



## State of New Jersey

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE  
*Governor*

BOB MARTIN  
*Commissioner*

KIM GUADAGNO  
*Lt. Governor*

PEPPERIDGE TREE REALTY  
CORPORATION,

ADMINISTRATIVE ACTION  
FINAL DECISION

Petitioner,

OAL DKT. NO. ELU 09271-15  
AGENCY REF. NO. CSD 130014-435442

v.

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION –  
DIVISION OF COASTAL AND LAND USE  
PLANNING,<sup>1</sup>

Respondent.

This Order addresses a challenge by Pepperidge Tree Realty Corporation (Petitioner) of the Highlands Applicability Determination and Water Quality Management Plan Consistency Determination (HAD) issued by the New Jersey Department of Environmental Protection (Department) on August 2, 2013, which denied Petitioner's application for an exemption pursuant to the New Jersey Highlands Water Protection and Planning Act (Highlands Act), N.J.S.A. 13:20-1 et seq., and its implementing rules, N.J.A.C. 7:38, to construct a personal residence on an 8.4 acre property located in the Highlands Preservation Area in Kinnelon Borough, Morris County. Petitioner applied for the exemption provided in N.J.S.A. 13:20-28(a)(1) and codified in the Department's rules at N.J.A.C. 7:38-2.3(a)1 (Exemption 1).

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<sup>1</sup> The caption is modified to correct the name of the Division within the Department that issued the decision being challenged.

Petitioner, a corporate entity organized in New Jersey, purchased the property located on West Shore Drive, Kinnelon Borough, Morris County, also known as Block 30, Lot 1.62 on the Tax Map of Kinnelon Borough (Property), in a March 1981 transaction involving numerous other properties and approximately 900 acres in Kinnelon Borough. Petitioner sought to build a single family dwelling on the Property and, on May 17, 2013, submitted an application for a HAD and Exemption 1 to the Department. Exemption 1 provides an exemption from the requirements of the Highlands Act for the construction of a single family dwelling for an individual's own use or for the use of an immediate family member on a lot owned by the individual on August 10, 2004 (the effective date of the Highlands Act) or on a lot for which an individual has, on or before May 17, 2004, entered into a binding contract of sale to purchase the lot. N.J.S.A. 13:20-28(a)(1); N.J.A.C. 7:38-2.3(a)(1).

On August 2, 2013, the Department denied Petitioner's application because Petitioner, as a corporation, is not an "individual" within the meaning of the Highlands Act and rules. In the HAD, the Department stated:

The requested exemption, N.J.A.C. 7:38-2.3(a)(1) – construction of a single-family dwelling, for an individual's own use or the use of an immediate family member – requires the proposed construction take place on a lot owned by that individual on August 10, 2004, or on a lot that, on or before May 17, 2004, was under binding contract of sale to that individual. The supplied tax records, however, indicate a corporation, [Petitioner], as the entity owning the subject lot on or before August 10, 2004.

Petitioner timely requested a hearing. The Department granted the request and transmitted the matter to the Office of Administrative Law (OAL), where it was assigned to Administrative Law Judge (ALJ) Michael Antoniewicz. Following discovery, the Department moved for summary decision on June 15, 2016, seeking dismissal of Petitioner's appeal. Petitioner filed opposition on July 5, 2016, and the Department filed a reply on July 11, 2016. The ALJ held oral argument on

July 15, 2016. On August 29, 2016, the ALJ issued an initial decision granting the Department's motion and affirming the Department's denial of Exemption 1.<sup>2</sup>

In the OAL, summary decision may be granted when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. N.J.A.C. 1:1-12.5(b). This is the same standard applied to motions for summary judgment in the Superior Court of New Jersey. See R. 4:46-2(c). In Superior Court, as in the OAL, "[w]hen the evidence is so one-sided that one party must prevail as matter of law, the [motion judge] should not hesitate to grant summary judgment." Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995) (internal citations omitted).

The undisputed facts establish that Petitioner is a corporate entity that applied to the Department for Exemption 1 so that it might build a single family dwelling on the Property, which is located in the Highlands Preservation Area. The issue before the Department and the ALJ was whether the proposed project qualified for Exemption 1. Because Petitioner, as a corporation, was not an individual within the meaning of the Highlands Act and rules, the Department and the ALJ both appropriately determined that the proposed project did not qualify.

The Highlands Act protects the water supply underlying the New Jersey Highlands Region by imposing "stringent standards governing major development in the Highlands preservation area[.]" N.J.S.A. 13:20-2. The Department's rules implementing the Highlands Act establish a strict permitting review program aimed at protecting Highlands resources from the impacts of development. See, e.g., N.J.S.A. 13:20-2; N.J.S.A. 13:20-33; N.J.A.C. 7:38-3. The Highlands Act and rules include several exemptions from the development restrictions of the Highlands Act. See

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<sup>2</sup> While the hearing was pending, Petitioner applied for, and received, approval of a different exemption to construct a single family dwelling on the Property. The Department approved Petitioner's application pursuant to N.J.S.A. 13:20-28(a)(2) and N.J.A.C. 7:38-2.3(a)2 (Exemption 2), which permits the construction of a single family dwelling on a lot in existence on August 10, 2004, provided that construction does not result in the disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more.

N.J.S.A. 13:20-28; N.J.A.C. 7:38-2.3. The rules set forth a process for prospective developers to apply for a HAD, in response to which the Department will make a determination on the requested exemption. N.J.A.C. 7:38-2.4.

Petitioner argued that it is entitled to Exemption 1 because it, as a corporation, qualifies as an individual and because it is seeking to construct a single family dwelling for the use of its “family members,” i.e., other shareholders of Petitioner. Petitioner asserted that, as a tax-paying entity endowed with constitutionally protected rights, it stands in the shoes of a natural person for purposes of Exemption 1 and thus qualifies as an individual. The Department disagreed, concluding in response to Petitioner’s HAD application that corporate entities are not “individuals,” and arguing in its motion for summary decision that including corporate entities in the definition of “individual” would be contrary to the Legislature’s intent and the plain meaning of the term “individual.” The ALJ agreed with the Department’s interpretation and dismissed Petitioner’s appeal.

“Individual” is not defined in the Highlands Act or in the Department’s rules. Statutory construction requires that courts look to the plain meaning of a term when interpreting a statute or regulation. Cherry Hill Manor Assocs. Faugno, 182 N.J. 64, 74-75 (2004); see also N.J.S.A. 1:1-1 (“In the construction of the laws and statutes of this state, both civil and criminal, words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved use of the language.”). Exceptions to statutory enactments in particular are to be “strictly but reasonably construed . . . .” Service Armament Co. v. Hyland, 70 N.J. 550, 558-59 (1976). That strict construction extends with full force to exceptions to environmental statutes. See M. Alfieri Co. v. State, 269 N.J. Super. 545, 554 (App. Div. 1994), aff’d o.b. 138 N.J. 642 (1995). An agency’s interpretation of its own statutes and

rules is entitled to special deference. See In re Adoption of N.J.A.C. 7:26E-1.13, 377 N.J. Super. 78, 98-99 (App. Div. 2005); see also GE Solid State, Inc. v. Dir., Tax Div., 132 N.J. 298, 306 (1993); In re Adoption of N.J.A.C. 7:26B, 128 N.J. 442, 452 (1992); In re Adopted Amendments to N.J.A.C. 7:7A-2.4, 365 N.J. Super. 255, 264 (App. Div. 2003); Nat'l Waste Recycling Inc. v. MCIA, 150 N.J. 209, 228 (1997).

The Legislature's intent in enacting Exemption 1, evident in other definitions in the Highlands Act and rules, confirms the Department's conclusion that the term "individual" as used in Exemption 1 does not apply to corporations. The terms "individual" and "corporation" are discrete and distinct parts of the definition of "person" set forth in the rules at N.J.A.C. 7:38-1.4, which provides that "person" means "an individual, corporation, corporate official, partnership, association, the Federal government, the State, municipality, commission or political subdivision of the State of any interstate body." As noted by the ALJ, the definition of "person" in the Rules for Agency Rulemaking similarly lists the discrete terms "individual" and "corporation." N.J.A.C. 1:30-12.

Exemption 1 permits an individual to construct a single family dwelling on property in a Highlands Preservation Area for the individual's own personal use or for the use of that individual's "immediate family member." Although "individual" is not defined, "immediate family member" is defined, and means "[s]pouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister, whether the individual is related by blood, marriage, or adoption." N.J.S.A. 13:20-3; N.J.A.C. 7:38-1.4.

An interpretation of "individual" to include corporations cannot be reconciled with the definition of the term "immediate family member." The term "individual" would be rendered meaningless, and the tenets of statutory construction dictate that laws must be interpreted "to give

meaning to all of the Legislature’s statutory text.” In re N.B., 222 N.J. 87, 101 (2015). The Department’s reasonable interpretation of the term “individual” gives meaning to all terms within Exemption 1 and is thus favored. See DKM Residential Props. Corp. v. Twp. of Montgomery, 182 N.J. 296, 307 (2005). (“[Courts] endeavor[] to give meaning to all words.”).

Further, the definition of the term “individual” in Webster’s Dictionary is “[a] human being regarded separately from a group or from society.” Webster’s II New Riverside University Dictionary 623 (1988). Black’s Law Dictionary defines “individual” as “a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation or association[.]” Black’s Law Dictionary 773 (6<sup>th</sup> Ed. 1990).

New Jersey case law also supports the Department’s interpretation of the term “individual.” See Main Investment Co. of Passaic v. U.S. Fidelity & Guar. Co., 29 N.J. Super. 221, 225-26 (Ch. Div. 1953). In Main Investment, the Chancery Division summarily rejected the plaintiff’s argument that the term “individual” in the context of an insurance agreement could include a corporation. According to the court, a “mere reading” of Article V of the agreement was enough to “demolish” that argument. Ibid. Article V provided insurance for additional automobiles if the insured was an “individual” or “husband and wife.” Id. at 223. The use of the terms “husband and wife,” expressly referencing natural persons, interchangeably with the term “individual,” as well as provisions for bodily injury, was sufficient for the court to dismiss the plaintiff’s argument.

In conclusion, for the reasons set forth therein and above, I ADOPT the ALJ’s initial decision finding that the term “individual” in Exemption 1 is limited to natural persons and affirming the Department’s denial of Petitioner’s application for Exemption 1. There should be no hardship to Petitioner because, as noted previously, Petitioner has already applied for, and obtained, Exemption

2 to construct, within certain limitations relating to acreage of disturbance and increase in impervious surface, a single family dwelling on the Property. Petitioner's appeal is dismissed.

IT IS SO ORDERED.

DATED: November 14, 2016

A handwritten signature in blue ink, appearing to read "Bob Martin", is written over a horizontal line.

Bob Martin, Commissioner  
New Jersey Department of  
Environmental Protection

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PROTECTION – DIVISION OF COASTAL AND  
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(Note: DAG Kristina Miles is substituted for DAG John Doyle,  
who is no longer with the Division of Law.)