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New zoning laws can block pending development

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In reviewing proposals for development, every New York State town must consider the environmental, aesthetic and infrastructure impacts of the project.

Does it respect neighborhood character? Does it contribute to the goals of community planning or overly tax already burdened roads, sewer systems and other infrastructure?

Towns have two primary bodies of law to assist in this evaluation process. The State Environmental Quality Re-view Act (SEQRA) and its regulations provide municipalities with a substantive and procedural road map for evaluating environmental impacts. Local zoning laws provide a matrix to encourage and control development consistent with town planning goals and comprehensive plans.

When new zoning laws are passed while a project is pending, the rights of the applicant can be adversely affected. A recent Appellate Division, Fourth Department case, *Matter of Meteor Enterprises LLC v. Bylewski*, 38 AD3d 1356, 831 NYS2d 787 (2007), highlights this issue and emphasizes the need for developers to carefully follow proposed legislation if they wish to protect their project.

In May 2002, Meteor Enterprises LLC sought to build a 230-unit clustered housing development in the Town of Clarence. Meteor applied for approval of the project as a Planned Unit Residential District (PURD), an allowable category under the zoning law at that time. The town's board acted as lead agency under SEQRA and conducted an environmental review before issuing findings and a negative recommendation to the town's planning board. Meteor challenged the determination in a CPLR Article 78 proceeding, which was decided in January 2005 and annulled the SEQRA findings.

While the Article 78 proceeding was pending, however, the town also was working on a new comprehensive zoning law, required pursuant to the town's August 2001 master plan. In March 2005, the new zoning law was adopted

ENVIRONMENTAL LAW



TERRY M. RICHMAN

absent any provision for PURDs. Shortly thereafter, the planning board recommended that Meteor's PURD application be denied. By resolution, the town then denied its approval of the application based on the SEQRA findings (annulled in the Article 78 proceeding) because the project was illegal under the new law.

Meteor and the property owner brought another Article 78 proceeding seeking approval of the application and declaring the new zoning law illegal since it did not include a PURD designation consistent with the master plan. The Erie County Supreme Court annulled the town's resolution and granted the PURD application.

The town appealed.

The Appellate Division quickly determined the town could not use the annulled SEQRA findings to deny the application. The issues, according to the court, were whether the town's new zoning law governed its decision to deny the PURD application, and whether the law was invalid because of its failure to comply with the master plan.

The court relied on the general rule that a zoning law amended while an application is pending should be applied unless the town acted in bad faith and "unduly delayed action ... while the zoning law was changed," *Id.*, 38 AD3d 1356 at 1357. Since the petitioners made no such allegation, the court determined the only remaining issue concerned whether the zoning law was invalid on the grounds it was inconsistent with the comprehensive plan, *Id.* at 1358.

In finding for the town, the court noted town land use regulations must be in accordance with an adopted comprehensive plan (master plan) pursuant to Town Law 272-a, and the challenger bore the burden of proving the law was in conflict with the plan. Although the new law eliminated the PURD designation, it contained a provision for a clustered housing zoning classification, therefore, the court said

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there was no conflict and the law must be upheld.

This decision underscores the need for developers to stay informed about the planning issues and decisions in the municipality where a proposed project is to be built. Although the case is silent regarding discussions between

the developer and the town, it is possible a change in project plans or more involvement in the town's legislative efforts may have produced a more positive result for the project and its developer.

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