Gansevoort St. LLC v City Planning Commn. of the City of N.Y.
2006 NY Slip Op 30757(U)
January 24, 2006
Supreme Court, New York County
Docket Number: 104588/2005
Judge: Walter B. Tolub

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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GANSEVOORT STREET LLC and MICHAEL WU

Petitioners,

-against-

THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK and THE CITY COUNCIL OF THE CITY OF NEW YORK

Respondents.

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Index No. 104588/2005
Mtn Seq. 001

WALTER B. TOLUB, J.:

The instant application involves a question of the land use and zoning of properties situated on the south side of Gansevoort Street between Washington and Greenwich Streets. This area, approximately 380 feet in length by 80 feet in depth, involves Block 643, Lots 43, 49, and 54, commonly known as 46-74 Gansevoort Street and 842-846 Greenwich Street (hereinafter, "the premises"). At one point in this City's history, this area marked the southern boundary of Manhattan's Meat Market,[1] an M1-5 and C8-4 manufacturing zoning district. Petitioner Gansevoort Street, LLC ("Gansevoort") is the present owner of the subject premises. Petitioner Michael Wu ("Wu") is the Director of Gansevoort Street, LLC.

By this Article 78 application, petitioners seek an order

[1] The area is now part of the Gansevoort Market Historic District, designated by the Landmarks Preservation Commission on September 9, 2003.

nullifying and setting aside Resolution No. 755 of the City Council dated December 15, 2004 with respect to Application M 840260 (C) ZMM, as illegal, arbitrary, capricious, and an abuse of discretion. Petitioners additionally seek a declaration that the City Planning Commission's ("CPC") application of the laws and regulations of the City of New York with respect to said application was unlawful, and violative of the New York City Charter, ULURP, and Restrictive Declaration D-94. Lastly, petitioners seek a declaration that the modifications as proposed by the City Council and confirmed by the CPC are unconstitutional, thereby warranting annulment of the resolution of the City Council with respect to the additional proposed text and necessitating a declaration that the CPC approve petitioners' original modification application as previously approved by the CPC.

Background

In 1984, petitioner Gansevoort's predecessors-in-interest, the Rockrose Development Company ("Rockrose"), in response to the migration[2] of many of the area's meat packing and preparation businesses, filed application C 840260 ZMM ("the 1984 application") with the CPC seeking to rezone a two block area located adjacent to

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[2] In leaving Manhattan, many of the meat packing and preparation businesses relocated to the Meat Markets now located at Hunts Point and Sunset Park. Others located to areas outside of New York State.

the premises and bounded by Gansevoort, Washington, West 12th and West Streets ("the adjacent area"). The 1984 application specifically sought to rezone the area from zones M1-5 and C8-4 to zone C6-2A in order to facilitate the development and conversion of non-residential properties to residential and commercial use.

The 1984 application, which had the potential to affect the environment, triggered a review under New York City's Uniform Land Use Review Procedure ("ULURP"),[3] which in turn required the City to conduct an environmental review of the proposed action under City Environmental Quality Review ("CEQR")[4] and State Environmental Quality Review Act ("SEQRA").[5] The resulting Environmental Impact Statement ("EIS") concluded that the proposed rezoning could adversely impact the remaining industrial and meat-production businesses occupying properties owned by Rockrose, albeit outside the requested rezoning area.[6] As such, the 1984 rezoning was conditioned upon use restrictions on the neighboring properties so as to protect the then-existing Meat Market.

The 1984 Restrictive Declaration

The Restrictive Declaration entered into by Rockrose (the "Restrictive Declaration") limited the use of the properties

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[3] 62 RCNY §2-01 *et seq*

[4] 62 RCNY §5-01 *et seq.* (present version).

[5] ECL § 8-103

[6] The subject premises were located outside of this area.

located within the zoning area co specific commercial and light manufacturing uses as defined in §15-58 of the Zoning Resolution of the City of New York. In addition, the Restrictive Declaration obligated property owners within the rezoned area to use their best efforts to lease vacant premises in their buildings for meat-related uses (Petitioners' Order to Show Cause, Exhibit A). With respect to modifications, pursuant to its terms, the Declaration could be amended or cancelled

> only upon application by the Declarant or any successors in interest and by the approval of the CPC, the Board of Estimate, and no other legal approval or consent from any public body, private person or legal entity of any kind shall be required. However, the CPC may, upon application of Declarant, administratively approve such modifications to this Declaration as the CPC may determine to be minor modifications. Such minor modifications shall not be deemed amendments requiring the approval of the Board of Estimate[7] (Restrictive Declaration, § 4.05).

The 1998 Modification

In 1986, the subject premises, now encumbered by the 1984 Restrictive Declaration, were purchased by William Gottleib. In 1998, the heirs of Mr. Gottleib operating the subject premises as Gansevoort Street, LLC (petitioner "Gansevoort"), applied for a modification of the Restrictive Declaration ("Application No. M

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[7] The court recognizes that the functions of the Board of Estimate have since devolved to the City Council.

840260 (B) ZMM") so as to permit Use Group 6 uses[8] on Lot 54 ("46-54 Gansevoort Street").[9] The application was approved[10] by both the City Council and the CPC following the CPC's determination that the proposed modification would "provide sufficient flexibility within appropriate parameters to allow the subject property to reasonably adapt to the area's current and foreseeable land use trends" (Petitioners' Order to Show Cause, Exhibit C).

In August, 2002, Gansevoort again sought modification of the Restrictive Declaration ("Application M 840260 (C) ZMM"; "the 2002 application") to permit Use Group 9 uses on lot 54 and to allow Use Groups 6 and 9 uses on the remaining subject properties ("46-50 Gansevoort Street"). On December 5, 2002, the Department of City Planning Environmental Assessment and Review Division by letter indicated that the Department of City Planning ("DCP"), acting on

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[8] Use Group 6 uses include retail stores and personal service establishments including, but not limited to, bakeries, drug stores, dry cleaners, food stores, banks, and book stores.

[9] It appears from the record that the proposed modification was sought after the basement and ground floor of 46-50 Gansevoort Street were leased in 1996 to LeGans Restaurant (LeGans). It was apparently, only after LeGans had completed construction and applied for its liquor license that it learned of the restriction on the property (Record of Proceedings Before the CPC and City Council, 84-86).

[10] Prior to its approval, the 1998 modification application was also considered by Community Board 2. Community Board 2 approved the proposed amendment to the 1984 Declaration, but explicitly stated that the resolutions passed with respect to the 1998 application were not to be "used as a precedent for further modifications to, or ignoring of, the terms of the Declaration" (Record of Proceedings Before the CPC and City Council, 84-86).

behalf of the City Planning Commission, was assuming lead agency status for the 2002 application, and was initiating the appropriate CEQR review (Record of Proceedings Before the City Planning Commission and The City Council, 151). On that same date, the DCP Environmental Assessment and Review Division forwarded a copy of the Technical Memorandum corresponding to the 2002 application to the City Council Land Use Review Division, the Manhattan Borough President, and Community Board 2 (Record of Proceedings Before the City Planning Commission and The City Council, 154).

By letter dated June 2, 2003, the DCP informed counsel for Gansevoort that the May 30, 2003 Technical Memorandum had been reviewed with respect to the proposed modifications. The letter further indicated that the DCP had "concluded that the finding of the Notice of Completion of the Final Environmental Impact Statement issued for the previous proposal on April 6, 1984" remained valid (Record of Proceedings Before the City Planning Commission and The City Council, 177-179).

On June 2, 2003, the CPC held a review session with respect to the 2002 application and determined that the matter should be sent to Community Board 2 for consideration (Record of Proceedings Before the City Planning Commission and The City Council, 181-184). On June 6, 2003, the DCP Technical Review Division forwarded a copy of the 2002 application to the Chairperson of Community Board 2, requesting comments on the application to be forwarded to the CPC

(Record of Proceedings Before the City Planning Commission and The City Council, 185). On June 12, 2003, the Zoning and Housing Committee of Community Board 2 passed a resolution, notwithstanding community objection, resolving that the modification of the application to allow Use Groups 6 and 9 be approved "only if there is a deed restriction or order by the City Planning Commission to disallow nightclubs [sic] uses, rooftop cafes and backyard dining"(Record of Proceedings Before the City Planning Commission and The City Council, 186-188, 188).[11] However, when presented to the full Community Board at its meeting on June 19, 2003, Community Board 2, taking the opposite position of its Zoning and Housing Committee, adopted a resolution by a vote of 42-5-1 (five opposed, one recusal) opposing[12] the modification of Gansevoort's 2002 application (Record of Proceedings Before the City Planning Commission and The City Council, 191). This results of this vote were conveyed to the CPC by letter dated June 24, 2003 (*Id.*).

On July 21, 2003, the CPC held a second review session on the 2002 application. A vote on the 2002 application was however,

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[11] The concerns raised by the Zoning and Housing Committee of Community Board 2 included zoning variance and landmark preservation issues(Record of Proceedings Before the CPC and City Council, 186-188).

[12] Community Board 2's opposition focused on the owner's prior violations of the Restrictive Declaration, the landmark status of the Gansevoort area, limitation of residential usage, and community objections and concerns (Record of Proceedings Before the CPC and City Council, 191-194)

postponed because it was determined that more information with respect to the issues surrounding ownership and non-conforming use were necessary (Record of Proceedings Before the City Planning Commission and The City Council, 196-202). On August 1, 2003, on behalf of petitioner Gansevoort, Mark Levine, Esq. of the law firm of Herrick Feinstein, submitted a response which included details of the vacant space then available on the lots (Record of Proceedings Before the City Planning Commission and The City Council, 203-204).

On September 24, 2003, the CPC, having considered Gansevoort's proposed modifications and the objections of Community Board 2, approved the 2002 application, and filed its approval with the City Council.

On November 17, 2003, the City Council Subcommittee on Zoning and Franchises (the "Subcommittee") held a hearing with respect to the 2002 application (Record of Proceedings Before the City Planning Commission and The City Council, 230-256). Petitioner Gansevoort was again represented by Mr. Levine. During the course of the hearing, the City Council raised numerous concerns about the sought after modifications, including the allowance or disallowance of office use (one of the use group 6 proposed uses). After considering the concerns of petitioner Gansevoort and those expressed by community representatives in attendance, the Subcommittee voted to approve the 2002 application with

modifications to the CPC's decision, and referred the matter to the full Land Use Committee (Record of Proceedings Before the City Planning Commission and The City Council, 253). On November 18, 2003, the Land Use Committee of the City Council, concurring with the Subcommittee's vote, voted 14-0-0 to approve the 2002 application with modifications (Record of Proceedings Before the City Planning Commission and The City Council, 257).

On November 19, 2003, the Land Use Committee of the City Council conveyed their position to the CPC by letter, recommending approval of the application conditioned upon the inclusion of language designed to exclude "office use" from the subject premises. The letter, in pertinent part, states:

> On November 18, 2003, the Land Use Committee of the City Council by a vote of 14-0-0 approved the above referenced application and recommended modification to the City Planning Commission's decision. [...] The Committee recommended that the approval of the above-referenced application be expressly conditioned on the following underlined text:
>
> ARTICLE 1 - DEVELOPMENT AND USE OF SUBJECT PREMISES
> A. Section 2.01(a) of the Declaration (as previously amended by the Amended Declaration) is hereby further amended by modifying Section 2.01 as follows:
> [...]
>
> (c) The following uses shall not be permitted on the above referenced Lots: eating and/or drinking establishments with entertainment uses; eating and/or drinking establishments of any type in rear yards or on the roof; <u>and Use Group 6B as set forth in Section 32-15 of the Zoning Resolution</u>. (Petitioner's Order to Show Cause Exhibit G; Record of Proceedings Before

the City Planning Commission and The City Council, 257).

On November 25, 2003 the CPC responded to the November 19, 2003 letter of the City Council indicating receipt of letter and recommended modification (Record of Proceedings Before the City Planning Commission and The City Council, 259-260). On December 6, 2004, the CPC approved the City Council's modifications of the 2002 application (Record of Proceedings Before the City Planning Commission and The City Council, 261-262). Thereafter, on December 15, 2003, the City Council passed a resolution approving with modification the decision of the CPC on M 840260 (C) ZMM (Record of Proceedings Before the City Planning Commission and The City Council, 263-267). The instant application ensued.

Discussion

Standing of Michael Wu

Inasmuch as respondents have challenged petitioner Michael Wu's standing, as a preliminary matter, this court first addresses the issue of whether petitioner Michael Wu has the requisite standing to challenge the determinations of the respondent Agencies. The generally accepted rule in this State, is that a challenge to an administrative action turns upon "a showing that the action will have a harmful effect on the challenger and that the interest to be asserted is within the zone of interest to be protected by the statute" (*Gernatt Asphalt Prods. v. Town of*

Sardinia, 87 NY2d 668, 687 [1996]). Moreover, as stated by the court in *Gallahan v. Planning Board of the City of Ithaca*, 307 AD2d 684, 685 [3rd Dept. 2003]:

> [w]hile standing principles are broadly construed in matters involving zoning and land use development (*see Matter of Sun-Brite Car Wash v. Board of Zoning & Appeals of Town of N. Hempstead*, 69 NY2d 406, 414, 515 NYS2d 418, 508 NE2d 130 [1987]), it nevertheless remains incumbent upon the party challenging such an administrative determination to "show that it would suffer direct harm, injury that is in some way different from that of the public at large" (Society of Plastics Indus. v. County of Suffolk, 77 NY2d 761, 774, 570 NYS2d 778, 573 NE2d 1034 [1991]; *see Matter of O'Donnell v. Town of Schoharie*, 291 AD2d 739, 740, 738 NYS2d 459 [2002]; Matter of Oates v. Village of Watkins Glen, 290 AD2d 758, 760, 736 NYS2d 478 [2002]

While Mr. Wu is named as a petitioner in this action, there are neither claims articulated on his own behalf, nor are there any claims established on his behalf that are separate from those of petitioner Gansevoort. As such, it is this court's determination that Mr. Wu has does not have the requisite standing to bring any claims in this action (see, *Society of Plastics Indus. v. County of Suffolk*, 77 NY2d 761 [1991]; *Roistacher v Council of the City of New York*, 199 AD2d 68 [1993]).

Claims of Petitioner Gansevoort

The claims brought by the remaining petitioner, Gansevoort, are properly before this court and subject to Article 78 review. Judicial review in this matter is therefore limited to whether the

challenged determination was made in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious or an abuse of discretion (CPLR 7803; *Pell v. Board of Education*, 34 NY2d 222, 231 [1974]; *Chinese Staff & Workers Association v. City of New York*, 68 NY2d 359, 363 [1986]). As this is not a *de novo* review (*see, Greystone Management Corp. v. Conciliation and Appeals Bd.*, 94 AD2d 614, 616 [1st Dept.1982], *aff'd*, 62 N.Y.2d 763 [1984]), this court will only review the record to determine whether a rational basis exists for the determinations of the respective agencies presently being challenged (*see, Purdy v Kreisberg*, 47 NY2d 354 [1979]), and will not substitute its judgment for that of another agency (*Id.*).

Allegations of Procedural Violations

As a preliminary matter, this court first addresses Gansevoort's contention that the CPC's failure to approve the City Council's proposed modifications of the 2002 application for more than one year constitutes violations of §197-d of the City Charter, ULURP § 2-06(g)(5) (62 RCNY 2-06(g)(5)), and §4.07 of the 1984 Restrictive Declaration. These flagrant violations, Gansevoort argues, renders the determinations of both City agencies arbitrary and capricious, and thus subject to annulment.

City Charter § 197-d and ULRUP 2-06(g)(5)

City Charter § 197-d sets forth the City Council and CPC review procedures for land use matters identified under § 197-c

(ULURP review), § 197-a (city planning), § 200 (zoning resolutions) and § 201 (application for zoning changes/permits). ULRUP 2-06(g)(5) establishes a fifteen day time frame during which the CPC "shall review and determine" proposed modifications of the City Council made in connection with applications made under § 197-c of the City Charter.

However, upon plain reading of these provisions (see, *Beekman Hill Association Inc. v. Chin*, 274, AD2d 161 [1st Dept. 2000]), it is this court's opinion that these sections are inapplicable as restrictive declarations do not appear to be a land use matter that triggers ULRUP review under either the City Charter or ULRUP itself. The CPC in fact, emphasized this point in its November 25, 2003 letter to the City Council, where it noted that:

> [t]he above-referenced application is not a ULURP application, but instead involves a proposed modification to a Restrictive Declaration originally entered into in connection with the environmental review of a zoning map amendment approved in 1984. Accordingly, the application is not subject to the provisions of Section 197-d(d), including the 15 day period specified therein. (Record of Proceedings Before the CPC and City Council, 186-188)

Accordingly, the provision of Gansevoort's application seeking a declaration that the CPC's applications of the laws and regulations of the City of New York with respect to the 2002 application were unlawful and violative of the New York City Charter and ULURP must be, and is, denied.

Restrictive Declaration § 4.07

The provision of Gansevoort's application seeking a declaration that the CPC's determination was violative of the restrictive declaration is also denied.

§ 4.07, which sets forth a component of the approval process for modification of the 1984 Restrictive Declaration states:

> Wherever in this Declaration the certification, consent or approval of Declarant or the Chairman or the CPC is required or permitted to be given, such certification, consent or approval will not be unreasonably withheld or delayed. If the Chairman or CPC shall not act upon a request for an approval within the time limits provided such approval shall be deemed granted (Restrictive Declaration § 4.07).

Petitioner Gansevoort argues that this provision was violated when the CPC, the only entity with the ability to approve the 2002 application, delayed its approval for more than one year after the City Council rejected the CPC's initial approval in favor of its own modifications. Petitioner Gansevoort further argues that under these circumstances, the final determination, which it is argued was arbitrary and capricious, should be approved without the inclusion of the City Council's modifications.

This court disagrees. Unlike time periods imposed by statute, time periods imposed on administrative agencies are directory (*Matter of Sarkisian Bros. v. State Div. of Human Rights*, 48 NY2d [1979]; *Matter of Geary v. Commissioner of Motor Vehicles of the State of New York*, 92 AD2d 38 [4th Dept 1983], 40 *aff'd*, 59 NY2d

950). An unreasonable delay that is coupled with a strong showing of prejudice can constitute an erroneous exercise of authority (*Erdos v. New York State Department of Education*, 105 AD2d 504 [1984]). Prejudice however, cannot be established merely by showing a lapse of time, in and of itself, in rendering an administrative decision (*Harris and Associates, Inc. v. DeLeon*, 84 NY2d 698 [1994]).

In the instant application, although petitioner Gansevoort makes clear the fact that it did not get a final determination from the CPC on its application until December of 2004, there has been no showing that Gansevoort was actually prejudiced by the delay. In the absence of a showing of prejudice, it cannot be said that the CPC's delay in handing down its final determination on the 2002 application, though admittedly lengthy, constituted a violation of the Restrictive Declaration.

Resolution No. 755 of the City Council

The argument offered by Gansevoort that Resolution No. 755 of the City Council, dated December 15, 2004, "sets forth absolutely no reason" for its decision restricting Use Group 6B uses (see, Memorandum of Law in Support of Petition p. 20; Petitioner's Order to Show Cause Exhibit G), and is therefore illegal, arbitrary, capricious, and an abuse of discretion, similarly fails.

The issue of whether the decision of an administrative agency has a rational basis and is factually supported does not turn on

the wording and/or content of the final decision. The focus of the inquiry, is whether the record, as a whole, supports the determination made by the agency (*McPartland v. McCoy*, 35 AD2d 641 [3rd Dept. 1970]; *Buitenkant v Robohm*, 122 AD2d 791 [2nd Dept. 1986]). Although petitioner Gansevoort contends that there was no factual support in the November, 2003 final determination which restricted petitioner Gansevoort from leasing any of the affected properties for Use Group 6 uses, there exists a lengthy compilation of documents and hearing transcripts that do provide factual support for the City Council's determination.

The "Record of Proceedings Before the City Planning Commission and The City Council Record" submitted by respondent, details the modifications to the 1984 Restrictive Declaration sought by Gansevoort in their 1998 and 2002 applications. Review of the one hundred and fifty plus pages devoted to the 2002 application yields numerous concerns raised by various entities, and supports the position that the City Council's determination was not arbitrary and capricious, but was factually based and rationally made. In the absence of evidence to the contrary, this court sees no reason to invalidate City Council Resolution No. 755 as arbitrary, capricious, or an abuse of discretion.

Constitutionality of the Restrictive Declaration

Lastly, this court addresses the contention that the 1984 Restrictive Declaration itself is unconstitutional because it has

the effect of singling out the subject premises for less favorable treatment than neighboring properties and thus constitutes reverse spot zoning as well as the argument that the exclusion of office use from the subject premises constitutes an unconstitutional taking of property.

Spot Zoning and Reverse Spot Zoning

"Spot Zoning" refers to the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of said property to the detriment of other owners" (*Matter of Daniels v. Van Voris*, 241 AD2d 796, 799 [3rd Dept. 1997]). By contrast, reverse spot zoning is "a land-use decision which arbitrarily singles out a particular parcel for different, less favorable treatment than the neighboring ones" (*Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 132 [1978]).

Gansevoort's position in this application, is that the subject premises sit in an M1-5 zoning district that permits Use Group 6 and 9 uses as of right. The enforcement of the Restrictive Declaration therefore arbitrarily singles out the premises for less favorable treatment than neighboring parcels, thereby constituting reverse spot zoning (Petitioner's Memorandum of Law p. 26).

What Gansevoort seemingly ignores however, is that the subject premises were never part of a targeted zoning action. Gansevoort took title to subject premises with the use restrictions already in

place. These restrictions were the result of the 1984 Restrictive Declaration, which was entered into as a way of mitigating the potential adverse environmental impacts arising out of the rezoning of the two block area located adjacent to the premises. Gansevoort's predecessors-in-interest, who owned property in the two block rezoned area as well as the subject premises chose to mitigate the potential environmental impact in this manner in order to effectuate the sought after zoning change. It is therefore very difficult for this court to perceive the treatment of the subject premises as being an arbitrary targeted zoning action.

Nor can this court declare that the City of New York effectuated a regulatory taking of Gansevoort's property when the agencies involved excluded "office use" from the Use Groups permitted on the subject premises. In order for government regulation of private property to constitute a taking, the regulation must be so restrictive it either fails to substantially advance a legitimate state interest or denies an owner from all economically beneficial or productive use of land (*Bonnie Briar Syndicate, Inc. v. Town of Mamaroneck*, 94 NY2d 96, 105 [1999]; *Agins v. City of Tiburon*, 447 U.S. 255, 260 [1980]).

In the instant application, the initial restrictions on the subject properties were put in place as a way to mitigate negative environmental impacts on the viability of the meat market. The preservation of this area, as with other historical areas

throughout the City, is a legitimate and governmental interest (*Trustees of Union College in Town of Schenectady in State of N.Y. v. Members of Schenectady City Council*, 91 NY2d 161 [1997]). Therefore, for petitioner Gansevoort to succeed on its takings claims, it would have to demonstrate that it has been denied all economic viability or productivity from the imposition of the restriction. This, based on the record, it simply cannot do.

A regulatory action is not deemed to be a taking simply because the value of the property affected has been diminished (*Gazza v. New York State Dept. of Environmental Conservation*, 89 NY2d 603 [1997]; *Concrete Pipe & Prods. of Cal. v. Construction Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 645 [1993]; *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104 at 131 [1978]). To succeed on this component of a takings claim therefore requires a property owner to demonstrate "'dollars and cents' evidence that under no use permitted by the challenged regulation would his property be capable of producing a reasonable return" (*de St. Aubin v. Flacke* 68 NY2d 66, 77 [1986]).

In its simplest terms, the record does not support Gansevoort's argument that they have lost "the most economically viable use of the premises" (Petitioner's Memorandum of Law at 16). What the record does however reflect, is that when Gansevoort acquired the subject premises, the restrictions on Use Groups 6 and 9 were already in place. Notwithstanding these limitations,

Gansevoort was able to successfully lease much of the properties it controlled, and on at least one occasion, did so notwithstanding the restrictions on the property.[13] As such, in the absence of evidence on the record to the contrary, it cannot be said that the exclusion of "office use" from the Use Groups permitted on the subject premises constitutes a taking of Gansevoort's property.

Accordingly, it is

ORDERED that petitioner Gansevoort's application seeking an order nullifying and setting aside Resolution No. 755 of the City Council dated December 15, 2004 with respect to Application M 840260 (C) ZMM, as illegal, arbitrary, capricious, and an abuse of discretion is denied; and it is further

ORDERED that the portion of the application seeking a declaration that the City Planning Commission's ("CPC") application of the laws and regulations of the City of New York with respect to said application was unlawful, and violative of the New York City Charter, ULURP, and Restrictive Declaration D-94 is denied; and it is further

ORDERED that the portion of the application seeking a

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[13] The unsuspecting tenant was LeGans Restaurant and the nonconforming lease of the property was the catalyst in obtaining the 1998 modifications to the Restrictive Declaration.

declaration that the modificati .s as proposed by the City Council and confirmed by the CPC are unconstitutional is denied.

This memorandum opinion constitutes the decision and judgment of the Court.

Dated: 1/24/06

HON. WALTER B. TOLUB, J.S.C.