



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

IN THE MATTER OF PRINCETON)
RAILROAD STATION TRACK)
REMOVAL PROJECT, PRINCETON)
RAILROAD STATION, MERCER)
COUNTY, BOROUGH OF)
PRINCETON, APPELLATE DOCKET)
NO. A-005145-11T1)

ORDER DENYING STAY
PENDING APPEAL

On June 25, 2012, Save the Dinky, Inc. and Anne Neumann (Appellants) filed an appeal in the New Jersey Superior Court, Appellate Division, challenging the Department of Environmental Protection's (DEP) May 11, 2012 conditional approval authorizing New Jersey Transit (NJT) to abandon 460 feet of a transportation easement at the north end of the Princeton Branch Railroad (also known as the Dinky Station or the Dinky) in the Borough of Princeton in conjunction with NJT's proposal to establish a new rail terminus 460 feet south of the present site. In 1984, NJT transferred the Dinky Station buildings, platform and land underlying the northernmost section of the rail line to Princeton University, retaining an easement over the property for public transportation purposes, including the right of way along the rail tracks, station, and station platform. The existing Princeton Railroad Station is listed in the New Jersey Register of Historic Places; thus, the NJT's undertaking was determined to be an encroachment under the New Jersey Register of Historic Places Act, N.J.S.A. 13:1B-15.131, and its attendant regulations, N.J.A.C 7:7-4.

Construction of a new rail station is part of Princeton University's development of an Arts and Transit Center on the western edge of the university's campus. This project will incorporate the existing Dinky Station buildings through their adaptive re-use as a café and restaurant. Existing parking will be replaced with new parking around the new station and various road and traffic improvements are planned.

DEP's May 11, 2012 approval adopted Resolution No. 2012-341 of the New Jersey Historic Sites Council (Sites Council), which, in turn, recommended approval of the NJT track removal project subject to three conditions that will avoid, minimize or mitigate the adverse impacts of the project on the historic resource. Specifically, the Department authorized abandonment of the transportation easement subject to the following conditions¹:

1. Prior to the abandonment of the easement, Historic American Building Survey (HABS) quality documentation shall be performed to record the current appearance of the Princeton Railroad Station complex and its physical setting. The quantity, nature, quality, specific content, and disposition of the photographs to be taken, shall be decided through consultation with and, thereafter, reviewed by the [Historic Preservation Office].
2. NJ Transit shall promote public awareness of the history of the Princeton Railroad Station and/or the new Dinky station. These displays shall use text and historic photographs to present the history of the station and the Princeton Branch, in particular, its relationship to both the township and the University.
3. The track shall not be removed until the service is terminated and the connection work for the new track has commenced. NJ Transit will not abandon the easement until new transit service is in operation.

¹ Nowhere in Appellants' papers is there any challenge to or discussion about Conditions 1 and 2.

Appellants' appeal is pending before the Appellate Division under Docket No. A-005145-11T1 and that matter is fully briefed. Appellants have now requested a stay of the DEP's May 11, 2012 approval and the underlying Sites Council resolution, claiming that irreparable harm will result unless all construction on and action taken to move the track removal project forward is suspended until the appeal is resolved.² NJT, Princeton University, which intervened in the pending appeal, and DEP, through the Historic Preservation Office, oppose any stay. Appellants submitted additional argument in support of their request for stay by letter brief dated August 27, 2013.

For the reasons set forth herein, I DENY the request for stay.

DISCUSSION

Standard for Granting of Stay

R. 2:9-7 requires that motions for stay of administrative agency decisions be "made in the first instance to the agency whose order is appealed from and, if denied, to the Appellate Division." R. 2:9-7. Appellants contend that they have met the standards for a stay and indicate that if the Department denies their request, they will seek relief in the Appellate Division.

The Department is not required to grant a stay request simply because its decision is under review by the Appellate Division. Rather, to be entitled to a stay, Appellants must demonstrate each of the following: (1) the threat of irreparable harm; (2) a reasonable probability of success on the merits; (3) that the legal rights underlying their claims are

² The Appellants have five other actions pending through which they are challenging Princeton University's Arts and Transit Center Project. Three of these matters are pending in the New Jersey Superior Court and two are before the federal Surface Transportation Board (STB). See footnote 1 of Brief in Opposition to Stay Application filed by Princeton University.

settled; and (4) that public interest and relative hardships to the parties favor a stay. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982).

I find that Appellants' stay request falls short of satisfying these criteria and hereby DENY their request.

Irreparable Harm

A stay "should not issue except when necessary to prevent irreparable harm." Id. at 132-3. "Harm is generally considered irreparable ... if it cannot be redressed adequately by monetary damages." Id. Appellants claim that irreparable harm will result because: (1) NJT and Princeton University have recently agreed to transfer certain property in exchange for other property to accommodate both NJT's rail relocation and need for easement rights as well as Princeton University's development project³; (2) construction in the perimeter area of the project has already begun; and (3) train service is scheduled to cease at the existing station on or about August 23, 2013 and begin at a new temporary platform to the south on August 26, 2013. Implicit in Appellants' first argument (1) is the assumption that the land exchanged includes the 460 feet easement under discussion and that the exchange signals a termination of the easement in violation of DEP's conditional approval. I find that Appellants' claims do not demonstrate irreparable harm.

As certified by Princeton University's Vice President of Facilities, the June 25, 2013 NJT Board approval of NJT and Princeton University's land exchange does not include any land or rights within the designated historic train district that was the subject of the DEP's May 11, 2012 approval. Further, both NJT and Princeton University have stated that the NJT easement at the existing Dinky Station will not be terminated until mid-year 2014.

³ NJT's Board of Directors approved this land exchange at its public meeting held on June 25, 2013.

Renovation of the station buildings for conversion to a café and restaurant is not contemplated until December 2013 at the earliest. Construction in the vicinity of the existing Dinky Station consists of installation of fencing, removal of structures not relevant to this matter, excavation for utilities and work associated with new parking and the temporary train station. There has been no work on the Dinky Station. The cessation of train service at the Dinky Station and the start of service at another temporary location as announced are fully consistent with Condition 3 of DEP's approval. NJT has committed to maintain transit service to the area without interruption by way of a temporary platform, and Princeton University has indicated that it will provide additional shuttle service for commuters traveling to Princeton Junction. NJT has certified that its work on the track removal project will not affect or otherwise harm the Dinky Station as that work relates only to the rail infrastructure. Further, NJT and Princeton University have agreed that in the event Appellants are successful on their claims in the related actions, both parties would be required to restore conditions to those that existed prior to the start of construction. Thus, Appellants have failed to establish any immediate, irreparable harm.

For these reasons, Appellants have not demonstrated irreparable harm sufficient to warrant the entry of a stay.

Likelihood of Success on the Merits

The second element that Appellants must demonstrate is reasonable probability of success on the merits. Crowe v. DeGioia, *supra* at 133. To that end, a stay "should not issue where all material facts are controverted." *Id.*

Courts extend substantial deference to an agency's interpretation of its own regulations. DiMaria v. Board of Trustees of Public Employees' Ret. Sys., 225 N.J. Super.

341, 351 (App. Div.), certif. denied, 113 N.J. 638 (1998). Accordingly, to prevail on appeal, Appellants must show that DEP's approval of the easement abandonment was arbitrary and capricious. In re Proposed Xanadu Redevelopment Project, 402 N.J. Super. 607, 642 (App. Div. 2008); Worthington v. Fauver 88 N.J. 183, 204-05 (1982). A decision is considered arbitrary and capricious where there is "no rational basis" or the decision is "willful and unreasoning" without consideration and in disregard of circumstances. Id. Appellants assert here as they do in their appeal that DEP and the Sites Council did not have jurisdiction to hear NJT's application for abandonment and that the STB, which has exclusive jurisdiction over abandonment or discontinuance of rail service, was the proper venue for the current application. They argue, further, that DEP and the Sites Council should not have considered NJT's application for abandonment because the 1984 contract of sale by which NJT transferred the rail station and facilities, subject to a transportation easement, is under review in separate litigation. Next, Appellants contend that the Sites Council was required to make findings that establish that public benefit of abandonment outweighs the harm due to loss of the historic resource and that there is a public benefit in relocating the terminus of the rail line. Princeton University and NJT argue that the only issue before DEP was the early termination of the NJT easement and not relocation of the terminus, over which DEP has no jurisdiction.

Appellants have filed numerous actions challenging Princeton University's project and DEP takes no position on any of them, including the matter pending before the STB. Notably, all that was before the Sites Council and the DEP was the early termination of NJT's transportation easement. The Sites Council and DEP do not have jurisdiction over Princeton University's project or its adaptive reuse of the station buildings; nor does DEP

have jurisdiction over NJT's transportation decisions⁴. In making its decision, the Sites Council followed all of the procedures set forth in N.J.A.C. 7:4-7.2. Specifically, the Sites Council held two meetings under the Open Public Meetings Act to consider the application, thus affording Appellants and the public an opportunity to comment on NJT's application. The Sites Council determined that NJT's application met the standards of N.J.A.C. 7:4-7.2(e)(6) by reducing traffic congestion in the area. In addition, the adaptive reuse of two historic buildings provides a public benefit. NJT's easement, moreover, will expire five years after NJT terminates service on the rail line. Thus, even if Appellants were successful in the underlying appeal, the only consequence would be that Princeton University would have to delay its adaptive reuse of the two station buildings and the removal of the tracks for five years until the easement expires by its own terms.

Accordingly, Appellants are unlikely to succeed on their claim that DEP should not have considered NJT's application for abandonment.

Settled Legal Rights

“Temporary relief should be withheld when the legal right underlying [the party's] claim is unsettled.” Crowe v. DeGioia, supra at 133. In support of this prong of the test for a stay, Appellants argue only that they have standing to ensure that administrative review of the proposed encroachment satisfies statutory and regulatory requirements. This vague claim does not address the required standard and merely reiterates Appellants' overall assertion that the historic structure will be irreparably damaged.

⁴ Notably, NJT is not abandoning rail service; it is merely moving the terminus to a location a short distance to the south of the existing end point.

Accordingly, I find that Appellants have not demonstrated settled legal rights sufficient to warrant a stay.

Balance of Hardships

The final prong of the test for a stay is a consideration of the relative hardships to the parties in granting or denying relief. Crowe v. DeGioia, *supra* at 134. Appellants assert the equities favor the grant of a stay because the public will be deprived of a functional historic resource if construction moves forward. Largely, the Appellants complain of inconvenience to the public that will result from longer walking or driving distances to the new rail terminus. In contrast, Princeton University has certified that it will lose millions of dollars in the first thirty to ninety days of delay, with a domino effect of impacts to later construction schedules, intended use of the facilities by faculty and students, and losses to neighboring facilities, such as McCarter Theater. NJT and DEP note the substantial benefits that will result from improved commuter rail access, roadway reconfiguration, and reduction in traffic congestion. Commuters using the rail station will also have the use of newly adapted buildings. A delay in the project will prolong traffic congestion in an area that will be under construction in other respects and would allow the two station buildings to sit idle and unused. Moreover, Appellants' appeal has been pending now for more than one year and they have known about the impending construction and cessation of service at the Dinky Station. Their delay in seeking a stay belies their assertion of harm to the public interest.

Accordingly, I find that the balance of hardships does not weigh in favor of granting a stay.

CONCLUSION

For the reasons set forth herein, Appellants have not demonstrated: (1) irreparable harm; (2) a likelihood of success on the merits; (3) the existence of settled legal rights; or (4) that the balance of hardships favors a stay. Accordingly, Appellants request for a stay is DENIED.

IT IS SO ORDERED.

8/28/2013
DATE



Bob Martin, Commissioner
New Jersey Department of
Environmental Protection

IN THE MATTER OF PRINCETON RAILROAD STATION TRACK REMOVAL
PROJECT, PRINCETON RAILROAD STATION, MERCER COUNTY, BOROUGH OF
PRINCETON, APPELLATE DOCKET NO. A-005145-11T1

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