

PF Dev. Group, LLP v Town of Brunswick

2024 NY Slip Op 34716(U)

January 8, 2024

Supreme Court, Rensselaer County

Docket Number: Index No. EF2023-273823

Judge: Jr., Richard J. McNally

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At a IAS Term of the Rensselaer County Supreme Court, held in and for the County of Rensselaer, in the City of Troy, New York, on the 9th day of January, 2024.

PRESENT: HON. RICHARD J. MCNALLY, JR.
JUSTICE

STATE OF NEW YORK
SUPREME COURT COUNTY OF RENSSELAER

PF DEVELOPMENT GROUP, LLP and DAVE LEON,

Plaintiffs,

-against-

DECISION & ORDER
Index No. EF2023-273823

TOWN OF BRUNSWICK and TOWN BOARD OF
THE TOWN OF BRUNSWICK,

Defendant.

APPEARANCES: JOHNSON & LAWS, LLC
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MCNALLY, J.

Dave Leon, plaintiff in this matter and owner of PF Development, LLC, challenges the adoption of Local Law No. 8 of 2022 of the Town of Brunswick (hereinafter “Local Law No. 8”) by the Town Board of the Town of Brunswick (hereinafter “Town Board”). Plaintiff seeks declaratory relief invalidating Local Law No. 8 and the reinstatement of Local Law No. 1 of 2017 of the Town of Brunswick (hereinafter “Local Law No. 1) on the basis that the adoption of Local Law No. 8 was irrational, arbitrary and capricious, and in violation Town Law § 263. Pending before this Court is defendant’s motion to dismiss pursuant to CPLR 3211 [a] [2] and CPLR 3211 [a] [7]. For the reasons stated below, Local Law No. 8 is declared valid.

Plaintiff is a real estate developer and the sole member of PF Development, LLC, with a business address of 1259 Gordon Road, Rotterdam, New York 12303. The Town Board is the governing body of the Town of Brunswick, a municipal corporation and political subdivision of New York State, with an address of 336 Town Office Road, Troy, NY 12180. The Town Board consists of the supervisor and town council members of the Town of Brunswick, and possesses the power to adopt zoning regulations pursuant to Town Law § 60 and Town Law § 264. Plaintiff, through PF Development, LLC, owns a fee simple of lands located in the Town of Brunswick on Hoosick Street, collectively known as “660 Hoosick Street.” On November 10, 2017, plaintiff submitted an application to the Town Board to develop both the “B-15” commercial zone and “R-25” residential zone of this parcel.

Plaintiff, through an application for a special use permit, sought to build a 200-unit apartment complex on the portion of the parcel zoned R-25. This apartment complex was to include five two-story apartment buildings with 425 parking spaces, a community clubhouse, and private recreational facilities, all on approximately 15.3 acres of land. The then-current Local

Law No. 1 allowed for special use permit applications for such multifamily structures for land that was zoned R-25. Plaintiff withdrew his special use permit application for the residential part of the project on December 27, 2019, and proceeded with the now-completed commercial portion of the project on the portion zoned B-15.

On December 19, 2022, the Town Board adopted Local Law No. 8, which imposed new density requirements and slope restrictions on land use. At the center of this case is that Local Law No. 8's density and slope requirements for land zoned R-25 ultimately prevent plaintiff from building his desired apartment complex. At issue is the ripeness of this case, whether plaintiff exhausted his administrative remedies, and whether the Town Board complied with the Town of Brunswick's comprehensive plan when adopting Local Law No. 8.

Ripeness and Administrative Remedies

Where a plaintiff's declaratory relief action is directed at the legislative action taken by a town board in enacting a zoning law, and not at any administrative action, then the challenge that plaintiff failed to exhaust his administrative remedies must be rejected (*Dodson v Town Board of Town of Rotterdam*, 119 NY3d 590, 593 [3d Dept 2020]). When current plans for a project may eventually be altered the ripeness challenge must also be rejected (*Id.*). A zoning enactment is a legislative action that is properly challenged through declaratory relief (*Id.*).

Plaintiff does not have an active application in front of the Town Board. Therefore, the ripeness of this matter and the question of whether plaintiff failed to exhaust his administrative remedies are extraneous.

The Town of Brunswick's Compliance with the Comprehensive Plan

Where there are no questions of fact and the only issues presented are questions of law and statutory interpretation, a motion to dismiss should be treated as one seeking declaratory

relief in the defendant's favor (*Id.* at 594). Here, the resolution of plaintiff's claim rests solely on the interpretation of Local Law No. 8, and the Town of Brunswick's comprehensive plan, which are questions of law that have been fully briefed by both parties (*See id.*).

A motion to dismiss pursuant to CPLR 3211 [a] [7] will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to law (*AG Capital Funding Partners. L.P. v State St. Bank and Trust Co.*, 5 NY3d 582 [2005]). However, when a party moves to dismiss the complaint in a declaratory judgment action, the court should make a declaration, even though the plaintiff is not entitled to the relief he seeks; a mere dismissal is not appropriate (*Dodson*, 119 NY3d at 594). "Upon such a motion, a court is not always precluded from addressing the parties' substantive claims. Where issues of fact are presented, the court should deny a motion to dismiss if the complaint 'is sufficient to invoke the court's power to render a declaratory judgment...as to the rights and other legal relations of the parties in a justiciable controversy'" (*Id.* quoting *North Oyster Bay Baymen's Assn. v Town of Oyster Bay*, 130 AD3d 885, 890 [2d Dept 2015]).

Town Law § 263 requires that zoning regulations be made in accordance with a comprehensive plan (*Bovee v Town of Hadley Planning Board*, 160 AD3d 1102, 1104 [3d Dept 2018]). A comprehensive plan does not need to be contained in a single document, and does not need to be written at all (*Id.* at 1105). Instead, the court may satisfy itself that a municipality has a comprehensive plan and that the municipality's authorities are acting in the public interest by furthering it by examining all available and relevant evidence of the municipality's land use policies (*Id.*). Zoning determinations enjoy a strong presumption of validity, and the plaintiff

must show that the rezoning was arbitrary, unreasonable, or unlawful (*Boyles v Town Board of Town of Bethlehem*, 278 AD2d 688, 690 [3d Dept 2000]; *See Dodson*, 119 NY3d at 595).

Here, it is undisputed the Town of Brunswick has a comprehensive plan. The Town of Brunswick published their comprehensive plan in 2013, and the record shows this plan was created to provide an overall framework and vision for the community. The comprehensive plan states a number of goals that were created to further the vision of maintaining the Town of Brunswick's small town, rural qualities. Some of the relevant goals of the comprehensive plan are as follows:

Natural and Agricultural Resources

- Goal 1: Provide safeguards to protect sensitive environmental areas and water bodies.
- Goal 2: Allow for the protection of farmland and rural lifestyles.
- Goal 3: Maintain and support a strong agricultural economy in Brunswick.

Housing

- Goal 1: Promote a mix of quality housing options that are appropriately located, available to a range of income levels, and meet the needs of existing and future Town residents.
- Goal 2: Preserve and enhance the Town's existing residential neighborhoods.

Transportation

- Goal 1: Improve and maintain the integrity and capacity of the Town's major arteries, address traffic congestion issues, and improve accessibility for residents and business patrons.

Local Land Use Regulations

- Goal 1: Accommodate a balanced mix of recreational, residential, agricultural, commercial and industrial uses while maintaining the overall existing rural character of the Town.

Goal 4: Encourage future development that minimizes negative impacts on natural resources, in order to safeguard the health, safety and welfare of the community.
(NYSCEF Docketed No. 25 at 11-12).

Recommendations in the plan set forth ways in which the Town of Brunswick is continuing to further these goals, as well as new ways these goals can be considered and explored. Notably, one of these recommendations encourages new high density housing “in areas that are served by water and/or sewer, and within convenient proximity to community resources, services, transportation and amenities to avoid sprawl and preserve rural character” (*Id.* at 22).

Other notable recommendations within the comprehensive plan include complying with regulations to “protect and preserve water quality in the town;” encouraging new development to preserve the Rensselaer Plateau for aesthetic purposes; identifying ways to support, protect and preserve the many environmental assets of the Rensselaer Plateau; “seek solutions to current vehicular traffic issues on Rt. 7;” and significantly “*Review and revise the Zoning Ordinance, Site Plan Review and Subdivision Regulations, as may be appropriate, to ensure that natural features such as water bodies, wetlands, and historic resources are protected.*” (*Id.* at 20, 23, 30, emphasis added).

Here, the comprehensive plan encourages high density housing in specific areas that have access to water and sewer systems (*Id.* at 22). The comprehensive plan also wants to preserve the rural character of the Town of Brunswick, protect its environment and natural resources, protect existing neighborhoods, and provide its citizens with safe and efficient infrastructure (*See id.* at 11-30).

When implementing Local Law No. 8, the Town Board had undertaken an investigation to determine whether the then-current Local Law No. 1 had sufficiently regulated two-family and multifamily dwellings in a manner that advanced overall public health, safety, and welfare, and

preserved community character (NYSCEF Docketed No. 15 at 2-4). The Town Board found that a significant number of multifamily dwellings had been constructed in the Town of Brunswick, and that a significant number of additional multifamily dwelling units had been approved under the previous Local Law No. 1 and were pending construction (*Id.*).

The Town Board conducted an analysis of these existing and future multifamily dwellings, and ultimately implemented the density and slope requirements at issue. In implementing Local Law No. 8, the Town Board took several issues into consideration, including population density, strain on public water and sewer infrastructure, increased traffic and transportation infrastructure impairment, the overall health, safety, and welfare of the inhabitants of the Town of Brunswick, and the preservation, maintenance, and enhancement of the quality of life of residents and property owners of the Town of Brunswick (*Id.*).

The Town of Brunswick's land use policies show the Town Board acted in accordance with the comprehensive plan in adopting Local Law No 8. There is nothing to indicate the Town Board acted arbitrarily, unreasonably, unlawfully, or in any other way that would overturn the strong presumption of validity that is given to a municipality's zoning determinations.

The preservation of rural character and the natural environment is a legitimate and lawful reason to implement such requirements when done in accordance with a town's comprehensive plan (*See Greenport Group, LLC v Town Board of Town of Southold*, 167 AD3d 575, 579-580 [2d Dept 2018]).¹ Municipalities may enact a wide range of land use restrictions or controls to enhance quality of life by preserving the character and desirable aesthetic features of the community (*Bovee*, 160 AD3d 1102 at 1104). While the comprehensive plan encourages high

¹ The Second Department case *Greenport Group, LLC v Town Board of Town of Southold*, 167 AD3d 575 [2d Dept 2018] presents a similar issue in which a subject property was rezoned to a lower density threshold. In *Greenport*, the Second Department held this type of rezoning was not arbitrary and was consistent with the Town's comprehensive plan where the Town's objectives included the preservation of rural character and the natural environment.

density housing in specific areas, the Town Board acted within its discretion and in accordance with the comprehensive plan when it implemented Local Law No. 8.

Spot Zoning

This Court is unpersuaded by plaintiff's contention that his parcel has been singled out by Local Law No. 8. He alleges that "few, if any other parcels in the R-25 zoning district, besides PF Development's, even have slopes greater than 12%" (NYSCEF Docketed No. 34 at 17).

Generally, town land use policies must be in compliance with a town's comprehensive plan in order to limit ad hoc or "spot" zoning, which affects the land of only a few without proper concern for the needs or design of the entire community (*See Matter of Gernatt Asphalt Prods. v Town of Sardinia*, 87 NY2d 668, 685 [1996]). If a zoning amendment is consistent with the municipality's comprehensive plan, it is not spot zoning (*Dodson*, 119 NY3d 590 at 594-595). The mere fact that a zoning change may only affect a single property, without more, does not constitute spot zoning (*Youngewirth v Town of Ramapo Town Board*, 65 NY3d 540, 547 [2d Dept 2017]).

Plaintiff's assertion that his parcel has been spot zoned is conclusory. The Town Board implemented Local Law No. 8 with proper concern given for the needs and design of the entire community, and complied with the comprehensive plan while doing so.

Impropriety

Plaintiff's assertion that the planning board chairman injected his own personal bias into Local Law No. 8 is irrelevant. Where a public official's substantial conflict of interest is inevitable in a zoning amendment process, the public official should not act (*Evans v City of Saratoga Springs*, 202 AD3d 1318, 1324 [3d Dept 2022]).

The planning board chairman lives adjacent to plaintiff's parcel, and had recused himself from prior applications involving plaintiff's development of 660 Hoosick Street so as not to cloud the planning board's review process (NYSCEF Docketed No. 11 at 7). However, zoning amendments are passed legislatively by the Town Board, to which the planning board plays only an advisory role. The planning board chairman does not sit on the Town Board. Whatever advisory role a planning board member may have played in the adoption of Local Law No. 8 does not give rise to an instance in which a substantial conflict of interest is inevitable, let alone an instance sufficient to invoke a Court's power to invalidate legislation of the elected Town Board.

North Shore

Lastly, plaintiff relies on *North Shore Steak House, Inc. v. Board of Appeals of Inc. Village of Thomaston*, 30 NY2d 238 [1972] to assert that high density housing is in harmony with the comprehensive plan because the Town Board allowed for special use permits for multifamily dwellings under Local Law No. 1. This is misguided. *North Shore* involves facts in which a plaintiff was incorrectly denied a special use permit on the grounds that the use did not comply with the comprehensive plan (*Id.* at 243). The Court of Appeals held that in allowing applications for a special use permit, this is tantamount to a presumption the use being applied for is consistent with the comprehensive plan (*Id.*).

Having allowed for special use permit applications for multifamily dwellings under Local Law No. 1 does not make it so the Town Board is then perpetually barred from making amendments to their zoning law. Furthermore, plaintiff was never denied a special use permit; he withdrew his application in 2019 (*See* p. 2-3, *supra*).

Conclusion

This Court considers the remaining arguments to be without merit. Based on the foregoing, the Town Board acted in accordance with the comprehensive plan when adopting Local Law No. 8, complied with Town Law § 263, and did not act irrationally, arbitrarily, or capriciously.

Accordingly, it is

ORDERED that Local Law No. 8 of the Town of Brunswick is hereby declared VALID.

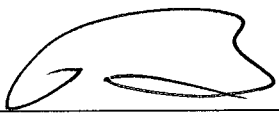
The Court has uploaded the original Decision and Order/Judgment to the case record in this matter as maintained on the NYSCEF website whereupon it is to be filed and entered by the Office of the Rensselaer County Clerk.

Counsel for the defendants are not relieved from the applicable provisions of CPLR 2220 or the Uniform Rules of Supreme and County Courts § 202.5b [h] [2], insofar as it relates to service and notice of entry of the filed document upon all other parties to this special proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

Uniform Rules of Supreme and County Courts § 202.5b [b] [2] [I] directs that service upon nonparticipating parties must be made in hard copy.

SO ORDERED!
ENTER

Dated: January 8^{pm}, 2024
Troy, New York



RICHARD J. MCNALLY, JR.
Supreme Court Justice

Papers Considered:

NYSCEF Docketed numbers 1-38.