

New Jersey Supreme Court Upholds Protections Against Changes in Zoning Afforded by Municipal Land Use Law

It's been a rule developers have long relied on, and municipalities have long understood, as both a principle of fairness and due process and a clear statement in the law: When an applicant obtains a site plan or subdivision approval, the terms of that approval are vested and protected from changes in zoning for two years in the case of a final approval (and three years for a preliminary approval). N.J.S.A. 40:55D-52(a). The City of Hoboken tested that long-standing provision and principle and sought to apply two ordinances that would have prohibited residential uses on a pier that were passed after a developer had obtained final site plan approval for the two high-rises. New Jersey Associate Justice Walter Timpone stated in *Shipyard Associates, LP v. City of Hoboken* (A-83/84/85-18) (082446), "the City asks us to halt Shipyard's proposed construction even though Shipyard's right to build has vested under the Municipal Land Use Law (MLUL)". But the Court, in clear, succinct language, would have none of it, stating: "We find that these are unquestionably zoning ordinances subject to the limitations of the MLUL, the plain language of which contains no exception."

This decision affirms the important principle that zoning requirements cannot be retroactively changed to undo final land use approvals.