

DIMENSIONS

Newsletter of the New Jersey Builders Association



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Dimensions newsletter is produced by the New Jersey Builders Association (NJBA). NJBA is a housing industry trade association of builders, developers, remodelers, subcontractors, suppliers, engineers, architects, consultants and other professionals dedicated to meeting the housing needs of all New Jersey residents and facilitating their realization of the American Dream. NJBA serves as a resource for its members through continuing education and advocacy. The NJBA and its members strive for a better, greener, more affordable New Jersey. Additional information is available at www.njba.org.

NJBA recognizes and appreciates the expertise of its members. In this spirit **we invite and encourage our members to submit articles for publication in *Dimensions***. NJBA reserves the right to make the determination on which articles will be published, the timing of the publication and, if need be, the right to edit articles after consultation with the author. Questions or comments may be sent to Grant Lucking at grant@njba.org.

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THE OVERLAP OF RECREATION AND REDEVELOPMENT: HOW BROWNFIELDS CAN BE GREEN ACRES

By: Catherine M. Ward, Esq.

Although this is not a new issue or recent development, the topic of this article is not widely known and it presents a situation which could derail a much-needed redevelopment project. A section of the Green Acres Land Acquisition and Recreation Opportunities Act, N.J.S.A. 13:8A-35 et seq. (the "Act"), states that any land used for recreational purposes within a municipality that receives Green Acres funding automatically comes under the jurisdiction of the Green Acres program and therefore subject to the Green Acres requirements that the land be held for conservation or recreation. A parcel that is situated within a designated redevelopment area and subject to a redevelopment plan, can nonetheless be determined to be limited to parkland or active recreation uses if the municipality does not take appropriate action. This situation arises when such a parcel designated for redevelopment does not find a redeveloper or is being held by the municipality pending the acquisition of additional sites or when there is disagreement over the appropriate future use and while these issues are being worked out, the parcel is used as a pocket park or a ball field or for other public recreation. This is exactly what occurred in the court case which prompted the legislature to amend the Act in response.

The City of Plainfield sought to remove a parcel from its Recreational and Open Space Inventory (ROSI) so that the land could be redeveloped. The parcel was located in a designated redevelopment

area and subject to a redevelopment plan, but was being used as a public park until a redeveloper could be found and a redevelopment project approved. During the eight year period that the parcel was used as a park, it was listed on the City of Plainfield's ROSI as open space. When a redevelopment project materialized, the City sought to have the parcel removed from the ROSI on the basis that it had been listed erroneously. NJDEP allowed the parcel to be removed from the ROSI but citizens groups appealed. In the resulting Appellate Division case, *In the Matter of Amendment to Recreation and Open Space Inventory of the City of Plainfield*, 353 N.J. Super. 310 (2002), the Appellate Division reversed the NJDEP's finding and held that the City of Plainfield had not proven that the parcel was erroneously listed, because the parcel had in fact been used as a park for eight years, even though it was also found that the City had actively been looking for redevelopment projects for the parcel and had upgraded the park to attract redevelopers. Despite the intent to redevelop the land, however, the City of Plainfield had included it on their ROSI submitted to NJDEP.

The impact of the decision confirmed that all lands used for recreation or open space held by a local unit (the entity receiving Green Acres funding, in this case, a municipality) are under Green Acres jurisdiction once the municipality receives Green Acres funding. Further, the intent of the municipality in

holding land pending redevelopment was no longer relevant. Only the actual use of the land matters. Once public land owned by a municipality receiving Green Acres funding is used for recreation or conservation purposes, the land must be listed on the municipality's ROSI. Any change in use of the land will require a diversion application. It is not just land which has been acquired or improved with Green Acres funds which becomes subject to Green Acres restrictions.

Upon the issuance of the Appellate Division decision on July 18, 2002, the legislature promptly amended the Act to address the City of Plainfield situation by excepting from the foregoing restrictions land which is the subject of a redevelopment plan adopted prior to July 18, 2002 (the date of the court decision in the *City of Plainfield* case). Redevelopment plans adopted after that date will not exempt lands from the jurisdiction of Green Acres. Thus, a municipality considering an interim recreation use for land which the municipality ultimately wants to develop commercially should undertake such action after careful consideration of the Act and the City of Plainfield case. Likewise, a redeveloper which has identified a publicly-owned parcel for redevelopment but which is being used for what could be considered a recreational use would be advised to meet with the Green Acres program of NJDEP to determine whether N.J.S.A. 13:8A-47, as amended, applies.

About the Author:

Stradley is a full service firm with offices in Philadelphia, Cherry Hill, Malvern, Harrisburg, Washington, DC, New York and Chicago. The author's practice focuses on environmental and related regulatory issues in redevelopment, energy, industrial and land use situations.