

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-6009-12T1

IN THE MATTER OF PRINCETON BRANCH  
RAILWAY STATION – PROPERTY  
INTEREST TRANSFERS WITH  
PRINCETON UNIVERSITY.

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Argued October 19, 2015 - Decided February 17, 2016

Before Judges Lihotz, Fasciale and Higbee.

On appeal from the Board of Directors of New  
Jersey Transit Corporation, No. 1306-31A.

Philip Rosenbach argued the cause for  
appellants Save the Dinky, Inc., Anne  
Neumann and the New Jersey Association of  
Railroad Passengers (Berman Rosenbach, P.C.,  
attorneys; Mr. Rosenbach, on the briefs).

Kenneth M. Worton, Deputy Attorney General,  
argued the cause for respondent New Jersey  
Transit Corporation (John J. Hoffman, Acting  
Attorney General, attorney; Andrea M.  
Silkowitz, Assistant Attorney General, of  
counsel; Mr. Worton, on the brief).

PER CURIAM

Appellants Save the Dinky, Inc., a non-profit group of  
citizens organized and composed of persons who use the Princeton  
Branch rail line between Princeton and Princeton Junction (the  
Dinky line), Anne Neumann, and the New Jersey Association of  
Railroad Passengers appeal from the adoption of a June 25, 2013  
resolution by the Board of Directors (Board) of the New Jersey

Transit Corporation (NJT), which facilitated the relocation of the Dinky line terminus and station 460 feet south of the current site. The Dinky line station is located on real property that had been sold by NJT to Princeton University (Princeton) in 1984. The proposed station relocation allowed Princeton to develop an Arts and Transit Neighborhood Project on the site.

Because of the detail of appellants' arguments, rather than summarizing them, we list them at length. On appeal, appellants raise the following issues:

POINT I.

NJT'S APPROVAL OF THE PROPOSED ACTION ITEM AT THE JUNE 25, 2013 SPECIAL MEETING VIOLATED THE NEW JERSEY TRANSPORTATION ACT OF 1979 REQUIREMENT THAT BEFORE THE SPECIAL MEETING TOOK PLACE, NJT HAD TO MAKE A REASONED DETERMINATION THAT THE PROPOSED ACTION ITEM DID NOT IMPLEMENT THE ABANDONMENT OR SUBSTANTIAL CURTAILMENT OF PASSENGER RAILWAY SERVICES.

POINT II.

IN FAILING TO PUBLISH OR MAKE PUBLICLY KNOWN A PROCEDURE BY WHICH NJT DETERMINES WHETHER AN ACTION WILL IMPLEMENT THE ABANDONMENT OR SUBSTANTIAL CURTAILMENT OF PASSENGER RAILWAY SERVICE, NJT HAS FAILED TO COMPLY WITH THE REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT, THE OPEN PUBLIC MEETINGS ACT, AND NEW JERSEY COMMON LAW.

A. The Decision Whether an Action Will Implement the Abandonment or Substantial Curtailment of Passenger Railway Service Is an Agency Decision That Should Be

Subject to Rule-Making Regulations  
Adopted Pursuant to the APA.

B. Independent of the Rule-Making Requirements Imposed by the APA, The Fundamental Requirements of Open Government and Due Process Require That NJT Present Reasoned Grounds for Its Determination That the Notice Requirements of N.J.S.A. 27:25-8(d) Did Not Apply To the Action Taken at the Telephonic Meeting.

C. If NJT Has Determined in Private Session That the Notice, Location, and Time Requirements of N.J.S.A. 27:25-8(d) Are Inapplicable, Then NJT Has Violated the Open Public Meeting Act.

D. Independent of the Rule-Making Requirements Imposed by the APA, The Fundamental Requirements of Open Government and Due Process Require That NJT Present Reasoned Grounds for Its Determination That the Notice Requirements of N.J.S.A. 27:25-8(d) Did Not Apply To the Action Taken at the Telephonic Meeting.

POINT III.

THE JUNE 25, 2013 NJT BOARD AUTHORIZATION WAS INTENDED TO IMPLEMENT THE ABANDONMENT OF RAIL PASSENGER SERVICES WITHOUT MEETING THE REQUIREMENTS OF PUBLIC CONVENIENCE AND NECESSITY.

POINT IV.

UNDER THE CIRCUMSTANCES PRESENTED HERE, GOVERNOR CHRISTIE SHOULD HAVE RECUSED HIMSELF FROM INVOLVEMENT IN APPROVAL OF THE JUNE 25, 2013 ACTION ITEM.

Following our review, we affirm.

I.

Princeton purchased the property on which the Dinky line station is located, along with existing improvements, including the passenger building, the platform, and freight buildings related to the Dinky line station, under terms and conditions set forth in a 1984 agreement with NJT. The transfer excluded from the sale rails, ties, catenary system and "any other fixtures on the property related to the physical operation of the train." Further, as grantor, NJT reserved an easement "for public transportation purposes[.]" The terms of the easement, stated in the 1984 agreement and the related deed, continued NJT's right to control continued passenger rail services on the Dinky line, and reserved the authority to review and approve modifications to the station, operating facilities and parking lots on the transferred property.

A related action filed in the Chancery Division by appellants as plaintiffs, along with additional individuals who use the Dinky line, sought a declaratory judgment that the 1984 agreement created a public transportation easement and also requested injunctive relief preventing NJT and Princeton, as named defendants, from relocating the Dinky line station. In that matter, Princeton, joined by NJT, moved for the summary

judgment dismissal of the complaint, arguing plaintiffs lacked standing. On June 20, 2013, the Chancery Division judge denied the motion.

The next day, NJT scheduled a special meeting of the Board for June 25, 2013; allowing members to appear by telephone. The action item for review was entitled: "1306-31A PRINCETON BRANCH RAIL STATION-PROPERTY INTEREST TRANSFERS WITH PRINCETON UNIVERSITY[.]" The proposal provided for the exchange of specified property interests between NJT and Princeton and to "facilitate construction of [Princeton's] Arts and Transit Neighborhood Project . . . and enhance[e] the customer experience at the [Dinky] station complex for [NJT] customers." The transfer included payment provisions, resulting in net revenue to NJT, based on the differential in fair market value of the real property subject to exchange.

Seven members of the public spoke regarding the proposed resolution and a letter from a Princeton Council member prepared in opposition to the station's relocation was read. Among the public participants was Virginia Kerr, counsel to and an officer of appellant Save the Dinky, Inc. Kerr presented appellants' opposition to any relocation, which she viewed as a precursor to closing the Dinky line station. Kerr identified legal

challenges appellants had filed against NJT and Princeton, then pending in the federal and state courts.<sup>1</sup>

Eden Quainton and Anne Neumann, who also identified themselves as members of appellant Save the Dinky, Inc., spoke at the hearing. Quainton insisted NJT's notice of pending action, as issued, failed to adequately comply with the notice provisions of New Jersey's Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 to -21. He also presented challenges to what he termed the "abandonment of a rail service," maintaining the Board's action must abide the fifteen-day prior public notice requirement of the Public Transportation Act of 1979 (NJTA). See N.J.S.A. 27:25-1 to -24. Neumann discussed the arguments raised in the pending Chancery Division action designed to obtain a legal determination of whether the 1984 agreement precluded the proposed relocation. See Save the Dinky, Inc. v. Trs. of Princeton Univ., No. A-2574-13 (App. Div. Feb. 17, 2016) (slip op. at 2-3) (identifying arguments in opposition to

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<sup>1</sup> In addition to this appeal, New Jersey actions included In re Princeton Station Track Removal Project, No. A-5145-11 (App. Div. Mar. 18, 2014), certif. denied, 218 N.J. 275 (2014) and Save the Dinky, Inc. v. Trs. of Princeton Univ., No. A-2574-13 (App. Div. Feb. 17, 2016). NJT's brief also includes a reference to a United States Surface Transportation Board (STB) matter. See N.J. Assoc. of R.R. Passengers & Nat'l Assoc. of Railroad Passengers-Petition for Declaratory Order-Princeton Branch, FD 35745 (STB served July 25, 2014). NJT asserts the STB determined it had no jurisdiction to review relocating the Dinky line station.

relocation of the Dinky line station raised before the Chancery Division).

Two members of appellant New Jersey Association of Railroad Passengers also participated. Jack May, its Vice President, challenged the urgency of conducting a meeting regarding an issue of great public interest, accusing the Board of having "something to hide." He also attacked the agenda notice as misleading and incomplete because it did not fully apprise interested parties the Dinky line station was being permanently moved. Phil Craig, its Director, urged the Board to provide more specificity to its proposal, which he stated omitted burdens to the rail using public resulting from the station's relocation.

Following the public portion of the meeting, NJT Executive Director James Weinstein introduced a resolution related to the sole action item for Board approval. The resolution was moved, seconded, and unanimously adopted. As required by law, the Board minutes were delivered to the Governor, N.J.S.A. 27:25-4(f), who did not exercise his veto power within ten days of receipt. This appeal ensued.

## II.

NJT is an agency of State government. Sell v. N.J. Transit Corp., 298 N.J. Super. 640, 642 (App. Div. 1997). Appellate

review of an administrative agency decision is "limited in scope." Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9 (2009). In our review, we consider whether the agency's decision violates express or implied legislative policies; whether there is substantial evidence to support the factual findings upon which the decision is based; and whether, in applying the law 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.'" Id. at 10 (quoting Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995)). Further, we are charged with determining whether the agency's decision was arbitrary, capricious, or unreasonable. Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963).

"A reviewing court 'may not substitute its own judgment for the agency's, even though the court might have reached a different result.'" In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 483 (2007)). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular field.'" Id. at 195 (quoting In re Herrmann, 192 N.J. 19, 28 (2007)). However, we are not "bound by the agency's interpretation of a statute or its determination of a strictly



legal issue." Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973). Guided by these standards, we undertake review of the issues raised by appellants.

The first point presented merely introduces issues discussed in later points. Appellants maintain NJT scheduled the June 25, 2013 special Board meeting in violation of the required notice provisions of the NJTA. However, appellants concede these requirements apply only if the action to be implemented entails "the curtailment or abandonment" of rail passenger services.

Here, appellants urge NJT's resolution was an abandonment of rail passenger services, which required "a public hearing [held] in the area affected during evening hours" with "at least 15 days" prior notice pursuant to N.J.S.A. 27:25-8(d). Because NJT conducted a telephonic hearing at 1 p.m., in Newark, giving only two days prior notice, appellants urge we vacate the resolution. Analysis of whether the Board's action amounted to be an "abandonment of rail passenger services" is discussed in appellants' Point III.

Alternatively, appellants suggest NJT made a prior determination the proposed action listed on the agenda was not an abandonment. Appellants contend such a decision can only be guided by regulation, which states what constitutes "a

substantial curtailment or abandonment." They suggest the absence of rulemaking in compliance with the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 to -31, to adopt such guidelines voids the determination. Appellants also urge the resolution be set aside because NJT predetermined the applicability of N.J.S.A. 27:25-8(d), which was made outside a public meeting, ignoring the requirements of OPMA and violating common law. These arguments are discussed in depth in appellants' Point II.

We find many of these arguments are intertwined. Underpinning all appellants' assertions is whether action item 1306-31A concerned a "substantial curtailment or abandonment of rail passenger services[,]" triggering N.J.S.A. 27:25-8(d). This represents a logical starting point.

Accompanying the Board's notice of the special meeting was an agenda listing the lone action item, which stated:

Board authorization will allow NJ TRANSIT to transfer certain property interest to the University in exchange for other property interests and a payment for the difference in values. This transfer of property interests will facilitate construction of [Princeton]'s Arts and Transit Neighborhood Project by the University at no cost to NJ TRANSIT while enhancing the customer experience at the station complex for NJ TRANSIT customers. The property transfers would result in net revenue to NJ TRANSIT based upon appraised fair market values.

The detail surrounding the proposed exchange of real property with Princeton, in furtherance of the relocation of the Dinky line station, was provided after the notice and agenda were released. Generally, the descriptive analysis tracked the proposed resolution, which the Board would be called on to approve. The resolution sought approval for NJT to:

1. [S]ell [Princeton] a 0.84 acre parcel in fee . . . to be used for the construction of parking for the new Dinky Station;
2. [A]cquire from [Princeton] a 0.06 acre parcel . . . to facilitate the realignment of the Princeton Branch tracks;
3. [R]elocate NJ TRANSIT's existing public transportation easement . . . in exchange for a public transportation easement from [Princeton] . . . ;
4. [C]ontinue and relocate parking covenants [at the new station] in relation to the location of the new Dinky Station; and,
5. [Obtain compensation].

Turning to the statute appellants seek to apply, we note "rail passenger service" is defined as meaning "the operations of a railroad, subway, street, traction or electric railway for the purpose of carrying passengers in this State or between points in this State and points in other states." N.J.S.A. 27:25-3(g). Although "substantial," "curtailment" and "abandonment" are not defined, we apply the well-established

rules of statutory construction and give these words their ordinary meaning, "construed in a common-sense manner." State ex rel. of K.O., 217 N.J. 83, 91 (2014). See also N.J.S.A. 1:1-1 (stating that the words of a statute are customarily construed according to their generally accepted meaning).

Appellants assert NJT's plan equates to "an abandonment of rail passenger services" at the former Dinky line station. They argue the exchange of property with Princeton abandoned the original railroad easement where the former Dinky line station was located, in favor of an easement in a more southern location.

An "abandonment" requires "[t]he relinquishing of a right or interest with the intention of never reclaiming it." Black's Law Dictionary 2 (9th ed. 2009). Here, there is no support NJT intended to stop, delay or indefinitely suspend rail passenger service on the Dinky line. Further, appellants, who have been intimately involved in this issue since at least 2011, have submitted no evidence station relocation affected fares, the number of trains in service, or the service schedules.

Notably N.J.S.A. 27:25-8(d) does not address substantial curtailment or abandonment of facilities, but speaks solely to rail passenger service. NJT's regulations define "facilities" to include "all stations and terminals owned or operated by

[NJT] under contract, lease or other agreements or arrangements[.]" N.J.A.C. 16:83-1.2. We cannot agree NJT's real property swap with Princeton requiring the relocation of the Dinky line station represents an abandonment of passenger rail services. While it is true the exact station location will no longer be in use, nevertheless, Dinky line rail passenger service continues from Princeton to Princeton Junction. Only the Princeton passenger pick-up and drop-off platform was moved 460 feet from its prior location.<sup>2</sup>

This analysis easily leads to the conclusion N.J.S.A. 27:25-8(d) is inapplicable to the Board's action. Accordingly, appellants' arguments in Point I, suggesting the action required fifteen days prior notice, is rejected.

The related argument, detailed in appellant's Point II, argues prior discussion predetermined the Board's action as one not involving a substantial curtailment or abandonment of rail passenger services. Appellants suggest the Board's resolution must be voided, as their conduct amounted to illegal rulemaking because NJT never published nor adopted the criteria defining a

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<sup>2</sup> Contrary to appellants' assertions, the concept of "public convenience and necessity" is utilized in federal law, see 49 U.S.C.A. § 10901 (2015), and is inapplicable to NJT's actions in implementing the NJTA. See N.J.S.A. 27:25-8(b) (exempting NJT from the jurisdiction vested in the Department of Transportation under N.J.S.A. 48:4-3 for issuance of certificates of public convenience and necessity).

substantial curtailment or abandonment of rail passenger services.

We have stated "a clear statutory provision is enforceable by the agency in accordance with its plain meaning without the necessity imposed by the Administrative Procedure Act for a prior rule promulgation." Equitable Life Mortg. & Realty Inv'rs v. N.J. Div. of Taxation, 151 N.J. Super. 232, 240 (App. Div.), certif. denied, 75 N.J. 535 (1977). In any event, because we have concluded the alteration or relocation of station facilities is not a curtailment or abandonment of passenger rail service as used in N.J.S.A. 27:25-8(d), we decline to otherwise address whether regulations are necessary to define an abandonment of passenger rail services, as we will not issue what amounts to an advisory opinion. N.J. Dept. of Env'tl. Prot. v. Huber, 213 N.J. 338, 368 n.10 (2013).

Next, appellants argue NJT must have discussed, in the course of a non-public meeting (prior to the June 25, 2013 meeting), that notice provisions mandated by N.J.S.A. 27:25-8(d) did not apply to the proposed action regarding the realty transfer with Princeton. Appellants assert this conduct violated OPMA. Further, they contend the Board action must be set aside because the Board issued no reasons supporting its conclusion N.J.S.A. 27:25-8(d) was inapplicable to the proposed

realty transfer and did not explain why the resolution was approved. We reject each of these arguments.

First, any claim of a non-public meeting discussing the Board's intended action results from speculative assumptions, not facts. The controversy regarding moving the Dinky line station had been on-going for two years prior to the Board's June 2013 meeting. NJT was a named defendant in the Chancery action that was filed by appellants in October 2011. Certainly, Board members were well versed in the nature of the Dinky line station relocation and the claimed implications by Dinky line passengers. The Board members would have readily recognized the proposed action on the land transfer resolution involved a change in facilities, not a curtailment or abandonment of rail passenger services. On this issue, we defer to the expert knowledge of Board members regarding the statute and regulations they administer. Stallworth, supra, 208 N.J. at 194. Finally, we will not assume there were non-public discussions by the Board, absent some prima facie basis to support such an assertion. R. 2:11-3(e)(1)(E).

As to the propriety of the Board's action, we discern no procedural irregularities or legal infirmities. The Board holds the discretion to provide notice to the public of its decision to conduct a special telephonic meeting. It held the meeting,

during which the public had an opportunity to present positions. At the close of discussion, the Executive Director presented the noticed resolution for adoption, which was moved, seconded and approved by a majority of the members present who constituted a quorum. See N.J.S.A. 27:25-4(e) (providing NJT acts through the voting members of its Board, which may act through motions or resolutions).

Our analysis concludes all remaining arguments not otherwise addressed were found to lack sufficient merit to warrant discussion in our opinion. We determine no basis is presented to interfere with the Board's adoption of Resolution 1306-31A.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION