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Dilworth Paxson client D'Anastasio Corporation, a premier builder of homes in southern New Jersey, was planning on developing a community in Pennsauken, NJ. D'Anastasio's plan called for the construction of several buildings containing condominiums.

D'Anastasio obtained the necessary approvals from the Pennsauken Zoning Board to proceed with constructing this multi-family residential project. The changing economy, however, forced the company to re-think its decision to build the community as condominiums. Instead, D'Anastasio decided the property would be more viable as a rental community. Therefore, D'Anastasio informed the township's zoning board of its decision to modify the property to rental units.

The Pennsauken Zoning Board, however, saw D'Anastasio's notification as a change in the property's character. The board asserted that its approval was for "luxury" condominiums, and that D'Anastasio had engaged in a "bait and switch" tactic, rendering the property as a "non-luxury" entity. In the board's judgment, these "substantial changes" to the zoning approvals meant D'Anastasio would need to apply for new land use approvals.

Given the Pennsauken Zoning Board's determination, Dilworth Paxson provided representation to D'Anastasio to appeal the decision before the Superior Court of New Jersey, Camden County.

Superior Court of New Jersey Action

The Court held that the Pennsauken Zoning Board improperly based its decision to ask D'Anastasio to apply for new land use approvals that considered the form of ownership (apartment) and potential occupants ("non-luxury renters"), as opposed to valid land use decisions.

Overall, the Court's decision affirmed that control over the form of project ownership is outside the jurisdiction of any zoning board's issuance of use variances and site plan review jurisdictions.

It held that the Pennsauken Zoning Board's determination that the form of ownership in question would affect any change relevant to land use and site plan approvals was arbitrary, capricious and unreasonable.

With the appeal concluded D'Anastasio will proceed to obtain construction code permits so construction of the project can commence.

An Arbitrary, Capricious and Unreasonable Decision

Essential elements of the D'Anastasio project remained unchanged; the number of dwelling units, bedroom mix, overall footprint, building exteriors, parking and traffic issues remained the same. The Firm argued that the form of ownership of a multi-family residential project is not a valid inquiry by the Zoning Board of Adjustment.