

Bond Case Briefs

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UTILITIES - NEW JERSEY

388 Route 22 Readington Realty Holdings, LLC v. Township of Readington

Supreme Court of New Jersey - May 5, 2015 - A.3d - 2015 WL 1983043

After township declined property developer's demand that the township, in accordance with sewer allocation ordinance, recapture sufficient sewer capacity to allow its construction project to proceed, developer filed a complaint in lieu of prerogative writs against the township and multiple private entities to compel the transfer of allocated but unused sewer capacity. On cross-motions for summary judgment, the Superior Court affirmed validity of the ordinance, but determined that township's blanket policy of not recalling unused sewer capacity violated principles of *First Peoples*. Township appealed. The Superior Court, Appellate Division reversed. Developer appealed.

The Supreme Court of New Jersey held that:

- Ordinance provided adequate standards to guide township's discretion when considering whether to repurchase sewer capacity; but
- As applied, ordinance violated dictates of *First Peoples*; and
- Supreme Court would order township both to undertake a detailed analysis of the unused capacity in the hands of private parties and to explain whether any of that capacity could be recalled.

Sewer allocation ordinance, which provided developers with option to purchase sewer connection permits before making application for development approvals, and which contemplated that township would retain control over sold, but unused, permits by repurchasing such permits, provided adequate standards to guide the exercise of municipal discretion when considering whether or when to repurchase sewer capacity. The ordinance set temporal limits on the right of a property owner to keep unused sewer capacity, and provided that an allocation agreement could be extended upon application to the township if there was a showing of good cause.

Sewer allocation ordinance, providing developers with option to purchase sewer connection permits before making application for development approvals, and which contemplated that township would retain control over sold, but unused, permits by repurchasing such permits, as applied, violated dictates of *First Peoples* and requirements of Municipal Land Use Law, where despite the ordinance, township had maintained a blanket policy of not repurchasing unused sewer capacity allocated to developers.

Supreme Court would order township committee to undertake a critical review of unused sewer capacity, identified by property developer seeking to construct a retail outlet and restaurant, and to determine whether any such capacity could be recaptured from other developers who had purchased sewer connection permits, to satisfy property developer's development needs.