



# NJAPZA

Newsletter

Fall 2015

## From the President's Corner

The leaves have begun to fall and the air has become crisp as we usher in the fall season and get ready for winter. The 26<sup>th</sup> year for NJAPZA is just about in the books and I am proud to reflect upon the last four years as the Association's President. The Association has grown and prospered and I feel confident with changes that have been made, changes to be made, and the continued support of the members, NJAPZA will continue to thrive.

The fall season also means we are weeks away from our Annual Luncheon Meeting at the NJSLOM Convention. This year promises to be an event not to be missed. The Convention and Education Committees have worked diligently to make preparations for our luncheon and I hope to see you there. As my second term comes to a close I am proud of our accomplishments and I must thank the membership for your trust and support, and give a special thanks to the Executive Board, the Board of Trustees, and our Executive Director for always looking out for me!

I am confident the new officers of the Association are up for the challenge and that they will continue to foster the success of NJAPZA. I look forward to working with the new officers as we complete projects that are in the works and develop new ideas and speakers. Again thank you and see you in Atlantic City!

Sincerely,

*Frank Vuoso*



*"The Association has grown and prospered and I feel confident with the changes that have been made, changes to be made, and the continued support of the members, NJAPZA will continue to thrive."*

- *Frank Vuoso*
- *President, NJAPZA*

## NJAPZA President recognized by New Jersey Planning Officials



*Frank Vuoso receiving the award from Jason Kasler, Executive Director of NJPO*

NJAPZA President, Frank Vuoso received the 2015 New Jersey Planning Officials (NJPO) Achievement in Planning Award as an individual who has demonstrated a significant contribution to planning.

Congratulations Frank!

### In This Issue

- Spotlight on Member
- New tool for handling foreclosed properties
- Checklists: An in-depth review
- CASE LAW Update
- Overview of NJPO



## Mentor Program to be Re-Evaluated in 2016

In the past NJAPZA offered a Mentor Program to those new to their jobs. Recent graduates of the Rutgers certificate programs who joined the Association were paired with an experienced land use administrator or zoning official, who provided support and advice upon request.

The program has been on hiatus, but the Board of Directors is discussing its revival. A Mentor Program Committee chaired by Rosiland McLean has looked at the Association's past efforts and has made recommendations to the Board about how the program could be overhauled. Other members of the committee are Maria Carvalho and Frank Mottola.

Before any action is taken, the Board would like to gauge the membership's interest. **Executive Director Jackie Zelinka will be contacting those members with less than three years experience to find out if they would like to have a mentor.**

*If you receive an email from her, please take a minute to reply. Your feedback will determine whether the program is reactivated. Thank you!*

**REGISTER**

**TODAY!**

**NJAPZA ANNUAL MEETING  
& LEAGUE LUNCHEON!**

**The reservation deadline has been extended to November 11 at 5 p.m!**

### Mission of the Association

- To educate its members to the legal requirements of Planning and Zoning Administration and Public Employment and thereby promote a better understanding of the official duties and obligations of its members.
- To establish uniform procedures and practices in Planning and Zoning Administration, insofar as possible or practical.
- To establish resources for membership assistance.
- To enhance the standing of the members in their respective communities.
- To promote the cause of competent and efficient Municipal and County Government.

## UPCOMING EVENTS

### [NJAPZA Luncheon and Annual Meeting](#)

Noon, Wednesday  
11-18-15

Caesars in Atlantic City

### **REGISTER TODAY! The reservation deadline has been extended to November 11 at 5 p.m!**

New officers will be inducted & Dr. Martin Bierbaum will discuss ***“Lessons Learned from a Failed State Plan: What Good Municipal Planning Looks Like in 2016.”*** Rutgers has approved one hour of CE credit for the lecture. For more info visit: [www.njapza.org](http://www.njapza.org)

### [NJSLOM Webinar](#)

11 am- 12 pm  
Friday 12-4-15

NJAPZA and the New Jersey State League of Municipalities are cosponsoring this webinar entitled ***“Managing Escrow Accounts for Land Development Applications.”*** It will be presented by Joseph Monzo, South Brunswick CFO, and Adele Lewis, Maplewood Township Planning and Zoning Board Administrator. By participating you will earn 1 hour of continuing education credit toward renewal of your Rutgers certificate (s). You can register now through the NJSLOM by visiting the Seminar Calendar on the League website

## LAND USE CHECKLISTS : FOCUS ON VARIANCES (PART ONE IN A SERIES)

By Nancy Griffin-Probst & Cyndi Kiefer

*Cyndi Kiefer is the Planning & Zoning Coordinator for Long Hill Township, Morris Township. Nancy Griffin-Probst is the Planning Board & Board of Health Administrator for the Borough of Far Hills, Somerset County, NJ.*

For those of us fortunate enough to work in land use, the term “checklist” can mean anything from a broad general list to a detailed inventory of 50 or more submission items required before an application can be “deemed complete.” The complexity or lack thereof is solely at the discretion of each municipality which approves the ordinance that governs checklist content. Since that list is such an integral part of our application process, a short history of its genesis might be in order.

When the Municipal Land Use Law was enacted in 1976, the term “complete application” was coined as a starting point for the “clock” which was a specific time period within which a Land Use Board must act and was meant to facilitate the process. Unfortunately, the term “complete application” was not defined and applications were being deemed incomplete for failing to submit items that had never been a part of the filing requirements in the first place. An amendment took effect in 1979 in response to that issue. It defined the term “complete application” as one where the appropriate completed application forms were submitted along with the documents as specified by municipal ordinance. What was thought to be a remedy resulted in declarations of “incompleteness” due to trivial items such as a lack of a north arrow or miswording of a signature line. Instead of expediting the process, it became an opportunity for some to impede it.

In an attempt to further clarify the term “complete application,” new requirements have been added which state that every municipality must by ordinance define each and every submission requirement for each and every type of development application. Although the municipality is free to make the list as minutely detailed as it feels necessary, each of those requirements has to be clearly stated in the ordinance. A copy of this “checklist” has to be given to the applicant along with the appropriate application forms. In addition, the application will be deemed complete within 45 days unless the applicant is notified in writing of exactly which checklist items were deficient.

In addition, it is the submission item itself, not the quality of that item which counts towards completeness. For example, if a particular engineering report is required and submitted in accordance with a checklist item, the application cannot be deemed incomplete because the content of that report might be deficient. The report was submitted and the act of that submission would therefore satisfy the checklist requirement. The Board has every right to subsequently request further information or clarification and eventually deny the application if such information is not provided. But for the purposes of “completeness” and “starting the clock” however, the applicant has met his burden.

## ***Spotlight on Membership***

### **Dawn Wolfe, Annual Luncheon Chair and Past President**

Editor's Note: This year NJAPZA will be losing a talented and dedicated member to retirement. Dawn Wolfe retired from Long Hill Township in July of 2015 and will be passing on her most recent NJAPZA responsibilities to a new chairperson this January. The Board of Directors wants to thank Dawn for her years of service and the example she set as a land use professional.

After working in the private sector for a number of years and then staying home to raise her three sons, Dawn Wolfe went back to work in 1984 as the part-time Secretary to the Board of Adjustment in Long Hill Township. She took the job as a favor to a friend on the Board, who described it as "a little typing and a little filing." Within two months Dawn added Construction Office secretary to her duties and became a full-time employee. Four years later, the Planning Board Secretary position became available, and she transitioned to a full-time position as administrator for both boards, which she held for the next twenty-seven years.

Dawn liked the land use field from the very beginning. She enjoyed working with homeowners and found the planning board's work on the master plan very interesting. She didn't even mind the night meetings. However, Dawn recognized at the outset that there was a lot more to the job than mere "typing" and "filing." So, she sought to gain the skills and expertise needed to excel in the position in many different ways. She took the Rutgers classes, which she found very helpful. She joined NJAPZA. At that time, the Association had several active county chapters, and she got involved with Morris County members right away. She also learned from her board attorneys and took advantage of appealed cases by going to hear the courtroom arguments and the judges' decisions.

While Dawn was honing her skills on the job, she became more involved with NJAPZA and ultimately served as President from 1998 to 2003. After she stepped down from that office, Dawn became chair of the Annual Luncheon and, along with co-chair Kali Tsimboukis, has overseen the event for the last 9 years.

These accomplishments describe a highly successful career, but Dawn also is a standard bearer for ethical behavior and grace under pressure in our profession. Politics can complicate the job of any board secretary or zoning official and sometimes require one to make tough decisions. Dawn had to make some when she was told to approve a non-permitted use in a light industrial zone. Rather than succumb to political pressure and ignore the zoning ordinance, Dawn worked with the Construction Official to ensure that a certificate of occupancy was never issued for the use. The Construction Official was not reappointed, and attempts were made to reduce her Planning/Zoning Administrator's position to part-time. Dawn responded to a Rice notice by hiring an attorney and asking the Township Committee for a public discussion of her case, which was her right. A packed house turned out in her support, and ultimately, after a review of her position by a special committee, it remained full-time.

Now that she has retired, Dawn is looking forward to doing some volunteer work, gardening, fishing and traveling with her husband Rich. They recently finished a complete renovation of the house that had been their weekend retreat in Manasquan and are enjoying life at the Shore.



## **Get Involved in 2016!**

Any member interested in volunteering for the MEMBERSHIP or NEWSLETTER committees should contact Jackie Zelinka at [jzelinka@gmail.com](mailto:jzelinka@gmail.com).

## **Be an Ambassador!**

Do you know a colleague you is not yet a member? Is there a new hire that may be interested in NJAPZA? Spread the word about the value of membership!



**Break-out Sessions**

**NJAPZA Workshop**

**Foreclosed &  
Abandoned Properties  
Seminar**

**Willingboro, NJ**

**September 25, 2015**

## **Safeguard *Compliance Connections* Connects Zoning Officers with Banks to Address Violations on Foreclosed Properties**

Does your town have vacant properties? Many communities do not have the staff or budget to handle this overwhelming issue. **But there is free help through Safeguard.** Visit their website: <https://connect.complianceconnections.com>

The foreclosure crisis struck communities across New Jersey with great force. Zoning and Code Enforcement departments are frustrated with not being able to reach a bank or responsible entity. Valuable (and wasted) time is spent researching a property that does not deliver the direct, much needed point of contact. Communication does not occur and no one wins.

Since 1990, Safeguard has been working for servicers and has been an active participant with cities and the mortgage servicing industry. **Safeguard established a community initiatives department to speak directly with towns to share free information and resources.** A solution to identify and communicate with a direct point of contact was needed to meet the shared objectives of our clients and jurisdictions to preserve vacant properties and maintain the integrity of neighborhoods. The solution is *Compliance Connections*. This free, web-based platform is a viable tool that allows a municipality to enter the address of the vacant property and provide the servicer with information to effectively treat the violation.

**The *Compliance Connections* team will then do all of the research through public, private and proprietary databases. With an average response time of less than two hours, you will be notified of the property's history and current status.** The name of the servicer will be provided. Then, an email about the issue will be sent to you and the servicer or preservation company. This creates an avenue for open and direct communication. In the end, efficiency is enhanced and resolution is expedited.

From personal experience, *Compliance Connections* works! I am using it in Middlesex Borough and have received information that I could never have obtained on my own for every property I have requested. They reach out to banks and other preservation companies notifying them of the violations and for them to contact me to address the issues. And they do! They even find family contact information when a bank is not involved.

To subscribe to *Compliance Connections*, go to <https://connect.complianceconnections.com>  
or contact Heather Thomas Lazar, Community Relations Liaison  
Safeguard Properties  
7887 Safeguard Circle  
Valley View, OH 44125  
O 800-852-8306 x1500  
F 216-739-2709  
C 216-346-9784  
[heather.lazar@safeguardproperties.com](mailto:heather.lazar@safeguardproperties.com)

**NOTE: This system is only open to municipal staff.** Let *Compliance Connections* help the community and you.

Good Luck,  
Barrie Palumbo/Zoning Officer  
Middlesex Boro, Randolph, Rockaway Boro & Victory Gardens

# Checklists

## Continued from page 3

As with many Land Use matters, there is often gray area. There are probably as many variations on Land Use checklists in New Jersey as there are municipalities, making the topic no exception by far. One would be hard pressed to find a municipality without a checklist for Site Plan but despite being one of the most sought after deviations, the concept of a variance checklist still eludes some. We will explore why this is a subsequent article. For now, our focus will be on form and substance.

Although the two main components of variance checklists (administrative and technical) are the same, form varies widely. Many of the checklists used in research for this article were classified by type (a and b versus c, versus d variances) while others used a more generic “catch all” format asking merely for some additional information such as specific proofs in the case of a particular variance such as a “d”. Some towns have gone as far as to provide for a “simple variance” which utilizes an abbreviated checklist for certain procedures such as the erection of a fence, shed or pool or alteration of a residence not to exceed a specific size. Many municipalities have adopted checklists for variances being sought simultaneous to a Subdivision or Site Plan or on the other hand, where Site Plan is NOT required. At least one municipality is efficient enough to offer an option whereby the applicant may submit fewer copies of the application package up front for a completeness review prior to a full submission. These variations allow for flexibility and speak to the unique landscape we often navigate as Land Use professionals. There are notable differences as well as similarities in variance checklist content. Regional needs contribute largely to the makeup of these checklists as is evidenced by the fact that towns may require submission of documents to agencies ranging from a local Fire Department to a Historic Preservation or Airport Hazard Committee. With variables such as Wetlands, Highlands, Pinelands and Coastal Areas, environmental requirements can also vary from region to region. A municipality in the Highlands which might require a basic Letter of Interpretation from the DEP as to the presence of wetlands might not be as well served using a checklist from a coastal community working under CAFRA guidelines.

Uniformity among variance checklist items is seen with respect to many administrative requirements. There are the basics seen in nearly every checklist such as number of plan sets required and different modalities for submission and then there is site data which speaks to the complexity and distinctive nature of each application. Almost all variance checklists require certification as to currency of taxes/escrow, inclusion of a certified list of property owners within 200’ of the subject property, proof of Notice/publication, evidence of approvals from other governmental agencies (DEP, County, Sewerage Commission, etc.) and statements describing the need for relief/ basis for granting same (proofs).

Technical requirements common to many variance checklists include specifications for title signature/title blocks, graphic scales and key maps, submission of plot plans/surveys and/or sketches with varying degrees of detail, dimensions and distances to property lines/stream encroachment lines, detailed lot coverage calculations, stormwater management plans and/or buffer management plans, lists of waivers being requested, copies of protective covenants, easements, dedications or deed restrictions applicable to the site, architectural renderings and in many cases, photographs. Many towns also provide for requirements specific to sewer and/or septic such as sewer permit waivers or perc test results.

As far as differences go (in administrative and technical requirements alike), there are a multitude. Some require basic items such as zoning data tables and/or information on what zoning districts within 200’ affect the tract, affidavits of non-collusion, contribution disclosure statements and/or various consent forms while others go as far as to require actual site inspections, streetscape elevations, elevation certificates, flood certifications, parking and/or landscaping plans, signage and/or lighting details, location of all structures on all ADJACENT properties, soil erosion/sediment control plans and even solid waste storage and recycling specifications.

Because the needs of each municipality and region are so unique, it truly is impossible to create a one size fits all variance checklist; however, adoption of a concise, well-crafted variance checklist will prove to be an invaluable tool for Board professionals, members and applicants alike.



## **New Jersey Planning Officials –**

### ***Who We Are and What We Do.***

#### **The Association of Planning Boards & Zoning Boards of Adjustment**

By Jason Kasler, Executive Director, NJPO

NJPO is neither a State agency, nor a professional organization. It was formed and led by the citizen planners, volunteer local residents appointed by mayors and/or municipal governing bodies to serve on planning boards and zoning boards of adjustment. They chart and preserve a community's quality of life standards.

In 1938, a group of local board members met in West Orange Town Hall to discuss how planning boards across the state could get planning and zoning education. That was the start. The group chose the name "Federation of Official Planning Boards" and published its first newsletter, the *New Jersey Planner*, in February 1939 to announce that the first State Planning Conference with the New Jersey State League of Municipalities would be held in April. In that same year, the League accepted NJPO as an affiliate. Today, NJPO is the largest League affiliate and the only one not representing an employee or consultant-based entity.

NJPO provides educational services, support and information to municipal planning boards, zoning boards of adjustment and elected officials. NJPO depends upon the annual membership of more than 740 municipal and county planning boards and local zoning boards, governing bodies and about 400 professionals and individuals. Total membership exceeds 9,000. NJPO thrives on the volunteer work of dedicated municipal planning board and zoning board of adjustment members. Officers and directors of NJPO must be active on a planning board or zoning board, or have served at least one four year term.

A solid core of professional members, planners, attorneys, engineers, architects, and others support NJPO as members. They assist with valuable advice and generously give time as NJPO instructors. In the early 1990's, a group of professionals worked with knowledgeable board members and created a structured, sophisticated curriculum that is the foundation of the popular NJPO basic educational programs. Then in 2005 NJPO was named in legislation to work with the Department of Community Affairs to craft mandatory education standards for board members. Since 2006 over 12,000 planning officials have been certified through the 5-hour program offered by NJPO.

In 1989 NJPO proudly accepted the New Jersey Association of Planning and Zoning Administrators as an affiliate of NJPO. NJPO is evolving to better meet the needs of today's board members. We have added morning and evening courses and now offer lunchtime webinars on topics ranging from "How to read a site plan" to "The basics of a municipal master plan". NJPO's recent modifications to our by-laws included municipal memberships that cover not only board members, but zoning officers, secretaries, as well as any municipal official. This three way membership affords NJAPZA members free access to our classes where we offer Rutgers Continuing Education Contact hours. If you are interested in learning more about NJPO please visit our website at [www.NJPO.org](http://www.NJPO.org).

# CASE LAW UPDATE

Thomas J. Molica, Jr., Esq., a member of the law firm Vogel, Chait, Collins & Schneider, PC, has graciously volunteered to author the feature.

**Editor's note:** *With this edition of the newsletter, we are adding a new feature that will highlight relevant, recent land-use cases.*

For this edition of the NJAPZA newsletter, I have reviewed three 2015 Superior Court of New Jersey, Appellate Division cases that will be of interest to the membership and offer the following case summaries and commentary:

**I. Claudia Casser v. Township of Knowlton, et al, 441 N.J. Super. 353, 118 A.3d 1071 (App.Div. 2015):**

**A. Relevant Issue:**

Whether the applicable Statute of Limitations for actions in lieu of prerogative writs challenging land use development approvals can be enlarged.

**B. Holding (re: relevant issue):**

No- the time period to challenge development approvals granted by a municipal planning or zoning board is 45 days, pursuant to R. 4:69 of the New Jersey Court Rules.

**C. Summary of Decision and Discussion:**

This case involves property owner and applicant Claudia Casser's ("Plaintiff") challenge to her own development approvals as granted by the Defendant Township of Knowlton Planning Board ("the Board"), and her concurrent constitutional challenges to the farmland preservation chapter of the Township of Knowlton zoning ordinance. The relevant issue in this matter (as it concerns NJAPZA) deals with statute of limitations for actions in lieu of prerogative writs.

Plaintiff was granted preliminary and final major subdivision approval pursuant to N.J.S.A. 40:55D-50 with ancillary variance relief to subdivide approximately 100 acres of land located in Township of Knowlton's farmland preservation zone. The Knowlton zoning ordinance required residential clustering on tracts of land 50 acres or more, leaving at least fifty (50%) percent of Plaintiff's total land area as "open space," which was defined as land "restricted to agriculture; open space restricted to use by residents of the development of

which the open space was a part; or public open space." Plaintiff initially proposed to subdivide the property into three "farmettes" (small horse farms) of 8-10 acres each, together with a remainder lot of approximately 70 acres on which she proposed to maintain the existing residence. Plaintiff proposed to convey the development rights on most of the remainder lot to the State of New Jersey so that it would be permanently preserved for farmland use but was unwilling to deed restrict the remainder parcel as a condition of her application. Plaintiff was granted preliminary and final subdivision approval together with variance relief, including a variance from the Township's clustering requirement. As conditions of the approvals, the Planning Board required that the farmettes and remainder lot be deed-restricted against further subdivision. Plaintiff agreed to these conditions, and the Board adopted its Resolution memorializing the approval on October 23, 2007 ("the Resolution").

On March 5, 2010, Plaintiff filed a complaint in lieu of prerogative writs pursuant to R. 4:69-6(a) of the New Jersey Court Rule against the Township, its governing body, the Planning Board, and various other municipal officials. The Complaint challenged the approvals she was previously granted, contending that the approvals were *ultra vires because the Township had no authority to require her to set aside the 49.971 acres as deed restricted open space, and that the Resolution and its conditions of approval should be set aside. The Appellate Division affirmed Trial Court holdings that the plain language of R. 4:69-6 barred Plaintiff's challenge to the Resolution because the Complaint was not filed within the 45-day period. In assessing the potential expansion of the 45 day limitation period for actions in lieu of prerogative writs based on the "interests of justice" language of R. 4:69-6(c), the Appellate Division states, "Indeed, because of the importance of stability and finality to public actions, courts do not routinely grant an enlargement of time to file an action in lieu of prerogative writs, and the longer a party waits to mount its challenge, the less it may entitled to an enlargement." Id. at 367, citing Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy, 349 N.J. Super. 418, 423-424, 793 A.2d 834 (App.Div. 2002); other citations omitted.*

**D. NJAZPA Practice Point:**

This case illustrates that the 45 day statute of limitations deadline for the filing of actions in lieu of prerogative writs is generally *strictly enforced by the Court, and rightfully so. It is important that a municipal planning or zoning board and its professionals timely prepare and adopt Resolutions memorializing board decisions, and that Notices of Decision are timely published (by either the applicant or the board) in the local, official newspaper of a municipality.*

**II. John E. Myers, Trustee, and Dianne D. Myers, Trustee v. Ocean City Zoning Board of Adjustment, 493 N.J. Super. 96, 106 A.3d 576 (App.Div. 2015):**

**A. Relevant Issue:**

Whether a municipal governing body is *required to adopt an ordinance consistent with a master plan change or amendment proposed in a re-examination report that a municipal planning board has reviewed and referred to its municipal governing body.*

**B. Holding:**

No- N.J.S.A. 40:55D-62(a) does not require a governing body to affirmatively act in response to a master plan recommendation, so long as the existing ordinance at issue is substantially consistent with the master plan's land use and housing elements.

**C. Summary of Decision and Discussion:**

This case involved Plaintiffs seeking to compel Defendant Ocean City to adopt a zoning change as recommended by the municipality's planning board in a master plan re-examination report. At issue was a proposed zoning change affecting the status of six (6) residential properties in Ocean City's Beach and Dune Zone ("B and D Zone"), whereby the properties (which were pre-existing, non-conforming uses and structures constructed prior to 1988- the year that the B and D Zone was established) would be classified as conditional uses, allowing the property owners to expand and/or in the event of a destructive storm. The Ocean City Planning Board conducted the required consistency review pursuant to N.J.S.A. 40:55D-64, and recommended this change in a Master Plan Re-Examination Report that was referred to the Ocean City governing body. However, Ocean City did not take any specific action regarding the proposed change to the permitted uses in the B and D Zone.

After Plaintiffs' variance application to expand a residence they owned in the B and D Zone was denied by the Ocean City Zoning Board of Adjustment, they brought an action in lieu of prerogative writs against the Zoning Board and Ocean City. In addition to challenging the Zoning Board denial, Plaintiffs sought an order compelling the City to adopt the Master Plan Amendment incorporating the B and D Zone change. The Trial Court found in Plaintiffs' favor and entered an order requiring that Ocean City "amend the zoning ordinance to conform with the Master Plan Amendment." The Appellate Division reversed the Trial Court, stating, " nothing in the plain language of N.J.S.A. 40:55D-62a requires a governing body to affirmatively act in response to a reexamination report. Rather, the statute imposes conditions upon a governing body when it decides to act." The Appellate Division also cites and quotes Cox & Koenig, New Jersey Zoning and Land Use Administration, §34-2.2 at 776, stating, "There is no clear statutory provision dealing with the failure of the governing body to amend or adopt ordinances in response to significant changes in a new Master Plan or re-examination report that require such amendment or adoption."

**D. NJAZPA Practice Point:**

As the Appellate Division holds, there is nothing in the plain language of N.J.S.A. 40:55D-62a requiring a governing body to affirmatively act in response to a reexamination report. Rather, it imposes conditions upon a governing body when it does, in fact, decide to act. Inaction by a governing body can render a particular zoning ordinance (that may, in fact, be substantially inconsistent with that municipalities master plan) susceptible to a legal challenge. It is important for municipal and planning board members and their professionals to be very familiar with that municipality's zoning ordinance and Master Plan, and strive to ensure that the zoning ordinance is substantially consistent with the Master Plan. When ordinances that are inconsistent with the master plan are adopted (which happens from time to time), the inconsistency

cannot be "substantial" and the Resolution of the governing body memorializing the adoption must be accompanied by a recitation of reasons for acting in a manner inconsistent with the Master Plan.

**III. Tonnelle, USA Inc. v. Township of North Bergen Zoning Board of Adjustment and NHB Enterprises, LLC, 2015 WL 3966233:**

**A. Relevant Issue:**

Whether the public notice of an application to the Defendant North Bergen Zoning Board of Adjustment seeking "use" variance relief pursuant to N.J.S.A. 40:55D-70d(1) is sufficient.

**B. Holding:**

No- the notice was defective and thus legally insufficient because it failed to disclose that certain conditions related to the application were not satisfied and because part of the subject property incorporated a public right-of-way that was not described in the notice.

**C. Summary of Decision and Discussion:**

This case involved Defendant NHB Enterprises, LLC's ("NHB") notice of public hearing regarding its site plan and use variance(s) application to the Defendant North Bergen Zoning Board of Adjustment, to construct additional retail space at a site that had previously received conditional use and site plan approval from the North Bergen Planning Board. The application incorporated use of a public right-of-way, which was not utilized or part of its prior application and approvals. Plaintiff Tonnelle, USA Inc., a neighboring property owner, did not object or otherwise appear during the application process and public hearings for the prior approvals. It did, however, object to the new application and ultimately challenged the Board's approval of the application, alleging that the Notice was inadequate and that the prior approvals were arbitrary, capricious and unreasonable.

The Notice that NHB published and served regarding the application provided that it was seeking "site plan approval and a use variance to construct retail stores located at property located at 8825 Tonnelle Avenue," and that "the applicant (NHB) does not intend to construct additional retail space (other than) those that were previously approved by the North Bergen Planning Board and constructed at the site." The Notice did not mention the public right-of-way or indicate that the conditions of the prior approvals were fully satisfied. The Trial Court agreed with Plaintiff and found that the notice was defective for the reasons cited by Plaintiff. The Appellate Division agreed with the Trial Court's findings regarding the Notice issue, and found that the Notice was defective. In discussing notice requirements, the Appellate Division states, in part,

"When a statute requires public notice, such notice should be capable of being understood by an ordinary person 'in a common sense manner.' Id. at 4 citing Perlmont of Lacey, Inc. v. Lacey Twp. Planning Bd., 295 N.J. Super 234, 239 (App.Div. 1996). Consequently, the notice must give 'an accurate description of what the property will be used for under the application.'" Tonnelle USA, Inc. at 4 citing Northgate Condo. Ass'n v. Borough of Hillsdale Planning Bd., 214 N.J. 120, 139-40 (2013); *other citations omitted.*

**D. NJAZPA Practice Point:**

A general, "common sense" rule regarding notices is that the more complicated the application, the more detailed the notice should be. Certain information - such as the entirety of the subject property involved in the application - *must always be fully included and stated in the notice. Notices and proof of publication materials should always be thoroughly reviewed by the Board administrator and Board attorney.*

## **NJAPZA EXECUTIVE BOARD MEMBERS**

**Frank Vuoso, President – Somerville Borough**  
**Mike Proietti, Vice President – North Brunswick**  
**Bonnie Imposimato, Treasurer – Holmdel Township**  
**Elaine Petrillo, Corresponding Secretary – Pt. Pleasant**  
**Meghan Hunscher, Recording Secretary – Morris County**  
**Lou Rago, Esq. – General Counsel**

## **COMMITTEE CHAIRS**

**Membership – George Waterman**  
**Education – Ilene Cutroneo**  
**Newsletter – Meghan Hunscher**  
**Convention – Dawn Wolf & Kali Tsimboukis**  
**Public Relations – Kali Tsimboukis**  
**Mentor Program – Rosiland McLean**  
**Rutgers Representative – Laura Flagg**