

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of
TOWN OF VERONA, NEW YORK,

Petitioner,

-against-

DECISION and ORDER
INDEX NO. 1740-95
RJI NO. 0195ST5710

RICHARD MC GUIRE, COMMISSIONER OF
THE NEW YORK STATE DEPARTMENT OF
AGRICULTURE AND MARKETS and THE
NEW YORK STATE DEPARTMENT OF
AGRICULTURE AND MARKETS,

Respondents.

For an Order Pursuant to Article 78
of the Civil Practice Law and Rules

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DEPT. OF AGRIC. & MARKETS
COUNSEL'S OFFICE

Supreme Court Albany County Special Term, April 28 1996
Justice Joseph C. Teresi, Presiding

APPEARANCES:

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TERESI, J.:

Petitioners bring this CPLR Article 78 proceeding seeking judicial review of a determination and order of the commissioner of Agriculture and Markets made on or about March 6, 1996. Respondents oppose the petition and seeks its dismissal. This Court previously stayed determination of this petition pending

determination of a pending Oneida County Supreme Court case. The resolution of that case has not addressed the key issue in this case, namely the determination by the Commissioner, finding that the composting of municipal sewage sludge is a agricultural activity protected by the provisions of Article 25 AA of the Agriculture and Markets Law, dated march 6, 1995.

This record indicates that petitioner enacted Local Law #5 of the year 1994 in direct contravention of both §305(2) and 305(a) of the Agricultural Districts Law which prevents unreasonable restrictions of farming practices within agricultural districts. Regardless of whether they are enforced or not these ordinances are prohibited. This record further indicates that §36 of the Agriculture and Markets Law was not violated in issuing this order.

The issue before this Court is whether the March 6, 1995 Order is supported by a rational basis.

The standard for the Court was recently stated by the Court of Appeals in Consolation Nursing Home, Inc. v. Commissioner of New York State Department of Health, 85 NY2d 326, 331-332 (1995) is:

"The standard for judicial review of an administrative regulation is whether the regulation has a rational basis and is not unreasonable, arbitrary or capricious (see, Matter of New York State Assn. of Counties v. Axelrod, 78 NY2d 158, 166; Matter of Bates v. Toia 45 NY2d 460, 464). An administrative agency's exercise of its rule-making powers is accorded a high degree of judicial deference, especially when the agency acts in the area of its particular expertise (see, Matter of Memorial Hosp. v. Axelrod, 68 NY2d 958, 960; 5 Davis, Administrative Law §29:3, at 343 [2d ed]). Accordingly, the party seeking to nullify such a regulation has the heavy burden of showing that the regulation is

unreasonable and unsupported by any evidence (see, Matter of New York State Health Facilities Assn. v. Axelrod, 77 NY2d 340, 349-350; Matter of Society of N.Y. Hosp v. Whalen, 47 NY2d 331, 343.)

Although documented studies often provide support for an agency's rule making, such studies are not the sine qua non of a rational determination. As we have previously stated, in a rate-fixing decision 'the commissioner, of course, is not confined to factual data alone but also may apply broader judgmental considerations based upon the expertise and experience of the agency he heads' (see, Matter of Catholic Med. Ctr. v. Department of Health, 48 NY2d 967, 968-960."

After a full review of this record this Court cannot state the Commissioner's determination and order is not supported by a rational basis. The Commissioner after an investigation which included site visits and interviews determined the questioned activity to be agricultural practice. The record reflects that the Commissioner considered the fact that DeMetto intends to use all of the compost product as an input for the production of turf on his farm property, distinguishing this case from Matter of Moody Hills Farms v. ZBA, 199 AD2d 964 (3rd Dept, 1993). This is a rational determination and the Court will not substitute its discretion for that of the Commissioner.

The Court has reviewed petitioner's remaining contentions and finds them to be without merit.

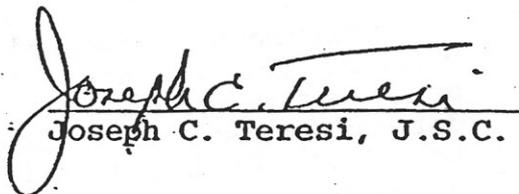
The petition is denied.

All papers, including this Decision and Order, are being returned to the attorneys for the respondents. The signing of this Decision and Order shall not constitute entry or filing under CPLR

2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

SO ORDERED!

Dated: Albany, New York
September 20, 1996


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

- (1) Notice of Motion dated March 30, 1996 with Petition dated March 28, 1996, with Attached Exhibit "A".
- (2) Affidavit of Thomas P. Hughes, Esq. dated April 26, 1996, with Attached Exhibits A - F.
- (3) Verified Answer dated April 21, 1996, with Attached Exhibit "A".
- (4) Affidavit of Robert C. Somers, Jr. dated April 21, 1996, with Attached Exhibits A - I.
- (5) Affidavit of Ruth A. Moore, Esq. dated April 27, 1996.
- (6) Letter Dated July 10, 1996 from Thomas P. Hughes, Esq. with Attachment.
- (7) Letter dated July 16, 1996 from Ruth A. Moore, Esq. with Attachment.