

**Board of Fire Commrs. of the Fairview Fire Dist. v  
Town of Poughkeepsie Planning Bd.**

2015 NY Slip Op 32845(U)

April 17, 2015

Supreme Court, Dutchess County

Docket Number: 4353/2014

Judge: Christine A. Sproat

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

-----X  
THE BOARD OF FIRE COMMISSIONERS OF THE  
FAIRVIEW FIRE DISTRICT, A DISTRICT  
CORPORATION OF THE STATE OF NEW YORK,

Petitioner-Plaintiff,  
  
- against -

**DECISION, ORDER  
& JUDGMENT**

**Index No. 4353/2014**

TOWN OF POUGHKEEPSIE PLANNING BOARD,  
TOWN OF POUGHKEEPSIE TOWN BOARD,  
TOWN OF POUGHKEEPSIE, A MUNICIPAL  
CORPORATION OF THE STATE OF NEW YORK  
AND PAGE PARK ASSOCIATES, LLC,

Respondents-Defendants.

-----X  
C. A. SPROAT, J.S.C.

Petitioner Board of Fire Commissioners of the Fairview Fire District moves for the following relief:

a. An order annulling and declaring invalid a resolution of respondent Town of Poughkeepsie Planning Board ("Planning Board"), adopted on August 21, 2014, whereby the Planning Board, acting as SEQRA Lead Agency, determined that a multi-family residential project proposed by Page Park Associates, as applicant and owner, which as modified would result in the development of 151 dwelling units and 514 bedrooms within the District, did not have the potential for any significant adverse environmental impact on the environment;

b. An order annulling and declaring invalid a resolution of respondent Planning Board, adopted on August 21, 2014, whereby the Planning Board referred said application to the Town of Poughkeepsie Town Board for action on the applicant's petition for application of a zoning overlay district known as the Planned Residential Overlay District ("PROD") to applicant's property; and

c. An order annulling the determination of respondent Planning Board to grant a Land Contour Permit to respondent Page Park Associates, or its assigns, and declaring that the Town respondents may not issue such permit until such time as the Planning Board properly conducts a review of the potential environmental impacts of the project in accordance with the State Environmental Quality Review Act and its enabling regulations, and makes such determinations with respect to potential impacts and mitigation of such impacts as is supported by the record before it.

The following papers were read:

Notice of Petition - Verified Petition - Annexed Exhibits	1-3
Affidavit in Support of George Lithco, Esq. - Annexed Exhibits	4-5
CGR Report on the Impact of Future Development on the Fairview Fire District	6
Verified Answer	7
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Kelly Libolt's Affidavit in Opposition - Annexed Exhibits	9-10
Richard I. Cantor, Esq.'s Affirmation In Opposition - Annexed Exhibits	11-12
Neil A. Wilson's Affidavit in Opposition - Annexed Exhibits	13-14
Memorandum of Law from respondents Town of Poughkeepsie Planning Board, Town of Poughkeepsie Town Board and Town of Poughkeepsie	15
Memorandum of Law from respondent Page Park Associates, LLC - Annexed Exhibits	16-17
Affidavit of Carol Barone - Accompanying Exhibits Parts 1-5	18-19
Petitioner's Reply to Counterclaim	20
Affidavit of James Doxsey	21
Affidavit of Andrew Calamari	22
Affidavit of Virginia Buechele	23
Reply Affirmation of George Lithco, Esq. - Annexed Exhibits	24-25
Reply Affidavit of Robert Gephard - Annexed Exhibits	26-27

Petitioner’s Reply Memorandum of Law	28
Respondent Town of Poughkeepsie’s Reply to Counterclaims	29
Affidavit of Joshua E. Mackey, Esq.	30

Upon the foregoing papers it is hereby ORDERED that the petitioner’s application is denied, the petition/complaint is dismissed, and all counterclaims asserted by the parties are dismissed. All other requested relief is denied.

The instant litigation arises out of a multi-family residential project proposed by respondent Page Park Associates, LLC to be constructed in the Town of Poughkeepsie, Dutchess County, New York. The project, commonly referred to as “Fairview Commons”, is located within the Fairview Fire District. Petitioner Board of Fire Commissioners of the Fairview Fire District (“Fairview Fire District”) alleges three causes of action in its petition/complaint. Petitioner in the first cause of action claims that respondent Poughkeepsie Planning Board “failed to comply with SEQRA” in issuing a negative declaration on August 21, 2014. (*Verified Petition*, page 10.) Petitioner in its second cause of action alleges that the Poughkeepsie Planning Board “failed to comply with SEQRA” in granting respondent Page Park Associates, LLC a Land Contour Permit on August 21, 2014. (*Verified Petition*, page 13.) Finally, petitioner in its third cause of action alleges that the Poughkeepsie Planning Board’s August 21, 2014 determination recommending favorable consideration of the PROD designation must be annulled because the Planning Board “failed to comply with SEQRA.” (*Verified Petition*, page 13.)

The respondents have served answers raising the affirmative defense/objection in point of law of lack of standing. “The standing of a party to seek judicial review of a claim or controversy is a threshold matter which must be resolved by the court before the merits of the application may be considered. (see *New York State Assn. of Nurse Anesthetists v. Novello*, 2 NY3d 207, 211[2004]; *Society of Plastics Industries v. County of Suffolk*, 77 NY2d 761 [1991]). Whether a person seeking relief from a court is a proper party to request an adjudication ‘is an aspect of justiciability which must be considered at the outset of any litigation.’ (*Roberts v. Health and Hospitals Corporation*, 87 AD3d 311, 318 [2011], citing

*Matter of Dairylea Coop. Inc. v. Walkley*, 38 NY2d 6, 9 [1975] ). Standing is thus a threshold determination that allows a litigant access to the courts to adjudicate the merits of a particular dispute that otherwise satisfies other justiciability criteria. (*Saratoga County Chamber of Commerce, Inc. v. Pataki*, 100 NY2d 801, 812 [2003] ). Standing is critical because a court ‘has no inherent power to right a wrong unless thereby the civil, property or personal right of the plaintiff in the action or the petitioner in a proceeding is affected.’ *Society of Plastics Indus., Inc. v. County of Suffolk*, *supra* at 772 [internal quotation marks omitted]. )”. (*Matter of County Oil Company, Inc. v. New York City Department of Environmental Protection*, 34 Misc.3d 1231 (A) (N.Y. Sup., 2012), *affirmed* 111 AD3d 718 (2<sup>nd</sup> Dept., 2013). )

“New York has adopted a two-part inquiry for determining whether a party has standing to challenge a governmental action. (see *New York State Assn. of Nurse Anesthetists v. Novello*, 2 NY3d at 211.) The petitioner must show (1) an ‘injury-in-fact’ and (2) that the alleged injury falls within ‘the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the agency has acted.’ (*Roberts v. Health & Hosps. Corp.*, *supra* at 5, quoting *New York State Assn. of Nurse Anesthetists*, 2 NY3d at 211; see also *Matter of Colella v. Board of Assessors*, 95 NY2d 401, 409-410 [2000]. )” (*Matter of County Oil Company, Inc. v. New York City Department of Environmental Protection*, 34 Misc.3d 1231 (A) (N.Y. Sup., 2012), *affirmed* 111 AD3d 718 (2<sup>nd</sup> Dept., 2013). ) “Generally, standing to challenge compliance with SEQRA turns on a showing by the challenger that it has sustained an injury-of-fact different from that of the public at large and one that falls within the zone of interest protected by SEQRA (see *Society of Plastics Indus., Inc. v. County of Suffolk*, *supra*). With respect to SEQRA claims in particular, a challenger ‘must demonstrate that it will suffer an injury that is environmental and not solely economic in nature.’ ” (*Id.* quoting *Matter of Mobil Oil Corp. v. Syracuse Indus. Dev. Agency*, 76 NY2d 428, 433 [1990] and citing *Society of Plastics Indus., Inc. v. County of Suffolk*, *supra*).

In the instant matter, the petitioner has “failed to make any showing that it would indeed suffer a specific or direct environmental harm as a result of the proposed project.” (*Matter of Village of Canajoharie v. Planning Board of Town of Florida*, 63 AD3d 1498,

[\* 5]

1501 (3<sup>rd</sup> Dept., 2009) citing *Matter of Mobil Oil Corp. v. Syracuse Indus. Dev. Agency*, 76 NY2d 433-434, 559 NYS2d 947, 559 NE2d 64). Rather, any harm suffered would be economic in nature.

Petitioner's letter of March 18, 2014, annexed as Exhibit G to petitioner's verified petition, states, *inter alia*, as follows:

"The project is located in the Fairview Center zoning district, and will also be located within the Planned Residential District Overlay Zone.

As you know, the Fairview Fire District continues to be under considerable financial pressure as a result of services it provides to tax-exempt properties in the District. We are concerned that the proposed project may have significant impacts on the district's ability to maintain services, both impacts that result from this individual project, and from the cumulative impacts of this project when considered in the context of the other development that has taken place in the District, such as Pendell Commons and the Dutchess Community College Dorms. Additional there are multiple projects pending in the near future, such as the proposed dorm project at Marist.

Overall, between funding constraints and the anticipated increase in services that will be required by these projects, it appears that the District will be hard pressed to maintain equipment and staffing levels to continue current levels of service."

(*Verified Petition*, Exhibit G.)

Petitioner's counsel's May 7, 2014 letter, annexed as Exhibit H to petitioner's verified petition, provides as follows:

"At the request of the Board of Fire Commissioners of the Fairview Fire District, I write to follow up on our May 1, 2014 discussion about the Fairview Commons Project.

As we all realize, the Fairview Fire District is facing significant challenges in meeting the existing service requirements of the District, which includes service to several large institutions with considerable demand, with its constrained tax base.

Moreover, several new projects are proposed in the District, which will significantly increase the level of services it must provide.

The Board of Fire Commissioners is working to get out ahead on new projects and determine whether and how they can meet the increased needs for fire and ambulance services by increasing its participation in the SEQRA review process. The goal of the Board is to work with its municipal partners during the SEQRA review of land use projects to understand the impacts that those projects will have on District services, identify opportunities to mitigate those impacts, and work with applicants to constructively address impacts and mitigation.

To that end, the District's March 18, 2014 letter explained its concern about the impact of the Fairview Commons project. The response of the applicant's engineer acknowledges that existing conditions are challenging the District's ability to provide services, but does not acknowledge or address the services that this project will require. . .

Moreover, the proposed multi-story buildings in Fairview Commons will require that the District send its ladder truck to fire calls. The District's existing ladder truck is on schedule for replacement: increasing the frequency of runs it makes will not only increase maintenance, but reduce its service life. This will force the District to accelerate the replacement schedule.

In sum, it seems clear that the impact on the District's resources will be significant.

Even if Fairview Commons is only considered by itself, it appears that the District will have to expand its capacity to serve this project. However, there are other significant projects nearing approval: Marist College is building a dorm and the Dutton project includes condominiums [sic] units in the District . . . Given the proximity of the project to Marist College, the District is understandably concerned about the prospect that the project could be acquired by Marist and converted to tax-exempt student housing. The District is aware that the Planning Board is working to develop a restrictive covenant that requires the units in the project to be available to the general public.

The District appreciates the Town's effort to preserve the taxable status of the

[\* 7]

project, and anticipates that the Planning Board will encourage this applicant and others to work with the District on other appropriate mitigation for those impacts.

We note that both Pendell Commons and Dutchess Community College did agree to make contribution to the District that helped mitigate the impact of those projects.” (*Verified Petition*, Exhibit H.)

Petitioner’s counsel’s letter dated June 10, 2014, annexed as Exhibit I to petitioner’s verified petition, states, *inter alia*,

“At the request of the Board of Fire Commissioners of the Fairview Fire District, I write in follow up on our May 7, 2014 letter on SEQRA review issues concerning the Fairview Commons project . . .

Chairman Gephard explained that the District, which already faces significant challenges in meeting the existing service requirements of the District due to the constrained tax base, is now aware of several projects, including Fairview Commons, the Dutton project, the Hudson Heritage project that was recently presented to the Town, and a dormitory project, that have significant residential components. Some are at various stages of the land use review process, and some are still in the internal planning process.

To meet the additional demand for fire and medical services that is anticipated from these projects, the District will need to make capital improvements to the firehouse, acquire and upgrade equipment, and add a significant number of staff positions . . .

While Mr. Page noted that the Fairview Commons project is intended to be fully taxable, the tax payments will lag the costs incurred to make sure the District can safely provide the necessary services.

There was discussion about the need for a capital contribution by Fairview Commons and other developers to offset the significant impact on the District. Chairman Gephard and Chief Maeder pointed to the contributions made by Pendell Commons and Dutchess County Community College to help defray the costs of service.

It was noted that those payments were made in part to offset the assessment of all or part of those projects as tax-exempt, and that the present need for a capital improvement payment differs in purpose and scope. Chairman Gephard emphasized that the District's intent was to work out a metric that would be fair and equitable to those proposing a project in the District that creates added needs for services, while not transferring the cost of meeting those needs to the existing taxpayers.

There was discussion of an appropriate metric to fairly apportion those costs among the projects as they undergo review. There was also recognition that the Fairview Commons project is presently undergoing review, and that the developer would prefer to avoid or minimize any unnecessary impact on the ongoing review of this project.

Chairman Gephard indicated that the District will endeavor to better quantify the impact of Fairview Commons on fire and ambulance services, and that he anticipates the Board of Fire Commissioners will work with the developer to constructively address impacts and mitigation, mindful that the conclusion will be a precedent for other projects . . .

At its June 3, 2014 meeting, the Board of Fire Commissioners determined that it will work with the Board's consultants to develop appropriate mitigation for the fiscal impact of proposed projects, so that the impact of each project, and the cumulative impacts of anticipated projects, can be addressed in the SEQRA process.

While the Board of Fire Commissioners does not wish to unduly delay the Planning Board's review of the proposed Page Park Associates Fairview Commons Project, the available information demonstrates that the cumulative impact of this project, and others now in, or about to enter, the land use review process, will have a significant adverse impact upon the District's ability to provide fire protection and emergency medical services to the residents of the District.

Those impacts will not only require a substantial investment in equipment and paid/volunteer staffing, but in the District infrastructure that supports those services. As you know, the District's ability to raise tax revenues for such expenditures is greatly constrained . . .

The need for mitigation is most obvious when a project would be tax exempt.

However, even when a project is proposing to pay full taxes, such as Fairview Commons, there is need for mitigation, as the District has to provide staff and equipment to meet a project's needs before tax revenues are available from the project. The Board of Fire Commissioners reiterates the point made by Chairman Gephard: the expense of serving new development cannot be imposed on the District's existing taxpayers.

While the Board of Fire Commissioners appreciates that the Fairview Commons developer has engaged in constructive discussion with representatives of the Board of Fire Commissioners, that discussion has not yet advanced to the point where the Board of Fire Commissioners can consider that the impacts have been adequately addressed.

Unless and until the project sponsor and the District enter into a written agreement setting forth appropriate mitigation, including [but not limited to] a restrictive covenant that implements the project sponsor's representation that the project will remain on the tax rolls, it is the Board of Fire Commissioners' view that the only appropriate determination of significance by the Lead Agency would be a positive declaration.

However, the Board of Fire Commissioners is committed to working with the project sponsor to develop fair and equitable mitigation measures for this project's fair share of those impacts. If an appropriate written and fully executed mitigation agreement is provided by the project sponsor, the Lead Agency could make an appropriate SEQRA determination.

The Board of Fire Commissioners is hopeful that it will be able to reach an agreement with the Fairview Commons developer on appropriate mitigation by the Board's July 1<sup>st</sup> meeting.

As we previously noted, the District is also concerned about the prospect that the project could be acquired by Marist and converted to tax-exempt student housing. Mr. Page provided assurances that the project would remain on the tax rolls, and therefor that [*sic*] the developer would provide a restrictive covenant that requires the units in the project to be available to the general public.

To ensure that such a covenant is effective, the District requests that the Town

require such covenant to include language that binds the owner and its successors in interest to pay all ad valorem taxes due to the applicable taxing jurisdictions, based upon the full assessed value of the Premises, notwithstanding that the Premises is otherwise eligible for or has received any tax exemption authorized by Section 490 of the Real Property Tax Law.” (*Verified Petition*, Exhibit I.)

“The essence of the petitioners’ SEQRA challenge [is] that the [respondent Planning Board] failed to consider the financial effects which an influx of [residents] living in the proposed project would have upon the petitioner [Fire] District.” (*Matter of Valhalla Union Free School Dist. v. Board of Legislators of County of Westchester*, 183 AD2d 771, 772 (2<sup>nd</sup> Dept., 1992).) The petitioner complains that an increase in the number of residents would cause an increase in service calls resulting in a financial burden on the Fire District. However, since “ ‘economic injury [alone] does not confer standing to sue under SEQRA’ (*Society of Plastics Indus. v. County of Suffolk*, 77 NY2d at 777, 570 NYS2d 778, 573 NE2d 1034), petitioner lack[s] standing to challenge the adequacy of the SEQRA process concerning the proposed project.” (*Matter of Village of Canajoharie v. Planning Board of Town of Florida*, 63 AD3d 1498 (3<sup>rd</sup> Dept., 2009) citing *Matter of Widewaters Rte. 11 Potsdam Co., LLC v. Town of Potsdam*, 51 AD3d 1292, 1294, 858 NYS2d 820 [2008]; *Matter of Nature’s Trees v. County of Suffolk*, 293 AD2d 543, 544, 740 NYS2d 419 [2002], *lv. denied* 98 NY2d 608, 746 NYS2d 691, 774 NE2d 756 [2002]; *Matter of Nature’s Trees v. County of Nassau*, 293 AD2d 544, 545-546, 740 NYS2d 417 [2002], *lv. denied* 98 NY2d 608, 746 NYS2d 691, 774 NE2d 756 [2002]; *Matter of Blue Lawn v. County of Westchester*, 293 AD2d 532, 533, 740 NYS2d 404 [2002], *lv. denied* 98 NY2d 607, 746 NYS2d 691, 774 NE2d 756 [2002]; *Matter of Bridon Realty Co. v. Town Bd. of Town of Clarkstown*, 250 AD2d 677, 677-678, 672 NYS2d 887 [1998], *lv. denied* 92 NY2d 813, 681 NYS2d 474, 704 NE2d 227 [1998]; *Matter of Valhalla Union Free School Dist. v. Board of Legislators of County of Westchester*, 183 AD2d 771, 772-773, 583 NYS2d 503 [1992], *lv. denied* 80 NY2d 758, 589 NYS2d 309, 602 NE2d 1125 [1992].)

In any event, even assuming that the petitioner has standing, judicial review of the Planning Board’s SEQRA determination is “limited to whether the determination was made

[\* (1)]

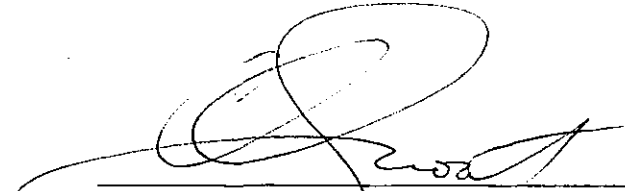
in accordance with lawful procedure and whether, substantively, the determination ‘was affected by an error of law or was arbitrary and capricious or an abuse of discretion’ ” (*Akpan v. Koch*, 75 NY2d 561, 570 [1990], quoting CPLR 7803[3]). In applying this standard “it is not the role of the courts to weight the desirability of the proposed action, choose among alternatives, resolve disagreements among experts, or substitute its judgment for that of the agency” (*Fisher v. Guiliani*, 280 AD2d 13, 19-20 [1<sup>st</sup> Dept., 2001]). Rather, judicial review is limited to a determination as to whether the lead 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 [citations omitted]” (*Id.*). Since it is not the court’s role to evaluate de novo the data presented to the agency, the court must generally be guided by a rule of reason and refrain from substituting its judgement for that of the agency. (*See Akpan, supra*).

Here, the Court finds that the Planning Board reasonably exercised its discretion in issuing a negative declaration that the proposed project would have no significant effect on the environment, thus obviating the need for an environmental impact statement. The Planning Board “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 Valhalla Union Free School District v. Board of Legislators of the County of Westchester*, 183 AD2d 771, 773 (2<sup>nd</sup> Dept., 1992) citing *Akpan v. Koch, supra*, 75 NY2d at 570, 555 NYS2d 16, 554 NE2d 53; *Matter of Jackson v. New York State Urban Dev. Corp.*, 67 NY2d 400, 417, 503 NYS2d 298, 494 NE2d 429.) Given the in-depth analysis of environmental impact, the Planning Board’s determination cannot be considered arbitrary and capricious or an abuse of discretion (see CPLR 7803[3]; *Akpan, supra*).

For all of the foregoing reasons, the petitioner’s application must be denied and the petition/complaint must be dismissed.

So Ordered.

Dated: April 17, 2015  
Poughkeepsie, New York



HON. CHRISTINE A. SPROAT  
Supreme Court Justice

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