

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
CAPE MAY COUNTY
DOCKET NO. CPM-C-55-22
APPELLATE DKT. NO. _____

NEW JERSEY DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)

Plaintiff,)

vs.)

CITY OF NORTH WILDWOOD,)

Defendant.)

TRANSCRIPT

OF

CASE MANAGEMENT

CONFERENCE

Place: Cape May Courthouse
9 North Main Street
2nd Floor
Cape May, NJ 08210
Date: March 7, 2023

BEFORE:

HON. MICHAEL J. BLEE, J.S.C.

TRANSCRIPT ORDERED BY:

ANTHONY S. BOCCI
(Cullen and Dykman LLP)

APPEARANCES:

MS. DIANNA SHINN, ESQ.
(New Jersey Department of Environmental Protection)
DEBRA ALLEN, ESQ.
(State of New Jersey, Department of Law & Public
Safety)
JENNIFER MORIARTY, ESQ.
COLLEEN KELLER, ESQ.
(NJDEP Division of Land Resource Protection)
Attorneys for the Plaintiff

ANTHONY BOCCI, ESQ.
NEIL YOSKIN, ESQ.
(Cullen and Dykman LLP)
Attorneys for the Defendant

ALSO PRESENT:

MAYOR PATRICK T. ROSENELLO, Mayor of North Wildwood
SALVATORE T. ZAMPIRRI, SR., Council President, City
of North Wildwood
PETER LOMAX, Consultant to the City of North Wildwood
JIM VERNA, City Engineer, City of North Wildwood
NICK LONG, City Administrator, City of North Wildwood
KYLE RUTHERFORD, City of North Wildwood Resident

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I N D E X

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THE COURT

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City of North Wildwood's request to
file a motion is granted

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1 THE COURT: Once again, formally, good
2 morning. My name is Michael Blee. I'm the Assignment
3 Judge of Vicinage 1. The date is March 7th. The time
4 is 10:02 a.m. I am in Courtroom 3-A, Atlantic City,
5 New Jersey, in the event that anyone needs to order a
6 transcript.

7 We're here in the matter of the New Jersey
8 Department of Environmental Protection v. the City of
9 North Wildwood under docket number CPM-C-55-22.

10 Counsel, please enter your appearances,
11 starting with the plaintiff.

12 MS. SHINN: Dianna Shinn, Your Honor, for
13 DEP.

14 THE COURT: Good morning.

15 MR. BOCCI: Good morning, Your Honor.
16 Anthony Bocci, law firm of Cullen and Dykman LLP, on
17 behalf of defendant City of North Wildwood.

18 THE COURT: Thank you. Good morning. And
19 would you be kind enough, Ms. Shinn, just to introduce
20 those folks that are on the Zoom screen and their role
21 in the case? Thank you.

22 MS. SHINN: Yes, Your Honor. I also have
23 Deputy Attorney General Debra Allen from the Division
24 of Law, and I have Jennifer Moriarty and Colleen Keller
25 from the Division of Land Resource Protection from the



1 Department.

2 THE COURT: Thank you and welcome.

3 North Wildwood?

4 MR. BOCCI: Your Honor, with us today is Neil
5 Yoskin of Cullen and Dykman. We also have Nick Long,
6 Kyle Rutherford, and Council President Sal Zampirri,
7 Mayor Rosenello, Peter Lomax, consultant for the City
8 of North Wildwood, and Jim Verna, City engineer for the
9 City of North Wildwood.

10 THE COURT: Very well. Okay.

11 Thank you all. The purpose of today's
12 conference was a request by Mr. Bocci to conduct this
13 conference. Since you were before the Court I entered
14 an order of February 1. I indicated that North
15 Wildwood was to file an emergent application within ten
16 days, and they completed that task.

17 At the time of our last conference, we were
18 not sure of the outcome of that emergent application.
19 We now know the outcome.

20 I have reviewed correspondence of February
21 24th from the DEP, specifically Ms. Moriarty, to Mr.
22 Long, the City administrator. It's approximately six
23 pages in length.

24 Ad it appears, Mr. Bocci, the request is
25 whether or not this Court would retain jurisdiction



1 over the new application. And what I've read, there
2 could be an additional application, or at least a
3 supplemental application, and whether the Court would
4 permit a motion seeking that type of relief.

5 The Court is well aware of the
6 administrative -- of the Jersey Administrative Code in
7 terms of denials. In fact, in part of my findings on
8 the preliminary injunction on the initial application,
9 I noted that.

10 And I'll hear from you, Mr. Bocci.

11 MR. BOCCI: Thank you, Your Honor. Your
12 Honor, we're here today because a public safety
13 emergency currently exists in the City of North
14 Wildwood. And you know, we're at the point where I'm
15 at wit's end as a lawyer in terms of what more I can do
16 to try to protect the City of North Wildwood from a
17 public safety emergency that exists today. And I am
18 continually facing battles from the DEP with respect to
19 seeking to limit the Court's jurisdiction as much as
20 possible. And as I've indicated to the Court before, I
21 do not believe that this matter can be adjudicated in
22 that way, because we do not have that luxury.

23 As it exists today, there are ten-foot high
24 dune scarps. I have an 11-year-old boy. Believe it or
25 not, even though I'm in Hackensack, you know, we have a



1 place in Ocean City, and I'm in Ocean City throughout
2 the year. And behind this -- in this public safety
3 building -- beach patrol building, excuse me -- any kid
4 can just go up onto this dune, and there is nothing
5 there to stop that child from falling ten feet.

6 And you know, Your Honor, with respect to the
7 EA denial, in addition, you know, this case is about
8 the bulkhead, at the end of the day. We need the
9 Court, at this point, to step in and authorize us to
10 build this bulkhead.

11 And what we're ultimately asking for, Your
12 Honor, is I'd like to be able to present to you
13 formally in a plenary hearing. You have all the
14 records that have been submitted to the Court. We're
15 happy to present this to you in a plenary hearing, so
16 that there is a proper record with respect to what
17 exists today, what has taken place, so that the City
18 can finally get relief. And what I mean by that is in
19 the recent EA, it wasn't just about the bulkhead. We
20 also sought authorization to regrade these dunes
21 because of this ten-foot-high dune scarps that exist.
22 And the DEP even denied that.

23 And why is that important? Because just
24 recently they provided that very release to Stone
25 Harbor. They just provided Stone Harbor with that



1 relief. Yet they're denying that relief here, in the
2 most erosional site, in the State of New Jersey. It
3 doesn't make sense. And I'm at my wit's end in terms
4 of what more do we need to do?

5 Your Honor entered an order directing us to
6 submit the EA. We complied with that order. In
7 response to the EA, the DEP sought significant
8 supplemental materials from the City. We provided that
9 information as quickly as we could, and we were still
10 denied. And not only were we denied, if you review
11 that February 24th denial, it states, we're happy to
12 consider anything else other than a bulkhead. They've
13 put in writing, they refuse to provide us with the
14 ability to build this bulkhead, other than we have this
15 other, you know, IP (phonetic) that sits out there, and
16 we can consider it there.

17 But again, we can't look at this in a vacuum
18 because of the public safety emergency that exists. So
19 what we are ultimately asking from the Court is, Your
20 Honor, you invoke -- first, they invoked your
21 jurisdiction. They filed this lawsuit. They sought
22 Your Honor's review of this matter.

23 In response, we said to the Court, this is a
24 unique case. You need to consider everything. And
25 Your Honor granted us the authority to file the



1 counterclaim, which we did, and which we amended to
2 show exactly what exists today.

3 On February 24th Your Honor directed DEP,
4 said, you want to file a motion with respect to the
5 amended counterclaim, whether or not that should be in
6 the case, file a motion. It's now March 7th. They
7 haven't filed a motion. I assume, by not filing the
8 motion, they've waived their position with respect to
9 that, but I won't speak for them.

10 But at the end of the day, we need the
11 Court's help. I can't say it in any other way. We
12 need the Court's help, because if Your Honor retain
13 jurisdiction in directing a party to seek an EA, I
14 would assume that it logically follows from that that
15 the Court also has the authority to review the matter
16 in which it directed a party to act. And that's -- and
17 we're okay with that.

18 We would love for Your Honor to consider
19 everything, and you make a determination as to DEP, in
20 light of everything, acted in an arbitrary and
21 capricious manner. We think we will be able to
22 definitively show that at a plenary hearing, which all
23 of the materials are already before, Your Honor. But
24 we're happy to put that together. Whether Your Honor
25 feels that it's appropriate to do it with live



1 testimony, whether Your Honor feels that it's
2 appropriate for us to submit a formal written
3 application that can be decided on the papers, we will
4 do it however Your Honor thinks is the best course of
5 action, because why we're here is, I'm seeking the
6 Court's guidance, because I'm trying to do what I can
7 ethically to help the residents of North Wildwood.
8 They need our help, and we're not getting it from the
9 State of New Jersey. And they've made it abundantly
10 clear we're not going to get this. So that's where
11 we're coming from, Your Honor.

12 You know, I have a lot more to say, but you
13 know, I respect the Court's time, and -- but at the end
14 of the day, that's, sort of, where we're coming from.

15 THE COURT: Understood. Thank you, Mr.
16 Bocci.

17 Ms. Shinn?

18 MS. SHINN: Yes, Your Honor. I just would
19 like to first start off and say that we filed this
20 action to seek this Court's jurisdiction to enforce a
21 final agency action in a summary manner, and that does
22 not allow this Court to relitigate the merits of the
23 underlying final agency action. So as this Court has
24 already held permit applications and authorizations,
25 and those decisions are not appropriate to be heard,



1 the merits of those, in this court.

2 North Wildwood, as it states in its most
3 recent letter, has the right to file an adjudicatory
4 hearing request under the Coastal Zone Management rules
5 with the Department, or it also could try to seek the
6 appellate division review of that, in the interests of
7 justice, under the Court rules. So North Wildwood has
8 two available avenues to challenge the most recent EA
9 denial.

10 We also would just like to continue to
11 recommend to North Wildwood to reach out to the
12 Department and to continue to discuss this matter, and
13 if they think that the conditions have changed -- I
14 believe that they submitted new photographs on Friday.
15 If conditions have changed since the February 10th EA,
16 right -- we're dealing with nature here, the conditions
17 are constantly changing -- they have the right to
18 submit another EA application with the Department.

19 The Department sought alternatives from North
20 Wildwood, and because they didn't specifically seek
21 that relief themselves in the EA, the Department
22 couldn't grant that. If, you know, the -- I think the
23 best thing is for the parties to discuss here some
24 alternatives apart from, you know, maybe if they still
25 believe a bulkhead is necessary, they can try again, in



1 another EA application, based off of current
2 conditions.

3 However, the Department would also recommend
4 taking a hard look at some of the alternatives that the
5 Department has represented to North Wildwood as
6 potentially being a good alternative, while their CAFRA
7 permit for a bulkhead in the same exact location is
8 currently under technical review.

9 So we kind of have two parallel permitting
10 decisions ongoing right now. We have these EAs that
11 are being filed with the Department, but the Department
12 is also spending resources and time, and has continued
13 to represent to North Wildwood that it's going to
14 expedite its review of that CAFRA permit for, again, a
15 bulkhead in the same exact location.

16 So again, if the conditions have changed, and
17 if North Wildwood continues to believe that they should
18 seek a bulkhead or also, you know, look at some of the
19 alternatives the Department has represented to them,
20 they can submit another EA, if they find that to be
21 appropriate. But again, the Department is committed to
22 expediting review of that underlying CAFRA permit for a
23 bulkhead in the same exact location.

24 THE COURT: So thank you, Ms. Shinn.

25 All right. I'm going to address, really, at



1 this point -- I'm not going to get into the merits, but
2 discuss the procedural aspect.

3 Mr. Bocci, I'm going to grant your request to
4 file a motion, but the motion really needs to be
5 whether this Court has jurisdiction over the most
6 recent emergency application and anything that may
7 occur subsequently. And obviously the State has a
8 right to oppose that, and I'll make that decision. But
9 I also know that the clock is ticking with respect to
10 exhausting your administrative remedies, so I'm going
11 to ask that that motion practice be done on an
12 expedited basis, because in the event, Mr. Bocci, the
13 Court determines that it does not have jurisdiction
14 over the most recent emergency authorization or any
15 subsequent application, you're going to have to avail
16 yourself of the administrative remedies.

17 I did make a determination that, at the time
18 that the case got to me, with respect to the October
19 EA, that the time period had expired, and I do not
20 believe that this Court has jurisdiction over that.

21 This one is an interesting issue, and I can't
22 make that determination without having briefs in front
23 of me and having oral argument.

24 Mr. Bocci, I'm going to ask you, you know,
25 how quickly you can get that done. If you want to take



1 a look at the calendar with respect to, you know, we
2 want to get this done before you would possibly lose
3 your opportunity under the Administrative Code for, you
4 know, going -- going through the administrative
5 process.

6 MR. BOCCI: Your Honor, I'm -- I -- thank you
7 for granting our request. I -- we will file this as
8 quickly as possible, believe me. What I would
9 respectfully suggest is, if we're going to follow this
10 motion on an expedited basis, I would put in our notice
11 a motion that we would request that the motion be heard
12 on short notice.

13 THE COURT: Yes.

14 MR. BOCCI: That it not be in a regular --

15 THE COURT: No. Let's talk. I'd like to
16 just discuss time frames now, Mr. Bocci, because --

17 MR. BOCCI: Okay.

18 THE COURT: I want to give you --

19 MR. BOCCI: Right.

20 THE COURT: -- a reasonable time to get
21 something submitted. We'll do a briefing schedule.
22 I'm going to ask you to prepare an order. And you
23 know, again, if you want to take time to look at -- in
24 the event I rule against North Wildwood, I don't want
25 you to lose your opportunity to pursue it through the



1 administrative process.

2 MR. YOSKIN: Your Honor, this is -- this is
3 Mr. Yoskin.

4 THE COURT: Yes.

5 MR. YOSKIN: Would it be inappropriate to
6 simply file an administrative hearing request as a
7 placeholder while all of this is going on, so that none
8 of us have to deal with that -- that issue of the
9 Damocles sword hanging--

10 THE COURT: Yeah. I can't answer that
11 because --

12 MR. BOCCI: Yeah.

13 THE COURT: You know, the State may say --

14 MR. BOCCI: All right.

15 THE COURT: -- that shows --

16 MR. BOCCI: Yeah. I would rather not do that
17 right now.

18 THE COURT: If you guys want to -- you want
19 to go out in a breakout room and discuss it?

20 MR. BOCCI: No, Your Honor. We're ready to
21 set forth a briefing schedule and move forward with
22 this matter.

23 THE COURT: Okay. All right. Mr. Bocci,
24 when would you like to file your brief?

25 MR. BOCCI: Could we file the -- can we file



1 this by Monday the 13th?

2 THE COURT: The 13th?

3 MR. BOCCI: Yeah. I technically have a trial
4 starting tomorrow. God willing, it's not going to go
5 out, but I will make it happen for the 13th.

6 THE COURT: All right. And State, could you
7 have a response within seven days, the 20th?

8 MS. SHINN: Yes, Your Honor.

9 THE COURT: Okay. Reply, Mr. Bocci?

10 MR. BOCCI: We can have a reply by the -- we
11 can do a reply by that -- the Thursday or Friday. If I
12 have a few days --

13 THE COURT: Would that be the 23rd or 24th,
14 Mr. Bocci?

15 MR. BOCCI: Yeah. I would say the 24th.

16 THE COURT: Okay. And then my law clerk is
17 listening.

18 And while we're doing that, Mr. Yoskin or Mr.
19 Bocci, just check your deadlines for the Administrative
20 Code. I hope, you know, I hope it's something I can
21 call from the bench.

22 Mr. Tuohy, could you give me a date for oral
23 argument?

24 MR. BOCCI: If I may, Your Honor?

25 THE COURT: Yes.



1 MR. BOCCI: I'm sorry. Before Mr. Tuohy says
2 that, I'm going to be away in -- at a conference in
3 Tampa Bay starting -- I don't know when -- it starts
4 March 29th. I may be leaving the 28th.

5 THE COURT: Okay.

6 MR. BOCCI: So it's not leaving you a lot of
7 time. So the 29th, I will be in Tampa Bay for sure.

8 THE COURT: Okay.

9 MR. BOCCI: And I cannot cancel that. I'm
10 sorry. So I can do it -- I'm happy -- I prefer to do
11 it in person.

12 THE COURT: Yes.

13 MR. BOCCI: But you know --

14 THE COURT: Well, we can, you know, we'll
15 work -- let's just --

16 Mr. Tuohy, a date, please?

17 THE CLERK: Friday the 31st you're free, but
18 Mr. Bocci is in a conference that day. So I can -- I
19 can look, or --

20 THE COURT: So we can -- this is going to be
21 a priority, Dennis. We'll move anything.

22 THE CLERK: Got it.

23 THE COURT: Okay. So --

24 Mr. Bocci, the 31st? You're in your
25 conference. Do you know when you're returning?



1 MR. BOCCI: I'm actually, from Tampa Bay I'm
2 flying to Houston from Tampa Bay. It's a little bit of
3 a hectic --

4 THE COURT: Okay.

5 MR. BOCCI: -- time for me. But if you want
6 to truncate my briefing schedule, I'm happy to truncate
7 my response time, if we -- if I can try to get it in,
8 you know, either the 27th, 28th. I don't know if that
9 works. That probably doesn't work for the Court.

10 THE COURT: 27 or 28th would work for you,
11 Counsel?

12 THE CLERK: Judge, the afternoon of the 27th
13 we have -- the 28th, you have a Judicial Council labor
14 relations meeting. I don't know if you can move that.

15 THE COURT: I'm going to get off the bench
16 and look at my calendar. I had trouble there, so just
17 bear with me, guys, okay?

18 MR. BOCCI: Thank you.

19 (Recess)

20 THE COURT: Counsel, it looks -- the best
21 date for the Court to try to accommodate Mr. Bocci
22 would be March 27th at 1:30.

23 MR. BOCCI: That works for us, Your Honor.

24 THE COURT: And that would be --

25 MR. BOCCI: Thank you so much.



1 THE COURT: -- Cape May Courthouse.

2 Ms. Shinn, does that work for you?

3 MS. SHINN: Yes, Your Honor.

4 THE COURT: All right. I appreciate, and
5 thank you for accommodating.

6 And that will work out, Mr. Yoskin, in
7 terms -- in the event the Court determines it should go
8 administratively, you're not going to lose that time.

9 MR. YOSKIN: Yes. Sure.

10 THE COURT: Okay.

11 MR. YOSKIN: Yes, Your Honor. While you were
12 away from the bench, we asked the State to check the
13 date on which the denial will be published, and the DEP
14 people are looking, because that triggers the appeals
15 period.

16 THE COURT: Very well. So Mr. Bocci, the
17 order is going to read, your request for leave to ask
18 the Court to exercise jurisdiction will be filed by
19 March 13th. The State will respond by March 20th and
20 reapply on March 24th. Oral argument, March 27th at
21 1:30 in person in Cape May Courthouse.

22 Does that work for all? Okay.

23 MR. YOSKIN: Your Honor.

24 THE COURT: Just -- it'll -- we're --

25 MR. YOSKIN: Thank you so much.



1 THE COURT: Yes. You're welcome.

2 MR. YOSKIN: I appreciate it.

3 THE COURT: And I just want to address the
4 parties again. I appreciate Ms. Shinn encouraging
5 continued discussion. And you know, we have excellent
6 counsel on both sides, but sometimes when you hear it
7 from the judge, you know, it might make a difference.

8 This is a very critical situation in terms of
9 my decision on jurisdiction. So if I decide that the
10 Court has jurisdiction, what is being created is what
11 we call an issue for appeal. The State may say we
12 disagree with you, Judge, respectfully, and take what's
13 called an emergent interlocutory appeal. Appellate
14 division may take it, may not. They may choose not to
15 do that.

16 I may say I want to have a plenary hearing
17 and make a ruling, and then someone from above, three
18 judges and above, the appellate division may say you
19 did it wrong.

20 So this -- these are critical issues.
21 There's risks on both sides. I understand the issue,
22 but it's not -- it's -- it's complicated in terms of
23 whether this Court does have jurisdiction or not.

24 So I just want both sides to know the risks
25 involved. And generally, when there's a risk, that's a



1 good time to try to work out an amicable resolution.

2 Okay?

3 All right. Thank you all very much. And
4 I'll wait for the order. Have a good afternoon. Any
5 questions by anyone?

6 MR. BOCCI: Thank you, Your Honor.

7 MR. YOSKIN: Oh. Yes, Your Honor.

8 MR. BOCCI: Thank you.

9 MR. YOSKIN: One more thing.

10 THE COURT: Sure.

11 MR. YOSKIN: One more thing, Your Honor, if I
12 may? And I know it may be a bit inappropriate, but I'm
13 going to ask. Can -- Your Honor, we'd like the
14 authority to at least regrade the dunes so that this
15 ten-foot cliff doesn't exist. Is that, I mean, is that
16 something that the Court would be --

17 THE COURT: Not at this point. I think only
18 with the consent of Ms. Shinn and her folks.

19 Ms. Shinn?

20 MS. SHINN: Your Honor, I think, again, I
21 would recommend that Lomax or the Town reach out to
22 Colleen or Jennifer and -- and discuss that, if they
23 think that that's an emergency that needs to be dealt
24 with at this time. I can't speak on behalf of the
25 Department at this time, because that involves the

1 Coastal Zone Management rules and permitting
2 procedures, so if that's something that you think needs
3 to be done, I would, again, encourage you to reach out
4 to the Department to discuss that.

5 THE COURT: And would that be taking the fill
6 from offshore and bringing it on? I'm just reading a
7 report. No. Okay. Something different. Okay.

8 All right. Any other questions, Counsel?
9 All right.

10 MR. BOCCI: No, Your Honor. Thank you.

11 THE COURT: Thank you all very much for your
12 time.

13 MR. YOSKIN: No, Your Honor.

14 THE COURT: Have a good afternoon. That
15 concludes the proceedings.

16 (Proceedings concluded at 10:27 a.m.)
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1 CERTIFICATION

2 I, Dena Farbman Page, the assigned transcriber, do
3 hereby certify the foregoing transcript of proceedings
4 in the Cape May Superior Court, on March 7, 2023, from
5 10:02 a.m. to 10:27 a.m., is prepared in full
6 compliance with the current Transcript Format for
7 Judicial Proceedings and is a true and accurate non-
8 compressed transcript of the proceedings as recorded.

9 

10 DENA FARBMAN PAGE

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11 ESCRIBERS, LLC

12 Date: March 8, 2023

