

**TOWNSHIP OF LOPATCONG,**

**STATE OF NEW JERSEY**

Petitioner,

OAL DKT. NO.: ADC 03446-08

AGENCY REF. NO.: SADC ID #695

vs.

**RAYMOND L. RAUB and  
GAIL A. RAUB,**

**FINAL DECISION**

Respondents.

**PROCEDURAL HISTORY AND FINDINGS OF FACT**

This case involves an appeal by commercial farmers Raymond and Gail Raub ("Raub") of a January 18, 2007 resolution ("the 2007 resolution") issued by the Warren County Agriculture Development Board ("WCADB" or "board") that, among other things, allowed Raub "to continue the existing use and placement of 7 trailers along the [Raubs'] boundary line in Lopatcong Township conditioned upon evergreen trees being planted [by Raub] at least 3' tall and 6' on center." The 2007 resolution disposed of a December 2005 complaint Lopatcong Township had filed against Raub for placing 14 trailers along the Raubs' property line in violation of the 40' minimum side yard setback requirement in the municipal zoning code.<sup>1</sup> The 2007 resolution was issued after the board held public hearings in late 2006 (collectively, "the 2006-2007 proceedings").

The 2007 resolution modified an October 25, 2004 WCADB resolution ("the 2004 resolution") approving, as a site specific agricultural management practice ("SSAMP"), the Raubs' placement of 14 trailers along their property line for the storage of hay and feed. Raub had applied for the SSAMP in early September 2004, and the 2004 resolution did not require that the trailers be screened with trees. The 2004 resolution was not appealed.

Lopatcong Township joined with the Raubs in appealing the 2007 resolution. Both appeals were forwarded by the State Agriculture Development Committee ("SADC") as a contested case to the Office of Administrative Law ("OAL") on March 22, 2007.

The OAL case was adjourned several times and finally heard on May 2, 2012. By letter dated May 1, 2012, Lopatcong Township withdrew

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<sup>1</sup> Five (5) other complaints filed with the WCADB in December 2005 by Lopatcong Township against Raub for violating provisions of the municipal land use ordinance were withdrawn by the township before the 2007 resolution was issued.

its appeal and advised it would not be participating in the OAL matter. The Raubs, who were the only parties that testified at the OAL hearing, asserted that the 2006-2007 proceedings initiated by Lopatcong Township involved the same facts and issues disposed of in the 2004 resolution; in addition, Raub claimed that the SSAMP was binding on the township because it failed to appeal the 2004 resolution. Accordingly, Raub contended that the WCADB had no authority in the 2007 resolution to require the reduction in the number of storage trailers from 14 to 7 and to require the tree plantings.

Post-hearing briefs were filed in June 2012 by Raub and the WCADB. On July 31, 2012, the administrative law judge ("ALJ" or "judge") issued an Initial Decision dismissing the Raubs' appeal and upholding the 2007 resolution. Exceptions to the Initial Decision were filed with the SADC by Raub and the board on August 13 and 23, 2012, respectively. The Committee obtained two (2) extensions of time to file a Final Decision due to the sequencing of SADC meeting dates, with the second order extending the filing date to December 13, 2012.

The SADC incorporates in this Final Decision the "Procedural History" and "Facts" set forth in the ALJ's Initial Decision. The SADC makes additional factual findings based on Curzi v. Raub, 415 N.J.Super. 1 (App.Div. 2011) and on the record before the ALJ.

Curzi involved a nuisance action in the Superior Court, Warren County filed against Raub by neighbors who complained about the proximity of the storage trailers to their common property boundary lines. The trial court judge rejected the Raubs' claim that the neighbors' complaints should have been forwarded to the WCADB in accordance with the Right to Farm Act ("RTFA"), N.J.S.A. 4:1C-10.1a., and Raub appealed. On July 30, 2010, the Appellate Division reversed the trial court's decision that overruled Raubs' RTFA claim, agreeing with the Raubs that the nuisance complaints regarding the storage trailers should have been heard by the board. Several important facts relevant to the case before us were recited in the appellate court opinion.

As set forth in Curzi, *supra* at 13, Lopatcong Township was aware of the location of the trailers as early as June 2003. By letter dated June 19, 2003, and in response to a complaint from one of the Raubs' neighbors, Township Engineer Paul M. Sterbenz asked the WCADB "to review Raub's placement of trailers along the neighbors' property lines." Mr. Sterbenz had met with Raub on June 5, 2003, at which time Raub advised that the location of the trailers was necessary to accommodate the storage of hay produced in an adjacent field. The

township engineer suggested to Raub that the trailers, as "accessory structures", be moved 40 feet away from the property line, consistent with the municipality's minimum set back requirements in the R-5 zone, or that Raub move the trailers behind a hedgerow that would screen them from view. According to Mr. Sterbenz, either option would still allow for hay storage from the adjacent farm field while requiring minimal movement of the trailers. Raub refused to move the trailers, contending that he did not have to accede to the township's requests because of the RTFA. The WCADB did not respond to the township engineer's June 19, 2003 letter.

In March 2004, Lopatcong Township's mayor wrote a letter to the WCADB stating that "over the course of the last year there has [sic] been many complaints from our residents regarding the placement of trailers" on the Raub property. Curzi, *supra* at 17. On June 25, 2004, Raubs' neighbors filed their nuisance complaints in the Superior Court. Id. at 8.

As stated on pages 4-5 of Raub's post-hearing OAL brief, the reason Raub applied for the SSAMP in September 2004 was based on potential enforcement action by Lopatcong Township due, wholly or in part, to the neighbors' complaints, as well as the township's zoning ordinance:

As a result of the complaints regarding the placement of the trailers along the [Raubs'] southwesterly [property] line. . . Lopatcong Township officials had written up a series of violations (although not having yet issued summonses) primarily with regard to the placement of the trailers[,] alleging that the [Raubs] were 'parking commercial trailers in a residential zone'. . . At that time the [Raubs], in order to obtain clarification of their rights, made application pursuant to [the RTFA] to the WCADB to obtain a determination of their status as to:  
(a) operating a commercial farm; and  
(b) whether or not they were properly engaged (including the placement of the trailers) in a generally accepted agricultural operation or practice pursuant to N.J.A.C. 2:76-2.2(b).

The 2004 resolution recited that Lopatcong Township appeared and participated, through its municipal attorney, Glenn Klauser, Esq., at the board's October 25, 2004 hearing at which the Raubs sought and obtained approval of their SSAMP request for the placement of the storage trailers along their property line.

The third WHEREAS paragraph in the 2004 resolution states that the Raub SSAMP application included approval for "fourteen storage trailers parked along the perimeter of [the Raub] property [in] which [the Raubs] store[] hay and straw for feed[] as well as[] [for] resale." In the fourth WHEREAS paragraph, the resolution notes that after Mr. Raub testified,

the matter was opened up to the public and Glenn Klauser, Esq., from Lopatcong Township[,] questioned Mr. Raub as to the storage trailers. Mr. Raub testified that they are used for storage of hay, as they are less expensive than constructing a barn on the property.

We note that the 2004 resolution contains errors not affecting its substance or validity. The 2004 resolution states that the Raubs sought an SSAMP for a farm operation that included 14 beef cattle, the production of hay and soybeans, and the location of the trailers. However, the board concluded that the Raubs "engaged in a generally accepted agricultural operation or practice pursuant to N.J.A.C. 2:76-2B.2", the regulatory citation for pick-your-own operations. In addition, the 2004 resolution noted that the hearing on the Raub SSAMP was held "in accordance with the procedure set forth in N.J.A.C. 2:76-2.10", the regulation governing hearings of complaints against a commercial farm. SSAMP procedures are set forth in N.J.A.C. 2:76-2.3.

#### **INITIAL DECISION**

The Initial Decision concluded that the 2004 proceedings and the 2006-2007 proceedings before the WCADB were not the same and that the legal doctrine of *res judicata* did not apply. *Res judicata*, typically employed as a defense to a complaint and asserted by Raub with respect to the 2006-2007 proceedings, is a common law doctrine barring relitigation of the same claims or issues that were fully and finally adjudicated in a prior proceeding involving the same parties.

The judge gave three (3) reasons for rejecting the Raubs' assertion that *res judicata* barred the WCADB from hearing the township's complaint and changing the 2004 resolution by reducing the number of trailers and requiring vegetative screening, as set forth in the 2007 resolution: (1) the 2004 proceedings were based on the Raubs' SSAMP application, while the 2006-2007 proceedings were based on an RTFA complaint filed by Lopatcong Township; (2) in 2004 the WCADB was not called upon to engage in the balancing test required by Township of Franklin v. den Hollander, 172 N.J. 147, 152 (2002), in

which the preemption of municipal ordinances is considered by weighing the local regulations against the commercial farmer's need to engage in legitimate agricultural activities; and (3) in the 2004 resolution, the Board explicitly retained jurisdiction, which the ALJ determined was an indication that the WCADB "was considering further action in this [2004] matter" and "that the 2004 matter was not fully and finally litigated".

In the OAL, the Raubs claimed that Lopatcong Township failed to appeal the 2004 resolution in a timely manner, while the WCADB claimed that the Raubs failed to file a timely appeal of the 2007 resolution. The Raubs also asserted that installing the vegetative screen was infeasible due to existing conditions on their farm property.

The ALJ rejected the Raubs' argument that because Lopatcong Township failed to appeal the 2004 resolution within the 10-day period set forth in N.J.S.A. 4:1C-10.1(d), the resolution was binding on the township in accordance with N.J.A.C. 2:76-2.10(b)2ii(2). The judge concluded that the 2007 resolution "did not change any of the two actual determinations in the 2004 proceeding", namely, that the Raubs operated a "commercial farm" defined in N.J.S.A. 4:1C-3 and that they "engage[d] in a generally accepted agricultural operation or practice." In other words, according to the judge, the failure of Lopatcong Township to appeal the WCADB's 2004 resolution was irrelevant because, in the 2006-2007 proceedings, the township was not disputing the 2004 findings that Raub operated a commercial farm in accordance with generally accepted agricultural practices. The judge also concluded that the WCADB failed to establish a factual basis for its argument that Raub did not appeal the board's January 18, 2007 resolution within the same 10-day period provided by statute and regulation. Finally, the judge rejected the Raubs' claim that installing the vegetative screen would not be feasible, stating that there was nothing in the court record to support the Raubs' assertion.

The Raubs' exceptions to the Initial Decision reiterated that the 2004 resolution did not require a vegetative screen for the trailers and that that resolution was not appealed in a timely manner. The exceptions also pointed out various practical difficulties associated with the tree plantings on the Raubs' side of the property line; instead, the Raubs offered to plant the trees on the neighbors' side of the property line. The WCADB's exceptions observed that it would be impractical for the trees to be planted on the neighbors' property and that, since the trailers are on wheels, there would be little difficulty moving them in order to allow for the vegetative screen.

## CONCLUSIONS OF LAW

The doctrine of *res judicata*, Latin for "the thing has been decided", provides that a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those parties in a new proceeding. Innes v. Carrascosa, 391 N.J. Super. 453, 488-489 (App. Div.), certif. denied, 192 N.J. 73 (2007). We conclude, as did the ALJ, and hereby **AFFIRM**, that *res judicata* did not apply to the WCADB's 2006-2007 proceedings because Lopatcong Township had not filed a cause of action against Raub in 2004 when the latter applied to the board for an SSAMP.<sup>2</sup> However, the Committee believes that the analysis of the WCADB's 2004 and 2006-2007 proceedings based solely on *res judicata* principles is too narrow a focus given the underlying purposes of the RTFA and the particular facts of this case.

The RTFA insulates a commercial farm against public and private nuisance actions and unduly restrictive local ordinances if a county agriculture development board ("CADB") determines that: (a) the commercial farm engages in agricultural management practices recommended by the SADC in a regulation; or (b) the farm's practice or operation is considered to be generally acceptable by the board. N.J.S.A. 4:1C-9 and 10.

These important protections further the RTFA's statutory goals of promoting New Jersey's agricultural industry and business climate. N.J.S.A. 4:1C-2a., d. and e. On a more practical level, eligible commercial farmers frequently apply for an SSAMP as prospective insurance protecting their agricultural business activities from unreasonable intrusions by neighbors and/or local government. Like all owners of business enterprises, commercial farmers desire a reasonable level of certainty that their day-to-day operations will not be unnecessarily disrupted.

Due to the potentially preemptive effect of the SSAMP on local ordinances, SADC regulations require that notice of an SSAMP application be given to the municipality in which the commercial farm is located. N.J.A.C. 2:76-2.3(c). From 1984 to 1999 the regulation only required that the CADB provide such notice to the SADC. When the agency proposed substantial amendments to N.J.A.C. 2:76 in June 1999, section 2.3(c) was revised to include additional notice to the municipality as part of other broader Right to Farm amendments. The

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<sup>2</sup> The ALJ found additional support for his determination that *res judicata* did not apply because the WCADB "retain[ed] jurisdiction" in the 2004 resolution. There is nothing in the record disclosing why the board included that provision in the resolution, and we find the ALJ's conclusion to be speculative.

April 1999 impact statements accompanying the proposed amendments stressed the SADC's interest in minimizing a commercial farm's time and expense securing, and being protected by, an SSAMP. See, 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

By requiring full disclosure to the affected municipality, the SSAMP process is designed to achieve, at one time and in one administrative forum, the statutory and regulatory goals of protecting commercial farmers while, at the same time, considering any municipal objections to the agricultural operations at issue. This interplay between the RTFA's procedural mechanisms and substantive protections informs our legal analysis of the specific facts and circumstances of this case. Rather than basing a decision, as the ALJ did, solely on *res judicata* principles, we believe that the RTFA leads us more appropriately to a concept related to *res judicata*, the entire controversy doctrine.

The entire controversy doctrine, formalized in New Jersey Court Rule 4:30A, requires a party to raise all claims that he or she might have against another party arising from their dispute. The doctrine is intended to prevent fragmented litigation by requiring the assertion of all claims arising from a single controversy in a single action. Prevratil v. Mohr, 145 N.J. 180, 190 (1996). The reasons behind the entire controversy doctrine are threefold: (1) the need for complete and final disposition through the avoidance of piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay. DiTrollo v. Antiles, 142 N.J. 253, 267 (1995) [citing Cogdell v. Hospital Center, 116 N.J. 7, 15 (1989)]. These factors also are substantially similar to the previously-described statutory and regulatory goals of the RTFA.

N.J.A.C. 1:1-1.3(a) of the Uniform Administrative Procedure Rules ("UAPR") provides as follows:

(a) This chapter shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. In the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes. Court rules regarding third party practice and class action designations may not be applied unless such procedures are specifically statutorily authorized in administrative hearings.

Neither *res judicata* nor the entire controversy doctrine is addressed in the UAPR, so N.J.A.C. 1:1-1.3(a) would permit the OAL

and the SADC to proceed in accordance with New Jersey Court Rule 4:30A. As is evident from DiTrollo and Cogdell, the three-part rationale noted above for that court rule is almost identical to the purposes underlying the UAPR set forth in N.J.A.C. 1:1-1.3(a): the achievement of "just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."

In addition, we note that the New Jersey Supreme Court has recognized "that there are important goals to be achieved from the prudent and selective application in administrative proceedings of such doctrines as *res judicata*, collateral estoppel, and the single controversy rule." Sheeran v. Progressive Life Insurance Company, 182 N.J. Super. 237, 251 (App. Div. 1981), citing Hackensack v. Winner, 82 N.J. 1, 31 (1980).

The distinction between *res judicata* and the entire controversy doctrine is subtle but important for the purpose of the Raub matter before us. After an initial legal action has been adjudicated, *res judicata* precludes a subsequent claim in a second legal action if the facts supporting both actions were the same. In re Estate of Gabrellian, 372 N.J. Super. 432 (App. Div. 2004), certif. denied, 182 N.J. 430 (2005). The linchpin of the entire controversy doctrine, on the other hand, is the *factual context* "giving rise to the controversy itself, rather than [the] commonality of claims, issues or parties. . ." Mystic Isle Dev. Corp. v. Perskie & Nehmad, 142 N.J. 310, 323 (1995). If the factual context giving rise to the separately-litigated cases is substantially similar, then the entire controversy doctrine can operate as a bar to the subsequent legal action. The doctrine is equitable in nature and will not be applied where to do so would be unfair in the totality of the circumstances and would not promote the threefold purposes described above. K-Land v. Landis Sewerage, 173 N.J. 59, 74-75 (2002). Finally, the doctrine does not apply to bar claims that were unknown at the time of the first legal action. McNally v. Providence Washington, 304 N.J. Super. 83, 94 (App. Div. 1997).

The Committee previously indicated its agreement with the ALJ that, as a technical matter, the 2004 SSAMP proceedings initiated by Raub and the 2005 RTFA complaint initiated by Lopatcong Township presented distinct facts to the WCADB and, consequently, *res judicata* did not apply to bar the 2006-2007 board proceedings. However, given the overall factual context of the dispute between the Raubs and Lopatcong Township beginning in 2003, we believe fundamental fairness dictates that the board's 2006-2007 consideration of the township complaint was barred by the entire controversy doctrine.



The controversy between the Raubs and the township began as early as June 2003, when the township engineer notified the WCADB and Raub that the placement of trailers along the property line was inconsistent with municipal setback requirements. The same controversy was the subject of the Lopatcong Township mayor's March 2004 letter to the board in which he complained about the location of the trailers on the boundary line of the Raubs' property. The township-Raub dispute had not changed as of September 2004, when the Raubs applied, on notice to Lopatcong Township, for an SSAMP approving the placement of the trailers within the municipal setback line. After approximately 15 months of ongoing, public disagreement between the Raubs and the township, the Raubs sought to protect the trailers' location as a generally accepted agricultural management practice, yet at the board hearing in October 2004 the township attorney limited his questioning of the Raubs to whether the trailers served an agricultural purpose.

We conclude from this record that there was ample opportunity for Lopatcong Township to have asserted its concerns about a breach of the municipal setback line when the Raubs applied for the SSAMP in September 2004. Accordingly, consistent with the factors set forth in Mystic Isle, K-Land and McNally, we find that the township's RTFA complaint should have been dismissed by the board in 2006 under the entire controversy doctrine given that the underlying dispute between Raub and Lopatcong Township---the placement of the trailers along the property boundary line in violation of the municipal setback requirement---was not only identical, but obviously known to Lopatcong Township, from 2003 through 2006 and involved the same subject matter as the 2004 SSAMP issued by the board.

The SADC reiterates that this Final Decision is limited to the particular facts of this case, in which there was a continuous and consistent legal dispute between Raub and the township involving the location of the storage trailers within the setback established by local zoning ordinances. The entire controversy doctrine would not have precluded the township from filing a complaint with the WCADB subsequent to the issuance of the 2004 resolution if the complaint pertained to specific aspects of the agricultural operation not addressed in the 2004 SSAMP. For example, if the Raubs, as opposed to merely locating the trailers within the setback for agricultural purposes, used the trailers for residential purposes, or stored illegal or deleterious non-agricultural materials within the trailers, or otherwise used the trailers for non-agricultural activities creating a public nuisance. The foregoing examples are for illustrative purposes only and are not intended to be an exhaustive list.

Accordingly, the SADC hereby **REJECTS** the Initial Decision by holding that the WCADB's consideration of Lopatcong Township's December 2005 zoning complaint against Raub was barred by the entire controversy doctrine. As a consequence of the Committee's holding, the requirement in the 2007 resolution conditioning placement of 7 trailers along the Raubs' boundary line on the planting of evergreen trees at least 3' tall and 6' on center is invalid and of no force or effect.

The SADC's rejection of the Initial Decision with respect to the 2007 resolution renders, as moot, consideration of Lopatcong Township's failure to appeal the 2004 resolution within the 10-day period set forth in N.J.S.A. 4:1C-10.1(d). The 2004 resolution has been found to be binding on the township as a result of the entire controversy doctrine and not as a result of N.J.A.C. 2:76-2.10(b)2ii(2).

We have considered the record and **AFFIRM**, for the reasons stated by the ALJ, that portion of the Initial Decision concluding that the WCADB did not provide sufficient evidence that Raub failed to file the appeal of the 2007 resolution in a timely manner.

IT IS SO ORDERED

Dated: November 8, 2012

/s/ Douglas H. Fisher  
Douglas H. Fisher, Chairman  
State Agriculture  
Development Committee

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