




Lashway, Lisa

From: NJLM - Municipal Clerks [njlm-clerks@cityconnections.com]
Sent: Thursday, January 28, 2010 2:57 PM
To: Lashway, Lisa
Subject: URGENT - Elimination of "Time of Decision Rule" is Reintroduced

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LEAGUE ALERT		
Municipal Clerk: Please forward to Mayor and Governing Body.		
January 28, 2010		
RE: URGENT - ELIMINATION OF "TIME OF DECISION RULE" IS REINTRODUCED		
Dear Mayor:		
RE: URGENT - ELIMINATION OF "TIME OF DECISION RULE" IS REINTRODUCED		
Legislation that would effectively eliminate the "time of decision" rule was re-introduced in the in the new legislature. <u>S-82</u> was filed and referred to the Senate Community and Urban Affairs Committee. Companion legislation, <u>A-437</u> , was introduced and referred to the Assembly Housing and Local Government Committee. We anticipate that other legislation which would also eliminate the time of decision rule could be introduced in the upcoming weeks and months.		
These bills would eliminate the "time of decision" rule and grant protection to any Land Use application once it has been submitted for consideration to the municipal Planning Board or Zoning Board of Adjustment. Only changes in ordinances vaguely defined as "necessary for the protection of health and		

public safety...” can be implemented to protect the public welfare. Otherwise, such an application would then be immune from any changes in municipal ordinances. Loopholes, errors, and the inability of legislative bodies to predict every possible negative impact in the drafting of general regulations should not serve to harm the public good.

The “time of decision” rule is a judicially-recognized principle that decisions are to be made on the basis of the laws, ordinances and regulations in effect at the time the decision is rendered. It is a rule created out of judicial respect for the separate powers vested in legislative bodies, and provides towns the mechanism to correct errors or close previously unanticipated loopholes, in statutory or ordinance language. Courts have applied this rule to allow municipalities to rectify an error in a zoning ordinance, thus giving the governing body the opportunity to perfect a legislative policy decision that had been found to be imperfectly expressed. The rule has also permitted a municipality to give initial legislative consideration to serious and substantial land use planning concerns that, for whatever reasons, had not been previously addressed in their ordinances.

We are including a sample resolution opposing any such legislation for your consideration. Questions on these bills can be directed to Mike Cerra at mcerra@njslom.com or at (609) 695-3481 x120.

Very truly yours,

William G. Dressel, Jr.
Executive Director

{Insert municipality name}
RESOLUTION #####

**RESOLUTION OPPOSING LEGISLATION AMENDING
THE TIME OF DECISION RULE**

WHEREAS, S-82 and A-437 are intended to modify the “time of decision” rule, which currently allows municipalities to change the zoning regulations during the pendency of an application for development; and

WHEREAS, the bills would deem as complete the ordinances in effect at the time of an application and shall govern the review of that application, and any decision made following upon that review;

WHEREAS, “the time of decision rule” is a judicially recognized principal that decisions are to be made on the basis of laws, ordinances and regulations in effect at the time the decision is rendered not upon application; and

WHEREAS, courts have applied the “time of decision rule” to correct errors in zoning ordinances, thus giving local legislators the opportunity to correct legislative policy that had been found to be imperfectly expressed; and

WHEREAS, the “time of decision rule” has permitted a municipality to give additional legislative consideration to serious and substantial land use planning concerns that, for

whatever reason, had not been previously addressed in the ordinance; and

WHEREAS, application and zoning changes require public discussion and hearings, and S-82/A-437 would permit developers to “beat the clock” by filing applications and freezing the ability of local officials to act;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of {fill in municipality)in the county of (insert county) in the State of New Jersey hereby urges our State Legislators to oppose A-4 and S-82, and any legislation which would eliminate the “time of decision” rule at the local level; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to (fill in State Senator, Assembly representatives), the members of the Senate Community and Urban Affairs Committee, the Assembly Housing and Local Government Committee, the New Jersey State League of Municipalities and the Office of the Governor.

DISTRIBUTION LIST FOR RESOLUTIONS OPPOSING S-82 and A-437

1. Senate Community and Urban Affairs Committee

Hon. Jeff Van Drew – Chair Senator, District 1 21 North Main St. Cape May Court House, NJ 08210 Tel: (609) 465-0700 Fax: (609) 465-4578 SenVanDrew@njleg.org	Hon. Ron Rice, Vice-Chairperson Senator, District 28 1044 South Orange Avenue Newark, NJ 07106 Tel: 973-371-5665 Fax: 973-371-6738 SenRice@njleg.org
Hon. Christopher J. Connors Senator, District 9 620 West Lacey Road Forked River, NJ 08731 Tel: 609-693-6700 Fax: 609-693-2469 SenConnors@njleg.org	Hon. Philip E. Haines Senator, District 8 32A North Main St. Medford, NJ 08055 Tel: (609) 654-1498 SenHaines@njleg.org
Hon. Teresa Ruiz Senator, District 29 166 Bloomfield Ave. Newark, NJ 07104 Tel: (973) 484-1000 SenRuiz@njleg.org	

2. Assembly Housing and Local Government Committee

Hon. Jerry Green – Chair Assemblyman, District 22 17 Watchung Ave. Plainfield, NJ 07060 Tel: (908) 561-5757 Fax: (908) 561-5547 AsmGreen@njleg.org	Hon. Mila Jasey, Vice-Chair Assemblywoman, District 27 15 Village Plaza, Suite 1B South Orange, NJ 07079 Tel: 973-762-1886 Fax: 973-762-6118 AswJasey@njleg.org
Hon. Linda Greenstein Assemblywoman, District 14 7 Centre Drive, Suite 2 NJ 08831 Tel: 609-395-9911 Fax: 609-395-9032 AswGreenstein@njleg.org	Hon. Celeste M. Riley Assemblywoman, District 3 935 Kings Highway, Suite 400 West Deptford, NJ 08086 Tel: 856-251-9801 Fax 856-251-9752 AswRiley@njleg.org
Hon. Frederick Scalera Assemblyman, District 36 800 Bloomfield Ave.	

Nutley, NJ

07110

Tel: (973) 667-4431 **Fax** (973) 667-9478
AsmScalera@njleg.org

3. STATE SENATOR/ASSEMBLY REPRESENTATIVES

4. THE NEW JERSEY STATE LEAGUE OF MUNICIPALITIES
222 WEST STATE STREET
TRENTON, NJ 08608

5. THE HON. CHRISTOPHER CHRISTIE, GOVERNOR
THE STATE OF NEW JERSEY
STATEHOUSE
PO BOX 001
TRENTON, NJ 08625

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Trenton, NJ 08608