

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.

Disp   x   Dec        Seq. No.   1   Type    Art. 78   

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

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In the Matter of

MAMARONECK COASTAL ENVIRONMENT  
COALITION, INC. et al.,

Petitioners,

For a Judgment Pursuant to CPLR  
Article 78

-against-

THE BOARD OF APPEALS OF THE VILLAGE OF  
MAMARONECK, LAWRENCE GUTTERMAN, BARRY  
WEPRIN, ROBIN KRAMER, DAVID NEUFELD,  
and GREG SULLIVAN, as members of the  
Board of Appeals of the Village of  
Mamaroneck, HAMPSHIRE CLUB, INC. and  
HAMPSHIRE RECREATION, LLC,

Respondents.

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The following papers numbered 1 to 9 were read on this  
petition:

<u>Paper</u>	<u>Number</u>
Notice of Petition, Petition and Exhibits	1
Memorandum of Law	2
Answer	3
Memorandum of Law in Opposition	4
Answer and Exhibits	5
Certified Return of Record	6
Memorandum of Law in Opposition	7
Affirmation and Exhibits	8

**FILED**

MAY 20 2015

TIMOTHY G. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Index No. 2382/14

DECISION AND ORDER



The Court has before it petitioners' petition, which seeks to annul the special use permit issued by the Zoning Board of Appeals (the "Board") of the Village of Mamaroneck (the "Village") to the Hampshire Club Inc. (the "Club")<sup>1</sup> on May 8, 2014. This permit allows the Club to hold a certain number of "non-member" events each year, under certain specific conditions. Petitioners also seek a permanent injunction enjoining the Club from holding any events "pursuant to the improperly issued Special Permit."

The Club property is in two different zoning districts: the Marine Recreation zoning district, and the residential zoning district. For unknown reasons, it is the only country club in the Village that is so split. The Marine Recreation zoning district allows membership clubs to have certain non-member events, as long as the clubs are operated by not-for-profits.

Petitioners argue that the Board approved the permit for the Club despite "clear evidence in the record" that the Club, a New York not-for-profit corporation incorporated in October 2013, is a "sham not-for-profit organization that is operated for the benefit of the principals and investors of for-profit owner" Recreation "in flagrant violation of Village of Mamaroneck Zoning

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<sup>1</sup>The Club does not own the property. The property is owned by respondent Hampshire Recreation, LLC ("Recreation"). Recreation leases the property to the Club. Recreation is a Delaware limited liability company.

Code." They also argue that the Board ignored "clear, uncontradicted evidence that, under current management," the Club's "operations have caused and continue to cause adverse traffic, parking and noise impacts on residents in the immediate vicinity. . . ." Petitioners complain that the Board failed to require any "effective conditions" to mitigate the impact of non-member events on the surrounding neighbors, "despite extensive testimony in the record" about such adverse impacts.

There are three causes of action in the petition. The first seeks to rescind the permit because its issuance by the Board to the Club, an alleged sham not-for-profit, was arbitrary and capricious, contrary to law and an abuse of discretion. The second cause of action seeks to nullify the permit because its issuance was arbitrary and capricious since it failed to include any "requested conditions on noise and parking." The third claim, which sought to vacate the permit because it allowed the Club to park cars in the residential zoning portion of the property, and not just in the Marine Recreation zoning section, is now moot. In September 2014, the Village amended the Zoning Code to allow a special permit for nonmember events to extend to a club's entire property, even if the rest of the property is in an adjoining residential zoning district.

## Analysis

It is well-settled that "In a proceeding pursuant to CPLR article 78 to review a determination of a zoning board of appeals, a zoning board's interpretation of its zoning ordinance is entitled to great deference and will not be overturned by the courts unless unreasonable or irrational. Judicial review is generally limited to ascertaining whether the action was illegal, arbitrary and capricious, or an abuse of discretion." *Green 2009, Inc. v. Weiss*, 114 A.D.3d 788, 788-89, 980 N.Y.S.2d 510, 512, (2d Dept. 2014). See also *In re Birch Tree Partners, LLC*, 122 A.D.3d 841, 842, 996 N.Y.S.2d 693, 694 (2d Dept. 2014).

Here, petitioners state that they "submitted unrefuted evidence" that the Club is really a sham not-for-profit, controlled by Recreation in a "profit-focused arrangement." In reality, however, there was no "unrefuted evidence" that the Club "is simply a conduit for" Recreation's "actions and that its actual purpose is simply to advance" its interests, not those of the Club's golf or tennis members. Rather, what petitioners submitted to the Court are bare facts and vehement assertions, unsupported by any documentary evidence or the testimony of anyone with personal knowledge, that (1) the boards of the two entities overlap; (2) the rent is, in their opinions, far in excess of what a true not-for-profit club would be charged; and (3) the 60-day termination provision in the lease is "a provision

that no independent membership club would agree to because it makes it impossible to assure members a complete golfing season, even for a single year." Many of these assertions in petitioners' papers are based on the hearing testimony of Celia Felsher, the president of the petitioner Coalition and one of the individually-named petitioners. There is no evidence in the record that Ms. Felsher is an expert on membership clubs.

In any event, without reciting each and every argument and point raised in front of the Board by both sides, suffice it to say that petitioners made their arguments quite plainly, and the Board obviously considered them. In addition to the many written submissions, there were over 100 pages of transcripts of the debate before the Board, in which each side vigorously advanced its position. As stated, the "determination of the responsible officials in the affected community will be sustained if it has a rational basis and is supported by substantial evidence in the record. The drawing of appropriate inferences from the evidence was for the board; [the Court] may not substitute [its] judgment for the board's absent abuse or illegality." *Rottenberg v. Edwards*, 103 A.D.2d 138, 142, 478 N.Y.S.2d 675, 679 (2d Dept. 1984). Here, petitioners do not demonstrate any abuse or illegality on the part of the Board; rather, they simply disagree, passionately and sincerely, with the conclusions drawn by the Board. That is not a basis for this Court to overturn the

Board's determination. *Toys R Us v. Silva*, 89 N.Y.2d 411, 423, 654 N.Y.S.2d 100 (1996).

As for petitioners' arguments about traffic, noise, and other adverse impacts on their community, there can be no dispute that on this subject, the debate was robust and thorough.<sup>2</sup> According to the transcripts, it appears that the Board allowed everyone to speak, for as long as they wished. The Board then closed the hearing, and then had a thoughtful and considered discussion, after receiving the advice of counsel, at the next meeting, before a resolution was drafted and voted upon.

While petitioners contend that the special permit was issued "without the requested conditions on noise and parking," a review of the special permit issued to the Club shows that this is not entirely accurate. For example, although petitioners argue that the Board "ignored the evidence showing that the Club's activities have been causing significant parking issues on Cove Road that damage neighbors' property, damage the shared private road, and impede traffic," the special permit requires that all parking for non-member events may be only on property owned by the Club. Although perhaps not as restrictive as petitioners

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<sup>2</sup>Petitioners had suggested that if a special permit were to be issued (over their objections), multiple conditions on noise, traffic and parking should be imposed. They based the need for these conditions on their anecdotal accounts of wrongdoing by the Club. Petitioners did not submit any vehicle counts, decibel measurements, or other objective indicia of any of these issues.

wanted, this restriction indicates that petitioners' views were indeed considered.

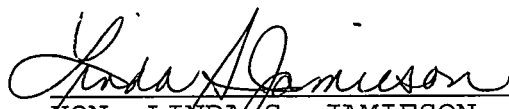
Based on this measured discussion and the rational process, the Court also finds that the Board's decision was reasoned, not abusive, and was based on the evidence before it - regardless of whether they drew the right or wrong conclusions from that evidence. *See Retail Prop. Trust v. Bd. of Zoning Appeals of Town of Hempstead*, 98 N.Y.2d 190, 196, 774 N.E.2d 727, 731 (2002). ("Even where no expert testimony is presented, a zoning board may not base the denial of a special exception solely on community objection."). (The Court makes no finding as to whether the Board's decision was correct or not.)

Accordingly, the Court finds that there is no basis for granting the petition and it is, thus, dismissed. *See Ten Two Ninety Realty Corp. v. Zoning Bd. of Appeals of Vill. of Harriman*, 221 A.D.2d 344, 344, 633 N.Y.S.2d 370, 371 (2d Dept. 1995).

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York  
~~April~~, 2015

MAY 18

  
HON. LINDA S. JAMIESON  
Justice of the Supreme Court

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