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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0777-20**

**IN RE BOROUGH OF LEONIA
ORDINANCE NUMBERS
2018-14, 2018-15, and 2018-17.**

Submitted February 17, 2022 – Decided April 29, 2022

Before Judges Haas and Alvarez.

On appeal from the New Jersey Department of Transportation.

Cleary Giacobbe Alfieri Jacobs LLC, attorneys for appellant Borough of Leonia (Brian M. Chewcaskie, of counsel; Mary Ann Groh, on the briefs).

Matthew J. Platkin, Acting Attorney General, attorney for respondent New Jersey Department of Transportation (Melissa H. Raksa, Assistant Attorney General, of counsel; Philip J. Espinosa and Ryne A. Spengler, Deputy Attorneys General, on the brief).

PER CURIAM

In an eighteen-page October 8, 2020 final agency decision, the Commissioner of the Department of Transportation disapproved certain ordinances enacted by the Borough of Leonia because they were "not in the

interest of safety and the expedition of traffic on the public highways[.]" Leonia appeals, and for the reasons stated by the Commissioner, we affirm.

The ordinances, 2018-14, 2018-15, and 2018-17, were enacted to control traffic flow through Leonia to and from the George Washington Bridge during rush hour. The ordinances include a timetable for use of certain streets by non-residents, exceptions, and a schedule of the streets affected by the restrictions. Leonia enacted the "no through street" ordinances to alleviate their long-standing concern with non-resident commuter traffic in residential neighborhoods.

Earlier ordinances attempting to limit non-resident rush hour traffic have been invalidated by judicial decision. The ordinances under consideration here were the subject of a remand to the Commissioner for a more comprehensive statutory review. In re Leonia Borough Ordinance Nos. 2018-15, 2018-14, and 2018-17, No. A-2095-18 (App. Div. Mar. 6, 2020). After remand, the Commissioner issued her October 8, 2020 final agency decision.

Leonia raises four points of error:

POINT I

THE COMMISSIONER'S DECISION VIOLATES
LEGISLATIVE POLICY THAT ALLOWS A LOCAL
GOVERNMENT TO ADOPT TRAFFIC

REGULATIONS THAT PROMOTE THE HEALTH, SAFETY AND WELFARE OF THE COMMUNITY.

POINT II

THE COMMISSIONER ERRED IN DISAPPROVING THE ORDINANCES, AS SUCH A DETERMINATION COULD NOT HAVE REASONABLY BEEN MADE UPON CONSIDERATION OF THE FINDINGS AND RECOMMENDATIONS IN THE RBA REPORT, POLICE CHIEF ROWE'S STATEMENT AND THE TRAFFIC COUNTS OVER THE COURSE OF A THREE-YEAR PERIOD, WHICH DEMONSTRATE THAT THE SUBJECT ORDINANCES ARE IN THE INTEREST OF SAFETY AND THE EXPEDITION OF TRAFFIC ON THE PUBLIC HIGHWAYS.

POINT III

CONTRARY TO N.J.S.A. 39:4-8(A), THE COMMISSIONER CONSIDERED FACTS BEYOND WHAT WAS SUBMITTED BY LEONIA WITHOUT JUSTIFICATION AND, BY DOING SO, REACHED THE DECISION ARBITRARILY, CAPRICIOUSLY AND/OR UNREASONABLY.

POINT IV

THE COMMISSIONER'S RELIANCE ON THE 1955 A.G. OPINION AND INSISTENCE THAT SAID OPINION IS A BAR TO APPROVAL OF THE ORDINANCES DESPITE THE FINAL RULING OF THIS COURT THAT SAID OPINION IS NEITHER BINDING NOR PERSUASIVE IS INDICATIVE OF THE COMMISSIONER'S UNREASONABLE CONDUCT IN REVIEW OF THE ORDINANCES.

Leonia's contentions lack sufficient merit to warrant much discussion in a written opinion. See R. 2:11-3(e)(1)(E).

We reiterate the familiar law on the subject. Our review of agency determinations is limited. AllStars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018). Absent a clear showing that a decision is arbitrary, capricious, unreasonable, or lacking fair support in the record, it will be sustained. Ibid. Agency action is affirmed if it does not violate express or implied legislative policies, if the record contains substantial evidence supporting the findings on which the agency based its action, and if in applying legislative policies to facts, the agency reached a reasonable conclusion drawn upon relevant factors. Ibid. Reviewing courts defer to the agency's "expertise and superior knowledge of a particular field." Id. at 158 (citing Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009)). We do not substitute our own judgment for that of the agency, but we are not bound to an agency's interpretation of legal issues. Id. at 158.

In reaching her decision, the Commissioner reviewed extensive materials including not only Leonia's submissions, but also recommendations by the Department of Transportation (DOT). Leonia rejected the DOT's proposals, relying heavily on a decades-old traffic study informed by outdated DOT

policies. The Commissioner's decision described the materials she reviewed and noted that the DOT's traffic count data did not support the ordinances. See N.J.S.A. 39:4-8(a). While acknowledging Leonia's undisputed authority to enact traffic ordinances, she observed that even after the remand, Leonia's submissions continued to rely upon the 1998 report. Additionally, the application still "lacked a certification from its municipal engineer supporting the traffic measures therein and a statement of reasons for the municipal engineer's decision as required by N.J.S.A. 39:4-8(a)."

The Commissioner also noted that New Jersey has a "longstanding prohibition on no through street ordinances" as inconsistent with accepted engineering standards. Even if that were not the case, Leonia lacked the specific authority to establish "no through streets." Furthermore, the proposed restrictions would create more traffic problems and hazards. Finally, "while Leonia experiences complicated traffic patterns during the peak traffic hours, the [DOT] counts revealed that these patterns are not attributable to cut-through traffic exiting the highways and using . . . Leonia's local streets to get to the [George Washington Bridge]."

Having thoroughly detailed her review of the record and the law, the Commissioner disapproved the ordinances because they failed to meet the statutory standards. After reviewing the record and her decision, we agree.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION