

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 housing market. 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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A MESSAGE FROM PRESIDENT JOHN KIRKENIR

Dear NJBA Members,



John Kirkenir
NJBA President

The 69th annual Atlantic Builders Convention is fast approaching and that means my term as President of the New Jersey Builders Association is nearing its conclusion.

NJBA had an eventful year and I am proud of the progress we made on numerous initiatives in the three-point plan I outlined last April. Our focus on engagement, efficiency and education has left NJBA strongly positioned for the future and I am pleased to be passing the torch to an extremely qualified Officer in President-elect Tom Troy. I know he will continue building on the momentum we have generated as NJBA works with a new Administration in Trenton to advance the interests of the building industry.

NJBA encountered a busy winter with the lame duck legislative session, the inauguration of Governor Phil Murphy, his appointment of key agency officials and the passage of federal tax reform. I'm pleased to report that during the lame duck session, NJBA secured a significant legislative victory with the enactment of its performance guarantee law.

NJBA's performance guarantee bill, S3233/A1425 (Van Drew/Oroho/Johnson/Wimberly), received unanimous approval in the Senate and Assembly on January 8 and was signed into law by Governor Chris Christie, January 16, 2017, as P.L.2017, c.312. The new law requires performance bond escrowing only for improvements that will be dedicated to a public entity, with some very limited exceptions. Previously, performance

bonds had frequently been required for both public and private improvements. Additionally, the new law establishes a safety and stabilization bond, and stream-lines the temporary certificate of occupancy process. Furthermore, requests for additional inspection fees will have to be itemized and justified. This bill is a major victory for builders and can mean the difference of tens of thousands of dollars for certain development projects. Thank you to the many members of NJBA who worked very hard on this law for nearly four years with a number of different stakeholders.

NJBA was successful in stalling numerous misguided proposals during lame duck that would have negatively impacted our ability to provide housing for the residents of NJ. Several of the most potentially damaging proposals included fire safety/sprinkler reforms, including a bill that mandated sprinklers in single and two-family homes and one that required a "fire watch" to be present on all residential construction sites. NJBA has been diligent in responding to the push by fire sprinkler and safety advocates by forming a Fire Sprinkler Task Force comprised of builders, architects, engineers and code committee members to review the numerous fire safety proposals being introduced in the legislature. I'd like to thank President-elect Tom Troy for his work chairing the Fire Sprinkler Task Force.

Additionally, I thank Immediate Past President Dwight Pittenger for continuing the work of the Affordable Housing Task Force. We have finally received a decision in the Mercer County case that we hope will be a defining ruling for other vicinages throughout the state. In the meantime, many of our members have been able to successfully negotiate with

municipalities to put forth projects that will help meet anticipated affordable housing obligations. It is hard to think of any home building developments that the affordable housing requirements won't be a big part of.

NJBA was also active opposing several proposals that would have negatively impacted Payments In Lieu Of Taxes (PILOTs) and tax abatements. Of particular concern was a bill that would have imposed prevailing wage on properties receiving tax abatements or exemptions and a bill that required municipalities to share certain PILOTs with school districts. I thank NJBA Builder Vice President Josh Mann, Esq. for his work chairing the newly created PILOT Task Force and their work studying the various legislative proposals.

Finally, NJBA was able to stall legislation that would have undermined private property rights while inappropriately expanding the public's right to access waterways under the Public Trust Doctrine. Similarly, NJBA has been engaged in discussions with other advocacy groups concerning S1073 (Smith/Bateman) to establish stormwater utilities to oversee the operation and maintenance of stormwater facilities. While none of the aforementioned issues advanced to the Governor before the end of lame duck, they are all likely to be topics of discussion in the 218th Legislative Session.

In addition to the work in Trenton, NJBA was also engaged at the federal level during discussions on H.R.1, the most sweeping tax reform in decades. NJBA joined NAHB 2nd Vice Chair Dean Mon in meeting with key members of NJ's Congressional delegation to relay concerns about how the final legislation would negatively impact NJ's building

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MOVING TOWARDS CONSISTENCY

Amendments to the Municipal Land Use Law, N.J.S.A. 40:55d-53, Bond Requirements

By: **Meryl A.G. Gonchar, Esq.**

During his last day in office, Governor Christie signed into law Assembly Bill 1425/Senate Bill 3233, which implement major reforms to the requirements for performance and other bonds posted in connection with municipal land use approvals under the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq. ("MLUL"). The amendments were intended to bring greater consistency in calculating performance bonds under N.J.S.A. 40:55D-53 and to introduce other modifications to the development process to address practices that resulted in cost and delay and to codify useful practices. Rather than viewing these amendments as either pro-municipality or pro-developer, the amendments should be viewed as an effort to create consistency such that a developer working in multiple municipalities is not faced with disparate bonding requirements in each municipality and has the ability to anticipate its costs relative to guarantees and inspection fees.

The amendments make clear that only improvements required to be dedicated, as enumerated in the statute, may be subject to a performance bond requirement and only if required by a duly adopted ordinance. These dedicated improvements include, among other items, streets, curbs, sidewalks, street lighting, street trees, water mains, and drainage structures. The dedication requirement may be set forth in an approval, developer's agreement, ordinance or regulation. Perimeter landscape buffers required by ordinance, approval or developer's agreement also may be required to be bonded as distinguished from other landscaping included in a project, such as parking lot landscaping or foundation plantings.



In addition to the clarification regarding the improvements as to which performance bonds may be required, a new guarantee, referred to as the "safety and stabilization guarantee," ("SSG") has been introduced. This new guarantee is, in part, a codification of the restoration bond that land use boards or officials often require to be posted prior to site disturbance but as to which there was no statutory authority. The SSG may be posted separately or as a line item under the performance bond. This guarantee is intended to provide the municipality with a source of funds to protect the public from unsafe or unstable conditions. Funds may be used, for example, to re-seed an area that has been cleared to protect against erosion or to fence or gate an unfinished road or an incomplete detention basin, without requiring the municipality to use municipal funds to do so. The guarantee amount is calculated as a percentage of the bonded improvements. The municipality has recourse to these funds only if all work on the project has stopped for a period of at least sixty (60) consecutive days and a notice is

provided which does not result in work recommencing within thirty (30) days following the notice.

The amendments also introduce a "temporary certificate of occupancy guarantee" ("TCOG"). The TCOG must be posted with the municipality, if required by an ordinance adopted by the municipality, at the time a temporary certificate of occupancy is sought. The guarantee is equal to 120% of the cost of only those items which are not completed and completion of which will be required to obtain a permanent certificate of occupancy. When these improvements are completed and the permanent certificate of occupancy is issued, the TCOG will be released by the officer or employee authorized by ordinance to do so, without the need for further process.

The new law makes changes with regard to maintenance guarantees under N.J.S.A. 40:55D-53.a.(2), a guarantee which may be required by ordinance and is posted at the time of release of the performance guarantee. The maintenance guarantee continues to be calculated at 15% of the performance guarantee. Maintenance guarantees also may include 15% of the cost of certain components of private storm water management facilities, including basins, inflow and water quality structures within the basin and outflow pipes and structures, even though these items, as private improvements, would not be included in the performance bond amount upon which the 15% maintenance guarantee is calculated. Maintenance guarantees now expire automatically at the end of two years.

Finally, the amendments make changes

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About the Author:

Meryl A.G. Gonchar, Esq. is a member of the firm and Co-Chair of the Land Use Practice Group at Sill Cummis & Gross, P.C.. Ms. Gonchar is also a member of the NJBA Board of Directors.

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RECENT DEVELOPMENTS IN SITE REMEDIATION: REVISED SOIL REMEDIATION STANDARDS

By: **Melissa A. Clarke, Esq.**

On September 18, 2017, the New Jersey Department of Environmental Protection (DEP) updated the soil remediation standards for nineteen contaminants.¹ These changes are significant for persons responsible for remediating contaminated property, environmental professionals, and potential purchasers of contaminated sites as the new standards may impact remediation requirements. The impact of the new standards will depend primarily upon whether the site already has a Final Remediation Document and how much the revised standard(s) have changed.

DEP's September 2017 soil remediation standard updates are based upon revisions by the United States Environmental Protection Agency to toxicity information for these contaminants. Specifically, the soil remediation standards are now less stringent for eleven contaminants, including solvents tetrachloroethene (PCE) and 1,1,1-trichloroethane (1,1,1-TCA) and several polyaromatic hydrocarbons (PAHs) commonly found in historic fill, like benzo(a)pyrene. The soil remediation standards are more stringent for six contaminants, including the solvent trichloroethene (TCE). The standards for three of those six contaminants have significantly decreased,² by an order of magnitude or more: 1,1-biphenyl (for both residential and non-residential); cyanide (both residential and non-residential); and nitrobenzene (non-residential only). One contaminant remains unchanged (1,1,2,2 tetrachloroethane), while

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another will no longer be regulated under DEP's soil remediation standards (thallium).

Sites without a Final Remediation Document

If a site undergoing remediation does not have a Final Remediation Document (FRD), the person responsible for conducting remediation may continue to remediate using the pre-September 18, 2017 soil remediation standards so long as the updated standard has not decreased by an order or magnitude or more from the standard in effect prior to September 18, 2017, and one of the following conditions apply:

- DEP has approved a Remedial Action Workplan (RAW) or Remedial Action Report (RAR) for the site being remediated prior to the effective date of September 18, 2017; or

- A RAW or RAR certified by a licensed site remedial professional (LSRP) has been submitted to DEP prior to September 18, 2017 for the site being remediated; or
- The site being remediated will have a RAW or RAR approved by the DEP by March 18, 2018; or
- A LSRP-certified RAW or RAR for the site being remediated will be submitted to DEP by March 18, 2018.

In addition, the remedial action must be conducted within the applicable regulatory timeframe as set forth in the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-5.8.

If the site being remediated has been impacted by any of the three contaminants for which the soil remediation standard decreased by an order of magnitude or more (1,1-biphenyl, cyanide, or nitrobenzene) then the new remediation standard applies regardless of whether a RAW or RAR has been approved by DEP or certified and submitted to DEP.

Sites with a Final Remediation Document

If a site undergoing remediation has a FRD, such as a Remedial Action Outcome (RAO), and the new soil remediation standard has not decreased by an order of magnitude or more, no further evaluation is required.

Where there is a FRD and the site

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1. <http://www.nj.gov/dep/rules/adminchg/20170918a.pdf>; http://www.nj.gov/dep/rules/rules/njac7_26d.pdf

2. If a standard becomes more stringent, it will decrease (i.e., the threshold for action will be lower). If it becomes less stringent, the standard will increase (i.e., threshold for action will be higher).

About the Author:

Melissa A. Clarke, Esq., is an Associate Attorney with Giordano, Halleran & Ciesla, P.C.. She can be contacted at mclarke@ghclaw.com or 732-741-3900. GH&C's Environmental and Land Use Department represents clients in environmental and land use matters, including State and federal environmental permitting and regulatory compliance involving wetlands, coastal areas, flood hazard areas, water and air quality, solid and hazardous waste remediation, brownfield redevelopment, and underground storage tank compliance. GH&C is also experienced in a broad variety of land use, development and environmental litigation involving municipal, State and federal agencies, such as planning and zoning boards, the Department of Environmental Protection (DEP), and the United States Environmental Protection Agency (EPA).

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MASTERMIND: INSIDE THE MIND OF A HACKER

By: Cathy Coloff

Cybersecurity is finding its way to the center of every business owner's radar—and if it isn't, it probably should be. Consider the companies we know (and trust) with our confidential data. All seems well until suddenly they're the victim of a massive cyber breach. Who ever thought Merck or Equifax would end up making headlines for data breaches, with millions of dollars lost as a result? How is it that hackers work as fast as they do?

Back in 1970, a board game known as Mastermind was released. The game is played between two opponents: The codemaker and the codebreaker. The codemaker creates a sequence, and it's up to the codebreaker to solve the code in the least amount of terms possible.

Hackers are expert game players. In the case of your computer, the key to the code is usually your login credentials (user name and password.) Once they have those, they have cracked the code. Here's a list of some of the most common, and most effective exploit techniques:

Phishing – The vast majority of data breaches happen when an employee is taken advantage of by a scammer posing as a legitimate person. Phishing attacks are bogus emails that can do serious damage if your staff is unaware (e.g., an email that poses as Microsoft and asks for login credentials to "update" your software.) It is easy for an unwitting staffer to provide access to their email account.



Vishing – This is another form of phishing; however, this time it's a phone call. Phony callers engineer a fake caller ID or local phone number to create trust. A website can mimic Microsoft or other trusted resource. Either way, you are tricked into providing your login credentials or other confidential information. Another example of vishing is a website that freezes your computer and says: Call 1-800-Definitely-Not-A-Scam-Now to fix your machine. Users who aren't trained on what to watch out for click into this and open their computer to the hacker...inadvertently risking your company's revenue, reputation, and in some cases, your business. And, to make matters worse, if employees have work credentials or information on a personal device, what happens out of the office can also impact your business.

Keylogging – After the intruder has snuck onto your machine with these codebreaker techniques, they can continue to break through layers of your code. Malicious programs to

track your employees' keystrokes are installed so that the hacker can see your accounting passwords (or worse, your clients' accounting passwords). Then, the attacker simply bides their time, until they have everything they need to compromise your network.

So, what can you do to stop this from happening or at least greatly reduce your risk? Educate your team on what to look out for. The #1 reason for data breaches is a user accidentally giving away "code" secrets to the codebreaker. You want your team to be savvy and cautious. And, you want passwords to be high quality and different from personal passwords. The latest password wisdom says that a random phrase, with a combination of letters, numbers and characters is the best approach.

Once the codebreaker has their foot in the door, it's far too late. Their automation techniques can do everything from holding your data hostage for a ransom, copying themselves on every email you send, and intercepting the messages you receive. **Seriously, folks, this happens more than you'd think!**

Our advice? Take advantage of the security and training resources available to you through IT Radix to reduce your risk of becoming a victim. We realize security is a big topic. It's not always easy to get started; but luckily, you don't have to figure it out alone. Give us a call. We've got your back!

About the Author:

Cathy Coloff is the Managing Member with IT Radix. Recognized in 2018 as one of New Jersey's Best 50 Women in Business by NJBIZ and in 2015 as one of the Top Leading Women Entrepreneurs in NJ, Cathy has 25+ years of experience in network systems. With extensive corporate experience at Exxon and Bear Stearns, Cathy helps IT Radix clients to harness the power of technology to stay up and running, maximize productivity, be secure, reach their goals and achieve success. Cathy can be reached at 973-298-6908, itsales@it-radix.com or www.it-radix.com

By: **Stuart Berger, CPA**

As 2018 has kicked off, all industries (and the real estate sector in particular) are preparing for major changes due to new laws and regulations in addition to new thought-processes on how we do business. This is an exciting time, and as a leader in Sax LLP's Real Estate Practice, it is my duty and passion to have my pulse on the market, and there is much that we can forecast for the coming future.

Certainly, the Tax Cuts and Jobs Act that President Trump signed into law on December 22 will significantly impact real estate, and although it may be too soon to tell the full scope, it is clear that specific segments of the market will be impacted differently.

One struggle is that the new Tax Act has left uncertainty in some areas. While most individual tax payers rushed to pay their real estate taxes at the end of 2017, there is now a larger void of information around the provisions for commercial real estate moving forward. Individual tax payers will be allowed to deduct approximately 20% of their qualified business income. This amount is going to be the lesser of 20% or the greater of 50% of W-2 wages paid to employees, and 25% of W-2 wages plus 2.5% of unadjusted basis of qualified property.

This may sound clear, but what is the definition of a qualified business? Who qualifies, and will they be able to avail themselves of this provision? Does a management company, developer or construction company meet the definition? There is also a huge uncertainty regarding how the 2.5% is calculated. As we await further guidance, I believe this could be a factor in slowing down real estate in the first two quarters of 2018.

On a positive note, tax-free exchanges (Section 1031) were preserved for real estate. This will allow for the continued trading of properties at very aggressive cap rates.

SALT (State and Local Taxation) has become a more common term now that the new Tax Act limits property tax deductions. This limitation, in addition to home mortgage interest deductions, will impact the values of residential real estate in high SALT states such as California, Maryland, Massachusetts, New Jersey and New York. The demand for homeownership in these states will decline as individuals will opt-out of owning a home to avoid high property taxes and invest their money elsewhere. This, in-turn, will increase multi-residential building development to account for the increase in demand for residential housing which we have already begun to see.

In a recent survey by the National Association of Home Builders (NAHB), new home construction, both locally and on a national scale, will be challenged by a lack of labor, lumber prices and availability of lots. Recently, there has been some sentiment that adds to the challenges facing the building industry as restrictions make lending more difficult.

While the nation is experiencing low population growth, New Jersey continues to experience almost zero. This does not bode well for the supply of labor. Once again, a recent survey of high school students conducted by the NAHB reported that the interest in entering the home building industry and related trades was extremely low. Availability and skilled labor will continue to be a major challenge for the industry.

As millennials continue to emerge in the industry and improved technology bridges the gap in communicating remotely, we will continue to see the traditional structure of a 9 a.m. – 5 p.m. work day dismantled and the idea that employees must report to an office challenged. With an increase in start-ups and entrepreneurial initiatives, the move to collaborative work spaces continues as these shared offices allow for lower renting costs, networking opportunities and fewer responsibilities. However, I project that this trend for collaborative offices will soften in the near future and there will be a slow shift back to private offices even though the office space of the future will undoubtedly continue to evolve.

In New Jersey, a new Governor will certainly bring about change. We expect and will watch for significant changes in the State's low-income housing policy due to continued activity in the courts and on the local level. On the legislative side, we expect changes in the state's PILOT program which allows municipalities to abate property taxes for developers when taking on projects in distressed areas. This could significantly change the landscape in requiring prevailing wages and allocation of the tax stream.

New Jersey Governor Phil Murphy has also been a large proponent for the legalization of marijuana and vowed to take this on once in office. The belief is that potential tax revenue from the cannabis industry could benefit New Jersey's economy greatly, in addition to impacting public health and tourism. Another large impact here could be to banking. The federal government declares marijuana as a Class I drug, so there will be issues with getting loans or

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About the Author:

Stuart Berger is a Partner at Sax LLP, a leading accounting, tax and advisory firm. Stu is the founder of the firm's Real Estate Practice and for more than 30 years, he has provided industry-specific tax and advisory services, with a special emphasis on helping family-owners and investors realize their full profit potential and maximize tax benefits. Stuart can be reached at sberger@saxllp.com or (973) 554-6111.

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HIGHLIGHTS OF TAX CUTS AND JOBS ACT

By: Edward P. Rigby, CPA

This article highlights the key individual and business tax law changes contained in the Tax Cuts and Jobs Act (P.L. 115-97) passed by Congress on December 20, 2017 and signed into law by President Trump on December 22, 2017. Among the major tax law changes are reform of individual tax rates, treatment of business income of individual taxpayers, repeal of individual tax deductions, reduction in the corporate tax rate, and increase in deductions for business capital investment.

Reform of Individual Tax Rates & Increase in Standard Deduction

The new law retains seven individual income tax rates (under the new law, the income tax rates are 10%, 12%, 22%, 24%, 32%, 35%, and 37%). Under the prior law, for 2017, the top individual income tax rate was 39.6% for taxable income over \$470,700 for a married couple filing a joint return (\$418,400 for single taxpayers). Beginning in 2018, the top 37% tax rate applies to taxable income over \$600,000 for married joint filers (\$500,000 for single taxpayers). The new law generally retains the maximum tax rates on long term capital gains and qualified dividends (e.g., the 20% rate applies to married joint filers with taxable income over \$479,000). The new law increases the standard deduction for married couples filing a joint return to \$24,000 (\$12,000 for single taxpayers). Thus, the new law nearly doubles the standard deduction amounts beginning in 2018.

Deduction for Qualified Business Income

There is a new 20% deduction available for individual taxpayers with passthrough income from sole proprietorships, partnerships (including LLCs taxed as partnerships), and S corporations. To

qualify, the income must be domestic, non-service business income. Also, there is a limitation or cap on the deduction based on wages paid by the passthrough business and capital investment as follows: The deduction is limited to the greater of: (1) 50% of the W-2 wages paid by the passthrough business or (2) 25% of W-2 wages plus 2.5% of the unadjusted basis of depreciable property used in the business. Further, specified service businesses such as accounting, law, healthcare, financial services and brokerage services are not eligible for the deduction (an exception applies for engineering and architectural services allowing such businesses to qualify).

The limitation or cap based on wages and capital is not applied to taxpayers with taxable income below the following thresholds. Further, the restriction on specified service businesses also does not apply to taxpayers with taxable income below these thresholds. For a married couple filing a joint tax return, the taxable income threshold is \$315,000 (\$157,500 for other filers). Thus, a married joint filer may claim the deduction regardless of W-2 wages and whether the business is a specified service business if their taxable income is below \$315,000. The wage and capital limitations and restrictions on service businesses phase-in when taxable income exceeds the \$315,000 and \$157,500 thresholds. The phase-in ranges are \$100,000 for joint filers and \$50,000 for other filers. Thus, a married joint filer with taxable income over \$415,000 is subject to the wage and capital limitation and must own a non-service business to claim the deduction.

Disallowance of Active Passthrough Losses in Excess of \$500,000 for Joint Filers (\$250,000 for all Others)

Pass-through losses (after the application of passive activity loss rules) from active trades or businesses are capped at \$500,000 for a married joint filer (\$250,000 for all others). Losses in excess of these amounts are carried over as part of the taxpayer's net operating loss (NOL). To illustrate, assume a married joint filer receives a partnership K-1 with a \$1,000,000 loss (the loss is not a passive activity loss). The loss is limited to \$500,000 for the current tax year with the excess amount treated as an NOL carryover amount to the subsequent tax year.

Repeal and Limitations on Individual Tax Deductions

The new law repeals the deduction for personal exemptions beginning in 2018. Deductions for state and local taxes that are not incurred in a trade or business are capped at \$10,000. Interest on home equity loans are disallowed and interest on mortgages for acquisition indebtedness are limited to mortgage debt up to \$750,000 (subject to grandfather rules for mortgages incurred before December 15, 2017). Further, miscellaneous itemized deductions subject to 2% of adjusted gross income (AGI) limitations are repealed. In addition, beginning in 2019, alimony deductions are repealed (and corresponding inclusion in income for the alimony recipient is also repealed).

Estate, Gift and Generation Skipping Transfer (GST) Taxes

The estate, gift and GST exemption amounts are doubled for estates of decedents dying and gifts made after December 31, 2017 and before January 1, 2026. For 2018, the exemption amount is approximately

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About the Author:

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HIGHLIGHTS TAX CUTS AND JOBS ACT

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\$11.2 million. The new law retains the prior law concept of basis step up for inherited assets and carryover for gifts. Thus, prior to gifting appreciated assets, a careful analysis should be made of the benefits of obtaining a basis “step up” upon the death of a decedent rather than obtaining a basis carryover from a gift.

Alternative Minimum Tax (AMT)

The new law repeals the AMT tax for corporations. Carryovers of AMT tax credits are retained. The AMT is retained for individual taxpayers with increased exemption amounts and phase-out thresholds. Beginning in 2018, the AMT exemption amount is increased to \$109,400 for married joint filers (\$70,300 for all other taxpayers). The phase-out thresholds are increased to \$1,000,000 for married joint filers (\$500,000 for other filers) (under the phase-out rules, the benefits of the AMT exemption are reduced as alternative minimum taxable income exceeds the phase-out thresholds).

Corporate Tax Rate Reduction

Effective for tax years beginning after December 31, 2017, the tax rate for C corporations is reduced from a top rate of 35% to a new rate of 21%. Under prior law, corporations were subject to a graduated tax rate schedule from 15% to a top rate of 35%. Under the new tax law, there is a flat rate of 21% imposed. Special straddle rules apply for fiscal year corporations that begin prior to December 31, 2017 and end in 2018. Thus, a fiscal year corporate taxpayer will calculate their tax using a blended tax rate (based on a calculation that combines the prior law and new law tax rates).

Increased Bonus Depreciation

The new law increases the deduction percentage under “bonus depreciation” for qualified property (from 40% in 2018 and 30% in 2019 under prior

law) to 100% for property acquired and placed in service after September 27, 2017 through 2022. After 2022, the percentage of bonus depreciation is phased down through 2026 (80% for 2023, 60% for 2024, 40% for 2025 and 20% for 2026). The new law allows used property to qualify for bonus depreciation (prior law contained an original use test). Qualified property generally includes tangible property such as machinery and equipment and also includes certain qualified improvement property (i.e., improvements to interior portions of nonresidential real property).

Increase in Expensing Election Under Code Section 179

The dollar limitation on Section 179 deductions is increased from \$500,000 under prior law to \$1 million for tax years beginning after December 31, 2017. Section 179 allows a taxpayer to make an election to depreciate the cost of qualified property in the year that the property is placed in service rather than claiming depreciation over the applicable MACRS depreciation life. The Section 179 phase-out is also raised from \$2 million to \$2.5 million. The phase-out reduces the maximum \$1 million deduction when the cost of Section 179 property acquired during the tax year exceeds \$2.5 million. Other limitations such as the taxable income limitation and application of the deduction for owners of passthrough entities such as partnerships and S corporations are retained under the new law. Under the new law, certain qualified improvements to real property such as roofs, air conditioning and heating systems, and security systems that are improvements to nonresidential real property qualify for Section 179 expensing.

Net Operating Losses (NOLs)

Prior law allowed a 2-year carryback of NOLs and a 20-year limitation on NOL carryforwards. For regular tax

purposes, a taxpayer’s NOL could be offset against 100% of taxable income. Under the new law, carrybacks of NOLs are repealed. There is an indefinite carryforward of NOLs and the amount of taxable income that can be sheltered by the NOL is limited to 80% of taxable income.

Reform and Simplify Small Business Accounting Methods

The requirement for C corporations to use the accrual method of accounting was based on a \$5 million gross receipts test. Under the new law, the gross receipts test is raised to \$25 million. The \$25 million gross receipts test is also used for purposes of determining whether a taxpayer is subject to capitalization of inventory costs under Code Section 263A. Further, the small business exception for long-term contracts and required use of percentage of completion method has been raised from \$10 million to \$25 million.

Limitation on Deduction of Net Business Interest Expense

Net business interest expense deductions are limited under the new law to 30% of adjusted taxable income. Real estate businesses can elect out of the interest expense limitation rule (electing out of the limitation rule requires a longer depreciation life for real property). Small taxpayers meeting the \$25 million and under gross receipts test discussed above for small business are exempt from the interest expense limitation rule.

Other Business Tax Provisions

Beginning in 2018 (subject to certain grandfather rules), deferred or “like kind exchanges” under Code Section 1031 are limited to exchanges of real property. Prior law allowed deferred exchanges for tangible personal property such as artwork or machinery and equipment used in the taxpayer’s business. The prior

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LOCAL REDEVELOPMENT: IT'S BAAACK, WITH A TWIST: MOUNT LAUREL?

By: **Richard P. DeAngelis, Jr. and Anthony F. DellaPelle**

There has been a recent uptick in municipally sponsored redevelopment efforts under New Jersey's Local Redevelopment and Housing Law, after nearly a decade of inactivity due to the economy and a spate of litigation in the 1990s and the early 2000s that focused upon whether properties qualified as blighted and, as such, were subject to acquisition by eminent domain.

So, what's changed in the last ten years? Well, for one, amendments to the Redevelopment Law in 2013 that now permit the designation of "non-condemnation redevelopment areas." This amendment was intended to make the controversial condemnation power optional, while continuing to provide favorable zoning and long-term tax abatements in hopes of incentivizing redevelopment. More recently, it appears there is another consideration that may be driving some of the renewed redevelopment efforts – the possible intersection between local redevelopment projects and the obligation of municipalities to provide a realistic opportunity for affordable housing under *Mount Laurel*.

Redevelopment under attack by the courts and the economy

The last proliferation of local redevelopment projects in New Jersey was dampened by the deep recession about ten years ago, as well as several court decisions. In the summer of 2007, the New Jersey Supreme Court issued its decision in *Gallenthin Realty Development v. Borough of Paulsboro*, concerning the constitutional definition of blight. This was followed by a string of decisions overturning municipal blight designations.

In February 2008, the Appellate Division

decided *Harrison Redevelopment Agency v. DeRose*, holding that the minimal amount of notice required under the Redevelopment Law fell short of the constitutional requirements of due process. This decision set a higher procedural bar for future projects, and also raised a hurdle for projects already in the pipeline because it held that property owners who receive inadequate notice retain the right to contest the property's blight designation as a defense in a later condemnation action.

These court decisions were codified in the 2013 amendments to the Redevelopment Law and, prior to becoming legislation, their precedent hampered municipal redevelopment projects which, combined with the precipitous fall of the real estate market, caused municipal redevelopment activities in New Jersey to come to a screeching halt by 2009. In some instances, developers backed out of redevelopment agreements. In others, redevelopment plans languished as there was no incentive for developers to proceed with their projects.

Multiple redevelopment projects have regained life and new projects have been conceived over the last two years. The driving force behind this resurgence is a revived economy and once again, the courts are playing a role. The courts will have to sift through the impact of its earlier decisions regarding the Redevelopment Law, particularly in regard to those "pipeline" projects that were halted. Also, the judiciary may have unknowingly given rise to a new issue to be considered in redevelopment matters – the issue of affordable housing.

The Mount Laurel conundrum

Under the Supreme Court's 1973 *Mount Laurel* decision, every municipality has

an obligation to use its zoning power to provide for a reasonable opportunity for the development of low and moderate cost housing. In its 1983 *Mount Laurel II* decision, the Supreme Court established the consequences of not complying with the *Mount Laurel* doctrine and that is the "builder's remedy."

Thereafter, the Fair Housing Act was enacted and created the Council on Affordable Housing ("COAH") to implement the *Mount Laurel* doctrine. COAH was charged with evaluating municipal compliance and it was through this process by which a municipality could attain "substantive certification" and protections from a builder's remedy action. Since then, many municipalities have struggled to control growth, while at the same time, complying with *Mount Laurel*. COAH's Round Two regulations expired in 1999, and the agency failed to establish legally valid rules. Years of litigation ensued over how the new rules should be formulated and the methodology to establish municipal fair share obligations.

In its March 2015 *Mount Laurel IV* decision, the Supreme Court reaffirmed the *Mount Laurel* doctrine. The Court also declared COAH defunct and eliminated the exhaustion-of-administrative-remedies requirement. In its stead, the Court provided for a judicial forum to adjudicate affordable housing disputes, creating a substitute for COAH's substantive certification process. It was under this new regime that municipalities then participating in the COAH substantive certification process could file an action to request from the court a declaration of compliance with its obligations under *Mount Laurel* and the Fair Housing Act. Shortly thereafter,

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About the Author:

The authors are attorneys at the Morristown law firm of McKirdy, Riskin, Olson & DellaPelle, P.C., where they limit their practice to eminent domain, redevelopment and real estate tax appeal matters. In addition, Mr. DellaPelle was a member of the NJBA's Redevelopment Committee which originated the proposed amendments to the Local Redevelopment and Housing Law that were enacted in late 2013 and which are referenced in this article.

DIMENSIONS

KEY STEPS TO GETTING YOUR PROJECT APPROVED

By: Susan R. Rubright, Esq.

Every construction project has its pitfalls, regardless of how much advance planning is done. However, there are some steps you can take to avoid running into pushback or allay concerns if you are presenting to the planning or zoning board (the “Board”). They are: be a good neighbor, hire the best professionals, demonstrate your project’s positive impact on the area, maintain a polite—yet firm—demeanor with the board, and make your case for the record.

Before the presentation

As noted above, the best place to start before you make your presentation is to consider your neighbors—it’s the first rule of land use and will serve you well.

Be transparent and talk to neighbors on all sides of the property about your plans.

Walk around the site and try to see it—and your proposal—from their point of view. They will likely have questions about your plans after receiving the legal notice about the hearing; it’s in your best interest to be available, open, and honest; answer their questions and show them you’re being a good neighbor. Tell them why your project is an improvement and why, if applicable, you are seeking variances. Being a good listener will serve you well and help avert unwanted complaints at the variance hearing.

Another proactive measure is to hire experts from the start; this will help you anticipate and troubleshoot potential issues. It also helps you prepare well for your hearing; you’ll be armed with all necessary information to adequately address concerns of the board and the public, should they arise.

These experts will also look at the project from all angles and aspects, and anticipate potential concerns about many

common issues such as traffic patterns and parking, landscaping, building design in the context of the surroundings, environmental impact of construction, and more.

Beyond your architect, some professionals to have on your team are site engineers, planners, arborists, environmental contractors, traffic engineers, and attorneys that specialize in land use. This last person is particularly important because of the specific body of law governing zoning and planning law. Be sure to have someone who specializes in these matters on your side.

Hiring these professionals will help you build credibility with stakeholders, show the impact your project will have, and help you prepare for your variance hearing or answer any pertinent questions on your application. You’ll be demonstrating your due diligence every step of the way. Doing so will also save you precious time and money in the long run, since you are less likely to return to the drawing board completely. It will also help you more easily accommodate zoning board requests for certain upgrades before construction begins.

Presenting to the Board

Your groundwork is laid for your presentation before the board and it’s time to get that project approved. Be sure to showcase the positive impact your project will have on the community at large (such as beautification, revitalizing the area, or repurposing of property to benefit area residents and workers). If there are detriments (be honest about them), be prepared to address those concerns. Have remedies at the ready for any negatives that come up from board members or residents—Plan B improvements for building design or site features, parking, public works,

or landscaping upgrades that boost your project’s positive impact on the surrounding area (and that you can live with). Since you’ve already engaged specialists to review your plans in advance, you should already be prepared for anticipated downsides.

When appearing before the Board, remember they have the future of your project in their hands. Be polite and respectful but firm about what you are proposing. Don’t bristle at their feedback—this could alienate the people who will be judging the project and—you hope—giving it the green light. If the Board asks for concessions, consider them carefully. See where you can be flexible and accommodate these conditions, even if it means reworking plans or adding to your construction budget.

If you really don’t find the conditions acceptable, firmly explain why and offer alternatives that you can do. Getting your application approved is a balancing act that requires compromise, not conflict.

In the event the Board denies your application and you intend to appeal, or if you truly find a requested condition to be non-negotiable, inform the zoning board calmly why you will appeal so it is entered into the record. This way, you’ll be setting up your appeal in a much more amenable fashion.

Bear in mind that although your application appears to be straightforward, “easy land-use applications” don’t really exist. Neighbors may appeal, setback variances may apply, the Board may question the proposed land use even though it is permitted ... myriad issues can crop up. This is why it is so important that you make your case for the record,

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By: Susan Stocker, Esq.

New Jersey developers should closely follow the progress of two pieces of legislation aimed at creating financial incentives for the development of affordable housing. On the federal level, H. R. 1661, the Affordable Housing Credit Improvement Act of 2017, is a bill introduced in March 2017 which will facilitate Housing Credit development for hard-to-reach populations including those with extremely low incomes. On the state level, New Jersey Assembly Bill No.

3551, introduced in April 2016, and recently approved by the New Jersey Assembly Housing and Community Development Committee, would significantly boost the tax credits available to developers to construct affordable housing projects. If signed into law, this legislation would add to the arsenal of financing tools available for the construction of affordable housing projects.

H.R.1661 The Affordable Housing Credit Improvement Act of 2017

The federal bill, H.R. 1661 is a bi-partisan, multi-layered bill aimed at fortifying the Low Income Housing Tax Credit (Housing Credit). The Housing Credit, established in 1986, is arguably our country's most successful mechanism for encouraging private investment in the production and preservation of affordable rental housing. The bill would simplify program requirements, streamline the financing of affordable housing and make the process more predictable. Importantly, the bill provides an incentive for creating housing for those with special needs—a category that includes disabled veterans, the mentally or developmentally disabled and the homeless-- the most underserved populations with the lowest incomes.

The Housing Credit permits a

dollar-for-dollar reduction in a taxpayer's income tax liability in exchange for a long-term investment in affordable rental housing. Housing credits are awarded to developers through state agencies. Developers may then sell the credits to private investors in exchange for funding for the construction and rehabilitation of affordable housing. Such funding allows developers to borrow less money and pass through the savings in lower rents for low-income tenants. For their participation, investors would receive a multi-year tax credit based on the cost of constructing or rehabilitating apartments that are reserved for those whose income is below sixty percent of the area medium income, or AMI.

In New Jersey, the competition for housing credits is fierce and the application process is fairly complex with demand exceeding supply by close to three-to-one. Developers must satisfy most, if not all, of the agency's development criteria, in order to secure the housing credits needed to attract private investment.

One important component of H.R.1661 is Section 209. This section of the bill is directed to increasing the amount of housing credits that developments serving extremely low-income tenants can receive. In order to serve the lowest income tenants, defined as those at or below the greater of thirty percent of area median income or the federal poverty line, developers need to reduce or eliminate debt on a property so that they need not rely as heavily on rental income from tenants to reduce debt. Presently, state allocating agencies can award up to a thirty percent basis boost adding additional Housing Credit equity to developments when needed for financial feasibility; however, this often is not sufficient to lower the rents to levels

that extremely low-income families can afford.

H.R. 1661 will provide a basis boost of up to fifty percent for developments serving extremely low-income and homeless families and individuals in at least twenty percent of the apartments. Because this provision applies only to the segment of the development reserved for these families and individuals, the Housing Credit would target a greater number of extremely low-income tenants at rents that are more affordable.

Another provision of the proposed legislation, Section 211, would eliminate forcing developers to choose whether to forgo energy tax incentives when they have received housing credits. Currently, an energy tax incentive, the Section 48 Investment Credit that is used to finance solar panels, requires basis reduction when used in conjunction with housing credits.

This means that when developers claim the solar tax incentives, less housing credit equity can go into the property. H.R. 1661 would eliminate this anomaly by eliminating the basis reduction and would permit developers to claim both housing credits and tax incentives for providing renewable energy sources.

New Jersey Assembly Bill No. 3551

On February 27, 2017, the Assembly Housing and Community Development Committee, approved Bill No. 3551 which would provide up to \$600 million in tax credits to developers to construct affordable housing projects that meet certain criteria. Specifically, the bill provides that in order to qualify for a tax credit, the developer must construct a residential project in which at least

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DIMENSIONS

DIRECTIONAL SIGNS & THEIR OPTIMAL DESIGN

By: Michelle Griffin

Road signage is different from your typical business card. When handing a potential customer a business card the audience is captured, the customer can look at the card at any time. Weekend directional signs are a much different type of advertising. Directional signage needs to capture an audience while they are moving, and they need to process the information on the spot. The sign needs to be simple enough for your potential customer to receive your message and call to action in just a few seconds. Drivers are typically moving on a highway about 45 miles per hour. That means they are moving at 66 feet per second. The unique hurttles with roadside directional signage changes how to create an effective sign.

Design is the largest component for an effective sign. That being said, design principles are important for print designs when designing a brochure or a magazine, but the most effective roadside signage use the design principles a bit differently. An example of a design element that is changed a bit for roadside signage is the design principle of contrast. Contrast is still important; the details of proper contrast are a bit different. It is strongly recommended in print design to keep a nice light background with dark bold text to be easy on the eye. Typical brochures have white backgrounds and are easy on the eyes to keep the customer captured and interested. For roadside signage a

dark background with big light bold text is always best. Great examples of this are street and highway signs. Highway signs are dark green with white bold text. Directional signs would stretch this a bit further to grab attention. Using bright neon colors is very common; this would never be seen on a speed limit sign. For directional signs the most effective signs are not easy on the eyes. The most common color that is seen is a blue and white sign. Since standing out is the main goal colors such as red, orange, yellow, purple, black and even pink are great alternatives. Combining these colors with the darker color as the background and the lightest for text is best. The sign will read well from the road, and be seen well against other signs.

Arrows are where a great sign can go bad. The whole purpose of directional signs is to direct your buyer. If a customer cannot see a clear, defined arrow there is no point of the directional sign if it cannot direct anyone. The most common mistake seen is a very long arrow tail that will stretch across the entire sign. While it can be a great design element, it makes the arrow less defined from a distance. The head and pointed part of the arrow should be much wider than the tail. It makes the point contrast well and reads much better from a distance. The actual size of the arrow matters as well. While a large arrow that takes up most of the

sign is great, it is simply not necessary. A simple 6" arrow on an 18"x24" is more than sufficient. Continuing with the theme of contrast, the arrow is no exception. An arrow should be a bold contrasting color that sticks out from the rest of the colors on the sign. Many people like the arrow to match and blend well into the color pallet of the sign. While this looks nice and is easy on the eye that is not the goal of a directional sign. The arrow is the most important part of the sign, make sure it sticks out and grabs attention.

Keeping a design simple is the key to a successful sign. The most important text for a potential customer to contact a sales agent would be all the text recommended for a sign. This is typically under 6 words. A short message, such as "New Homes!" a logo and a phone number is all the information a person can read in just a few seconds while driving past a sign. A customer should never miss a turn because they were reading too many details about sales incentives on a sign. Always keep the goal of having potential customers reach your sales center in mind.

An effective directional sign is all about simplicity and grabbing attention. Keep in mind the main goal of having customers arrive at a sales center. A directional sign campaign does not need a large budget and bells and whistles to be successful.

About the Author:

Penn Jersey Signs is the Mid Atlantic regions' leading weekend directional sign company focused on customer service and satisfaction, with specialization in aiding new home communities' efforts to direct buyers to their site.

A MESSAGE FROM NJBA PRESIDENT

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industry. Both of NJ's Senators and 11 of 12 NJ Congressional representatives voted against H.R.1. While the legislation was ultimately enacted, NJBA and NAHB were successful in lobbying for the retention of tax-exempt Private Activity Bonds in the bill. NJBA continues to be concerned about provisions in the law that will affect the ability for residents of high tax states to make deductions but is hopeful the law will encourage policy makers to address NJ's high tax environment.

Entering a New Era



With the start of the 218th Legislative Session on January 9, the 40 seat NJ Senate welcomed 5 new members with the Democrats gaining a seat for a 25-15 majority in the upper house. In the 80 seat General Assembly, the Democratic majority expanded by two seats to 54-26, their largest majority since 1978. On January 13, Governor Phil Murphy was sworn into office as the 56th Governor of New Jersey, giving the Democratic party control of both the legislative and executive branches.

The new political climate will require NJBA to be particularly vigilant. I ask all our members to be engaged as NJBA navigates the new political environment. NJBA has been working with our members and coalition partners to meet with new legislators and members of the Administration. Most recently, NJBA staff, President-elect Tom Troy and I, had an introductory meeting with new Department of Community Affairs (DCA) Deputy Commissioner Robert Long (pictured above). A few NJBA

members also had an opportunity to meet with former DCA Commissioner, Chuck Richman, in his new role as HMFA Executive Director. And just last month, NJBA hosted a joint discussion on the amended Topsoil and Land Grading Standards with the NJ Department of Agriculture and member engineering firms.

NJBA continues to work on our immediate legislative priority, S1247/A2779 (Rice/Greenwald), which provides credits for existing sewer connections and extend the 50% credit for connection fees that exist for non-profit developers to all developers. The legislation passed both houses at the conclusion of lame duck but was pocket vetoed by Governor Christie.

I also ask all our members to continue to take advantage of NJBA's educational programs and communications material. We held a number of very informative and timely educational panels over the last year and I encourage you all to take advantage of the expert knowledge our members are willing to share with us. Our Association is second to none in its ability to keep members apprised of the latest industry information, pending legislation and regulatory requirements. At the Atlantic Builders Convention alone, there will be more than a dozen programs offering continuing education credits for attorneys, engineers and planners.

Finally, I would like to thank President-elect Tom Troy and NJBA Builder Vice President Josh Mann, Esq. for working with me on the task force charged with relocating our Association to a more efficient office space and resolving the lease with our prior landlord. Our Association is in good financial health and prepared to tackle the challenges ahead. I look forward to continuing to work with all of our members to advance the interests of the building industry in NJ. I offer my sincerest appreciation to each and every member who made

my year as President a success and enabled NJBA to remain an effective advocate for a more vibrant, greener, and affordable housing market in New Jersey.

I hope to see you all on April 10th at the Golden Nugget Hotel & Casino for my final Board Meeting as President and for the installation of President-elect Tom Troy as the 65th President of the New Jersey Builders Association.

2018 FORECAST

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financing from national banks. However, the Murphy Administration has been advocating for a State Bank which could get the state around those obstacles. This will certainly be a hot topic in 2018.

Recently, we have seen an increase in interest rates, and as I write this article, the key indicator the 10-year United States Treasury rate is approaching is what many pundits believe is the witching hour for the economy of 3% after years of record lows. Certainly, in early 2018 we have seen an increase in mortgage rates along with wild fluctuations in the stock market.

There is truly a lot ahead of us, and I for one am excited for what change could bring. Real Estate professionals such as myself will continue to forecast the coming changes and effects, but there is of course no concrete determination at this time. One thing is for certain, and that is Real Estate and the housing industry is resilient and will undoubtedly adapt successfully to whatever changes lie ahead.

MOVING TOWARDS CONSISTENCY

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to the inspection fee provisions set forth at N.J.S.A. 40:55D-53.h. While inspection fees are still calculated at five (5%) percent of the cost of both the dedicated site improvements that are the subject of the performance guarantee and private site improvements for which no performance guarantee is required, the amendments alter the process for replenishing the inspection escrow. Historically, when the five (5%) percent escrow was depleted, a municipality would simply demand additional funds to replenish the escrow without explanation or justification and work on a project could be stopped until additional funds were deposited. Under the amendments, a municipality will have to send a request to the developer seeking additional funds, signed by the municipal engineer, setting forth the basis for the request including the items or undertakings that require inspection, estimates of the time required and the estimated cost of those inspections. The amendments also eliminate the provision that allowed inspections to cease where sufficient funds were not on deposit.

While the new law, by its terms, took effect immediately, there are many questions regarding what this means in practice. The new law requires municipalities to adopt an ordinance prior to requiring any of the guarantees. As of the effective date of the amendments, municipalities can only require new performance guarantees calculated upon the cost those improvements specified in the amended act. Since performance guarantees are not among the "general terms and conditions" protected under vesting provisions of the MLUL, the applicability of the new law to any particular project is not affected by the date of Board approval. While replacing existing guarantees may raise practical difficulties, it appears clear that the amount of any existing performance guarantees should be adjusted at the time of any renewal and guarantees for

future phases of a development of a multi-phased project should be calculated under the new law notwithstanding that a different law applied to earlier phases. Particular circumstances may require negotiation with the municipality to reach a workable accommodation that balances the cost differential between guarantees required under the prior law and that under the amendments against the cost of fighting over the proper application of the new amendments. Further, a municipality arguing against applicability of the amendments to a project approved prior to the effective date of the amendments may be hard pressed to claim a right to require either the SSG or TCOG. Therefore, a cooperative effort by all parties will be required to work through the period of adjustment to the amendments.

LOCAL REDEVELOPMENT

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several such matters were filed and remain pending, including in municipalities with pre-2007 blight designations and/or redevelopment plans.

Mount Laurel to the rescue?

Some of the proposed settlements in these *Mount Laurel* compliance proceedings rely, in part, on redevelopment projects with affordable housing set-asides. The Redevelopment Law has always provided that a redevelopment plan adopted thereunder "may include the provision of affordable housing in accordance with the 'Fair Housing Act.'" What has changed is the renewed pressure on municipalities to meet their *Mount Laurel* obligations, which has resulted in an increasing number of redevelopment plans that provide for affordable housing.

In at least one pending *Mount Laurel* compliance proceeding, there is a proposal to seize properties by eminent domain citing to both the Redevelopment Law and the Fair Housing Act to facilitate a proposed for-profit transit oriented

development. Property owners have challenged the blight designation, to which the municipality has responded by claiming that the power of eminent domain is appropriate under the Fair Housing Act because the proposed development includes an affordable housing set aside. In doing so, the municipality is attempting to shift the court's focus from (a) whether the area in question satisfies the blight criteria in the Redevelopment Law, to (b) whether the project should proceed due to the affordable housing set-aside. But the Fair Housing Act does not provide the power of eminent domain for an inclusionary development and prohibits the transfer of condemned lands to a for-profit developer.

Should a municipality be permitted to shield a local redevelopment project subject to a challenge under the Redevelopment Law with a cloak of "*Mount Laurel* compliance" in order to be able to take property by eminent domain under the Fair Housing Act? How the courts will respond to such efforts remains to be seen, yet judicial scrutiny concerning municipal determinations that areas are "in need of redevelopment" should properly be focused on whether those areas satisfy the statutory criteria of the Redevelopment Law, not whether those municipalities can or should provide otherwise needed affordable housing in such areas. Regardless of the judicial reaction, the next unknown will likely be if and how the Legislature and Governor will respond.

RECENT DEVELOPMENTS IN SITE REMEDIATION

Continued from page 4

being remediated has been impacted by any of the three contaminants for which the soil remediation standard decreased by an order of magnitude or more, additional inquiry and remedial action may be necessary. If the site is subject to a deed notice, the person responsible for maintaining the engineering and/or institutional control (deed notice) must perform an order of magnitude evaluation for any of those three contaminants during the biennial protectiveness certification as required by the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C-7.7. If the existing controls are deemed protective, no further remediation will be required. If the remedy is deemed insufficient to control exposure under the updated remediation standard, additional remediation will be necessary. In either case, the deed notice and/or remediation action permit (RAP) for soil, if applicable, must be modified to reflect the updated soil remediation standard. If DEP has not yet issued a soil RAP, the person responsible for maintenance of the engineering and/or institutional control must apply for a RAP, per N.J.A.C. 7:26C-7.5.

If the site has a FRD but no deed notice, an order of magnitude evaluation must be performed if the site returns to the Site Remediation and Waste Management Program, pursuant to the ARRCS (N.J.A.C. 7:26C-1.4). If, as a result of that evaluation, the remedy is found to be insufficient to control exposure under the new standards, additional remediation will be necessary, and a deed notice and soil RAP will be required if contamination remains above the applicable standard(s).

Conclusion

DEP's revised soil standards took effect on September 18, 2017. Persons remediating contaminated sites and their environmental professionals should familiarize themselves with the new

standards and understand the potential impact on remediation requirements, particularly if the site has been impacted by any of the contaminants subject to significantly more stringent standards (i.e., 1,1-biphenyl, cyanide, and nitrobenzene). In addition, prospective purchasers of contaminated property should carefully assess during due diligence whether there is a possibility of DEP re-opening a remediation case given the new standards, and environmental professionals should consider addressing same in a Phase I Environmental Site Assessment and/or a Preliminary Assessment.

INCENTIVIZING AFFORDABLE HOUSING

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fifty percent of the residential units are constructed and reserved for very low-, low-, and moderate-income housing. At least thirteen percent of these residential units must be reserved for very low-income housing-- defined as housing developed as part of a qualified residential project, affordable by Federal Housing and Urban Development or other recognized

standards for home ownership and rental costs and occupied, or reserved for occupancy, by households with a gross household income equal to thirty percent or less of the median gross household income for households of the same size within the housing region in which the qualified residential project is located.

Developers would apply for these tax credits in the same manner in which developers applied for grants under the State Economic Redevelopment and Growth Grant (ERG) program. The bill is currently with the Assembly Budget and Appropriations Committee.

Each of these bills, if signed into law, will provide valuable incentivizing tools to encourage the infusion of capital from private investors into affordable housing for those in the lowest income brackets who need it the most.

HIGHLIGHTS TAX CUTS AND JOBS ACT

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law deduction for domestic production activities has been repealed. Further, deductions for business entertainment expenses such as golf and sporting events are disallowed beginning in 2018.

Sunset Rules Apply to Individual Tax Reform

The individual tax law provisions discussed above such as the reform of individual tax rates, special pass-through deduction for individuals, repeal of individual tax deductions and personal exemptions, increases to the estate, gift and GST exemption amounts and individual AMT changes are subject to a sunset provision for tax years ending after December 31, 2025.

GETTING YOUR PROJECT APPROVED

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so there is support for your position in writing and on file. Although you may believe your project is innocuous at worst and beneficial at best, there's no telling (or control over) what the board or the public might bring up. If your project is bringing something new and different to a community, prepare for people who oppose change of any kind.

Whatever type of land use you are proposing or the scale of your project, you can create a smoother, less contentious approval process by following these guidelines. Showing that you have the community's interests in mind as part of your planning process can help lead to the outcome you desire.