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SUPREME COURT - STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. JAMES V. BRANDS

Justice.

SUPREME COURT: DUTCHESS COUNTY

CREED-MONARCH, INC. d/b/a CREED ANKONY
FARM, ASTOR COURTS, LLC, ANDREW SOLOMON,
as Trustee of the Andrew Solomon Trust, MARTIN
SOSNOFF, TONI SOSNOFF, ALLISON HALL and
ILLIANA VAN MEETEREN,

Plaintiffs-Petitioners,

DECISION AND ORDER
ON TWO MOTIONS

Index No: 3116/10

For a Judgment pursuant to Article 78 of the CPLR and
for Declaratory Judgment relief

-against-

THE TOWN BOARD OF THE TOWN OF RHINEBECK
and THE TOWN OF RHINEBECK,

Defendants-Respondents.

x

The plaintiff-petitioners (hereinafter "petitioners") move for an order granting summary judgment on all five causes of action. The defendants-respondents ("respondents") cross-move for summary judgment dismissing the complaint/petition in its entirety. This matter was commenced by a petition pursuant to CPLR Article 78 and combined complaint seeking a declaratory judgment (the "petition"). The following papers were read and considered.

NOTICE OF MOTION
PETITIONERS' ATTORNEY'S AFFIDAVIT IN SUPPORT
EXHIBITS A (1-7), B, C & D
PETITIONERS' MEMORANDUM OF LAW IN SUPPORT

NOTICE OF CROSS-MOTION
AFFIDAVIT OF THOMAS J. TRAUDT
AFFIDAVIT OF SAVERIA MAZZARELLA
AFFIDAVIT OF J. THEODORE FINK
EXHIBITS A-J

COMPLAINT/PETITION
ANSWER

MEMORANDUM OF LAW IN OPPOSITION TO PETITIONERS' VERIFIED PETITION
AND MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF TOWN'S CROSS-
MOTION FOR SUMMARY JUDGMENT

REPLY AFFIDAVIT OF PETITIONERS' COUNSEL
EXHIBIT A

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF TOWN'S CROSS-
MOTION FOR SUMMARY JUDGMENT

The petition alleges that the Town of Rhinebeck Town Board's (the "board") adoption on December 29, 2009 of Local Law No. 6 of 2009 (the "re-zoning") arbitrarily and without any reasonable basis made an irrational distinction subjecting certain properties, including petitioners' properties, to a 20 acre minimum lot size. This is four times larger than previously. Petitioners claim this "reversed decades of congruent treatment of the land between Route 9 and the Hudson River", with respect to "properties that had historically been treated in a uniform manner". Others were increased to a 10 acre minimum lot size. Some were not increased at all. Counsel states there was no justification of the proposed location of the boundary line between the new 20 acre and 10 acre districts.

Counsel contends that the 20 acre requirement is wholly unnecessary, not reasonably related to a legitimate government purpose, does not further any town goals, and that the town has acknowledged as much.

Petitioners' counsel asserts that the documents relied upon by the town in the analysis of the proposal including the draft and final general environmental impact statements ("DGEIS" and "FGEIS") lead to the conclusion that the town enacted a zoning law that bears no rational relationship to a lawful public goal that would be advanced by the zoning law nor is it based on proper studies and findings.

It is on the foregoing basis that petitioners move for summary judgment on the first cause of action declaring that the 20 acre zoning requirement should be set aside on the basis that it was adopted without substantive due process, is not supported by a rational relationship to a proper governmental purpose, and constitutes an arbitrary and illegal exercise of government power. On the second cause of action, petitioners claim the 20 acre requirement must be set aside on the basis that it is not in accordance with a well-reasoned comprehensive plan. The third cause of action seeks a declaratory judgment, that the re-zoning is not supported by a well-considered comprehensive plan. On the fourth cause of action, petitioners claim the Findings Statement and re-zoning violate the State Environmental Quality Review Act ("SEQRA") and are arbitrary and capricious in mandating a 20 acre lot minimum. Finally, petitioners seek summary judgment on

the fifth cause of action to set aside the requirement that any development proposals include a reservation of the rail corridor for future trails and open space, on the ground that such constitutes an illegal taking, and as such is unconstitutional.

Prior to the 2009 re-zoning, petitioners were subject to a five acre minimum lot size. Petitioners allege that the 2009 comprehensive plan does not support the re-zoning as it lacks any reasonable basis for an increase to a 20 acre minimum lot size. Petitioners' counsel points out an inconsistency within the comprehensive plan's recommendation wherein it states that the zoning that "relies on large lot sizes in an attempt to protect community character" is counter-productive, creates sprawl, and creates unanticipated consequences to public health. (Citing Comprehensive Plan, Section 1.3). Counsel underscores that one particular area of the former R5 District was singled out for 20 acre zoning and complains that the DGEIS irrationally classified the historic preservation value of the area at a low number (20) in order to provide a superficial appearance of balance with the artificially low densities in what was referred to as "priority growth areas" in the original comprehensive plan. Counsel states that the DGEIS determined that there was no meaningful environmental impact difference between the current 20 acre zoning in the particular area, or treating the entire area as 10 acre zoning and discusses the potential impact on water resources, ground water resources, habitat and wild life, wetlands, transportation impact and impact upon emergency service providers and community character. The conclusion is that there would in general be a comparable impact either way. In the DGEIS, approximately 3,200 out of the 5,280 acres were to be modified to the 20 acre minimum requirement. As of the FGEIS, that was reduced to approximately 2,080 acres. Petitioners' counsel argues that the number of acres, and which acres are to be effected by the 20 acre minimum, were "pulled out of thin air", and as such, are arbitrary in nature, and should not be sustained. Counsel underscores that there is no explanation offered as to why only those 2080 acres would be subject to the 20 acre lot requirement.

Counsel seeks a declaration, in sum, that the 20 acre designated areas are part of a cohesive area with similar resources and attributes that should continue to be subject to uniform treatment as they have been since 1969; that large lot zoning is unnecessary and counter-productive or ineffectual to accomplish good planning; that the 20 acre minimum lot size is excessive, irrational, and not reasonably related to any legitimate government purpose.

By way of answer, and in opposition to the motion, and in support of the cross-motion for summary judgment, the respondents claim that the subject comprehensive plan and zoning law rationally and reasonably placed petitioners' property into a new historic preservation zoning district in order to achieve the town's legitimate governmental objectives of rural, historic and scenic resource protection and preservation of the town's Hudson River estate properties. It is claimed that the zoning law is in accordance with the comprehensive plan, that the land conservation trails' district does not constitute a regulatory taking because it does not require an easement or dedication of land for public use.

The town supervisor in his affidavit describes a lengthy, seven year, re-zoning process, multiple town board meetings, public hearings, workshops, all of which resulted in the new comprehensive plan and re-zoning. He describes largely undeveloped estates within the nationally designated 16 miles historic district which offers views of the Hudson River and Catskill Mountains underscoring the town's unique rural and scenic resources. He states the town board was careful to apply an appropriate re-zoning with a density requirement that would achieve the town's goals of scenic and rural preservation. He states the board listened closely to the comments and proposals of many landowners who appeared at the meetings, and that it was ultimately decided to create a special historic river front district for the estates while establishing a 10 acre minimum district as a transition between that and the more developed areas of the town.

Respondents rely on the affidavit of Saveria Mazzarella. Saveria Mazzarella is the Chairperson of the Town of Rhinebeck Comprehensive Plan Committee which has 22 members. She states they spent over four years preparing a draft comprehensive plan for the board's formal review. She was Chairperson of the Zoning Review Committee. She states she attended hundreds of public meetings and work sessions after the Comprehensive Plan Committee submitted its draft plan and zoning law to the town board. From 1975 to 1995 she served as the Chairperson of the Town Planning Board. She points out that she has been involved in community planning for over 35 years. She states both the Comprehensive Planning Committee and the town board believed that a 20 acre density requirement was needed to protect the subject scenic land from increasing development pressures. These lands are part of the 16 mile historic district which was listed in 1979 on the national register of historic places by the United States National Park Service and was characterized as an "exceptional historic corridor" along the bank of the Hudson River. She points out that it contains country estates of famous families in our nation's history including the Astors, former Vice-President Morton, the Roosevelts, the Vanderbilts, and the Livingstons. She states it became known as the "great estates area". Respondents point out that it is this rural and scenic quality that attracts tourists from New York City and other urban areas, pointing to the example of the recent Clinton wedding at the property of the plaintiff, Astor Courts, LLC.

Ms. Mazzarella confirms that much thought was given to where to draw the boundary line separating these historic river front estates from other lands in the town, which to classify as a minimum of 10 acre zoning, and states that the boundary line imposed is almost exactly the same as the border of the 16 mile historic estates district. She states the Comprehensive Plan Committee proceeded to hold over 200 public meetings and workshops during which town residents shared their ideas for the future of the town. She states on many occasions nearly 200 individuals attended. She states that the area designated as a 10 acre minimum lacked the scenic and visual significance of the country estates on the river front.

Finally, Ms. Mazzarella points out that the rail/trail district does not require the granting of an easement, and as such, does not constitute a taking. Any future public use of the private lands set aside for the trail and open space would require a voluntary easement agreement

between the town and the landowner. There is no mandatory obligation. No development rights were taken.

The affidavit of J. Theodore Fink, AICP, states that he worked for the Town of Rhinebeck for seven years in connection with the December 29, 2009 comprehensive plan and zoning law. He states that the purpose of creating the new historic preservation 20 acre district, and the 10 acre district, was to place the nationally significant historic rural estates bordering on the Hudson River into a special low density zoning district to maximize preservation of their character including their river front, scenic and visual attributes. He states that all anyone needs to do is drive along River Road and Morton Road/South Mill Road and look east and west to appreciate that the state-designated scenic roads constitute a natural boundary line between the 20 acre and 10 acre districts which coincide with the border of the 16 mile historic district.

Mr. Fink underscores that the town board's comprehensive planning and re-zoning efforts were in response to increased development pressures facing the town and heightened concern by residents as to maintenance of the town's rural and historic and scenic attributes. Mr. Fink states he attended almost every public meeting and workshop and that the town's deliberative process was thorough and protracted and included exhaustive in depth discussions and analyses over hundreds of meetings and well attended public workshops, forums and public meetings related to the ultimate plan and re-zoning.

Mr. Fink points out that by nature the purpose of a comprehensive plan is to re-evaluate the town's existing plan, update it, and modify it to meet the current needs and plan for the future. The prior comprehensive plans were 1969 and 1989. In his opinion, they were outdated. The 1989 plan was based upon a 1980 census, surveys and mapping that occurred in the mid 80s. Mr. Fink states that in his more than 30 years experience regarding comprehensive planning and zoning and related issues to over 50 municipalities throughout New York State: "I have never participated in a re-zoning process that was as meticulous and deliberate as the one conducted by the Town of Rhinebeck from 2002 to 2009". (Paragraph 37 of his affidavit annexed to the cross-motion papers). He goes into depth as to the discussions and recommendations made with respect to both the 20 acre density proposal and the 10 acre density proposal stressing the efforts made, the deliberate and rational basis upon which he states the determinations were made, all in support of the cross-motion for summary judgment dismissing the petition/complaint.

In reply, petitioners' counsel argues that the claimed rational bases upon which these determinations were made are not evident anywhere in the record, and that in fact the three affidavits submitted, make no significant reference to the record, that these are after the fact statements which she states are contradicted in the record, particularly with respect to the rationality of 20 acre zoning as opposed to 10 acre zoning.

In reply, the respondents' counsel points out that the town's cites to the zoning law, to the steep slopes map, in the comprehensive plan, to demonstrate that the board considered the area of the estates located along the Hudson River when determining how to achieve the goal of

preserving the rural and historic character of the town. Counsel points to references to the comprehensive plan and its appendixes by Mr. Fink. References were made to various parts of the record by the respondents in the memorandum of law in opposition as pointed out in the reply memorandum. Respondents state the record establishes the numerous meetings and documents considered. They further state that the petitioners missed the point about their references to the 16 mile historic district. The purpose was to underscore that the town's decision was not irrational because it is an example of prior recognition of the importance placed on this historic area and of the emphasis as to the desire to maintain it. References to it are made in the record as pointed out in the reply memorandum of law.

The parties agree that the relevant law provides that petitioners have the burden to demonstrate that the town's re-zoning lacks a rational basis in the record and that because zoning is a legislative act, there is a presumption of constitutionality which must be overcome by proof beyond a reasonable doubt. (See Asian Americans For Equality v. Koch, 72 NY2d 121, 131 [1988]; Farahzad v. Town Board of Riverhead, 220 AD2d 379 [2nd Dept. 1995]). Further, it is not the court's role to interfere with the well reasoned decision making of the town unless it is irrational, arbitrary and capricious.

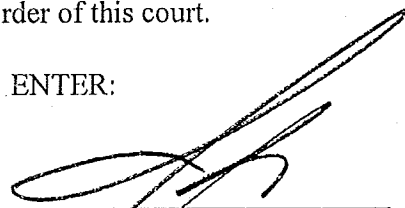
Based upon all of the foregoing, this court finds that the plaintiffs/petitioners have failed to meet their burden to demonstrate that the town's re-zoning lacks a rational basis or that it was affected by an error of law or an abuse of discretion. Accordingly, it is hereby

ORDERED that the petitioners' motion for an order granting summary judgment is denied. The respondents' motion for summary judgment dismissing the complaint/petition is granted. As to the 20 acre zoning requirements, which are addressed in causes of action 1-4, the court finds that the subject comprehensive plan and zoning law were considered over numerous hearings and a long period of time and were not arbitrary and capricious, but rather a reasonable determination following inquiry and public hearings and in accordance with the applicable zoning law and comprehensive plan. As to the fifth cause of action, the court agrees that the land conservation trails' district does not constitute a regulatory taking of property as it does not require an easement or dedication of land for public use. Contrary to petitioners' counsel's assertion, respondents' claims are supported by the record. Petitioners have not met their burden of proof nor raised issues sufficient to demonstrate genuine triable issues of fact as to warrant a hearing in this matter.

The foregoing constitutes the decision and order of this court.

Dated: July 27, 2011
Poughkeepsie, New York

ENTER:



James V. Brands
Supreme Court Justice

Cuddy & Feder LLP
Jennifer Van Tuyl, Esq.
Joshua E. Kimerling, Esq.
Thomas A. Cunnane, Jr., Esq.
445 Hamilton Avenue-14th Floor
White Plains NY 10601

Zarin & Steinmetz
Michael D. Zarin, Esq.
81 Main Street, Suite 415
White Plains NY 10601

Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to Judge Brands' Chambers, please do not submit any copies. Submit only the original papers.