SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4379-14T1

IN THE MATTER OF THE SADC RESOLUTION FY2015R12(2).

Argued April 5, 2017 – Decided May 16, 2017

Before Judges Alvarez, Manahan, and Lisa.

On appeal from the resolution by the New Jersey State Agriculture Development Committee, Resolution No. FY2015R12(2).

Daniel L. Schmutter argued the cause for appellants Max Henry Riewerts and Diane Tribble Riewerts (Hartman & Winnicki, P.C., attorneys; Mr. Schmutter, on the briefs).

Jason Thomas Stypinski, Deputy Attorney General, argued the cause for respondent State Agriculture Development Committee (Christopher S. Porrino, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Mr. Stypinski, on the brief).

PER CURIAM

Since 2012, appellants Max Henry Riewerts and Diane Tribble Riewerts have been attempting to obtain the necessary approvals, municipal and state, in order to relocate a right-of-way (ROW) in which they have an interest by recorded easement deed. After the

initial denial by the agency director of the State Agriculture Development Committee (SADC or Committee) on October 26, 2012, appellants sought formal approval from the Committee. The Committee denied them permission to reconfigure and move the ROW,[1] which decision was memorialized in Resolution FY2015R12(2). Their request was finally denied on December 11, 2014, and on February 26, 2015, by resolution, FY2015R12(5), SADC denied their request for reconsideration. This appeal followed.

Appellants contend the record supports outright reversal. They assert that the decision was based on SADC staff net opinions that resulted in arbitrary, unreasonable, and capricious action by the agency. The SADC argues to the contrary, that its decision was based on a proper assessment of facts and law, and should be affirmed.

The record consists of transcripts of appellants' presentation, made during multiple appearances before the Committee, as well as exhibits such as the easement deeds. After our consideration of the record and the relevant law, we conclude that it does not allow for meaningful review. Since no formal hearing was conducted affording the parties the opportunity to

[1] This denial was actually sent to the owner of the servient property over which the easement crosses and forwarded to appellants on December 17, 2012.

fully explore the legal and factual issues, we now vacate the denial and remand the matter for that purpose.

By way of background, in March 2009, appellants acquired a fifty-six-acre parcel known as Greenwich Township Block 44, Lot 24. They reside on the property and lease a portion of the landlocked parcel for farming purposes. Access to the nearest public road is over a ROW created in 1951 by recorded easement deed. It does not include a metes and bounds description, rather it describes the location as follows:

> There is conveyed to second party a right of way over an existing roadway leading from the Bloomsbury-Warren Glen Road through the property of first party to the property hereinabove conveyed consisting of approximately fifteen feet in width.

On July 23, 2010, after appellants acquired their tract, the then owner of the adjoining lot, over which the easement extends, Block 44, Lot 5, conveyed by deed of easement to the State of New Jersey, and the United States, all non-agricultural development rights to that tract. The parcel is similar in size to appellants' property. This conveyance was made under the Agricultural Retention and Development Act (ARDA), N.J.S.A. 4:1C-11 to -48. ARDA authorized the SADC, an agency created under the Right to Farm Act, N.J.S.A. 4:1C-1 to -10, to enter into agreements with farmland owners for the acquisition of development rights in order

to keep land in agricultural production. N.J.S.A. 4:1C-15 to -21.

The deed further states that the United States, "acting through the United States Department of Agriculture, Natural Resources Conservation Service (NRCS)" funded the purchase. The funds for the acquisition were allocated to the Warren County Board of Chosen Freeholders by the Board of Trustees of the New Jersey Conservation Foundation for that purpose.

Attached to the 2010 farm preservation easement deed is a schedule including a metes and bounds description of the property and the following language: "Subject to a Right of Way for access to Block 44 Lot 24 containing 0.423 acres. Said Right of Way being approximately 15-feet wide as recited in Deed Book 351 page 139, Deed Book 373 page 273 and Deed Book 421 page 490." The deed further discloses an ROW belonging to Lot 5 over appellants' lot, "for Certain Water Rights benefitting Block 44 Lot 5." The ROW over Lot 24 was memorialized years prior in a recorded deed.

Lot 5 is currently owned by Robert Santini. Although he supports appellants' proposal, he did not make the application himself nor was he involved in any presentation to the SADC. Committee members, for reasons not stated on the record, suggested he should have been involved in the application.

Despite the existence of the two recorded deeds regarding ROWs having been described in the farmland deed, it appears no notice of the conveyance of development rights was provided to appellants. They were unaware of the change in Lot 5's status until they approached the municipality to obtain the necessary approvals or permits to reconfigure their ROW.

Appellants' ROW includes two ninety-degree turns around a railroad embankment on the southerly end of the driveway, which are difficult to negotiate with farm equipment. They contend that in addition, the ROW is impacted by runoff from the County road and from Lot 5, as well as flooding and erosion.

Appellants submitted an engineer's report and sketch in support of their proposed alternative ROW, basically a straight line drawn from the County road across Lot 5 to their lot on the southerly end. The local fire chief wrote a letter that appellants presented to the SADC, confirming that a fire truck would have difficulty negotiating the two ninety-degree turns to reach Lot 24 from the County road. Appellants represented that entry onto the County road from Lot 24 is dangerous in the summer, when corn grown on Lot 5 attains its full height, as visibility becomes virtually non-existent.

Appellants' proposed reconfiguration, identified by all parties as Alternative 1, placed the entry point on the County

road further to the east at an angle with the road. Throughout the meetings, the Committee acknowledged that appellants' safety concerns were legitimate. No formal expert report or testimony was presented other than appellants' engineering report and plan depicting Alternative 1.

The SADC staff rejected Alternative 1 and came up with their own proposal, known as Alternative 2. The Committee followed the "staff recommendations" included in their meeting packets. They are not included in the appendices on appeal, and we cannot discern if appellants had access to them during their several appearances before the Committee. Alternative 2 essentially tracked the present driveway, except it somewhat eased the turns at the end of the ROW.

Based on SADC staff recommendations, the NRCS in writing also rejected Alternative 1 but consented to Alternative 2. When appellants realized they had not been given a copy of that letter, one was provided, and they were invited to present any new information at the next meeting. Because in the opinion of the SADC, appellants did not provide any new information in response to the NRCS letter, the application was again rejected.

A consequential and disputed point was the issue of whether the reconfiguration of the ROW would result in the loss of farmland. Appellants contended that removal of the blacktop

extending over the present ROW, and remediation of the soil beneath, would lead to its eventual reclamation for farmland purposes. Appellants pointed out that, based on materials posted on a government internet website, such reclamation of impacted soil could occur within one to two years of the removal of the asphalt after deep plowing.

The SADC took the position that Alternative 1 would result in the loss of farmland both because of the additional ground consumed by a new ROW, and the nonarable area that would be left by the removal of the blacktop extending over the old ROW. Appellants unsuccessfully argued that the change would lead to more, not less, available farmland since they contended that Alternative 1 actually covered slightly less square footage than the present ROW, and the land beneath the ROW blacktop could be remediated for agricultural purposes.

The resolution contained the following findings:

> 1. The proposal does not constitute an agricultural use or serve an agricultural purpose but [] instead constitutes development of the [p]remises for the nonagricultural purpose of improved access to an adjacent residential property; []
> 2. The purpose would be detrimental to drainage, flood control, erosion control, and soil conservation as a result of steeper slopes and the potential for more runoff and erosion; []
> 3. The proposal, as described in the [e]ngineering [r]port and [addendum], would be

> detrimental to the continued agricultural use of the [p]remises by taking more prime farmland out of production than the existing [ROW,] . . . additional land will be removed from crop production[,] . . . [the proposal] will reduce the size of the fields, increase field edge and attendant crop loss to wildlife; []
> 4. [The addendum's] design . . . would require easements of 45 feet in width where the current roadway total 15 feet in width . . .; []
> 5. Conveyance of an additional easement greater than the existing 15 foot wide easement . . . would be a violation of the Deed of Easement; and
> 6. As described in the November 17, 2014, letter from the NRCS, . . . [alternative] 1 is in conflict with [the] Deed of Easement . . . and therefore the request is denied by that agency.

Additionally, Alternative 2 was approved for the following reasons:

> 1. The proposal constitutes an agricultural use and serves agricultural and conservation purposes by addressing existing drainage, erosion control, and soil conservation . . . . Specifically, drainage and erosion control concerns . . . could be addressed in the triangle of land between the old alignment and the new alignment through the installation of various NRCS conservation practices . . . ; []
> 2. The proposal reduces impervious cover . . . and does not impact any prime farmland; and
> 3. The proposal is not in conflict [with any] Deed of Easement restrictions inherent to farms preserved with funding from NRCS through [Farms and Ranch Lands Protection Program] as confirmed by the NRCS on November 17, 2014 . . . .

On appeal, appellants raise the following points of error:

> ALL OF THE EVIDENCE IN THE RECORD SUPPORTS APPELLANTS' APPLICATION, AND THUS THE DECISION BELOW SHOULD BE REVERSED WITH DIRECTIONS TO ENTER A DECISION GRANTING THE APPLICATION.
>
> > A. SADC's Determination was Arbitrary and Capricious and not Supported by Substantial Credible Evidence.
> >
> > B. This Court Has Authority to Provide Relief as to the Driveway Easement.

Appellate courts have a "limited role" in reviewing administrative agency decisions. In re Stallworth, 208 N.J. 182, 194 (2011). An agency's judgment may only be reversed if it was "arbitrary, capricious, [] unreasonable, or [] not supported by substantial credible evidence in the record as a whole." Ibid. (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). Moreover, "courts typically defer to the expertise of agencies in technical matters which lie within their special competence" and "give deference to agencies' construction of the statutory schemes they are entrusted to administer." Pasquince v. Brighton Arms Apartments, 378 N.J. Super. 588, 597 (App. Div. 2005) (citations omitted).

In order to review such decisions, however, in light of the deference ordinarily accorded to an agency, we must be presented with an adequate record. See Stevens v. Bd. of Trs., 294 N.J. Super. 643, 655 (App. Div. 1996) (citation omitted) ("When an

administrative agency's decision is not accompanied by the requisite findings of fact and conclusions of law, the usual remedy is to remand the matter to the agency to correct this deficiency.").

The record does not support appellants' position that a reversal of the agency decision is warranted. We lack important information necessary to fairly accomplish our deferential review. Appellants had no opportunity to present evidence except very informally, nor were they able to cross-examine SADC staff. We do not have the reports the Committee relied upon, nor the credentials and areas of expertise of the SADC personnel whose recommendations and opinions appear to have been adopted. Thus we cannot determine whether SADC's exercise of discretion in rejecting appellants' engineer's report was reasonable.

It is undisputed that "[d]ue process does not always require an administrative agency to hold an evidentiary hearing before it goes about the business it was created to conduct." In re Request for Solid Waste Util. Customer Lists, 106 N.J. 508, 520 (1987). This is because "[t]he power to supervise and investigate a regulated industry could be undermined if a regulator were required to provide the industry with the right to produce witnesses and cross-examine staff members before the agency could act." Id. at 520-21. "Sometimes nothing more is required than notice and the

opportunity to present reasons, either orally or in writing, why the proposed action should not be taken." Id. at 521.

In High Horizon Development Co. v. Department of Transportation, 120 N.J. 40, 42 (1990), the Court addressed the question of when administrative agencies were required to conduct trial-type hearings. The key issue is "whether the agency is acting in a judicial or quasi-judicial capacity or in a legislative capacity." Id. at 50.

> If the [agency] is exercising "policy or discretion" with respect to [the issues], a clear requirement for a trial-type hearing is not present. On the other hand, if the questions turn on expert opinion relied on by the agency, one must be able in some way to contest the bases of the opinion.
>
> [Id. at 51.]

Additionally, trial-type hearings may be required when the agency must resolve factual issues. Ibid. Because in this case the SADC was acting upon an application brought by a third party significantly affecting that party's rights, it was acting in a "judicial or quasi-judicial capacity[.]" See id. at 50.

In this case, the agency made some assumptions regarding the law in rendering their decision, such as that the failure to notify appellants of the farm preservation deed was legally inconsequential. Similarly, the Committee assumed Lot 5's change in use, which precludes appellants from modifying their pre-

existing ROW, was not compensable. The Committee also assumed appellants can be bound by the conditions limiting the use of Lot 5 when they never agreed to those restrictions. These assumptions may all be correct, and we express no opinion regarding them, but they warrant some consideration by the Committee.

Additionally, Alternative 2 did not significantly modify the ROW. From the record available to us, safety and other concerns were unaffected. A more complete exploration of potential consequences such as runoff, soil erosion, and the restoration of land for agricultural purposes is necessary. The questions "turn[ed] on expert opinion relied on by the agency," and without a hearing, appellants, third parties previously unconnected to the SADC, could not have successfully "contest[ed] the bases of the opinion." See id. at 51.

Paragraphs 2, 4, and 5 purport to make factual findings regarding conditions such as flood control, the width of the proposed roadway as opposed to the current roadway, and changes to the width of the easement, which were in stark contrast to the information appellants presented, or were not in the record provided on appeal. Paragraph 3 of the Resolution indicates that Alternative 1 would decrease the amount of prime farmland available for production, while appellants argued that the agricultural use of both properties would be enhanced by the reclamation of the

present ROW and improvement of drainage, flood control, erosion conditions, and soil conservation resulting from Alternative 1. We do not have a basis for passing on the reasonableness of those conclusions. Finally, although the NRCS denied the application, a factor the SADC took into consideration, that refusal appears to be solely in response to communications from the SADC.

Thus, a remand is necessary because the record does not allow for fair review, appellants were not afforded the process due them, and significant legal and factual questions were not addressed by the proceedings before the resolution was adopted. The denial of appellants' application is therefore vacated, and the matter remanded for hearing. We do not retain jurisdiction.

Remanded for a hearing.