

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

DOCKET NO.       A-5311-05T2  
                  A-5341-05T2  
                  A-5353-05T2

SOMERSET AIR SERVICE, INC.,

Plaintiff-Respondent,

v.

THE TOWNSHIP OF BEDMINSTER;  
GEOFFREY PRICE, BEDMINSTER  
TOWNSHIP ZONING OFFICER; and  
PAUL FERRIERO, BEDMINSTER  
TOWNSHIP ENGINEER,

Defendants-Respondents,

and

MALCOLM S. FORBES, JR. and  
SABINA FORBES; TOWNSHIP OF  
BRIDGEWATER; PHOEBE WESELEY;  
and BEDMINSTER, BRANCBURG,  
BRIDGEWATER CONCERNED  
CITIZENS COALITION, INC.,

Intervenors-Respondents.

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SOMERSET AIR SERVICE, INC.,

Plaintiff-Respondent,

v.

THE TOWNSHIP OF BEDMINSTER;  
GEOFFREY PRICE, BEDMINSTER  
TOWNSHIP ZONING OFFICER;  
PAUL FERRIERO, BEDMINSTER

TOWNSHIP ENGINEER,

Defendants-Respondents,

and

MALCOLM S. FORBES, JR. and  
SABINA FORBES; PHOEBE WESELEY;  
and BEDMINSTER, BRANCHBURG,  
BRIDGEWATER CONCERNED  
CITIZENS COALITION, INC.,

Intervenors-Respondents,

and

TOWNSHIP OF BRIDGEWATER,

Intervenor-Appellant.

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SOMERSET AIR SERVICE, INC.,

Plaintiff-Respondent,

v.

THE TOWNSHIP OF BEDMINSTER;  
GEOFFREY PRICE, BEDMINSTER  
TOWNSHIP ZONING OFFICER;  
PAUL FERRIERO, BEDMINSTER  
TOWNSHIP ENGINEER,

Defendants-Respondents,

and

MALCOLM S. FORBES, JR. and  
SABINA FORBES; and TOWNSHIP  
OF BRIDGEWATER,

Intervenors-Respondents,

and

PHOEBE WESELEY; and BEDMINSTER,  
BRANCBURG, BRIDGEWATER CONCERNED  
CITIZENS COALITION, INC.,

Intervenors-Appellants.

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Argued June 5, 2007 - Decided June 21, 2007

Before Judges Coburn, Axelrad and Gilroy.

On appeal from the Superior Court of New Jersey,  
Law Division, Somerset County, L-419-06.

John M. Lore argued the cause for Bedminster Township Planning Board and Bedminster Township Board of Adjustment, appellants in A-5311-05T2, and respondents in A-5341-05T2 and A-5353-05T2 (DeMarco & Lore, attorneys; Mr. Lore, on the brief).<sup>1</sup>

Alan Bart Grant argued the cause for the Township of Bridgewater, appellant in A-5341-05T2, and respondent in A-5311-05T2 and A-5353-05T2 (Mauro, Savo, Camerino & Grant, attorneys; Edward A. Halpern and Mr. Grant, on the brief).

Robert F. Simon argued the cause for Phoebe Weseley and Howard A. Teichman argued the cause for Bedminster, Branchburg, Bridgewater Concerned Citizens Coalition, Inc., appellants in A-5353-05T2, and respondents in A-5311-05T2 and A-5341-05T2 (Herold & Haines, and Morgan Melhuish Abrutyn, attorneys; Mr. Simon and Alan L. Harwick, of counsel; Mr. Simon, Mr. Teichman, and Lisa M. Gowen, on the joint brief).

Daniel S. Bernstein argued the cause for Somerset

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<sup>1</sup> The Law Division ordered that the Bedminster Township Planning Board and the Bedminster Township Board of Adjustment be joined as indispensable parties. However, the record does not contain an order adding these parties to the caption; therefore, they are added only to the attorney appearances as the appellants in A-5311-05T2, and respondents in A-5341-05T2 and A-5353-05T2.

Air Service, Inc., respondent in A-5311-05T2, A-5341-05T2, and A-5353-05T2 (William G. Mennen, attorney; Mr. Bernstein, of counsel; Mr. Bernstein and Mr. Mennen, on the brief).

DiFrancesco, Batemen, Coley, Yospin, Kunzman, Davis & Lehrer, attorneys for the Township of Bedminster, respondent in A-5311-05T2, A-5341-05T2, and A-5353-05T2, did not file a brief.

Richard M. Sasso, attorney for Malcolm S. Forbes, Jr., respondent in A-5311-05T2, A-5341-05T2, and A-5353-05T2, did not file a brief.

PER CURIAM

These three back-to-back appeals, which we now consolidate, relate to the 2004 relocation of the State's NorthSTAR medevac helicopter operation from University Hospital in Newark to Somerset Airport ("Somerset Airport" or "the Airport") in the Township of Bedminster ("Township" or "Bedminster"). Somerset Airport is a private airport, owned and operated by Somerset Air Service, Inc. ("SAS"). NorthSTAR is a state-operated emergency medical service helicopter unit that services the northern half of the State of New Jersey. It was established pursuant to the New Jersey Emergency Medical Service Helicopter Response Program, N.J.S.A. 26:2K-35 to -38.

The appeals challenge a Law Division order dated April 18, 2006, which enjoined defendants from interfering with NorthSTAR's medevac operation at the Airport pending a final decision in the matter; declared that a medevac helicopter operation was a permitted aeronautical activity at the Airport,

and that office facilities for the medevac operation were permitted as accessory uses to the permitted Airport use; declared void, and of no force and effect, the action of the Bedminster Township Zoning Officer and Bedminster Township Engineer, who concluded that a medevac helicopter operation's presence at the Airport required variance approval from the Township of Bedminster Zoning Board of Adjustment ("Board of Adjustment"); declared that jurisdiction for SAS's application for conditional use and site plan approval, in order to renovate an existing hangar to create office space that will accommodate NorthSTAR, was vested in the Township of Bedminster Planning Board ("Planning Board"), as opposed to the Board of Adjustment, and therefore remanded the case to the Planning Board; and joined the Planning Board and Board of Adjustment as indispensable parties.

Defendants, Board of Adjustment and the Planning Board (collectively referred to as "the Boards"), and defendants-intervenors Township of Bridgewater ("Bridgewater"), Phoebe Weseley ("Weseley"), and the Bedminster, Branchburg, Bridgewater Concerned Citizens Coalition ("Citizens Coalition") filed separate appeals, raising the following procedural and substantive issues: whether the Law Division Judge erred (1) by granting injunctive and declaratory relief, considering SAS failed to exhaust its administrative remedies before the Board

of Adjustment; (2) by not adding indispensable parties until the litigation had been decided; (3) by granting declaratory and injunctive relief to SAS; (4) by declaring that a medevac helicopter operation was a permitted aeronautical activity at Somerset Airport, and that all ancillary and support facilities were permitted accessory uses; (5) by declaring that the Planning Board was the proper venue to consider SAS's application for conditional use and site plan approval.

## I

Somerset Airport was established in 1946 in the Township of Bedminster. It is privately owned and operated by SAS and has served as a base for numerous helicopter operations, including, for example, a corporate helicopter owned by the Puralator Corporation, an air charter service, a helicopter school, and State Police helicopters. SAS provides office and hangar space, as well as restroom facilities, to support flight operations at the airport. In the past, it also provided a restaurant/snack bar in the Airport's administration building.

The Airport is located in Bedminster's R-10 (rural residential) zone, where it is a permitted conditional use. Bedminster's 2003 Master Plan contains these remarks about the Airport:

A conditional use in this district is an airport existing at the time of adoption of the 1946 Zoning Ordinance. The George

Walker Field (formerly Somerset Airport) has operated as a permitted use since 1946 with conditions related to tenure, tract delineation, and runway length.

During the Planning Board's development of the master plan during the early 1990's, numerous public comments at a series of public information meetings addressed the issues of aircraft noise and potential environmental hazards associated with airport operations.

The Planning Board recognizes the right of the airport to continue operations, and such rights would exist even for a nonconforming use. The role of the airport as a recreational and education facility has a long history in Bedminster Township. However, the potential for expanded functions (increased business travel, reliever status, and introduction of jet aircraft) has previously prompted concerns over airport plans for runway length expansion and other development proposals.

Conditional use treatment of the airport provides a level of assurance that the conditions that have previously defined this permitted use will be enforceable under the Zoning Ordinance. Failure to adhere to these conditions will require that the expansion plans become the subject of review by the Zoning Board of Adjustment under N.J.S.A. 40:55D-70(d). The proofs required to secure such relief will help to assure that no substantial detriment to the public good will result.

In 1986, the Legislature created the New Jersey Emergency Medical Service Helicopter Response Program ("the Program"). N.J.S.A. 26:2K-35 to -38. The Program was established in the Division of Local and Community Health Services of the

Department of Health. N.J.S.A. 26:2K-36(a). But the helicopters used in the Program are maintained and piloted by the State Police. N.J.S.A. 26:2K-35(d); N.J.S.A. 26:2K-37.

The Legislature mandated the creation of at least two hospital-based emergency medical service helicopter units. N.J.S.A. 26:2K-36(a). NorthSTAR services the northern portion of the State, in coordination with the University of Medicine and Dentistry of New Jersey ("UMDNJ"). SouthSTAR services the southern portion of the State. N.J.S.A. 26:2K-35(g). Combined, NorthSTAR and SouthSTAR fly approximately 1500 medevacs per year, with SouthSTAR flying about 100 more than NorthSTAR. About seventy-five percent of the calls are for trauma scene transports, the other twenty-five percent are inter-hospital transports.

The staff of NorthSTAR and SouthSTAR are responsible for "render[ing] life support services to an accident or trauma victim, as necessary, in the course of providing emergency medical transportation." N.J.S.A. 26:2K-36(b). Critically ill and injured patients, including but not limited to victims of motor vehicle accidents, burns, and explosions, have the best chance for survival if transported within sixty minutes of their injury to one of the trauma centers in the State, where they can receive the specialized care and services that their injuries require. Air medical transport by helicopter is the quickest,



and therefore the most effective, means of critical patient transport. By contrast, ground transport is significantly slower and more dangerous, thereby lessening the patients' likelihood of survival.

Medevac helicopter operations are commonly located at airports and "nearly half of the registered air medical rotor wing programs are based at airports." In New Jersey, for example, at the outset of the Program, NorthSTAR and SouthSTAR, then collectively referred to as JEMSTAR, operated out of Mercer County Airport, in West Trenton. Subsequently, NorthSTAR moved to Morristown Municipal Airport, in Morristown, and SouthSTAR moved to Southern Jersey Regional Airport, near Voorhees. There are four additional air medical transport programs based at New Jersey airports, including: Atlantic Health Air-One, based at Morristown Municipal Airport; MONOC Medevac, based at Mercer County Airport, West Trenton; University Medevac Atlantic CARE, based at Hammonton Airport; and Air Ambulance Express, based at Mercer County Airport, West Trenton.

Airports provide "on site fuel availability, advanced weather technology, maintenance support, and aviation facilities that support navigational needs of the medevac pilots." In addition, airports typically provide both hangar space for the helicopters, and office space for the medevac staff, which generally includes such things as couches and microwave ovens.

Indeed, some office space is seemingly required for medevac helicopter operations, since federal law imposes flight time restrictions upon medevac flight crews and mandates that the crews have "[a]n adequate place of rest." 14 C.F.R. § 135.271(f); United States v. Rocky Mountain Helicopters, Inc., 704 F. Supp. 1046, 1049-50 (D. Utah 1989). At their base airports, NorthSTAR and SouthSTAR have been provided with both hangar space and office space to house flight operations centers.

Elizabeth McKenzie, a licensed professional planner retained by SAS, submitted a certification in which she opined that medevac support facilities were permitted at Somerset Airport. Based upon her study and analysis, including review of the governing municipal land use regulations and visits to similar airports in Alexandria Township and Montgomery Township, New Jersey, she concluded

that it is customary and even necessary to permit office and support space to be created in hangars occupied by various entities, including private pilots, helicopter flight schools, helicopter rental and charter businesses, aerial photographers and numerous other entities typically occupying hangar space at an airport. Not all of these can nor should they be accommodated in a single central airport office.

In February 2005, in response to a number of concerns, including increased calls for service to the central and western

portions of the State, and delayed response times to those areas from its then-current location at University Hospital in Newark, NorthSTAR moved its operations to Somerset Airport. The move significantly improved response times, particularly to the western portion of the State, and also eliminated the need to fly to Newark Liberty International Airport for fuel.

NorthSTAR's presence at the Airport has upset some people in the area. Indeed, SAS's applications for various permits and approvals from Bedminster's local officials and governmental bodies, in order to accommodate NorthSTAR's operations, have been challenged at virtually every step of the process, and have spawned a multiplicity of litigations that were consolidated below for the purposes of case management.

On November 16, 2005, SAS applied to the Planning Board for conditional use approval and related site plan approval to permit interior renovations of an existing hangar building in order to accommodate NorthSTAR's operations. Alternatively, SAS sought conditional use approval and a related amendment to the previously approved site plan for the Airport property to permit the renovations. The proposed renovations of the hangar building would create an entry vestibule and closet, two restrooms, a kitchenette, and four offices.

The relevant Township ordinances provide, in pertinent part, as follows:

Before a construction permit or certificate of occupancy shall be issued for any conditional use as permitted by this chapter, application shall be made to the Planning Board. The review by the Planning Board of a conditional use shall include any required site plan review pursuant to this chapter. . . . Site plan review of a modification to a previously approved conditional use shall not be required where the renovations or alterations to the interior or exterior of the building or structure do not involve any enlargement of the building or major structural change as determined by the Construction Code Official. (Ord. #95-20, § 1)

In connection with SAS's site plan application, the Township's professional planner, Frank Banisch, prepared a review letter dated January 5, 2006. Banisch questioned whether an office for the medevac helicopter operation was a permitted use of the Airport property, and he concluded that SAS's proposed renovations would require a floor area ratio variance from the Board of Adjustment.

Thereafter, by letter dated February 28, 2006, Bedminster Township's Engineer and Zoning Officer advised SAS that two issues needed to be addressed before NorthSTAR could move from its temporary trailers into the Airport's administration building, a move necessitated by the February 28, 2006, expiration of the Special Use Permit: (1) SAS would either have to substantiate the sufficiency of the existing septic system or implement the new septic system, as approved by the Board of

Health; and (2) although the Board of Adjustment had determined that the use and basing of helicopters was permitted at the Airport, "the medevac function is not a permitted principal use nor is it a use that is customarily incidental, or accessory, to the airport use," and therefore "the medevac use is not permitted at the airport absent an approval by the appropriate agency or board of the Township." Accordingly:

The establishment of the medevac use at the site on a permanent basis without the approval of the Board of Adjustment will be a violation of the Township Land Management Ordinance and may result in an unauthorized expansion of use of the existing on site subsurface sewage disposal system. If the medevac offices are retained on the site after the expiration of the special use permit, it will be necessary to issue notices of violations/summonses for the reasons listed above.

Approximately one week later, by letter dated March 6, 2006, Bedminster's zoning officer advised SAS that within fifteen days of receipt of the letter, NorthSTAR's "medevac office must be removed from the airport unless the necessary approvals have been obtained. If the use is retained after this time without approval, a summons will be issued."

In March 2006, SAS filed a verified complaint in lieu of prerogative writs against the Township of Bedminster and Bedminster's zoning officer and engineer. Submitted with the complaint were certifications in support of an order to show

cause why the defendants should not be restrained from interfering with or proceeding against NorthSTAR's medevac operations at the Airport. SAS also sought a declaratory judgment from the court indicating that: a medevac operation is a permitted primary use at the Airport; a medevac office facility is a permitted accessory use at the Airport; and jurisdiction over SAS's application for conditional use and site plan approval rests with the Planning Board.

On March 20, 2006, Judge Reed entered the requested order to show cause with temporary restraints, and issued a one-paragraph written opinion in support of his decision. Pending further order, Judge Reed enjoined defendants "from interfering with the NorthSTAR medevac operation at Somerset Airport," and stayed "[a]ll proceedings against Somerset Air Service, Somerset Airport, and NorthSTAR medevac in any way related to medevac operations or services at Somerset Airport."

Opposition was filed by defendants and the Citizens Coalition, which sought intervenor status. A hearing was held on March 31, 2006.

The judge ruled in favor of SAS and decided to continue the temporary restraints on any interference with the operations of NorthSTAR medevac at Somerset Airport, finding that NorthSTAR performed a public service and irreparable harm would occur if

it could not continue its operations pending final resolution of the case.

The judge rejected the argument that SAS was required to exhaust its administrative remedies by filing an appeal with the Board of Adjustment, holding that, as a matter of state aviation law, helicopters were a permitted aeronautical activity at the Airport, and medevac helicopters were merely a type of helicopter. Therefore, the judge ruled that medevac helicopters were a permitted aeronautical activity at the Airport, and the Zoning Officer and Township Engineer's declarations to the contrary were void. The judge also declared that the office space proposed to accommodate NorthSTAR's operations was a permitted accessory use to the permitted airport use. Accordingly, the judge vacated the action of the Bedminster Township Zoning Officer and remanded the case to the Planning Board to proceed with a review of SAS's application for conditional use and site plan approval. Finally, the court left it for the Planning Board to decide whether it had jurisdiction over the proposed floor area ratio, or whether SAS was required to seek a variance from the Board of Adjustment under N.J.S.A. 40:55D-70(d)(4).<sup>2</sup>

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<sup>2</sup> SAS represents in its brief that: "On May 4, 2006, the Planning Board conducted a hearing and determined that the SAS application would not increase the floor area, and therefore no

(continued)

Thereafter, by order dated April 18, 2006, the judge permitted Malcolm S. Forbes, Jr. ("Forbes"), the Township of Bridgewater, Weseley, and the Citizens Coalition to intervene.<sup>3</sup>

The judge further ordered, in pertinent part, as follows:

2. That, pending a final decision in this matter, the Defendants are enjoined from interfering with the NorthSTAR medevac operation at Somerset Airport and all municipal enforcement proceedings against Somerset Air Service, Somerset Airport, and NorthSTAR medevac in any way related to medical evacuation (medevac) operations/ services at Somerset Airport are stayed; and

3. That the medevac helicopter operation is a permitted use at Somerset Airport; and the contemplated 24 hr/365 day operation, and support facilities to accommodate such operation (sleeping, eating, hygiene) are accessory uses to the permitted use; and

4. That the action of the Bedminster Township Zoning Officer and Bedminster Township Engineer in their letter of February 28, 2006 is vacated and is considered void, and of no force or effect; and

5. That jurisdiction for Somerset Air Service's site plan application is vested with the Bedminster Township Planning Board; and in the event it determines that a floor area ratio variance is required, the Twp. Bd. of Adjustment shall review same for the

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(continued)

floor area ratio variance was required." The Citizens Coalition has appealed that ruling.

<sup>3</sup> In their briefs, the parties reference Sabina Forbes as a recognized intervenor. However, the record does not contain an order to that effect.



limited purpose of hearing said variance application; and

6. This Court shall retain jurisdiction over this matter, and directs that the Bedminster Twp. Planning Bd. and Bd. of Adjustment shall be joined herein as indispensable parties w/in 20 days hereof.

Thereafter, by order dated May 8, 2006, the judge certified paragraphs two, three, four, five, and six of the April 18, 2006, order as final pursuant to R. 4:42-2.<sup>4</sup> By separate order dated May 8, 2006, the judge denied a stay of the April 18, 2006, order, pending appeal.

On June 20, 2006, the Planning Board and Board of Adjustment filed a notice of appeal from paragraphs three and five of the Law Division's April 18, 2006, order, and from the May 8, 2006, order that certified those paragraphs as a final judgment. That appeal was assigned docket number A-5311-05T2.

On June 21, 2006, Bridgewater filed a notice of appeal from paragraphs three, five, and six of the Law Division's April 18, 2006, order, and from the May 8, 2006, order that certified those paragraphs as a final judgment. That appeal was assigned docket number A-5341-05T2.

On June 22, 2006, Weseley and the Citizens Coalition filed a joint notice of appeal from paragraphs two, three, four, and

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<sup>4</sup> Because we doubt the propriety of the Final Order Certification, we grant leave to appeal nunc pro tunc in the interests of justice. R. 2:4-4(b)(2).

five of the Law Division's April 18, 2006, order, and from the May 8, 2006, order that certified those paragraphs as a final judgment. That appeal was assigned docket number A-5353-05T2.

## II

Weseley, the Citizens Coalition, and the Township of Bridgewater argue that the judgment of the Law Division should be reversed as procedurally improper because SAS failed to exhaust its administrative remedies before the Board of Adjustment. They contend that, before proceeding to the Law Division to challenge the ruling of the Township Zoning Officer that a medevac helicopter operation was not a permitted use at the Airport, SAS was obligated to first file an appeal with the Board of Adjustment.

The Township of Bridgewater, the Planning Board, and Board of Adjustment similarly argue that the Law Division erred by usurping the jurisdiction of the Board of Adjustment, and by issuing a conclusion on the question of permitted uses at the Airport without engaging in necessary fact-finding.

Trial courts have discretion to waive a party's obligation to exhaust administrative remedies in the interests of justice. As such, appellate courts will review any such decision for an abuse of discretion. Durgin v. Brown, 37 N.J. 189, 203 (1962).

The Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1 to

-163, establishes administrative procedures for appealing decisions made by an administrative officer in enforcing a zoning ordinance, or for requesting an interpretation of a zoning ordinance. Under N.J.S.A. 40:55D-70(a) and (b):

The board of adjustment shall have the power to:

a. Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance;

b. Hear and decide requests for interpretation of the zoning map or ordinance or for decisions upon other special questions upon which such board is authorized to pass by any zoning or official map ordinance, in accordance with this act;

See also Nouhan v. Bd. of Adjustment of Clifton, 392 N.J. Super.

283, 290-91 (App. Div. 2007). In addition, N.J.S.A. 40:55D-

72(a) provides that:

Appeals to the board of adjustment may be taken by any interested party affected by any decision of an administrative officer of the municipality based on or made in the enforcement of the zoning ordinance or official map. Such appeal shall be taken within 20 days by filing a notice of appeal with the officer from whom the appeal is taken specifying the grounds of such appeal. The officer from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken.

Further, under the Court Rules, in general, a party must exhaust his or her administrative remedies before filing an action in lieu of prerogative writs. Specifically, R. 4:69-5 provides that: "Except where it is manifest that the interest of justice requires otherwise, actions under R. 4:69 shall not be maintainable as long as there is available a right of review before an administrative agency which has not been exhausted."

The exhaustion of remedies requirement set forth in R. 4:69-5 is "a rule of practice designed to allow administrative bodies to perform their statutory functions in an orderly manner without preliminary interference from the courts." Brunetti v. Borough of New Milford, 68 N.J. 576, 588 (1975). However, "it is neither a jurisdictional nor an absolute requirement." Ibid. It will be waived as the interests of justice require, which

has been held to mean that exhaustion of remedies will not be required where administrative review will be futile, where there is a need for prompt decision in the public interest, where the issues do not involve administrative expertise or discretion and only a question of law is involved and where irreparable harm will otherwise result from denial of immediate judicial relief.

[Id. at 589.]

Interpretation of a statute or municipal ordinance is primarily a judicial function, and the court may decide such issues of law without deference to any ruling by a lower court,

administrative agency, or municipal body. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Here, the exhaustion of administrative remedies was not required because the issue presented, whether a medevac helicopter operation is a permitted aeronautical activity at the Airport, is purely one of law, involving the interpretation of state and federal aviation law in conjunction with the local zoning ordinance. Also, the Board of Adjustment has already reviewed a substantially similar issue, whether the use and basing of helicopters was permitted at the Airport, and ruled in favor of SAS, and an appeal of that ruling was pending in the Law Division at the time the present litigation was filed. Judge Reed decided that case in favor of SAS on March 31, 2006. Therefore, the purpose of the exhaustion of remedies doctrine had been served, and it would result in unnecessary delay to remand the matter to the Board of Adjustment. Finally, given the nature of NorthSTAR's services and the public policy evident in the Legislature's establishment of the Emergency Medical Service Helicopter Response Program, the public interest is best served by prompt resolution of this dispute.

### III

The Planning Board, Board of Adjustment, Weseley, and the Citizens Coalition argue that the judgment of the Law Division should be reversed because the Planning Board and Board

of Adjustment were not joined as indispensable parties until final judgment had been entered.

The applicable Court Rule is R. 4:28-1(a), which addresses the joinder of "[p]ersons [n]eeded for [j]ust [a]djudication."

It states, in pertinent part:

A person who is subject to service of process shall be joined as a party to the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest in the subject of the action and is so situated that the disposition of the action in the person's absence may either (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or other inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party.

[R. 4:28-1(a).]

A person's indispensability is established "if the omitted person 'has an interest inevitably involved in the subject matter before the court and a judgment cannot justly be made between the litigants without either adjudging or necessarily affecting the absentee's interest.'" Fox v. Twp. of W. Milford, 357 N.J. Super. 123, 130 (App. Div.) (quoting Jennings v. M & M Transp. Co., 104 N.J. Super. 265, 272 (Ch. Div. 1969)), certif. denied, 176 N.J. 279 (2003).

"The party-joinder rule is concerned with the completeness, soundness, and finality of the ultimate determination of a legal controversy." Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 18 (1989). Its purposes are to protect an absent person from an adjudication of his or her interests, and to promote judicial efficiency and economy by ensuring that any judgment entered is complete and binding upon all those with an interest in the subject matter of the case. Id. at 17-19.

Here, the question of whether the Planning Board and Board of Adjustment are indispensable parties is not before the court, since that aspect of the Law Division's judgment was not appealed. Seacoast Builders Corp. v. Jackson Twp. Bd. of Educ., 363 N.J. Super. 373, 381-82 (App. Div. 2003). Certainly, however, the Boards should have been joined as parties based upon N.J.S.A. 2A:16-56, which says this: "When declaratory relief is sought, all persons having or claiming any interest which would be affected by the declaration shall be made parties to the proceeding." The Boards could be considered "persons" having an interest in the outcome of this litigation. See N.J.S.A. 2A:16-50 (defining "person" as including "any person, partnership, joint stock company, unincorporated association or society, and municipal or other corporation of any character"). Although the Boards have no personal stake in whether NorthSTAR's medevac operations are permitted at the Airport,

they have an interest in preserving their respective powers under the MLUL. N.J.S.A. 40:55D-20.

While it might have been a better practice for the judge to have joined the Boards as parties and considered any arguments they might have made before entering final judgment, the question presented in this case is purely one of law, and the Boards have addressed the issue here. Our review of the judge's rulings on issues of law is de novo. Thus, the Planning Board and Board of Adjustment are not harmed by making their arguments for the first time in the Appellate Division.

#### IV

Weseley and the Citizens Coalition seek reversal of the grants of declaratory judgment and injunctive relief. They argue that the appropriate procedures were not followed in granting declaratory judgment, and that the applicable legal standards were not met for the grant of temporary injunctive relief.

According to Weseley and the Citizens Coalition, the declaratory judgment could not be entered without the benefit of discovery and a plenary hearing because the question of whether a medevac helicopter operation is a permitted primary or accessory use at the Airport raises questions of fact.

Under the Uniform Declaratory Judgments Act, N.J.S.A. 2A:16-50 to -62, SAS possessed the right to "have determined any



question of construction or validity arising under" state aviation law and the Bedminster land use ordinance, "and obtain a declaration of rights, status or other legal relations thereunder." N.J.S.A. 2A:16-53. In turn, the court had both the power and the discretion to declare such rights. N.J.S.A. 2A:16-52; N.J.S.A. 2A:16-61; R. 4:42-3; Bress v. L.F. Dommerich & Co., 94 N.J. Super. 282, 287 (App. Div. 1967). A justifiable controversy was presented in this case, rendering declaratory judgment appropriate, because SAS had been threatened with the imposition of "notices of violations/summonses" for permitting NorthSTAR to operate at the Airport without a variance. Indep. Realty Co. v. Twp. of N. Bergen, 376 N.J. Super. 295, 302-03 (App. Div. 2005).

The Uniform Declaratory Judgments Act is remedial in nature, and must be liberally construed and administered. N.J.S.A. 2A:16-51. Its purpose "is to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." Ibid.

Where no disputed issues of facts are presented, a trial is not necessary. R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529-30 (1995). Since this case involves a question of law, there was no need for discovery or a plenary hearing.

In the first count of its verified complaint, SAS asked that defendants be "enjoin[ed] . . . from interfering with the NorthSTAR medevac at Somerset Airport." Judge Reed agreed, reasoning as follows:

The interim restraints contained herein are necessary to maintain the status quo, and permit this court to consider the matter on a preliminary basis. R. 4:52-1. Thompson v. Patterson, 9 N.J. Eq. 624 (E. & A. 1854). In this case, in which the criteria for such relief has been met, Crowe v. DeGioia, 90 N.J. 126 (1982), the relief herein *pro tem* is particularly appropriate considering the third and fourth Crowe criteria. In addition, the public interest militates in favor of *ad interim* relief, including restraint of proceedings to interfere with or remove MEDEVAC operations at Somerset Airport pending the return date.

And at a later point Judge Reed added the following:

In seeking Planning Board approval of its site plan, SAS is doing what it is required to do under the rules promulgated pursuant to the Aviation Act: namely seeking local approval of its alteration of the airport facility to improve support facilities for the medevac service. Parenthetically, that status gives SAS standing to bring this action. Instead of determining whether SAS's plans to accommodate the State Police medevac operation are in conformance with existing zoning and land use ordinances, Bedminster has continued to focus on whether the use of helicopters at the airport is a permitted use. As held by this court in its most recent decision, helicopters are a permitted use at the Airport and the Township of Bedminster is impotent to find that its zoning ordinance provides otherwise. The delay in resolving this dispute is created

by emphasis on the wrong issue, and has prejudiced SAS and NorthSTAR. To vacate the restraints and permit the Township of Bedminster to terminate local availability of this emergency medical service helicopter response unit, before a final resolution, would be inconsistent with the applicable law applied to the facts here, and would be a dereliction of this court's responsibility. Those restraints will therefore be continued.

[(emphasis added) (footnote omitted).]

Weseley and the Citizens Coalition seek reversal of the temporary restraints, arguing that the standard for injunctive relief was not met. We disagree and affirm substantially for the reasons expressed by Judge Reed.

V

Defendants and intervenors appeal from the judgment of the Law Division that, as a matter of law, a medevac helicopter operation was a permitted aeronautical activity at the Airport, and any office facilities needed were a permitted accessory use. They argue that medevac helicopter operations are not permitted at the Airport, or, alternatively, that this issue should be decided in the first instance by the Board of Adjustment.

This is a legal issue that we are permitted to review de novo. Manalapan Realty, supra, 140 N.J. at 378. We affirm substantially for the reasons given by Judge Reed in his well-reasoned written opinion.

VI

The Planning Board and Board of Adjustment, Weseley and the Citizens Coalition, and the Township of Bridgewater argue that Judge Reed erred by remanding this matter to the Planning Board. They claim that the appropriate venue for SAS's site plan application is the Board of Adjustment, because a use variance is needed for the medevac helicopter operation, under N.J.S.A. 40:55D-70(d)(1), or, alternatively, a conditional use variance may be needed under N.J.S.A. 40:55D-70(d)(3) if the Airport does not comply with the conditions imposed by Bedminster's land use ordinance.

Again, we affirm substantially for the reasons expressed by Judge Reed. In that regard, we note that Judge Reed emphasized the court's respect for the appropriate exercise of power by municipal authorities, stating:

The action of the Bedminster Township Zoning Officer is vacated. Therefore, there is nothing to appeal to the Board of Adjustment and the matter will be remanded to the Planning Board to proceed with site plan review, as the appropriate administrative forum and remedy. This will permit the exercise of local power over the use of land for aeronautical purposes, in order to permit development of a local planning/zoning record, with recognition of the proviso that municipalities must not exercise their zoning authority so as to collide with expressed policy goals of the State legislation, N.J.S.A. 6:1-20, or the final decision of the Commissioner, Garden State Farms, Inc. v. Mayor Bay II, 77 N.J. 439, 454 (1978). Proceeding in such a manner will operate to satisfy SAS's

complaint that it has never had the opportunity to present its plans for review by the Township Planning Board. It will have that opportunity now.

The municipality, intervenors, and [the Citizens Coalition], subject to the discretion of the Planning Board, will have the forum to express their local concerns. That is the opportunity which they seek.

The court will then have the benefit of a record to review in the context of a prerogative writ action, if and when appropriate. Or, the parties may argue at that time that the Commissioner of Transportation has jurisdiction and any review can be conducted by him, if that is appropriate, instead.

Judge Reed ruled that medevac helicopter operations are a permitted aeronautical activity at the Airport, and that the office space needed for the operation is either part and parcel of the permitted primary airport use, or a permitted accessory use thereto. Therefore, a use variance is not needed under N.J.S.A. 40:55D-70(d)(1), and the Board of Adjustment does not need to address that issue.

The Township's land use ordinance is fully consistent with the MLUL on this issue. The ordinance provides, in pertinent part, that "[b]efore a construction permit or certificate of occupancy shall be issued for any conditional use as permitted by this chapter, application shall be made to the Planning Board," and the Planning Board will conduct any required site plan review. (emphasis added).

At argument we were advised that the Planning Board has completed the review directed by Judge Reed and has issued a final administrative decision, which has been appealed to the Law Division. Therefore, comment on that aspect of the case would be inappropriate.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION