



# LADDEY CLARK & RYAN, LLP

ATTORNEYS AT LAW

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## NEWSLETTER

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## Implications of the Highlands Act

By Richard Clark and Jarrod Cofrancesco

A New Jersey State Superior Court Judge has rendered the first decision regarding the constitutionality of the Highlands Act. In November, Morris County Assignment Judge Theodore Bozonelis ruled that the Act, which restricts development in the Highlands region, is constitutional. This ruling will undoubtedly impact municipalities, developers, landowners, and farms alike in that it sets a precedent by which the constitutionality of the statute will be judged. The decision will likely be appealed due to its statewide importance.

### The Governmental Perspective

What does all this mean for Municipal governing bodies, zoning and planning Boards? First, the exact boundaries within the Municipality for land impacted by the Act must be determined and mapped for ready public use. Second, any developers applying for building permits or zoning or planning approvals must obtain a letter of exemption or approval from the Highlands Act thru the Department of Environmental Protection. Third, wait. The State Legislature shot first and asked questions later. The Highlands Act was signed on 8/10/04. It was retroactive so neither municipalities nor landowners could take action to protect themselves from its effects. Hundreds of approved plans, including many governmental projects have been put on hold and most will never be developed. The Highlands Master Plan is not even finished and is due under the law by June 2006. So, the law was passed even before the Plan was considered. If a municipality did this, it would be thrown out of court since a master plan must be approved before the zoning ordinances can be adopted.

Finally, get ready for all the lawsuits. The other shoe is about to drop. Property owners are screaming about loss of property

values and they are right. The State is trying to counter by asking for a water tax to be imposed on those who drink the water which literally and figuratively will only be a drop in the bucket. Everyone wants clean water. No one wants to pay for it. Well, the landowners including Municipalities in the Highlands are paying for it. The State's plan for a program of Transfer Development Rights (TDR) to pay landowners a little to transfer their development rights to areas outside the Highlands is window dressing. Who wants to get paid a one time \$15,000 payment to stick another house in your town to appease the State? TDR hasn't really worked elsewhere and probably won't in the Highlands. Unfortunately, Municipal master plans and property are decimated by this big State land grab. It is also likely towns will be unfairly dragged into the mounting litigation.

### Landowners and Farmers - The Private Perspective

The Highlands Act creates a "preservation area" in a "planning area," which encompassed the entire New Jersey Highlands Region, consisting of approximately 800,000 acres. This area stretches across portions of Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex, and Warren Counties. The statute itself contains a narrative metes and bounds description of the "preservation area" and designates all land not within the preservation area as the "planning area."

The first step for a landowner, developer or farmer owning land in this region is to determine whether the land is in the preservation or planning area. Major development restrictions affect only that land located within the preservation area. Land located within the planning area is not subject to

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## Profile: Lauren D. McFadden, Esq.



Lauren McFadden is a graduate of Rutgers College in New Brunswick, where she earned a B.A. in History and Political Science. She received her law degree from Seton Hall Law School in Newark, where she was a class Senator in the Student Bar Association; a VP of Membership and Recruitment for the Federalist Society; and a student representative on the Faculty/Administration's Building Committee. Lauren also worked in the Civil Litigation Clinic at Seton Hall Law School's Center for Social Justice.

In addition to her work in the law, Lauren is an accomplished actor. Lauren has performed with the Pegasus Players, Cornerstone Playhouse and The Country Theatre. She was also a finalist for a role on *The Apprentice* and has been cast as a background actor in various feature films and television commercials.

Growing up, when Lauren was not at the theater or studying, she could be found practicing tennis, softball, soccer or basketball. From her years of working in theater and participating in athletics, she acquired various skills which she now utilizes in her law practice.

"Theater taught me how to engage an audience, which is a very important tool for a trial lawyer to possess. Competing in sports, especially tennis, allowed me to really see the connection between a sound work ethic, perseverance and success. There's no better feeling than realizing that your hours of practicing backhands just won you a tournament, or that your hours of preparation and attention to detail just won your client a huge settlement or verdict."

Prior to joining Laddey Clark & Ryan, Lauren served as a Judicial Law Clerk for the Honorable Karen D. Russell, J.S.C., in the New Jersey Superior Court. She is admitted to the bar of the State of New Jersey, the United States District Court, District of

New Jersey and the United States Court of Appeals for the 3rd Circuit.

At Laddey Clark & Ryan, Lauren's practice focuses on personal injury and commercial litigation, as well as municipal court defense. Lauren believes her diverse background has provided her with a unique perspective in the practice of law. She credits her ability to think quickly on her feet and present legal arguments before the Court to her years on the stage performing before an audience. All of these attributes have become an important part of her professional life.

Lauren has participated in several of Laddey, Clark & Ryan's high-profile cases, including *Feinhals v. Aumick*, which led to the one of the highest personal injury verdicts in Sussex County history. She has also contributed to the successful resolution of cases that included permanent back injuries, a slip and fall injury that occurred in Canada but was successful-

ly argued in New Jersey, and several vehicular accidents in which clients sustained permanent injuries. Lauren is currently working on cases that involve injuries sustained during gymnastics practice, a dental malpractice case, a wrongful death suit, and a slip and fall case.

Lauren is co-Advisor with Andrew Fraser of the Newton High School Mock Trial team. Coaching students in mock trial has become a passion for Lauren.

"Mock trial was essentially the beginning of my legal career. Now I have the opportunity to share all that I have learned with the talented students I coach."

In Lauren's spare time, she enjoys outdoor activities including camping, hiking and fishing, and playing baseball, soccer, tennis and basketball with her husband, Peter. Lauren and Peter reside in West Orange, NJ.

Lauren McFadden can be reached at 973-729-1880 or via e-mail at [lmcfadden@lclrlaw.com](mailto:lmcfadden@lclrlaw.com).

## New Attorney: Megan MacMullin, Esq.



Megan E. MacMullin, Esq. has joined the law firm of Laddey, Clark & Ryan as an Associate in the firm's Real Estate and Estate Planning/Administration departments. MacMullin is a Member of the bar of the State of New Jersey, and the United States District Court, District of New Jersey. She is a Member of the SCARC, Inc. Board of Trustees and is Secretary of the SCARC Foundation Board. Megan is a member of the Guardianship Association of New Jersey and the National Guardianship Association.

Through her the real estate practice, MacMullin represents clients for both residential and commercial transactions. Through her work with the Estate Planning and Administra-

tion Practice Group, she provides individualized guidance and advice for clients to ensure their estate planning meets their specific and unique needs including the development of Special Needs Trusts and tax-advantaged trusts. MacMullin also is experienced in representing families and individuals for Guardianship petitions and advises Estate Executors and Administrators on the proper management of an estate and the individual's fiduciary duties related to administering an estate.

MacMullin received a B.A. in Psychology from Siena College and a M.Ed. from The College of Saint Rose. She graduated Cum Laude from New York Law School where she earned her Juris Doctorate.

Megan can be reached at (973) 729-1880 and by email at [mmacmullin@lclrlaw.com](mailto:mmacmullin@lclrlaw.com).

## LCR in the News

**Thomas N. Ryan** was recently honored by the Mountain Lakes Education Foundation (MLEF) at a dinner following its Annual Golf and Tennis Outing. The MLEF supports academic and cultural enrichment activities in the Mountain Lakes public school system. Ryan, who resides in Mountain Lakes, was a founding and long time member of the MLEF's Board of Trustees. Ryan is also a former President of the Mountain Lakes Board of Education, having served as a Board member for six years.

Ryan currently serves as the attorney for the MLEF. He also serves the Mountain Lakes community as a Trustee and Past-President of the Lakers Sports Club, Inc., a non-profit organization established to provide support for the athletic programs and student athletes at Mountain Lakes High School.

In addition to serving as Managing Partner, Ryan chairs the Labor and Employment Practice Group and the Corporate Practice Group at Laddey, Clark & Ryan. He serves as Labor and Employment Special Counsel for Sussex County, as well as for numerous municipalities, including Sparta Township, Franklin Borough, Wantage, Stillwater, Pohatcong and Byram Township. He also serves as Labor and Employment Counsel, as well as outside General Counsel, to numerous small and mid-sized companies.

Tom Ryan may be reached at 973-729-1880 or via e-mail at [tryan@lcrlaw.com](mailto:tryan@lcrlaw.com).



**Andrew Fraser** chaired the 2005 "Thunder for the Disabled" motorcycle tour and has reported that more motorcycles than ever participated this year; and that, combined with other events, raised \$13,000 for the Department for Persons with Disabilities' (DPD).

His practice at Laddey Clark & Ryan, in addition to personal injury litigation, includes commercial litigation,

civil trial work, and workers' compensation. He is one of a select group of Certified Civil Trial Attorneys in Sussex County.

The DPD is a Catholic Charities Agency of the Diocese of Paterson and is a nonprofit agency responsible for the care and housing of developmentally disabled persons. It operates 12 group homes, a farm and a vocational training center in Jefferson Township. Andy is a long-time DPD board member and was joined on the tour by Michael Garofalo, a colleague in the firm.

Andy Fraser may be reached at 973-729-1880 or via e-mail at [afraser@lcrlaw.com](mailto:afraser@lcrlaw.com).

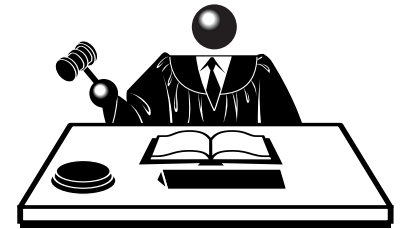


**Angelo Bolcato** has been appointed to the Board of Directors of Warren County's Habitat for Humanity. He also serves on Habitat's Site Selection

Committee which works with local municipalities and property owners in locating and acquiring suitable sites for home rehabilitation or new home construction.

Bolcato's practice specializes in municipal law and commercial transactions. Additionally, he also heads up the firm's Collection, Creditor's Rights and Bankruptcy Practice Group. Bolcato is a Diplomate in New Jersey Local Government Law.

Angelo Bolcato may be reached at 973-729-1880 or via e-mail at [abolcato@lcrlaw.com](mailto:abolcato@lcrlaw.com).



## New Attorney: Jeffrey A. Kopco, Esq.



**Jeffrey A. Kopco, Esq.** has joined the law firm of Laddey, Clark and Ryan as an Associate in the firm's Labor and Employment Practice Group. He was recently admitted to the bars of the State of New Jersey, and the United States District Court, District of New Jersey. Kopco will also be admitted to the Bar of the State of New York.

Kopco's practice will focus on Labor and Employment and general litigation. As an attorney in the Labor and Employment Practice Group, Kopco will assist in the handling of employment matters for public and private sector employers and employees. The group represents employers, as well as individuals, in wrongful termination and employment discrimination cases and in the negotiation of employment and severance agreements. It also assists

management in complying with state and federal employment laws and counsels on hiring, termination, employee handbooks, pre-employment interviews and restrictive covenants.

Previously, Kopco worked as a Law Clerk with Laddey Clark & Ryan. During that time, he assisted in the preparation and trial of a sexual harassment case. He has assisted in the development of personnel policy manuals for various public and private sector employers. Jeff has also worked with personal injury and workers' compensation litigation. Kopco is currently involved in the representation of a woman who was fired for notifying the State about her employer's illegal activities.

Kopco graduated Magna Cum Laude from Syracuse University and earned his Juris Doctorate from Seton Hall University School of Law.

Jeff can be reached at 973-729-1880 and by e-mail at [jkopco@lcrlaw.com](mailto:jkopco@lcrlaw.com).

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## Cases of Note

*Litigation, on behalf of individuals as well as public and private entities is the cornerstone of the work that we do at Laddey Clark & Ryan, LLP. Our recent results stand for that commitment.*

Andrew A. Fraser successfully secured a \$100,000 jury verdict for a motorcyclist who was rear-ended on Route 15 and who sustained permanent injuries that included herniated and bulging discs as well as an encroachment on a certain nerve root. Fraser noted that the verdict should encourage other plaintiff attorneys to take verbal threshold limits to trial rather than opt for low settlement offers.



Larry Supp secured a successful disposition of a property claim representing a homeowner in a claim against a neighbor concerning their mutual property rights. A common right of way, used only as a footpath, bordered the client's property. A neighbor recently excavated along the footpath changing it into a driveway for a motor vehicle. The excavation made the right of way impractical for our client to use. The Court granted our motion compelling the neighbor to restore the property to its original configuration, grade and slope.



Thomas N. Ryan successfully defended a Newark manufacturer in an arbitration brought by the employee union before the State Board of Mediation. Ryan successfully defended the employer's right to terminate an employee who knew of, but failed to inform the employer, another employee's theft of confidential formulas and product samples. The Union had argued the employee had no knowledge and, regardless, simple knowledge was not adequate cause for termination. The Arbitrator's 23 page decision upheld the termination and dismissed the grievance. Ryan was assisted by Jeffrey Kopco.

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## Highlands

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the mandates of the Highlands Act, but rather is exclusively regulated by the traditional local and State land use laws. Municipalities containing land located within the Highlands Region should be utilized as a resource for all landowners to determine whether or not certain tracts of land are located within the preservation area.

If the determination is made that a certain tract of land is located within the preservation area, then the particular land owner, developer, or farm should identify the objectives for the subject land and determine if any exemptions identified within the Act apply. If the subject land received any local or State development approvals prior to March

29, 2004, those lands may be eligible for an exemption under the Act.

In addition, the Highlands Act identifies certain exemptions based upon proposed activity or development objectives for the subject land. The Construction of a single family dwelling for an individual's own use or the use of an immediately family member on a tract of land owned by the individual is an activity exempt from the Highlands Act. Also exempt from the Act is the construction of a single family dwelling on a lot in existence on the date of enactment of the Highlands Act, provided that the construction does not result in the disturbance of one acre or more of land, or increase the impervious surface on a land by one quarter acre or more. In addition, any improvements to a single family dwelling in existence on the

date of enactment of the Act are exempt. Finally, any improvements for non-residential purposes related to Church, public or private schools, hospitals, are exempt from the Act. Certain agricultural or horticultural development in the preservation area is exempt from the Act.

Any landowners considering development of land that may be subject to the Highlands Act should first consult with an experienced land use attorney who has studied the Act and its implications, and with the assistance of legal counsel, seek a determination as to the applicability of the exemptions from a local land use official.

Richard Clark and Jarrod Cofrancesco can be reached at 973-729-1880, or via e-mail at [rclark@lclrlaw.com](mailto:rclark@lclrlaw.com) and [jcofrancesco@lclrlaw.com](mailto:jcofrancesco@lclrlaw.com).

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