



March 8, 2009

N.J. Supreme Court to hear builders case

By *KEITH RUSCITTI*
TOMS RIVER BUREAU

The state Supreme Court on Monday will be the arbiter of a second dispute over a local ordinance, this time involving the requirement that developers set aside land for open space and recreation or pay a fee to the township.

This is the second time in six months that the state Supreme Court has heard arguments between the New Jersey Builders Association and Jackson regarding a local ordinance.

In September, the parties argued the validity of a 2003 local tree-removal ordinance that required landowners to replace one tree for every tree removed from a property or else pay \$200 into a municipal tree escrow account. Money from that account is used to plant trees on public property.

A decision on that case is still pending.

Numerous municipalities in the state are interested in the outcome of both cases because they have written ordinances similar to the ones in Jackson, according to Greg Auriemma, the Sierra Club's Ocean County chairman.

One municipality, Egg Harbor in Atlantic County, won a similar lawsuit filed by the Builders League of South Jersey at the Superior Court level two years ago. The appeal of the Egg Harbor verdict was incorporated into the Jackson case at the appellate level.

Jackson Council President Michael Kafton, who was mayor when the ordinances were enacted, has been one of the biggest advocates of the open space ordinance.

"The developers have to bear their fair share of the costs of development and environmental preservation," Kafton said regarding the ordinance. "Those costs have been put on the backs of residents for too long."

However, two lower courts have sided with the argument made by New Jersey Shore Builders Association attorney Paul H. Schneider that the open space ordinance was an impact fee and exceeded the mandates of the state's Municipal Land Use Law.

Developers and builders argue the ordinance will eventually lead to the higher housing prices and will have a negative impact on interested home buyers.

In February, New Jersey Sierra Club Director Jeff Tittel announced the environmental group was filing a friend of the court brief on behalf of Jackson on the open space ordinance.