

ALERTS AND UPDATES

New Jersey Governor Eliminates “Time-of-Decision” Rule in Favor of “Time-of-Application” Rule

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Land Development Applications to Be Protected Under New Law from Zoning Changes Adopted Subsequent to Submission of Application

On May 5, 2010, New Jersey Gov. Chris Christie signed into law Senate Bill No. 82, which provides that once a developer submits an application to develop a property, it will not have to alter the application due to future zoning changes a local municipality may enact. In essence, the new law grandfathers a land-development application under the development regulations in existence on the date the application is submitted to the municipality. Only regulations relating to health and public safety that are adopted subsequent to the date of submission of the application will apply retroactively.

Developers in New Jersey previously were required to comply with zoning changes that occurred even while their applications were pending. Prior law recognized a “time-of-decision” rule, under which a builder must have preliminary site-plan approval from municipal officials for a project to be protected from zoning changes that may be later adopted by the municipality. Previously, developers had no protection against zoning changes until they obtained preliminary approval, and municipalities were able to adopt reactionary zoning ordinances or amendments in response to specific applications—with the apparent goal of creating considerable legal barriers to such development.

For example, if a property owner filed a development application to build a big-box store in a zoning district that permitted such big-box stores on the date the application was filed, the municipality could amend its zoning to prohibit such stores while the application was pending. As a result, the applicant would have to either amend its application to comply with the new regulation or be faced with overcoming the significant burden of obtaining a use variance, which may be granted rarely. Moreover, the property owner would be faced with having spent considerable funds performing its due diligence and preparing its land-use application based on zoning ordinances that could be rendered inapplicable by the subsequent zoning changes. The time-of-decision rule was applied to an application, even after an approval was granted, if appealed by an objector. Thus, a court can apply the new zoning if it changes after the approval, but before the court—at any level—renders its decision.

The legislation appears to take significant zoning control from local municipalities, but may provide greater certainty to developers. Some contend that the legislation may interfere with local officials’ ability to control growth and may undermine sound planning as developers race to file applications. However, the legislation may encourage municipalities to be more proactive in ensuring their zoning codes are comprehensive, up-to-date and aligned with their development goals. Municipalities in New Jersey have limited time to prepare, as the legislation will take effect on May 5, 2011.

For Further Information

If you have any questions about this *Alert* or would like more information, please contact [George J. Kroculich](#), [Michael J. McCalley](#), any other [member](#) of the [Real Estate Practice Group](#) or the attorney in the firm with whom you are regularly in contact.