

Mayors Fax Advisory



New Jersey State League of Municipalities

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William G. Dressel, Jr., EXECUTIVE DIRECTOR ■ Michael J. Darcy, CAE, ASSISTANT EXECUTIVE DIRECTOR

RECEIVED

June 23, 2008

CC: COUNCIL ✓
PLANNING ✓

JUN 23 2008
OFFICE OF THE MAYOR &
BUSINESS ADMINISTRATION

RECEIVED
JUN 23 2008
Mount Olive Township Clerk's Office

Re: Appellate Divisions Rules Open Space
Set Asides and Contributions Not
Authorized by MLUL

Dear Mayor:

In a very important land use decision this morning, the Appellate Division has ruled 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) and therefore are invalid.

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.

To access this case, please go to: <http://www.judiciary.state.nj.us/opinions/index.htm>

If you have any questions or concerns about this communication, please contact Deborah M. Kole, Staff Attorney, at the League, ex. 137, or at dkole@njslom.com

Very truly yours,

William G. Dressel, Jr.
Executive Director

WGD:dk/sc

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