

# PRESIDENT'S MESSAGE

By

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## New Jersey's hasty push toward Shared Service The Next "Inherently Beneficial"

The Doctrine of Inherently Beneficial Use is a land use reference that has been around since the mid 1960's when civil court judges ruled that certain land uses like schools and hospitals could not be blocked by local zoning ordinances because they "benefited society as a whole". This doctrine has expanded over the years to gradually include other uses deemed to serve "the greater good". During land use litigation in the mid 1990's, that use was further expanded to include Cell Towers. And just in the past few years, the extension of this growing social shield has been proposed in the legislature for uses involving renewable energy like wind and solar.

The general mindset for this seems easy enough to understand. If something has a benefit to "many people" – we can't let a lesser number of people get in the way of it. The problem is, the term "benefit" has never been clearly defined. Is it a measurement of something, an opinion, or a concept? If this term is a measurement, what are the standards employed? When is it apparent to the analyst that the scale has tilted toward benefit? Is benefit uniform among everyone, and is it implied that "everyone" represents the majority?

The understanding of this gets murkier if the term "benefit" is considered more of an opinion or a concept. Endless arrays of questions will inevitably attach themselves to either of these definitions. Unfortunately, for the most part these questions not only go unanswered but unasked, because the term "Inherently Beneficial Use" is largely the creation of an unelected judiciary. As such, we are just given this as an answer, a "guiding principle" that provides the shield to a specific challenge – but without the benefit of ordinary dialogue, Q & A, or the democratic process. General acceptance of things usually follows when communication is not part of the equation. And finally, after acceptance becomes the norm – belief soon follows. At that point, no one even thinks to question things anymore.

Now to be certain, questions were in fact posed long before the "belief" took hold. With regard to the cell tower "issue", in a March 10, 1996 New York Times article covering a cell tower battle in Bernards Township between a phone carrier and an energized public, the author writes:

*"...in the battle over cellular phone towers, the companies hold an important advantage. In a series of lawsuits challenging local denials of permits, state courts have repeatedly overturned municipal zoning decisions on the ground that the towers are "inherently beneficial" to the public.*

*...But critics wonder where the doctrine will stop. What about gas stations, supermarkets, private landfills?*

*...We need to have towers, but municipal officials are very concerned that once an application for something has been categorized as an inherently beneficial use, then nothing else matters, said Assemblyman Richard H. Bagger..."*

In a follow-up article from the League of Municipalities magazine in 1996, Assemblyman Bagger wrote:

*"New Jersey public policy must recognize a balance between the need to provide locations for facilities' of a public or quasi-public nature and the ability of local governments to review the specific location and site plans for these facilities. Unfortunately, the New Jersey courts have tipped the balance in favor of applicants proposing to build a facility considered "inherently beneficial" and against the legitimate desire of local planners to identify the most appropriate sites for particular uses within a community through zoning and address important site plan considerations..."*

The concerns by Mr. Bagger seemed to fall on deaf ears and the "greater good" association in this land use issue became a tag that trumped all concerns in its path. An interesting and continually overlooked characteristic of history is that it keeps repeating itself. And the path of least resistance is often sought by those preparing for a possible confrontation, instead of the path well-traveled.

Shifting forward to today, the NJ Legislature seems to have stumbled upon an already proven formula for success. And who doesn't enjoy success? It's really embarrassingly simple – just simple word association. The conga line of recent legislation that has been introduced over the past year, and continues to be offered-up at a breakneck pace, bears a consistently transparent theme... that being shared service. Taking advantage of the current stagnant state of our economy, politicians have hit upon the clever concept of associating the term "shared service" with that of "inherently beneficial", and essentially making those expressions interchangeable – each meaning and/or supporting the other.

The goal can't be more obvious. Once the public becomes indoctrinated to the idea that "shared service" (the label, not necessarily the product) represents *your best interest*, anything that bares this moniker must of course be for our own good. And the easiest way to connect these dots with the public is to simply imply that whatever is being proposed "will save money".

It reminds me of the currently airing television commercial for the Capital One Credit Card featuring Jimmy Fallon saying at one point "*and who doesn't like cash back*" (referring to how this credit card pays you back a small percentage of your purchases) – before the baby he was talking to throws a fire extinguisher at him, obviously not caring about anything at that age. A funny commercial, playing to an obvious assumption.

Our heavily over-taxed public is hungering for solutions to their financial woes, and politicians have discovered a storehouse of red meat. Long has it been the goal of the State to lesson, if not entirely eliminate, the single most accountable and responsive form of government we have in New Jersey – the LOCAL GOVERNMENT. By tying their personal ambitions of centralizing power into the hands of fewer people, state politicians have discovered that by promoting

something as a “shared service” – they get the immediate benefit of the doubt from the public as to its worthiness. The quantity, quality, and durability of the “alleged savings” figures don’t matter, and are often not even part of any specific discussion on proposed legislation of this sort. The assumption is simply that whatever it is (whatever is being proposed) – **if it’s “shared”, it will cost less for everyone.**

And the evil flip-side to this concept is something that the original political proponents seem quite comfortable going along with – if you oppose legislation that bares the noble crest of “shared service” – you are a monger against the public good and therefore, we can’t take you seriously. The public good is just what it implies – good for the public, PERIOD... END OF DISCUSSION! Opposition to this type of legislation becomes more cloak and dagger, as well-intended legitimate opponents must now carefully measure who might see them in such a hideously defiant light.

It is hard to not draw this conclusion when reviewing some of the most recent beneficiaries to this type of demagoguery. Specifically, Senate 2794 (Shared Services/Consolidation Bill) as originally drafted was seemingly motivated by the best of intentions – to save the taxpayer’s money through the promise of consolidation at the LOCAL LEVEL (not the state, not the county, but yet again... at the local level). While some very good intent is expressed in this Bill, it comes only if you agree with it. The author and sponsors are prepared to use the carrot & stick approach to this legislation, backed by the confidence that the public will be in their corner because of the implied financial benefits of “shared service”.

In S-2794, if a municipality disagrees with the recommendations for consolidation that emanate from an unelected Commission of politically appointed individuals (LUARCC), they suffer the penalty of reduced State Aid. In a June 13, 2011 League of Municipalities Mayor’s newsflash letter, an excerpt spoke specifically to that point:

*“...In other words, the voters would be threatened with the diminishment of future property tax relief funding, if they do not vote in favor of a LUARCC recommendation. We **must oppose any proposal which would**, on the one hand, allow the voters to express their will; but, on the other hand, **inform those voters that they will be punished, if their will does not comport with that of a majority of the appointed members of the LUARCC.**”*

How about that! Not only do we (the legislature supporting this) feel that this would be a good idea for you Mr. John Q Public, but if you happen to not agree with us – we’re going to punish you for it. Wow, this must be some really good idea when it has to be backed by a punitive measure to help you evaluate it..?

I cannot remember ever seeing a Bill of this magnitude that applied to similarly proportionate levels of consolidation at either the County or State Level.

One of New Jersey’s greatest strengths in comparison to most states throughout this nation is the ultra-high-level of citizen involvement in the decision making process that governs it. The dominate degree of governmental services that affect the daily lives of NJ citizens is the result of decisions made at the local level. These involve basic services covering roads and transportation, parks and recreation, garbage and sanitation, educational facilities and programs, personal and

property protection through fire, police, and first aid responders, civic programs catering to various groups representative of the local population, community preservation and enhancement through planning and zoning regulations and participation, health and safety monitoring, etc., etc.

Liberal access by the public to directly influence all of these component parts to their “bundle of rights” of community citizenship has helped shape the unique character of each of its 565 (+/-) municipal jurisdictions. This character becomes an identity, and that identity has translated into New Jersey being one of the wealthiest states in the country, in terms of both property value and income. Of course in any system that promotes individuality – there are going to be “perceived” winners and losers. The beauty of a system like this however is that at any given point – the citizens through their own actions and decisions can have a direct hand in helping to change their own status.

The typical slogan oft heard at election time is that “every vote counts”. This is certainly true. Along a similar line, what is most overlooked by critics of NJ’s local governance structure is that with regard to its citizenry – **every voice counts** – every time it’s uttered! On any given work day, and sometimes even at nights and on the weekend, any individual citizen can call their local town hall or stop in to demand an audience with the manager/administrator that runs the municipality – or any of the subordinate department heads – and voice their concerns over an issue. They can alternately attend any number of various committee or governing body meetings always open to the public and almost certainly be guaranteed an opportunity to speak. These meeting opportunities take place dozens of times in towns throughout the state each and every day. Often, if it is within the capability of the official at hand, the residents’ concerns are immediately addressed, or alternately an action plan is put in place to address them when appropriate. That is exactly the highest form of representation anyone would hope to achieve from their government, and for that it would seem taxpayer dollars are being used most prudently.

This simply does not, and CAN NOT happen at higher levels of government, primarily from a pure logistical standpoint – covering both the citizen who might not easily be able to travel any great distance to arrive at the central government’s headquarters to conduct business, or the central government itself who simply cannot handle the potential volume of inquiries from such a large constituency on a moment’s notice. What this type of governance produces is a sense of general apathy among its overall base, and limited targeted efforts at representation through lobbyists that only serve a small motivated and financially elite demographic or professional membership. Very seldom does something good emanate from this type of system – for if it had, why does it always need to keep reinventing itself? The fact is, it’s not reinventing itself – it’s still INVENTING ITSELF.

At the end of the day, the simplest way to quash individual voices you don’t want to hear is not to turn down the volume (as is the process in Totalitarian regimes), but to more cleverly TURN UP the volume. Make the pool of voices so large that once everyone starts speaking – it becomes like white noise with no one voice capable of being heard above din of the crowd. Under that scenario, it appears that democracy is working at its finest, for everyone is having a voice. The only problem is that no one can hear it – which appears to be the intention all along. Government at that level just nods it’s head like it hears and understands you (much like a parent smiles and nods

as they listen to their baby utter gibberish) – but continues to move along its own path of intent believing that their individual actions are inherently beneficial to all.

In conclusion, I still look back to the concerns expressed in that 1996 Times article. Where will the doctrine stop? The concern back then was who really knows better the unique characteristics and intricacies of their municipality than the local land use board of volunteer citizens running it? It was certainly not the Court! On a similar comparison today – who better understands the immediate needs of the public than the local government that serves them? It is certainly not the State! If the politicians doubt this – they should just ask someone from their immediate constituency sometime... instead of just nodding.