SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2608-16T1

MONICA and RICK LARUE,

Petitioners,

v.

MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD,

Respondent-Appellant.

Submitted February 7, 2018 – Decided April 16, 2018

Before Judges Alvarez and Currier.

On appeal from the State Agricultural Development Committee, Docket No. SADC 1375.

Beekman Law Firm, LLC, attorneys for appellant (Christopher L. Beekman, Assistant County Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent State Agriculture Development Committee (Jason W. Rockwell, Assistant Attorney General, of counsel; Jason T. Stypinski, Deputy Attorney General, on the brief).

PER CURIAM

In this appeal, petitioners Monica and Rick LaRue submitted a Site Specific Agricultural Management Practice (SSAMP) application to appellant Monmouth County Agricultural Development Board (MCADB). Pertinent to this appeal was petitioners' request for approval of a farm work area location under the Right to Farm Act (RTFA), N.J.S.A. 4:1C-1 to -10.4, despite its violation of a municipal setback ordinance.

The MCADB found that the farm work area was not entitled to RTFA protection and issued a resolution to that effect. On appeal, the State Agriculture Development Committee (SADC) overturned that ruling in a December 11, 2016 final decision, concluding that the RTFA protected the farm work area location. After a review of the contentions in light of the record and applicable legal principles, we affirm.

Petitioners own and operate a commercial farm consisting of 24.09 acres located in a "Rural Agricultural" zone. On February 20, 2014,[1] petitioners submitted a revised SSAMP application to MCADB, seeking RTFA protection for a number of activities, including the location of an equipment storage and trailer parking

[1] Petitioners had submitted an initial SSAMP application in January 2012. The first SSAMP application is not at issue in this appeal.

area (the farm work area), which violated the municipality's ten-foot side yard setback requirement.[2]

After several hearings on the application, MCADB adopted four resolutions pertaining to petitioners' application.[3] With regard to the farm work area location, MCADB adopted Resolution No. 2014-06-02, finding that the farm work area was not entitled to RTFA protection because petitioners failed to show that an "agricultural hardship" existed and, therefore, the farm work area must comply with the municipal ten-foot side yard setback requirement.

Petitioners appealed from the resolutions and the matter was transferred to the Office of Administrative Law. Following a hearing, an Administrative Law Judge (ALJ) issued an initial decision on August 22, 2016, concluding that MCADB's "decision that petitioners were not entitled to relief from the setback requirement was appropriate." Petitioners submitted exceptions to the ALJ's initial decision.

After exceptions to the ALJ's initial decision were filed, the SADC issued a final decision on the matter on December 1,

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[2] The revised SSAMP application also sought RTFA protection for six other activities that are not the subject of this appeal.

[3] Only the resolution regarding the farm work area and setback requirement is at issue on appeal.

2016. The SADC concurred with the MCADB and ALJ that the proper storage of vehicles and equipment for farming operations was a generally accepted agricultural management practice. However, it determined that the ALJ and MCADB had applied the wrong standard when determining when an accepted agricultural management practice may preempt a local ordinance. Petitioners did not have to show an agricultural hardship to receive the protection of RTFA, but instead needed to "demonstrate a legitimate, farm-based reason for not complying with the local law."

The SADC balanced the "legitimate, farm-based interest [presented by petitioners] against the public interest in the side yard setback requirement" and concluded that the farm work area was entitled to RTFA protection. The SADC, therefore, granted petitioners' request for RTFA protection of the location of the farm work area. On appeal, MCADB argues that the SADC erred in granting RTFA protection to the location of the farm work area.

We are mindful that our review of administrative agency decisions is limited. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). We will not disturb an agency's action unless it was clearly "arbitrary, capricious, or unreasonable." Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). As the reviewing court, we "may not substitute [our] own judgment for the agency's, even though [we] might have reached a different

result." In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 483 (2007)). We do, however, review an agency's interpretation of a statute or case law de novo. Russo, 206 N.J. at 27.

Applying our highly deferential standard of review, we conclude that there is substantial credible evidence in the record to support the SADC's finding that the farm work area was eligible for RTFA protection. We affirm.

The RTFA "represents a legislative determination 'to promote, to the greatest extent practicable and feasible, the continuation of agriculture in the State of New Jersey while recognizing the potential conflicts among all lawful activities in the State.'" Twp. of Franklin v. Hollander, 338 N.J. Super. 373, 383 (App. Div. 2001) (quoting L. 1983, c. 31) aff'd, 172 N.J. 147 (2002). In order to assure "the State's regulatory action with respect to agricultural activities" was "undertaken with a more complete understanding of the needs and difficulties of agriculture," the Act established the SADC within, but independent of, the Department of Agriculture. N.J.S.A. 4:1C-4(a). To effectuate this express purpose, the provisions of the RTFA are paramount to "any municipal or county ordinance, resolution, or regulation to the contrary." N.J.S.A. 4:1C-9; see also Borough of Closter v. Abram Demaree Homestead, Inc., 365 N.J. Super. 338, 347 (App. Div. 2004).

Our Supreme Court has recognized that the RTFA implicates "the relationship between commercial farming activities . . . and the right of municipalities to enforce local zoning and land use ordinances enacted pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -129." Twp. of Franklin v. Hollander, 172 N.J. 147, 149 (2002). In doing so, the Court also held that the RTFA "preempts municipal land use authority over commercial farms." Ibid.

Under Hollander, when an applicant seeks RTFA protection, the reviewing board must engage in a two-part inquiry. Id. at 152. First, the board must determine "whether an agricultural management practice is at issue." Ibid. Second, the board must "consider relevant municipal standards in rendering its ultimate decision." Ibid. (quoting Hollander, 338 N.J. Super. at 393). This "fact-sensitive inquiry" requires a careful balancing of "the interests of farmers, . . . 'the extent of [the] use [of agricultural management practices] and . . . the limitations imposed on such uses by a municipality.'" Id. at 153 (quoting Hollander, 338 N.J. Super. at 392).

In reviewing petitioners' revised SSAMP application, the MCADB interpreted Hollander to require petitioners to demonstrate an "agricultural hardship" for RTFA protections. However, Hollander does not require the showing of a "hardship"; it requires

only "a legitimate, agriculturally-based reason" for the agricultural management practice at issue. 172 N.J. at 153.

The SADC noted that the MCADB and ALJ had applied the wrong standard, and the SADC appropriately followed the guidelines stated in Hollander. The SADC found, first, "that proper storage of vehicles and equipment for farming operations is a generally accepted agricultural management practice." The SADC next balanced petitioners' interests against the public interest in enforcing the municipal setback requirement. Petitioners' reasons for non-compliance with the setback requirement were that the farm

> lacks sufficient flat terrain outside of the 10' setback area and that the farm equipment storage and trailer parking area needs to remain at the current location in order to have . . . a 'significant turning radius' without having to move farm equipment. The public interest in [enforcing] the setback requirement . . . was the importance of providing a buffer between neighboring properties and farms.

Considering these interests, the topographic constraints of the farm, and the fact that the only structures on the abutting property were "approximately 1,000 feet southeast of the . . . farm work area," the SADC reasoned that "it appears that the activities occurring in the farm work area would have minimal, if any, impact on the neighboring property." The SADC also noted, as did the MCADB, that there were no complaints against petitioners

from neighbors regarding the placement of the farm work area.[4] The SADC reasoned that this "lack of complaints . . . further evidences that farm work area activities have had no or insubstantial adverse impacts on public and private interests." As such, the SADC concluded that, on balance, "the trailer parking and farm equipment storage in the farm work area may receive RTFA protection."

Having reviewed the record on appeal, we are satisfied that the SADC applied the proper standard under Hollander and sufficiently balanced petitioners' interests against the public interests in concluding that the farm work area was eligible for RTFA protection. We are also satisfied that the MCADB failed to demonstrate that the SADC's conclusions were arbitrary, capricious, or unreasonable, or unsupported by the substantial credible evidence in the record. Accordingly, there is no basis to disturb the SADC's decision.

Affirmed.

[4] In the testimony presented at the OAL hearing, there was a vague reference to a neighbor who had complained about the proximity of the farm work area location at the MCADB hearing. The neighbor did not appear before the OAL and petitioners advised that the neighbor had since moved. There was no specific information presented as to the nature of the complaints.