

Matter of Ely v New York State Dept. of State
2024 NY Slip Op 35578(U)
December 13, 2024
Supreme Court, Dutchess County
Docket Number: Index No. 2024-51563
Judge: Michael G. Hayes
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X

In the Matter of

JOSEPH ELY and BRIAN BINETTI,

Petitioners,

DECISION, ORDER
AND JUDGMENT

-against-

Index No. 2024-51563

NEW YORK STATE DEPARTMENT OF STATE;
NEW YORK STATE DEPARTMENT OF STATE,
SOUTHERN REGION HUDSON VALLEY BOARD
OF REVIEW; BOB DELUCA, in his capacity
as Town of Rhinebeck Fire Inspector;
KARL DUNKENBERG; PLANNING BOARD OF
THE TOWN OF RHINEBECK; and ED MATUK,
in his capacity as Town of Rhinebeck
Building Inspector/Code Enforcement
Officer,

Respondents.

-----X

HON. MICHAEL G. HAYES, Acting Supreme Court Justice

The Court read and considered the following documents upon
these motions:

PAPERS NUMBERED (NYSCEF)

Notice of Petition.....	1	(2)
Verified Petition.....	2	(1)
Exhibits.....	3	(3-11)
Memorandum of Law.....	4	(12)
Verified Answer (Rhinebeck Respondents)..	5	(27)
Affirmation (Lyons).....	6	(28)
Exhibits.....	7	(29-30)
Affidavit (DeLuca).....	8	(31)
Affidavit (Moore).....	9	(32)
Answer (DOS Respondents).....	10	(33)
Exhibits.....	11	(34-44)

Reply (to DOS Answer).....	12	(46)
Verified Answer (Dunkenberg).....	13	(47)
Affirmation (Liguori).....	14	(48)
Exhibits.....	15	(50-51)
Memorandum of Law.....	16	(49)
Reply (to Dunkenberg Answer).....	17	(56)
Amended Answer (DOS Respondents).....	18	(57)
Exhibit.....	19	(58)
Reply (to Amended DOS Answer).....	20	(61)
Exhibits.....	21	(62-63)

This Article 78 proceeding seeks to nullify and vacate a January 19, 2024, decision of Respondent NYS Department of State, also named in the caption of this proceeding as NYSDOS Southern Region Hudson Valley Board of Review (collectively, the "Board"). The Board's decision denied Petitioners' administrative appeal from a September 7, 2023, determination by Town of Rhinebeck Fire Inspector Bob DeLuca.

The Fire Inspector's determination focused on a proposed shared private driveway that will provide access to certain residential lots as part of a conservation subdivision. After reviewing the plans and the relevant Fire Code sections, the Fire Inspector found that the dimensions, stability and design of the proposed shared driveway are adequate, and that no modifications are required for compliance with the Fire Code.

On administrative appeal, the Board found that Petitioners failed to meet their burden of proving that that the Fire Inspector's determination should be reversed. This Article 78 proceeding ensued.

BACKGROUND

Respondent Karl Dunkenberg owns a 141-acre parcel of land located in the Town of Rhinebeck (the Property). Development of the Property is currently limited to one house, which is located on a northern portion of the Property and can be accessed from Bollenbecker Road.

Dunkenberg has filed an application with Respondent Town of Rhinebeck Planning Board seeking approval of a conservation subdivision that would create four additional, approximately 3-acre buildable lots on a western portion of the Property (the "Alderkill Subdivision"). Forty-five acres of environmentally sensitive lands would also be placed in a conservation easement, to be managed by the Oblong Land Conservancy.

None of the four new lots have frontage on a Town road. Rather, these proposed lots would access Buttonwood Lane using a proposed shared common driveway (the "Alderkill driveway"). Buttonwood Lane is a cul-de-sac road owned and maintained by the Town of Rhinebeck.

Petitioner Joseph Ely owns the real property located at 19 Buttonwood Lane. Ely's lot has direct access to Buttonwood Lane, and is located at the end of the cul-de-sac approximately 600 feet past the entrance to the Alderkill driveway.

Petitioner Brian Binetti owns the real property located at 16 Buttonwood Lane. The Binetti lot is adjacent and contiguous to the Alderkill subdivision. Although the Binetti lot has a modest amount of frontage on Buttonwood Lane, the subdivision approval that created the Binetti lot precludes direct access to Buttonwood Lane over that frontage. Rather, the Binetti lot can only access Buttonwood Lane using an easement that encumbers the Property, running over a portion of the same strip of land that Dunkenberg has designated for use as the Alderkill driveway.

On June 20, 2023, the Planning Board granted conditional preliminary subdivision approval to the Alderkill Subdivision. On September 7, 2023, the Fire Inspector issued a letter confirming his prior verbal approval of the Alderkill driveway. On October 2, 2023, the Planning Board granted amended preliminary subdivision approval that incorporated the Fire Inspector's written determination.

On July 20, 2023, Petitioners commenced an Article 78 proceeding challenging the preliminary subdivision approval (Index No. 2023-52583). That proceeding has been stayed pending the outcome of this proceeding.

On or about November 17, 2023, Petitioners filed an administrative appeal challenging the Fire Inspector's September 7, 2023, written determination. The Board heard that appeal on

December 15, 2023. By written decision dated January 19, 2024, the Board sustained the determination of the Fire Inspector and denied the appeal. By this Article 78 proceeding, Petitioners challenge that administrative appellate determination.

DISCUSSION

Executive Law §381(1) compels the NYS Secretary of State to promulgate rules and regulations for the administration and enforcement of the Uniform Fire Prevention and Building Code. The regulations adopted pursuant to this statutory mandate are contained in 19 NYCRR Parts 1201-1205.¹

Part 1205 establishes the applicable variance and appeals procedures. As to variances, the Board has the power to vary or modify the Fire Code in those cases where strict compliance is unwarranted or would otherwise entail practical difficulties or unnecessary hardship - so long as the variance or modification will not have a substantial adverse effect on health, safety and security, and so long as a safe and proper alternative exists [§1205.3(a)(1)]. As to administrative appeals, the Board is

¹ The Uniform Fire Prevention and Building Code is broken into separate codes organized by topic: a Building Code, a Residential Code, a Fire Code, and a Fuel Gas Code. The Fire Code is the relevant code for purposes of this proceeding. The regulations contained in Parts 1201-1205 are equally applicable to the Fire Code and the other codes.

vested with the power to hear and decide an appeal from the Uniform Code determination of a local administrative official, such as the Fire Inspector. [§1205.3(a)(2)].

The Alderkill driveway seeks to provide the four new residential lots with access to Buttonwood Lane. That unpaved driveway would be approximately 1,260 feet long and 12 feet wide, not including two 20-foot wide pulloff areas that are designed to allow emergency vehicles sufficient space to pass each other. The proposed driveway also ends in a cul-de-sac with a diameter of approximately 78 feet. In addition to providing the four new lots with access to Buttonwood Lane, the Binetti lot has an easement over the first portion of the Alderkill driveway for that same purpose.

Fire Code §511.2.6 states "Driveways, and portions thereof, that serve more than four buildings shall meet the design requirements for fire apparatus access roads as specified in section 503." Fire Code §503.1 states "Fire apparatus access roads shall be provided and maintained in accordance with sections 503.1.1 through 503.1.3 and Appendix D."

Petitioners argue, *inter alia*, that the Alderkill driveway will serve more than four buildings because it seeks to provide access to the four new lots using a portion of the land that is encumbered by the Binetti lot's easement. As such, Petitioners

assert that the Alderkill driveway constitutes a fire apparatus access road, and that it must therefore comply with the design specifications of Appendix D.

Respondents deny that the Alderkill driveway qualifies as a fire apparatus access road on the grounds that the Binetti lot should be excluded from the calculation of the buildings that the Alderkill driveway will serve. Even if the fire apparatus access road design requirements arguably apply to the Alderkill driveway, Respondents argue, *inter alia*, that Fire Code §503.2.2 grants the Fire Inspector the authority to permit modifications to the required access widths, and that the Fire Inspector's decision to permit any such modifications had a rational basis.

As part of the Planning Board review process, the opinion of the Chief of the Rhinebeck Fire Department was solicited. In 2022, the Chief was Kyle Eighmy. By email dated August 9, 2022, Chief Eighmy stated "I approve the 12' driveway width with pull offs provided, this allows the fire department to have significant access in case of an emergency." Chief Eighmy's email only expressly addressed the width of the driveway and the pull offs. He did not expressly discuss its other dimensions and characteristics and did not make any reference to the NYS Fire Code.

In 2023, the Fire Chief was Bryant Knapp. In an email dated May 31, 2023, Chief Knapp stated "The Rhinebeck Fire Department recommends that the international fire codes for roads and driveways is followed. It can be found under Appendix D." Chief Knapp's email did not expressly address the dimensions or other characteristics of the Alderkill driveway, and did not offer any opinion as to whether it conformed to the NYS Fire Code.

By Memorandum dated June 26, 2023, the Planning Board's Engineer expressed the opinion that the Alderkill driveway qualifies as a fire apparatus access road. The Engineer also opined that under Appendix D, when a fire apparatus access road is more than 500 feet long, the minimum required width is 26 feet. And that when a fire apparatus access road is more than 150 feet long, the minimum required diameter of its cul-de-sac is 96 feet.

The Engineer stated that the proposed width of the Alderkill driveway is 12 feet (with two widenings to accommodate pulloffs), and that the proposed diameter of its cul-de-sac is 78 feet. Therefore, the Engineer stated that the Alderkill driveway "does not appear to meet Fire Code requirements."

The Engineer also observed that increasing the width of the Alderkill driveway would increase the disturbance to the wetland adjacent area and would require a modification to the relevant

NYSDEC Freshwater Wetlands Permit. The Engineer noted that Fire Code Appendix D102.1 states that the proposed lots "shall be accessible to fire department apparatus by way of an approved fire apparatus access road with an asphalt, concrete or other approved driving surface capable of supporting the imposed load of fire apparatus weighing up to 75,000 pounds."² The Engineer also stated "It is worth noting that our interpretation of the Fire Code requirements indicates that the Rhinebeck Fire Chief has the ability to accept alternative design requirements based on the equipment required to respond to the proposed lots."

On September 7, 2023, the Fire Inspector issued a letter responding to a request for a determination concerning the Alderkill driveway. The Fire Inspector stated that he reviewed the plans that received preliminary subdivision approval against the relevant Fire Code provisions, which he identified as §§501 (General), 502 (Definitions), 503 and Appendix D (Fire Apparatus Access Roads), and 511 (Emergency Vehicle Access). The Fire Inspector also expressly stated that §503.2.2 provides him with the authority "to require or permit modifications to the required access widths where they are inadequate for fire or

² Fire Code §202 defines *approved* as "acceptable to the fire code official." Here, that is the Town of Rhinebeck Fire Inspector.

rescue operations or where necessary to meet the public safety objectives of the jurisdiction."

After reviewing the plans, and consulting with the Building Inspector, the Fire Inspector concluded that "the common access drive, as proposed, is compliant with Section 511 of the Fire Code, includes adequate dimensions for width, measures for turnaround, turnouts, stability and design and no modifications to the plan are required for compliance."

Petitioners filed an administrative appeal seeking the reversal of the Fire Inspector's determination on two grounds: (1) the Alderkill driveway must comply, but fails to comply, with the fire apparatus access road design requirements contained in Appendix D; and (2) the Fire Inspector's authority under §503.2.2 to modify the required access widths is limited to imposing greater access widths and does not include the corresponding authority to approve a road width less than the Appendix D standard. In a supplement to their initial appellate papers, Petitioners submitted a copy of a trial court decision in an unrelated case that supports their interpretation of the limits on a Fire Inspector's authority to modify the width of a fire apparatus access road [Matter of Summit Lake Conservation Group, LLC v. Village of Philmont, Index No. E012023020459 (Sup. Ct. Columbia County October 13, 2023)].

Dunkenberg and the Planning Board filed papers with the Board opposing this administrative appeal. The Board heard the appeal on December 15, 2023.

When introducing the appeal at the December 15 hearing, the Board Chair identified the relevant Fire Code provisions as §§511.2.6, 503.1, 503.2.1, 503.2.2, and Appendix D. The Board Chair also summarized the Fire Inspector's written determination as stating that a fire code official may require or permit modifications to fire apparatus access road dimensions.

After hearing argument from the attorneys for Petitioners, the Planning Board, and Dunkenberg, Board Member Megan Smailer made the motion that served as the basis for the Board's decision. That motion cited the same Fire Code sections as the Board Chair. That motion also described the Fire Inspector's determination as stating, "in summary, that the Fire Code official may require or permit modifications to fire apparatus access road dimensions".

The Board unanimously adopted the motion and affirmed the determination, based upon its finding that Petitioners had failed to provide sufficient evidence to warrant reversal. The Board's appellate determination was reduced to written decision dated January 19, 2024, which summarized the Fire Inspector's

determination as a finding "that the Fire Code Official may require or permit modifications to the fire apparatus access road dimensions."

The Petition challenges the Board's determination on the grounds that it is erroneous as a matter of law, that it is arbitrary, capricious, and irrational, and that it failed to consider the substantial evidence and legal authority that were presented during the administrative appeal process. The Petition alleges that the Board's decision fails to contain any findings of fact supporting its determination, and that it fails to identify or analyze any of the evidence that was presented on appeal. The Petition also alleges that the Alderkill driveway is a fire apparatus access road, that it fails to comply with the NYS Fire Code, and that the Fire Inspector's determination that it complies with the Fire Code should have been reversed by the Board. The Petition also argues that the Fire Inspector does not possess the authority to modify the NYS Fire Code by approving widths that are less than those specified by the regulations, and that even if the Fire Inspector has the authority to approve a narrower road width he does not also have the authority to approve an unpaved gravel driving surface.

In their joint Answer, the Rhinebeck Respondents deny that the Alderkill driveway fails to comply with the NYS Fire Code

and dispute the allegation that it is a fire apparatus access road. They argue that the Binetti lot should be excluded from the calculations because it is a preexisting lot that will only use a small portion of the entire Alderkill driveway, and that the vast majority of the Alderkill driveway extends far beyond its connection with the Binetti easement. Thus, the Rhinebeck Respondents argue that only the four new lots should be considered for purposes of assessing whether the Alderkill driveway is a fire apparatus access road. They also argue that there is no evidence that the Alderkill driveway would prevent the Binetti lot from being served by emergency responders, and that the Board had a solid basis for its determination.

In his affidavit in support of the Rhinebeck Respondents' Answer, the Fire Inspector states that the existing driveway already provides safe emergency responder access to the Binetti lot, that the proposed Alderkill driveway serving the four new lots complies with Fire Code §511 ("Emergency Vehicle Access"), and that its dimensions are adequate for turnaround, turnouts, stability and design [Fire Code §§511.2.1-511.2.5]. However, the Fire Inspector's affidavit falls short of expressly addressing whether the Alderkill driveway is subject to the requirements of §511.2.6, which compels compliance with the design requirements

of a fire apparatus access road when a driveway, or portion thereof, serves more than four buildings. The Fire Inspector's affidavit also fails to explain the reliance his September 7, 2023, written determination placed on §503.2.2, which provides a fire code official with the authority to permit modifications to the required width of a fire apparatus access road under certain circumstances.

In her affidavit in support of the Rhinebeck Respondents' Answer, the Planning Board Chair states that the Alderkill driveway was a major topic of concern during the subdivision application process. The Planning Board Chair states that, after careful study and consideration of different options, and after consulting with local fire officials, the Alderkill driveway was identified as the best option for this conservation subdivision because it facilitates and promotes the preservation of open space and the protection of environmentally-sensitive lands.

During the December 15, 2023 appellate hearing, the attorney for the Rhinebeck Respondents also asserted that the preservation of the Town of Rhinebeck's rural character was identified as the single biggest concern when the Town last updated its comprehensive plan, that the Town does not want oversized roads that will unnecessarily disrupt the environment or the Town's rural character, and that local fire officials

have become adept at making judgments as to whether the access route for a proposed conservation subdivision is suitable for fire apparatus and emergency response purposes.

The Board's initial Answer did not expressly admit or deny any of the allegations of the Petition, other than to deny that the Board's decision was arbitrary and capricious. The Board's initial Answer characterizes the Fire Inspector's September 7, 2023, determination as either a finding that the Alderkill driveway meets the standards of the Fire Code, or that the fire code official has the authority to modify those requirements.

As a "Defense to the Petition" the Board's initial Answer notes that the Commentary to the 2018 International Fire Code suggests that a fire code official has the authority to approve lesser access-widths for fire apparatus access roads, "as done by the Town of Rhinebeck Fire Inspector." [¶8]. The Board also expressly denies that the Summit Lake trial court decision cited by Petitioners is binding precedent, and asserts that the Third Department has previously affirmed a decision of the Board that relied, *inter alia*, on the Commentary to the International Building Code [Matter of Raymond Hadley Corp. v. NYS Dep't of State, 86 Ad3d 899 (3d Dept. 2011)].

In their Reply to the Answer of the Rhinebeck Respondents and the Board, Petitioners note that the Board's Answer admits that the Alderkill driveway services five residential lots, and that it fails to comply with the fire apparatus access road width and diameter requirements of the Fire Code. Petitioners also argue that the Board and the Rhinebeck Respondents essentially concede that it is unclear whether the Fire Inspector's decision finds that the Alderkill driveway meets the applicable Fire Code standards or whether he exercised his contested authority to permit modifications to those standards. Petitioners further accuse the Board and the Rhinebeck Respondents of engaging in "revisionist history, attempting to backfill a legally-erroneous decision rendered by the Board of Review" [¶17]. Finally, Petitioners take umbrage at the Board's assertion that the Summit Lake trial court decision is currently on appeal.

In his Answer, Dunkenberg denies that the Board's decision was arbitrary and capricious or irrational and denies that the Summit Lake trial court decision applies to this dispute. He also alleges that the Court should afford deference to the Board's interpretation of the Fire Code, that Petitioners have the burden of proof of demonstrating that they are entitled to the requested relief, and that the Board has broad discretion in

its appellate capacity to "fashion suitable remedies so as to justice among the parties." [19 NYCRR §1205.4(c)]. Dunkenberg also argues that the fire code official's determination in the Summit Lake case was never appealed to the Board and, therefore, that the trial court decision should not be afforded any weight because the available administrative remedies were never exhausted.

In their Reply to the Dunkenberg Answer, Petitioners accuse Dunkenberg of engaging in a collateral attack on the Summit Lake trial court decision, and of attempting to relitigate that case. Petitioners also argue that there is no evidence in the record to support Dunkenberg's assertion that the Fire Inspector and/or the Board considered the cost of constructing a fire apparatus access road that meets the design requirements of §503 and Appendix D when rendering their respective determinations.

On July 15, 2024, the Board filed an Amended Answer. The Amended Answer attempts to cure the Board's initial failure to admit or deny the specific allegations of the Petition. One of the effects of this amended pleading was to expressly deny the allegation that the Fire Inspector lacks the ability to approve a fire apparatus access road with an access width that is less than minimums established in Appendix D.

The Amended Answer asserts two Affirmative Defenses and Objections in Point of Law. The first Defense and Objection is a nearly verbatim repetition of the "Defense to the Petition" that was pled in the initial Answer, including the assertion that the International Fire Code serves as the basis for the New York State Fire Code, and the claim that the Commentary to the International Fire Code includes a provision "to allow fire code officials the ability to allow lesser access-width dimensions for Fire Apparatus Access Roads, as done by the Town of Rhinebeck Fire Inspector" [¶15]. The first Defense and Objection also continues to deny that the Summit Lake trial court decision is binding precedent, and to instead insist that the Board's interpretation of the Fire Code is entitled to substantial deference [¶¶15,16].³

The second Defense and Objection raises a legal argument that was not advanced in the initial Answer. The Board asserts that the Petition must be denied to the extent it seeks mandamus relief compelling the Board to grant Petitioners' administrative appeal. The Board also argues that the only relief that is even

³ Although Petitioners concede that the Amended Answer was filed within the time provided by CPLR §3025(a) for as-of-right amended pleadings, Petitioners argue that the Board filed its Amended Answer after the return date of the Petition and without seeking leave of the Court as contemplated by CPLR §§ 7804(c,d). Any alleged prejudice caused by the Board's unilaterally amended pleading was sufficiently ameliorated when the Court granted Petitioners' request for leave to file a Reply to the Amended Answer.

potentially available to Petitioners would be an Order remanding the matter to the Board for further proceedings consistent with the Court's determination.

In their Reply to the Board's Amended Answer, Petitioners criticize the Board for having "abruptly changed course" by denying multiple allegations that it was deemed to have admitted in the initial Answer while offering "no explanation for this significant change in position" [¶¶3,4]. Petitioners also argue that the Amended Answer "comingled and confused the regulatory standards for review of a waiver application with that of an administrative appeal," and that no application for a variance from the fire apparatus access road design requirements has ever been presented to the Board. [¶¶11,12]. To the extent that the Board's position relies on Commentary to the 2018 International Fire Code, Petitioners argue that there is no evidence that this Commentary applies to the 2020 NYS Fire Code. Petitioners also attack the Board for its purported refusal to afford controlling judicial authority the respect it properly deserves. This argument relies heavily, if not exclusively, on Petitioners' continued insistence that the Summit Lake trial court decision is "controlling precedent" [¶¶16-23]. Finally, the Reply does not attempt to refute the Board's Second Defense and Objection

to the extent that it asserts that mandamus relief is not available in this Article 78 proceeding.

"An agency's interpretation of its regulations must be upheld unless the determination is irrational and unreasonable."

[Matter of Marzec v. DeBuono, 95 NY2d 262 (2000)]. "Judicial deference to an agency's interpretation of its rules and regulations is warranted because, having authored the promulgated text and exercised its legislatively delegated authority in interpreting it, the agency is best positioned to accurately describe the intent and construction of its chosen language." [Andryeyeva v. New York Health Care, Inc., 33 NY3d 152 (2019)]. The fact that an agency's interpretation "might not be the most natural reading of the regulation, or that the regulation could be interpreted in another way, does not make the interpretation irrational." [Matter of Elcor Health Services, Inc., v. Novello, 100 NY2d 273 (2003)].

To the extent the Rhinebeck Respondents have attempted to question whether the Board and the Fire Inspector treated the Alderkill driveway as a fire apparatus access road, Petitioners have accurately characterized those efforts as an exercise in revisionist history. The Fire Inspector's September 7, 2023, determination expressly invoked his §503.2.2 authority to modify the regulatory fire apparatus access road widths, and his

artfully drafted affidavit in this proceeding fails to explain his express reliance on that authority.

More importantly, this is an Article 78 challenge to the Board's appellate determination. When the Board Chair opened the hearing, he described the question on appeal as whether the Fire Inspector may permit modifications to fire apparatus access road dimensions. After the hearing, the motion that served as the basis for the Board's determination and its subsequent written decision both described the question on appeal as whether "the Fire Code official may require or permit modifications to fire apparatus access road dimensions." And the Board's initial Answer and Amended Answer both assert that the Commentary to the 2018 International Fire Code includes a provision "to allow fire code officials the ability to allow lesser access-width dimensions for Fire Apparatus Access Roads, *as done by the Town of Rhinebeck Fire Inspector.*" (emphasis supplied). This is clear evidence that the Board's determination relied upon, *inter alia*, its assessment of the Fire Inspector's §503.2.2 authority to permit modifications to the regulatory fire apparatus access road dimension requirements.

Petitioners' persistent attempts to paint the Summit Lake trial court decision as "controlling precedent" are equally

unavailing. While the decision of a court of coordinate jurisdiction is entitled to respectful consideration, it is not binding. [East River Realty Co., LLC v. New York State Dept. of Environmental Conservation, 22 Misc.3d 404, 413 (Sup. Ct. 2008), *aff'd* 68 A.D.3d 564 (1st Dept. 2009); Matter of DaimlerChrysler Corp. v. Spitzer, 6 Misc.3d 228, 236 (Sup. Ct. 2004), *aff'd* 26 A.D.3d 88 (3d Dept. 2005), *aff'd* 7 N.Y.3d 653 (2006)].⁴

While Summit Lake is not binding authority, it may still serve as persuasive authority. Dunkenburg argues that it should not be afforded that treatment because, *inter alia*, the fire code determination in Summit Lake was never appealed to the Board. Although Petitioners cast this argument as an improper

⁴ The Board and Petitioners also disagree over the status of a Notice of Appeal that was purportedly filed in the Summit Lake case. The Board asserts that appeal remains pending, while Petitioners assert that it is deemed dismissed because the time to perfect that appeal has expired.

Even if a Notice of Appeal had been filed from the Summit Lake decision, the status of that appeal would have no impact on whether the underlying trial court decision is controlling precedent. A trial court decision is never controlling precedent for a court of coordinate jurisdiction. In any event, the Court takes judicial notice that two different Summit Lake Article 78 proceedings were commenced and ultimately decided in Columbia County [Chateau Rive Corp. v. Enclave Dev. Assoc., 22 AD3d 445, 446 (2nd Dept 2005)].

The first proceeding was filed on September 9, 2022 (Index No. E012022018817) and was decided by Decision and Order dated January 13, 2023. That decision declined to consider the fire apparatus access road issue on the grounds that it was premature. A Notice of Appeal from that decision was filed on February 17, 2023, and assigned Index No. CV-23-0358. That is the Notice of Appeal that the parties have been pointlessly debating.

The second proceeding was filed on May 24, 2023 (Index No. E012023020459) and was decided on October 13, 2023. This second proceeding produced the Summit Lake decision that Petitioners rely upon. There is no record of a Notice of Appeal from this decision ever having been filed.

attempt to relitigate Summit Lake, the absence of administrative appellate review by the Board preceding the trial court's decision is a significant factor detracting from its persuasive weight. The principle of judicial deference to an agency's interpretation of its own regulations is rooted in the understanding that an agency is best positioned to construe the meaning and intent of the language it used when promulgating those regulations. When the Summit Lake trial court rendered a decision without the benefit of the Board's insight, it lost the opportunity to consider the promulgating agency's interpretation of that regulation - an opportunity that is especially valuable when the agency's interpretation might not be the most natural reading of the regulation but is nonetheless rational.⁵

The Summit Lake trial court decision focuses on the first part of §503.2.2, which gives the Fire Inspector the authority to require modifications to the required access widths "where they are inadequate for fire or rescue operations." However, the trial court ignored or overlooked the second part of §503.2.2, which also states that the Fire Inspector has the authority to require or permit modifications to the required widths "where

⁵ It appears that the defense of failure to exhaust administrative remedies was not asserted in Summit Lake, and thus never presented to the trial court for consideration.

necessary to meet the public safety objectives" of the Town of Rhinebeck.

Implicit in the Board's denial of Petitioners' appeal is its interpretation that §503.2.2 grants a fire code official not only the authority to require increased widths when the Appendix D widths are inadequate for fire or rescue operations, but also the separate and distinct authority to permit a decreased width for a safe alternative access way that satisfies the relevant public safety objectives. This interpretation is consistent with that of the NYS DOS Code Compliance Specialist in Summit Lake, which was summarily rejected by the trial court without the benefit of appellate review by the Board.

The Board's interpretation was also informed by an email it received from NYS DOS Senior Architect Neil Collier on December 14, 2023. That email advised that the 2018 International Fire Code provides Commentary that is applicable to the relevant fire apparatus access road section contained in the NYS Fire Code.

That Commentary states:

Fire departments respond to many types of emergency situations and the jurisdictions they serve may have traffic safety criteria that impact the design of roadways used by emergency response vehicles. This section authorizes the fire code official to require greater, or to allow lesser, access-width dimensions based on the size and maneuverability of the anticipated emergency response apparatus, including mutual-aid apparatus from neighboring communities or agencies, among other considerations.

The preface to the 2020 NYS Fire Code states that it is "a derivative work of the 2018 edition of the International Fire Code." In Matter of Raymond Hadley Corp. v. NYS Dep't of State, 86 Ad3d 899 (3d Dept. 2011), the Third Department found that the Board reasonably relied on the Commentary to the International Building Code when interpreting the NYS Building Code. Although Petitioners attempt to distinguish Raymond Hadley on the grounds that it involved the Building Code and not the Fire Code, that argument is not convincing. Both codes are components of the Uniform Fire Prevention and Building Code, and both codes are derivative works of the International Codes. Therefore, as in Raymond Hadley, the Board properly considered the Commentary to the International Fire Code when making its interpretation.

The Board's determination that §503.2.2 authorizes the Fire Inspector to permit a decreased width for an emergency vehicle access way - so long as it provides a safe alternative that meets the relevant public safety objectives - is not irrational. The Board is in the best position to interpret that regulatory language. While its interpretation might not be the most natural reading of §503.2.2, and the regulation is clearly susceptible to a different interpretation (as amply demonstrated in Summit Lake), the Board's reasonable interpretation of the scope of the

Fire Inspector's regulatory authority should be sustained consistent with principles of judicial deference.

Having resolved the question of whether the Fire Inspector had the authority to approve the reduced widths of the Alderkill driveway, one question remains: did the Board also properly find that Petitioners failed to meet their burden of proving that the Fire Inspector's determination should be reversed on its merits?

The Fire Inspector's determination found that the Alderkill driveway complies with the emergency vehicle access driveway requirements contained in §511 of the Fire Code, including its dimensional, turnaround, turnout, stability, and design requirements [§§511.2.1-511.2.5]. Having expressly exercised his §503.2.2 authority to modify the fire apparatus access road access width requirements, his written determination represents a finding that compliance with the §511 emergency vehicle access driveway requirements provides a safe alternative to strict compliance with the §503 and Appendix D fire apparatus access road access width requirements, and that this alternative meets the public safety objectives of the Town of Rhinebeck.

The record provides ample support for the Board's finding that Petitioners have failed to satisfy their burden of proof on appeal [19 NYCRR §1205.5(f)]. The Fire Inspector's determination states that he reviewed the applicable plans and code sections,

and that he consulted with the Building Inspector. The Alderkill driveway was an item of primary concern during the review of this conservation subdivision, and the approved version achieves important strategic and planning goals designed to preserve the Town's rural character and to protect environmentally sensitive lands, including state-regulated wetlands. As explained during the Board's hearing, over the years the Town's fire officials have become adept at assessing the adequacy of emergency access provided by driveways and fire apparatus access roads for conservation subdivisions. Chief Eighmy approved the Alderkill driveway based upon his finding that its width and turnouts will provide sufficient access in the case of an emergency. Chief Knapp did not voice any objections or express any concerns, and simply recommended compliance with the International Fire Code.

The evidence presented to the Board also reveals that only a small portion of the Alderkill driveway will serve both the four conservation lots and the Binetti lot. The vast majority of the Alderkill driveway, which extends far beyond its connection point with the preexisting Binetti lot, will serve only the four proposed conservation lots.

Fire Code §511.2.6 imposes the fire apparatus access road design requirements on those "driveways, and portions thereof,"

that serve more than four buildings. As such, it is not clear that the fire apparatus access road requirements even apply to the lengthy portion of the Alderkill driveway that serves only four lots. However, assuming *arguendo* that §511.2.6 applies to the entire Alderkill driveway (rather than to only that portion serving five lots), the Board could reasonably conclude that the Fire Inspector properly exercised his authority when he approved the Alderkill driveway based upon his determination that most of its length serves only the four new lots, that its entire length complies with the §§511.2.1-511.2.5 emergency vehicle access regulations, and that the shorter portion providing access to all five lots and the much longer portion serving only the four conservation lots are adequate in dimension, stability, and design for safe use by the response apparatus that will actually be called upon in the event of an emergency.

Finally, Petitioners argue that even if the Fire Inspector has the authority to approve a narrower road width for a fire apparatus access road, he does not have the corresponding power to approve an unpaved gravel driving surface. However, Fire Code Appendix D102.1 states that the road surface must be "asphalt, concrete or other *approved* driving surface capable of supporting the imposed load of fire apparatus weighing up to 75,000 pounds" and Fire Code §202 defines *approved* as "acceptable to the fire

code official." Therefore, the Fire Inspector has the authority to approve an unpaved surface so long as it can support the imposed load of the anticipated fire apparatus.

Petitioners failed to present any evidence to the Board to support a determination that the proposed unpaved gravel surface is not capable of supporting the Town's fire apparatus, or any other type of fire apparatus weighing up to 75,000 pounds. Thus, the Board could reasonably determinate that Petitioners failed to meet their burden of proving that the Fire Inspector's approval of the alternate road surface should be reversed [19 NYCRR §1205.5(f)]. It is therefore

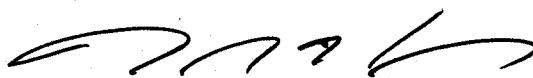
ORDERED, ADJUDGED AND DECREED that the petition is denied, and this proceeding is dismissed; and it is further

ORDERED, ADJUDGED AND DECREED that counsel for the parties in the related proceeding (Index No. 2023-52583) shall appear for a virtual scheduling conference on January 6, 2025 at 10:00 AM.

This constitutes the Decision, Order and Judgment of the Court.

Dated: December 13, 2024
Poughkeepsie, New York

ENTER



HON. MICHAEL G. HAYES, A.J.S.C.