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BRUCE A. PATERSON, ILEEN CUCCARO, HORACE CORBIN and DAVID CORBIN Plaintiffs/Respondents, v. THE COMBINED PLANNING BOARD/ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF GARWOOD Defendants/Respondents, And ANGELA VILLARAUT and SANDRO VILLARAUT Defendants/Appellants	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-2328-15 Civil Action On Appeal from: Order Of The Superior Court of New Jersey, Law Division, Civil Part, Union County Sat below: The Hon. Karen M. Cassidy, P.J.S.C. Docket No. UNN-L-3224-14

BRIEF OF *AMICUS CURIAE* NEW JERSEY STATE BAR ASSOCIATION

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The New Jersey State Bar Association ("NJSBA") relies on the Procedural History and Statement of Facts as set forth in the Memorandum of Law submitted by Defendants-Appellants Angela Villaraut and Sandro Villaraut. The trial court's orders entered November 4, 2015 (Da242) and January 19, 2016 (Da289) are collectively referred to herein as the "Trial Court's Decision."

PRELIMINARY STATEMENT

The NJSBA seeks to participate as *amicus curiae*, and urges the Court to reverse the Trial Court's Decision. The trial court erred by imposing notice requirements that are more stringent than those set forth in the Municipal Land Use Law ("MLUL") and the case law interpreting it.

From a broader perspective, the Trial Court's Decision ignores the realities of the land use approval process in New Jersey, in which the give and take between developers, the municipal land use board, its consultants and the public often results in modification of the application and the grant of approval subject to conditions. In particular, it disregards the fact that almost every development approval by a municipal land use board is, by its nature, an organic process, subject to a routine series of modifications and conditions for which specific notice has never been required by statute or the courts. Furthermore, the Trial Court's Decision undermines the ability of developers, purchasers and lenders to reasonably rely on land use approvals because, under the Trial Court's Decision, such

approvals could now be challenged on the basis that a modification or a condition of approval gives rise to a "heightened concern" which warranted additional public notice. As discussed infra, this poses grave concern to practitioners, and could very likely have deleterious effects on the ability to transfer property and to secure financing.

In light of New Jersey's liberal standing provisions, and the ability to expand the period for appeal "in the interests of justice," the NJSBA files this motion to bring to the Court's attention its concern that the Trial Court's Decision, if affirmed by this Court, presents broad and significant policy implications that will negatively affect all aspects of land use including development and redevelopment, transfer, and financing of real property throughout the state. These policy considerations have not been fully articulated by the parties in their briefs. Therefore, and because the Trial Court's Decision is arbitrary, capricious and contrary to law, the NJSBA respectfully requests that this Court grant the motion, allow the NJSBA to participate as an *amicus curiae*, and reverse the decision of the trial court.

LEGAL ARGUMENT

I. THE TRIAL COURT'S DECISION IMPOSES NOTICE REQUIREMENTS THAT ARE MORE STRINGENT THAN THOSE DICTATED BY THE MLUL, WHICH REQUIRES ONLY THAT NOTICE IDENTIFY THE "NATURE OF THE MATTERS TO BE CONSIDERED."

A. The Trial Court's Decision Far Exceeds MLUL Notice Requirements.

The Trial Court's Decision imposes a notice standard that is more stringent than required by either the MLUL, N.J.S.A. 40:55D-11, or the case law interpreting it. The practical effect of the standard set forth by the trial court undermines the ability of developers and land use boards to engage in a dialogue, with public input, by which applications for development are scrutinized and evolve to address technical comments, board member and public concerns, which ultimately results in a better plan.

The notice provisions of the MLUL were intended to provide consistency, uniformity and predictability in the land use process throughout the State. N.Y. SMSA Ltd. P'ship. v. Twp. Council Of Twp. of Edison, 382 N.J. Super. 541, 550 (App. Div. 2006). The standards of N.J.S.A. 40:55D-11, as interpreted by the courts in cases such as Perlmart of Lacey, Inc. v. Twp. of Lacey Planning Bd., 295 N.J. Super. 234, 237-38 (App. Div. 1996) and Pond Run Watershed Ass'n v. Twp. of Hamilton Zoning Bd. of Adjustment, 397 N.J. Super. 335, 351 (App. Div. 2008), have become a widely-acknowledged, predictable and consistent standard in land development throughout the State. The Trial Court's Decision, as explained in its Statement of Reasons, undercuts this precedent

and requires that much more exhaustive notices, which include both potential conditions that could be imposed by a land use board and potential developer concessions, must be provided to ensure notice "specific enough to apprise the public and affected property owners of the proposed use." Da252. These standards far exceed the statutory notice requirements, and the ills the trial court seeks to avoid are adequately remedied by the very process of which the objectors in this matter have availed themselves.

N.J.S.A. 40:55D-11 requires that a notice identify the time, date, and place of the hearing; the nature of the matters to be considered; the property to be developed; and the location at which maps and documents for which approval is sought can be inspected. The only issue in dispute here is whether the notice adequately identified the "nature of the matters to be considered."

The purpose of requiring notice, as this Court has previously recognized, is to

> ensure that members of the general public who may be affected by the nature and character of the proposed development are fairly apprised thereof so that they may make an informed determination as to whether they should participate in the hearing or, at the least, look more closely at the plans and other documents on file.

Perlmart, supra, 295 N.J. Super. at 237-38. This standard has been echoed by this Court and the Supreme Court consistently since its announcement in Perlmart. See, e.g., Twp. of Stafford v. Twp. of Stafford Zoning Bd. of Adjustment, 154 N.J. 62, 74-75 (1998); Northgate Condominium Ass'n, Inc. v. Borough of Hillsdale Planning

Bd., 214 N.J. 120, 139 (2013); Pond Run, supra, 397 N.J. Super. at 351; Shakoor Supermarkets, Inc. v. Old Bridge Twp. Planning Bd., 420 N.J. Super. 193, 201 (App. Div.), certif. denied, 208 N.J. 598 (2011). These cases readily establish that to be adequate, the description of "the nature of the matters to be considered" must "'inform the public of the nature of the application in a common sense manner such that the ordinary layperson could intelligently determine whether to object or seek further information.'" Northgate, supra, 214 N.J. at 140 (emphasis added) (quoting Perlmart, supra, 295 N.J. Super. at 239). While this includes an "accurate description of what the property will be used for under the application," id. at 139-40, the description need not be "exhaustive to satisfy this standard." Shakoor, supra, 420 N.J. Super. at 202. In other words, so long as the description of the project contained in the notice "adequately informed laypersons" so as to alert the public "to the possible concerns" of the project, the notice is sufficient. Id. at 203.

In Perlmart, the panel expressly rejected the contention that the notice must identify all relief requested, holding that "we do not believe the Legislature intended the required public notice to be that specific." Id. at 237 n.3. Moreover, this Court has previously upheld a notice that did not expressly identify the type of end user for a 150,000-square-foot "big box" retail facility, even where the specific nature of the retail use was well-known to both the developer and the board during the course of the hearings. Shakoor, supra, 420 N.J. Super. at 198. There, a

representative of Wal-Mart appeared on behalf of the applicant and provided testimony that the proposed use was a Wal-Mart Supercenter operating 24 hours per day. Id. Objectors appealed the eventual approval, claiming that the notice was deficient because it failed to identify the retailer, relying on Perlmart. Id. at 196. The panel rejected this position, holding that the general notice "adequately informed laypersons that a major 'big box' store was proposed for the site and alerted them to the possible concerns, such as traffic, commonly associated with those stores." Id. at 203. Notably for the analysis here, the panel added the analysis from Pond Run, holding that "none of the uses [proposed] provide legitimate cause for 'heightened concern' to the public, beyond those associated with a 150,000 square foot retail store." Id.

Here, the trial court in its Statement of Reasons identifies a "heightened concern" associated with multi-family development in Garwood, noting that residents who "may have believed the application for a non-age-restricted, multi-family use would have no chance of being approved, would not appear at the hearing." Da294. Yet the Court then conversely reasons that notice of a multi-family development with fewer impacts would have potentially raised more vocal opposition because it may have "a stronger likelihood of passing." Id. This stands in stark contrast to Pond Run and Shakoor, both of which rely on the nature of the use in determining whether additional notice was necessary, examining whether such a use would be objectionable or cause "heightened concern." See Pond Run, supra, 397 N.J. Super. at 354-55 (noting

the heightened concerns associated with a restaurant); Shakoor, supra, 420 N.J. Super. at 203.

Age-restricted developments have lighter demands on traffic, are more economically desirable for a municipality, and the municipality has more control over who can inhabit the property through deed restrictions and the like than in a traditional development. These uses are viewed as more desirable in most municipalities, and do not lead to the "heightened concern" that motivated the Court in Pond Run to invalidate the notice. Quite the contrary, this use is a subset of the proposed multi-family housing that is less intensive and more beneficial to Garwood. Thus, the trial court's basis for finding that age-restricted housing may have led to a "heightened concern" seems out of place and without basis.

The public does not need to be put on notice about every nuance or potential variable that may occur during the land use process, nor does the MLUL require as much. What members of the public need (and to which they are entitled by statute) is a plain, common sense statement about the general details of the application that will allow them to determine whether they should seek more information or pay attention to the proceedings. The precision demanded by the Trial Court's Decision will serve only to provide notices which alienate public engagement in the land use process. Notices will become longer, more complex, and more confusing, and in many cases multiple notices will become necessary for a single development application as modifications or conditions come about

during the public hearing process. The end result will defeat the purpose of providing in the initial notice a description that is clear and understandable to the average layperson.

B. The Practical Effect Of The Trial Court's Decision Would Allow Boards To Grant Variances Without Notice, But Would Require Notice By Applicants For Modifications or Conditions That Come Up During The Course Of The Application And Public Hearing Process.

It is important to be mindful of the unintended consequence that necessarily arises from the Trial Court's Decision. Under that decision, additional notice will be required when approval of the development includes a modification or condition, not included in the initial application, that will reduce the project's impact and thereby increase the likelihood of approval. Yet, under existing law, our courts have made clear that variances — which by their very nature often increase a project's impacts and could make approval less likely — do not need to be specifically noticed in every instance. See Shakoor, supra, 402 N.J. Super. at 202-03 (noting that the MLUL does not require notice of "all of the particular variances required"); see also, Scerbo v. Bd. Of Adjustment, 121 N.J. Super. 378, 388-89 (Law. Div. 1972) (indicating that notice stating a "variance" will be sought is not required when the notice describes the overall relief needed). It would be anomalous and contradictory for this Court to hold that modifications and conditions which reduce a project's impacts

warrant public notice, even though variances which increase a project's impacts do not.

Accordingly, the Trial Court's Decision should be reversed and the adequacy of the notice provided should be held to be sufficient with an appropriate order dismissing the challenge.

II. THE TRIAL COURT'S DECISION FAILED TO RECOGNIZE THAT SECURING MUNICIPAL LAND USE APPROVALS IS A PROCESS WHICH REQUIRES A DIALOGUE BETWEEN DEVELOPERS, THE BOARD AND THE PUBLIC IN A LIMITED TIME PERIOD.

The Trial Court's Decision and the memoranda of law filed by Plaintiffs-Respondents fundamentally misunderstand the process for securing land use approvals in New Jersey. As set forth below, the dynamic nature of the development approval process requires that there be sufficient notice of the use to provide an accurate description of the matters to be considered, but not notice which is so specific that it stifles the evolution of a proposal during the public review process required by the MLUL.

A. Land Development In New Jersey Is A Dynamic Process Which Contemplates Implementation Of Modifications And Imposition Of Conditions.

The land use approval process is a dynamic one which commences with the original submission of an application by the developer, and continues through a determination of completeness, a thorough review by the board and its consultants and staff for technical conformity with local zoning and design standards, and ultimately a public hearing. See, e.g., Pizzo Mantin Group v. Twp. of Randolph, 137 N.J. 216, 232-33 (1994)(suggesting that the

discretion to impose conditions comes "by a process in which planning boards affirmatively interact with developers when reviewing proposed subdivisions").

While the hearing is the first time the full board has an opportunity to engage directly with the developer and its witnesses, the board's design professionals typically begin discussing an application with the applicant well before the hearing. Many municipalities even send an application to a technical review committee before any hearing for analysis of the design and technical details of the application.[1] Following the technical review, the applicant may determine whether to revise its plans in response to the comments received. After the submission of an application for development, the board's staff and consultants (whether as part of a technical review committee process or independently) will issue review letters that present a comprehensive review of issues associated with the application, and often detail specific objections or concerns. They may recommend plan revisions and conditions of approval, such as limiting the operating hours of the proposed use, providing additional landscaping and buffering, reducing or increasing lighting levels, modifying the design of parking areas, or a variety of other modifications or conditions. These reviews are part of the public record. Prior to the public hearing, discussions will often take place between developer's representatives and the

[1] While Garwood has a development review committee, it does not appear that committee ever reviewed this application.

board's design professionals in an effort to determine which issues the developer can resolve prior to the hearing, and how best to accommodate municipal concerns. A developer may alter the plans or, if a public hearing has already been scheduled and notice issued, agree to comply with such recommendations as conditions of approval. This may occur at the commencement of the hearing, as was the case here, or may be offered in testimony during the hearing.

Following the grant of approval, the board must memorialize its decision and publish notice of it in the official newspaper. Thereafter, the resolution of approval is available to the public, and the full application (plans, reports, etc.) as submitted by the developer remains available, including all exhibits submitted to the board. It is incumbent upon persons potentially interested in the outcome of the application to actively engage in the review process and examine the application, supporting plans and reports, and attend the public hearing.

Notice vests a municipal land use board with jurisdiction to hear an application, and must be geared to providing a layperson an accurate description of the "nature of the matters to be considered." N.J.S.A. 40:55D-11. Without such jurisdictional notice, the actions of the board are deemed void. See, e.g., Northgate Condominium Ass'n, Inc., supra, 214 N.J. at 138. Notice requirements should not be considered a limitation on the ability of developers to propose or agree to conditions of approval which enhance the chances of approval unless the hearing process is

paused while the applicant serves new notice. Indeed, this would render the development review process fundamentally unworkable, because such delays could preclude the board from taking action within the applicable statutory time frames. E.g., N.J.S.A. 40:55D-46(c) (45 days for site plans); N.J.S.A. 40:55D-67(a) (95 days for conditional uses); N.J.S.A. 40:55D-73(a) (120 days for variances). These statutory timeframes do not contemplate publication and service of multiple notices. This further confirms that the Trial Court's Decision is at odds with the MLUL.

Notice of the application should be written to accommodate the original version of an application, which is usually the most intense potential scope of development, because that presents a worst case scenario for those who may have heightened concerns regarding a particular use. The application may then be refined, through conditions or otherwise, to address concerns expressed by the board or the public.

The developer in this matter did provide a reasonable and inclusive notice. The notice was more inclusive than it needed to be, seeking approval for all forms of multi-family residential uses, and advising that any further relief that may be identified either through the review of the application or testimony before the Board is also requested. See Da278; Da292.

As the foregoing demonstrates, the process of land development review is intended to recognize that applications will be altered during the review process. The case law encourages boards, developers and the public to engage in this discursive

practice, and provides opportunities for all to do so. See, e.g., Shakoor, supra, 397 N.J. Super. at 196-98 (describing the land use approval process as involving comments from the board and the public resulting in approval subject to "various stipulations and conditions"). The Trial Court's Decision would seriously hinder such a practice, and would place severe limitations on the ability of developers to alter their plans to accommodate the board's concerns.

B. Developers Have A Statutory Right To Modify Their Applications, And Whether A Condition Was Offered By The Applicant Or Imposed By The Board Is A Distinction Without A Difference.

The trial court's Statement of Reasons also focuses on whether the conditions to be imposed were conditions proposed by the applicant or were proposed by the Board as mitigating conditions, and whether objectors would have had sufficient time to adequately prepare a response based on notice of these possible outcomes. Da253; Da300. Due to the dynamic nature of the land use process, whether a modification or condition is proposed by a developer as a mechanism of mitigating concerns, or imposed by the Board, is a distinction without a difference. Furthermore, any concerned member of the public had the time allowed pursuant to statute, N.J.S.A. 40:55D-10(b), to prepare a response to the application.

In enacting the MLUL, the Legislature foresaw that applications change, and provided that applicants "may produce other documents, records, or testimony at the hearing to substantiate or clarify or supplement the previously filed maps

and documents." N.J.S.A. 40:55D-10(b). Developers are prejudiced when an application is denied, because denials are considered a conclusive decision on the merits of an application, and are afforded preclusive effect against any future similar application. See Charlie Brown of Chatham, Inc. v. Bd. of Adjustment for Chatham Twp., 202 N.J. Super. 312, 327 (App. Div. 1985). That is why the statute vests in developers the ability to clarify their prior submissions at the hearing, and allows the public to react by engaging in cross-examination, seeking an extension of time to secure appropriate witnesses, or filing an action in lieu of prerogative writ. The public is not prejudiced by a developer exercising its rights to clarify or modify an application as contemplated by the MLUL.[2]

Finally, the trial court's Statement of Reasons attaches significance to the fact that the age restriction was offered by the applicant *before* commencement of the hearing, rather than being imposed as a condition of approval by the board *during the hearing process*. Da300. The trial court apparently would have been less concerned about the adequacy of notice had the age restriction

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[2] Clarifications should not be confused with changes to the proposed use such as where multi-family use is eliminated and replaced with single-family, office, or retail use, or situations where modifications to a site plan are so substantial as to amount to a new application. See Macedonian Orthodox Church v. Planning Bd. of Tp. of Randolph, 269 N.J. Super. 562, 565-72 (App. Div. 1994); Davis v. Planning Bd. of City of Somers Point, 327 N.J. Super. 535, 541-43 (App. Div. 2000). Such changes would clearly require public notice in order to describe "the nature of the matters to be considered" pursuant to N.J.S.A. 40:55D-11.

come about during testimony or at the time the board voted, preferring that sequence of events to the applicant's more practical approach of addressing concerns made known to it before the hearing commenced. The Trial Court's Decision encourages applicants who find themselves in the situation of the Villarauts to engage in sidebar discussions with board members or the board's consultants, to indicate a willingness to implement a condition so long as it is *required by the board*, as opposed to being *offered by the applicant*. Such *ex parte* communications during the hearing process may avoid a need to re-notice under the trial court's reasoning, but they invite discussions which undermine the openness of the proceeding and could lead to mischief. See, e.g., Stewart v. Planning Bd. of Twp. of Manalapan, 334 N.J. Super. 123, 128 (Law Div. 1999)(invalidating site plan approval because of discussions of "issues of consequence" regarding application at informal hearing).

Based on the foregoing, the Trial Court Decision should be reversed and the notice found to be sufficient.

III. THE TRIAL COURT'S DECISION, IF AFFIRMED, WOULD UNDERMINE THE FINALITY AND REPOSE ACCORDED TO LAND USE APPROVALS, THEREBY IMPEDING REAL ESTATE CONVEYANCES AND FINANCING TRANSACTIONS.

Consummation of real estate conveyances and financing transactions demands a high level of finality and repose that assumes development approvals may be relied upon and will not be disturbed. However, the Trial Court's Decision raises substantial

doubt concerning the finality and repose of any development approval containing modifications or conditions, thereby threatening the ability of developers and lenders to rely on those approvals, resulting in a substantial and very real impediment to real estate conveyances and financing transactions.

A. The Lack of Finality Engendered By the Trial Court's Decision Imposes An Unnecessary Impediment To Real Estate Transactions.

Every real estate transaction involves due diligence, which increases substantially with the complexity and value of the transaction. Such transactions often are contingent on the existence of development approvals, in final, unappealable and unappealed form. The Trial Court's Decision, in demanding additional notice prior to the imposition of modifications or conditions of approval, casts doubt on the finality of such approvals, which in turn threatens the transactions which rely upon them.

An economic emergency affecting the real estate industry was legislatively declared to exist beginning Jan. 1, 2007, with the enactment of the Permit Extension Act, N.J.S.A. 40:55D-136.1 et seq., and that emergency continued through the end of 2016. It remains in effect in certain superstorm Sandy-impacted counties. P.L. 2016, c.14. Onerous notice requirements which exceed statutory mandates serve no purpose, are inconsistent with established case law, and run contrary to legislative policies of minimizing unnecessary impediments to development.

B. Land Use Due Diligence Would Require Substantially More Extensive Investigation Of Development Approvals, And In Many Cases, Would Not Provide Finality Concerning The Sufficiency Of The Notice Which The Trial Court's Decision Requires.

The sale of property often is subject to obtaining development approvals, financing, or both. Purchasers and lenders routinely conduct due diligence to confirm the status of, and rights afforded by, development approvals for the property in question, because knowledge of what due diligence would have revealed is imputed to the purchaser. Aldrich v. Schwartz, 258 N.J. Super. 300, 309-10 (App. Div. 1992), appeal dismissed sub nom. Aldrich v. Hawrylo, 146 N.J. 493 (1996).

As part of this due diligence, a purchaser or lender presently can easily determine whether the notice requirements of N.J.S.A. 40:55D-11 are satisfied through an analysis of the elements outlined in the statute. See, e.g., Db8 (comparing the notice provided to the statutory requirements). Such an examination is necessary to determine any risk that the underlying decision may be vacated for lack of jurisdiction due to inadequate notice.

Under the Trial Court's Decision, however, a purchaser or lender could not rely solely on an examination of the resolution of approval as is typically undertaken. Due diligence would require an examination of the minutes, hearing transcripts, public notice(s), application forms, and project description to determine whether the approval differs in any manner from the project which

was described in the public notice. If modifications or conditions offered by the applicant, or perhaps even imposed by the board, were not referenced in the public notice(s), a question would arise as to whether those changes might have caused a hypothetical member of the public to prepare differently for the hearing, or to have attended the hearing that he or she elected not to attend. This opens the door to an unknown set of potential appeals, with no way of obtaining finality other than bringing a declaratory judgment action for the sole purpose of adjudicating whether the public notice was adequate.

This is an impractical solution, because the cost of doing so in both time and money would impose a substantial burden on many conveyances and financing transactions, in many cases preventing their consummation.

C. New Jersey's Broad Grant of Standing, Coupled With Opportunities For Expansion Of The Appeal Period In The Interests of Justice, Substantially Broadens The Possibility Of Appeals, Even For Projects Previously Approved And As To Which The Appeal Period Has Expired.

The risk to impeding real estate conveyances and financing transactions is heightened by the Trial Court's Decision because of New Jersey's broad standing rules and the opportunity to enlarge the 45-day appeal period in certain circumstances. The trial court's requirement that public notice of a land use hearing must encompass not only the scope of the application, but also any modifications or conditions which might alter how one would prepare for the hearing or one's decision whether to attend the hearing at

all, has the practical effect of substantially broadening the ability to challenge an approval based on defective notice, even long after the project was approved. This would also alter the well-established standards of review for land use approvals, since the Trial Court's Decision would convert a broad range of substantive challenges into procedural issues. Questions of sufficiency of notice are traditionally reviewed *de novo*, where substantive challenges to decisions of municipal land use boards are reviewed deferentially. Compare Northgate, supra, 214 N.J. at 138, with Price v. Himeji, LLC, 214 N.J. 263, 284 (2013).

Generally, New Jersey courts construe standing broadly, particularly in the context of actions in lieu of prerogative writ challenging land use approvals. E.g., Aurentz v. Planning Bd. of the Twp. of Little Egg Harbor, 171 N.J. Super. 135 (Law Div. 1979)(taxpayer standing); Home Builders League of South Jersey v. Twp. of Berlin, 81 N.J. 127, 131-35 (1979)(deprivation of commercial opportunity sufficient to confer standing on trade group); DePetro v. Twp. of Wayne Planning Bd., 367 N.J. Super. 161, 171-72 (App. Div. 2004)(granting a business competitor within the same municipality standing to challenge application). While our courts bar "mere intermeddlers," New Jersey courts are those of general jurisdiction, and permit standing if a plaintiff can demonstrate a sufficient stake in the outcome of the litigation and that their position is adverse to the defendant. Home Builders League of South Jersey, supra, 81 N.J. at 132; Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107-108 (1971).

In addition to broad objector standing rights, Court Rule 4:69-6 establishes an appeal of the determination of a planning board or a board of adjustment shall be filed no later than 45 days after "the publication of a notice in the official newspaper of the municipality or a newspaper of general circulation in the municipality." R. 4:69-6(b)(3). However, R. 4:69-6(c) provides that the court may extend that deadline "where it is manifest that the interest of justice so requires." The scope of these expansions is not time limited, and a court "may grant even a very substantial enlargement of time in order to afford affected parties an opportunity to challenge the alleged unlawful governmental action." Willoughby v. Planning Bd. of Deptford, 306 N.J. Super. 266, 276-77 (App. Div. 1997); see also Borough of Princeton v. Bd. of Chosen Freeholders of Mercer, 169 N.J. 135 (2001) (granting enlargement of five years to one plaintiff and nine years to another); Damurjian v. Bd. of Adjustment of Colts Neck, 299 N.J. Super. 84, 97-99 (App. Div. 1997) (four years); Wolf v. Mayor of Shrewsbury, 182 N.J. Super. 289, 296 (App. Div. 1981) (one year); Ocean Cty. Bd. of Realtors v. Borough of Beachwood, 248 N.J. Super. 241, 247-48 (Law Div. 1991)(seven years); see also Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361, 413 (App. Div. 2008)(granting right to appeal redevelopment designation seven years after municipal action).

Given broad standing rights and the flexibility to enlarge the appeal period, the Trial Court's Decision finding notice insufficient is exceptionally troubling because notice is

jurisdictional, and a defective notice renders the approval null. Viewed in this context, the Trial Court's Decision undermines the predictability of land use approvals. Purchasers and lenders involved in transactions in New Jersey would rightfully have concerns about the finality of land use approvals. In many cases this could lead to an unwillingness to proceed with a transaction if there is a possibility that an approval could be challenged and set aside because the developer engaged with the board to modify or condition its development to become more conforming, or to reduce the project's potential negative impacts. Neither the trial court nor the parties have recognized this very real possibility.

Accordingly, we submit the Trial Court Decision should be reversed, with an Order entered upholding the notice as sufficient.

CONCLUSION

In light of the foregoing, the NJSBA respectfully urges this Court to grant its motion to participate as *amicus curiae*, reverse the Trial Court Decision and uphold the adequacy of the notice provided.

Respectfully submitted,

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Dated: September 26, 2016