

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of

HILLCREST FIRE COMPANY NO. 1, LENA BODIN,
JOHN PORTA, WILLIAM ABRAMSKY, ELF
LAWRENCE AHEARN, SANDRA SOLOMON,
SUSAN IITTO SHAPIRO, as Executor for the Estate of
MILTON B. SHAPIRO,

Petitioner,

-against-

DECISION & ORDER
Index No. 1791/2015

Motion # 2- MG
DC -Y

TOWN OF RAMAPO, TOWN BOARD OF THE
TOWN OF RAMAPO, THE PLANNING BOARD
OF THE TOWN OF RAMAPO.,

Respondents

-and-

SCENIC DEVELOPMENT, LLC, SCENIC
DEVELOPMENT SM, LLC, FORTY-SIX-FIFTY
TWO WADSWORTH TERRACE CORP.,
NEWFIELD ESTATE, INC.,

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Hon. Thomas E. Walsh II, J.S.C.

The following papers numbered 1-4 were read on a Notice of Motion by Petitioner for an Order pursuant to *Civil Practice Law and Rules* § 2221(e) for Leave to Renew based upon changes in law as set forth in Appellate Division, Second Department decisions of November 8, 2017 and upon renewal, to change the prior determination of this Court by vacating its June 29, 2016 Decision & Order and entering an Order and Judgment in Favor of Petitioners granting the Amended Petition herein and annulling Resolution No. 2015-404 of the Town Board of the Town of Ramapo, dated September 17, 2015, that adopted a Findings Addendum dated September 11, 2015, together with such other and further relief as the Court may seem just and proper.

<u>PAPERS:</u>	<u>NUMBER:</u>
Notice of Motion/Affirmation of Susan Hiro Shapiro, Esq./Exhibits (1-6)	1
Affirmation of Terry Rice, Esq.	2
Reply Affirmation of Doris F. Ulman, Esq.	3
Affirmation of Janice Gittleman, Esq.	4

A motion to renew is based upon new facts not offered on the prior motion which would change the prior determination or, will demonstrate that there has been a change in the law that would change the prior determination. [Civil Practice Law and Rules § 2221]. A motion for leave to renew is the proper manner in which a party seeks relief from a prior order based on a change in the law. [Civil Practice Law and Rules § 2221(e)(2); Dinallo v. DAI Elec., 60 AD3d 620 (2d Dept 2009); Roundabout Theatre Co. v. Tishman Realty & Constr. Co., 302 AD2d 272 (1 Dept); 5151 Avenue I Corp. v. 515 Avenue I tenants Corp., 44 AD3d 707 (2d Dept 2007)]. Specifically, “[a] clarification of the decisional law is a sufficient change in the law to support renewal.” [Dinallo v. DAI Elec., 60 AD3d at 621;]. Further, a motion for leave to renew based upon a change in the law must be made prior to the entry of a final judgment or before the time to appeal has expired. [Gluckman v. Board of Education Central School Bd. of Comsewogue Union Free School Dist., 278 AD2d 364, 365-366 (2d Dept 2000); Daniels v. Millar Elevator Industries, Inc., 44 AD3d 895 (2d Dept 2007); Eagle Ins. Co v. Persaud, 1 AD3d 356 (2d Dept 2003)]. Additionally, motions for leave to renew are left to the sound discretion of the trial court. [Washington Apts. L.P. v. Oetiker, Inc., 43 Misc3d 265, 267 (Sup Ct Erie Cty 2013); Caryl S. v. Child & Adolescent Treatment Services, Inc., 238 AD2d 953 (4th Dept 1997)].

In the instant action the Petitioner is seeking leave to renew regarding the undersigned’s June 29, 2016 Decision and Order and seeking the Court to vacate and set aside that Decision based upon a change in the law. The Petitioners submit that based on the Appellate Division, Second Department’s November 2017 Decision pertaining to the Patrick Farm Project, which were decided after the Court’s 2016 Decision and Order in the instant action change the undersigned’s 2016 Court Decision and require annulment of the Findings Addendum Approval. According to Petitioner, the Appellate Division vacated the prior subdivision and site plan

approvals with a direction that a SEIS must be done regarding the site's wetlands. Further, Petitioner submits that in another Appellate Division decision the Court annulled the 2010 SEQRA Findings upon which the Town Board's 2015 Findings Addendum Approval was based stating that the Respondent Town failed to take a "hard look" at the impact of the Columbia gas pipeline that runs through the Patrick Farm site. The Petitioner further asserts that the Appellate Division Second Department annulled the Town of Ramapo Planning Board's March 22, 2013 grant of Final Subdivision and Final Site Plan approvals for the project based upon the failure to prepare an SEIS regarding on-site wetlands and to comply with Town Code Section 376-42(A), which addresses deduction of wetlands (this matter was remitted back to the Town for preparation of an SEIS regarding the presence of wetlands on the subject property).

In applying the Appellate Division, Second Department's Decision to the instant action the Petitioner concedes that the 2015 Findings Addendum in the instant case includes an "ACOF JD," but that the town still failed to prepare the SEIS that the Second Department ordered in its Decision. Petitioner submits that the Court acknowledged that the Respondent did not file an SEIS in its 2016 Court Decision, which stated that the Town's determination that an SEIS was not warranted shouldn't be disturbed.

Petitioner further submits that the Appellate Division, Second Department Decision in Youngewirth v Town of Ramapo Town Board, 2017WL5162956 (2d Dept Nov. 8, 2017) provides another reason for the Court to vacate its 2016 Decision. The Appellate Division annulled all of the Town Board's January 25, 2010 EQRA findings based on the Town Board's failure to take a "hard look" at the environmental impact of the proposed development's placement within close proximity to the Columbia Gas Pipeline. Additionally, Petitioner avers that the Appellate Division Decision set aside the Patrick Farm zone change and Comprehensive Plan Amendment due to the aforementioned SEQRA Findings. Based on the Appellate Division's Decision in Youngewirth, the Petitioner submits that the Court's 2016 Decision which is based upon the "flawed" SEQRA Findings must be annulled.

In opposition Respondent submits that the Petitioner's reliance on the Appellate Division's conclusion that an Army Corps JD was required in order to fully delineate the wetlands is inapplicable to the Decision in the instant action, since subsequent to the approvals

reviewed by the Appellate Division, Scenic obtained a JD and new site plan and subdivision approvals. Respondent further asserts that Petitioner's argument an annulment of the Court's Decision is supported by the Appellate Division's finding that the analysis of the impact of the Columbia pipeline was not adequately considered by the Town Planning Board is misplaced, as the Petitioner never challenged the SEQRA review as to the Columbia pipeline in the instant action. Respondent continues arguing that a motion for leave to renew must be based upon new or additional facts which although in existence at the time of the original motion were not known to the party at the time they filed the original motion. According to Respondent, the facts upon which the undersigned made the June 29, 2016 determination were available to Petitioner from the commencement of the instant action, the argument was raised before the undersigned on numerous occasions and the facts are the same now as they were before. The Respondent states that the Petitioner has filed an appeal in the instant action and that the appropriate remedy is for the Petitioner to perfect their appeal.

Renewal is warranted in the instant action based upon the Appellate Division's Decisions and Orders and the annulments made constitute a change in law. [*Civil Practice Law and Rules* § 2221(e)(2)]. The Decisions and Orders constitute a change in the law that is essential to and would have changed the Court's June 30, 2017 Decision and Order. The Court finds that based on the foregoing and a review of the Appellate Division's Decisions dated November 8, 2017 the motion is granted in its entirety.


In arriving at this decision the Court has reviewed, evaluated and considered all of the issues framed by these motion papers and the failure of the Court to specifically mention any particular issue in this Decision and Order does not mean that it has not been considered by the Court in light of the appropriate legal authority.

Accordingly, it is hereby

ORDERED that Petitioner's Notice of Motion for Leave to Renew (Motion #2) is granted in its entirety.

The foregoing is the Court's Decision and Order as to Motion #2.

Dated: New City, New York
March 21, 2018



Hon. Thomas E. Walsh II, J.S.C.

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