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Case Law Update - 2017

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E. Deane Leonard v. Planning Bd. Of Town of Union Vale, 136 A.D.3d 868 (2d Dept 2016)

- Facts:
  - In 1987, in connection with a proposal to subdivide a 950-acre parcel of real property, Planning Board issued a negative declaration pursuant to SEQRA. Planning Board gives final subdivision approvals for a portion of the parcel.
  - In 2012, Plaintiff applies to Planning Board for subdivision of remainder of parcel and relies upon the 1987 SEQRA determination.
  - Planning Board rejects the application as incomplete finding that the 1987 SEQR resolution was not operative with respect to the current application.
  - Planning Board determines current action constitutes a "new action" for purposes of SEQRA review.
  - Developer brings suit seeking court to declare that 1987 SEQRA determination remains in full force and effect.

Issue

- Whether the 1987 SEQRA determination remains in full force and effect?
- How long can a SEQRA determination last?

Holding

- The 1987 SEQRA determination remains in full force and effect HOWEVER . . .
  - SEQRA determinations do not expire.
  - Rescission and amendments are authorized at any time prior to a decision to approve an action.
  - The Planning Board may assess whether the 1987 Determination should be rescinded or amended taking into account changes in project, new information, and changed circumstances affecting the project.
  - See 6 NYCRR 617.7(e) or (f) – amendment or rescission of SEQRA finding

24 Franklin Ave. R.E. Corp. v. Heaship, 139 A.D.3d 742 (2d Dep't 2016)

- Facts:
  - Planning Board approves three-lot subdivision for existing home and two (2) two-family homes to be built.
  - Building permit application is for three new two-family homes.
  - Town Board enacts a Local Law which amends the Code and provides that the construction of only single-family homes would be permitted in the area in which Plaintiff's proposed to build two-family homes.
  - The Local Law affected real property located within 500 ft. of municipal boundaries.
  - Westchester County Administrative Code: Requires a town to provide the county with 10 days notice of any public hearing as to a zone change amendments. Town claims such notice was provided.
  - N.Y. GML Section 239-m: Applied but was not met.

Issue

- Whether the Town Board's failure to refer the amendment to the county planning agency constituted a "jurisdictional defect" invalidating the local law?
- Does the County Administrative Code notice requirements supersede GML 239-m?

Holding

- Failure to refer the amendment to the county planning agency constituted a jurisdictional defect EVEN IF the Town Board complied with the Westchester County Administrative Code.
- Local Law is void related to single family homes in this District.
- The building permit application does not comply with the approved subdivision, therefore the Supreme Court erred in directing a building permit be issued.
- Remand to the Planning Board for further review.

Elam Sand & Gravel Corp. v. Town of West Bloomfield Zoning Board of Appeals, 137 A.D.3d 1732 (4th Dep't 2016)

- Facts:
  - Plaintiff enters into a lease for property. At the time, mining is a permitted use provided a special permit was obtained.
  - Before special permit obtained, Town Board passes a resolution adopting a moratorium on mining.
  - Plaintiff applies to the zoning board for a use variance and is denied.

Issue

- Whether Plaintiff had a vested right to mine on the property?

Holding

- Plaintiff did not have a vested right to mine on the property even though the application was submitted before the local law was adopted.
- Although plaintiff provided expert testimony with respect to the use variance, “it is the ‘sole province of the ZBA … as administrative fact finder to resolve issues of credibility.”

Lumberjack Pass Amusements, LLC v. Town of Queensbury Zoning, 145 A.D.3d 1144 (3d Dep't 2016)

- Facts:
  - In 2012, Plaintiff purchased a property containing a commercial building and a single-family dwelling that constituted a non-conforming use
  - Pursuant to the Town Zoning Code: "A nonconforming use that is abandoned for more than 18 months shall be required to conform to the requirements of this chapter . . . If a non-conforming use is discontinued for a period of 18 consecutive months, such use shall be deemed abandoned."
  - Commercial neighbor complaint to Town saying the single-family residence was abandoned for 18 months.
  - The ZBA issued a determination that the nonconforming use was not discontinued based upon evidence submitted at the public hearing. Specifically, there was testimony that the owner's son (**not the owner**) stayed at the dwelling sporadically during the 18 months.
  - Son had a different residence.

Issue

- Does abandonment mean for the entire 18 months or most of the time during the 18 months?
- Whether the zoning board's determination had a rational basis?

Holding

- Abandonment is defined in Code as “an intent to abandon or to relinquish and some overt act, or failure to act, which carries the implication that the owner neither claims nor retains any interest in the building.”
- Even though the testimony during the hearing was conflicting, it provided the Zoning Board a rational basis (i.e., the use was not discontinued for a consecutive period of 18 months) to determine the non-conformity was not abandoned.

Lucente v. Terwilliger, 144 A.D.3d 1223 (3d Dep't 2016)

- Facts:
  - In January 2006, Plaintiff submits an application to the Town Planning Board seeking to subdivide a property into 50 lots (47 residential; two to Cornell; one to Town for park).
  - Planning Board issued a negative declaration for purposes of SEQRA and granted preliminary subdivision approval with various conditions.
  - Plaintiff applied for final subdivision approval in 2007. Submission included a revised stormwater management plan which called for the clearing of certain forested wetlands and the construction of a permanent artificial pond along with a revised long form environmental assessment.
  - Moratorium is imposed for period in excess of 600 days.
  - N.Y. Town Law Section 276(8): A certificate of default approval of a final plat must be issued upon demand when a planning board fails to take action within the applicable statutory time limit after completion of all requirements under SEQRA
    - Town's statutory time period is 45 days
  - Following mortarium and 45 days, Plaintiff demands a certificate of default approval.

Issue

- Whether Plaintiff is entitled to a certificate of default approval?

Holding

- No because . . .
  - Additional SEQRA review needed to be conducted upon submission of the final plat (which was modified for stormwater purposes). Therefore, all SEQRA requirements were not completed. As a result, the clock for obtaining a certificate of default approval never started ticking.

Ramapo Pinnacle Properties, LLC v. Village of Airmont Planning Board, 145 A.D.3d (2d Dep't 2016)

- Facts:
  - Plaintiff submits a site plan to Planning Board for approval. Site plan shows two separate entrances for ingress/egress.
  - Planning Board issues negative declaration where it found no adverse impact from the curb cut for the second entrance and that it would reduce traffic at an important intersection.
  - During public hearing, Mayor and Village Trustees contest the second entrance citing general traffic and safety concerns.
  - Planning Board approves site plan but denies the second entrance.

Issue

- Whether Planning Board had a rational basis for denying the second entrance on the site plan?

Holding

- No because . . .
  - Denial of second entrance was based upon generalized community objections.
    - "Although scientific or other expert testimony is not required in every case to support a zoning board's determination, the board may not base its decision on generalized community objections"
  - Once SEQRA determination was made that second entrance did not have a significant environmental impact, there has to be some additional information to justify denial of that entrance
  - Did the fact that the Mayor and Trustees objected play a role in Court's decision??
  - Courts want to see proof in the record when there is a denial.

Matter of Sullivan v. Zoning Board of Appeals of City of Albany, 2016 N.Y. Slip Op 07911 (3d Dep't 2016)

- Facts
  - Plaintiff wants to use church parsonage to operate a not-for-profit corporation which will provide a "home base" for the homeless.
  - Under Zoning Code, permitted uses in the district include "houses of worship."
  - ZBA issues an interpretation stating that the proposed use is "consistent with the mission and actions of a house of worship" and "OKs" the use.
  - Neighbor challenges the determination.

Issue

- Whether the ZBA's interpretation has a rational basis?

Holding

- Yes because . . .
  - The plain and ordinary meaning of “house of worship” permits and encompasses the use proposed by the church.
  - “If the law or ordinance at issue does not define a particular term, courts will afford such term its plain or ordinary meaning.”
  - When terms are indefinite, courts will read it to favor property owner.

Town of Lysander v. Hafner, 96 N.Y.2d 558 (2001)

- Facts:
  - Town Code prohibited houses smaller than 1,100 sq. ft.
  - Town brings a lawsuit requesting an order from the court to remove single wide trailers of less than 1,100 sq. ft located on farmer's property. The farmer's property is located in an Agricultural District.
  - Farmer challenged the lawsuit asserting that it unreasonably restricted farming operations and the public health and safety was not threatened by the regulated activity (i.e., mobile home usage)

Issue

- Whether the restrictions on the size of homes in Lysander is prohibited by Agriculture & Markets Law Section 305-a?

Holding

- Supreme Court – No
- Appellate Division, 4th Department – No
- Court of Appeals - Yes
  - N.Y. Agricultural and Markets Law Section 305-a: Prohibits local governments from enacting and administering laws, ordinances, rules or regulations that "unreasonably restrict or regulate farm operations within an agricultural district ***unless*** it can be shown that the public health or safety is threatened."
  - Housing for migrant workers is essential to the farming process.
  - No proof by Town that public health or safety was threatened by small homes.