

Calogrias v Town of Southampton

2011 NY Slip Op 30948(U)

April 7, 2011

Supreme Court, Suffolk County

Docket Number: 366/2009

Judge: Paul J. Baisley

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MEMORANDUM

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SUPREME COURT - SUFFOLK COUNTY

PRESENT:

HON. PAUL J. BAISLEY, JR., J.S.C.

I.A.S. PART 36

By: Baisley, J.S.C.

Dated: April 7, 2011

INDEX NO.: 366/2009
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LOUIS CALOGRIAS, PETER CALOGRIAS, ELAINE
GILDE, SHIRLEY KATZTER, GEORGE KATZTER,
CHARLES KRUSEN, KRISTEN KRUSEN, GEORGE
R. BUNN, JR., PATRICK D'ANGELO, SERGIO DA
CUNHA, DIANE DA CUNHA, SCOTT MCMULLEN,
MICHELLE MCMULLEN and ANDREWS WATCH,
INC.,

Petitioners,

-against-

TOWN OF SOUTHAMPTON, TOWN OF
SOUTHAMPTON PLANNING BOARD and THE
GREEK ORTHODOX CHURCH OF THE
HAMPTONS,

Respondents.

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On December 18, 2008, the Town of Southampton Planning Board (the "Planning Board") granted conditional site plan approval to the proposal of the Greek Orthodox Church of the Hamptons (the "Church") to renovate its existing church and construct a new Byzantine-style domed church/sanctuary and a cultural center on its property in the Town of Southampton¹ in order to accommodate its expanding membership. Petitioners – neighboring property owners who oppose the Church's proposal – thereupon commenced the instant Article 78 proceeding to annul and reverse the Planning Board's resolution.²

In the instant proceeding petitioners allege that the Planning Board failed to comply with the State Environmental Quality Review Act ("SEQRA") by failing to take the required "hard look" at

¹ The Church's 3.88-acre property is located on St. Andrew's Road at the northwest corner of its intersection with Nicholas Court in the Hamlet of Tuckahoe in the Town of Southampton.

² The Court notes that this is but one of several actions/proceedings commenced by petitioners arising out of the proposed renovation. This Court recently denied petitioners' prior Article 78 petition to annul a Town of Southampton Zoning Board of Appeals determination that the proposed project does not require a parking variance and does not violate the maximum lot coverage requirements of the Southampton Town Code (*Matter of the Petition of Peter Calogrias, et al. v Herbert E. Phillips, et al.*, Baisley, J., Oct. 14, 2010, Index No. 31624/2006).

the environmental impact of the proposed construction project, including but not limited to significant impacts on traffic congestion and safety, noise impacts, visual impacts, and impacts on groundwater and the surrounding ecology that allegedly affect the petitioners in this case. In response to the petition, respondents Town of Southampton and Town of Southampton Planning Board (the “Town respondents”) submitted a verified answer with objections in point of law and a certified return, together with a memorandum of law; the Church interposed a pre-answer motion to dismiss the petition pursuant to CPLR R. 3211(a)(1), (a)(7) and CPLR §7804(f). For the reasons set forth hereinafter, the petition is denied, the motion to dismiss the petition is granted, and the proceeding is dismissed.

The certified record reflects that the Church originally submitted a site plan application to expand and renovate its existing facilities in July 2003, and that the site plan was thereafter revised numerous times in response to the comments of the Planning Board and community members elicited at several public hearings held over the next several years. Public comments generally centered around the visual impact of the new church, which, with the large, Byzantine-style dome to be constructed atop the new church, will be substantially higher than the old church; concerns that the new community center with kitchen facilities would be operated as a “commercial catering facility”; concerns about the impact of the construction itself on surrounding properties; and concerns about the noise and safety impact of increased Church traffic. Also a recurring theme was the Church’s annual Greek Festival which, although not a part of the instant application, was alleged to have a substantial impact on the surrounding neighborhood.

In May 2006, the Church prepared and submitted a further revised site plan together with a voluntary draft environmental impact statement (“DEIS”) dated May 2006, which the Planning Board elected to treat as an Environmental Assessment Form for the purpose of determining significance. On August 3, 2006, the Planning Board issued a “positive declaration” pursuant to 6 NYCRR §617.7 identifying various issues to be addressed in the DEIS, including potentially large impacts on land, on groundwater and surface water runoff, on aesthetic resources and community character, on transportation, on public health and safety related to traffic impacts, on growth and character of community or neighborhood, and on public controversy in light of the public interest in the project. The Planning Board recommended that, among other things, the Church revise the DEIS to provide additional information regarding site design details; expand its discussion of traffic patterns and parking issues; provide a full discussion of the applicable provisions of the Town Code; provide additional information about how the accessory facilities such as the cultural center and community center will be used and clarify whether any non-religious uses are proposed; discuss the impact of the project on the character of the community; discuss mitigation of visual impact, including analysis of sight lines from various points; include a discussion of the impact of outdoor lighting on adjoining properties and revise the photometric plan to comply with Town Code and International Dark Sky Association standards; expand the area of analysis of the traffic impact study to include the intersection of County Road 39 and St. Andrew’s Road and proposed uses for other than Sunday worship service; and discuss the impact of special events on adjacent roadways (although noting that the impact of special events such as the annual Greek Festival is not part of the scope of SEQRA review).

In May 2007, the Church submitted a revised DEIS in accordance with the Planning Board recommendations, and joint public hearings were then held on both the revised DEIS and the site

plan in August and September 2007. A final environmental impact statement (“FEIS”) was submitted in August 2008 and accepted as complete by resolution of the Planning Board dated August 28, 2008. The FEIS was duly noticed for public comment and, on December 18, 2008, the Planning Board issued a Findings Statement and adopted a resolution adopting the Findings Statement and granting conditional site plan approval for the proposed project.

Petitioners thereafter commenced the instant Article 78 proceeding, alleging that the Planning Board’s SEQRA analysis was inadequate and that revisions or supplements to the DEIS should have been required. Among other things, petitioners allege that the Planning Board failed to adequately consider the visual impact of the height of the proposed church dome on the surrounding neighborhood; failed to adequately consider the impact of the construction on migrating birds; failed to consider an alleged discrepancy between the DEIS and the FEIS regarding the pumping of groundwater; failed to consider the impact of “special events” on the surrounding residential neighborhood and to consider holding such events “off-site”; failed to agree that by proposing to host two events a week (weddings, baptisms and “maceras”) using professional caterers, the Church will be operating a commercial catering facility; failed to include information on direction of groundwater flow and on nitrogen loading in groundwater and any potential impact on the South Shore Estuary and Peconic Estuary; failed to revise the DEIS to discuss the impact of the positioning of the church and dome on neighboring residents; failed to reject the “seriously flawed” noise study contained in the FEIS; failed to adequately address traffic safety issues; failed to correctly estimate increased Church traffic volume; failed to redesign the parking configuration in accordance with petitioners’ expert’s suggestion; and failed to address concerns or mitigate impacts from construction.

Respondents dispute petitioners’ allegation, and argue that the Planning Board fully complied with the procedural and substantive requirements of SEQRA.

The SEQRA process is designed to insure that state and local “agency decision-makers – enlightened by public comment where appropriate – will identify and focus attention on any environmental impact” of a proposed project, balance the environmental consequences against the social and economic benefits of the project, minimize any adverse environmental effects to the maximum extent possible, and articulate the bases for their determination (*see, Matter of New York City Coalition to End Lead Poisoning v Vallone*, 100 NY2d 337 [2003]; *Matter of Jackson v New York State Urban Dev. Corp.*, *supra*; *see also, Matter of Town of Henrietta v Department of Env’tl. Conservation*, 76 AD2d 215 [4th Dept 1980]). The environmental impact statement (“EIS”) is a detailed statement setting forth, among other things, a description of the proposed action and its environmental setting; the environmental impacts of the proposed action, including both long-term and short-term effects; any adverse environmental impacts which cannot be avoided if the action is implemented; alternatives to the proposed action; and mitigation measures proposed to minimize the environmental impact (ECL §8-0109(2); 6 NYCRR 617.9(b); *see, Matter of Munash v Town Bd. of Town of East Hampton*, 297 AD2d 345 [2d Dept 2002]; *Matter of Citizens Against Retail Sprawl v Giza*, 280 AD2d 234 [4th Dept 2001]). The purpose of the EIS is “to relate environmental considerations to the inception of the planning process, to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision making process in determining the environmental consequences” of a proposed project (ECL §8-0109(4); 6 NYCRR

617.2(n); see, *Matter of Long Is. Pine Barrens Soc. v Planning Bd. of Town of Brookhaven*, supra; *Roosevelt Islanders for Responsible Southtown Dev. v Roosevelt Is. Operating Corp.*, 291 AD2d 40 [1st Dept 2001], lv denied 97 NY2d 613 [2002]; *Matter of Holmes v Brookhaven Town Planning Bd.*, 137 AD2d 601 [2d Dept], appeal denied 72 NY2d 807 [1988]).

Judicial review of the SEQRA process is limited to determining whether an agency's determination was made in violation of proper procedures, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion (see, *Akpan v Koch*, 75 NY2d 561 [1990]; *Matter of Silvercup Studios v Power Auth. of State of New York*, 285 AD2d 598 [2001]). The Court is required to review the administrative record to determine whether the agency "identified the relevant areas of environmental concern, took a 'hard look' at them, and made a 'reasoned elaboration' of the basis for its determination" (*Matter of New York City Coalition to End Lead Poisoning v Vallone*, 100 NY2d 337, 348, quoting *Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY 2d 400, 416 [1986]). Compliance with the requirements of SEQRA is "governed by a rule of reason." Moreover, "the extent to which particular environmental factors are to be considered varies in accordance with the circumstances and nature of particular proposals" (*Akpan v Koch*, supra). The agency is not required to conduct a detailed analysis of every possible environmental impact or every possible alternative, and it is not the role of the Court to "weigh the desirability of any action or choose among alternatives" (*id.*, quoting *Matter of Jackson*, supra, 67 NY2d at 417).

The extensive record herein reflects that the Planning Board conducted an extensive and thorough analysis of the potential environmental impacts that were identified in the DEIS and FEIS. The Planning Board recognized and acknowledged the numerous letters and comments received throughout the SEQRA process from community members and neighbors, including the petitioners and their representatives and technical consultants. The Planning Board noted – and the record reflects – that those concerns had been addressed in the DEIS and the FEIS and considered by the Planning Board along with the remainder of the SEQRA record. The Planning Board also noted that in response to expressed community concerns, the Church had previously made numerous modifications to its proposal, including reducing the height of the proposed sanctuary, lowering the ridgeline and reducing the gross square footage of the cultural center, modifying exterior finishes, lowering the bell tower and floor elevations of the existing church, and agreeing that the community hall and kitchen will not be operated as a commercial catering facility and that the classroom space will not be rented for a private school.

The Planning Board findings statement set forth a detailed analysis of the prospective impact of the proposed construction on geology, soils and topography; water resources; ecological resources; land use, zoning and community character; transportation; community services; aesthetic resources; cultural resources; and construction impacts; and prescribed further detailed mitigation measures in connection with all of the foregoing. In particular, the Planning Board addressed the impact of the proposed construction on the immediately surrounding community in terms of increased traffic, visual impact, lighting trespass, and construction impact. The Planning Board found that the traffic and parking impacts had been thoroughly evaluated in the traffic impact study and supplemental studies provided in the FEIS, and concluded that there would be no significant adverse traffic impacts. The Planning Board reviewed various alternatives regarding parking and ingress and egress to the site. It rejected a proposal that would place a significant amount of parking in the front of the property and provide two access points from St. Andrews Road. The Planning Board found that reconfiguring the traffic pattern by providing a single entrance on Nicholas Court with a single exit onto St. Andrews Road would be a feasible alternative and an improvement over

the proposed double access onto Nicholas Court, and would mitigate concerns over traffic circulation, lot coverage by impervious surfaces, visual impact and screening.

The Planning Board analyzed the visual impact of the proposal as depicted in numerous photographic simulations from various vantage points, and found it consistent with that of other religious institutions in residential areas as reflected in the FEIS. Noting that the potential visual impacts of the proposal have been of particular interest to area residents, the Planning Board analyzed a proposal to relocate the Sanctuary to the northern portion of the property. Evaluating the photo-simulation contained in the FEIS, the Planning Board found that such a relocation would not provide significantly different overall visual impacts, and, by requiring that parking be relocated to the front yard, would increase its visibility and place cars closer to adjoining residential properties. Moreover, because of the grading differential at the alternate site, the elevation of the dome would increase. The Planning Board found that perimeter planting and landscaping would minimize aesthetic impacts. The Planning Board further found that light trespass from car headlights and exterior lighting would be minimal and would not result in a significant adverse impact. In addition, detailed plans and mitigation measures were set forth to minimize the expected short-term environmental impacts caused by the construction on the site, including soil erosion, noise, traffic disruption and dust.

As to community concerns regarding potential use of the accessory buildings and facilities for non-religious purposes, the Planning Board imposed as a further condition of approval the submission and recordation of a declaration of covenants and restrictions limiting the use of the property to that of a religious institution, and providing specifically that the Church will not operate the community hall and kitchen as a commercial catering facility or rent the classroom space for a private school. All of the foregoing issues were thoroughly discussed and fully documented in the DEIS and FEIS.

While not all of the petitioners' concerns were expressly addressed in the Planning Board's determination, the record reflects that the DEIS and FEIS contained lengthy, detailed responses to all of the criticisms and concerns that were voiced by petitioners and others during the extended public hearings on the proposed project. The Planning Board's determination addressed each of the areas that it determined to have a potentially significant impact on the environment. Upon reviewing the Planning Board's determination and the record as a whole, the Court finds that the Planning Board reasonably and adequately identified potentially significant environmental impacts of the proposed project, took a "hard look" at them, evaluated reasonable alternatives, imposed reasonable conditions and mitigation factors, and set forth a sound, well-reasoned basis for its determination to grant conditional site plan approval to the Church's proposal. The Court finds no basis to conclude that a supplemental or revised DEIS should have been required (*County of Orange v Village of Kiryas Joel*, 44 AD3d 765 [2007]), and finds that the Planning Board's analysis satisfies the requirements of SEQRA. Accordingly, the petition is denied, the motion to dismiss the petition is granted, and the proceeding is dismissed.

Settle judgment.

PAUL J. BAISLEY, JR.

J.S.C.