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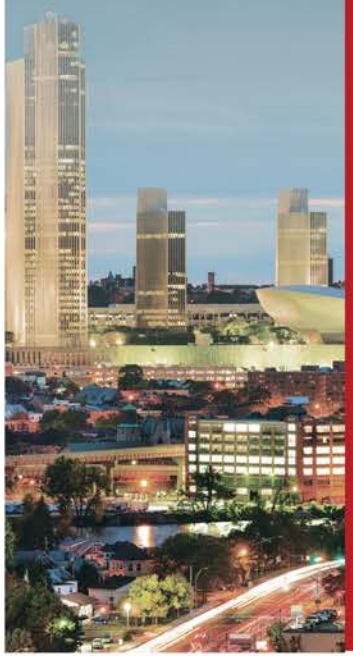

Case Law Update

October 28, 2022
For CDRPC Fall Local Government Workshop

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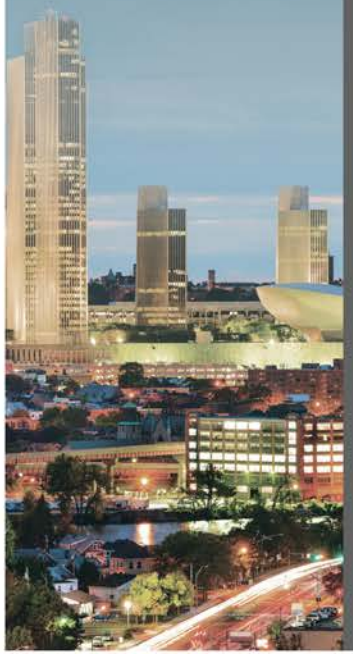

ZONING LAW

61 Crown St., LLC v City of Kingston Common Council, 206 A.D.3d 1316 (3rd Dep't, 2022)

FACTS

- The City owned several contiguous parcels in the commercial zoning district of a mixed-use overlay district of the city. One city-owned parcel had a picnic table, and the public would eat lunch at the site.
- The City proposed redeveloping the parcel for mixed-use business, apartment and parking garages, amending the zoning of one privately owned parcel.
- The petitioners filed an Article 78 claiming (among other claims) that the City impermissibly amended the zoning, spot zoning the parcel for the redevelopment.
- The lower court dismissed the complaint, from which Plaintiffs appeal.

61 Crown St., LLC v City of Kingston Common Council, 206 A.D.3d 1316 (3rd Dep't, 2022)

HOLDING

- Where a zoning amendment is part of a "comprehensive plan, it will be upheld if it is established that it was adopted for a legitimate governmental purpose and there is a reasonable relation between the end sought to be achieved and the means used to achieve that end."
- In reviewing zoning amendments, courts will also consider whether the proposed use is compatible with surrounding uses, whether other suitable parcels are available, and recommendations from the Professional Planning Staff.

Matter of Committee for Environmentally Sound Dec v Amsterdam Ave. Redevelopment Assoc. LLC, 194 A.D. 3d 1 (1st Dep't, 2021)

FACTS

- Respondent proposed developing 55-unit condominium housing.
- Board of Standards and Appeals (BSA) approved the application, relying on an interpretation of a resolution consistent with the longstanding interpretation of the zoning resolution.
- Petitioners filed an Art 78.
- The Supreme Court annulled the BSA decision and ordered demolition of constructed floors of the project.
- Respondent appealed.

Matter of Committee for Environmentally Sound Dec v Amsterdam Ave. Redevelopment Assoc. LLC, 194 A.D. 3d 1 (1st Dep't, 2021), Cont'd

HOLDING

Re Standing

- Petitioners must suffer direct harm, injury different from the public at large to establish standing.
- Close proximity can but Economic or speculative harm does not establish standing.

Re Ambiguous Language and Precedent

- Zoning Resolution ambiguous
- BSA rationally interpreted the resolution, based on past interpretation.
- The lower court should have deferred.

Matter of Yeshiva Talmud Torah Ohr Moshe v. Zoning Bd of Appeals of the Town of Wawarsing, 170 A.D. 3d 1488 (3rd Dep't, 2019)

FACTS

- Applicant was a not-for-profit religious corporation.
- Project proposed was an educational facility for religious studies
- ZBA denied the application, claiming the educational school or camp was not a permitted use.
- Religious uses were permitted in the town zoning code, defined as:

"Permitted uses within a Neighborhood Settlement District include a place of worship, which is defined as the use of land, buildings, and structures for religious observance, including a church, synagogue, or temple and related on-site facilities such as monasteries, convents, rectories, retreat houses, and fellowship or school halls." Code of the Town of Wawarsing, New York, § 112-4.

Matter of Yeshiva Talmud Torah Ohr Moshe v. Zoning Bd of Appeals of the Town of Wawarsing, 170 A.D. 3d 1488 (3rd Dep't, 2019)

HOLDING

- Court defers to board discretion on decisions, including interpreting ordinances, subject to "arbitrary and capricious" standard.
- Matters of legal interpretation of the zoning law, such as the definition of the "Place of Worship," the court will review, and overturn decisions based on an "error of law"

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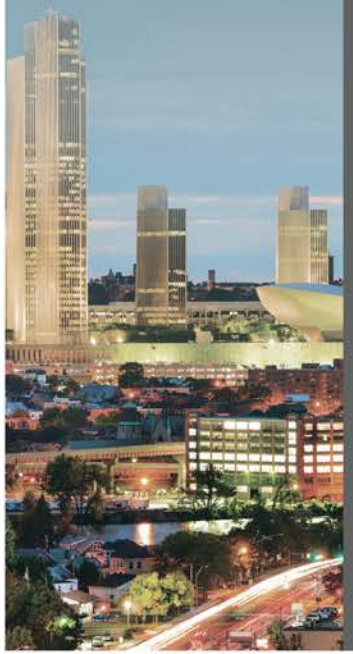

Site Plan Review

Favre v. Planning Board of Town of Highlands, 185 A.D.3d 681 (2d Dep't 2020)

- **Facts**:
  - Project involved 86-room, 4-story hotel and restaurant
  - Adjacent property owners (petitioners) challenged Planning Board's site plan approval and grant of special exception use permit contending that:
    - Planning Board was required to hold another public hearing on revised site plans
    - Planning Board was required to re-refer application for site plan approval and special exception use permit to county planning board after revisions
    - Planning Board failed to comply with SEQRA in issuing Negative Declaration

Favre v. Planning Board of Town of Highlands, 185 A.D.3d 681 (2d Dep't 2020) CONT'D

- **Holding/Rationale**:
  - Site plan revisions were insubstantial, therefore no additional hearing was necessary
  - New referral to county planning board was not required as revisions did not differ substantially from original proposal
  - Planning Board identified relevant areas of environmental concern, took a hard look, and made a reasoned elaboration of the basis for its determination

Empire Imp.-Exp. of USA, Inc. v. Town of E. Hampton Plan. Bd., 186 A.D.3d 1364 (2d Dep't 2020)

- **Facts**:
  - Town of East Hampton Planning Board denied petitioner's application for site plan approval for the installation of a canopy at a gas station in the hamlet of Montauk
  - Petitioner filed Article 78 proceeding challenging denial of application for site plan approval
  - Supreme Court denied the petition and dismissed the proceeding

Empire Imp.-Exp. of USA, Inc. v. Town of E. Hampton Plan. Bd., 186 A.D.3d 1364 (2d Dep't 2020) CONT'D

- **Holding**:
  - Appellate court held that decision denying site plan approval was proper because Planning Board's determination was rational given size and scale of proposed canopy
  - Specifically, the Planning Board considered whether project was consistent with surrounding property use and whether it would change the visual character of area

Gershow Recycling of Riverhead, Inc. v. Town of Riverhead, 193 A.D.3d 731 (2d Dep't 2021)

- **Facts**:
  - The Town Code authorized the Administrator of the Building Department "to review evaluate, judge, and advise on applications related to the Town Code," and "to make issue and render determinations regarding compliance with provisions of the Zoning Code for site plan applications."
  - Town Code contained specific provisions vesting the Planning Board with the authority to act on site plan applications
  - Town Building and Planning Administrator denied the site plan application of petitioners and informed petitioners they had a right to appeal to the Zoning Board of Appeals
  - Supreme Court granted petitioners Article 78 petition, annulled determination, and remitted the matter to the Planning Board

Gershow Recycling of Riverhead, Inc. v. Town of Riverhead, 193 A.D.3d 731 (2d Dep't 2021) CONT'D

- **Issue**:
  - Whether Town Building and Planning Administrator had authority under Town Code to deny site plans.

- **Holding:**
  - Appellate Court explained that specific provisions prevail over general ones – Town Code specifically vested Planning Board with authority to act on site plan applications

  - Appellate Court held that the Administrator of the Building Department's denial of the site plan application "was an action wholly beyond his grant of power," and "petitioners were not required to exhaust their administrative remedies by appealing to the Town's Zoning Board of Appeals."

Cady v. Town of Germantown Plan. Bd., 184 A.D.3d 983 (3d Dep't 2020)

- **Facts:**
  - Application for site plan approval for building design with 71-foot façade
  - Town Zoning Code includes a provision stating that "the length of any façade should generally not exceed 50 feet maximum."
  - Supreme Court held that Planning Board exceeded its authority in approving site plan application without first submitting the plan to the ZBA

Cady v. Town of Germantown Plan. Bd., 184 A.D.3d 983 (3d Dep't 2020) CONT'D

- **Rationale / Holding:**
  - Appellate Court held that absent compulsory language, "this provision is deliberately phrased as a guideline, rather than as a prohibition; in other words, there was no requirement for a referral to the ZBA to determine the plain language of the statute."
  - The Court held that the Planning Board did not exceed its authority, "as its approval of the site plan was rational and based simply upon an unambiguous reading of the Town zoning code."
  - Court further held that Planning Board complied with the procedural and substantive requirements under SEQRA

Matter of Sagaponack Ventures, LLC v. Bd. of Trustees of Vil. of Sagaponack, 171 A.D.3d 762 (2d Dep't 2019)

- **Facts:**
  - Petitioner applied for site plan approval of a project involving the development of an over 13,000 square foot single-family residence on his property
  - Planning Board rejected application, determining that the northwestern corner of property (site of proposal) was not a suitable location for development
  - Petitioner commenced an Article 78 proceeding against the Village
- **Holding:**
  - The Planning Board properly considered the requisite factors set forth in the Village Code governing site plan applications and "determined that development in the northwestern corner of the property would contribute to the loss of agricultural soil, that such development would negatively impact the views and vistas of farmland areas, and that such development would have a negative impact on any future subdivision of the property."

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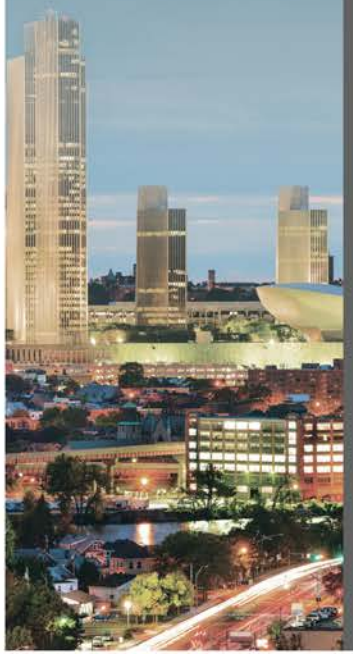

Special Use Permit

Matter of Barnes Rd. Area Neighborhood Assn v Planning Bd of the Town of Sand Lake, 206 A.D.3d 1507 (3d Dept, 2022)

Facts:

- Applicant applied for a Special Use Permit and Site Plan approval to construct a barn to operate a seasonal party venue.
- Planning Bd approved the applications.
- Petitioners filed an Article 78 to annul the approvals.

Holding:

1. When a zoning law lists a permitted use allowed by special use permit, "it 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."
2. The Special Use Permit must comply with "legislatively imposed conditions on an otherwise permitted use."
3. Court review is limited to ensuring the board "followed lawful procedures, did not effect an error of law and was not arbitrary or capricious."

Biggs v. Eden Renewables LLC, 188 A.D.3d 1544 (3d Dep't 2020)

- **Facts:**
  - Project involved construction of a major solar energy system consisting of two five-megawatt solar panel arrays.
  - Town of Duanesburg Planning Board granted special use permit and site plan approval for project
  - Petitioners filed Article 78 Proceeding challenging grant of permit and site plan approval

- **Holding:**
  - Appellate Court held:
    - Planning Board's finding conformed to standards in Town laws
    - Would have been improper to deny a special use permit based solely on community objection
    - Planning Board had a rational basis for granting the special use permit, considered a range of factors, was not arbitrary or capricious

Edgewater Apartments, Inc. v. New York City Plan. Comm'n, 177 A.D.3d 576 (1st Dep't 2019)

- **Facts:**
  - New York City Planning Commission granted an application for renewal of a special permit to construct a new hospital building
  - Article 78 petitioner challenged the permit renewal on grounds that Commission did not consider environmental impacts resulting since initial grant of permit

- **Holding:**
  - Appellate Court held that the "Commission's determination that the facts upon which the special permit was granted have not substantially changed was rationally based in the record and not contrary to law"
  - Commission construed the statute to mean that the "facts" assessed refer to the scope and terms of the project, rather than changes in external factors such as environmental impacts that may have resulted since initial grant of permit.

AREA VARIANCES

1. Will the proposal produce an undesirable change in the neighborhood?
2. Can the benefit sought be achieved by a feasible method other than an area variance?
3. Is the variance substantial?

4. Will the proposal adversely impact the physical or environmental conditions in the neighborhood if granted?
5. Was the alleged difficulty self-created?

Matter of Grosso v. DeChance, 205 A.D.3d 1026 (2nd Dep't, 2022)

FACTS

- Applicants' family owned a 7,378sf parcel for generations (since 1954).
- The Town rezoned the area, increasing minimum lot size requirements to 40,000sf.
- Applicant sought an area variance to construct a dwelling on the parcel.
- ZBA denied the area variance, dismissing the Art 78 proceeding.

HOLDING

The ZBA did not need supporting evidence for each of the five factors so long as the board determined that the detriment to the neighbors outweighed any benefit to the applicant as found during a balancing of the five factors.

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1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
2. The alleged hardship relating to the property is unique, and does not apply to a substantial portion of the district or neighborhood;
3. The requested use variance will not alter the essential character of the neighborhood;
4. The alleged hardship is not self-created.

USE VARIANCES

Matter of Brennan v Hobbs, 193 A.D.3d 725 (2nd Dep't, 2021)

FACTS

- Applicant sought a use variance to use his single-family home as a two-family home.

PROCEDURAL

- ZBA denied the application.
- Applicant filed an Article 78 which the Supreme Court dismissed.
- Applicant petitioner appealed the decision.

HOLDING

The ZBA's determination was not illegal, arbitrary or an abuse of discretion. The Applicant has the burden of establishing the request is meets the standards for a use variance.

Matter of WCC Tank Tech., Inc. v Zoning Bd of Appeals of the Town of Newburgh, N.Y., 190 A.D.3d 860 (2nd Dep't, 2021)

FACTS

- Parcel received a use variance in 1984 and continued operating as a fuel tank lining business under that use variance since issuance.
- The Petitioner began storing vehicles with mounted hydrovac equipment inside the building.
- Code compliance office issued an Order to Remedy.
- Applicant requested an interpretation and use variance which the ZBA denied.
- Applicant filed an Article 78 which was dismissed.

Matter of WCC Tank Tech., Inc. v Zoning Bd of Appeals of the Town of Newburgh, N.Y., 190 A.D.3d 860 (2nd Dep't, 2021)

HOLDING

- Petitioners failed to show "by dollars and cents proof that they cannot yield a reasonable rate of return absent the requested use variance."

- The remaining factors did not require consideration without the financial evidence the property could not be used for a permitted purpose.

- The lower court's dismissal of matter was upheld.

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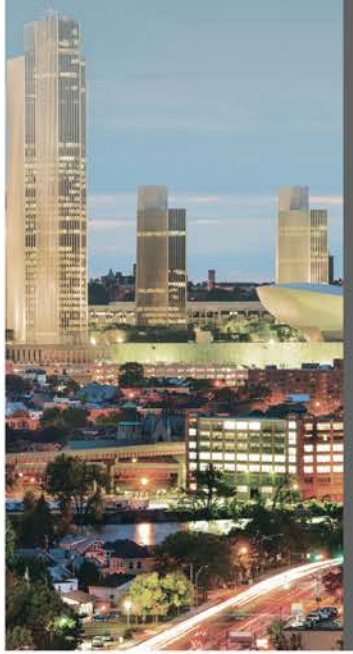

SEQRA

Matter of Coalition for Cobbs Hill v. City of Rochester, 194 A.D.3d 1428 (4th Dep't 2021)

- **Facts:**
  - Project to redevelop Cobbs Hill Village, which would entail demolishing current complex and building several buildings to house over 100 apartment units for affordable senior housing
  - Zoning Manager – Lead Agency for SEQRA review designated project as Type I Action, submitted project to County Planning Department, issued negative declaration
  - City of Rochester Planning commission requested further information, applicants submitted revised application addressing CPC's concerns
  - CPC conditionally approved project
  - Lead agency issued amended negative declaration based on SEQRA violations
  - Petitioners (tenants and residents of adjacent neighborhoods) filed an Article 78 proceeding seeking to annul: (1) Lead Agency's negative declaration based on SEQRA violations; (2) CPC's conditional approval of the project as inconsistent with the special permit approval standard; and (3) CPC's determination on the grounds that revised application should have been rereferred to County Planning Department under Gen. Municipal Law § 239-m

Matter of Coalition for Cobbs Hill v. City of Rochester, 194 A.D.3d 1428 (4th Dep't 2021)

- **Holding:**
  - The Zoning Manager complied with SEQRA in issuing negative declaration – considered potential impacts of Project on traffic, lead contamination, and the mitigation measures included in application
    - Did not improperly issue a conditioned negative declaration – mitigating measures were adopted after issuance of negative declaration and were not conditions to declaration
  - CPC considered and addressed in findings each of the five factors set forth in the zoning code after hearings and reviewing comments/recommendations
  - Revised Project not required to be resubmitted to county Planning Department because changes were not substantial: "Although the number of apartment units to be constructed and the height of those buildings have increased since the original referral, those changes to the Project, when viewed in its totality, were relatively minor."

Matter of Brunner v. Town of Schodack Planning Bd., 178 A.D.3d 1181 (3d Dep't 2019)

- **Facts:**
  - Type I project involving the construction of a sales distribution center in Town
  - Town granted site plan approval and special use permit to applicant
  - Planning Board was lead agency for SEQRA review
  - Planning Board did not prepare EIS but considered the EAF, a geotechnical engineering report, a stormwater management report, the Town Engineer's recommendations, traffic impact studies
  - Planning Board held public meetings and considered public responses
  - Petitioners filed Article 78 proceeding to annul Planning Board's grant of special permit and site plan approval and to direct Planning Board to prepare an EIS, contending that Planning Board should have considered impact on certain nearby highway exits and review process was rushed

Matter of Brunner v. Town of Schodack Planning Bd., 178 A.D.3d 1181 (3d Dep't 2019) CONT'D

- **Holding:**
  - Appellate Court held that the Planning Board "took the requisite hard look *at the areas of environmental concern* and satisfied its obligations under SEQRA"
  - Further, Planning Board did not deny public a meaningful opportunity to participate in SEQRA review process
    - The Planning Board held two public meetings and the public was given an opportunity to submit written comments
    - Claim that review process was rushed has no merit – "regulatory scheme does not provide for a minimum time for such process" only "maximum time frames by when lead agency must act"

Matter of Peachin v. City of Oneonta, 194 A.D.3d 1172 (3d Dep't 2021)

- **Facts:**
  - Proposal to City of Oneonta Planning Commission to construct a 73,500 square foot, four-story, mixed-use building which would include 64 affordable-housing apartment units and an educational facility on a 2.12-acre municipal parking lot
  - City Planning Commission served as lead agency
  - Project designated as Type I action under SEQRA
  - Planning Commission issued a negative declaration and approved the project, waiving the zoning code requirement that 90 off-street parking spaces be added to accommodate the use
  - Petitioners, adjacent business owners, filed an Article 78 proceeding to annul the negative SEQRA declaration and resolution granting site plan approval, asserting that the Commission failed to take a hard look at the parking impacts of the project
  - Supreme Court held that petitioners lacked standing to challenge the negative declaration

Matter of Peachin v. City of Oneonta, 194 A.D.3d 1172 (3d Dep't 2021) CONT'D

- **Holding:**
  - Appellate Court agreed with Supreme Court and held that the petitioners lacked standing to challenge negative declaration because their harms were too speculative or economic in nature
  - Appellate Court held that, the issue of standing aside, the Planning Commission took the requisite hard look at the parking impacts

Matter of Buckley v. Zoning Bd. of Appeals of City of Geneva, 189 A.D.3d 2080 (4th Dep't 2020)

- **Facts:**
  - Proposal to renovate Trinity Episcopal church and rectory involving the construction of an inn with guest rooms, a restaurant, and an expansion of the parking lot
  - Applicants submitted application for a use variance because the inn, restaurant, and event space were not permitted uses in the multifamily residential and historic district within which the church sits
  - ZBA was lead agency and issued a negative declaration under SEQRA and approved the use variance
  - Petitioners allege that the ZBA did not comply with the substantive and procedural requirements of SEQRA, petitioners were denied the right to participate in public hearings before the ZBA, and the ZBA impermissibly allowed project applicants to submit materials after the submissions deadline

Matter of Buckley v. Zoning Bd. of Appeals of City of Geneva, 189 A.D.3d 2080 (4th Dep't 2020) CONT'D

- **Holding:**
  - Appellate Court held that the ZBA complied with SEQRA in issuing the negative declaration and took a hard look at the relevant areas of environmental concern and made a reasoned elaboration of the basis for its determination
    - Court noted that "the designation as a Type I action does not, per se, necessitate the filing of an environmental impact statement"
  - Furthermore, the Court held that petitioners were not denied due process as they were given notice of the hearings and an opportunity to be heard (petitioners did in fact participate and comment on the issues at the hearings)
  - The Court also rejected the contention that the ZBA's consideration of materials after the public comment period had closed warrants reversal under the circumstances

Matter of Micklas v. Town of Halfmoon Plan. Bd., 170 A.D.3d 1483 (3d Dep't 2019)

- **Facts:**
  - Application for a special use permit and site plan approval to add a brewpub to an existing bar and restaurant
  - Throughout application review process, Planning Board characterized project as Type II action
  - For SEQRA purposes, Planning Board denoted project as unlisted
  - Petitioners challenge SEQRA negative declaration and issuance of special use permit

Matter of Micklas v. Town of Halfmoon Plan. Bd., 170 A.D.3d 1483 (3d Dept 2019) CONT'D

- **Holding:**
  - Negative declaration
    - The Appellate Court held that "although it might have been better for the Planning Board to set forth more of a reasoned elaboration for the basis of its determinations, this particular record is adequate for us to exercise our supervisory review"
    - Planning Board strictly complied with the SEQRA process for unlisted actions and the negative declaration is supported by a rational basis in the record
  - Special Use Permit
    - Planning Board considered the special use permit factors in the zoning code and approved the brewpub with conditions to minimize the negative impact on neighbors, which was a rational determination that the project complied with legislatively imposed conditions on an otherwise permitted use

Matter of Neeman v. Town of Warwick, 184 A.D.3d 567 (2d Dep't 2020)

- **Facts:**
  - Black Bear Family Campground, Inc. (BBFC) expanded its campground from the approved 74 campsites to 154 campsites and constructed accessory structures without seeking any variances, permits, or approvals from the Town
  - As part of BBFC's settlement of civil proceedings against it by the Town, the Town Board entered into Development Agreement with BBFC wherein BBFC would obtain an area variance, among other relief from zoning laws
  - Planning Board, lead agency, adopted negative declaration under SEQRA after public hearings and the completion of an EAF
  - Planning Board approved BBFC's application for site plan approval and a special use permit

Matter of Neeman v. Town of Warwick, 184 A.D.3d 567 (2d Dep't 2020) CONT'D

- **Facts:**
  - Petitioners initiated an Article 78 proceeding challenging the Planning Board's issuance of a negative declaration
  - Supreme Court denied the petition and dismissed the proceeding
- **Holding:**
  - The Appellate Court disagreed with Supreme Court and held that the Planning Board's negative declaration should be annulled
  - Specifically, the Court held that the "Planning Board failed to adequately assess and consider the potential environmental impacts of the construction and expansion of the campground from 74 campsites to 154 campsites, and adopted the negative declaration based largely upon its finding that the campground had been operating 154 campsites—albeit illegally—for many years."
  - Planning Board cannot delegate obligations as lead agency

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

- **Facts:**

  - Rapp Road Development, LLC applied for and was granted subdivision and site plan approval for a development project involving two sites: a 222-apartment residential development and a warehouse and refueling station

  - Planning Board, lead agency, undertook cumulative review of the project and issued a SEQRA positive declaration

  - Petitioners challenge Planning Board's approval of project

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

- **Holding:**
  - Appellate Court held that Planning Board complied with SEQRA as it took the requisite hard look and made a reasoned elaboration of the basis for its determination regarding:
    - impacts to avian populations;
    - visual impact of proposed project on nearby historic district;
    - impact on community character;
    - compatibility w/ the goals of the transit district;
    - the proposed mitigation measures; and
    - alternatives to the proposed developments

Matter of Save the Pine Bush, Inc. v. Town of Guilderland, 205 A.D.3d 1120 (3rd Dep't, 2022)

- **Facts:**

New Petitioners filed an appeal to annul Planning Board's SEQR findings statement and site plan approval (earlier action was dismissed and a prior appeal was pending from another petitioner). The Petitioners based the appeal on the cumulative environmental impacts regarding:

- Threatened or endangered species;
- Potential pesticide use;
- Effects of development on wetlands;
- Climate change; and
- Air Quality

Matter of Save the Pine Bush, Inc. v. Town of Guilderland, 205 A.D.3d 1120 (3rd Dep't, 2022)

- **Holding:**

- Appellate Court held that a new petitioner was not precluded from filing a second appeal, given new issues not addressed in the prior matter. However, the standard for review remains "to assure that the agency has satisfied SEQR, procedurally and substantively." In this instance, the Planning Board relied on studies submitted by the Applicant. The court will not:
    - "evaluate the data" (or pass judgment on studies submitted);
    - "weigh the desirability of any particular action (second guess the lead agency);
    - "choose among alternatives"; or
    - "substitute our judgment for that of the agency."

Matter of Van Dyk v. Town of Greenfield Planning Bd., 190 A.D.3d 1048 (3d Dept 2021)

- **Facts**:
  - Stewart's Shops sought site plan approval of project involving the construction of a manufacturing and distribution center
  - Planning Board issued negative SEQRA declaration and site plan approval
  - Petitioner's challenge issuance of negative declaration on grounds that Planning Board failed to consider environmental concerns, specifically the stormwater and wetland impacts raised in the application
- **Holding**:
  - Appellate Court held that Planning Board took a hard look at the stormwater impacts and "made a reasoned determination that the capacity of the existing system was adequate to handle the increase in stormwater runoff"
  - The determination in the full EAF that the modified project "would have no impact on surface waters is supported by the evidence and validates the Planning Board's negative declaration."

Matter of Davis v Zoning Bd. of Appeals of City of Buffalo, 177 A.D.3d 1331 (4th Dep't 2019)

- **Facts**:
  - Proposed Development involving the construction of a mixed-use, four-story building in Buffalo
  - Project required the demolition of fourteen structures within a National Register of Historic Places District
  - The Planning Board initially issued a positive declaration, prepared a final EIS and addressed the concerns raised by the New York State Office of Parks Recreation & Historic Preservation (SHPO)
  - Petitioners contend Planning Board, as lead agency, did not comply with SEQRA as it failed to take a hard look at the identified historic resources as an area of environmental concern an did not provide a reasoned elaboration for its determination

Matter of Davis v Zoning Bd. of Appeals of City of Buffalo, 177 A.D.3d 1331 (4th Dep't 2019) CONT'D

- **Holding/ Rationale:**
  - The Appellate Court noted that the Planning Board initially issued a positive declaration and prepared a final EIS addressing concerns raised by the New York State Office of Parks, Recreation and Historic Preservation (SHPO)

  - The Court held that even though the Planning Board ultimately disagreed with SHPO concerning the impact on historic resources, the Planning Board conducted a detailed review of the project and provided a reasoned elaboration for its determination in its written findings in compliance with SEQRA.

Matter of Northern Manhattan Is Not for Sale v. City of New York, 185 A.D.3d 515 (1st Dep't 2020)

- **Facts:**
  - City adopted rezoning plan
  - Petitioners filed Article 78 proceeding arguing City did not take requisite hard look under SEQRA and CEQR at eight specific issues raised during public comment period on draft EIS
  - Lower Court agreed, rejecting the "City's argument that it is not required to identify or address every conceivable environmental impact" and finding the City's reliance on the CEQR Technical Manual erroneous
  - Lower Court found City's reliance on CEQR Technical Manual was misguided because manual is not a rule or regulation requiring strict compliance, but a guideline

Matter of Northern Manhattan Is Not for Sale v. City of New York, 185 A.D.3d 515 (1st Dep't 2020) CONT'D

- **Holding:**
  - The First Department reversed and held that the City took a hard look at the requisite issues and provided reasoned explanations in the FEIS;
  - City did not have to "parse every sub-issue as framed by petitioners," and was "entitled to rely on the methodology set forth in the CEQR Technical Manual, including in determining what issues were beyond the scope of SEQRA/CEQR review."

Matter of Berg v. Planning Bd. of the City of Glen Cove, 169 A.D.3d 665 (2d Dep't 2019)

- **Facts:**
  - Developer applied for special use permit for planned unit development (PUD) master development plan
  - Developer applied to amend PUD plan and Planning Board determined supplemental EIS was not needed
  - Petitioners challenge the Planning Board's adoption of the 579-page final EIS, 135-page SEQRA findings statement, the grant of a special use permit for the developer's planned unit development (PUD) master development plan, and the determination that a supplemental environmental impact statement was not needed
  - Supreme Court dismissed petition

Matter of Berg v. Planning Bd. of the City of Glen Cove, 169 A.D.3d 665 (2d Dep't 2019) CONT'D

- **Holding:**
  - The Appellate Court held that the Supreme Court's dismissal of the petition challenging the Board's determination regarding a Supplemental EIS was proper:
    - The Board identified the relevant areas of environmental concern, took a hard look at them, and made a reasoned elaboration of the basis for its determination
  - The Court held that the remaining issues were time-barred.

Matter of Save Harrison, Inc. v. Town/Village of Harrison, NY, 168 A.D.3d 949 (2d Dep't 2019)

- **Facts:**
  - SEQRA review of zoning amendment
  - Petitioners challenge:
    - The Planning Board's lead agency declaration for SEQRA review of zoning amendment, and
    - The issuance of a negative declaration for failure to consider the cumulative impacts of an unrelated proposed development.
- **Holding:**
  - The Appellate Court held that even though the Planning Board did not have final approval over the zoning amendment, it was a proper lead agency as it had decision-making authority over various aspects of the project
  - Additionally, the Planning Board complied with SEQRA and had no obligation to consider the cumulative impacts of an unrelated, proposed development of a senior living facility

Campaign for Buffalo Hist. Architecture & Culture, Inc. v. Zoning Bd. of Appeals of City of Buffalo, 174 A.D.3d 1304 (4th Dep't 2020)

- **Facts:**
  - Application for site plan approval for project involving the demolition of a house and garage and the construction of a three-story building housing an art gallery and eight apartment
  - Planning Board issued negative declaration and site plan approval
  - Petitioners challenge negative declaration and site plan approval and claim that Planning Board's determination violated General City Law § 28-a(12), inasmuch as site plan is inconsistent with City's comprehensive plan
- **Holding:**
  - The Appellate Court rejected petitioners' arguments and held that negative declaration complied with SEQRA the approval of the site plan was rational and proper

Matter of Court St. Dev. Project, LLC v. Utica Urban Renewal Agency, 188 A.D.3d 1601 (4th Dep't 2020)

- **Facts:**
  - Petitioner's property was condemned by respondent Utica Urban Renewal Agency
  - Petitioner challenged condemnation on several grounds, including that respondent segmented its SEQRA review by only considering impact of condemnation on petitioner's property
  - Petitioner claims respondent should have considered the impact "of future unknown aspects of the rehabilitation or reuse project"
- **Holding:**
  - Appellate Court held that the SEQRA review was not improperly segmented as "no specific future use had been identified prior to the acquisition of petitioner's property, and thus respondent was not required to consider the environmental impact of anything beyond the acquisition."

Save Monroe Ave., Inc. vs. NYSDOT Monroe County Supreme Ct, 9-27-22

- Opponents of a Whole Foods Store proposed in the Town of Brighton seek to overturn NYSDOT approval and permits
- NYSDOT was involved agency only but issued its own SEQRA SOF and permits for the project
- Claim was that NYSDOT decision was improperly based on Town Board (SEQRA lead agency) without independent evaluation and that NYSDOT did not require maximum mitigation measures

Save Monroe Ave., Inc. vs. NYSDOT

- The Court held in favor of NYSDOT
  - finding that certain of the claims were moot because the highway work permits were issued, the work completed and the permits expired;
  - Finding that NYSDOT's compliance with SEQRA was independent and sufficient and that Petitioner's claims that NYSDOT did a 180 on the project was not an accurate characterization of the NYSDOT decision-making which was thorough and took place over four years of review and six traffic studies; and
  - The Court reaffirmed its obligation to defer to NYSDOT's decision which had a rational basis in the record and reflected a SEQRA hard look.

Comments or Questions?

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