

Double Reversal: Appeals Court Rules for Mahwah Township Again in Fitness Center Zoning Suit

Press Releases

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For the second time, a New Jersey appeals court has reversed a lower court's invalidation of a Mahwah Township, N.J., ordinance that opens more commercial zones to health, wellness and fitness centers.

Ruling in a lawsuit filed by existing health clubs, the Appellate Division panel found that the Township met the requirements of the New Jersey Municipal Land Use Law (MLUL) when it sent notices, prior to adopting the ordinance, to owners of properties in or near the affected zones. The published Appellate opinion, issued on April 15, 2013, reversed a ruling from New Jersey Superior Court in Bergen County that the Township failed to meet a requirement that the notice include information about the zone boundaries. In ruling, the appeals panel adopted the statutory interpretation advanced by [Andrew T. Fede](#) of Archer P.C. in Hackensack, who represents the Mahwah defendants. The appeals court remanded the case to the trial court for further proceedings in accordance with its ruling.

In an earlier ruling in the same case – *Mahwah Realty Associates Inc. and TSI Mahwah Inc. v. the Township of Mahwah and the Mahwah Township Planning Board* – the Appellate Division issued a published opinion in July 2011 reversing a previous trial court ruling that the Township's procedures for adopting the ordinance violated the MLUL. At that time, the Appellate Division panel also nullified the trial court's decision that individual Township officials be required to undergo deposition questioning about whether they or their family members had been treated at a hospital that supported the ordinance change, and about details of the treatment and cost. The

appeals court found that requirement “overly broad and unnecessarily intrusive” given that the plaintiffs had produced no evidence that any of the officials has a personal or financial interest in the hospital.

Mr. Fede serves as Township Attorney for Mahwah. His wide-ranging practice has a concentration in governmental law, land use law and appellate practice. He provides counsel and representation to numerous public entities in New Jersey.

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