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From: NJLM - Municipal Clerks [mailto:njlm-clerks@cityconnections.com]
Sent: Wednesday, July 15, 2009 3:57 PM
To: Lashway, Lisa
Subject: From NJLM - A-3443

LEAGUE ALERT

Municipal Clerk: Please forward to Mayor and Governing Body.

July 15, 2009

Re: I A-3443, Authorizes Set-Asides, Fees In-Lieu for Open Space and Recreation Purposes.

Re: I. A-3443, Authorizes Set-Asides, Fees In-Lieu for Open Space and Recreation Purposes.

Dear Mayor:

The League of Municipalities supports A-3443, sponsored by Assembly Herb Conaway, which authorizes set-asides or fees in-lieu thereof, for open space and recreation purposes.

In June 2009, the New Jersey Supreme Court affirmed the Appellate Division and held that municipalities may only require on-site open space set asides from developers of Planned Unit Developments. In the case of NJ Shore Builders v Township of Jackson and Builders League of South Jersey v Egg Harbor Township, the Court found that municipal ordinances requiring such set asides for other types of development are not authorized by the Municipal Land Use Law (MLUL.)

The opinion also held that municipalities had no authority to require payments in lieu of such set asides from developers. The court noted that contributions may be required under the MLUL for certain off-tract improvements, but these improvements are statutorily limited to "water, sewer, drainage, and street improvements."

The Court acknowledged that recreation and open space were important considerations in land use planning under the MLUL, but held that more specific authorization was required for municipalities to require set asides or

contributions from developers for these purposes, and such authority did not exist in the statutes.

For more on this decision, please see our Dear Mayor letter of June 25.

Thus, A-3443 addresses this omission in the MLUL, and expressly authorizes municipalities to condition development approvals based on a set aside for open space, recreational areas and facilities or payments in lieu. This legislation would assist local governments in open space preservation and sound planning.

We suggest contacting your Assembly representatives and ask that they support A-3343, and prioritize it when the Legislature returns after the election. For more on this bill, please contact Mike Cerra at mcerra@njslom.com or 609-695-3481 x120.

Very truly yours,

William G. Dressel, Jr.
Executive Director

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