

# **Bond Case Briefs**

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## **ZONING - NEW JERSEY**

### **Casser v. Township of Knowlton**

**Superior Court of New Jersey, Appellate Division - July 7, 2015 - A.3d - 2015 WL 4078128**

Landowner brought action to challenge land use approvals issued for proposed subdivision. The Superior Court granted summary judgment and dismissed the complaint, and landowner appealed.

The Superior Court, Appellate Division, held that:

- Purported facial challenge to zoning ordinance was moot;
- Failure to file timely action in lieu of prerogative writs following land use approvals barred subsequent complaint challenging zoning ordinance; and
- Interests of justice did not warrant relaxing 45-day time limit to file an action in lieu of prerogative writs.

Landowner's purported facial challenge to zoning ordinance which required clustering and open space preservation was moot, as township had amended the farmland preservation chapter of its zoning ordinance such that the ordinance, which no longer required clustering as a condition for minor subdivisions, was not the most current applicable zoning ordinance.

Landowner's failure to file timely action in lieu of prerogative writs following land use approvals barred subsequent complaint challenging zoning ordinance; landowner had 45 days in which to file an action in lieu of prerogative writs, but instead waited three years to file lawsuit.

Interests of justice did not warrant relaxing 45-day time limit to file an action in lieu of prerogative writs and allow landowner to bring action to challenge land use approval for subdivision. Landowner was not deprived of the right to develop or sell her land, but rather owned about 100 acres of land subject to ten-acre zoning, decision safeguarded her right to subdivide the land and build 10 houses, landowner had sold 25-acre subdivided lot, fact that the variance terms may have prevented her from also selling development rights to the State did not give rise to a takings cause of action, and expert report thoroughly debunked landowner's theory that many other landowners were treated more favorably than she was.