v. New Jersey Economic Development Authority, A-3281-18T2 (Oct. 2, 2020)

https://scholar.google.com/scholar_case?case=13647118987441058587&q=kammerman&hl=en&as_sdt=6,31&as_ylo=2020

Appellant required to repay the EDA a portion of a hardship grant that it received under the Underground Storage Tank Financing Act pursuant to the terms of the grant. "Having represented it owned the Project Site, and received a grant based on that representation, Marine is estopped from now denying ownership to avoid repayment upon the site's sale."

Moss v. Borough of Franklin, A-1812-19 (Feb. 4, 2021)

https://scholar.google.com/scholar_case?case=16812208850460775359&q=moss+v.+franklin+&hl=en&as_sdt=6,31&as_ylo=2021

There is nothing in *Whispering Woods* to suggest that the public must be given wide latitude at a hearing to renegotiate the terms of an agreement settling an action in lieu of prerogative writs. *Whispering Woods* requires that a settlement agreement only be "subject to public presentation, a public hearing thereon and a public vote."

Gerbino v. State, A-0045-19 (March 23, 2021)

https://scholar.google.com/scholar_case?case=786490633886661527&q=gerbino+v.+state&hl=en&as_sdt=6,31&as_ylo=2021

Where there has been no final decision, any appeal therefrom is interlocutory.

In the Matter of the Application of Medicinal Marijuana Alternative Treatment Ctr., A-1281-19, A-1283-19, A-1284-19, A-1285-19, A-1286-19, A-1416-19, A-1656-19, A-1743-19, A-1744-19, A-1747-19, A-1754-19, A-1766-19, A-2166-19 (Feb. 18, 2021)

https://scholar.google.com/scholar_case?case=4527361890270079734&q=medical+marijuana+alternative&hl=en&as_sdt=6,31&as_ylo=2021

With respect to challenges to the Department of Health's alternative treatment center cannabis licensing process, where the regulations provide that applicants must show documentation of support from the "community or municipal governing body," and an applicant provides documentation of support from a number of prominent community members (but no municipal governing body support), the Department erred by invalidating the application on the basis of same.

In the Matter of the Petition of the New Jersey Natural Gas Co. for Approval and Authorization to Construct & Operate the S. Reliability Link Pursuant to N.J.A.C. 14:7-1.4, A-2876-15 (April 29, 2021)

https://scholar.google.com/scholar_case?case=8067593015352595&q=petition+of+new+jersey+natural+gas&hl=en&as_sdt=6,31&as_ylo=2021

Court upheld Board of Public Utilities' determination that a safety petition filed by New Jersey National Gas with respect to its southern reliability link was an "uncontested case" because the Appellant did not have any right to a hearing and there were no contested material facts.

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Maple Shade Equities, LLC v. Dep't of Transp., A-3709-19 (Nov. 17, 2021)

https://scholar.google.com/scholar_case?case=14682038888212469813&q=maple+shade+equities&hl=en&as_sdt=6,31&as_ylo=2021

Court affirms Department's refusal to entertain untimely appeal of an agency decision related to highway access regulation.

Columbia Fruit Farms, Inc. v. Dept. of Cmty. Affairs, A-3155-19 (Dec. 13, 2021)

https://scholar.google.com/scholar_case?case=13735634510008414896&q=columbia+fruit+farm&hl=en&as_sdt=6,31&as_ylo=2021

A letter from the Commissioner of the Department of Community Affairs to the Secretary of the Department of Agriculture which outlined the requirements of the Uniform Construction Code as applied to certain farm structures-was not a *de facto* and unlawful rulemaking under the Administrative Procedures Act.

In the Matter of the Renovation of the Permit for Direct Access to Route 206 for Block 2501, Lot 39, Hampton Township, A-1958-18 (July 5, 2022)

https://scholar.google.com/scholar_case?case=5935713828514563808&q=Revocation+of+the+Permit+for+Direct+Access+to+Route+206+for+Block+2501,+Lot+39,&hl=en&as_sdt=6,31

Despite the fact that Appellant's driveway had been in existence for seventy-five (75) years, where alternative access to and from the property is available and the Commissioner of the New Jersey Department of Transportation deems the existing driveway unsafe to existing traffic patterns, the Department correctly revoked the Applicant's driveway access permit to a state highway.

Town of Clinton v. Borough of Lebanon, A-2502-21 (Sept. 26, 2022)

https://scholar.google.com/scholar_case?case=2820138097490258760&q=Town+of+Clinton+v.+Borough+of+Lebanon&hl=en&as_sdt=6,31

The Board of Public Utilities has jurisdiction to hear an appeal by a municipal water company with respect to the application of an ordinance imposing certain street repair requirement of a municipality which the utility serves.

Animal Prot. League of New Jersey v. New Jersey Fish & Game Council, A-1019-22 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=4495953709760724844&q=animal+v.+new+jersey+y+fish&hl=en&as_sdt=6,47&as_ylo=2023

Court held that the State violated the emergency rulemaking requirements of the Administrative Procedure Act by failing to show that adopting the rule was necessary on fewer than 30 days' notice and that the December 2022 hunt was necessary to prevent imminent peril. Specifically, the court was swayed by Plaintiff's argument that Defendants were aware of the increased black bear population and increased rate of bear-human interactions long before adopting the emergency rule, which belied the State's claim that there was imminent peril requiring emergency rulemaking.

IMO Route 66, 477 N.J. Super. 22 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=13754144376390377336&q=Route+66&hl=en&as_sdt=6,47&as_ylo=2023

By way of a proposed roadway projects, the NJDOT's replacement of appellant's direct access to the state highway through an existing driveway with access through a shared driveway connecting to an adjacent landowner's parcel is a "modification" of access and not a "revocation" or "removal" of appellant's means of access.

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In the Matter of the Challenge of the Community Ass'ns Inst. New Jersey Chapter, Inc., A-2241-21 (Feb. 23, 2024, 2024)

https://scholar.google.com/scholar_case?case=923765940007446687&q=new+jersey+chapter&hl=en&as_sdt=6,47&as_ylo=2024

Court upholds NJDCA's refusal to amend and repeal certain regulations regarding reformed elections in community associations.

Pub. Serv. Elec. & Gas Co. v. Town of Westfield, A-3602-22 (April 14, 2025)

https://scholar.google.com/scholar_case?case=7574809563738876995&q=+Pub.+Serv.+Elec.+%26+Gas+Co.+v.+Town+of+Westfield&hl=en&as_sdt=6,47&as_ylo=2025

As applied to utility transmission infrastructure that runs across a number of municipalities, a municipal ordinance that sought to regulate utility pole height and diameter is preempted by Title 48 of the Revised Statutes.

LITIGATION & SETTLEMENT

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Warner v. Sutton, 274 N.J. Super. 464 (App. Div. 1994)

http://scholar.google.com/scholar_case?case=7710375472867367840&q=274+N.J.+Super.+464+&hl=en&as_sdt=2,31

Appellate Division sets forth settlement procedures for prerogative writ action.

Meehan v. K.D. Partners, 317 N.J. Super. 563 (App. Div. 1998)

http://scholar.google.com/scholar_case?case=5245573422087178769&q=317+N.J.+Super.+563+&hl=en&as_sdt=2,31

In a case challenging planning board's grant of a use variance, objector's application for intervention as of right, which was filed 30 days after case dismissed due to settlement by the parties and subsequently denied by the trial court, satisfied all of the required elements and should have been granted. However, upon remand, objector's intervention will be limited to challenging the settlement.

Clifton Hospice House v. Zoning Bd. of Adjust. of Clifton, A-4707-97T1 (App. Div. 1999), *certif. denied*, 163 N.J. 397 (2000)

Denial of counsel fees to litigant who successfully prosecuted complaint in lieu of prerogative writs was proper where trial judge's decision was based on zoning law rather than Fair Housing Act or N.J. Law Against Discrimination, either of which would have allowed recovery of counsel fees.

Structure Building Corp v. Abella, 377 N.J. Super. 467 (App. Div. 2005)

http://scholar.google.com/scholar_case?case=16507975621261256296&q=377+N.J.+Super.+467+&hl=en&as_sdt=2,31

Action for malicious abuse of process, malicious use of process, and tortious interference with prospective economic advantage brought by a developer against a group of objectors dismissed. The right of homeowners to participate in hearings and oppose zoning applications and appeal to the courts protected by *Noerr-Pennington* doctrine under which those who petition the government for redress are afforded immunity.

Builders League of South Jersey v. Gloucester County Utilities Authority, 386 N.J. Super. 462 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=17250364594791490403&q=386+N.J.+Super.+462+&hl=en&as_sdt=2,31

A fairness hearing was an appropriate vehicle for the court to employ to examine the appropriateness of a proposed settlement. In *Morris County Fair Hous. Council v. Boon Twp.*, 197 N.J. Super. 359 (Law Div. 1984), the court described a fairness hearing as follows: "the hearing on the proposed settlement is not a plenary trial and the court's approval of the settlement is not an adjudication of the merits of the case. Rather, it is the court's responsibility to determine, based upon the relative strengths and weaknesses of the parties' positions, whether the settlement is 'fair and reasonable,' that is, whether it adequately protects the interests of the person on whose behalf the action was brought." Developer's interest was adequately represented by existing parties and thus developer was not entitled to intervene as of right in action that was brought by builders group to challenge sanitary sewer connection fee that was imposed by county utilities authority. To intervene as of right, an applicant must: (1) claim an interest relating to the property or transaction which is the subject of the litigation; (2) show he is so situated that the disposition of the litigation may impair or impede his ability to protect that interest; (3) demonstrate that the applicant's interest is not adequately represented by existing parties; and (4) make a timely application to intervene. Here, the court found that the developer's position, which alleged that the utilities authority failed to follow applicable statute when it established the connection fee, was the same as the builders'

group position.

Rinaldo v. RLR Investment, 387 N.J. Super. 387 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=3420535757063762823&q=387+N.J.+Super.+387+&hl=en&as_sdt=2,31

Under R. 2:2-3(a)(2), the Appellate Division has exclusive jurisdiction to review any decision of a state administrative agency except one involving condemnation or inverse condemnation. The DEP's grant of a wetlands permit for the construction of an access road through wetlands and its approval of a mitigation project on a different property were both final decisions of a state administrative agency reviewable in the Appellate Division. However, plaintiffs' complaint asserting tort claims against private defendants which seek both injunctive relief and damages fall within the jurisdiction of the Chancery Division. The issuance of a government permit authorizing the disturbance of wetlands does not insulate the permittee from liability for causing damaging flooding to its neighbors' properties.

DEG, LLC v. Township of Fairfield, 398 N.J. Super. 59 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=11807065601554714614&q=398+N.J.+Super.+59+&hl=en&as_sdt=2,31

Township may enter into a settlement agreement of a case challenging the constitutionality of a statute under which the governmental body agrees to an injunction against enforcement of the statute if it reasonably concludes there is a substantial question concerning the statute's constitutionality and the costs of the statute's defense are not justifiable.

DEG, LLC v. Twp. of Fairfield, 198 N.J. 229 (2009)

http://scholar.google.com/scholar_case?case=7978591871174163334&q=198+N.J.+229+&hl=en&as_sdt=2,31

Township was not entitled to relief from a settlement in which it agreed to issue a certificate of nonconforming use for a sexually oriented business that was precluded by its zoning ordinance. An agreement to issue a certificate of nonconforming use as part of a settlement does not violate the MLUL.

Friends of Peapack-Gladstone v. Borough of Peapack-Gladstone Land Use Bd., 407 N.J. Super. 404 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=7919493649469693738&q=407+N.J.+Super.+404+&hl=en&as_sdt=2,31

The board properly conducted a *Whispering Woods* hearing to effectuate the settlement of litigation, including providing notice, a public hearing, a public vote, and a written resolution. Testimony from the developer's experts was not required where the board's planner provided detailed testimony regarding the project.

Schadrack v. K.P. Burke Builder, LLC, 407 N.J. Super. 153 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=5194668430101421170&q=407+N.J.+Super.+153+&hl=en&as_sdt=2,31

A de novo standard of review applies to a review of the arbitration conducted under the Construction Lien Law pursuant to N.J.S.A. 2A-44A-21(b)(10). A late service of an arbitration demand does not preclude its enforceability unless the party not timely served proves by a preponderance of the evidence that the late service has materially prejudiced its position.

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Washington Commons, LLC v. City of Jersey City, 416 N.J. Super. 555 (App. Div. 2010)
http://scholar.google.com/scholar_case?case=9763716930911285192&q=416+N.J.+Super.+555+&hl=en&as_sdt=2,31

Conditions imposed on a zoning approval are enforced via a complaint for injunctive relief, specific performance or other appropriate action brought by the municipality. Where there is no extant cause of action or court order to which an enforcement motion relates, the municipality must file a new action for relief. Under the doctrine of the law of the case, “if an issue, such as one concerning a variance, has been determined on the merits in a prior appeal it cannot be relitigated in a later appeal of the same case, even if of constitutional dimension.”

Price v. Hudson Heights Development, LLC, 417 N.J. Super. 462 (App. Div. 2011)
http://scholar.google.com/scholar_case?case=2172318962368097811&q=417+N.J.+Super.+462+&hl=en&as_sdt=2,31

Plaintiff who was successful in the Law Division in having the Board’s resolution approving a project declared null and void could not appeal the court’s rationale; appeals are taken from judgments and not from opinions.

Northgate Condominium Association, Inc. v. Borough of Hillsdale Planning Board, 214 N.J. 120 (2013)
http://scholar.google.com/scholar_case?case=8738681213286813626&q=Northgate&hl=en&as_sdt=4,31

One challenging a board’s decision bears the burden of demonstrating that the board’s decision was arbitrary, capricious, or unreasonable. “The challenger must show that the Board engaged in ‘willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is [valid] when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.’”

Wreden v. Township of Lafayette, 436 N.J. Super. 117 (App. Div. 2014)
http://scholar.google.com/scholar_case?case=14985220320429937949&q=A-5422-12T3&hl=en&as_sdt=4,31

On a motion to dismiss under Rule 4:6-2(e), a judge is not permitted to look outside of the parties’ pleadings. If a judge relies on matters outside the pleadings, a Rule 4:6-2(e) motion is automatically converted into a Rule 4:46 summary judgment motion and it was error for the trial court to dismiss the Complaint when discovery had not been completed.

Raritan Baykeeper, Inc. v. NJ Industries, Inc., Civ. No. 09-cv-4117 (JAP)(Jan. 2, 2014)
http://scholar.google.com/scholar_case?case=10244660620460518169&q=09-cv-4117&hl=en&as_sdt=3,31

Motions for reconsideration are not expressly recognized in the Federal Rules of Civil Procedure and are treated as motions to alter or amend judgment under Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment under Rule 60(b). However, neither Rule 59(e) nor Rule 60(b) applies where the order seeking to be reconsidered is not a final judgment or order. “Local Civil Rule 7.1(i) permits a party to seek reconsideration by the Court of a matter which the party believes the Judge ‘overlooked’ when it ruled on the motion. A motion for reconsideration under Rule 7.1(i) ‘shall be served and filed within 14 days after the entry of the order or judgment on the original motion by the Judge’ and submitted with a ‘brief setting forth concisely the matter or controlling decisions which the party believes the Judge . . . has overlooked.’ L. Civ. R. 7.1(i).” “A judgment may be altered or amended under Rule 7.1(i) if the movant shows at least one of the following grounds: ‘(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [issued its order]; or (3) the need to correct a clear error of law or fact to prevent manifest injustice.’”

Smith v. Honeywell International, Inc., No. 10-CV-03345-ES-JAD (Jan. 27, 2014)

http://scholar.google.com/scholar_case?case=14610234898605528022&q=CV-03345&hl=en&as_sdt=3,31

If a motion to amend the pleadings is not filed within the deadline set by the scheduling order, Rule 16 requires a moving party to demonstrate good cause for its failure to comply. Where a scheduling order sets no amendment deadline, the court looks to when discovery closes to determine whether the motion to amend is untimely. Whether good cause exists depends upon the diligence of the party seeking to modify the scheduling order. Amendments are to be freely granted in the absence of unfair prejudice, futility of amendment, undue delay, bad faith, or dilatory motive.

Pontone v. Borough of Rockleigh Planning Board, A-0298-13T1 (Feb. 4, 2015)

https://scholar.google.com/scholar_case?case=1566437529561848582&q=A-0298-13T1+&hl=en&as_sdt=4,31

“Plaintiffs’ failure to file a transcript of the existing portions of the board’s hearings was grounds alone for dismissal of the suite.” R. 4:69-4. “Without the remaining record created before the board, we can only assume the extensive factual findings contained in the board’s resolution were supported by evidence adduced at the board’s hearing.”

Robert J. Pacilli Homes, LLC v. Pilesgrove Township Planning Board, A-3942-12T3, A-3943-12T3 (Feb. 13, 2015)

https://scholar.google.com/scholar?q=A-3942-12T3&btnG=&hl=en&as_sdt=4%2C31

Party could not obtain a refund of attorney’s fees paid pursuant to a trial court order that was subsequently reversed where it had entered into a settlement agreement that failed to address the fee issue, the case was dismissed and the settlement agreement provided that it “resolved all issues” and “settled the disputes” and “constitute[d] the entire agreement” between the parties.

Thurman v. Lindenwold Center, LLC, A-5364-12T4 (March 9, 2015)

https://scholar.google.com/scholar_case?case=16397161975288890912&q=A-5364-12T4&hl=en&as_sdt=4,31

A cause of action is barred based on *res judicata* where there is (1) a final judgment by a court of competent jurisdiction, (2) identity of parties, and (3) substantially similar or identical causes of action. The preclusive effect of *res judicata* applies not only to claims which were raised in a prior action but also to matters which could have been raised. Collateral estoppel, or issue preclusion, bars the re-litigation of an issue that has already been litigated in a prior matter. “Collateral estoppel requires a party to establish: (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.” The entire controversy doctrine provides “that the adjudication of a legal controversy should occur in one litigation in only one court.” “The rule ‘encompasses virtually all causes, claims, and defenses relating to a controversy,’ [citations omitted] and requires all parties in an action to raise all transactionally related claims or risk preclusion.”

Village Supermarkets, Inv. v. Township of Egg Harbor, A-5370-12T4 (April 8, 2015)

https://scholar.google.com/scholar_case?case=8661082786403048940&q=A-5370-12T4&hl=en&as_sdt=4,31

Testimony of Township Administrator and Class II board member at trial on challenge to Township’s ordinance permitted where there was an inherent conflict in the land use ordinances which necessitated the use of extrinsic evidence as an aid to interpretation.

LITIGATION & SETTLEMENT

Black Creek Sanctuary Condominium Association v. Fortress Investment Group, L.L.C., A-5227-12T3 (April 9, 2015)

https://scholar.google.com/scholar_case?case=10346290154195335711&q=A-5227-12T3&hl=en&as_sdt=4,31

Absent exceptional circumstances, on a motion for reconsideration “[o]ne trial judge may not review whether the decision of another judge ‘of coordinate jurisdiction’ is correct in the same way that an appellate court does.”

LH Wagner Realty Corporation v. Martin, A-2203-13T4 (May 21, 2015)

https://scholar.google.com/scholar_case?case=6383993499202825954&q=A-2203-13T4+&hl=en&as_sdt=4,31

Rule 4:6-2(e) requires that when "matters outside the pleading are presented to and not excluded by the court, the motion [to dismiss] shall be treated as one for summary judgment. . . ." Where the court went “beyond the four corners of plaintiffs' complaint without converting the motion to one for summary judgment,” the decision must be reversed, without prejudice to defendant's filing a motion to dismiss pursuant to Rule 4:6-2(e), or for summary judgment, pursuant to Rule 4:46-2.

H.H. Hankins & Bro. v. Edgewood Properties, Inc. A-3109-13T4 (June 10, 2015)

https://scholar.google.com/scholar_case?case=3876663635507585902&q=A-3109-13T4&hl=en&as_sdt=4,31

"Although prejudgment interest in a tort action is expressly governed by [Rule] 4:42-11(b), 'the award of prejudgment interest on contract and equitable claims is based on equitable principles.'" "The equitable purpose of an award of prejudgment interest is compensatory, 'to indemnify the claimant for the loss of what the moneys due him would presumably have earned if payment had not been delayed.'" "[P]rejudgment interest is not a penalty[;] . . . its allowance simply recognizes that until the judgment is entered and paid, the defendant has had the use of money rightfully the plaintiff's."

Eileen J. Zigarelli 2014 Trust Agreement v. 65 Madison Avenue Associates, L.L.C., A-0915-14T3 (June 17, 2015)

https://scholar.google.com/scholar_case?case=17963890509520097178&q=A-0915-14T3&hl=en&as_sdt=4,31

“Arbitration awards may be vacated only for fraud, corruption, or similar wrongdoing on the part of the arbitrators,” where the arbitrator exceeded the arbitrator’s powers or the arbitration was conducted without proper notice.

Buchler v. Club Regatta Condo Association, A-1108-13T2[1]; A-1456-13T2 (June 24, 2015)

https://scholar.google.com/scholar_case?case=9980369738347564066&q=Buchler+v.+Club+Regatta&hl=en&as_sdt=4,31

Where claims or cross-claims are not frivolous when first asserted, but lack evidentiary support as discovery progresses, the party has an obligation at that time to withdraw the claims or be liable for reasonable counsel fees and litigation fees under the FLS and Rule 1:4-8.

Giordano v. MGC Mortgage, Inc., 160 F. Supp. 3d 778 (D.N.J. 2016)

[https://scholar.google.com/scholar_case?case=15418706977127815523&q=4399+\(JLL\)&hl=en&as_sdt=3,31](https://scholar.google.com/scholar_case?case=15418706977127815523&q=4399+(JLL)&hl=en&as_sdt=3,31)

“[I]n order to bring a claim under RESPA, a plaintiff ‘must sufficiently allege one of two types of damages: (1) actual damages to the borrower as a result of the failure to comply with § 2605; or (2) statutory damages in the case of a pattern or practice of noncompliance with the requirements of § 2605.’” The cost of postage and fees related to sending the initial letter – prior to any alleged

violation – are not actual damages under RESPA because the damages must flow as a result of the violation.

US Bank Nat. Ass’n v. Curcio, 444 N.J. Super. 94 (App. Div. 2016)

https://scholar.google.com/scholar_case?case=16445904357943217229&q=A-2649-13T4&hl=en&as_sdt=4,31

Court reviews Court Rules governing personal and mailed service of process and finds that mailed service effective following plaintiff’s reasonable and good faith attempt to serve defendant personally.

Jai Sai Ram, LLC v. The Planning/Zoning Board of South Toms River, 446 N.J. Super. 338 (App. Div. 2016)

https://scholar.google.com/scholar_case?case=4662268700999096378&q=A-2075-14T2&hl=en&as_sdt=4,31

The “time of application rule” “does not apply where the local zoning is amended to specifically permit the use which is the subject of a variance application. In that situation, the variance is no longer necessary, and . . . where . . . there is a pending appeal challenging the grant of the variance, the appeal becomes moot by virtue of the amendment specifically permitting the use.”

Highlander Condominium Association, Inc. v. Katz, A-0869-13T1 (Feb. 26, 2016)

https://scholar.google.com/scholar_case?case=14525285125901779350&q=0869-13T1&hl=en&as_sdt=4,31

Condominium unit owner has right to a jury trial to contest fees and assessment. “Once any party demands a jury trial, the court may waive the jury trial only with the consent of all parties.”

Vincent Pools, Inc. v. APS Contractors, Inc., A-2670-13T3, A-2688-13T3 (March 18, 2016)

https://scholar.google.com/scholar_case?case=10479253350567292056&q=A-2670-13T3.&hl=en&as_sdt=4,31

In a multi-defendant case where the plaintiff is not seeking joint and several liability, the offer-of-judgement rule permits a party to make an offer in respect of the total judgment, rather than in pro rata shares payable by individual defendants.

Fanning v. Township of Hillsdale, A-4925-13T4 (May 23, 2016)

https://scholar.google.com/scholar_case?case=9474374758524149350&q=No.A-4925-13T4&hl=en&as_sdt=4,31

“Rule 4:49-2 requires that a motion for reconsideration be filed within twenty days ‘after service of the judgment or order upon all parties by the party obtaining it.’ Rule 1:3-4(c) prohibits ‘the parties’ or ‘the court’ from enlarging the twenty-day time restriction in Rule 4:49-2.”

Fields v. Trustees of Princeton University, Nos. 005904-2014, 007556-2015 & 007672-2016 (Tax May 31, 2015)

https://scholar.google.com/scholar_case?case=10145302690061231593&q=Nos.+005904-2014&hl=en&as_sdt=4,31

“Neither New Jersey nor other American courts have directly addressed the issue of non-indigent litigants, as here, who may still find it difficult, if not impossible, to afford high court fees. . . This court is satisfied that access to our courts is a right guaranteed to all citizens regardless of their economic situation. . . [and] justice requires that court fees must never be the basis to deny anyone access to the courts regardless of his or her economic situation.”

LITIGATION & SETTLEMENT

Farmland Dairies, Inc. v. Borough of Wallington, Nos. 009501-2014, 004801-2015, 002499-2016 (NJ Tax June 21, 2016)

https://scholar.google.com/scholar_case?case=14874428085074026952&q=Farmland+Dairies+Wallington&hl=en&as_sdt=4,31

N.J.S.A. 54:3-21 provides that “a taxpayer . . . feeling discriminated against by the assessed valuation of other property in the county, . . . may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000.” A party may not intervene in an ongoing tax appeal to challenge the assessment if the intervention occurs after the statutory deadline.

Four Felds, Inc. v. City of Orange Township, A-2685-13T1 (June 23, 2016)

https://scholar.google.com/scholar_case?case=16787552408806266394&q=A-2685-13T1&hl=en&as_sdt=4,31

“Collateral estoppel, also referred to as issue preclusion, ‘bars re-litigation of any issue which was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action.’” “Collateral estoppel applies when the party asserting the doctrine shows: ‘(1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.’”

Vorhand v. Guinan, A-3768-14T3 (June 23, 2016)

https://scholar.google.com/scholar_case?case=1210962694274341636&q=A-3768-14T3&hl=en&as_sdt=4,31

A judge must make factual findings to support an award of sanctions. The grant of a dispositive motion, without more, is insufficient to establish an unsuccessful party’s bad faith.

Oceanfront Investments, LLC v. Philomenas, LLC, A-0988-14T2 (June 29, 2016)

https://scholar.google.com/scholar_case?case=16102709677612369545&q=A-0988-14T2&hl=en&as_sdt=4,31

“If ‘matters outside the pleading are presented to and not excluded by the court,’ a motion under Rule 4:6-2(e) ‘shall be treated as one for summary judgment and disposed of as provided by R. 4:46.’ R. 4:6-2.” “The consequence of defendants’ failure to dispute any of the assertions in plaintiff[s] statement of material facts is clearly prescribed by the rule. They ‘will be deemed admitted.’”

Marie-Glasby v. Hart, A-1213-14T4 (July 11, 2016)

https://scholar.google.com/scholar_case?case=6205318679389628385&q=1213-14T4&hl=en&as_sdt=4,31

A motion for reconsideration must be filed within 20 days of receipt of the order.

Battista v. Borough of Beach Haven, No. 16-1918 (D.N.J., July 21, 2016)

https://scholar.google.com/scholar_case?case=11786939550339636280&q=No.+16-1918+Battista&hl=en&as_sdt=3,31

Claims arising out of a dispute involving a denial of a transfer of a liquor license were not ripe because an appeal of the denial was pending with the Division of Alcoholic Beverage Control.

Galaxy Towers Condominium Association, Inc. v. Township of North Bergen, A-3583-13T3, A-0184-14T2, A-0519-14T2 (Aug. 8, 2016)

https://scholar.google.com/scholar_case?case=17742136956527193570&q=A-0184-14T2&hl=en&as_sdt=4,31

During a remand hearing, if a party relies upon documents that it refuses to disclose, a litigant must seek an order compelling the disclosure of the documents or it will be deemed to have waived this issue.

Garden State Highway Products, Inc. v. Vineland Cooperative Produce Auction Ass'n., A-2377-14T3 (Sept. 1, 2016)

https://scholar.google.com/scholar_case?case=11118377035401244016&q=A-2377-14T3&hl=en&as_sdt=4,31

Award of attorneys' fees and costs was appropriate where plaintiff's claim of adverse possession was frivolous and plaintiff "knew, or should have known, that the complaint . . . was without any reasonable basis in law or equity and could not be supported by a good faith argument for the extension, modification or reversal of existing law." *N.J.S.A.* 2A:15-59.1(b)(2)."

Huny & BH Associates Inc. v. Silberberg, A-4569-15T1 (Dec. 2, 2016)

https://scholar.google.com/scholar_case?case=17001408834094572192&q=A-4569-15T1&hl=en&as_sdt=4,31

"We are unpersuaded that it is consistent with New Jersey practice and policy to treat the denial of a motion to intervene as of right as final and appealable as of right. The as-of-right-vs.-permissive dichotomy creates a problematic two-part evaluation for the reviewing court. As a threshold matter, the court must reach the merits of the appeal from the intervention denial — that is, whether there was a right to intervention. Only after this evaluation may the court decide whether there was a right to appeal. Since both forms of motions to intervene merely resolve one issue as to one party, it is far more sensible to treat both as interlocutory."

The Islamic Society of Basking Ridge v. Township of Bernards, 681 Fed. Appx. 110 (3rd Cir. 2017)

https://scholar.google.com/scholar_case?case=963042600298354304&q=16-4414&hl=en&as_sdt=3,31

An objector, "as a member of the public, has a general interest in the litigation [involving a land use matter], his interests are adequately represented by the Township, the 'governmental entity charged by law with representing' him" and does not meet the requirements for intervention as of right. "Permissive intervention is available when an applicant 'has a claim or defense that shares with the main action a common question of law or fact.'"

New York-Connecticut Development Corp. v. Blinds-To-Go (U.S.) Inc., 449 N.J. Super. 542 (App. Div. 2017)

https://scholar.google.com/scholar_case?case=8540574294808286261&q=A-5660-14T4&hl=en&as_sdt=4,31

"Although a party may plead and pursue alternative, and even inconsistent, theories, [citation omitted], a party is not entitled to recover on inconsistent theories. Once the jury found there was an enforceable contract between the parties, plaintiff was not entitled to recover damages under quantum meruit."

LITIGATION & SETTLEMENT

Triple T Construction v. Township of West Milford, No. 14-2522 (D.N.J. Jan. 12, 2017)

https://scholar.google.com/scholar_case?case=3362549721280827369&q=triple+t+construction+llc+v+township+of+west+milford&hl=en&as_sdt=3,31

28 U.S.C. § 1367(c)(3) provides that a “‘district court[] may decline to exercise supplemental jurisdiction over a claim’ if ‘the district court has dismissed all claims over which it has original jurisdiction.’ . . . However, the Third Circuit has determined that ‘where the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so.’”

501 Washington Blvd LLC v. Sea Girt Borough Planning Board, A-2993-14T3 (Jan. 3, 2017)

https://scholar.google.com/scholar_case?case=11941308059243159289&q=A-2993-14T3&hl=en&as_sdt=4,31

A motion for reconsideration “should only be used ‘for those cases which fall into that narrow corridor in which either 1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence.’” Motion for reconsideration improperly denied where a basis for the Board’s action relied upon by both the Board and the Court later determined to be erroneous.

“Prior to remanding the matter to the Planning Board, the trial court should conduct a case management conference with the parties’ attorneys and map out a procedural course of conduct for the Board to follow on remand. As the Court stated in *Pizzo*, the Board’s reconsideration of an applicant’s proposal on remand need not be confined to the record and, therefore, the possibility that additional evidence may be required by the Board or sought or tendered by the applicant should not be automatically foreclosed. . . Finally, the trial court and the parties should resolve the issue of which Board members may participate in the reconsideration of the application if there have been changes in membership since the time of the Board’s [] resolution. As the Court noted in *Pizzo*, when, as here, a planning board is directed to make a ‘fresh determination’ of a matter, all members of the board may participate, including ‘those who participated in the earlier hearings as well as those who have since joined the board.’” [citation omitted].

39 Union Square Condominium Association, Inc. v. Kitrosser, A-1164-15T3 (Jan. 10, 2017)

https://scholar.google.com/scholar_case?case=5141446393256511040&q=A-1164-15T3&hl=en&as_sdt=4,31

“[A] party is not permitted to use a motion for reconsideration as a basis for presenting facts or arguments that could have been provided in the original motion.” “A party seeking to be relieved of his or her obligation under a settlement agreement must provide ‘clear and convincing proof’ of ‘fraud or other compelling circumstances.’”

Lacroce v. M. Fortuna Roofing, Inc., No. 14-7329 (JBS/KMW) (Jan. 31, 2017)

https://scholar.google.com/scholar_case?case=12794024543567187578&q=M.+Fortuna&hl=en&as_sdt=3,31

A request for attorneys’ fees and costs pursuant to the New Jersey Frivolous Claims Act may not be included as part a motion for summary judgment on the merits. Such a request must be submitted in “an independent motion for sanctions outside of its summary judgment briefing, as well as an affidavit stating in detail: ‘[t]he nature of the services rendered, the responsibility assumed, the results obtained, the amount of time spent by the attorney, any particular novelty or difficulty, the time spent and services rendered by secretaries and staff, [and] other factors pertinent in the evaluation of the services rendered.’ N.J.S.A. 2A:15-59.1(c)(1).”

Zarour v. JPMorgan Chase Bank, N.A., No. 14-cv-06261-NLH-AMD (D.N.J., Feb. 21, 2017)
https://scholar.google.com/scholar_case?case=9448124991963851758&q=No.+14-cv-06261&hl=en&as_sdt=3,31

When jurisdiction depends on diversity of citizenship, the pleadings must contain sufficient averments or facts to demonstrate the required diversity, or it will be dismissed for lack of subject matter jurisdiction.

D' Antonio v. Borough of Allendale, No. 2:16-0816 (CCC) (JBC) (D.N.J., March 1, 2017)
https://scholar.google.com/scholar_case?case=16412748545740169416&q=No.+2:16-0816&hl=en&as_sdt=3,31

The appointment of pro bono counsel under 28 U.S.C. § 1915(e), in a civil case is a privilege, not a statutory or constitutional right. The decision to appoint pro bono counsel involves a two-step analysis. First, a court must determine, as a threshold matter, whether a plaintiff's claim has "some merit in fact and law," and if the action arguably has merit, it should then consider the following factors:

- (1) the plaintiff's ability to present his or her own case;
- (2) the complexity of the legal issues;
- (3) the degree to which factual investigation will be necessary and the ability of the plaintiff to pursue such investigations;
- (4) the amount a case is likely to turn on credibility determinations;
- (5) whether the case will require the testimony of expert witnesses;
- (6) whether the plaintiff can attain and afford counsel on his own behalf.

Torre v. Geary, A-1190-15T1 (Mar. 24, 2017)
https://scholar.google.com/scholar_case?case=13482154249578097646&q=A-1190-15T1&hl=en&as_sdt=4,31

The parties to a contract may make it dependent upon the performance of a condition precedent. However, a condition precedent must be expressed in clear language or it will be construed as a promise because a condition precedent works a forfeiture and is therefore disfavored by the courts.

Adler v. Craft, A-2448-15T3 (Mar. 27, 2017)
https://scholar.google.com/scholar_case?case=1645399324660879752&q=A-2448-15T3&hl=en&as_sdt=4,31

A motion in aid of litigants' rights under Rule 1:10-3 provides a "means for securing relief and allow[s] for judicial discretion in fashioning relief to litigants when a party does not comply with a judgment or order." [citation omitted] "The scope of relief in a motion in aid of litigants' rights are limited to remediation of the violation of a court order." Where a court held that a party had no right to construct a wall without the Township's consent, neither that party nor the Township violated the court order when that consent was subsequently given.

Greco v. Twinn Cedars, Inc., A-3631-15T3 (May 2, 2017)
https://scholar.google.com/scholar_case?case=5614530898360664927&q=A-3631-15T3&hl=en&as_sdt=4,31

Failure of the trial court to state its factual findings and legal conclusions on a motion requires remand so the appellate court may understand the rationale underlying the decision.

LITIGATION & SETTLEMENT

Tedeschi v. D.N. Desimone Construction, Inc., Civ. No. 15-8484 (NLH/JS)(May 8, 2017)
https://scholar.google.com/scholar_case?case=795706010560520344&q=15-8484&hl=en&as_sdt=3,31

The binding dispute resolution provision of the Standard Form AIA Document A101-2007 which offers three choices to resolve disputes “clearly explains in a simple way that the parties’ disputes must be resolved in arbitration instead of litigation” where the parties select the arbitration dispute mechanism, rather than the litigation option.

Zitter v. Petruccelli, Civ. No. 15-6488 (NLH/KMW)(May 8, 2017)
https://scholar.google.com/scholar_case?case=5941545822776852499&q=15-6488&hl=en&as_sdt=3,31

Motion to reconsider an interlocutory order must be filed within 14 days under Local Civil Rule 7.1(i), and not within the 28 days allowed by Fed. R. Civ. P. 59(e), which is designed to address orders rendering a final judgment.

Fidelity Eatontown, LLC v. Excellency Enterprise, LLC, No. 3:16-cv-3899-BRM-LHG (June 22, 2017)
https://scholar.google.com/scholar_case?case=8069441549142861222&q=No.+3:16-cv-3899-BRM-LHG&hl=en&as_sdt=3,31

A plaintiff asserting a claim for attempted monopolization pursuant to Section 2 of the Sherman Act must allege (1) that the defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent to monopolize and (3) a dangerous probability of achieving monopoly power. The costs of contesting basely challenges to its planning application which “represent a key component of Defendants’ effort to discourage competition” constitute antitrust injuries. To support a claim of conspiracy to monopolize, Plaintiff must show the existence of an agreement, i.e., “a unity of purpose, a common design and understanding, a meeting of the minds, or a conscious commitment to a common scheme.”

“The four elements of a claim of tortious interference with prospective economic advantage under New Jersey law are: (1) a reasonable expectation of economic advantage to plaintiff, (2) interference done intentionally and with malice, (3) causal connection between the interference and the loss of prospective gain, and (4) actual damages.” The new business rule, which deems the prospective profits of a new business too speculative to meet the standard of legal certainty, does not apply where the business operator has experience in the enterprise that alleges lost prospective profit. Defendants’ alleged baseless, bad-faith challenges to Plaintiffs land use application supported a claim of tortious interference with contract because the court infers that Defendant was aware of an agreement between the property owner and its tenant because the owner had processed the land use application on behalf of its tenant.

Jamco Heating & Air Conditioning, Inc. v. Procaccini, A-2836-15T4 (May 15, 2017)
https://scholar.google.com/scholar_case?case=14631396462704945634&q=A-2836-15T4&hl=en&as_sdt=4,31

A party seeking to vacate a final judgment must meet the standards of Rule 4:50-1 which “provides six grounds for relief: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.”

Ahad v. Gausulazam Mini Market, A-0704-15T2 (May 32, 2017)

https://scholar.google.com/scholar_case?case=2330095024635486358&q=Ahad+v.+Gausulazam&hl=en&as_sdt=4,31

Rule 2:6-1(a)(1) requires an appellant's appendix to include "such . . . parts of the record . . . as are essential to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied upon by the respondent." Rule 2:5-4 requires an appellant to provide "the stenographic transcript of the proceedings." When the appellant fails to provide the requisite documents necessary for appellate review, the appeal will be dismissed.

Polifly Gas, Inc. v. Schrader, A-2805-14T2 (June 14, 2017)

https://scholar.google.com/scholar_case?case=14239441113128282168&q=A-2805-14T2&hl=en&as_sdt=4,31

A motion to dismiss under Rule 4:6-2(e) must be based on the pleadings. "For purposes of such a motion, the 'complaint' includes the 'exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim.'" If matters outside the pleadings are presented to the court, the motion must be treated as a motion for summary judgment.

Camden Day Association v. City of Camden, Nos. 012151-2015, 012152-2015, 012171-2015 (Tax July 5, 2017)

https://scholar.google.com/scholar_case?case=2704673026881153043&q=012151-2015&hl=en&as_sdt=4,31

A taxpayer's failure to file a timely tax appeal denies the court jurisdiction to provide relief.

Habitate, LLC v. City of Bridgeton, A-2296-15T2 (July 21, 2017)

https://scholar.google.com/scholar_case?case=3648173744100442605&q=A-2296-15T2&hl=en&as_sdt=4,31

Res judicata does not apply where there is dissimilarity between the issues raised in different law suits. The entire controversy doctrine bars a subsequent action only when the prior action based on the same transactional facts has been tried to judgment on the merits or settled. "New Jersey has a broad definition of standing when it comes to challenging governmental actions," and "taxpayer intervention is appropriate where there are claims of fraud or corruption."

Grabowsky v. Township of Montclair, A-4294-15T2, A-4489-15T2 (Aug. 10, 2017)

https://scholar.google.com/scholar_case?case=3536067510461964656&q=A-4489-15T2&hl=en&as_sdt=4,31

"The 'fund in court' is created when a 'plaintiff's actions have created, preserved or increased property to the benefit of a class of which he is a member.' [citation omitted]. It applies to 'situations in which equitably[,] allowances should be made and can be made consistently with the policy of the rule that each litigant shall bear his own costs.' [citation omitted]. Such a situation exists 'when a party litigates a matter that produces a tangible economic benefit for a class of persons that did not contribute to the cost of the litigation,' making it 'unfair to saddle the full cost' of the litigation upon the plaintiff." The fund in court exception did not apply to plaintiff's successful challenge to a municipal zoning ordinance because there was no "fund" that was created, preserved, increased or the subject of the litigation. "Although the trial court described plaintiff's suit as producing a 'tangible conferred benefit of protecting the integrity of government and fostering citizen confidence,' that cannot be substituted for the requirement that the suit produce a 'tangible economic benefit' to a class of persons."

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Winks/Krug Landscaping Services, LLC v. Stonebridge at Wayne Homeowners Association, A-3220-15T3 (Aug. 23, 2017)

https://scholar.google.com/scholar_case?case=9874900852680588709&q=A-3220-15T3&hl=en&as_sdt=4,31

The calculation of lost profits as a result of a breach of contract requires the calculation of “the difference between the contract price and the cost of performance or production.”

Smith v. Hillside Village, No. 17-0883 (KM)(Sept. 11, 2017)

https://scholar.google.com/scholar_case?case=13115634047606669093&q=No.+17-0883&hl=en&as_sdt=3,31

The entire controversy rule is an equitable doctrine that the court should not apply when the totality of the circumstances makes it unfair to do so.

Dumont Board of Education v. Borough of Dumont, A-4309-15T3 (Oct. 11, 2017)

https://scholar.google.com/scholar_case?case=3220163375341834159&q=A-4309-15T3&hl=en&as_sdt=4,31

A case is moot if the disputed issue has been resolved with respect to the parties who instituted the litigation and court may consider events that occur subsequent to the filing of an appeal in determining that an appeal is moot.

Perez v. Adler, A-4103-14T4 (Oct. 17, 2017)

https://scholar.google.com/scholar_case?case=8695335966782212809&q=A-4103-14T4&hl=en&as_sdt=4,31

In malpractice case against engineering expert, plaintiff’s engineering expert gave a net opinion because he failed to identify the standard of care applicable to the defendant engineering expert. Similarly, “in a legal malpractice action, expert testimony is required to define the duty owed and explain the breach. [citation omitted]. Furthermore, when the issue of proximate cause is ‘beyond the common knowledge of lay persons,’ expert testimony is required to establish that the attorney’s malpractice was a proximate cause of damage to the plaintiff.” Where plaintiff’s legal expert relies upon another expert’s report which is found to be a net opinion, that legal expert’s report is rendered an inadmissible net opinion.

Lukoil North America LLC v. RTS. 94 & 515 Vernon, LP, No. 16-8345 (NJ Dist. Dec. 18, 2017)

https://scholar.google.com/scholar_case?case=4811439418996526773&q=Lukoil+North+America+LLC+v.+RTS+94+%26+515+Vernon+&hl=en&as_sdt=6,31

“Pursuant to the *Brillhart-Wilton* doctrine, ‘when a federal suit is brought under the Federal Declaratory Judgments Act, presenting only questions of local laws, the court is under ‘no compulsion to exercise [jurisdiction] if a parallel state court proceeding would address the matters in controversy between the parties.’” *Marshall v. Lauriault*, 372 F.3d 175, 183 (3d Cir.2004) (quoting *Brillhart*, 316 U.S. at 495).” The existence of a related state court proceeding alone does not require the court to decline jurisdiction. Additional factors include: “(1) the likelihood that a federal court declaration will resolve the uncertainty of obligation which gave rise to the controversy; (2) the convenience of the parties; (3) the public interest in settlement of the uncertainty of obligation; (4) the availability and relative convenience of other remedies; (5) a general policy of restraint when the same issues are pending in a state court; (6) avoidance of duplicative litigation; (7) prevention of the use of the declaratory action as a method of procedural fencing or as a means to provide another forum in a race for res judicata; and (8) (in the insurance context), an inherent conflict of interest between an insurer’s duty to defend in a state court and its attempt to characterize that suit in federal court as falling within the scope of a policy exclusion.” The *Brillhart-Wilton* abstention doctrine, however, applies only to federal cases seeking declaratory relief. When legal relief is sought, then federal district courts have a “virtually unflagging

obligation" to exercise jurisdiction. The court employs the independent claim test when a complaint contains claims for both legal and declaratory relief to determine whether the legal claims are independent of the declaratory claims. If the legal claims are dependent on the declaratory claims, the court may decline jurisdiction of the entire action.

Thompson v. Mansfield Township, A-4087-15T4 (Nov. 20, 2017)

https://scholar.google.com/scholar_case?case=11333945820767829382&q=Thompson+v.+Mansfield+&hl=en&as_sdt=6,31

"Mandamus relief to compel municipal officials to enforce zoning ordinances is not absolute." "[B]oth the plaintiff's right to the relief requested and the defendant's duty to perform it must 'legally be clear.'" "Those seeking mandamus relief to enforce a zoning ordinance must show: (1) that there has been a clear violation of a zoning ordinance that has especially affected the plaintiff; (2) a failure of appropriate action despite the matter having been duly and sufficiently brought to the attention of the supervising official charged with the public duty of executing the ordinance; and (3) the unavailability of other adequate and realistic forms of relief."

New Jersey Department of Environmental Protection v. Exxon Mobil Corporation, 453 N.J. Super. 272 (App. Div. 2018)

https://scholar.google.com/scholar_case?case=3004587477532951404&q=A-0668-15T1&hl=en&as_sdt=4,31

"[I]n deciding whether to permit intervention, the court should consider if the intervenor has standing in its own right to assert a claim or defense that presents a 'common' 'question of law or fact' with the pending action." Environmental groups had standing to challenge settlement under the Spill Act even though they did not participate in underlying administrative proceedings.

Smith v. Salaam, A-0661-16T1 (Feb. 26, 2018)

[https://scholar.google.com/scholar_case?case=14949784765699108092&q=A-0661-16T1+\(Feb&hl=en&as_sdt=4,31](https://scholar.google.com/scholar_case?case=14949784765699108092&q=A-0661-16T1+(Feb&hl=en&as_sdt=4,31)

Even though a non-movant party does not file a responding statement either admitting or disputing each of the facts in the movant's statement in response to a motion for summary judgment as required by R. 4:46-2(b), "[a] judge may not merely accept as true all the allegations of a party's statement with no consideration of 'the competent evidential materials'" [citation omitted]. The movant was not entitled to summary judgment "when the record as a whole clearly show[ed] a material dispute."

Novak v. County of Warren, A-1531-16T3 (March 13, 2018)

https://scholar.google.com/scholar_case?case=419551528791890368&q=A-1531-16T3&hl=en&as_sdt=4,31

A motion for reconsideration may not be used to expand the record in an attempt to cure an inadequacy in the motion record.

Indemnity agreement entered into with County as precondition to grant of subdivision approval protected County from inverse condemnation action brought years later.

Tower Two Center, LLC v. Atrium Executive Center, LLC, A-2172-16T4 (April 6, 2018)

https://scholar.google.com/scholar_case?case=7982263364399625651&q=A-2172-16T4&hl=en&as_sdt=4,31

"Insufficient service of process is an affirmative defense, and, therefore, it must be asserted in a defendant's first responsive pleading. See R. 4:6-2(d). A defense based upon insufficient of service of process may also be 'raised by motion within 90 days after service of the answer.' R. 4:6-3. However, under Rule 4:6-7, a defense based upon insufficient service of process is 'waived if not raised by motion pursuant to R. 4:6-3.'" "[I]n order to defeat summary judgment, the non-movant

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who resists the motion on the grounds of incomplete discovery is required to specify the discovery that is still necessary.”

New Jersey Department of Environmental Protection v. Amerada Hess Corporation, No. 15-6468 (FLW), May 22, 2018

[https://scholar.google.com/scholar_case?case=17918822942725653868&q=15-6468+\(FLW\)&hl=en&as_sdt=3,31](https://scholar.google.com/scholar_case?case=17918822942725653868&q=15-6468+(FLW)&hl=en&as_sdt=3,31)

The Seventh Amendment provides that “[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved.” “The right to a jury trial includes more than the common-law forms of action recognized in 1791; the phrase ‘Suits at common law’ refers to ‘suits in which legal rights [are] to be ascertained and determined, in contradistinction to those where equitable rights alone [are] recognized, and equitable remedies [are] administered.’” [citation omitted].

715 Partners, LLC v. GS Assignment, LLC, A-2527-15Te (May 25, 2018)

https://scholar.google.com/scholar_case?case=6887958147463072023&q=A-2527-15T3&hl=en&as_sdt=4,31

The doctrine of invited error bars a litigant from claiming on appeal that a position it advocated, encouraged, consented to, or acquiesced in and that the judge adopted at trial, was error.

Joy Systems, Inc. v. FIN Associates Limited Partnership, A5373-15T4 (June 7, 2018)

https://scholar.google.com/scholar_case?case=10641533074183722918&q=A-5373-15T4&hl=en&as_sdt=4,31

Trial courts have broad power to amend the pleadings pursuant to R. 4:9-1 to conform to the proofs. Consumer Fraud Act claim allowed where neither party identified the CFA in their pleadings or pretrial submissions, but plaintiff had filed a summary judgment motion prior to trial based on the CFA (which was denied) and defendant did not object to the CFA claim until the close of trial.

VNO 1105 State Hwy 38 LLC v. Township of Hazlet, Tax No. 007243-2018 (Aug. 20, 2018)

https://scholar.google.com/scholar_case?case=12467739204504164002&q=007243-2018&hl=en&as_sdt=4,31

A response to an amended complaint under R. 8:3-2(b) is limited to the amendment and does not resurrect the ability to file a counterclaim.

Camden County Historical Society v. Department of Transportation, 371 F. Supp. 3d 187 (2019)

https://scholar.google.com/scholar_case?case=3308171017830070542&q=17-5270&hl=en&as_sdt=3,31

The National Historic Preservation Act does not create a private cause of action. To determine whether a statute creates a private right of action, the court must look to the statute to determine whether Congress intended to create a private right and whether Congress intended to create a private remedy.

Racetrack Supermarket, LLC v. Cherry Hill, 459 N.J. Super 197 (Law Div. 2018)

https://scholar.google.com/scholar_case?case=14976391898545718920&q=L-003400-16&hl=en&as_sdt=4,31

Thorough recitation of the factors to be reviewed by a judge in response to a motion that the judge be recused.

Lakeside Estates Condominium Assn v. Gimmillaro, A-1666-17T4 (Dec. 21, 2018)

https://scholar.google.com/scholar_case?case=299100718834624713&q=Lakeside+estates&hl=en&as_sdt=4,31

Defendant showed good cause for reconsideration of an order granting summary judgement where the trial judge failed to consider the opposition papers filed by defendant.

Spring Lake Enterprises, LLC v. Ward Wight Sotheby's International Realty, Inc., A-4726-16T4 (Jan. 4, 2019)

https://scholar.google.com/scholar_case?case=1875844299513893670&q=A%3D4726-16T4&hl=en&as_sdt=4,31

The entire controversy doctrine does not bar a claim against a person not a party to the first action unless there is inexcusable conduct and substantial prejudice to the non-party resulting from omission from the first suit.

Lakewood Realty Associates v. Lakewood Township Planning Board, A-3750-16T4 (Feb. 5, 2019)

https://scholar.google.com/scholar_case?case=6063161816266949931&q=A-3750-16T4&hl=en&as_sdt=4,31

Trial court's decision required reversal where respondent improperly supplemented the municipal report by presenting to the court various reports and exhibits that were not presented to the Board before they voted.

In The Matter of Appeal of Decision of Franklin Tp. Ethics Bd., A-3902-17T3 (Feb. 28, 2019)

https://scholar.google.com/scholar_case?case=14687239030230915438&q=A-3902-17T3&hl=en&as_sdt=4,31

Although appellant had a right to bring an ethics complaint to the local finance board, he did not have standing to challenge the decision of the LFB in court. LFB decisions are appealable in the same way as other agency decisions. N.J.S.A. 40A:9-22.9. "An appeal to our court from a final agency decision requires a showing a standing. [citation omitted]. Thus, absent any showing of particularized harm, appellant has no right to judicial review of the LFB's decision. [citation omitted] As appellant has not established any personal stake in the LFB's decision, we conclude that appellant lacks standing to bring the current appeal."

Scheibelhoffer v. Brick Tp. Zon. Bd. of Adjust., A-1169-17T2 (March 8, 2019)

https://scholar.google.com/scholar_case?case=314582850301678565&q=A-1169-17T2&hl=en&as_sdt=4,31

Once the trial court determined that the property's size and configuration gave rise to a hardship that was not self-created, contrary to the conclusion reach by the Board, it was required to reverse and remand to the Board to weigh the positive criteria established by the hardship against the negative criteria. It was not for the court to determine whether or not the proofs of the negative criteria were sufficient.

Orix Public Finance, LLC v. Melton-Kaufman, A-2695-17T3 (March 22, 2019)

https://scholar.google.com/scholar_case?case=10905146034223079591&q=A-2695-17T3&hl=en&as_sdt=4,31

A third-party investor must intervene in a foreclosure action before redeeming a tax sale certificate.

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Salazar v. MKGC + Design, A-3617-17T2 (April 8, 2019)

https://scholar.google.com/scholar_case?case=18179441601990098367&q=A-3617-17T2&hl=en&as_sdt=4,31

Dismissal of complaint not proper where defendant's motion was filed in disregard of the court rules.

Gifford v. City of Jersey City, No. 18-5422 (ES)(SCM)(April 12, 2019)

https://scholar.google.com/scholar_case?case=7558605662312760373&q=18-5422&hl=en&as_sdt=3,31

For a claim to be ripe in a land use dispute, the plaintiff must have submitted "at least one meaningful application for a variance" unless the application would be a futile gesture and demonstrate immediate and significant hardship. The statute of limitations for an ADA claim is two years.

Karagozi v. Risucci, A-3735-17T1 (April 12, 2019)

https://scholar.google.com/scholar_case?case=3626729501406031813&q=A-3735-17T1&hl=en&as_sdt=4,31

Where "plaintiffs contend that defendants' home was constructed in violation of local zoning ordinances," they were required to exhaust their administrative remedies by appealing to the zoning board, before bringing their claim to the court. See R. 4:69-5. An action in lieu of prerogative writs for mandamus may not be maintained against a private party as they have no authority to enforce a zoning ordinance. A nuisance action may not be maintained based on alleged fears of future interference where there are no present damages.

Price v. Oz Holdings, LLC, A-3452-17T2 (May 22, 2019)

https://scholar.google.com/scholar_case?case=577531511100264553&q=A-3452-17T2&hl=en&as_sdt=4,31

The trial judge's findings and analysis of the applicable provisions of the MLUL as they related to the Board's decision did not satisfy the requirements of Rule 1:7-4 and required remand. "The Rule requires that a judge 'by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury. . . . ' R. 1:7-4. 'When a trial court issues reasons for its decision, it 'must state clearly [its] factual findings and correlate them with relevant legal conclusions, so that parties and the appellate courts [are] informed of the rationale underlying th[ose] conclusion[s].'"

Moss v. State, A-5455-17T3 (June 6, 2019)

https://scholar.google.com/scholar_case?case=14101179411922628040&q=A-5455-17T3&hl=en&as_sdt=4,31

Plaintiff's challenge to the DEP's Forest Stewardship Plan was untimely because it was filed more than 45-days after the DEP issued public notice that the plan was final. Another party's appeal, later withdrawn, did not toll the time for plaintiff to file suit.

Hellenic Gyro & Pita, LLC v. Gloucester County Utilities Authority, A-5654-17T1 (July 10, 2019)

https://scholar.google.com/scholar_case?case=9440013174762295618&q=A%3D5654-17T1&hl=en&as_sdt=4,31

In order to maintain a declaratory judgment action, there must be a justiciable controversy and not allegations based on a state of facts that are future, contingent or uncertain.

R&K Associates, LLC v. New Jersey Department of Environmental Protection, A-1475-18T1 (Nov. 19, 2019)

https://scholar.google.com/scholar_case?case=1867099106296594277&q=A-1475-18T1&hl=en&as_sdt=4,31

A jurist has the inherent power to exercise his or her discretion to review, revise, reconsider or modify interlocutory orders at any time prior to the entry of final judgment.

Wolosky v. Fredon Twp., Nos. 008267-2016, 009548-2017, 010326-2018, (N.J. Tax, Dec. 18, 2019)

https://scholar.google.com/scholar_case?case=3831132705878109808&q=008267-2016&hl=en&as_sdt=4,31

Appeal of resident who sought to increase the tax assessment on the tax assessor's residence acted in a "premeditated act of vengeance" and ordered to pay \$45,000 for filing a frivolous suit. "Our courts are designed to provide litigants with the opportunity for justice, not vengeance."

Newstead Holmdel HOA v. Hazlet Township Land Use Board, A-1330-18T3 (Jan. 6, 2020)

https://scholar.google.com/scholar_case?case=2472637548501287641&q=A-1330-18T3&hl=en&as_sdt=6,31

Appellate court dismisses appeal and refuses to entertain argument regarding defective notice because it wasn't raised before Board or trial court.

Blum v. Township of Lakewood, A-1962-17T1 (Jan. 7, 2020)

https://scholar.google.com/scholar_case?case=4941375261024810107&q=Blum+v.+Twp.+of+Lakewood&hl=en&as_sdt=6,31&as_vis=1

An issue not briefed on appeal is deemed waived and won't be considered by the court.

Fernandes v. Jivani, A-3560-17T1 (Jan. 8, 2020)

https://scholar.google.com/scholar_case?case=2092651377653385950&q=Fernandes+v.+Jivani&hl=en&as_sdt=6,31&as_vis=1

"In the civil context, forgery, as a form of fraud, must be proven by clear and convincing evidence." "[T]he withholding of rent constituted a failure to pay rent warranting the entry of a judgment for possession, with defendants being given until the end of business on the day of the judgment to pay the amount owed. See N.J.S.A. 2A:18-55."

Egg Harbor Associates, LLC v. Village Supermarkets, Inc. A-0053-18T4 (Jan. 13, 2020)

https://scholar.google.com/scholar_case?case=5649839616502070638&q=Egg+Harbor+Assoc.,+LLC+v.+Village+Supermarkets&hl=en&as_sdt=6,31&as_vis=1

Plaintiff's complaint that alleged that defendant's three prerogative writs actions were sham litigation filed simply to thwart its development efforts dismissed as being out of time because plaintiff was aware of the facts giving rise to the allegation more than six years prior and failed to take action. Plaintiff's tortious interference and abuse of process claims were not saved by the continuing tort doctrine which the court determined to be inapplicable. The court further held that its decision in *Main Street v. Ammons Supermarket* had no bearing on the accrual of plaintiff's claims and because defendants did not engage in any inequitable conduct that caused plaintiff to withhold filing a complaint until after the statute had run, the doctrine of equitable tolling did not apply.

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Gaeta v. Hendel, A-5524-17T2 (Jan. 14, 2020)

https://scholar.google.com/scholar_case?case=17508437436559770088&q=Gaeta+v.+Hendel&hl=en&as_sdt=6,31&as_vis=1

Court order requiring defendants to pay counsel fees that was entered prior to the filing of a bankruptcy petition and was stayed as a result, could be reinstated *sua sponte* by the judge once the stay was lifted.

Blanchard v. Critchfield, A-5928-17T4 (Jan. 21, 2020)

https://scholar.google.com/scholar_case?case=238698031561645089&q=A-5928&hl=en&as_sdt=4,31

A settlement agreement that contained a right to reinstate the lawsuit is a contract that is subject to a six-year statute of limitations. Laches barred the reinstatement of a lawsuit where plaintiff waited almost 8 years after its rights accrued without providing a sufficient factual basis to explain the delay.

Fodor v. Township of Alexandria Land Use Board, A-1137-18T3 (Jan. 29, 2020)

https://scholar.google.com/scholar_case?case=8712860800362762536&q=Glenn+Fodor+v.+Township+of+alexandria&hl=en&as_sdt=4,31

A land use board is not obligated to give special deference to its earlier denial of an application when it considers a revised application at a Whispering Woods hearing.

Jones v. City of Jersey City, A-2366-18T1 (Feb. 18, 2020)

https://scholar.google.com/scholar_case?case=1374057677889163728&q=Jones+v.+City+of+Jersey+City+&hl=en&as_sdt=6,31&as_ylo=2020

Plaintiffs' amended complaint naming a new governmental agency was required to be dismissed where plaintiff failed to serve a notice of tort claim or file a motion to file a late claim against the new governmental defendant as required by N.J.S.A. 59:8-8 and N.J.S.A. 59:8-9.

800 Sylvan Avenue, LLC v. Borough of Englewood Cliffs, A-4019-17T2 (Feb. 19, 2020)

https://scholar.google.com/scholar_case?case=15598666289259917936&q=A-4019-17T2&hl=en&as_sdt=6,31

Appeal dismissed as moot where appellant alleged that trial court erred by granting immunity from exclusionary zoning lawsuits and extending the immunity to plaintiff/appellant's suit and during the pendency of the appeal the trial court refused to extend the immunity and authorized plaintiff to file a builder's remedy suit. In addition, while the issues are capable of repetition, they are not issues evading review because the issue of whether the court erred by terminating the Borough's immunity and allowing plaintiff to file suit can be raised on appeal from the final judgment entered in the DJ action.

Lafferty v. Antebi, A-0943-19T4 (Feb. 21, 2020)

https://scholar.google.com/scholar_case?case=15709734562419429681&q=A-0943&hl=en&as_sdt=6,31

Rule 1:7-4(a) requires a trial court to "find the facts and state its conclusions of law thereon in all actions tried without a jury." The court must also state its credibility findings even where they "may not be susceptible to articulation in detail." If the trial court fails to do so, the appellate court cannot determine whether the trial court's findings and conclusions of law are supported by substantial evidence and the matter must be remanded.

Passaic Industrial Properties, LLC v. McCusker, A-2539-18T2 (Feb. 25, 2020)

https://scholar.google.com/scholar_case?case=4626734438963720777&q=Passaic+Indus.+Prop.,+LLC+v.+McCusker,&hl=en&as_sdt=6,31&as_ylo=2019

Trial just should not have dismissed plaintiff's suit in its entirety for failing to respond to court-ordered discovery. "Absent consideration of lesser sanctions and why any lesser sanctions were inadequate to remedy PIP's violation of discovery orders, the judge abused his discretion by imposing the ultimate sanction and dismissing PIP's complaint with prejudice."

Grewal v. Greda, 463 N.J. Super. 489 (App. Div. 2020)

https://scholar.google.com/scholar_case?case=10304016570840187512&q=Grewal+v.+Greda&hl=en&as_sdt=6,31&as_ylo=2019

The cross-examination of a witness about the principles of her religion violated N.J.R.E. 610, because "[e]vidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness's credibility is impaired or enhanced." Where there was an inadvertent deletion of a portion of a statement and there was no additional recording with which to provide the complete statement, neither N.J.R.E. 106 nor the doctrine of completeness mandates an order barring admission of recorded statements that are available. Testimony of witnesses that defendant "stared" at her and that defendant was "unwelcoming" were based on their perceptions and would have assisted the jury in determining whether defendant violated the LAD and it was error for the court to exclude such admissible lay opinion testimony under N.J.R.E. 701.

Homebridge Financial Services, Inc. v. Santesse, A-3555-17T1 (May 1, 2020)

https://scholar.google.com/scholar_case?case=16165175275835544486&q=Homebridge+Fin.+Serv.,+Inc.+v.+Becica,&hl=en&as_sdt=6,31&as_ylo=2020

"A judge's personal knowledge of a cash-based culture allegedly prevalent in the southern part of our State where fishing is one of the main economic activities are outside the parameters established by N.J.R.E. 201(b) because they are facts which can be reasonably disputed, are not generally or universally known, nor easily verifiable."

Mitschele v. Wilf/Mitschele Joint Venture, A-0777-18T2 (May 5, 2020)

https://scholar.google.com/scholar_case?case=4149010994692426496&q=Mitschele+v.+Wilf/Mitschele+Joint+Venture&hl=en&as_sdt=6,31&as_ylo=2020

Arbitrator's award of relief pursuant to a liquidated damages provision in a contract was within the discretion of the arbitrator notwithstanding the fact that this relief was not specifically sought by either party. The prevailing party to a contested judicial proceeding to confirm an arbitration award may be granted an award of legal fees pursuant to N.J.S.A. 2A:23B-25(c).

8 Erie St., JC LLC v. City of Jersey City, No. 19-cv-9351 (D. N.J. May 21, 2020)

https://scholar.google.com/scholar_case?case=5357125815708982685&q=8+Erie+St.+JC+LLC+v.+City+of+Jersey+City&hl=en&as_sdt=6,31&as_ylo=2020

Plaintiff's "group pleading" in which conclusory allegations against defendants as a group that did not allege the personal involvement of any individual defendant required dismissal. "When a number of defendants are named in a complaint, a plaintiff cannot refer to all defendants 'who occupied different positions and presumably had distinct roles in the alleged misconduct' without specifying 'which defendants engaged in what wrongful conduct.'" Citation omitted. The District Court will generally decline to exercise supplemental jurisdiction under 28 U.S.C. § 1367(c)(3) when the basis for original jurisdiction has been lost.

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Toll JM EB Residential Urban Renewal LLC v. Tocci Residential, LLC, Civ. No. 16-5422 (PGS) (D.N.J. May 21, 2020)

https://scholar.google.com/scholar_case?case=14283178711666528108&q=Toll+JM+EB+Residential+Urban+Renewal+LLC+v.+Tocci+Residential+&hl=en&as_sdt=6,31&as_ylo=2020

In order to state a claim for fraud under New Jersey law, a plaintiff must allege 5 elements: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." [citation omitted]. To comply with Rule 9(b), allegations of fraud must be pled with sufficient particularity to place the defendant on notice of the "precise misconduct with which [it is] charged." "To satisfy this standard, the plaintiff must plead or allege the date, time and place of the alleged fraud or otherwise inject precision or some measure of substantiation into a fraud allegation." [Citation omitted]. To pierce a corporate veil, "there must be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist [and] the circumstances must indicate that adherence to the fiction of separate corporate existence would sanction a fraud or promote injustice."

Gage v. Somerset County, No.19-9097 (MAS)(ZNQ)(Sept. 14, 2020)

https://scholar.google.com/scholar_case?case=16201576020625572248&q=gage+v.+somerset&hl=en&as_sdt=6,31&as_ylo=2020

"Under Federal Rule of Civil Procedure 12(b)(5),[2] a party may file a motion asserting insufficient service of process as a defense. Rule 4 establishes the procedural requirements that must be met for proper service of summons. 'If a defendant is not served within [ninety] days after the complaint is filed, the court ... must dismiss the action without prejudice against that defendant or order that service be made within a specified time.' Fed. R. Civ. P. 4(m). Rule 4(j) governs the process of effecting service upon state governmental organizations, and requires that such parties 'must be served by: (A) delivering a copy of the summons and of the complaint to its chief executive officer; or (B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.' Fed. R. Civ. P. 4(j)(2). Furthermore, New Jersey law provides that service on public bodies other than the State shall be made 'by serving a copy of the summons and complaint ... on the presiding officer or on the clerk or secretary thereof.' N.J.S.A. § 4:4-4(a)(8). The presiding officer, clerk, or secretary must be 'authorized by appointment or by law to receive service of process on the [public body's] behalf.' Id.

Fair Share Housing Center, Inc. v. Zoning Board of the City of Hoboken, A-1499-17T2, A-1500-17T2, A-1501-17T2, A-1530-17T2, A-1540-17T2, A-1553-17T2 (Sept. 30, 2020)

https://scholar.google.com/scholar_case?case=1607240754239227233&q=fair+share+v.+zoning&hl=en&as_sdt=6,31&as_ylo=2020

Under the law of the case doctrine, a party cannot relitigate an issue previously decided on the merits. An issue that was decided by the trial court and not raised in the parties' appeal, is waived and cannot be raised again in the appellate court's remand or the subsequent appeal.

Vineland Ice & Storage v. City of Vineland, A-2890-18T2 (Oct. 1, 2020)

https://scholar.google.com/scholar_case?case=16094650635262361486&q=vineland+ice+%26+storage+v.+vineland&hl=en&as_sdt=6,31&as_ylo=2020

Complaint properly dismissed where it was filed to wrest jurisdiction from the Construction Board of Appeals, but not served for several months in violation of R. 4:4-1.

Feigenbaum v. MW Properties, LLC, A-4198-18T4 (Dec. 16, 2020)

https://scholar.google.com/scholar_case?case=6364940101488818262&q=Feigenbaum+&hl=en&as_sdt=6,31&as_ylo=2020

An agreement to resolve litigation “will be enforced as long as the agreement addresses the principal terms required to resolve the dispute.” [citation omitted]. A valid settlement agreement requires an offer and acceptance by the parties, ‘and the terms of the agreement must ‘be sufficiently definite [so] that the performance to be rendered by each party can be ascertained with reasonable certainty. [citations omitted]. There must be an ‘unqualified acceptance to conclude the manifestation of assent.’ [citations omitted]”. “[I]f parties agree on essential terms and manifest an intention to be bound by those terms, they have created an enforceable contract.” [citation omitted]. As a corollary, “[w]here the parties do not agree to one or more essential terms, however, courts generally hold that the agreement is unenforceable.” Essential terms are those that go to the “heart of the alleged agreement.” [citation omitted]. The burden of proving that a settlement was reached is on the party seeking to enforce the settlement.”

Vorhies v. Board of Adjust., Twp. of Rockaway, A-1213-18T4 (Sept. 8, 2020)

https://scholar.google.com/scholar_case?case=5690475695674649940&q=Vorhies+v.+Board+of+Adjustment&hl=en&as_sdt=4,31

Plaintiff had 20 days from when he knew of the issuance of a permit that he thought was issued improperly to appeal to the Zoning Board. His complaint filed in Superior Court was properly dismissed for failure to exhaust administrative remedies. “Where administrative remedies have not been exhausted, it is appropriate for a trial court to remand a prerogative writ complaint to a municipal body to ‘exercise its statutory authority to review and pass upon the challenged decisions of local land use officers.’”

Tocci Residential, LLC v. Toll JMEB Residential Urban Renewal LLC, 16-cv-05422 (Feb. 4, 2021)

https://scholar.google.com/scholar_case?case=7596378643218276072&q=tocci+v&hl=en&as_sdt=6,31&as_ylo=2021

The Affidavit of Merit statute “does not extend to bar claims for contribution and indemnification for several reasons including, but not limited to: there is no independent claim of professional negligence, rather causes of action for contribution and indemnification rise or fall with plaintiffs' claims; claims for contribution and indemnification do not accrue until a judgment is entered on behalf of plaintiff; to require a third party to produce upfront an AOM lacks common sense because it requires a defendant to support a plaintiff's case upon a cause of action plaintiff has not alleged.”

U.S. Bank, N.A. v. Caldane, A-3593-19 (April 22, 2021)

https://scholar.google.com/scholar_case?case=3227056378660495857&q=U.S.+bank+v.+caldane&hl=en&as_sdt=6,31&as_ylo=2021

Appellate Division affirmed trial court's denial of motion to set aside a sheriff's sale of a foreclosed property and confirmed the sale where the appellant did not file motion to set aside within the required timeframe and the record on appeal did not support any claim of fraud, accident, surprise, lack of notice or improper service.

Academy Hill, Inc. v. City of Lambertville, 2:21-cv-01966-JDW (May 28, 2021)

https://scholar.google.com/scholar_case?case=5381741879794362719&q=acad+v.+lambertville&hl=en&as_sdt=6,31&as_ylo=2021

With respect to a malicious prosecution claim related to an alleged zoning violation, and pursuant to 28 U.S.C. § 1391(b), venue is proper in the state where the violation allegedly occurred and the defendants reside, not where the plaintiff resides.

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Twp. of Monroe v. Love, A-2350-19 (July 26, 2021)

https://scholar.google.com/scholar_case?case=4533520947815339198&q=monroe+v.+love&hl=en&as_sdt=6,31&as_ylo=2021

Where a factual record was created by both the municipal and superior court, the two-court rule requires application of a deferential standard to that factual record and the lower court's evaluation of same.

Athene Annuity & Life Assurance Co. v. Cunha, A-0340-20 (Oct. 18, 2021)

https://scholar.google.com/scholar_case?case=16509159074211285216&q=Athene+Annuity+v.+cunha&hl=en&as_sdt=6,31&as_ylo=2021

Appellate Division affirms trial court decision that notice of intent to foreclose was sufficient and mortgagor had standing to foreclose.

Roggio v. JPMorgan Chase Bank, N.A., A-4199-18 (Oct. 18, 2021)

https://scholar.google.com/scholar_case?case=8210861267791581881&q=Roggio+v.+JPMorgan&hl=en&as_sdt=6,31&as_ylo=2021

Notwithstanding Plaintiff's contention, where a mortgage holder is absorbed by another bank, the bank has standing to foreclose on the property and state court has jurisdiction over same.

Berk v. Ritz Carlton Condominium Assoc., 19-20666 (Nov. 12, 2021)

https://scholar.google.com/scholar_case?case=13055075681080619403&hl=en&as_sdt=6&as_viss=1&oi=scholar

Motion to amend complaint from one based on the Americans with Disabilities Act to the Federal Fair Housing Act denied because of Plaintiff's undue delay.

Village of Ridgefield Park v. Outfront Media, LLC, A-1135-20 (Oct. 7, 2022)

https://scholar.google.com/scholar_case?case=13168393638593273854&q=Ridgefield+Park+v.+outfront+&hl=en&as_sdt=6,31&as_ylo=2022

Res judicata and collateral estoppel do not apply on remand where the appellate division vacated the Board's first resolution. "The Board was not bound to interpret the zoning ordinance in the same manner as it had at the first hearing."

Benipal v. Tri-State Petro, Inc., A-2306-19 (Aug. 16, 2022)

https://scholar.google.com/scholar_case?case=12914544849346419503&q=Benipal+v.+Tri-State+Petro&hl=en&as_sdt=6,31&as_ylo=2022

Determining whether a cause of action is barred by a statute of limitations is a question of law that is reviewed de novo and the application of the discovery rule is for the court, not a jury, to decide. Trial court determinations concerning the admissibility of evidence are reviewed under the "palpable abuse of discretion standard."

In the Matter of the Application of the Borough of Englewood Cliffs, A-3119-20 (July 15, 2022)

https://scholar.google.com/scholar_case?case=16326638372729882728&q=In+the+Matter+of+the+Application+of+the+Borough+of+Englewood+Cliffs&hl=en&as_sdt=6,31&as_ylo=2022

Where a municipality argues that two (2) of its governing body members do not have conflicts related to a pending settlement agreement and the court rules in their favor, where a settlement agreement is then entered into, the municipality is then estopped from trying to challenge the settlement agreement after there is a change in the composition of the governing body.

Pileggi v. Zoning Board of Adjustment, City of North Wildwood, A-0016-21 (June 22, 2022)

https://scholar.google.com/scholar_case?case=7168459191694711736&q=Pileggi+v.+Zoning+board+of+Adjustment+of+the+City+of+North+Wildwood&hl=en&as_sdt=6,31

Rule 4:33-1 governs intervention as of right. "To satisfy the rule, a moving party must (1) claim an interest relating to the property or transaction which is the subject of the transaction, (2) show [that the movant] is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, (3) demonstrate that the [movant's] interest is not adequately represented by existing parties, and (4) make a timely application to intervene." [citation omitted]. Here, trial court properly denied adjoining neighbor's motion to intervene where the zoning board's denial of approvals related to an adjoining property had been litigated in 2010 and 2020 and no appeal was taken by the board.

Ravenscraft Homeowners Association, Inc. v. Derroisne, DC-002519-20 (July 11, 2022)

https://scholar.google.com/scholar_case?case=1492850381673365971&q=Ravenscraft+Homeowners+Association,+Inc.+v.+Derroisne&hl=en&as_sdt=6,31

Service is considered effective if the regular mail is not returned and the certified mail has either been claimed or is returned with a marking to indicate that service at the given address was good service. The Rule gives examples of markings that show ineffective service, such as certified mail returned with a stamp that says the addressee is not known. R. 6:2-3(d)(4). Here, certified mail was returned to the court with marking stating "Return to Sender, Insufficient Address, Unable to Forward." However, the USPS tracking code stated "service left." The court held that, when in conflict, the Domestic Mail Manual mail piece markings outweigh the conflicting evidential value of USPS tracking codes with respect to delivery.

Diaz-Ventura v. Palisades 1300, LLC, A-1134-21 (Dec. 13, 2022)

https://scholar.google.com/scholar_case?case=11413816291269239178&q=Diaz-Ventura+v.+Palisade+1300,&hl=en&as_sdt=4,31

Because the signature requirement of a settlement agreement is an essential term of same, where the defendant landlord did not sign the agreement, the settlement was not made effective even if one plaintiff tenant dismissed their rent control board complaint on the basis of the agreement.

SAS Hotel, LLC v. Friends of Historic Flemington, A-0212-20 (April 26, 2022)

https://scholar.google.com/scholar_case?case=7155888252989367274&q=SAS+Hotel,+LLC+v.+Friends+of+Historic+Flemington&hl=en&as_sdt=6,31&as_ylo=2022

Trial court correctly denied Defendant citizen group's motion to sanction Plaintiff developer for frivolous litigation where Plaintiff acted in good faith when it sued the Defendant for tortious interference, and related claims, with respect to Plaintiff's redevelopment project. In upholding the trial court, the Appellate Division noted that Plaintiff offered to withdraw its complaint several months before it formally moved for dismissal, yet Defendants never consented to the dismissal. In other words, litigation continued long after Defendants asserted Plaintiff's complaint was utterly baseless, despite Plaintiff's attempts to end the matter.

Powers v. Twp. of Mahwah, A-2302-19 (March 16, 2022)

https://scholar.google.com/scholar_case?case=9845598322876773709&q=powers+v.+mahwah&hl=en&as_sdt=6,31&as_ylo=2022

Where a municipality settles litigation regarding purported zoning violation and an adjoining homeowners association ("HOA") loses at trial with respect to enforcement of the code, a member of the HOA is barred by notions of *res judicata* and collateral estoppel from seeking to relitigate various issues related to the purported zoning violation. However, Plaintiff's challenge to the settlement agreement is not barred by *res judicata* or collateral estoppel. Notwithstanding same, because "such settlements are encouraged as a matter of public policy," and the Plaintiff "merely

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asserted legal conclusions” without any factual basis, a motion to dismiss their challenge against the settlement was appropriate.

Lot 20.06 LLC v. Furniture Soup, Inc., A-0402-20 (March 1, 2022)

https://scholar.google.com/scholar_case?case=9983808934578376492&q=furniture+soup&hl=en&as_sdt=6,31&as_ylo=2022

Where Plaintiff knew of the existence of an equitable lien on his property for over four (4) years and taken no action to relieve the property of the encumbrance, the doctrine of laches is applicable and the trial court correctly dismissed the complaint on the basis of same.

Galeria Construction v. Township of Kingwood, Docket No. A-0660-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=16075718671813689554&q=Galeria+Construction+v.+Township+of+Kingwood&hl=en&as_sdt=6,31&as_ylo=2023

Where there was no prior adjudication on the merits of a zoning violation before the municipal court, the rule of double jeopardy does not apply, and the municipality may issue a second violation for the same purported zoning code violation.

Borough of Lincoln Park v. AG Construction Corps, Docket Nos. A-0439-21/A-1444-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=15908742859711696661&q=Borough+of+Lincoln+Park+v.+A.G.&hl=en&as_sdt=6,47

Defendant property owner discovered the existence of an ordinance that would permit the contested use and provided a report to the municipality indicating same. Thereafter, the Plaintiff municipality failed to timely amend its answers to respond to same, provide an expert report or request for an extension of discovery. The record also showed that the municipal zoning official was aware of the subject ordinance prior to Defendant’s report. In light of the above, the Court upheld the lower court’s decision to prohibit the municipality from amending its answers and submitting an expert report to rebut Plaintiff’s expert report.

Quantum Behavioral Health LLC v. Twp of Berkeley, Civ. No. 23-2483 (ZNQ) (JBD) (D.N.J. 2023) (App. Div. 2023)

https://scholar.google.com/scholar_case?case=956619381600079424&q=Quantum+Behavioral+Health,+LLC+v.+Twp.+of+Berkeley&hl=en&as_sdt=6,47&as_ylo=2023

Plaintiff’s request for a preliminary injunction to permit the construction of a residential drug and alcohol treatment facility was denied because Plaintiff failed to demonstrate “irreparable harm.”

800 Sylvan Ave. LLC v. Planning Bd. of Borough of Englewood Cliffs, A-2309-19 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=18063179192623429087&q=800+Sylvan+Ave.+LLC+v.+Planning+Bd.+of+Borough+of+Englewood+Cliffs&hl=en&as_sdt=6,47&as_ylo=2023

Where Plaintiff was litigating a denial with respect to a commercial use of the subject property and later entered into an affordable housing settlement agreement with the municipality with respect to the same property, the appeal related to the commercial use is not moot because the settlement did not require Plaintiff to relinquish its right to pursue alternative development options on the property.

Gonzalez v. 908-910 Washington St., LLC, A-2463 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=17925860524206959285&q=Gonzalez+v.+908-910+Washington&hl=en&as_sdt=6,47&as_ylo=2023

Settlement of a lawsuit related to the landlord's provision of hot water for the subject property, and a general release related to same, did not preclude Plaintiff from later bringing another lawsuit related to toxic lead contamination where Plaintiff did not become aware of the existence of the lead contamination until after the first settlement had been entered into.

Pace v. Hamilton Cove, 475 N.J. Super. 568 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=8100395024483672866&q=Pace+v.+Hamilton+Cove&hl=en&as_sdt=6,31&as_ylo=2023

Courts will not enforce a class action waiver in a contract that does not contain a mandatory arbitration provision.

Cellco P'ship v. County of Monmouth, Civ. No. 23-18091 (D.N.J. Mar. 7, 2024)

https://scholar.google.com/scholar_case?case=14973912707642389859&q=Cellco+v.+County+of+Monmouth&hl=en&as_sdt=6,47&as_ylo=2024

A threadbare statement of generalized interests is not sufficient to provide permission to intervene.

53-55 E. Kinney, LLC v. The City of Newark Cent. Planning Bd., A-4022-21 (Dec. 23, 2023)

https://scholar.google.com/scholar_case?case=9636645062615945829&q=53-55+E.+Kinney,+LLC&hl=en&as_sdt=6,47&as_ylo=2023

Plaintiff timely appealed a land use approval, it did not include the underlying developer as a party, which was the basis for dismissal at the trial level. Appellate Division held that the trial court correctly refused to extend the Plaintiff additional time to add the developer to its complaint.

Hernandez v. LA Fortaleza, Inc., A-0367-22 (Jan. 5, 2024)

https://scholar.google.com/scholar_case?case=9097305328119319818&q=Hernandez+v.+LA+Fortaleza&hl=en&as_sdt=6,47&as_ylo=2024

Requiring the payment of attorneys' fees to the prevailing party, with respect to a slip and fall case, is appropriate when there is a misrepresentation made by opposing counsel.

Schorr v. The Planning Bd. of the City of Trenton, A-3772-21 (Jan. 18, 2024)

https://scholar.google.com/scholar_case?case=17928663386428463448&q=Schorr+v.+The+Planning+Bd.+of+the+City+of+Trenton&hl=en&as_sdt=6,47&as_ylo=2024

Plaintiff timely appealed a land use approval nine (9) days after the notice of approval was published but the complaint was dismissed for other reasons. Thereafter, the Plaintiff had thirty-six (36) days (i.e. 45 days minus 9 days) to re-file his appeal or else same would be out of time pursuant to Rule 4:69-6(b)(3).

Kelsey v. Sommerville, A-2423-21 (Jan. 19, 2024)

https://scholar.google.com/scholar_case?case=16588244547732773316&q=Kelsey+v.+Sommerville&hl=en&as_sdt=6,47&as_ylo=2024

With respect to a *pro se* litigant prosecuting a boundary dispute, who was under psychiatric care, the court rules do not permit a dismissal of the litigant's complaint conditioned on the filing of a guardianship complaint with respect to litigant's care.

Borough of Englewood Cliffs v. Trautner, 260 N.J. 410 (2025)

https://scholar.google.com/scholar_case?case=15172437210913986419&q=Borough+of+Englewood+Cliffs+v.+Trautner&hl=en&as_sdt=6,47&as_ylo=2025

A municipality is not exempt from sanctions under the Frivolous Litigation Statute.

Miller v. Zagranichny, 261 N.J. 194 (2025)

https://scholar.google.com/scholar_case?case=7601355440840857876&q=Miller+v.+Zagranichny&hl=en&as_sdt=6,47&as_ylo=2025

Defendants were not bona fide purchasers with respect to a portion of their property which was previously subdivided and granted to their neighbor where they had constructive notice of frontage discrepancies between various title documents prior to purchase.

Nelson v. Sirois, A-0845-23 (Feb. 14, 2025)

https://scholar.google.com/scholar_case?case=11814972934610886773&q=Nelson+v.+Sirois&hl=en&as_sdt=6,47

Where an applicant publishes notice of a board's action before the board publishes same, the time period to appeal the action commences on applicant's publication. Here the Appellate Division affirmed the court's decision not to extend the time to file the appeal where the error was made by a non-lawyer office manager. N.J.S.A. 40:55D-10(i) provides that "[t]he period of time in which an appeal of the decision may be made shall run from the first publication of the decision, whether arranged by the municipality or the applicant.

PA Builders, LLC v. Twp. of Toms River, A-1585-23 (May 7, 2025)

https://scholar.google.com/scholar_case?case=14003197768802949091&q=PA+Builders,+LLC+v.+Twp.+of+Toms+River&hl=en&as_sdt=6,47&as_ylo=2025

An action in lieu or prerogative writs, and not a declaratory judgment action, is the appropriate method to challenge an alleged change in position of a municipal zoning officer with respect to whether flood hazard requirements required that Plaintiff's home be elevated. Further, the statute of limitations under the New Jersey Civil Rights Act is two (2) years.

Township of Gloucester vs. Harry's Tires, LLC, A-1179-23 (Dec. 2, 2025)

https://scholar.google.com/scholar_case?case=18024200104184798578&q=Township+of+Gloucester+vs.+Harry%27s+Tires+&hl=en&as_sdt=6,47

Pursuant to Rule 4:50-1(a), a defendant seeking to reopen a default judgment because of excusable neglect must show that the failure to answer was excusable under the circumstances and that a meritorious defense is available. Here, where the Defendant argues that the excusable neglect was that he hired an attorney and expected him to protect Defendant's interests but Defendant provides no such affidavit attesting to said facts, the trial court correctly refused to reopen the default judgment.

Lokal Stockton LLC v. City of Cape May, A-3372-23, A-0234-24 (Dec. 22, 2025)

https://scholar.google.com/scholar_case?case=17853069798496381551&q=Lokal+Stockton+LLC+v.+City+of+Cape+May&hl=en&as_sdt=4,31

Pursuant to R. 4:10-2(a), parties may obtain discovery regarding any non-privileged matter that is relevant to the subject of a pending action or is reasonably calculated to lead to the discovery of admissible evidence. A nonparty may be compelled by subpoena to produce "books, papers, documents, electronically stored information, or other objects designated therein." R. 1:9-2. "In determining whether a document is protected from disclosure by the work-product privilege, the threshold question is whether the document was 'prepared in anticipation of litigation or for trial.'" "If a document was prepared 'in the ordinary course of business' rather than in anticipation of litigation, it is not entitled to protection as work product." Documents prepared by plaintiff's expert in the hearing before the HPC were not privileged because they were not prepared in anticipation of litigation.

Nature's Touch Med v. City of Hoboken, A-0722-24 (Dec. 30, 2025)

https://scholar.google.com/scholar_case?case=13834550896115640437&q=A-0722-24+&hl=en&as_sdt=4,31

Where an applicant for a cannabis license was not aware of an alleged bribe to mayor to refuse to sign off on application, the time limitation for the issuance of a tort claim notice for tortious interference did not commence until applicant was aware of said alleged bribery by way of a separate lawsuit.

MISCELLANEOUS

MISCELLANEOUS

AMERICANS WITH DISABILITIES ACT &
NEW JERSEY LAW AGAINST DISCRIMINATION

Cottrell v. Heritage Dairy Stores, Inc. Civ. No. 09-1743 (RBK/JS) Sept. 30, 2010 2010 WL 3908567 (D.N.J.)

http://scholar.google.com/scholar_case?case=7283064635004463523&q=Cottrell+v.+Heritage+Dairy+Stores,+Inc&hl=en&as_sdt=2,31

The only relief available for a retaliation claim under the Americans With Disabilities Act is injunctive relief and plaintiffs lacked Article III standing because they failed to allege immediate or future harm from defendant's decision to ban them from the premises of any of its stores.

Stoney v. McAleer, 417 N.J. Super. 574 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=7594643568172002068&q=417+N.J.+Super.+574+&hl=en&as_sdt=2,31

Claims that construction code violations were retaliatory tactics that are asserted under the Law Against Discrimination are subject to a two-year limitations period, but the "continued violation doctrine" is appropriate in the context of a "a continual, cumulative pattern of tortious conduct . . . as opposed to the occurrence of discrete discriminatory acts."

Humphries v. Powder Mill Shopping Plaza, A-6038-08T1 (Nov. 4, 2010)

http://scholar.google.com/scholar_case?case=4454585820030298835&q=Humphries+v.+Powder+Mill+Shopping+Plaza&hl=en&as_sdt=2,31

Defendant ordered to pay plaintiff's attorneys' fees under Americans with Disabilities Act and New Jersey Law Against Discrimination where shopping center's parking were not in compliance with code. Statutes have fee-shifting provisions and New Jersey uses the catalyst test for determining whether a party is a prevailing party under the law.

Shearn v. Victoriana Condominium, A-1327-10T2 (Nov. 23, 2011)

http://scholar.google.com/scholar_case?case=2782453161948392710&q=,+A-1327-10T2+&hl=en&as_sdt=2,31

A condominium association may be liable under the Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 to -49, for failing to provide a disabled owner a parking space accommodation. However, condominium unit owners are required to pay their share of the common expenses. Where appellant was in arrears with the condo fees, the Association had the right under the condo documents to disallow him from using the parking area and where others who were also in arrears lost their parking privileges, it was reasonable for the Division of Civil Rights to find no probable cause that the association had acted toward appellant in a discriminatory manner.

Lasky v. Moorestown, 425 N.J. Super. 530 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=17320305242078071227&q=lasky+moorsetown+n ew+jersey+2012+discrimination&hl=en&as_sdt=2,31

"A public facility that is not accessible without assistance does not necessarily violate Title II of the ADA or the LAD. See 28 C.F.R. § 35.150(a)(1); N.J.A.C. 13:13-4.11(a). Rather, the requirement is one of "reasonable accommodation[[]]" N.J.A.C. 13:13-4.11(a), which encompasses a variety of measures including assigning aides to assist persons of disabilities in accessing facilities. 28 C.F.R. § 35.150(b)(1). Thus, it remains plaintiff's burden to prove he was discriminated against by being denied reasonable access to the park. . . . The question of reasonable accommodation in this case was one for the jury to resolve, particularly in light of evidence allowing them to find that had plaintiff requested assistance, he would have been provided with

such, thereby remedying the claimed physical barriers and enabling him ready access to the park in a reasonable manner.”

Lasky v. Borough of Hightstown, 426 N.J. Super. 68 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=18423958284802447733&q=lasky+heightstown+new+jersey+2012+discrimination&hl=en&as_sdt=2,31

In a failure to accommodate claim, a plaintiff must notify the public entity of the requested accommodation so a reasonable accommodation that considers the needs and wishes of the disabled person may be provided. However, “where a more generalized claim alleging overall lack of access is made, a plaintiff seeking redress should not be required, as a prerequisite to filing such a claim, to first make a request for a reasonable accommodation.”

Stoney v. Maple Shade, 426 N.J. 297 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=3063461543287920512&q=stoney+mapleshade+new+jersey+2012+discrimination&hl=en&as_sdt=2,31

“In adjudicating claims for injunctive relief under Title II of the ADA and the LAD, the court should employ a “balancing of the competing claims of injury and the effect on each party of the granting or withholding of the requested equitable remedy, along with, most significantly, the compelling public interest strongly favoring accessibility. We reject the view, however, that strict liability and mandatory injunctive relief automatically flow from a showing of a breach of access guidelines or regulations. Instead, in assessing the critical factor of the likelihood of suffering continuing irreparable harm as a result of the denial of access, courts should take into account the public entity's progress in remedying the asserted violations as well as the cognizable danger of recurrent violations. Although under appropriate circumstances, a court may justifiably withhold injunctive relief even if it concludes that the law has been violated by the party sought to be enjoined, in cases involving new construction or “alterations” occurring on or after 1992, irreparable harm should be presumed.”

Cottrell v. Good Wheels, No. 11-3409 (3rd Cir. Jan. 23, 2012)

http://scholar.google.com/scholar_case?case=12940635168238061596&q=Cottrell+2012+discrimination&hl=en&as_sdt=2,31

To prove a claim of retaliation under the ADA and NJLAD, a plaintiff must first establish that (1) he was engaged in protected conduct; (2) an adverse action was taken; and (3) there is a causal link between the protected conduct and the adverse action and applied the burden-shifting framework. Once a prima facie case is established, the burden shifts to the defendant to present a non-discriminatory reason for the adverse action. The plaintiff must then prove that the defendant's proffered reasons were merely a “pretext for discrimination.”

Cottrell v. Zagami, Civ. No. 08-3340(JEI/AMD) (Feb. 14, 2012)

http://scholar.google.com/scholar_case?case=15406942329750972288&q=08-3340&hl=en&as_sdt=2,31

The statute of limitations for ADA and NJLAD claims is two years [which] accrues when the plaintiff discovers, or with due diligence should have discovered, the injury that forms the basis for the claim.” The ADA's anti-retaliation provision provides a cause of action to an individual who “opposed any act or practice made unlawful” by the ADA. 42 U.S.C. § 12203(a). Where plaintiff was banned from defendant's premises following her opposition to defendant's liquor license renewal, which was six months after plaintiff's protected ADA actions, the timing does not suggest a causal connection to plaintiff's protected conduct to support an ADA claim of retaliation. “This attempt to defeat defendant's liquor license renewal is not protected conduct under the ADA, whose object is not to shut businesses down but to keep them open and accessible for all people.”

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Revock v. Cowpet Bay West Condominium Association, Nos. 14-4776, 14-4777 (3rd Cir. 2017)
https://scholar.google.com/scholar_case?case=1369899932578977288&q=revock+v.+cowpet&hl=en&as_sdt=3,31

The survival of a claim under the Fair Housing Act is governed by federal common law. Since a Fair Housing Act claim is remedial, it survives the death of a party. The court applied the “pre-Erie Railroad Co. v. Tompkins” common law rule of survival, under which remedial claims survive, but penal claims do not.”

Rush v. Rosetto Realty Group, LLC, No. 17-2506 (Aug. 29, 2018)
https://scholar.google.com/scholar_case?case=2749622243300835431&q=17-2506&hl=en&as_sdt=3,31

“Commercial real estate available for lease does not fall under the statutory definition of ‘place of public accommodation’ for purposes of 42 U.S.C. §2000a(a), and the Fair Housing Act, 42 U.S.C. § 3604, does not apply to commercial real estate, but discrimination in leasing may be actionable under New Jersey LAD, N.J.S.A. § 10:5-4. ‘New Jersey courts have often, though not religiously, used the McDonnell Douglas burden-shifting framework in evaluating claims brought under this section.’ ‘Under the first step of McDonnell Douglas, the plaintiff must initially make out a prima facie case of discrimination. [citation omitted]. In a case alleging discrimination in renting, such a prima facie case may be established by demonstrating that (a) the plaintiff belongs to a protected category, (b) he attempted to rent the space and was qualified to rent it, (c) he was rejected, and (d) after the rejection, the space remained vacant and the defendant continued to try to rent it.’ ‘In the second step, once the plaintiff has established a prima facie case, the burden of production falls on the defendant to ‘articulate some legitimate, nondiscriminatory reason for the. . . rejection.’ [citation omitted]. Then, in Step Three, the plaintiff must ‘prove by a preponderance that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.’” One may be liable for aiding and abetting a violation of NJLAD where “‘(1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; [and] (3) the defendant must knowingly and substantially assist the principal violation.’” [citation omitted].

Oasis Therapeutic Life Centers, Inc. v. Wade, A-0711-17T3 (Dec. 10, 2018)
https://scholar.google.com/scholar_case?case=9985314241070457322&q=Oasis+Therapeutic+Life+Wade&hl=en&as_sdt=4,31

For LAD purposes, a “person” includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries. A nonprofit charitable organization that attempted to acquire property to construct a center to help autistic children had standing to assert LAD claims for “defendants’ alleged attempts to interfere with its efforts to purchase property, through the vandalizing of its property, in the efforts to interfere with its easement rights, and its loss of the MCF grant. This claim of economic damage allegedly resulting from defendants’ alleged discriminatory conduct sufficiently meets the standing required by the LAD.” In addition, plaintiff “may also incur ‘stigmatic and associational’ damage in this way; . . . defendants’ conduct may be viewed as interfering with Oasis’s relationship to those who benefit from its existence and its good works.” “N.J.S.A. 10:5-4.1 makes it unlawful ‘to discriminate against any buyer or renter because of the disability of a person residing in or intending to reside in a dwelling after it is sold, rented or made available or because of any person associated with the buyer or renter.’ That provision clearly does not mean that a seller or landlord must possess the discriminatory intent or that a buyer or renter is the person directly discriminated against. This provision’s plain meaning supports what is alleged to have occurred here — that defendants targeted and tormented Oasis because Oasis was

providing a residence for autistic individuals. N.J.S.A. 10:5-4.1 renders that conduct unlawful, . . .”

The Independence Project, Inc. v. Shore Point Plaza, LLC, No. 18-15048 (FLW) (ZNQ) (Oct. 29, 2020)

https://scholar.google.com/scholar_case?case=4193334987884365478&q=independence+v.+shore+point&hl=en&as_sdt=6,31&as_ylo=2020

“Plaintiffs have not sufficiently demonstrated that they have standing to sue for injunctive relief under the ADA. To state a viable claim in federal court, a plaintiff is required to satisfy both the Article III constitutional minimum of a ‘case or controversy’ and any prudential considerations set by the courts. [citation omitted]. To satisfy the constitutional minimum of Article III standard, a plaintiff ‘must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.’ [citation omitted]. Where, as here, a plaintiff seeks prospective injunctive relief, ‘plaintiff must show that he is ‘likely to suffer future injury’ from the defendant’s conduct’ to meet the injury-in-fact requirement. [citation omitted]. In that connection, ‘past exposure to illegal conduct does not show a present claim for injunctive relief.’ [citation omitted]. These general principles apply equally to cases under Title III of the ADA in which a plaintiff seeks injunctive relief.”

Laufer v. Aark Hospitality Holding, LLC, 20-20028 (Feb. 10, 2021)

https://scholar.google.com/scholar_case?case=5743233512847092592&q=laufer+v.+aark&hl=en&as_sdt=6,31&as_ylo=2021

Court dismisses Plaintiff’s claim for injunctive relief under the American with Disabilities Act regarding a lack of information on Defendant Hotel’s website regarding ADA compliance because, while Plaintiff intended on some day visiting the hotel, the “some day” nature of her complaint did not give her sufficient standing for injunctive relief in federal court.

Maurer v. GL Qichen Inv. Ltd. 20-20028 (June 11, 2021)

https://scholar.google.com/scholar_case?case=9663682391915004301&q=maurer+v.+gl&hl=en&as_sdt=6,31&as_ylo=2021

Where the Plaintiff lives fifty (50) miles away and has no concrete plans to return to the Defendant’s establishment, said Plaintiff lacks standing to bring injunctive relief under the ADA.

Oxford House, Inc. v. Township of North Bergen, 1-19260 (June 29, 2022)

https://scholar.google.com/scholar_case?case=11307770573385970333&q=Oxford+House,+Inc.+v.+Township+of+North+Bergen&hl=en&as_sdt=6,31&as_ylo=2022

A disparate treatment claim under the Fair Housing Act (“FHA”) will fail where a municipality denied the issuance of a CO to permit the use of a two-family dwelling by alcoholics who reside together in a group home because the Township viewed same as a “Community Residence” which could not be located in a two-family dwelling pursuant to N.J.S.A. § 40:55D-66.1 and no other evidence of discriminatory intent is provided. The Court held that the municipality had neutrally enforced the law and because plaintiff provided no additional evidence of a discriminatory treatment claim, a motion to dismiss its claims was appropriate.

Leone v. Howell Twp., A-0046-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=5074380344193351769&q=Leone+v.+Howell&hl=en&as_sdt=6,47&as_ylo=2023

Plaintiff purchased a residence located on a property that was also partially subject to a conservation easement. Notwithstanding the existence of the easement, Plaintiff mowed the grass and placed a swing set on same. When the municipality sought to enforce the easement, Plaintiff requested an

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accommodation under the New Jersey Law Against Discrimination (“NJLAD”) and the Fair Housing Act (“FHA”) because of purported health reasons that required the grass to be moved and the swing set to be located on the conservation easement. Court held that the conservation easement located on Plaintiff’s property is not a public accommodation subject to NJLAD, therefore Plaintiff has no right to request an accommodation from same. Similarly, because the conservation easement does not deny Plaintiff access to his dwelling, the FHA is not applicable.

Players Place II Condo Ass’n v. K.P., A-1304-20 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=8878862632752149055&q=players+place+ii+condo&hl=en&as_sdt=6,31&as_ylo=2023

Defendant purchased a dog which exceeded the weight permitted by the condo association. While Defendant argued that the dog was an “emotional support animal” and that a waiver of the rule was required by the NJLAD and FHA, the Court ruled that the Defendant was not “handicapped” under the applicable facts and also because she certified that she was not mentally ill when she recently purchased a firearm. Notwithstanding same, the Court ruled that Defendant could keep the dog based on certain equitable principles concerning the arbitrary nature of the condo rule and that the dog did help Defendant’s mental health situation.

Players Place II Condo. Ass’n v. K.P., 279 N.J. 472 (2024)

https://scholar.google.com/scholar_case?case=6576674028263444116&q=players+place&hl=en&as_sdt=6,47&as_ylo=2024

NJLAD’s definition of “disability” is much broader than the Fair Housing Amendment Act’s (“FHAA’s”) definition of “handicap.” Notwithstanding the fact that Plaintiff was employed and had a very good academic record, she was still “handicapped” under the NJLAD because of her mental illness diagnosis. Additionally, a resident of a condominium complex is entitled under state and federal law to request an accommodation to a pet policy in order to keep an emotional support animal. The individual must first demonstrate they have a disability under the NJLAD. In addition, they must show that the requested accommodation may be necessary to afford them an “equal opportunity to use and enjoy a dwelling.” *N.J.A.C. 13:13-3.4(f)(2)*. The housing provider then has the burden to prove the requested accommodation is unreasonable. As part of that process, the parties should engage in a good-faith, interactive dialogue to exchange information, consider alternative options, and attempt to resolve or narrow any issues. If that collaborative effort fails and litigation follows, courts will inevitably need to balance the need for, and benefits of, the requested accommodation against the costs and administrative burdens it presents to determine whether the accommodation is reasonable.

New Jersey Realtors v. Twp. of Berkeley, 479 N.J. Super. 379 (App. Div. 2024)

https://scholar.google.com/scholar_case?case=369391133142035219&q=New+Jersey+Realtors+v.+Twp.+of+Berkeley&hl=en&as_sdt=6,47&as_ylo=2024

Appellate Division rules that a municipal ordinance restricting ownership, as opposed to occupancy, in age-restricted communities to individuals over the age of 55 is invalid on the grounds that it violates, and is preempted by, the federal Fair Housing Act and the New Jersey Law Against Discrimination.

Deejaiz LLC v. Twp. of Franklin, Civ. No. 23-3192 (D.N.J. Nov. 22, 2024)

https://scholar.google.com/scholar_case?case=5513034226416077272&q=Deejaiz+LLC+v.+Twp.+of+Franklin&hl=en&as_sdt=6,47

Courts will dismiss equal protection claims when Plaintiffs fail to show disparate treatment based on race.

Oxford House, Inc. v. Twp. of North Bergen, 158 F.4th 486 (3rd Cir. 2025)

https://scholar.google.com/scholar_case?case=14707425090502721030&q=Oxford+House,+Inc.+v.+Twp.+of+N.+Bergen&hl=en&as_sdt=6,47&as_ylo=2025

In order to bring a disparate treatment claim under the Fair Housing Act, Plaintiff must not only allege that the zoning officer and the municipal attorney had two different rationale for the denial of a zoning permit for a sober living home, there must be some allegation that the denial was motivated by discriminatory animus.

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Municipal Council of the City of Newark v. Sharpe James, 183 N.J. 361 (2005)

http://scholar.google.com/scholar_case?case=2651137668227192730&q=183+N.J.+361+&hl=en&as_sdt=2,31

The statutory scheme of the Faulkner Act allocates the responsibility for initiating, negotiating, and signing contracts to the Mayor, while City Council is charged with approving or rejecting the contracts presented to it by the Mayor.

Jen Electric, Inc. v. County of Essex, 197 N.J. 627 (2009)

http://scholar.google.com/scholar_case?case=9228533890107773128&q=197+N.J.+627+&hl=en&as_sdt=2,31

The 2000 amendment to the Local Public Contracts Law, N.J.S.A. 40A:11-13(e), is intended as a statute of limitation, and not a restriction on standing which is governed by traditional, and liberal, common law notions of standing.

Loigman v. Twp. Comm., Twp. of Middletown, 409 N.J. Super. 1 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=8605950611216143757&q=409+N.J.+Super.+1+&hl=en&as_sdt=2,31

“It is permissible for an attorney who serves as the statutorily mandated municipal attorney to be paid a salary for that position, and also to be paid for additional services under the authority of a resolution adopted under the professional services exception to public bidding under the Local Public Contracts Law, N.J. S.A. 40A:11-1 to -51.”

CFG Health Systems, LLC v. County of Hudson, 413 N.J. Super. 306 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=17614061093414239608&q=413+N.J.+Super.+306+&hl=en&as_sdt=2,31

No material element of a public bid may be provided after bids are opened, and a board may not make changes to a contract that constitutes a material change of the bid following the acceptance of the bids.

H&S Construction and Mechanical, Inc. v. Westfield Public Schools, A-3696-17T4 (July 5, 2018)

https://scholar.google.com/scholar_case?case=6975434946160292990&q=A-3696-17T4&hl=en&as_sdt=4,31

Failure to include in a bid statutorily mandated documents is non-waivable. If not statutorily mandated, the determination of whether the defects are minor or inconsequential and therefore waivable, or material and non-waivable is subject to the two-part River Vale test: (1) whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and (2) whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common

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standard of competition.

Alpha Painting & Construction Company, Inc. v. Delaware River Port Authority, No. 1:16-cv-05141-NJH-AMD (June 26, 2019)

https://scholar.google.com/scholar_case?case=14555227808498624743&q=1:16-cv-05141-NJH-AMD&hl=en&as_sdt=3,31

Plaintiff, as a bidder on a public contract, “had a non-abstract legitimate entitlement to have its bid assessed according to the process created by the DRPA. . .” for purposes of a due process claim and since plaintiff was treated differently from another bidder for no rational basis, plaintiff demonstrated an equal protection violation.

Thassian Mechanical Contracting, Inc. v. East Brunswick Board of Ed., A-5149-18T1 (Jan. 6, 2020)

https://scholar.google.com/scholar_case?case=8424509431636196387&q=Thassian+Mech.+Contracting,+Inc.+v.+Hanna%27s+Mech.&hl=en&as_sdt=6,31

Failure to waive minor defect in bid was arbitrary, capricious and unreasonable.

Pact Two, LLC v. Township of Hamilton, A-1762-19T3 (April 20, 2020)

https://scholar.google.com/scholar_case?case=1039755124813586708&q=Pact+Two,+LLC+v.+Twp.+of+Hamilton+&hl=en&as_sdt=6,31&as_ylo=2020

Publicly advertised contracts must be awarded to the lowest responsible bidder, i.e., one that complies with the substantive and procedural requirements in the bid. “A governmental entity has discretion ‘to accept or reject, for valid reasons, a bid’ containing a non-material deviation. ‘[T]o be considered valid,’ a governmental entity’s reasons for accepting or rejecting a bid containing a non-material deviation ‘must be non-pretextual,’ ‘reflect sound business judgment, and may not bespeak any avoidance of the underlying purposes of public bidding requirements.’ [citation omitted]. Thus, where a bid contains a non-material deviation from the specifications, ‘the next step is the specific decision to grant or deny waiver [of the deviation] which is then subject to review under the ordinary abuse of discretion standard.’”

Moradi v. Geroski, Docket No. F-15099-18 (Bergen Ch., June 10, 2020)

https://scholar.google.com/scholar_case?case=24338355527933255&q=Moradi+v.+Geroski&hl=en&as_sdt=6,31&as_ylo=2020

Sheriff’s Sale not vacated as a result of environmental contamination because the property was listed on the DEP website as being contaminated and the historical and current use of the property was a dry-cleaning business should have put them on notice to conduct additional due diligence. “[P]ursuant to N.J.S.A. 2A:61-16, in order for a purchaser of real estate to be relieved from a bid at a public sale, the purchaser must demonstrate a substantial defect or cloud upon the title of the real estate that was sold. Moreover, the purchaser must show that the title has become unmarketable or the existence of a lien or encumbrance on the title. Here, the contamination on the Property does not constitute an encumbrance upon the title. . . . [T]he doctrine of caveat emptor applies when the contract for the purchase of the property lacks a covenant to deliver the property free and clear of encumbrances, as is the case here.

Sal Electric Co., Inc. v. Plainfield Board of Education, A-1236-19T3 (Nov. 25, 2020)

https://scholar.google.com/scholar_case?case=16225103350844182729&q=sal+electric+v.+plainfield&hl=en&as_sdt=6,31&as_ylo=2020

“Board’s decision to require all bidders to comply explicitly with the PWA was reasonable. As noted, if a contractor pays a worker below the PWR then the Board would have the authority to ‘terminate the contractor’s. . . right to proceed with the work’ and the contractor would be ‘liable for any excess costs occasioned thereby to the public body.’ N.J.S.A. 34:11-56.27.”

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In re Protest of Contract Award for Project A1150-08, A-1193-19T1 (Feb. 2, 2021)

https://scholar.google.com/scholar_case?case=17907930259615252003&q=Contract+Award+for+Project+A1150-08&hl=en&as_sdt=6,31&as_ylo=2021

While the Appellate Division will dismiss a public works contract award case where a substantial amount of the work has been done, as moot, where the matter is of sufficient public importance, the Court has the leeway to review the subject issue. Here, the Appellate Division held that the Division of Property Management and Construction correctly interpreted state law to not require a low bidder to disclose the subcontractor responsible for installing building management control systems.

Tomar Constr., LLC v. Passaic Valley Sewerage Comm'n, A-1217-20 (May 25, 2021)

https://scholar.google.com/scholar_case?case=5888023179544338652&q=tomar+v.+passaic&hl=en&as_sdt=6,31&as_ylo=2021

Where the lowest bidder's bid was found to be "un-balanced" by the contracting unit, same was a valid basis to determine that the bid was not responsive and such a decision was not arbitrary, capricious or unreasonable.

Dobco, Inc. v. Bergen County Improvement Auth., 250 N.J. 396 (April 28, 2022)

https://scholar.google.com/scholar_case?case=15180750636792886306&q=Dobco,+Inc.+v.+Bergen+County+Improvement&hl=en&as_sdt=6,31&as_ylo=2022

While a party is estopped from challenging the award of a contract which it actively sought through the same public bidding procedures it now attacks, an owner of the company who is also a taxpayer can challenge the award. Having said that, the Court held that, going forward, a plaintiff claiming taxpayer standing in an action challenging the process used to award a public contract for goods or services must file a certification with the complaint. That certification should state that (1) the plaintiff is acting independently of, and not taking direction from, any applicant that participated in the process challenged in the action; and (2) the plaintiff is personally paying the legal fees and costs incurred in prosecuting the action, without reimbursement by an unsuccessful applicant. If the plaintiff fails to submit the certification, the trial court should dismiss the plaintiff's claims."

Asphalt Paving Systems v. Borough of Stone Harbor, A-0712-20 (App. Div. 2022)

https://scholar.google.com/scholar_case?case=376180854716063707&q=Asphalt+Paving+Systems+v.+Borough+of+Stone+Harbor&hl=en&as_sdt=6,31&as_ylo=2022

A mailing address, and not a home address, is sufficient to meet the requirement in N.J.S.A. 55:25A-24.2 that owners of a ten (10) percent or greater interest in the bidder disclose their "addresses."

Epic Management v. Borough of Ship Bottom, A-2796-20 (April 12, 2022)

https://scholar.google.com/scholar_case?case=3533489548465732576&q=Epic+Management+v.+Borough+of+Ship+Bottom&hl=en&as_sdt=6,31&as_ylo=2022

With respect to the subject bid for construction of a new municipal court building, the lowest contract was not required to provide the address and phone number of its electrical subcontractor—just the name of the subcontractor was sufficient under the Local Public Contracts Law.

Brickland 88, LLC v. Twp of Brick, A-2624-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=1509039504928542254&q=Brickland+88,+LLC+v.+Twp&hl=en&as_sdt=6,47&as_ylo=2023

It is well settled that "while a public body may make contracts as an individual, it can only do so within its express or implied powers and those who deal with a municipality are charged with notice of limitations imposed by law upon the exercise of that power." *Kress v. LaVilla*, 335 N.J. Super.

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400, 410 (App. Div. 2000). Furthermore, a public body may only act by resolution or ordinance. *Id.* Here, the municipality entered into a contract to purchase the subject 1.35 acre property subject to approval by ordinance. The municipality adopted an ordinance authorizing the contract to purchase 1.35 acres but, before closing, discovered the property to be much smaller. Court held that pursuant to the terms of the ordinance, the municipality was not required to purchase the Property because same was not, in fact, 1.35 acres in size.

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Port Imperial Ferry Corp. v. Monmouth County, A-0776-22 (April 2, 2024) certif. den. 258 N.J. 144 (2024)

https://scholar.google.com/scholar_case?case=2156780402389794914&q=port+imperial+ferry+corp&hl=en&as_sdt=4,31,131

“Generally, an ‘unsuccessful bidder[]’ has ‘no standing to challenge the award of the contract to a rival bidder or to attack allegedly illegal specifications.’ [because] ‘a party is estopped from challenging the award of a contract which it actively sought through the same procedures it now attacks.’” “The purpose of the [LPCL]... is to promote competitive bids ‘to secure for the public the benefits of unfettered competition.’”

The extraordinary unspecifiable service (“EUS”) procurement exception in the LPCL requires a service that is “specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.” N.J.S.A. 40A:11-2(7). Under this exception, a contract for an EUS “the amount of which exceeds the bid threshold, may be negotiated and awarded by the governing body without public advertising for bids and bidding therefor[e] and shall be awarded by resolution of the governing body....” N.J.S.A. 40A:11-5(1)(a)(ii). An EUS requires a “documented effort by the contracting agent to secure competitive quotations,” and “a determination in writing by the contracting agent that the solicitation of competitive quotations is impracticable.” N.J.S.A. 40A:11-6.1(b). However, as the LPCL provides, “[t]he application of this exception shall be construed narrowly in favor of open competitive bidding, whenever possible....” N.J.S.A. 40A:11-5(1)(a)(ii). “The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract... in the manner set forth in subsection [N.J.S.A. 40A:11-5(1)(a)(i)].” *Ibid.* Thus, the award of any purchase, contract, or agreement properly characterized as being an EUS is subject to N.J.S.A. 40A:11-6.1.

The Division of Local Government Service has adopted regulations limiting the use of the [EUS] exception. N.J.A.C. 5:34-2.2. Those regulations require that (1) the qualitative nature concerning the performance of the services cannot be reasonably described by written specifications, (2) the services were previously bid or characterized as a “continuous ongoing nature,” shall be subject to the “presumption that such services may not be classified as an EUS, unless the public entity can demonstrate in writing its inability to prepare written specifications describing the qualitative nature of the performance of the services required[,]” and (3) “[i]f written specifications can be prepared describing the qualitative nature of the performance of the services, then they shall be so written, but notwithstanding that the other criteria of the definition may be met.” N.J.A.C. 5:34-2.2(c).

Further, prior to awarding an EUS contract, a designated administrative official of the public entity “must file a certificate with the governing body clearly describing the nature of the work to be done, stating that it is not reasonably possible to draft specifications, describing the informal solicitation

of quotations, and describing in detail why the contract meets the provisions of the statute and these rules." N.J.A.C. 5:34-2.3(b). "A mere recitation of the language in the statute shall not be sufficient" for awarding an EUS."

"Several specific requirements must be satisfied to qualify as a competitive contracting exception: (1) the governing body must "pass a resolution" authorizing its use "each time specialized goods or services... are desired to be contracted[.]" N.J.S.A. 40A:11-4.3(a); (2) a public RFP process must be used, with notice of the RFP "published in an official newspaper of the contracting unit at least [twenty] days prior to the date established for the submission of proposals[.]" N.J.S.A. 40A:11-4.5(a); (3) the award of the contract must "be based on an evaluation and ranking, which shall include technical, management, and cost related criteria," which "criteria shall not unfairly or illegally discriminate against or exclude otherwise capable vendors[.]" N.J.S.A. 40A:11-4.4(b); and (4) a report must be prepared by the "purchasing agent or counsel or administrator... evaluating and recommending the award of a contract or contracts" which "shall list the names of all potential vendors who submitted a proposal[.]" summarize their proposals, and recommend the selection of vendor that is "clear in the reasons why the vendor or vendors have been selected among others considered, and shall detail the terms, conditions, scope of services, fees, and other matters to be incorporated into a contract[.]" N.J.S.A. 40A:11-4.5(d)."

Consumer Fraud Act (CFA)

Vagias v. Woodmont Properties, L.L.C., 384 N.J. Super. 129 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=15850836831305835281&q=384+N.J.+Super.+129+&hl=en&as_sdt=2,31

Realtor who made an affirmative misrepresentation on a critical issue to the purchase of a home – its location, location, location - violated the Consumer Fraud Act regardless of intent.

Stone v. Kahr Properties, LLC, A-6137-06T1 (Dec. 16, 2008)

Consumer Fraud Act applies to a person or entity in the business of selling home improvements. A business entity may also be a consumer and is entitled to protection under the CFA.

Czar, Inc. v. Jo Anne Heath, 198 N.J. 195 (2009)

http://scholar.google.com/scholar_case?case=16380703323367630819&q=,+198+N.J.+195+&hl=en&as_sdt=2,31

Contractor hired by a homeowner to design and install a kitchen in a new home then being built for the homeowner by a different contractor, and neither acted as the general contractor nor qualified as a builder of new homes, was engaged in the business of home improvements and subject to the Consumer Fraud Act.

Dean v. Barrett Homes, Inc., 406 N.J. Super. 453 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=10648069249870401845&q=406+N.J.+Super.+453+&hl=en&as_sdt=2,31

Consumer Fraud Act and product liability claims against material supplier in home clad in EIFS siding brought by subsequent purchaser of home dismissed where there is no privity, representations, reliance, etc.

MISCELLANEOUS

Cardillo v. Bolger, A-1117-07T2 (Jan. 12, 2009)

The Consumer Fraud Act and the regulations governing home-improvement practices apply equally to corporations and the individuals acting on their behalf. Individual defendant, a corporate officer and the sole shareholder of corporate home improvement contractor, personally liable for CFA violations by the corporation, based upon the definitions of “person” in the CFA and “seller” in the regulations, and the tort-participation theory of liability. “Corporate officers, directors, shareholders, and employees are individually liable for statutory violations in which they participate, just as they are individually liable for intentional torts in which they participate because the duty is imposed by law, like a tort.”

Mitigation Services, Inc. v. McErlean, A-2891-07T2 (May 18, 2009)

All home improvement contracts for a price in excess of \$500 must be in writing signed by all parties and clearly set forth all terms and conditions of the contract. Under the Consumer Fraud Act, the term “home improvement services” include those performed under emergency conditions. A party who violates the CFA may not recover any damages for services performed, regardless of its good faith in the transaction.

Allen v. V and A Brothers, Inc., 414 N.J. Super. 152 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=17935871696012684035&q=414+N.J.+Super.+152+&hl=en&as_sdt=2,31

Consumer Fraud Act liability may be imposed upon the individual principals of the corporation for negligent construction of a retaining wall and substitution of inferior backfill which resulted in property damage upon proof of personal participation by an individual in a particular regulatory violation.

Rinaldo v. Schaad, A-3788-08T3 (Oct. 25, 2010)

http://scholar.google.com/scholar_case?case=7251400532250556877&q=Rinaldo+v.+Schaad&hl=en&as_sdt=2,31

There was no waiver of the right to arbitrate contained in a home improvement contract where contractor had filed a construction lien law claim which was withdrawn and then in response to a complaint from the homeowner alleging negligence, breach of contract and a CFA violation, demanded arbitration.

ABJ Sprinkler Co., Inc. v. Paxton Construction, A-3664-08T3 (Sept. 23, 2010)

http://scholar.google.com/scholar_case?case=9197073489036238399&q=A-3664-08T3+&hl=en&as_sdt=2,31

False affidavit of title executed by condominium developer in the sale of units that all contractors had been paid is a prima facie violation of the Consumer Fraud Act. Acts of omission must be knowing and committed with the intent to induce reliance, but prohibited affirmative acts, including misrepresentation of material facts, do not require proof of intent to mislead.

Allen v. V and A Brothers, Inc., 208 N.J. 114 (2011)

http://scholar.google.com/scholar_case?case=5398680689086057224&q=208+N.J.+114+&hl=en&as_sdt=2,31

Employees and officer of a corporation may be individually liable under the CFA for affirmative acts or knowing omissions they undertake through the corporate entity.

Murnane v. Finch Landscaping, LLC, 420 N.J. Super. 331 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=16759290700991139390&q=420+N.J.+Super.+331+&hl=en&as_sdt=2,31

A homeowner who contracts directly with a building contractor to perform a home improvement,

without engaging the services of a general contractor, may assert a claim against the contractor under the Consumer Fraud Act and the Contractor's Registration Act.

Perez v. Professionally Green, LLC, 215 N.J. 388 (2013)

http://scholar.google.com/scholar_case?case=8930184333439924688&q=069482&hl=en&as_sdt=4,31

Plaintiffs may not recover attorneys' fees under N.J.S.A. 56:8-19, where they demonstrated a technical violation of the CFA, but their motion for partial summary judgment on the issue of ascertainable loss was denied and the defendant's motion for involuntary dismissal at trial was granted.

Green v. Morgan Properties, 215 N.J. 431 (2013)

http://scholar.google.com/scholar_case?case=11323772670287852305&q=Nos.+A-100-11,+069540&hl=en&as_sdt=4,31

Plaintiffs' claim for relief pursuant to the CFA that the amounts of attorneys' fees fixed in residential leases survives motion to dismiss because "in the context of a summary dispossession action based on a residential lease, an attorneys' fee clause is not a form of damages, but an additional rent term." "[T]he leases signed by plaintiffs are lengthy, pre-printed forms that, like most residential leases, are contracts of adhesion." "[T]enants must be afforded a forum to challenge the reasonableness of lease clauses on which landlords rely for purposes of summary dispossession proceedings." "[T]he landlord in a summary dispossession action bears the burden of proving the reasonableness of the lease terms; permitting the landlord to characterize the attorneys' fee provision as a liquidated sum would impermissibly shift that burden to plaintiffs." "The complaint, indulgently interpreted, contends that it was an unconscionable business practice to include the attorneys' fee provisions in the leases when they did not accurately represent the fees." Where complaint does not allege that individual defendants had any role in the drafting of an alleged unconscionable lease, the CFA claim against the individual defendants must be dismissed. "[T]he assertion that an attorney has violated one of our ethical rules does not give rise to a cause of action, although the evidence may be relevant for another purpose." The Court remains reluctant to permit non-clients to sue an adversary's attorneys.

Belmont Condominium Association, Inc. v. Geibel, 432 N.J. Super. 52 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=7458238314800869478&q=A-2584-10T3++&hl=en&as_sdt=4,31

Where alleged damages involve the common elements of a condominium, the association may bring a CFA claim against the developer. An association may recover all the damages for defects in the common elements without apportionment of damages among unit owners. An association has no standing to bring a claim for loss to an individual unit. A claim of literal truth does not constitute a defense to a CFA claim – the capacity to mislead is the prime ingredient of deceptive or an unconscionable commercial practice. "Plaintiffs CFA claims did not accrue until it suffered an ascertainable loss. Nevertheless, even if plaintiff's claims accrued at an earlier date, the statute of limitations was properly tolled under the discovery rule." An award of prejudgment interest is limited to the compensatory portion of a CFA damages award; it may not be given on the treble damages award which are punitive.

Zaman v. Felton, 219 N.J. 199 (2014)

http://scholar.google.com/scholar_case?case=6682399977598997845&q=zaman+v.+felton&hl=en&as_sdt=4,31

CFA does not apply to non-professional, casual seller of real estate, but only to professional sellers.

MISCELLANEOUS

Huston v. Lieber, A-2326-13T3 (April 17, 2015)

https://scholar.google.com/scholar_case?case=15371072775528627589&q=A-2326-&hl=en&as_sdt=4,31

Contractor violated the Contractors' Registration Act ("CRA") by failing to have a signed contract, include his registration number on the contract, attach a copy of his certificate of commercial general liability insurance to the contract and inform the homeowners that they had three days after receiving the contract to cancel it. A violation of the CRA is also a violation of the CFA and a party who violates the CFA may not obtain damages even if the violation was innocent, committed in good faith or where the contractor previously performed services for the homeowners. The contractor's only remedy is to proceed in quantum meruit.

Hudson Harbour Condominium Association, Inc. v. Oval Tennis, Inc., A-3063-13T1 (July 29, 2015)

https://scholar.google.com/scholar_case?case=8726596790001253663&q=A-3063-13T1+&hl=en&as_sdt=4,31

A prima facie case of unlawful conduct pursuant to CFA shown where contractor knowingly represented that it was qualified by experience and practice to do the job when it was not.

Coluccio v. Sevas Builders, Inc., A-5576-12T4 (Aug. 27, 2015)

https://scholar.google.com/scholar_case?case=7531994208073852965&q=A-5576-12T4&hl=en&as_sdt=4,31

Homeowner not equitably estopped from recovering on a CFA claim against builder where homeowners' failure to obtain proper permits and approvals did not "induce" builder to commit the violations of the CFA.

Plantation Bay, LLC v. Stewart Title Guaranty Company, No. 15-2042 (Aug. 29, 2016)

https://scholar.google.com/scholar_case?case=718430218115210250&q=no.+15-2042&hl=en&as_sdt=3,31

Title company's erroneous statement about the enforceability of a deed restriction, while "material to Plaintiff's decision to purchase its title insurance policy and therefore complete its purchase of the Property, is not a 'fact' for the purposes of fraud claims." "Defendant's statements were more akin to legal opinions about enforceability requiring application of principles of law to factual circumstances, but the statements are not themselves facts for the purposes of a consumer fraud claim."

Port Imperial Condominium Association, Inc. v. Cane, A-5723-13T2 (Jan. 11, 2016)

https://scholar.google.com/scholar_case?case=17113613152119401870&q=A-5723-13T2&hl=en&as_sdt=4,31

To recover for lost property value due to alleged misrepresentations of the Seller, Plaintiff must prove ascertainable loss by an appraisal or an expert report.

Amorim v. Moschette, A-3044-14T2 (July 12, 2016)

https://scholar.google.com/scholar_case?case=16426845316110800894&q=A-3044-14T2&hl=en&as_sdt=4,31

"[A] plaintiff who establishes a violation of the Act and whose ascertainable loss issue survives summary judgment is entitled to attorney's fees, even if the ascertainable loss issue fails when submitted to a jury."

Katz v. NT Callaway Real Estate Broker, LLC, A-5730-14T2 (Nov. 14, 2016)

https://scholar.google.com/scholar_case?case=3500510590235072724&q=A-5730-14T2&hl=en&as_sdt=4,31

“Knowledge on the part of the attorney for a purchaser of land . . . of a defect in title is imputed to the client.” [citation omitted]. To succeed on a CFA claim, plaintiff must show ascertainable loss. “In cases involving breach of contract or misrepresentation, either out-of-pocket or a demonstration of loss in value will suffice to meet the ascertainable loss hurdle.” [citation omitted].

All Risk, Inc. v. Merion Realty, LLC, A-1583-13T2 (Dec 30, 2016)

https://scholar.google.com/scholar_case?case=13678357613362190257&q=A-1583-13T2&hl=en&as_sdt=4,31

A contract for the renovation to a building that has a commercial use on the ground floor and residents on the second and third floors qualifies as a residential, non-commercial property for purposes of the CFA. The violation of the CFA must have a causal relationship with the ascertainable loss of money or property. Quantum meruit is available to a plaintiff who sought recovery under an unenforceable contract.

Riccardi v. Bruno, A-4702-14T2 (Jan. 11, 2017)

https://scholar.google.com/scholar_case?case=16388931022051203091&q=A-4762-14T2&hl=en&as_sdt=4,31

An award of attorney’s fees under the CFA must be “informed by the degree of success achieved by the prevailing party.”

ABDM Properties, Limited Liability Company v. Meusz, A-4556-15T4 (Aug. 23, 2017)

https://scholar.google.com/scholar_case?case=8343458631658377286&q=A-4556-15T4&hl=en&as_sdt=4,31

The caveat emptor doctrine is not applied where there has been concealment or nondisclosure of a latent defect. “[A] seller of real estate or a broker representing the seller would be liable for nondisclosure of on-site defective conditions if those conditions were known to them and unknown and not readily observable by the buyer.” The CFA does not apply to “the non-professional, casual seller of real estate.”

Joy Systems, Inc. v. FIN Associates Limited Partnership, A5373-15T4 (June 7, 2018)

https://scholar.google.com/scholar_case?case=10641533074183722918&q=A-5373-15T4&hl=en&as_sdt=4,31

Commercial landlord violated the CFA by engaging in unconscionable commercial practices by failing to return the security deposit to tenant and asserting damages against tenant for work that was not required to be performed under the lease.

Houghton v. Houran, A-2056-16T3 (June 21, 2018)

https://scholar.google.com/scholar_case?case=16846019474106415924&q=A-2056-16T3&hl=en&as_sdt=4,31

“An employee or officer of a corporation can be held individually liable under the CFA ‘when the basis for the CFA claim is a regulatory violation rather than an affirmative act or knowing misrepresentation.’ ‘[I]ndividual liability for a violation of the CFA will necessarily depend upon an evaluation of both the specific source of the claimed violation that forms the basis for the plaintiff’s complaint as well as the particular acts that the individual has undertaken.’ The same analysis should apply when determining whether attorney’s fees awarded under the CFA for regulatory violations can be assessed individually against an employee or officer of a corporation or limited liability company.”

MISCELLANEOUS

Kayal v. Signal Hill Realty Corp., No. 17-3565-BRM-DEA (Aug. 29, 2018)
https://scholar.google.com/scholar_case?case=5215911109063316919&q=17-3565&hl=en&as_sdt=3,31

“The CFA creates three categories of unlawful practices: affirmative acts, knowing omissions, and violations of state regulations.’ . . . The CFA does not create strict liability for violations of other statutes, regulations, or rules not promulgated under the CFA . . . ‘[a] plaintiff must suffer a definite, certain and measurable loss, rather than one that is merely theoretical.’” [internal citations omitted]

McCarthy v. Prudential Fox & Roach, A-4442-15T4 (Sept. 14, 2018)
https://scholar.google.com/scholar_case?case=5001171642466008083&q=A-4442-15T4&hl=en&as_sdt=4,31

A real estate agent is not a professional with an obligation to protect plaintiffs “from self-inflicted harm,” and is therefore entitled to have the jury assess plaintiffs’ comparative negligence for entering into an “as is” purchase of property unsuitable in the short term for their needs.

Shaw v. Shand, A-5686-17T1 (Aug. 15, 2019)
https://scholar.google.com/scholar_case?case=3103585807164331065&q=A-5686-17T1&hl=en&as_sdt=4,31

The CFA applies to home inspectors because they are not covered by the learned professional exception.

Houghton v. Houran, A-0101-18T1 (Aug. 28, 2019)
https://scholar.google.com/scholar_case?case=9801724503479462311&q=A-0101-18T1&hl=en&as_sdt=4,31

Defendant not personally liable where regulatory violation was not the basis for damages.

McAvoy v. Fine Homes by James Eskin, A-3325-18T3 (Feb. 1, 2021)
https://scholar.google.com/scholar_case?case=12335119020553772076&q=McAvoy+v.+Fine+Homes&hl=en&as_sdt=6,31&as_ylo=2021

To establish a fraud claim on the basis of “apparent authority” against a principal, a party must establish that: (1) the appearance of authority was created by the conduct of the alleged principal and cannot be established alone and solely by the conduct of the agent; (2) a third party relied on the agent’s apparent authority for a principal; and (3) the reliance was reasonable under the circumstances.

EASEMENTS & RESTRICTIONS

Randolph Town Center, L.P. v. County of Morris, 374 N.J. Super. 448 (App. Div. 2005)
http://scholar.google.com/scholar_case?case=16422379528735550646&q=374+N.J.+Super.+448+&hl=en&as_sdt=2,31

Period to establish prescriptive easement is the same period used for adverse possession.

Storms v. County of Hunterdon, HNT-C-14029-05 (Mar. 31, 2006)
 Count grapples with issue of easement granted to county planning board in connection with subdivision approval which was granted in the name of a member of a limited liability company, rather than the LLC. Case remanded to determine whether a reasonable title searcher would have found the easement.

Robinson v. Rea, A-1491-05T3 (Jan. 25, 2007)

An easement by necessity arises when a once unified title is severed and the result leaves either the grantor or grantee owning a landlocked parcel. The creation of this easement occurs automatically because enjoyment of the land cannot be achieved without access to it and there is a strong public policy that all land be accessible and utilized. Easements, when justified by necessity, must be reasonable and limit their burden on the servient estate as much as possible and not unreasonably interfere with the use and enjoyment of the servient estate.

Twp. of East Brunswick v. Transcontinental Gas Pipeline Corporation, A-5681-06T2 (July 7, 2008)

Easement for gas pipeline which granted the easement holder the right to cut trees from time to time was clear and plaintiffs couldn't block the company's proposed tree removal simply because it didn't object at the time of planting and the trial court erred in providing for a three-year staged tree removal.

Twp. of Piscataway v. Spectra Energy, Civ. No. 01-4828 (FSH), 2008

http://scholar.google.com/scholar_case?case=14421465569268335270&q=,+Civ.+No.+01-4828+&hl=en&as_sdt=2,31

Defendant owner of gas pipeline enjoined from removing trees where easement does not clearly provide for tree removal and court finds that removal of trees is not reasonably necessary to the enjoyment of the easement and the removal of the trees would unduly burden the adjacent property owners.

1404 Washington Street, LLC v. Riggins, Inc., A-1682-08T3 (Oct. 28, 2009)

http://scholar.google.com/scholar_case?case=12396024806005611294&q=A-1682-08T3+&hl=en&as_sdt=2,31

The duty of fair dealing required the reformation of a restrictive covenant that was clearly set forth in the contract, but was not completely provided for in the deed.

Sack v. FirstEnergy Corp., A-0154-07T2 (Nov. 19, 2008)

Where the terms of an easement are unambiguous, there is no need to resort to implied rights. However, the holder of an easement must exercise its rights in a reasonable manner so as to avoid unnecessary increases in the burden on the landowner.

Rosen v. Keeler, 411 N.J. Super. 439 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=4583506125938113789&q=411+N.J.+Super.+439+&hl=en&as_sdt=2,31

"An easement appurtenant cannot be transferred or assigned for the benefit of another tenement separate from the dominant estate unless the instrument creating it demonstrates a clear intent to grant such a right." The language in the easement that provides that it shall run "with the land and shall bind and inure to the benefit of the owner . . . and their heirs, personal representatives, assigns and successors in title" does not allow the easement to be assigned to a party that does not hold an interest in the dominant estate.

Yellen v. Kassir, 416 N.J. Super. 113 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=13871669801004445813&q=416+N.J.+Super.+113+&hl=en&as_sdt=2,31

To prove a prescriptive easement, it must be demonstrated that the use is adverse, visible, open, notorious, and continuous for over thirty years. It is not enough to use the property of another for the statutory time period, the use must be under a claim of right to be adverse. Permissive use is not adverse.

MISCELLANEOUS

Reed v. Billybob Partners, A-0059-08T2 (Jan. 14, 2010)

http://scholar.google.com/scholar_case?case=18227056524797276222&q=A-0059-08T2+&hl=en&as_sdt=2,31

An easement by necessity is an implied easement that arises for access to a landlocked parcel and will end when the necessity ends. An easement by deed does not end when it is no longer required. The relocation of an easement generally requires the consent of both parties. Where an easement was intended for residential use and the town requires that driveways be paved, the holder of the easement may pave the driveway to allow for access.

Borough of Paramus v. Shamrock Creek, L.L.C., A-6267-08T2 (Mar. 30, 2010)

http://scholar.google.com/scholar_case?case=8296291774783378208&q=A-6267-08T2+&hl=en&as_sdt=2,31

Borough cannot enforce an unrecorded restriction against an innocent purchaser who had no notice of the restriction. The integrity of the recording system is the paramount interest to be protected.

1952 Union Valley Road, LLC v. Adelo Corporation, A-3203-08T3 (Mar. 30, 2010)

http://scholar.google.com/scholar_case?case=2185430655914918548&q=A-3203-08T3+&hl=en&as_sdt=2,31

Easement by estoppel created where one party paved and cleared the property of another with the other's knowledge and maintained it for nine years. The easement also arose out of a reciprocal commitment to provide and receive future benefits. However, since the easement essentially arose out of an oral agreement between the parties, there was no error in the court's limiting the easement to the life of the benefited party, or until he sold his interest in the property benefited from the easement.

Beyer v. Cutler Brothers Box & Lumber Company, A-3382-08T1 (Aug. 19, 2010)

http://scholar.google.com/scholar_case?case=6815733269489402170&q=A-3382-08T1+&hl=en&as_sdt=2,31

Holder of an easement to use private roadway cannot claim adverse possession as against the fee owner where its actions are consistent with those who enjoy the easement and the fee owner had no knowledge that the holder of the easement claimed fee ownership.

Valleybrook Country Club, LLC v. Gloucester Twp. Council, A-1516-09T3 (Nov. 3, 2010)

http://scholar.google.com/scholar_case?case=458692341482995557&q=Valleybrook+Country+Club,+LLC+v.+Gloucester+Twp.+Council&hl=en&as_sdt=2,31

Deed restriction on golf club may not be set aside in its entirety on the ground that the precise boundaries of the restriction were subject to slight modification in the future to accommodate the developer, where the restriction was not otherwise vague. Deed restrictions are deemed to be abandoned when pervasive violations or changed circumstances show an intent to abandon the restriction, but minor and isolated violations will not demonstrate an intent to abandon the restriction.

Breakwater Cove Condominium Association v. Chin, A-1420-09T3 (Dec. 2, 2010)

http://scholar.google.com/scholar_case?case=13682570399118094366&q=A-1420-09T3+&hl=en&as_sdt=2,31

A condominium's restrictive covenant must be construed strictly in favor of the owner's unrestricted use.

DiGiovanni v. Rodriguez, A-4631-08T1 (Dec. 10, 2010)

http://scholar.google.com/scholar_case?case=2052178617840958236&q=,+A-4631-08T1+&hl=en&as_sdt=2,31

Trial court's grant of an easement for a driveway based upon hardship where adverse possession wasn't established reversed where expense or difficulty of removing improvements within the encroachment was minimal and thus hardship was not established. "[H]ardship must result from the expense and difficulty of removing an encroachment, and not by the resultant condition of the trespasser's own property."

1101 CRNB, LLC v. Feed The Children, Inc., Civ. Action No. 10-2811 (FLW) Jan. 14, 2011

[http://scholar.google.com/scholar_case?case=16635236819422576606&q=Civ.+Action+No.+10-2811+\(FLW&hl=en&as_sdt=2,31](http://scholar.google.com/scholar_case?case=16635236819422576606&q=Civ.+Action+No.+10-2811+(FLW&hl=en&as_sdt=2,31)

A. In order to establish the existence of a quasi-easement, one must satisfy the following five elements: 1) unity of title; 2) apparent use; 3) continuous nature of the use; 4) permanent character of the quasi-easement; and 5) reasonable necessity – and that all elements existed at the time of the severance of title. B. New Jersey does not explicitly recognize an easement by acquiescence, although acquiescence is an element of easement by prescription. An easement by prescription arises when elements similar to those of adverse possession are shown to have existed for 20 years. C. "Easements by estoppel, like all estoppel cases, must satisfy the elements of equitable estoppel: proof of misrepresentation of material facts, or concealment thereof, known to the party sought to be estopped and unknown to the party claiming estoppel, done with the intention or expectation that it will be acted upon by the other party and upon which the other party reasonably and justifiably relies, to its detriment."

Rodano v. Craig, A-0863-09T3 (May 17, 2011)

http://scholar.google.com/scholar_case?case=1563004130251611204&q=A-0863-09T3+&hl=en&as_sdt=2,31

For easements, "the primary rule of construction is that the intent of the conveyor is normally determined by the language of the conveyance read as an entirety and in the light of the surrounding circumstances." "When there is any ambiguity or uncertainty about an easement grant, the surrounding circumstances, including the physical conditions and character of the servient tenement, and the requirements of the grantee, play a significant role in the determination of the controlling intent." Where two separate clauses in the preamble of the instrument stated that the grantor would "grant" and "create" the easement, the court interpreted the intent as requiring the grantor to physically improve the easement to allow it to be used driveway purposes by the grantee – including the construction of a bulkhead and obtaining the necessary DEP permits to do so.

GMK Properties, LLC v. Developers Diversified Realty Corporation, A-4656-10T1 (Feb. 16, 2012)

http://scholar.google.com/scholar_case?case=950417547664987855&q=A-4656-10T1+&hl=en&as_sdt=2,31

"The policy of the law is against the imposition of restrictions upon the use and enjoyment of land and such restrictions are to be strictly construed."

The Children's Center of Monmouth County, Inc. v. First Energy Corporation, A-3963-10T3 (Mar. 8, 2012)

http://scholar.google.com/scholar_case?case=12544711440156620945&q=3963-10T3+&hl=en&as_sdt=2,31

"In considering easements, restrictive deed covenants and other servitudes, our courts have frequently consulted the Restatement (Third) of Property: Servitudes (2000) and relied on its principles." "An easement holder's rights generally depend 'on the intent of the parties as expressed in the language of the grant.' Where, as here, an easement has been created by grant, it may be

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modified by subsequent agreement. Similarly, the question of whether a particular writing ‘operates to release a servitude is a matter of the parties’ intent.’”

DePalma v. McGlone, A-5208-09T3 (June 18, 2012)

http://scholar.google.com/scholar_case?case=7978128142528252112&q=depalma+v.+mcglone&hl=en&as_sdt=2,31

Where a landowner obtains subdivision approval, builds a home on one of the lots and an appurtenant driveway on the other lot prior to the time that they sold the lot benefitted by the driveway, an implied easement is created because (1) title was separated; (2) before separation took place the use that gave rise to the easement had been “so long continued and so obvious or manifest as to show that it was meant to be permanent,” and (3) that the easement was “necessary to the enjoyment of the land granted.” An easement by implication is extinguishable only (A) by release; (B) by merger of the estates; (C) by abandonment; (D) by estoppel; and (E) by expiration of a stated term of easement.

Lamanna v. Swan, A-1280-10T3 (July 20, 2012)

http://scholar.google.com/scholar_case?case=8791556606098874412&q=A-1280-10T3++&hl=en&as_sdt=2,31

“To create an easement by prescription, as with adverse possession, the use must be adverse or hostile, visible, open and notorious, and continuous” for a period of thirty years. “Open” means the use is not secret. “Notorious” means actual knowledge on the part of the property owner or that the use is widely known. “Hostile” refers to an intent to claim against the owner in such circumstances that the owner will be alerted to resist the acquisition. The use need not be established by intentional hostility, but it may not be permissive. “Continuous” means “there is no break in the ‘attitude’ of the adverse possessor, which could be evidenced by seeking the servient owner’s consent, by abandoning the use following the owner’s demand, or by paying the owner for the privilege of continuing the use.”

Hawes Realty, Inc. v. Cupo, A-4715-10T1 (Aug. 2, 2012)

http://scholar.google.com/scholar_case?case=8079781957098512358&q=A-4715-10T1+&hl=en&as_sdt=2,31

“In order to establish an easement by prescription, a litigant must prove elements similar to those associated with adverse possession. Thus, the proponent of an easement by prescription must prove an adverse use of land that is visible, open and notorious for at least thirty years.” “A use is adverse or hostile if a person uses the property of another under a claim of right, pursued with an intent to claim against the true owner in such circumstances of notoriety that the owner will be aware of the fact and thus alerted to resist the acquisition of the right by claimant before the period of adverse possession has elapsed.”

Liberty House Nursing Home of Jersey City, Inc. v. GRE Jersey City, A-0206-11T1 (Mar. 25, 2013)

http://scholar.google.com/scholar_case?case=3631301618249452279&q=A-0206-11T1&hl=en&as_sdt=4,31

Although “parties may effectively bind themselves by an informal memorandum where they agree upon the essential terms of the contract and intend to be bound by the memorandum, even though they contemplate the execution of a more formal document,” a memorandum of lease did not bind the parties where “the relationship between the parties, the terms of the Memorandum of Lease, and the circumstances under which that document was created,” evidenced the parties’ intent not to be bound by the Memorandum of Lease.

Soho Properties, LLC v. Centex Homes, LLC, A-1521-11T2 (Mar. 26, 2013)

http://scholar.google.com/scholar_case?case=3912211964369804301&q=A-1521-11T2&hl=en&as_sdt=4,31

Chancery Court properly granted lot owners a private right-of-way over a roadway that was shown on the filed subdivision map creating their lots notwithstanding the fact that it was never dedicated to the public.

Estevez v. Mangiliman, A-2097-11T3 (April 3, 2013)

http://scholar.google.com/scholar_case?case=1078482044555997914&q=A-2097-11T3&hl=en&as_sdt=4,31

“Generally, a deed that is forged is deemed void and a nullity.” However, “[o]ne who knows a deed transferring his or her ownership in property has been transferred and does nothing to repudiate it may be deemed to have ratified the forged deed and lose the right to challenge the forgery later, when an anticipated benefit does not arise.”

Old Taunton Colony Club v. Medford Township Zoning Board of Adjust., A-5134-11T2 (June 5, 2013)

http://scholar.google.com/scholar_case?case=10564759020322234370&q=A-5134-11T2+&hl=en&as_sdt=2,31

“[V]iolations of restrictive covenants governing [a common neighborhood scheme] ‘must be such as ‘to indicate an abandonment or modification of the original general plan which makes an enforcement of the plan inequitable because of changed conditions. The violations must be so pervasive as to indicate either a change in the neighborhood or a clear intent on the part of the property owners generally to abandon or modify the original plan.’” “The essential test that applies to such a claim of changed circumstances requires the applicant to demonstrate that it has become ‘impossible as a practical matter to accomplish the purpose for which’ a servitude or restrictive covenant was created.”

Adel v. NFPS, Inc., A-1116-12T4 (June 10, 2013)

http://scholar.google.com/scholar_case?case=10968068529146066231&q=A-1116-12T4+&hl=en&as_sdt=2,31

“A perdurable right of first refusal . . . limits the owner’s options and constitutes a restriction on the free and unfettered alienation of property, . . . and is . . . not favored in law, and, as a result, they: ‘are always to be strictly construed, and courts will not aid one person to restrict another in the use of his land unless the right to restrict is made manifest and clear in the restrictive covenant.’” Therefore, a right of first refusal does not remain viable after the initial sale of the property unless the contract unequivocally provides otherwise.

Smith v. Kinley, A-4160-11T4 (July 11, 2013)

http://scholar.google.com/scholar_case?case=8957501820381962357&q=A-4160-11T4+&hl=en&as_sdt=4,31

“All instruments of every kind” affecting title to real estate may be recorded pursuant to N.J.S.A. 46:16-2, including a quiet title judgment containing a metes and bounds description. “Under the statute, a bona fide purchaser for valuable consideration is bound by the terms of an unrecorded judgment if the bona fide purchaser for valuable consideration had notice of the judgment or if a ‘reasonable’ search of its chain of title would have led to the judgment.”

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Petrone v. Petrone, A-5974-08T1 (Oct. 28, 2013)

http://scholar.google.com/scholar_case?case=14788599499377504252&q=A-5974-08T1+&hl=en&as_sdt=4,31

"In a grant by way of joint tenancy, to three persons, each takes one third part. In a grant to a husband and wife, and a third person, the husband and wife take one half, and the other person takes the other half. [citation omitted]. That common law rule does not change with the application of current statutory law. A tenancy by entirety is created when '[a] husband and wife together take title to an interest in real property ... under a written instrument designating both of their names as husband and wife.' N.J.S.A. 46:3-17.2." In addition, N.J.S.A. 46:3-17.3, provides that: "No instrument creating a property interest on the part of a husband and wife shall be construed to create a tenancy in common or a joint tenancy unless it is expressed therein or manifestly appears from the tenor of the instrument that it was intended to create a tenancy in common or joint tenancy."

Petrozzi v. City of Ocean City, Nos. A-1633-11T4, A-1677-11T4 (Oct. 28, 2013)

http://scholar.google.com/scholar_case?case=1366151609476359905&q=Petrozzi&hl=en&as_sdt=4,31

"[A] riparian grant is a conveyance in fee simple of real property[;] [a]s such, without specific mention in the deed or other evidence that the parties intended its inclusion, a riparian grant will not pass as appurtenant to another district parcel." citing *Panetta v. Equity One, Inc.*, 190 N.J. 307, 309 (2007).

Caribbean House, Inc. v. North Hudson Yacht Club, 434 N.J. Super. 220 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=17712631844425519953&q=caribbean+house&hl=en&as_sdt=4,31

"A mere statement that a way is 'for ingress and egress' . . . or for 'the purpose of passing and repassing' . . . aptly describes an easement of way without restriction." "Where no limitation is placed on the extent of the use of an easement of way, it is available as a general way for all purposes to which the dominant tract might be devoted." Therefore, the owner of the dominant estate had the right to allow the use of the easement by a restaurant located on an unrelated parcel to park cars on the dominant estate.

Mautone v. Cappelluti, A-6090-12T3 (July 22, 2014)

http://scholar.google.com/scholar_case?case=6039350385632733798&q=A-6090-12T3&hl=en&as_sdt=4,31

Trial court properly ordered the relocation of a sanitary sewer easement where it interfered with the approved development of Plaintiff's property and could be relocated and still provide Defendants with the essential benefit of the easement. A court may order the relocation of an easement to advance the interests of justice where the modification is minor and the parties' essential rights are fully preserved.

Blain v. Smithson, A-1776-12T2 (Aug. 4, 2014)

http://scholar.google.com/scholar_case?case=7304495183735573387&q=A-1776-12T2+&hl=en&as_sdt=4,31

Adjoining landowners may reach a boundary line agreement that bind each other. "N.J.S.A. 46:3A-5 states: A certificate, executed by the owners of adjoining lands, certifying that any line, corners and boundaries are allowed and acknowledged by them to be the true boundary between their lands, shall be as fully conclusive and binding as to the parties thereto, their heirs, successors and assigns as though such boundary had been fixed by them by deed or otherwise, and any such certificate, when duly acknowledged or proved, may be recorded in the office of the county clerk or register of deeds and mortgages, as the case may be, of the county in which such lands lie, and, when so recorded, the record thereof shall be receivable in evidence and shall be notice in the same manner

and to the same effect as though their respective deeds had been so acknowledged or proved and recorded.” The fact “that the Township took no action after the boundary line agreement was recorded does not mean the lots are converted and the modification was a validated change to the lots as listed on the tax map.” “However, the boundary line agreement does not equate to a subdivision or liken itself to bulk variance approval. Indeed, N.J.S.A. 46:3A-5 allows parties to agree to abide by boundary lines that differ from those drawn on the municipal tax map.”

State v. Quaker Valley Farms, LLC, A-5710-12T3 (July 24, 2015)

https://scholar.google.com/scholar_case?case=3272014921098160461&q=A-5710-12T3&hl=en&as_sdt=4,31

“The court’s ‘prime consideration’ in interpreting a deed ‘is the intention of the parties.’ The court may resort to intrinsic evidence to inform the court’s interpretation.” The same principals are applied in the interpretation of an easement. “When ‘language purportedly granting an easement is ambiguous or in dispute, ‘the primary rule of construction is that the intent of the conveyer is . . . determined by the language of the conveyance read as an entirety and in the light of the surrounding circumstances.’ However, if ‘the intent of the parties is evident from an examination of the instrument, and the language is unambiguous, the terms of the instrument govern.’”

Van Horn v. Harmony Sand & Gravel, Inc., A-2794-13T2 (Sept. 10, 2015)

https://scholar.google.com/scholar_case?case=17642451500221827921&q=A-2794-13T2+&hl=en&as_sdt=4,31

An agreement entitled “lease agreement” was actually a profit because it conveyed a lesser interest than exclusive possession and merely conveyed the right to extract materials from the property, limited the non-interference obligation of the owner to the grantee’s mining operation, was contingent upon the grantee obtaining permits and terminable on the cessation of mining operations.

Freedman v. Sufirin, A-4942-13T1 (Nov. 24, 2015)

https://scholar.google.com/scholar_case?case=12778617462817687081&q=4942-13T1&hl=en&as_sdt=4,31

Restrictions on the use of land are to be strictly construed. Although the “rule of strict construction ‘will not be applied to defeat the obvious purpose of a restriction[,] . . . the meaning of a restrictive covenant will not be extended by implication and all doubts and ambiguities must be resolved in favor of the owner’s unrestricted use of the land.’ . . . Accordingly, the existence of ambiguities does not preclude summary judgment, as would be the case when construing a contract; to the contrary, . . . ambiguities invite summary judgment in this context.”

Friedman v. MTR Ventures, LLC, A-0295-14T1 (Feb. 9, 2016)

https://scholar.google.com/scholar_case?case=5953478629594864961&q=A-0295-14T1&hl=en&as_sdt=6,31

Where the reference on a final plat to an easement is ambiguous and insufficient to determine the parties’ intent with respect to the extent of the easement, the court should consider the underlying circumstances of the grant to determine the parties’ intent.

Falconite v. Daroci, A-0876-14T2 (April 15, 2016)

https://scholar.google.com/scholar_case?case=979898740484030965&q=A-0876-14T2&hl=en&as_sdt=4,31

In an action over a failed real estate purchase due to an undisclosed drainage easement, the seller cannot rely upon the printed contract form – that the conveyance was subject to easements – if she misrepresented what she knew about the easement.

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Rinaldo v. DeLuca, A-1495-14T2 (April 18, 2016)

https://scholar.google.com/scholar_case?case=2700133368675300230&q=A-1495-14T2&hl=en&as_sdt=4,31

“An easement creates a non-possessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement.’ (citation omitted). ‘An easement appurtenant is created when the owner of one parcel of property (the servient estate) gives rights regarding that property to the owner of an adjacent property (the dominant estate),’ (citation omitted), and ‘cannot exist separate from the land itself.’ . . . To determine the extent of the rights conveyed under an easement, the primary rule of construction is that ‘the intent of the conveyor is normally determined by the language of the conveyance read as an entirety and in the light of the surrounding circumstances.’ (citation omitted). When the terms of the easement are unambiguous and ‘the intent of the parties is evident,’ the ‘terms of the instrument govern.’ (citation omitted). However, ‘[w]hen the language is ambiguous, the surrounding circumstances, including the physical conditions [and character] of the servient tenement and the requirements of the grantee, play a significant role in the determination of the controlling intent.’ (citation omitted). The court may consider the course of conduct of the parties as evidence of what was intended under the agreement. (citation omitted). Ambiguities in the easement must be construed against the grantor. (citation omitted).

Two competing principles guide a court's interpretation of an easement: (1) the landowner cannot, absent consent of the dominant estate, ‘unreasonably interfere with the latter's rights or change the character of the easement so as to make the use thereof significantly more difficult or burdensome’; and (2) the dominant estate's ‘implied right to do what is reasonably necessary for its complete enjoyment’ must be exercised ‘in such reasonable manner as to avoid unnecessary increases in the burden upon the landowner.’”

Iaria Family, LLC v. Myers, A-3970-14T3 (Aug. 9, 2016)

https://scholar.google.com/scholar_case?case=4921633938069754913&q=A-3970-14T3&hl=en&as_sdt=4,31

“Absent an ambiguity that presents a question of fact, interpretation of a deed is a question of law for the court which we review de novo. An ambiguity is present when a deed is ‘susceptible to at least two reasonable alternative interpretations.’ [citation omitted]. ‘In construing a deed, the court must undertake to determine the intention of the parties.’ [citation omitted]. The court may consider extrinsic evidence to resolve an ambiguity where the intention of the parties ‘is not clear on the face of the deed.’ Where a deed contains an ambiguity, ‘a factual issue is presented and extrinsic evidence can be considered to aid the construction effort.’ [citation omitted]. ‘[I]n the absence of extrinsic evidence, the court must determine a dispute concerning title by construing the deed as a whole, without giving disproportionate emphasis to any individual part of the document.’”

Where the grantor of a deed owned two properties, one of which was benefitted by an easement over the other, the conveyance of “whatever interest” grantor had in the servient lot is ambiguous as to whether the grantor sought to convey his right to the easement benefitting the lot that he retained, especially where the stated purpose of the deed was to convey grantor’s right to a life estate in the servient lot. The resolution of the ambiguity requires consideration of extrinsic evidence and was not properly decided by the trial judge as a matter of law.

Welch v. Chai Center For Living Judaism, Inc., A-4088-13T1, A-4163-13T1 (Aug. 15, 2016)

https://scholar.google.com/scholar_case?case=1565342229206363086&q=A-4088-13T1&hl=en&as_sdt=4,31

“‘Restrictions on the use to which land may be put are not favored in law because they impair alienability.’ [citation omitted] However, such restrictions are not prohibited and must ‘be strictly construed.’ This rule, mandating strict construction, ‘will not be applied to defeat the obvious purpose of a restriction.’ Accordingly, enforcement of provisions by one person restricting another

in the use of his land occurs when ‘the right to restrict is made manifest and clear in the restrictive covenant.’ Restrictive covenants at their core are contracts, ‘subject to the interpretative doctrines of contract law which focus on the parties’ mutual purpose.’ [citation omitted]. ‘The polestar of contract construction is to find the intention of the parties as revealed by the language used by them.’ [citation omitted]. A court cannot enhance a restrictive covenant, but must be confined by the parties’ express agreement. Also, ‘[i]t is well settled that a covenant should not be read in such a way that defeats the plain and obvious meaning of the restriction.’ [citation omitted].”

“‘To constitute a real rather than a personal covenant, the promise must exercise direct influence on the occupation, use or enjoyment of the premises.’ [citation omitted]. Further, a covenant properly affecting the subject property, requires ‘the deed provision must define in some measurable and reasonably permanent fashion the proscriptions of and limitations upon the uses to which the premises may be put.’ Stated another way, ‘covenants that the parties intend to burden one property for the benefit of another property are deemed to be servitudes that run with the land benefited and burdened and transfer with its ownership’ unless (1) the parties intended for the burden to be of limited duration or for the benefit of an individual; (2) changed conditions frustrate the purpose of the restriction; or (3) equities make enforcement of the restriction unjust, or require its modification.”

A deed restriction restricting the use of a lot to a single-family home does not unconstitutionally prohibit private religious observance. The restriction was not abandoned notwithstanding that a dental office occupied the property for a few years following the imposition of the restriction.

Williamson v. Ernst, A-3162-14T1 (Nov. 3, 2016)

https://scholar.google.com/scholar_case?case=5698166161316940660&q=A-3162-14T1&hl=en&as_sdt=4,31

A court-ordered prescriptive easement found to be abandoned where the owner of the dominant tenement created conditions where the original purpose for the easement no longer exists, notwithstanding the fact that the owner of the dominant tenement continued to use and maintain the easement. “Alternatively, even if it were found that the Ernst had not abandoned the easement, the destruction of their home ‘makes it impossible as a practical matter to accomplish the purpose for which the servitude was created.’ Restatement (Third) of Property: Servitudes §7.10(1). The frustration-of-purpose doctrine calls for the modification of ‘the servitude to permit the purpose to be accomplished. If modification is not practicable, or would not be effective, a court may terminate the servitude.”

Homestead at Mansfield Homeowners Association, Inc. v. Homestead at Mansfield, Inc., A-5466-14T2 (Dec. 1, 2016)

https://scholar.google.com/scholar_case?case=5462253447767422124&q=A-5466-14T2&hl=en&as_sdt=4,31

A utility easement that did not provide that it was to be used exclusively to serve a condominium development, could be used by a cell phone carrier that provided service to the development but also to the surrounding community.

Hartz Mountain Industries, Inc. v. Merck Sharp & Dohme Corp., A-2402-14T2 (Dec. 8, 2016)

https://scholar.google.com/scholar_case?case=292039870969438600&q=A-2402-14T2&hl=en&as_sdt=4,31

Generally, New Jersey law does not favor perpetual contracts. Where an easement is silent as to the right of the dominant tenement to terminate it, and the agreement and deed of easement were ambiguous, it was proper for the trial court to rely upon the testimony of witnesses to ascertain the intent of the parties.

Pearson v. DMH 2 Limited Liability Company, 449 N.J. Super. 30 (Ch. 2016)

https://scholar.google.com/scholar_case?case=8443035035351506036&q=449+N.J.+Super.+30&hl=en&as_sdt=4,31

Restriction against commercial use unenforceable where the scope of the purported “neighborhood scheme” was not defined, certain properties in the area had similar restrictions and some did not and thus there was a lack of universality and uniformity with respect to the restrictions. “Absent a reciprocal scheme of uniform and universally applicable restrictive covenants memorialized in the relevant chains of title, the fact that this narrowly construed neighborhood has essentially remained residential over the last century is, in large part, irrelevant. A neighborhood scheme must be rooted in actual restrictions on record, not in an incidental pattern of development.”

“[D]efendant took title to [the property] with record notice of the restrictions contained in its chain of title, even though their title search did not reveal the restrictions. As stated above, a grantee will be charged with notice of those restrictions present and discoverable in their chain of title, even if their deed does not, itself, state such restrictions. . . . as a practical matter, the standard of a sixty-year search is the product of a calculated risk by title searchers; they are essentially insuring against the possibility that no restrictions will appear in a chain of title more than sixty years back.” The restriction against commercial use is not a restraint on alienation, it is only a limitation on use.

“The final inquiry, . . . presents the issue not of whether the restrictions, in the abstract are enforceable, but instead whether, under the circumstances presented, the restrictions should be enforced. This is because a finding that ‘plaintiff has the right to enforce the restrictive covenant does not end the inquiry;’ rather, courts must consider ‘whether plaintiff’s conduct, changed circumstances or the relevant equities preclude enforcement’ of the covenant. [citation omitted]. On this point, the parties have agreed that, in determining the enforceability of a restrictive covenant, New Jersey courts apply the “reasonableness” analysis established by the Supreme Court in *Davidson Bros. v. D. Katz & Sons, Inc.*, 121 N.J. 196, 579 A.2d 288 (1990).

American Dream at Marlboro, LLC v. Planning Board, Twp. of Marlboro, A-0547-15T2 (June 9, 2017)

https://scholar.google.com/scholar_case?case=12480715207946202150&q=A-0547-15T2&hl=en&as_sdt=4,31

A party seeking to eliminate a deed restriction based on changed circumstances must “demonstrate that it has become ‘impossible as a practical matter to accomplish the purpose for which’” the restriction was imposed. “An ambiguous restriction will not be enforced in equity so as to impair the alienability or use of property.” [citation omitted].

The doctrine of unclean hands is an equitable maxim that provides that a party who comes into equity must be with clean hands. “It provides that ‘a court should not grant relief to one who is a wrongdoer with respect to the subject matter in suit.’ [citation omitted] However, its application is limited, . . . as it does not require a court to bar a litigant from seeking or obtaining relief from the court because the doctrine ‘should not be used as punishment[,] but to further the advancement of right and justice.’ [citation omitted]. It is the effect of the inequitable conduct on the total transaction which is determinative whether the maxim shall or shall not be applied.”

Matthies v. Dietrich, A-0765-15T3 (Aug. 3, 2017)

https://scholar.google.com/scholar_case?case=11054137092400424392&q=A-0765-15T3&hl=en&as_sdt=4,31

“The interpretation of the language in the deed restriction is also one to be decided by the court. It is well-established ‘[e]xpert witnesses simply may not render opinions on matters which involve a question of the law.’” [citation omitted]. “[I]f the language in a document creating an easement is ambiguous or in dispute, a court may resort to extrinsic evidence to inform the court’s interpretation of the parties’ intent in the case of an ambiguity.”

Maywood Realty Associates, LLC v. Jos. L. Muscarelle Investment Co., Inc., A-2304-16T4 (May 1, 2018)

https://scholar.google.com/scholar_case?case=5199138759036365522&q=A-2304-16T4&hl=en&as_sdt=4,31

Installation of bollards to prevent a shared driveway easement from being confused with highway ramp was permitted within the easement holder's right to maintain the easement and the "implied right to do what is reasonably necessary for its complete enjoyment . . ." and there is no showing of unreasonable interference or change to the character of the easement making it more burdensome on the other party.

Venture v. Clayton Providence House, LP, A-2697-16T4 (July 13, 2018)

https://scholar.google.com/scholar_case?case=886763615221565523&q=A-2697-16T4&hl=en&as_sdt=4,31

Were easements were required as a condition of board approval and a party refuses to execute the easement, the trial court properly used its equitable powers to authorize court-execution of the easements.

Hoboken Associates, LP v. Kenny, A-3561-16T2 (Nov. 21, 2018)

https://scholar.google.com/scholar_case?case=14721293441146743792&q=Hoboken+Assoc.,+LP+v.+Kenny&hl=en&as_sdt=4,31

Where the language of an easement is clear and unambiguous, the terms of the instrument govern. But where the easement grant is ambiguous, "the surrounding circumstances, including the physical conditions of the servient tenement and the requirements of the grantee, play a significant role in the determination of the controlling intent." As a result, the trial court correctly interpreted an easement in light of an overall urban renewal plan of which it was a part.

Flemington Fields Condominium Association, Inc. v. Flemington Fields Homeowners Association, Inc., Nos. A-3873-16T3, A-3919-16T3 (Nov. 30, 2018)

https://scholar.google.com/scholar_case?case=12873607419781197033&q=Flemington+fields&hl=en&as_sdt=4,31

"New Jersey adheres to the general rule that '[t]he beneficiary of an easement . . . has a duty to the holder of the servient estate to repair and maintain the portions of the servient estate and the improvements used in the enjoyment of the servitude[.]'" A quasi-easement is established by "the apparent use of the quasi-servient portion of the estate for the quasi-dominant portion, the continuous nature of the use, the permanent character of the quasi-easement, and its reasonable necessity to the beneficial enjoyment of the dominant portion." Thus, an implied easement was created from the benefits derived by an HOA whose stormwater runoff is discharged into a pond on the adjacent property. "Because the HOA derived a benefit from the storm water management system, it is obligated to contribute toward the pond's maintenance and related expenses."

Cherry Hill Towne Center Partners, LLC v. GS Park Racing, L.P., No. 18-12868 (RMB/KMW) Sept. 4, 2019

https://scholar.google.com/scholar_case?case=6846045490528346617&q=18-12868&hl=en&as_sdt=3,31

Restrictive covenant that prohibits gambling reasonable notwithstanding the fact that gambling was illegal at the time the covenant was created but legal now. A restrictive covenant is enforceable if it is reasonable. "In determining reasonableness, the court considers: 1. The intention of the parties when the covenant was executed, and whether the parties had a viable purpose which did not at the time interfere with existing commercial laws, such as antitrust laws, or public policy. 2. Whether the covenant had an impact on the considerations exchanged when the covenant was originally executed. This may provide a measure of the value to the parties of the covenant at the time. 3.

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Whether the covenant clearly and expressly sets forth the restrictions. 4. Whether the covenant was in writing, recorded, and if so, whether the subsequent grantee had actual notice of the covenant. 5. Whether the covenant is reasonable concerning area, time or duration. . . . 6. Whether the covenant imposes an unreasonable restraint on trade or secures a monopoly for the covenantor. This may be the case in areas where there is limited space available to conduct certain business activities and a covenant not to compete burdens all or most available locales to prevent them from competing in such an activity. 7. Whether the covenant interferes with the public interest. 8. Whether, even if the covenant was reasonable at the time it was executed, changed circumstances now make the covenant unreasonable.” *Davidson Bros. v. D. Katz & Sons, Inc.*, 121 N.J. 196, 211 (1990).

Eagle Realty of NJ, LLC v. 111 Kero Holdings, LLC, BER-C-198-21 (Sept. 14, 2022)

https://scholar.google.com/scholar_case?case=16808128514813025030&q=Eagle+Realty+of+NJ,+LLC+v.+111+Kero+Holdings&hl=en&as_sdt=6,31

Where Plaintiff’s access to an adjoining property was done with the consent and approval of the adjoining property owner, and was not adverse or hostile, such access took the form of a revocable license rather than an easement by prescription.

Paterson Housing Authority, A-1175-19 (June 15, 2022)

https://scholar.google.com/scholar_case?case=2388231902323368164&q=Paterson+Housing+Auth.+v.+Sunshine+Learning&hl=en&as_sdt=6,31

Where Plaintiff public housing authority owns property which adjoining Defendants use for parking, the trial court correctly ordered ejectment from the Plaintiff’s property. With respect to Defendants’ rights to the property, the court held that because the property was held by a public agency for a public purpose, Defendants’ adverse possession or proscriptive easement claim must fail. Furthermore, while the Zoning Board of Adjustment may have viewed the property as under the control of Defendants when it granted approvals to the Defendants, the Board had no authority to grant title with respect to the property.

Roberts v. Krause, A-3257-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=18092730373895331345&q=Roberts+v.+Krause&hl=en&as_sdt=6,47&as_ylo=2023

Court improperly dismissed Complaint requesting an injunction to prevent neighbor from fencing over a private drive used by Plaintiff to access accessory structures on his property. Court ruled that the record was inadequate in setting forth necessary facts about how the drive was created, maintained and placed/removed from the tax map. Consequently, the Court ruled that the trial court improperly dismissed Complaint.

546 OG, LLC v. Borough of Edgewater, A-1474-21 (App. Div. 2023)

https://scholar.google.com/scholar_ddrrtrfgcase?case=9131981238832113994&q=546+OG,+LLC+v.+Borough+of+Edgewater&hl=en&as_sdt=6,47&as_ylo=2023

Municipality vacated a street that provided access to Plaintiff’s property. However, the ordinance vacating the street was adopted many years before Plaintiff took title to the property. Because Plaintiff did not own the subject property prior to the adoption of a roadway vacation ordinance by the municipality (which landlocked the property), Plaintiff cannot successfully allege a reverse condemnation because nothing was taken from Plaintiff.

Scaduto v. New Jersey Dep't of Env. Prot., 474 N.J. Super. 427 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=7711877424630179654&q=Scaduto+v.+New+Jersey+&hl=en&as_sdt=6,31&as_ylo=2023

Plaintiffs' recreation easements do not provide them the right to a private beach. While Plaintiffs are free to argue in the condemnation action that they are entitled to severance damages because the State's partial taking reduced the value of their homes by impairing their appurtenant easements in their association's beach lot, they may not mislead the jury as to the extent of those easements prior to the taking.

Swan v. Lamanna, A-2866-21 (Jan. 2, 2024)

https://scholar.google.com/scholar_case?case=9908264378714875684&q=swan+v.+lamanna&hl=en&as_sdt=6,47&as_ylo=2024

Where the terms of an access easement are plain, a court will not modify same—even amending the route of the easement to use an existing road so that Plaintiff will not require NJDEP permitting.

River Drive Dev., LLC v. Borough of Elmwood Park, A-2604-22 (Jan. 9, 2025)

https://scholar.google.com/scholar_case?case=5490788203051616603&q=River+Drive+Dev.,+LLC+v.+Borough+of+Elmwood+Park&hl=en&as_sdt=6,47&as_ylo=2024

Appellate Division affirmed lower court's decision that two roads that provided access to plaintiffs' property were public roads that had been dedicated to and accepted by the Borough under N.J.S.A. 40:55D-53(j). The Court found that because the (1) the roads were dedicated to the Borough; (2) the Roads were inspected and approved by the Borough's engineer; (3) the Borough released plaintiffs' performance bonds after the roads had been constructed and improved; 4) the tax map showed the roads as public roadways; and 5) nowhere on the Borough's official map were the roads shows as "private," same demonstrated the offer and acceptance of the road for public use.

Gallo v. Hafner, A-1843-23 (Nov. 19, 2025)

https://scholar.google.com/scholar_case?case=6426961843676811681&q=Gallo+v+hafner&hl=en&as_sdt=4,31

Defendant's contention that the original purpose of a deed restriction, to preserve an open view to the ocean from plaintiffs' lot, is now impossible due to the government-built sand dunes which completely obscure the ocean from the ground level, is misplaced because the purpose of the deed restriction is to preserve "an open view to the ocean" which can still be accomplished because "the deed was meant to include the surrounding landscape and wildlife leading to the ocean."

MISCELLANEOUS

GREEN ACRES

First American Title Insurance Co. v. Twp. of Rockaway, 322 N.J. Super. 583 (Ch. Div. 1999)
http://scholar.google.com/scholar_case?case=9380366221071805805&q=322+N.J.+Super.+583+&hl=en&as_sdt=2,31

Township's conveyance of property subject to Green Acres restrictions is *void ab initio* and township must reimburse purchase price plus prejudgment interest.

Amendment to Recreation and Open Space Inventory of the City of Plainfield, In the Matter of 353 N.J. Super. 310 (App. Div. 2002)
http://scholar.google.com/scholar_case?case=17322486103974722556&q=353+N.J.+Super.+310+&hl=en&as_sdt=2,31

When a municipality receives public funds in exchange for dedicating land under the Green Acres Land Acquisition and Recreation Opportunities Act, *N.J.S.A.* 13:8A-47b and *N.J.A.C.* 13:8A-35 to 55, it cannot thereafter remove such land from its Recreation and Open Space Inventory to allow commercial redevelopment unless there is a "clear case of a bona fide" mistake in placing such land on its inventory list.

Bloom v. Morales, A-2188-13T2 (March 6, 2015)
https://scholar.google.com/scholar_case?case=1593627824138568263&q=A-2188-13T2+&hl=en&as_sdt=4,31

No easement by prescription created where there was no evidence that the use was hostile. To establish an easement by prescription a litigant must prove elements similar to those associated with adverse possession; i.e., that an adverse use of land is visible, open and notorious for at least thirty years. The proponent of the easement must establish the elements by the preponderance of the evidence.

City of Millville v. State of New Jersey, A-1976-13T3 (Aug. 3, 2015)
https://scholar.google.com/scholar_case?case=11043006536049355353&q=1976-13T3+&hl=en&as_sdt=4,31

DEP is not required to promulgate regulations for state acquisitions, or to allow public review or comment on its acquisitions. "The Legislature imposed different duties and responsibilities on the DEP depending on its role in acquiring land. The DEP is authorized to use money appropriated from the Fund to assist local government units and qualifying nonprofits acquire and develop land for recreation and conservation purposes, *N.J.S.A.* 13:8C-26(a)(2)-(3), and to acquire land for the State for recreation and conservation. *N.J.S.A.* 13:8C-26(a)(1). When assisting local government units and qualifying nonprofits in acquiring lands, the DEP acts as a regulatory body and must adopt rules and regulations, pursuant to the APA, establishing application procedures and criteria for evaluation of those applications. *N.J.S.A.* 13:8C-24(b)(3)(a) [citation omitted]. However, when acquiring land for the State, the DEP must only establish the evaluation and ranking criteria and policies. *N.J.S.A.* 13:8C-24(b)(4)."

Greenhouse v. Township of Montgomery, A-3518-19 (Sept. 9, 2022)
https://scholar.google.com/scholar_case?case=4423044230659422453&q=Greenhouse+v.+Twp.+of+Montgomery+&hl=en&as_sdt=6,31

The New Jersey Department of Agriculture should be included as an indispensable party with respect to a challenge related to whether the renewal of a lease of funded Green Acres property to a farmer violated Green Acres restrictions and whether the NJDEP approved the lease renewal in conformity with the applicable regulations.

LANDLORD TENANT

Tarta Luna Props., LLC v. Harvest Rest. Group LLC, A-4994-18T3 (Jan. 28, 2021)

https://scholar.google.com/scholar_case?case=9929036830989447723&q=tarta+v.+harvest&hl=en&as_sdt=6,31&as_ylo=2021

Appellate Division reversed the trial court decision below, holding that attorney's fees cannot be granted based on equitable consideration when otherwise fee shifting is not permitted by statute. The Appellate Division affirmed the trial court's decision to deny Plaintiff landlord's request for forfeiture of Defendant tenant's improvements to the leased premises per the parties' lease agreement because same would create a windfall for Plaintiffs and because, while the Defendants did violate the subject lease because the improvements did not comply with the construction code, the Defendants were not aware of this fact—having relied on their architectural and engineering professionals.

Cent. Jersey Prop., LLC v. Shang, A-3043-18T1 (Jan. 28, 2021)

https://scholar.google.com/scholar_case?case=14607805532076349989&q=jersey+v.+shang&hl=en&as_sdt=6,31&as_ylo=2021

A landlord has a duty to mitigate damages where he seeks to recover rents due from a defaulting tenant and the Appellate Division affirmed the trial court's holding that the Plaintiff landlord had violated that duty by refusing to re-let a residential unit to a co-worker of the defaulting tenant because the co-worker refused to enter into another year long lease at a higher monthly rent.

Fed. Nat'l Mortgage Ass'n v. Halbert, A-1415-19 (April 9, 2021)

https://scholar.google.com/scholar_case?case=2418378675231132051&q=federal+national+mortgage+association+v.+halpert&hl=en&as_sdt=6,31&as_ylo=2021

Because there was evidence in the record that a rental property was uninhabitable for a greater period of time than indicated by the trial court, the Appellate Division reversed and remanded to the trial court to require the return of rent paid during said increased period of time.

Proctor Prop., LLC v. State of New Jersey, A-5139-18 (May 17, 2021)

https://scholar.google.com/scholar_case?case=12521315236032185877&q=Proctor+Prop.,+LLC+v.+State.&hl=en&as_sdt=6,31&as_ylo=2021

Where the New Jersey Department of Community Affairs was required to provide, as part of a settlement agreement with a landlord participant in a housing program, names of qualified tenants, it met that obligation even if some of the names of participants on that list were not qualified or otherwise not able to become tenants of the landlord.

Washington St. Apartments v. Goodman, A-1582-20 (June 25, 2021)

https://scholar.google.com/scholar_case?case=4288441218745306412&q=washington+v.+goodman&hl=en&as_sdt=6,31&as_ylo=2021

Where a dog's incessant barking disturbed the ability of adjoining apartment dwellers to use and enjoy their homes in violation of the Defendant's lease, such a situation fell within the "special interests of justice exception" of Governor Murphy's eviction moratorium and eviction was warranted.

Montgomery St. Housing Urban Renewal, LLC v. Sheriff, A-2037-19 (June 25, 2021)

https://scholar.google.com/scholar_case?case=16663911974826254709&q=Montgomery+St.+Housing+Urban+Renewal,+LLC+v.+Sheriff&hl=en&as_sdt=6,31&as_ylo=2021

Pursuant to applicable state and federal regulations, a tenant's non-compliance with tenant

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occupancy requirements for subsidized housing is a basis for eviction from same.

Talmadge Vill., LLC v. Wilson, A-0590-20 (July 1, 2021)

https://scholar.google.com/scholar_case?case=17517663718860674249&q=Talmadge+v.+Wilson&hl=en&as_sdt=6,31&as_ylo=2021

Governor Murphy's executive order imposing a moratorium on residential evictions extends only to legal tenancies and not to squatters.

Foti v. JG Elizabeth II, LLC, A-1638-19 (July 2, 2021)

https://scholar.google.com/scholar_case?case=11056064992302850802&q=Foti+v.+JG+Elizabeth&hl=en&as_sdt=6,31&as_ylo=2021

Because Defendant City failed to prove a novation that relieved it of its obligations under the Lease to provide insurance to Co-Defendant mall operator, through its self-insurance program, the City was obligated to defend same in Plaintiff's lawsuit.

Alhagaly v. Mega Prop. at 100-104 Romaine Ave., LLC, A-4287-19 (July 14, 2021)

https://scholar.google.com/scholar_case?case=11780349909539817854&q=Alhagaly+v.+Mega&hl=en&as_sdt=6,31&as_ylo=2021

Plaintiff's Consumer Fraud Act claim with respect to being overcharged rent was not estopped by the municipal rent-leveling board's preliminary determination that Defendant landlord had, indeed, overcharged the Plaintiff.

Mill Road Solar Project LLC v. CEP Solar Ltd., BER-L-2029-19 (Sept. 23, 2021)

https://scholar.google.com/scholar_case?case=3292574394180390364&q=mill+road+solar&hl=en&as_sdt=6,31&as_ylo=2021

Where Plaintiff solar developer, lost its lease to the subject property, and thus lost a number of approvals related to the solar project proposed thereon, it was not breach of contract or tortious interference for Defendant to take over the site, regardless of the fact that the Defendant had been negotiating with Plaintiff to purchase the project prior to losing the lease.

Jennings v. Gnoinski, A-2736-19 (Nov. 5, 2021)

https://scholar.google.com/scholar_case?case=16871636424437438211&q=jennings+v.+Gnoinski&hl=en&as_sdt=6,31&as_ylo=2021

Where the parties' consent judgment extended the tenancy in return for additional rent, same superseded the landlord's claim for possession based on his intent to occupy, and the Anti-Eviction Act did not require a landlord to occupy the unit after the parties resolved their case.

Garner v. Pacific Landing, LLC, A-3467-19 (Dec. 10, 2021)

https://scholar.google.com/scholar_case?case=15169683238049149038&q=garner+v.+pacific&hl=en&as_sdt=6,31&as_ylo=2021

Appellate Division affirmed treble damages award against defendant landlord for withheld security deposit.

Turbo Fin. Improvement, LLC v. Collins, A-0113-20 (Dec. 10, 2021)

https://scholar.google.com/scholar_case?case=12959386220610469536&q=turbo+v.+collins&hl=en&as_sdt=6,31&as_ylo=2021

Appellate Division affirms trial court's order granting possession of leased premises to Plaintiff where Defendant misrepresented the factual record related to its tenancy.

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CBRE, Inc. v. New World Stainless, LLC, A-0021-20 (Dec. 21, 2021)

https://scholar.google.com/scholar_case?case=9941847452043484454&q=CBRE+v.+new+world&hl=en&as_sdt=6,31&as_ylo=2021

While Plaintiff's eviction action and its motion to enforce a stipulation of settlement Agreement both arose from the same commercial lease contract disputes between the same parties, involve similar facts, and seek similar relief, the Plaintiff did not violate the "entire controversy doctrine" by litigating each of these matters separately because they each arose from separate transactions.

Magic Reimbursement LLC v. T-Mobile, USA, Inc., 22-02121 (Sept. 29, 2022)

https://scholar.google.com/scholar_case?case=12895115553276582173&q=+Magic+Reimbursements+LLC+v.+T-Mobile+USA,+Inc.,+&hl=en&as_sdt=6,31

Where Plaintiff is in the business of calculating and collecting tax reimbursement on behalf of landlords from wireless telecommunications providers, but is not a party to the lease itself, Plaintiff lacks standing to enforce the terms of the leases. Furthermore, Defendant's failure to make the payments was not "tortious interference" between the Plaintiff and its client landlords, because in deciding to not make the payments, the Defendant was invoking its rights under the subject leases.

Port-Man-GB Assoc, LLC v. Renaissance at Schanck Rd, LLC, A-1454-18 (March 10, 2022)

https://scholar.google.com/scholar_case?case=10449840097226007403&q=port-man+v.&hl=en&as_sdt=6,31&as_ylo=2022

With respect to liabilities under a lease, where a property had been used as a dry cleaner for many years, Defendant tenant was only responsible to pay the cost of environmental damages to the property which occurred after the lease had been assigned to it in 2007.

Curry v. New Community Corporation, A-3776-20 (Sept. 29, 2022)

https://scholar.google.com/scholar_case?case=16266863654500240011&q=Curry+v.+New&hl=en&as_sdt=6,31&as_ylo=2022

Under common law, ordinarily a landlord is not responsible for injuries caused by a tenant's dog.

Aperion Enterprises, Inc. v. Gotham Beverages, Inc., A-1840-20 (Aug. 22, 2022)

https://scholar.google.com/scholar_case?case=17085157633770263678&q=Aperion+Enter.,+Inc.+v.+Gotham+Beverage.&hl=en&as_sdt=6,31&as_ylo=2022

Where a landlord miscalculates the amount of rent owed based on an existing lease, and the tenant accepts that calculation, same does not constitute a new agreement and the terms of the new lease should be enforced, with the corrected calculations.

Devi Ma Newkirk LLC v. Estate of Harris, A-3129-20 (July 12, 2022)

https://scholar.google.com/scholar_case?case=15283709334629639678&q=Devi+Ma+Newkirk,+LLC+v.+Estate+of+Harris&hl=en&as_sdt=6,31&as_ylo=2022

Under New Jersey law, for someone to be deemed a functional tenant, an occupant must establish three facts: (1) they have continuously resided at the premises; (2) they have "been a substantial contributor toward satisfaction of the tenancy's financial obligations"; and (3) their "contribution has been acknowledged and acquiesced to by" the landlord. *Maglies v. Estate of Guy*, 193 N.J. 108, 126 (2007).

Sevan Associates, Inc. v. Subway Real Estate, LLC, A-2879-20 (June 22, 2022)

https://scholar.google.com/scholar_case?case=15270025724777879176&q=Sevan+Assoc.,+Inc.+v.+Subway+Real+Estate,+LLC&hl=en&as_sdt=6,31

With respect to a lease agreement, the term "solely responsible" does not equate to the term "personally guarantee."

MISCELLANEOUS

Willow Ridge Apartments, LLC v. Union County Rent Stabilization Board, A-3578-20 (July 7, 2022)

https://scholar.google.com/scholar_case?case=15673834361545958338&q=Willow+Ridge+Apar+tmnts,+LLC+v.+Union+City+Rent+Stabilization&hl=en&as_sdt=6,31

N.J.S.A. 2A:42-84.1 to-84.6 provides that buildings constructed after 1987 are exempt from rent control ordinances. However, N.J.S.A. 2A:42-84.4 obligates owners of any newly constructed buildings to file a notice claiming the exemption prior to a municipality issuing a certificate of occupancy for any applicable building. Where a municipality has no record of such a letter claiming exemption for a building built in 2002, the rent control board may determine that no such letter was transmitted and, consequently, that no exemption from the rent control ordinance exists. In so holding, the Appellate Division reasoned that N.J.S.A. 2A:42-84.4's notice requirement is a mandatory condition precedent to receipt of a rent control exemption under N.J.S.A. 2A:42-84.2. First, because N.J.S.A. 2A:42-84.1 to-84.6 created a new right to a rent control exemption, strict compliance with its terms is required to qualify for the exemption. Second, if compliance with N.J.S.A. 2A:42-84.4 were not required, it would constitute meaningless surplusage.

OM 309-311 6th Street LLC v. the City of Union City et al, 21-12051 (March 23, 2021)

https://scholar.google.com/scholar_case?case=3508063701275926715&q=6TH+STREET,+LLC+v.+THE+CITY+OF+UNION+CITY+&hl=en&as_sdt=6,31&as_ylo=2022

An alleged deprivation of Landlord's property right in charging tenants the legal rent does not "shock the conscience" and is, therefore, not a substantive due process violation. Furthermore, such an alleged deprivation does not equate to a takings under the Penn Central factors.

Gray v. Chamoro, A-1416-20 (March 23, 2022)

https://scholar.google.com/scholar_case?case=1711327177629269752&q=Gray+v.+Chamoro&hl=en&as_sdt=6,31&as_ylo=2022

Where landlord was required to obtain his own counsel with respect to a lawsuit related to his property, at personal expense, because tenant violated lease by not adding landlord onto his commercial insurance policy, the tenant was liable for attorney's fees related to same based on an exception to the American Rule permitting "an allowance of reasonable counsel fees where the incurring thereof is a traditional element of damages in a particular action."

Carmer Realty, Inc. v. Fairview Bergen Associates, LLC and JP Management, LLC, A-0893-20 (Feb. 28, 2022)

https://scholar.google.com/scholar_case?case=16276932288935568305&q=carmel+realty+&hl=en&as_sdt=6,31&as_ylo=2022

A ninety-nine (99) year lease entered into between related entities for parking spaces in exchange for a yearly rent of one (1) dollar, which was recorded with the county clerk, was enforceable because same was not unconscionable or a violation of the statute of frauds.

Garces v. Sousa, A-3946-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=10749951157103165139&q=garces+v.+sousa&hl=en&as_sdt=6,47&as_ylo=2023

Plaintiffs alleged that they had exercised option contract to purchase the subject property by transmitting a "lease attachment" to landlord. On review of the record, Court finds that the trial court's determination that the "lease attachment" was not transmitted to the landlord was supported by substantial evidence in the record.

Yildizican v. Jimenez-Cruz, A-0199-22 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=17118411598406343498&q=Yildizican+v.+Jimenez-Cruz&hl=en&as_sdt=6,47&as_ylo=2023

Defendant tenant's modification of the subject residence, without landlord approval, constituted a violation of the lease and entry of possession was property granted to landlord.

Mohammed v. Sutton, A-2437-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=11487111639064821157&q=Mohammed+v.+Sutton&hl=en&as_sdt=6,47&as_ylo=2023

Courts apply a five part test to determine whether a rent increase is unconscionable: (1) the amount of the proposed rent increase; (2) the landlord's expenses and profitability; (3) how the existing and proposed rents compare to rents charged at similar rental properties in the geographic area; (4) the relative bargaining position of the parties; and (5) based on the judge's general knowledge, whether the rent increase would 'shock the conscience of a reasonable person.' There may be other factors which, on a case-by-case basis, a court may consider, and therefore this enumeration shall not be deemed exhaustive. *Fromet Properties, Inc. v. Buel*, 294 N.J. Super 601 (App. Div. 1996). Here, the Court held that the facts demonstrate that the proposed increase "shocked the conscience" based on the facts presented.

MHC Pine Ridge at Crestwood, LLC v. Skidmore, A-2027-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=16256666109569624923&q=MHC+Pine+Ridge+at+Crestwood,+LLC+v.+Skidmore&hl=en&as_sdt=6,47&as_ylo=2023

Courts dismiss as moot an appeal challenging an eviction when the tenant has been removed or otherwise vacated the property.

Garfield Partners 2, LLC v. Washington Town, LLC, A-2357-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=7595987202148750617&q=Garfield+Partners+2,+LLC+v.+Washing&hl=en&as_sdt=6,31&as_ylo=2023

Defendant rented space at a strip mall for a laundromat and did not follow formal process to renew lease. However, Defendant did purport to renew the lease by way of oral conversation with prior landlord and prior and current landlords accepted rent payments at the higher renewal rate for a year before the eviction action was commenced. These "special circumstances" warrant relaxation of the formal lease renewal requirements. Consequently, because Defendant renewed the lease, same was not a month-to-month lease, and Plaintiff's eviction lawsuit was property dismissed.

City of Union v. Williams, A-3742-19 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=249395647106769169&q=City+of+Union+City+v.+Williams&hl=en&as_sdt=6,31&as_ylo=2023

The Receivership Act authorizes a court to appoint a receiver "to take charge and manage" a multifamily residential building if (1) it is in "violation of any State or municipal code to such an extent as to endanger the health and safety of the tenants ... and the violation or violations have persisted, unabated, for at least [ninety] days preceding the date of the filing of the complaint," or (2) there is a "clear and convincing pattern of recurrent code violations" at the building. *N.J.S.A. 2A:42-117(a) to (b)*. The Receivership Act does not, however, apply to any building with less than five residential units so long as "the owner occupies one of the units as his or her principal residence." *N.J.S.A. 2A:42-116*. Here, the Court determined that the Receivership Act was applicable because the City had identified several violations at the Property that endangered the health and safety of the tenants, including a water leak and fire hazards. Additionally, the landlord failed to abate these violations when given 90 days to do so. Lastly, although the Property has less than 5 residential units, same is not exempted from the Act because Defendant did not occupy one of the units as his principal place of residence.

MISCELLANEOUS

Cortese v. Labruna, A-1320-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=2862067300253015189&q=Cortese+v.+Labruna&hl=en&as_sdt=6,31&as_ylo=2023

Where a tenant no longer resides in the property, an appeal challenging the propriety of an eviction is moot.

Washington-Hudson Assoc. II, LLC v. Town Sports Int'l Holdings, Inc., A-1357-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=6332803611632286400&q=washington+hudson+assoc&hl=en&as_sdt=6,31&as_ylo=2023

Where a commercial lease was clear and unambiguous in providing that there would be "no abatement, diminution or reduction" in rent for "any inconvenience, interruption, cessation or loss of business" caused "directly or indirectly" by government orders "or by any other cause or causes beyond the control of [the tenant]," the Covid-19 pandemic and Governor Murphy's executive orders clearly fall within the ambit of that provision and preclude the tenant and its guarantor from claiming that the Covid-19 pandemic or the executive orders excused the obligation to pay rent.

Rivera v. Cherry Hill Towers, 474 N.J. Super. 234 (App. Div. 2022)

https://scholar.google.com/scholar_case?case=17352602984880645906&q=rivera+v.+cherry+hill&hl=en&as_sdt=6,31&as_ylo=2022

Defendant property management company had no duty of care to Plaintiff after it ceased providing property management services to the subject residential apartment complex.

Pace v. Hamilton Cove, N.J. (2024)

https://scholar.google.com/scholar_case?case=1021485210882996054&q=Pace+v.+Hamilton+Cove&hl=en&as_sdt=6,47&as_ylo=2024

Class action waivers in consumer contracts are not *per se* contrary to public policy but may be unenforceable if found unconscionable or violative of state contract law.

Knight v. Williams, A-1306-20 (Dec. 29, 2023)

https://scholar.google.com/scholar_case?case=10131871468719800993&q=Knight+v.+Williams&hl=en&as_sdt=6,47&as_ylo=2023

Landlord failed to demonstrate defendant's tenancy terminated because it provided no evidence of a notice to quit or demand for the premises and the court could not conclude landlord complied with the obligation to serve the required notices.

Wawa, Inc. v. Barrington Redevelopment, LLC, A-3566-21 (Mar. 11, 2024)

https://scholar.google.com/scholar_case?case=4849104212336927081&q=wawa+v.+barrington&hl=en&as_sdt=6,47&as_ylo=2024

Special assessment is not a "tax" that tenant was contractually required to pay.

JN Equity Perth Amboy, LLC v. Hiraldo, A-0636-22 (April 22, 2024)

https://scholar.google.com/scholar_case?case=9085917589842811336&q=JN+equity+perth+amboy+v.+hiraldo&hl=en&as_sdt=6,47&as_ylo=2024

Because landlord failed to prove the tenancy was conditioned on employment as required for eviction under N.J.S.A. 2A:18-61.1(m), he had failed to establish adequate ground for eviction under that provision.

JMC Real Estate Holdings, LLC v. Asim Holdings, LLC, A-1550-22 (May 2, 2024)

https://scholar.google.com/scholar_case?case=11289323253334282518&q=JMC+Real+Estate+Holdings,+LLC+v.+Asim+Holdings,+LLC&hl=en&as_sdt=6,47&as_ylo=2024

Facts with respect to mitigation efforts by landlord after lease breach were admissible in the trial court.

922 RVD, LLC v. BC Int'l Group, Inc., A-0152-22 (July 17, 2024)

https://scholar.google.com/scholar_case?case=11727364820543878799&q=922+RVD,+LLC+v.+BC+&hl=en&as_sdt=6,47

Racking system left by defendant was included in the property purchase and plaintiffs' claims of breach, bad faith, and fraudulent misrepresentation were unsupported by specific facts or evidence.

Merkin v. Belyi, 23-cv-23393 (Dec. 12, 2024)

https://scholar.google.com/scholar_case?case=6581327939672130041&q=+Merkin+v.+Belyi&hl=en&as_sdt=6,47&as_ylo=2024

Defendants failed to establish federal jurisdiction since ejectment actions did not arise under federal law.

Rojas-Gomez v. Tyliczka, A-0606-23 (Jan. 23, 2025) certif. denied 261 N.J. 598 (2025)

https://scholar.google.com/scholar_case?case=11543713644898956386&q=Rojas-Gomez+v.+Tyliczka&hl=en&as_sdt=6,47&as_ylo=2024

New Jersey law does not contain an “implied warranty of legality” akin to an “implied warranty of habitability.” Consequently, Plaintiff still owed rent to landlord Defendant notwithstanding that the leased premises did not have a certificate of occupancy and was illegal.

Universal Dev. & Constr. II, LLC v. European Car Care LLC, A-2449-23 (June 4, 2025)

https://scholar.google.com/scholar_case?case=4747538749474685002&q=Universal+Dev.+%26+Constr.+II,+LLC+v.+European+Car+Care&hl=en&as_sdt=6,47&as_ylo=2025

Despite the fact that a lease contained a number of typographical errors with respect to the address to provide notice to the parties, the Appellate Division affirmed trial court’s decision that the law implies a covenant of good faith and fair dealing in contractual relations, and that it should not impose unintended consequences upon parties nor destroy the mutual benefits created by the Lease Agreement. Applying these principles, the court concluded the plaintiff Landlord violated the implied covenant by knowingly depriving the defendant Tenant of their right to exercise their extension of the Lease Agreement based on those typographical errors.

Main St. Neal, LLC v. JM40, LLC, A-011-24 (July 31, 2025)

https://scholar.google.com/scholar_case?case=13206629024954029944&q=Main+St.+Neal,+LLC+v.+JM40,+LLC&hl=en&as_sdt=6,47

Appellate Division affirms trial court decision that Defendant did not violate the parties' Lease by failing to maintain and repair the leasehold, however, the Court vacated the order of dismissal because it concluded that the trial court erred in not considering the non-waiver clause under the Lease.

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VL North LLC v. Allen, A-1187-23 (Sep. 3, 2025)

https://scholar.google.com/scholar_case?case=11344934895399485638&q=VL+North+LLC+vs.+Sean+Allen&hl=en&as_sdt=6,47&as_ylo=2025

Appellate Division affirmed lower court decision that concession charge back provisions of a lease were enforceable because the amount plaintiff sought to recover was tied to the precise amount of the previously conferred rent concession. It did not exceed the cost of the rent concession and limited the recovery to the concessions plaintiff provided "as consideration" for defendants' agreement to lease the property and fulfill their obligations during the full term of the lease.

Fairkings Partners, LLC v. Daniels, A-2972-23 (Dec. 8, 2025) Approved for Publication

https://scholar.google.com/scholar_case?case=7491693530471176641&q=Fairkings+Partners+v.+Essence+L.+Daniels+&hl=en&as_sdt=6,47

Effective March 1, 2020, the Legislature amended the Fair Eviction Notice Act to allow tenants who are about to be evicted for non-payment of rent, "to submit a rent payment," and thereby avoid eviction, also known as the "Stack Amendment." This appeal presented the issue of whether the rent payment must be in the amount set forth in the judgment of possession or the amount of rent due at the time the tenant makes the payment. The Appellate Division interpreted the Stack Amendment to allow the tenant to pay the amount set forth in the judgement, because the judgment is the judicial determination that allows a landlord to evict a tenant under the Anti-Eviction Act.

CONDOMINIUMS AND COMMON INTEREST COMMUNITIES

Poblette v. Towne of Historic Smithville Community Ass'n, 355 N.J. Super. 55 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=910373112185040705&q=355+N.J.+Super.+55+&hl=en&as_sdt=2,31

Homeowners in development brought action for damages from flood. Detention basin held to be "community facility;" developer's intent to convey maintenance responsibility of detention basin intertwined with purpose of the planned Real Estate Development Full Disclosure Act which required developer to form association; developer's bankruptcy lead to a *de facto* transfer to community development association of rights and duties under easement; association had duty to inspect detention basin.

Verna v. The Links at Valleybrook Neighborhood Ass'n, 371 N.J. Super. 77 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=9086438342756961603&q=371+N.J.+Super.+77+&hl=en&as_sdt=2,31

Homeowners' association entitled to enforce its parking regulations, even after it dedicated street to public use.

Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22 (2006)

http://scholar.google.com/scholar_case?case=2859994175027412851&q=383+N.J.+Super.+22+&hl=en&as_sdt=2,31

Provisions in homeowner's associations by-laws that weighted voting according to property value, denied tenants the right to vote, and allowed non-resident owners to vote, did not violate the Planned Real Estate Development Full Disclosure Act or residents rights of expression under the New Jersey Constitution. PREDFDA required fair and open elections for board of directors of homeowner's association for planned unit developments in which opposition candidates were entitled to campaign.

Luchejko v. City of Hoboken, 207 N.J. 191 (2011)

http://scholar.google.com/scholar_case?case=6002711634463379054&q=207+N.J.+191+&hl=en&as_sdt=2,31

A residential condominium association is not subject to tort liability for failure to maintain sidewalks. The Court, favoring a bright line test, states that “[r]esidential homeowners can safely rely on the fact that they will not be liable unless they create or exacerbate a dangerous sidewalk condition; commercial owners, defined in reference to their use of the property and its capacity to generate income, know that clearing their abutting sidewalks [of snow and ice] is a cost of doing business and that failure to do so can lead to liability.”

Cape May Harbor Village and Yacht Club Association, Inc. v. Sbraga, 421 N.J. Super. 56 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=17688364546759410431&q=421+N.J.+Super.+56+&hl=en&as_sdt=2,31

An amendment to the Declaration of Covenants and Restrictions of a homeowner’s association the restricts renting is reviewed under the less deferential reasonableness standard because the restrictions under review were the result of an amendment, not the original Declaration; the restriction occurred after appellant bought into the community; there were no prior restrictions on renting properties, and the fact that it impacted on a property right.

Masdabrook Commons Homeowners’ Association v. Khan, 210 N.J. 482 (2012)

http://scholar.google.com/scholar_case?case=4189467335049900733&q=mazdabrook+commons&hl=en&as_sdt=2,31

Since political speech lies “at the core” of the constitutional free speech protections, a homeowners’ association may not ban all political signs in light of the minor interference this conduct poses on the associations’ legitimate interest in maintaining architectural design and aesthetic appeal of its common-interest community. Under the New Jersey Constitution, “[e]very person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.” N.J. Const. art. I, § 6. Unlike federal law, New Jersey law does not require “state action.” The Court balances “the legitimate interests of private property owners – to be free from untoward interference with or confiscatory restrictions upon” the reasonable use of their property – and the individual right to free speech and assembly. To determine the parameters of free speech right on privately owned property the court must consider three factors: “(1) the nature, purposes, and primary use of such private property, generally, its ‘normal’ use, (2) the extent and nature of the public’s invitation to use that property, and (3) the purpose of the expressional activity undertaken upon such property in relation to both the private and public use of the property.” *State v. Schmid*, 84 N.J. 535, 563 (1980), appeal dismissed sub nom. *Princeton Univ. v. Schmid*, 455 U.S. 100 (1982). “If the speaker is both an association member and an owner, the application of the first two Schmid factors can vary depending on whether they are viewed from the perspective of the homeowners’ association or the homeowner. That ambiguity, in turn, enhances the weight of the third Schmid factor.”

Bell Tower Condominium Association v. Haffert, 423 N.J. Super. 507 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=284886162631177972&q=A-3218-10T2&hl=en&as_sdt=2,31

The Condominium Act requires condominium associations to establish a “fair and efficient procedure for the resolution of housing-related disputes” between individual unit owners and the association, or between unit owners, “as an alternative to litigation.” N.J.S.A. 46:8B-14(k). “Because the long-established public policy of this State favors alternative dispute resolution, and because the Legislature chose expansive and unconditional language when it required the arbitration of ‘housing-related disputes’ . . . we construe the term broadly. We hold that the term

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‘housing-related disputes’ refers to any dispute arising directly from the condominium relationship.” As a result, the dispute over a special assessment imposed by the Association for repairs to the condominium premises was a housing-related dispute that should have been submitted to arbitration or other form of alternative dispute resolution.

Port Liberte II Condominium Association, Inc. v. New Liberty Residential Urban Renewal Company, LLC, 435 N.J. Super. 51 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=17009203057408805684&q=A-2574-11T1&hl=en&as_sdt=4,31

The Condominium Act, N.J.S.A. 46:8B-1 to -38, authorizes a condominium association to file suit against builders and other third parties for damage to the common areas. Where the association by-laws require the unit owners to authorize the commencement of litigation, but the association files suit prior to obtaining such authorization, the unit owners may remedy the lack of authorization by voting to ratify the filing. Defendant contractors have no standing to enforce the by-laws because they “are strangers to the relationship between the Association and the unit owners.”

Flinn v. Amboy National Bank, 436 N.J. Super. 274 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=12932644840729884429&q=flinn+v+amboy&hl=en&as_sdt=4,31

If the developer is failing to build or advertise in the "ordinary course of business," then N.J.S.A. 46:8B-12.1(a) authorizes a court to strip the developer of control involuntarily. “This transfer of control is mandatory, and not discretionary, given that the statute explicitly states that the unit owners ‘shall be entitled’ to elect a certain number of board members at certain milestones.”

Quian v. Toll Brothers Inc., 223 N.J. 124 (2015)

https://scholar.google.com/scholar_case?case=15349919405889557728&q=Nos.+A-95+September+Term&hl=en&as_sdt=4,31

Residential public-sidewalk immunity does not apply in the case of a sidewalk privately owned by a common-interest community. The homeowner’s association by-laws control the association’s duty to maintain the common areas. *Luchejko* distinguished due to the public sidewalk at issue in that case.

Jaye v. Oak Knoll Village Condominium Owners Association, A-4856-12T2 (Jan. 28, 2015)

https://scholar.google.com/scholar_case?case=9158245005714334654&q=A-4856-12T2+&hl=en&as_sdt=4,31

A unit owner’s obligation to pay common expenses is unconditional. N.J.S.A. 46:8B-17. An association is authorized to charge a nonpaying member with reasonable attorney’s fees. N.J.S.A. 46:8B-21.

Mill Creek Island Berkeley Condominium Association v. Nitto, A-4544-13T1 (July 6, 2015)

https://scholar.google.com/scholar_case?case=7025689455055718145&q=A-4544-13T1+&hl=en&as_sdt=4,31

Post-petition condominium fees are not excluded from discharge when the debtor physically occupies or receives rental income from the unit or "as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest" in the property. 11 U.S.C.A. § 523(a)(16).

Birch Glen Condominium Association, Inc. v. Boahene, A-4357-13T2 (April 8, 2015)

https://scholar.google.com/scholar_case?case=4280611370848509383&q=A-4357-13T2+&hl=en&as_sdt=4,31

Before a condominium unit may be sold to satisfy a unit owner’s debt to the Association based on nonpayment of maintenance fees, the Association must first seek to satisfy the debt from the

debtor's personally under Rule 4:59-1.

The Glens at Pompton Plains Condominium Association, Inc. v. Van Kleeff, A-0418-13T4 (May 7, 2015)

https://scholar.google.com/scholar_case?case=5047759444818281054&q=A-0418-13T4&hl=en&as_sdt=4,31

The Condominium Act provides that an "association shall provide a fair and efficient procedure for the resolution of housing-related disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation." N.J.S.A. 46:8B-14(k). "So long as the dispute 'arise[s] from the parties' condominium relationship,' [including disputes regarding monthly maintenance fees] a unit owner may, pursuant to N.J.S.A. 46:8B-14(k), demand submission of such disputes to ADR in lieu of proceeding in court." Defendants did not waive their right to arbitration by filing an earlier suit against the association (which was dismissed) without demanding arbitration.

Mirmanesh v. Brasslett, A-3433-13T3 (June 23, 2015)

https://scholar.google.com/scholar_case?case=5802415073074199976&q=A-3433-13T3&hl=en&as_sdt=4,31

The Condominium Act does not preclude parties from agreeing to amend a Master Deed to exclude a particular improvement from the definition of "common element" where the improvement is reserved for or limited to a particular unit or group of units.

Buchler v. Club Regatta Condo Association, A-1108-13T2[1]; A-1456-13T2 (June 24, 2015)

https://scholar.google.com/scholar_case?case=9980369738347564066&q=Buchler+v.+Club+Regatta&hl=en&as_sdt=4,31

Damage to condominium dry wall, ceilings and woodwork were not damage to the common elements and the Association properly denied unit owners' request to submit the claim to the Association's insurance carrier.

Highpoint at Lakewood Condominium Association v. Township of Lakewood, A-2118-13T2 (Aug. 14, 2015)

https://scholar.google.com/scholar_case?case=18040912273778211887&q=A-2118-13T2+&hl=en&as_sdt=4,31

A condominium unit does not need to be completed before it is considered a unit for purposes of assessing responsibility for the proportionate share of the common elements. "The taxation of phantom units constitutes taxation on the basket of property rights associated with the unit, including the unit's undivided interest in the common elements." The municipality may tax the phantom units as individual properties, separate from the common elements of the condominium and the developer is liable for taxes on unbuilt units.

A deed of revocation is required to remove land from a condominium; a foreclosure judgement will not suffice. Powers of attorney may not be used to evade statutory requirements. "A condominium association may be barred by principles of waiver or laches from imposing retroactive assessments."

Lake Community Property Owners Association, Inc. v. Zeugin, A-4426-13T4 (Dec. 10, 2015)

https://scholar.google.com/scholar_case?case=2996610271473455532&q=4426-13T4&hl=en&as_sdt=4,31

Homeowners in lake community not bound by court order that imposed dues where they did not receive actual notice or constructive notice of the court order, but matter remanded to determine whether they had inquiry notice. "A purchaser is deemed to be on constructive notice of outstanding claims or encumbrances discoverable in his chain of title." A court order that is

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docketed, but not filed in the deed book or deed indices, was not included in the chain of title and therefore did not put them on constructive notice. "A prospective purchaser may be charged with inquiry notice if he or she becomes aware of facts or suspicious circumstances that would prompt investigation. A purchaser 'will be charged with knowledge of whatever such an inquiry would uncover where facts are brought to his attention `sufficient to apprise him of the existence of an outstanding title or claim, or the surrounding circumstances are suspicious and the party purposefully or knowingly avoids further inquiry.'" "Inquiry notice can be triggered by statements or references within documents in the chain of title." "The extend of a person's inquiry is subject to a standard of reasonableness."

Sterling Laurel Realty, LLC v. Laurel Gardens Co-Op, Inc., 444 N.J. Super. 470 (App. Div. 2016)
https://scholar.google.com/scholar_case?case=4758904116245488743&q=A-0696-14T4&hl=en&as_sdt=4,31

Where a Co-Op's certificate of incorporation is silent, a majority of a Co-Op's Board may not amend the bylaw definition of a quorum (to require less than a majority of the shareholders for purposes of shareholder meetings) without an amendment of the certificate of incorporation. N.J.S.A. 14A:5-9 states, in pertinent part: "Unless otherwise provided in the certificate of incorporation or this act, the holders of shares entitled to cast a majority of the votes at a meeting shall constitute a quorum at such meeting."

The Palisades at Fort Lee Condominium Association, Inc. v. 100 Old Palisade, LLC, A-4292-13T3 (Feb. 1, 2016)
https://scholar.google.com/scholar_case?case=3662863590576884085&q=A-4292-13T3&hl=en&as_sdt=4,31

"[A]lthough a cause of action in a construction-defect case generally accrues at the time of substantial completion, the date of accrual may be delayed by application of the discovery rule or other equitable considerations." Plaintiff's causes of action did not accrue until the unit owners took full control of the Association's governing Board, and the Board received an expert's report that provided it with sufficient facts upon which to assert actionable claims against defendant contractors.

Riccuitti v. McEwan, A-2303-14T2 (Feb. 10, 2016)
https://scholar.google.com/scholar_case?case=7351040738343332677&q=A-2303-14T2&hl=en&as_sdt=6,31

A condominium association has the exclusive right to institute litigation over the common elements. To bring a derivative action, a unit owner must first demand action from the association unless making the demand would be futile. "PREDFDA sets forth a six-year statute of limitations to file any claim that a developer has made 'untrue statement[s] of material fact' relating to the purchase of certain real property."

Aiosa v. Amboy Bank, A-2166-14T1 (April 25, 2016)
https://scholar.google.com/scholar_case?case=16942434024928001766&q=A-2166-14T1&hl=en&as_sdt=4,31

The Condominium Act authorizes a condominium association to file suit against third parties for damages to common elements. A unit owner may only pursue claims regarding common elements if the association wrongfully fails to file such a suit.

Park Street Condominium Association, Inc. v. Denenberg, A-3422-14T4 (Aug. 2, 2016)
https://scholar.google.com/scholar_case?case=2505368323983689333&q=A-3422-14T4&hl=en&as_sdt=4,31

A unit owner's obligation to pay common expenses is unconditional. *N.J.S.A.* 46:8B-17. His refusal to pay assessments because of the alleged failure to maintain the common area was an improper self-help remedy.

The Top Condominium v. Township of South Orange, A-5388-13T3 (Aug. 5, 2016)
https://scholar.google.com/scholar_case?case=17567463357934095035&q=A-5388-13T3&hl=en&as_sdt=4,31

The court discusses the tax implications of common area property located in a different municipality than the unit and the implications of the failure of the municipalities to adopt resolutions as required by *N.J.S.A.* 54:4-25, which provides that "when the line between taxing districts divides a tract of land, each part shall be assessed in the taxing district where located, unless the governing body of one of the taxing districts shall by resolution request that the entire tract be assessed by the adjoining taxing district in which a portion of the tract is located" and *N.J.S.A.* 46:8B-19 which provides that "all property taxes are separately assessed against each condominium unit and not on the common elements of the condominium property." The court held that the assessment of the common elements on the condominium association was improper.

DiGiandomenico v. Great Bay Condominium Board of Trustees, A-4484-14T4 (Aug. 9, 2016)
https://scholar.google.com/scholar_case?case=16047559022402394309&q=A-4484-14T4&hl=en&as_sdt=4,31

It was not improper for a condo board to levy an assessment before the work was completed. The Master Deed only prohibited the filing of a lien before the expense was incurred.

AB Monmouth, LLC v. Township of Wall Planning Board, A-1099-15T3, A-1629-1573 (Oct. 6, 2016)
https://scholar.google.com/scholar_case?case=1287881423637272068&q=A-1629-15T3&hl=en&as_sdt=4,31

Party who acquired the remainder of undeveloped property from a condominium developer is not a "developer" under the MLUL where the property is part of the common elements. "The unit owners, not any individual unit owner or group of owners, would be the developer under *N.J.S.A.* 40:55D-4."

Woodlands Community Association, Inc. v. Mitchell, 450 N.J. Super. 310 (App. Div. 2017)
https://scholar.google.com/scholar_case?case=803091518005612075&q=A-4176-15T2&hl=en&as_sdt=4,31

Lender, or its assignee, that takes possession of a condominium unit following the unit owner/mortgagor's default on the loan and changes the locks and winterizes the unit is not a "mortgagee in possession" responsible for the payment of condominium fees and assessments. The lender did "not occupy the unit, is not collecting rents or any other profits, nor is it making repairs" and therefore it did not exercise "the necessary level of control and management over the property to deem it a mortgagee in possession."

Epstein v. Cherry Parke Condominium Association, A-2003-15T2 (March 3, 2017)
https://scholar.google.com/scholar_case?case=8267638188056181951&q=A-2003-15T2&hl=en&as_sdt=4,31

Claims related to damage to the common elements belong to the association, not to individual unit owners, unless damage to the individual unit is alleged. Unit owners retain the right to bring an action against the association and its directors for breach of their fiduciary duty.

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Mill Pointe Condominium Association, Inc. v. Rizvi, A-2362-15T2 (April 13, 2017)

https://scholar.google.com/scholar_case?case=5470420635197787628&q=A-2362&hl=en&as_sdt=4,31

Condo association's motion to appoint a rent receiver for unit with unpaid assessments moot where final judgment entered in bank's foreclosure action establishing its priority over the association.

A Country Place Condominium Association v. Abdelhak, A-0145-15T4 (June 6, 2017)

https://scholar.google.com/scholar_case?case=2178223202076636611&q=A-0145-15T4+&hl=en&as_sdt=4,31

Association's "failure to maintain some common elements, or its retaliatory slowness in addressing snow and ice, did not absolve [the unit owner] from his obligation to pay his monthly assessments." The unit owner "would be entitled to a setoff against his assessment obligations for the period in question if he had proved he was damaged because [the association] breached the Condominium Act, the master deed, the bylaws, or its duty of good faith and fair dealing by improperly failing to provide services or by improperly retaliating against defendant."

Lechler v. 303 Sunset Avenue Condominium Association, 452 N.J. Super. 574 (App. Div. 2017)

https://scholar.google.com/scholar_case?case=6613325849834899181&q=A-1095-16T3&hl=en&as_sdt=4,31

A condo association has a statutory duty to maintain the common areas, "including a duty to identify and correct dangerous conditions, and that duty extend[s] to residents of the condominium building, regardless of their characterization as licensees or invitees." The association's failure to adopt a by-law immunizing it against negligence actions by unit owners as permitted by N.J.S.A. 2A:62A-13(a), opens it up to potential liability.

Chassman v. Longview at Montville Condominium Association, A-1660-16T3 (June 7, 2018)

https://scholar.google.com/scholar_case?case=2122882408154132036&q=A-1660-16T3&hl=en&as_sdt=4,31

A condo association has the right to adopt a code of conduct and to suspend a member's privileges for failure to pay a fine for violating the code.

Pathway Condominium Association, Inc. v. Ocean Grove Camp Meeting Association, A-3842-16T2 (June 28, 2018)

https://scholar.google.com/scholar_case?case=2326575769654497104&q=A-3842-16T2&hl=en&as_sdt=4,31

Plaintiffs' claims to void leases barred by 6-year statute of limitations applicable to contracts. The Condominium Act expressly allows land to be held under a lease.

Alloco v. Ocean Beach and Bay Club, A-0922-16T3 (Aug. 22, 2018)

https://scholar.google.com/scholar_case?case=14201877646980074864&q=alloco+v.+ocean&hl=en&as_sdt=4,31

"Pursuant to the business judgment rule, a [common-interest] association's rules and regulations will [only] be invalidated (1) if they are not authorized by statute or by the bylaws or master deed, or (2) if the association's actions are 'fraudulent, self-dealing or unconscionable.'" The rule "bars judicial inquiry into the decisions of the board of directors made in good faith' and within 'the limits of the by-laws.'"

Goodman v. Shore Club Condominium Assoc., No. 17-2226 (JS) (Sept. 10, 2018)

[https://scholar.google.com/scholar_case?case=11555356684760474553&q=17-2226+\(JS\)&hl=en&as_sdt=3,31](https://scholar.google.com/scholar_case?case=11555356684760474553&q=17-2226+(JS)&hl=en&as_sdt=3,31)

“In order for a condominium association to be immune from unit owners’ claims of bodily injury, N.J.S.A. 2A-13(a) requires that the bylaws ‘specifically’ set forth such immunity.” Bylaws that only provide immunity to the trustees, does not insulate the association from suit.

Community Corporation of High Point, Inc. v. Ponky, Inc., A-1517-17T2 (Sept. 27, 2018)

https://scholar.google.com/scholar_case?case=17822273863768296496&q=A-1517-17T2&hl=en&as_sdt=4,31

By-law restriction that prohibited commercial uses without the consent of the board allowed for the imposition of a preliminary injunction to prohibit the operation of a real estate office.

Breslin v. Northgate Condominium Association, Inc., A-3464-16T2 (Nov. 30, 2018)

https://scholar.google.com/scholar_case?case=11069754476565129577&q=Breslin+v.+northgate&hl=en&as_sdt=4,31

“[P]laintiff’s concern that the assessments were in fact special assessments has been resolved by virtue of the unit owners’ retroactive approval and ratification of the prior assessments as special assessments. It is well established that even if the acts of a corporate board were *infra vires* due to a failure to obtain shareholder approval and/or failure to follow procedural formalities, such as voting in a properly noticed board meeting, same can be ratified after the fact.”

In Re Spradley, No. 18-cv-263 (PGS)(Feb. 6, 2019)

[https://scholar.google.com/scholar_case?case=124857022263649578&q=18-cv-263+\(PGS\)&hl=en&as_sdt=3,31](https://scholar.google.com/scholar_case?case=124857022263649578&q=18-cv-263+(PGS)&hl=en&as_sdt=3,31)

The Condominium Act gives limited priority of association liens over other liens. “[T]he six months of maintenance fees shall be given priority over the first mortgage . . . the Condominium Act authorizes a lien for the entire amount of assessments set forth in the recording; but it elevates only a portion of said lien, the six months of assessment fees, above other liens and recorded mortgages so long as certain conditions are met. Hence, the remainder of the lien (after elevating the six months of the maintenance liens) is still a valid lien under the statute. A bankruptcy court has the authority to ‘cram down’ a lien to unsecured status in most situations except if it is a ‘claim secured only by a security interest in real property that is the debtor’s principal residence.’ See 11 U.S.C. § 1322(b)(2). Here, the remainder of the lien under the Condominium Act is a security interest in real property and the unit is Spradley’s primary residence. As such, the remainder of the lien would ordinarily not be subject to the cram down provision due to the language of the anti-modification provision.”

Blue Water Townhome Ass’n v. DiFabio, A-4709-16T4 (March 8, 2019)

https://scholar.google.com/scholar_case?case=14380801352697070422&q=A-4709-16T4&hl=en&as_sdt=4,31

Unit owner’s status as an ineligible voter did not excuse the association’s failure to provide her with notice of association’s meeting because under the master deed and by-laws all unit owners were entitled to notice.

NJHR6, LLC v. Essex Place Condominium Ass’n., A-4945-17T4 (June 26, 2019)

https://scholar.google.com/scholar_case?case=10644774708615415191&q=A-4945-17T4&hl=en&as_sdt=4,31

Plaintiff, which acquired a condo unit as a result of a mortgage foreclosure, is not liable for the Association’s pre-existing lien claims attributable to the prior owner.

MISCELLANEOUS

Rialto-Capitol Condominium Ass'n, Inc. v. Baldwin Assets Associates Urban Renewal, 465 N.J. Super. 31 (App. Div. 2020)

https://scholar.google.com/scholar_case?case=3499277265441694724&q=rialto+v.+baldwin&hl=en&as_sdt=6,31&as_ylo=2020

Condo association had no standing to sue for faulty windows where the master deed defined a “unit” as including the windows. That claim belonged to the unit owners. However, since the building also contained an historic preservation easement that protected the appearance of the exterior of the building, the association had standing to protect the requirements of the easement.

Glogover v. Hudson Harbour Condominium Association, Inc., A-3446-18T3 (Sept. 29, 2020)

https://scholar.google.com/scholar_case?case=13630303320510145475&q=glogover+v.+hudson&hl=en&as_sdt=6,31&as_ylo=2020

A unit owner by acceptance of title is conclusively presumed to have agreed to pay his proportionate share of common expenses accruing while he is the owner of a unit. N.J.S.A. 46:8B-17. “No unit owner may exempt himself from liability for his share of common expenses by waiver of the enjoyment of the right to use any of the common elements or by abandonment of his unit or otherwise.” *Id.* Section 14(k) of the Condominium Act requires an association to “provide a fair and efficient procedure for the resolution of housing-related disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation.” N.J.S.A. 46:8B-14(k). “[S]o long as a dispute arise[s] from the parties' condominium relationship,” a party may, pursuant to N.J.S.A. 46:8B-14(k), demand submission of such disputes to ADR in lieu of proceeding in court.” The Condominium Act authorizes a condominium association to charge a non-paying member with reasonable attorney's fees. N.J.S.A. 46:8B-21.

Goldberg v. Soc'y Hill Condo. Ass'n, Inc. A-0790-19 (March 11, 2021)

https://scholar.google.com/scholar_case?case=10475629649329333342&q=goldberg+v.+society&hl=en&as_sdt=6,31&as_ylo=2021

Where the trial court awarded attorneys fees to Defendant HOA pursuant to Rule 4:58-1 and the Condominium Act and the association's master deed, but did not explain its reduction in the amount requested, same was remanded back to the trial court for further findings.

Volovnik v. Bridge Plaza Condo. Ass'n, Inc., A-2154-19 (May 11, 2021)

https://scholar.google.com/scholar_case?case=6379649222029142124&q=Volovnik+v.+Bridge+Plaza&hl=en&as_sdt=6,31&as_ylo=2021

The Appellate Division upheld the trial court determination that, according to the HOA by-laws, because the sponsor/developer is prohibited from voting to elect new HOA board members, the sponsor is therefore prohibited from voting to remove board members. Thus, the sponsor/developer was unable to call a special meeting for the purpose of removing HOA board members.

Stekelman v. Carhart, A-1799-19A-2495-19 (July 29, 2021)

https://scholar.google.com/scholar_case?case=12290377206725475618&q=stekelman+&hl=en&as_sdt=6,31&as_ylo=2021

Appellate Division upheld trial court decision to refuse sanctions against a *pro se* homeowner by her HOA related to two (2) unsuccessful lawsuits.

DiPiano v. Curtis Point Prop. Owners Ass'n, A-3612-19 (Sept. 14, 2021)

https://scholar.google.com/scholar_case?case=16859461441278000434&q=curtis+point&hl=en&as_sdt=6,31&as_ylo=2021

The entire controversy doctrine bars a Plaintiff homeowner from, after the fact, challenging the ability of the Defendant HOA to cover other homeowners' legal costs related to Plaintiff's original

suit. Additionally, where the HOA provides a truthful summary of Plaintiff's litigation and its costs to the HOA community, same cannot meet the standard for defamation.

McCann v. Whitehall Manor Condo. Ass'n, Inc., A-4086-19 (Nov. 24, 2021)

https://scholar.google.com/scholar_case?case=5970974188087211667&q=McCann+v.+Whitehall+Manor&hl=en&as_sdt=6,31&as_ylo=2021

The Appellate Division reversed trial court's grant of motion for summary judgement against Defendant HOA because there was a genuine issue of material fact as to whether the language in the indemnification clause of the HOA's by-laws contemplated recovery of attorney's fees in a first-party claim between the Association and its former board members.

1530 Owners Corp. v. Americana Assoc., A-0732-20, A-0760-20 (Dec. 14, 2021)

https://scholar.google.com/scholar_case?case=17820905354994527872&q=1530+owners+corporation&hl=en&as_sdt=6,31&as_ylo=2021

Where a HOA's incorporation document required that all un-sold units at the time of incorporation be sold within three (3) years and a breach of contract suit is filed thirty-one (31) years after the date that the units were supposed to be sold alleging violation of that requirement, such a suit is beyond the six (6) year statute of limitations and cannot proceed. Furthermore, where the Plaintiff fails to supply the court with information related to code and other related alleged violations, the lower court rightly held that there was no ongoing nuisance related to the HOA's purported non-compliance.

Cross Roads Condominium Owners Association v. Cosentino, A-3599-20 (Sept. 28, 2022)

https://scholar.google.com/scholar_case?case=2183908562325097483&q=+Cross+Roads+Condo+v.+Cosentino+&hl=en&as_sdt=6,31&as_ylo=2022

Where a court awards attorneys' fees to an HOA with respect to enforcement of its rules and recovery of unpaid assessments, the award will be reversed when it is approximately ten (10) times the amount requested when the complaint was filed without some further analysis and explanation by the trial court.

Fulton Bank of New Jersey v. Casa Eleganza, LLC, A-2859-20 (Aug. 11, 2022)

https://scholar.google.com/scholar_case?case=7864239107704558162&q=Fulton+Bank+of+New+Jersey+v.+Casa+Eleganza&hl=en&as_sdt=6,31&as_ylo=2022

Where a bank acquired title to a portion of a residential community by way of sheriff sale, it was required to pay HOA fees and assessments related to its ownership of same. The Court held that HOA responsibilities and debts could not be extinguished by the foreclosure of a portion of the lots covered by the subdivision approval. The Court reasoned that, pursuant to notions of equitable subrogation, HOA Declaration constituted an equitable servitude that follows the land even if the foreclosed mortgage was filed first. Consequently, contrary to the Bank's argument that the foreclosure had extinguished the declaration of covenants, same was still in effect.

MacFarlane v. Society Hill at University Heights Condo Association II, Inc., A-2792-20 (July 6, 2022)

https://scholar.google.com/scholar_case?case=13221959817364592663&q=MacFarlane+v.+Hill+at+Univ&hl=en&as_sdt=6,31

Trial court correctly denied injunctive relief to void an HOA board election and remove the existing trustees from office because Plaintiff homeowner could not meet the requisite standard for relief under *Crowe v. DeGoia*, particularly with respect to demonstrating irreparable harm and reasonably probability of success.

MISCELLANEOUS

Baouab v. 2600 Association, Inc., A-4039-19 (Dec. 28, 2021)

https://scholar.google.com/scholar_case?case=16889413110989840510&q=Baouab+v.+2600&hl=en&as_sdt=6,31

The business judgment rule creates 'a rebuttable presumption' that the actions of a Board are valid." [citation omitted]. To "promote and protect the full and free exercise of the power of management given to the directors," the second prong of the business judgment rule "protects a board of directors from being questioned or second-guessed on conduct of corporate affairs, except in instances of fraud, self-dealing, or unconscionable conduct." [citation omitted].

500 Park Ave. E.O., Inc. v. Williams, A-3595-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=16685477377404000973&q=500+park+ave+v.+williams&hl=en&as_sdt=6,47&as_ylo=2023

Plaintiff's occasional non-compliance with its bylaws did not void Defendant unit owner's obligation to pay assessments or Plaintiff's authority to collect the debt owed.

Players Place II Condo Ass'n v. K.P., A-1304-20 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=8878862632752149055&q=players+place+ii+condo&hl=en&as_sdt=6,31&as_ylo=2023

Defendant purchased a dog which exceeded the weight permitted by the condo association. While Defendant argued that the dog was an "emotional support animal" and that a waiver of the rule was required by the NJLAD and FHA, the Court ruled that the Defendant was not "handicapped" under the applicable facts and also because she certified that she was not mentally ill when she recently purchased a firearm. Notwithstanding same, the Court ruled that the Defendant could keep the dog based on certain equitable principles concerning the arbitrary nature of the condo rule and that the dog did help Defendant's mental health situation.

Players Place II Condo. Ass'n v. K.P., (2024)

https://scholar.google.com/scholar_case?case=6576674028263444116&q=players+place&hl=en&as_sdt=6,47&as_ylo=2024

NJLAD's definition of "disability" is much broader than the Fair Housing Amendment Act's ("FHAA's") definition of "handicap" and notwithstanding the fact that Plaintiff was employed and had a very good academic record, she was still "handicapped" under the NJLAD because of her mental illness diagnosis. Additionally, a resident of a condominium complex is entitled under state and federal law to request an accommodation to a pet policy in order to keep an emotional support animal. The individual must first demonstrate they have a disability under the NJLAD. In addition, they must show that the requested accommodation may be necessary to afford them an "equal opportunity to use and enjoy a dwelling." N.J.A.C. 13:13-3.4(f)(2). The housing provider then has the burden to prove the requested accommodation is unreasonable. As part of that process, the parties should engage in a good-faith, interactive dialogue to exchange information, consider alternative options, and attempt to resolve or narrow any issues. If that collaborative effort fails and litigation follows, courts will inevitably need to balance the need for, and benefits of, the requested accommodation against the costs and administrative burdens it presents to determine whether the accommodation is reasonable.

Ruccolo v. Ardsley W. Cmty. Ass'n, Inc., A-1563-21 (Mar. 28, 2024)

https://scholar.google.com/scholar_case?case=53491166886447736&q=Ruccolo+v.+Ardsley+&hl=en&as_sdt=6,47&as_ylo=2024

While HOA attorney admitted that the HOA did not strictly follow its rules with respect to proxy ballots, same did not invalidate the HOA's election results.

MISCELLANEOUS

The Village Green at Bedminster Neighborhood Condo. Ass'n, Inc. v. Shields, A-3271-22 (May 23, 2024)

https://scholar.google.com/scholar_case?case=7462484952517162684&q=The+Vill.+Green+at+Bedminster+Neighborhood+Condo.+Ass%27n,+Inc.+v.+Shields&hl=en&as_sdt=6,47

Appellate Division affirms trial court's denial of defendant unit owner's request to file a third party complaint against the condo association where he could show no evidence of verifiable loss.

Gerstmann v. Executive House Condo. Ass'n, A-0860-22 (Jan. 17, 2025)

https://scholar.google.com/scholar_case?case=18089055976289290424&q=Gerstmann+v.+Executive+House&hl=en&as_sdt=6,47&as_ylo=2024

Appellate Division upholds trial court decision that HOA was authorized to enter into a bulk-billing agreement with Cablevision, which required unit owners to pay for cable services as part of their common charges.

Wedgewood Gardens Condo. Ass'n, Inc. v. Wedgewood Gardens Developers, Inc., A-0699-23 (Feb. 5, 2025)

https://scholar.google.com/scholar_case?case=13364544960352497670&q=Wedgewood+Gardens+Condo.+Ass%27n,+Inc.+v.+Wedgewood+Gardens+Developers,+Inc.&hl=en&as_sdt=6,47&as_ylo=2025

Unit which, according to the by-laws, as intended to be occupied by the development's residence manager was not a "common unit," and Defendants had adequate title to transfer same.

Estates at Layton's Lakes Homeowners Ass'n, Inc. v. Watson, A-3123-23 (May 7, 2025)

https://scholar.google.com/scholar_case?case=17696643871599013290&q=The+Estates+at+Layton%27s+Lakes+Homeowners+Ass%27n,+Inc.+v.+Watson&hl=en&as_sdt=6,47&as_ylo=2025

Court interrupted the HOA's by-laws and determined that Defendant's fence was governed by a particular section of same and there did not have to comply with the municipality's zoning setback requirements for structures.

PREMISES LIABILITY

Luchejko v. City of Hoboken, 414 N.J. Super. 302 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=2696244258511268232&q=,+414+N.J.+Super.+302+&hl=en&as_sdt=2,31

Condominium association has no duty to maintain public sidewalks for liability purposes. The court bases its conclusion on the fact that although the association collects fees from its members, the funds are used solely for the upkeep of the property, with no profit realized to its members, unlike a rental apartment building that is considered commercial due to the owner's capacity to generate income from the property.

Holmes v. Kimco Realty Corporation, 598 F.3d 115 (2010)

http://scholar.google.com/scholar_case?case=13304870364702528384&q=Holmes+v.+Kimco+Realty+Corporation&hl=en&as_sdt=2,31

A commercial tenant in a multi-tenant shopping center does not have a duty to maintain common areas controlled by the landlord. Such a duty would result in substantial increased costs with little added benefit and lead to duplicative efforts, interference with the landlord's maintenance program and confusion.

Tymczyszyn v. Columbus Gardens, 422 N.J. Super. 253 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=18265204661197447671&q=422+N.J.+Super.+253+&hl=en&as_sdt=2,31

Owners of a public housing complex can be held liable for tort injuries for failure to remove snow and ice.

Nielson v. Wal-Mart Store #2171, 429 N.J. Super. 251 (App. Div. 2013)

[http://scholar.google.com/scholar_case?case=14783228711047198398&q=A-2790-11T1+\(Jan.+11,+2013\)&hl=en&as_sdt=4,31](http://scholar.google.com/scholar_case?case=14783228711047198398&q=A-2790-11T1+(Jan.+11,+2013)&hl=en&as_sdt=4,31)

"The notion that a land occupier's duty of care extends only as far as the boundaries of its property . . . is simply out of step with the modern course of the common law." "The common law's progression should not stop because of the labels adopted by the parties in defining their relationship when an innocent individual, not a party to that relationship, is injured by the condition of – or failure to warn of the condition of – abutting property or nearby areas that an invitee might foreseeably encounter. "[T]he fact that the developer [of a commercial condominium and not the unit owner] had contractually agreed to 'repair, replace and maintain' the area in question provides some weight for insulating [the tenant] from liability. The other circumstances to which we have alluded, however, carry the day. Walmart, as a unit owner, is fairly chargeable with a duty to be familiar with the perimeter outside its unit and other common areas that its invitees and passersby might foreseeably use. The imposition of a duty encourages a business owner such as Walmart to alert the contractually responsible entity about hazardous conditions. Walmart also directed plaintiff to use the unit's perimeter, and it was in the course of following that direction that plaintiff encountered the area in which he was injured. And Walmart had an adequate remedy – in its right to seek indemnification from the developer."

Grijalba v. Floro, 431 N.J. Super. 57 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=3920485990180944436&q=A-4563-11T4&hl=en&as_sdt=4,31

Whether an owner-occupied three-family home is "commercial" or "residential" for sidewalk liability purposes depends upon a factual analysis as applied to the following legal framework: "(1) the Court has acknowledged repeatedly that residential property owners are generally not liable for sidewalk injuries; (2) the Court has maintained the fundamental notion that commercial property

owners are better prepared to spread the risk of loss to innocent third parties than residential homeowners; (3) the residential-commercial distinction requires a case-by-case, fact-sensitive analysis; (4) we continue to use commonly accepted definitions of "commercial" and "residential" to resolve the residential-commercial distinction; (5) in determining whether an owner-occupied two- or three-family home is deemed "residential" or "commercial," courts have considered the nature of the ownership of property and the predominant use of that property; and (6) the commercial-residential framework, even in the gray area of owner-occupied two- and three-family structures, continues to provide guidance and predictability for property owners." On remand, the trial court must review "(1) the nature of the ownership of the property, including whether the property is owned for investment or business purposes; (2) the predominant use of the property, including the amount of space occupied by the owner on a steady or temporary basis to determine whether the property is utilized in whole or in substantial part as a place of residence; (3) whether the property has the capacity to generate income, including a comparison between the carrying costs with the amount of rent charged to determine if the owner is realizing a profit; and (4) any other relevant factor when applying 'commonly accepted definitions of 'commercial' and 'residential' property.'"

McGlynn v. State, 434 N.J. Super. 23 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=3074436884656156504&q=mcglynn+v+state&hl=en&as_sdt=4,31

The property owner bears the principal responsibility to exercise due care over trees that might pose a hazard to travelers. Although JCP&L had a commitment to keep vegetation controlled in order to prevent interruption in electric service, it does not maintain vegetation for the benefit of the passing motorists.

Wreden v. Township of Lafayette, 436 N.J. Super. 117 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=14985220320429937949&q=A-5422-12T3&hl=en&as_sdt=4,31

In action for damage to property resulting from municipality's construction of a retaining wall that caused flooding of plaintiff's property, it was error for trial court to not analyze plaintiffs' claim under the continuing tort doctrine. "The 'continuing tort doctrine,' also known as the 'continuing violation doctrine,' provides that when an individual is subjected to a 'continual, cumulative pattern of tortious conduct,' the statute of limitations period begins only when the wrongful action ceases. [citation omitted]. When a court finds that a continuing nuisance has been committed, the new tort is an 'alleged present failure' to remove the nuisance, and "[s]ince this failure occurs each day that [defendant] does not act, the [defendant's] alleged tortious inaction constitutes a continuous nuisance for which a cause of action accrues anew each day.'" The date on which a notice of claim is filed therefore does not mark the accrual date for a cause of action in a continuing tort case.

Zheng v. Santos, A-1361-13T4 (Feb. 23, 2015)

https://scholar.google.com/scholar_case?case=3514404644812198049&q=1361-13T4&hl=en&as_sdt=4,31

"The relevant question [for the imposition of premises liability on owner-occupied dwelling] is the primary use of the property," not whether the owner had a mortgage payment to offset the income generated by the rental of part of the property.

MISCELLANEOUS

Na v. 369 First Street Condominium Association, A-2971-14T3 (May 5, 2016)

https://scholar.google.com/scholar_case?case=7365708452379924108&q=A-2971-14T3&hl=en&as_sdt=4,31

Matter remanded for determination whether public sidewalk is a common element of a condominium and whether ground floor commercial unit owner in otherwise residential condominium had authority to correct defect in sidewalk. “[W]e are troubled by the inequity and skewed incentives that would exist here if it is true that the dry cleaner had no right to dig up and repair the sidewalk unilaterally. Assuming that is so, it would be unfair and illogical for the dry cleaner to be the only party potentially liable in tort for an accident caused by a structural condition in the sidewalk – lacking any ability to pursue reimbursement from the association so that the other unit owners could share in such costs.”

Kuczynski v. Pomponi, A-0316-15T3 (May 27, 2016)

https://scholar.google.com/scholar_case?case=10324920438221620409&q=A-0316-15T3&hl=en&as_sdt=4,31

The discovery rule applies to claims brought under the TCA where the victim is aware of an injury, but does not know that a third party is responsible. The notice of claim must therefore be brought within 90 days of discovering that the municipality may be at fault.

Postorino v. County of Passaic, A-1081-14T2 (July 25, 2016)

https://scholar.google.com/scholar_case?case=14715077872709162604&q=A-1081-14T2&hl=en&as_sdt=4,31

Public entity did not have liability for a dangerous condition on a roadway where it did not have constructive notice of the condition. Constructive notice can be established through length of time a dangerous condition existed, its appearance or prior accidents at the same location.

Yulis v. Township of Teaneck, A-4016-13T4 (Aug. 1, 2016)

https://scholar.google.com/scholar_case?case=8982961743194524326&q=A-4016-13T4&hl=en&as_sdt=4,31

Township entitled to plan or design immunity under TCA where it has approved the feature of the plan that is causally related to the accident. Engineer who designed the allegedly defective feature entitled to immunity because “[p]ublic work cloaked with plan or design immunity extends to private contractors through derivative immunity.”

Colon v. City of Hoboken, A-1980-14T1 (Aug. 3, 2016)

https://scholar.google.com/scholar_case?case=12336881638080985821&q=A-1980-14T1&hl=en&as_sdt=4,31

Under the Tort Claim Act, “the issue of whether the public entity created the dangerous condition or whether the public entity had notice of the condition should normally be addressed before reaching the question of whether the action or inaction of the public entity was not palpably unreasonable.”

Tider v. City of Jersey City, A-3611-14T1 (April 4, 2017)

https://scholar.google.com/scholar_case?case=15987155387616692743&q=Tider+v+city&hl=en&as_sdt=4,31

A public entity does not incur liability under the Tort Claims Act for a dangerous condition unless the public entity’s actions or inactions are “palpably unreasonable.” Whether the action (or inaction) is palpably unreasonable is a question of law and is defined as “behavior that is patently unacceptable under any given circumstances.”

Engle v. Paradise Pavers Pond Landscaping, LLC, A-3162-15T3 (April 18, 2017)
https://scholar.google.com/scholar_case?case=14919745172175555754&q=A-3162-15T3&hl=en&as_sdt=4,31

Owner-occupier of residential property has common law immunity for injury that occurred on abutting sidewalk even though owner parked his commercial vehicle at the property and occasionally posted a commercial sign on the property.

Corbisiero v. Schlatter, A-2357-15T1 (May 17, 2017)
https://scholar.google.com/scholar_case?case=6549710110080471135&q=A-2357-15T1&hl=en&as_sdt=4,31

Property owner not liable for injury to adjacent owner who injured herself trimming tree that overhung onto her property where tree didn't create a dangerous condition, but it was the plaintiff's own action in deciding to trim the tree herself that resulted in her injuries.

Valentine v. Almanzar, A-2207-15T4 (June 12, 2017)
https://scholar.google.com/scholar_case?case=7284189845004787963&q=A-2207-15T4&hl=en&as_sdt=4,31

The owner-occupiers of a three-family home (where the other two units are rented to generate income to cover the carry charges) have no duty to clear snow and ice from the public sidewalk adjoining their property because the primary purpose of the property was residential, not commercial.

Ekambi v. Walls, A0358-15T3 (July 20, 2017)
https://scholar.google.com/scholar_case?case=4231555094261658503&q=A-0358-15T3&hl=en&as_sdt=4,31

Defendant not liable for injury that occurred on sidewalk that abutted property she owned, but did not live in. Although she allowed her son to live at the property, the primary purpose was residential, not commercial, even though it was not owner-occupied.

Reaves-Harrington v. DiGuseppi, A-5094-15T3 (Nov. 6, 2017)
https://scholar.google.com/scholar_case?case=13485856632549995303&q=A-5094-15T3&hl=en&as_sdt=4,31

A landlord has no common law duty to remedy a property defect absent a contractual obligation to repair, or fraudulent concealment of a latent defect.

Waldeier v. Piper I Townhouse Condominium Association, A-0257-16T1 (Nov. 22, 2017)
https://scholar.google.com/scholar_case?case=17474910013838369621&q=A-0257-16T1&hl=en&as_sdt=4,31

Residential condominium association has no liability for defects in public sidewalk.

Lechler v. 303 Sunset Avenue Condominium Ass'n., 452 N.J. Super. 574 (App. Div. 2017)
https://scholar.google.com/scholar_case?case=6613325849834899181&q=A-1095-16T3&hl=en&as_sdt=4,31

Condo association has a statutory duty to maintain the common elements and owed a duty of care to unit owners. The association's failure to adopt a by-law immunizing it against negligence actions by unit owners as permitted by N.J.S.A. 2A:62A-13(a), opens it up to potential liability.

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Jersey Central Power & Light Company v. Township of Phillipsburg, A-1652-16T3 (March 12, 2018)

https://scholar.google.com/scholar_case?case=6494625987060181549&q=A-1652-16T3&hl=en&as_sdt=4,31

A tort claims notice served on the ninety-first day following an accident is one day late.

Devlin v. Junior League of Elizabeth-Plainfield, A-0595-16T4 (May 7, 2018)

https://scholar.google.com/scholar_case?case=5878510763003390872&q=A-0595-16T4&hl=en&as_sdt=4,31

Commercial property owner within Special Improvement District had duty to maintain sidewalk where the SID ordinance did not prohibit commercial landowners from making repairs, requesting a permit to do so, or taking appropriate steps to warn pedestrians of a hazardous condition on abutting public sidewalks.

Banks v. Gunderson, A-0569-16T1 (May 30, 2018)

https://scholar.google.com/scholar_case?case=18228694883562590746&q=A-0569-16T1&hl=en&as_sdt=4,31

“No New Jersey case law or statute requires a municipality to install sidewalks.” As a result, a municipality’s decision not to install or require the installation of sidewalks near the site of an accident is a discretionary decision entitled to immunity under N.J.S.A. 59:2-3(b), notwithstanding the fact that the municipality’s zoning board had required the installation of sidewalks in connection with development applications located on either side of the accident location. In addition to discretionary immunity, the municipality was entitled to plan or design immunity under N.J.S.A. 59:4-6 which “grants public entities complete immunity for injuries resulting from dangerous conditions produced by the plan or design of public property, where such a plan or design has been officially approved by an authorized body [- in this case, the zoning board].” The County also enjoyed plan or design immunity because the dangerous condition was outside of the improved portion of its right-of-way. “No published case law or statute requires maintenance of an unused portion of a public entity’s right-of-way that is otherwise on private property.”

Doremus v. DeLorenzo, A-5578-16T3 (May 31, 2018)

https://scholar.google.com/scholar_case?case=16875493752536355387&q=A-5578-16T3&hl=en&as_sdt=4,31

“[M]unicipal ordinances cannot create tort liability with regard to residential landowners” and thus residential property owner not liable for injuries to plaintiff while walking on sidewalk even though the municipal ordinance required the abutting owner to maintain the walk.

Decter v. Hejib, A-3073-16T3 (June 4, 2018)

https://scholar.google.com/scholar_case?case=3135911213143913618&q=A-3073-16T3&hl=en&as_sdt=4,31

“In New Jersey, residential property owners, unlike commercial property owners, have no duty to maintain the sidewalks adjacent to their land so long as they do not affirmatively create a hazardous condition.”

Adams v. Magotch, A-3637-16T2 (June 20, 2018)

https://scholar.google.com/scholar_case?case=17457079201148824917&q=A-3637-16T2&hl=en&as_sdt=4,31

An abutting residential property owner can be liable for affirmatively created artificial conditions (failing to cleanup decorative stones) that render the sidewalk hazardous for passersby.

Habibi v. SCO Dougherty, A-3495-16T2 (July 13, 2018)

https://scholar.google.com/scholar_case?case=1260146499219490236&q=A-3495-16T2&hl=en&as_sdt=4,31

A plaintiff has ninety days to file a notice of tort claim and one year to file a motion for leave to file a late notice of claim, beyond which a court lacks the authority to grant permission to file a late notice of claim.

Mattos v. PVT. Peter S. Hotalen – American Legion Post 157, A-4554-16T3 (Aug. 22, 2018)

https://scholar.google.com/scholar_case?case=5094359221187278214&q=A-4554-16T3&hl=en&as_sdt=4,31

NJDOT not liable for injuries to person who uses NJDOT land to park car and is hit by car crossing the road to attend an event across the road. “A public entity is not liable for any injury caused by adopting or failing to adopt a law or by failing to enforce any law.”

Moore v. Claremont Clinton, LLC, No. 18-11411 (SRC)(Aug. 29, 2018)

https://scholar.google.com/scholar_case?case=5702617260777118025&q=18-11411&hl=en&as_sdt=3,31

“The cause of action provided by the [Federal Tort Claims Act], 28 U.S.C. § 1346(b), is the exclusive remedy ‘for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment.’ 28 U.S.C. § 2679(b)(1). The statute confers exclusive jurisdiction over such claims on federal district courts. 28 U.S.C. § 1346(b)(1).” As a prerequisite to filing suit, a plaintiff must file a written notice of claim with the appropriate agency.

Gross v. Fotinos Enterprises, A-2058-17T4 (Oct. 1, 2018)

https://scholar.google.com/scholar_case?case=3083070808205543346&q=A-2058-17T4&hl=en&as_sdt=4,31

Where triple net lease “impos[es] liability on tenant for all maintenance, repairs, insurance, taxes, and other charges associated with the property,” property owner owed no duty to third party to inspect the premises or enforce any violations of the lease by tenant.

Paschall v. Norfolk Square Apartments, A-2621-17T2 (Dec. 28, 2018)

https://scholar.google.com/scholar_case?case=7670977942575138671&q=Paschall+v.+Norfolk&hl=en&as_sdt=4,31

“‘[A] possessor of land who holds it open to the public’ has a duty to ‘exercise reasonable care to prevent foreseeable harm’ to ‘members of the public who enter in response to the possessor’s invitation. . . .’ [citation omitted]. In the case of a trespasser upon property, unlike a situation involving a licensee or an invitee on property, a landowner must only warn ‘of artificial conditions on the property that pose a risk of death or serious bodily harm.’” A landlord’s duty of care is based on the totality of the circumstances based on: (1) “the relationship of the parties;” (2) “the nature of the attendant risk;” (3) “the opportunity and ability to exercise care;” and (4) “the public interest in the proposed solution.”

Castelli v. Sollitto, A-2029-17T3 (Jan. 11, 2019)

https://scholar.google.com/scholar_case?case=3423604917545059124&q=A-2029-17T3&hl=en&as_sdt=4,31

An owner-occupied, two-family home is deemed to be residential for purposes of sidewalk liability “absolving the owners from the duty to maintain abutting sidewalks under currently prevailing standards.”

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Aybar v. Borough of Carteret, A-0317-17T3 (Jan. 22, 2019)

https://scholar.google.com/scholar_case?case=4314706000687178823&q=A-0317-17T3&hl=en&as_sdt=4,31

The dangerous condition must relate to the physical condition of the property itself and not to activities conducted on the property.

Cruz v. Camden County, A-2074-17T4 (Feb. 19, 2019)

https://scholar.google.com/scholar_case?case=17326188326428981998&q=2074-17T4&hl=en&as_sdt=4,31

To have constructive notice of a dangerous condition, the condition must have existed for such a time and was of such a dangerous nature that the governmental entity in exercising due care should have discovered the condition and its dangerous character.

McCantis v. Kennedy, A-2846-17T4 (Feb. 28, 2019)

https://scholar.google.com/scholar_case?case=10103989349539350414&q=2846-17T4&hl=en&as_sdt=4,31

N.J.A.C. 5:10-6.4(a) requires owners of multiple dwelling units to be responsible to keep all parts of the premises, including the exterior of the premises, free from all nuisances, insanitary conditions, and any hazards to the safety or health of occupants and to promptly removed and abated such conditions.

Terhune v. County of Union, A-4433-16T2 (Mar. 18, 2019)

https://scholar.google.com/scholar_case?case=16701794320084016533&q=4433-16T2&hl=en&as_sdt=4,31

Before liability can be imposed on a public entity, evidence must establish that the entity owned or controlled the property. N.J.S.A. 27:16-8 provides that the county's responsibility to maintain its roads is limited to what is "between the curb lines," and does not include a sidewalk on property adjacent to a county road.

Cannizzaro v. RIMROB Corp., No. 17-5931 (SRC)(April 9, 2019)

https://scholar.google.com/scholar_case?case=1446538119394989495&q=17-5931&hl=en&as_sdt=3,31

The waiver of sovereign immunity carved out by the Federal Tort Claims Act does not extend to the acts or omissions of a contractor with the United States, such as a landlord or the landlord's maintenance contractor unless the government has the power to control the detailed performance of the contractor.

Dixon v. HC Equities Associates, LP, A-5756-17T1 (May 2, 2019)

https://scholar.google.com/scholar_case?case=7878707036721502591&q=A-5756-17T1&hl=en&as_sdt=4,31

"An owner or possessor of property owes a higher degree of care to the business invitee because that person has been invited on the premises for purposes of the owner that often are commercial or business related." [citation omitted]. But, an owner is not "obligated to remove snow and ice until the precipitation stopped and it had a reasonable time to remove the snow and ice" and is therefore not liable for injuries that occurred during a snow event.

Colombo v. Estate of Serriano, A-1950-16T3 (May 17, 2019)

https://scholar.google.com/scholar_case?case=9235667386182912&q=A-1950-16T3&hl=en&as_sdt=4,31

Residential property owners have no duty to maintain public sidewalks adjacent to their property and are generally immune from liability unless (1) they or their predecessors negligently

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constructed or repaired the sidewalk; (2) their use of the property rendered the sidewalk unsafe; (3) they installed a drain, grating or hole in or upon the sidewalk; or (4) they created a dangerous condition in the sidewalk by building upon it.

Ferranti v. City of Elizabeth, A-4707-17T2 (May 22, 2019)

https://scholar.google.com/scholar_case?case=3775004593604779939&q=A-4707-17T2&hl=en&as_sdt=4,31

County had no duty to warn of snow conditions during a snow event as the conditions were patently obvious.

Santopietro v. Borough of Union Beach, A-4856-17T2 (July 8, 2019)

https://scholar.google.com/scholar_case?case=13573177677487214308&q=A-4856-17T2&hl=en&as_sdt=4,31

Notice of the dangerous condition must be of the actual condition that allegedly caused the injury, not of a different dangerous condition.

Green v. Borough of Englewood Cliffs, A-0289-17T3 (July 9, 2019)

https://scholar.google.com/scholar_case?case=15372671008085484742&q=A-0289-17T3&hl=en&as_sdt=4,31

Repairs to street that caused aggregate to dislodge and accumulate on the road surface causing injury to bicyclist was not conduct found to be palpably unreasonable because roadways are primarily for cars and cars could harmlessly pass over the loose gravel.

Albert v. Pathmark Stores, Inc., A-5163-17T3 (Jul 10, 2019)

https://scholar.google.com/scholar_case?case=8034301139732505836&q=A-5163-17T3&hl=en&as_sdt=4,31

In general, a tenant and not a landlord is responsible for the maintenance of a leased premises unless (1) the portion of the property where the injury occurred is not demised and remains in the landlord's control or (2) a covenant in the lease gives rise to a duty on the part of the landlord.

Vargas v. Augusto, A-4897-17T1 (Aug. 6, 2019)

https://scholar.google.com/scholar_case?case=1322520406815612829&q=A-4897-17T1&hl=en&as_sdt=4,31

Residential property owners are not responsible for sidewalk injuries, but “if a landowner constructs or maintains drain pipes, leaders or similar artificial conduits of surface water in such a manner that the water thus collected is so discharged that it reaches the public sidewalk and there freezes, making the sidewalk dangerous to travelers, then he is chargeable with negligently creating an unreasonable risk of injury. *Gellenthin v. J. & D., Inc.*, 38 N.J. 341 (1962)”

Cagnassola v. Township of Mansfield, A-1145-18T3 (Sept. 26, 2019)

https://scholar.google.com/scholar_case?case=1870264851291501263&q=A-1145-18T3&hl=en&as_sdt=4,31

A township's passage of an ordinance requiring property owners to repair sidewalks does not create liability on the part of the municipality nor the residential property owner for defective sidewalks absent the municipality's awareness of the condition or the property owners' creation of an unnatural dangerous condition.

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Pitts v. Gianni, A-0121-18T3 (Dec. 4, 2019)

https://scholar.google.com/scholar_case?case=1194748499993777838&q=A-0121-18T3&hl=en&as_sdt=4,31

Landlords have a duty to protect tenants from foreseeable criminal acts of third parties.

Cardenas v. Servino, A-1262-18T4 (Dec. 5, 2019)

https://scholar.google.com/scholar_case?case=7701054898283825245&q=A-1262-18T4&hl=en&as_sdt=4,31

Sidewalk liability turns on the status of the property at the time of the accident and a non owner-occupied two-family home being renovated was not being used for commercial purposes.

Marim v. Newark Public Schools, A-5538-17T1 (Dec. 17, 2019)

https://scholar.google.com/scholar_case?case=15481542484297022493&q=A-5538-17T1&hl=en&as_sdt=4,31

Commercial property owner's responsibility for dangerous condition arises only if, after actual or constructive notice, he has not acted in a reasonably prudent manner.

Shields v. Ramslee Motors, 240 N.J. 479 (2020)

https://scholar.google.com/scholar_case?case=2840813119253244939&q=Shields+v+Ramslee&hl=en&as_sdt=4,31

Where commercial lease delegated responsibility for maintenance to tenant and tenant retained complete control, landlord had no duty to party injured on the premises.

Mehmedi v. Strengthen Our Sisters, A-0956-18T2 (Jan. 28, 2020)

https://scholar.google.com/scholar_case?case=2556723315810317126&q=Mehmedi+v.+Strengthen+Our+Sisters&hl=en&as_sdt=6,31&as_ylo=2020

Resident of homeless shelter's complaint for damages dismissed under the Charitable Immunity Act, N.J.S.A. 2A:53A-7 to -11 because plaintiff's presence at defendant's premises was due to her being a beneficiary of defendant's charitable works, not as a volunteer whose presence was "unconcerned in and unrelated to" defendant's charitable activities.

McBride v. Fair-Willoughby, A-5610-17T4 (Feb. 4, 2020)

https://scholar.google.com/scholar_case?case=3964998812910684158&q=McBride+v.+Fair-Willoughby&hl=en&as_sdt=6,31&as_ylo=2020

Expert testimony did "not establish that placing a downspout so that it pours substantial water onto a sloped driveway, knowing the water will first cross a public sidewalk before reaching the street, is "a proper way of doing it." Nor is the fact that other homes in the neighborhood discharge water in a similar way a valid defense to a claim of negligence. "The defense that 'everyone does it' is not an acceptable ground to absolve a defendant from liability in the absence of a reasonable justification for defendant's conduct or for the conduct of similarly — situated persons.

Markou v. Caliber Home Loans, Inc. A-2360-18T2 (April 1, 2020)

https://scholar.google.com/scholar_case?case=6111251734258941612&q=Markou+v.+Caliber+Home+Loans&hl=en&as_sdt=6,31&as_ylo=2019

Vacant property that was foreclosed upon and sold to a company that contracted with a property management company to maintain it, was still residential property for purposes of the sidewalk rule of no liability for slips and falls.

Pareja v. Princeton International Properties, 463 N.J. Super. 231, certif. granted 244 N.J. 168 (2020)

https://scholar.google.com/scholar_case?case=1677748979895630531&q=Pareja+v.+Princeton&hl=en&as_sdt=6,31&as_ylo=2019

Court rejects the ongoing storm rule and holds that “a commercial landowner has a duty to take reasonable steps to render a public walkway abutting its property—covered by snow or ice—reasonably safe, even when precipitation is falling.” “[I]t is fair to impose a duty of ordinary and reasonable care on commercial landowners because—under all the circumstances—they are well positioned to remove or reduce foreseeable known snow and ice hazards.” “Reasonableness is generally a jury question. To assess reasonableness of a commercial landowner's conduct, a jury may consider: (1) Whether any action would be inexpedient or impractical; (2) the extent of the precipitation, including the amount of snow or ice accumulation; (3) the timing of the precipitation, whether it's day or night; (4) the nature of the efforts, if any, to prevent, remove, or reduce snow or ice accumulation, especially whether conditions were so hazardous as to make it unsafe for the landowner or any contractor to venture out in the elements; (5) the minimal usage consequent on a "closed" facility in contrast to a normal work week; (6) the number of individuals expected to use the public sidewalk, premises, and the area in need of attention; (7) the past, current, and anticipated weather conditions, including but not solely dependent on reliable weather predictions, and the practicality of reasonable safety measures or methods of ingress or egress; and (8) any other relevant factors.”

Underhill v. Borough of Caldwell, 463 N.J. Super. 548 (App. Div. 2020)

https://scholar.google.com/scholar_case?case=11984538403580585250&q=Underhill+v.+Borough+of+Caldwell&hl=en&as_sdt=6,31&as_ylo=2020

Owner of commercial property leased to the Borough for a parking lot owed no duty to plaintiff to maintain the lot because the lease assigned that duty to the Borough.

Rienzi v. Giacomani, A-5056-18T3 (Oct. 26, 2020)

https://scholar.google.com/scholar_case?case=2955535638473416549&q=rienzi+v&hl=en&as_sdt=6,31&as_ylo=2020

A three-unit residential building in which the owner lived in one of the units and rented the other two units is residential for purposes of sidewalk immunity.

Pannucci v. Edgewood Park Senior Hous. – Phase I, LLC, A-4735-17T3 (Nov. 30, 2020)

https://scholar.google.com/scholar_case?case=2342410648174682868&q=Pannucci+v.+Edgewood+Park+Senior+&hl=en&as_sdt=6,31

Court rejects invitation to remove the requirement under the *res ipsa loquitor* doctrine that a plaintiff show his or her injury did not result from his or her own voluntary act or neglect based on argument that it is incompatible with the Comparative Negligence Act. First, to do so would overrule supreme court precedent and there is no indication that the supreme court would do so. Second, there is value in having a plaintiff demonstrate that his or her actions did not provide an alternative explanation for the accident.

Pareja v. Princeton Int'l Props., 246 N.J. 546 (2021)

https://scholar.google.com/scholar_case?case=9698934546068983234&q=Pareja+v.+Princeton&hl=en&as_sdt=6,31&as_ylo=2021

Commercial landowners do not have a duty to remove the accumulation of snow and ice until the conclusion of the storm, but unusual circumstances may give rise to a duty before then. There are two exceptions that could impose a duty: if the owner's conduct increases the risk, or the danger is pre-existing.

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Butler v. Badr Sch., A-1099-19 (Feb. 9, 2021)

https://scholar.google.com/scholar_case?case=14549915460913436170&q=butler+v+badr&hl=en&as_sdt=6,31&as_ylo=2021

Tort claims against a public entity must be commenced with a notice of the claim filed within ninety days of the accrual of the claim. The notice of claim requirement applies to a plaintiff's tort claims, a defendant's cross-claims, and does not exempt a defendant's claim for contribution and indemnification, or any other category of claims against the public entity. N.J.S.A. 59:8-8 As a result, a defendant may be deprived of its right to pursue a claim against a joint tortfeasor before the defendant is aware that the claim exists. Such a defendant's remedy is to seek an allocation of fault against the public entity under the Comparative Negligence Act, N.J.S.A. 2A:15-5.1 to-5.8, and the Joint Tortfeasors Contribution Law, N.J.S.A. 2A:53A-1 to-5.

County of Monmouth v. Jersey Cent. Power & Light, A-2571-19 (Feb. 22, 2021)

https://scholar.google.com/scholar_case?case=10000333936763641937&q=county+of+monmouth+v.+jersey+central&hl=en&as_sdt=6,31&as_ylo=2021

Appellate Division reverses trial court, finding that while a public utility had the statutory duty to provide notification to the One-Call System (N.J.S.A. 48:2-82(d)(3)), it also had a common law duty to use reasonable care. Consequently, because Plaintiff's sewer man-hole was visible, it had a duty to further inspect and avoid damaging same.

Tchikindas v. Basser-Kaufman Mgmt. Corp., A-3560-19 (May 4, 2021)

https://scholar.google.com/scholar_case?case=9944091801753375626&q=Tchikindas+v.+Basser-Kaufman&hl=en&as_sdt=6,31&as_ylo=2021

Where an indemnity provision in a lease is ambiguous, the provision is strictly construed against the indemnitee. In addition, where it does not expressly and unequivocally provide that the indemnitor shall indemnify another party for the legal expenses incurred in defending against claims of that party's own negligence, the indemnitor is not liable for those costs. But, the indemnitee may recover its defenses costs so long as the indemnitee is free from active wrongdoing regarding the injury to the plaintiff and has tendered the defense to the indemnitor at the start of the litigation.

Pesci v. Twp. Of Parsippany, No. A-0952-23 (Sept. 20, 2024)

https://scholar.google.com/scholar_case?case=296824102960718172&q=pesci+v.+parsippany&hl=en&as_sdt=6,47

Court found Plaintiff's drainage claims against the Township with respect to drainage issues were barred by the applicable statute of limitations, N.J.S.A. 24:14-1 and she failed to follow the procedures under the TCA for filing a claim. Furthermore, Plaintiff failed to provide needed expert testimony to establish causation and quantify her damages and she failed to show she had any contract with Township for work on her property.

Padilla v. An, 257 N.J. 540 (2024)

https://scholar.google.com/scholar_case?case=10115948632240616026&q=padilla+v.+an&hl=en&as_sdt=6,47

All commercial landowners — including owners of vacant commercial lots — have a duty to maintain the public sidewalks abutting their property in reasonably good condition and are liable to pedestrians injured as a result of their negligent failure to do so.

INSURANCE

Crystal Point Condo. Ass'n Inc. v. Kinsale Ins. Co., A-4621-19 (March 4, 2021)

https://scholar.google.com/scholar_case?case=1616790575768552650&q=crystal+v+kinsale&hl=en&as_sdt=6,31&as_ylo=2021

Merely being a third-party beneficiary to an insurance agreement does not require that the Appellant be subject to the arbitration clause of the underlying insurance agreement.

Birch v. The Hanover Ins. Co., A-2490-19, (March 19, 2021)

https://scholar.google.com/scholar_case?case=7887681453215605987&q=birch+v.+the+hanover&hl=en&as_sdt=6,31&as_ylo=2021

Where an insurance policy includes an exclusion for claims "[a]rising out of or based upon . . . flammable materials" and the insured seek coverage with respect to a propane tank explosion, coverage would be excluded under the plain language of the policy.

Jomain, LLC v. City of Hoboken, A-3443-19 (June 29, 2021)

https://scholar.google.com/scholar_case?case=7857857618189572188&q=jomain+v.+hoboken&hl=en&as_sdt=6,31&as_ylo=2021

Appellate Division reverses trial court decision denying Defendant's motion for summary judgement with respect to Co-Defendant's duty to defend against Plaintiff's negligent claims. The Appellate Division held that the Co-Defendant had a duty to defend because Plaintiff's complaint falls squarely within the language of the contractual-indemnification provision. It is a "claim[]," "lawsuit[]," "demand[]," "suit[]," "action[]," and "cause[] of action" that "directly... arise[s] out of" or "relate[s] to: (i) any of the work and services of" Co-Defendant or "(iii) any act or omission under, in performance of, or in connection with this agreement by" Co-Defendant. The fact that the Co-Defendant argues that it is not liable for damages was besides the point.

Affiliated FM Ins. Co. v. Rothschild Realty I, L.P., A-1448-19 (Aug. 6, 2021)

https://scholar.google.com/scholar_case?case=3891530096302325&q=rothschild+realty&hl=en&as_sdt=6,31&as_ylo=2021

Where a tenant and insurer mistakenly list a third-party as additional insured instead of the landlord but the premium is paid year after year and the issue is not resolved, such conduct does not demonstrate the type of "unilateral mistake" that would warrant reformation of the insurance policy.

Velez v. Angel Consulting, LLC, BER-L-8280-19 (Aug. 10, 2021)

https://scholar.google.com/scholar_case?case=2686225130231618046&q=angel+consulting&hl=en&as_sdt=6,31&as_ylo=2021

Trial court granted Co-Defendant Insurer's motion for summary judgement dismissing cross-complaint by co-defendant condo management company because the management company was not covered by the co-defendant HOA's business owners liability or D&O coverage.

Wilmington Sav. Fund v. Daw, A-0829-19 (Oct. 22, 2021)

https://scholar.google.com/scholar_case?case=16510363799568453815&q=wilmington+v.+daw&hl=en&as_sdt=6,31&as_ylo=2021

Pursuant to an implied covenant of good faith and fair dealing in determining the disposition of the property or insurance funds for storm damaged property, once the lender is provided with adequate information to determine how the insurance funds should be used—such as the estimated costs of repairs and market values—the lender is obligated to clearly advise the borrower within a reasonable period of time as to whether the requested use of insurance monies for repairs is

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economically infeasible or will impair its security in the property. The time to notify the borrower of the disposition may be extended if the parties mutually undertake good-faith negotiations to modify the loan terms. If the lender unreasonably delays making a decision to approve the proposed use of the insurance funds for repairs, the court has the equitable power to abate the mortgage interest that has accumulated in the meantime. Additionally, the lender must place the insurance funds in an interest-bearing, segregated account until the proper use of those funds is resolved.

Mercer Insurance Company of New Jersey v. Baron, A-2764-19 (Jan. 25, 2022)

https://scholar.google.com/scholar_case?case=11043005033481795297&q=mercerv.+baron&hl=en&as_sdt=6,31&as_ylo=2022

Where a jury finds that landlords are 100% responsible for a fire with respect to a negligence claim, the insurer cannot obtain a breach of lease claims against the tenants where lease provides that if the tenants or their guests damage the apartment through their own acts or negligence, they will be responsible for the damage.

State-Comm LLC v. Axis Ins. Co., A-0962-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=299811670550535384&q=State-Comm+LLC+v.+Axis+Ins.+Co&hl=en&as_sdt=6,47&as_ylo=2023

If an insurance policy is ambiguous, courts will construe the terms in favor of the insured. *Mac Prop. Grp. LLC & The Cake Boutique LLC v. Selective Fire & Cas. Ins. Co.*, 473 N.J. Super. 1, 18 (App. Div. 2022). This doctrine only applies if there is a genuine ambiguity in the contract, and "the phrasing of the policy is so confusing that the average policyholder cannot make out the boundaries of coverage...." *Templo Fuente De Vida Corp.*, 224 N.J. at 200.

Rosario v. the Hartford Fire Ins. Co., A-1968-20 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=18250968740560512027&q=Rosario+v.+The+Hartford+Fire+&hl=en&as_sdt=6,31&as_ylo=2023

If there are no ambiguities in the insurance contract language, "courts cannot `write for the insured a better policy of insurance than the one purchased.'" *Walker Rogge, Inc. v. Chelsea Title & Guar. Co.*, 116 N.J. 517, 529 (1989)). Here, the Court read the plain language of the insurance policy to exclude environmental contamination.

STATUTE OF REPOSE

Port Imperial Condominium Ass'n, Inc. v. K. Hovnanian Port Imperial Urban Renewal, Inc., 419 N.J. Super. 459 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=3496967234151179338&q=419+N.J.+Super.+459&hl=en&as_sdt=2,31

The ten-year statute of repose in N.J.S.A. 2A:14-1.1 precludes construction defect claims against subcontractors who completed work more than ten years before the filing of the complaint where faulty workmanship led to the creation of defects that resulted in unsafe condition.

State of New Jersey v. Perini Corporation, 425 N.J. Super. 62 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=4205709247162320913&q=A-3268-10T4&hl=en&as_sdt=2,31

Trigger date for statute of repose for construction litigation is the date of substantial completion, not completion of every last task of the contractor. Separate trigger dates apply to subcontractors that have substantially completed their work, even if the improvement as a whole is not completed and a certificate of occupancy has not been issued. The trigger date for any single contractor runs from completion of that contractor's entire work on the improvement, not from discrete tasks. But the statute of repose does not run against the general contractor, the project supervisor, or other contractors who have continuing duties. For contractors who remain on the job, the statute is triggered when their own work on the project is substantially completed. Multiple phases of a construction project that are clearly defined and documented can trigger separate periods of repose, even for contractors who continue working on the entire project, but only when such phases are clearly designated with distinct dates of substantial completion, occupancy and use.

Town of Kearny v. Brandt, 214 N.J. 76 (2013)

http://scholar.google.com/scholar_case?case=15385995457316106565&q=town+of+kearny+v.+brandt&hl=en&as_sdt=4,31

The ten-year period prescribed in N.J.S.A. 2A:14-1.1(a) commences when the first Certificate of Occupancy is issued. When claims against a defendant are dismissed on statute of repose grounds, fault may be apportioned to the dismissed defendant under the Comparative Negligence Act and the Joint Tortfeasors Contribution Law.

Cumberland County Board of Chosen Freeholders v. Vitetta Group, P.C., 431 N.J. Super. 596 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=7800086211514693050&q=vitetta&hl=en&as_sdt=4,31

"The time within which an action may be brought under N.J.S.A. 2A:14-1.1 'is entirely unrelated to the accrual of any cause of action' [citation omitted], and the cause of action specifically 'ceases to exist' after ten years. the statute cuts off all claims after ten years..., irrespective of the date of injury. [citation omitted]. Thus injury occurring more than ten years after the negligent act allegedly responsible for the harm, forms no basis for recovery. The injured party literally has no cause of action."

State v. Perini Corporation, 221 N.J. 412 (2015)

https://scholar.google.com/scholar_case?case=11566186689119978950&q=Perini&hl=en&as_sdt=4,31

"[T]he statute of repose does not begin to run on claims involving an improvement that serves an entire project—including those parts constructed in multiple, uninterrupted phases—until all buildings served by the improvement have been connected to it . . . In addition, we hold that the statute of repose does not apply to claims relating solely to manufacturing defects in a product used

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in the HTHW system.”

The Palisades at Fort Lee Condominium Association, Inc. v. 100 Old Palisade, LLC, A-4292-13T3 (Feb. 1, 2016)

https://scholar.google.com/scholar_case?case=3662863590576884085&q=4292-13T3&hl=en&as_sdt=4,31

In construction defect cases, the statute of limitations general begins to run upon substantial completion of the work, but the date of accrual may be delayed by application of the discovery rule. Where sponsor is in control of the condominium board, “the statute of limitations did not begin to run until the unit owners had full control of the Association's governing Board and it had sufficient facts upon which to assert its claims for construction defects.”

The Palisades at Fort Lee Condominium Association, Inc. v. 100 Old Palisade, LLC, 230 N.J. 427 (2017)

https://scholar.google.com/scholar_case?case=9906776064771754177&q=applied+property+management+co.,+inc.,+the+palisades+077249&hl=en&as_sdt=4,31

“A construction-defect cause of action accrues at the time that the building's original or subsequent owners first knew or, through the exercise of reasonable diligence, should have known of the basis for a claim. From that point, the plaintiff has six years to file a claim. A subsequent owner stands in no better position than a prior owner in calculating the limitations period. If a prior owner knew or reasonably should have known of a basis for a construction-defect action, the limitations period began at that point.”

Jersey City Municipal Utilities Authority v. NJ Transit Corp., A-1748-16T2 (April 5, 2018)

https://scholar.google.com/scholar_case?case=1380745202185758053&q=A-1748-16T2&hl=en&as_sdt=4,31

“The statute of repose creates four categories of actions that are exempt from the statute so long as they are brought by ‘a governmental unit.’ N.J.S.A. 2A:14-1.1(b). Those four exceptions are for claims brought by a governmental unit based on (1) a written warranty, guaranty, or other contract; (2) willful misconduct, gross negligence, or fraudulent concealment; (3) an environmental remediation law or contract for carrying out responsibilities under an environmental remediation law; or (4) any contract for the application, enclosure, removal, or encapsulation of asbestos.”

REAL ESTATE BROKERS

The Berg Agency v. Twp. of Maplewood, 163 N.J. Super. 542 (Law Div. 1978)

http://scholar.google.com/scholar_case?case=4494898553074238198&q=163+N.J.+Super.+542+&hl=en&as_sdt=2,31

Real estate brokers signs

Zaman v. Felton, 219 N.J. 199 (2014)

http://scholar.google.com/scholar_case?case=6682399977598997845&q=zaman+v.+felton&hl=en&as_sdt=4,31

Real estate broker did not commit the unauthorized practice of law where he did not act in his professional capacity as a broker seeking to promote a successful closing but was the buyer of a property notwithstanding the fact that both parties were unrepresented by counsel.

Best Bergen Homes, Inc. v. Nunez, A-4693-13T3 (Feb. 4, 2016)

https://scholar.google.com/scholar_case?case=13197817604794418379&q=A-4693-13T3&hl=en&as_sdt=4,31

For a real estate broker to earn a commission it must be established that he [or she] was the ‘efficient producing cause’ in bringing about the sale. If the transaction is not completed during the time period delineated in the listing agreement, the broker's entitlement is predicated on the transaction being "consummated without a substantial break in the ensuing negotiations."

The Real Estate Company, LLC v. Premier Development Group, LLC, A-1338-13T1 (March 9, 2016)

https://scholar.google.com/scholar_case?case=2436020762019823844&q=A-1338-13T1&hl=en&as_sdt=4,31

Real estate broker not entitle to recover commission based on quantum meruit. “Pursuant to the Statute of Frauds, ‘a real estate broker who acts as agent or broker on behalf of a principal for the transfer of an interest in real estate, including lease interests for less than three years, is entitled to a commission only if before or after the transfer the authority of the broker is given or recognized in a writing signed by the principal or the principal's authorized agent, and the writing states either the amount or the rate of commission. [N.J.S.A. 25:1-16(b).] The statute allows for an exception to the rule based upon an oral agreement only in certain circumstances. Specifically, ‘[a] broker who acts pursuant to an oral agreement is entitled to a commission only if: (1) within five days after making the oral agreement and before the transfer or sale, the broker serves the principal with a written notice which states that its terms are those of the prior oral agreement including the rate or amount of commission to be paid; and (2) before the principal serves the broker with a written rejection of the oral agreement, the broker either effects the transfer or sale, or, in good faith, enters negotiations with a prospective party who later effects the transfer or sale.’”

New Jersey Real Estate Commission v. Edge, A-1696-15T2 (Jan. 10, 2017)

https://scholar.google.com/scholar_case?case=8799078447223426154&q=A-1696-15T2&hl=en&as_sdt=4,31

Commission’s decision to revoke real estate salesperson's license for two years upheld where appellant withheld material information from the buyers and only disclosed information after the buyers discovered the truth about the property.

Direnzo v. Katchen, A-0329-14T1 (Aug. 1, 2017)

https://scholar.google.com/scholar_case?case=11303955745589674266&q=Direnzo+v.+katchen&hl=en&as_sdt=4,31

“To establish legal fraud, a plaintiff must prove ‘(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages.’” [citation omitted]. ““The fact that no affirmative misrepresentation is made does not bar relief predicated on a claim of fraud. Silence in the face of an obligation to disclose may be fraud, since the suppression of truth when it should be disclosed is equivalent to an expression of a falsehood.”” [citation omitted].

Markeim-Chalmers, Inc. v. Willingboro Urban Renewal, LLC, A-5469-14T3 (Aug. 3, 2017)

https://scholar.google.com/scholar_case?case=15195809766190077546&q=Markeim-chalmers,+inc.+v.+willingboro&hl=en&as_sdt=4,31

A ninety-nine-year lease should be treated as a “sale or exchange” within the meaning of the listing agreement for purposes of the broker’s commission. “[A] broker who works under an oral agreement is entitled to a commission only if: 1) within five days after making the oral agreement

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and before the transfer or sale, the broker serves the principal with a written notice which states that its terms are those of the prior oral agreement including the rate or amount of commission to be paid; and (2) before the principal serves the broker with a written rejection of the oral agreement, the broker either effects the transfer or sale, or, in good faith, enters negotiations with a prospective party who later effects the transfer or sale.” N.J.S.A. 25:1-16(d). Where there is an express agreement regarding the subject matter of a commission, the broker cannot obtain relief based on quantum meruit.

Century 21-Main Street Realty, Inc. v. St. Cecelia’s Church, A-2506-15T2 (Sept. 6, 2017)

https://scholar.google.com/scholar_case?case=6564604288257146721&q=A-2506-15T2&hl=en&as_sdt=4,31

Real estate broker not entitled to a commission on a lease where property was let “rent free” but tenant required to make improvements to the property because improvements made to property are generally not rent. The broker not entitled to recover on a claim of unjust enrichment because a contract existed between the parties.

Pollack v. Quick Quality Restaurants, Inc., A-1967-15T2 (Oct. 26, 2017)

https://scholar.google.com/scholar_case?case=8208237086918165669&q=A-1967-15T2&hl=en&as_sdt=4,31

A tenant exercising a right of first refusal to purchase property is not obligated to pay a commission to a real estate broker that secured a prospective buyer on behalf of the seller absent a contractual relationship between the tenant and the third-party broker.

Tamasco v. Rodd, A-1574-16T2 (Aug. 27, 2018)

https://scholar.google.com/scholar_case?case=14085425494971582012&q=A-1574-16T2&hl=en&as_sdt=4,31

Seller’s real estate agent did not have a duty to the buyer’s agent to take affirmative action to ensure the property of the seller is clear from ice and snow when the buyer’s agent accompanied the buyer’s appraiser to the property. *Hopkins v. Fox & Lazo Realtors*, 132 N.J. 426 (1993) distinguished.

McCarthy v. Prudential Fox & Roach, A-4442-15T4 (Sept. 14, 2018)

https://scholar.google.com/scholar_case?case=5001171642466008083&q=A-4442-15T4&hl=en&as_sdt=4,31

A real estate agent is not a professional with an obligation to protect plaintiffs “from self-inflicted harm,” and is therefore entitled to have the jury assess plaintiffs’ comparative negligence for entering into an “as is” purchase of property unsuitable in the short term for their needs.

Sella v. New Jersey Real Estate Commission, A-1544-17T1 (April 18, 2019)

https://scholar.google.com/scholar_case?case=17634540259478819254&q=A-1544-17T1&hl=en&as_sdt=4,31

“The statutory provisions for reinstatement of a salesperson’s license are mandatory. A person holding a salesperson’s license who fails ‘to maintain or renew such license or obtain a new license for a period of two consecutive years or more after the expiration of the last license held... shall... attend a licensed school and pass the State examination prior to issuance of a further license.’ N.J.S.A. 45:15-9(e).”

Gebroë-Hammer Associates v. West Green Gables, LLC, A-0481-18T2 (July 30, 2019)
https://scholar.google.com/scholar_case?case=5326106199086033918&q=A-0481-18T2&hl=en&as_sdt=4,31

Where real estate broker has procured a ready, willing and able buyer, but the seller has had a change of heart after executing the listing agreement, the seller is obligated to pay the broker's commission.

Sullivan v. Max Spann Real Estate Auction Co., Inc., A-5327-18T1 (Nov. 13, 2020)
https://scholar.google.com/scholar_case?case=6289474912882428301&q=sullivan+v.+max&hl=en&as_sdt=6,31&as_ylo=2020

The three-day attorney review period does not apply to real estate auctions. Plaintiff, “a prospective bidder, had ‘notice of the binding nature of the sale and encouragement to seek counsel prior to’ the auction. We discern no incongruity between the goals advanced in N.J. State Bar Ass'n vis-à-vis the Sales Contract at issue, which we hold validly waived the three-day attorney review. We hold that a private real estate auction sale is not the consumer type contract contemplated in N.J. State Bar Ass'n, and therefore, the three-day attorney review period is not required in such a sale. Here, the auction was without reserve and was final when the hammer came down. We find nothing repugnant about the auction process as conducted in the matter under review and it was not in contravention of the public policy goals of N.J.A.C. 11:5-6.2(g), which addresses traditional, residential real estate contracts. To hold otherwise would vitiate over thirty years of established real estate auction practice in this State and render the real estate auction process futile. That was not the Court's pronouncement in N.J. State Bar Ass'n nor the Legislature's intention in enacting N.J.A.C. 11:5-6.2(g).”

Gebroë-Hammer Associates, v. Deal Lake Village Gardens, LLC, A-0262-18T3 (Jan. 28, 2020)
https://scholar.google.com/scholar_case?case=2274466556603331381&q=A-0262&hl=en&as_sdt=4,31

The efficient procuring cause doctrine a/k/a the efficient "producing" cause doctrine, is an equitable tool used to fill the void to ensure equitable results when a contract does not otherwise expressly specify the conditions precedent to earning a commission. But, when a contract explicitly sets forth the circumstances when the broker is entitled to a commission, a court must apply the terms of the contract and not superimpose onto the contract the elements of the efficient procuring cause doctrine.

Kenney v. Weichert Co., A-0395-19T2 (Feb. 21, 2020)
https://scholar.google.com/scholar_case?case=413466365751029736&q=A-0395&hl=en&as_sdt=4,31

New Jersey Realtors, a trade association of real estate salespersons and brokers, lacked standing to intervene in a class action brought by a real estate salesperson against his real estate brokerage firm that claimed the brokerage firm misclassified him and other real estate salespersons as independent contractors. “NJR has no real dispute with Kennedy or the putative class of Weichert salespersons.” “NJR would suffer no alleged injury to itself if Kennedy prevails. NJR members ‘associational ties are not at risk in this suit.’” “The property or transaction at issue consists of the agreements between, on one side, Kennedy and the putative class, and on the other side, Weichert. NJR does not have an interest in those agreements separate from Weichert’s.”

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C&R Holdings and Investments, LLC v. Walker, A-5000-18T4 (Dec. 15, 2020)

https://scholar.google.com/scholar_case?case=9919850373458740824&q=C+%26+R+Holdings+v+walker&hl=en&as_sdt=6,31&as_ylo=2020

Where a listing agreement requires the seller's written consent to dual agency, the agent was not acting in dual agency. N.J.A.C. 11:5-6.9(b) requires a real estate licensee to secure writing consent for the realtor to act as a dual agent.

DKNJ Real Estate & Appraisal, LLC v. Reussi Capital LLC, A-2316-19 (Feb. 10, 2021).

https://scholar.google.com/scholar_case?case=934646779965358629&q=dknj&hl=en&as_sdt=6,31&as_ylo=2021

Where there was no signed commission agreement between a broker and the purchaser, the broker was not entitled to a commission on breach of contract grounds or under the efficient procuring case doctrine.

Teach Solais NJ, LLC v. Nagel, A-3291-18 (April 15, 2021)

https://scholar.google.com/scholar_case?case=5594164534180440417&q=Teach+Solais&hl=en&as_sdt=6,31&as_ylo=2021

A claim of tortious interference related to a short sale of a property against the property owner and his realtor fails where, following the sale falling through, the Plaintiff did not attend, or attempt to bid on the property, at the subsequent sheriff's sale.

Century 21 Main St. Realty, Inc. v. St. Cecelia's Church, A-2804-19 (Aug. 20, 2021)

https://scholar.google.com/scholar_case?case=8690670719310047130&q=century+21+real+estate+llc&hl=en&as_sdt=6,31&as_ylo=2021

Where there is a genuine issue of a material fact related to the parties' understanding of the impact of a revised lease/sale agreement on the prior agreement, a grant of summary judgement is inappropriate.

City of Newark v. Twp. of Jefferson, A-1303-19T1 (Jan. 29, 2021)

https://scholar.google.com/scholar_case?case=194549042198110113&q=newark+v.+jefferson&hl=en&as_sdt=6,31&as_ylo=2021

Plaintiff appealed from the judgment affirming tax assessments on over 4000 acres of watershed land with numerous restrictions. Although the court rejected plaintiff's assertion of discriminatory treatment by defendant, it held that defendant's assessment had no basis in fact, as it was based on settlement discussions with plaintiff's counsel rather than the fair value of the property, as well as on a sale that defendant's assessor failed to verify.

Ciba Specialty Chemicals, Corp. v. Twp. of Dover, A-3963-18 (Feb. 4, 2021)

https://scholar.google.com/scholar_case?case=3881825152724990292&q=ciba+v.+dover&hl=en&as_sdt=6,31&as_ylo=2021

Where a parcel was entirely designated by the Environmental Protection Agency (EPA) as a Superfund site and subsequent listing in the National Priorities List (NPL), the tax court correctly held that the parcel was "development prohibited."

Ocean Grove Camp Meeting Ass'n Of The United Methodist Church V. Twp. Of Neptune, 005650-2018 (March 4, 2021)

https://scholar.google.com/scholar_case?case=1339487356464061236&q=Ocean+Grove+Camp+Meeting+Ass%27n+Of+The+United+Methodist+Church+V.+Twp.+Of+Neptune&hl=en&as_sdt=6,31&as_ylo=2021

While a camp meeting may not be officially overseen by any religious entity, the legislation related to camp meetings, the camp meeting's mission statement, charter, and By-Laws, all sufficiently

evidence that a camp meeting's incorporation fits into either the Religious/Charitable Clause or the Moral and Mental Improvement Clause of N.J.S.A. 54:4-3.6 and that office property used to further same is exempt from taxation.

Hocroft Assocs. v. Twp. of Bridgewater, 006949-2021 (May 14, 2021)

https://scholar.google.com/scholar_case?case=9138059533526097942&q=hocroft&hl=en&as_sdt=6,31

A Chapter 91 demand is defective and cannot be the basis for dismissing a tax appeal where the lot and block of the subject property is only referenced in the address on the envelope and is not located anywhere else in the form or enclosed documents.

Somerset Elizabeth III LLC v. Franklin Twp., 005827-2018, 006751-2019, 001509-2020 (July 29, 2021)

https://scholar.google.com/scholar_case?case=6825833309495626898&q=somerset+elizabeth&hl=en&as_sdt=6,31&as_ylo=2021

Based on the Court's reading of NJ.R.E. 408, where a Taxpayer provides a preliminary appraisal report in relation to settlement discussions, the Defendant Taxing Authority may use the report to cross-examine the Taxpayer's expert appraiser at trial.

Priestly Soc. of the Venerable John Henry Cardinal Newman v. Pine Beach Borough, 010370-2019, (July 29, 2021)

https://scholar.google.com/scholar_case?case=12213431591065706597&q=priestly+v.+pine+beach&hl=en&as_sdt=6,31&as_ylo=2021

The upstairs residence for two Catholic priests, in addition to a publicly available religious library, is also exempt from taxation because the residence is an "integral part" of Plaintiff's religious operations. Whether or not the residence could qualify as a "parsonage" was not, in the court's opinion, determinative.

Jovsim LLC v. City of New Brunswick, 011827-15; 004211-2016 (Sept. 29, 2021)

<https://casetext.com/case/jovsim-llc-v-city-of-new-brunswick-1>

Where the assessor compared the subject property to other similar apartment buildings and based his re-assessment on improvements to the property and not solely due to the recent sale price of the property, same is not considered an unconstitutional "spot assessment." Additionally, requiring that a re-assessment only take place during a district wide re-assessment would nullify the ability of taxing districts to appeal assessments.

187 Dey Rd. Ass'n, LLC v. Twp. of S. Brunswick, 013415-2019 (Oct. 22, 2021)

https://scholar.google.com/scholar_case?case=518229391188473395&q=187+dey&hl=en&as_sdt=6,31&as_ylo=2021

Summary judgement is inappropriate where there are genuine disputes over material facts related to how taxpayer's property was being used during the subject tax years with respect to agricultural uses.

115 CCD Partners, L.P. v. City of Jersey City, 006676-2016, 005840-2017, 008002-2018, 007137-2019, 000249-2020, 004966-2020 and 000250-2020 (Dec. 3, 2021)

https://scholar.google.com/scholar_case?case=16539956377543449648&q=115+CCD&hl=en&as_sdt=6,31&as_ylo=2021

A delay in the assessor's review and approval of taxpayer's settlement offer, prior to submittal to the City's governing body, does not violate the "square corners doctrine."

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Sullivan v. Max Spann Real Estate & Auction Co., A-57 (June 9, 2022)

https://scholar.google.com/scholar_case?case=331352409780720396&q=Sullivan+v.+Max+Spann+Real+Estate+%26+Auction&hl=en&as_sdt=6,31

A residential real estate sale by absolute auction is distinct from a traditional real estate transaction in which a buyer and seller negotiate the contract price and other terms and memorialize their agreement in a contract. Consequently, there is no requirement for a three-day attorney review clause in such a contract pursuant to the New Jersey Supreme Court's holding in *New Jersey State Bar Ass'n v. New Jersey Ass'n of Realtor Boards*, 93 N.J. 470, 471-86, modified, 94 N.J. 449 (1983)

Alexander Summer, LLC v. Marschall Warehouse Co., A-2651-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=14701285986768116061&q=alexander+summer+v.+marschall&hl=en&as_sdt=6,47&as_ylo=2023

A novation substitutes a new contract and extinguishes the old one. *Wells Reit II-80 Park Plaza, LLC v. Dir., Div. of Tax'n*, 414 N.J. Super. 453, 466 (App. Div. 2010). A novation requires: (1) a previously valid contract; (2) an agreement to make a new contract; (3) a valid new contract; and (4) an intent to extinguish the old contract.

TAX

Russo v. Township of Plumstead, 010327-2020 (Nov. 7, 2022)

https://scholar.google.com/scholar_case?case=8910366995694553153&q=Russo+v.+Twp.+of+Plumsted&hl=en&as_sdt=6,31&as_ylo=2022

Tax assessor correctly denied farmland assessment where the dominant use on the farm evolved from mainly agricultural to mainly a commercial recycling business.

Carant LP v. W. Caldwell Twp, 007541-2018, 002803-2019, 008467-2020, and 004882-2021 (Oct. 3, 2022)

https://scholar.google.com/scholar_case?case=8254212383935146158&q=Carant+LP+v.+W.+Caldwell+Twp.,+&hl=en&as_sdt=6,31&as_ylo=2022

The court affirmed the property assessments, finding that plaintiff's expert selected comparable land sales without development approval but offered no market analysis to support the reliability of the price adjustments applied to the comparable sales.

Brigantine Marine Superstore, Inc. v. City of Brigantine, 011350-2021 (Aug. 16, 2022)

https://scholar.google.com/scholar_case?case=8274411049623659&q=Brigantine+Marine+Superstore+Inc.+v.+City+of+Brigantine&hl=en&as_sdt=6,31&as_ylo=2022

Attempted service of Chapter 91 request by certified mail alone is inadequate.

Jaguar Land Rover North America v. Director, Division of Taxation, 014046-201 (July 29, 2022)

https://scholar.google.com/scholar_case?case=11039929790514200554&q=Jaguar+Land+Rover+N.+Am.+v.+Dir.,+Div.+of+Taxation&hl=en&as_sdt=6,31&as_ylo=2022

Pursuant to the Statewide Non-residential Development Fee Act, N.J.S.A. 40:55D-8.1 to -8.7, in order to qualify for an exemption from the required non-residential development fee, the subject site must be within an urban transit hub which itself must be specifically delineated *and* be located within a one-half mile radius surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area.

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Galloway Education Ctr., LLC v. Twp. of Galloway, 005841-2020 (June 24 2022)
https://scholar.google.com/scholar_case?case=11543671426206857881&q=Galloway+Education+Ctr.,+LLC+v.+Twp.+of+Galloway&hl=en&as_sdt=6,31

Because there must be a confluence of ownership and use for an exemption to be applicable, where a single purpose entity owns the property and leases it to another entity to operate a school, the subject property should not be tax exempt. Furthermore, the law also requires that the exempt entity be organized and operate the property on a not-for-profit basis. Where for-profit representative of the various bondholders which financed the purchase of the property have the essential powers of a landlord by virtue of the terms of the lease and other governing documents, the bondholders are de facto landlords and the exemption should also be denied on this basis.

Fish Grill, Inc. v. Director, Division of Taxation, 10-2020 (April 7, 2022)
https://scholar.google.com/scholar_case?case=15381257926979369583&q=Fish+Grill,+Inc.+v.+Director&hl=en&as_sdt=6,31&as_ylo=2022

Where flooding required that an entire building be demolished and replaced, and even though some municipal approval documents referred to the project as “reconstruction, same does not constitute a “reconstruction” that would otherwise be exempt from the Non-Residential Development Fee Act.

Erez Holdings Urban Renewal, LLC v. Dir., Div. of Taxation, 013941-2018 (Feb. 1, 2022)
https://scholar.google.com/scholar_case?case=226634399389661333&q=erez+v.+taxation&hl=en&as_sdt=6,31&as_ylo=2022

Pursuant to the plain language of the Non-Residential Development Fee Act (“Act”) , which imposes a fee “on all construction resulting” in the development of a new non-residential property on an unimproved lot at 2.5% of the equalized assessed value” of the land and improvements, the imposition of such a fee was appropriate, even where the property had obtained a tax abatement under the Long Term Tax Exemption Law. While a property may obtain an abatement, it’s equalized assessed value is not impacted by the LTTEL and, consequently, the Act should apply.

Arsenis v. Borough of Bernardsville, 476 N.J. Super. 195 (App. Div. 2023)
https://scholar.google.com/scholar_case?case=2177073113712066302&q=Arsenis+v.+Borough+of+Bernardsville&hl=en&as_sdt=6,47&as_ylo=2023

The Legislature created well-defined avenues for review of assessments on real property. Therefore, Plaintiff’s attempt to appeal their tax assessment by way of various tort theories is not permitted.

Tyler v. Hennepin County, 143 S. Ct. 1369 (2023)
https://scholar.google.com/scholar_case?case=13963901718736903535&q=Tyler+v.+Hennepin+County&hl=en&as_sdt=6,31&as_ylo=2023

Taxing entity unconstitutionally retained the excess value of taxpayer’s home above her tax debt in violation of the takings clause of the U.S. Constitution.

Smit v. Twp. Of Toms River, Civ. No. 22-02594 (D.N.J. June 25, 2024)
https://scholar.google.com/scholar_case?case=11748803835530138527&q=Smit+v.+Twp.+of+Toms+River&hl=en&as_sdt=6,47&as_ylo=2024

With respect to Plaintiff’s RICO and constitutional class action claims, the Tax Injunction Act deprived the district court of jurisdiction over the tax issues that formed the basis of plaintiff’s case.

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Liberty & Prosperity 1776 Inc. v. City of Atl. City, A-0420-22 (Oct. 21, 2024)

https://scholar.google.com/scholar_case?case=4420263418512781837&q=Liberty+%26+Prosperity+1776+Inc.+v.+City+of+Atl.+City&hl=en&as_sdt=6,47&as_ylo=2024

2021 Amendment to the Casino Property Restabilization Act that redefined the calculations of payment in lieu of taxes was unlawful because it violated a 2018 consent order.

Sharifi v. Twp. of E. Windsor, A-1813-22 (Oct. 28, 2024)

https://scholar.google.com/scholar_case?case=2617230987725297210&q=Sharifi+v.+Twp.+of+E.+Windsor&hl=en&as_sdt=6,47&as_ylo=2024

In order to make a case for discrimination in tax assessment, a party must first rebut the presumption of correctness related to their assessment and establish the fair market value of their own property.

City of Jersey City v. Hudson St. Inv, LLC, 008833-2023, 008834-2023, 008836-2023, 008837-2023, 008838-2023, 008840-2023 (Tax May 10, 2014)

https://scholar.google.com/scholar_case?case=878640397424148997&q=+City+of+Jersey+City+v.+Hudson+&hl=en&as_sdt=6,47&as_ylo=2024

A nine unit newly constructed condominium building constitutes a "Multiple Dwelling." As such, the Jersey City controlling ordinance requires that a taxpayer seeking a tax exemption must apply for and receive a tax agreement from the Jersey City Municipal Council, prior to the commencement of construction.

United Pentecostal Church of Camden, Inc. v. City of Camden, A-1648-22 (Mar. 28, 2024)

https://scholar.google.com/scholar_case?case=4643951604111353121&q=United+Pentecostal+Church+of+Camden,+Inc.+v.+City+of+Camden&hl=en&as_sdt=6,47&as_ylo=2024

Voiding the transfer of tax exempt property to individuals (who were not tax exempt) did not entitle those individuals to a refund of the taxes previously paid.

257-261 20th Ave. Realty, LLC v. Roberto, 259 N.J. 417 (2025)

https://scholar.google.com/scholar_case?case=672203390091451512&q=+257-261+20th+Ave.+Realty,+LLC+v.+Roberto&hl=en&as_sdt=6,47&as_ylo=2024

New Jersey Supreme Court affirmed Appellate Division decision that, influenced by the U.S. Supreme Court's decision in *Tyler v. Hennepin County*, 598 U.S. 631, found New Jersey's tax foreclosure scheme unconstitutional.

Madison Bulldog Leasing Co. v. Paterson City, 007271-2021, 005248-2022, 005150-2023 and 001389-2024 (NJ Tax Jan. 31, 2025)

https://scholar.google.com/scholar_case?case=13075388546130738408&q=Madison+Bulldog+Leasing+Co.+v.+Paterson+City&hl=en&as_sdt=6,47&as_ylo=2025

With respect to a multi-family residential development subject to a PILOT, court found that plaintiff presented sufficient evidence to overcome the presumption of validity of the original assessments.

Greater New Jersey Annual Conference of the United Methodist Church v. Borough of Stratford, 000354-2024 (NJ Tax May 30, 2025)

https://scholar.google.com/scholar_case?case=942056394520411567&q=Greater+New+Jersey+Annual+Conference+of+the+United+Methodist+Church+v.+Borough+of+Stratford&hl=en&as_sdt=6,47&as_ylo=2025

Storage of religious artifacts qualifies as tax-exempt use (use for religious purposes).

OTHER

Russo Farms, Inc. v. Vineland Bd., 144 N.J. 84 (1996)

http://scholar.google.com/scholar_case?case=1798527877785855355&q=144+N.J.+84+&hl=en&as_sdt=2,31

Tw. of West Orange v. Whitman, 8 F. Supp. 2d 408 (D.N.J. 1998)

http://scholar.google.com/scholar_case?case=17112743883838492626&q=8+F.Supp.2d+408+&hl=en&as_sdt=2,31

Plaintiffs' complaint in action brought to challenge the siting and licensing of two state-contracted group homes for the mentally ill in residential neighborhoods failed to state a § 1983 claim for deprivation of procedural or substantive due process, for violation of the Fair Housing Amendments Act, or for liability for ultra hazardous use or nuisance.

National Transfer, Inc. v. New Jersey Dep't of Env'tl. Prot., 790 A. 2d 218 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=2057493084134403143&q=790+A.+2d+218+&hl=en&as_sdt=2,31

Appellate Division affirmed the \$1,100,000 penalty assessed against the solid waste transfer facility for operating in excess of the capacity permitted by the DEP and denied the operating facility's argument that it was not responsible for knowing the capacity limit because it never received the second sheet of a two sheet permit which identified the limit, holding to the contrary that the operating facility had a duty to inquire further about the nature of the "limitations and conditions" to which the face sheet, which the facility did receive, referred.

Tw. of South Brunswick v. State Agriculture Development Committee, 352 N.J. Super. 361 (App. Div. 2002)

http://scholar.google.com/scholar_case?case=16954360106934565011&q=352+N.J.+Super.+361+&hl=en&as_sdt=2,31

Township can appeal decision of County Agricultural Development Board to State Agricultural Committee. SAC's decision to exclude an 80-acre parcel from ADA was proper where it conflicted with a proposed superhighway.

Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, 370 N.J. Super. 171 (App. Div. 2004), *aff'd* 185 N.J. 40 (2005)

http://scholar.google.com/scholar_case?case=7160559307418090870&q=370+N.J.+Super.+171+&hl=en&as_sdt=2,31

Limiting access by placing an unreasonable economic burden on the public undermines the objectives of the public trust doctrine to the same extent as any physical barrier; the public trust doctrine dictates that the beach and the ocean waters must be open to all on equal terms and without preference. Circumstances did not justify limiting both horizontal and perpendicular public access to beach club's private beach under the public trust doctrine; the club did not provide cabanas, changing facilities, or other improvements necessitating further accommodation to the privacy of its members, which favored limiting horizontal access, and limiting perpendicular access was not appropriate given the history of long-time access, the large number of nearby residential units, and the inconvenience associated with the nearest available perpendicular access.

Avalon Manor Improvement Ass'n, Inc. v. Tw. of Middle, 370 N.J. Super. 73 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=10983152690768707835&q=370+N.J.+Super.+73+&hl=en&as_sdt=2,31

Township's denial of homeowner association and other parties' deannexation petition was not an abuse of discretion; financial losses to township could not be offset by any savings from

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deannexation, substantially increased ratables were reasonably anticipated in area homeowner's association sought to deannex, area sought to be deannexed was one of the nicest in the township, and deannexation would result in township losing control of natural wetlands.

Green Brook Flood Control Project, In re 370 N.J. Super. 122 (App. Div. 2004)

http://scholar.google.com/scholar_case?case=16120802985413164514&q=370+N.J.+Super.+122+&hl=en&as_sdt=2,31

State was required to pay cost of relocation of public utility's facilities in flood control project area, under State Flood Control Act.

Interfaith Community Org. v. Honeywell Int., Inc., 399 F.3d 248 (3d Cir. 2005)

http://scholar.google.com/scholar_case?case=12408211516776676765&q=399+F.3d+248+&hl=en&as_sdt=2,31

Court affirmed an injunction against Honeywell resulting from a citizen's suit under RCRA. The injunction to remove 1,500,000 tons of chromate waste was affirmed, even though the NJDEP process was pending.

Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc., 185 N.J. 40 (2005)

http://scholar.google.com/scholar_case?case=4116476792099202927&q=185+N.J.+40+&hl=en&as_sdt=2,31

Public trust doctrine requires that uplands sands be available for use by the general public.

Ramapo River Reserve Homeowners Ass'n., Inc. v. Bor. of Oakland, 186 N.J. 439 (2006)

http://scholar.google.com/scholar_case?case=10589036205711589952&q=186+N.J.+439+&hl=en&as_sdt=2,31

Neither the MLUL nor the Municipal Services Act prohibit a developer's agreement providing for the delegation of municipal services until such time as the developer's control of a homeowner's association established pursuant to the Planned Real Estate Development Full Disclosure Act terminates.

Cherry Hill Towers v. Twp. of Cherry Hill, 407 F. Supp. 2d 648 (D.N.J. 2006)

http://scholar.google.com/scholar_case?case=14788740260114949965&q=407+F.Supp.2d+648+&hl=en&as_sdt=2,31

Delay of 65 days beyond statutory deadline in approving construction permits did not shock the conscience, precluding substantive due process, procedural due process, or equal protection claim.

Twp. of Middletown v. Simon, 387 N.J. Super. 65 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=5019284471609403445&q=387+N.J.+Super.+65+&hl=en&as_sdt=2,31

A 1929 subdivision created 57 lots, including a lot designated on the subdivision map as "park." Thereafter, lots were conveyed with reference to the map. The reference to "park" was construed as a dedication of the lot to the township for use as a park. The township did not accept the dedication of the park until immediately prior to the litigation and over the years the township levied taxes on the lot, although the tax records indicated that the ownership of the lot was unknown. The township sold a tax sale certificate for the park lot in 1995 and in 2000 a tax foreclosure action was filed seeking title to the park. Court holds that the township was not barred by collateral estoppel from relitigating the issue of whether the park was dedicated for public use because the issue was not crucial to the earlier decision involving taxes and finds that the park was dedicated for public use. The township's assessment of taxes on the lot and the sale of the tax sale certificate were not inconsistent with the township's later acceptance of the dedication, although the value of the lot for tax purposes should reflect the fact that it was dedicated for public purposes.

Finally, township was not barred by estoppel or laches from subsequently accepting dedication of the park lot as a result of its issuance of a tax sale certificate and failure to intervene in the tax foreclosure action.

D'Anastasio v. Twp. of Pilesgrove, 387 N.J. Super. 241 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=6291264601219294662&q=387+N.J.+Super.+241+&hl=en&as_sdt=2,31

Township's denial of property owner's petition to de-annex property from township was not arbitrary or unreasonable where petition constituted zoning and density shopping and did not provide a valid reason for altering historical municipal boundaries.

Stoeckel v. Twp. of Knowlton, 387 N.J. Super. 1 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=6690425017659693242&q=387+N.J.+Super.+1+&hl=en&as_sdt=2,31

In Section 1983 suit, court holds that a plaintiff may be able to establish a policy that denies a constitutional right from the township's failure to draw down on a letter of credit posted to secure the installation of a subdivision road, in failing to request an extension and confirm that it was granted, and in concealing the loss of the letter of credit from the plaintiff for several years. Whether these actions were so egregious that it may fairly be said to shock the conscience is an issue for a jury. Under the Tort Claims Act, the actions of the township officials in allowing the letter of credit to lapse and failing to disclose this to the plaintiff do not support a conclusion as a matter of law that they were acting in good faith and therefore this is a matter for the jury precluding summary judgment. A public employee, such as the township attorney, is not liable for an injury where a public entity is immune from liability for that injury. A six-year statute of limitations applies to all claims against publicly employed attorneys which accrued prior to July 1, 1994 and all other causes of action which accrued on or after July 1, 1994 are subject to a two-year statute of limitation.

Patterson v. Vernon Twp. Council, 386 N.J. Super. 329 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=12930655787478045224&q=386+N.J.+Super.+329+&hl=en&as_sdt=2,31

A private cause of action is available under the Environmental Rights Act, *N.J.S.A.* 2A:35A-1 to 14 (the "ERA"), to enjoin destruction of any site that a member of the public deems historic, irrespective of the property's inclusion in the historic places register. Where the property is not listed in the register, the plaintiff has the burden of persuading the court that the historic nature of the property warrants protection. The ERA allows for the award of attorney's fees to a prevailing party, but does not provide for the recovery of attorney's fees for proceedings under the Historic Places Act.

Tavalario, In re 386 N.J. Super. 435 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=15101785947611605849&q=386+N.J.+Super.+435+&hl=en&as_sdt=2,31

In light of the common goals of the Right to Farm Act and the Farmland Assessment Act, the court finds it reasonable to read the two acts in *pari material*. Clear evidence of actual or future receipt of income from agricultural production therefore required. SADC's interpretation of the definition of "commercial farm" constitutes a permissible construction of the statute that accords with the court's interpretation of similar provisions of the Farmland Assessment Act. The SADC's delay in submitting its minutes to the governor, delayed the effective date of its decision, but did not affect its ultimate validity.

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Warren County Bar Ass'n. v. The Bd. of Chosen Freeholders of the County of Warren, 386 N.J. Super. 194 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=15308720844692157757&q=386+N.J.+Super.+194+&hl=en&as_sdt=2,31

County bar association may not compel the freeholders to provide “suitable” court facilities. Mandamus is an appropriate remedy “to compel specific action when the duty is ministerial and wholly free from doubt, and to compel the exercise of discretion, but not in a specific manner.”

Crusader Servicing Corp. v. Port Authority of New York and New Jersey, 386 N.J. Super. 494 (App. Div. 2006)

http://scholar.google.com/scholar_case?case=8066556915360552838&q=386+N.J.+Super.+494+&hl=en&as_sdt=2,31

Like any purchaser, the Port Authority acquired property subject to existing liens and encumbrances, including tax lien, even though it is tax exempt for subsequent assessments.

Stransky v. Monmouth Council of Girl Scouts, Inc., 393 N.J. Super. 599 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=18070323774711055932&q=393+N.J.+Super.+599+&hl=en&as_sdt=2,31

The construction of a deed is a question of law and where ambiguity is present, a factual issue is presented and extrinsic evidence can be considered to aid the construction effort. The prime consideration in determining the meaning of the basic title instruments is the intention of the parties. A hierarchy of calls (landmarks chosen by a surveyor or utilized in a deed to designate real property boundaries) is used to determine the proper boundary of the property conveyed, but it is subordinate to the intent of the grantor if this can be ascertained. Calls will generally control in descending order of priority by monuments (natural monuments being preferred over manmade structures), followed by direction, distance, and quantity of the land conveyed. When a monument referenced in a deed is missing, it does not lose its significance as a monument if its original location can be determined. New Jersey is a notice/race state and if a common grantor sells the same land to two persons, the first to record will prevail.

21-23 Seidler Associates, L.L.C. v. City of Jersey City, 391 N.J. Super. 201 (App. Div. 2007)

http://scholar.google.com/scholar_case?case=5070034846068927895&q=391+N.J.+Super.+201+&hl=en&as_sdt=2,31

City’s tax liens for demolition costs invalid as a result of failure to provide plaintiff holders of tax sale certificates statutorily required notice. Plaintiffs permitted to foreclose on certificates without reimbursement to City for demolition costs.

Berk Cohen Associates at Rustic Village, LLC v. Borough of Clayton, 402 N.J. Super. 409 (App. Div. 2008)

http://scholar.google.com/scholar_case?case=4621518396058693882&q=402+N.J.+Super.+409+&hl=en&as_sdt=2,31

Municipality’s offer to apartment complex of curbside garbage pickup satisfied its statutory obligation under N.J.S.A. 40:66-1.3 to provide solid waste service in the same manner as provided to the residents of the municipality who live along public roads and streets.

Township of Middletown v. Simon, 193 N.J. 228 (2008)

http://scholar.google.com/scholar_case?case=2859031218429526251&q=193+N.J.+228+&hl=en&as_sdt=2,31

The recording of a subdivision map showing a lot dedicated as a park and subsequent sale of residential lots with reference to that map constitute an irrevocable dedication of the lot as a public park. Once an owner of land makes an offer of dedication, that offer is complete and irrevocable

and remains open until the municipality accepts or rejects it, no matter how long the delay. These rights can only be destroyed by proper municipal action. The owner of unaccepted land is responsible for the payment of taxes on that land. The township sale of tax sale certificates and the subsequent tax sale foreclosure did not prevent the municipality from accepting the lot as dedicated even though the dedication was made almost 90 years earlier.

Bubis v. Kassin, 404 N.J. Super. 105 (App. Div. 2008) (Bubis IV)

http://scholar.google.com/scholar_case?case=17640408187723661843&q=,+404+N.J.+Super.+105+&hl=en&as_sdt=2,31

“The property of an owner of oceanfront property only extends to the high water mark. The property below that line is owned by the State in trust for its citizens.” Owners of private property adjoining property held by the State under the public trust doctrine may impose reasonable regulations as to the use of the beach area and “may prohibit persons using the area below the mean high water mark from standing or placing a beach chair in a location that would obstruct their lifeguard’s observations of swimmers. . . [but they] may not impose limitations upon the public’s use of that property simply to enhance the enjoyment of their own property.” The public does not have any right of access to the upland sand area of private property where the property is not operated for a commercial purpose and there are public beaches nearby.

612 Associates, L.L.C. v. North Bergen Municipal Utilities Authority, 404 N.J. 531 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=320730410110943093&q=404+N.J.+531+&hl=en&as_sdt=2,31

The entity that actually treats the effluent is entitled to collect from a new user a non-duplicative connection fee representing a fair contribution for the past capital costs of its treatment facility even though the actual connection is to another entity’s collection lines. The connection fee must be apportioned between the two entities.

The Presbyterian Home at Pennington, Inc. v. The Borough of Pennington, 406 N.J. Super. 166 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=10924120843555538091&hl=en&as_sdt=2,31

An assisted living facility does not have to provide charity care in order to qualify for real estate tax exemption.

Boylan v. The Borough of Point Pleasant, 410 N.J. Super. 564 (App. Div. 2009)

http://scholar.google.com/scholar_case?case=3818712543092743764&q=A-0234-08T2+&hl=en&as_sdt=2,31

In the absence of extrinsic evidence, any ambiguity in the description of a lot in a deed should be resolved by reference to the depiction of the lot in the filed subdivision map.

Mack-Cali Realty, L.P. v. Clerk of Bergen County, 25 N.J. Tax 2009)

http://scholar.google.com/scholar_case?case=4690950341079706142&q=Mack-Cali+Realty,+L.P.+v.+Clerk+of+Bergen+County&hl=en&as_sdt=2,31

The exemption from the Realty Transfer Fee allowed by N.J.S.A. 46:15-10(a) where consideration is less than \$100 is applicable to conveyances between related entities.

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Appeal by Earle Asphalt Company, In the Matter of the 401 N.J. Super. 310 (2009)

http://scholar.google.com/scholar_case?case=818866657822725795&q=401+N.J.+Super.+310+&hl=en&as_sdt=2,31

In upholding the constitutionality of a 2005 amendment to the Campaign Contribution and Expenditure Reporting Act, L. 2005, c.51, the court finds that “the State’s interest in ‘insulat[ing] the negotiations and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof[.]’ N.J.S.A. 19:44A-20-13, is a ‘sufficiently important interest’ to justify a limitation upon political contribution.” *Quoting, Buckly v. Valeo*, 424 U.S. 1, 21 (1976). A contractor’s claim for an exemption from disqualification was properly rejected where it did not actually receive a reimbursement of the disqualifying contribution even though it took steps to obtain the same within the statutorily required 30-day period.

Robertet Flavors, Inc. v. Tri-Form Construction, Inc., 203 N.J. 252 (2010)

http://scholar.google.com/scholar_case?case=11656522809537533712&q=203+N.J.+252+&hl=en&as_sdt=2,31

The factors to consider where there has been spoliation in commercial construction litigation include the identity of the spoliator; the manner in which the spoliation occurred, the reason why it occurred, and the timing of its occurrence; prejudice to the non-spoliator and the alternate sources of information available to the non-spoliator and whether the non-spoliator bears any responsibility for the loss of the evidence.

Dean v. Barrett Homes, Inc. 204 N.J. 286 (2010)

http://scholar.google.com/scholar_case?case=880058050917474877&q=204+N.J.+286+&hl=en&as_sdt=2,31

The economic loss rule embodied in the Products Liability Act, N.J.S.A. 2A:58C-1 to -11, precludes recovery of damages for harm that defective EIFS siding caused to itself, but since it was affixed to the exterior walls of the dwelling “it did not become an integral part of the structure itself, but was at all times distinct from the house,” and plaintiffs may seek recovery for damage that the EIFS caused to the house.

Riverview Development, LLC, In re 411 N.J. Super. 409 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=9776186723176618655&q=411+N.J.+Super.+409+&hl=en&as_sdt=2,31

“Section 3.3a of the APA [Administrative Procedures Act], . . . clearly instructs that ‘[e]xcept as otherwise required by federal law or by statute that specifically allows a third party to appeal a permit decision, a State agency shall not promulgate any rule or regulation that would allow a third party to appeal [administratively] a permit decision.’ N.J.S.A. 52:14B-3.3a. A third party is defined in the statute as ‘any person other than: a. [a]n applicant for any agency . . . permit . . . or other form of permission required by law; b. [a] State agency; c. [a] person who has a particularized property interest sufficient to require a hearing on constitutional or statutory grounds.’ Homeowners’ association’s members’ desire to maintain view of New York skyline does not, absent an enforceable deed restriction or easement, entitle them to a formal OAL hearing to contest permit issued to developer who will build condo towers that block their view. “[T]he collateral economic impacts upon surrounding properties caused by the siting of an otherwise-lawful building are part and parcel of the social compact. They result from the unavoidable interrelatedness of living in a world surrounded by other persons and by other things.”

Communications Workers of America v. Christie, 413 N.J. Super. 229 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=634051378574710675&q=413+N.J.+Super.+229+&hl=en&as_sdt=2,31

Executive Order Number 7 which sought to extend pay to play restrictions to labor unions violates separation of powers doctrine because it is “so fundamentally incompatible with our existing laws and statutes as to impair the ‘essential integrity’ of the constitutional powers of the Legislature.”

Courier-Post Newspaper v. County of Camden, 413 N.J. Super. 372 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=16096606715692833621&q=413+N.J.+Super.+372+&hl=en&as_sdt=2,31

To be qualified to print official advertisements, a newspaper must be printed and published in New Jersey and must charge the statutory rates for official advertising and may not charge lower rates.

Wells REIT II – 80 Park Plaza, LLC v. Director, Division of Taxation, 414 N.J. Super. 453 (App. Div. 2010)

http://scholar.google.com/scholar_case?case=9697068983291637671&q=Wells+REIT+II+%E2%80%93+80+Park+Plaza,+LLC+v.+Director,+Division+of+Taxation&hl=en&as_sdt=2,31

Statute that provides for a refund of the Mansion Tax to contracts for commercial properties that were “fully executed before July 1, 2006,” provided that the deed was transferred on or before November 15, 2006, is not an exemption from the Mansion Tax, but rather a refund provision that should be construed in favor of the taxpayer. “Fully executed before July 1, 2006” means a contract that is signed and binding upon the parties before July 1, 2006, whether or not there are subsequent amendments to the terms.

Keane v. The Township of Monroe, 25 N.J. Tax 479 (2010)

http://scholar.google.com/scholar_case?case=4114258592146898005&q=25+N.J.Tax+479&hl=en&as_sdt=2,31

Municipality ordered to undertake a property revaluation in order to bring uniformity to the assessment of local property taxation where there exists a high coefficient of deviation that has steadily increased as well as significant development changes in the municipality during the 17 years since the prior revaluation.

Lowe’s Home Centers, Inc. v. City of Millville, 25 N.J. Tax 591 (2010)

http://scholar.google.com/scholar_case?case=11557243512717812198&q=Lowe%E2%80%99s+Home+Centers,+Inc.+v.+City+of+Millville+&hl=en&as_sdt=2,31

City could not rescind a five-year tax abatement ratified in a development agreement pursuant to which plaintiff constructed a retail store. City’s conduct precluded relief under the square corners doctrine, which is not dependent upon a finding of bad faith.

Society of the Holy Child Jesus v. City of Summit, 418 N.J. Super. 365 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=10577759568931983367&q=418+N.J.+Super.+365+&hl=en&as_sdt=2,31

The statutory criteria for tax exemption for a religious organization do not include a requirement that the property comply with zoning requirements.

New Jersey Department of Environmental Protection v. Dimant, 418 N.J. Super. 530 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=14934804676206933133&q=,+418+N.J.+Super.+530+&hl=en&as_sdt=2,31

Spill Act liability requires a nexus between the discharge and damages.

MISCELLANEOUS

Township of White v. Castle Ridge Development Corporation, 419 N.J. Super. 68 (App. Div. 2011)

http://scholar.google.com/scholar_case?case=188006691203483554&q=419+N.J.+Super.+68+&hl=en&as_sdt=2,31

Under the developer's agreement, road maintenance obligations were developer's responsibility until the road was accepted by the municipality and developer had to reimburse municipality for costs of snow plowing and court costs and attorney's fees for bringing action where road not yet accepted.

Fay v. Medford Township Council, 423 N.J. Super. 81 (Law Div. 2011)

http://scholar.google.com/scholar_case?case=16952314303943391353&q=423+N.J.+Super.+81+&hl=en&as_sdt=2,31

Township Council properly vacated councilperson's seat on the council pursuant to the Municipal Vacancy Law, N.J.S.A. 40A:16-3, upon determining that she no longer resided in the Township.

Seals v. County of Morris, 210 N.J. 157 (2012)

http://scholar.google.com/scholar_case?case=2367285883476356143&q=Seals+v.+County+of+Morris&hl=en&as_sdt=2,31

An electric utility may be liable if it places or maintains an electric utility pole where there is an unreasonable and unnecessary danger to travelers unless a governmental entity directs the utility were to place a pole.

New Jersey Department of Environmental Protection v. Dimant, 212 N.J. 153 (2012)

http://scholar.google.com/scholar_case?case=4641319446197702606&q=067993&hl=en&as_sdt=2,31

A discharge occurs pursuant to the Spill Act when a hazardous substance is spilled or leaked, or otherwise released, into the waters or onto the lands of the State. There is no de minimis exception to the prohibition against the discharge of a hazardous substance. Once a party is found responsible for a discharge, there is another requirement to be satisfied to hold the party responsible for damages and/or response costs. A nexus also must be demonstrated to exist between the discharge for which one is responsible and the contaminated site for which cleanup costs are incurred. "[T]he causation standard to be applied to Spill Act claims must accommodate the Act's multiple forms of relief and must support and justify a range of relief available under the Act, which includes injunctive relief, and/or the recovery of damages and those [response] costs available under the Act." "[O]n proof of the existence of a discharge, one can obtain prompt injunctive relief under the Spill Act. However, in an action to obtain damages, authorized costs and other similar relief under the Act there must be shown a reasonable link between the discharge, the putative discharger, and the contamination at the specifically damaged site."

Borough of Pittman v. Monroe Savings Bank, SLA, 425 N.J. Super. 245 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=12593889546456583011&q=A-3113-10T1&hl=en&as_sdt=2,31

Unrecorded municipal assessment of fire code violation foreclosed by mortgagee. N.J.S.A. 52:27D-210c provides for the satisfaction of unpaid penalties through the use of a defined legal process, by securing a Superior Court judgment against the responsible party and recording that judgment as a lien on the realty. Because the mortgagee's foreclosure judgment was filed before the municipality's judgment, any claim that the municipality had was foreclosed.

L & W Supply Corporation v. DeSilva, 429 N.J. Super. 179 (App. Div. 2012)

http://scholar.google.com/scholar_case?case=13728102336737971879&q=L+%26+W+Supply+Corporation+v.+DeSilva&hl=en&as_sdt=2,31

The Supreme Court held in *Craft v. Stevenson Lumber Yard, Inc.*, 179 N.J. 56, 63 (2004), that a materials supplier that seeks to file a construction lien has a duty to apply payments correctly against several open accounts of a materials purchaser, such as a subcontractor, if the supplier has reason to know that the payment funds came from a particular building project. Here, the court holds that when the purchaser of materials has not provided specific, reliable instructions as to the allocation of its payment, or when the circumstances are such that a reasonable supplier should suspect the purchaser has not used an owner's funds to pay for materials supplied for that owner, then the supplier must make further inquiry and attempt to ascertain the source of the payment funds so that it can allocate them to the correct accounts. A supplier that fails to fulfill this duty sacrifices its rights under the Construction Lien Law.

612 Associates, LLC v. North Bergen Municipal Utilities Authority, 215 N.J. 3 (2013)

http://scholar.google.com/scholar_case?case=16745688790741051329&q=A-13+September+Term+2011&hl=en&as_sdt=4,31

Where two sewerage authorities each seek to collect a connection fee because one provides the initial physical connection to a development and transports the waste for a short distance and the other actually treats it, they may both collect the fee, provided that it is “represents a fair payment toward the cost of the system. . . . In this regard, a fair payment must be one that reflects the use of each system and is not duplicative.” “That is, each connection fee must be tied to the cost of that part of the system that the particular connector uses, so that a property that merely has sewage transported for a distance through the piping system on one authority will be assessed based on the costs of that entity’s collection system, but will not be charged for the costs of that entity’s treatment system that it does not use. By the same token, the same property may be charged a connection fee by the authority that actually treats the sewage which reflects a portion of that entity’s capital costs for its piping system and its treatment facility, consistent with the property’s use. Finally, an authority that operates only a collection system and the authority that operates the treatment facility will each be permitted to assess their connection fee to defray capital costs as the statutes intended.”

Advance Housing, Inc. v. Township of Teaneck, 215 N.J. 549 (2013)

http://scholar.google.com/scholar_case?case=9572201918557630310&q=069436&hl=en&as_sdt=4,31

Non-profit’s provision of housing with integrated supportive services to mentally disabled individuals, who otherwise would be dependent on government relief, in furtherance of the State’s express policy, is entitle to real estate tax-exemption. To establish its right to a property tax exemption, plaintiff must satisfy the statutory three-part test that flows from N.J.S.A. 54:4-3.6. It must show that: (1) it is organized exclusively for a charitable purpose; (2) its property is actually used for such a charitable purpose; and (3) its use and operation of the property is not for profit. The factors that the court looks to in determining whether a non-profit corporation, organized for charitable purposes, is actually using property for a charitable purposes includes the following: (1) the charitable work done by the private entity will spare the government an expense that ultimately it must bear; (2) the private entity must not be engaged in a seeming commercial enterprise; (3) the property must be used in a manner to further the charitable purpose; (4) the receipt of government subsidies or funds is not contraindicative of a charitable purpose; (5) financial support and recognition by the State of a private entity’s charitable work may be indicative that its property is used for a charitable purpose; and (6) the private entity in carrying out its charitable mission through the use of its property is addressing “an important and legitimate governmental concern.

MISCELLANEOUS

Vellucci v. Allstate Insurance Company, 431 N.J. Super. 39 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=9408139113654153125&q=A-2905-10T1&hl=en&as_sdt=4,31

“The prevailing industry and regulatory standards do not impose a duty on [a commercial property owner] to take proactive measures to ensure that a commercial office building’s water supply is not contaminated by the *Legionella* bacteria. Absent evidence that [the owner] actually knew or should have known, through the exercise of reasonable maintenance measures, that the building’s water supply had been contaminated with the *Legionella* bacteria, [the owner] is not liable for decedent’s demise.”

Booker v. Rice, 431 N.J. Super. 548 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=4984791043545499304&q=A-2413-12T4+&hl=en&as_sdt=4,31

“The Municipal Vacancy Law permits a governing body’s “remaining members,” N.J.S.A. 40A:16-7, to fill a vacancy [on the council] within thirty days of the occurrence of a vacancy, N.J.S.A. 40A:16-12. The remaining members are not required to act; if they are unable to agree or if they choose not to fill the vacancy, the seat remains vacant until filled by the voters. N.J.S.A. 40A:16-13. N.J.S.A. 40:69A-180(a) authorizes a governing body to “determine its own rules of procedure, not inconsistent with ordinance or statute.” Where City’s rules provided that an abstention was neither a yes or no vote, the abstentions could not be counted as a no vote. The Court also recognizes that the current state of the law regarding how to treat an abstention is complicated and that “there is very little clarity or consistency in the judicial treatment of abstentions by members of municipal governing bodies.”

Zimmer v. Castellano, 432 N.J. Super. 412 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=16873100228896627247&q=A-2559-12T4&hl=en&as_sdt=4,31

The trial court could not grant a writ of mandamus to order the council to fill a vacancy because the Municipal Vacancy Law only permits a governing body to fill a vacancy, it does not require it. Where the rules of the governing body do not explain the impact of a vote to abstain, but do provide that Robert’s Rules of Order shall be followed to the extent that they do not conflict with the municipality’s rules, an abstention means to refrain from voting, so that an abstention cannot be counted as a vote at all.

Zaman v. Felton, 219 N.J. 199 (2014)

http://scholar.google.com/scholar_case?case=6682399977598997845&q=zaman+v.+felton&hl=en&as_sdt=4,31

“Ordinarily, the conveyance of a property accompanied or followed by a leaseback transaction is precisely what it purports to be: a sale in which the parties separately agree that the seller will become the tenant, and the buyer will become the landlord, in accordance with the terms of a lease. However, ‘New Jersey courts have repeatedly found that sale-leaseback arrangements made to avoid foreclosure are in fact equitable mortgages.’” “It is the trial court’s task to discern whether the transaction has been labeled as a land sale in order to mask its actual objective: a mortgage loan secured by a deed to the property at issue.” The court must evaluate eight factors “in determining whether a given transaction gives rise to an equitable mortgage: (1) Statements by the homeowner or representations by the purchaser indicating an intention that the homeowner continue ownership; (2) A substantial disparity between the value received by the homeowner and the actual value of the property; (3) Existence of an option to repurchase; (4) The homeowner’s continued possession of the property; (5) The homeowner’s continuing duty to bear ownership responsibilities, such as paying real estate taxes or performing property maintenance; (6) Disparity in bargaining power and sophistication, including the homeowner’s lack of representation by counsel; (7) Evidence showing

an irregular purchase process, including the fact that the property was not listed for sale or that the parties did not conduct an appraisal or investigate title; (8) Financial distress of the homeowner, including the imminence of foreclosure and prior unsuccessful attempts to obtain loans.”

Cammarano, In re 219 N.J. 415 (2014)

http://scholar.google.com/scholar_case?case=14909046179907700907&q=cammarano&hl=en&as_sdt=4,31

Disbarment warranted for attorney who, while campaigning for mayor, accepts \$25,000 from government witness disguised as a developer, and in exchange promises expedited zoning approvals.

Finkel v. Township Committee of the Township of Hopewell, 434 N.J. 303 (App. Div. 2013)

http://scholar.google.com/scholar_case?case=12723266617806342635&q=finkel++hopewell&hl=en&as_sdt=4,31

Court exercised discretion to hear an otherwise moot case because it presented an issue of significant public importance and was a controversy “capable of repetition, yet evading review.” Nonbinding referendum must be submitted to County Clerk in compliance with the 81-day deadline in N.J.S.A. 19:37-1, rather than the 65-day deadline under N.J.S.A. 19:37-2.

Princeton Office Park, LP v. Plymouth Park Tax Services, LLC 218 N.J. 52 (2014)

http://scholar.google.com/scholar_case?case=3493570937370212&q=Princeton+office+park,+LP&hl=en&as_sdt=4,31

The purchaser of a tax sale certificate possesses a tax lien on the encumbered property. “[T]he debt underlying a certificate holder's lien is the property owner's obligation to pay taxes, and that the lien conferred with the certificate is a tax lien. This statutory interpretation furthers the Tax Sale Law's fundamental objective of making tax sale certificates an attractive investment for third parties, thereby assisting municipalities in raising revenue.”

Donovan v. Bergen County Board of Chosen Freeholders, 436 N.J. Super. 91 (Law Div. 2012), affirmed, 436 N.J. 1 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=785353646769310101&q=donovan+v+bergen&hl=en&as_sdt=4,31

Appointment of an accountant was an administrative, rather than a legislative, function and pursuant to the Charter Act the county executive, rather than the county board of chosen freeholders had the power to appoint an accountant. Only county executive, and not executive's designee, has the right to participate in board of chosen freeholders meetings pursuant to the Charter Act.

Traetto v. Palazzo, 436 N.J. Super. 6 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=11401566759877370421&q=traetto&hl=en&as_sdt=4,31

“Noise may constitute an actionable private nuisance. [citations omitted]. To prove that a specific source of noise constitutes a nuisance, a plaintiff must show ‘(1) injury to the health or comfort of ordinary people to an unreasonable extent, and (2) unreasonableness under all the circumstances, particularly after balancing the needs of the maker to the needs of the listeners.’” “A private nuisance may exist even where there is compliance with controlling governmental regulations. [citation omitted]. Thus, even if noise is otherwise in compliance with an ordinance, ‘the character, volume, frequency, duration, time, and locality of the noises continue to be relevant factors in determining whether the alleged annoyance . . . unreasonably interferes with the ordinary comfort of human existence in the neighborhood.’”

MISCELLANEOUS

Salem County Improvement Authority v. Salem County Board of Chosen Freeholders, 436 N.J. Super. 16 (Law. Div. 2014)

http://scholar.google.com/scholar_case?case=13563645135780008181&q=salem+county+improvement+authority+freeholders+436+N.J.&hl=en&as_sdt=4,31

Board of Freeholders had the authority to veto the Improvement Authority's minutes for no reason and the reason that it provided, i.e., that it needed more time to review a complicated issue, was reasonable.

Waterside Villas v. Monroe Township, 434 N.J. Super. 275 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=10472541039861198183&q=waterside&hl=en&as_sdt=4,31

Taxpayers are obligated to respond to a Chapter 91 request within 45 days and may not simply ignore the request. Where the copy of the statute provided by the tax assessor contains a minor omission that does not alter the substance of the statute, and does not prejudice the property owner, the municipality is still entitled to a dismissal under N.J.S.A. 54:4-34.

Allied Building Products Corp. v. J. Strober & Sons, LLC, 437 N.J. Super. 249 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=4768189544806237002&q=J.+Strober&hl=en&as_sdt=4,31

Subcontractor's surety bond that incorrectly states obligee as owner rather than general contractor still obligated itself to general contractor in contract between subcontractor and general contractor. Surety was obligated to perform under the contract in accordance with the form attached to the contract notwithstanding that fact that it hadn't reviewed it because a "surety is chargeable with knowledge of the contents of the contract it undertook to guarantee." Reformation of the bond is the appropriate remedy.

Benjoray, Inc. v. Academy House Child Development Center, 437 N.J. Super. 481 (App. Div. 2014)

http://scholar.google.com/scholar_case?case=18281778320502183487&q=benjoray&hl=en&as_sdt=4,31

Either party to a summary dispossession proceeding may move to have the matter transferred to the Law Division. Five factors are used to determine whether a dispossession action should be transferred to the Law Division: "(1) The complexity of the issues presented, where discovery or other pretrial procedures are necessary or appropriate; (2) The presence of multiple actions for possession arising out of the same transaction or series of transactions, such as where the dispossessions are based upon a concerted action by the tenants involved; (3) The appropriateness of class relief; (4) The need for uniformity of result, such as where separate proceedings are simultaneously pending in both the Superior Court and the County District Court arising from the same transaction or set of facts, and (5) The necessity of joining additional parties or claims in order to reach a final result." Where the tenant asserts a claim for rescission, that is beyond the authority of the court hearing a summary dispossession action as such a court lack general equitable jurisdiction.

Cashin v. Bello, 223 N.J. 328 (2015)

https://scholar.google.com/scholar_case?case=10772831070847840975&q=073215&hl=en&as_sdt=4,31

The term "building" in the Anti-Eviction Act, denotes a single, unattached physical structure and does not include other structures located on the same parcel of land and therefore a tenant can be removed from a two-unit building in which the owner seeks to take occupancy notwithstanding the fact that there are five additional units on the property.

State v. Eldakroury, 439 N.J. Super. 304 (2015)

https://scholar.google.com/scholar_case?case=2218274177546067014&q=eldakroury&hl=en&as_sdt=4,31

Indictment against defendant charging him under N.J.S.A. § 2C:34-7(a) with operating a sexually oriented business within 1,000 feet of a residential zone properly dismissed because the location of the business is a material element of the offense and the State's instruction to the jury was blatantly wrong as it relieved the State from having to establish defendant's mens rea as to knowingly with respect to that element.

Garden Howe Urban Renewal Associates, LLC v. HACBM Architects Engineers Planners, LLC, 439 N.J. Super 446 (2015)

https://scholar.google.com/scholar_case?case=4802455411835921763&q=439+N.J.+Super.+446&hl=en&as_sdt=4,31

In professional malpractice action against architect, trial court mistakenly excluded expert testimony by two engineers who opined that the architect failed to comply with the Uniform Construction Code. The experts' reports did not have to be signed by architects where the standard of care was based on the failure to comply with the UCC and the engineers had sufficient knowledge and experience with the UCC.

State of New Jersey, by the Commissioner of Transportation, v. Cherry Hill Mitsubishi, Inc., 439 N.J. Super. 462 (2015)

https://scholar.google.com/scholar_case?case=1306543326200738431&q=A-2899-13T2&hl=en&as_sdt=4,31

Claims against state officials dismissed under qualified immunity. In order to determine whether government officials are entitled to qualified immunity, courts employ a two-pronged test: (1) "whether a constitutional right would have been violated on the facts alleged" and (2) "whether the right was clearly established." Where plaintiff had no right to encroach upon state highway, it had no property interest and thus no constitutional right that would have been violated by the State's action seeking removal of the encroachment. The officials therefore were entitled to qualified immunity as a matter of law.

The New Jersey Contractual Liability Act allows for a limited waiver of sovereign immunity in contract disputes. "The CLA does not, however, waive sovereign immunity except as to those 'suits based on an express contract or contracts implied in fact.'" It does not waive sovereign immunity where the only basis for relief is a contract implied in law.

Torre v. Liberty Mutual Fire Insurance Company, 781 F.3d 651 (2015)

https://scholar.google.com/scholar_case?case=13621079287042734531&q=No.+14-2733+&hl=en&as_sdt=3,31

The Standard Flood Insurance Policy issued under the National Flood Insurance Act of 1968, covers certain structures but does not cover the entire parcel of land and therefor does not cover the cost of the removal of non-owned debris outside of the home.

612 Paramus, LLC v. Borough of Paramus, A-005699-2014 (Jan. 2, 2015)

https://scholar.google.com/scholar_case?case=16005542671774075443&q=612+Paramus&hl=en&as_sdt=4,31

Tax assessor satisfies his obligation under N.J.S.A. 54:4-34, when he sends a valid Chapter 91 request to the property owner. The assessor need not inquire into the contractual arrangements between the owner and its tenants as to the obligation to pay taxes. In addition, a subsequent owner stands in the shoes of the prior owner. If the prior owner received a Chapter 91 request and ignored it, the subsequent owner may not challenge the validity of the request and its complaint challenging the assessment is subject to dismissal.

MISCELLANEOUS

MNR Clat, LLC v. Township of Montclair, A-0499-13T3 (Jan. 6, 2015)

https://scholar.google.com/scholar_case?case=13988302422088507371&q=A-0499-13T3&hl=en&as_sdt=4,31

“Construction officials may deviate from the requirements specified in a subcode if the premises are being used in a way that differs significantly from what was anticipated in the subcode.” But, where “there is a specific regulation applicable, and the construction official determines that additional safety precautions are warranted, he or she would not be permitted to use discretion to impose the additional requirements. Instead, the proper course of action would be to ‘adopt an appropriate amendment to [the subcode] rather than suggesting that N.J.A.C. 5:23-2.2(c) provides broad authorization for ad hoc local decision making.’”

D’Agostino v. Gesher LLC, A-1040-12T2 (Jan. 7, 2015)

https://scholar.google.com/scholar_case?case=15918672396926186175&q=A-1040-12T2&hl=en&as_sdt=4,31

“Under New Jersey law, the tort of interference with a prospective economic advantage (tortious interference) contains four elements: (1) a protectable interest; (2) malice-the defendant’s intentional interference without justification; (3) a reasonable likelihood that the interference caused the loss of a prospective gain; and (4) resulting damages.” “As to the first element, ‘[n]ot only does New Jersey law protect a party’s interest in a contract already made, ‘[t]he law protects also a [person’s] interest in reasonable expectations of economic advantage.’” Plaintiff who alleged interference with his opportunity to enter into a contract to purchase property therefore had a protectable interest. “As to the second element, an interference can be malicious, or ‘without justification or excuse,’ in either of two ways: (1) the interest pursued is illegitimate, or (2) the means used are inappropriate. [citation omitted]. The inquiry’s focus is on the defendant’s acts.”

Newfield Fire Company No. 1 v. Borough of Newfield, A-0751-13T4 (Jan. 23, 2015)

https://scholar.google.com/scholar_case?case=16004281079586670467&q=A-0751-13T4+&hl=en&as_sdt=4,31

A municipality is permitted “to use the mechanism of an ordinance as the contractual basis to set forth provisions assuring municipal supervision and control of members of the volunteer fire company it designates as the official entity to perform the public function of extinguishing fires.” “Prudence suggests any terms formulated in an ordinance governing the Fire Company would be mutually discussed, if not formulated by assent before passage. Still, we are aware of nothing that precludes the Borough from adopting an ordinance defining the conditions it requires of any volunteer fire company seeking to act as the Borough’s designated fire company [without prior consent by the fire company]. Here, the Fire Company must accept these terms if it seeks to continue in its role as the designated municipal entity. Nevertheless, nothing prevents the Fire Company members from declining to voluntarily perform firefighting services under terms mandated by a valid ordinance, such as Ordinance #2013-7. If it chooses to do so, absent further negotiation and agreement with the Borough, its municipal firefighting status ceases, and the Borough has authority to assume possession and control of its real and personal property and to seek a replacement entity to perform the necessary fire functions.”

Cap v. Borough of Belmar, No. 007035-2014 (Tax April 13, 2015)

https://scholar.google.com/scholar_case?case=12044961898503608565&q=cap+v.+borough+of+belmar&hl=en&as_sdt=4,31

Storm-damaged home that was to be demolished because it was more cost efficient to demolish and rebuild rather than repair, did not lead to the conclusion that the improvement was worthless for local property tax purposes sufficient to overcome the presumption of correctness of the assessor’s 30% reduction in value, notwithstanding the fact that it was uninhabitable and the Zoning Board had approved a resolution authorizing the demolition.

Pennsville Travel Center, Inc. v. Atlantic City Electric Company, A-0748-13T2 (April 23, 2015)
https://scholar.google.com/scholar_case?case=12190846047704146919&q=A-0748-13T2+&hl=en&as_sdt=4,31

A public utility is responsible for the cost of relocating utility poles where the project predominantly serves the public interest, such as where the poles are within the public right-of-way and road widening is involved, but a private property owner must pay for the cost of relocating utility poles where the poles are located in a private easement and the project is for the benefit of the private owner or developer.

AHS Hospital Corp., d/b/a Morristown Memorial Hospital v. Town of Morristown, Docket Nos. 010900-2007, 010901-2007, 00406-2008 (NJ Tax June 29, 2015)
https://scholar.google.com/scholar_case?case=12047984674404757258&q=AHS+Hospital&hl=en&as_sdt=4,31

Non-profit hospital's tax exemption denied where court finds that the property is used substantially for profit. To receive an exemption under N.J.S.A. 54:4-3.6, three criteria must be met: the owner must be organized exclusively for an exempt purpose; the property must be actually and exclusively used for the exempt purpose; and the operation and use of the property must not be conducted for profit. The test of whether property is used for profit is a "pragmatic inquiry into profitability" . . . if the profit from the use of the property "can trace it into someone's personal pocket," the property will not be entitled to an exemption. Where the owner "entangle[ed] its activities and operations with those of for-profit entities, [and] allowed its property to be used for profit," . . . "and a substantial benefit was conferred upon for-profit entities as a result," it violated the profit test.

Madonia v. Township of Berkeley, N.J. Tax, June 12, 2015
https://scholar.google.com/scholar_case?case=4284789598729290123&q=madonia&hl=en&as_sdt=4,31

Where the record contains insufficient credible evidence with which to determine the true market value of the subject property, the court must affirm the assessment.

Lydon v. PCAM Associates, A-2914-14T1 (June 30, 2015)
https://scholar.google.com/scholar_case?case=13502308452600449084&q=A-2914-14T1+&hl=en&as_sdt=4,31

Specific performance was an available remedy to plaintiffs who spent hundreds of hours developing plans with an architect before contracting with a builder to construct a custom home on a specific lot where the builder allegedly breached the contract by making changes to the plans and substituting inferior materials without their consent and plaintiffs had filed their complaint against the builder prior to the builder setting the date of a time of the essence closing.

Township of Wyckoff v. Village of Ridgewood, A-2703-13T4 (July 15, 2015)
https://scholar.google.com/scholar_case?case=11903240113593231598&q=A-2703-13T4+&hl=en&as_sdt=4,31

In water rate dispute, where the BPU lacks a legal framework in determining "rate uniformity," the BPU does not have primary jurisdiction and the matter is properly brought before the court, rather than the BPU, for an analysis of statutory construction and an assessment of the probative value of evidence.

West Palm Beach Hotel, LLC v. Atlanta Underground, LLC, Civ. No. 14-4113 (3rd. Cir., Aug. 14, 2015)
https://scholar.google.com/scholar_case?case=190077921186511482&q=No.+14-4113&hl=en&as_sdt=3,31

Letter of Intent to purchase hotel not an enforceable agreement where it contained an explicit

MISCELLANEOUS

disclaimer that provided: "[T]his letter is intended to be and only is an indication as to the basic terms of the proposed transaction and not a binding agreement, and it is understood that if a binding Contract is not executed between the parties on or TDB [sic] date then in such event this letter shall be null and void and the undersigned shall be relieved from any obligations or liabilities in connection herewith."

Kolegarova v. Skubinski, A-1230-13T3 (Sept. 23, 2015)

https://scholar.google.com/scholar_case?case=17203899930452547839&q=A-1230-13T3&hl=en&as_sdt=4,31

"A joint venture is simply a single-purpose partnership. [citation omitted.] Generally speaking, some or all of the following elements are present in a joint venture:

(A) A contribution by the parties of money, property, effort, knowledge, skill or other asset to a common undertaking;

(B) A joint property interest in the subject matter of the venture;

(C) A right of mutual control or management of the enterprise;

(D) Expectation of profit, or the presence of "adventure," as it is sometimes called;

(E) A right to participate in the profits;

(F) Most usually, limitation of the objective to a single undertaking or ad hoc enterprise.

In the non-commercial context of an unmarried couple sharing an investment in a residence, without any promises of lifetime support that would constitute a 'palimony agreement,' the factors that loom largest are the parties' joint contribution of money and effort toward the acquisition, upkeep, and improvement of the property; their venture's singular interest in the property; and the parties' expectation that if their relationship ended, they would receive an equitable share of their joint investment, regardless of formalities of title."

"In dissolving a joint venture consisting of an unmarried couple's joint investment in a residential property, the court may consider 'a forced sale of the property and division of the net proceeds between the parties.' [citation omitted.] Partition in kind may be impracticable, or cause great prejudice to the parties.

City of Jersey City v. Salahuddin, A-1510-13T1 (Oct. 26, 2015)

https://scholar.google.com/scholar_case?case=5113131451813148918&q=A-1510-13T1&hl=en&as_sdt=4,31

A deed that conveyed property to the buyer "so long as buyer rehabilitates the property" and further provides that if the buyer fails to make the required repairs "title to the property shall automatically revert to and become vested" in the seller, granted a fee simple determinable, not a fee simple subject to condition.

Fields v. Trustees of Princeton University, A-005904-2014, 007556-2015, 010656-2011 (Tax Nov. 5, 2015)

https://scholar.google.com/scholar_case?case=6684315960456441994&q=Fields+v.+trustees+of+princeton&hl=en&as_sdt=4,31

"The presumption of validity afforded the Assessor's original tax assessments does not extend to tax exemptions." The taxpayer has the burden of proof to justify the exemption, notwithstanding the fact that a third-party has brought a challenge to the Assessor's exemption.

Conley v. Guerrero, A-3796-13T2 (Nov. 5, 2015)

https://scholar.google.com/scholar_case?case=436443082446260063&q=3796-13T2&hl=en&as_sdt=4,31

A standard notice of termination of a residential real estate purchase and sales contract "prescribes the method of delivery only for notice to the real estate agent. Any form of actual notice suffices as pertains to the buyer." A purchaser who has actual notice of a termination "may not enforce the

rights of the agent to notice that complies with the method-of-delivery requirements” where the agent hasn’t complained about it.

845 Bergen Avenue Partnership v. Yang, A-1234-13T1 (Nov. 9, 2015)

https://scholar.google.com/scholar_case?case=15560736136286307516&q=A-1234-13T1&hl=en&as_sdt=4,31

“A claim of breach [of a lease] based on a municipal notice of violation is not ripe until the tenant has exhausted its right to be heard.”

Bergenline Property Group, LLC v. Coto, A-0259-14T2 (Nov. 10, 2015)

https://scholar.google.com/scholar_case?case=6519095921762106601&q=A-0259-14T2&hl=en&as_sdt=4,31

Tenant’s signing of a lease with court-approved terms “under protest” was not an unqualified acceptance of the lease and did not represent a valid reservation of rights, nor a grumbling acceptance and was not immaterial to their dispute.

Barbero v. John, A-4137-13T2 (Dec. 2, 2015)

https://scholar.google.com/scholar_case?case=4136668953904951759&q=4137-13T2&hl=en&as_sdt=4,31

Where written agreements contain merger and integration clauses, the parol evidence rule bars consideration of alleged oral agreements where there is no finding of fraud, unclean hands or misrepresentation.

Berkeley Family Apartments, LLC v. Township of Berkeley, A-3042-14T4 (Dec. 7, 2015)

https://scholar.google.com/scholar_case?case=8443319569751216160&q=3042-14T4&hl=en&as_sdt=4,31

“[A] municipality’s decision whether to adopt a resolution of need concerning a housing project [under the New Jersey Housing and Mortgage Finance Agency Fund for Restoration of Multi-Family Housing program] cannot be characterized as a ‘ministerial act’ that can be compelled through a writ of mandamus. Rather, to enable HMFA to equitably allocate the limited financial assistance available to developers under the FRM program, N.J.S.A. 55:14K-6(c) requires the municipality to make an independent determination of the need, if any, for the project. Among other things, the municipality must examine the facts and circumstances underlying the applicant’s proposal and make a reasoned determination whether there is a need for additional affordable housing at that specific location in the zoning district. Thus, the outcome of the municipality’s review of a request for a resolution of need is not ‘absolutely certain and imperative,’ and nothing in N.J.S.A. 55:14K-6(c) ‘prescribes and defines the time, mode and occasion’ of the municipality’s decision.” The fact that the Township had added such housing as a conditional use in the zone did not equate to a determination of need.

Hanover 3201 Realty, LLC v. Village Supermarkets, Inc., 806 F.3d 162 (3rd Cir. 2015), cert. denied 136 S.Ct. 2451 (2016)

https://scholar.google.com/scholar_case?case=6241195802164781844&q=hanover+3201+realty+llc+v+village+supermarkets+inc&hl=en&as_sdt=3,31

Plaintiff lessor had standing to bring an antitrust suit under the Sherman Act with respect to its claim that defendants’ attempted to monopolize the market for full-service supermarkets due to objections to land use approvals lodged by defendants “without regard to the merits of the claims and for the purpose of using the governmental process to restrain trade.”

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Cypress Point Condominium Association, Inc. v. Adria Towers, LLC, 226 N.J. 403 (2016)
https://scholar.google.com/scholar_case?case=10139480013198673064&q=076348&hl=en&as_sdt=4,31

“The consequential damages caused by the subcontractors' faulty workmanship constitute ‘property damage,’ and the event resulting in that damage — water from rain flowing into the interior of the property due to the subcontractors' faulty workmanship — is an ‘occurrence’ under the plain language of the CGL policies at issue here.”

Perez v. Zagami, LLC, 443 N.J. Super. 359 (App. Div. 2016)
https://scholar.google.com/scholar_case?case=4139469428595192205&q=3268-14T2&hl=en&as_sdt=4,31

No affidavit of merit is required in a suit claiming malicious use of process against an attorney because a malicious use of process action is an intentional tort requiring proof of malice and not a deviation from a standard of care.

Dial, Inc. v. City of Passaic, 443 N.J. Super. 492 (App. Div. 2016)
https://scholar.google.com/scholar_case?case=11077988872871575137&q=A-2106-13T2&hl=en&as_sdt=4,31

N.J.S.A. 39:4-197.6 to -197.7 authorizes municipalities, by ordinance, to establish restricted parking zones in residential areas for use by handicapped persons. The fee charged under the City's ordinance for personalized handicapped spaces is not an unlawful surcharge under the ADA because such spaces have not been declared to be “required” under federal law.

Scannavino v. Walsh, 445 N.J. Super. 162 (App. Div. 2016)
https://scholar.google.com/scholar_case?case=1342151653703933951&q=A-0033-14T1&hl=en&as_sdt=4,31

Adjoining property owner not liable for damage to retaining wall caused by tree roots where property owner did not plant or preserve trees, but merely pruned them. Under the Restatement (Second) of Torts, “neither a possessor of land, nor a vendor, lessor, or other transferor, is liable for physical harm caused to others outside of the land by a natural condition of the land.”

ACP Partnership v. Garwood Borough, 29 N.J. Tax 102 (2016)
https://scholar.google.com/scholar_case?case=12818622116699723766&q=009227-2010&hl=en&as_sdt=4,31

Where property owner is not responsible for the contamination of the property and has entered into a voluntary MOA with the DEP to investigate the contamination source and implement remediation efforts, and has sought to hold the party who caused the contamination liable for the cleanup costs, the environmental condition of the property and the costs to be incurred by the taxpayer to remediate the property must be considered in conjunction with “normal assessment techniques” in valuing the property notwithstanding the fact that the property is “in-use” by the taxpayer.

Positive Health Care, Inc. v. City of Newark, 29 N.J. Tax 213 (2016)
https://scholar.google.com/scholar_case?case=1563623603206488978&q=017739-2011&hl=en&as_sdt=4,31

“The Supremacy Clause of the United States Constitution and the doctrine of sovereign immunity preclude the levying of local property taxes on the Federal Government and, as a rule, most federal property is tax-exempt. There is no such provision however for privately owned property purchased in whole or in part with federal funds.” As a result, owners of real property claiming an exemption must comply with the statutes and rules, including filing a separate complaint for an exemption each year.

Karimi v. Director, Division of Taxation, No. 014476-2013 (Jan. 29, 2016)

https://scholar.google.com/scholar_case?case=14191395680804719271&q=014476-2013&hl=en&as_sdt=4,31

A taxpayer's Complaint filed one day late is dismissed as untimely. The mailing of a Complaint within the 90-day period does not amount to a filing under the statute.

Newton West Ltd. v. Town of Newton, A-001976-15 (Jan. 29, 2016)

https://scholar.google.com/scholar_case?case=3725231013067484773&q=001976-15&hl=en&as_sdt=4,31

"The Freeze Act does not apply where the taxing district has completed and adopted either a revaluation or reassessment program approved by a county board of taxation of which the taxpayer has notice within a reasonable time prior to the appeal deadline." [citation omitted]. The reassessment is "complete" where "a public hearing with testimony was held, the Board formally approved the Town's application to conduct the reassessment, the Town adopted a formal Resolution authorizing the reassessment, and the Director of the Division of Taxation sent its 'signature of approval' on the proposed complete reassessment contract with Appraisal Systems, Inc."

Vincent Pools, Inc. v. APS Contractors, Inc., A-2670-13T3, A-2688-13T3 (March 18, 2016)

https://scholar.google.com/scholar_case?case=10479253350567292056&q=A-2670-13T3,&hl=en&as_sdt=4,31

There are three statutory forms of security for the payment of the value of labor performed or materials furnished in connection with a public works project, which are in pari materia and must be construed together:

(1) the Municipal Mechanics' Lien Law (which imposes a lien in favor of those who contract with a public agency "for the value of the labor or materials, or both, upon the moneys due or to grow due under the contract ... to the full value of the claim or demand." N.J.S.A. 2A:44-128(a)). The lien "attaches to funds appropriated for the payment of such public work and still in the hands of the public agency." The extent of protection is limited to the amount the public agency owes "to the prime contractor at the time the notice of lien claim is filed or thereafter becoming due," so that the public agency "cannot be liable for more than the total amount of the prime contract, provided it pays the prime contractor in accordance with the terms thereof and withholds a sum sufficient to cover lien claims filed, and satisfaction of the claim cannot be had out of the public property which is the subject of the project." "[T]he Mechanics' Lien Law protects an unpaid subcontractor by enabling it to claim against monies due to the general contractor payable by the public agency. Read within context, the words of the statute refer to the contract price as a whole, not the price for a specific portion of the contract.")

(2) the Bond Act (which requires the general contractor contracting out public-works projects to furnish a bond that ensures: payment by the contractor for all labor performed or materials, provisions, provender or other supplies, teams, fuels, oils, implements or machinery used or consumed in, upon, for or about the construction, erection, alteration or repair of such buildings, works or improvements. Under this statute, a party who performs labor or furnishes materials "has, for his security, recourse on the bond which the prime contractor is obliged to file.")

(3) the Trust Fund Act, N.J.S.A. 2A:44-148 (which directs that when payments are made to a general contractor, those sums shall constitute a trust fund in favor of unpaid materialmen and laborers. The trust attaches to monies paid by the public agency in the hands of the general contractor.")

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Mignano v. Jim Sullivan, Inc., A-2995-12T2, A-3587-12T2, A-3732-12T2 (May 26, 2016)

https://scholar.google.com/scholar_case?case=6575591928837987355&q=A-2995-12T2&hl=en&as_sdt=4,31

Township immune from liability under the TCA for its permitting activities in issuing construction, occupancy and zoning permits that allowed a daycare center to be opened on a contaminated site, and for its failure to enforce a law. The Zoning Officer's negligence in issuing the zoning permit to use a contaminated site for a day care center did not shock the court's conscience. The Township was not liable where it did not act "with deliberate indifference to the possibility that a tax sale certificate could be issued for a contaminated site and create an unconstitutional state-created danger." "The DEP is immune from liability for actions that constitute nonfeasance, N.J.S.A. 59:1-2; any failure to enforce the law, N.J.S.A. 59:2-4 and 59:3-5; any failure to inspect or negligent inspection, N.J.S.A. 59:2-6; and for discretionary activities, N.J.S.A. 59:2-3." "Under the Spill Act, the duty to clean up the site rested at all times with those responsible for the contamination and its remediation. [citation omitted]. The DEP also took regulatory actions regarding the property, as permitted by law, but such actions did not impose upon the DEP a duty of care for the property pending its remediation."

Mill Street Partners, LLC v. Cotton Mill Associates, LLC, A-2968-14T4 (June 17, 2016)

https://scholar.google.com/scholar_case?case=11259453923159628673&q=A-2968-14T4&hl=en&as_sdt=4,31

Purchaser did not violate the implied covenant of good faith and fair dealing by not pursuing additional development approvals that would have netted the seller additional money above the base purchase price where the contract unambiguously provided the buyer with the sole discretion to control the development of the property.

New Jersey Chinese Community Center v. Warren Township Construction Office, A-4778-14T4 (July 22, 2016)

https://scholar.google.com/scholar_case?case=15544005935429622612&q=A-4778-14T4&hl=en&as_sdt=4,31

Certificate of occupancy properly denied where proposed use did not comply with zoning or the plans submitted to the construction official. "N.J.A.C. 5:23-2.24(a)(1) states that a '[c]ertificate of [o]ccupancy shall be conditioned upon' the fact '[t]hat the completed project meets the conditions of the construction permit, and all 'prior approvals . . . ' As defined in N.J.A.C. 5:23-1.4, the term 'prior approvals' includes zoning.

Aries Investments, LLC v. First American Title Insurance Co., A-0501-14T3 (Aug. 2, 2016)

https://scholar.google.com/scholar_case?case=9669612515207764546&q=A-0501-14T3&hl=en&as_sdt=4,31

"With respect to real estate, an insurable interest need not rise to the level of legal or equitable title. In the past, New Jersey courts have recognized that an insured retains an insurable interest as long as he has a reasonable expectation of deriving pecuniary benefit from the preservation of the property or would suffer a direct pecuniary loss from its destruction."

Doyle v. Baldinger, A-2697-14T3 (Aug. 2, 2016)

https://scholar.google.com/scholar_case?case=4338471656161938390&q=A-2697-14T3&hl=en&as_sdt=4,31

"'[A]n unrecorded deed is 'perfectly efficacious in passing title from grantor to grantee, subject to all subsequent recorded liens against the grantor and subject to potential divestment by a subsequent bona fide grantee without notice.' [citation omitted]. However, an unrecorded deed 'shall be of no effect against subsequent . . . bona fide purchasers . . . for valuable consideration without notice and whose conveyance . . . is recorded[.]'" Where a deed attempts to transfer title to a lot that is

not owned by the grantor, it is “simply a mistake that has no legal consequences. [The grantor] could not convey that which they never had. . .” “Wild deeds cannot convey title to land.” A grantee of a wild deed is not a bona fide purchaser.

Naskell Properties, LLC v. The American Insurance Company, A-1452-14T2 (Aug. 4, 2016)

https://scholar.google.com/scholar_case?case=14824291913070057294&q=A-1452-14T2&hl=en&as_sdt=4,31

“In New Jersey, the law excuses an insurer's obligation to cover losses that occur after a policy is assigned in contravention of a consent-to-assignment clause. . . . However, the Seller's claims for coverage under the policies relating to occurrences that happened before the transfer to plaintiff were freely assignable by the Seller, to the extent the policies were ‘occurrence policies.’ Those policies insure ‘the occurrence itself,’ and provide coverage ‘[o]nce the occurrence takes place . . . even though the claim may not be made for some time thereafter.’ [citation omitted] ‘[O]nce a loss occurs, an insured's claim under a policy may be assigned without the insurer's consent,” because “the prohibition of assignments without the consent of the insurer [ceases]. Its liability [has] become fixed, and like any other chose in action [is] assignable regardless of the conditions of the policy in question.”

Bradley v. Kovelesky, A-0423-14T4 (Aug. 15, 2016)

https://scholar.google.com/scholar_case?case=14151568735582812562&q=A-0423-14T4&hl=en&as_sdt=4,31

The Spill Act’s exclusive list of defenses precludes equitable defenses of laches or unclean hands. N.J.S.A. 2A:15-3 preserves the right of action a deceased person would have for damage to his person or property, but a survival action must be brought within two years of the decedent’s death.

Clean Jersey Solar, LLC v. Effisolar Energy Corporation, No. 12-2008 (MAS)(LHG) (Aug. 20, 2016)

[https://scholar.google.com/scholar_case?case=644085869468158079&q=12-2008+\(MAS\)+\(LHG\)&hl=en&as_sdt=3,31](https://scholar.google.com/scholar_case?case=644085869468158079&q=12-2008+(MAS)+(LHG)&hl=en&as_sdt=3,31)

Buyer's breach of the Amendment to the Purchase and Sale Agreement in which Seller granted Buyer an extension of time to close title is a breach of a separate promise and a separate injury than its breach of the PSA and does not result in a double recovery to Seller.

Alcatel-Lucent USA, Inc. v. Township of Berkeley Heights, Nos. 004598-2014, 007688-2014, 003166-2016, 006661-2016 (NJ Tax Sept. 8, 2016)

https://scholar.google.com/scholar_case?case=12795363528045881187&q=+004598-2014,+007688-2014,&hl=en&as_sdt=4,31

“When payment is made to a property owner in consideration for which the occupant enjoys exclusive use, enjoyment or possession of all or a distinct portion of property, free from the property owner's discretion to unilaterally revoke those rights, our courts have concluded the property is “income-producing” under Chapter 91.”

When a Chapter 91 request is thought to be confusing or not legitimate in whole or in part, the taxpayer must assert that contention before the assessment is imposed to avoid the statutory bar to appeal the assessment.

“No appeal shall be heard from the assessor's valuation and assessment with respect to income-producing property where the owner has failed or refused to respond to such written request for information within 45 days . . . or shall have rendered a false or fraudulent account . . . N.J.S.A. 54:4-34.” The “term ‘false’ [with respect to the statute must] include some knowledge of falsity and embodies an element of materiality.” “The court is not convinced that in enacting Chapter 91 our Legislature intended taxpayers to face the harsh appeal preclusion consequences when a timely, good faith response to a Chapter 91 request was furnished which inadvertently excluded, overstated

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or understated property or income and expense information.”

“Chapter 91 is applicable to every New Jersey property owner, including property owners who may subsequently make application for an exemption from local property tax or who believe their land may qualify for preferential farmland assessment under the Farmland Assessment Act.”

Zlotkin v. Leora Dubrovsky Realty Group, LLC, A-0604-14T2 (Sept. 14, 2016)

https://scholar.google.com/scholar_case?case=7881067385768414370&q=A-0604-14T2&hl=en&as_sdt=4,31

A tenant who holds over beyond the expiration of their lease term is deemed to be a month-to-month tenant. *N.J.S.A.* 46:8-10. Landlord’s notice to quit properly given because “*N.J.S.A.* 2A:18-56(a),(b) sets forth the time periods for serving the notice to quit. Subsection (a) requires that year-to-year tenants be given at least three months’ notice, while subsection (b) requires month-to-month tenants be given only a single months’ notice.”

RND Associates v. Birdsall, A-4724-14T3 (Oct. 6, 2016)

https://scholar.google.com/scholar_case?case=6215508095843498763&q=A-4724-14T3&hl=en&as_sdt=4,31

Property Seller’s complaint for specific performance dismissed where Purchaser’s proposed resolution of septic contingency rejected by Seller and Purchaser thereafter sent a letter terminating the contract. The Seller’s subsequent acceptance of Purchaser’s proposal was too late because at that time there was no offer on the table for Purchaser to accept.

1485 Ocean Avenue Realty, LLC v. Borough of Sea Bright, No. 002445-2016 (Nov. 4, 2016)

https://scholar.google.com/scholar_case?case=17660656724733422840&q=No.+002445-2016&hl=en&as_sdt=4,31

Beach club that takes in income from renting lockers and cabanas was an “income-producing” property for property taxation purposes.

Malden Real Estate v. Cycle Craft, Inc., A-3450-14T3 (Nov. 15, 2016)

https://scholar.google.com/scholar_case?case=17684711841075538334&q=fA-3450-14T3&hl=en&as_sdt=4,31

The decision to award attorney’s fees is within the discretion of the trial judge and is reviewed under the abuse of discretion standard. The court begins with the calculation of the lodestar in determining the reasonableness of the fee. “The lodestar is ‘the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.’” [citation omitted]. Rule 4:42-9(b) requires all applications for fees to be ‘supported by an affidavit of services addressing the factors enumerated by RPC 1.5(a)’ and “a recitation of other factors pertinent in the evaluation of the services rendered, the amount of the allowance applied for, and an itemization of disbursements for which reimbursement is sought.” R. 4:42-9(b). The “factors to be considered in determining the reasonableness of a fee include” (1) the time, labor, difficulty level and skill required; (2) whether “acceptance of the particular employment will preclude other employment by the lawyer;” (3) customary fees for similar legal services; (4) “the amount involved and the results obtained;” (5) time limitations imposed; (6) the nature and length of the relationship with the client; (7) “experience, reputation, and ability of the lawyer;” and (8) “whether the fee is fixed or contingent.”

Siris Pharmaceuticals, LLC v. Unity Bank, A-5487-14T2 (Nov. 30, 2016)

https://scholar.google.com/scholar_case?case=8066879732397789209&q=A-5487-14T2&hl=en&as_sdt=4,31

The Security Deposit Act “requires a landlord to return the tenant's security deposit and interest accrued ‘[w]ithin 30 days after the termination of the tenant's lease... less any charges expended in accordance with the terms of [the] lease[.]’ N.J.S.A. 46:8-21.1. If a landlord violates this requirement, the tenant may sue the landlord, and ‘the court upon finding for the tenant ... shall award recovery of double the amount of said moneys, together with full costs of any action and, in the court's discretion, reasonable attorney's fees.’” It does not apply to commercial leases.

ERA South, LLC v. Mayor and Council of Englewood, A-0533-14T3, A-0576-14T3 (Dec. 6, 2016)

https://scholar.google.com/scholar_case?case=12325557160664651027&q=A-0533-14T3&hl=en&as_sdt=4,31

“Upon a timely appeal from a municipality's special assessment decision, ‘[t]he court shall determine whether or not the assessment ... appealed from is a just and fair assessment or award, and if not shall make an order correcting the same or if the assessment or award is sustained shall so order.’ N.J.S.A. 40:56-54.” The assessment must be proportionate to the benefit received. “The improvement must benefit the assessed property, and that benefit must be special and local, that is, the benefit to the specific property must be substantially greater than to the public in general.” “We conclude that a frontage-only assessment of a newly opened road is not immune from attack on justice and fairness grounds solely because the objecting property owner cannot establish that its assessment exceeds benefit. On the other hand, the statute does not compel assessment on non-fronting properties.” However, the objecting property can claim that “omitting any and all property owners not fronting Sterling Boulevard was neither just nor fair pursuant to N.J.S.A. 40:56-54 because they also enjoyed a special benefit from the new roadway.” “[A] court may not determine that a frontage-only assessment is just and fair in a vacuum without regard to proffered evidence of benefit elsewhere.”

Mirabella v. Villard, 853 F.3d 641 (3rd Cir. 2017)

https://scholar.google.com/scholar_case?case=4673683008966062739&q=15-3171&hl=en&as_sdt=3,31

Homeowners who petitioned their local government for assistance in a dispute with their neighbors involving disturbance of wetlands on municipal property and due to inaction by the local government informed the local government that they would be an indispensable party to litigation and who received an email from a municipal official informing them to refrain from contacting the governing body and any other municipal employee other than the attorney adequately alleged First Amendment claims; a retaliation claim and a violation of their right to petition. However, because the rights allegedly violated were not clearly established, the municipal official “would not have understood that his ‘no contact’ email violated [plaintiffs] First Amendment rights” and was entitled to qualified immunity.

“To plead retaliation for the exercise of First Amendment rights, a plaintiff must allege ‘(1) constitutionally protected conduct, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action.’” “The Mirabellas engaged in constitutionally protected speech and petitioning when they protested the Township's failure to protect the open space and threatened litigation.” Whether an act is retaliatory is an objective question – “whether the act would deter a person of ordinary firmness, not whether the plaintiff was deterred.” Because the ‘no contact email’ barred plaintiffs “from communicating with Township employees about any topic, not only the threatened litigation, as to which limits on communication might have been ‘prudent,’” it was a retaliatory act.

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The rights violated by the official were “the right to be free from a retaliatory restriction on communication with one’s government, when the plaintiff has threatened or engaged in litigation against the government” and the “right to petition the government for redress of grievances.” These rights were not clearly established by a “robust consensus of cases or persuasive authority” and as a result, the officials was entitled to qualified immunity.

Givaudan Fragrances Corporation v. Aetna Casualty & Surety Company, 227 N.J. 322 (2017)

https://scholar.google.com/scholar_case?case=5211968514322504590&q=A-16-25&hl=en&as_sdt=4,31

Post-lost assignment of insurance does not nullify insurance notwithstanding anti-assignment clause in policy. The decision is rooted in the public policy against allowing restraints on alienation of choses in action and because the assignment did not increase the risk to the insurer. The post-loss assignment does not alter the insurer’s liability for indemnifying the underlying insured event.

NL Industries, Inc. v. State of New Jersey, 228 N.J. 280 (2017)

https://scholar.google.com/scholar_case?case=10263826248880339383&q=076550&hl=en&as_sdt=4,31

[T]he Spill Act contains no clear expression of a legislative intent to waive the State's sovereign immunity retroactively to cover periods of State activity prior to the Spill Act's enactment. Absent a clear and specific indication that the Legislature intended to impose a retroactive liability that could have profound impact on the fiscal affairs of the State, retroactive waiver of the State's sovereign immunity for Spill Act contribution claims concerning pre-Act activities will not be inferred.”

Conley v. Guerrero, 228 N.J. 339 (2017)

https://scholar.google.com/scholar_case?case=9094641806764600105&q=conley+v.+guerrero&hl=en&as_sdt=4,31

Supreme Court exercises its constitutional authority over the practice of law and finds that an attorney's notice of disapproval of a real estate contract may be transmitted by fax, e-mail, personal delivery, or overnight mail with proof of delivery. Notice by overnight mail will be effective upon mailing. The attorney-review period within which this notice must be sent remains three business days.

Elazar v. Macrietta Cleaners, Inc., 230 N.J. 123 (2017)

https://scholar.google.com/scholar_case?case=1110336801106713192&q=A-11+September+Term+2016&hl=en&as_sdt=4,31

“When a plaintiff is injured by a third party and has no reason to believe that another party, specifically a public entity, is responsible, the discovery rule applies to toll the accrual date that triggers the notice-of-claim requirement.”

Thurber v. Thurber, A-4578-14T4 (Jan. 17, 2017)

https://scholar.google.com/scholar_case?case=1372207973176808272&q=A-4578-14T4&hl=en&as_sdt=4,31

A forged deed is deemed void and a nullity, but a person who knows that a forged deed that transfers her ownership interest has been filed, but does not repudiate that conduct and acts to later approve the conduct and benefits from the same, has ratified the conduct and loses the right to challenge the forgery.

Timber Ridge, LLC v. Borough of Lindenwold, A-0617-15T4 (Feb. 2, 2017)

https://scholar.google.com/scholar_case?case=5307588071284767504&q=A-0617-15T4&hl=en&as_sdt=4,31

“Although a municipality is not mandated to provide residential trash removal services, it must not discriminate between multifamily property owners and single-family home owners when it chooses to provide such a service.” Multifamily property owners were not required to avail themselves of a municipally-offered carting service and did not have to pay for the service if they declined to use it.

Rega v. Aranha, A-1668-15T4 (Feb. 3, 2017)

https://scholar.google.com/scholar_case?case=7075972383699746368&q=A-1668-15T4&hl=en&as_sdt=4,31

The pre-approval of a loan is not the same as a mortgage commitment. The Home Mortgage Disclosure Act, 12 U.S.C.A. §§ 2801-2811, does not provide for a private right of action.

State v. Flarlas, A-3775-14T2 (Feb. 9, 2017)

https://scholar.google.com/scholar_case?case=4545219893295811614&q=A-3775-14T2&hl=en&as_sdt=4,31

Penalty assessment for violation of Uniform Construction Code reduced where defendant found to violate provisions of the UCC, rather than orders of the construction official because UCC has different penalties for different infractions.

New Jersey Turnpike Authority v. Elizabeth City, Tax No. 004383-2014, 013888-2015 (Feb. 10, 2017)

https://scholar.google.com/scholar_case?case=16088173510136674505&q=No.+004383-2014,&hl=en&as_sdt=4,31

For a governmental agency to be exempt from local property taxation under N.J.S.A. 27:23-12, the property must be used in furtherance of the agency's statutory mandate, used for the agency's purposes, or presently intended to be put to such use. “A property which is ‘not now in the public use or presently intended for public use is taxable even when owned by bodies having a right to tax exemption with respect to property used for an appropriate purpose.’” With respect to a cell tower, the question is whether the governmental agency leased the tower in an effort to further the agency’s purposes, or primary to improve the wireless carrier’s coverage.

Moon Landscaping, Inc. v. Burris Construction Company, Inc., A-2844-14T3 (Mar. 6, 2017)

https://scholar.google.com/scholar_case?case=14770396381324580346&q=A-2844-14T3&hl=en&as_sdt=4,31

Settlement agreement enforced notwithstanding attorney’s conflict of interest. “[T]he RPCs are generally enforced ‘by this Court through the disciplinary mechanisms we have established; and . . . punishment for violations of those rules fall, with exceedingly rare exceptions, on the offending attorney rather than upon his or her client.’”

Medford Lakes Colony Club v. Maida, A-4833-14T4 (Mar. 2, 2017)

https://scholar.google.com/scholar_case?case=11821639903479568761&q=A-4833-14T4&hl=en&as_sdt=4,31

Lake club had the right to remove a dock constructed by a lake front owner who had not paid dues or received permission from club to construct dock. Laches did not prevent the club from enforcing its rights where the court found that defendant “was a free-rider for twenty years while other residents shouldered the expense of maintaining the lake.”

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Caltabiano v. Gill, A-2805-16T4 (Mar. 24, 2017)

https://scholar.google.com/scholar_case?case=5799150465842488894&q=A-2805-16T4&hl=en&as_sdt=4,31

Reduction in size of Salem County Board of Chosen Freeholders from seven to five members, as approved by the voters, did not require terminating the existing terms of office of all board members and beginning with a whole new make-up of the board as proposed by the County Clerk. “In construing statutes, courts should give effect to each provision and they should be ‘interpreted so they do not conflict.’” [citation omitted].

Free-Will, LLC v. City of Wildwood, No. 006799-2008, 009191-2009, 017714-2009 (NJ Tax 2017)

https://scholar.google.com/scholar_case?case=11326434525845207059&q=006799-2008.&hl=en&as_sdt=4,31

For property tax assessment purposes, property must be valued at its highest and best use. “The highest and best use analysis requires sequential consideration of the following four criteria, determining whether the use of the subject property is: 1) legally permissible; 2) physically possible; 3) financially feasible; and 4) maximally productive.” It is not based on the value of its current use, but the use that maximizes an investment property’s value. “If a party seeks to demonstrate that a property’s highest and best use is other than its current use, it is incumbent upon that party to establish that proposition by a fair preponderance of the evidence.” “Pursuant to N.J.S.A. 54:51A-6a, commonly known as Chapter 123, in a non-revaluation year an assessment must be reduced when the ratio of the assessed value of the property to its true value exceeds the upper limit of the common level range. The common level range is defined by N.J.S.A. 54:1-35a(b) as ‘that range which is plus or minus 15% of the average ratio’ for the municipality in which the subject property is located.” The retrofitting or remediation of deferred maintenance of a commercial property does not constitute an improvement permitting an added assessment.

Bass v. Spartan Oil Company, A-1326-15T3 (April 24, 2017)

https://scholar.google.com/scholar_case?case=5924161596381077282&q=A-1326-15T3&hl=en&as_sdt=4,31

The right to receive holdover rent is a legal right. The waiver of such right must be intentionally and voluntarily relinquished and the evidence of a waiver clear and unequivocal.

Friends of Loew’s, Inc. v. City of Jersey City, A-4876-14T1 (April 24, 2017)

https://scholar.google.com/scholar_case?case=8021232675990089629&q=A-4876-14T1&hl=en&as_sdt=4,31

N.J.S.A. 40A:12-14(c) provides that a lease by a governmental agency to a nonprofit corporation or association for a public purpose “shall be authorized by resolution, in the case of a county, or by ordinance, in the case of a municipality, and may be for nominal or other consideration” and must specify the term of the lease. Where the ordinance authorizes an initial term of years with extensions, a new ordinance is not required at the time the lessee exercises its right to extend the lease.

Czyz v. Carrington Mortgage Services, LLC, A-1523-15T2 (May 2, 2017)

https://scholar.google.com/scholar_case?case=5396348828925474326&q=A-1523-15T2&hl=en&as_sdt=4,31

A spouse has a right of joint possession to the principal marital residence, N.J.S.A. 3B:28-3, but that right is subject to the lien of a mortgage, if placed on the residence before the marriage. N.J.S.A. 3B:28-3.1. A claim for tortious injury to real property, a cause of action for fraud, and a claim for breach of the implied covenant of good faith and fair dealing must each be filed within six years after the cause of action has accrued. N.J.S.A. 2A:14-1. A claim for money damages under the

Truth In Lending Act must be asserted within one year after the date upon which the loan is closed. 15 U.S.C.A. § 1640(e).

PPG Industries, Inc. v. J. Goldenberg Inc., A-0077-15T3 (May 8, 2017)

https://scholar.google.com/scholar_case?case=14064385862910119072&q=A-0077-15T3&hl=en&as_sdt=4,31

The preponderance of the evidence standard must be met for one claiming adverse possession. An urban alley is not a “woodlands or uncultivated tract” even if unimproved. Adverse possession may be obtained over an easement where the benefit of the easement has been abandoned and the owner of the servitude took action inconsistent with the intent of the easement. “The term ‘hostile’ does not mean that there has to be ill will or malevolence, but the term means only that one in possession of land claims the exclusive right thereto.” The required 30-year term may be established by tacking, “the accumulation of consecutive periods of possession by parties in privity with each other.” The issue is privity of possession and therefore tacking is allowed where a property is transferred by foreclosure.

Russo v. Plumsted Township, A-1564-15T2 (May 16, 2017)

https://scholar.google.com/scholar_case?case=1904789450270554187&q=A-1564-15T2&hl=en&as_sdt=4,31

N.J.S.A. 40A:14-118 permits a municipality to retain a director of public safety to “act in all manners relating to police function in the municipality.” Although he may not take actions limited by statute to those played by police officers, he may advise them to enforce the law.

In Re Torres, No. 09-34115 (RG), Adv. No. 11-2336 (RG), (N.J. Bank. June 15, 2017)

https://scholar.google.com/scholar_case?case=7747638424906674369&q=Carlos+E.+Torres+and+Marguerite&hl=en&as_sdt=3,31

The court declines to expand *Sears Mortgage v. Rose*, 134 N.J. 326 (1993) to permit a non-insured seller to recover against a title insurer under agency theory. “Unlike the buyer in *Sears*, a seller is simply not a party to the contract with the insurer, and therefore the insurer has no duty to protect the seller from the tortious acts of the title company.

Joemax Realty, Inc. v. Stonewall of Saddle River, L.P., A-3377-14T2 (June 20, 2017)

https://scholar.google.com/scholar_case?case=10067130680058392247&q=A-3377-14T2&hl=en&as_sdt=4,31

The statute of limitations on claims under the Uniform Fraudulent Transfer Act is four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was discovered by the claimant.

Kernahan v. Home Warranty Administrator of Florida, Inc., A-1355-16t4 (June 23, 2017)

https://scholar.google.com/scholar_case?case=4467479309085296613&q=kernahan+v+home&hl=en&as_sdt=4,31

An arbitration agreement that does not clearly and unambiguously provide that the parties are waiving their right to pursue a judicial remedy renders such an agreement unenforceable. A clause that just states that arbitration is the exclusive remedy is not sufficient.

Caro v. Perez, A-2210-15T3 (June 26, 2017)

https://scholar.google.com/scholar_case?case=17516389081583251542&q=A-2210-15T3&hl=en&as_sdt=4,31

“Purchaser’s failure to make a timely deposit in accordance with the terms of the real estate sales contract did not constitute a material breach, as it did not defeat the overall purpose of the contract.” The Seller didn’t ask for the deposit and until there was a claim of breach and then it was promptly

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paid. “The essence of the contract was the sale of the property to plaintiff for the agreed upon price . . . for which she remained ready and willing to perform.”

5 Perry Street, LLC v. Southwind Properties, LLC, A-0178-15T2 (June 27, 2017)

https://scholar.google.com/scholar_case?case=1604695094413224332&q=A-0178-15T2&hl=en&as_sdt=4,31

The transfer of a deed to an insider following the entry of judgment of foreclosure is void. The transfer was also fraudulent as to present creditors because the debtor made the transfer without receiving fair value and the debtor was insolvent at the time or became insolvent as a result of the transfer. The transfer was also fraudulent because the debtor made the transfer with the actual intent to hinder, delay, or defraud creditors.

Russo v. PPN Title Agency, LLC, A-2297-15T4 (July 20, 2017)

https://scholar.google.com/scholar_case?case=10585312035739989989&q=A-2297-15T4&hl=en&as_sdt=4,31

A title company’s liability is limited to the policy and the company is not liable in tort for negligence in searching records unless it has agreed to conduct a search and provide an abstract of title in addition to the policy.

Mroz v. Handler, A-3957-15T2 (July 31, 2017)

https://scholar.google.com/scholar_case?case=7420613094172315041&q=A-3957-15T2&hl=en&as_sdt=4,31

Lease containing right of first refusal held to be invalid and unenforceable due to attorney’s conflict of interest. R.P.C. 1.8(a) forbids “[a] lawyer [from] enter[ing] into a business transaction with a client or knowingly acquir[ing] an ownership, possessory, security or other pecuniary interest adverse to a client unless’ the attorney meets the following three conjunctive requirements:

- (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;
- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and
- (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.”

Burke v. Donlon, A-3802-15T2 (Aug. 11, 2017)

https://scholar.google.com/scholar_case?case=3035368153902347811&q=A-3802-15T2&hl=en&as_sdt=4,31

“[T]o establish the remedy of specific performance, a party must demonstrate that the contract in question is valid and enforceable at law. [citation omitted]. Further, the party must show that ‘the terms of the contract are expressed in such fashion that the court can determine, with reasonable certainty, the duties of each party and the conditions under which performance is due.’ [citation omitted]. Lastly, the party must demonstrate that an order compelling performance of the contract will ‘not be harsh or oppressive.’ [citation omitted] . . . and “whether the performance of the contract represents an equitable result.”

Newton West, LTD v. Town of Newton, A-1976-15T1 (Sept. 8, 2017)

https://scholar.google.com/scholar_case?case=1491706090305573529&q=A-1976-15T1&hl=en&as_sdt=4,31

The Freeze Act does not have any time period for the filing of a motion to enforce its provisions and the courts look to the doctrine of laches to determine whether an alleged delay in filing was reasonable. A Freeze Act action is independent of any tax appeal which challenges the fairness of an assessment. “There are two exceptions to the Freeze Act. ‘[W]hen the taxing authority demonstrates circumstances occurring after the base year assessment date that result in an increase in the value of the property or when the taxing authority implements a revaluation program affecting all property in the tax district.’”

Holloway v. McManus, A-4804-15T3 (Sept. 11, 2017)

https://scholar.google.com/scholar_case?case=15365731932312689613&q=A-4804-15T3&hl=en&as_sdt=4,31

Access easement shown on subdivision map was an offer of dedication to the municipality, but the actual dedication was not consummated because there was no acceptance.

Emigrant Mortgage Company, Inc. v. Costa, A-4888-14T1 (Sept. 18, 2017)

https://scholar.google.com/scholar_case?case=7886344419805773524&q=A-4888-14T1&hl=en&as_sdt=4,31

“The New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 to -35 (HOSA), authorizes a homeowner who has borrowed money for home improvements to assert against the loan creditor all affirmative claims and defenses the borrower may have against the home improvement contractor if the contractor arranged the loan.”

Hanover Floral Co. v. East Hanover Township, No. 018815-2012 (Tax Sept. 29, 2017)

https://scholar.google.com/scholar_case?case=10441437959232643629&q=018815-2012&hl=en&as_sdt=4,31

Where property taxes are paid on the property of another by mistake as defined in N.J.S.A. 54:4-54 a refund is mandatory. The refund is also required under general equitable principles where the municipality intimidated the plaintiff to pay the taxes notwithstanding the fact that the plaintiff informed the municipality that it did not own the property. The court only has authority to order a refund for the taxes paid for the year in which the complaint is filed and the three years prior because of the three-year statute of limitations.

1701 E. Main, LLC v. Wawa, Inc., A-5469-15T2 (Oct. 11, 2017)

https://scholar.google.com/scholar_case?case=4867693620550287460&q=A-5469-15T2&hl=en&as_sdt=4,31

“[A] servitude will be deemed modified or terminated when the party possessing the servitude’s benefit not only ‘communicates . . . by conduct, words, or silence, an intention to modify or terminate the servitude,’ but also communicates ‘under circumstances in which it is reasonable to foresee that the burdened party will substantially change position on the basis of that communication, and the burdened party does substantially and detrimentally change position in reasonable reliance on that communication. Restatement (Third) of Property Sec. 7.6 (2000).’”

Congregation Chateau Park Sefard v. Township of Lakewood, No. 010868-2016 (Tax Oct. 20, 2017)

https://scholar.google.com/scholar?hl=en&as_sdt=4%2C31&q=010868-2016&btnG=

The parsonage exemption from local property taxes is not contingent on the ownership or exempt status of the building in which the occupant of the parsonage officiates at worship service. The statute “provides for an exemption if five factors are met: (1) the residence must be occupied as a

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parsonage by the officiating clergyman of a religious corporation of this State; (2) the land on which the residence sits, not in excess of five acres, must be necessary for the fair enjoyment of the premises and not devoted to a purpose other than as a parsonage; (3) the entity claiming the exemption must not be conducted for profit; nor may the building or land associated with the parsonage be conducted for profit; (4) the entity claiming the exemption must own “the property in question”; and (5) the entity seeking the exemption must be authorized to carry out the purposes of a parsonage.”

In The Matter of Appeal of the Decision of the Franklin Township Ethics Board (Somerset County) in FTEB Complaint #11-01, A-2561-15T3 (Nov. 14, 2017)

https://scholar.google.com/scholar_case?case=10792660062869420688&q=A-2561-15T3&hl=en&as_sdt=4,31

A statute that defines a quorum as a majority or larger percentage “of all the members or of the authorized membership” require a fixed number of members to be present at the meeting which remains constant despite vacancies.

Brancato v. Martin, A-2323-15T1 (Nov. 28, 2017)

https://scholar.google.com/scholar_case?case=6491281144962144400&q=A-2323-15T1&hl=en&as_sdt=4,31

Deed valid notwithstanding false statement of consideration.

Rosso v. Borough of Point Pleasant, No. 005775-2017 Dec. 21, 2017)

https://scholar.google.com/scholar_case?case=4575711464213249840&q=No.+005775-2017&hl=en&as_sdt=4,31

The "Welcome Stranger" reassessment based on the purchase of a property is a spot assessment "commonly recognized as an intentionally discriminatory practice," by reassessing only properties that were the subject of a recent sale, while leaving undisturbed the assessments of other properties in the same class that have not been sold.

Russo v. Township of Plumsted, No. 015983-2012, 010713-2013, 010167-2014 (Dec. 28, 2017)

https://scholar.google.com/scholar_case?case=6548366062710758767&q=No.+015983-2012&hl=en&as_sdt=4,31

Where plaintiff used property for a variety of commercial uses in addition to farming, plaintiff did not prove by a preponderance of the evidence that the dominant use of the property was agricultural or horticultural on the relevant valuation date and therefore farmland assessment for that year properly denied. In addition, although the predominant use of the property for the next two years was conceded to be agricultural or horticultural, the statute requires that property be actively devoted to such uses for two consecutive years before qualifying for farmland assessment, and thus the assessment for those years was also properly denied.

Verizon New Jersey, Inc. v. J. F. Kiely Construction Co., A-1078-16T3 (Dec. 28, 2017)

https://scholar.google.com/scholar_case?case=3365631604361066479&q=A-1078-16T3&hl=en&as_sdt=4,31

Notwithstanding defendant’s violation of the Underground Facility Protection Act by commencing construction prior to its permitted “start date” it was error to grant summary judgement because there remained a material question as to whether plaintiff provided inaccurate mark outs of the location of the underground utilities that were damaged.

Lozman v. Riviera Beach, 138 S. Ct. 1945 (2018)

https://scholar.google.com/scholar_case?case=3399406490150712002&q=lozman+v+city+of+riviera+beach+fla&hl=en&as_sdt=3,31

The existence of probable cause to make an arrest does not bar a First Amendment retaliation claim where the arrest was the product of an official city policy to retaliate against Plaintiff for his earlier protected speech.

NRG REMA LLC v. Creative Environmental Solutions Corp., 454 N.J. Super. 578 (App. Div. 2018)

https://scholar.google.com/scholar_case?case=10463695137771606448&q=A-0567-16T3&hl=en&as_sdt=4,31

In contract for the demolition of a structure, where contractor paid the owner for the right to demolish the building and salvage materials, the value of the salvaged materials, reduced by the contractor's payment to owner, enhances the size of the lien fund available to unpaid subcontractors under the Construction Lien Law (CLL), N.J.S.A. 2A:44A-1 to -38.

Rapisardi v. Estate of Lange, A-3722-16T2 (Mar. 27, 2018)

https://scholar.google.com/scholar_case?case=5787568633044538682&q=A-3722-16T2&hl=en&as_sdt=4,31

A riparian right is not the same as a riparian grant. A riparian right is the right of a riparian landowner to make reasonable use of adjacent water. A riparian grant is the method that the State conveys riparian lands to its citizens. Once the land that is subject to a riparian right is submerged by water, the owner loses the right over it as title vests in the State.

Bianchi v. Ladjén, A-3310-15T4 (April 23, 2018)

https://scholar.google.com/scholar_case?case=597952541779321378&q=A-3310-15T4&hl=en&as_sdt=4,31

Risk of loss passed from seller to purchaser after seller signed over the deed, handed over the keys and the checks for the purchase price had cleared.

An attorney's violation of an RPC does not per se create a viable claim for malpractice. "[T]he Court has permitted the standards of care to be shaped, to some extent, by the legal profession itself through the development and continuation of prevailing customs and practices." "[W]e do not rule out the possibility of reasonable disagreement among qualified legal experts about whether the standards of care for a buyer's attorney include an obligation to advise a client of the importance of obtaining homeowner's insurance when the buyer takes title to the property. There is also legitimate room for debate over whether the standards of care at least entail a duty on the part of the buyer's attorney to alert his or her client about the significance and meaning of the contract documents and what legal responsibilities will flow to the buyer, including the risk of loss at the point in time when the title passes." "[T]he risk of loss until the closing was completed was expressly allocated by the sales contract to the Ladjens as sellers. Once the funds cleared, the risk passed to plaintiff as the buyer. The title agent had no authority to alter that allocation through an escrow agreement. Nor did the title agent, in his dual and neutral role, have the prerogative to draft an escrow agreement that would favor the interests of one party to the transaction over the other party."

Jodzio v. Sliwowski, A-0207-15T4 (April 24, 2018)

https://scholar.google.com/scholar_case?case=7052859961649484297&q=A-0207-15T4&hl=en&as_sdt=4,31

One is liable for damage to another's property caused by surface water from improvements on one's property only if the actions taken were intentional and unreasonable or result from negligence, reckless or abnormally dangerous conduct.

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Birch Investments, LLC v. Keymer, A-1840-16T4 (April 26, 2018)

https://scholar.google.com/scholar_case?case=11991197089309637905&q=1840-16T4&hl=en&as_sdt=4,31

Tax sale foreclosure would not extinguish a development easement under the Agriculture Retention and Development Act because it is an easement in gross.

Jimenez v. Jimenez, A-2495-16T1 (May 8, 2018)

https://scholar.google.com/scholar_case?case=3151172133432869828&q=A-2495-16T1&hl=en&as_sdt=4,31

N.J.S.A. 46:3-17.4 precludes a spouse's unsecured creditor from forcing a partition of real property owned as tenants by the entirety even where the property is not the marital residence.

Kovacs v. Monroe Township, No. 013521-2017 (Tax May 16, 2018)

https://scholar.google.com/scholar_case?case=2608536396776056740&q=013521-2017&hl=en&as_sdt=4,31

Plaintiff entitled to tax relief for 3 years in which error was made in assessment regarding land under pole barn. The Correction of Errors statute authorizes the correction of mistakes that are indisputable and not subject to assessor's exercise of discretion.

Waterfront Commission of New York Harbor v. Murphy, No. 18-650 (SDW) (LDW) (D. N.J. June 1, 2018)

[https://scholar.google.com/scholar_case?case=3521954029688152917&q=18-650+\(SDW\)&hl=en&as_sdt=3,31](https://scholar.google.com/scholar_case?case=3521954029688152917&q=18-650+(SDW)&hl=en&as_sdt=3,31)

New Jersey enjoined from withdrawing from the Waterfront Commission and dissolving the compact. A state is not free to modify or dissolve an interstate compact unilaterally.

City Council of the City of Orange Twp. v. Edwards, 455 N.J. Super. 261 (App. Div. 2018)

https://scholar.google.com/scholar_case?case=5474922901244332310&q=3729-15T4&hl=en&as_sdt=4,31

Mayor's appointment of Business Administrator was ultra vires in the primary sense and therefore void because the Mayor failed to obtain the advice and consent of the Council which was required under the form of government. Even though the Business Administrator may be a de facto officer, he did not serve in the position in good faith and the disgorgement of his salary was the appropriate remedy.

Fenner Real Estate, Inc. v. Kramer, A-1989-16T4 (June 20, 2018)

https://scholar.google.com/scholar_case?case=13470103766059094457&q=A-1989-16T4&hl=en&as_sdt=4,31

“An accord and satisfaction is an agreement which, upon its execution, completely terminates a party's existing rights and constitutes a defense to any action to enforce pre-existing claims. The traditional elements of an accord and satisfaction’ are ‘(1) a dispute as to the amount of money owed; (2) a clear manifestation of intent by the debtor to the creditor that payment is in satisfaction of the disputed amount; (3) acceptance of satisfaction by the creditor.’ ‘[A]n accord and satisfaction requires a clear manifestation that both the debtor and the creditor intend the payment to be in full satisfaction of the entire indebtedness.’ ‘In the absence of evidence of such intention, the defense of accord and satisfaction is unavailing to defeat a creditor's claim for payment in full.’” [internal citations omitted].

320 Associates, LLC v. New Jersey Natural Gas Co., A-1831-16T2 (June 29, 2018)
https://scholar.google.com/scholar_case?case=4514158308145217824&q=A-1831-16T2&hl=en&as_sdt=4,31

Plaintiff's claim for permanent loss in the value of its land due to migration of contaminants untimely as being beyond the 6-year statute of limitations. Plaintiff's negligence claim also dismissed because migration of pollutants does not constitute a new discharge. However, if the nuisance can be abated, the failure to abate constitutes a continuing tort that entitles plaintiff to relief.

Vidi v. Cumberland Mutual Fire Ins. Co., A-1527-16T3 (July 5, 2018)
https://scholar.google.com/scholar_case?case=13317843917182770541&q=A-1527-16T3&hl=en&as_sdt=4,31

In a first-party insurance coverage case, coverage may be forfeited upon a finding that there was a material and willful breach of the insured's duty to cooperate with the insurer's investigation that materially diluted the insurer's ability to evaluate the claim. Notwithstanding an insured's delay, summary judgment may not be granted unless the trial court finds that carrier's ability to evaluate the claim was materially diluted.

Duong v. Stein, A-5043-16T2 (July 5, 2018)
https://scholar.google.com/scholar_case?case=16128260201288311001&q=A-5043-16T2&hl=en&as_sdt=4,31

Sellers entitled to deposit and damages for purchasers' failure to close where purchasers argued that they lost their mortgage commitment, but closed on a different house with the same lender within the time extended by sellers.

Mazel, LLC v. Township of Toms River, A-4636-15T4, A-4637-15T4 (July 10, 2018)
https://scholar.google.com/scholar_case?case=17659622579342837971&q=A-4637-15T4&hl=en&as_sdt=4,31

"Two types of conduct can give rise to nuisance claims: affirmative acts and failures to act while under a duty to do so." However, "absent a special relationship, there is no duty to control a third person's conduct." The owner of an "open" facility that provides residence to physically and mentally disabled tenants is statutorily prohibited from exercising the degree of control necessary to establish the special relationship required to impose the duty.

Borough of Red Bank v. RMC-Meridian Health, Nos. 000007-2016, 000008-2016 (NJ Tax July 25, 2018)
https://scholar.google.com/scholar_case?case=15156666131879449326&q=000007-2016&hl=en&as_sdt=4,31

Pursuant to the tax exemption cessation statute, N.J.S.A. 54:4-63.26, there must be a change in use as a condition precedent for a local property tax exemption to cease.

Burke v. Bernardini, A-2955-16T1 (July 13, 2018)
https://scholar.google.com/scholar_case?case=3858619046358658532&q=A-2955-16T1&hl=en&as_sdt=4,31

Plaintiff and defendant were involved in a romantic relationship, during which plaintiff purchased property on which he built a house. The original deed was to plaintiff only but he subsequently executed a deed to himself and to defendant as joint tenants with right of survivorship. Upon breakup of the relationship, defendant entitled to partition because the acceptance of a deed is deemed prima facie full execution of an executory contract unless the contract contains covenants collateral to the deed. "The deed contained no covenants or conditions collateral to the deed. Thus, even if the parties had agreed to a joint venture, that agreement became void, and the deed, not the

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agreement, determined the parties' rights. The deed expressly provided for a joint tenancy with the right of survivorship. Thus, each party is entitled to an equal distribution of the net sale proceeds as a matter of law.”

Torah v. Aryeh, A-3344-16T2 (July 26, 2018)

https://scholar.google.com/scholar_case?case=11179867204405806245&q=A-3344-16T2&hl=en&as_sdt=4,31

“Under Judaic law, an adjoining property owner has a right of first refusal to purchase neighboring property.” “[A]bsent statutory authority, courts should never coerce or compel a litigant to submit to binding arbitration. . . . Because the trial court declined to vacate the [first arbitration] award, it lacked authority under N.J.S.A. 2A:23B-23(c) to compel a second round of arbitration.”

Kwok Fang Chang Trust v. Estate of Sylvia Malakoff, A-5036-16T4 (July 27, 2018)

https://scholar.google.com/scholar_case?case=6663120042580218796&q=A-5036-16T4&hl=en&as_sdt=4,31

Notwithstanding a lease clause that triggered a default upon the death of the tenant, the son and grandson of decedent tenant were entitled to remain in possession of the decedent’s apartment following her death because they were “functional tenants” who (1) continuously resided in the premises; (2) substantially contributed to the tenancy’s financial obligations; and (3) the landlord acknowledged the contribution and acquiesced to the same.

Chabad of Old Tappan, Inc. v. Borough of Old Tappan, No. 012869-2017 (Tax Aug. 14, 2018)

https://scholar.google.com/scholar_case?case=8496839615679478603&q=012869-2017&hl=en&as_sdt=4,31

The statute requires five elements to qualify for a parsonage exemption to taxation: “(1) the residence must be occupied as a parsonage by an officiating clergyman of a religious corporation; (2) the parcel of land must be necessary for the fair enjoyment of the premises, not used for purposes other than a parsonage, and cannot exceed five acres; (3) the religious corporation must not be conducted for profit, nor can the parsonage property be used for profit; (4) the religious corporation must own the property; and (5) the religious corporation must be authorized to carry out the purposes of a religious organization.” “[T]he statute does not contain a requirement that the exempt use complies with zoning ordinances.”

State v. Quaker Valley Farms, LLC, 235 N.J. 37 (2018)

https://scholar.google.com/scholar_case?case=10133961884281010983&q=078517&hl=en&as_sdt=4,31

An easement under the Farmland Preservation Program must be read and interpreted so that each individual provision is consistent with the overall intent of the document, giving meaning to all provisions. As a result, the owner had the right to construct hoop houses for its flowers, but did not have the right to do so in a manner that permanently damaged prime agricultural soil. An approved soil conservation plan from the local soil conservation district did not provide the necessary authority because that plan “was limited to concerns about soil erosion, sedimentation, and related storm water management controls.” Its purpose was not to protect agricultural soil. “If the SADC fails to [enact rules] to establish guidance on the extent of soil disturbance that is permissible on preserved farmland, then it can expect administrative due process challenges to its enforcement actions.”

McKay v. Pryor, A-0097-16T2 (Aug. 27, 2018)

https://scholar.google.com/scholar_case?case=15346273178745766094&q=A-0097-16T2&hl=en&as_sdt=4,31

“N.J.S.A. 40:69A-122 requires the Council's advice and consent on the appointment of any attorney, including labor counsel.”

Emerald Bay Developers, LLC v. Lenyk Automotive, Inc., A-2875-16T1 (Sept. 25, 2018)

https://scholar.google.com/scholar_case?case=8301584896906656877&q=2875-16T1&hl=en&as_sdt=4,31

“A claim for contribution under the Spill Act inherently entails an effort by a defendant or other party charged with liability under the Act to compel other responsible parties to ‘contribute’” . . . and does not provide a private action for damages to a non-discharger. To establish causation under the Act, expert testimony is required “to show the scientific nexus between a defendant’s conduct and the alleged contamination.”

Albert Samuels Trust v. Settimo and The Three Musketeers, LLC, A-0576-17T2 (Oct. 2, 2018)

https://scholar.google.com/scholar_case?case=16745093391482889109&q=0576-17T2&hl=en&as_sdt=4,31

A contract that provides for a development bonus if approval is obtained allowing for construction on a particular lot which does not provide any limiting language that suggests that the bonus is contingent upon development only or exclusively on that lot, is enforceable even though other property was required to be acquired to make development possible.

Huntley v. Finbar Equity Investments, LLC, A-1417-17T2 (Oct. 4, 2018)

https://scholar.google.com/scholar_case?case=14408919744966561276&q=1417-17T2&hl=en&as_sdt=4,31

Conservation easement is not enforceable where it was sent to the municipality to be held in escrow pending the issuance of construction permits and the developer abandoned the project.

Waterside Plaza Apts., LLC v. Brand, A-0973-17T2 (Oct. 11, 2018)

https://scholar.google.com/scholar_case?case=6698354590533931969&q=A-0973-17T2&hl=en&as_sdt=4,31

“If the lease clearly includes counsel fees in the definition of rent, then . . . the court may award such reasonable fees to the landlord in a summary disposes action. . . . [W]here the lease requires the tenant to pay legal fees and other costs but does not characterize those expenses as ‘rent’ or as ‘additional rent,’ the landlord must seek a money judgment in a separate breach of contract suit.

Scotty Pine, Inc. v. Director, Division of Taxation, A-3837-16T2 (Oct. 12, 2018)

https://scholar.google.com/scholar_case?case=8674768061197360473&q=3837-16T2&hl=en&as_sdt=4,31

“[S]atisfaction of the postmark rule is not the only way in which a taxpayer can establish delivery of a document to be filed. The common law mailbox rule also remains as a viable method of establishing delivery.” “An attorney owes a duty to monitor whether a mailed document has actually been received and filed.”

Sesztak v. Great Northern Insurance Co., A-2846-15T4 (Nov. 14, 2018)

https://scholar.google.com/scholar_case?case=7598824119421771243&q=Sesztak+v.+Great&hl=en&as_sdt=4,31

“In order to rescind an insurance contract on grounds of equitable fraud, a party must demonstrate: (1) a material misrepresentation of a presently existing or past fact; (2) the maker's intent that the

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other party rely on the misrepresentation; and (3) detrimental reliance by the other party.” “Information provided to an insurer is material if ‘a reasonable insurer would have considered the misrepresented fact relevant to its concerns and important in determining its course of action.’” Plaintiff’s false statements that they intended to live in a house that they had constructed, rather than sell it, was grounds for the insurer to rescind the policy “because premium rates on homeowner’s policies do not reflect the higher risk of loss associated with a vacant home or a residence occupied by tenants.”

Charming Way Homeowners Association v. Miracle Investment Group Lakewood, A-5289-16T4 (Nov. 15, 2018)

https://scholar.google.com/scholar_case?case=10934474143320158811&q=Charming+Way+Homeowners&hl=en&as_sdt=4,31

Subdivision resolution and final plat that were recorded after the mortgage were subject to the earlier recorded mortgage absent actual knowledge of it.

McDonald v. City of Wildwood, A-0109-17T4 (Nov. 26, 2018)

https://scholar.google.com/scholar_case?case=14044732173681753072&q=McDonald+v.+City+of+Wildwood&hl=en&as_sdt=4,31

Claim of lost profits under a concessionaire agreement were too speculative to satisfy the legal standard of “reasonable certainty” where plaintiff was a new business operating in a new market.

Coddington Communities, LLC v. Mcdonfen, LLC, A-3565-16T3 (Nov. 27, 2018)

https://scholar.google.com/scholar_case?case=15749133400547145869&q=Coddington+Communities&hl=en&as_sdt=4,31

Real estate contract not formed until both purchasers signed it where it was not demonstrated that the purchasers were partners with authority to bind each other.

Chobar v. Township of Parsippany-Troy Hills, A-4148-16T1 (Nov. 28, 2018)

https://scholar.google.com/scholar_case?case=2045762730841239905&q=Chobar+v.+Township&hl=en&as_sdt=4,31

A claim of negligent inspection against a public entity is barred by the TCA, N.J.S.A. 59:2-6, which provides that a public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property. Steps taken by Township to repair water main fracture were not “palpably unreasonable.” “Palpably unreasonable” implies ‘behavior that is patently unacceptable under any circumstances’ and ‘it must be manifest and obvious that no prudent person would approve of its course of action or inaction.’” [citation omitted].

First Indemnity of America Insurance Company v. Blue Rose Corporation, A-0114-17T3, A-0115-17T3, A-0239-17T3 (Dec. 11, 2017)

https://scholar.google.com/scholar_case?case=3174784348931449926&q=Blue+Rose+Corp.&hl=en&as_sdt=4,31

Developer bound by terms of indemnity agreement entered into with party issuing performance bonds for the purpose of ensuring the completion of site improvements. “Plaintiff issued a bond to ensure the costs of improvements. The bond has no expiration date as its purpose is to ensure the improvements are completed to the satisfaction of the municipality. Therefore, the bond remains in effect until the required site improvements are completed.”

Milsted v. Local Finance Board, A-2311-17T1 (Dec. 28, 2018)

https://scholar.google.com/scholar_case?case=10829215576579445362&q=Milsted+v.+Local&hl=en&as_sdt=4,31

"Local government officers" are required to file a "financial disclosure statement" by April 30th of each year. N.J.S.A. 40A:9-22.6(a)-(b). The financial disclosure statement discloses information about the local government official's sources of income, certain business interests, and real estate holdings in New Jersey. If found guilty of failure to file a financial disclosure statement, the local government official "shall be fined not less than \$100 nor more than \$500." N.J.S.A. 40A:9-22.10(a). "The term 'local government officer' is defined as, any person whether compensated or not, whether part-time or full-time: (1) elected to any office of local government agency; (2) serving on a local government agency which has the authority to enact ordinances, approve development applications or grant zoning variances; (3) who is a member of an independent municipal, county or regional authority; or (4) who is a managerial executive employee of a local government agency, as defined in rules and regulations adopted by the Director of the Division of Local Government Services in the Department of Community Affairs pursuant to the "Administrative Procedure Act," [N.J.S.A.52:14B-1 to-31], but shall not mean any employee of a school district or member of a school board[.] [N.J.S.A. 40A:9-22.3(g).]" "[T]he term 'local government agency' is defined as, any agency, board, governing body, including the chief executive officer, bureau, division, office, commission or other instrumentality within a county or municipality, and any independent local authority, including any entity created by more than one county or municipality, which performs functions other than of a purely advisory nature, but shall not include a school board[.]" [N.J.S.A. 40A: 9-22.3(e).]"

Ayad v. Accura Home Inspection, A-2181-17T4 (Dec. 24, 2018)

https://scholar.google.com/scholar_case?case=1894097959307100159&q=ayad+v+&hl=en&as_sdt=4,31

Negligence of home inspector must be demonstrated by expert testimony. "[E]xpert testimony is required when the subject matter is so esoteric that jurors [or factfinders] of common judgment and experience cannot form a valid judgment." Rule 703 requires that an expert's opinion be based upon 'facts or data . . . perceived by or made known to the expert at or before the hearing.'"

R Realty LLC v. Little Falls Township, Tax Dec. 21, 2018

https://scholar.google.com/scholar_case?case=12299351502848473128&q=008007-2014&hl=en&as_sdt=4,31

Market data is required to determine the impact of a property's location in a flood hazard area on its market value for taxation purposes.

A franchise agreement and lease are voluntary contractual encumbrances on title, not encumbrances on land that would affect its value for taxation purposes.

Allen v. Estate of Allen, A-2605-17T1 (Jan. 7, 2019)

https://scholar.google.com/scholar_case?case=16137436895167104612&q=A-2605-17T1&hl=en&as_sdt=4,31

"[I]f individuals take property as tenants by the entirety, but are not married, they take the property as tenants in common, absent specific language creating a joint tenancy."

A constructive trust is a remedial device that will be imposed by a court of equity when the court finds "that the res has been received or retained through a 'wrongful act' which 'unjustly enriches' the recipient." [citations omitted].

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Hertz v. Borough of Lincoln Park, 31 N.J. Tax 1 (2019)

https://scholar.google.com/scholar_case?case=17245768459815549995&q=009897-2017&hl=en&as_sdt=4,31

Taxpayer has burden of proof to establish that not less than five acres are actively devoted to agricultural or horticultural use to qualify for Farmland Assessment. “An assessor should not have to look for undesignated or unidentifiable crops to determine whether land qualifies for Farmland Assessment. Areas alleged to be farmland must be maintained with requisite care, reasonably delineated and readily apparent upon inspection; . . .”

Ralph v. The Borough of Seaside Park, A-0601-17T3 (Jan. 22, 2019)

https://scholar.google.com/scholar_case?case=4031169602428573835&q=A-0601-17T3&hl=en&as_sdt=4,31

Sole surviving shareholders of a dissolved company had the authority to convey property. The transaction was “intra vires” and therefore voidable, but not “ultra vires” and void per se.

Just Pups, LLC v. Township of East Hanover, A-2135-17T3 (Jan. 24, 2019)

https://scholar.google.com/scholar_case?case=13276936422834192927&q=A-2135-17T3&hl=en&as_sdt=4,31

In a Faulkner Act municipality, the governing body serves as the local board of health and it properly decided to not renew a pep shop license upon the finding of several health violations.

In The Matter of Lakewood Township Fire District #1, A-3969-17T4 (Jan. 31, 2019)

https://scholar.google.com/scholar_case?case=7931763240077899345&q=A-3969-17T4&hl=en&as_sdt=4,31

The Vote By Mail Law applies to elections, not special meetings, of fire districts.

New Jersey Land Title Association v. Rone, 458 N.J. Super. 120 (App. Div.), certif. granted 238 N.J. 354 (2019)

https://scholar.google.com/scholar_case?case=7693416699980503956&q=New+Jersey+Land+Title+v.+Rone&hl=en&as_sdt=4,31

A county register or clerk does not have the authority to charge a "convenience fee" for the electronic filing of documents concerning real property.

Pennymac Loan Services, LLC v. Cruz, A-2092-17T1 (Feb. 28, 2019)

https://scholar.google.com/scholar_case?case=9250084360894498985&q=A-2092-17T1&hl=en&as_sdt=4,31

The doctrine of caveat emptor still applies at sheriff's sales, except in limited situations.

Main Land Sussex Company, LLC v. Shetty, A-5450-15T4 (Mar. 8, 2019)

https://scholar.google.com/scholar_case?case=4651730664719381605&q=A-5450-15T4&hl=en&as_sdt=4,31

Defendants violated the Uniform Fraudulent Transfer Act (UFTA), N.J.S.A. 25:2-20 to -33, when they transferred money received at the closing of the sale of a Dunkin' Donuts franchise to pay off debts and mortgages securing defendants' personal properties and distributed the remainder of the sales proceeds (which were all of the entity's assets) to its members. The transfers rendered the entity insolvent without paying the monies owed to plaintiff, the prior obligor.

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Newark Housing Authority v. Murphy, A-2327-17T1 (March 11, 2019)

https://scholar.google.com/scholar_case?case=12944551671638992208&q=A-2327-17T1&hl=en&as_sdt=4,31

Judgment of possession in landlord-tenancy case upheld where tenant breached the lease by engaging in criminal conduct, i.e., threatening and punching a housing authority agent.

JSM at Edison, LLC v. Edison Fair Rental Housing Board, A-4079-17T1 (April 5, 2019)

https://scholar.google.com/scholar_case?case=12918664627134383883&q=A-4079-17T1&hl=en&as_sdt=4,31

Landlord's decision to charge tenant for the cost of water in a lease renewal, after having not charged for water for the past 24 years, was a disguised rent increase in violation of the rent control ordinance.

Oettinger v. Iwaskiw, A-3966-17T3 (April 8, 2019)

https://scholar.google.com/scholar_case?case=13554432086821732283&q=A-3966-17T3&hl=en&as_sdt=4,31

Plaintiff presented sufficient proof that a business being operated out of a home involved in the repair of lawnmowers, weed wackers, leaf blowers, chain saws and other power tools created a private nuisance to avoid a motion for summary judgment. A physical injury is not required to establish that noise, fumes, smoke or odor constitute a nuisance; discomfort is enough.

Susko v. Borough of Belmar, A-3059-16T2 (April 22, 2019)

https://scholar.google.com/scholar_case?case=14071673542604094119&q=A-3059-16T2&hl=en&as_sdt=4,31

“[A] violation of N.J.S.A. 40:61-22(a)’s prohibition on unreasonable beach fees would entitle an injured plaintiff to an award of counsel fees under the CRA, but a violation of financial accounting rules would not.” Fees for parking on the street adjacent to the beach where the municipality did not charge for parking elsewhere consisted “beach fees” under the Public Trust Doctrine’s access requirements. N.J.S.A. 40A:5-29, authorizes a municipality to accept gifts made to it but it must utilize such gifts in the manner set forth in the conditions of the donation.

Gifford v. City of Jersey City, No. 18-5422 (ES)(SCM)(April 12, 2019)

https://scholar.google.com/scholar_case?case=7558605662312760373&q=18-5422&hl=en&as_sdt=3,31

“When analyzing a claim under the reasonable accommodations provision of the FHAA, the Court must focus on three factors: ‘whether the requested accommodation is (1) reasonable and (2) necessary to (3) afford handicapped persons an equal opportunity to use and enjoy housing.’”

Shedlock v. Director, Division of Taxation, Tax 008644-2018 (April 30, 2019)

https://scholar.google.com/scholar_case?case=8728135278748122076&q=008644-2018&hl=en&as_sdt=4,31

“N.J.S.A. 54:34-1.1 extends a presumption that a transfer made more than three years prior to the death of the grantor shall not be deemed to be intended to take effect at death.” “The Legislature intended to impose a de facto three-year statute of limitation by adding a clause: ‘but no such transfer made prior to such three-year period shall be deemed or held to have been made in contemplation of death.’” As a result, “the court need not address the motives of a decedent where the transfer of a property was made more than three years prior to the death of the decedent.”

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Certain Underwriters at Lloyds v. Public Service Electric and Gas, 459 N.J. Super. 436 (App. Div. 2019)

https://scholar.google.com/scholar_case?case=12215839754933047809&q=A-4128-17T4&hl=en&as_sdt=4,31

Where defendant's negligence has a homeowner to be displaced, a homeowner's damages are not limited to the cost of alternate shelter. A homeowner may also seek additional damages based on a broader concept of inconvenience.

160 Chubb Properties, LLC v. Township of Lyndhurst, 31 N.J. Tax 192 (2019)

https://scholar.google.com/scholar_case?case=1622770828764564934&q=002442-2014&hl=en&as_sdt=4,31

Subsequent owner of property, as successor in title, has standing to seek relief under the Freeze Act and is entitled to its protections.

Waterfront Commission of New York Harbor v. Murphy, No. 18-650 (SDW)(LDW)(May 29, 2019)

https://scholar.google.com/scholar_case?case=7174358925664986776&q=18-650&hl=en&as_sdt=3,31

New Jersey could not unilaterally withdraw from the Waterfront Commission because the compact agreed to by both states contains a concurrency requirement that provides that any amendment to the compact adopted by the legislature of one state must also be adopted by the legislature of the other.

Eden Wood Realty, LLC v. Luxury Home I, Inc., A-3385-16T2 (June 13, 2019)

https://scholar.google.com/scholar_case?case=6727965268351869410&q=A-3385-16T2&hl=en&as_sdt=4,31

Under the Abandoned Tenant Property Act, N.J.S.A. 2A:18-72 to -84, a commercial landlord must give notice to the tenant before disposing of the tenant's property. If it fails to provide such notice, the tenant is relieved of the obligation to reimburse the landlord for the cost of removing its property from the leased premises.

Tuosto v. Brady, A-3374-16T2 (June 17, 2019)

https://scholar.google.com/scholar_case?case=6058752095935387196&q=A-3374-16T2&hl=en&as_sdt=4,31

Where air conditioning units are found to exceed the municipality's noise ordinance, that alone is insufficient to prove a nuisance. "To establish a noise nuisance, a complaining party must prove by clear and convincing evidence: '(1) injury to the health or comfort of ordinary people to an unreasonable extent, and (2) unreasonableness under all the circumstances, particularly after balancing the needs of the maker to the needs of the listeners.'" [Citation omitted].

Glenpointe Associates IV, LLC v. Twp. of Teaneck, Tax No. 013983-2018 (July 10, 2019)

https://scholar.google.com/scholar_case?case=12141183312966256092&q=013983-2018&hl=en&as_sdt=4,31

For purposes of calculating the Non-Residential Development Fees, a property that had an existing parking lot was improved for purposes of the Act and "the date to be used for the purposes of determining a NRDF is the chronologically earlier of (a) the date the developer first sought approval for construction/demolition permit; or (b) the date the developer first sought approval under the MLUL."

J & M Schragger, LLC v. Pennington African Cemetery Association, Inc., A-3951-17T2 (July 11, 2019)

https://scholar.google.com/scholar_case?case=6203553512284639011&q=A-3951-17T2&hl=en&as_sdt=4,31

“An attorney may not act on behalf of a client without consent unless specifically authorized. [citations omitted]. This is no different from the general rule that ‘an agent may only bind his principal for such acts that ‘are within his actual or apparent authority.’ [citation omitted]. Actual authority occurs ‘when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal’s manifestations to the agent, that the principal wishes the agent so to act.’” “[I]mplied actual authority exists when ‘an agent is authorized to do what he [or she] may reasonably infer ‘the principal desires him [or her] to do’ in light ‘of the principal’s manifestations’ and ‘facts as he [or she] knows or should know them’ when he [or she] acts.’”

CCC Atlantic, LLC v. Silverang, Donohue, Rosenzweig & Haltzman, LLC, No. 18-cv-17433(RBK.AMD)(July 25, 2019)

https://scholar.google.com/scholar_case?case=14492155555403281453&q=CCC+Atlantic,+LLC+v.+Silverang&hl=en&as_sdt=3,31

To properly plead a claim of breach of fiduciary duty against an attorney, plaintiff must allege misconduct by the attorney involving dishonesty, self-dealing, or breach of loyalty, beyond a breach of a duty of care.

US Masters Residential Property (USA) Fund v. New Jersey Department of Environmental Protection, 239 N.J. 145 (2019)

https://scholar.google.com/scholar_case?case=17329704187529348940&q=US+Masters+Residential&hl=en&as_sdt=4,31

Arbitrator’s misperception of the evidence which can lead to an arbitrary and capricious agency decision, undercuts the fairness of the proceedings and requires a new arbitration.

NJ DEP/UFT v. Township of Upper Freehold, 31 N.J. Tax 230 (2019)

https://scholar.google.com/scholar_case?case=17884917406152107623&q=007457-2017&hl=en&as_sdt=4,31

Property owned by the State or its instrumentalities is tax-exempt when used for public purposes. The public purpose is defined by the enabling statute and a golf club is a recreational activity under the statute and therefore constitutes a public purpose.

Pokhan v. State Farm Fire and Casualty Company, A-336-17T3 (July 30, 2019)

https://scholar.google.com/scholar_case?case=17810686123577673334&q=A-336-17T3&hl=en&as_sdt=4,31

Homeowner’s misstatements of facts during insurer’s post-loss investigation did not warrant dismissal under Rue 4:37-2(b) where there was no testimony to support whether the misstatements were material to the insurer’s investigation.

McKormick 106, LLC v. May, A-5848-17T2 (Aug. 9, 2019)

https://scholar.google.com/scholar_case?case=9353224529605852478&q=A-5848-17T2&hl=en&as_sdt=4,31

Defendant, who occupied the premises during the stay of eviction following a foreclosure, was in lawful possession of the premises and had a duty to exercise reasonable care for the safekeeping of the premises and was liable to plaintiff for damage done and the removal of certain fixtures.

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In Re Hackler, 938 F.3d 473 (3rd Cir. 2019)

https://scholar.google.com/scholar_case?case=9959526019942870339&q=18-1650&hl=en&as_sdt=3,31

A transfer of real estate conducted in accordance with New Jersey's tax foreclosure procedures may be voided as a "preference" under §647 of the United States Bankruptcy Code.

Opex Realty v. Taylor, 460 N.J. Super 287 (Law Div. 2019)

https://scholar.google.com/scholar_case?case=11934324174843660409&q=OPEX+Realty+Management&hl=en&as_sdt=4,31

A landlord may not circumvent a rent control ordinance and raise the rent beyond the lawful limit by labeling late fees or legal fees as additional rent.

Raji v. Saucedo, 461 N.J. Super. 166 (App. Div. 2019)

https://scholar.google.com/scholar_case?case=2499032836290842000&q=A-1629-18T1&hl=en&as_sdt=4,31

By entering into a "pay-and-go" consent judgment which resolved a summary dispossess action, the parties entered into an accord and satisfaction and resolved all known claims arising out of the tenancy. As a result, the tenant could not raise a counterclaim in the landlord's subsequent action to enforce the pay-and-go judgment.

Town of Kearny v. New Jersey Sports and Exposition Authority, C-72-19 (Sup. Ct. Hudson Cty., Ch Div., Sept. 30, 2019)

https://scholar.google.com/scholar_case?case=784329929568560192&q=C-72-19&hl=en&as_sdt=4,31

Plaintiff can bring action under the Environmental Rights Act, N.J.S.A. 2A:35A-4b for an injunction to prevent violation of the air quality standards.

89 Water Street Associates v. Reilly, A-3366-17T1 (Oct. 1, 2019)

https://scholar.google.com/scholar_case?case=4763356355978773348&q=A-3366-17T1&hl=en&as_sdt=4,31

Contract for the purchase of real property that included a condition that the owners must receive an environmental clearance document from the DEP and that so long as the owners were cooperating with the DEP in pursuing the clearance that no party may exercise any right to terminate the agreement, but did not include any time limit for the owners to secure the environmental clearance document, nor place a cap on the amount of the costs that they would have to incur to obtain it, may not be cancelled by the owners if the cleanup became more expensive than they expected.

City of Newark v. Township of Jefferson, Docket Nos.: 006324-2016, 007392-2015, 007399-2015, 007940-2014, 007937-2014, 006324-2016, 007392-2015, 005970-2012, 005969-2012, 005555-2011, 008214-2010, 008215-2010, 013604-2009, 013606-2009, 013601-2009 (NJ Tax Oct. 3, 2019)

https://scholar.google.com/scholar_case?case=17282626113179294023&q=013601-2009&hl=en&as_sdt=4,31

Tax assessment affirmed because the court was unable to determine true tax value due to insufficient credible evidence from either party's experts

Marcal Manufacturing, LLC v. Constellation Newenergy, Inc., C-141-19 (Oct. 21, 2019)
https://scholar.google.com/scholar_case?case=10412345916451298863&q=C-141-19&hl=en&as_sdt=4,31

Notwithstanding the fact that performance under a contract may be excused under a *force majeure* event, a party may still have a claim for unjust enrichment if the opposing party received a benefit the retention of which would be unjust.

Tai He Trading Corp. v. Ng, C-108-19 (Sup. Ct. Hud. Cty., Oct. 29, 2019)
https://scholar.google.com/scholar_case?case=14256929315891629330&q=C-108-19&hl=en&as_sdt=4,31

Clear and convincing evidence is required to prove that a transfer of property is fraudulent under the UFTA. A transfer of a fully encumbered property is not a transfer within the meaning of the UFTA because the property is not an asset. Where plaintiff did not prove the market value of a property that was encumbered by substantial debt, it failed to demonstrate whether there was an asset that may have been fraudulently transferred.

501 Jersey Ave LLC v. XXXIII Associates/Riverside Center, LLC, A-1660-18T4 (Oct. 31, 2019)
https://scholar.google.com/scholar_case?case=1373791279388565459&q=A-1660-18T4&hl=en&as_sdt=4,31

Where parties executed a “term sheet” for the purchase of property that provided that the sale of the property could not be finalized without a “fully executed and mutually exchanged written contract” there was no enforceable contract absent a signed agreement.

Jujutsu, LLC v. DiPalie Property Management, LLC, A-0209-18T3 (Nov. 4, 2019)
https://scholar.google.com/scholar_case?case=2942817618140694164&q=A-0209-18T3&hl=en&as_sdt=4,31

A past forgiveness of debt cannot serve as consideration for a new agreement. “Past consideration is no consideration.”

Past performance of an oral agreement may take an agreement out of the statute of frauds, but only where the performance is “clearly referable to the execution of the contract and not to some other relation.”

Aulert v. Mayor and Twp. Committee of Brick, A-0426-18T3 (Dec. 4, 2019)
https://scholar.google.com/scholar_case?case=2111017260510137371&q=A-0426-18T3&hl=en&as_sdt=4,31

Plaintiff was not entitled to a hearing before a license to sell motor vehicles was not renewed, but the Township’s action in denying the renewal must not be arbitrary, capricious or unreasonable.

Tartivita v. Borough of Union Beach, No. 007705-2018 (NJ Tax, Dec. 9, 2019)
https://scholar.google.com/scholar_case?case=15607703900637647266&q=007705-2018&hl=en&as_sdt=4,31

The Freeze Act applies to the subject assessment, notwithstanding the Borough’s annual reassessment under the Real Property Assessment Demonstration Program.

Zafar v. Zoning Board of Adjustment, Bor. of Tenafly, A-1608-18T4 (Dec. 24, 2019)
https://scholar.google.com/scholar_case?case=14878632669370935845&q=A-1608-18T4&hl=en&as_sdt=4,31

Preexisting nonconforming use established by prior planning board approval of expansion of parking lot which inferred that it was a permitted use, because an expansion of a non-permitted use would have had to have been approved by the zoning board and by aerial photographs that showed

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that the use had existed with minimal change since before the ordinance made the use nonconforming.

Medford Commons, LLC v. Lexon Insurance Company, A-2040-17T4 (Dec. 26, 2019)

https://scholar.google.com/scholar_case?case=15866563879741211731&q=A-2040-17T4&hl=en&as_sdt=4,31

Developer required to indemnify surety for money spent to complete affordable housing project notwithstanding a change to the scope of the project because the surety agreement only prohibited changes that increased the cost of the project and the cost was actually reduced and under the parties' agreement, the municipal engineer was authorized to make changes to the project. "Suretyship is a contractual relation resulting from an agreement whereby one person, the surety, engages to be answerable for the debt, default or miscarriage of another, the principal. [citation omitted] This relationship typically 'involve[s] three parties: 'an obligee who is owed a debt or duty; a primary obligor, who is responsible for the payment of the debt or performance of the duty; and a secondary obligor, or surety, who agrees to answer for the primary obligor's debt or duty.'"

Kornbleuth v. Westover, 241 N.J. 289 (2020)

https://scholar.google.com/scholar_case?case=12186266915496573317&q=Kornbleuth+v.+Westover&hl=en&as_sdt=6,31&as_ylo=2019

"[T]he Restatement limits damages recoverable for trespass to land to the diminution in the value of the land when the restoration costs are disproportionate to the diminution in value and there is no reason personal to the owner for restoring the property to its original condition. However, even when restoration costs are disproportionate to the diminution in value, those costs may be recovered if there is a reason personal to the owner for restoring the property to its original condition and those costs are not unreasonable." "In short, whether restoration costs may be recovered is not an election of the aggrieved party but is dependent upon a showing that such damages are reasonable." "[P]roportionality and reasonableness of restoration costs could not be determined without evidence of diminished value or some similarly helpful yardstick for comparison." The property owner's "general interest in privacy and vague assertions of the aesthetic worth of bamboo as opposed to any other natural barrier do not establish value personal to the owner."

Waterfront Commission of New York Harbor v. Governor of New Jersey, 961 F.3d 234 (3d Cir. 2020)

https://scholar.google.com/scholar_case?case=8093216882818763173&q=Waterfront+Comm%27n+of+New+York+Harbor+v.+Governor+&hl=en&as_sdt=6,31&as_ylo=2020

"As a rule, 'federal courts may not entertain a private person's suit against a State' unless the State has waived its immunity or Congress has permissibly abrogated it." An exception to the rule allows suits against state officials to command a state official from refraining from violating federal law. But if the relief sought is really against the sovereign, rather than the official, the exception does not apply.

Gourmet Dining, LLC v. Union Township, 243 N.J. 1 (2020)

https://scholar.google.com/scholar_case?case=17608196176516173712&q=Gourmet+Dining+v.+Union&hl=en&as_sdt=6,31&as_ylo=2020

A for-profit restaurant on a State university campus was taxable as a lease or lease-like interest where the overriding purpose of the restaurant was focused on profit, rather than a college purpose.

Plaza Twenty Three Station, LLC, v. Township of Pequannock, Nos. 002870-2018, 002215-2019 (Tax, Jan. 9, 2020)

https://scholar.google.com/scholar_case?case=9022421646430962669&q=002870-2018&hl=en&as_sdt=4,31

“The Uniformity Clause of the New Jersey Constitution requires that ‘[a]ll real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value . . .’ N.J. CONST. art. VIII, § 1, 1(a). Furthermore, ‘[d]iscrimination under the Equal Protection clause occurs when a property is intentionally assessed at a higher percentage of true value than similarly-situated properties, and this ‘in fact bears unequally on persons or property of the same class.’” Citation omitted. An appraised value of property may not be increased merely because it was sold. “The remedy for a spot assessment is to revert the assessment back to its pre-sale amount.”

Braemar at West Milford, LLC v. West Milford Township, Nos. 012238-2010, 011850-2011, 010904-2012, 014484-2013, 011227-2014, 008652-2015, and 008236-2016, Tax Jan. 10, 2020

https://scholar.google.com/scholar_case?case=679084167436213560&q=Braemar+at+West&hl=en&as_sdt=6,31

The highest and best use analysis requires objective consideration of "the reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value." DEP's letter that stated that wetlands permit had expired and that the Highlands determination had expired had to be taken into account for taxation purposes because it called into question whether a 17-lot subdivision was reasonably probable. In order to determine the value of the property on the valuation dates, "the court was required to not only objectively weigh and consider the facts and information available, including without limitation, the status of the subject property's Highland's Act exemption, but to consider the marketplace's anticipated reaction to those facts and information, in terms of a value in exchange transaction, based on the testimony and evidence offered during trial."

Aster Holdings, LLC v. Heubel, A-3182-18T1 (Jan. 14, 2020)

https://scholar.google.com/scholar_case?case=1879749734932977291&q=Aster+Holdings,+LLC+v.+Heubel+&hl=en&as_sdt=6,31&as_vis=1

Lender failed to show excusable neglect for its failure to respond to notices of a foreclosure of a tax lien. It presented no proof that the borrower had agreed to pay the taxes owed and did not undertake any effort to protect its interests, chose not to timely redeem the certificate and therefore, foreclosure was warranted.

83 Willow Avenue Apartments, LLC v. 83 Willow, LLC, A-0460-18T1 (Jan. 16, 2020)

https://scholar.google.com/scholar_case?case=17526389671019645305&q=A-0460-18T1&hl=en&as_sdt=4,31

Defendant committed legal fraud by failing to disclose lease of parking spaces on property it sold. "A misrepresentation amounting to actual legal fraud consists of a material representation of a presently existing or past fact, made with knowledge of its falsity and with the intention that the other party rely thereon, resulting in reliance by that party to his detriment." Unlike legal fraud, equitable fraud does not require knowledge of the falsity and an intent to obtain an undue advantage. Both rescission and reformation are available remedies in an action for equitable fraud.

New Jersey Land Title Association v. Rone, 241 N.J. 113 (2020)

https://scholar.google.com/scholar_case?case=7924458085330967414&q=New+Jersey+Land+Title+v.+Rone&hl=en&as_sdt=6,31&as_ylo=2020

The Legislature has established the fees that a county recording officer can charge "for entering, filing, recording, registering, indexing, copying and certifying copies" of documents that may be

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recorded and has comprehensively preempted the field of filing fees for documents affecting real property. A fee not listed in N.J.S.A. 22A:4-4.1 cannot be charged and neither the county nor the register can authorize a new fee for these services.

The defense that "everyone does it" is not an acceptable ground to absolve a defendant from liability in the absence of a reasonable justification for defendant's conduct or for the conduct of similarly — situated persons.

MasTec Renewables Constr. Co. v. Sunlight General Mercer Solar, LLC, 462 N.J. super. 297 (App. Div. 2020)

https://scholar.google.com/scholar_case?case=16457300972148847857&q=MasTec&hl=en&as_sdt=4,31

The County Improvement Authorities Law (CIAL) defines a county improvement authority as “a public body politic and corporate constituting a political subdivision of the State,” N.J.S.A. 40:37A-55, and “shall not constitute or be deemed to be a county or municipality or agency or component of a municipality for the purposes of any other laws.” As a result, the Municipal Mechanics' Lien Law (MMLL), N.J.S.A. 2A:44-125 to -142 does not apply to county improvement authorities.

Lafferty v. Antebi, A-0943-19T4 (Feb. 21, 2020)

https://scholar.google.com/scholar_case?case=15709734562419429681&q=A-0943&hl=en&as_sdt=6,31

“Trespass and private nuisance are alike in that each is a field of tort liability rather than a single type of tortious conduct. In each, liability may arise from an intentional or an unintentional invasion.” Restatement § 821D cmt. d. Further, “the flooding of the plaintiff's land, which is a trespass, is also a nuisance if it is repeated or of long duration.” An intentional but reasonable or accidental invasion does not trigger liability under a private nuisance theory because such a theory is predicated on the unreasonable interference with the use and enjoyment of another's land. Where an initial invasion may be unintentional, but where the conduct continues after knowledge of the invasion, further invasions are intentional.

St. Cyrillus and Methodius Czecho Slovak National Church of Perth Amboy, NJ, Inc. v. Polish National Catholic Church, Inc., A- 0933-18T4 (March 2, 2020)

https://scholar.google.com/scholar_case?case=11272842534530036760&q=Cyrillus+%26+Methodius+Czecho+Slovak&hl=en&as_sdt=6,31&as_ylo=2020

Where plaintiff no longer had any right to access the property, defendant did not violate the unlawful detainer and detainer statutes by changing the locks.

Awonusi v. Yaboh, A-3023-18T1 (March 5, 2020)

https://scholar.google.com/scholar_case?case=8723316202937927049&q=Awonusi+v.+Yaboh+&hl=en&as_sdt=6,31&as_ylo=2019

The authority to borrow money shall not be inferred in a power of attorney in the absence of express authorization "unless it is necessarily implied by the scope and character of the authority which is expressly granted."

Gianacakos v. Hudson River Crossfit, A-0808-18T2 (April 1, 2020)

https://scholar.google.com/scholar_case?case=5014378125354733696&q=Gianacakos+v.+Hudson+River+Crossfit,+&hl=en&as_sdt=6,31&as_ylo=2019

The operation of a gym created a private nuisance where the noise and vibration significantly exceeded the municipal ordinance requirements within plaintiff's premises. “The sounds interfered with their sleep; there was no place to avoid the sounds. Although there certainly is a utility to a gym in terms of adding to the physical and mental fitness of its members, we cannot say the trial

court erred by determining the utility of those benefits did not outweigh the impact on plaintiffs through the loss of enjoyment and use of their property on a daily basis.” “There is nothing in N.J.S.A. 40:55D-18 that provides plaintiffs are precluded from instituting an action because there also is a municipal court complaint about the same conduct . . .”

Grand Madison LLC v. Rotonda, A-3057-18T3 (April 13, 2020)

https://scholar.google.com/scholar_case?case=7670126727098377712&q=Grand+Madison,+LLC+v.+Huntington+&hl=en&as_sdt=6,31&as_ylo=2020

In tax foreclosure, Chancery Judge properly stayed the entry of final judgment and permitted intervention and redemption by third party who had entered into a profit sharing agreement with the property owner. The court concluded that even if part of the consideration may appear illusory, the proposed initial payment of \$10,000 and a use-and-occupancy agreement are more than nominal consideration for entry into the profit-sharing agreement.

Art Resources, LLC v. Hartz Carpet II Limited Partnership, A-1115-18T2 (April 27, 2020)

https://scholar.google.com/scholar_case?case=146186848890997184&q=+Art+Res.,+LLC+v.+Hartz+Carpet+II+Ltd.+P%27ship&hl=en&as_sdt=6,31&as_ylo=2020

Claims for breach of contract, breach of the duty of good faith and fair dealing, violation of the CFA, forcible entry and detainer, and trespass require proof of different elements, but the damages caused by each claim are the same. As a result, plaintiff is not entitled to an award of duplicative damages. Expert testimony is required to determine value of real property.

Churchill Corporate Services, Inc. v. Rockhill Insurance Company, A-2887-18T1 (May 6, 2020)

https://scholar.google.com/scholar_case?case=2112965144493889681&q=Churchill+Corp.+Serv.,+Inc.+v.+Rockhill+&hl=en&as_sdt=6,31&as_ylo=2020

Plaintiff’s voluntarily payment to property owner for damages caused by a fire, despite the owner never having filed suit, relieved insurer of liability under policy. “Had plaintiff waited for Vornado to pursue its claim through a lawsuit, defendant may have been obligated to provide a defense, and then assert its claim that plaintiff was not responsible for the fire or determine whether to settle. Defendant’s coverage did not, however, extend to plaintiff’s contractual liability, only its negligence, if any.”

H.C. Equities, L.P. v. County of Union, A-2903-18T4, A-443-18T4 (May 12, 2020)

https://scholar.google.com/scholar_case?case=9476437113477093728&q=H.C.+Equities,+LP+v.+County+of+Union&hl=en&as_sdt=6,31

A tort claim notice must be signed and filed with the public entity, but need not be on the public entity’s claim form provided it contains the information required by the TCA as viewed under the doctrine of substantial compliance.

Minster v. Volovnik, A-3149-18T1 (May 21, 2020)

https://scholar.google.com/scholar_case?case=4393081686630302052&q=Minster+v.+Volovnik+&hl=en&as_sdt=6,31&as_ylo=2020

A residential landlord may only require a security deposit up to one and one-half times the monthly rent and cannot circumvent the statutory limit by characterizing part of deposit as pet security. “If a security deposit exceeds the statutory limitation, the excess is deemed wrongfully withheld upon expiration of the lease, and must be doubled before considering any credits to a landlord.”

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Martins v. Township of Cranford, A-5210-18T1 (Sept. 11, 2020)

https://scholar.google.com/scholar_case?case=11195099398351961697&q=Martins+v.+Cranford&hl=en&as_sdt=4,31

Purchaser of property that was formed by the acquisition of two nonconforming lots from the Township that contained a condition at the time of the prior owner's purchase that the lands "shall be used only in conjunction with adjoining property owned by the grantees to form one building lot" was satisfied through the doctrine of merger of the two nonconforming lots with the prior owner's lot, and did not prevent the future subdivision of the combined parcel because the condition did not contain a clear prohibition on subdividing.

In a 1973 resolution authorizing the sale of Parcel A by public auction, the Township expressly referenced the condition in the public notice advertising the sale, and specified that the Township had "determined. . . that said lands and premises [were] not required for public purposes and that it [was] in the best interest of the Township that the same be sold at public auction."

Lee v. Chin, BER-L-7867-19 (Oct. 9, 2020)

https://scholar.google.com/scholar_case?case=6131196215019880369&q=lee+vchin&hl=en&as_sdt=6,31&as_ylo=2020

A quiet title action may only be maintained by one in possession of the property. "In order to sustain an action in ejectment, the Plaintiff must either 'trace his paper title back to someone who is shown to have been in possession of the [property], or failing in that, must trace his paper title back to the council of proprietors.' (citation omitted). The title needed to support or defend against an ejectment action is 'one which is a present, subsisting, operative legal title' and '[s]uch title must be valid and capable of enforcement by the party holding it[.]'" One who has acquired title to property for substantial consideration is presumed to be a bona fide purchaser and takes title free of any claims that were not known or capable of being known from a reasonable search of the record.

Seven Star Prop., LLC v. Edgewater 880 Assoc., LLC, A-0392-19T4 (Oct. 8, 2020)

https://scholar.google.com/scholar_case?case=149982145929885460&q=Seven+Star+Prop.,+LLC+v.+Edgewater+880&hl=en&as_sdt=6,31&as_ylo=2020

A settlement agreement between and Buyer and Seller that called for the Seller to take back a mortgage only amended a contract, it did not supersede the unaltered terms of the underlying contract because the settlement was not a comprehensive real estate contract. Where a party did not act in good faith, and mislead both the Seller and the Court with respect to the financing for the purchase, it was not entitled to a refund of its entire deposit. "If, with intent to deceive, either party to a contract of sale conceals or suppresses a material fact which he is in good faith bound to disclose, this is evidence of and equivalent to a false representation, because the concealment or suppression is, in effect, a representation that what is disclosed is the whole truth." [citation omitted]. "With respect to the opinions of qualified experts, a trier of fact is free to accept or reject the testimony of either side's expert, in full or in part."

B & D Assoc., LTD v. Township of Franklin, Nos. 006112-17, 006387-2018 (Tax Oct. 26, 2020)

https://scholar.google.com/scholar_case?case=7913611378626516296&q=D+v.+township+of+franklin&hl=en&as_sdt=6,31&as_ylo=2020

Owner of property in foreclosure has standing to file a tax appeal, but must file a copy of the complaint on the mortgagee.

Bradshaw Equities LLC v. City of Toms River, Nos. 005792-2018, 000839-2019 (Tax Nov. 4, 2020)
https://scholar.google.com/scholar_case?case=742082320227636460&q=bradshaw+v.+toms+riv&hl=en&as_sdt=6,31&as_ylo=2020

A contract-purchaser has standing to file a tax appeal, as did an entity to be formed by the contract-purchaser.

Knight v. Vivint Solar Developer, LLC, A-2258-19T1 (Dec. 2, 2020)

<https://www.njcourts.gov/attorneys/assets/opinions/appellate/published/a2258-19.pdf?c=5JT>

An arbitration agreement must be the product of mutual assent. “Under section two of the Federal Arbitration Act (FAA), 9 U.S.C. § 1 to 16, states may regulate arbitration agreements under general contract principles. [citation omitted]. Accordingly, arbitration clauses may be invalidated on grounds existing at law or equity that call for the revocation of any contract.”

Wisseh v. Aquino, A-4767-18T2 (Dec. 9, 2020)

https://scholar.google.com/scholar_case?case=16613599255891835604&q=Wisseh+v.+Aquino&hl=en&as_sdt=6,31&as_ylo=2020

The Royal Charter given by King George II in 1753 “which created the Board of Trustees of the First Presbyterian Church in Newark is an enforceable contract between the private parties. Pursuant to the Royal Charter, the Board of Trustees has the ongoing right to give, assign, or sell any of the lands, property, real estate, and goods of the Church as [it] deem[s] fit.” “[U]nder N.J.S.A. 16:1-28, titled saving of rights under charters granted by Great Britain, Rev. 1877, p. 960 § 12, ‘[an] act to incorporate the trustees of religious societies,’ approved April 9, 1875, such charters were saved from repeal.”

Garden State Investment v. Township of Brick, A-0082-19T2, A-0093-19T2 (Dec. 10, 2020)

https://scholar.google.com/scholar_case?case=10989265307202025139&q=garden+state+v.+brick&hl=en&as_sdt=6,31&as_ylo=2020

Purchasers of tax sale certificate of property that contained a recorded conservation easement were not entitled to a refund where the township was unaware of the restriction. “Plaintiffs and the township were laboring under the same misunderstanding about the property. And both sides had the same ability to learn more. The township, however, had no reason to be curious about the lots or inquire further, while plaintiffs had every reason to uncover all material circumstances about their investments. Plaintiffs’ failure to act more diligently in ascertaining any defects in or limitations on their investments bars their claim for equitable relief, particularly against the township, which acted passively and innocently throughout.”

Harrison EVG Properties, LLC v. State, A-5242-18T2 (Dec. 16, 2020)

https://scholar.google.com/scholar_case?case=3074272464300589856&q=Harrison+EVG+&hl=en&as_sdt=6,31&as_ylo=2020

A lease with the State is subject to the New Jersey Contractual Liability Act, and “[u]nder the Act, the State ‘waives its sovereign immunity from liability arising out of an express contract or a contract implied in fact,’ but ‘recovery against the State for punitive or consequential damages arising out of contract’ and for ‘any recovery against the State for claims based upon implied warranties or upon contracts implied in law’ is prohibited. N.J.S.A. 59:13-3.” The Act thus bars claims based on the implied covenant of good faith and fair dealing, and claims for consequential damages.

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Lott v. Borough of Roselle, A-1123-19T4 (Dec. 28, 2020)

https://scholar.google.com/scholar_case?case=15239870084568670126&q=lott+v.+roselle&hl=en&as_sdt=6,31&as_ylo=2020

Plaintiff's cause of action for a corrected deed was not barred by the six-year statute of limitations for a contract claim. First, under the discovery rule, when considering the totality of circumstances, the record supports a finding that a reasonable person exercising ordinary diligence would not have understood that there was a problem with the deed. Second, the statute of limitations contained in N.J.S.A. 2A:14-1 applies only to actions at law for recovery upon a contractual claim or liability and is inapplicable to an equitable claim for the corrected deed.

HISTORIC PRESERVATION

Berardo v. City of Jersey City, 476 N.J. Super. 341 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=14863917676432192392&q=Berardo+v.+City+of+Jersey+City&hl=en&as_sdt=6,47&as_ylo=2023

In order to obtain a demolition permit, the City code required that an application be submitted to the City's Historic Preservation Officer for the issuance of a determination as to whether the subject building warrants preservation. The Court held that the MLUL does not authorize HPOs to unilaterally grant or deny historic preservation designations that bind a zoning officer in determining whether a demolition permit shall issue; and that advisory function belongs solely to the Historic Preservation Commission, as detailed in the MLUL at N.J.S.A. 40:55D-111, and cannot be delegated to other entities or individuals.

Taylor v. Zoning Bd. of the Twp. of Neptune, A-3709-22 (Feb. 5, 2025)

https://scholar.google.com/scholar_case?case=9617941907364071772&q=Taylor+v.+Zoning+Bd.+of+the+Twp.+of+Neptune&hl=en&as_sdt=6,47&as_ylo=2025

Ordinance which provided for an appeal mechanism related to a decision of the Historic Preservation Commission to the Zoning Board of Adjustment was not only permitted under, but authorized by, the New Jersey Municipal Land Use Law. Appellate Division further upheld decision by the ZBA to uphold an HPC's denial of a certificate of appropriateness related to a sidewalk installation.

CONTRACTUAL DISPUTES

Smialek v. Gorgon, A-3193-20 (June 29, 2022)

https://scholar.google.com/scholar_case?case=8234168242455382195&q=Smialek+v.+Gorgon&hl=en&as_sdt=6,31

Where a deed names one grantee but is signed by three individuals as grantees and is silent as to the percentage of individual ownership there is a rebuttable presumption that the grantees take title as tenants in common and share ownership equally. The plaintiff's subjective intent does not control, and objective actions, such as paying the loan and mortgage payments, as well as renting out the property, do not establish intent at the time of the deed's acceptance. Consequently, the subject property is owned by the parties as tenants in common.

Barros v. Barros, A-0914-21 (Dec. 9, 2021)

https://scholar.google.com/scholar_case?case=2681203373442712194&q=barros+v.+barros&hl=en&as_sdt=4,31

While a beneficiary of a trust may have been permitted to use the property of her trust on occasion, she had no colorable claim to the property as title to the property remained in the trust and no landlord-tenant relationship existed.

Kowalski v. South Jersey Water Test, No. A-2557-20. (April 22, 2022)

https://scholar.google.com/scholar_case?case=11797582558477663790&q=Kowalski+v.+South+Jersey+Water+Test&hl=en&as_sdt=6,31&as_ylo=2022

With respect to homeowner's motion for summary judgement related to a breach of contract by a contractor who had inspected his septic system prior to purchase, because the subject matter exceeded the average juror's general knowledge, the homeowner's failure to provide an expert report was fatal to his motion.

Kemp v. Estate of Brandau, A-4161-19 (April 21, 2022)

https://scholar.google.com/scholar_case?case=205945984351872067&q=Kemp+v.+Estate+of+Brandau&hl=en&as_sdt=6,31&as_ylo=2022

Where Plaintiff buyer brings negligent misrepresentation and fraud claims with respect to a home purchase, but pleads no facts that demonstrate that Defendant sellers knew about water and/or carpenter ant damage to the subject property prior to the sale, Defendant seller's motion for summary judgment is correctly granted.

Woodmont Properties, LLC v. Township of Westampton, A-4453-19 (Feb. 7, 2022)

https://scholar.google.com/scholar_case?case=12081449859798053326&q=woodmont+v.+township&hl=en&as_sdt=6,31&as_ylo=2022

There was no tortious interference on the part of Defendant bank, where Plaintiff had entered into a contract to purchase property and had worked with the local municipality to have the property declared an area in need of redevelopment and be named the redeveloper but the bank foreclosed on the property and purchased same in a sheriff sale which, effectively, terminated these agreements.

4 Highpoint LLC v. Durelli, A-0949-20 (Jan. 12, 2022)

https://scholar.google.com/scholar_case?case=4096179318064439389&q=4+highpoint+v.+durelli&hl=en&as_sdt=6,31

Executive Order 106 only barred removals of individuals in legal possession of the property and did not apply to squatters.

MISCELLANEOUS

City of Atlantic City v. Special Situations Value Investing, A-1412-20 (Feb. 2, 2022)

https://scholar.google.com/scholar_case?case=2901570508239113727&q=city+of+atlantic+city+v.&hl=en&as_sdt=6,31&as_ylo=2022

With respect to City's motion for summary judgment to quiet title related to properties which it alleged Defendant's held forged title to, the trial court incorrectly granted summary judgment because the trial court should not have framed the question as whether the moving party, the City, could show the deeds were forged; but rather the trial court should have focused on whether the non-moving party, the Defendant, could permit a rational factfinder to find that the City was involved in the deeds being forged.

NKG Inv., LLC v. Baczkowski, A-3788-20 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=10107573168252661587&q=NGK+Inv.,+LLC+v.+Baczkowski&hl=en&as_sdt=6,47&as_ylo=2023

In general, a real estate contract is "binding and enforceable when approved, signed and delivered. It cannot be unilaterally terminated." *Zapanta v. Isoldi*, 212 N.J. Super. 678, 693 (Ch. Div. 1986). Here, the fact that additional purchasers signed the contract after the initial execution did not make the contract unenforceable.

Battaglia v. Aversa, A-3240-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=7479999703370432815&q=Battaglia+v.+Aversa&hl=en&as_sdt=6,47&as_ylo=2023

A seller of real estate has a duty to disclose "on-site defective conditions if those conditions [are] known to [the seller] and unknown and not readily observable by the buyer." *Strawn v. Canuso*, 140 N.J. 43, 59 (1995), superseded by statute on other grounds, New Residential Real Estate Off Site Conditions Disclosure Act, P.L.1995, c. 253 (quoting *Weintraub v. Krobatsch*, 64 N.J. 445, 454 (1974)). "[T]he nondisclosure must be significant." *Correa v. Maggiore*, 196 N.J. Super. 273, 281 (App. Div. 1984). A seller's duty to disclose does not apply to "[m]inor conditions which ordinary sellers and purchasers would reasonably disregard as of little or no materiality in the transaction...." *Weintraub*, 64 N.J. at 455. Even when selling property "as is," a seller may not deliberately conceal or fail to disclose a known latent condition material to the transaction. *Id.* at 453, 455-56. Here, because Defendant seller's disclosure statement required him to disclose flooding in the basement and he failed to do so, seller is liable for the cost of redressing water damage.

Fitzpatrick v. Qasim, A-2812-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=14145420285782267144&q=Fitzpatrick+v.+Qasim&hl=en&as_sdt=6,47&as_ylo=2023

The attorney review clause of a standard residential property sale agreement allows attorney disapproval for any reason. There is no duty to explain the reason and courts are not expected to review the disapprovals for reasonability. Furthermore, sellers' continuing to solicit bids during the three-day attorney-review period is not a breach of the duty of good faith and fair dealing inherent in every contract. Additionally, in the subject case, the Court held that oral communication between sellers and buyer's attorneys and realtors would effectuate cancellation of the contract even though no such communication was transmitted in writing.

Mar Acquisition Group, LLC v. Oparaji, A-2160-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=13194296917490339799&q=MAR+Acquisition+Group,+LLC+v.+Oparaji&hl=en&as_sdt=6,31&as_ylo=2023

Specific performance is an appropriate remedy where seller and buyer enter into a contract for sale of property but seller fails to follow through and instead sells the property to a related entity.

Rogers v. Conti, A-0379-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=12388341196322130248&q=Rogers+v.+Conti&hl=en&as_sdt=6,31&as_ylo=2023

Where existence of mold is unknown by seller, she has no duty to disclose same.

Gabriel v. Wallace, A-2449-21 (App. Div. 2022)

https://scholar.google.com/scholar_case?case=3496114302522058927&q=gabriel+v.+wallace&hl=en&as_sdt=6,31&as_ylo=2022

A co-owner, who is a tenant in common, is not entitled to credits for funds expended on renovations solely by virtue of having expended those funds. *Donnelly v. Capodici*, 227 N.J. Super. 310, 312 (Ch. Div. 1987). Rather, a co-owner is entitled to credit for improvement to a property only to the extent that its value is enhanced by the improvement. *Ibid.* In other words, to receive credit for renovations, a co-owner must: (1) demonstrate that the value of the property has increased; (2) due to the improvements; (3) by proper evidence. *Ibid.* Here, the Court determined that no credit should be awarded where the Defendant failed to show evidence of how the value of the subject property increased.

Pallai v. Loschiavo, Docket No. MON-C-154-22 (Chan. Div. 2024)

https://scholar.google.com/scholar_case?case=14576842843050367978&q=Pallai+v.+Loschiavo&hl=en&as_sdt=6,47&as_ylo=2024

A determination with respect to whether a sum of money used to purchase a house was a gift or a loan depends on the parties' credibility and here, the Defendants showed enough credible evidence that the money granted by Plaintiff to purchase the property was a gift. Consequently, Plaintiff's request for partition was dismissed.

River Pointe Homeowners Ass'n, Inc. v. Pulte Homes of NJ, Ltd. P'ship., No. OCN-L-002491-17, (Law Div. 2024)

https://scholar.google.com/scholar_case?case=17891835227913006554&q=River+Pointe+Homeowners+v.+Pulte+Homes+&hl=en&as_sdt=6,47&as_ylo=2024

Because the HOA had made a *prima facie* case of deceptive advertising and consumer fraud claims against their developer, the Court would not permit that claims to be dismissed.

Park Rd. Dev. LLC v. AKGG, LLC, A-2661-22 (Sept. 24, 2024)

https://scholar.google.com/scholar_case?case=12878859203360340297&q=Park+Rd.+Dev.+LLC+v.+AKGG,+LLC&hl=en&as_sdt=6,47&as_ylo=2024

Where the record contains substantial evidence of uncertainty and miscommunication between the parties and the terms of the agreement itself were evidence of the lack of mutual assent, there is no meeting of the minds and thus no effective contract between the parties.

The Moirai Group Ltd. v. Melaku, A-0549-22 (June 4, 2024)

https://scholar.google.com/scholar_case?case=1117088243537588562&q=The+Moirai+Group+Ltd.+v.+Melaku&hl=en&as_sdt=6,47&as_ylo=2024

Specific performance appropriate for property sale even though Defendant did not close on property due to having to attend to his sick brother.

771 Allision Court LLC v. Sirianni, A-1566-22 (May 17, 2024)

https://scholar.google.com/scholar_case?case=16044058174001506253&q=771+Allision+Court+LLC+v.+Sirianni&hl=en&as_sdt=6,47

The failure of seller to communicate to buyer the provision of a deed that provided that the Grantor's children had first right of refusal until their deaths was a violation of a contract term that the property "would be free from of all claims of the rights of others" at the time of closing.

MISCELLANEOUS

Schwartz v. Menas, A-2481-22, A-2482-22 (Jan 2, 2025)

https://scholar.google.com/scholar_case?case=9581219205681379995&q=Schwartz+v.+Menas&hl=en&as_sdt=6,47&as_ylo=2024

With respect to damages related to allege attorney malpractice related to legal advice to a non-developer related to obtaining tax credits to construct an affordable housing project, Plaintiff fell far short of establishing his alleged lost profits damages with a reasonable degree of certainty. At most, plaintiff established a possibility he might, as a novice entering a new enterprise, have been able to develop these large, extremely expensive, and heavily regulated construction projects. A showing of "reasonable certainly" requires significantly more than a mere possibility. Where, as here, a new business seeks lost profits that are remote, uncertain, or speculative, the trial court should bar the evidence supporting the claim.

Weinmeier v. Garzone, A-2395-21 (Feb. 4, 2025)

https://scholar.google.com/scholar_case?case=17962704828695395029&q=Weinmeier+v.+Garzone&hl=en&as_sdt=6,47

Appellate Division affirmed trial court decision that without expert testimony establishing when the mold began to germinate, plaintiff purchaser could not prove defendant buyers' actions proximately caused her damages related to the existence of mold in the home she had purchased. Court also affirmed the trial court's decision regarding the fraud claim against seller defendant because plaintiff purchaser lacked clear evidence that sellers made affirmative material misrepresentations or intentional omissions of a presently existing or past fact concerning the mold.

Invel Capital, LLC v. 45 William Urban Renewal LLC, A-3385-23 (July 7, 2025)

https://scholar.google.com/scholar_case?case=6314261759899335989&q=+Invel+Capital,+LLC+v.+45+William+Urban+Renewal+LLC&hl=en&as_sdt=6,47&as_ylo=2025

Buyer of a commercial/residential building can terminate a purchase and sales agreement due to the buyer's pre-closing receipt of an unacceptable estoppel certificate by one of the property's commercial tenants, citing to the seller's default of the tenant's lease agreement and changes to the lease agreement.

422 West Fourth Street, LLC vs. Allstates Title Service, A-2439-23 (Aug. 7, 2025)

https://scholar.google.com/scholar_case?case=6421265671998935865&q=422+West+Fourth+Street,+LLC+vs.+Allstates+Title+Service+&hl=en&as_sdt=6,47

Plaintiff violated the New Jersey Tax Sale Law by failing to intervene in the underlying foreclosure action as a third-party investor.

2430 Morris Ave., LLC v. Grammer, A-0017-23 (Oct. 8, 2025)

https://scholar.google.com/scholar_case?case=10424794428203400445&q=2430+Morris+Ave.,+LLC+v.+Grammer&hl=en&as_sdt=6,47

To succeed on a claim of breach of the covenant of good faith and fair dealing, plaintiff must not only show that the defendant has injured its right to receive the "contractual benefits" but "must also prove the defendant's 'bad motive or intention.'"

Villas at Manville LLC v. Brooks Townhouses LLC, A-1414-24 (Nov. 13, 2025)

https://scholar.google.com/scholar_case?case=17955005739829646112&q=Villas+at+Manville+LLC+vs.+Brooks+Townhouses+LLC+&hl=en&as_sdt=6,47

Appellate Division upholds the trial court's decision to enforce a settlement agreement that stemmed from a dispute arising from a purchase and sale agreement.

SEWER

388 Route 22 Readington Realty Holdings, LLC v. Twp. of Readington, A-1848-21 (Aug. 1, 2024)

https://scholar.google.com/scholar_case?case=1546228923517765105&q=388+Route+22+Readington+Realty+Holdings&hl=en&as_sdt=6,47&as_ylo=2024

Plaintiff no longer had standing to challenge sewer allocation/extension of approvals after losing its own property to bankruptcy in the subject municipality.

***In the matter of Treatment Works Approval*, A-2802-22 (Aug. 26, 2025)**

https://scholar.google.com/scholar_case?case=974348605947304464&q=In+the+matter+of+Treatment+Works+Approval+&hl=en&as_sdt=6,47

With respect to a TWA application for a cannabis cultivation facility, the NJDEP determined that a “factory/warehouse” designation and not a “commercial use/warehouse” area designation was applicable to the cultivation area. Appellate Division affirmed same.

ANNEXATION

Seaview Harbour Realignment Committee, LLC v. Township Committee of Egg Harbor Township, A-3048-19 (Dec. 29, 2021)

https://scholar.google.com/scholar_case?case=3259980872159008365&q=Seaview+Harbour+Realignment+Committee,+LLC+v.+Township+Committee+of+Egg+Harbor+&hl=en&as_sdt=6,31

A petition to a municipal governing body for de-annexation under N.J.S.A. 40:7-12.1 may be appropriately denied where a court concludes that a municipality's decision was neither arbitrary nor unreasonable and that it would be detrimental to the majority of residents despite the undisputed fact that deannexation would produce considerable property tax savings for the petitioning homeowners, who seek to become part of a lower tax municipality. That detriment can include the loss of significant services to the community at large, removal of a diverse citizenship, and likely erosion of valuable civic participation caused by the absence of those homeowners who seek to deannex from the community.

Whiteman v. Twp. Council of Berkeley Twp., A-3786-21 (June 17, 2024)

https://scholar.google.com/scholar_case?case=11658015216168598137&q=whiteman+v.+berkeley&hl=en&as_sdt=6,47&as_ylo=2024

Council’s decision to deny Plaintiff’s de-annexation petition was arbitrary, capricious and unreasonable because the Board proceedings were fraught with unfair and biased conduct due to the Board and the Township Council's coordination of the record to achieve a pre-determined result of denying de-annexation.

***Whiteman v. Twp Council of Berkeley*, 261 N.J. 106 (2025)**

https://scholar.google.com/scholar_case?case=14848096879096201936&q=whiteman+v.+berkeley+twp&hl=en&as_sdt=4,31

N.J.S.A. 40A:7-12 requires a planning board to independently evaluate the merits of a de-annexation petition and make an objective recommendation to the municipality's governing body. Here, the New Jersey Supreme Court held that the Township’s planning board worked with the local governing body to deny the deannexation request. Plaintiffs met their burden of proof with respect to all three prongs of N.J.S.A. 40A:7-12.1, and the trial court properly ordered deannexation.

MERGER

Mason v. Twp of Middletown Zoning Board of Adjustment, A-0133-22 (Aug. 10, 2022)

https://scholar.google.com/scholar_case?case=6076256587480196132&q=Mason+v.+Twp.+of+Middletown&hl=en&as_sdt=6,31&as_ylo=2022

Municipality will not be equitably estopped from denying a building permit where two (2) parcels have merged by operation of law and where the hardship is self created-here the Plaintiff waived the condition to obtain a building permit before closing on the property and had notice from his title company that his property had likely merged.

Brennan v. Bay Head Planning Bd., A-3984-21 (May 1, 2024)

https://scholar.google.com/scholar_case?case=11138716002761001273&q=Brennan+v.+Bay+Head&hl=en&as_sdt=6,47

While the Borough Code states that if two or more contiguous lots "are in single ownership and one or more of the lots is nonconforming in any aspect," they "shall be considered to be an undivided parcel for the purposes of" zoning and planning in the Borough and that no portion of this "parcel" may be "conveyed or divided" unless subdivision is first approved," same cannot be construed to indicate that two parcels have merged when one lot is not undersized and the adjacent lot is but the lots are located back to back and merger would create an "oddly long and narrow plot."

OWNERSHIP DISPUTE

Shea v. Lydon, A-2613-19 (Jan. 14, 2022)

https://scholar.google.com/scholar_case?case=13925740843088706215&q=shea+v.+lydon&hl=en&as_sdt=6,31&as_ylo=2022

Chancery Division correctly held that where Defendant's garage minimally encroached on Plaintiff's property, and the local zoning board's denial of Defendant's application to replace the garage was pending in court, concepts of equity directed the court to deny Plaintiff's request for an order to order demolition of the garage. Rather, if the board's denial were upheld, equity required the Court to direct the parties to negotiate a fair market value for the encroached area or seek a judicial determination of same. If the Board's denial was reversed, then Defendant would be required to remove the encroachment.

Twp. of Green v. Prager, A-1637-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=907661600906327126&q=green+v.+prager&hl=en&as_sdt=6,31&as_ylo=2023

Equitable estoppel applies when a party's "conduct, either express or implied, ... reasonably misleads another to his prejudice so that a repudiation of such conduct would be unjust in the eyes of the law." *D'Agostino v. Maldonado*, 216 N.J. 168, 200 (2013). Here, the Township sought to eject an adjoining property owner's split rail fence from its property. It was not equitably estopped from doing so where the adjoining property owner constructed the fence on the township's property with zoning permit approval and the Township did not detect same during its inspection many years before.

MISCELLANEOUS

Yuri Inv. & Dev., Inc. v. 322 Commercial Ave. LLC, A-0484-20 (May 3, 2024)

https://scholar.google.com/scholar_case?case=6970520496112898516&q=Yuri+Inv.+%26+Dev.,+Inc.+v.+322+Commercial+Ave.+LLC&hl=en&as_sdt=6,47&as_ylo=2024

Where two adjacent lots were always operated as separate lots, there existed no easement by implication which is typically based on the severance of once-unified property, where a part of the land had, prior to severance, been used to benefit another part.

Birkitt v. Adwan, Docket No. C-147-23 (Chan. Div. May 1, 2024)

https://scholar.google.com/scholar_case?case=16513738485134367633&q=Birkitt+v.+Adwan&hl=en&as_sdt=6,47&as_ylo=2024

A landowner may remove a tree on his property, as an encroachment tree, where same grew onto his neighbor's land without first securing the approval of his neighbor, unless the landowners jointly planted, jointly cared for, or treated the tree as a partition between the properties. Here, the facts show that the subject tree is an encroachment tree and can be removed without the neighbor's consent.

Patierno v. Ahmed, A-2163-23 (April 24, 2025)

https://scholar.google.com/scholar_case?case=182442348954038928&q=Patierno+v.+Ahmed&hl=en&as_sdt=6,47&as_ylo=2025

Where boundary commissioners determine to change the boundary between two (2) lots that are back to back, same does not change the boundaries of the adjacent back to back lots whose boundary line has not changed.

NUISANCE

Kane v. Franklin Township, A-3707-20 (July 13, 2022)

https://scholar.google.com/scholar_case?case=7194204334062385732&q=Kane+v.+Franklin+Township&hl=en&as_sdt=6,31&as_ylo=2022

Where Plaintiff's neighbor allegedly operates a non-conforming commercial landscaping business in a residential zone, Defendant municipality's inaction in not enforcing the zoning code against same cannot be the basis of a private or public nuisance complaint.

Nugent v. Grant, Docket No. A-1720-21 (App. Div. 2023)

https://scholar.google.com/scholar_case?case=14400345054747612470&q=Nugent+v.+Grant&hl=en&as_sdt=6,47&as_ylo=2023

The two elements of private nuisance claim are: "(1) injury to the health or comfort of ordinary people to an unreasonable extent, and (2) unreasonableness under all the circumstances, particularly after balancing the needs of the [defendant] to the needs of the [plaintiff]." The Court held that Plaintiffs failed to establish by clear and convincing evidence that the alleged annoyances and disturbances from the use of the parking lot and walkway to access the beach (adjacent to their home) were substantial enough to constitute a nuisance. Critical to this finding was the fact that the buffer zone that separated Plaintiff's property by over 100 feet was sufficient to alleviate disturbances from the use of the walkway.

MISCELLANEOUS

Asdal v. Chester Twp., A-0229-21 (Dec. 31, 2024)

https://scholar.google.com/scholar_case?case=14549907593309050208&q=Asdal+v.+Chester+Twp.&hl=en&as_sdt=6,47

Complaint seeking mandamus relief with respect to municipality's failure to enforce stormwater regulations related to a commercial farm was not time barred. Furthermore, mandamus relief to force stormwater regulation enforcement was appropriate where the County Agricultural Board had asked the Township Engineer to opine on whether the commercial farm was compliant and the Township Engineer refused to do same.

Lema v. Borough of Garwood, A-3086-23 (Nov. 21, 2025)

https://scholar.google.com/scholar_case?case=9076935749672266689&q=A-3086-23&hl=en&as_sdt=4,31

Public and private nuisance claim against zoning officer and municipality for failure to enforce zoning code correctly dismissed where Plaintiff failed to file a tort claims notice.

WIRELESS COMMUNICATIONS

Extenet Systems, Inc. v. Township of North Bergen Docket No. 2:20-cv-15098 (May 19, 2022)

https://scholar.google.com/scholar_case?case=5725556064121309734&q=Extenet+Systems,+Inc.+v.+Township+of+North+Bergen&hl=en&as_sdt=6,31

With respect to an application to place small wireless facilities within a municipal right-of-way, the Township's denial based on an aesthetics rationale was impermissible because it could not meet the Telecommunications Act "substantial evidence" requirement pursuant to 47 U.S.C. §332(c)(7)(B)(iii). Also, the Township violated 47 U.S.C. §332(c)(7)(B)(iv) by considering the facilities' environmental effects when denying the applications and such a violation was enough for the Plaintiff to prevail, even if there were other legitimate reasons for the denial.

Cellco Partnership v. White Deer Township Zoning Hearing Board, 74 F.4th 96 (3d Cir. 2023)

https://scholar.google.com/scholar_case?case=11145007259894138330&q=Cellco+Partnership+v.+White+Deer+Township+Zoning+Hearing+Board&hl=en&as_sdt=6,47&as_ylo=2023

Third Circuit adopts the "materially inhibit" standard for violations of the Telecommunications Act of 1996 as set forth by the Federal Communications Commission in its 2018 Third Report and Order. The Court held that "coverage gap-based-tests, like [the old effective prohibition test], reflect an 'unduly narrow reading of the statute and an outdated view of the marketplace.' So as a general matter, the new standard applies not only when a wireless provider is attempting to fill a coverage gap in its wireless service, but also when a provider is pursuing 'the introduction of new services or the improvement of existing services.' Under the new standard, a local government can materially inhibit personal wireless service even if a provider has filled all coverage gaps."

Loevinger v. Bd. of Adjust., Twp. of Lakewood, A-3201-22 (June 4, 2024)

https://scholar.google.com/scholar_case?case=9056357552382712544&q=Loevinger+v.+Bd.+of+Adjustment+of+the+Twp.+of+Lakewood&hl=en&as_sdt=6,47&as_ylo=2024

Here, an objector to a cell tower application asked if the application "get[s] approved," could he request the matter be "carried for a professional [to review the application]" and in response, the Chairman stated, "[i]f it does get approved you can sue the township and you could go to court." Here, the Appellate Division rules that the statement by the Chairman is not a misleading statement that would warrant the reversal of the approval because the objector did not clearly ask for an adjournment to obtain an expert before the Board approved the matter and, even if he did ask that, same could have been denied because the objector had adequate time to retain such a professional.

MISCELLANEOUS

Townnorth Dev., LLC v. Shamong Twp. Joint Land Use Bd., No. A-3577-21 (Feb 2, 2024)
https://scholar.google.com/scholar_case?case=16642236863390419194&q=Townnorth+Dev.,+L+LC+v.+Shamong+&hl=en&as_sdt=6,47&as_ylo=2024

Proof of a negative impact of a cell tower on surrounding properties generally requires qualified expert testimony and the developer of a cell tower is not required to exhaust all alternative locations before seeking a variance. Rather, the developer must show a "reasonable and good faith effort to find an alternative, less-intrusive site" for the project.

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Mr. Meese is a former Chairman of the Board of Directors of the New Jersey State Bar Association Land Use Law Section, former Counsel to the Builders Association of Northern New Jersey, and former Co-chair of the Environmental Law Section of the Bergen County Bar Association. He has authored a chapter on the zoning of telecommunications facilities for Matthew Bender's national zoning treatise *Zoning and Land Use Controls*. In addition, he was the Special Editor of the June 1999 issue of *New Jersey Lawyer Magazine* that focused on telecommunications and utility law issues and has written several articles regarding land use issues. Mr. Meese currently serves as the President of the New Jersey Wireless Association.

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About the Panelists...

Victoria D. Britton is Of Counsel to Price, Meese, Shulman & D'Arminio, P.C. in the firm's Woodcliff Lake, New Jersey, office. With more than 17 years of experience, she concentrates her practice in community association law, land use law, local government law, real estate and property law, and trial and appellate litigation.

Admitted to practice in New Jersey, Connecticut and Massachusetts, and before the United States Supreme Court, Ms. Britton is a Director of the New Jersey State Bar Association's Land Use Law Section and serves on the Moorestown Environmental Advisory Committee. She is Past President and a Trustee of the Somerset County Bar Association; a Trustee and Co-Chair of the Diversity, Inclusion & Leadership Committee of the Burlington County Bar Association; and a Trustee of the Burlington County Bar Foundation. Ms. Britton is also a member of the Hispanic Bar Association of New Jersey. A lecturer for ICLE and the New Jersey Planning Officials, she was named Somerset County Professional of the Year in 2022 by the New Jersey Commission on Professionalism in the Law.

Ms. Britton received her undergraduate degree from Boston University and her law degree from the University of Connecticut School of Law.

Peter A. Chacantias is counsel to Flaster Greenberg P.C. in Cherry Hill, New Jersey. He concentrates his practice in land use and environmental matters, and advises commercial real estate developers and property owners on all aspects of the land development process including development, redevelopment, affordable housing and permitting matters. He has appeared before several planning boards, zoning boards of adjustment, and other municipal governing bodies throughout the State to advocate on behalf of clients in connection with site plan approvals, subdivisions and variance applications.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey, Mr. Chacantias is a member of the New Jersey State Bar Association, the New Jersey Builders Association and the Shore Builders Association of Central NJ, Inc. He serves on the Board of Directors of the NJSBA Land Use Section and has presented programs on land use, zoning, tidelands and other waterfront development topics at a number of professional forums, including ICLE, the National Business Institute, the NEXUS Association of Realtors, Surety Title and Fidelity National Title. He previously served as Board Solicitor for several municipal bodies throughout New Jersey, including the Point Pleasant Beach Planning Board and the Zoning Boards of Adjustment for the municipalities of Little Egg Harbor, Toms River and Summit.

Mr. Chacantias received his B.A., *magna cum laude*, from Seton Hall University, where he was the recipient of the Presidential Scholarship Award, and his J.D. from Seton Hall University School of Law, where he received the Presidential and Riccio Scholarships.

Jason A. Cherchia is an associate with Wilentz, Goldman & Spitzer, P.A. with offices in Woodbridge and Eatontown, New Jersey; New York City; and Philadelphia, PA. A member of the firm's Land Use Practice Group, he concentrates his practice in development applications, planning and zoning board hearings, *Right to Farm Act* applications and land use litigation.

Mr. Cherchia is admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey. He is a member of the New Jersey State, Morris County and Middlesex County Bar Associations.

Mr. Cherchia received his B.A., *cum laude*, from George Washington University, his J.D. from Seton Hall University School of Law and his LL.M. in Taxation from New York University School of Law. He was a law clerk to the Honorable Joseph M. Andresini, Presiding Judge, Tax Court of New Jersey.

Amanda M. Curley is Counsel to Day Pitney LLP in the firm's Parsippany, New Jersey, office, where she advises property owners, developers and institutional investors on land use and real estate redevelopment. She serves as attorney for the Hudson County Planning Board.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey, Ms. Curley is a Director of the New Jersey State Bar Association Land Use Law Section. She has lectured for ICLE and the Garden State Bar Association.

Ms. Curley received her B.A., *cum laude*, from Lafayette College and her J.D. from Rutgers School of Law-Newark, where she was Managing Editor of the *Rutgers Business Law Review*. She was a law clerk to the Honorable Maureen B. Mantineo, Superior Court of New Jersey (temporarily assigned to the Appellate Division).

Lawrence S. Cutalo is a Partner in the Cedar Grove, New Jersey, office of O'Toole Scrivo, LLC, and focuses his practice in complex litigation and land use. He has extensive experience in business litigation, zoning and development, healthcare and cannabis, and routinely handles local planning and zoning board matters and related litigation.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey and the Third Circuit Court of Appeals, Mr. Cutalo is a member of the Board of Directors of the Land Use Law Section of the New Jersey State Bar Association. He is President-Elect of the Morris County Bar Association, a former Co-Chair of the Association's Land Use Committee and Past President of the Morris County Bar Foundation. He has lectured for the New Jersey State and Morris County Bar Associations and is the recipient of several honors.

Mr. Cutalo received his B.A. from the University of Virginia and his J.D. from Rutgers University School of Law-Newark, where he was a member of the Rutgers Environmental Law Clinic. He served as a judicial clerk to the Honorable Ronald B. Graves, J.A.D., Superior Court of New Jersey, Appellate Division.

Cosmas P. Diamantis is Municipal Attorney and Director of Law for Cherry Hill Township in Cherry Hill, New Jersey. He was formerly an associate with Zeller & Wieliczko, LLP.

Admitted to practice in New Jersey and Pennsylvania, and before the United States District Court for the District of New Jersey, the Third Circuit Court of Appeals and the United States Supreme Court, Mr. Diamantis holds a Diplomate in Local Government Law and is a Board Member of the New Jersey State Bar Association Land Use Section and a member of the

Association's Government, Public Sector, and Public Interest Lawyers Committee. He is a Trustee of the Camden County Bar Association and a member of the American Bar Association, the Pennsylvania Bar Association and the New Jersey Institute of Local Government Attorneys, Inc. He is the author of "The Impact of Social Media on Public Sector Employees in New Jersey" (*New Jersey Lawyer*, April 2019).

Mr. Diamantis received his B.A., *cum laude*, from Rutgers University-Camden, where he was elected to *Alpha Sigma Lambda*; his J.D. from Rutgers Law School, where he was a member of the Willem C. Vis and Hunter Moot Courts; and his M.B.A. from Rutgers Business School. He holds Certificates in Public Sector Labor Relations and Labor and Employment Law from the Rutgers School of Management and Labor Relations (SMLR). He was Law Clerk to the Honorable Stephen M. Holden, J.S.C., Ph.D. and to the Honorable Anthony M. Pugliese, J.S.C.

Adam J. Faiella is a Member of the Real Estate Department of Sills Cummis & Gross P.C. in Newark, New Jersey. He concentrates his practice in land use, redevelopment, zoning and related litigation, including the preparation of site plan and variance applications, and has presented before planning boards and zoning boards of adjustment across New Jersey.

Admitted to practice in New Jersey and New York, Mr. Faiella is a Director of the New Jersey State Bar Association Land Use Law Section and serves on the Section's Affordable Housing Committee. He is a member of the International Council of Shopping Centers (ICSC) NextGen Committee, the American Bar Association, the New Jersey chapter of the National Association of Industrial and Office Properties (NAIOP-NJ) and the Urban Land Institute; and a former Advisory Board Member at Rutgers Center for Real Estate. He has lectured for ICLE, the New Jersey Builders Association, ICSC and Monmouth University's Kislak Real Estate Institute.

Mr. Faiella received his B.S., with distinction, from The Pennsylvania State University and his J.D. from Duke University School of Law.

Peter Flannery practices with Bisgaier Hoff, LLC in Haddonfield, New Jersey, where he focuses in land use and redevelopment law. Representing residential and mixed-use redevelopers, retail developers and landlords, and industrial operators, he is involved in appearances before local planning and zoning boards as well as county, regional and state agencies; the litigation of prerogative writ actions in connection with land use approvals; redevelopment area designations; zoning and redevelopment plan ordinances; and the negotiation of redevelopment and other development agreements.

Admitted to practice in New Jersey and New York, Mr. Flannery is a member of the New Jersey State Bar Association Land Use Law Section and Committee on Renewable Energy, Clean Tech and Climate Change. He is also a member of the New Jersey Chapter of the National Association of Office and Industrial Properties (NAIOP-NJ) and the International Council of Shopping Centers (ICSC).

Mr. Flannery has lectured for the National Business Institute, the New Jersey Builders Association and other organizations. A contributing author to two chapters in *New Jersey Land Use, Second Edition* (Juris Publishing, 2009), he is the author of articles which have appeared in *The Metropolitan Corporate Counsel* and *Dimensions*.

Mr. Flannery received his B.A., with honors, from the University of Chicago; his M.C.R.P. from Rutgers University's Edward J. Bloustein School of Planning and Public Policy; and his J.D. from Rutgers University School of Law-Newark.

Gary S. Forshner is the founder and Principal of the Law Offices of Gary S. Forshner in South Amboy, New Jersey, after previously serving as the Co-Chair of the Redevelopment and Land Use Department of one of New Jersey's most prestigious law firms. He concentrates his practice in land use, zoning and real estate development and redevelopment, and represents local, national and international developers, property owners and other business clients engaged in mixed use, residential, industrial, office, retail and affordable housing development projects. Mr. Forshner provides sophisticated counsel and guidance across all phases of the project life cycle, including commercial transactions, land use, planning and approvals; permits and variances; appearances before municipal, county and state boards and agencies; and appeals of unfavorable land use decisions. He has also served as special land use counsel to municipalities and the New Jersey Builders Association (NJBA).

Admitted to practice in New Jersey and Pennsylvania, Mr. Forshner is Past Chair of the New Jersey State Bar Association's Land Use Law Section. He is a Life Director of the New Jersey Builders Association, has been Chair of the Association's Master Sponsor Committee and has served on or chaired several other committees. Mr. Forshner has been a Life Director of the Shore Builders Association of Central New Jersey and a member of the Builders League of South Jersey and the National Association of Home Builders. He is a long-time member of the Legislative Affairs Committee of the National Association of Industrial and Office Properties (NAIOP), and has served on several committees of the International Council of Shopping Centers (ICSC). Mr. Forshner has served as the Associate Vice Chair of New Jersey Builders Political Action Committee and is a long-time Trustee of the organization. A Commissioner of the South Amboy Redevelopment Agency, he is a former member of the South Amboy Planning Board.

For the past 8 years Mr. Forshner has served as an adjunct professor at Monmouth University, teaching real estate law to undergraduate and graduate students in the Kislak Real Estate Institute. He has lectured on zoning and planning, sustainable energy land use, eminent domain, real estate transactions, financing and leasing, and attorney and government ethics topics for several organizations including ICLE, the New Jersey Bar Association, the NJBA and ICSC; is the author and co-author of articles which have appeared in the *New Jersey Lawyer*, the *New Jersey Law Journal* and other publications; and plans and coordinates the Land Use Institute of the New Jersey State Bar Association. He is the 2008 recipient of the Distinguished Service Award for Outstanding Political Action and the 2013 Builders' Choice Award, both bestowed by the New Jersey Builders Association, and several other honors.

Mr. Forshner received his B.S. from Pennsylvania State University and his J.D. from American University, Washington College of Law.

Cameron W. MacLeod is a Partner in FBT Gibbons in the firm's Trenton, New Jersey, office, where he represents developers of industrial, commercial and residential projects throughout New Jersey as part of the land use and redevelopment process, with a particular emphasis on addressing affordable housing issues and land use/zoning litigation.

Admitted to practice in New Jersey and Pennsylvania, Mr. MacLeod is a member of the New Jersey State Bar Association Land Use Law Section and the International Law Students Association. He has lectured for ICLE and NJBiz, and has authored articles which have appeared in the *New Jersey Law Journal* and other publications.

Mr. MacLeod received his B.A., *cum laude*, from The College of Wooster and his J.D. from Case Western Reserve University School of Law, where he was Managing Technical Editor of *War Crimes Prosecution Watch*, Vols 5&6, and Executive Notes Editor of the *Case Western Reserve Journal of International Law*, Vol. 44. He was law clerk for the Somerset County Prosecutor's Office and the International Criminal Tribunal for Rwanda in Arusha, Tanzania.

Nicole M. Magdziak is a Partner in Day Pitney LLP in the firm's Parsippany, New Jersey, office, where she assists developers, property owners and corporations with residential, commercial, industrial and multi-family development and redevelopment, including land use and zoning, rezoning, affordable housing, redevelopment law, real estate acquisitions and dispositions, and financial incentives. She appears before municipal authorities to secure regulatory approvals including site plan, subdivision, bulk variances and use variances.

Admitted to practice in New Jersey and New York, Ms. Magdziak is a member of the Board of Directors of the New Jersey State Bar Association Land Use Law Section and a member of the Morris County Bar Association. She has lectured for the Morris County Bar Association and serves on the Commercial Real Estate Steering Committee of the United Way.

Ms. Magdziak received her B.S., with distinction, from the University of North Carolina and her J.D., *cum laude*, from Seton Hall University School of Law, where she was Symposium Editor of the *Seton Hall University School of Law Legislative Journal*. She interned with the Office of Regional Counsel, Environmental Protection Agency, Region 2, and with the Honorable Denise Cobham, New Jersey Superior Court.

Steven J. Mlenak is Co-Chair of the Redevelopment and Land Use Department and the Community Associations Practice Group at Greenbaum Rowe Smith & Davis LLP in the firm's Roseland, New Jersey, office. He concentrates his practice in community association law, redevelopment, land use, affordable housing and real estate development, and has also served as Chair of the firm's Financial Incentives & Economic Development Practice Group.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey, Mr. Mlenak is a Fellow of the American College of Real Estate Lawyers (ACREL) and Past President of the Community Association Institute's New Jersey Chapter (CAI-NJ), for which he has served in several capacities. He is a Director of the New Jersey State Bar Association Land Use Law Section, Chair of the Section's Legislative Committee and a member of the Regulatory Affairs and Legislative Committees of NAIOP-New Jersey and the Legislative Affairs Committee of the New Jersey Builders Association.

Mr. Mlenak contributed to *The Redevelopment Handbook: A Guide to Rebuilding New Jersey's Communities* (3rd Edition, 2024) and has lectured for organizations including ICLE, CAI-NJ and the New Jersey Builders Association. He was the 2016 recipient of CAI-NJ's "Speaker of the Year" award and a number of other honors.

Mr. Mlenak received his B.A. from the University of Connecticut and his J.D. from Rutgers University School of Law-Newark, where he was a semi-finalist in the Nathan Baker Mock Trial Competition.

Derek W. Orth is an Equity Partner in Inglesino Taylor, Attorneys at Law, in Parsippany, New Jersey, where he concentrates his practice in civil litigation, zoning and land use litigation, tort matters, and criminal defense. He represents clients in all phases of litigation and regularly appears in state courts on behalf of individuals, businesses and public entities. He is also certified as a Special Civil Part Mediator and has successfully mediated numerous matters to resolution.

Admitted to practice in New Jersey, Mr. Orth has extensive experience navigating complex litigation issues and provides strategic counsel in matters involving land use disputes, civil claims and criminal proceedings. He also worked in the Appellate Bureau of the New Jersey Attorney General's Office, assisting in the prosecution of criminal appeals on behalf of the State. He has lectured on issues relating to civil litigation and mediation, and is the recipient of several academic honors.

Mr. Orth received his B.A., *cum laude*, from Carleton College and his J.D., *cum laude*, from Rutgers University School of Law–Newark, where he served as Managing Articles Editor of the *Computer and Technology Law Journal*. His prior legal internships include service with the Honorable Harold W. Fullilove, P.J.S.C., Superior Court of New Jersey, Essex County, and the Honorable William J. Martini, U.S.D.J., United States District Court for the District of New Jersey. Prior to entering private practice, he served as Judicial Law Clerk to the Honorable Thomas L. Weisenbeck, A.J.S.C., Superior Court of New Jersey, Morris County.

Jennifer M. Porter is a Member of Chiesa Shahinian & Giantomasi P.C. in Roseland, New Jersey, and New York City, and is Practice Group Leader of the Redevelopment, Land Use & Zoning Group. She represents clients ranging from Fortune 500 companies to developers, owners and lessees of commercial, retail, industrial and residential properties in land use, zoning and development law matters.

Ms. Porter is admitted to practice in New Jersey, New York, Pennsylvania and Connecticut, and before the United States District Court for the District of New Jersey and the Southern District of New York. She is a member of the New Jersey State Bar Association Land Use Law Section; the New York State Bar Association Municipal and Real Property Law Sections; the Pennsylvania Bar Association Real Property, Probate and Trust Section; the Planning and Zoning Section of the Connecticut State Bar Association; and the Essex County Bar Association. She has lectured for ICLE, the New Jersey State Bar Association, the National Business Institute and other organizations, and is the recipient of a number of honors.

Ms. Porter received her B.A., *cum laude*, and M.A. from Indiana University of Pennsylvania and her J.D., *cum laude*, from Pace University's Elizabeth Haub School of Law, where she was a Casenote and Comment Editor of the *Pace University Law Review* and Managing Director and Research Fellow at the Pace Land Use Law Center. She was a judicial extern to the Honorable Charles L. Brieant, Jr., United States District Court for the Southern District of New York, and also interned at the Pace Environmental Litigation Clinic.

Robert F. Simon is a Shareholder in Herold Law, P.A. in the firm's Warren, New Jersey, office. He focuses his practice in land use regulation before local zoning and planning boards; real estate-related litigation including land use, tenancy, tax appeals, condemnation and title actions; and commercial and residential real estate transactions. Mr. Simon has been qualified as an expert witness in both Superior Court and District Court in legal malpractice and mortgage fraud matters. He is Board Attorney for the Township of Tewksbury Land Use Board, Special Land Use Counsel for the Borough of Wallington as to Affordable Housing litigation and Board Attorney for the Township of Millburn Board of Adjustment.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey and the Southern and Eastern Districts of New York, and the United States Court of Appeals for the Second and Third Circuits, Mr. Simon is Vice Chair of the New Jersey State Bar Association's Land Use Law Section, a member of the Association's Real Estate Law Section and Past Chair of the District XIII (Hunterdon, Somerset and Warren Counties) and District VB Fee Arbitration Committees. He has lectured for ICLE and Lorman Education Services.

Mr. Simon received his B.A. from Johns Hopkins University and his J.D. from Benjamin N. Cardozo School of Law, Yeshiva University, where he served as a member of the Editorial Board of the *New Europe Law Review*. He was a judicial law clerk to the Honorable R. Benjamin Cohen, J.S.C.

Thomas J. Trautner Jr. is a Partner in Chiesa Shahinian & Giantomasi P.C. in Roseland, New Jersey, and Chair of the firm's Redevelopment, Land Use & Zoning Group. He is an experienced real estate development lawyer with a diverse practice and serves as counselor, strategic architect and (when the situation calls) litigator. He counsels clients before planning and zoning boards and assists clients with securing redevelopment designations and negotiating redevelopment agreements.

Admitted to practice in New Jersey and Pennsylvania, and before the United States District Court for the District of New Jersey, Mr. Trautner is Chair of the New Jersey State Bar Association Land Use Law Section and Governance Co-Chair of the Urban Land Institute, Northern New Jersey. He serves on the Board of Directors of the New Jersey Builders Association and the Metropolitan Builders & Contractors Association of New Jersey, and is a Trustee of NAIOP-NJ. He is the recipient of several honors.

Mr. Trautner is a *cum laude* graduate of Rider University and received his law degree from Rutgers Law School. While attending Rutgers Law School, he served as Co-Chair of the Moot Court Board and had the distinction of being named to the school's 1998 national Moot Court Team. Prior to joining the firm, he served as a judicial law clerk to the Honorable Eugene D. Serpentelli, Assignment Judge, Superior Court of New Jersey, Ocean County.

Amanda C. Wolfe is a Member of Norris McLaughlin, P.A. in Bridgewater, New Jersey, and a member of the firm's Real Estate Practice Group. She has more than a decade of experience representing municipal planning, zoning and land use boards, including the Zoning Boards of Adjustment of Berkeley Heights and Chatham Township, the Land Use Board of Chester Borough and the Zoning Board of Adjustment and Planning Board of New Providence.

Admitted to practice in New Jersey, New York and Florida, Ms. Wolfe is a Director of the Land Use Law Section of the New Jersey State Bar Association and a member of the Somerset County, Union County and Summit Bar Associations. She teaches the mandatory course for new board members for the New Jersey Planning Officials (NJPO) and the Somerset County Bar Association Land Use Symposium, and has lectured for the New Jersey State Bar Association and other local bar associations.

Ms. Wolfe received her B.A., *summa cum laude*, and M.A. from Fairleigh Dickinson University and her J.D., *cum laude*, from the University of Florida's Levin College of Law, where she was an executive board member of the *Journal of Law and Public Policy*. She interned for the Office of the Attorney General – Consumer Affairs Division, the Honorable Paul Armstrong, J.S.C. (Ret.), the Honorable Frederic S. Kessler, P.J.Ch. (Ret.) and Florida Institutionalized Legal Services.