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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1253-08T2

TOWNSHIP OF BETHLEHEM,

Appellant,

v.

STATE OF NEW JERSEY, STATE AGRICULTURE DEVELOPMENT COMMITTEE,

Respondent.

IN RE: ENNIS FARM DEVELOPMENT
EASEMENT BLOCK 44, LOTS 22 and 22.03.

Submitted December 1, 2009 - Decided March 15, 2010

Before Judges Wefing, Messano and LeWinn.

On appeal from the Final Decision of the State Agriculture Development Committee.

Hoagland, Longo, Moran, Dunst & Doukas, LLP, attorneys for appellant (Robert G. Kenny, of counsel; Olivia F. Cleaver, on the brief).

Anne Milgram, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; William A. Schnurr, Deputy Attorney General, on the brief).

PER CURIAM

The Township of Bethlehem (the Township) appeals from the State Agriculture Development Committee's (the SADC) denial of

the Township's application for funds to defray costs incurred in acquiring certain real property, commonly known as the Ennis Farm (the property), with the intention to preserve a portion as farmland. The Township contends that the SADC's decision was arbitrary, capricious and unreasonable; it also argues that the SADC should be equitably estopped from denying the funds.

We have considered the arguments raised in light of the record and applicable legal standards. We affirm.

I.

In October 1999, the owner of the property, Adolphus Busch, notified the Township of his desire to sell the development rights to the property to the Township in conjunction with its application to the SADC for a Planning Incentive Grant (PIG) under the State Agriculture Retention and Development Act (ARDA), N.J.S.A. 4C:1-11 to -48. The Township submitted its application on November 1, 1999. The application anticipated that a portion of the total acreage, approximately three acres, would be excluded from the preservation easement as an "exception area," upon which the existing farmhouse would remain and residential use would be permitted.

The SADC granted preliminary approval to the application on January 27, 2000. Pursuant to PIG program regulations, the property was appraised by two independent appraisers with the

fair market value of the easement determined to be between $5800 and $6900 per acre. Those appraisals were reviewed by the SADC staff, which, on April 26, 2001, certified the "development easement value" as of September 1, 2000 to be "$6,000/acre."

Several weeks earlier, however, on April 5, 2001, the Township engaged in a series of transactions with the property's then-current owners, Troy and Kirsten Ennis.[1] First, the Ennises conveyed the entire property to the Township in fee simple for $902,000, part of the purchase price being the Township's assumption of $295,000 of existing mortgages. On the same day, the Township transferred a portion of the property back to the Ennises, who paid the purchase price by re-assuming the mortgages. As a result, the Township acquired the development easement area for a net price of $607,000, or $7200.50 per acre. On December 18, 2002, the SADC granted final approval to the Township's PIG application.

However, because the Township's acquisition of the property resulted in two separate exception areas of one and two acres each, as opposed to a single parcel of three acres, the Township submitted an amended PIG application. Revised appraisals valued the development easement as between $5800 and $6500 per acre.

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[1] Kirsten Ennis is the daughter of Adolphus Busch.

On January 26, 2006, the SADC re-certified the value to be $5800 per acre.

It is apparent from the record that the SADC questioned the manner in which the Township had structured the acquisition of the easement rights. An e-mail in February 2006 from the SADC to the Township's attorney raised a concern "that IF the Township only purchased the easement . . .[,] then they (sic) paid higher than the highest appraised value for the easement (per acre). In such cases the SADC is prohibited from cost sharing on the reimbursement for the easement." The Township's attorney responded

> From what we have been able to reconstruct in discussions with the folks who were around at the time of the purchase, the Twp[.] Committee knew they [sic] were paying a premium for the property above the certified value and they [sic] knew the Twp[.] would have to eat the difference between the certified value and the purchase price. So they [sic] were only expecting reimbursement [sic] based on the certified value.

The Township provided a title insurance commitment to the SADC; this reflected the superior liens of several mortgages that were not extinguished when the property was acquired in 2001. In January 2007, the SADC notified the Township that it would not provide a PIG grant to defray the acquisition costs of the property. The SADC advised the Township that it could

submit a new application, but noted existing deficiencies that included the prior mortgage liens still encumbering the property, the lack of any municipal resolution authorizing the purchase and subsequent sale of the exception areas to the Ennises, and the need for new appraisals. The SADC also advised the Township that it could apply, pursuant to other programs, for the direct sale of the easement to the SADC.

The Township did not submit a new application. On July 2, 2007, the SADC adopted new rules regarding PIG grants and its direct acquisition program. It is apparently undisputed that pursuant to the new rules, the property fails to meet the minimum requirements for tillable acreage, thus making it ineligible for any grant from the SADC.

On October 17, 2008, the Executive Director of the SADC, Susan E. Craft, notified the Township's attorney that it would not provide a grant "from any SADC-funded program . . . ." Craft reiterated the problems inherent in the Township's acquisition of the property, "including the . . . failure to adopt enabling ordinances, . . . and the existence of four unsubordinated mortgages . . . ." Craft continued, "However, the most important issue was the SADC's inability to cost share on the easement purchase because the township paid higher than the highest appraised easement value." Craft noted that the

adoption of new regulations made the property ineligible for any funding from SADC, concluding the agency was "unable to financially participate in th[e] transaction." The Township's appeal followed.

II.

The Township contends that SADC's decision not to provide funds to defray the property's acquisition costs was arbitrary, capricious and unreasonable because 1) it qualified for the funding and only sought cost-sharing up to the appraised value of the property; 2) the SADC misconstrued its own regulations; and 3) the denial "goes against the legislative intent of the [PIG] program." We find none of the arguments persuasive.

We first note that our review of final agency action is quite limited. In re Taylor, 158 N.J. 644, 656 (1999).

> Three channels of inquiry inform the appellate review function: "(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors."
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> [In re Herrmann, 192 N.J. 19, 28 (2007) (quoting Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1993)).]

"When an agency's decision meets those criteria, then a court owes substantial deference to the agency's expertise and superior knowledge of a particular field." Herrmann, supra, 192 N.J. at 28. Moreover, we "afford substantial deference to an agency's interpretation of a statute that the agency is charged with enforcing[,]" though we are "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." Richardson v. Bd. of Trs., 192 N.J. 189, 196 (2007) (citations and quotations omitted).

There is no factual dispute in this case. The Township admits that in order to obtain the easement rights to the property, it paid more per acre than the highest appraised value. Our review, therefore, is purely a legal one.

The Legislature enacted ARDA to "strengthen[] . . . the agricultural industry and . . . preserv[e] . . . farmland . . . ." N.J.S.A. 4:1C-12(a). To accomplish this goal, the Legislature found it "necessary to authorize the establishment of State and county organizations to coordinate the development of farmland preservation programs within identified areas where . . . certain financial, administrative and regulatory benefits w[ould] be made available to those landowners who ch[ose] to participate . . . ." N.J.S.A. 4:1C-12(c). "The SADC was established by the Right to Farm Act, N.J.S.A. 4:1C-1 to -10,

which was enacted at the same time as the ARDA, . . . and share[s] the same purpose to protect and encourage agriculture." Twp. of S. Brunswick v. State Agric. Dev. Comm'n, 352 N.J. Super. 361, 365 (App. Div. 2002) (citing N.J.S.A. 4:1C-2 and -12).

The SADC was created so "that the State's regulatory action with respect to agricultural activities may be undertaken with a more complete understanding of the needs and difficulties of agriculture . . . ." N.J.S.A. 4:1C-4(a). The SADC is empowered to "[a]pply for, receive, and accept from any federal, State, or other public or private source, grants or loans for, or in aid of, the committee's authorized purposes[,]" to "[e]nter into any agreement or contract . . . and perform any act . . . necessary, convenient, or desirable . . . to carry out any power expressly . . . [provided,] and to "[a]dopt . . . rules and regulations [as] necessary . . . ." N.J.S.A. 4:1C-5(d), (e), and (f). The SADC is also empowered to certify to the Secretary of Agriculture those farmland preservation areas in which matching grant funds may be expended, and to review and approve any application for funds. N.J.S.A. 4:1C-1(a) and (e).

Applications for farmland preservation grants are reviewed by each county agricultural development board, N.J.S.A. 4:1C-14, which is empowered to "[r]eview and approve, conditionally

approve or disapprove, prior to any applications to the [SADC], any request for financial assistance authorized by" ARDA. N.J.S.A. 4:1C-15(e). ARDA specifically envisions the purchase of farmland development easements that require the land to be dedicated to agricultural purposes. N.J.S.A. 4:1C-24. However, there is an express limit upon how much can be paid for any development easement. The property must be evaluated pursuant to "[t]wo independent appraisals," and "[n]o development easement shall be purchased at a price greater than the appraised value . . . ." N.J.S.A. 4:1C-31(c) and (h).

This statutory prohibition is included within the SADC's PIG regulations. N.J.A.C. 2:76-17A.11(d) obligates the SADC to "certify the market value of [a] development easement and report . . . [that] value to the municipality." The municipality is then required to convey that "certified value to the landowner." N.J.A.C. 2:76-17A.12(a). "The municipality may negotiate a purchase price of the development easement for an amount greater than or less than the [SADC's] certified market value . . ., but not greater than the higher of the two independent appraised development easement values . . . ." N.J.A.C. 2:76-17A.12(a)(1). Thus, it is clear that in this case, the SADC strictly complied with the statutory and regulatory prohibitions

against using its funds to assist in the purchase of a development easement that exceeded the highest appraised value.

The Township can offer no compelling reason why the SADC's strict compliance with its own statutory and regulatory scheme is arbitrary, capricious and unreasonable. It contends that "the unique set of circumstances" by which the development easement was obtained justifies departure from the regulations; by this the Township means that it obtained the property in its entirety, and then conveyed back only the exception areas to the Ennises, as opposed to obtaining only the development easement area in the first instance. It offers no explanation why this process was so extraordinary that the statute and regulations should be relaxed. Indeed, it offers no explanation why the acquisition was structured this way in the first place.

The Township argues that the SADC's "narrow reading" of the statute and regulations somehow subverts the legislative purpose of ARDA. It contends that since it only seeks funding based upon the certified appraised value, and not the price it actually paid, approval of its PIG application would help preserve farmland as the Legislature intended.

However, this argument overlooks the plain language of the statute. It is not for us to divine why the Legislature sought to accomplish its purposes while limiting the use of public

funds to acquire only those development easements that meet the statutory criteria. We can infer, nevertheless, that the Legislature did not intend to support the purchase of development easements by municipalities through PIG grants when those municipalities chose to pay more than fair market value for the easement.

In the context of the SADC's direct purchase of preservation easements, we have noted the important nexus between appraised values and the expenditure of public funds.

> Any purchase of farmland by the SADC is made with public funds, and the SADC is, in our judgment, obligated to ensure that it spends those funds wisely and exercises sound judgment in doing so. Indeed, if the SADC were not able to obtain appraisals to determine the fair market value, the process would be subject to collusion and chicanery.
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> [Bruce Paparone, Inc. v. State, Agric. Dev. Comm., 392 N.J. Super. 391, 400 (App. Div. 2007).]

We think it clear that the Legislature believed the public interest would be served by limiting the use of PIG funds to purchase only those development easements where the cost to do so was within the range of fair market values as determined by independent appraisal.

The Township also contends that N.J.S.A. 4:1C-31(h) does not apply because it did not purchase a development easement from the Ennises; rather, it purchased the property in fee

simple and re-conveyed the exception areas. We find the argument to be of insufficient merit to warrant any extensive discussion. See R. 2:11-3(e)(1)(E). It suffices to say that however the Township wishes to characterize the transactions, it sought funding for the costs associated with acquisition of the development easement, which was all that was permitted pursuant to the PIG program. And, as the numbers demonstrate, the price it paid to acquire the easement exceeded the highest appraised value.

Failing to present a legally persuasive reason to avoid the clear language of the statute and regulations, the Township has advanced an equitable argument. It contends that the SADC should be estopped from denying funding because it "passed a final approval of the application, and . . . [the Township] relied upon [SADC's] actions in purchasing the easement." We are not persuaded that under the circumstances presented, the extraordinary remedy of estoppel should be invoked against a public agency.

"The essential elements of equitable estoppel are a knowing and intentional misrepresentation by the party sought to be estopped under circumstances in which the misrepresentation would probably induce reliance, and reliance by the party seeking estoppel to his or her detriment." O'Malley v. Dep't.

of Energy, 109 N.J. 309, 317 (1987) (citations omitted). "Equitable estoppel is rarely invoked against a governmental entity. . . . . Nonetheless equitable considerations are relevant to assessing governmental conduct, and may be invoked to prevent manifest injustice." Id. at 316 (internal citations omitted). However, equitable estoppel is particularly inappropriate when the government agency is charged with the distribution of scarce financial resources. E. Orange Bd. of Educ. v. N.J. Schs. Const. Corp., 405 N.J. Super. 132, 145-46 (App. Div. 2009). Application of equitable estoppel in such instances, absent arbitrary, capricious and unreasonable actions by the agency, would thwart the Legislature's specific decision to delegate decision-making authority to the agency. Id. at 146.

We think the facts do not support the Township's invocation of equitable esoppel, nor do the equities compel the conclusion that it must be invoked to avoid a manifest injustice. The Township consummated its purchase of the property before it ever received the SADC's certification of price. Thus, it is difficult to escape the conclusion that the Township decided to purchase the property regardless of what the SADC intended to contribute. The purchase was also made well before the SADC gave final approval to the Township's PIG application in

December 2002. While SADC knew of the purchase at that time, it did not know that the Township had paid more than the appraised value for the development easement until much later. Moreover, the Township's application had other deficiencies which, significantly, are not addressed on appeal.

It is axiomatic that the SADC must comply with the statutory and regulatory scheme. That scheme, as we discussed above, is intended to further the Legislature's goal of preserving farmland through, among other things, the allocation of finite financial resources. After consideration of the relevant facts in this case, we find no principled reason to permit circumvention of the express legislative scheme based upon equitable principles.

Affirmed.