Case Law Review -2022

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Matter of Frontier Stone, LLC. v. Town of Shelby 174 AD3d 1382 (2019)

- Facts:
  - Article 78 brought to invalidate a local law that created a wildlife refuge overlay district and to annul the Neg. Dec. under SEQRA.
  - Petitioner (Frontier) operates a quarry and applied for a mining permit in the agricultural/residential (AR) zoning district.
  - Town Board adopted a moratorium for special permits for mining.
  - Town Board then by local law removed mining from the allowed uses in an AR and said mining could only take place in an industrial district with a new overlay mining designation and site plan approval.
  - Town Board then proposed a new local law that created the "wildlife refuge overlay district" which prohibited mining and proposed the new district would include the proposed mine.

Issues

- Petitioners (Frontier) complained that:
  - the changes to the local laws were in violation of the Town's comprehensive plan
  - The Town Board, in its SEQRA determination, did not identify the relevant areas of environmental concern, didn't take a "hard look", and didn't set forth a reasoned elaboration of the basis for the determination
  - The Town Board, in its SEQRA determination, did not consider the potential beneficial impacts of the proposed quarry on water levels in the overlay district, especially in light of the presumed effect of climate change (??)
  - The local law was pre-empted by the New York State Mine Reclamation Act
  - The Town Board did not comply with lawful procedures when adopting the local law

Holding

- "If the validity of the legislative classification for zoning purposes is fairly debatable, the legislative judgement must be allowed to control"
- "Where the parties challenging the zoning classification fail to establish a clear conflict with the comprehensive plan, the zoning classification must be upheld"
- The Town Board made specific findings about the need to protect unique wildlife habitat
- The Town Board "had the discretion to select the environmental impacts most relevant to its determination and to overlook those of 'doubtful relevance.'"
- The MLRL does not preempt a towns authority to determine that mining should not be a permitted use of land within a zoning district.

Affirmed

Frank Ludovico Sculptor Trail Corp. v. Town of Seneca Falls, 173 AD3rd 1718

- Facts:
  - Town sought to acquire an easement along a nature trail commemorating the women's rights movement in order to install a sewer line.
  - Used Eminent Domain Law to obtain the easement.
  - Petitioner claimed that the Town did not properly undertake a SEQRA analysis when obtaining the easement.
  - NYS DEC made the Town aware that its database indicated the presence of certain endangered, threatened, or rare animals and plant species on the easement.
  - Northern long-eared bat, imperial moth, northern bog violet.
  - Also, an inland salt marsh.
  - DEC recommended that the Town conduct a survey of professional literature to determine whether the project site contains habitat favorable to these species.
  - Town assumed the presence and in Part 3 reasoned that bats wouldn't be affected because the clearing of trees would take place in the winter months when they are hibernating in caves.
  - No reasoning with respect to moth, violet, inland salt marsh.
  - Also issue with stream and the effect of drilling on the stream.

Issue

Did the Town properly conduct SEQRA?

Holding

- To comply with the substantive requirements of SEQRA, the Town should have:
  - Identified the relevant areas of environmental concern
  - Took a hard look at them
  - Make a reasoned elaboration of the basis for its determination
- While the bat issue was addressed, the EAF simply noted the presence of the moth, violet and inland salt marsh but did not provide a reasoned elaboration for why the Town concluded that there would be no significant environmental impact on those species or geological features.
- Therefore, the Board failed to take a “hard look” at those impacts
- Regarding the impacts on the stream, the Town merely set forth general practices for avoiding significant adverse impacts on surface water but did not provide an elaboration that implementing those practices in this particular project the Town would successfully avoid any significant adverse impacts on surface water.

Easement Annulled

Matter of Ned E. Dean v. ZBA of the Town of Poland ZBA, 185 AD3d 1485 (2020)

Facts:

- Property owner owns 17-acre parcel
- Property owner wants to sell two acres to a Dollar Store
- Sale was contingent on a use variance from the ZBA
- ZBA granted a use variance
- Neighbors brought Article 78
- Supreme Court dismissed the petition, concluding that the record was sufficient to establish that the ZBA determination had a rationale basis and was not arbitrary and capricious.
- Appellate court remanded to ZBA asking it elaborate its reasoning for granting the use variance.
- It provided reasons for each of the 4 criteria and said that the Dollar Store demonstrated that the regulations have caused “unnecessary hardship.”

Issue

- Should the ZBA issued a use variance?

Holding

- Town Law 267-b(2) Use variance shall not be granted without a showing by the applicant that zoning regulations and restrictions have caused unnecessary hardship. To prove unnecessary hardship the applicant shall demonstrate for each and every permitted use under the zoning regulations for the particular district where the property is located;
  - the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
  - that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
  - that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
  - that the alleged hardship has not been self-created.
- In order to establish unnecessary hardship, the applicant has to establish that for each and every permitted use under the zoning regulation the applicant cannot realize a reasonable return for the property and that the lack of return is substantial as demonstrated by competent financial evidence.
- There is no evidence in the record establishing whether respondent could realize a reasonable return on the parcel if it were used for any conforming use and failed to meet their burden to demonstrate

Matter of 209 Hudson Street, LLC v. City of Ithaca ZBA, 182 AD3d 851 (2020)

- Facts:
  - House on a lot with a pre-existing side yard deficiency.
  - Subdivision requested to create another lot.
  - The existing lot would include the house, applicant would build a multi-family residence on the newly created vacant lot.
  - After an evaluation of the 5 criteria, the ZBA denied the variance.
  - Substantial public opposition.

Issue

- Did the ZBA properly deny the area variance?

Holding

- The Supreme Court found that the determination to deny the area variance request was based on matters not related to the side yard deficiency and that a rational basis required respondent to examine the requisite factors as they pertained to such deficiency.
- ZBA was entitled to factor into its determination that applicant intended to build a multifamily dwelling.
- ZBA's findings reflect that an environmental review of the project concluded there will be no significant environmental impact from granting the variance.
- Planning Board recommendation was ambiguous about the variance, saying they were "conflicted" about whether it should be granted.
- Multifamily is a permitted use.
- ZBA's consideration of the factors rested primarily on the opposing comments provided by neighbors.
- General community opposition is not sufficient reason to deny variance.

Variance Denial was annulled

In the Matter of HV Donuts, LLC v. Town of LaGrange ZBA, 169 AD3d 678 (2019)

- Facts:
  - Gasoline service station and convenience store operated on a parcel of land that was not properly zoned for such use.
  - Pre-existing non-conforming use status was recognized by the Town.
  - A fuel delivery truck hit a light pole and spilled approximately 3,000 gallons of gasoline on the property.
  - Operations had to cease as remediation measures began.
  - Restoration took over 1 year to complete.
  - Code Enforcement Officer said the non-conforming use could be re-established pursuant to the Code and granted a one-year extension to re-establish the non-conforming use.
  - Dunkin Donuts across the street brought action to ZBA asking that it overturn CEO interpretation of the Code.
  - ZBA confirmed CEO's interpretation – Dunkin Donuts brought an Article 78 challenging ZBA's interpretation

Issues

- Did the gas station lose its non-conforming use status by not operating for more than 1 year – Town Code says if the use is abandoned for more than 1 year the non-conformity is lost.

Holding

- A court must set aside the determination of a ZBA "only where the record reveals illegality, arbitrariness, or abuse of discretion."
- Where a ZBA has a rational basis in the record, a court may not substitute its own judgment, even where the evidence may support a different conclusion.
- The ZBA determined that there was "more to maintaining a gasoline filing station than pumping gas."
- The ZBA rationally concluded that remediation of the petroleum spill amounted to a continuation of the nonconforming use and that the provisions of the Code regarding discontinuance of use were rationally applied.
- "Because the ZBA's determinations involved interpretation of its own zoning ordinance and because its conclusions were supported by the record presented to it, we defer to its conclusions."

ZBA affirmed

Town of Hempstead v. State of New York, 42 AD 3d 123 (2007)

- Facts:
  - State entered into a Telecommunications Site Manager Agreement with private company to build cell towers on State land.
  - State had to approve the sites and reserved the right to install its own telecommunications equipment at any site.
  - State informed Town that it was reviewing an environmental site assessment for the installation of a cellular communication tower on State-owned property.
  - Town never responded.
  - State completed SEQRA and issued a negative declaration for the tower, Town didn't respond.
  - Tower construction starts.
  - Town brings an action to enjoin the construction of the tower because it did not go through the site plan and special use permit process.
  - State said Town's claim was time barred and that it was exempt from zoning under the *Matter of Monroe County* case.

Monroe County v. City of Rochester case

- Zoning applies unless it doesn't
- Balancing of public interests:
  - Nature and scope of instrumentality seeking immunity;
  - The kind of function or land use involved;
  - The extent of the public interest to be served;
  - The effect local land use regulation would have upon the enterprise concerned;
  - The impact upon legitimate local interests;
  - Alternative methods of providing the needed improvement;
  - Intergovernmental participation in the project development process

  While no factor is controlling, one factor may be of significantly greater influence so as to overshadow all other factors.

Issue

- Is the State subject to the zoning ordinances of the Town?

Holding

- While *Monroe* was between two public entities, the Court of Appeals made it clear that a private entity may share in the immunity accorded to the State if the result of the balancing test is in the State's favor.
- The public interest in developing cellular service is significant.
- Tower is located within a highway entrance ramp (but approximately 250 feet from houses).
- Proposed re-location too close to railroad.

DISSENT

- *Crown* case did not provide “blanket authority for the placement of state-owned towers at any location the State desires.”
- Upon evaluation of the balancing test factors, it is clear they weigh in favor of applying the Town’s zoning code.
- Plaintiff does not seek to eliminate the tower but to move it, so it is not as visible from houses.
- The State has the burden of proof since it is seeking immunity.
- Does it seem fair that a private corporation can “borrow” the State’s immunity?

Favre v. Planning Board of the Town of Highlands, 185 AD3rd 681 (2020)

- Facts:
  - Applicants filed a site plan and special permit application to Town to construct a hotel and restaurant on two vacant lots.
  - On January 18, 2018 the Planning Board held a public hearing on the application.
  - On September 20, 2018 SEQRA was completed and site plan and special permits approved.
  - Next door neighbor, auto repair shop and convenience store, brought Article 78.
  - Claimed that the Planning Board was required to hold an additional public hearing after the site plan was revised.
  - Further claimed that the site plan should have been re-sent to the county planning agency for re-review based on the revised site plan.

Issue

- When does a change in a site plan trigger a new referral to county planning and a new public hearing?

Holding

- The record established that an additional public hearing was not required because the revisions were “insubstantial.”
- The changes did not expand or change the basic layout or dimensions of the project.
- Further, the public hearing was held after an extensive process where applicant provided the Planning Board with revised site plans.
- Same is true with the GML referral.
- Planning Board is to submit to the county a “full statement of such proposed action” defined as “all materials required by and submitted to the referring body as an application on a proposed action, including a completed EAF and all other materials required … in order to make its determination of significance pursuant to SEQRA”
- Only when the revisions are so substantially different from the original proposal, should the county agency … have the opportunity to review and make recommendations on a new and revised plan.