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In re Adopted Amendments to N.J. Admin. Code tit. 7, § 7A-2.4, 365 N.J. Super. 255 (N.J. Super. Ct. App. Div. 2003)

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Specifically, the court stated it could only decide whether competent and relevant evidence supported such determinations, and whether the determinations were arbitrary, capricious, or unreasonable. In this case, the court held that both determinations were supported by sufficient evidence and were not arbitrary, capricious, or unreasonable. Consequently, the court rejected both arguments.

In conclusion, the court rejected all of Silverstone's arguments and affirmed DNR's order.

Benjamin M. Petre

NEW JERSEY

In re Adopted Amendments to N.J. Admin. Code tit. 7, § 7A-2.4, 365 N.J. Super. 255 (N.J. Super. Ct. App. Div. 2003) (holding that New Jersey Department of Environmental Protection's adoption of the Landscape Project method to classify wetlands was neither inconsistent with governing statute, unsupported by the record, nor arbitrary or capricious).

New Jersey Builders Association ("Builders") challenged as *ultra vires* the New Jersey Department of Environmental Protection's ("DEP") adoption of the Landscape Project method ("LPM") to classify wetlands. In 2002, DEP adopted the LPM to classify wetlands supporting the habitats of threatened or endangered species as wetlands of exceptional resource value. Prior to the adoption of LPM, DEP made wetlands determinations entirely on specific sightings of individual threatened or endangered species. Based on the assumption that species are located in the middle of their home range, DEP mapped a habitat for that species regardless of whether the entire mapped area contained features that the species actually used or required. LPM broadened the field of inquiry beyond "sighting-specific" areas. Using satellite imagery, LPM focuses on habitat areas required to support local populations of threatened or endangered wildlife species. By adopting LPM, DEP sought to establish a more population driven parameter of habitat protection that would best ensure the continued, long-term existence of a particular documented species or population in an identified wetland. Builders appealed DEP's decision to adopt the LPM in Superior Court of New Jersey, Appellate Division claiming LPM exceeded DEP's statutory mandate.

The court stated that judicial review of state agency regulations is restricted to three inquiries: (1) whether the agency's action violated the enabling act's express or implied legislative policies, (2) whether there was substantial evidence in the record to support the findings on which the agency based their action, and (3) whether in applying the legislative policies to the facts the agency clearly erred by reaching a conclusion that could not reasonably have been made upon a showing

of the relevant factors. Thus the court found a regulation can only be set aside if it is proved to be arbitrary or capricious, plainly transgresses the statute it purports to effectuate, or alters the terms of the statute and frustrates the policy embodied in it.

The court found DEP's adoption of LPM to delineate wetlands did not flout the enabling statute or undermine the legislative intent. Since DEP classifies wetlands supporting the habitats of threatened or endangered species, the court noted that LPM broadens the inquiry to include habitats of actual sightings or physical evidence of these species, and contiguous wetlands that contain the natural characteristics that make the wetlands suitable for species to populate. The court held that because endangered or threatened species are not stationary many rare species require continuous blocks of habitat. Furthermore, rapid suburbanization of landscape could lead to the loss and degradation of critically important wild life habitats. The court concluded the adoption of a more protective approach through LPM was neither inconsistent with governing statute, unsupported by the record, nor arbitrary or capricious. Thus, the court concluded that the adoption of LPM did not exceed DEP's statutory mandate.

D.M. Shohet

Manzo v. Mayor of Marlboro, 838 A.2d 534 (N.J. Super. Ct. Law Div. 2003) (holding township may enact ordinances using residential cluster development to reduce pollution in nearby streams and waters).

Rose Manzo and Morgan Estates ("Manzo") filed suit against Marlboro Township ("Marlboro") challenging Marlboro's Zoning Ordinance in the Monmouth County Superior Court. Manzo alleged that (1) the Zoning Ordinance was inconsistent with the Township's Master Plan, (2) the ordinance represented fiscal zoning, (3) Marlboro improperly sought to reduce residential development density, (4) the ordinance violated the Fair Housing Act by discriminating against families with children, and (5) the means Marlboro used to achieve its stated goal were unreasonable. The court dismissed each of Manzo's claims.

The estate of Rose Manzo owned 167 acres of undeveloped land in Marlboro. Manzo and Morgan Estates, L.L.C. ("Morgan Estates") entered in an option agreement for Morgan Estates to purchase the property by 1999. The property was divided into quadrants by streams, ultimately running into Big Brook, which runs along the northern boundary of the property. Until August 1999, the property was zoned for lots of 30,000 square feet, similar to other properties in the area. In the same month, Manzo and Morgan Estates executed the prior agreement, and soon thereafter, Marlboro created a new zoning district named the Stream Corridor Preservation Residential District-II ("SCPRD-II"). The SCPRD-II required a minimum lot size of 80,000