



NEW JERSEY INSTITUTE OF  
LOCAL GOVERNMENT ATTORNEYS



# LOCAL GOVERNMENT LAW REVIEW

VOLUME 47

NUMBER 2

SPRING 2024

AN AFFILIATE OF





**Submissions for future volumes of the  
LOCAL GOVERNMENT LAW REVIEW  
should be sent to:**

**Joseph M. Wenzel, Esq.  
Friend & Wenzel, LLC  
975 Clifton Avenue  
Clifton NJ 07013**

or to

[joe@friendwenzel.com](mailto:joe@friendwenzel.com)

**The deadline for the Summer 2024 issue is May 30, 2024.**

---

## **MANAGING EDITOR'S NOTE**

Well, here we are. The temperature is rising. The birds are singing. The insects are swarming. The pollen is amassing as a yellow cake layer on your car. Spring is in the air. This edition provides our usual rundown of the most consequential municipal law decisions from all levels of the judiciary. We also have our legislative update which is focused on, guess what, that's right, the new statutory requirements for affordable housing. In conjunction, we have a great article from one of our editors, Kathryn Razin, which gives a comprehensive dive into the legislation and its pitfalls. These new standards for setting affordable housing obligations and outlining the manner for challenging same will significantly affect the vast majority of municipalities we represent. Legislative updates and articles like the ones in this edition are there to provide you, dear reader, with guidance and insight to apply to the unique situation that your community faces. We hope these are both informative and helpful.

I recently came across an unpublished trial court decision concerning the nature (get the pun?) of a tree which straddles the lot line between two residential properties. The court stated that it was a case of first impression. More specifically, the court was called upon to determine whether the tree in question was a "boundary" or "encroachment" tree. I found it somewhat hard to believe that a case involving bickering neighbors over the cost of tree removal was not already the source of several reported decisions. However, I appear to be wrong. I had included it as instructive when one of your councilmembers calls to ask what can be done over a similar tree problem.

Again, we encourage you to consider submitting an article that qualifies for the \$1,000 Walter T. Wittman Prize in writing. To qualify you now have until September 15, 2024, to submit an article to us. We would welcome any articles concerning the legal issues effecting local governments. Contact us about it by email to [joe@friendwenzel.com](mailto:joe@friendwenzel.com).

Please support our advertisers and consider advertising with us yourself.

Electronic copies of back issues of *The Local Government Law Review* from 2010 onward can be found in the Members Only section of the Institute's website ([www.njilga.org](http://www.njilga.org)). If you need a copy of materials from the Local Government Law Review published before 2010, you may email a request to [trishka@mgplaw.com](mailto:trishka@mgplaw.com).

Joseph Wenzel, Managing Editor  
Samantha J. Castrelos, Assistant Editor  
Jameson Van Eck, Assistant Editor  
Robin La Bue, Assistant Editor  
Richard J. Allen, Associate Editor  
Bruce H. Bergen, Associate Editor  
Jean L. Cipriani, Associate Editor  
Clifford Gibbons, Associate Editor  
Ed Purcell, Associate Editor  
Tara St. Angelo, Associate Editor  
Andrea E. Wyatt, Associate Editor  
William Malso, Associate Editor  
Kathryn Razin, Associate Editor  
Nicholas Sullivan, Associate Editor  
Steven Goodell, Legislative Editor  
Thomas W. Dunn, Senior Editor  
William John Kearns, Jr. (ex officio)

SPRING 2024

**LOCAL GOVERNMENT LAW REVIEW**  
**SPRING 2024**  
**VOLUME 47, NUMBER 2**  
**INTERACTIVE TABLE OF CONTENTS**

	PAGE
EDITOR’S NOTE.....	i
DIGESTS OF PUBLISHED CASES.....	46
DIGESTS OF UNPUBLISHED CASES.....	52
SUPREME COURT CASES TO WATCH.....	62
LEGISLATION.....	68
AFFORDABLE HOUSING ARTICLE.....	71
D.R. HORTON, INC. V. TWP. OF SPRINGFIELD OPINION.....	77
BIRKITT V. ADWAN AND HL BUILDERS, LLC OPINION.....	101
NJILGA – WHO WE ARE.....	111
WALTER T. WITTMAN WRITING COMPETITION.....	112
INSTITUTE AWARDS.....	113
NEED HELP?.....	115
HOW TO ADVERTISE.....	116
OUR SPONSORS.....	117