

**SUMMARY OF SELECT MUNICIPAL CANNABIS LITIGATION
(SEPTEMBER 2023)**

1. C3 Middle Township v. Township of Middle, et al.
(Docket: CPM-L-000425-22)

Defendant Township rejected Plaintiff C-3's application for resolution of support for the sole Class 5 cannabis retailer license authorized in the Township per Township Ordinance and instead adopted a resolution to support co-defendant Insa (and also declined to support co-defendant Sweet Spot). Plaintiff C-3 sought preliminary injunctive relief to restrain the Township from proceeding with the permitting process with Insa instead of C-3, claiming that the criteria for the resolutions of support by the Township were ambiguous and the Township's decision was arbitrary, capricious or unreasonable. The trial judge denied preliminary injunctive relief, recognizing the broad discretion afforded to municipalities under the CREAMM ACT and that any harm suffered by Plaintiff C-3 would not be irreparable. After the denial of injunctive relief, Plaintiff C-3 stipulated to dismiss the action.

2. Fresh Dispensary v. Eatontown Borough, et al.
(Docket: MON-L-000907-22)

Defendant Boro rejected Plaintiff Fresh Dispensary's application for a resolution of support for a Class 5 cannabis retail license because it violated the Boro ordinance's requirement that such use be located at least 1,000 ft. from a school. The Board interpreted its proximity requirement to be measured from the subject property line to the property line of the closest school, rather than to the physical structure housing the school itself. Co-Defendants Sunrise and Blue Violet both were awarded resolutions of support for their applications for the only two (2) retail licenses available in the Boro. After a bench trial on the prerogative writ action, the trial judge found the Boro's interpretation of its proximity ordinance was erroneous, vacated the resolutions of support issued to co-defendants Sunrise and Blue Violet and directed the Boro to develop objective selection criteria for issuance of the Class 5 retail licenses. The judge ruled that "school" as used in the Boro's proximity requirement ordinance meant the building or group of buildings in which the school was located and, therefore, Fresh Dispensary satisfied the proximity requirement as it was located more than 1,000 feet from the closest school building. The decision has been appealed but a motion to stay the decision pending appeal was denied.

3. Botteon v. Highland Park Borough, et al.
(Docket: MID-L-002068-22)

Plaintiff individuals challenged co-defendant Boro's cannabis ordinance on a variety of grounds but the judge dismissed the challenge, finding, among other things, that the challenge was untimely as it was brought more than 45 days after adoption of the ordinance.

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4. St. Peters University v. Planning Board of Jersey City, et al.
(Docket: HUD-L-002559-22)

Defendant Jersey City Planning Board granted site plan approval to co-defendant Medusa for a class 5 retail dispensary, but Plaintiff St. Peter's University challenged the Planning Board's decision on jurisdictional grounds, claiming that St. Peter's constitutes a "school" that is located within 200 feet of the proposed dispensary, which violates a condition of the conditional use, therefore, requiring Medusa to get subsection d(3) conditional use variance relief from the Zoning Board of Adjustment. Co-defendants Planning Board and Medusa interpret the term "school" for purposes of the proximity requirement to mean grades K-12, thus excluding colleges and other institutions of higher learning. The matter is pending trial.

5. KGNJ Operations v. Keyport Borough, et al.
(Docket: MON-L-002997-22)

Plaintiff KGNJ challenged co-defendant Boro's rejection of its request for a resolution of support for a Class 5 retail license (where the Boro granted a resolution of support for co-defendant Blaze and denied one for co-defendant GSM), claiming that the Boro's evaluation sheet/scoring process was biased and subjective, and also that some members improperly considered land use issues despite that the Planning Board would consider same at the land use application stage.

6. Green & Gold Dispensary v. Keyport Borough, et al.
(Docket: MON-L-3315-22)

Plaintiff GGD challenged co-defendant Boro's rejection of its request for a resolution of support for a Class 5 retail license (where the Boro granted a resolution of support for co-defendant Simply Pure and denied them for co-defendants Down to Earth and Herbalize), claiming that the Boro's scoring process was biased and subjective, and also because Simply Pure's location, which received the resolution of support, allegedly violated a 150 foot proximity restriction from houses of worship (St. Mary's Episcopal Church).

7. Sea & Leaf v. Zoning Board of Lower Township, et al.
(Docket: CPM-000462-22)

Plaintiff Sea & Leaf appealed the zoning application denial and interpretation of the ordinance by Defendant Zoning Board for violating a 300' proximity requirement from "sensitive receptors", including a residential lot.

8. The Cannabis Shoppe v. Borough of Neptune City, et al.
(Docket: MON-L-003362-22)

Plaintiff TCS challenged co-defendant Boro's rejection of its request for a resolution of support for a Class 5 retail license (where the Boro granted resolutions of support to co-defendants Shipwreck'd and Ivy Hall), claiming that the Boro's scoring process was biased and subjective, and also because Shipwreck'd and Ivy Hall's supported locations, if both approved and constructed, would allegedly violate a 600 foot proximity restriction between two Class 5 retail uses in a commercial zone.

9. Woodmeir Farms v. West Amwell Planning Board, et al.

(Docket: HNT-L-000363-22)

Plaintiff Woodmeir seeks to void the Township's cannabis ordinances and challenges Defendant Planning Board's site plan approval in favor of co-defendant Green Medicine for a Class I cannabis cultivation facility on numerous grounds, including (1) lack of jurisdiction because the facility requires an expanded septic system located entirely in the portion of the split-zoned lot that prohibits cannabis cultivation facilities, thus requiring use variance relief from the zoning board of adjustment; (2) the applicant's "odor mitigation" engineer was not licensed in NJ; and (3) the Township's former zoning officer and special planner, who created the Township's cannabis ordinances, was employed by co-defendant Green Medicine and became so while still employed by the Township, in violation of the Local Government Ethics Law (LGEL) and the regulations of the NJ State Board of Planners.

10. Big Smoke v. West Milford, et al.

(Docket: PAS-L-003052-22)

Plaintiff Big Smoke challenged Defendant Township's refusal to consider a resolution of support for the Class 5 retailer license, after Big Smoke obtained a zoning permit and a letter from the zoning officer stating the site was suitable, but also after the Township adopted an ordinance requiring at least 2,500 feet between two Class 5 retailer licensed businesses, and co-defendant Soulflora already obtained both the zoning permit/zoning officer letter and the all important resolution of support, therefore Big Smoke failed to satisfy the 2,500 feet distance requirement as to Soulflora.

11. Nar Group v. Lebanon Twp Planning Board, et al.

(Docket: HNT-L-000454-22)

Plaintiff Nar got a conditional approval from the CRC to authorize Nar to cultivate of medical marijuana and a resolution from the co-defendant Township's governing body providing both that "agricultural uses" are permitted in the Resource Conservation District (where the site is located) (the "RCD") and the Township's cannabis "opt out" ordinance does not prohibit the cultivation of medical cannabis. Plaintiff Nar then sought site plan approval from the co-defendant Planning Board for an indoor medical marijuana cultivation facility on the grounds that the use constituted a permitted "agricultural use" in the RCD. A Township resident, Webb, who later formed co-defendant Save Lebanon Township Coalition (SLTC), objected on jurisdictional grounds and the Planning Board concluded that the issue of whether the proposed facility is a "farm", and hence a principal permitted use under the applicable Township Ordinance permitting "agricultural and horticultural uses", required an interpretation by the Zoning Board of Adjustment under MLUL Section 70(b). The next day the governing body adopted an ordinance prohibiting all classes of medical cannabis businesses and amended the existing subject zoning ordinance to prohibit medical marijuana farming in all zones in the Township. Plaintiff Nar commence a prerogative writs action and moved for summary judgment, (1) claiming that the Planning Board's failure to decide the site plan application within 95 days constituted an automatic approval, or, (2) alternatively, for an order declaring that the proposed use constituted the permitted use of "agriculture" in the RCD and the Planning Board's determination to not exercise jurisdiction over Nar's site plan application was arbitrary, capricious and unreasonable. The trial judge denied Plaintiff Nar's summary judgment motion and granted SLTC's cross-motion for

summary judgment dismissing with prejudice the automatic approval claim dismissing without prejudice the claim and for a declaratory judgment that the proposed use is a permitted agricultural use in the RCD, the latter to allow Plaintiff Nar to proceed with the interpretation request to the Zoning Board of Adjustment and then to refile the declaratory judgment claim, if still needed, thereafter. The parties currently are pursuing the interpretation of the use before the Zoning Board of Adjustment.

12. Hoboken For Responsible Cannabis v. City of Hoboken Planning Board, et al.

(Docket: HUD-003520-22)

Plaintiff HRC challenges the Hoboken Planning Board's site plan approval for a Class 5 retail dispensary in close proximity to a school in violation of the conditional use requirement that such use be at least 600 feet away from a school. Co-defendant Planning Board and successful site plan applicant Blue Violet claim that Blue Violet was not subject to the proximity requirement because it filed its comprehensive application to the City's Cannabis Review Board prior to the adoption of the ordinance and, thus, Blue Violet was not subject to the proximity requirement pursuant to the "Time of Decision Rule" under Section 10.5 of the MLUL. However, Plaintiff HRC claims that the "Time of Decision" rule only applies where a complete "application for development" to a land use board is submitted prior to the adoption of the subject land development ordinance, and an application to the City's Cannabis Review Board does not constitute such an "application for development". Therefore, Plaintiff HRC contends that Blue Violet is subject to the proximity requirement and, as such, was required to obtain d(3) conditional use variance approval from the Zoning Board of Adjustment and the Planning Board lacked jurisdiction to decide the application. The matter is being briefed for oral argument/trial.