

VENTANTONIO
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COUNSELLORS-AT-LAW

If you have any questions or would like to schedule a consultation on the matters discussed in this publication, please contact the attorneys at Ventantonio & Wildenhain at 908.757.3900 or info@vwlaw.com.

This publication is intended to provide information on recent legal developments. It should not be construed as legal advice on any matter, nor is it intended to create an attorney/client relationship.

Ventantonio & Wildenhain Public Policy Forum

DATE:
October 10, 2007

TIME:
8:00 am - 9:30 am

LOCATION:
Radisson Hotel
Piscataway

A Neighborhood Nuisance

Liquor License Holders Who Fail to Prevent Illegal Activity May Have Their Licenses Suspended

by David L. Minchello, Esq.

Many municipalities have a local bar that is a hot spot for illegal activity. Behind closed doors and spilling out onto the streets, these establishments often have patrons who engage in gambling, drug use, prostitution, or fighting on the premises.

These problem bars become a source of frustration for local governments. They divert law enforcement to one location, drain police resources, and become a blight on surrounding neighborhoods affecting businesses and homes.

Municipalities can utilize the New Jersey Alcohol Beverage Control (ABC) regulations to combat illegal activity by

restricting, denying renewal, or suspending a liquor license. The ABC regulations permit violations to be issued if prostitution, violence, or drug activity occurs on the premises.

A municipality can issue a violation even if the license holder was unaware, not present, or had no knowledge of the illegal conduct. The law requires the license holder to take "effective measures" to prevent illegal conduct, such as employing security guards or installing video cameras.

In addition, ABC regulations require a license holder and his employees to operate the establishment "in an orderly and

lawful fashion, so as not to constitute a nuisance." Under this provision, the license holder's conduct need not even be illegal to be considered a violation of ABC regulations. Examples of a "nuisance" may include complaints of noise, litter, or excessive crowds.

Diligent enforcement and prosecution of ABC regulations provide the tools to municipalities to combat unlawful establishments that can plague a community. Once these tools are effectively implemented, local officials will see a community impact that will be greatly appreciated by their constituency.

New Concerns in Redevelopment

by Elia Pelios, Esq.

Redevelopment has been used by municipalities as a tool for reinvigorating decaying neighborhoods. Tools available via the Local Redevelopment and Housing Law have been critical in revitalizing many of New Jersey's older communities. We are now seeing an emerging case law which may make it more difficult to undertake redevelopment.

The New Jersey Supreme Court recently decided *Gallenthin v. Paulsborough*, in which the

Borough's designation of an area as being "in need of redevelopment" was rejected due to a misapplication of the law supporting such a designation.

The criterion in question had been used to deem an area in need of redevelopment if it was "underutilized" or "not fully productive." After *Gallenthin*, this criterion is only appropriate when underutilization is caused by issues of title, diversity of ownership, or "other similar conditions."

Towns must retain competent, experienced professionals to navigate this quickly changing landscape. While Planners and Redevelopment Counsel should apply new case law when performing investigations for potential redevelopment projects, it is also advisable that they review the investigation reports of existing redevelopment designations in light of new decisions to make sure they reflect current law.

Coming to a Public Meeting Near You—Camcorders

A review of the Implications of *Tarus v. Borough of Pine Hill, New Jersey*

by Debra A. Sahler, Esq.

Every municipality must become familiar with a recent New Jersey Supreme Court opinion that enforced the public's common law right to video tape public meetings. The Court found that there was a common law right to tape the meetings,

of the meeting does not disrupt the business of the governing body or disrupt other citizens' right of access. Any guidelines imposed on videotaping must be neutrally adopted and administered by the municipality and limited in scope to prevent

are permitted to enact rules that prevent damage to the meeting hall facilities and to prevent the creation of safety hazards and rules. It also is permissible to require fair payment if electricity is used.

Prior to *Tarus*, many municipalities enacted restrictions that prevented citizens from videotaping the audience at public meetings. Typical municipal restrictions provided that the camera must remain on the members of the governing body or must be fixed on the podium provided for members of the public to speak. As a result of *Tarus*, even citizens in the audience at a public meeting are permitted to be videotaped by a private individual. The Court found that citizens have no rights of privacy protecting their public comments.

Members of the public making comments and remarks in an open and public forum are permitted to be recorded.

Despite many town meetings being recorded by the cable provider, the municipality may not prohibit the public from taping the proceedings. Some persons may still wish to record meetings for their own purposes. Not only council

meetings, but also School Board meetings, Board of Adjustment meetings, Shade Tree Commission meetings, and Recreation Board meetings appear to fall within the ambit of *Tarus*. The public's videotaping, as long as it is consistent with the parameters described above, would be permissible.

While governing bodies are under no obligation to create guidelines limiting the right to videotape, if rules are created they must not be overly restrictive. Similarly, the governing body must enforce the guidelines uniformly. Failure to enforce the guidelines may result in litigation when the body attempts to enforce them.

Any governing body interested in enacting such guidelines should do so as soon as possible. If the municipality waits until citizens attend the meeting with cameras in hand, the municipality will not be able to restrict taping prior to the enactment of restrictions. While the municipality chooses to formulate reasonable guidelines, that decision in no way postpones the accrual of the right to videotape until guidelines are established.

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citing an “interwoven tapestry of jurisprudence and policy” supporting both the value of open government and the right to document government proceedings. The unanimous decision overturns a 2005 appeals court ruling, which held that while residents have the right to attend public meetings, they do not have a right to videotape them.

However, the public's right to video tape meetings is not unfettered; it may be qualified and restricted within certain parameters.

Public bodies are permitted to impose reasonable guidelines to ensure that the recording

disruption of the public meeting. Reasonable guidelines could include: (1) the number and types of cameras permitted, (2) positioning of the cameras, (3) the activity and location of the operator, lighting and other equipment, and (4) any other guidelines designed to maintain order and prevent disruption of the proceedings. Further restrictions that appear proper are that equipment must be set up prior to the meeting, no artificial lighting can be used, equipment must be stationary, the recording device cannot produce a distracting sound and tapes may not be rewound during the session. Further, public bodies

The Role of Legal Counsel in Achieving Sustainability

by James B. Ventantonio, Esq.

As any regular attendee of conferences and workshops knows, certain words and phrases become popular and are suddenly found everywhere. “Sustainability” has become the new buzzword for planning and development.

The meaning of the term is a bit vague. It usually has environmental overtones, but we are also starting to think in terms of economic, social, and institutional sustainability. Simply put, we are beginning to be much more conscious of the long-term impact our policies will have on people and the communities in which they live.

With all of the economic and regulatory pressures facing local elected officials today, incorporating sustainability into the agenda may seem like another burden to carry. How

can officeholders be expected to balance another priority?

Identifying a Sustainable Community

The attempts to define a sustainable community may seem doomed to frustration and failure. Beyond the obvious environmental characteristics, where should a governing body begin?

We believe that experienced legal counsel should be able to provide a framework of information designed to identify and manage risk. The risks may be social and economic, but many will require a legal solution. Engaging counsel in the planning process can lead to innovative solutions, as well as provide protection against legal consequences of policies and regulations.

Environmental Sustainability

Creating sound environmental policy is an obvious place to begin sustainability planning. For many elected officials, however, the word “environmental” is usually associated with “litigation,” and the governing body is often in a defensive posture. Legal counsel is frequently called in to minimize costs resulting from actions that may have been taken by previous bodies.

Legal counsel can be used, however, in a proactive manner to examine and assess all municipal laws and ordinances that may have an environmental impact. Once the governing body sets its sustainability goals, counsel can also suggest legal strategies to accomplish those goals.

This type of planning and long-range thinking should

not be done only when reviewing and updating the master plan. It should become a regular part of the governing body’s policy-making and procedures.

Requirements of Legal Counsel

When retaining legal counsel, governing bodies should look for these characteristics:

- A pro-active approach to planning, rather than a defensive or reactive posture;
- Community service on a broad level, in addition to experience gained through employment; and
- Extensive legal knowledge.

We at Ventantonio and Wildenhain have experience in the areas of environmental law, planning, property taxes and municipal governance. We are happy to consult with municipalities about moving toward sustainability.

Ventantonio & Wildenhain PC to Host Public Policy Forum

Mayor Angelo Corradino of Manville, NJ, President of the New Jersey Conference of Mayors, will address municipal officials at a breakfast hosted by Ventantonio & Wildenhain PC on Wednesday, October 10 at the Radisson Hotel in Piscataway. The breakfast is one of a series of public policy forums sponsored by the firm throughout the year.

Mayor Corradino will outline his agenda for his term as NJCM President and speak about the association’s priorities. He and the municipal officials will also discuss issues and concerns of importance to the municipalities in Somerset, Union, and Middlesex Counties.

For more information, call 908.757.3900 or email sdavidson@vwlaw.com.

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People in the News

*Ventantonio & Wildenhain PC
is pleased to announce:*

Elia Pellos has been sworn in as Treasurer of the Somerset County Bar Association. Pellos, who is of counsel to the firm, also serves as President of the New Jersey Association of County Tax Boards.

David Minchello was appointed backup prosecutor in Manville. Minchello's practice focuses on municipal and government entities.

James Ventantonio has been selected for inclusion in *Who's Who in America, 2008*.

Ventantonio serves as a Trustee of Raritan Valley Community College and is on the Board of Visitors at Seton Hall Law School.

Ventantonio & Wildenhain PC is a boutique law firm specializing in litigation, corporate law, and governmental entities.

Our reputation and tradition are based on our commitment to communication with our clients and a proactive approach to obtaining the best results. Respect for clients and their concerns is our guiding principle. We believe that the best client/attorney relationships are based on honesty, openness, and ethical behavior, and all of our attorneys are firmly committed to the highest standards in these areas.

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