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FIGHT TO SAVE THE PATRICK FARM UPDATE

Town of Ramapo Residents, Shapiro & Youngewirth Win Decision in Appellate Court: Judge Jamieson's Lawsuit Dismissals Overturned

August 24, 2012 On April 22nd, a four-judge panel of the Appellate Division of the New York State Supreme Court overturned orders written by Rockland Supreme Court Justice Linda S. Jamieson challenging the Town of Ramapo's amendment to the Town's Comprehensive Plan and zone changes for the Patrick Farm (corners of Route 202 and 306). The Appellate Division reversed Judge Jamieson's rulings that residents living adjacent to Patrick Farm had no right to challenge the Town of Ramapo's actions. The Appellate Court went further and ruled that the Town of Ramapo had to respond to Petitioners' claims under the State Environmental Quality Review Act.

The Appellate Court sent the cases back to the Rockland County Supreme Court for hearings on the merits of the claims. Previously, a decision this Appellate Court held that the Village of Pomona also had the right a hearing on the merits of its claims concerning the rezoning of the Patrick Farm.

The Issues

These lawsuits challenge the downzoning of the Patrick Farm property by the Town of Ramapo. When Yechiel Lebovits and his development company, Scenic Development, LLC, originally bought Patrick Farm the applicable Ramapo zoning law only permitted single-family residences on lots with a minimum of 80,000 square feet on the property (R-80)--one home on two acres, to protect the underlying sole source aquifer, which supplies drinking water to 1/3 of Rockland County. When the Town adopted the 2004 Ramapo Comprehensive Plan it changed the zoning to one house per 40,000 square feet (R-40)—one home on one acre. In 2010, the Town of Ramapo once again changed the zoning by increasing density on the Patrick Farm to allow multiple-family dwellings of 8 units per acre.

Three lawsuits against the development and the Town followed. Two of them are the Shapiro and Youngewirth cases. The Appellate Division held that the Rockland County Supreme Court Judge Linda S. Jamieson erred in dismissing all these cases due to lack of standing.

In its prior decision the Appellate Division also held that the Village of Pomona was incorrectly dismissed for lack of standing by Judge Jamieson, and that the amendment to the Comprehensive Plan and Zone Change to 8 homes per acre must be heard by the Supreme Court on the merits.

Three laws suits against the Town of Ramapo followed. The parties claimed that the Town of Ramapo:

1. Violated its own comprehensive plan for building and growth by improperly amending its comprehensive plan to only grant the zone change for Patrick Farm.
2. The change in zoning given to Scenic Development "was an act of spot zoning and unconstitutional, and was for the benefit of the property owner, not the community at large."
3. The Rockland County Planning Board raised objections to the Patrick Farm project, and, Pomona claimed, "The Ramapo Town Board resolutions did not properly override the Rockland County Planning Department's General Municipal Law reviews." (Specifically, the Ramapo Board did get the super-majority vote needed to override, but did not provide the factual evidence to justify the override.)
4. That Ramapo violated SEQRA (the State Environmental Quality Review Act)--that it "failed to comply with its obligation to identify and take a 'hard look' at potential significant adverse impacts resulting from the zone change for the subject property, including community character, water, sewer, infrastructure, traffic and safety." Specifically Ramapo also failed to consider the impacts of placing multifamily housing in close proximity to the Columbia Gas Pipeline and failed to consider the impacts high density multi-family housing would have on the underlying sole source aquifer and Rockland County's water supply.

Shapiro and Youngewirth Reinstated

The Petitioners, Shapiro's and Youngewirth have "standing" the right to sue Ramapo and Scenic Development.

The Appellate Court held that the residents living in close proximity to the Patrick Farm did not need to show actual injury or special damage to establish standing and the injuries alleged by these residents fell within the zone of interests to be protected by SEQRA.

The Appellate Court reversed Judge Jamieson's decision in 3 out of 4 causes of action raised by the Shapiros. The Appellate Court upheld the lower court's decision that the sale of the Patrick Farm to Scenic in July 2001 could not be challenged due to a statute of limitation.

The Appellate Court reversed the Rockland County Supreme Court decision in 5 out of 6 causes of action raised by Youngewirth. The Appellate Court upheld the lower court's decision that Youngewirth did not have standing to raise a complain about a procedural violation of the Municipal Home Rule Law because she did not show how she was harmed by the adoption of the Local Law the absence of a mandatory referendum.

Next Steps

This recent orders of the Appellate Court guarantee that the Village of Pomona, the Shapiros and Youngewirth (1) can continue to sue the Town Board, and Scenic Development, LLC; (2) can demand that the court evaluate the environmental impact on the Town of the downzoning; and (3) can judicially seek legitimate, not conclusionary, answers to the objections to the Patrick Farm downzoning raised by the Rockland County Planning Department and other interested parties

The attorney for Youngewirth, Bruce Levine states, “[w]e will prevail once Judge Jamieson realizes that the town's environmental studies were built on nothing more than assertions and conclusions. Once the Supreme Court realizes that the developer plans to rape the landscape (clear cut the side of the mountain – and moving 500,000 cubic yards of earth); endanger the sole source aquifer; and threaten the lives of future residents, including thousands of children, by exposing them to the potential dangers of an explosion of the Columbia Gas Transmission Pipeline, we are confident we will prevail. The developer and the Town will have to go back to step one and redesign the entire project in a responsible manner.”

Now, all three cases go back to the Rockland Supreme Court in about a month. The Town of Ramapo's attorney is Michael Klein, and Scenic Development's attorney is Terry Rice.

Currently ROSA 4 Rockland, the Village of Pomona and the Shapiros have three additional cases on appeal challenging the Town of Ramapo's Preliminary Subdivision Approval of Scenic Development plan for Patrick Farm on January 2011. In addition, these parties are awaiting a decision from Supreme Court Judge Thomas Walsh in three other cases challenging the Town of Ramapo's Final Subdivision Approval for Scenic's Patrick Farm development proposal in December of 2011. The decision upholding standing in these three cases initiated in 2010 by the appeal court is positive news for all three parties and their original cases as well as for all six cases subsequent cases that are winding their way through the court systems.

Earlier this week the Town of Ramapo release a Planning Board agenda for a meeting on 9/11/12 to consider a request to waive the Public Hearing for a new revision to the December 2011 Final Subdivision Approval and then, if the waiver is approved, to immediately make a decision on the new revision to final subdivision approval. ROSA 4 Rockland has initiated an investigation into the new revisions.

Susan Shapiro, attorney for her parents the Shapiro's believes "The Appellate Court's decision is an important first victory for the community and the environment. However, the fight to protect the Patrick Farm and its underlying sole source aquifer, a vital source of drinking water for Rockland County, is far from over, since the Town of Ramapo continues to act with blatant disregard to State environmental laws and procedures."

Suzanne Mitchell, director of ROSA 4 Rockland states "This is great news for ROSA supporters and refutes naysayers who claim that there is nothing that can be done about poor Planning Board decisions in the Town of Ramapo. By focusing on the facts and the rights of the community, while following and respecting the legal process with patience and persistence, the community's desire to protect the water resources, the community character and the public's safety can be achieved in the long run. ROSA recently announced a benefit concert for Sunday, September 23rd. For more information about the concert or the issues visit the ROSA4Rockand.org website.

FOR MORE INFORMATION CONTACT:

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