Case Law Update

Southern Tier Central – Regional Planning and Development Board
Regional Leadership Conference
March 31, 2022

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State Environmental Quality Review Act (SEQRA)

SEQRA – Substantive compliance

Hart v. Town of Guilderland, 196 A.D.3d 900 (3d Dep't 2021)

- Town adopted a transit oriented development (TOD) district. Developer applied for subdivision and site plan approval for a mixed use commercial/residential development in the new TOD district.
- Planning Board declared lead agency, issued positive declaration which triggered an EIS. After scoping, Applicant submitted DEIS and the Board held a public hearing. The Board then accepted the FEIS and authorized the project.

Takeaways:

- The duty of the reviewing agency under SEQR is to prepare the DEIS and FEIS to analyze the environmental impact and any unavoidable adverse environmental effects of the project.
  - Literal compliance with the letter and spirit of SEQR is required—substantial compliance is not enough.
- DEIS must include a description and evaluation of a range of reasonable alternatives including the no action alternative—which should evaluate the adverse or beneficial site changes likely to occur.
- FEIS must discuss all reasonable alternatives, but the lead agency does not have to engage in an exhaustive analysis of every conceivable alternative to the proposed project.

- A reduced project scale need not be considered where such reduction would reduce the project to the point it will no longer serve the proposed function. The SEQR regulations only require description and discussion of *feasible* alternatives, considering the objectives and capabilities of the project sponsor.

- SEQRA recognizes and protects the right of a developer to advance its business objectives and only mandates consideration of alternatives consistent with those objectives.
  - It would be unrealistic and onerous to require a developer to conduct an analysis of alternative sites or uses including possible development of other sites of which it has no control, may not be for sale, or which are not economically feasible.

SEQRA – Hard look standard

Evans v. City of Saratoga Springs, 202 A.D.3d 1318 (3d Dep't 2022)

- City updated comp plan and amended the zoning map. This converted a parcel owned by Saratoga Hospital from urban residential (UR-1) to office/medical business 2 (OMB-2).
  - UR-1 allows uses beyond single-family residential like schools and religious institutions with site plan and special use permt approval. OMB-2 primarily allows medical offices, clinics, ancillary uses, etc. with site plan approval.
- The county and city planning boards signed off.
- City Council did SEQR, and issued a negative declaration.

Takeaways:

- Courts will not disturb a SEQR determination so long as the lead agency identified the pertinent areas of environmental concern, took a *hard look* at them, and advanced a *reasoned elaboration* of the grounds for its determination.

SEQRA – Impermissible segmentation

Evans v. City of Saratoga Springs (Hospital case) (cont.)

- City Council declined to consider hospital's potential expansion project if the parcel was rezoned, arguing if it submitted an application, it would be subject to SEQR review which would be no less protective of the environment than hypothetical speculative review now.
- Although the City Council was not given an impending, specific development proposal, rezoning the parcel via the map amendment was "step one" for eventual development. The rezoning provided the requisite right to develop—it was the "green light".
  - The potential development was not so attenuated from the zoning map amendment that reviewing it would've been permissible segmentation.

Takeaways:

- Segmentation is the division of environmental review such that various activities or stages of an action are addressed as though independent, needing individual determinations of significance.
- This is impermissible when the environmental review of the action is divided into smaller stages to avoid detailed review. So, projects should be considered together when they are integrated components of a larger plan, dependent on each other and sharing a common purpose.
- This is allowed, however, when the agency clearly sets forth the reasons and demonstrates segmented review is *clearly no less protective of the environment*.

SEQRA – Conditioned Negative Declaration

- *Coalition for Cobbs Hill by Pastecki v. City of Rochester,* 194 A.d.3d 1428 (4th Dep't 2021)

- Developers sought to redevelop an affordable housing community. The lead agency reviewed the EAF Part 1 which indicated the project would have only a small impact on geological features, plants, animals, and critical environmental areas. Following its review, the lead agency issued a negative declaration.
- Although one or two significant environmental impacts were indicated as possible, neither the EAF nor EAF amendment contained any mitigation measures required by the lead agency as a condition of issuing the negative declaration – they were adopted after issuance.

Takeaways:

- SEQRA regulations do not authorize issuance of a conditioned negative declaration for Type I actions—only unlisted actions.
- The court will look at whether the project as proposed might result in identification of one or more significant adverse environmental impacts and whether the proposed mitigating measures incorporated into the EAF Part III were identified and required by the lead agency as a *condition precedent to issuance* of the negative declaration.

SEQRA – Standard of Review

Matter of Douglaston Civic Ass'n v. City of New York, 199 A.D.3d 562 (1st Dep't 2021)

- Rezoning application was considered to redevelop a block in Douglaston, Queens for affordable and senior housing.
- The New York City Planning Commission (CPC) identified the relevant areas, took a hard look at them, and made a reasoned elaboration for why the environmental impact was not significant, leading it to issue a negative declaration.

Takeaways:

- Agencies have considerable latitude to evaluate environmental effects and choose among alternatives. Nothing in the law requires an agency to reach a particular result or permits the courts to second-guess the agency's choice.

- *See also Hart*
  - An agency's SEQR determination must be reviewed in the light of a *rule of reason*. Every conceivable impact, mitigating measure, and alterative need not be identified and addressed before an FEIS will satisfy the substantive SEQR requirements.
  - The fact that another individual or agency would've chosen differently presents a difference of opinion the agency, not the court, must resolve.

Consistency with the comprehensive plan

JDM Holdings, LLC v. Vill. of Warwick, 200 A.D.3d 880 (2021)

- Petitioner owned a parcel of land zoned residential. The Village passed two local laws implementing suggestions from the comprehensive plan to require clustering for all residential development in certain corridors.
- This applied to the petitioner's property.

Takeaways:

- The power to zone must be exercised in accord with a comprehensive plan
- An ordinance enacted in accordance with a well-considered comprehensive plan cannot constitute “reverse spot zoning”

Spot Zoning

Evans v. City of Saratoga Springs (Hospital case) (cont.)

Takeaways:

- Spot zoning is the singling out of a small parcel for a use classification totally different from the surrounding area for the benefit of the property owner and to the detriment of other property owners.
- When reviewing a spot zoning claim, the court may consider whether the rezoning is consistent with the comprehensive plan, whether it is compatible with surrounding uses, the likelihood of harm to surrounding properties, the availability and suitability of other parcels, and the recommendations of planning staff.

Standard of Review: arbitrary and capricious

Takeaways:

Evans v. City of Saratoga Springs (Hospital case) (cont.)

- A court will not overturn a zoning determination without demonstration by the petitioner, beyond a reasonable doubt, that it was *arbitrary, unreasonable, or otherwise unlawful.*
- This requires a showing that there was no reasonable relation between the end sought to be achieved by the zoning determination and the means used to achieve that end.

Coalition for Cobbs Hill by Pastecki (Affordable Housing development case) (cont.)

- An action is *arbitrary and capricious* when it is taken without sound basis in reason or regard to the facts.

Burden of Proof and Presumption of Validity

JDM Holdings, LLC v. Vill. of Warwick (Consistency with comp plan case) (cont.)

- Petitioner owned a parcel of zoned residential. The Village passed two local laws implementing suggestions from the comprehensive plan to require clustering for all residential development in certain corridors.
- This applied to the petitioner's property.

Takeaways:

- Legislative enactments, such as zoning codes and amendments, enjoy a strong presumption of legality and the burden rests with the party attacking them to overcome that presumption *beyond a reasonable doubt*
- When a petitioner fails to establish a clear conflict with the comprehensive plan, the challenged zoning ordinance must be upheld.

Time to file an administrative appeal

Grout v. Visum Dev. Group LLC, 197 A.D.3d 1404 (3d Dep't 2021)

- Developers sought to build an apartment complex. The Planning Board determined variances were not required, only site plan approval. When petitioner's appealed, the City Zoning Administrator stated it was untimely as it was brought outside the 60–day time limit.
- Based on a review of the record, it was undisputed that the Planning Board's determination was never filed.
- Since there was no filing of the determination, the time period to appeal it never began to run.

Takeaways:

- General City Law § 81–a (5)(a) imposes an affirmative duty on administrative officials charged with the enforcement of the zoning law to file each order, requirement, decision, interpretation or determination within *five business days* from the day it is rendered and § 81–a (5)(b) requires appeals to such determinations be made within *60 days from filing*. *See also* Town Law § 267-a(5)(a)-(b); Village Law § 712–a(5)(a)-(b).
- Given this very clear procedural requirement, "constructive notice" of the determination is not enough.

Permitted Uses

Hart v. Town of Guilderland (TOD District case) (cont.)

Takeaways:

- Inclusion of a permitted use in a zoning law is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the local community
- A special use permit use is permitted per the legislature, except that the applicant must demonstrate compliance with the legislatively imposed conditions on the permitted use
- *See also North Shore Steak House, Inc. v. Inc. Vill. of Thomaston*, 30 N.Y.2d 238 (1972)

County Referrals

General Municipal Law § 239-m requires agencies to refer certain approvals to the county planning agency for recommendation

- Triggering approvals:
  - Adoption or amendment of a comprehensive plan
  - Adoption or amendment of a zoning ordinance or local law;
  - Issuance of special use permits;
  - Approval of site plans;
  - Granting of use or area variances;
  - Other authorizations issued under a zoning ordinance or local law

- Triggering areas – affects real property within 500 feet of:
  - A city, village or town boundary
  - An existing or proposed county or state park or any other recreation area
  - The ROW of an existing or proposed county or state parkway, thruway, expressway, road, or highway
  - The existing or proposed ROW of any County stream or drainage channel
  - The existing or proposed boundary of any county or state owned land with a public building or institution
  - A farm operation located in an Ag & Markets Law Article 25-AA agricultural district (*this one does not apply to area variances*)

- The “county planning agency … shall have thirty days after receipt of a *full statement* of such proposed action … to report its recommendations…” GML § 239-m(4)(b)

- All materials required by and submitted to the referring body, including those required to make its determination of significance under SEQRA (*e.g.*, EAF)
- For adoptions/amendments of zoning ordinances or local laws: complete text of the proposed law and existing provisions to be affected, if not already in the possession of the county planning agency
- A referring body may agree with the county planning agency on what to include in a full statement

Coalition for Cobbs Hill by Pastecki v. City of Rochester (Affordable Housing Development Case) (cont.)

- After the initial referral to the county planning department, the number of apartment units and height of the buildings increased. However, when viewed in its totality and in relation to the Project's overall footprint (100+ units to be built), the changes were relatively minor.
- A second referral was not necessary.

Takeaways:

- Failure to comply with GML § 239-m is a *jurisdictional defect*—it will render the agency's action invalid
- However, the agency is not required to provide multiple referrals to the county unless revisions are *so substantially different* from the original proposal that the county should have the opportunity to review and make recommendations on the revised plan

Conflicts of Interest

Evans v. City of Saratoga Springs (Hospital case) (cont.)

- City updated comp plan and amended the zoning map. This converted the parcel owned by Saratoga Hospital from urban residential (UR-1) to office/medical business 2 (OMB-2).
- Members of the city council received campaign contributions from representatives of the hospital.
  - The campaign contributions didn't violate the city's code of ethics or the GML. An actual violation of these statutes would persuade the court more that a conflict was substantial and inevitable.

Takeaways:

- To determine if a disqualifying conflict exists, the extent of the issue must be considered, and where a *substantial* conflict exists, the official must not act.
- Acceptance of campaign contributions may raise an appearance of impropriety, but whether or not it's an instance where a substantial conflict is inevitable is fact-based.

Thank you!

Questions?

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