Case Law Update

South Tier West
Fall Planning & Zoning Training 2022

Presented by:
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SEQRA/Land Use Litigation

- Overarching principles of judicial review
  - Agency deference
    - "Pure legal interpretation" vs. factual inquiry/application
  - SEQRA "Hard Look" standard
  - Procedural vs. substantive compliance
  - Administrative record
- Review of Article 78 proceedings
- Overview of New York Court system

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SEQRA

- *Save the Pine Bush, Inc. v. Town of Guilderland*, 205 A.D.3d 1120 (3d Dep't 2022)
  - Petitioner challenges subdivision and site plan approval for a commercial and residential development.
  - Planning Board lead agency under SEQRA.
  - Determined that significant cumulative adverse environmental effects may result from other potential development in the area from related entities, including a Costco.
  - Planning Board issued a positive declaration. Petitioner claimed that the environmental review was inadequate.
  - "Our sole function, in short, is to assure that the agency has satisfied SEQRA, procedurally and substantively, and we neither can nor will evaluate data de novo, weigh the desirability of any particular action, choose among alternatives or otherwise substitute [our] judgment for that of the agency."
    - Lead Agency built a record; determination upheld.
  - Open Meetings Law challenge, based on technical difficulties. Remedy?

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SEQRA

- *Evans v. City of Saratoga Springs*, 202 A.D.3d 1318 (3d Dep't 2022)
  - City Council considered zoning amendments for a parcel of land owned by a hospital that would pave the way for a contemplated redevelopment.
  - The City Council issued a negative declaration for the zoning amendment and noted that it was not required to consider the hospital's redevelopment plans (appended to the EAF), as there was no specific application before it.
  - Petitioners sued, alleging improper segmentation
  - Court agreed – "the potential development of the parcel here was not so attenuated from the zoning map amendment that reviewing an expansion of the hospital constituted permissible segmentation"
  - Spot zoning claim rejected
  - Conflict claims rejected – Allegations of bias because City Council members received campaign contributions from the hospital. "In determining whether a disqualifying conflict exists, the extent of the interest at issue must be considered and, where a substantial conflict is inevitable, the public official should not act. Although, under these circumstances, the receipt of campaign contributions may create an appearance of impropriety, we do not find that it gave rise to an instance where a substantial conflict [is] inevitable."

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SEQRA/Eminent Domain

- *PSC, LLC v. City of Albany Industrial Dev. Agency*, 200 A.D.3d 1282 (3d Dep't 2021)
  - City of Albany IDA utilized its power of eminent domain to address a blighted area in the city to allow for redevelopment.
  - City determined to conduct the SEQRA review of only the acquisition of the parcels and not the specific redevelopment of the property.
  - Findings dealt with segmentation head on. Referenced Fourth Department decision addressing similar issue.
  - "The Agency evaluated whether this would constitute impermissible segmentation and determined that it would not, because the redevelopment project was too "speculative and hypothetical" at this point as it depended on "future steps and proposals that have yet to be developed." The Agency noted that, once a final project was approved, a complete SEQRA review would be completed at that time."
  - What is blight?
  - Pandemic procedural challenges rejected.

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SEQRA/Eminent Domain

- *Capitano v. Town Bd. of the Town of Brookhaven*, 199 A.D.3d 793 (2d Dep't 2021)
  - Town Board commenced eminent domain proceedings to acquire an easement to maintain an existing drainage pipe on property owned by petitioners.
  - Classified the action as "Type II" under SEQRA, meaning no further environmental review is required.
  - Petitioners challenged the determination, stating that while they do not object to the easement, they sought to compel the Town to complete the required review and propose the necessary mitigation measures to restore the property to the prior condition.
  - Court dismissed the petition, finding no basis to disturb the Board's determination to classify the action as Type II and, accordingly, no further environmental review was required.

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SEQRA

- *Miranda Holdings, Inc. v. Town of Orchard Park*, 206 A.D.3d 1662 (4th Dep't 2022)
  - Petitioner sought to construct a restaurant with a drive-through.
  - Town adopted Local Law prohibiting drive-through windows in the architectural overlay district (AOD). Classified the action as "unlisted" and used the short-form EAF.
  - Petitioner sued, alleging a violation of SEQRA because it should have been classified as a Type I.
  - Court sided with Petitioners: Town argued that AOD regulations were merely design requirements, but the Court found the drive-through restrictions were a change to an allowable use affecting 25 or more acres, triggering a Type I classification. Thus, because only a short EAF was used, SEQRA was violated.
  - Court annulled the Local Law.

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SEQRA

- *Williamsville Residents Opposed to Blocher Redevelopment v. Village of Williamsville Planning and Architectural Review Board*, CA 21-01051 (4th Dep't 2022)
  - Petitioners challenged Planning Board negative declaration, site plan, and architectural review approvals for the redevelopment of an apartment building.
  - Main contention is that Planning Board failed to complete the full EAF.
  - Court agreed that the Planning Board improperly classified the project as an unlisted action.
  - "Although SEQRA's procedural mechanisms are in place to ensure that SEQRA's purposes are not thwarted, and therefore strict compliance with procedural mechanisms is required a misclassification does not always lead to the annulment of the negative declaration if the lead agency conducts the equivalent of a type I review notwithstanding the misclassification."
  - Negative declaration upheld, as Court found the review was just as rigorous.

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SEQRA/Site Plan Approval

- *Route 17K Real Estate, LLC v. Planning Bd. of the Town of Newburgh*, 198 A.D.3d 969 (2d Dep't 2021)
  - Developer received site plan approval for 5-story hotel.
  - Petitioners challenged alleging (1) Planning Board improperly closed the public hearing after only one meeting; and (2) improper SEQRA segmentation for failure to consider signage.
  - State law does not mandate public hearing for site plan approval; only where local law requires it. Local law did not require it here and the public hearing was only discretionary.
  - Planning Board issued a written negative declaration. That the site plan was approved without signage was not improper segmentation.
    - "Here, signage is not being treated as an independent, unrelated activity, but as a part of the entire project, and allowing RAM to return to the Planning Board with a signage proposal will not distort the approval process."
  - Site plan approval had a rational basis in the record.
    - Are findings required? What is the best practice?

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Standing

- *Airport Parking Associates, LLC v. Town of North Castle*, 200 A.D.3d 684 (2d Dep't 2021)
  - Plaintiff sued to challenge a local law that allowed structured parking as a permitted use in the Industrial zoning district, which would allow an application for a Airport parking garage to move forward near Westchester County Airport.
  - Plaintiff owns a competing business.
  - Town moved to dismiss on the ground that plaintiff lacked standing to sue.
  - "Furthermore, where the only substantiated injury is the threat of increased business competition, an interest which is not within the zone of interests protected by the zoning laws, even a close neighbor lacks standing to contest a zoning determination. Here, the petitioner failed to substantiate that it would suffer any injury as a result of King Street's project that is not solely economic in nature, due to business competition."
  - Can a competitor ever have standing to sue under SEQRA/zoning laws?

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Special Use Permit/Site Plan Approval

- *Marcus v. Planning Bd. of Vil. of Wesley Hills*, 199 A.D.3d 1007 (2d Dep't 2021)
  - Plant nursery and arborist business received a special use permit and site plan approval to operate on the property.
  - Petitioner sued and the Planning Board's determination was annulled.
  - While a special use is a legislative determination that the use is permitted, it must satisfy the criteria set forth in the zoning law. The Planning Board has no authority to deviate from those criteria.
  - Here, the criteria required the business to have frontage on and practical access to two major roads. The Planning Board found practical access to a second major road unnecessary and granted the permit anyway. This was in contravention of the zoning law.
  - Further, the site plan was annulled because it did not conform with the requirements of the zoning law as the maximum gross impervious surface ratio was exceeded.

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Special Use Permit

- *1640 State Rte. 104, LLC v. Town of Ontario Planning Bd.*, 207 A.D.3d 1101 (4th Dep't 2022)
  - Petitioner owns a nursery and landscaping business. Obtained site plan approval with a condition that the applicant may store wood "to be regularly processed for landscape mulch."
  - Petitioner submitted a new site plan application to grow the business. Planning Board determined that mulching required a special use permit. Petitioner applied for one, which was then denied.
  - Petitioner sued.
    - The condition didn't necessarily give petitioner the right to mulch. When town took the position that mulching was a light manufacturing use requiring a SUP, petitioner didn't challenge that determination. He applied for a SUP, which was denied.
    - "Furthermore, we note that, although [t]he inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood, there is no automatic entitlement to a special use permit. Rather, petitioners were required to establish that the contemplated use conformed to the conditions or standards imposed by the Town Code. The [f]ailure to meet any one of the conditions set forth in the ordinance provides a rational basis for denying an application for a special use permit. Here, we conclude that, contrary to petitioners' contention, the Planning Board rationally determined that the special permit application failed to comply with the specific and general conditions imposed by the Town Code."

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Special Use Permit/Variance

- *666 ORT, LLC v. Bd. of Zoning Appeals of Town of Hempstead*, 200 A.D.3d 682 (4th Dep't 2021)
  - Petitioner sought an application for a building permit for a restaurant, which was denied for violations of the zoning ordinance (floor area ratio and off-street parking).
  - Sought a special exception permit to exceed the applicable FAR and a variance to reduce the required amount of off-street parking.
  - Lower court granted the petition and appellate court affirmed.
  - Explained the difference between special exception/special uses and variances and the tests for each.
  - Found that while it was rational for the board to conclude that the requests were substantial, its determination was conclusory and lacked an objective factual basis. No evidence that there would be an undesirable effect on the character of the neighborhood or negative impact to physical/environmental conditions, or otherwise be a detriment to health, safety, welfare on the community. No rational basis for denial.

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ZBA Interpretation Appeal

- *Webster Citizens for Appropriate Land Use, Inc. v. Town of Webster*, 200 A.D.3d 1617 (4th Dep't 2021)
  - Landowner proposed to develop a hydroponic farming operation on residential property.
  - During the Planning Board's site plan review, Petitioner sought to appeal a "determination" embodied in the agenda that the farming operation was a permitted use.
  - ZBA declined to hear appeal. Planning Board granted preliminary and final site plan approval.
  - Lower court annulled the site plan approval and ordered the ZBA to hear the appeal.
  - The Town appealed, arguing that no appeal to the ZBA was proper
  - Appellate Court agreed because there was no determination of an administrative official of the town and thus the ZBA was without jurisdiction to hear the appeal.

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ZBA Interpretation Appeal/Area Variance

- *Hoots v. Town of Rochester Zoning Bd. of Appeals*, 206 A.D.3d 1210 (3d Dep't 2022)
  - Petitioners built a home with a studio; sought to convert the studio into a private commercial studio.
  - CEO determined it to be a "Class II home occupation" but noted the studio was too large under the zoning law, an area variance would be required.
  - Petitioners sought an area variance, but neighbors challenged the CEO's classification of the use as a "Class II home occupation"
  - ZBA overruled the CEO and determined that the use was a "Class III home occupation." The ZBA also denied Petitioners' application for an area variance due to the substantial nature of the request, the potential effect on the character of the environment and neighborhood, and the self-created nature of the hardship.
  - Petitioners sued; Court found the ZBA's determinations were rational and supported by the record.
    - Interpretation appeal; pure legal interpretation vs. factual inquiry. Here, more factual; court afforded deference – rational basis standard. Home occupations classifications required evaluating the size, use, frequency of visitation and traffic (afforded ZBA great deference here).
    - ZBA properly applied the 5 factor balancing test.

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Exhaustion of Administrative Remedies

- *5055 Northern Boulevard, LLC v. Inc. Village of Old Brookville*, 201 A.D.3d 932 (2d Dep't 2022)
  - Petitioner applied for a building permit for a gas station property.
  - CEO denied the application on the ground that the prior non-conforming use of the property terminated for non-use.
  - Petitioner sued; the Village respondents moved to dismiss on the ground that Petitioner failed to exhaust his administrative remedies.
  - Orders of administrative officials under the zoning law are appealable to the ZBA. Before you can go to court, you must exhaust all available administrative remedies.
  - Petition should be dismissed.

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Area Variance

- *Dutt v. Bowers*, 207 A.D.3d 540 (2d Dep't 2022)
  - Petitioner hired a contractor to build and in-ground pool.
  - Code requires a 14-foot setback from property line.
  - Contractor installed the pool 6 feet from the property line.
  - Petitioner sought an area variance from the ZBA, which was denied.
  - For area variances, ZBAs are required to conduct the balancing test set forth in Town Law § 267-b(3)(b) and consider the 5 factors.
    - "(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created"
  - ZBAs have broad discretion. "ZBA is not required to justify its determination with supporting evidence with respect to each of the five factors, so long as its ultimate determination balancing the relevant considerations was rational."
  - ZBA considered the factors.
    - Change is undesirable; no evidence of similarly located pools. A pool with such a small setback would establish an unwarranted precedent.
    - Property could have been placed in a conforming location based on the survey
    - Variance was substantial – 57% deviation
    - Adverse affect on physical and environmental conditions; purpose of setbacks is to enhance character, protect privacy, and quiet enjoyment
    - Contractor's error is self-created.

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Area Variance

- *Sticks & Stones Holding, LLC v. Zoning Bd. of Appeals of Town of Milton*, 207 A.D.3d 855 (3d Dep't 2022)
  - Petitioner purchased 3-acre property at foreclosure sale that contained a "dilapidated double wide mobile home" and multiple human burial sites.
  - Petitioner sought an area variance from the 5-acre minimum lot requirement to allow construction of a 2,500 sq. ft. single-family home.
  - ZBA requested petitioner provide an inventory of the burial sites, allow the historian to take photographs of the gravestones and take other measures to protect the burial sites.
  - OPRHP recommended maintaining a 25-foot buffer around the burial sites, taking precautions during construction of any new development and requiring Petitioner to execute a restrictive covenant to protect the site long term.
  - Petitioner agreed to comply with OPRHP's recommendations but otherwise failed to comply with the ZBA's requests, including denying access to the site.
  - ZBA denied the application; Petitioner sued.
  - Court found the ZBA's determination to be rational
    - Locations of the burial sites had not been reliably determined; unclear withether code-compliance well and septic could be utilized without adverse impacts to burial sitex
    - Risk of damage to burial sites would create an undesireable change to character of neighborhood and adverse physical/environmental conditions.
    - Petitioner's refusal to cooperate did him in here.
    - Other methods could be utilized; rebuild the dilapidated structure.
    - Self-created; knew or should have known of the problem when petitioner acquired the property
    - ZBA carefully weighed the factors and record supported the determination.

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Estoppel

- *E&S Realty, LLC v. Bd. of Appeals of Village of Sands Point*, 2022 WL 4361157 (2d Dep’t 2022)
  - Village adopted law in 1989 prohibiting use of accessory structures in residential zones for “habitable purposes.”
  - Petitioner applied for a building permit to enlarge an accessory structure for a residence.
  - Building permit issued and improvements were completed at substantial cost.
  - Petitioner sought a certificate of completion, which was denied because the building permit was issued in error and the renovations would need variances, because they violated the zoning law.
  - Petitioner appealed to the ZBA seeking the certificate on estoppel grounds or, in the alternative, the required variance to permit use of the structure as a residence.
  - The ZBA denied the application in its entirety
  - Court upheld the ZBA determination.
  - Estoppel cannot be used to prevent a municipality from correcting errors and enforcing its zoning laws, even where there are harsh results.

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Issue Preview: Incentive Zoning

- Town Law § 261-b
- *Brighton Grassroots, LLC v. Town of Brighton*, 179 A.D.3d 1500 (4th Dep't 2020)
  - "Contrary to petitioner's contention, section 261–b does not require an incentive zoning law to specifically adopt a prospective formula for weighing the costs and benefits of awarding any particular incentive under the law."
- *Save Monroe Ave., Inc. v. Town of Brighton*, Monroe County Index No.: E2018002894
  - What are amenities?
  - Is there a limit to what may be granted?

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Issue Preview: Public Utility Uses

- *Freepoint Solar LLC v. Town of Athens Zoning Bd. of Appeals*; Index No. EF2021-795 (Sup. Ct. Greene Cty. 2022)
  - ZBA's denial of a use variance for a solar facility annulled.
  - Traditional use variance factors do not apply.
  - Remanded back to the ZBA for consideration of the application under the public utility use variance standard.

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Questions?

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