

SUPREME COURT OF NEW JERSEY

N.J. Highlands Coal. v. N.J. Dep't of Env'tl. Prot., 236 N.J. 208

198 A.3d 982 (2018) · Decided December 13, 2018

SUMMARY

The New Jersey Supreme Court reviewed whether a development project qualified for the Highlands Act's affordable-housing exemption. The court held that the exemption's three-year expiration period is triggered only after all final approvals required under the Highlands Act have been obtained, and that the statute does not incorporate the Municipal Land Use Law's defined term "final approval." The court affirmed the Appellate Division's judgment while clarifying the limited, statute-specific nature of its interpretation.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Per Curiam; Chief Justice Rabner; Justice LaVecchia; Justice Albin; Justice Patterson; Justice Fernandez-Vina; Justice Solomon; Justice Timpone
JURISDICTION	New Jersey
DECIDED	December 13, 2018
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs petitioned for certification from an Appellate Division judgment affirming the New Jersey Department of Environmental Protection's determination that a development project remained qualified for the Highlands Act's affordable-housing exemption.
STANDARD OF REVIEW	The court reviewed the DEP's administrative determination and interpreted the Highlands Act de novo, applying the statute's plain language.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of New Jersey.
PARTIES	N.J. Highlands Coalition, Sierra Club, N.J. v. New Jersey Department of Environmental Protection, Bi-County Development Corporation

TOPICS

environmental law

administrative law

judicial review of agency action

statutory interpretation

plain meaning rule

PRACTICE AREAS

environmental law

administrative law

land use law

statutory interpretation

QUESTIONS PRESENTED

1. Whether the Highlands Act's Exemption 17 requires construction beyond site preparation to commence within three years after receiving all final approvals required pursuant to the Municipal Land Use Law.
2. Whether the phrase "all final approvals" in Exemption 17 incorporates the Municipal Land Use Law's defined term "final approval."
3. Whether the DEP correctly determined that Bi-County had not obtained all final approvals and that the exemption therefore had not expired.

HOLDINGS

1. The phrase "all final approvals" in N.J.S.A. 13:20-28(a)(17) is distinct from and does not incorporate the Municipal Land Use Law's defined term "final approval."
2. The DEP was within its authority to conclude that Bi-County had not secured all final approvals; consequently, the three-year period for expiration of Exemption 17 had not been triggered.

KEY QUOTATIONS

"We now agree with the Appellate Division, and the DEP, that this project may proceed under Exemption 17 because its qualification has not expired." (236 N.J. at 210-11)

"To be clear, 'all final approvals' in the Highlands Act is the operative phrase to be applied when examining whether the DEP erred in determining that Exemption 17 had not expired for the Bi-County development project." (236 N.J. at 213)

"The plain language of the Highlands Act requires 'all final approval s' to have been obtained in order to trigger the three-year period after which the exemption is lost if 'construction beyond site preparation' is not accomplished." (236 N.J. at 213-14)

FACTUAL BACKGROUND

Bi-County owned property in Oakland subject to the Highlands Water Protection and Planning Act. An earlier 1991 settlement concerning the development made it eligible for the Highlands Act's affordable-housing exemption, Exemption 17. Although the Oakland Planning Board issued preliminary and final site plan approvals together, the approvals contained fifty-seven conditions, including conditions requiring additional county and DEP approvals after specified changes occurred; several conditions remained unsatisfied when the DEP made its determination.

PROCEDURAL HISTORY

The DEP determined that Bi-County's project had not yet obtained all final approvals required under the Highlands Act and therefore that the exemption's three-year expiration period had not begun. The Appellate Division affirmed. The Supreme Court of New Jersey granted certification limited to whether Bi-County qualified for the exemption under N.J.S.A. 13:20-28(a)(17), affirmed the judgment, and modified the reasoning to clarify that the Highlands Act's phrase "all final approvals" does not incorporate the Municipal Land Use Law's definition of "final approval."

DISPOSITION

affirmed

CASES CITED

- N.J. Highlands Coal. v. DEP, 456 N.J. Super. 590, 196 A.3d 982 (App. Div. 2017)
- In re Attorney Gen.'s "Directive on Exit Polling: Media & Non-Partisan Pub. Interest Grps.", 200 N.J. 283, 297-98, 981 A.2d 64 (2009)
- DiProspero v. Penn, 183 N.J. 477, 492, 874 A.2d 1039 (2005)