

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of

VILLAGE OF POMONA,
Petitioner,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules

-against-

DECISION & ORDER
Index No. 320/2016

Motion # 2-MG
DC -Y

THE PLANNING BOARD OF THE TOWN OF RAMAPO,
THE TOWN BOARD OF THE TOWN OF RAMAPO,
SCENIC DEVELOPMENT, LLC, NEWFIELDS
ESTATES INC. and FORTY SIX-FIFTY TWO
WADSWORTH TERRACE CORP.,
Respondents -Defendants

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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(c) for Leave to Renew based upon a change in the law that would change the prior determination of this Court and, upon Renewal, to change the prior determination if this Court by vacating the Order and entering an Order and Judgment in favor of Petitioner herein, granting the Petition herein and annulling the Decisions of Respondent Planning Board, dated January 27, 2016, (1) granting revised Final Subdivisions approval to the subdivision known as Patrick Farm, (2) granting revised Final Site Plan approval to the project known as Patrick Farm Condominiums, (3) granting revised Final Site Plan approval to the project known as Patrick Farm Volunteer Housing and for such other and further relief as the Court may deem just and proper:

<u>PAPERS</u>	<u>NUMBER</u>
Notice of Motion/Affirmation of Doris F. Ulman, Esq./Exhibits (A-C)	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. DAL 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. DAL 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. [Glicksman v. Board of Education Central School Bd. of Comsewogue Union Free School Dist., 278 AD2d 354, 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 30, 2017 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 the law has changed with respect to the Petitioner’s Second Cause of Action set forth in the instant Petition. According to Petitioner, the Court’s June 30, 2017 Decision and Order dismissed the Petitioner’s Second Cause of Action determining that the Town Board of the Town of Ramapo had not conducted a proper SEQRA review of the impact of the proximity of the Columbia Gas pipeline in the development and the combined environmental impact of the pipeline and the development together. Petitioner submits that the underlying Petition in the instant action would have been granted if the Appellate Division decision had been made prior to June 30, 2017. Further, Petitioner avers that

the Appellate Division annulled the Town's SEQRA Findings Statement which annuls the amendment to the Comprehensive Plan and therefore results in an annulment of the Town of Ramapo Planning Board decisions granting subdivision and site plan approvals to the Patrick Farm development. Following the Appellate Division Decisions, Petitioner argues that since the June 30, 2017 Decision of the undersigned upheld the Planning Board Decisions and those decisions were based on the SEQRA determinations that have been annulled, that the Judgment issued by the undersigned on June 30, 2017 must be annulled. As to the timeliness of the application for leave to renew, the Petitioner states that a Notice of Appeal of the undersigned's June 30, 2017 Order was filed by Petitioner on July 31, 2017.

The Respondent states that the Petitioner seeks to "reargue this Court's rejection of the basis for its challenges to the most recent approvals of Patrick Farm" and concedes that the Appellate Division found that the Town Board's SEQRA review was insufficient because they did not adequately consider the impacts of the Columbia pipeline. At the outset the Respondent submits that the Petitioner's papers are deficient because they failed to attach a copy of the papers of the Article 78 proceeding upon which it seeks renewal were decided. 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. Further, Respondent asserts that the Petitioner's instant application is not based on new facts which existed at the time Petitioner commenced the Article 78 proceeding, as the Petitioner argued the analysis and impact of the Columbia Pipeline were not adequately considered by the Planning Board. According to Respondent, the facts upon which the undersigned made the June 30, 2017 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. Additionally, Respondent asserts that the Petitioner's current reliance on the Appellate Division decisions is improper as the Appellate Division Decision applies to an earlier matter which is not involving the instant subdivision and site plan approval. 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.

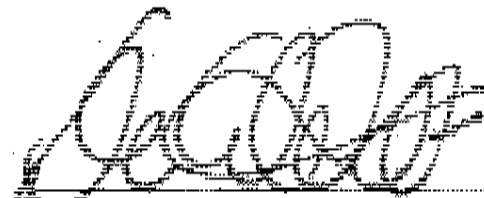
Accordingly, it is hereby

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~~, 2018




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

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Date: 4/2/2018 4:42 PM

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