

**Matter of Patel v Board of Trustees of Incorporated
Vil. of Muttontown**

2012 NY Slip Op 30431(U)

February 10, 2012

Supreme Court, Nassau County

Docket Number: 11866/11

Judge: Anthony L. Parga

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SHORT FORM ORDER

**SUPREME COURT-NEW YORK STATE-NASSAU COUNTY
PRESENT:**

HON. ANTHONY L. PARGA
JUSTICE

-----X **PART 6**

In the Matter of the Application of
DR. MANILAL PATEL, RENOS KOURTIDES,
THOMAS D. MURRAY, YAKUB KHAN,
THOMAS PAUL, and VARANDER NAYER,

Petitioner,

INDEX NO.: 11866/11
XXX
MOTION DATE: 12/22/11
SEQUENCE NO. 01, 02, 03

For Judgment Pursuant to Article 78 of the CPLR,

-against-

THE BOARD OF TRUSTEES OF THE
INCORPORATED VILLAGE OF MUTTONTOWN,
and THE JEWISH CONGREGATION OF BROOKVILLE,

Respondents,

-----X

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Upon the foregoing papers, the application by Petitioner, pursuant to Article 78 of the CPLR, for an order rescinding, annulling, and vacating the findings adopted by the Board of Trustees of the Incorporated Village of Muttontown (hereinafter "Board"), pursuant to the New York State Environmental Quality Review Act (hereinafter "SEQRA"), compelling respondents

to engage in *de novo* SEQRA review of the potential environmental impacts of the subject project, and for other related relief, is denied, and the within petition is dismissed. The motions by Respondents Board and The Jewish Congregation of Brookville (hereinafter "Congregation"), for an order dismissing the petition on the grounds that this matter is not yet ripe for adjudication are denied in view of the aforesaid decision.

The petitioners are six individuals, five of whom reside in the vicinity of a site where the Congregation hopes to construct a synagogue and appurtenant structures along Route 106 in Muttontown. In January 2005, the Congregation filed a Special use Permit Application with the Zoning Board of Appeals (hereinafter "ZBA") of the Village to construct a 13,100 square foot synagogue with associated parking and other structures. Pursuant to SEQRA, the ZBA undertook to review the Application and designated itself as the lead agency for the SEQRA review. The ZBA adopted a positive declaration for the Application, thereby requiring the preparation of a Draft Environmental Impact Statement ("DEIS"). Subsequently, the jurisdiction for the consideration of special use permits was transferred from the ZBA to the Board, and the Board became the lead agency for the SEQRA. On March 13, 2007, the Board re-adopted a "positive declaration" identifying certain environmental factors which required evaluation in the DEIS. A Final Scope was adopted by the Board on June 12, 2007, and the DEIS was submitted by the Congregation in November 2007. A revised DEIS was submitted by the applicant in June 2008, and the Board deemed it adequate for public review. Public hearings on the DEIS were conducted on September 24, 2008 and December 4, 2008, and written comments were accepted through December 31, 2008. The Board filed a Final Environmental Impact Statement ("FEIS") on March 8, 2011, and set a public consideration period through March 25, 2011, during which the Village contends that no comments were received. Based upon the full SEQRA record, and pursuant to the regulations of the Department of Environmental Conservation, 6 NYCRR §617.11, the Board adopted its SEQRA Findings Statement on April 12, 2011. The adoption concluded the SEQRA process. The Board still has not, however, reviewed the site plan, has not approved the site plan, has not approved the Special Use Permit for the project, and has not issued any building permits to date. As such, the Board and the Congregation both contend that there has been no final determination by the Village and that the petition should be dismissed as

premature.

An agency action is final when the decision-maker arrives at a “definitive position on the issue that inflicts an actual, concrete injury.” (*Stop-The-Barge v. Cahill*, 1 N.Y.3d 218, 803 N.E.2d 361 (2003), quoting, *Matter of Essex County v. Zagata*, 91 N.Y.2d 447 (1998)). In *Stop-The-Barge*, the Court of Appeals held that an agency reached a definitive position, rendering the matter ripe, when its SEQRA review ended. (*Id.* at 223). In the instant action, the Board’s issuance of SEQRA Findings admittedly ended its SEQRA review. Accordingly, the Board reached a “definitive position” with respect to its assessment of the environmental impacts and required mitigations for the Congregation’s project. (See, *Jones v. Amicone*, 27 A.D.3d 465, 812 N.Y.S.2d 111 (2d Dept. 2006)(City Council’s adoption of the SEQRA Findings was ripe for adjudication because it “completed the SEQRA review process and established the City Council’s definitive position on the issue that inflicted actual concrete injury on the petitioners”); *Long Island Contractors’ Ass’n v. Town of Riverhead*, 17 A.D.3d 590, 793 N.Y.S.2d 494 (2d Dept. 2005)(the limitations period did not commence until the Town Board issued a negative declaration which concluded its SEQRA review); *Coalition Against Lincoln West, Inc. v. Weinshall*, 21 A.D.3d 215, 799 N.Y.S.2d 205 (1st Dept. 2005), *lv to appeal denied*, 5 N.Y.3d 715 (2005)(holding that when the FEIS was certified as complete, agency action was final as to those components of the project, even if formal approvals were necessarily deferred until such time as construction of the project reached that point”); *Uhlfelder v. Weinshall*, 10 Misc.3d 151, 810 N.Y.S.2d 275(Sup. Ct. N.Y. Cty. 2005), *aff’d*, 47 A.D.3d 169, 845 N.Y.S.2d (1st Dept. 2007)(holding that the issuance of a negative declaration triggers the four month statute of limitations period for SEQRA and City Environmental Quality Review (CEQR) claims); See also, 6 NYCRR §617.11). As such, this matter is ripe for adjudication and the Respondent’s motions to dismiss, on the grounds that Petitioner’s application is premature, are denied.

Petitioners contend that although the Board “concededly engaged in a lengthy review that studied various impacts associated with the subject project,” it ultimately failed to rationally address, as SEQRA requires, critical areas of environmental concern to petitioners, including by not limited to traffic, parking, landscaping, flooding, and noise. The petitioners contend, *inter alia*, that the Board failed to recognize the project’s potential significant environmental impacts,

including traffic impacts, particularly along Route 106; that the project's projected population "appears unduly conservative;" that the High Holiday overflow parking plan is deficient; that the landscaping plan was improperly deferred until the Site Plan approval process is underway; that the Board failed to consider the impact of a deceleration lane on Route 106, which petitioner Patel alleges is in front of his driveway and "could significantly adversely affect" safety and the ability to enter and exit his driveway; and that the Board failed to consider the noise impacts on neighboring areas. The petitioners fail, however, to submit sufficient admissible evidence to support their contentions, including any expert reports regarding the environmental impacts which they allege "could" result as a result of the project.

It is well settled that in a proceeding brought under Article 78 of the CPLR, the function of this Court is only to see that a determination of an administrative body or officer was made in the manner prescribed by law (*See, Laureano v. Kuhlmann*, 75 N.Y.2d 141; *Voelckers v. Guelli*, 58 N.Y.2d 170). Generally, an administrative agency's determination requires deference in the area of its expertise (*See, Rosen v. Public Empl. Relations Bd.*, 72 NY2d 42, 47-48). The standard of review in an Article 78 proceeding is "whether the agency determination was arbitrary and capricious or affected by an error of law." (*See, Scherbyn v. Wayne FINDER Lakes Bd. of Coop. Educ. Services*, 77 N.Y.2d 753 (1991)).

The rule regarding judicial review of SEQRA determinations "is not to weigh the desirability of any proposed action or to choose among alternatives and procedural requirements of SEQRA [citations omitted], but to determine whether the agency took a 'hard look' at the proposed project and made a 'reasoned elaboration' of the basis for its determination." (*Week Broadcasting Corp. v. Planning Board of the Town of Lloyd*, 79 N.Y.2d 373, 592 N.E.3d 778 (1992); *Matter of Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 503 N.Y.S.2d 298 (1986)). A court's authority "to examine a SEQRA review conducted by an agency that was required to do so is limited to reviewing whether the determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." (*Gernatt Asphalt Prods. v. Town of Sardinia*, 87 N.Y.2d 668, 664 N.E.2d 1226(1996)). The question is "whether the agency identified the relevant areas of environmental concern, took 'at them and made a reasoned elaboration' on the basis for its determination."

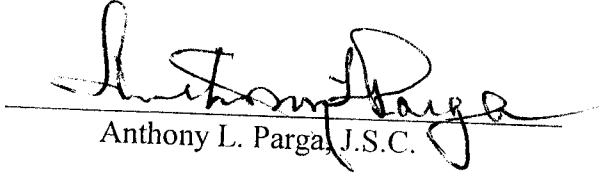
(Matter of Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d 400, 503 N.Y.S.2d 298 (1986)). The agency's substantive obligations under SEQRA must be viewed in light of a rule of reason" and the degree of detail with which each environmental factor must be discussed will necessarily vary and depend on the nature of the action under consideration. (*Gernatt Asphalt Prods. v. Town of Sardinia, 87 N.Y.2d 668, 664 N.E.2d 1226(1996), citing, Matter of Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d 400, 503 N.Y.S.2d 298 (1986)*). The "substantial evidence" by which an agency's determination must be supported, is "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." (*Weok Broadcasting Corp. v. Planning Board of the Town of Lloyd, 79 N.Y.2d 373, 592 N.E.3d 778 (1992), citing, 300 Gramatan Ave. Assocs. v. State Div. of Human Rights, 45 N.Y.2d 176, 379 N.E.2d 1183 (1978)*).

Contrary to petitioners' contentions, based upon the submissions before this Court, including the SEQRA Finding Statement, the Board's determination is supported by substantial evidence and was not made in violation of lawful procedure, was not affected by an error of law and was not arbitrary and capricious. Further, there is ample evidence that the Board took a "hard look" at the proposed project and its environmental impact, and made a reasonable elaboration on the basis of its determination.

Accordingly, petitioners' application to vacate the findings adopted by the Board, pursuant to SEQRA," and compel respondents to engage in *de novo* SEQRA review of the potential environmental impacts of the subject project, is denied and the petition is dismissed.

This constitutes the decision and Order of this Court.

Dated: February 10, 2012


 Anthony L. Parga, J.S.C.

Cc: Zain & Steinmetz
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