

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1659

CA 08-01183

PRESENT: MARTOCHE, J.P., SMITH, CENTRA, GREEN, AND PINE, JJ.

IN THE MATTER OF LAIDLAW ENERGY AND
ENVIRONMENTAL, INC., PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

TOWN OF ELLICOTTVILLE, TOWN OF ELLICOTTVILLE
PLANNING BOARD, MARGARET SIGMORE, IN HER
CAPACITY AS CHAIR OF TOWN OF ELLICOTTVILLE
PLANNING BOARD, JOHN ZERFAS, IN HIS CAPACITY
AS CO-CHAIR OF TOWN OF ELLICOTTVILLE PLANNING
BOARD, MICHAEL GUERCIO, SHARI BARRERA, DOC
DAYTON, GARY MATHE AND ARTHUR CHUBB, IN THEIR
RESPECTIVE CAPACITIES AS MEMBERS OF TOWN OF
ELLICOTTVILLE PLANNING BOARD,
RESPONDENTS-RESPONDENTS.

HISCOCK & BARCLAY, LLP, SYRACUSE (ANDREW J. LEJA OF COUNSEL), FOR
PETITIONER-APPELLANT.

HODGSON RUSS LLP, BUFFALO (DANIEL A. SPITZER OF COUNSEL), FOR
RESPONDENTS-RESPONDENTS.

Appeal from a judgment (denominated order and judgment) of the
Supreme Court, Erie County (Frank A. Sedita, Jr., J.), entered March
18, 2008 in a proceeding pursuant to CPLR article 78. The judgment
dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioner commenced this CPLR article 78 proceeding
seeking to annul the determination of respondent Town of Ellicottville
Planning Board (Board) denying its application for, inter alia, site
plan approval for a cogeneration plant. Petitioner owns 16.5 acres of
land in respondent Town of Ellicottville in an area zoned for "Light
Industrial/Service Commercial" use. The previous owner of the
property had operated a lumber drying kiln and cogeneration electrical
power plant, powered by natural gas. Petitioner applied to the Board
for, inter alia, site plan approval for a new cogeneration plant using
wood chips as a fuel source (plant). The Board named itself as lead
agency for a review pursuant to article 8 of the Environmental
Conservation Law (State Environmental Quality Review Act) and issued a
positive declaration, requiring the preparation of a draft
environmental impact statement (DEIS).

Petitioner subsequently submitted a DEIS and a revised DEIS to the Board, and a public hearing was held. The Board requested additional information from petitioner, and petitioner submitted a draft final environmental impact statement (FEIS) and a revised FEIS. The Board then issued the FEIS, held another public hearing on petitioner's applications, and subsequently denied site plan approval for the plant. In its Statement of Findings and Decision, the Board indicated that there was no area of greater concern than the air emissions from the proposed cogeneration plant, and that the "serious increases in harmful emissions" from the plant would result in an "unacceptable adverse impact."

Contrary to the contentions of petitioner, the Board's determination is not "arbitrary, capricious or unsupported by substantial evidence" (*Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 417; see *Matter of Gernatt Asphalt Prods. v Town of Sardinia*, 87 NY2d 668, 688), and the record establishes that the Board took the requisite hard look at the evidence and made a reasoned elaboration of the basis for its determination (see generally *Matter of WEOK Broadcasting Corp. v Planning Bd. of Town of Lloyd*, 79 NY2d 373, 383). We thus conclude that Supreme Court properly dismissed the petition.

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court