

**RSM W. Lake Rd. LLC v Town of Canandaigua
Zoning Bd. of Appeals**

2007 NY Slip Op 31990(U)

June 15, 2007

Supreme Court, Ontario County

Docket Number: 0098584/2007

Judge: William F. Kocher

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STATE OF NEW YORK
COUNTY OF ONTARIO

SUPREME COURT

RSM WEST LAKE ROAD LLC,
GERMAN BROTHERS MARINA, INC., and
RSM DEVELOPMENT COMPANY, LLC,

Petitioners,

-vs-

DECISION
Index No. 98584

TOWN OF CANANDAIGUA ZONING BOARD OF
APPEALS, TOWN OF CANANDAIGUA, AL KRAUS,
PRISCILLA HERBIK, OKSANA FULLER, EAST SHORE
ASSOCIATION OF CANANDAIGUA LAKE, INC., and
CANANDAIGUA LAKE WATERSHED ALLIANCE, INC.,

Respondents.

Petitioners seek an order pursuant to CPLR Article 78 modifying the November 14, 2006 decision of the respondent Town of Canandaigua Zoning Board of Appeals ("ZBA") pertaining to the Residences at West Lake Marine Club project proposed for 3907 and 3950-3952 County Road 16 in the Town of Canandaigua.

Specifically, petitioners seek an order declaring that if the Town of Canandaigua Planning Board ("Planning Board") determines that the proposed community center clubhouse, sundeck dock, other dock, boat ramp and parking lot satisfy the Town Zoning Code standards for "private water oriented recreational facilities, or social clubs," then those facilities constitute a use eligible for a special permit from the Planning Board. Furthermore, if the special permit is issued, then petitioners are entitled to the allocation of docking and mooring slips consistent with the "All Other Land Use Category" of the Dock Law. Finally, petitioners request that this Court

determine that the proposed "sundock" is a structure designed for docking and other water-oriented activities.

Petitioner RSM proposes to construct the "Residences at West Lake Marine Club" on two adjoining parcels of land on the western shore of Canandaigua Lake. The larger parcel, "the Johnson parcel," is owned by petitioner RSM West Lake Road LLC. Petitioner German Brothers Marina owns the smaller parcel. Petitioner RSM Development Company entered into a Purchase and Sale Agreement with the German brothers under which RSM Development is entitled to acquire the German Brother parcel subject to RSM obtaining the necessary government approvals to develop the project. The current proposal for the lakeside portion of the German Brothers parcel contains a 4,000-square foot community center, cantilevered sundeck dock, a boat ramp and lift, continued use of the marine fuel dispensing facility, a pump house, docks containing 81 boat slips, 35 mooring spots, and 8 parking spots. On the inland side of the German Brother's property, petitioner proposes to build 3 single family residences and 45 parking spaces. The proposal before the Town was to have the homeowners association own the subdivided lot upon which the club facilities would be located.

On April 28, 2006, the Town Zoning Officer issued a decision in which she determined that: 1) German Brother Marina is a lawful pre-existing nonconforming use; 2) petitioners could request a "private water oriented recreational facilities, or social clubs" special use permit; 3) a number of setback and area variances would be required; 4) the number of parking spaces is sufficient and the maximum seating capacity of the community center is 233; 5) the number of proposed boating and mooring slips is less than the maximum allowable; and 6) the proposed sundeck is a dock which conforms to the Dock Law.

Three appeals were filed and consolidated. A hearing was commenced on September 11, 2006 and a decision was filed on November 16, 2006. The ZBA ruled that the clubhouse was not eligible for a special use permit for a "private water-oriented recreation or social club." The ZBA determined that the classification "private water-oriented recreation or social club" is limited to "water-dependent facilities such as marinas and yacht clubs."

The ZBA also determined that the German Brothers parcel may not have more boat slips than the number allowed pursuant to the Residential Land Use Category under the Dock Law because the lot will be owned by the homeowners' association. This interpretation limits the number of boat slips to 12.

Finally, the ZBA ruled that the proposed sundeck dock is not "predominately related to docking" and therefore is prohibited by the Dock Law and the Zoning Code's prohibition on the placement of structures within 25 feet of the mean high water line. The proposed sundeck will extend from the community center into a boat dock at the lakeshore and will be used for accessing boats and for the placement of tables and chairs.

As a preliminary matter, it appears that some of the issues raised in the appeal are premature. For example, petitioner requests that this Court determine that "if a 'private water oriented recreational facilities, or social clubs' special permit is issued for a portion of the Project, then that use is entitled to allocation of docking and mooring slips consistent with the 'All Other Land Use Category' of the Town's Canandaigua Lake Uniform Docking & Mooring Law." The Planning Board has not ruled on petitioner's special use permit application. In fact, from the papers, it is not clear that such application has been made. However, for the purpose of

judicial economy, and because neither the petitioners nor the respondents raised this issue before the ZBA, the court will address all issues raised by petitioners.

ELIGIBILITY FOR A SPECIAL PERMIT

The German Brothers parcel is located within the Town's Residential Lake District. The Town Code permits an applicant seeking to develop property within the Residential Lake District to apply for a special use permit for "private water oriented recreational facilities, or social clubs" (Canandaigua Town Code § 105-506[E][3]).

This Court finds that the Town of Canandaigua ZBA's determination that petitioners could not apply for a special permit under the category of "private water oriented recreational facilities, or social clubs" was irrational and unreasonable (*Chrysler Realty Corp. v Orneck*, 196 AD2d 631, 632).

"The starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof" (*Majewski v Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 583). "In the absence of any controlling statutory definition, we construe words of ordinary import with their usual and commonly understood meaning" (*Rosner v Metropolitan Property and Liability Ins. Co.*, 96 NY2d 475, 479). The zoning law must be construed strictly against the Town (*Chrysler Realty Corp. v Orneck*, 196 AD2d 631, supra at 632-633). This Court need not resort to the cases cited by petitioners (*Allen v Adami*, 39 NY2d 275; at al.) for the proposition that any ambiguity in the zoning code must be resolved in favor of the property owner inasmuch as no ambiguity in the zoning law exists.

The West Lake Marine Club is, by the plain meaning of the words, both a private water oriented recreational facility and a social club. Clearly, the purpose of the community center,

docks, sundeck, pump house, boat ramp, and mooring spots is to enjoy both the views of Canandaigua Lake and Canandaigua Lake itself. The community center will provide access to the lake as well as to the docked boats and is, therefore, water oriented and recreational. The community center will also act as a meeting place for its members and may be classified as a social club.

This Court need look no further than the language of the zoning code itself in order to determine that the proposed clubhouse constitutes a “private water oriented recreational facilities, or social clubs” and to determine that petitioners may apply for a special use permit pursuant to that category. Inasmuch as the ZBA’s interpretation of the Zoning Code’s language was irrational and unreasonable (*Tallini v Rose*, 208 AD2d 546, 547), the ZBA’s determination is annulled.

NUMBER OF BOAT SLIPS

After determining that petitioners were entitled to apply for a special use permit, the Zoning Officer determined, “the number of permitted boat slips and moorings is governed under the ‘All Other Land Use’ (marina/yacht club) category in the Canandaigua Lake Uniform Docking & Mooring Law.” The ZBA reversed and determined that the number of boat slips was limited by the Dock Law’s Residential Land Use category, thereby allowing a maximum of 12 dock and mooring spaces. The ZBA focused on the use to which the adjacent upland parcel was put rather than the existence, or lack thereof, of a dwelling.

The “All Other Land Uses” category is defined as “all types of land uses on the adjacent upland except those land uses specified in the residential land use category. This includes but is not limited to marinas, yacht clubs, camps, restaurant docking, etc.” (Canandaigua Lake

Uniform Docking & Mooring Law § 44-4). The “Residential Land Use” category is defined as “all uses on the adjacent upland parcel that are normally classified as a place of dwelling, including but not limited to, single-family, multi-family, boarding houses, apartments, bed and breakfasts, town homes and condominium units” (Canandaigua Lake Uniform Docking & Mooring Law § 44-4). “Adjacent Upland Parcel is defined as, “A parcel of land bordering on the lakeshore of Canandaigua Lake” (Canandaigua Lake Uniform Docking & Mooring Law § 44-4).

By its very definition, and by the use of the singular parcel, there is only one adjacent upland parcel to the stretch of Canandaigua Lake upon which petitioners propose to build the clubhouse. If petitioners are granted a special use permit to construct the clubhouse, then there can be no doubt that the use of that parcel is not residential.

The ZBA’s decision to look to the use of the entire project was mistaken inasmuch as the Canandaigua Lake Uniform Docking & Mooring Law looks to the use of the singular upland parcel, i.e. the clubhouse. Likewise, any consideration as to who the owners or patrons of the adjacent upland parcel are was mistaken. The Dock Law refers to the use to which the adjacent upland parcel is put, not to who the owners are. Here, the use of the adjacent upland parcel is the community center. As noted in the previous section of this Decision, the community center is a recreational facility; a social club. The fact that it will be owned and used by many individuals who live in close proximity does not change its classification. Again, this Court need only look to the plain language of the Dock Law to determine that the adjacent upland parcel is not residential.

The Association respondents argue that the upland use is residential, looking to the overall purpose of the entire project. Again, the Dock law refers to the use of the adjacent upland

parcel. Once the German Brothers lot is divided, the adjacent upland parcel is the one on which the community center sits. It is the use of only that parcel that the ZBA should have considered.

With respect to the Association respondents contention that the words in the Dock Law, "adjacent upland owners," refers to any and all owners of property in the vicinity of the lake, this Court has reviewed many cases utilizing the terms "adjacent upland owner" and "adjacent upland parcel." All cases refer to the property immediately adjacent to the lake shore and the owners thereof (see, *Arnold's Inn, Inc. v Morgan*, 63 Misc2d 279, 283; *Claudio v Village of Greenport*, 55 Misc2d 371, 373; *Riviera Ass'n, Inc. v Town of North Hempstead*, 52 Misc2d 575, 580; *Beekman Campanile, Inc. v City of New York*. 36 Misc2d 125, 126).

The ZBA's determination that community center should be placed in the residential land use category was irrational and unreasonable (*Tallini v Rose*, 208 AD2d 546, supra at 547). The community center is clearly not residential in nature; the fact that it will, in effect, be owned by nearby residents does not change this result. The determination of the ZBA that the community center falls within the residential land use category is annulled and the determination of the zoning officer is reinstated.

THE SUNDECK

The Zoning Officer further determined that the 1,500 square foot "sundock" "has been determined to be a dock." The ZBA determined that the proposed sundeck is prohibited by the Dock Law as it does not primarily relate to docking. The ZBA also concluded that the dock is prohibited by the Zoning Code.

Petitioner argues that the proposed sundock structure which is included within the definition of a dock. Dock is defined as

Any structure, or fixed platform built on floats, columns, open timber, piles, or similar open-work supports, or cantilevered structures anchored to the shore including piers and wharfs and designed to provide access from the shore to Canandaigua Lake for swimming, boating or other recreational or commercial uses and shall also include accessorial uses including but not limited to boat slips and berths. All structural descriptions provided above which are placed on the waterside of the mean high water mark shall be defined as a dock

(Canandaigua Lake Uniform Docking and Mooring Law § 44-4).

Canandaigua Lake Uniform Docking and Mooring Law § 44-5(N) provides, "For the purpose of this local law, only docks, boathouses, boat hoist structures, boat stations, boat accessory structures, and other specified berthing and mooring facilities are permitted on the waterside of the mean high water mark and in compliance with the regulations of this local law. Gazebos, view decks, screen porches, shelters, and other permanent structures not related to docking and mooring are prohibited."

Again, the Court must look to the use to which the structure will be put. The Town's Scope states that there will be a sun deck with tables and chairs attached to the Community Center. The Scope notes that "the deck will extend lakeward from the Community Center a distance of 25' to the bulkhead, and then seamlessly join into a four foot wide dock that will extend out past the mean high water line which will serve up to three boats."

The proposed deck is prohibited by the Canandaigua Lake Uniform Docking and Mooring Law. Clearly a 1,500 square foot deck is to be used for more than "access from the shore to Canandaigua Lake for swimming, boating or other recreational or commercial uses." As previously noted, the Scope indicates that only three boats are to be docked at the dock and that tables and chairs are to be placed on the deck.

However, as discussed below, the respondents lacked standing to appeal the Zoning Officer's interpretation of the Dock Law and therefore the ZBA determination on the issue of the sundock, to the extent it reversed the Zoning Officer's interpretation of the Dock Law is annulled.

STANDING

Petitioners contend that respondents Kraus, Herbig, and Fuller (the resident respondents) and East Shore Association of Canandaigua Lake, Inc. and Canandaigua Lake Watershed Alliance, Inc. (the association respondents) lacked standing to appeal the Zoning Officer's determinations regarding the Dock Law to the ZBA. Petitioners contend that the ZBA has authority to hear appeals involving the Town's Zoning Code, but not other laws.

As a preliminary matter, respondents have standing to challenge the project generally (see, *Sun-Brite Car Wash, Inc. v Board of Zoning and Appeals of Town of North Hempstead*, 69 NY2d 406; *Parisella v Town of Fishkill*, 209 AD2d 850). However, respondents lack the standing to challenge the determination of the Zoning Officer regarding the Dock Law by way of appeal to the ZBA.

Canandaigua Lake Uniform Docking and Mooring Law § 44-10 provides, "Adjacent upland owners aggrieved by the decision of the Code Enforcement Officer¹ may appeal the decision to the zoning board of appeals. Pursuant to Section 267 of Town Law or other applicable requirements specified by New York State statute or case law, the zoning board of appeals may grant a variance to the provisions of this local law."

¹ Canandaigua Town Code § 105-1100 provides that the Zoning Officer "shall have the same duties and powers as are conferred herein upon the Code Enforcement Officer to administer the provisions of this Local Law."

The Dock Law, by its terms, permits appeals to the ZBA only by adjacent upland owners. As previously noted, the adjacent upland owner is the owner of the property abutting the lake. Therefore, the Dock Law does not provide the authority for an appeal to the ZBA by any of the respondents. The ZBA's statement that standing to appeal under the Dock Law "by implication necessarily must extend to other owners whose real property is in close proximity to the project site" is not supported by the language of the Dock Law. "Words of ordinary import used in a statute are to be given their usual and commonly understood meaning, unless it is plain from the statute that a different meaning is intended" (Statutes § 232). "Where the statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used" (*Patrolmen's Benevolent Assn. v City of New York*, 41 NY2d 205, 208).

Town Law § 267-a(4) provides, "Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town." Unless otherwise provided, the ZBA may only hear appeals involving the zoning code (*Portion Properties, Inc. v DeLuca*, 126 AD2d 650, 652). The Dock Law was not adopted pursuant to Article 16 of the Town Law and, in fact, is not a zoning ordinance. Rather, it was adopted pursuant to the Navigation Law § 46-a(4).

Furthermore, reserving the right to appeal to adjacent upland owners does not leave other property owners without a remedy. If there is no other avenue of appeal, an Article 78 action may be instituted directly from a determination of the Zoning Officer (CPLR 7801).

The respondents all had standing to appeal to the ZBA those issues that required interpretation of the Town of Canandaigua Zoning Code but not those issues involving interpretation of the Canandaigua Lake Uniform Docking & Mooring Law.

TIMELINESS

Finally, petitioners contend that the respondents were not timely in their appeal from the Zoning Officer's determination that the project was governed by the "All Other Land Use" category. The Zoning Officer made an initial determination on this issue on November 29, 2005 and that determination was not appealed from. That determination did not become appealable until it was made final in April 2006.

SUMMARY

The determinations of the ZBA regarding the Zoning Officer's enumerated determinations 2, 6, and 7 are annulled and the determinations of the Zoning Officer are reinstated.

This constitutes the Decision of the Court. Submit Order accordingly.

ENTER:



Hon. William F. Kocher
Acting Supreme Court Justice

Dated at Canandaigua, New York
this 15th day of June 2007