Matter of Kearsino & Edwards Am. Legion Post 1600 Inc. v Town of Ramapo
2025 NY Slip Op 35489(U)
February 25, 2025
Supreme Court, Rockland County
Docket Number: Index No. 034124/2024
Judge: Keith J. Cornell
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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ROCKLAND

In the Matter of	:	
KEARSING & EDWARDS AMERICAN LEGION POST 1600 INC., MARILYN SCHWARTZ. HELEN FROMEN, and HELEN SANTOS,	:	Index #: 034124/2024 (Motion Sequence 1)
Petitioners-Plaintiffs	:	**DECISION AND ORDER**
For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules and a Declaratory Judgment Pursuant to Section 3001 of the Civil Practice Law and Rules,	:	
-against-	:	
TOWN OF RAMAPO and THE TOWN OF RAMAPO TOWN BOARD, Respondents-Defendants,	:	
AND MOUNT IVY LLC, BROWNSTONES AT POMONA LLC And LINDIFRIM (POMONA) LIMITED PARTNERSHIP, Nominal Respondents-Defendants.	:	

PRESENT: HON. KEITH J. CORNELL, A.J.S.C.

Before the Court is the combined Article 78 Proceeding and declaratory judgment action of the petitioner-plaintiffs' ("Petitioners") against the Town of Ramapo and the Town Board of the Town of Ramapo (the "Town"). Respondents oppose the petition.

The following documents have been read and considered: NYSCEF Doc. Nos. 1-93.

The amended petition (NYSCEF #26) primarily seeks an order to annul and vacate certain actions taken by the Town:

1) RESOLUTION NO. 2023-353: "Miller's Pond PUD - Amended SEQRA Findings" ("SEQR Resolution") passed by the Town Board at the meeting of August 23, 2023;
2) RESOLUTION 2023-355;
3) RESOLUTION NO 2024-134: Adoption of Millers Pond Planned Unit Development ("PUD" or "Project") Local Law, Rezoning of Certain Lands to the MP-PUD District, and Establishment of an Open Development Area for the MP-PUD" ("PUD Rezoning Decision") passed by the Town Board at the meeting of March 13, 2024; and
4) Local Law 2-2024 ("LL2-2024").

BRIEF HISTORY

This Court (Eisenpress, J. (Index # 036695/2023), NYSCEF #43) dismissed an earlier related litigation based on that matter not being ripe for determination. Justice Eisenpress provided the background in her Decision and Order which also sets the stage in this litigation. Justice Eisenpress wrote:

> [S]ince 2016, the Town Board has been interested in the potential for development of certain areas in northeast Ramapo. In 2019, the Town Board began the process to amend its Comprehensive Plan to all for such development, known as the Northeast Ramapo Development Plan ("NRDP"). The Town Board undertook the required SEQRA steps, including categorizing the action as Type I, completing a full Environmental Assessment Form ("EAF"), declaring itself as lead agency, issuing a positive declaration, drafting and finalizing a Generic Environmental Impact Statement ("GEIS") with public notice and comment, and ultimately amending its Comprehensive Plan in 2022. After the July 2022 adoption of the GEIS and attendant implementing local law, in 2023, the applicants submitted their proposal for a PUD within the NRDP area, known as the Millers Pond PUD. The Millers Pond PUD requires enactment of a local law by the Town Board for rezoning of the land into a PUD . . . In order to consider the enactment of a local law that places the Millers Pond lands into a PUD, another SEQRA process was required to determine whether the proposal conformed to the findings adopted by the Town Board in its GEIS. If not, the proposal would trigger the need for a Supplemental EIS ("SEIS"). In conformance with this procedure, the applicants submitted a 1,400 page Environmental Assessment Form ("EAF"), with attached supplemental studies. By resolution (2023-354)

> adopted on August 23, 2023, the Town Board issued amended findings and resolved that, based upon the EAF submissions and the GEIS, there was no need for a SEIS because it was determined to be in conformance with the SEQRA GEIS adopted in July 2022.

Subsequently, the Town Board adopted LL2-2024 on March 28, 2024. This litigation ensued by the filing of a verified petition on July 15, 2024, as amended on September 6, 2024 (the "Petition").

PETITION

The Petition alleges five (5) causes of action: (1) a claim asserting a violation of "due process rights" relating to Petitioners' alleged lack of notices relating to the Millers Pond PUD and the Town's alleged failure to hold additional hearings on LL2-2024 pursuant to Town Zoning Code §376-172 (first cause of action); (2) a claim asserting a violation of Town Law § 265 and the Municipal Home Rule Law asserting that the Town failed to hold additional public hearings prior to the passage of LL2-2024 (second cause of action); (3) a claim labeled "SEQRA Procedural Violations", which alleges that the Town Board violated SEQRA by not requiring an EIS for the Millers Pond PUD (third cause of action); (4) a claim alleging that the Town Board did not take a "hard look" under SEQRA (fourth cause of action); and (5) a claim that the Town Board violated Town Zoning Code §376-24 in enacting LL2-2024 (fifth cause of action). Before addressing the merits of the causes of action, Respondents have raised a predicate question, arguing that Petitioners do not have standing.

STANDING

Respondents raise the standing issue at the outset and argue that the Petitioners should be barred from proceeding due to their lack of standing. Petitioners each alleged somewhat different bases for their standing:

1) The Legion alleges that its property is separated from the Project by "only a 65' strip walking trail portion of the Rockland County Mount Ivy Park." (Petition para 6, NYSCEF #26). It further claims that it will be uniquely impacted by the Project due to " extensive clearing of forested areas, the introduction of high density, many hundreds of new style multifamily town house development highly visible from [the] meeting hall that will forever change [the] views; the introduction of nighttime lighting that will affects [sic] our night sky views at our outdoor events; the changes to the ambient natural forest noises to residential use noises affecting the enjoyment of our use of the outdoor pavilion [footnote omitted] , and the increased traffic caused by hundreds of new residents, and other commercial uses that directly impact Post 1600 Meeting Hall members' and visitors use of Station road, hinder emergency services access to our location, and forever destroy the character of our picnic grounds and firing range." (NYSCEF #14, Schreiner Aff'd para. 34).

   The Legion further asserts that it will be uniquely impacted because of the loss of the rural character of the vicinity which will adversely affect the enjoyment of the Legion's picnic grounds and recreational uses on their property.

2) Fromen asserts that she resides in a condominium unit on property proximate to the Project and that she will "suffer injury in fact caused by the commercial development of the Site including visual impacts, traffic impacts, change in community character, impact to the Scenic Road District, sewer impacts, and impact to community services" (Petition para 8, NYSCEF # 26).
3) Schwartz asserts the same claims as to proximity and injury as Fromen but adds that she will be impacted because she regularly walks from her home to a park along the hiking trail where she will have a clear view of the Project for over 3000 feet (Petition para 9 & 10, NYSCEF #26).
4) Santos asserts that she will suffer an injury that is specific to her because she resides at 7 Camp Hill Road located directly across Camp Hill Road from the Site where one of the three proposed entrances will be located. (Petition para 12, NYSCEF #26)

Each of the Petitioners have also submitted lengthy affidavits. It is the Petitioners' position that they each have standing in their own right to proceed due to the harm that they will suffer as a result of the Town's actions. The Legion is immediately adjacent to the Project and Santos lives directly across the street from one of the proposed access points to the Project.

Respondents contend that none of the Petitioners have standing because they have not alleged that they have (1) an environmental injury that is different from the public at large and (2) that the claimed injury falls within the zone of interests sought to be protected. Respondents argue that, despite Petitioners' proximity to the Project, proximity alone is insufficient to confer standing and the Petitioners have not shown that they will suffer harm different in kind or degree from that which would affect the general public.

To establish standing a petitioner must show that they will suffer an injury-in-fact and that the alleged injury falls within the zone of interests sought to be protected by the statute (Matter of Veteri v Zoning Bd. of Appeals of the Town of Kent, 202 AD3d 975, 979 [2d Dept 2022]). "In land use matters, a petitioner must show 'direct harm, injury that is in some way different from that of the public at large' " (id., quoting Society of Plastics Indus. v. County of Suffolk, 77 NY2d at 774).

Individual property owners can likewise establish standing. "An allegation of close proximity may give rise to an inference of damage or injury that enables a nearby property owner to challenge a land use decision without proof of actual injury. However, this does not entitle the property owner to judicial review in every instance. In addition to establishing that the effect of the proposed change is different from that suffered by the public generally, the property owner must establish that the interest asserted is arguably within the zone of interests the statute protects" (Matter of Veteri v Zoning Bd. of Appeals of the Town of Kent, 202 AD3d at 979 [internal quotation marks, brackets, and citations omitted]).

However, "[s]tanding should be liberally construed so that land use disputes are settled on their own merits rather than by preclusive, restrictive standing rules" (Matter of Barrett v Dutchess County Legislature, 38 AD3d at 653). "Interest and injury are not synonymous" (Matter of Citizens Emergency Comm. to Preserve Preserv. v Tierney, 70 AD3d 576, 576 [1st Dept 2010], lv denied 15 NY3d 710 [2010] [internal quotation marks omitted]).

The Court of Appeals has expressed that standing rules should *not* be applied heavy-handedly in zoning litigation by declaring that it is "reluctant to apply standing principles in an overly restrictive manner where the result would be to completely shield a particular action from judicial review" (Matter of Association for a Better Long Is., Inc. v New York State Dept. of Envtl. Conservation, 23 NY3d 1, 6 [2014]). Such a result "would effectively insulate [a municipality's] actions from any review and thereby run afoul of our pronouncement that the standing rule should not be so restrictive as to avoid judicial review" (Matter of Sierra Club v Vil. of Painted Post, 26 NY3d 301, 311 [2015]). Critically, "an allegation of close proximity alone may give rise to an inference of damage or injury that enables a nearby owner to challenge a zoning board decision without proof of actual injury" (Matter of Sun-Brite Car Wash v Board of Zoning & Appeals of Town of N. Hempstead, 69 NY2d 406, 414 [1987]).

Here, both Fromen and Schwartz, albeit living close to the project, do not allege specific individual harm that is significantly different from that which the public at large might suffer. On the other hand, both Santos and the Legion do claim specific harm that directly will impact them. Therefore, the Court finds that standing as to those two Petitioners is clear. While standing as to Fromen and Schwartz is less clear, standing for at least one of the Petitioners is sufficient and the Court need not further parse the question of standing as to the other two named Petitioners.

PETITIONERS' FIRST CAUSE OF ACTION (NOTICE REQUIREMENTS)

Petitioners' First Cause of Action Alleges a Violation of Due Process Rights in connection with the Town's enactment of LL2-2024. Petitioners claim that their due process rights were violated because the Town: (1) failed to provide proper notice of its action to establish a re-zoning of the Project's site by mailing to property owners within 500' of the site, (2) failed to provide proper language describing the proposed action in published notice and (3) failed to hold a public hearing on substantial conditions of the zoning local law.

Specifically, Petitioners claim that the Town's 9/13/23 newspaper public notice was deficient. They also claim the Town did not comply with the notice requirement of Town Law 376-172(B)(1) by providing written notice to owners within 500' of the site of the proposed rezoning and claim that neither Fromen nor Schwartz received a mailed notice.

Respondents argue that Petitioners are simply incorrect and that the proper notice was provided. Respondents provide copies of the posted notice (NYSCEF #44), the affidavit of posting (NYSCEF #45), the affidavit of mailing (NYSCEF # 46), the vicinity map and mailing list (NYSCEF # 47). Respondents argue that the notice provisions of Municipal Home Rule Law 20 and Town Law 264 and 265 were all complied with. Respondents explain that Town Law 264 requires mailed notice of any public hearing scheduled for the purpose of adopting proposed zoning local laws or amendments thereto and that all property owners within the statutorily mandated mailing radius of 500' were all included in the Town's mailing.

Respondents point out that neither Fromen nor Schwartz reside within the 500' radius and were not included in the mailing, nor where they required to have been. In any event, Respondents argue that neither Fromen nor Schwartz are named on the deeds to the properties where they reside and would not have been named on the mailing list even had those properties fallen within the 500' radius.

Respondents further explain that Petitioners rely upon a SEQRA notice requirement which is inapplicable. Petitioners assert that the SEQRA notice requirement contained in 6 NYCRR

617.12 was not adhered to. Respondents counter that the public hearing of September 13, 2023 and the adjourned hearing dates for the continuation of the hearing on the adoption of LL2-2024 were not SEQRA hearings at all and that the SEQRA notice requirements do not apply.

Respondents also argue that, even if the Petitioners were correct about a notice deficiency (which they deny), none of the Petitioners can assert a due process violation because Petitioners, Santos and the Legion received mailings and Fromen and the Legion had actual knowledge of the meeting. The Legion and Fromen appeared and gave testimony. While the attendee who spoke on the Legion's behalf may not have been authorized to represent the Legion, that is of no moment.

DISCUSSION

The Town's posting notice announcing the planned hearing to address the zoning change was adequate for the purpose of alerting the public to the substance of the proposed zoning changes. (See Gernatt Asphalt Products, Inc. v. Town of Sardinia, 1996, 87 N.Y.2d 668). The notice (NYSCEF # 44) identifies the affected property and the specific proposal regarding the Project and the plan to rezone from RR-80 (2 acre residential) to a new "Millers Pond Planned Unit Development (MP-PUD) District". The announcement provided adequate notice in accordance with Town Law 264 which required a publication of the notice at least 10 days before the scheduled public hearing. Petitioners acknowledge that the notice was published (Petition, para. 60, NYSCEF #26). The Town shows, prima facie, that the required postings were accomplished and that the required mail was performed.

Petitioners have not shown there was any defect in the notice itself, the publication or the mailing. Even evidence that mailings were not received by some persons on the mailing list is insufficient to overcome the presumption of proper mailing evidenced by the Town's mailing affidavit. It is the mailing of the required notice and not the receipt by those on the mailing list that completes the Town's mailing obligation. The Petitioners' argument that the SEQRA notice requirements were not met is inapposite. Thus, the Petitioners' First Cause of Action must be dismissed.

SECOND CAUSE OF ACTION (HOME RULE LAW)

Petitioners argue that the substance of the meeting notice was insufficient to provide adequate information as to the nature of the proposed action and that the Town subsequently made modifications to the proposed local law which were so substantive that re-noticing the hearing scheduled to address the revised draft of the local law was required and needed to include complete detail of the draft's revisions. Specifically, Petitioners argue that LL2-2024, as adopted, varied from the original draft of the local law, inter alia, because the final draft: (1) allowed for an increase in density, (2) modified language regarding planning board's review of parking requirements, (3) provided a requirement for private garages to have EV charging service without calculating the impact upon the Project's overall electrical usage and (4) included 25 pages of findings intended to be part of the local law.

Respondents argue that LL2-2024, as finally adopted, was the product of multiple hearings and extensive input from the community and planning professionals. Respondents argue that the local law adoption process included significant data review and consideration of the submittals and community input, which resulted in revisions to the local law which were in keeping with the zone change topic and did not trigger the need for any additional noticing of the hearings.

DISCUSSION

At the outset, it bears noting that the local law adoption process contemplates the possibility, if not likelihood, that the hearing process will result in modifications to the draft of the local law between the initial proposed draft and the final adopted version. The sine qua non of the legislative process for zoning changes is notice and opportunity to be heard. It is not accurate that any and all law revisions require restarting the process all over again.

The Court of Appeals, in Gernatt Asphalt Products, Inc. v. Town of Sardinia, 87 N.Y. 2d 668, took up this topic and wrote:

> A notice that describes the proposed change with reasonable precision will satisfy these purposes of the notice requirement (see, Coutant v. Town of Poughkeepsie, 69 A.D.2d 506, 510–512, 419 N.Y.S.2d 148; *cf.,* Matter of Gardiner v. Lo Grande, 92 A.D.2d 611, 459 N.Y.S.2d 804, affd on other grounds 60 N.Y.2d 673, 468 N.Y.S.2d 104, 455 N.E.2d 663). When events subsequent to the publication of notice lead to an amendment that is substantially different from that which was noticed, new notice and opportunity to be heard may be required (Village of Mill Neck v. Nolan, 259 N.Y. 596, 182 N.E. 196; see, e.g., Callanan Rd. Improvement Co. v. Town of Newburgh, 6 Misc.2d 1071, 167 N.Y.S.2d 780, *affd* 5 A.D.2d 1003, 173 N.Y.S.2d 780). However, where the amendment as adopted is embraced within the public notice, the notice has satisfied its purpose of alerting the public to potential and contemplated revisions of the local ordinance, and the notice will generally be deemed sufficient (see, Lighthouse Shores v. Town of Islip, 41 N.Y.2d 7, 10–11, 390 N.Y.S.2d 827, 359 N.E.2d 337).

Petitioners allege that "[s]ignificant substantive changes were made from the proposed Local Law August 2023 version considered at the public hearing, to the version LL2-2024 passed…" (Petition, para 76, NYSCEF #26). As noted above, the specific examples given include density changes, parking requirements changes and the additional of EV charging capability. While the Petitioners are correct that the final version was at variance with the initially noticed draft local law, the Appellate Division, Second Department, in Matter of Benson Point Realty Corp. v. Town of E. Hampton, 62 A.D. 3d 989, held that "[w]here changes are made to a proposed zoning amendment following the conclusion of a properly noticed public hearing, new notice and another public hearing are not required if the "amendment as adopted is embraced within the public notice" [quoting Gernatt]or if the amendment as adopted is not substantially different from the amendment as noticed (see Caruso v Town of Oyster Bay, 250 AD2d 639 [1998]; Marcus v Incorporated Vil. of Spring Val., 24 AD2d 1021 [1965]; Matter of Suffolk Pines v Harwood, 14 Misc 2d 826, 828 [1958], *affd* 10 AD2d 867 [1960]; cf. Matter of LCS Realty Co. v Incorporated Vil. of Roslyn, 273 AD2d 474 [2000]; Callanan Rd. Improvement Co. v Town of Newburgh, 5 AD2d 1003 [1958]; Village of Mill Neck v Nolan, 233 App Div 248 [1931], *affd* 259 NY 596 [1932])."

Here, the local law revisions Petitioner refers to are fully consistent with the originally noticed hearing. The key to the notice requirement is providing the public with an adequate understand about the proposed action which is sufficient to inform meaningfully. As the Court of Appeals held in Gernatt, the notice requirement is intended to "fairly apprise the public of the fundamental character of the proposed change [and] not mislead interested parties into foregoing attendance at the public hearing". It cannot be said that this notice given by the Town was insufficient to apprise the public of the nature of the proposal or that it could have mislead those interested.

The Petitioners, in addition to referring to the local law revisions, argue that the inclusion of findings in the resolution enacting LL2-2024, in of itself, is a substantial change which triggered the need to re-notice the proceedings. Here, Petitioners are referring to the "whereas" clauses in the adopting resolution. The enacting resolution was lengthy and detailed. Petitioners are correct that the resolution language was not part of the draft local law noticed to be addressed. The resolution, however, is not the local law. Petitioners provide no support for the proposition that the adopting resolution must be included along with the proposed local law draft. To do so makes no sense. It is the hearing and review process that informs the creation of the adopting resolution. Thus, the resolution itself is designed as a guide to understanding the legislative bodies' decision-making process. It cannot be said that the inclusion of what is, in effect, a lengthy introduction to the local law, is any substantial change to the reacted law. Therefore, the Petitioners' second cause of action must be dismissed.

THIRD CAUSE OF ACTION (SEQRA VIOLATIONS)

Petitioners' Third Cause of Action is the substantive heart of their challenge. They argue that the Town failed to engage in the mandated SEQRA review. Respondents respond that the Petitioners are mistaken that a new and separate SEQRA review was required. Respondents argue that the Town's Northeast Ramapo Development Plan ("NRDP"), which included the adoption of a Generic Environmental Impact Statement ("GEIS") concluded in 2022 with the creation of a "Flexible Overlay Zone" for the development of planned unit developments ("PUD") such as the MP-PUD. Respondents argue that the time within which to have challenged that SEQRA review has long since expired. Petitioners do not contest that.

However, Petitioners claim that an environmental impact statement ("EIS") or supplemental EIS ("SEIS") was required for the MP-PUD. Respondents counter that Petitioners' are incorrect and misapprehend the fact that the Town used the Town Law 272-a(8) mechanism which permitted proceeding with a GEIS process when the Town established the NRDP and that that environmental review process was completed in 2022 and was not challenged. Respondents argue that there was no failure on the Town's part and that Petitioners ignore the specific statutory authorization.

DISCUSSION

The analysis of the claim that the Town did not perform a required environmental review must turn on whether the Town complied with the terms of Town Law 272-a (8). When the Town engaged in a comprehensive plan process and created the NRDP it did so within that framework.

Town Law 272-a (8) provides:

> 8. Environmental review. A town comprehensive plan, and any amendment thereto, is subject to the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. A town comprehensive plan may be designed to also serve as, or be accompanied by, a generic environmental impact statement pursuant to the state environmental quality review act statute and regulations. No further compliance with such law is required for subsequent site specific actions that are in conformance with the conditions and thresholds established for such actions in the generic environmental impact statement and its findings.

The Court of Appeals, in Matter of Eadie v. Town Bd. Of Town of N. Greenbush, 7 N.Y. 3d 464, specifically addressed an analogous challenge to a zoning determination. The Eadie Court wrote:

> [T]he Town [was not] required under SEQRA to prepare an SEIS before adopting the rezoning. DEC regulations state that, where a GEIS is used, an SEIS must be prepared in connection with a "subsequent proposed action" that was "not addressed or was not adequately addressed" in the GEIS (6 NYCRR 617.10 [d] [4]). But the regulations do not say or imply that every possible subsequent action must be analyzed in an SEIS before a "program or plan having wide application" is adopted. It was for the Town to decide, subject to a rule of reason, how detailed an analysis to perform, before rezoning was enacted, of all projects that might result from it. The Town's decision that the analysis in its final GEIS was adequate was not arbitrary and capricious.

The Eadie Court was faced with a rezoning challenge to an "access management" plan which was intended to address the entry and exit of traffic on major roads so as to mitigate traffic problems and reduce interference with traffic flow. The review process utilized a GEIS process. There, as here, the challengers claimed that a SEIS was required because of the necessity to engage in further environmental review as to the specific environmental impacts of the particular action.

Thus, the question was the same as faced by this Court: whether a SEIS should have been prepared before the MP-PUD was approved. Because Town Law 272-a (8) circumscribes the need for additional environmental review following the proper completion of a GEIS process, the Petitioners in the case at bar are asking this Court to substitute its judgment for that of the Town's as to whether further environmental review was required.

As the Court of Appeals held in Eadie:

> "The document in question here is a *generic* environmental impact statement. Department of Environmental Conservation regulations permit a GEIS to be used to assess the environmental impacts of "an entire program or plan having wide application or restricting the range of future alternative policies or projects, including new or significant changes to . . . zoning regulations" (6 NYCRR 617.10 [a] [4]). The regulations provide that "[g]eneric EISs may be broader, and more general than site or project specific EISs" (6 NYCRR 617.10 [a]). There is no merit to petitioners' contention that the Town violated SEQRA by failing, as part of approval of an "entire program or plan," to commit with greater specificity to some details of access management."

Similarly, while the MP-PUD is, of course, a specific application of the NRDP, the question is whether the environmental impacts where not addressed or not adequately addressed in the DEIS. "[W]here an agency has followed the procedures required by SEQRA, a court's review of the substance of the agency's determination is limited" (Matter of Eadie v Town Bd. of Town of N. Greenbush, 7 NY3d 306, 318 [2006]). "[T]he Legislature in SEQRA has left the agencies with considerable latitude in evaluating environmental effects and choosing among alternatives," and "[n]othing in the law requires an agency to reach a particular result on any issue or permits the courts to second-guess the agency's choice" (Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d at 417). "Nevertheless, an agency, acting as a rational decision maker, must have conducted an investigation and reasonably exercised its discretion so as to make a reasoned elaboration as to the effect of a proposed action on a particular environmental concern" (Akpan v Koch, 75 NY2d 561, 571 [1990]).

> "While the judicial review must be genuine, the agency's substantive obligations under SEQRA must be viewed in light of a rule of reason and the degree of detail with which each environmental factor must be discussed will necessarily vary and depend on the nature of the action under consideration" (Matter of Gernatt Asphalt Prods. v Town of Sardinia, 87 NY2d 668, 688 [1996] [internal quotation marks and citation omitted]). "Thus, while a court is not free to substitute its judgment for that of the agency on substantive matters, the court must ensure that, in light of the circumstances of a particular case, the agency has given due consideration to pertinent environmental factors" (Akpan v Koch, 75 NY2d at 571).

In this case, the Town engaged in extensive review with thousands of pages of material associated with the MP-PUD project and concluded that the DEIS had adequately addressed the environmental impacts of the project. As a consequence, the Town determined that the project was in keeping with and consistent with the NRDP. As such, the Town complied with the requirements of Town Law 272-a (8) and no further environmental review was required.

This determination is predicated upon the Town having engaged in extensive and intensive analysis of the impacts of the project and necessary mitigation requirements. While the Petitioners and even a court, might find fault with certain determinations, it is not for courts to second-guess the sound discretion of a town, so long as there has been a reasoned analysis. This Court's function is to examine the review and legislative process, but not to impress its own judgment upon the Town's legitimate decision-making process.

The Project is by all accounts a major one and it will have significant impacts on the area. No one can deny that. It is no wonder that there are opponents of the Project. However, the record reveals that the Town has worked through the necessary approval steps and this Court cannot impose its own view as to the legitimate land use choices.

The Petitioners, despite their good faith concerns for the environment, have not shown a procedural error in the Town's adoption process and, therefore, the Third Cause of Action must be dismissed.

FOURTH CAUSE OF ACTION (FAILURE TO TAKE HARD LOOK)

In light of the analysis above, the Petitioners' claims that the Town did not perform the required "hard look" are without merit and the Fourth Cause of Action must be dismissed.

FIFTH CAUSE OF ACTION (Local Law 376-24)

Finally, Petitioners argue that the Town violated its own local law by (1) including Lot 31 (with only 7.2 acres) and not contiguous to Lots 6 and 37 in the MP-PUD, (2) failing to subject the MP-PUD to specific environmental review and (3) failure to consider a cluster development. The Court finds that these arguments are not supported by the record and, in effect, ask the Court to second guess the rational determination of the Town. The Court cannot find any basis for the position that any of these determinations was an arbitrary and capricious Town decision. Therefore, the Fifth Cause of Action must likewise be dismissed.

Based upon the foregoing, it is

ORDERED, that the petition is DISMISSED in its entirety.

This shall constitute the Court's Decision and Order.

Dated: February 25, 2025
New City, New York

ENTER

Hon. Keith J Cornell, A.J.S.C.

To: All counsel via NYSCEF