545 Halsey Lane Props., LLC v Town of Southampton Zoning Bd. of Appeals
2015 NY Slip Op 30936(U)
May 13, 2015
Supreme Court, Suffolk County
Docket Number: 4955-14
Judge: Denise F. Molia

COPY

Index No: 4955-14

SUPREME COURT - STATE OF NEW YORK
I.A.S. Part 39 - SUFFOLK COUNTY

PRESENT:
Hon. **DENISE F. MOLIA,**
Justice

545 HALSEY LANE PROPERTIES, LLC,

Petitioner-Plaintiff,

- against -

TOWN OF SOUTHAMPTON ZONING BOARD OF APPEALS, and HERBERT PHILLIPS, ADAM GROSSMAN, HELEN BURGESS, BRIAN DeSESA, DENISE O'BRIEN, KEITH TUTHILL and LAURA STEPHENSON, all the Foregoing named in their Capacities as Members of the Town of Southampton Zoning Board of Appeals, and John Does 1 through 4,

Respondents-Defendants,

- and -

TOWN OF SOUTHAMPTON,

Defendant.

CASE DISPOSED: NO
MOTION R/D: 4/22/14
SUBMISSION DATE: 2/20/15
MOTION SEQUENCE NO.: 001 MD
002 MD

ATTORNEY FOR PETITIONER
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ATTORNEYS FOR RESPONDENTS
Town of Southampton
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Upon the following papers filed and considered relative to this matter:

Notice of Petition and Verified Petition and Complaint dated March 7, 2014 (001); Affidavit of David S.J. Neufeld dated March 7, 2014; Exhibits A through K annexed thereto; Verified Answer and Answer dated April 3, 2014; Exhibits 1 through 20 and Exhibits A through F annexed thereto; Respondents' Reply Memorandum of Law dated April 3, 2014; Notice of Motion dated April 25, 2014 (002); Affidavit of Sarah A. Willig dated April 24, 2014; Exhibits L through S annexed thereto; Affirmation dated May 9, 2014; Exhibit A annexed thereto; Petitioner's Memorandum of Law dated April 25, 2014; Respondents' Reply Memorandum of Law dated April 9, 2014; Affidavit of David S.J. Neufeld dated June 4, 2014; Exhibit T annexed thereto; Petitioner's Reply Memorandum of Law dated June 4, 2014; and upon due deliberation; it is

ORDERED, that the Order to Show Cause by petitioner-plaintiff, pursuant to, *inter alia,* CPLR Article 78, CPLR 3001 and Town Law §282, for a judgment (1) annulling and vacating a decision of the Town of Southampton Zoning Board of Appeals dated February 6, 2014, on the

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grounds that the same is arbitrary, capricious, unlawful, in excess of the authority of the Respondent Zoning Board and directing that the Petitioner's appeal to the Zoning Board be granted and directing the issuance of a permit to the Petitioner pursuant thereto, and (2) imposing costs and attorney's fees upon Respondents pursuant to Public Officers Law §107 on the grounds that Respondents have violated New York State Open Meetings Law, and, to the extent the Court does not vacate and annul the Decision pursuant to CPLR Article 78, vacating the Decision pursuant to Public Officers Law §107(1), is denied; and it is further

ORDERED, that the motion by petitioner-plaintiff, pursuant to CPLR 3001, for an Order directing the entry of summary judgment in favor of plaintiff on the Third cause of action contained in the Complaint declaring that Southampton Code §330-51 is only applicable to properties preserved exclusively for agricultural purposes or, alternatively, the Southampton Code §§350-51 and 330-50(D)(2) do not apply to the property of the plaintiff and, in the alternative, declaring that the respondents-defendants have forfeited their right to enforce any of their rights under the Grant and is estopped from doing so, is denied.

This action has been brought as a hybrid action in which the First and Second causes of action have been brought pursuant to CPLR Article 78 against the Town's Zoning Board of Appeals, while the Third cause of action seeks a declaratory judgment against the Town of Southampton and the Town's Zoning Board of Appeals.

The petitioner, 545 Halsey Lane Properties, LLC, is the owner of a 40.747 acre parcel of real property located within the Town of Southampton, and designated by Suffolk County Tax Map number 900-105.000-01.00-001.030. The petitioner acquired title to this property, which is zoned Residential R-80, by deed dated February 26, 2003. The property is located within an Agricultural Overlay District and benefits from Certificates of Occupancy for the following: one family, two story dwelling, garage, deck porch, unfinished cellar, swimming pool, spa, trellis, tennis court, pergola, four car/two story garage with a three bay storage area with second floor living area, pool house, front porte-cocher, attached roofed patio addition to dwelling, and two agricultural storage buildings.

The petitioner's predecessor in title and the Town of Southampton entered into an agreement pursuant to General Municipal Law §247, which imposed certain understandings and agreements concerning the use of the property, which are the subject of, and set forth within, a "Grant of Easement" dated July 15, 1980 ("Grant"), which was subsequently authorized by the Southampton Town Board and recorded with the Suffolk County Clerk. The Grant imposed certain limitations on the future development of the property and expressly reserved to the property owners and their successors, certain enumerated property rights and reservations.

The Grant provides as follows, in pertinent part:

> "Grantor, for themselves, and for and on behalf of their heirs, successors, legal representatives and assigns, hereby covenants to and agree with Grantee, as follows:
>
> 1. The use and development of the Agricultural Reserve Area will forever be restricted to some or all of the following: (i) farming operations and activities, including soil preparation, . . . farm buildings, . . .; (ii) open, fallow, landscaped and

> wooded areas, with lanes, walkways, foot path, and ponds or brooks; (iii) recreational areas, for compatible recreational uses; and (iv) one single family dwelling and customary accessory uses and structures incidental thereto."

At the time that the Grant took effect, the Town Code did not restrict construction or development with the Agricultural Overlay District ("AOD"). However, the Town Code was amended in 1994 to add §330-51(A), which restricted construction on land within the AOD that had been "preserved for agricultural purposes as a condition of subdivision or site plan approval by a grant of easement . . ."

On or about August 28, 2013, the petitioner filed an application with the Town's Building and Zoning Division, seeking to erect a grade level, 54 feet by 88 feet basketball court on the property. By letter dated September 4, 2013, the Town's Building Inspector denied the petitioner's application on the grounds that the "Basketball Court Not Allowed on Agricultural Reserve." The petitioner appealed the Building Inspector's determination to the respondent Zoning Board of Appeals ("ZBA") on October 22, 2013. The appeal contended that the denial was erroneous and improper, in direct conflict with the Grant, General Municipal Law, and prior decisions of the Town Board concerning the property, and a misinterpretation of the Southampton Town Code.

The petitioner sought an interpretation from the ZBA that (1) Town Code §330-51 applies only to land that is preserved exclusively for agricultural use as part of a subdivision process; (2) the Code must be applied so as to respect and not impair the rights set forth in the Grant created under New York law and to which the Town was a party and beneficiary; (3) under *stare decisis*, the ZBA may not depart from prior precedents, particularly where the Town Board granted permission to construct a dwelling on the property and respected the terms of the Grant notwithstanding the restrictions of Town Code §§330-50 and 330-51 to defeat such rights; and (4) petitioner's rights are protected by General Municipal Law §247, pursuant to which the Grant was created and is enforceable.

A public hearing was held on December 5, 2013. Counsel for petitioner noted that the parcel was created as the "Agricultural Reserve" of a 29 lot subdivision in 1980, and maintained that the "Agricultural Reserve" designation is misleading since the use of the property is not restricted exclusively to agricultural, by allowing for dwellings and "recreational areas, for compatible recreational uses." Counsel opined that the Town Board conceded that the Town Code provisions do not apply to the property when it issued a construction permit for a dwelling on the premise in 1997. Counsel further contends that such action constituted an acknowledgment by the Town that (1) the Town Code may not be applied in a manner that will impair the Grant established by State Law; (2) the restrictions resulting in Town Code §330-51 are only applicable to properties whose owners had agreed to restrict their property exclusively to agricultural uses and improvements; and (3) a subsequent post-Grant amendment to the Code could not be applied to deprive the owner of the property a right specifically reserved in the Grant.

Neighboring property owners appearing in opposition to the application testified that the property was meant to be preserved for agricultural uses and scenic views, the reservations set forth in the easement did not contemplate that the property could be turned into an "amusement park", the Town Board specifically considered where to place the dwelling, meant to be a "farm

house" on the property, and the permitted recreational areas noted in the easement included trails and benches, but was not meant to permit nearly regulation size basketball courts.

By decision dated February 6, 2014, the Board determined that the Building Inspection did not err when he denied the building permit, finding that Town Code §330-51 prohibits the erection of a basketball court on premises which has been preserved for agricultural purposes as a condition of subdivision approval by grant of Easement dated July 15, 1980, to the Town. The Board determined that it was without the authority to interpret the Grant of Easement, and in this instance was only charged with rendering an interpretation of the zoning law pursuant to Town Law.

In rendering its decision, the Board found that Town Code §330-51 applied to the subject property as it was entirely located within an Agricultural Overlay District, was created as part of the "Subdivision Map of Broadlands", is noted on the subdivision map as the "Agricultural Reserve Area" surrounded on all sides by the 29 lot subdivision, was referenced by the Town Board Resolution of December 23, 1997 as consisting of "40.7475 acres of agricultural reserve, and was burdened by a "Grant of Easement" to the Town on July 15, 1980, described as an "agricultural, scenic and conservation use easement."

The Board further found:

> "Further, as applicant seeks to erect a basketball court on the premises, the procedure to obtain a construction permit on such easement is set forth in Town Code §330-50(D)(2). This section of the Town Code provides that the Southampton Town Plannig Board is empowered to issue a permit for the construction of buildings and other structures customarily accessory and incidental to agricultural production as defined in §301 of the New York State Agriculture and Markets Law, through its site plan review and referral to the Agricultural Advisory Committee.
>
> Applicant's assertions that Town Code §330-51 applies only to properties where the owners have agreed to restrict the use and improvement of their property exclusively to agricultural uses and improvements is unpersuasive. This interpretation is not consistent with the plain language of the Town Code and would require the Building Department to review the language and terms of individual easements, which is not within their authority.
>
> Similarly, applicant's assertion that this Board must find that Town Code §330-51 does not apply in order to be consistent with the Town Board's earlier findings is also flawed. In November 1996, the owners of the premises at the time, requested a waiver letter from the Town in order to construct approximately 19,800 square feet of improvements including a single family residence and tennis court, asserting, as they are here, that the agricultural easement pre-dated the relevant provisions of the Town Code and was thus, inapplicable. The Town Board however, determined that the structures proposed were not covered by the waiver provisions of the Town Code, but authorized

> the construction nonetheless, finding that the Easement provided for the construction of "one single family dwelling and customary uses and structures incidental thereto." Here, applicant is seeking to construct the proposed basketball court, not pursuant to this provision of the easement but rather pursuant to the provision that permits "recreational areas, for compatible recreational uses." As the Town Board did not opine as to this provision of the easement, there is no issue of stare decisis at hand.
>
> While this Board agrees with the applicant that the Easement granted to the Town here may be "unique" and/or may afford additional construction opportunities on the premises to the property owners, it is not within its jurisdiction to interpret such a document. Likewise, while the Town Board in 1997 created a "building envelope" on the premises and granted a building permit pursuant to Town Code §330-50(D)(2) to construct a single family dwelling and any customary accessory uses and structures incidental to the dwelling, it is not within the Board's purview to interpret whether or not the proposed at grade basketball court (located wholly outside of this building envelope) is permitted pursuant to the Easement notwithstanding its prohibition in the Town Code."

A decision rendered by a zoning board of appeals is entitled to a strong presumption of validity. See, Levine v. Korman, 185 A.D.2d 323, 586 N.Y.S.2d 620; see also, Perlman v. Board of Appeals of the Village of Great Neck Estates, 173 A.D.2d 832, 570 N.Y.S.2d 656. A determination by a zoning board of appeals is also entitled to judicial deference when the board is exercising its statutory duties of interpreting particular provisions of its local code, or deciding variance applications. See, Ifrah v. Utschig, 98 N.Y.2d 304; see also, Falco Realty, Inc. v. Town of Poughkeepsie Zoning Board of Appeals, 40 A.D.3d 635, 636, 835 N.Y.S.2d 398, 400; Page v. Hollis, 130 A.D.2d 661, 515 N.Y.S.2d 593. A zoning board interpretive decision is entitled to judicial deference when it is reasonable and supported by a rational basis. See, Conti v. Zoning Board of Appeals of the Village of Ardsley, 53 A.D.3d 545, 861 N.Y.S.2d 140. See also, Winston v. Town of Bedford Zoning Board of Appeals, 14 Misc.3d 1235(A), 836 N.Y.S.2d 504 ("The final interpretation of the law is for the reviewing court and where, as here, the zoning board's construction of its code provisions comports with reason and logic, and finds a rational basis in the record, it is entitled to judicial deference").

The Court of Appeals has reaffirmed the limited role of the courts in the review of decisions issued by local land use boards. See, Retail Property Trust v. Bd. of Zoning Appeals of Town of Hempstead, 98 N.Y.2d 190, 196; see also, Matter of P.M.S. Ltd. v. Zoning Board, 98 N.Y.2d 683. The reason for the limited scope of judicial review was set forth by the Court of Appeals in Cowan v. Kern, 41 N.Y.2d 591 at 599, as follows:

> "The crux of the matter is that the responsibility for making zoning decisions has been committed primarily to quasi-legislative, quasi-administrative boards composed of representatives from the local community. Local officials generally possess the familiarity with local conditions

> necessary to make the often sensitive planning decisions which affect the development of their community. Absent arbitrariness, it is for the locally selected and locally responsible officials to determine where the public interest in zoning lies. (McGowan v. Cohalan, 41 N.Y.2d 434, 438, supra.) Judicial review of local zoning decision is limited; not only in our court but in all courts. Where there is a rational basis for the local decision, that decision should be sustained."

Here, the record, return, and submissions to the court demonstrate the Board's careful consideration of the meaning of Town Code §330-51 and its applicability to the subject premises and the petitioner's application to erect a basketball court on that parcel. In a proper exercise of its discretion, the ZBA made a determination that Town Code §330-51, which sets forth the procedure for construction on lands preserved by easement or Suffolk County purchase, is applicable to the subject premises. Petitioner's contention to the contrary, the plain language of the above Code section, which does not contain the word "exclusively", does not support the petitioner's belief that the Code applies to lands preserved exclusively for agriculture. It does however, support the Board's interpretation as stated in its decision.

The use of land under a zoning ordinance and the use of the same land under an easement or restrictive covenant are "separate and distinct matters, the ordinance being a legislative enactment and the easement or covenant a matter of private agreement." Matter of Friends of Shawangunks v. Knowlton, 64 N.Y.2d 387, 392, 487 N.Y.S.2d 543. In this matter, the ZBA is without the authority to make a finding that the construction of a basketball court is permitted "as-of-right" on the premises as a "recreational area, for compatible recreation uses," allegedly pursuant to the Grant of Easement. The conclusion that the ZBA lacks the authority to interpret the easement, and particularly the "recreational" provision of the Easement is bolstered by the content of the Town Board resolution that created a building envelope and issued a construction permit for a single family dwelling and customary accessory structures in 1997, where it was noted that the Grant of Easement "provided for the construction of 'one single family dwelling and customary accessory uses and structures incidental thereto.'" The petitioner has failed to demonstrate that the Grant of Easement essentially trumps the current Town Code, or that the Town's enforcement of the easement has been permanently forfeited.

As an alternative request for relief, the petitioner also seeks to vacate the ZBA's decision under a theory that the respondents violated the "Open Meetings Law" as set forth in the Public Officers Law. The basis for this request are the allegations that (1) the decision was drafted by the Office of the Town Attorney; (2) the ZBA failed to conduct deliberations on the application at any public meeting; and (3) one newly appointed Board Member who voted on the Decision was not present for the public hearing and the "record contains no evidence that she was familiar with the Appeal of the hearing and she conducted no deliberations on the Appeal."

The burden of establishing that an administrative board violated Public Officer's Law §103(a) is cast upon the party asserting the violation. Matter of Ramapo Homeowners Association v. Town of Ramapo, 2 A.D.3d 529, 767 N.Y.S.2d 907. Petitioner bears the burden of showing that discussions of substance, voting, or other action inappropriately took place at a meeting in which a quorum was present. Mobil Oil Corporation v. City of Syracuse Industrial Development Agency, 224 A.D.2d 15, 646 N.Y.S.2d 741. Here, the petitioner has failed to satisfy this burden. The allegations of petitioner are "merely conclusory and speculative in nature

and not supported by any specific facts." Residents for a More Beautiful Port Washington, Inc. v. Town of North Hempstead, 545 N.Y.S.2d 303, 305, 149 A.D.2d 266. While the individual Board members may not have articulated their position on the application to the satisfaction of petitioner, the record reflects sufficient discussion of the application by the Board during the hearing process. The fact that the decision may have been drafted by the Board's legal counsel is not fatal to its validity or legality, especially in light of petitioner's failure to demonstrate that the decision did not reflect the determination of the Board members who voted to adopt it. Likewise, the fact that a new Board member was not present at the public hearing would not preclude such member from casting a vote on the application. Such member had the ability to either listen to a tape of the proceedings or review the transcript of the hearing, which included the testimony of the applicant and any witnesses. Here, the petitioner has failed to set forth any actions taken by the Board that would constitute a violation of the Open Meetings Law, and its claims to that end must fail. See, *e.g.*, Halperin v. City of New Rochelle, 24 A.D.3d 768, 809 N.Y.S.2d 98.

Under the circumstances presented, the Court finds that the findings of the respondent Board are rational and supported by the substantial evidence on the record, and are not found to be arbitrary, capricious, or erroneous as a matter of law, or an abuse of discretion. The application to vacate or annul the Decision of the respondent Board dated February 6, 2014, is denied.

The petitioner-plaintiff has also moved for summary judgment on its Third cause of action seeking a declaration that Southampton Town Code §330-51 only applies to properties preserved exclusively for agricultural purposes, or alternatively, a declaration that Southampton Town Code §§350-51 and 330-50(D)(2) do not apply to the subject property, or alternatively, a declaration that the respondents-defendants have forfeited their right to enforce any of their rights under the Grant and are estopped from doing so. This portion of the application is also denied.

Summary judgment is a drastic remedy, which should be granted only if no triable issues of fact have been presented. Pearson v. Dix McBride, LLC, 63 A.D.3d 895. The party moving for this relief must make a *prima facie* showing that it is entitled to summary judgment and tender sufficient evidence in admissible form to demonstrate the absence of any material issues of fact. Moore v. 3 Phase Equestrian Center, Inc., 83 A.D.3d 677. Here, as discussed above, the petitioner-plaintiff has not demonstrated that it has a vested right to construct a basketball court on the Agricultural Reserve Area, that the referenced Town Codes do not apply to the subject property, or that the respondents' enforcement of the Easement has been forfeited. It is clear that at the very least, there remains an issue of fact as to what constitutes use and development for "recreational areas, for compatible recreational uses." Summary judgment is therefore not warranted at this juncture.

The foregoing constitutes the Order of this Court.

Dated: May 13, 2015

Hon. Denise F. Molia

HON. DENISE F. MOLIA A.J.S.C.