

Tarnopol v Finnerty

2002 NY Slip Op 30156(U)

March 13, 2002

Supreme Court, Suffolk County

Docket Number: 11877/2001

Judge: Melvyn Tanenbaum

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**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XIII SUFFOLK COUNTY**

PRESENT:

Hon. MELVYN TANENBAUM
Justice

MOTION #001 & 001-MG

R/D: 061201

S/D 120401

MICHAEL L. & LYNNE TARNOPOL

Petitioners

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

- against -

DENNIS FINNERTY, Chairman, JAMES V. ZIZZI, E.
BLAIR MC CASLIN, MARGARET CARAHER,
LAWRENCE TOLER, JOHN J. BLANEY and
ROSALIE TUTINO, Constituting the Planning Board of
the Town of Southampton

Respondents.

Index #11877-2001

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Index #8961-2001

PLTF'S/PET'S ATTY:

TWOMEY, LATHAM, SHEA & KELLEY, ESQS.
33 West Second Street
Riverhead, New York 11901

DEFT'S/RESP'S ATTY:

DAVID J. GILMARTIN, JR., ESQ.
116 Hampton Road
Southampton, New York 11968

Upon the following papers numbered 1 to 160 read on this motion for an order pursuant to CPLR Article 78

Notice of Motion/Order to Show Cause and supporting papers 1-27 and 28-52; Notice of Cross Motion and supporting papers _____
 Answering Affidavits and supporting papers 54-89; 90-160 Replying Affidavits and supporting papers _____
 Other _____; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

These CPLR Article 78 petitions by petitioners MICHAEL L. and LYNNE TARNOPOL ("TARNOPOL") seeking a judgment striking a specific condition which requires the removal of an existing driveway, associated drainage structures and trees set forth in two separate resolutions granting: 1) site plan approval, special exception approval and construction permit approval and 2) subdivision approval for a four-lot subdivision containing a horse farm are granted.

Petitioner MICHAEL TARNOPOL owns two separate lots of 9.3 acres (improved with a residence) and 13.8 acres. A 38 acre parcel owned by petitioner LYNNE TARNOPOL lies between and connects the two parcels. The three lots are in single and separate ownership. The town acquired the development rights reserved to agricultural use for the 38 acre lot. Petitioners thereafter constructed a 1,364 foot long, 20 foot wide bluestone driveway which bisected the 38 acre agricultural parcel.

These petitions concern two separate related applications to the "PLANNING BOARD". One was a site plan/special permit application which sought permission to construct a horse farm on the 38 acre parcel containing:

- 1) a 2,196 square foot, 1½ story barn with six stalls and parking area;
- 2) four paddock areas on 8.6 acres;
- 3) access to the barn and paddock areas by way of the existing bluestone driveway; and
- 4) a 10' x 10' manure pit screened by evergreens.

The second application was for a four lot subdivision. It was a re-submission of an identical application conditionally granted to a prior owner in 1982. The grant lapsed because such owner failed within one year of approval to satisfy all of the conditions for this subdivision.

By resolution dated March 12, 2001 respondent "PLANNING BOARD" granted petitioners site plan/special permit/construction permit application subject to 29 specific conditions which included:

"3. The subject portion of the driveway and associated drainage structures and trees, from the barn to the dwelling unit to the east that divides the transfer of development parcel shall be removed, and re-graded and (the) restored to match the typical soil profile of the site. This shall be noted on the plans submitted for signature."

By resolution dated April 12, 2001 respondent "PLANNING BOARD" granted petitioners subdivision application and incorporated by reference the identical condition set forth in the site plan approval paragraph (3).

"TARNOPOL's" petitions each seek a judgment striking the condition that requires removal of the existing bluestone driveway together with the trees planted alongside the roadway. In support, movants submit two verified petitions together with two affidavits of counsel and an affidavit from a land use planner. Petitioners claim that the "PLANNING BOARD's" decision was arbitrary, capricious and an abuse of discretion and was not supported by substantial evidence in the record. Petitioners claim that they had a right to install an unpaved farm road to allow direct access to/from their residence with the proposed horse farm's paddock areas. It is petitioners position that the existing driveway is not an illegal structure and is a roadway customarily accessory and incidental to the use of a horse farm. Petitioners claim that the Town's agricultural advisory committee and the "PLANNING BOARD's" staff each rendered opinions supporting a finding that the "driveway was customarily accessory and incidental to the use of the horse farm". Petitioners argue that under these circumstances the "PLANNING BOARD's" determination had no evidentiary foundation in the record. Petitioners also claim that the "PLANNING BOARD's" conclusion that the driveway would have an inhibiting effect on agricultural activities is unsupported since: 1) the existing driveway will have less detrimental effect on agricultural soil than the proposed lengthy peripheral road and since 2) petitioners have offered to strip development rights from an adjacent 85,525 square foot lot. It is petitioners position that horse farms customarily have a farm road leading from a residence to paddocks that would provide a suitable access for large horse trailers and trucks to pick up and deliver horses from paddocks on either side of the road and to provide access for removing manure, providing feed and other necessary acts required to maintain a horse farm. Petitioners claim that no reasonable basis exists to support the "PLANNING BOARD's" decision to require removal of the existing roadway.

In a proceeding seeking judicial review of administrative action, the court must determine whether there is a rational basis for the decision or whether it is arbitrary and capricious (MATTER OF WARDEN v. BOARD OF REGENTS, 53 NY2d 186, 194, 440 NYS2d 875, 881 (1981)). The determination of responsible local officials in the affected community will be sustained if it has a rational basis and is supported by substantial evidence (MATTER OF FUHST v. FOLEY, 45 NY2d 441, 410 NYS2d 565 (1978); CASTLE PROPERTIES CO. v. ACHERSON, 163 AD2d 785, 558 NYS2d 334 (3rd Dept., 1990)).

A planning board's determination will be sustained if it is "not irrational, arbitrary and capricious or unsupported by substantial evidence." (NEW CITY OFFICE PARK v. CLARKSTOWN PLANNING BOARD, 144 AD2D 348, 349, 533 NYS2d 786, 787 (2d Dept., 1988)). A planning board decision which however is contrary to the evidence or "based upon general objections or conclusory findings without evidentiary support in the record" will be annulled (DODSON v. HIGHLANDS PLANNING BOARD, 163 AD2D 804, 807, 558 NYS2d 1012, 1015 (3rd Dept., 1990)).

The "PLANNING BOARD" is vested with authority to impose reasonable conditions relating to access to residential lots and placement of a driveway/roadway in a designated agricultural district. The sole issue raised in movants petitions is whether the condition set forth in the site plan/special exception/construction permit approval and incorporated in the subdivision approval requiring removal of "TARNOPOL's" pre-existing bluestone driveway is arbitrary, capricious or an abuse of discretion.

The record before the Court establishes that petitioners built the 20 foot wide bluestone farm driveway and planted trees intending that it be the main pathway connecting "TARNOPOL's" main residence with the horse barn and paddock areas. The record further establishes that the driveway bisects the 38 acre parcel which will continue to be preserved as agricultural land.

Respondent "PLANNING BOARD" acted without foundation when in granting subdivision approval to LYNN TARNOPOL it required the removal of petitioner MICHAEL TARNOPOL's driveway. Subdivision approval is intended to ensure that individual lots are properly and safely laid out and sufficiently improved with necessary facilities and amenities. In this instance, petitioners subdivision application sought to renew a minor four lot subdivision conditionally granted in 1982. No safety issue concerning a benefit to the community for the parcels owners existed sufficient to justify any requirement relating to removal of the MICHAEL TARNOPOL's existing driveway. Moreover, the board could not condition its grant to the owner of the subdivision parcel upon the act of an adjacent holder of property in single and separate ownership. (See VAN EUCLID v. SARGENT, 97 AD2d 913, 470 NYS2d 750 (3rd Dept., 1983); WORTHINGTON v. CARMEL PLANNING BOARD, 131 AD2d 466, 515 NYS 2d 880 (2d Dept., 1987)). Under such circumstances, the "PLANNING BOARD's" conditional subdivision approval requiring such removal was arbitrary.

In its March 12, 2001 resolution granting site plan approval, the "PLANNING BOARD" required that the existing driveway be removed. Respondent set forth the reasons for its determination that an adequate accessory driveway already exists:

"WHEREAS, the subject site has two means of access from Hayground Road via the following:

1. A blue stone driveway which has been constructed over the western adjacent property having Suffolk County Tax Map Number 900-83-1-4 (also owned by the applicant), which continues through the center of the northern portion of the subject parcel to the residentially developed portion of the subject site.
2. A asphalt paved right-of-way located to the south of the subject portion of the subject site that is the subject of this Construction Permit/Special exception application.

WHEREAS, the Planning Board finds that the portion of the blue stone driveway between the subject barn and the residentially developed parcel to the east is not customarily accessory and incidental to the subject agricultural use, due to the following facts:

- It has been the past practice of the Planning Board when reviewing agricultural road on the restricted agricultural lands to determine the necessity of subject given the proposed use and lot configuration. When the Planning Board has determined that such roads are necessary, they have been located along the periphery of the subject site to minimize the potential impacts to the prime agricultural soil associated with the site, as well as the potential for future agricultural activity.
- The subject portion of the driveway bisects the subject Purchase Development Rights parcel, which has an impact on the existing prime agricultural soils, as well as diminishing future potential agricultural activities on site.
- There is adequate access to the subject barn via the driveway to Hayground Road.”

None of these reasons as applied to petitioners application provides a rational basis for removal of the existing driveway. No evidence was presented during the hearings to show that: 1) past practice requires that a roadway be located on the periphery of a site for use of a horse farm, or 2) that the existing driveway has an impact on existing and future agricultural soil on the site, or 3) that adequate access exists on another portion of the property.

Creation of a horse farm is an appropriate agricultural use of the 38 acre parcel and an accessory unpaved roadway which maximizes such use appears to be appropriate for the preservation of existing agricultural soil. Relevant evidence was submitted concerning custom and usage in the horse farm industry. It establishes that petitioners proposed design which provides a central driveway with horse paddocks on both sides of the driveway is a traditional and customary layout which maximizes direct access and use of the horse farm. The central driveway design allows efficient access to all paddocks, for the to delivery and transport of horses, and for the delivery of feed and removal of waste products.

In addition, there is no proof in the record to support the “PLANNING BOARD’s” finding that another “adequate” path exists providing direct access to the farm. Respondent’s proposed alternate roadway along the periphery of the property includes a path of travel entering and exiting upon a public roadway without access to the center of the property. It was for these reasons that the town’s agricultural advisory committee, architectural review board and “PLANNING BOARD” staff recommended approving a finding that the existing driveway was “customary accessory and incidental to the horse farm use”.

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ORDERED AND ADJUDGED that petitioners CPLR Article 78 petitions each seeking a judgment striking condition #3 as set forth in respondent's resolution dated March 12, 2001 are granted. Respondents shall proceed to grant the necessary permits.

Dated: March 13, 2002

MELVYN TANENBAUM

J.S.C.

FINAL DISPOSITION