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SAHN WARD COSCHIGNANO, PLLC

A T T O R N E Y S A T L A W

Welcome to the Summer 2015 edition of “Report from Counsel,” a Newsletter for the firm’s clients and the other professionals who consult with the firm, updating them on:

New York City Land Use and Development Update 1

Firm News 1-2

Preserving Family Wealth With Basic Estate Planning . . . 2

Matters of Interest 3

New Developments in the Law 4

Out and About 4-5

FIRM NEWS

JON WARD NAMED TO LIBN’S “ONES TO WATCH” IN LAW

Jon Ward was named as one of the “Ones to Watch” in Law by *Long Island Business News*. Ones to Watch is featured each week in *LIBN*, highlighting six people who stand out in their respective fields.



Jon Ward

Partner
Sahn Ward Coschignano

JON WARD

Jon Ward heads the litigation and appeals practice group at Sahn Ward Coschignano in Uniondale. His practice focuses on representing clients in complex civil litigation, with an emphasis on commercial litigation. His expertise extends to labor and employment relations, construction litigation, real property and title disputes, environmental cleanup litigation and land use and municipal litigation, among other matters. A Yale University graduate, Ward earned his law degree from the University of Notre Dame. He was recently elected a fellow of the New York Bar Foundation.

—COMPILED BY BERNADETTE STARZEE

NEW YORK CITY LAND USE AND DEVELOPMENT UPDATE

TRANSFERRING DEVELOPMENT RIGHTS ACROSS ZONING DISTRICT BOUNDARIES IN NEW YORK CITY – WHEN IS IT ALLOWED?



DANIEL H. BRAFF

As the real estate development market continues to improve to near pre-recession levels, property assemblages, which typically include the acquisition of development rights (a/k/a “air rights”) from adjoining parcels, are becoming more common in the outer boroughs of New York City. Sometimes the development rights parcels (from which the “air rights” will be obtained) and the parcels to be developed with the new building are located in different zoning districts.

Under Article 7, Chapter 7 of the New York City Zoning Resolution, the general rule is that you cannot transfer floor area across zoning district boundaries. However, there are some exceptions to this rule for zoning lots

that existed before the date the zoning district boundary was created (i.e. “pre-existing lots”), which allow you to average the floor area across the “pre-existing lot” or, in some instances, shift the zoning district boundary to the lot line. Moreover, there is an additional court-affirmed exception to the prohibition on the transfer of floor area where the permitted floor area for the use to be developed is identical in different zoning districts. In such instances, the floor area generated in one zoning district may be transferred to and developed on the portion of the zoning lot located within the other zoning district. See *Matter of Beekman Hill Association v. Chin*, 274 A.D.2d 161 (1st Dept., 2000).

It is critical that a full zoning analysis be performed when considering the acquisition of development rights as part of an assemblage to ascertain, among other things, the applicable zoning districts and when they were established, the history of the lots involved, and the maximum floor area for the use to be developed. Depending upon the outcome of such an analysis, it is possible that the transfer of development rights will be prohibited, permitted, or somewhere in between. Given that the viability of most development projects depend upon the maximum floor area yield, this analysis should be completed as part of any initial due diligence.

PRESERVING FAMILY WEALTH WITH BASIC ESTATE PLANNING

With basic planning, you can preserve family wealth and investments.

The firm's estate and trust attorneys consult with clients to develop comprehensive wealth preservation, business succession and estate plans. In this regard, a growing number of people will face the issues of long-term nursing care. Expensive long-term nursing care can be financially devastating. However, basic estate planning can avoid adverse consequences.

With basic planning, an individual with disabilities may receive governmental benefits and have an unlimited amount of assets held in a Trust for their benefit.

A Supplemental Needs Trust (sometimes called a Special Needs Trust or "SNT") is a specialized legal document designed to benefit an individual with a disability. A SNT enables a person under a physical or mental disability, or an individual with a chronic or acquired illness, to have — held in Trust for his or her benefit — an unlimited amount of assets. In a properly drafted SNT, those assets are not considered countable assets for purposes of qualification for certain governmental benefits.

With basic planning, an individual can avoid the unnecessary cost of a guardianship proceeding if a person suddenly becomes incapacitated.

A durable power of attorney is one of the most important estate planning documents you can have. It allows a person to appoint someone to act for you (your "agent") if you become incapacitated. Without a power of attorney, your loved ones would not be able to make decisions for you or manage your finances without court intervention to appoint a guardian, which is an expensive and time-consuming process.

There are many do-it-yourself power of attorney forms available; however, it is a good idea to have an attorney draft the form for you. There are many issues to consider and one size does not fit all.

In addition to a durable power of attorney, the attorneys at Sahn Ward Coschignano, PLLC recommend having a Health Care Proxy and Living Will in place.



WAYNE EDWARDS

LONG ISLAND BUSINESS NEWS INTERVIEWS WAYNE EDWARDS ON STRATEGIES FOR BUSINESSES TO EXPAND IN A TIGHT REAL ESTATE MARKET

Wayne Edwards was interviewed by *Long Island Business News* for a story on how companies that are looking to expand are seeing a dearth of available office space. Mr. Edwards says that, once growing businesses find nearby space, they should negotiate in their lease the

FIRM NEWS

PUBLIC JUSTICE NAMES JOSEPH BJARNSON 2015 TRIAL LAWYER OF THE YEAR



JOSEPH BJARNSON

Joseph R. Bjarnson, an Associate with the firm, was named the 2015 Trial Lawyer of the Year by Public Justice, a not-for-profit organization that supports causes for social justice. Mr. Bjarnson and his colleagues were chosen in recognition of their work as pro bono counsel in *David, et al. v. Signal International, LLC, et al.*, No. 08-cv-1220 (E.D. La.).

On February 18, Mr. Bjarnson and the firm's co-counsel helped obtain a \$14 million federal jury verdict for five Indian national workers named as plaintiffs in the lawsuit against Signal International, a marine fabrication company. The suit claimed the company engaged in human trafficking, forced labor, racketeering and civil rights violations against them because of their nationality.

The lawsuit contended that Signal and the other defendants forced the workers to pay money upfront on the promise that they would receive permanent U.S. residency. Instead, they received temporary H-2B guest worker visas, were placed in overcrowded and heavily guarded labor camps, and were subjected to a hostile work environment. When the guest workers began to organize and air their grievances, the company had the camp raided, forcefully terminating and

deporting some of the guest workers as an example to the other workers.

Since joining Sahn Ward Coschignano in 2012, Mr. Bjarnson has devoted hundreds of hours pro bono to this case, acting as lead counsel for the firm. The firm has served as co-counsel with attorneys from the Southern Poverty Law Center, the American Civil Liberties Union, Crowell & Moring LLP, the Asian-American Legal Defense and Education Fund and the Louisiana Justice Institute.

Mr. Bjarnson was honored at Public Justice's Awards Gala, which took place on July 13 at the Fairmont, Queen Elizabeth in Montreal, Canada.

"I am very honored to receive this prestigious award," Mr. Bjarnson said. "As counsel for the plaintiffs in this case, we have fought hard to obtain justice and relief for our clients, and it is an honor to be recognized for our efforts. I also want to thank Public Justice, not only for this distinguished honor, but for their ongoing pursuit of bringing wrongdoers to justice and for representing those who may not be able to stand up for themselves."

Public Justice is a public interest law firm. Its mission — through creative litigation, public education and innovative work with the broader public interest community — is to protect people and the environment; hold the powerful accountable; challenge government, corporate and individual wrongdoing; increase access to justice; combat threats to the nation's justice system; and inspire lawyers and others to serve the public interest. The group's work is supported by The Public Justice Foundation, a not-for-profit 501(c)3 charitable member organization.

right of first offer or first refusal in the event the space becomes available. He also said that landlords have leases which give them the right to relocate a tenant — at the expense of the landlord — to accommodate an expanding company.

VISIT WWW.SWC-LAW.COM TO VIEW THE ARTICLE

JUDGE ISSUES TEMPORARY RESTRAINING ORDER, ALLOWING HAV-A-HOME KENNEL TO REOPEN FOR BUSINESS AND RESUME SERVICING PET OWNERS

A temporary restraining order was issued on May 21 against a local municipality which prohibited the municipality from enforcing a condemnation order that it issued against a family-run kennel that has been in the business for nearly a century. Two of the firm's Partners, Jon A. Ward and Andrew Roth, and Joseph R. Bjarnson, an Associate with the firm, are currently representing the kennel's owner and her family.

On April 13, the village ordered Hav-a-Home Kennels, its owner/operator, Patricia Kleber, and her two sisters who also operate the facility with her, to vacate the premises after condemning the building for what the municipality deemed to be an "unsafe" structure. As a result of the condemnation order, the kennel was forced to immediately shut down and close. Ms. Kleber and her two sisters, all of whom are in their seventies, rely on the income from the kennel to support themselves. Thus, the impact of the condemnation order was personally devastating for them.

The municipality maintained that an exterior wall of the structure was unsafe because it was leaning slightly. Ms. Kleber retained a professional engineer, who inspected the kennel and disputed the basis for the condemnation. He found that the slightly leaning wall was not an uncommon feature

in a building of this type and age, which was constructed in the 1920s or earlier. He also found that the building was not in any imminent danger of collapse or otherwise unsafe. He recommended a simple repair to the wall. To alleviate any concerns the municipality might have regarding the safety of the structure, Ms. Kleber also hired a contractor who installed a temporary shoring wall to further support the structure, and repaired the exterior wall a few weeks later.

On May 4, Mr. Ward wrote a letter to the municipality requesting that the condemnation order be lifted immediately. After nearly two weeks without a response from local officials, Mr. Ward filed a civil rights lawsuit against the municipality on May 21, claiming, among other things, that the municipality abused its governmental power and violated Ms. Kleber's constitutional rights to occupy and use the building because the municipality did not provide her with any due process (notice and opportunity to be heard) either before or after it condemned the structure. Further, the municipality failed to follow its own procedures outlined in its local laws with respect to addressing buildings it deemed unsafe.

After hearing arguments on May 21, Justice Antonio I. Brandveen of the New York State Supreme Court, Nassau County, granted

a temporary restraining order against the municipality, finding that the condemnation order was causing Ms. Kleber and her sisters to suffer immediate and irreparable harm. The temporary restraining order prevents the municipality from enforcing the condemnation order, which will allow Hav-a-Home to reopen and continue its operations while the court considers whether a preliminary injunction should be issued against the municipality.

"We are pleased to see the kennel open again after it was abruptly closed by local officials," Mr. Ward said. "This is a third-generation, family-owned dog kennel whose owner has an excellent reputation for the care the kennel has provided to thousands of local families and their pets for decades. Ms. Kleber is continuing to make improvements to the facility, and we look forward to fully vindicating her rights in court."



This matter was the subject of a feature report by News 4 New York.



JON A. WARD



ANDREW M. ROTH



JOSEPH R. BJARNSON



MIRIAM VILLANI REPRESENTS DEVELOPER OF WATERFRONT PROPERTY IN GLEN COVE

The firm is representing the developer of a waterfront property in the City of Glen Cove. The owner of the property plans a mixed-use development. The development is surrounded by federal Superfund sites, and will include commercial uses such as a sports complex, restaurant, hotel and residential use. Miriam Villani, who heads the firm's Environmental Law Practice Group, is providing legal guidance with

respect to environmental issues, including coordinating an investigation into the Superfund site's likely impacts on the property, and potential remediation, with the U.S. Environmental Protection Agency (EPA) and New York State Department of Environmental Conservation (DEC). The firm's Managing Member, Michael Sahn, will be handling the land use approvals to allow the development to go forward.

ELAINE COLAVITO'S "BENCH BRIEFS" PUBLISHED IN *SUFFOLK LAWYER*

Elaine Colavito had her "Bench Briefs" column published in the June 2015 edition of *The Suffolk Lawyer*. "Bench Briefs" is a roundup of recent decisions from Suffolk County trial courts.

VISIT WWW.SWC-LAW.COM TO VIEW THE ARTICLE



NEW TO THE FIRM'S BLOGS:



Draft Revisions to The New York State Hazardous Waste Management Regulations are Open for Public Comment

By Miriam Villani

The New York State Department of Environmental Conservation ("NYSDEC") released a draft of proposed amendments to the Hazardous Waste Management Regulations...

For the full article, visit the Environmental Law blog at www.swc-law.com



Will Solar Plants Deliver On Long Island

By Michael Sahn

Even before the planning, construction and closing of the Shoreham nuclear plant, the debate has gone back and forth on the best way to provide power to Long Island. The latest big deal, so to speak, is the potential for solar power to supply energy needed to...

For the full article, visit the Land Use and Municipal Law blog at www.swc-law.com



Striking a Jury Demand in a Mechanic's Lien Foreclosure Action

By Adam H. Koblenz

Mechanic's lien foreclosure actions are regularly filed by general contractors seeking to simultaneously: (1) obtain equitable relief in the form of a foreclosure on a mechanic's lien filed in connection with construction work...

For the full article, visit the Litigation blog at www.swc-law.com

FOR ADDITIONAL ARTICLES, CHECK OUT OUR BLOGS AT WWW.SWC-LAW.COM

OUT AND ABOUT

SAHN WARD COSCHIGNANO SPONSORS 2015 MARCUM WORKPLACE CHALLENGE

Sahn Ward Coschignano, PLLC was one of the participating sponsors for this year's Marcum Workplace Challenge, which took place July 28 at Jones Beach State Park. A large contingent of the firm took part in the 3.5-mile run/walk.

Nearly 10,000 participants from over 200 local companies were in attendance. Participating organizations included businesses, non-profits and governmental agencies, representing almost every industry in Nassau and Suffolk Counties.

Proceeds went to benefit the Long Island Children's Museum, Long Island Cares — The Harry Chapin Food Bank and the Children's Medical Fund of New York.



The staff and family of Sahn Ward Coschignano, PLLC join together for a photo before taking part in the 2015 Marcum Workplace Challenge. In addition to its participation, the firm was also a sponsor of the event.



Sahn Ward Coschignano employees following the run including Comptroller Brian Sales, Paralegal Cami Negus, and Partners Jason Horowitz and John Christopher. The participants braved one of the hottest days of the year to support local charities.

MICHELE PINCUS JOINS PINK AID LONG ISLAND IN GIVING \$30,000 GRANT TO BROOKHAVEN BREAST CANCER SURVIVORSHIP COALITION AND PARTICIPATES IN MOOT COURT COMPETITION



Pictured (front row, left to right): Diana Mitchnick, Tammy Winter and Michele Pincus. Back row (l-r): Dr. Arlene Sussman, Marilyn Konnerth, Richard T. Margulis, Chris Mitchell, Dr. Melissa Fana and Dr. David Mangiameli.

Michele Pincus, a Partner with the firm and a member of Pink Aid's Grant Committee, recently joined fellow members of Pink Aid Long Island in providing a \$30,000 grant to the Brookhaven Breast Cancer Survivorship Coalition, a service of Brookhaven Memorial Hospital Medical Center in Patchogue, New York.

The grant will be used to fund the emergent needs of uninsured or underinsured Long Island women in treatment for breast cancer, including non-medical expenses, such as meal delivery, wigs, lymphedema compression sleeves, grocery cards and transportation services to and from treatment.

Founded by the Mitchell family, the owners of Marshs in Huntington, Pink Aid helps underserved local women survive breast cancer treatment by providing grants for support programs. Pink Aid provides support to established hospital foundations, national nonprofits and smaller grassroots organizations and covers their non-medical expenses for screenings to women in need. This grant to Brookhaven was one of five grants made this year to local organizations.

Ms. Pincus was also invited to participate as one of the judges in the Annual Moot Court Competition hosted by Plainview-Old Bethpage JFK High School. Twelve high schools across Long Island competed in the daylong tournament.

JOHN CHRISTOPHER IS ADMITTED TO THE U.S. SUPREME COURT DURING NYSBA YOUNG LAWYERS SECTION WASHINGTON, D.C. SUMMER MEETING AND ATTENDS BURTON AWARDS

John Christopher attended the New York State Bar Association (NYSBA), Young Lawyers Section (YLS) Summer Meeting in Washington, D.C. on June 14th and June 15th. The Summer Meeting consisted of the YLS Executive Committee Meeting on June 14th and the YLS Supreme Court Admissions Program on June 15th, during which Mr. Christopher was admitted to the United States Supreme Court. Mr. Christopher is an officer of the YLS and currently holds the position of Treasurer, along with several other Executive Committee positions.

He also attended the Burton Awards for Legal Achievement held at the Library of Congress on June 15.



Pictured are United States Supreme Court Associate Justice Sonia Sotomayor (left) and John Christopher (right), a Partner with the firm. The photo was taken at the Burton Awards for Legal Achievement held at the Library of Congress on June 15, where Mr. Christopher represented the firm.

ADAM KOBLENZ CO-CHAIRS TENNIS EVENT OF CMF'S 40TH ANNUAL GOLF & TENNIS CLASSIC



Adam H. Koblenz was Tennis Co-Chair for the Children's Medical Fund of New York's 40th Annual Golf and Tennis Charity Classic, which was recently held on June 15 at the Glen Oaks Club. He currently serves as one of the vice presidents of the Men's Division. Mr. Koblenz has been involved in the CMF for many years, having also chaired the "Cycle for CMF" event. Children's Medical Fund of New York is a nonprofit

organization dedicated to raising funds for the Steven & Alexandra Cohen Children's Medical Center of New York. Through a wide network of friends, volunteers and deeply committed donors, CMF has raised over \$85 million to help build, equip and secure ongoing funding for programs that are vital to the needs of seriously ill children and their families.

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A T T O R N E Y S A T L A W

SAHN WARD COSCHIGNANO is a full-service law firm concentrating in the areas of zoning and land use planning; real estate law and transactions; civil litigation in state and federal trial and appellate courts; municipal law and legislative practice; environmental law; corporate/business law and commercial transactions; telecommunications law; labor and employment law; real estate tax certiorari and condemnation; estate planning and administration. The firm is committed to providing its clients with the highest-quality legal representation, counsel and advice, and to using our expertise to achieve our clients' goals. The firm has an extensive client base that includes Fortune 500 companies, prominent regional businesses, municipalities, government agencies and authorities, and individuals. Our offices are centrally located to serve our clients on Long Island and in New York City.

**THE FIRM FOCUSES ITS PRACTICE
IN THE FOLLOWING AREAS OF THE LAW:**

- Zoning and Land Use
- New York City Land Use and Development
- Real Estate Law and Transactions
- Litigation and Appeals
- Municipal Law and Legislative Practice
- Environmental Law
- Corporate Practice
- Labor and Employment Practice
- Tax Certiorari and Condemnation Law
- Matrimonial and Family Law
- Estates, Trusts and Elder Law
- Cellular and Telecommunications Law