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OF COUNSEL

LEAH C. HEALEY

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Direct Dial No.: (973) 912-6818

December 4, 2009

James J. Farina, City Clerk  
Hoboken City Hall  
94 Washington Street  
Hoboken, NJ 07030

**Re: Response to Request for Qualifications for Special Counsel – Redevelopment**

Dear Mr. Farina:

We are pleased to submit a response to the Request for Qualifications for Special Counsel – Redevelopment to serve the City of Hoboken.

Maraziti, Falcon & Healey is one of the few law firms in New Jersey that focuses its practice representing public sector clients in the area of redevelopment law. The firm has been in existence for thirty years and has spent the last ten years practicing redevelopment law. Unlike other firms who practice in the field of redevelopment law in New Jersey, Maraziti, Falcon & Healey, LLP has focused its practice representing public bodies, rather than redevelopers. We are pleased that New Jersey Monthly included our lawyers among the 2007 and 2008 Super Lawyers in New Jersey.

Maraziti, Falcon & Healey currently represents a number of municipalities around the State in redevelopment matters including, Bloomfield, Carneys Point, North Arlington, Palmyra, Perth Amboy Redevelopment Agency, Rutherford and Wildwood on a variety of large and small redevelopment projects. The firm serves as General Counsel to the Perth Amboy Redevelopment Agency (PARA) and as Special Redevelopment Counsel to the other municipalities. A more complete list of our clients, including the list of other municipalities we have provided redevelopment services to in the past, is attached to this proposal in our firm's folder.

The firm has experience in all aspects of the redevelopment and rehabilitation processes from the initial area designation through project implementation, as well as the defense and prosecution of lawsuits which are sometimes necessary to keep projects on track. Once the

redevelopment or rehabilitation area has been designated and the plan adopted, the developer selection and redevelopment agreement process must be crafted to encourage competition and assure that the selected developer has the financial capability and experience to complete the project in a timely manner.

The redevelopment agreement is the touchstone document for implementing projects. There are not many statutory requirements that must be included in a redevelopment agreement, so these agreements must be developed from experience. That is where the attorneys at Maraziti, Falcon & Healey have a significant advantage. We have drafted and negotiated more redevelopment agreements for municipalities than most other law firms in New Jersey and we understand the need to protect the interests of the governing body and promote the project's public purpose. Our redevelopment agreements are focused on answering the following questions: What will be built? When will it be built? What happens if it is not built? Is the redeveloper qualified? How do we assure the redeveloper will remain committed to the project? What public benefits does the municipality need from the project? We also understand the critical need for the municipality to maintain control of redevelopment projects because the governing body is ultimately accountable for the success or failure of the project in their town.

Once the redevelopment agreement is signed, our firm often assists with project oversight on an as needed basis. We encourage our clients to establish progress meetings and a reporting process to monitor the redevelopment project from approvals, through construction start-up and all the way to completion. Our oversight is especially useful when the redeveloper may be slipping towards breach and municipal action is needed. Our redevelopment agreements contain specific project schedules and termination remedies to protect the municipality against project delays such as that which occurred in Asbury Park where the redeveloper stalled the project and held the City hostage for years with a half built shell.

Finally, we have experience in terminating a redeveloper who was delinquent in an early phase of a large project. Shortly after the termination, we were able to resolve the issues, reinstitute the agreement with the redeveloper and the project broke ground. Without the clearly stated termination remedy which we had drafted in the redevelopment agreement allowing for termination regardless of fault after a certain period of time, the project would have been stalled.

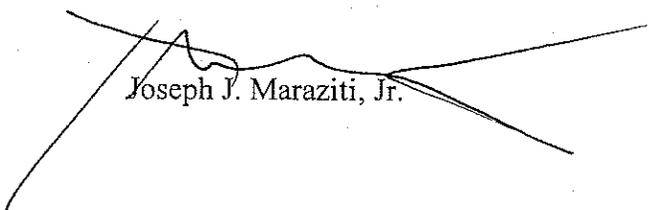
Most recently the firm was selected in an RFP process by the New Jersey Redevelopment Authority to teach the NJRA's Redevelopment Institute Course for municipalities and redevelopers.

In addition, we have been participants in the legislature review of eminent domain and the redevelopment process. A recent editorial in the New York Times, cited our participation in that process.

As you will see from our proposal, we have in-depth experience in representing municipalities in all aspects of the redevelopment process. We appreciate the opportunity to

submit this proposal for your consideration. Please do not hesitate to contact me should you need any further information or have questions concerning this submission. We would welcome the opportunity to meet with representatives of the City.

Very truly yours,



Joseph J. Maraziti, Jr.

JJM: smw  
Enclosure

CITY OF HOBOKEN

Response to Proposal

for

Redevelopment Attorney

December 9, 2009

Maraziti, Falcon & Healey, LLP  
150 John F. Kennedy Parkway  
Short Hills, New Jersey 07078  
Tel: (973) 912-9008  
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### **Tabs**

A - Short Biographies and Resumes for Attorneys that will be working with Haddon

B – Biographies for all Firm Attorneys

### **Exhibits**

- Exhibit A     -     Certificate of Employee Information Report
- Exhibit B     -     Business Registration Certificate

## CITY OF HOBOKEN

### INTRODUCTION:

Maraziti, Falcon & Healey, LLP is one of the few law firms in New Jersey that focuses the majority of its practice in the areas of redevelopment and environmental law for public sector clients. Collectively, we have had over forty years' experience in New Jersey environmental law matters including the purchase, sale, lease, mortgage, insurance, condemnation, foreclosure and cleanup of contaminated properties; Brownfields redevelopment including obtaining remediation financing from federal agencies, state agencies and private lenders; pursuing environmental cost recovery from responsible parties and insurance carriers; obtaining federal and state grants and other incentives for cleanup and redevelopment; pursuing cost-effective soil, groundwater, surface water and building interior remediation by working effectively with NJDEP; obtaining environmental permits to construct a project; and defending toxic tort matters brought against municipalities (the most recent being the defense of Ringwood in a toxic tort suit seeking billions in damages).

We are familiar with all environmental programs dealing with the discharge of pollutants and hazardous substances to the air, soil and water (including groundwater and MTBE cases); environmental land use laws (wetlands, flood hazard, Highlands and ISRA, among others) and environmental reporting requirements. Since our clients are mostly municipalities we are particularly sensitive to the need to take advantage of the unique statutory, contractual and common law rights, defenses and immunities that can limit our municipal client's exposure to environmental risk and cost. We have successfully represented municipalities seeking remedies from industrial polluters of potable water supplies.

The firm currently represents municipalities around the State including, Bloomfield, Carneys Point, Milford, North Arlington, Palmyra, Perth Amboy Redevelopment Agency, South Amboy Planning Board and Wildwood, on a variety of large and small projects. A more complete list of our clients is attached to this proposal.

### **New Jersey Redevelopment Agency – Redevelopment Training Institute**

For the past several years, the New Jersey Redevelopment Authority (NJRA) has selected Maraziti, Falcon & Healey, LLP to teach redevelopment fundamentals to municipal

representatives and others as part of the state-wide NJRA Redevelopment Training Institute – an intensive four-day course that includes environmental issues impacting municipalities.

### **State Development and Redevelopment Plan**

Having served as Chairman of the State Planning Commission, Joseph J. Maraziti, Jr., understands the inter relationship of the myriad of legal and public policy issues which challenge municipal officials.

The following members of the firm will be pleased to perform redevelopment legal services for the City of Hoboken:

Joseph Maraziti, Esq. Mr. Maraziti will be the principal contact to advise the City on redevelopment issues. He will provide opinions and advice on claims that arise relating to the City's redevelopment plan and attend to any litigation, negotiations or court appearances as requested by the City. He will be available on a daily basis for consultation in the redevelopment process or related efforts. Mr. Maraziti will attend meetings of the governing body when requested and prepare ordinances and resolutions germane to the redevelopment. Mr. Maraziti has many years of experience representing public sector clients throughout New Jersey in redevelopment projects, condemnation, land use, real estate transactions and litigation in federal and state courts. He is well versed in redevelopment law. He recently testified before the Senate Committee on Community and Urban Affairs on Senate Bill 1975 which proposes amendments to the Local Redevelopment and Housing Law and has been identified as a "Super Lawyer" in environmental law by New Jersey Monthly. Mr. Maraziti's full resume is contained in **Tab A** attached hereto.

Brent T. Carney, Esq. Mr. Carney will be responsible for assisting Mr. Maraziti in any litigation efforts which may arise from challenges to the redevelopment plan or agreement. For ten years, Mr. Carney has been involved in redevelopment litigation in federal and state courts in connection with area designations, redevelopment plans, redevelopment agreements and condemnation matters. Mr. Carney's full resume is contained in **Tab A** attached hereto.

Andrew M. Brewer, Esq. Mr. Brewer's litigation and real estate expertise will be utilized on an as needed basis. Mr. Brewer's full resume is contained in **Tab A** attached hereto.

Anton L. Lendor, Esq. Mr. Lendor will assist in the defense of any claims of litigation and will provide research assistance on related legal issues. Mr. Lendor has represented the City of Orange Township with various legal matters, with an emphasis on redevelopment. Mr. Lendor's full resume is contained in **Tab A** attached hereto.

Christopher D. Miller, Esq. Having developed particular expertise in matters relating to compliance with affordable housing requirements and protections against “builders remedy” litigation, Mr. Miller will be available on an as needed basis to advise regarding such matters. Mr. Miller’s full resume is contained in **Tab A** attached hereto.

Short biographies of all of the members of the firm are also included in **Tab “B”** in order to provide the City with a full understanding of the firm’s depth and capabilities. Included in our response is a comprehensive list of the redevelopment projects in which Mr. Maraziti and Mr. Carney have been involved.

**1. REFERENCES AND RECORD OF SUCCESS  
OF SAME OR SIMILAR SERVICE:**

**A      References**

Below is a list of references that may be contacted for information regarding their experience with our firm. We would be pleased to provide you with additional client contact information upon request.

Honorable Wilda Diaz, Mayor  
Perth Amboy City Hall  
260 High Street  
Perth Amboy, New Jersey 08861  
Tel: (732) 826-0290  
Fax: (732) 826-1160

Honorable John J. Gural, Jr., Mayor  
Palmyra Borough Hall  
20 West Broad Street  
Palmyra, New Jersey 08065  
Tel: (856) 829-6100  
Fax: (856) 829-4096

Helga van Eckert, Executive Director  
Perth Amboy Redevelopment Agency  
Perth Amboy City Hall  
260 High Street  
Perth Amboy, New Jersey 08861  
Tel: (732) 293-1638  
Fax: (732) 442-4189

Honorable Sandra Haimoff, Mayor  
Township of Millburn  
375 Millburn Ave  
New Jersey 07041-1379  
Tel: (973) 564-7000  
Fax: (973) 564-7468

Honorable Jose Torres, Mayor  
City of Paterson  
155 Market Street  
Paterson, New Jersey 07505  
Tel: (973) 321-1310  
Fax: (973) 881-7085

Honorable John Hipp, Mayor  
Borough of Rutherford  
176 Park Avenue  
Rutherford, New Jersey 07070  
Tel: (201) 460-3022  
Fax: (201) 460-3003

Nellie Pou, Assistant Business Manager  
City of Paterson  
155 Market Street  
Paterson, New Jersey 07505  
Tel: (973) 321-1370 x 2374

Honorable Peter Massa, Mayor  
Borough of North Arlington  
214 Ridge Road  
North Arlington, NJ 07031  
Tel: (201) 991-6060

Honorable Edward Voyles, Mayor  
Township of Carneys Point  
303 Harding Highway  
Carneys Point, New Jersey 08069  
Tel: (856) 299-0070  
Fax: (856) 299-1983

## B. Record of Success of Same or Similar Service

Maraziti Falcon & Healey has represented municipalities in over fifty five redevelopment and rehabilitation projects throughout the state. A more detailed description of those projects is set forth below in B.1 through B.4 of this section.

The firm has significant litigation experience in defending against challenges to area designation, redevelopment plans and inverse condemnation claims. (*Rosengarten v. Council of the City of Perth Amboy*, Docket No. A-3316-03T1 (App. Div.), certif. denied, 185 N.J. 295 (2005)). We succeeded in several cases in the Appellate Division where challenges were made to the redevelopment process. *Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy*, 349 N. J. Super. 418 (App. Div.) certif. denied, 174 N.J. 189 (2002) and *Milford Mill 128, L.L.C. v. Borough of Milford*, 400 N.J. Super. 96. (App. Div. 2008). We have also successfully defended against conflict of interest challenges to the members of a redevelopment agency.

### B.1 The New Jersey Redevelopment Authority – Redevelopment Training Institute

Maraziti, Falcon & Healey, LLP was chosen in 2007 by the New Jersey Redevelopment Authority (NJRA) to create and co-teach the three (3) day Redevelopment Institute program entitled: “Redevelopment Planning Process”. The program is presented on a bi-annual basis and attracts municipal officials, redevelopers, and consultants seeking to obtain a comprehensive understanding of the legal and planning issues essential to successful redevelopment efforts.

### B.2 Redevelopment Project Experience:

Since 1998, the firm has advised the Perth Amboy Redevelopment Agency in all aspects of the redevelopment process on more than twenty two redevelopment projects, some of which are briefly described below:

- o Township of Bloomfield: This firm has served as Special Redevelopment Counsel for the Township of Bloomfield since May 2007. In that capacity, it has served as a member of a multi-disciplinary consultant team in the preparation of the Bloomfield Center Redevelopment Plan – Phase I. The Plan is the result of extensive community visioning process, which engaged hundreds of citizens. The Plan encompasses both redevelopment and rehabilitation areas. In 2009, New Jersey Future honored the Plan with a Smart Growth Award. Maraziti, Falcon & Healey has advised with regard to the multi-faceted legal issues that characterize redevelopment/rehabilitation efforts in the aftermath of recent case law.

In addition, the firm represents the Township in defense of litigation stemming from earlier redevelopment efforts.

- o Landings at Harborside Waterfront Project, Perth Amboy. This 50-acre redevelopment project located on the Arthur Kill includes approximately 2,000 residential units consisting of condominiums, apartments and townhouses; a hotel; retail space, including restaurants and stores; and the construction of public parks, a community cultural arts center and a waterfront promenade. The firm has been involved in the area designation and redevelopment plan process, redeveloper selection by request for proposal and negotiation and preparation of the redevelopment agreement. We have transferred City property to the redeveloper and have acquired property by condemnation. We successfully defended this project from challenges involving area designation, the redevelopment plan, taking and inverse condemnation, all the way to the Supreme Court. Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy, 349 N. J. Super. 418 (App. Div. 2002) certif. denied.; Rosengarten v. Council of the City of Perth Amboy, Docket No. A-3316-03T1 (App. Div.), certif. denied, 185 N.J. 295 (2005). We have also advised the City on environmental issues associated with the transfer and condemnation of properties, as well as the unique liability protections associated with the municipal ownership of contaminated property.
  
- o Kings Plaza Commercial and Affordable Housing Project. The firm represented PARA in the area designation, redevelopment plan and redevelopment agreement for this mixed use project in the center of Perth Amboy consisting of a 124-unit affordable apartment complex, 3-level parking deck, new supermarket and other retail uses. This project has been subject to legal challenges in both state and federal court in connection with the designation and condemnation actions. The firm has been successful in defeating these challenges and has transferred the properties to the Redeveloper. It is one of the few projects to receive \$40 million dollars in tax credit financing from the State for providing moderate income housing on a portion of the project. This project has completed extensive demolition and is under construction.
  
- o Matrix Outdoors Light Manufacturing Project. The firm assisted PARA with developer selection and negotiated and prepared the redevelopment agreement for this new light manufacturing warehouse project which was constructed on a 78 acre contaminated property in the City's old industrial section. The firm assisted PARA in understanding and addressing the environmental issues that challenged this redevelopment project. This project has been completed and is generating major new jobs and taxes.
  
- o Morris Companies Light Manufacturing Warehouse Project. The firm negotiated a redevelopment agreement for light industrial redevelopment of a 69 acre site formerly owned by Chevron. This project provides a community benefit of a new road and property for a new firehouse. The first building is under construction and the project is due to be complete next year.
  
- o iPORT 440 International Business Center. The firm negotiated and prepared a redevelopment agreement which has been executed to provide office, retail, technology/flex warehousing, a waterfront greenway and recreational property for the public. This brownfield site is listed on the New Jersey Portfield Site List for development for light manufacturing to serve the Port area. This \$178 million dollar

project involves complex environmental issues and significant business relocation issues which the firm is handling. The project has obtained local approvals and is in the process of obtaining state approvals. Land acquisition is underway.

Maraziti Falcon & Healey serves as Special Redevelopment Counsel to a number of other municipalities on projects which are briefly described below:

- o Center City Mixed Use and Parking Structure Project, Paterson. This project involves redevelopment of a 5-acre vacant parking lot across the street from the Passaic County Court House. The redeveloper's plan is to construct a \$130 Million 5-story complex that will include office and retail space, a 10-screen movie theater, residential units and a significant parking structure. As Special Redevelopment Counsel to Paterson, the firm prepared the RFP for developer solicitation, and successfully negotiated a redevelopment agreement. The property is owned by the Paterson Parking Authority. The City owns the development rights and generates revenues for surface parking. The firm is working closely with the Authority, the City and the redeveloper to structure the development, financing and construction of the new parking structure through a public/private partnership. The firm recently represented the City in a landmark closing establishing development rights for the City and leasing the property to the Redeveloper. Construction of the project is currently underway.
- o Borough of Rutherford. Maraziti, Falcon & Healey is assisting the Borough in connection with its Financial Agreement with EnCap relating to PILOT payments and securitization of PILOT payments for Meadowlands Redevelopment Project and the myriad issues arising in the aftermath of the apparent failure of the Meadowland Redevelopment project.
- o Bassett Highway Rehabilitation Area Project, Town of Dover. The firm represents the Town of Dover in connection with a major downtown project along the Rockaway River. The firm has been involved since the declaration of the rehabilitation area and has assisted in the visioning and adoption process for the rehabilitation plan. The firm also prepared the request for proposals and is currently negotiating with a developer who has reached a voluntary acquisition agreement with the property owner.
- o Township of Milburn Downtown Redevelopment Area. The firm assisted the Township in the preparation of a request for proposals for a planning consultant to collaborate with the community in the preparation of a redevelopment plan for the downtown area. The firm will be assisting in the preparation, adoption and implementation of the plan.
- o Chrome Waterfront Mixed Use Redevelopment Project, Carteret. This multi-phase waterfront redevelopment project located in Carteret will include a substantial number of residential units, office space, large and small scale retail components open space and walkway recreation areas. The firm came in after the developer was selected to prepare and negotiate the redeveloper agreement on behalf of the Borough of Carteret.

- o Park/Madison Commercial Redevelopment Project, Plainfield. The City razed a large downtown block to make way for new development which unfortunately took over 40-years to mature. In the interim, the site was used as a park and was designated as a Green Acre parcel in the 1990s. A few years ago, the Union County Improvement Authority agreed to finance the construction of a four-story, 100,000 square foot office building for county and state offices, two one-story commercial buildings with retail and professional components and a 300-car parking deck. The firm represented Plainfield regarding contractual and litigation matters that arise in connection with removing the Green Acres designation and pursuing the redevelopment.
- o Wildwood Landfill Redevelopment Project. The firm represents the City of Wildwood in connection with the redevelopment of a former municipal landfill and public works facility located on the Bay to provide a new waterfront residential development. The firm assisted in the selection of the redeveloper and the preparation and execution of a memorandum of understanding allowing for the transfer of a 3.5 million dollar initial payment to the City. The firm is currently completing negotiations of a redevelopment agreement.

### **B.3 Redevelopment Litigation and Condemnation Experience:**

Redevelopment projects involve the acquisition of land, responding to project challenges and permitting, scheduling and termination issues, among other things. Each of these components may become the focus of litigation by opponents to the project. Maraziti, Falcon & Healey has had considerable experience defending such challenges:

- o Successfully completed the acquisition of 15 properties for the expansion of one of Perth Amboy's main thoroughfares and the construction of ramps to accommodate increased traffic flow to waterfront redevelopment projects. The firm obtained title to the properties by both voluntary agreement and condemnation. Some of the properties were contaminated and valued in accordance with the principles of the recent *Suydam* eminent domain decision. The new roadway is on schedule to start construction this Spring.
- o Successfully defended challenges to the area designation process, redevelopment plan, redevelopment agreement and conflict of interest allegations, and has won significant reported decisions in the Appellate Division and Supreme Court that have benefited redevelopment agencies. (*Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy*, 349 N. J. Super. 418 (App. Div. 2002)).
- o Significant experience with condemnation actions, from notice of entry for inspection of property, through bone-fide negotiations, declarations of taking and valuation hearings and appeals. The firm has efficiently and effectively litigated condemnation matters to conclusion, as well as successfully defended inverse condemnation claims by property owners. (*Rosengarten v. Council of the City of Perth Amboy*, Docket No. A-3316-03T1 (App. Div.), certif. denied, 185 N.J. 295 (2005)).

- o Many redevelopment sites are contaminated. The firm is well versed in the latest requirements for valuing contaminated property in the context of condemnation as provided in the recent *Suydam* decision and is currently condemning various sites in accordance with the *Suydam* guidelines.

#### **B.4 Brownfield Redevelopment Experience:**

Brownfields are often the focus of redevelopment efforts. Our firm has had extensive experience with Brownfields policy and its practical application. Albert Telsey is widely recognized for his particular experience in this area and has been identified in 2007 and 2008 by New Jersey Monthly as a "Super Lawyer" in the area of environmental law.

Some of the larger Brownfields projects the firm has been involved with include the following:

- o *Edison Crossroads 75% Cost Reimbursement*. Maraziti, Falcon & Healey represented ARC Properties, a private redeveloper, in obtaining the first Redevelopment Reimbursement Agreement from the State under the Brownfield and Contaminated Site Remediation Act, which provides for the reimbursement of 75% of a redeveloper's cleanup costs from sales taxes generated by the project. ARC constructed a commercial complex consisting of retail space, restaurants and a bank on a former contaminated and bankrupt industrial parcel along Route 1 in Edison. The State provided ARC with a check for over \$1.2 million dollars as reimbursement for cleanup costs. The project was also awarded the "Brownfields Phoenix Award" by the United States Environmental Protection Agency.
- o *Clifton Commons Retail Redevelopment, Clifton*. The firm represented a national retail development company in the redevelopment of a contaminated manufacturing site on Route 3 in Clifton known as Clifton Commons. The site required ISRA and Spill Act compliance and involved the drafting of complex documents to complete the acquisition and long term cleanup.
- o *Ringwood Superfund Site*. The firm represented the Borough Ringwood in connection with a major Superfund Site. In January 2006, approximately 700 residents sued Ford Motor Company for dumping hazardous waste in their neighborhoods during the 1960's and early 1970's. The residents have sued Ford for injuries suffered by exposure to Ford's waste and have also served a Notice of Claim on the Borough of Ringwood. The Plaintiffs are alleging two billion dollars in personal injury damages. We represented the Borough in defending against this lawsuit. On behalf of the Borough, the firm was successful in a declaratory judgment action against the Borough's insurance carriers to compel the carriers to provide a defense to the toxic tort claims and to pay any damages.
- o *Borne Chemical Brownfield Redevelopment Area, Elizabeth*. This site is an abandoned chemical factory that has an expensive cleanup component and many potential responsible parties who have joined together to address cleanup. The DEP has

designated the site a Brownfield Redevelopment Area (BDA) and is coordinating assistance from many state agencies to help the City redevelop the site. The firm represented the Elizabeth Development Corp. and provided counsel on liability management and effective cleanup options using the State's new BDA tool.

- o Magic Marker Brownfield Redevelopment Site, Trenton. The firm assisted the City of Trenton, an EPA Brownfield Pilot Grant recipient, in seeking cost recovery for cleanup of a former battery manufacturing plant later used to manufacture Magic Markers. This property is also designated as a Brownfield Redevelopment Area site (BDA). The firm helped the City coordinate grants and other assistance from various state agencies so that the site could be redeveloped to fit the surrounding residential neighborhood.

#### **B.5 Public Sector Expertise:**

The firm has been representing public bodies in the state of New Jersey for over 45 years as both general and special counsel and is very familiar with the legal framework that governs the activities of public entities such as the Local Public Contract Law, the Municipal Land Use Law, the Local Lands and Buildings Law, the Pay to Play Law and the Open Public Meetings Act. A more complete list of our public sector clients is in the firm folder.

#### **2. DESCRIPTION OF ABILITY TO PROVIDE THE SERVICES IN A TIMELY FASHION (INCLUDING STAFFING, FAMILIARITY AND LOCATION OF KEY STAFF):**

Maraziti Falcon & Healey has the support staff and technology to provide excellent service in a timely fashion to Hoboken. The support staff which will be assigned to this matter are Susan Whittaker, Assistant to Mr. Maraziti and Mr. Brewer, and Emily Kunz, Assistant to Mr. Carney, Mr. Lendor and Mr. Miller. All attorneys and support staff are located at the firm's offices at 150 John F. Kennedy Parkway, Short Hills, New Jersey 07078.

During normal business hours, our support staff is always available to field and direct all calls to our attorneys. After hours the attorneys can be reached by voicemail and cell phone. We have full service email, voicemail, and internet services and provide global teleconferencing. We can accommodate Word, Word Perfect, Excel, PowerPoint and Adobe systems. We would encourage you to contact our client references above for feedback on the firm's success in handling clients work loads and meeting deadlines.

#### **3. COST DETAILS, INCLUDING THE HOURLY RATES OF EACH OF THE INDIVIDUALS WHO WILL PERFORM SERVICES AND ALL EXPENSES:**

Recognizing that time must be spent at the outset of our engagement to familiarize ourselves with ongoing matters and attending meetings with City officials and staff, we will provide the first hundred hours of our services, exclusive of litigation services, at a rate of \$100 dollar per hour.

Thereafter, we propose to provide services at our preferred rate for public bodies which is the blended hourly rate of \$195.00 for all attorneys working on the matter, except to the extent

that such fees are paid solely by private parties through a re-imbusement basis, in which case the blended rate of \$220.00 per hour, will apply.

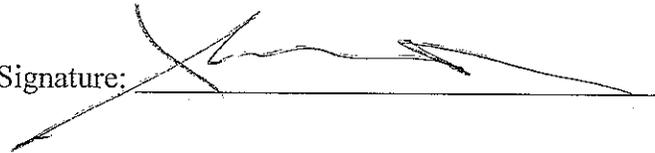
It is our standard practice to recommend interim cost agreements and redevelopment agreements between the municipality and the redeveloper to provide for the redeveloper to pay for the municipality's costs in the redevelopment process, including legal costs in preparing and negotiating the redeveloper agreement as well the municipality's cost in preparing redevelopment plans.

We will submit fee statements on a monthly basis. The statement will include our fee for services rendered, and disbursements made on your behalf. Such disbursements may include, but not be limited to, computerized research fees (as billed to us), court costs and fees (as required), messenger and delivery fees (using least expensive service available), long distance telephone (as billed to us), telecopy (\$1.00/page), and postage charges (as required), document reproduction (\$0.15/page) and transcript fees (as billed to us). Support staff time is not separately billed. The firm will comply with the General Terms and Conditions required by the City and enter into the City's standard Professional Services Contract.

Firm: Maraziti, Falcon & Healey, LLP

Date: December 1, 2009

Authorized Representative (Print): Joseph J. Maraziti, Jr., Esq.

Signature: 

Title: Partner

Telephone No.: (973) 912-9008

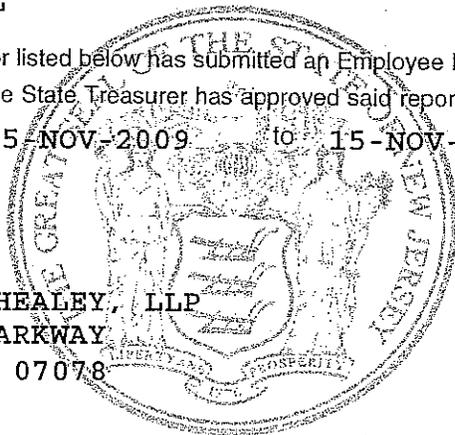
Fax No.: (973) 912-9007

Certification 20121

**CERTIFICATE OF EMPLOYEE INFORMATION REPORT  
RENEWAL**

This is to certify that the contractor listed below has submitted an Employee Information Report pursuant to N.J.A.C. 17:27-1.1 et. seq. and the State Treasurer has approved said report. This approval will remain in effect for the period of **15-NOV-2009** to **15-NOV-2016**

**MARAZITI, FALCON AND HEALEY, LLP**  
**150 JOHN F. KENNEDY PARKWAY**  
**SHORT HILL NJ 07078**



A handwritten signature in black ink, appearing to be "D. P. ...", written over a horizontal line.

State Treasurer

STATE OF NEW JERSEY  
BUSINESS REGISTRATION CERTIFICATE

DEPARTMENT OF TREASURY/  
DIVISION OF REVENUE  
PO BOX 252  
TRENTON, NJ 08646-0252

TAXPAYER NAME:

MARAZITI FALCON & HEALEY LLP

TRADE NAME:

TAXPAYER IDENTIFICATION#:

223-393-558/000

SEQUENCE NUMBER:

0652503

ADDRESS:

150 JFK PARKWAY  
SHORT HILLS NJ 07078

ISSUANCE DATE:

09/30/04

EFFECTIVE DATE:

08/25/95

*J.P. S. Kelly*  
Acting Director

FORM-BRC(08-01)

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.



## FIRM BIOGRAPHIES

- **Joseph J. Maraziti, Jr.** has advised public and private sector clients regarding environmental and infrastructure-related issues for more than thirty years and has successfully litigated matters involving a wide variety of environmental law and regulations. He is active in professional and civic organizations regarding the environment. In 1998, Governor Whitman appointed Mr. Maraziti as a member of the State Planning Commission and designated him to serve as its Chairman. He has served on the New Jersey Supreme Court Committee on Environmental Litigation, was the founding chair of the Morris County Bar Association Environmental Law Committee, he is an associate of the Environmental Law Institute and a frequent lecturer on environmental and planning topics. Mr. Maraziti has served on the Environment of the 21st Century Task Force of the New Jersey General Assembly, as well as Chairman of both Morris 2000 and New Jersey Future. He is listed as one of the Top Ten Leaders in Environmental Law and as one of the Best Environmental Lawyers in New Jersey Edition of Best Lawyers in America. Mr. Maraziti has been selected for inclusion in the 2007, 2008, 2009 and 2010 edition of "Super Lawyers" of New Jersey.
  
- **Christopher H. Falcon** represents public and private clients on local government, environmental, land development, and regulatory issues. Mr. Falcon represents a number of Municipalities, Boards and Authorities. He also represents private companies in environmental matters involving infrastructure projects, drinking water allocation and permitting, land use, industrial pretreatment, wastewater discharges and permitting. He is a member of various professional and civic organizations including the Natural Resources, Energy and Environmental Law Section of the American Bar Association and was a delegate to the Moscow Conference on Law and Economic Relations in 1990. He has served as Chair of the Local Government Section of the New Jersey Bar Association and is a member of the Environmental Law and Land Use Sections of the Association. A former legislative assistant in the New Jersey Senate, he presently serves as a legislative assistant in the New Jersey Assembly. He is a Member of the Advisory Board of the Trust for Public Land and was Chairman of the Board of Trustees of Morris Tomorrow, a public interest planning organization. He is a Member of the Environmental and Economic Development Committees of the New Jersey Chamber of Commerce and the New Jersey Planning Officials.
  
- **Diane Alexander** practices in the areas of environmental compliance and permitting for the public and private sectors including industrial wastewater pretreatment, discharges to groundwater and surface water allocation and water supply issues and permitting, disposal of contaminated media and conveyance of

property subject to environmental regulations. Ms. Alexander has successfully represented a group of public authorities in litigation against the NJDEP concerning wastewater permitting and successfully represented the Association of Environmental Authorities (AEA) with respect to its challenge of the Surface Water Quality Standards. She was selected to participate in the Stakeholders Group convened by the NJDEP to revise the NJPDES Regulations and Surface Water Quality Standards and she also serves as Counsel to the Passaic River Basin Alliance, which group was formed to address regulatory and other issues of concern to wastewater discharges in the Passaic River Basin.

- **Albert I. Telsey** has been an environmental attorney since the mid 1980's. He began his career as a Deputy Attorney General with the New Jersey Environmental Prosecutions Task Force. Since 1988 he has been in private practice and has been Chairman of the Environmental Law Department for a number of large New Jersey law firms before joining Maraziti, Falcon & Healey. Mr. Telsey has worked with federal and state Brownfields programs in order to assist local government and private clients redevelop contaminated properties. Mr. Telsey was also the first attorney to submit a groundwater reclassification petition to the New Jersey Department of Environmental Protection to designate groundwater in the Ironbound section of Newark as Class II-B (industrial/non-potable) which will save significant cleanup costs for a four square mile area. Mr. Telsey is also a member of the Newark Brownfields Committee. He has written extensively on a variety of environmental topics and is the author of the Delaware Environmental Handbook published by Government Institutes.
  
- **Andrew M. Brewer** has extensive experience in counseling and representing private sector clients in all aspects of the redevelopment process. He also has experience in land use practice, including preparing and presenting applications before planning boards and zoning boards of adjustment as well as with litigation challenging and defending land use approvals. Prior to joining the firm, Mr. Brewer worked as an associate in the environmental law department of Wolf, Block, Schorr, Solis-Cohen and as environmental coverage counsel for American International Group.
  
- **Brent T. Carney** is involved in advising and representing the firm's public and private sector clients. In addition to advising the public authorities and local governments represented by the firm on matters relating to the environment, land development, local government and regulatory issues, Mr. Carney is also a litigator in environmental matters. Prior to joining the firm and receiving his juris doctorate, Mr. Carney was employed by Cycle Chem, a major hazardous waste disposal and management practice business and served as managing editor of the New England Law Review.
  
- **Anton L. Lendor** is involved in the firm's redevelopment, real estate, land use, environmental and municipal law practice. Prior to joining the firm, Mr. Lendor

represented the City of Orange Township with their various legal matters, with an emphasis on redevelopment. Mr. Lendor also has a background in construction, and has worked as a construction manager with Turner Construction Company on projects such as the New Jersey Performing Arts Center, and the Tiffany Material Handling Center. Mr. Lendor received both his law and civil engineering degrees from Rutgers University, and he is licensed to practice law with the State of New Jersey and the U. S. District Court of New Jersey. Mr. Lendor also performs community service in the City of Newark, the City of Orange Township, and the City of East Orange. Currently, he is a member of the New Jersey Bar Association, Essex County Bar Association, and Garden State Bar Association.

□ ***Christopher D. Miller*** is involved in the firm's environmental law, land use and redevelopment law practice. He is a 2007 graduate of Vermont Law School, where he received his law degree and a Master's Degree in Environmental Legal Studies, *cum laude*. He was a member of the Moot Court Advisory Board, the Pace National Environmental Law Moot Court Team and served as the Environment Project Extern for the National Association of Attorneys General. While at Vermont Law School, Mr. Miller also worked as a clinician in the Environmental & Natural Resources Law Clinic. Mr. Miller was sworn in as a member of the New Jersey Bar in December 2007.

□ ***Heather Pierce*** is a 2007 graduate of Vermont Law School, where she served as Managing Editor of the *Vermont Journal of Environmental Law* and Executive Director of the *Vermont Legal Research Group*. While at Vermont Law School, Ms. Pierce also worked as an extern for the New Hampshire Legislature's Administrative Rules Division, and clerked with the Conservation Law Foundation and the New Hampshire Department of Justice. Ms. Pierce was sworn in as a member of the New Jersey Bar in June 2008.

## JOSEPH J. MARAZITI, JR.

**Practice Areas:** Environmental/Redevelopment/Governmental

**Areas of Emphasis:** Joseph J. Maraziti, Jr. is a partner in the firm. He represents both public and private sector clients in regulatory, transactional and litigation matters having local and national significance. With more than forty years experience in legal issues related to infrastructure and the environment, Mr. Maraziti is an active leader and driving force in the redevelopment arena.



Mr. Maraziti served from 1998 to 2002 as Chairman of the New Jersey State Planning Commission, which adopted the State Development and Redevelopment Plan in March 2001. In this role, he worked with the Governor's Cabinet, Counties, local communities and the private sector to ensure that development and redevelopment in the state enhances the quality of life for all citizens.

**Professional Recognition:** Mr. Maraziti has been identified as one of the Ten Leaders in Environmental Law in New Jersey and as one of the Best Environmental Lawyers in New Jersey by the *Best Lawyers in America*. New Jersey Monthly has recognized Mr. Maraziti in its 2007, 2008, 2009 and 2010 listing of "Super Lawyers" of New Jersey.

**Civic Activities:** Mr. Maraziti has served in leadership positions in numerous professional and civic organizations focusing on environmental issues. He was Chairman of New Jersey Future. He is a member of the Board of Directors of the New Jersey Committee of the Regional Plan Association (RPA) and of the Board of Directors of the Tri-State organization. He has served on the New Jersey Supreme Court Committee on Environmental Litigation, was the founding chair of the Morris County Bar Association Environmental Law Committee and is an Associate of the Environmental Law Institute. In addition, Mr. Maraziti has served as a member of the Subcommittee on the Environment of the 21<sup>st</sup> Century Task Force of the General Assembly of the State of New Jersey as well as Chairman of Morris 2000. Mr. Maraziti is a member of the Board of Trustees of New Jersey Future, the

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Regional Planning Partnership and on the Advisory Board at the Alan M. Voorhees Transportation Center.

**Representative  
Speaking and  
Writing Experience:**

Mr. Maraziti lectures extensively on environmental, (water, sewer, and hazardous, solid waste) and redevelopment topics at legal seminars, conferences, civic groups and Universities and has testified before subcommittees of the United States House of Representatives as well as Committees of the New Jersey Senate.

**Bar Admission:**

New Jersey, 1965  
United States Federal District Court,  
United States Supreme Court, 1969  
United States Court of Appeals, Third Circuit, 1980

**Professional  
Activities:**

American Bar Association - Section of Natural Resources, Energy and Environmental Law

*Associate*, Environmental Law Institute, Washington, D.C.

New Jersey State Bar Association - Environmental Law Section

*Master*, Justice Stewart G. Pollock Environmental American Inn of Court

**Education:**

J.D., Fordham Law School, 1965  
BSocSc, Fordham College, 1962



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## BRENT T. CARNEY

**Practice Areas:** Redevelopment Law/Land Use/Eminent Domain

**Areas of Emphasis:** Mr. Carney is involved in advising and representing the firm's public and private sector clients. In addition to advising the public authorities and local governments represented by the firm on matters relating to redevelopment, environmental, local government and regulatory issues, Mr. Carney is also a litigator in redevelopment, environmental, and eminent domain matters, representing the firm's clients in Federal and State court and before administrative agencies.



**Representative Speaking and Writing Experience:** "Avoiding the Redevelopment Conflict of Interest Pitfall", *League of Municipalities*, November 2007.

"Redevelopment Planning Process", New Jersey Redevelopment Authority Redevelopment Training Institute, October 2006 and April 2007.

"Reclaiming the Wasteland" *New Jersey Law Journal*, March 5, 2001.

**Bar Admission:** New Jersey, 1997  
United States District Court, District of New Jersey, 1997

**Education:** J.D., New England School of Law, *cum laude*, 1997

## ANDREW M. BREWER

**Practice Areas:** Redevelopment Law

**Areas of Emphasis:** Negotiating and drafting redevelopment agreements on behalf of public and private sector clients;

Representation of municipalities, planning boards and other governmental entities;

Appearance before planning boards and zoning boards of adjustment for variety of land use approvals;

Negotiate and obtain insurance recovery;

Transactional Work: Negotiated and drafted redevelopment agreements documents to resolve environmental issues in the context of the sale, purchase, lease, mortgage and foreclosure of contaminated real property on behalf of buyer and seller, public and private clients; negotiated and obtained defense and indemnification insurance coverage for environmental liabilities. Negotiated and drafted settlement of environmental, construction and commercial disputes.

Litigation:

- Cost recovery actions in federal and state court under CERCLA, Spill Act, etc.
- Insurance coverage litigation.
- Defense and prosecution of challenges to redevelopment.
- Defense and prosecution of eminent domain proceedings.
- Prerogative Writ litigation challenging and defending land use approvals.
- Commercial and Construction litigation in Federal and State courts.

Compliance Work: Counseled commercial, industrial, municipal and professional clients with regard to environmental compliance issues for existing and planned activities.



**Representative  
Speaking and Writing  
Experience:**

In October 2006 and April 2007, Mr. Brewer served as an Instructor on the topic of redevelopment agreements for the New Jersey Redevelopment Authority's Redevelopment Training Institute.

**Bar Admission:**

New Jersey, 1993

**Education:**

J.D., Rutgers School of Law – Newark, 1993  
B.S., Rutgers University, 1990



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## ANTON L. LENDOR

**Practice Areas:** Redevelopment, Real Estate, Litigation,  
Land Use, Environmental Law and  
Municipal Law

**Areas of Emphasis:**

Mr. Lendor is involved in the firm's redevelopment, real estate, land use, environmental and municipal law practice.

Prior to joining the firm, Mr. Lendor represented the City of Orange Township with their various legal matters, with an emphasis on redevelopment.



Mr. Lendor also has a background in construction, and has worked as a construction manager with Turner Construction Company on projects such as the New Jersey Performing Arts Center, and the Tiffany Material handling Center. Additional construction experience includes supervisory responsibilities on Central High School, Science High School, and the new First Avenue Elementary School with the City of Newark.

Mr. Lendor received his Juris Doctor and his Bachelors of Science in law and civil engineering degrees from Rutgers University. He is licensed to practice law in the State of New Jersey Bar and with the U.S. District Court of New Jersey.

In 2008, the Governor of the State of New Jersey appointed Mr. Lendor to the Working in Newark's Neighborhoods Board of Directors, whose responsibilities include supervising the investment of \$10 million dollars designated towards redevelopment within neighborhoods throughout the City of Newark.

Currently, he is a member of the New Jersey Bar Association, Essex County Bar Association, Garden State Bar Association, and Caribbean Bar Association of New Jersey.

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# MARAZITI, FALCON & HEALEY, L.L.P.

REDEVELOPMENT • ENVIRONMENTAL • LAND USE TRANSACTIONS

**Activities:** New Jersey Bar Association  
Essex County Bar Association  
Garden State Bar Association  
Caribbean Bar Association of New Jersey  
Working in Newark's Neighborhoods (WINN) Board of Directors  
Garden State Bar Association  
Caribbean Bar Association

**Bar Admission:** New Jersey, 2003  
United States District Court, District of New Jersey, 2003

**Education:** J.D., Rutgers University, School of Law - Newark  
B.S., Rutgers University, College of Engineering

## CHRISTOPHER D. MILLER

**Practice Areas:** Environmental Law/Land Use and  
Redevelopment Law

**Areas of Emphasis:**

Mr. Miller is a 2007 graduate of Vermont Law School, where he received his law degree and a Master's Degree in Environmental Legal Studies, *cum laude*. He was a member of the Moot Court Advisory Board, the Pace National Environmental Law Moot Court Team and served as the Environment Project Extern for the National Association of Attorneys General. While at Vermont Law School, Mr. Miller also worked as a clinician in the Environmental & Natural Resources Law Clinic. Mr. Miller was sworn in as a member of the New Jersey Bar in December 2007.



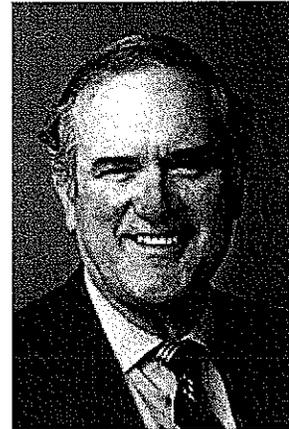
**Bar Admission:** New Jersey, 2007  
United States District Court, District of New Jersey, 2007

**Education:** J.D., Vermont Law School  
M.S.E.L., Vermont Law School  
B.A., Bucknell University

## CHRISTOPHER H. FALCON

**Practice Areas:** Local Government, Land Use and Redevelopment Law

**Areas of Emphasis:** Christopher Falcon is a partner in the firm of Maraziti, Falcon & Healey. He has over thirty-five years of experience representing both private and public sector clients as general and special counsel. Private sector involvement has centered on both transactional services including ISRA clearances, real estate development, zoning approvals, and financing, as well as litigation services including both judicial and administrative proceedings. Public sector representation has involved serving as counsel to various municipalities, boards and authorities. Particular areas of emphasis have included land use planning, enforcement actions, condemnations, infrastructure financing, development, permit negotiation, and litigation. Mr. Falcon previously served as a Legislative Assistant in the New Jersey Assembly and the New Jersey Senate and is active in various civic and professional organizations including the New Jersey Planning Officials, the Trust for Public Land, the Association of Environmental Authorities and the Water Environment Federation.



Mr. Falcon is a graduate of Gettysburg College and Villanova University Law School. He is a member of the Natural Resources, Energy, and Environmental Law Section of the American Bar Association and served as Chairman of the Local Government Law Section of the New Jersey State Bar Association. Mr. Falcon is also a member of the Environmental Law and Land Use Sections of the NJSBA and the Morris County Bar Association. Mr. Falcon served as Mayor of the Borough of Mountain Lakes (1981-1985) and as Chairman of Morris Tomorrow, (2002-2004), a public interest community planning organization.

**Representative Speaking and Writing Experience:** Mr. Falcon lectures frequently on behalf of the New Jersey Planning Officials and has published articles in the New Jersey Law Journal and the AEA Newsletter.

**Bar Admission:**

New Jersey, 1972  
United States District Court, District of New Jersey, 1972

**Education:**

J.D., Villanova University Law School, 1971  
B.A., Gettysburg College, 1968



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## ALBERT I. TELSEY

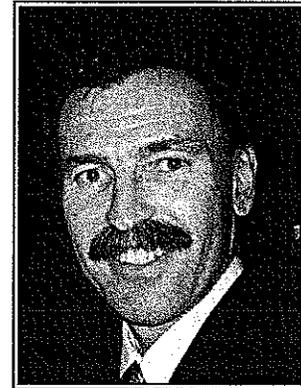
September 2009

**Practice  
Areas:**

Environmental and Redevelopment Law

**Areas of  
Emphasis:**

Mr. Telsey is a partner at Maraziti, Falcon & Healey, LLP. He was named a *Super Lawyer* in 2007, 2008 and 2009 by New Jersey Monthly Magazine. Mr. Telsey and his firm promote New Jersey's Smart Growth initiatives by working mostly with municipal clients involved in the redevelopment of New Jersey's urban core areas. Mr. Telsey focuses on all aspects of environmental compliance and litigation as it impacts redevelopment and the purchase, sale, lease, mortgage, foreclosure, condemnation and cleanup of contaminated property in New Jersey.



Mr. Telsey began his environmental career in the 1980s as an environmental prosecutor with the New Jersey Attorney General's Office where he handled significant criminal cases including cases against Ciba-Geigy, American Cyanamid and others. Since 1989 he has been in private practice where he handles environmental matters related to real estate transactions, environmental due diligence, permit compliance, cleanup cost recovery suits, property damage litigation and environmental torts. He recently handled an environmental mass tort in Ringwood, New Jersey. Mr. Telsey also pursued a Class IIB groundwater reclassification effort in the Ironbound Section of Newark and worked on trying to site the state's low-level radioactive waste disposal facility.

Mr. Telsey graduated from Rutgers University with a degree in philosophy. He received his law degree from Oklahoma City University School of Law. After law school he clerked with his father the Honorable Norman Telsey, Superior Court Judge, Salem County, NJ.

He has been a Master with the New Jersey Environmental Inns of Court and is a member of the New Jersey State Bar Association and the New Jersey Commerce and Industry Association. He writes and speaks extensively on environmental matters and is the author of the Environmental Law Handbook for the State of Delaware. Mr. Telsey was Co-President of the Children's Museum of New Jersey, to be locating in downtown Newark. He lives in Westfield with his wife Leslie

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Schwartz, an Assistant US Attorney in Newark. They have three children – Sabrina and twins Jason and Michelle. Mr. Telsey is an avid runner.

**Recent  
Speaking  
Engagements**

October 2006 to the 2009 – New Jersey Redevelopment Authority –  
Redevelopment Institute

November 2005 Redevelopment Workshop, New Jersey State Bar  
Association Continuing Legal Education Program

December 2003 Environmental Law Basics, New Jersey State Bar  
Association Continuing Legal Education Program

November 2003 Expert Witnesses in Environmental Litigation, Rutgers  
– Cook College Continuing Education Program

February 1999 Groundwater Reclassification Regional Plan  
Association, Newark, NJ

June 1999 Assisting Municipalities do Brownfields work, Downtown  
New Jersey Annual Conference, Newark, NJ

**Recent  
Articles**

Articles

“Grace Period Rules” NJSBA Environmental Law Section Newspaper June  
2007

“Stormwater Rules: Developers Face New Restrictions,” New Jersey Law  
Journal, July 12, 2004.

“Changes in Condemnation of Contaminated Property” New Jersey  
Law Journal, July 2004.

“Well Water Rising – In Prominence That Is” [Private Well Testing  
Act], New Jersey Law Journal, September 30, 2002.

"Groundwater Reclassification is an Important Tool for the Smart  
Growth Tool Chest," New Jersey Law Journal, July 8, 2002.

"Court Limits Insurance Coverage for Landfill Dumping,"  
Environmental Law Notes, Summer 2001.

**Bar  
Admission:**

New Jersey, 1982

United States District Court, District of New Jersey, 1982

New York, 1994

United States District Court, District of New York, 1994

**Education:**

J.D., Oklahoma City University School of Law, 1982

B.A., Rutgers University, 1979

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## DIANE ALEXANDER

**Practice Areas:** Environmental Law

**Areas of Emphasis:** Diane Alexander is a partner at the law firm of Maraziti, Falcon & Healey, L.L.P., in Short Hills, New Jersey. She has advised public and private sector clients regarding environmental and infrastructure-related issues and has successfully litigated matters involving a wide variety of environmental laws and regulations. Her practice focuses on the areas of environmental compliance and permitting for the public and private sectors including, discharges to groundwater; surface water allocation and water supply issues; wastewater discharge issues, compliance and permitting; industrial wastewater pretreatment permitting and compliance; disposal of contaminated media and conveyance of property subject to environmental regulations. Ms. Alexander represents numerous public authorities and municipalities concerning water and wastewater permitting issues and she participated in the Stakeholders Group convened by the New Jersey Department of Environmental Protection to revise the NJPDES Regulations, Planning Rules and Surface Water Quality Standards.



**Representative Speaking and Writing Experience:** Law Seminars International – “Wastewater Management Plans” – Update on new April 2008 Regulations requiring more extensive water quality planning and documentation, June 26, 2008.

Association of Environmental Authorities – Update on Passaic and Millstone TMDLs, January 29, 2008.

New Jersey Water Environment Association Technology Transfer Seminar, Industrial Management Session – Emerging Wastewater Treatment Issues for Industries and POTWs entitled: *The NJPDES Permit Appeal Process*, March 7, 2006.

“Stormwater Rules: Developers Face New Restrictions,” New Jersey Law Journal, July 12, 2004.

**Bar Admission:** New York, 1987  
New Jersey, 1988  
United States District Court, District Court of New Jersey, 1988

**Education:**

J.D., The John Marshall Law School, 1987  
B.A., University of Delaware, 1983



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## HEATHER A. PIERCE

**Practice Areas:** Ms. Pierce is involved with the firm's environmental, real estate, land use, and municipal law practice.

**Areas of Emphasis:**

Ms. Pierce is a 2007 graduate of Vermont Law School, where she served as Managing Editor of the *Vermont Journal of Environmental Law* and Executive Director of the *Vermont Legal Research Group*. While at law school, Ms. Pierce served as extern to the New Hampshire Legislature's Administrative Rules Division, clerked for the Conservation Law Foundation, and worked as an intern for the New Hampshire Department of Justice. Ms. Pierce was sworn in as a member of the New Jersey Bar in June 2008.



Prior to joining the firm, Ms. Pierce served as Law Clerk to the Honorable Heidi Willis Currier, J.S.C., and the Honorable John A. Jorgensen, J.S.C., New Jersey Superior Court, Middlesex County.

**Bar Admission:** New Jersey, 2008  
United States District Court, District of New Jersey, 2008

**Education:** J.D., Vermont Law School, 2007  
B.A., *cum laude*, Cornell University, 1998



## REPRESENTATIVE CLIENTS

### PUBLIC

- Bloomfield Township
- Buena Vista Township
- Carneys Point Township
- Dover Town
- Greenwich Township
- Hanover Sewerage Authority
- Madison-Chatham Joint Meeting
- Mendham Township
- Milford Borough
- Millburn Township
- Morris County Municipal Utilities Authority
- Morris Plains Planning Board
- Morris Township
- Palmyra Borough
- Palmyra Planning Board
- Paterson City
- Pequannock River Basin Regional Sewerage Authority
- Perth Amboy City
- Perth Amboy Redevelopment Authority
- Pittsgrove Township
- Plainfield City
- Rockaway Valley Regional Sewerage Authority
- Rutherford Borough
- Somerset Raritan Valley Sewerage Authority
- South Amboy Planning Board
- Stony Brook Regional Sewerage Authority
- Two Bridges Sewerage Authority
- Verona Township
- Wanaque Valley Regional Sewerage Authority
- Wildwood City

### PRIVATE

- ABD Realty, Inc.
- Accutech Environmental Services, Inc.
- Affordable Harding Corp.
- BDLJ Associates
- Bp Corp. of MA, Inc.
- Brogan Cadillac
- Co-Planar, Inc.
- EcReCon, Inc.
- Endot Industries, Inc.
- Johanson Manufacturing Corporation
- K.V. Associates, LLC
- New England Motor Freight, Inc.
- Newark Refrigerated Warehouse
- Rebtex, Inc.
- Rite Aid Companies
- State Electronic Parts Corporation
- TRB Electro Corporation
- Upper Raritan Watershed Association
- Warren George, Inc.
- Wavebrook Associates, LLC

### NON-PROFIT

- Lincoln Park Coast Cultural Redevelopment Project, Newark, New Jersey (Museum of African American Music)



## REPRESENTATIVE FIRM EXPERIENCE

The wide range of successful experience of the firm is illustrated by the following summaries of some of the matters in which the lawyers at Maraziti, Falcon & Healey, LLP, have:

Maraziti Falcon & Healey serves as Special Redevelopment Counsel to a number of other municipalities on projects which are briefly described below:

- Township of Bloomfield: This firm has served as Special Redevelopment Counsel for the Township of Bloomfield since May 2007. In that capacity, it has participated as a member of a multi-disciplinary consultant team in the preparation of the Bloomfield Center Redevelopment Plan – Phase I. The Plan is the result of extensive community visioning process, which engaged hundreds of citizens. The Plan encompasses both redevelopment and rehabilitation areas. It is a Plan that is designed to achieve substantial redevelopment without the use of eminent domain under the Redevelopment Law. The Plan was adopted on December 15, 2008. Maraziti, Falcon & Healey has advised with regard to the multi-faceted legal issues that characterize redevelopment/rehabilitation efforts in the aftermath of recent case law.

In addition, the firm represents the Township in defense of litigation stemming from earlier redevelopment efforts.

- Center City Mixed Use and Parking Structure Project, Paterson. This project involves redevelopment of a 5-acre vacant parking lot across the street from the Passaic County Court House. The redeveloper's plan is to construct a \$130 Million 5-story complex that will include office and retail space, a 10-screen movie theater, residential units and a significant parking structure. As Special Redevelopment Counsel to Paterson, the firm prepared the RFP for developer solicitation, and successfully negotiated a redevelopment agreement. The property is owned by the Paterson Parking Authority. The City owns the development rights and generates revenues for surface parking. The firm is working closely with the Authority, the City and the redeveloper to structure the development, financing and construction of the new parking structure through a public/private partnership. The firm recently represented the City in a landmark closing establishing development rights for the City and leasing the property to the Redeveloper. Construction of the project is currently underway.
- Borough of Rutherford. Maraziti, Falcon & Healey is assisting the Borough in connection with its Financial Agreement with EnCap relating to PILOT payments

and securitization of PILOT payments for Meadowlands Redevelopment Project and the myriad issues arising in the aftermath of the apparent failure of the EnCap Meadowland Redevelopment project.

- Bassett Highway Rehabilitation Area Project, Town of Dover. The firm represents the Town of Dover in connection with a major downtown project along the Rockaway River. The firm has been involved since the declaration of the rehabilitation area and has assisted in the visioning and adoption process for the Redevelopment Plan. The firm also prepared the request for proposals and is currently negotiating with a major residential developer who has reached a voluntary acquisition agreement with the property owner.
- Township of Milburn Downtown Redevelopment Area. The firm assisted the Township in the preparation of a request for proposals for a planning consultant to collaborate with the community in the preparation of a redevelopment plan for the downtown area. The firm will be assisting in the preparation, adoption and implementation of the plan.
- Chrome Waterfront Mixed Use Redevelopment Project, Carteret. This multi-phase waterfront redevelopment project located in Carteret will include a substantial number of residential units, office space, large and small scale retail components open space and walkway recreation areas. The firm came in after the developer was selected to prepare and negotiate the redeveloper agreement on behalf of the Borough of Carteret.
- Park/Madison Commercial Redevelopment Project, Plainfield. The City razed a large downtown block to make way for new development which unfortunately took over 40-years to mature. In the interim, the site was used as a park and was designated as a Green Acre parcel in the 1990s. A few years ago, the Union County Improvement Authority agreed to finance the construction of a four-story, 100,000 square foot office building for county and state offices, two one-story commercial buildings with retail and professional components and a 300-car parking deck. The firm represented Plainfield regarding contractual and litigation matters that arise in connection with removing the Green Acres designation and pursuing the redevelopment.
- Wildwood Landfill Redevelopment Project. The firm represents the City of Wildwood in connection with the redevelopment of a former municipal landfill and public works facility located on the Bay to provide a new waterfront residential development. The firm assisted in the selection of the redeveloper and the preparation and execution of a memorandum of understanding allowing for the transfer of a 3.5 million dollar initial payment to the City. The firm is currently completing negotiations of a redevelopment agreement.

Since 1998, the firm has advised the Perth Amboy Redevelopment Agency in all aspects of the redevelopment process on more than twenty two redevelopment projects, some of which are briefly described below:

- Landings at Harborside Waterfront Project, Perth Amboy. This 50-acre redevelopment project located on the Arthur Kill includes approximately 2,000 residential units consisting of condominiums, apartments and townhouses; a hotel; retail space, including restaurants and stores; and the construction of public parks, a community cultural arts center and a waterfront promenade. The firm has been involved in the area designation and redevelopment plan process, redeveloper selection by request for proposal and negotiation and preparation of the redevelopment agreement. We have transferred City property to the redeveloper and have acquired property by condemnation. We successfully defended this project from challenges involving area designation, the redevelopment plan, taking and inverse condemnation, all the way to the Supreme Court. *Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy*, 349 N. J. Super. 418 (App. Div. 2002) certif. denied.; *Rosengarten v. Council of the City of Perth Amboy*, Docket No. A-3316-03T1 (App. Div.), certif. denied, 185 N.J. 295 (2005). We have also advised the City on environmental issues associated with the transfer and condemnation of properties, as well as the unique liability protections associated with the municipal ownership of contaminated property.
- Kings Plaza Commercial and Affordable Housing Project. The firm represented PARA in the area designation, redevelopment plan and redevelopment agreement for this mixed use project in the center of Perth Amboy consisting of a 124-unit affordable apartment complex, 3-level parking deck, new supermarket and other retail uses. This project has been subject to legal challenges in both state and federal court in connection with the designation and condemnation actions. The firm has been successful in defeating these challenges and has transferred the properties to the Redeveloper. It is one of the few projects to receive \$40 million dollars in tax credit financing from the State for providing moderate income housing on a portion of the project. This project has completed extensive demolition and is under construction.
- Matrix Outdoors Light Manufacturing Project. The firm assisted PARA with developer selection and negotiated and prepared the redevelopment agreement for this new light manufacturing warehouse project which was constructed on a 78 acre contaminated property in the City's old industrial section. The firm assisted PARA in understanding and addressing the environmental issues that challenged this redevelopment project. This project has been completed and is generating major new jobs and taxes.
- Morris Companies Light Manufacturing Warehouse Project. The firm negotiated a redevelopment agreement for light industrial redevelopment of a 69 acre site formerly owned by Chevron. This project provides a community benefit of a new

road and property for a new firehouse. The first building is under construction and the project is due to be complete next year.

- iPORT 440 International Business Center. The firm negotiated and prepared a redevelopment agreement which has been executed to provide office, retail, technology/flex warehousing, a waterfront greenway and recreational property for the public. This brownfield site is listed on the New Jersey Portfield Site List for development for light manufacturing to serve the Port area. This \$178 million dollar project involves complex environmental issues and significant business relocation issues which the firm is handling. The project has obtained local approvals and is in the process of obtaining state approvals. Land acquisition is underway.
- South Amboy Planning Board. Maraziti, Falcon & Healey guided the South Amboy Planning Board through an adversarial process to determine whether a major industrial site on the waterfront could be determined to be in need of redevelopment. It has defended the Board in the litigation brought to challenge the designation.
- Palmyra Land Use Board. Maraziti, Falcon & Healey guided the Palmyra Combined Land Use Board through a re-examination at a previously blighted area following recent New Jersey cases mandating a more exacting review of the light designation process. Upon completion at several nights of testimony from fact and expert witnesses and numerous objectors, the Board recommended re-designation of an area of approximately 170 acres along the Delaware River.

### **Redevelopment Litigation and Condemnation Experience:**

Redevelopment projects involve the acquisition of land, responding to project challenges and permitting, scheduling and termination issues, among other things. Each of these components may become the focus of litigation by opponents to the project. Maraziti, Falcon & Healey has had considerable experience defending such challenges:

- Successfully completed the acquisition of 15 properties for the expansion of one of Perth Amboy's main thoroughfares and the construction of ramps to accommodate increased traffic flow to waterfront redevelopment projects. The firm obtained title to the properties by both voluntary agreement and condemnation. Some of the properties were contaminated and valued in accordance with the principles of the recent *Suydam* eminent domain decision. The new roadway is on schedule to start construction this Spring.
- Successfully defended challenges to the area designation process, redevelopment plan, redevelopment agreement and conflict of interest allegations, and has won significant reported decisions in the Appellate Division and Supreme Court that have

benefited redevelopment agencies. (*Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy*, 349 N. J. Super. 418 (App. Div. 2002)).

- Significant experience with condemnation actions, from notice of entry for inspection of property, through bone-fide negotiations, declarations of taking and valuation hearings and appeals. The firm has efficiently and effectively litigated condemnation matters to conclusion, as well as successfully defended inverse condemnation claims by property owners. (*Rosengarten v. Council of the City of Perth Amboy*, Docket No. A-3316-03T1 (App. Div.), *certif. denied*, 185 N.J. 295 (2005)).
- Many redevelopment sites are contaminated. The firm is well versed in the latest requirements for valuing contaminated property in the context of condemnation as provided in the recent *Suydam* decision and is currently condemning various sites in accordance with the *Suydam* guidelines.
- In an Appellate Division decision that was published on May 2, 2008, *Milford Mill 128, L.L.C. v. Borough of Milford*, 400 N.J. Super. 96 (App. Div. 2008), our firm successfully defended an equal protection and substantive due process challenge to a Redevelopment Plan that prohibited land use variances and required a consistency determination by the governing body prior to a redeveloper being permitted to submit an application to the Planning Board. This decision is significant because the Appellate Division recognized for the first time that a redeveloper proposing a “*de facto*” wholesale revision of the entire Redevelopment Plan” is not entitled to a use variance from the requirements of the Redevelopment Plan and the Appellate Division further distinguished its prior holding in *Weeden v. City Council of Trenton*, 391 N.J. Super 214 (App. Div. 2007) in which the Court upheld a minor use variance.
- In re 318-322 Glenwood Avenue, Bloomfield, New Jersey (Jeanny Sung Koo), OAL Docket No. CAF 05832-08, the firm defended the Township of Bloomfield against a commercial property owner’s claim for relocation assistance. In this case, the commercial property was conveyed to a private entity rather than to the Township of Bloomfield or its designated redeveloper. On December 11, 2008 an initial decision was rendered by the Honorable Barry Moscovitz, A.L.J., granting the Township of Bloomfield’s Motion for Summary Decision and concluding that the business owner was ineligible for relocation assistance. This initial and recommended decision is presently pending before the Commissioner of the Department of Community Affairs who is authorized to make a final decision in this matter.

### **Brownfield Redevelopment Experience:**

Brownfields are often the focus of redevelopment efforts. Our firm has had extensive experience with Brownfields policy and its practical application. Albert Telsey is widely recognized for his particular experience in this area. He and Mr. Maraziti have been

identified in 2007 and 2008 by New Jersey Monthly as a "Super Lawyer" in the area of environmental law.

Some of the larger Brownfields projects the firm has been involved with include the following:

- Edison Crossroads 75% Cost Reimbursement. Maraziti, Falcon & Healey represented ARC Properties, a private redeveloper, in obtaining the first Redevelopment Reimbursement Agreement from the State under the Brownfield and Contaminated Site Remediation Act, which provides for the reimbursement of 75% of a redeveloper's cleanup costs from sales taxes generated by the project. ARC constructed a commercial complex consisting of retail space, restaurants and a bank on a former contaminated and bankrupt industrial parcel along Route 1 in Edison. The State provided ARC with a check for over \$1.2 million dollars as reimbursement for cleanup costs. The project was also awarded the "Brownfields Phoenix Award" by the United States Environmental Protection Agency.
- Clifton Commons Retail Redevelopment, Clifton. The firm represented a national retail development company in the redevelopment of a contaminated manufacturing site on Route 3 in Clifton known as Clifton Commons. The site required ISRA and Spill Act compliance and involved the drafting of complex documents to complete the acquisition and long term cleanup.
- Ringwood Superfund Site. The firm represented the Borough Ringwood in connection with a major Superfund Site. In January 2006, approximately 700 residents sued Ford Motor Company for dumping hazardous waste in their neighborhoods during the 1960's and early 1970's. The residents have sued Ford for injuries suffered by exposure to Ford's waste and have also served a Notice of Claim on the Borough of Ringwood. The Plaintiffs are alleging two billion dollars in personal injury damages. We represented the Borough in defending against this lawsuit. On behalf of the Borough, the firm was successful in a declaratory judgment action against the Borough's insurance carriers to compel the carriers to provide a defense to the toxic tort claims and to pay any damages.
- Borne Chemical Brownfield Redevelopment Area, Elizabeth. This site is an abandoned chemical factory that has an expensive cleanup component and many potential responsible parties who have joined together to address cleanup. The DEP has designated the site a Brownfield Redevelopment Area (BDA) and is coordinating assistance from many state agencies to help the City redevelop the site. The firm represented the Elizabeth Development Corp. and provided counsel on liability management and effective cleanup options using the State's new BDA tool.
- Magic Marker Brownfield Redevelopment Site, Trenton. The firm assisted the City of Trenton, an EPA Brownfield Pilot Grant recipient, in seeking cost recovery for

cleanup of a former battery manufacturing plant later used to manufacture Magic Markers. This property is also designated as a Brownfield Redevelopment Area site (BDA). The firm helped the City coordinate grants and other assistance from various state agencies so that the site could be redeveloped to fit the surrounding residential neighborhood.



## **BROWNFIELD REDEVELOPMENT**

January 2009

Maraziti, Falcon & Healey, LLP, has been active in Brownfield Redevelopment for many years. The firm represents public and private clients in connection with the sale, purchase, lease, lending, foreclosure and condemnation of underutilized and contaminated sites for the purpose of promoting redevelopment and reuse. Some tools we use include environmental cost recovery by way of negotiation, litigation, arbitration and mediation; grant, loan, tax and other government incentives to promote cleanup; negotiating permit and cleanup requirements with NJDEP and other agencies; and coordinating with governmental bodies to promote public-private partnerships. Some projects we have worked on include the following:

- ❑ Perth Amboy -- \$1B in redevelopment. Serve as Counsel to the Perth Amboy Redevelopment Agency in connection with the implementation of more than \$1 Billion in redevelopment projects in various areas throughout the City. These ambitious projects focus private investment in restoring the economic and social vitality of Perth Amboy by transforming contaminated sites into residential, commercial and light manufacturing uses and providing new parks, a cultural center and an esplanade along the Kill Van Kull.
- ❑ Newark – downtown renewal. Serve as environmental Counsel to a private redeveloper acquiring large portions of downtown Newark for the purpose of redeveloping the area in accordance with the master plan. This project involves resolving all aspects of urban and historic soil and groundwater contamination in a manner that is protective of human health using the many federal and state programs and incentives available to provide cost savings to the client.
- ❑ Edison – sales taxes paid for remediation. Obtained first Redevelopment Agreement with State of New Jersey to reimburse Brownfield redeveloper \$1.5 Million in cleanup costs from sales taxes paid by new tenants who transformed a former industrial site in Edison into a thriving mall. We provided environmental guidance with regard to cost recovery from responsible parties, ISRA, insurance, permits, community involvement and public-private relationships. On October 13, 2000, the project was the recipient of the Phoenix Award for Region II at the Brownfields 2000 Research & Regional Conference.
- ❑ Bayonne – port development. Represent developer and operator of new port facility on the Kill Van Kull for the off loading from ocean going ships of dry bulk materials and the transshipment of such materials to various markets. The project involves the issuance of a Waterfront Development Permit, dredging and disposal of contaminated soils and the integration of the new port facility into the remediation plan for the site.

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- ❑ Dover – landfill redevelopment. Represent national retail developer in purchase and redevelopment of former municipal landfill. Provided advice on purchase contract, environmental insurance and obtaining reimbursement of up to 75% of cleanup costs under Municipal Landfill Reclamation Act.
- ❑ Wyckoff – mall redevelopment. Brought cost recovery action against responsible parties for contaminating a mall in order to redevelop the site into a 21<sup>st</sup> Century mall.
- ❑ Jersey City – chemical company to condo. Assisted former pesticide manufacturer and current chemical company sell its property for condo development subject to the client undertaking cleanup to DEP satisfaction, including significant groundwater contamination in area notorious for tidal flows and a general soup of historic groundwater contamination.
- ❑ Wildwood – landfill redevelopment. Serve as special counsel to the City of Wildwood in connection with redevelopment and transformation of a former municipal landfill into a waterfront luxury residential complex.
- ❑ Newark – Oil Company to trucking facility. Assisted trucking company move its operation to an oil distribution facility in Newark located along the Passaic River which was suffering from chronic groundwater contamination due to years of discharges by making sure seller undertook all cleanup work at seller expense without passing those costs on to the client.
- ❑ West Orange – historic military laboratory turned residential. Worked with seller of benign property to sell it for residential use only to discover a distant past secret of the property – it was used as a military lab that left historic contamination requiring cleanup before sale could be consummated. We addressed cost recovery issues and cost efficient cleanup requirements as part of sales terms.
- ❑ Paterson – mills to condos/mills to new commercial use. Old textile mills in Paterson are beautiful brick buildings desired by condo conversion specialists and commercial users. We have assisted sellers and buyers revitalize these sites by addressing all sorts of environmental issues (interior, exterior, underground, off-site) in concert with the city and state, responsible parties and cleanup incentives that help the client map out a strategy for revitalization that stays within the boundaries of a prudent pro forma.
- ❑ Elizabeth – Superfund Site. Provided insights and strategies for Elizabeth Redevelopment Agency with regard to the cleanup and redevelopment of a superfund site near the river.
- ❑ Morristown – Family Services expands onto neighboring gas station. Family Services outgrew its facility. What better place to expand than next door, except when next door is a contaminated closed gas station. The site was too good to pass

up. We helped the client get an indemnity from oil company to undertake and complete the cleanup which facilitated the transfer of title.

- ❑ Salem County – Feed & Grain manufacturer. Pittsgrove Township needed assistance getting state grant money to investigate a defunct facility since its boarded façade was an eyesore. We obtained state grant money for the investigation and provided guidance on how best to develop redevelopment scenarios for the site that fit into the municipal plan.
- ❑ Bergen County – Overpeck Park. Assisted the county examine how to use dredged spoils to cover hundreds of acres of landfill for conversion into parkland, including insurance, permit, environmental and contracting elements required to make the project successful.
- ❑ Washington Township – Defunct chemical company to something better. The Township is working with DEP to cleanup a site that has been defunct for awhile. Redevelopment is hampered by Highlands Act restrictions. We worked with the Township to provide guidance on how to do cleanup and redevelopment in the Highlands under the limited Brownfields exception to the Act.
- ❑ Many locations – leaking underground storage tanks. We have worked on many commercial sites throughout the state suffering from contamination caused by leaking underground storage tanks often requiring interaction and/or litigation with insurance companies to provide coverage.
- ❑ Perth Amboy – EPA Pilot grants. Serve as special counsel to the City of Perth Amboy Redevelopment Agency, both recipients of EPA Brownfield Pilot Grants, to advise on Brownfield redevelopment particularly with respect to protecting Cities from liability, obtaining cost recovery on contaminated sites which the Cities acquire and using the tools offered by the State of New Jersey to assist municipalities in Brownfield redevelopment.

### **RELATED FIRM EXPERIENCE**

Our lawyers have also been active in the Brownfield area on a pro bono basis.

- ❑ *Joseph J. Maraziti, Jr.* served as a member of the New Jersey Committee of the Regional Plan Association (RPA) during its active participation in the Orion Project - a project designed to demonstrate the validity of the Brownfields concept. On behalf of the Regional Plan Association, he also chaired its committee which formulated the RPA position on Senate Bill 1070. In that capacity, he testified before the New Jersey State Senate Environment Committee regarding the bill. Mr. Maraziti has served as the Chairman of the State Planning Commission since his appointment to that position in 1998 by Governor Whitman.

# Avoiding the Redevelopment Conflict of Interest Pitfall



By Brent T. Carney  
Senior Associate,  
Maraziti, Falcon & Healey L.L.P.

**B**efore starting the redevelopment process, it is essential to evaluate and screen out all potential conflicts of interest among members of the governing body, the planning board, and the redevelopment agency under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. and the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq. Failure to do so will likely lead to the waste of public funds, years of delay, and perhaps even the death of the redevelopment project.

The costly downward spiral of what would otherwise be a promising and successful redevelopment project can be avoided by taking the time at the beginning of the redevelopment process to answer and evaluate the results of a conflict of interest questionnaire.

The potential for conflicts of interest arise "when the public official has an interest not shared in common with the other members of the public." *Wyzkowski v. Rizas*, 132 N.J. 509, 524 (1993). The Legislature has codified certain conflicts of interest under the Local Redevelopment and Housing Law, by providing that "no commissioner or employee of an agency shall acquire any interest, direct or indirect, in a redevelopment project or in any property included or planned to be included in a project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials and services to be furnished or used in connection with a project..." N.J.S.A. 40A:12A-11.

Additionally, numerous conflicts of interest provisions are codified under the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq. One of the more prominent provisions, often cited in lawsuits filed by concerned citizens, disgruntled property owners, or developers that were not designated by the municipality to be the redeveloper for the redevelopment project, states: "No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediately family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity of independence of judgment." N.J.S.A. 40A:9-22.5(d). A number of questions arise as a result of this provision, the answers to which are extraordinarily fact sensitive. For example: Does the member of local government own property in or adjacent to the proposed redevelopment study area? How about a relative? Does the member or a family member have a financial interest in a business in or adjacent to the proposed redevelopment study area? Are there charities in which the government official is a member that has also received charitable

donations from the proposed redeveloper? Are there charities near or in the proposed study area that have received donations from a member of local government?

While the foregoing is not intended to be an exhaustive list for a conflict of interest evaluation, plaintiffs challenging the redevelopment area designation or the redevelopment plan will exhaustively search to find an alleged conflict of interest for at least the following two reasons. First, a plaintiff that is successful in proving that a potential for a conflict of interest existed during the redevelopment process can result in the Court invalidating every redevelopment action that was taken by local government during the period of time in which the potential for a conflict of interest existed. Second, if there was the potential for a vitiating conflict of interest during the redevelopment process, the mere existence of such potential will provide the plaintiff with the opportunity to argue for the expansion of the traditional 45 day period in which to challenge the redevelopment area designation and/or redevelopment plan. If successful, this may permit a challenge to a redevelopment area designation and redevelopment plan that occurred years ago.

The answer as to whether there is a potential for a conflict of interest is very dependent on the particular facts. For example, there are several decisions that have found there was no potential for a conflict of interest. These decisions include, but are not limited to *Wilson v. City of Long Branch*, 27 N.J. 360, cert. denied, 358 U.S. 873 (1958) where the Supreme Court upheld a determination of blight even when the Mayor, who voted for the blight designation "was a director and stockholder of a bank and savings and loan association which held some mortgages in the area. This was not sufficient reason to bar him from performing his official duties." *Id.* at 396. However, in *Griggs v. Borough of Princeton*, 33 N.J. 207 (1960), two professors of Princeton University who served on the borough council voted in favor of the blight determination were held by the Supreme Court to have a conflict of interest because Princeton University owned a majority of the stock of Princeton Management Improvement, Inc., one of the largest land owners inside and outside the redevelopment area. The Court, in that case, invalidated the blight determination even though the professors were not aware of the "interlocking interests" between Princeton University and Princeton Management Improvement, Inc.

In *Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy*, 349 N.J. Super. 418 (App. Div.), cert. denied, 174 N.J. 189 (2002), the plaintiff-appellant alleged for the first time and as late as the appellate oral argument that the

potential for a conflict of interest existed because the redevelopment area designation was within very close proximity to the primary residences of several city council members. While retaining jurisdiction, the matter was remanded to the Law Division for a hearing on whether there was a vitiating conflict of interest. No vitiating conflict of interest was found after a trial on that issue and the Appellate Division affirmed the dismissal of the complaint on untimeliness grounds. The Appellate Division noted that the 45 day rule to file an action in lieu of prerogative writ may have been enlarged to permit the challenge to the redevelopment area designation and redevelopment plan two and one-half years after the adoption of the redevelopment if a vitiating conflict of interest had been established.

In *Deegan v. Perth Amboy Redevelopment Agency*, 374 N.J. Super. 80 (App. Div.), certif. denied, 183 N.J. 217 (2005), the Court held that a redevelopment agreement was valid when it was ratified without the vote of a parish priest of a church that had received charitable donations from the principal of the redeveloper years before the parish priest was appointed to the redevelopment agency. In this case, the parish priest had previously voted to approve the redevelopment agreement.

In the unpublished decision of *City of Long Branch v. Brower*, 2006 WL 1746120 (L. Div. June 22, 2006) no potential for a conflict of interest existed when two city councilmen that owned shares and worked for a bank voted to approve designation of a co-redeveloper to whom the bank had previously issued two lines of credit. It was noted that neither councilman served on the loan committee for the bank. Rather, one member was a messenger and the other was a senior vice president and chief financial officer for the bank.

In another unpublished decision of *Albano v. City of Vineland*, 2006 WL 3626766 (App. Div. 2006), certif. denied, 190 N.J. 256 (2007), the Appellate Division determined that even though a councilman's son is a cashier at Walmart in Colorado, there was no disqualifying conflict of interest when the city councilman voted to approve a redevelopment agreement designating Walmart as the redeveloper for the City of Vineland.

Recently, the Law Division in an unpublished decision invalidated the City of Somers Point redevelopment area designation of approximately 380 parcels due to a holding that the potential for a conflict of interest existed because a councilman, the planning board chairman, and one of the many siblings of the Mayor, owned residential property in the area determined to be in need of redevelopment. *Bay Avenue Redevelopers, L.L.C., et al. v. City of Somers Point, et al.*, Docket No. ATL-L-2440-05.

Therefore, given the cost of litigation and the delay to the redevelopment project that can result from the same, evaluating whether the potential for a conflict of interest exists at the earliest stage of the redevelopment process will undoubtedly avoid costly headaches. If the facts reveal the potential for a conflict, it is advisable to have that person recuse themselves from the redevelopment proceedings and not participate in any way in order to avoid the conflict of interest pitfall. ▲

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## Real Estate Title Insurance & Construction Law

### Get Your Foot in The Door

Municipalities are rewarded for good-faith effort to plan for affordable housing

By Christopher D. Miller

When it comes to seeking protection from a "builder's remedy," court-ordered affordable housing in which a municipality often has little control, a municipality's first step can be the most important. The regulatory framework governing affordable housing in New Jersey rewards municipalities for making good-faith efforts to plan for affordable housing — even if that initial plan may be incomplete or imperfect. A municipality which takes the first step of petitioning the Council on Affordable Housing ("COAH") with a Housing Element and Fair Share Plan ("HE&FSP") "shall not be subject to a builder's remedy," unless its petition is ultimately dismissed by COAH.

Once a municipality is subject to the jurisdiction of COAH, the municipal-

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ity will be protected from "exclusionary zoning litigation"; that is, litigation challenging a municipality's zoning and land use regulations on the basis that they do not provide a "realistic opportunity" for affordable housing (a/k/a "builder's remedy" litigation). Successful "exclusionary zoning" litigation results in the appointment by the court of a "special master" to help the parties develop a plan that will allow the "builder" the right to proceed with its project. In this context, local zoning and planning considerations are eclipsed by the effort to accommodate the successful plaintiff's project, and years of laborious local planning efforts — often concerning redevelopment efforts — are left in shreds. Exclusionary zoning litigation may not be instituted against a municipality which is under COAH's jurisdiction unless the complainant has first exhausted administrative remedies (i.e., engaged in the entire mediation and review process overseen by COAH). N.J.S.A. 52:27D-315. If COAH ultimately issues substantive certification after reviewing the municipality's petition, then the municipality will not be subject to a builder's remedy for 10 years.

Although COAH's rules established certain deadlines for municipalities in

order to remain protected under COAH's jurisdiction, there is generally no restriction on when a municipality can file a petition for substantive certification of its HE&FSP. This is consistent with the legislative policy of removing affordable housing disputes from the courts in favor of the administrative process overseen by COAH. N.J.S.A. 52:27D-303.

#### Issuance of Substantive Certification Is Subject to Appeal

Substantive certification does not mean that a municipality's affordable housing efforts are completely immune from legal challenge, however. COAH's decision to issue substantive certification is subject to an appeal as of right to the Appellate Division of the New Jersey Superior Court. *Sod Farm Associates v. Twp. of Springfield*, 366 N.J. Super. 116, 131 (App. Div. 2004) (citing N.J. Court Rule 2:2-3(a)(2)). The Appellate Division will defer to COAH's decision to issue substantive certification as long as the court finds substantial evidence in the record in support thereof, and even if the court itself might have reached a different result. *In re Bor. of High Bridge Grant of Substantive Certification*, 2006 WL 1520263 \*3 (App. Div. 2006) (unpublished) (citing *In the Matter of Taylor*, 158 N.J. 644, 657 (1999)). Accordingly, COAH's decision to issue substantive cer-

tification must stand unless it is arbitrary, capricious or unreasonable.

If upon review, the Appellate Division reverses a decision by COAH to issue a municipality substantive certification, the judicial practice is to remand the municipality's petition back to COAH for reconsideration or revision. See e.g., *In re Petition for Substantive Certification, Twp. of Southampton*, 338 N.J.Super. 103, 121 (App. Div. 2001), certif. denied, 169 N.J. 610 (2001); *Elon Associates, LLC v. Township of Howell*, 370 N.J.Super. 475 (App. Div. 2004); *Sod Farm Associates*, 366 N.J.Super. 116. However, even in such cases, a would-be challenger of the municipality's HE&FSP would still need to engage the mediation and review process prior to instituting exclusionary zoning litigation against the municipality.

#### Strong Presumption of Validity in any Subsequent Exclusionary Zoning Litigation

Once a municipality receives substantive certification, a strong presumption of validity attaches to the municipal HE&FSP, and the complainant in exclusionary zoning litigation has the burden of proving by "clear and convincing evidence" that the HE&FSP does not realistically plan for the provision of the municipality's affordable housing obligation. N.J.S.A. 52:27D-317. This "heavy evidential burden" "effectively insulates a municipality from exclusionary zoning lawsuits" for ten years. *Elon Associates, LLC*, 370 N.J.Super. at 482. In *Hills Development Co. v. Twp. of Bernards*, 103 N.J. 1 (1986), the Supreme Court of New Jersey observed that the presumption of validity which attaches upon the issuance of substantive certification provides a strong incentive to municipalities to affirmatively plan for the provision of affordable housing. In the words of the Court,

The difficulties facing any plain-

tiff attempting to meet such a burden of proof are best understood by noting the variety of methodologies that can be used legitimately to determine regional need and fair share as well as the many different ways in which a realistic opportunity to achieve that fair share may be provided. If the Council conscientiously performs its duties, including determining regional need and evaluating whether the proposed adjustments and ordinances provide the requisite fair share opportunity, a successful Mount Laurel lawsuit should be a rarity. There is therefore a broad range of municipal action that will withstand challenge, given this burden of proof.

Although substantive certification of a municipal HE&FSP protects a municipality against a "builder's remedy," it does not mean that a zoning ordinance which is a component of the certified HE&FSP cannot be challenged in court. Substantive certification does not preclude a challenge to the validity of any zoning ordinance adopted by a municipality as part of its fair share plan; even on the ground that it fails to provide a realistic opportunity for the construction of the municipality's fair share of affordable housing. When an individual component of a certified HE&FSP (i.e., an inclusionary zoning ordinance or development fee ordinance) is challenged, the "clear and convincing evidence" burden of proof only applies if the challenge is based on an allegation that the component fails to provide for a realistic opportunity for the construction of the municipal fair share of affordable housing. In *Sartoga v. Borough of West Paterson*, 346 N.J.Super. 569 (App. Div. 2002), certif. denied, 172 N.J. 357, the

Appellate Division observed that

The sole effect of a grant of substantive certification to a municipality is to create a presumption of validity in an exclusionary zoning action challenging the validity of a zoning ordinance adopted to implement a certified plan.

Stated differently, "a zoning ordinance that furthers the constitutional and statutory goal of providing housing for lower income families is not insulated from challenge on the ground that it conflicts with other purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq." This does not suggest, however, that a litigant who successfully challenges a municipal zoning ordinance solely on grounds which are completely unrelated to affordable housing would be entitled to a "builder's remedy" award merely because that ordinance happens to be a component of a COAH-certified HE&FSP.

#### Conclusion

While substantive certification "effectively insulates" a municipality from exclusionary zoning challenges for 10 years, COAH's rules also provide substantial protections to a municipality for taking the first step on the path toward that goal. Municipalities are protected from a builder's remedy by virtue of making a good-faith petition to COAH for substantive certification of an adopted HE&FSP — that protection will not be lost solely because the municipality's initial submission may be incomplete or imperfect. Municipalities which are not currently before COAH may still come within its jurisdiction by filing an up-to-date HE&FSP. Failure to do so may result in needless exposure to builder's remedy litigation. ■

# New rules a disaster for affording housing

## Latest regulations discourage urban, suburban renewal

New Jersey has a twofold affordable-housing problem. On the one hand, it is clear that the state has a pressing need for housing that people of low and moderate means can afford; on the other hand, it is equally clear that the so-called third-round rules recently adopted by the Council on Affordable Housing will not only result in a failure to provide the needed housing, but worse, the new rules are likely to severely inhibit the effort to revitalize New Jersey's cities and towns as well. To avert this disaster, it is time for the state Legislature to step up and meet the challenge.



**JOSEPH MARAZITI**

Decades ago, the New Jersey Supreme Court in a landmark decision of national significance, the Mout Laurel case, established the legal framework within which the affordable-housing debate has continued ever since. Simply stated, the court held that municipalities could not use their land use/zoning power to "zone out" lower-income people from living within their borders. The court held that municipalities have a constitutional obligation to create a "realistic opportunity" for the construction of affordable housing. Note that the court held that the obligation is to create a "realistic opportunity"; it is not an obligation to actually create subsidized housing.

In reaction to the indifference, if not the hostility, of most municipalities to create these zoning opportunities, the court created an enforcement mechanism. If a builder proved in a lawsuit that a town was not in compliance, the builder would be rewarded for that effort and expense and would be provided a "builder's remedy." Under the "builder's remedy" the builder can build a project at much higher density than the local zoning permitted, in order to make the construction of some affordable units financially feasible. Most of the new development consists of market-rate housing, not affordable units. It has often been noted that "builder's remedies" are exactly that: remedies for builders, not much of a help for people in need of affordable housing.

The fact that the Fair

Housing Act has been a disappointing failure is evidenced by the fact that only about 65,000 affordable units have been produced since the adoption of the Fair Housing Act in 1965. Now, astonishingly, the new rules call for the creation of 115,000 units in the next 10 years. A gargantuan task, likely to be met with more hostility — and more costly court battles.

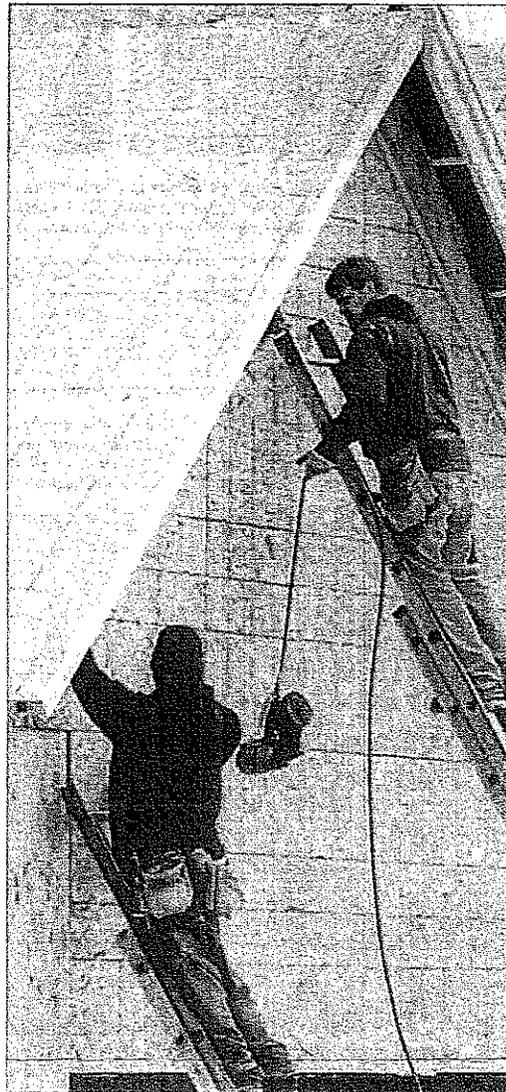
The third round concept is dramatically different than the systems in place in the prior rounds because it operates on the principle of "growth share", i.e., as a town — any town — grows, it must provide

a percentage of affordable housing in proportion to its growth. The rules adopted by COAH will impose a 20 percent affordable requirement — for every group of five new residences, one must be an affordable unit. A similar calculation is made for nonresidential development as well.

By one measure, the cost of round three could be as much as \$18.5 billion in the next 10 years! Since all new development — commercial and residential — will be required to produce affordable homes, the perception is that the burden is on the developers; in truth, the added cost will be passed on to the ultimate consumers.

This is where the trouble comes in. For the first time since the Mout Laurel decision was handed down, the growth share concept has brought the COAH process to the urban centers, places which have suffered from the exodus to suburbia and have struggled to move past the twin enemies of poverty and crime. New development in such locations now has an additional expense to carry.

COAH's newly adopted rules are hostile to all redevelopment — urban and suburban — and will have the unintended consequence of inhibiting the revitalization of areas that are in dire need of the infusion of major new investments. On the one hand, New Jersey is pouring billions into urban areas in the form of education and economic aid in hopes of revitalizing cities. Now the new growth share rules will inhibit the urban redevelopment that the



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state has been encouraging for decades. It is likely that developers will shy away from such areas and may shy away from the state altogether.

The new rules represent another example of the state passing on to the municipalities all the burdens and obligations and none of the resources to accomplish a nearly impossible task. There are both legal and economic reasons why the state must step forward to develop new ways to achieve a worthy goal — creating more affordable housing. It is imperative that the

Legislature take a hard look at the Fair Housing Act and consider whether it is time to give COAH a new set of instructions and, perhaps, even to consider replacing COAH altogether with a new mechanism that will create affordable housing in a more equitable way and without damage to our communities and the state's economy.

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