

<b>Matter of Wyandanch Union Free Sch. Dist. v Town of Babylon Indus. Dev. Agency</b>
2021 NY Slip Op 34301(U)
March 29, 2021
Supreme Court, Suffolk County
Docket Number: Index No. 609647/2020
Judge: Carmen Victoria St. George
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**SUPREME COURT – STATE OF NEW YORK  
TRIAL TERM, PART 56 SUFFOLK COUNTY**

**PRESENT:**

*Hon. Carmen Victoria St. George*  
**Justice of the Supreme Court**

x

**In the Matter of the WYANDANCH UNION FREE  
SCHOOL DISTRICT, WYANDANCH UNION FREE  
SCHOOL DISTRICT BOARD OF EDUCATION, and  
JAMES CRAWFORD, Individually and as President of  
the Board of Education of the Wyandanch Union Free  
School District,**

**Index No.  
609647/2020**

**Petitioners,**

**Motion Seq:  
001 MD**

**-against-**

**Decision/Order**

**TOWN OF BABYLON INDUSTRIAL  
DEVELOPMENT AGENCY, ALBANESE  
DEVELOPMENT CORPORATION and WR  
COMMUNITIES-D, LLC,**

**Respondents,**

**For a Judgment Pursuant to Article 78 of the New York  
Civil Practice Law and Rules.**

The following electronically filed papers were read upon this motion:

Notice of Motion/Order to Show Cause.....	1-13
Answering Papers.....	21-47; 48-53
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Petitioners seek to have this Court determine that the February 26, 2020 resolution of the Town of Babylon Industrial Development Agency (TOBIDA) erroneously authorized and granted the 94-unit senior residential housing facility (the project) to be constructed by WR Communities-D, LLC (WR) certain financial assistance pursuant to New York General Municipal Law Article 18-A (the New York State Industrial Development Agency Act (the Act)).

Respondents Albanese Development Corporation (ADC) and WR jointly oppose the requested relief, as does respondent TOBIDA.

Petitioners contend that TOBIDA's authorization was affected by an error of law, and was therefore *ultra vires* and null and void, because residential apartment buildings are not included in the types of projects eligible for financial assistance under the Act. Petitioners make this application pursuant CPLR § 7803 (3), asserting that, "[t]he singular question before this Court is whether Respondent TOBIDA's action was, in fact, *ultra vires*, and the Court should answer that question in the affirmative."

This Court disagrees with petitioners' assertion. The petition must be dismissed on its merits, for the reasons that follow.

CPLR § 7803 (3) provides in pertinent part that the only questions that may be raised in a proceeding under this article are "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. . ."

"Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Pell v. Board of Education of Union Free School District No. 1*, 34 NY2d 222, 231 [1974]). The appropriate test is whether the administrative determination lacks a rational basis (*Id.*). An agency's action need only be supported by a rational basis for it to be upheld (*Matter of Jennings v. Commissioner, NYS Department of Social Services*, 71 AD3d 98, 109 [2d Dept 2010]). Furthermore, an agency's interpretation of the statute it is charged with enforcing or implementing is entitled to "great weight, to the extent that the interpretation relies on the special competence which the agency is presumed to have developed in its administration of the particular statute" (*Id.*). If the agency's determination is rationally based, a reviewing court may not substitute its judgment for that of the agency, even if the reviewing court may have decided the matter differently (*Flacke v. Onondaga Landfill Systems, Inc.*, 69 NY2d 355, 363 [1987]; *Savetsky v. Board of Zoning Appeals*, 5 AD3d 779, 780 [2d Dept 2004]). A reviewing court may not weigh the evidence or reject the agency's determination where the evidence conflicts and room for a choice exists (*Toys "R" Us v. Silva*, 89 NY2d 411, 424 [1996]).

Here, the project at issue is part of a much larger Wyandanch Downtown Revitalization Plan/Urban Renewal Plan with which petitioners do not take issue. The process for implementing the Plan began in 2004, and respondent ADC was chosen as the Master Developer in 2011. As part of the overall Plan, a five-story, 91-unit affordable residential building with ground floor retail space, a four-story, 86-unit affordable residential building with ground floor retail space, and a five-story, 124-unit affordable residential building have been completed by WR/ADC. The project at issue is a 94-unit, 100% affordable residential building to be leased to tenants who are 62 years of age or older.

It appears that the petitioners take issue with the fact that TOBIDA has granted WR financial assistance/benefits to build the project at issue in the form of what are known as Payments In Lieu Of Taxes (PILOT) (*General Municipal Law § 854 [17]*). Gina Talbert, Ed.D., Superintendent of the District's Schools, avers in her July 23, 2020 affidavit that, during the

public hearing held on the topic at issue in this application, she “shared a statement with the Babylon IDA that the development of a senior residential project has the potential to be economically beneficial to the School District. However I opposed this graduated PILOT payment schedule which would eliminate property taxes, and leave the School District with continued short falls in revenue during this economic downturn and in the future.”<sup>1</sup>

Pursuant to General Municipal Law § 858, an Industrial Development Agency (IDA) “shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreational facilities. . . and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the state of New York and to improve their recreation opportunities, prosperity and standard of living.” An IDA is a “governmental agenc[y] and instrumentalit[y],” whose purpose is to “prevent[ ] unemployment and economic deterioration” (*General Municipal Law § 852*).

Respondents contend that the subject project, residential housing for seniors, falls within the scope of the statutory definition of a project, which is stated to include, in relevant part, “any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the municipality for whose benefit the agency was created. . . suitable for manufacturing, warehousing, research, commercial or industrial purposes or other economically sound purposes” (*General Municipal Law § 854 [4]*).

Respondents specifically cite to the Opinion of the State Comptroller (85-51) wherein the Comptroller was “asked whether construction of an apartment complex is a commercial purpose within the meaning of section 854 (4) of the General Municipal Law and, thereby, a proper project for industrial development bond financing.” In that Opinion, the Comptroller wrote that, “[s]uch a determination must be made by local officials based upon all the facts relevant to the proposed project. We do note, however, that any such determination should take into account the stated purposes of the New York State Industrial Development Agency Act, that is, the promotion of employment opportunities and the prevention of economic deterioration.” Accordingly, the granting of financial benefits under the circumstances presented in the instant application is not prohibited by the Opinion, or by any authority cited by the petitioners; therefore, TOBIDA’s actions in this matter are not *ultra vires*.<sup>2</sup>

Respondents argue that TOBIDA acted within the scope of its authority in determining to provide WR with financial assistance for the project at issue since TOBIDA reviewed and considered 1) the Babylon Town Board’s 2008 resolution designating an urban renewal area and the adoption of draft blight study, 2) the Town’s 2009 resolution declaring that Downtown

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<sup>1</sup> It is undisputed that the parcel upon which the subject project is to be built has been owned by the Town of Babylon for several years; therefore, it has not been on the tax rolls, and it has been exempt from the payment of any taxes to the School District. The PILOT would require ADC to make a first payment of \$57,000 within a year after completion of the project, and the PILOT payment would increase each year over the next succeeding thirty years.

<sup>2</sup> Petitioners’ reference to New York State Attorney General Opinions from 1980 and 1981 are inapposite since TOBIDA did not authorize financial assistance for the building of a hospital or nursing home/health-related facility.

Wyandanch is appropriate for urban renewal, 3) the Town's resolution adopting environmental findings for the Downtown area/Urban Renewal Plan, 4) a lengthy report prepared with the assistance of environmental, traffic, zoning and site layout consultants finding that the entire Urban Renewal Plan, which includes the subject project, seeks to redevelop and revitalize the Downtown area by encouraging retail, office and commercial development, 5) the Long Island Regional Economic Development Council report, and 6) a 2019 report from an economist with the National Development Council determining that the Plan would generate \$4 million in real estate tax increments during the PILOT period, replace blighted property with new buildings, produce 94 units of affordable senior housing, increase disposable income of the residents and guests, support emerging retail trade, and create 90 short-term construction jobs and three full-time equivalent jobs. The economist's report further stated that, without the financial assistance in the form of PILOT, the project "would not be financially feasible," and that "[t]his IDA financial package does not create undue enrichment for the applicant."

Thus, the submitted record establishes that TOBIDA's passing of the resolution to provide financial assistance to the co-respondents for the subject project following a public hearing was not in excess of its jurisdiction, *ultra vires*, arbitrary, capricious, or an abuse of discretion. Nor was TOBIDA's action affected by an error of law that would warrant relief pursuant to Article 78.

Moreover, petitioners admit that "the development of a senior residential project has the potential to be economically beneficial to the School District" (Affidavit of Gina Talbert, Ed.D.), thereby confirming that TOBIDA's determination was squarely in accord with the Act and not detrimental to petitioners.

Since the subject project promotes employment opportunities and serves to prevent economic deterioration as part of the overall Wyandanch Downtown Revitalization Plan/Urban Renewal Plan, in an area within TOBIDA's scope and ambit, TOBIDA's February 26, 2020 determination is rationally based.

Accordingly, the petition is denied, and the proceeding is hereby dismissed as to all respondents.

The foregoing constitutes the Decision and Order of this Court.

Dated: March 29, 2021  
Riverhead, NY



CARMEN VICTORIA ST. GEORGE, J.S.C.

FINAL DISPOSITION [ X ] NON-FINAL DISPOSITION [ ]