Case Law Update

Onondaga County Planning Federation

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Summary of cases

- Presented by:

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Sullivan Farms IV, LLC v. Village of Wurtsboro 134 A.D. 3rd 1275 (2nd Department)

- FACTS OF CASE: Sullivan Farms II, Inc. owned 54 acres of property in the Village of Wurtsboro, Sullivan County. In 2009, Sullivan Farms II obtained conditional final subdivision plat approval from the Village Planning Board for a 72 unit cluster development. The approval lapsed due to inactivity. In 2012, Sullivan Farms IV, LLC again sought approval from the Village and it was granted. Simultaneously, the developer applied for another cluster development on an adjacent property. The Planning Board then revisited the original subdivision approval and in the meantime, the Village Board passed a law that altered the methodology for calculating the allowable building lots. The Planning Board rescinded the original subdivision approval based on the new laws and one more issue.

Issues?

- Can a Board rescind an approval already granted?
- What about vested rights?
- Can a Town Board change the basis for calculated cluster development after a subdivision was approved by a planning board based on the old methodology?
- Is this fair?

What did the court say?

- “Despite the lack of statutory authority, a planning board may reconsider a determination if there is a material change of circumstances since its initial approval of the plat or new evidence is presented” (citing *Matter of 1066 Land Corp. v. Planning Board of Town of Austerlitz*, 218 A.D. 2d 887).
- The question isn’t whether the Planning Board had the authority to do what it did, but whether it abused its discretion.
- There was more than enough land (85 acres) to allow the 72 units.
- Then why did the court allow the Town to rescind the site plan approval?????

You can’t count land that’s not in YOUR VILLAGE

- 31 acres of the 85 acres was in the Town of Mamakating … not the Village of Wurtsboro.
- The applicant expected that the land would be annexed into the Village, but that never happened.
- Since the land in the Site Plan that was approved was not in the Village of Wurstboro, the Planning Board did not have the legal authority to approve the Site Plan.
- How can this happen????

Vested Rights of the Applicant

- A vested right can be acquired when, pursuant to a legally issued approval, the landowner demonstrates a commitment to the purpose for which the approval was granted by effecting substantial changes and incurring substantial expenses to further the development (*Town of Organgetown v. Magee*, 88 N.Y. 2d 41)
- When an approval is granted without jurisdictional authority, you can't accrue vested rights.
- Is there any recourse for the developer for spending money on a jurisdictional defective approval?

SEQRA

- Developer said the rescission of the subdivision approval was no good because the Planning Board didn't do SEQRA.
- Initially, there was no finding.
- Then the Planning Board rectified this by making a finding that the rescission was a ministerial act and therefore wasn't approving an "action" under SEQRA.
- Court said ok.
- With regard to the adoption of the local law, it was an unlisted action because they only amended the procedures for determining cluster development calculations.
- The short EAF recognized the relevant areas of concern and provided a sufficient elaboration of the basis for its negative declaration.

Local Law Unconstitutionally Vague

- The Local Law regarding calculations left it up to the Planning Board to determine the number of units permitted on any given property.
- The court disagreed, “It is incumbent on the challenging parties to demonstrate that the statutory language is so indefinite that they could not reasonably understand it” (citing *Clements v. Village of Morristown*, 298 A.D. 2d 777).
- A specific methodology was set forth in the local law, that’s good enough.

Matter of Falcon Group LLC v. Town/Village of Harrison Planning Board
131 A.D. 3d 1237 (2nd Dept.)

- FACTS OF CASE: Falcon Group LLC owned 14.62 acres of land in the Town of Harrison. It's zoned R-1. Falcon Group submitted an application for a 14 lot subdivision. The project required the improvement of a paper street and a waiver from the cul-de-sac length requirements. The Planning Board adopted a positive declaration, finding the site was significantly constrained by the presence of steep slopes, wetlands, a stream and subsurface conditions. A DEIS was prepared, which included several alternatives. The Board accepted the DEIS and public hearings were held. An FEIS was prepared and the Board accepted that. The FEIS included two new alternatives which would reduce the density of the project and many of the environmental concerns. After a public hearing on the FEIS, the Board determined that the project did not minimize or avoid the adverse environmental effects to the maximum extent possible, and would result in a significant environmental impact that could not be avoided.

Issues?

- Developer brought an Article 78 to annul the findings statement on the grounds that it contradicted conclusions reached in the FEIS and the DEIS and was not supported by empirical evidence in the record.

SEQRA Standards

- Were the agency procedures lawful and “whether the agency identified the relevant areas of environmental concern, took a ‘hard look’ at them, and made a ‘reasoned elaboration’ of the basis for its determination.” (citing [*Matter of Jackson v. NYS Urban Dev. Corp*], 67 N.Y. 2d 400).
- The purpose of an EIS is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake or approve such action (ECL – 8-0109(2)).
- In a findings statement, the lead agency should “consider the relevant environmental impacts presented in the EIS, weighs and balances them with social, economic and other essential considerations, provides a rationale for the agency’s decision and certifies that the SEQRA requirements have been met.” (6 NYCRR 617.2(p)).
- While an agency’s ultimate conclusion is within the discretion of the agency, it must be based on factual evidence in the record and not generalized, speculative community objections. [*Matter of WEOK Broadcasting Corp v. Planning Board of Town of Lloyd*], 79 N.Y. 2nd 373).

Were These SEQRA Standards Met?

- No. The Board was required to render its conclusion regarding the sufficiency of mitigation measures, the propriety of permit approvals, and a balancing of considerations, based on the evidence contained in the environmental review.
- The Board's conclusions were based, at least in part, on factual findings which were contradicted by the scientific and technical analysis included in the FEIS and not otherwise supported by empirical evidence.
- The finding statement also failed to give sufficient consideration to the various alternative plans reviewed in the FEIS.
- The Court remanded the matter back to the Board to issue a finding statement that is consistent with the FEIS

Matter of M&V 99 Franklin Realty Corp. v. David Weiss
124 A.D. 3d 783 (2nd Department)

- FACTS OF CASE: The owner of a property operates a used-car business, and a tenant operates an auto-repair business. These uses were not allowed as of right but required a special exception permit. The owner applied to the Board of Appeals of the Town of Hempstead for a special exception permit to display and sell used cars and parking in the setback and for a variance for off-street parking. After a public hearing, the Board denied the application.

Special Exception Permit (Special Use Permit)

- Standards:
  - Unlike a variance, which gives permission to an owner to use property in a manner inconsistent with a local zoning ordinance, a special exception gives permission to use property in a way that is consistent with the zoning ordinance, although not necessarily allowed as of right. (*Matter of Retail Prop. Trust v. ZBA of Town of Hempstead*, 98 N.Y. 2d 190)
  - The burden of proof on the owner seeking a special exception is lighter than that on an owner seeking a variance.
  - The owner must show compliance with the legislatively imposed conditions pertaining to the intended use before a special exception permit may be granted.
  - The denial of a special exception permit must be supported by evidence in the record and may not be based solely on community objections.
  - When such evidence exists, deference must be given to the discretion of the board authorized to rule upon the application.

Were the Standards Met?

- Yes. The Board was not limited to just the site plan presented to it, but properly considered "whether the plot area was sufficient … for the use and the reasonable anticipated operation … thereof"
- Based on the statements made at the hearing and its own inspection of the property, the Board discredited the owner's contention that it would limit the number of parking cars associated with the business on the adjoining property to 20.
- "*Issues of credibility are within the province of the Board*" (citing *Matter of Green 2009, Inc. v. Weiss*, 114 A.D. 3d 788).
- The Board's finding that the anticipated use of the property would prevent the orderly and reasonable use of adjacent property due to vehicular overcrowding was supported by "eyewitness testimony of actual conditions at the premises", not generalized community opposition.
- Variance was also denied after considering the requisite factors.

Mimassi v. Town of Whitsboro ZBA
124 A.D. 3d 1329

- FACTS OF CASE: Area variance was denied. Applicant brought an Article 78 seeking to annul the denial. Applicant claimed that the ZBA didn’t adhere to its precedent.

Court said:

- Deny on the precedent issue. Applicant failed to establish that respondent's determination on another application was based on essentially the same facts as the present application.

HOWEVER,

The Zoning Board of Appeals made its decision upon factors and other criteria that determined that applicant did not prove "practical difficulties".

“Practical Difficulties” is no longer standard

- The balancing test set forth in Town Law Section 267-b is now the standard to determine whether to grant an area variance.
- Overturned and sent back to ZBA
- Remember, however, that the contention that a ZBA failed to satisfactorily address all five statutory factors is without merit, as no single statutory factor is determinative, but merely one consideration in a broader balancing test. (citing *Matter of Filipowski v. ZBA of Village of Greenwood Lake*, 38 A.D. 3d 545)
- Further, a ZBA is entitled to consider the effect its decision would have as a precedent (*Matter of Genser v. ZBA of the Town of N. Hempstead*, 65 A.D. 3d 1144)