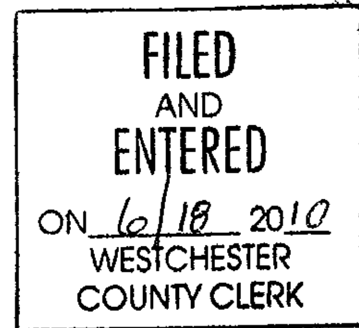
To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER : ENVIRONMENTAL CLAIMS PART

In the Matter of the Application of

MAMARONECK BEACH & YACHT CLUB, INC. AND MAMARONECK BEACH & YACHT CLUB, LLC.,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Law & Rules

-against-

ROBERT GALVIN, STEWART E. STERK, MICHAEL IANNIELLO, CARL ALTERMAN and LEONARD VIOLI constituting the PLANNING BOARD OF THE VILLAGE OF MAMARONECK and THE PLANNING BOARD OF THE VILLAGE OF MAMARONECK,

Respondents,

ORDER and JUDGMENT
Index No. 24348/07

NICOLAI, J.

The following papers numbered 1 to 46 were read on this petition to annul the Environmental Findings Statement issued by respondent Planning Board of the Village of Mamaroneck pursuant to the New York State Environmental Quality Review Act (Environmental Conservation Law of the State of New York, Article 8) and its attendant regulations (6 NYCRR Part 617) as arbitrary, capricious, unresponsive and unlawful and for an Order directing respondent Planning Board of the Village of Mamaroneck to issue a new Environmental Findings Statement approving thirty-two units of seasonal residences for members of petitioner Mamaroneck Beach & Yacht Club, Inc. and Mamaroneck Beach & Yacht Club, LLC as set forth in its modified proposed site plan and depicted in the Final Environmental Impact Statement approved by Respondent Planning Board of the Village of Mamaroneck.

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Upon the foregoing papers, for the reasons articulated hereinafter, the relief sought is granted and the Findings Statement issued by respondent Planning Board of the Village of Mamaroneck is annulled.

Factual and Procedural Background

Petitioners own and operate the Mamaroneck Beach & Yacht Club – a membership yacht club – at 555 South Barry Avenue in the Village of Mamaroneck (the Club). The instant dispute arises out of the 6-year – and thus-far futile – effort of petitioners, Mamaroneck Beach & Yacht Club, Inc. and Mamaroneck Beach & Yacht Club, LLC (collectively, MBYC) to obtain approval for the construction of, inter alia, free-standing seasonal residence units on MBYC property for Club members. The 12.84 acre parcel upon which the Club is located is within the MR-Marine Recreation District (MR District) as set forth on the Village of Mamaroneck Zoning Map.[1]

In January of 2004, MBYC submitted to respondent Planning Board of the Village of Mamaroneck (Planning Board) an application for site development plan approval, proposing to make a number of improvements to Club property, including the construction of a number of free-standing seasonal residence units for Club members. Membership supported clubs are the sole permitted principal use within the MR District where the Club is located (Mamaroneck Village Zoning Code § 342-35[A][1]). Under Mamaroneck Village Zoning Code, as it existed in

[1]Prior to the establishment of the MR District, the Club was within an R-20 zoning district which permitted residential development as well as other uses. In 1984, the Village of Mamaroneck adopted a Local Waterfront Revitalization Plan (LWRP) which attempted to promote and support, inter alia, beach club uses. In so doing, the LWRP acknowledges that the standards and requirements necessary to upgrade and expand social clubs (under the R-20 zoning district) could unduly discourage the expansion and upgrading of beach and yacht clubs. In 1985, the Club property, and other waterfront clubs within the Village of Mamaroneck, were downzoned from R-20 to the single use MR District.

2004, accessory uses, which were authorized in conjunction with appropriate principal use, permitted, inter alia, seasonal residences for club members and their guests (Mamaroneck Village Zoning Code § 342-35[B][2], [3][6]). The Mamaroneck Village Zoning Code also permits other accessory buildings and uses which are incidental to the principal uses (Mamaroneck Village Zoning Code § 342-35[B][9]).

Under the relevant section of the Village of Mamaroneck's Zoning Code, in effect when petitioners first submitted the application for site plan approval:

> "[r]esidences for caretakers and staff and seasonal residences for Club members and guests are permitted accessory uses in the Marine Recreation Zone in conjunction with a permitted principal use" (Village of Mamaroneck Zoning Code, § 342-35[B][6]).

Initially at least, there appears to have been a mutual acknowledgment between the Mamaroneck Village Planning Consultant, its Building Inspector and the Village attorney that, within the MR District, free-standing seasonal residence units were a permitted accessory use to membership yacht clubs according to the zoning code of the Village of Mamaroneck, as it then existed. In a memorandum issued to the Planning Board, the then-building inspector determined that MBYC's site plan application was consistent with the zoning code as to the permitted use, the lot area and frontage, building coverage and floor ratio, building height, off street parking, parking set back and architectural sketches. He further opined that the proposed seasonal residence units were a permissible accessory use. A subsequent memorandum from the Village of Mamaroneck's Planning Consultant, stated that it was the Building Department's opinion that the Planning Board had a complete application before it and that it could proceed with SEQRA and site plan review. The memorandum states that the Planning Board could proceed with its site plan application review, notwithstanding that the Village's Harbor Coastal Zone Management Commission had not rendered a decision as to whether MBYC's application was in compliance with the Local Waterfront Revitalization Plan (LWRP), since the Building Inspector and the Village Attorney both believed that the proposed seasonal residence units could be properly considered as accessory uses to the permitted principal clubhouse use.

Vocal public opposition to MBYC's plan, occasioned primarily by the Shore Acres Property Owners Association (SAPOA) arose and litigation followed during which time the Planning Board refused to initiate site plan review of MBYC's application. The Planning Board took the position that SAPOA's appeal to the Village of Mamaroneck Zoning Board of Appeals, on the issue of whether seasonal residences such as those proposed by MBYC in its application, are a permitted accessory use within the MR District, stayed further action by the Planning Board with respect to MBYC's application under New York's Village Law § 7-712-a(6). In response, petitioners commenced an Article 78 in the nature of mandamus. Thereafter, in a Decision and Order dated April 20, 2004, this Court (Lippman, J.,) granted petitioners an Order of Mandamus, and directed respondent Planning Board to, without delay, declare its intent

to act as the lead agency pursuant to SEQRA, conduct the necessary SEQRA review and to proceed with site plan review of the MBYC's application.[2]

When petitioners requested, consistent with the April 2004 Order of Mandamus, affirmed on appeal, that their application for site development plan approval be placed on the Planning Board's January 12, 2006[3] agenda, the Planning Board refused to process the application on the ground that a zoning moratorium on development within the MR District, which had been impending but had not been enacted by the Village Board of Trustees at the time of the April 2004 order of mandamus, had not been waived for petitioners. In so doing, the Planning Board took the position that the zoning moratorium, ostensibly enacted to consider the meaning of "accessory use," precluded review applications for site plan approval within the MR District until the Board of Trustees determined whether it was going to amend the Village Code related to accessory uses permitted in the MR District, or the moratorium period expired notwithstanding that there had been no zoning moratorium at the time of the Court's Order of Mandamus.

In response, MBYC moved to hold respondents in civil contempt for wilful failure to comply with the April 2004 Order of Mandamus directing them to process their application for site development plan approval (CPLR 5104; Judiciary Law § 756). In its Decision and Order dated April 20, 2006, this Court (Lippman, J.,) agreed that the respondent Planning Board had unreasonably failed to comply with the April 2004 order of mandamus requiring that it initiate a review and determination of MBYC's application and issued a conditional contempt order, directing that the Planning Board be held in contempt unless the SEQRA process and site plan application review were initiated within thirty days. In so doing, the Court noted that the issue of whether the moratorium stayed the processing of MBYC's application for site plan approval had already been rejected, once in the April 2004 Order of Mandamus and again by the Appellate Division. The issue of the potential effect of the impending moratorium had been fully briefed and the Court had nonetheless ordered the Planning Board to initiate review of MBYC's application in accord with the zoning code as it existed at the time of MBYC filed its application. In so holding, the Court determined that respondents could not reasonably rely on the subsequently-enacted moratorium to refuse to act on MBYC's application as directed by the

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[2]The Court's order and judgment was later affirmed when the Appellate Division held that the Planning Board's refusal to act, pursuant to the Village's local code requirement as well as to SEQRA, to review and act upon petitioners' application for site development plan approval within forty-five days warranted mandamus relief to compel the Planning Board to undertake the review process (Mamaroneck Beach & Yacht Club v. Fraioli, 24 AD3d 669 [2d Dept., 2005]; see Village of Mamaroneck Zoning Code § 342-79).

[3]Petitioners initiated a second Article 78 proceeding in July of 2004 seeking to annul the Village Board's decision denying MBYC a variance from the building moratorium. The review and approval of site plan approval applications were stayed with respect to MR District properties during the pendency of this proceeding.

Court in the April 2004 order of mandamus. The Court also rejected respondents' argument that MBYC's application for a variation from the moratorium effected its acknowledgment of the controlling force of the moratorium and it concluded that MBYC was entitled to have its site plan application processed regardless of the moratorium and that collateral estoppel barred respondents from arguing that the moratorium stays the Planning Board's power to review and render a determination on the application.

Respondent Planning Board commenced the SEQRA process in May of 2006. It issued a positive declaration on June 22, 2006, requiring MBYC to file the application with a Draft Environmental Impact Statement (DEIS). On November 22, 2006 MBYC submitted an initial DEIS, proposing the construction of 32 units of seasonal housing, 20 of which were to be located in 5 free-standing buildings. The remaining 12 units were proposed for the existing clubhouse. MBYC filed a revised DEIS designating this aspect of the site development plan as Alternative G (32 units of seasonal housing – 20 freestanding units and 12 within the clubhouse).

The Planning Board held a public hearing on the DEIS on March 8, 2007 during which time MBYC's application was discussed, including Alternative G. The period of public comment on the DEIS was closed on March 23, 2007. On June 11, 2007, MBYC submitted its Final Environmental Impact Statement (FEIS) to the Planning Board designating the "Applicant's Modified Proposed Action"[4] the proposed action for consideration. The revised FEIS, which designated this Modified Proposed Action as the preferred proposed action was submitted by MBYC to the Planning Board on July 12, 2007 and accepted on July 26, 2007. MBYC maintained, in support of the proposal, that the 20 seasonal units, housed within the 4 free-standing buildings, were a unique amenity and a financially necessary component to effectuate the other aspects of the proposed improvements to the club.

Specifically, MBYC and its experts maintained that if MBYC were to proceed with all of the improvements recommended by the Planning Board in the draft Findings Statement – including the 12 seasonal units within the clubhouse – but not including the 20 units within 4 free-standing buildings – the estimated capital construction cost was $10,223,000. The annual income derived from the 12 seasonal residences within the clubhouse, coupled with the additional yearly revenue derived from the improvements to the club amenities was estimated at $59,000 in additional income. The annualized rate of return on the investment, based on these estimates (5.08%) rendered the redevelopment plan financially untenable, maintained MBYC through its experts. If, however, the redevelopment plan including the free-standing seasonal residence units were to be undertaken, opined MBYC's president and several retained experts, the construction costs would rise to $16,493,000 however the annual income derived from the collective improvements would also rise to an estimated $1,551,000 per year, resulting in what MBYC characterized as a reasonable annual rate of return of 9.41%.

[4] The Modified Proposed Action was substantially similar to Alternative G except that it proposed that the number of free-standing buildings for the 20 units of seasonal housing be reduced from 5 to 4.

On October 26, 2007, respondent Planning Board issued its Findings Statement which approved certain aspects of the plan for redevelopment. Approved was the proposed expansion of the historic clubhouse building, the construction of a new recreation building, a new pool, new docks, new marina slips and a new yacht club building. The Findings Statement rejected the Alternative G/Modified Proposed Action which pertained to the construction of the 4 new free-standing buildings for the 20 seasonal residence units. Instead, the Findings Statement approved the hybrid Alternatives B-1 and C as the best plan to minimize adverse environmental impacts and to balance environmental protection issues while accommodating the relevant social and economic considerations. The only seasonal residence units that were approved in the Findings Statement were the 10 studio units and 2 single bedroom units which were allowed for the existing historic clubhouse.

The instant Article 78 proceeding to annul and declare void the Findings Statement was commenced on November 27, 2007.

Article 78 Petition

Petitioners seek to annul the Environmental Findings Statement approved by respondents on October 25, 2007 pursuant to the New York State Environmental Quality Review Act and its attendant regulations (collectively, "SEQRA") on the ground that respondents unjustifiably refused to approve that aspect of their redevelopment plan which sought 20 free-standing seasonal residence units intended for members of petitioner MBYC.

First Cause of Action

Despite awareness that the critical aspect of the petitioners' application was the proposal to build free-standing seasonal residence units, petitioners claim in their first cause of action that the Findings Statement failed to meaningfully address this proposal (Alternative G/Modified Proposed Action) and failed to take a requisite hard look – choosing instead to focus exclusively on an alternative which petitioners had already made clear would be economically unfeasible and which would render the entirety of the proposed improvements unviable. In this fashion, petitioners assert, the Planning Board improperly manipulated the SEQRA process contriving to the pre-ordained rejection of the 20 free-standing seasonal residences – and with it the economic feasibility of the entire project – while appearing as if it had taken the required hard look.

Second Cause of Action

Petitioners point to respondent Planning Board's demonstrated, persistent and unreasonable refusal to consider its site plan application. From the Spring of 2004, when the application was submitted, through the order of mandamus which followed the first Article 78 proceeding, continuing throughout and after the respondents' unsuccessful appeal and concluding only – and reluctantly – after petitioners' motion seeking an order of contempt. Once review was initiated, petitioners argue, respondent Planning Board unfairly refused to consider any units of free-standing seasonal residences for MBYC members. Petitioners contend that this failure and refusal, coupled with the disparate manner in which neighborhood opposition was permitted to

influence the process evidences the arbitrary, capricious and unreasonableness of respondent Planning Board in processing MBYC's application for site plan approval.

Third Cause of Action

Petitioners also claim that the respondent Planning Board's Findings Statement was crafted to reflect the oppositional influence of the Shore Acres Property Owners Association (SAPOA) and other members of the general community towards the petitioners' planned improvements. In this vein, petitioners argue that the amended zoning ordinance, which changed allowable accessory use within the MR District to 12 seasonal residence units, was de-facto applied in determining the maximum number of allowable seasonal residence units with respect to their site plan application notwithstanding that this Court has specifically determined that the new zoning amendment is inapplicable. Petitioners argue that it was no coincidence that the number of seasonal units approved in the Findings Statement was 12 inasmuch as the Zoning Code, which was amended after petitioners initiated the process of obtaining site plan approval, limited the number of seasonal residences units allowed as an accessory use to 12. Petitioners assert that this virtually pre-ordained result has tainted the Findings Statement and is demonstrative of the pretext and subterfuge which has characterized the respondent Planning Board's manipulation of the SEQRA process.

Fourth Cause of Action

Petitioners point to the legislative history surrounding the LWRP and the creation of the MR District in 1985 as demonstrative of the intent to facilitate and encourage Mamaroneck's waterfront clubs to undertake practical improvements to and enhancements of their facilities in a manner which would allow them to thrive economically in the community. In this respect, petitioners argue that the respondent Planning Board's refusal to approve any free-standing seasonal housing units for Club members creates no economic incentive for MBYC to proceed with any of its redevelopment plan and is, in that respect, tantamount to a denial of a valid, revitalization plan which is in keeping with the goals of the LWRP and the establishment of the MR District.

Analysis

The primary purpose of SEQRA is to inject environmental considerations directly into the governmental decision-making process to ensure that "agency decision makers, enlightened by public comment where appropriate, will identify and focus attention on any environmental impact of proposed action, that they will balance those consequences against other relevant social and economic considerations, minimize adverse environmental effects to the maximum extent practicable, and then articulate the basis for their choices" (Matter of Jackson v. New York State Urban Dev. Corp., 67 NY2d 400, 414-415 [1986]). The procedures necessary to fulfill SEQRA review are carefully detailed in the statute and its implementing regulations (see Environmental Conservation Law § 8-0101-8-0117; 6 NYCRR 617; City Council of City of Watervliet v. Town Board of Colonie, 3 NY3d 508, 515 [2004]). Literal compliance with SEQRA is required; substantial compliance is insufficient to discharge an agency's responsibility

under the Act (see Matter of Merson v. McNally, 90 NY2d 742, 750 [1997]), because "departures from SEQRA's procedural mechanisms thwart the purposes of the statute" (Matter of King v. Saratoga County Bd. of Supervisors, 89 NY2d 341, 347 [1996]).

The heart of SEQRA is the environmental impact statement process, which requires that an Environmental Impact Statement be prepared regarding any proposed action that may have a significant effect on the environment to examine the identified potentially significant environmental impacts which may result from that project (see Matter of Coca-Cola Bottling Co. v. Board of Estimate, 72 NY2d 674, 680 [1988]). In arriving at its determination, the lead agency must identify the relevant areas of environmental concern, take a "hard look" at them and then set forth a reasoned elaboration for its determination (see Kahn v. Pasnik, 90 NY2d 569, 574 [1997]). In effectuating this process, a municipal planning board is vested with broad discretion in reaching its determinations on applications such as was submitted by petitioners (see Kaywood Properties, Ltd. v. Forte, 69 AD3d 628 [2d Dept., 2010]).

To that end, judicial review of a determination under SEQRA is limited to the determination of whether the challenged finding was affected by an error of law, was arbitrary or capricious, was an abuse of discretion or was the product of a violation of lawful procedure (see Akpan v. Koch, 75 NY2d 561 [1990]; Matter of Jackson v. New York State Urban Dev. Corp., 67 NY2d at 416; Matter of Village of Tarrytown v. Planning Bd. of Vil. of Sleepy Hollow, 292 AD2d 617, 619 [2d Dept., 2002]; Matter of City of Rye v. Korff, 249 AD2d 470 [2d Dept., 1998]). In reviewing the determination made by the lead agency, the reviewing court must determine whether the lead 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" (Matter of Jackson v. New York State Urban Dev. Corp., 67 NY2d at 417; see Chinese Staff & Workers Assn. v. City of New York, 68 NY2d 359 [1986]). To that end, "it is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively" (Matter of Jackson v. New York State Urban Dev. Corp., 67 NY2d at 416; Matter of Village of Tarrytown v. Planning Bd. of Vil. of Sleepy Hollow, 292 AD2d at 619).

Applied to the instant matter, the role of this Court is limited to deciding whether the respondent Planning Board acted in an arbitrary and capricious manner and whether there is a rational basis for its administrative determination (see Matter of Harwood v. Board of Trustees of Incorporated Village of Southampton, 176 AD2d 291 [2d Dept., 1991]). In the specific context of SEQRA determinations, this Court must determine whether the agency took a "hard look" at the proposed project and made a "reasoned elaboration" of the basis for its determination (see Matter of WEOK v. Planning Board of the Town of Lloyd, 79 NY2d 373 [1992]). If it has failed to take the required hard look and make a reasoned elaboration, or if its decision was irrational, or is arbitrary and capricious or not supported by substantial evidence, the agency's determination may be annulled. To that end, it is not the role of the courts to weigh the desirability of any action or to choose among alternatives, but to assure that the SEQRA process has been procedurally and substantively satisfied (Jackson v. New York State Urban Development Corp., 67 NY2d at 416).

The dispositive question in that regard is whether respondent Planning Board satisfied SEQRA mandates by weighing and balancing relevant environmental impacts with social, economic, and other considerations, and whether it made a reasoned elaboration for its decision pursuant to 6 NYCRR §617.11(2) and (3). For the reasons set forth below, the court concludes that the Planning Board did not. The proposed action submitted by MBYC sought to improve the Club facility by, inter alia, constructing new, free-standing seasonal residence units to generate sufficient revenue to make other facility improvements economically feasible. At the behest of the Planning Board, the FEIS focused on three other alternatives, which all had in common their conspicuous lack of free-standing seasonal residence units.

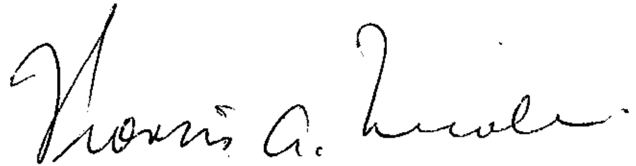
The Findings Statement determined that the most environmentally sensitive alternative was the one which incorporated the substantive amendments to the zoning law which this Court has already determined to be inapplicable in this matter. The Planning Board's poorly veiled efforts to circuitously apply the subsequently-enacted zoning amendment to its determination of allowable seasonal residence units is arbitrary and capricious. Notwithstanding this Court's previous determination that the new zoning ordinance is inapplicable to MBYC's planned redevelopment project, the Planning Board focused only on alternatives which conformed with the zoning amendment relative to seasonal residence units. While on its face the Findings Statement favorably recommends various aspects of MBYC's planned redevelopment project, approval of the Alternative B-1/C over the Modified Alternative G is, in many respects, tantamount to a denial as it essentially rejects the aspect of the redevelopment plan which is demonstrably central to the economic feasibility of the project – that is, the free-standing seasonal residence units. This is apparent from the Findings Statement's cursory and conclusory economic analysis which does not constitute substantial evidence and which purports to disprove petitioners deposition and supporting documentation to establish that the rate of return on the B-1/C Alternative renders the economic feasibility of the project unviable.

Inasmuch as seasonal residence units are a permitted accessory use within the MR District and are encouraged as "an overriding consideration" by the Local Waterfront Revitalization Plan of 1984 (LWRP), the respondent Planning Board may not, on the premise of exercising its environmental review authority, disregard the applicable zoning regulations on essentially pretextural grounds (WEOK Broadcasting Corp. v. Planning Board of the Town of Lloyd, 79 NY2d 373 [1992]). Indeed, the inclusion of a permitted use in a local zoning ordinance is the functional equivalent of a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the local community (see RPM Motors v. Gulotta, 88 AD2d 658 [2d Dept., 1982]). Respondents' would use their environmental review power to effectively re-zone the Club in a manner suspiciously consistent with subsequently-enacted zoning legislation. It is not insignificant in this analysis that, on its face, the Findings Statement appears to merely echo the amended zoning code's limit of the number of seasonal residence units when the former zoning code contained no such limitation. The pretextural implication of this, coupled with respondents' failure to adequately examine the relevant socioeconomic factors, provides cumulative evidence of respondent Planning Board's intent to frustrate the revitalization plan entirely.

Accordingly, the petition is granted to the extent that the Environmental Findings Statement issued by respondent Planning Board is annulled. All other relief sought by petitioner is denied.

It is Ordered and Adjudged that the petition is granted to the extent that the Environmental Findings Statement issued by the respondent Planning Board is annulled and the matter is remitted to the Planning Board for further consideration consistent with this order and judgment; and it is further ORDERED and ADJUDGED that the remaining relief sought by the petition is Denied.

Dated: White Plains, New York
June 16, 2010



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