

Stormwater Management: New Jersey Builders Organization Challenges Municipal Ordinance



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The Superior Court of New Jersey, Appellate Division (“Court”) addressed in a March 3rd Order a challenge to a stormwater management ordinance (“Ordinance”). See *Builders League of South Jersey v. Borough of Haddonfield*, 2021 WL 806933.

The Builders League of South Jersey (“BLSJ”) objected to the Borough of Haddonfield (“Borough”) adoption of Ordinance § 135-92 governing stormwater management in the municipality.

The New Jersey Constitution authorizes the Legislature to regulate land use. This authority has been delegated to municipalities under the Municipal Land Use Law (“MLUL”).

Municipalities are required to strictly conform to the MLUL. The MLUL authorizes the Department of Environmental Protection (“DEP”) to adopt regulations governing stormwater management plans. Each municipality is then required to adopt a stormwater ordinance in compliance with DEP regulations. Such regulations apply to all “major developments.”

The New Jersey Department of Community Affairs implemented regulations known as the Residential Site Improvement Standards (“RSIS”). The RSIS governs all residential site improvements in the State. They supersede any contrary requirements that might be found in municipal ordinances.

The DEP’s Model Ordinance offers guidance to municipalities adopting stormwater management ordinances. It is applicable to “major developments.” The Ordinance encompasses:

. . . all site plans or subdivisions that require site plan review . . .

In contrast, Haddonfield’s Ordinance applies to “all new homes and commercial buildings.” It is not limited to “major developments.”

BLSJ argued that the Haddonfield Ordinance, is inconsistent with the MLUL and RSIS. It requires stormwater plans for an individual seeking to build a single-family or two-family home in Haddonfield be reviewed and approved by a municipal official, engineer, construction official. Further, the individual was required to post a bond for engineering professional review fees. Consequently, BLSJ asserted the Ordinance was:

- Beyond Haddonfield’s legal authority
- Contrary to MLUL, RSIS, and Model Ordinance

The Superior Court of New Jersey, Law Division, Camden County granted BLJS's motion for summary judgment. It concluded the Ordinance was invalid because the Ordinance essentially imposed site plan review for the construction of single-family and two-family homes. The MLUL was held to have expressly exempted such structures and be contrary to state law.

The Court on appeal rejected the following Haddonfield arguments:

- The [lower court] judge erred in finding the Ordinance invalid as contrary to, and inconsistent with, statutory and regulatory laws of New Jersey
- The [lower court] judge erred in adjudicating the BLJS's challenge to the Ordinance as an action in the Superior court of New Jersey instead of transferring the matter to the DEP.

The Court affirmed the lower court's ruling. It held that the Ordinance conflicted with the pronouncements in the MLUL and the RSIS because it applied stormwater review to single-family and two-family homes.

The Court noted that nothing in the DEP's stormwater management regulations allowed Haddonfield to violate the MLUL or the RSIS by adopting an ordinance imposing stricter requirements than the requirements under the enabling legislation. Therefore, the Ordinance exceeded Haddonfield's authority.

The Court also concluded that the DEP was established to adopt regulations to protect the public safety with respect to storm water detention facilities. This mission did not include determining the validity of municipal ordinances. Because the challenge to the Ordinance was that it was inconsistent with State law, it is within the purview of the Law Division of the Superior Court.

A copy of the Opinion can be downloaded [here](#).