SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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CHESTNUT RIDGE ASSOCIATES, LLC,

Plaintiff,

-against-

30 SEPHAR LANE, INC., and STEVE'S LAWNS, INC.,

Defendants.

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DECISION & ORDER

INDEX NO. 14674/10

The following sets of papers numbered 1 to 5 were considered on plaintiff's motion for a preliminary injunction, and on defendants' cross-motion to dismiss plaintiff's first, second, and third causes of action for lack of standing (but not the fourth cause of action, for nuisance):

Order to show cause, memorandum of law, exhibit A, Burns affidavit, Reginald J. Montgomery affidavit, and Antoinette Montgomery affidavit	1
Notice of cross-motion, Lynch affirmation, Slackman affidavit, Mitzner affidavit, and exhibits A-Z[1]	2
Condon affirmation in opposition and exhibit A; memorandum of law	3, 4
Lynch affirmation in reply and Slackman affidavit	5

As set forth below, both motions are denied in full.

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[1]Exhibits must be tabbed. Counsel is directed to review the Part Rules.

Plaintiff is the owner of a largely vacant[2] 14.6 acre parcel in the Village of Chestnut Ridge (the "Village") which seeks to enjoin the defendants from operating a landscaping business on its property, located across the street from plaintiff's property. Plaintiff states that it has been trying, unsuccessfully, to develop its property for approximately 20 years - long before defendants began operating on their parcel. Plaintiff has had mixed success renting the two homes on the property.

Plaintiff alleges that defendants are operating their business without an approved site plan and without a certificate of occupancy. Plaintiff further alleges that landscaping is not a permitted use in the "LO" (Laboratory-Office) zone in which the properties are located. In response, defendants allege that their use is permissible in the "LO" zone and that they have (in 2009) submitted a site plan for approval. Defendants also argue, in support of their motion, that plaintiff has no standing to seek enforcement of the zoning code.

It is undisputed that the Village, after issuing defendants a summons for a zoning violation (in 2008), has deferred prosecution of the alleged violation, and has allowed defendants to apply for site plan approval. While this approval is pending (for over two years), the Village has allowed defendants to

[2]There are two homes on one section of the property.

continue operating their business. Indeed, a memo from the Village's attorney to the Village Planning Board, dated October 13, 2009, states that he "is of the opinion that the proposed use by Steve's Lawns as an office and storage of landscape materials and equipment is a permitted use in the LO zone." While not determinative, this opinion is certainly relevant to the Court.

As for the motion to dismiss, the Court finds that is has no merit. Plaintiff does have standing to bring this action. A private party who has suffered special damages may seek to enjoin the violation of a zoning ordinance. *See Zupa v. Paradise Point Association, Inc.*, 22 A.D.3d 843, 803 N.Y.S.2d 179 (2d Dept. 2005) ("to maintain a private action at common law to enjoin a zoning violation, a plaintiff must establish that he or she has standing to do so by demonstrating that special damages were sustained due to the defendant's activities."). Where, as here, the individual owns property in close proximity to the alleged violator, special damages are generally presumed. *Id.* ("an allegation of close proximity may give rise to an inference of injury enabling a nearby property owner to maintain an action without proof of actual injury."). *See also Bais Yoel Ohel Feige v. Congregation Yetev Lev D'Satmar of Kiryas Joel*, 65 A.D.3d 1176, 885 N.Y.S.2d 741 (2d Dept. 2009) ("Supreme Court properly determined that the defendant has standing to assert a cause of action seeking to enjoin the plaintiffs from allegedly violating

the Code of the Village of Kiryas Joel.").

To the extent that defendants' motion also addresses the merits of the first three causes of action, there is no question that claims are sufficiently stated to survive this motion to dismiss. *See Leon v. Martinez*, 84 N.Y.2d 83, 87-88, 614 N.Y.S.2d 972 (1994).

With respect to plaintiff's motion, the Court finds that plaintiff does not have a likelihood of success on the merits sufficient to enjoin the defendants' use of the premises. It is undisputed that the Village has - for whatever reason - knowingly allowed defendants to operate their business for several years after issuing a violation. While defendants' assertion that their use of the property is allowed because the Village deems their landscaping business to be permissible as an "office building with accessory storage" seems a bit of a stretch, the fact remains that a municipality's interpretation of its own local laws is generally entitled to deference. *See Sabatino v. Suffolk County*, 74 A.D.3d 825, 903 N.Y.S.2d 446(2d Dept. 2010). The Village has not officially weighed in on this issue.

In any event, the paucity of evidence of *irreparable* harm to plaintiff, and the clear balance of the equities in favor of defendants warrant denial of a preliminary injunction. Plaintiff's allegations of harm are general and somewhat speculative. In contrast, preventing defendants from operating

their business on a preliminary injunction is a very real, specific harm. Moreover, it appears to the Court that if plaintiff ultimately prevails in this action, it can be compensated with money damages.

Plaintiff is directed to contact the Part Clerk within three business days of receipt to schedule a conference in this matter.

This decision shall constitute the order of this Court.

Dated: New City, New York
March 21, 2011

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SUPREME COURT JUSTICE

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