IN THE MATTER OF THE TOWNSHIP OF EAST BRUNSWICK FOR A JUDGMENT OF COMPLIANCE OF ITS THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-3115-19 A-3125-19
HIDDEN OAK WOODS, LLC, Plaintiff/Respondent, -vs.- TOWNSHIP OF EAST BRUNSWICK and TOWNSHIP OF EAST BRUNSWICK PLANNING BOARD, Defendants/Appellants.	On appeal from Final Judgment Entered in Law Division of Middlesex County Docket No. L-4013-15 Docket No. L-4282-19 Sat Below: Hon. Thomas McCloskey, J.S.C. Civil Action (Consolidated)

BRIEF OF AMICI LAWRENCE BROOK WATERSHED PARTNERSHIP AND LOWER RARITAN WATERSHED PARTNERSHIP

Renée Steinhagen, Esq.
Attorney ID No. 038691989
NEW JERSEY APPLESEED PUBLIC INTEREST LAW CENTER
50 Park Place, Rm. 1025
Newark, N.J. 07102
973-732-0523
renee@njappleseed.org

Attorney for *Amici Curiae*
Lawrence Brook Watershed Partnership
Lower Raritan Watershed Partnership

Dated: December 9, 2020

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes, Regulations, Rules:

Municipal Ordinances:

Other Authorities:

Articles, treatises:

INTEREST OF AMICI CURIAE

Pursuant to R. 1:13-9, the special interests in this litigation asserted by *amici* are as follows:

The applicants are two local environmental nonprofit organizations that are dedicated, as part of their respective missions, to restoring, enhancing and conserving the natural resources of their shared "Watershed Management" area in Middlesex County. Each of the applicants has a special interest in this litigation. They both participated in the Planning Board hearings held in this matter, requested the Planning Board to require the developer to secure an updated wetlands delineation of the 42-acre "Hidden Oak Woods" development site, and sought to secure changes to the project that would ensure a safe, healthy environment for future residents, as well as cause minimum negative impact on the soils, hydrology and plants of this distinct geographical area.

Since 1998, Lawrence Brook Watershed Partnership ("LBWP") has been vigorously committed to advocacy, water monitoring, community action and environmental education programs related to the Lawrence Brook Watershed. Its mission is specifically to protect the environment and enhance the water quality throughout this area. In this matter, Alan S. Godber, President of LBWP, submitted a letter dated December 29, 2018, to the East Brunswick Planning Board setting forth the organization's concerns regarding

the proposed residential development. (Steinhagen Cert., Ex. A, hereinafter "RS Cert."). He also spoke directly to the Board at the February 13, 2018, hearing. (5T163-19 to 5T166-20). The letter ended urging the Board to consider several other sites in the East Brunswick Township that are "more suitable for residential development and affordable housing needs" than the subject parcel, which LBWP feared would be subject to unnecessary "habitat destruction."

The Lower Raritan Watershed Partnership ("LRWP") works to conserve, enhance and restore the natural resources of New Jersey Watershed Management Area 9, the Lower Raritan Watershed. Organized in 2014 to address industrial pollutants that left a legacy of contamination in the Raritan River and the Lower Raritan Watershed, it has since identified other ongoing threats to the watershed, including the expansion of impervious surfaces, significant non-point pollution related to stormwater flows and stream degradation related to up-slope development. In 2017, LRWP worked with a student at Rutgers University to develop documents to guide restoration of the East Brunswick Tices Lane Park Pinelands area, which included among other things, an effort to establish baseline information to understand stream degradation of the Sawmill Brook from up-slope development. LRWP is currently in the process of documenting changes to the percentage of impervious surface in East Brunswick over time (see Maps from 1995-2015, RS

Cert., Ex. B), and notes the recommendation by a Rutgers University Report that impervious cover within the Lawrence Brook sub-watershed should be reduced by 183.4 acres. See http://water.rutgers.edu/Projects/NFWF/ICA/ICA_EastBrunswick.pdf

Heather Fenyk, AICP/PP, Founder and President of LRWP, submitted a letter dated October 8, 2018, to the East Brunswick Planning Board setting forth the organization's concerns regarding the proposed residential development. (RS Cert., Ex. C). She also spoke directly to the Board, as part of the objector's case at the February 13, 2018, hearing. (3T16-3T47). In the first line of the letter, Ms. Fenyk requested, on behalf of LRWP, that the developer provide "an updated wetlands delineation of the 45-acre 'Hidden Oak Woods' proposed development site in East Brunswick's historic and environmentally critical Sawmill Brook Basin/Hickory Swamp."

As described above, each of the two applicant *amici* has a special interest in this litigation insofar as each seeks to protect the natural resources of specific Watershed Management Areas in Middlesex County. Their respective interests originate from their organizational missions, their tireless advocacy on behalf of the natural resources found in shared geographical areas, and their dedication of resources toward increasing awareness and public action to protect the water quality as well as the surrounding habitat of the many streams, tributaries, and lakes

that serve as the drinking water supply for many Middlesex residents.

PRELIMINARY STATEMENT

The decision below portrays this dispute as simply between a developer, who is trying to enforce a 2016 Settlement Agreement between the Township and the Fair Share Housing Center (Ja21-Ja46) and a Final Judgment of Compliance and Repose (Ja282-Ja289), and the Township, which is portrayed as hostile to the construction of affordable housing. LBWP and LRWP do not take a position on whether Township officials are opposed to affordable units; but what they do know is that this dispute cannot be seen exclusively in these terms.

More consideration and respect must be afforded the unique 45-acre natural landform at issue here, once known as Hickory Swamp (3T14-15 to 17); an area that is the most northern example of the New Jersey Pine Barrens and has historically been and remains very wet (3T19-12 to 18), with living wetlands as a prominent feature of its ecology. Designated as a Critical Environmental Site under the State Development and Redevelopment Plan and an Environmentally Sensitive Area under the East Brunswick Natural Resource Inventory, development within certain portions of the site is permitted (though not desirable), and must proceed with due caution and care. Indeed, LBWP and LRWP participated in the Planning Board hearings to ensure that the residential development

that will occur on this property is in accordance with all relevant environmental ordinances and statutes, will have a minimal adverse impact on wetland, stream encroachment and buffer transition areas present on the site, and will not result in flooding, mold and water pollution problems for future residents.

Amici seek to reverse the trial court decision for two reasons: First, contrary to the court below, LBWP and LRWP believe that the Planning Board's implementation of its policy to permit members of the public to speak at the end of each hearing (and to present an objector's case), cannot, as a matter of law, be the basis for concluding that the Board and Township do not intend to comply with the 2016 agreement and judgment with respect to this property. The Township's legal commitment to "expedite" the approval process cannot overwhelm the public's constitutional right to petition government and its statutory right under the Municipal Land Use Law ("MLUL") to present comments, cross-examine witnesses and present its own objector case.

Second, LBWP and LRWP contend, again contrary to the court below, that requiring the developer to produce an updated Wetlands Letter of Interpretation ("LOI") does not indicate an intent to prevent the project nor an unlawful attempt to intrude on NJDEP's exclusive authority to regulate wetlands. Rather, *amici* assert that such requirement constitutes a reasonable demand to ensure that the project's design is solidly grounded on an accurate

characterization of the property. In fact, LBWP and LRWP understand that an LOI is not an "approval" or a "permit." And requiring a developer to secure such delineation from NJDEP prior to receiving municipal approval is explicitly authorized under N.J.A.C. 7:7A-4.2(b)1. It is a necessary step in furtherance of the Planning Board's obligation to protect the public, residents and the property itself from potential future harm.

This property is not just another property deemed by a township to be suitable for residential development. It is an environmentally sensitive site that has been impacted by adjacent industrial development in the past and will be impacted by the construction of this housing development going forward. Most importantly, it is very wet land that over the last twenty-five years has experienced increased precipitation and climate change, making it more likely than not that its typography and the boundaries of the wetlands have changed. Therefore, as matter of public policy, development cannot and should not proceed before the Township engineers and Planning Board members are able to ascertain that the property has been accurately characterized and the wetlands accurately delineated.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Amici hereby rely upon the procedural history and statement of facts set forth in the Appellants Township of East Brunswick's

and Township of East Brunswick Planning Board's jointly filed brief.

THE STORY OF HICKORY SWAMP aka HIDDEN OAK WOODS

Hidden Oak Woods is to be built on what has for at least one hundred years been known colloquially as Hickory Swamp. (RS Cert., Ex. C). This approximately 45-acre parcel was never developed, even during the height of development in the 1960s and 1970s, and until very recently remained undeveloped and almost completely wooded. (Ja311).[1] The entire site is identified in local and state plans as an environmentally critical or sensitive site for its extensive wetlands and significant steep slope features. It is a truly unique natural landform, the northern-most example of the New Jersey Pine Barrens. (3T25-8 to 9).

First classified as a Major Subdivision by the Planning Board in 1975, the entire parcel was approved for a 21-lot industrial/office cluster subdivision, with preservation of several environmentally sensitive areas, first in 1984, and then 1987, with amended final approval granted in 1988. (Ja308-309). Eagle Road and Mill Brook Court, both accessory roads, were approved as part of the final application and were constructed soon thereafter. (Ja297). At some point, underground utilities and

[1] The actual site owned by the developer is 41.06 acres. (Ja110).

a stormwater collection system were also constructed; the record is unclear as to when such infrastructure was built. (Ja311).

The Middlesex County cross-acceptance map of the State Development and Redevelopment Plan (first published in June 1992, and last revised in March 2001) identifies this area as a Critical Environmental Site (RS Cert., Ex. A); whereas, the relevant map within the 1996 East Brunswick Natural Resources Inventory identifies the property as partially in a Class A Environmentally Sensitive Area ("ESA") and partially in a Class B ESA. (Ja1144). Class A ESAs "are areas of critical environmental sensitivity that are highly regulated by federal and state law," in which "[d]evelopment is undesirable, but may be allowed with regulatory approval." (RS Cert., Ex. J). Class B ESAs "are areas of critical environmental sensitivity that may be regulated by local ordinance" and "may be made developable if site-specific mitigation measures are used." Ibid. An accurate representation of these classifications as applied to the site can be visualized by viewing the GIS Data Maps produced by NJDEP. (See RS Cert., Ex. F).

In 1998, NJDEP issued a LOI, based on a plan map dated March 13, 1996 (and revised one month later) verifying the jurisdictional boundary of the freshwater wetlands and other bodies of water on the Hidden Oaks site. (Ja312). It is unclear, who requested that letter and what type of development was contemplated for the site.

Six years later, in a resolution dated June 19, 2002, the Planning Board adopted a resolution to amend the Township Master Plan to permit "a senior citizen mixed use development zone" to be created. The following year, the M. Alfieri Company requested an updated LOI. The NJDEP issued such letter in October 2003, based in part upon a site inspection conducted on August 15, 2003, affirming the accuracy of the maps submitted in 1996. (Ja798).

In August 2007, the property was rezoned to permit Planned Senior Residence Development to be added as a conditional use to the Office/Industrial Planned Development zone at a density of 10 units per acre (Ja297; Ja 309). At some time in 2008, the Township rezoned the site for "400 senior for sale units with an inclusionary set aside," (Ja1935), but the Township received no credit for such potential project with respect to addressing its total 1987-2018 affordable housing obligation. (Ja423-424).

In 2016, the Planning Board recommended to the Township Council that the subject property again be rezoned to MDA Multi-Dwelling Apartment zone to permit 275 apartments, including 55 affordable units, in accordance with the East Brunswick Housing Element and Fair Share Plan and the judicially approved Affordable Housing Settlement. (Ja310). That recommendation was adopted by the Township on November 14, 2016. (Ja49-Ja52).

Since that time, and until recently, the property remained untouched. Starting this September, the developer appears to have

commenced preparing the property for construction. Compare Aerial photos taken dated July 12, 2020 with those taken on September 20, 2020. (RS Cert., Ex. G).

LEGAL ARGUMENT

I. THE PLANNING BOARD'S IMPLEMENTATION OF ITS POLICY TO PERMIT PUBLIC PARTICIPATION IN THIS MATTER FURTHERS THE POLICY OF THE MLUL AND DID NOT EVIDENCE HOSTILITY TOWARD THE PROPOSED PROJECT.

In its decision, the trial court said:

> Rather than expedite the hearing, the Board allowed dozens of witnesses to testify about unrelated matters and issues beyond the jurisdiction of the board to consider. (Ja1934E.

See also Ja1943 ("Furthermore, unsupported, inaccurate, irrelevant and repetitive testimony. . . hampered and extended Hidden Oaks application.") There is little doubt when reading through Judge McCloskey's opinion that he believed that the manner in which the Planning Board conducted the board hearings demonstrated bias against the developer and/or affordable housing. *Amici* assert that an objective review of the transcripts of the five hearings tells a different story; a less dramatic, mundane story, with much less controversy than both the applicant and judge have authored.

Despite several requests by the developer's counsel to prevent members of the public from speaking during the public comment period -- including LBWP's Board President, the Planning Board resisted; instead, it defended the public's constitutional

right to express their concerns about the proposed project (2T7-23 to 2T9-14), and its own discretion to permit members of the public to speak at each meeting. (1T49-14 to 23).

The Planning Board's standard policy regarding public participation, as implemented in this matter, is clearly consistent with the policy of the MLUL with respect to hearings (N.J.S.A. 40:55D-10), and the case law decided thereunder. See, e.g., DeMara v. JEB Brook LLC, 372 N.J. Super. 138 (Law Div. 2004)(planning board must show impartiality in treating objectors similar to the applicant and giving everyone the right to speak pursuant to consistently applied rules); Witt v. Borough of Maywood, 328 N.J. Super. 432 (Law Div. 2000), *aff'd*, 328 N.J. Super. 343 (App. Div. 2000)(planning board obligated to offer all objectors a fair opportunity to address the full range of issues implicated in the application; not remaining neutral and "above the fray" "deprives the [board's] decision of legitimacy."); and Village Supermarket v. Mayfair Supermarket, 269 N.J. Super. 224 (Law Div. 1993)(holding that all persons regardless of motive have a First Amendment right to influence planning board members by participating in board hearings).

So, what actually happened during the proceedings before the Planning Board? At each of the five meetings, members of the public were given the opportunity to voice either their support for or objection to any aspect of the application; no member of the public

or formal objector cross-examined the applicant's witnesses; and people were polite, spoke relatively succinctly and testified to issues typically raised at a planning or zoning board hearing: traffic, safety concerns (1T89-15 to 22; 2T74-11 to 15), tree removal(1T83; 1T113; 1T118), potential flooding (2T94-1 to 7; 2T102 to 103; 2T106; 5T61-17 to 24), potential pollution of water resources, the encroachment of the project on streams, drainage and conservation easements (1T106-12 to 17), and the development's limitation with respect to its "walkability." (1T94-95;108-1 to 5; 3T52).

Yes, two or three people may have framed their concerns in the language of impaired property values and increased burden on the schools, but no planning board in the State of New Jersey is spared hearing such comments. Commons v. Westwood Zoning Bd. of Adjustment, 81 N.J. 597 (1980)(where neighbors opposed application for a variance based on their fears of decreased property values).

And yes, some people raised the same concern that had been previously articulated by their neighbor, but the record indicates that the Chairman of the Board did request that people avoid such repetition. (5T160-7 to 12). Simply prohibiting people from testifying would have been inappropriate; and from the public's perspective, letting more people speak rather than fewer people, and permitting the same people to speak, but at different hearings on different issues, is a breath of fresh air and should be

promoted, not sanctioned. Cf. Morris County Fair Housing v. Booton Twp., 220 N.J. Super. 388, 399-400 (Law Div. 1987), *aff'd* 230 N.J. Super. 345 (App. Div. 1989)(where court lamented the fact that the board had placed "virtually no limitations on the cross-examination of experts by members of the public" but noted "it would not be appropriate to require a party to make some preliminary showing of a need for cross-examination or to place an arbitrary limitation on its length").

The record indicates that the applicant was particularly vexed by the objector case presented on Dec. 5, 2018, and repeatedly told the objector, a former Planning Board member, and his witnesses (who included, LRWP's President, Ms. Fenyk) that their testimony was irrelevant or not properly before the Planning Board. Notwithstanding Mr. Petrino's claims, the objector's presentation, on the whole, was in fact relevant to matters on which the Planning Board had a legal obligation to act (based on several letters submitted by the developer, including a letter by its engineer explaining how the developer intended to remedy the water discharge problem identified by Mr. Walling). (Ja1577).

First, it should be noted that Mr. Walling's objector's case and information that he submitted to the Planning Board via e-mail (RS Cert., Ex. E), implicated several municipal ordinances, including but not limited to the following:

- §132-3 (defining "Environmentally Critical Areas")

- §132-30 (Checklists)
- §132-31 (Environmental Impact Ordinance)
- §192-9 (Environmental Features, Grading)
- §192-23 (Environmentally Sensitive Areas)
- §192-51 (Soil Erosion and Sediment Control)
- §192-53 (Storm Drainage Facilities)
- §228-229.3 (Steep Slopes)

These East Brunswick Township ordinances regulate development in Class B ESAs and co-exist with state and federal regulations, which govern Class A ESAs; and, the applicant has acknowledged that both classes of ESAs exist on the Hidden Oak Woods site. (Ja1144).

Moreover, although NJDEP has exclusive jurisdiction to issue flood hazard permits or freshwater approvals, and the Freshwater Wetlands Protection Act pre-empts local regulation on matters within the Act's ambit, a municipality, such as the Township of East Brunswick is not precluded from acting on and considering stormwater management, drainage, and other environmental issues raised by *amici* and Mr. Walling. Similarly, although the Freehold Soil Conservation District has sole authority to issue required Sediment (Slopes) Control approvals, a municipality may still require an applicant to comply with its own steep slope ordinance.

The relationship between NJDEP (or county or federal regulatory agencies) and municipal land use boards is not simple; indeed, it is certainly more complicated than either/or. See e.g., In re Freshwater Wetlands Permits, 185 N.J. 452 (2006)(court noted that hearings before the planning board, not the NJDEP permitting

process, was the appropriate venue for consideration of the impact on neighboring properties of runoff from wetlands); Save Hamilton Open Space v. Hamilton Twp. Planning Bd., 404 N.J. Super. 278, 283-386 (App. Div. 2008)(remanding to the planning board, which court found had not determined compliance with Phase II stormwater management regulations, despite NJDEP's issuance of a general permit for stormwater discharge during construction); Dowell Associates v. Harmony Twp. Land Use Bd., 403 N.J. Super. 1, 30-31 (App. Div. 2008), *certif. denied*, 197 N.J. 15 (2008)(where court carefully distinguished the propriety of board's ruling regarding the "feasibility" of a sewage disposal system from the impropriety of board's ruling on its "permittability," which exclusively belonged to NJDEP); Goodfellows v. Washington Twp. Planning Bd., 345 N.J. Super. 109 (App. Div. 2001) (holding that once the planning board determined that applicant's drainage plan complied with municipal requirements, it should have conditioned preliminary approval on the applicant's acquisition of a drainage easement on adjoining property). See also Terner v. Spyco, Inc. 226 N.J. Super. 532, 539-540 (App. Div. 1988)(noting that pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58: 16A-50 et seq., municipalities may adopt more restrictive requirements than NJDEP for areas designated as floodways and flood plains); and Cox & Koenig, New Jersey Zoning & Land Use Administration, §44-3.1 at 922 (Gann 2019)("Municipalities are well advised to give

stormwater discharge serious consideration" given that every municipality is required to prepare a stormwater management plan as part of its master plan and adopt a stormwater control ordinance under the State's Stormwater Management Act).

There is no doubt that the central issues raised in Mr. Walling's presentation -- water discharge, stormwater management, retention basins, and steep slope grading -- were all addressed, even if not adequately, in reports written by both the Board's engineer and the developer's experts; and they were all issues that were properly before the Board. See 4T115-18 to 22).[2]

In fact, in response to Mr. Walling's e-mail regarding "a major source of water run-off into the property [that] apparently was never part of the drainage/water reports for this site," Ms. Zimmerman, District Manager, Freehold Soil Conservation District, wrote as follows:

> Mr. Walling: The condition you are describing is a municipal engineering matter. The District review of permanent measures for erosion control is conditioned upon the directives from the municipal engineer. They determine first what is needed in the municipal system. In the event that the municipality directs the applicant to install structures to address flooding or storage, then we review what the design engineer develops. If the municipal engineer asks us to join in a meeting to discuss this, we certainly will participate. (RS Cert., Ex. E).(Emphasis added).

---

[2] As Board counsel explained: [Board members] know that we have to deal with evaluation of traffic. We have to deal with evaluation of environmental issues. We have to deal with issues of water containment and water control. We have to deal with everything associated with an application."

In this way, the developer was wrong when he tried to discredit the testimony of one of the objector's witnesses, Stephanie Murphy, as irrelevant. Contrary to Mr. Petrino's argument, the issue of soil types and soil erosion that she was discussing were properly before the Planning Board even though the Freehold Soil Conservation District had already issued its Sediment (Slope) Control approval. The Board engineer had a distinct responsibility, as Ms. Zimmerman noted, to make sure that the issues the objector raised were incorporated in his directives to the developer.

The objector's testimony was also critically valuable in two ways: First, he exposed that the calculations regarding water discharge that were provided to the Board, the Conservation District and NJDEP were incorrect. This was due to the great influx of water from the adjoining property, which was not included in the calculations upon which the storm detention system was based. According to Mr. Walling, neither the applicant nor the Board's engineer had addressed the impact of that discharge on soil erosion on the slopes of the property or on the wetland soil types identified in all prior soil assessments.

Second, Mr. Walling also raised concerns about the applicant's failure to provide a steep slope map and to thus properly determine the extent of grading on the slopes. See also

Environmental Commission Memorandum, #12 on page 2, RS Cert., Ex. D. ("The Township Engineer is charged with determining if construction on steep slopes can be appropriately engineered but it is not clear how this assessment can be made without a steep slope map showing the extent, severity and soil types on the onsite steep slopes"). Pointing out a deficiency, such as the applicant's failure to provide documents required to be provided pursuant to the Township's site plan review requirements for environmentally sensitive areas, is not irrelevant testimony. It is the type of testimony that is directed at making sure that the development plan that ultimately gets approved complies with all relevant local ordinances.[3]

In conclusion, the number of public commentators, who always spoke only at the end of each hearing and did not seek to cross-examine any of the developer's experts, did not hamper nor unreasonably extend the Board's processing of the developer's application. The number of public commentators was not inordinate or out of the ordinary, and any repetition was due to several people expressing similar concerns about potential traffic and flooding problems. One hearing out of five hearings was devoted to the objector's presentation, and his case actually exposed a

[3] See also Ja1578 (after inspecting the property, developer's engineer acknowledged the additional discharge raised by Mr. Walling and noted that "the project's systems should be designed to accommodate the additional flow").

water discharge problem that the developer had not revealed to the Board.

As a result, there is no basis for concluding that the Board's implementation of its regular policy regarding public participation was arbitrary or contrary to the law. The record does not support a finding of bias against the applicant nor hostility to affordable housing based on the hearings themselves. Directly put: the trial judge's rhetoric on the issue is just not substantiated by the record.

II. THE PLANNING BOARD'S DECISION TO REQUEST AN UPDATED WETLANDS LETTER OF INTERPRETATION PRIOR TO APPROVING THE PROJECT WAS CONSISTENT WITH THE RECOMMENDATION OF THE EAST BRUNSWICK ENVIRONMENTAL COMMISSION AND THE BOARD'S ENVIRONMENTAL EXPERT, NJDEP REGULATIONS AND RESPONSIBLE PLANNING PRINCIPLES.

In its decision, the trial court found that the Planning Board arbitrarily

> demanded that [the developer] obtain a new Wetlands Letter of Interpretation from NJDEP even though the Board was aware that NJDEP stated in writing on January 10, 2019 "that no other wetlands approvals are required for the construction of the project." (Ja1935-1936).

It further held that this demand unlawfully violated NJDEP's

> exclusive jurisdiction to delineate wetlands and transition areas and to regulate the development of wetlands. (Ja1970).

The court's conclusion is incorrect for two basic reasons: First, it rests on a misunderstanding of the nature and purpose of

the LOI; it is not a wetlands approval, but rather an informational document.[4] Second, the Planning Board was not attempting to enforce an ordinance that regulated freshwater wetlands; instead, it was relying on a specific regulation promulgated under the Freshwater Wetlands Protection Act itself.

N.J.A.C. 7:7A-4.2 states in part:

> (b) A letter of interpretation does not grant approval to conduct any regulated activities. The sole function of a letter of interpretation is to provide or confirm information about the presence or absence, boundaries, and/or resource value classification of freshwater wetlands, transition areas, and/or State open waters.
>
> 1. For planning approvals, for demonstrating compliance with ordinances, or for other purposes, a municipality or county may require and applicant to obtain an LOI as a condition of application completeness or a condition of approval. (Emphasis added).

In this instance, the Township required the developer to obtain an updated LOI prior to granting approval; having inadvertently failed to enforce its own Checklist Ord. §132-30,[5] it was reluctant

---

[4] See In re Freshwater Wetlands Letter of Interpretation-Reliance Determination, 2008 N.J. Unpub. LEXIS 1799,*8 (App. Div., August 1, 2008), *certif. denied*, 197 N.J. 259 (2008)(finding LOI to be an "informational document" not a "grant of approval to conduct any regulatory activities."); Delaware Riverkeeper Network v. Sec'y Pa. Dept. of Environ. Prot., 833 F.3d. 360, 373-379 (3d Cir. 2016) (finding LOIs to be "part and parcel" of Freshwater Wetlands Individual Permits, and are thus subject to the court's review when the permit is under review).

[5] Ord. §132-30A states in part: "Letter of Interpretation from New Jersey Department of Environmental Protection Freshwater Wetlands Division, including evidence that notice was given to the Municipal Clerk pursuant to N.J.S.A. 13:9B. If the New Jersey Department of

to grant approval prior to receiving from the developer an updated LOI that showed no greater constraint caused by the wetlands on the property than those established in the 2003 LOI. Merely requiring the developer to obtain an updated LOI as a condition of approval, without such substantive protection, was thought to be insufficient. The Planning Board wanted to know that nothing had changed on the entire site that would impact the footprint and design of the project before approving the application.[6]

A careful look at how the issue of "an updated LOI" arose may explain some of the confusion about the issue. The record indicates a contentious legal argument between the parties' counsel and their

---

Environmental Protection deems that wetlands are present, or the applicant does not receive a response to its request for a letter of interpretation, the applicant shall show such areas on a survey of the property, prepared by a Licensed Surveyor of the State of New Jersey."

[6] As counsel for the Planning Board stated:

> I'll be frank with you. I have yet to see a major scale application approved by this municipality which did not have a valid LOI and why is that important? The reason it's important is that's a fundamental aspect of what the development plan is based on. (5T94-7 to 12).

See Field v. Mayor and Council of Franklin Twp., 190 N.J. Super. 326, 332-333 (App. Div.), *certif. denied*, 95 N.J. 183 (1983) (approval denied when applicant failed to provide sufficient information to resolve fundamental elements of the development plan that would have a "pervasive impact on the public health and welfare").

environmental experts as to whether NJDEP's issuance of the Freshwater General Permit #6 ("GP-6"), dated June 6, 2018 (Ja804), extended the validity of the 2003 LOI on which it was based. For *Amici* and members of the public, what was troubling about the debate was its formal nature. The developer, and primarily his environmental expert, seemed indifferent to whether the LOI in question still reflected an accurate description of the value classification or boundaries of the wetlands and transition areas known to exist on the site. On the other hand, the Planning Board and its expert seemed to share the public's concern with accuracy.

In the record, the request for an updated LOI first appeared in the memorandum written by the East Brunswick Environmental Commission, May, 18, 2018. (RS Cert., Ex. D).[7] The Board's engineer noted in his report to the Planning Board, dated June 1, 2018, that the 2003 LOI had expired. (Ja312). *Amicus* LRWP requested an updated wetlands delineation in the first sentence of its letter to the Planning Board, dated October 8, 2018 (RS Cert., Ex.C); and that request became the subject of the cross-examination of Ms.

---

[7] Hidden Oak Wood's application for preliminary and final site approval, filed on December 15, 2017, (Ja3), was deemed complete on March 29, 2018. (Ja683). It included a 2003 Wetlands LOI that had confirmed a 1998 LOI, based on a 1996 map, for the same property; the formal validity of the LOI had been extended pursuant to the Permit Extension Law for fourteen years until it expired on June 30, 2017 (Ja1820 to Ja1821) Accordingly, it was no longer valid at the time the developer filed its development application with the Township.

Fenyk, when she appeared as a planning expert as part of Mr. Walling's objector case at the December 5, 2018 hearing. See 3T41-21 to 15 (where counsel for the developer implied that NJDEP must think that the 2003 LOI is still accurate because it issued the GP-6 based on it).

At the February 13, 2019 hearing, there was extended testimony presented by the environmental experts for both the Planning Board and developer, as well as sparring between their respective attorneys about the validity of the 2003 LOI, and whether the Board should request an updated document. The following was revealed:

The developer submitted his application for the GP-6 permit under a letter dated May 16, 2017, one month before the LOI finally expired (Ja801-802); NJDEP issued the GP-6 permit on June 6, 2018, when the LOI was no longer valid (Ja804); it was never established whether NJDEP last visited the site in 2003 or 2018; and if NJDEP did visit the site in 2018 before issuing the GP-6 permit, it was not established whether NJDEP inspected the entire site or only the isolated wetland area. (5T74-77;81-84). The developer's expert also reluctantly admitted, under questioning by the Board's counsel, that if the applicant were required to obtain a new LOI that significantly differed with respect to wetland boundaries and buffer requirements, the proposed application before the Board would have to be revised or reconfigured. (5T92-9 to 16).

Most importantly, NJDEP confirmed in writing to the developer's expert that the GP-6 permit "cannot be relied upon as verification of the wetlands boundaries onsite. Only an LOI can be used to verify the location and extent of freshwater wetlands and the LOI issued for the site has expired." (Ja1566 to Ja1567). In light of this written statement, the facts above and his years of practice in the area, Mr. Giddings, the Planning Board's environmental expert, opined "that [Hidden Oak Woods, LLC] should provide documentation from the NJDEP verifying their assertion that the LOI for the entire site is still valid or provide a new LOI for the site." (Ja1820 to Ja1821). And primarily based on his memorandum, the Planning Board requested that the developer obtain an updated Wetlands LOI prior to granting the final site approval.

There is no doubt that the Mount Laurel cases expressly recognized the importance of balancing the competing interests of preservation and development, but did not require departure from the requirements of the Freshwater Wetlands Act and its regulations. See S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel I), 67 N.J. 151 (1974), *appeal dismissed and cert. denied*, 423 U.S. 808 (1975), and S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel II), 92 N.J. 158, 218, 285 (1983).

Here, NJDEP's regulations permit the Township to require a valid, updated LOI as either a checklist item for application completeness or a condition of approval. The Planning Board

effectively chose the former when it required an updated LOI prior to approval, even though it had erroneously deemed the application complete when it had received the expired 2003 LOI in 2018; and the trial court, perhaps blinded by its unjustified anger, unfortunately failed to acknowledge that authority. As a result, the court erred as matter of law and sound public policy, when it refused to approve the Board's reasonable exercise of its right to request an updated LOI under NJDEP regulations to ensure that any plans approved would be based on an accurate characterization of the property.[8]

III. *AMICI'S* OPPOSITION TO THE PROPOSED PROJECT RESTS ON GENUINE ENVIRONMENTAL AND PUBLIC HEALTH CONCERNS; NOT ANIMUS TO THE INCLUSION OF AFFORDABLE UNITS.

In October 2019, Governor Murphy issued Executive Order No. 89, acknowledging that

> New Jersey is especially vulnerable to the impacts of sea level, increased flooding and other aspects of climate change, with potentially disastrous consequences for public health and safety. (RS Cert., Ex. H).

The Order further explains that "minority and low-income communities are disproportionately affected by climate change,

[8] It is puzzling to *Amici* why Hidden Oak Woods, LLC decided to go to court rather than secure an updated LOI. Doesn't it want to know whether the critical environmental site on which it intends to build this housing development has significantly changed? Almost two years has passed since the Planning Board denied the application, and neither the Planning Board, the courts nor the public know if the 2003 LOI is accurate.

including by the health effects of higher temperatures and increased air pollution and by the displacement of . . . low-lying neighborhoods from . . . flooding." The Order calls for a Statewide Climate Change Resilience Strategy to include recommendations for action the State should undertake to mitigate and adapt to the effects of climate change, especially in regard to the development and redevelopment plans of local units of government. See also Knoblauch, Matthew You Probably Shouldn't Build There: Watershed-Based Land Use Strategies for Mitigating Global Climate Change in New Jersey's Freshwater Systems, 16 *Sustainable Development Law & Policy* Iss.1, Article 3 (2017) (assessing New Jersey's legal framework for mitigating hazards that result from an increase in precipitation combined with increased human development), available at http://digitalcommons.wcl.american.edu/sdlp/vol16/iss1/3.

The need to mitigate hazards -- environmental and public health and safety hazards -- arising from climate change was the driving force behind LBWP's and LRWP's participation in the hearings. Though both organizations stated their opinion that this site was not suitable for residential housing, they, like the Environmental Commission, sought to achieve changes that would mitigate those hazards as well as certain public health problems that may arise from the proposed development as currently designed.

Specifically, some of the issues raised were as follows:

Flooding, Excessive Wetness: Though the development is not to be built directly on the wetlands, much of the site is very wet. There is a strong likelihood that residents will face continual flooding and moisture that may give rise to mold within the units. Exposure to mold has been strongly associated with "allergic rhinitis, persistent colds, asthma, sneezing, and chronic bronchitis" with "some evidence pointing to mental health" problems as well. Swope, C. and Hernandez, D. (2019). "Housing as a determinant of health equity: A conceptual model," *Soc. Sci. Med.* 243, 112571; see also Institute of Medicine (US) Committee on Damp Indoor Spaces and Health. Damp Indoor Spaces and Health. Washington (DC): National Academies Press (2004)

Proximity to Industrial Zone with Heavy Truck Traffic: The site is currently adjacent to an industrial zone that creates heavy truck traffic, in addition to safety risks arising from children straying outside the confines of the development. With respect to this location, research notes that "exposures such as traffic-related air pollution" have negative impacts on one's health and can lead to adverse effects, such as asthma, in children who are exposed to diesel fumes. Exposure to "exhaust particles or nitrogen dioxide increases levels of inflammatory markers relevant to asthma." Chen E., et al. (2008). "Chronic traffic-related air pollution and stress interact to predict biological and clinical

outcomes in asthma," *Environmental Health Perspectives,* 116(7), 970-975.

Lack of Sidewalks, Playgrounds, etc. Several speakers commented on the lack of sidewalks with respect to the proposed development, lack of play grounds, and the general issue of minimum "walkability." The link between obesity (and subsequent associated comorbidities (i.e., heart disease, diabetes, etc.) and lack of physical activity is commonly accepted. What is less known, but relevant here, is the fact that "proximity to the site in which physical activity occurs, perceived traffic/road safety, and neighborhood transport infrastructure, such as sidewalks and controlled intersections" are factors that go into one's overall decision-making processes when determining whether to engage in physical activity. Grow, Helene M., et al. (2012) "Where are Youth Active? Roles of Proximity, Active Transport, and Built Environment," *Medicine and Science in Sports & Exercise, 40*(12), 2071-2079.

Too far from shopping areas and public transportation. At the same time as the proposed project is not safe for pedestrians, as there are no sidewalks on Harts Lane and only one sidewalk on Tices Lane, the distance to walk from the site to shopping areas is too far, and public transportation is also not accessible. There is no safe way to bicycle to and from the site, leaving

residents relatively segregated from the rest of the East Brunswick community.

It is concerns such as these that support *Amici's* objection to the proposed residential project as designed; not animus to affordable housing. Indeed, several objectors expressed their opinion that the Township should be including more affordable units in the development projects arising in the redevelopment areas around Route 18; residential developments that are being built on impervious surfaces, not on an environmentally sensitive site. E.g., (1T122-14 to 25), (4T139-21 to 140-5), (5T166-16 to 20). See, also, RS Cert., Ex. I (redevelopment agreement indicating a commitment to build 1,260 market rate units and only 15 affordable units). As noted by LBWP's President, Mr. Godber:

> We understand from officials of the Township that there are several other sites in the Township much more suitable for residential development and affordable housing needs. These sites should be considered in order to spare the subject parcel from habitat destruction.

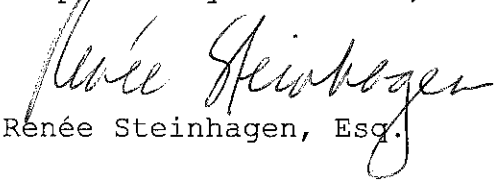
(RS Cert., Ex. A).

CONCLUSION

For all the foregoing reasons, before the developer is permitted to take further action, it behooves us as humans to know "the lay of the land" in order to do what's right to protect the health and safety of future residents, the public, and our environment/habitat. *Amici* LBWP and LRWP, therefore, request that

the Court reverse the decision below and remand this matter to the Planning Board to reconsider Hidden Oak Woods' application once it secures an updated LOI.

Respectfully submitted,



Renée Steinhagen, Esq.

Dated: December 10, 2020

In re Freshwater Wetlands Letter of Interpretation-Reliance Determination

Superior Court of New Jersey, Appellate Division

January 30, 2008, Argued; August 1, 2008, Decided

DOCKET NO. A-3345-06T3

Reporter
2008 N.J. Super. Unpub. LEXIS 1799 *; 2008 WL 2938369

IN THE MATTER OF FRESHWATER WETLANDS LETTER OF INTERPRETATION-RELIANCE DETERMINATION, APPLICANT/PROJECT MEYERSON ASSOCIATES/LANDMARK AT PRINCETON, PRINCETON TOWNSHIP, MERCER COUNTY.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: **[*1]** On appeal from the Department of Environmental Protection, Division of Land Use Regulation, File No. 1110-05-0006.1 (FWW-060001).

Core Terms

wetlands, site, subdivision, Freshwater, tributary, site plan, revised, changes, expired, corner

Counsel: R. William Potter argued the cause for appellants, Herrontown Woods Citizens Association, Jan Mazzeo and Anthony Mazzeo (Potter and Dickson, attorneys; Mr. Potter, on the brief).

Timothy M. Mulvaney, Deputy Attorney General, argued the cause for respondent, Department of Environmental Protection (Anne Milgram, Attorney General, attorney; Patrick DeAlmeida, Assistant Attorney General, of counsel; Mr. Mulvaney, on the brief).

Neil Yoskin argued the cause for respondent, Landmark at Princeton, L.L.C. (Sokol, Behot & Fiorenzo, attorneys; Mr. Yoskin, on the brief).

Judges: Before Judges Cuff, Lihotz and Simonelli.

Opinion

PER CURIAM

This appeal, which is calendared back-to-back with *Herrontown Woods Citizens Association v. Regional Planning Board of Princeton, A-1820-06T1, 2008 N.J. Super. Unpub. LEXIS 1454*, involves a challenge to a Freshwater Wetlands Letter of Interpretation (LOI) issued by the New Jersey Department of Environmental Protection (DEP) to Landmark of Princeton, L.L.C. (Landmark) for property on which Landmark intends to build a residential housing development. Appellant, Herrontown Woods Citizens Association **[*2]** (HWCA) objects to the development and submitted comments in opposition to Landmark's application for an LOI extension.

In seeking preliminary major subdivision and site plan approval, Landmark relied on an LOI issued in 2000. Because the LOI was set to expire before the Regional Planning Board of Princeton (Planning Board) rendered a final decision on the development application, Landmark applied to DEP for an extension of the 2000 LOI. DEP issued an LOI extension in 2006 that revised the wetlands delineation set forth in the 2000 LOI. Landmark subsequently requested, and was granted, permission to disregard the changed conditions noted in the 2006 LOI and to rely on the findings of the 2000 LOI.

HWCA argues that DEP had no legal basis to grant Landmark's reliance request. It further argues that there is no factual basis to support DEP's decision to allow Landmark to rely on the 2000 LOI. We hold that the 2006 LOI extension is not a final agency action and is not ripe for review.

In May 2000, Meyerson Associates, the owners of the subject site, submitted a Freshwater Wetlands LOI application to DEP for the property located at the northeast corner of Snowden Lane and Van Dyke Road in Princeton **[*3]** Township (the Landmark site). On September 1, 2000, DEP issued an LOI/Line Verification letter, confirming the boundaries of wetlands on the Landmark site and classifying those wetlands as intermediate resource value.

The 2000 LOI confirmed the existence of several freshwater wetlands on the Landmark site. Based on an August 29, 2000 site inspection, DEP verified that the western edge of the site was transversed from north to south by an unnamed tributary of Harry's Brook and that a few wetlands were associated with this tributary. The northern edge of the site was transversed from east to west by a man-made ditch, which was classified as an open water channel. Several small wetlands were located in the northeast corner of the site, while a larger, isolated wetland was located in the southeast corner. All of the wetlands were determined to be of intermediate resource value. Landmark incorporated the 2000 LOI in formulating and submitting a preliminary major subdivision and site plan application to the Planning Board.

In June and August 2004, HWCA wrote to Lou Cattuna, a section chief in DEP's Bureau of Inland Regulation, requesting a revaluation of the Landmark site and nullification **[*4]** of the September 1, 2000 LOI. Landmark, as contract purchaser of the Meyerson property, opposed this request by letter dated September 8, 2004.

Landmark applied for a Freshwater Wetlands LOI extension on August 9, 2005. HWCA notified DEP that it opposed the LOI extension due to changed circumstances in the Landmark site. It forwarded an expert report supported by maps of wetlands on the Landmark site. On December 8, 2005, DEP issued a notice of deficiency and asked Landmark to address two specific changes that had occurred on the site between 2000 and 2005. The first was that the wetland in the southeast corner of the site could no longer be considered "isolated" because a site inspection revealed that a steady flow of water drained from the area into a roadside inlet. [1] Second, the inspection also revealed that selected areas within the watercourse had acquired wetland characteristics.

Meanwhile, the subdivision and site plan application proceeded before the Planning Board. By the conclusion of the Planning Board's hearings on Landmark's application, the 2000 LOI had expired, but the August 2005 LOI extension application had been submitted and was pending before DEP. In the findings of fact and conclusions of law adopted on December 12, 2005, the Planning Board addressed the situation as follows:

> The applicant acknowledged that its original LOI had expired and asked the Board to proceed with action on the submitted application and to condition the Board's approval on the applicant obtaining an LOI from the DEP that did not require it to make any significant amendments to its subdivision

---

[1] During the Planning Board hearings, it was revealed that Princeton Township, acting unilaterally and without notice, had installed a storm drain in the southeast corner of the site in order to abate the problem of water flowing onto Van Dyke Road. This presents a problem to Landmark because the change **[*5]** in classification from isolated to non-isolated will make it much more difficult to get a permit to fill in the wetland.

> plan. The Board understands that if the DEP's extended LOI precludes the applicant from implementing the subdivision and site plan as proposed, then the applicant would not be allowed to implement its Planning Board approval. Instead, applicant will be required to return to the Board either for a new or an amended subdivision approval. This is not a case in which **[*6]** an applicant has proceeded without obtaining an LOI. Instead, this is the case in which a subdivision was designed based [on] an existing LOI which expired during the course of the Planning Board review process. Even though questions were raised as to the validity of the information shown on the old LOI, the Board finds that the applicant acted reasonably in preceding [sic] to the Board and designing its subdivision based on that information. The Board finds that it would be unreasonable to deny the application for preliminary approval based upon the assumption that the DEP's extended LOI will be substantially different thereby requiring a major modification to the applicant's plans. If that in fact occurs, the applicant will be required to return to the Board with its revised plans.

In accordance with these findings, the Planning Board imposed Condition No. 8, which stated:

> If the DEP's extended LOI precludes the applicant from implementing the subdivision and site plan as proposed, then the applicant will not be allowed to implement its Planning Board approval. Instead, if it chooses to proceed, applicant will be required to return to the Board either for a new or an amended subdivision **[*7]** and site plan approval.

Landmark submitted a revised plan to DEP on May 19, 2006. However, it did so without prejudice to its request for a reliance determination that it submitted to DEP on April 11, 2006. In response to the deficiency notice, it made several modifications to the plan verified by the 2000 LOI. It presented a more accurate survey of the location of the tributary to Harry's Brook and added two new wetlands within the tributary. The other changes were as follow:

> 1. The area between wetland point numbers WB-4 and WB-12 has been called out of the "wetland swale".
> 2. The "isolated" label has been removed from the wetland adjacent to Van Dyke Road, and a note has been added indicating that unpermitted improvements were constructed within the wetland adjacent to Van Dyke Road, thereby connecting that wetland to the Van Dyke Road drainage system; and
> 3. The improvements to Van Dyke Road that were constructed by Princeton Township have been added to the plan.

On June 14, 2006, DEP issued a Freshwater Wetland LOI/Line Verification-Extension. It concluded that, based on a site inspection conducted on November 29, 2005, the wetlands and waters boundary lines shown on the revised plan **[*8]** were accurate. In addition, DEP determined that the wetlands on the site were of intermediate value, with the exception of the wetlands delineated between WB4 and WB12, which were of ordinary value.

On September 19, 2006, Landmark submitted documentation to DEP and the Division of Law in support of its reliance determination request. The documentation provided additional support for Landmark's claim that it expended more than $ 689,000 in reliance on the 2000 LOI.

On January 19, 2007, DEP issued Landmark a Freshwater Wetlands LOI-Reliance Determination, signed by Richard C. Reilly, Manager of DEP's Division of Land Use Regulation. The letter provided as follows:

> This is in response to [Landmark's] letters of April 11, 2006 and September 19, 2006, regarding the a [sic] Letter of Interpretation-Extension issued in accordance with *N.J.A.C. 7:7A-3.6*.
>
> On June 14, 2006 the Division issued a Letter of Interpretation - Extension which verified the jurisdictional boundary of freshwater wetlands and waters on the referenced property. The letter of interpretation also classified the wetlands as intermediate resource value with

an associated 50-foot transition area. The revised approved survey noted **[*9]** some minor changes from the originally approved survey in the Letter of Interpretation of September 1, 2000. Specifically, an unnamed tributary to Harry's Brook was surveyed for a more accurate location, two small wetlands area[s] were identified within this delineated tributary, and the wetland area located at the corner of Snowden and Van Dyke Roads was shown to be connected to a storm drain and not isolated.

In your correspondence you requested that the Department disregard certain changes noted in the Letter of Interpretation extension. You stated that the applicant utilized the previous approved survey to obtain local approval to develop the property, and that any changes in the revised survey would result in a hardship. My staff reviewed your request and concurs. Therefore the Department will honor your request for you to rely on the original wetland survey with the following conditions:

1. The surveyed boundaries of the unnamed tributary to Harry's Brook shall be utilized on any future development plans. However the wetland areas delineated by the following points shall now be considered State open waters: WB- C/WB-D to WB-E/WB-F, and WB-A/WB-B to SOW-24/SOW-25.

2. The Letter of **[*10]** Interpretation and terms of this letter shall expire on September 1, 2010. As noted, the applicant is entitled to rely on the original wetland survey as conditioned by item 1 above. However, please noted [sic] that the issuance of this letter does not guarantee that any future permits or waivers, that may be required will be approved.

Please contact Lou Cattuna of my staff . . . if you have any questions regarding this letter.

It is from this document that HWCA appeals.

As a preliminary matter, we reject the Landmark and DEP contention that HWCA failed to exhaust administrative remedies because HWCA failed to request an administrative hearing to contest the LOI-Reliance Determination. HWCA correctly responds that it did not request an administrative hearing because it had no right to do so. N.J.S.A. 52:14B-3.2, -3.3 and N.J.A.C. 7:7A-1.7(a)(2), -1.7(k) require "particularized property interest sufficient to require a hearing on constitutional or statutory grounds," to request an administrative hearing. *In re Freshwater Wetlands Statewide General Permits, 185 N.J. 452, 463-64, 888 A.2d 441 (2006)*. *See also In re Amico/Tunnel Carwash, 371 N.J. Super. 199, 210-12, 852 A.2d 277 (App. Div. 2004)* (ownership of property **[*11]** adjacent to property that is subject of variance appeal before State agency not entitled to a hearing).

At oral argument we expressed reservations whether a LOI is a final agency action subject to an appeal as of right. R. 2:2-3(a)(2). An LOI is an informational document that only takes effect when it is incorporated into a permit decision. DEP has yet to act on Landmark's applications for wetland permits, therefore, any decision by this court as to the import of the LOI would be speculative and possibly unnecessary.

Here, HWCA is appealing the issuance of an LOI. Unlike a permit which confers specific rights on the recipient, an LOI "does not grant approval to conduct any regulated activities. The sole function of a letter of interpretation is to provide or confirm information about the presence or absence of wetlands, boundaries, and/or resource value classification of freshwater wetlands, transition areas, and/or State open waters." N.J.A.C. 7:7A-3.1(b). Because it is purely informational and because it can be voided pursuant to N.J.A.C. 7:7A-3.6(a) when new information discloses a changed condition on the site, an LOI lacks the effect and finality of a permitting, licensing or zoning **[*12]** decision. We, therefore, dismiss the appeal.

Appeal dismissed.

End of Document