

EDU #06492-99S
C # 328-02
SB # 37-02

TOWNSHIP OF EASTAMPTON :
AND EASTAMPTON TOWNSHIP :
PLANNING BOARD, :

PETITIONERS-RESPONDENTS, :

V. :

STATE BOARD OF EDUCATION

BOARD OF EDUCATION OF RANCOCAS :
VALLEY REGIONAL HIGH SCHOOL, :
BURLINGTON COUNTY, :

DECISION

RESPONDENT-APPELLANT, :

AND :

NEW JERSEY STATE DEPARTMENT OF :
EDUCATION, DIVISION OF FINANCE, :
OFFICE OF SCHOOL FACILITIES :
FINANCING, :

RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, August 29, 2002

For the Petitioners-Respondents, Kenneth S. Domzalski, Esq.

For the Respondent-Appellant, Parker, McCay & Criscuolo (Sandra G.
Zeidman, Esq., of Counsel)

For the Respondent-Respondent, Allison Colsey Eck, Deputy Attorney
General (David Samson, Attorney General of New Jersey)

In July 1999, the Township of Eastampton and the Eastampton Township
Planning Board (hereinafter "petitioners") filed a petition of appeal with the

Commissioner of Education challenging the approval by the Department of Education's Bureau of Facility Planning Services of a plan by the Board of Education of the Rancocas Valley Regional High School (hereinafter "Board") to construct athletic fields on a site known as the DAC Farm in Eastampton Township.

On May 31, 2002, an Administrative Law Judge ("ALJ") recommended remanding the matter to the Office of School Facilities Financing "for the issuance of a decision containing a legally sufficient articulation and explanation of its findings as to the material facts and conclusions of law." Initial Decision, slip op. at 7. On August 29, 2002, the Commissioner rejected the ALJ's recommendation, concluding that the approval at issue had expired. He therefore dismissed the petition as moot without prejudice to the Board filing a new application to acquire the property. The Commissioner concluded that:

N.J.A.C. 6:22-2.1, which governed Department of Education approval of acquisition of land at the time the Board obtained the approval at issue herein, limited such approvals to eighteen months duration, and N.J.A.C. 6A:26-7.1, which now governs same, limits the duration of such determinations to three years. Pursuant to either regulation, the approval at issue has expired, thus rendering the matter moot. Therefore, the Board of Education must file a new application in accordance with N.J.A.C. 6A:26-7.1 if it wishes to acquire the land at issue."

Commissioner's Decision, slip op. at 10-11.

The Board filed the instant appeal to the State Board from that portion of the Commissioner's decision "which dismisses the petition in this matter as a result of its findings that the approval obtained by the Board has expired." Notice of Appeal, at 1. The Board subsequently filed a Motion to Correct and/or Supplement the Record pursuant to N.J.A.C. 6A:4-1.9 with proof that it had complied with the pertinent

regulation by acquiring the DAC site within 18 months of the approval issued by the Bureau of Facility Planning Services. The Deputy Attorney General representing the Department of Education opposed the motion and filed a motion to remand this matter to the Commissioner so that he could develop a thorough record and reconsider his decision in light of all pertinent facts.

On November 15, 2002, the petitioners and the Board submitted a Stipulation of Settlement in which they agreed that the Board could construct the athletic fields in accordance with the approved plans. They further agreed that, “in light of the Commissioner’s decision raising an issue as to the continued validity of the approval, the Board will not dismiss its appeal with the State Board, but will continue with the appeal in an attempt to clarify that the approval issued by the Bureau of Facility Planning Services has not expired.” Stipulation of Settlement, at 2.

Initially, we approve the proposed settlement of this matter, finding it to be in accord with the principles expressed in In re Cardonick, decided by the State Board of Education, April 6, 1983. Although our approval of the settlement disposes of the petitioners’ challenge to the Board’s plan to construct athletic fields on the DAC site, it does not dispose of the issue, first addressed in the Commissioner’s decision, of whether the approval of that plan by the Bureau of Facility Planning Services has expired, an issue which the parties expressly excluded from their Stipulation of Settlement. Consequently, before the Board can proceed with its planned construction, it is necessary to resolve whether the approval is still valid.

We turn therefore to the Board’s motion to supplement the record with documents related to its acquisition of the DAC Farm property. Upon review of the

papers filed, we find that the proposed exhibits are material to the remaining issue on appeal, i.e., whether the approval granted to the Board by the Bureau of Facility Planning Services is still valid. We therefore grant the Board's motion. N.J.A.C. 6A:4-1.9(b). We also grant the Department's motion to remand this matter to the Commissioner, agreeing that the Commissioner should be given the opportunity to reconsider this issue on the basis of all pertinent evidence. Accordingly, we remand this matter to the Commissioner for such proceedings as are necessary in order to determine whether the approval granted to the Board is still valid.

Samuel J. Podietz recused himself from the deliberations.

January 8, 2003

Date of mailing _____