160 A.D.3d 833
Supreme Court,
Appellate Division, Second Department, New York.

In the Matter of CALVERTON MANOR, LLC, appellant-respondent,
v.
TOWN OF RIVERHEAD, et al., respondents-appellants.

2014–10185
|
(Index No. 25551/04)
|
Argued—November 20, 2017
|
Decided on April 18, 2018

Attorneys and Law Firms

Certilman Balin Adler & Hyman LLP, Hauppauge, N.Y. (John M. Wagner of counsel), for appellant-respondent.

Twomey, Latham, Shea, Kelley, Dubin & Quartararo LLP, Riverhead, N.Y. (Jennifer Nigro of counsel), for respondents-appellants.

MARK C. DILLON, J.P., JOHN M. LEVENTHAL, HECTOR D. LASALLE, VALERIE BRATHWAITE NELSON, JJ.

DECISION & ORDER

In a hybrid proceeding pursuant to CPLR article 78, inter alia, to review zoning resolutions of the respondent/defendant Town Board of the Town of Riverhead dated June 22, 2004, in effect, implementing a new agricultural protection zoning district for the respondent/defendant Town of Riverhead, and action for declaratory relief, the petitioner/plaintiff appeals from an order of the Supreme Court, Suffolk County (William B. Rebolini, J.), dated July 15, 2014, which denied its motion for summary judgment on the petition/complaint and denied so much of the petition as sought to annul the zoning resolutions, and the respondents/defendants cross-appeal from so much of the same order as did not search the record and award them summary judgment and, in effect, make a declaration in their favor, on the petitioner/plaintiff's second cause of action.

***1** ORDERED that the cross appeal is dismissed, without costs or disbursements; and it is further,

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

The petitioner/plaintiff (hereinafter the petitioner) submitted a site plan application in 2001 to construct numerous commercial and residential buildings on an undeveloped parcel of land in the respondent/defendant Town of Riverhead (hereinafter the Town). The petitioner worked with Town officials to revise the site plan application to bring it into compliance with then-applicable zoning rules. Meanwhile, since 1997 the respondent/defendant Town Board of the Town of Riverhead (hereinafter the Town Board) had been in the process of developing a new Comprehensive Plan (hereinafter the Comprehensive Plan) for the Town. The "goals and policies" of the Comprehensive Plan included "protect [ing] open space and farmland, while concentrating development" into certain specified areas. The Comprehensive Plan proposed eliminating certain permitted uses on the petitioner's parcel critical to the site plan application. The petitioner submitted its last revised site plan application in September 2003. While that application was still pending, the Town Board adopted the Comprehensive Plan on November 3, 2003.

The petitioner commenced several related hybrid proceedings/actions against the Town and the Town Board (hereinafter together the respondents) in the Supreme Court, Suffolk County. The instant hybrid proceeding/action challenges the Town Board's adoption of zoning amendments implementing the Agricultural Protection Zone component of the Comprehensive Plan (hereinafter the APZ law). The APZ law affected part of the property subject to the petitioner's site plan application.

The petitioner moved for summary judgment on the petition/complaint, arguing, among other things, that the Town Board failed to comply with General Municipal Law § 239–m and Town Law § 272–a, failed to comply with the procedural and substantive requirements of the State Environmental Quality Review Act (*see* ECL art 8; hereinafter SEQRA), failed to comply with the Comprehensive Plan, violated the doctrine of legislative equivalence, and exceeded its zoning powers. The

petitioner's second cause of action sought a declaration that "special facts" entitled it to have its site plan application reviewed in accordance with the zoning designation in effect prior to the Town Board's adoption of the Comprehensive Plan.

The Supreme Court denied the motion. The court held that the respondents were entitled to the entry of judgment in their favor declaring the zoning resolutions at issue to be a legal, constitutional, and valid exercise of the police and zoning powers of the Town Board. The court further held that triable issues of fact existed with respect to the applicability of special facts. The petitioner appeals, and the respondents cross-appeal from so much of the order as did not search the record and award them summary judgment and, in effect, make a declaration in their favor, on the petitioner's second cause of action. We dismiss the cross appeal and affirm the order insofar as appealed from.

***2** A party is not aggrieved by an order which does not grant relief that the party did not request (*see Spielman v. Mehraban,* 105 A.D.3d 943, 943–944, 963 N.Y.S.2d 704; *Schlecker v. Yorktown Elec. & Light. Distribs., Inc.,* 94 A.D.3d 855, 855, 941 N.Y.S.2d 886). The respondents are not aggrieved by so much of the order as did not search the record and award them summary judgment and, in effect, make a declaration in their favor, on the petitioner's second cause of action (*see Schlecker v. Yorktown Elec. & Light. Distribs., Inc.,* 94 A.D.3d 855, 855, 941 N.Y.S.2d 886).

Contrary to the petitioner's contention, the Town Board made a proper referral of the APZ law to the Suffolk County Planning Commission (hereinafter the Planning Commission). " 'To facilitate regional review of amendments to a local zoning ordinance, General Municipal Law § 239–m requires the local municipality to refer its proposed amendments to the county planning board' " (*Matter of Village of Kiryas Joel, N.Y. v. Village of Woodbury, N.Y.,* 138 A.D.3d 1008, 1012, 31 N.Y.S.3d 83, quoting *Matter of Benson Point Realty Corp v. Town of E. Hampton,* 62 A.D.3d 989, 991, 880 N.Y.S.2d 144). Here, upon the Town Board's referral to the Planning Commission, the Planning Commission processed the referral, held a hearing, voted, and reported its recommendations to the Town Board. There is no evidence in the record that the Planning Commission determined the Town Board's referral to be deficient in any respect. Under the circumstances presented here, the Town Board made a "full statement" of its proposed APZ law in accordance with General Municipal Law § 239–m (*see* General Municipal Law § 239–m[1][c]). Moreover, the revisions made to the APZ law after referral were " 'embraced within the original referral' " (*Matter of Village of Kiryas Joel, N.Y. v. Village of Woodbury,* 138 A.D.3d at 1012, 31 N.Y.S.3d 83, quoting *Matter of Benson Point Realty Corp. v. Town of E. Hampton,* 62 A.D.3d at 992, 880 N.Y.S.2d 144; *see Matter of Gernatt Asphalt Prods. v. Town of Sardinia,* 87 N.Y.2d 668, 679, 642 N.Y.S.2d 164, 664 N.E.2d 1226).

We agree with the Supreme Court that the Town Board complied with the procedural and substantive requirements of SEQRA in adopting the APZ law. When a final generic environmental impact statement (hereinafter EIS) has been filed, no further SEQRA compliance is required if a subsequent proposed action will be carried out in conformance with the conditions and thresholds established for such actions in the generic EIS or its findings statement (*see* 6 NYCRR 617.10[d][1]; *Matter of In Defense of Animals v. Vassar Coll.,* 121 A.D.3d 991, 994, 994 N.Y.S.2d 412). Here, the Town Board accepted a draft and a final generic EIS in connection with the Comprehensive Plan. The APZ law faithfully implemented the agricultural components of the Comprehensive Plan and thereby satisfied the conditions and thresholds for future actions set forth in the draft and final generic EISs. The Town Board's reliance on the generic EISs prepared in connection with the Comprehensive Plan therefore satisfied the procedural and substantive requirements of SEQRA (*see* 6 NYCRR 617.10[d]; *Matter of Eadie v. Town Bd. of Town of N. Greenbush,* 7 N.Y.3d 306, 319, 821 N.Y.S.2d 142, 854 N.E.2d 464; *Matter of Danyla v. Town Bd. of Town of Florida,* 259 A.D.2d 850, 851–853, 686 N.Y.S.2d 213). Moreover, the petitioner failed to identify a clear conflict between the APZ law and the Comprehensive Plan (*see Nicholson v. Incorporated Vil. of Garden City,* 112 A.D.3d 893, 894–895, 978 N.Y.S.2d 288).

"The doctrine of legislative equivalency requires that existing legislation be amended or repealed by the same procedure as was used to enact it" (*JEM Realty Co. v. Town Bd. of Town of Southold,* 297 A.D.2d 278, 279, 746 N.Y.S.2d 41; *see Naftal Assoc. v. Town of Brookhaven,* 221 A.D.2d 423, 424–425, 633 N.Y.S.2d 798). "The doctrine applies to attempts to amend a zoning

code or ordinance by use of a resolution" (*Matter of Brunswick Smart Growth, Inc. v. Town Bd. of Town of Brunswick,* 51 A.D.3d 1119, 1120, 856 N.Y.S.2d 308; *see Paradis v. Town of Schroeppel,* 289 A.D.2d 1027, 1028, 735 N.Y.S.2d 278). Here, the petitioner failed to demonstrate that the Town Board improperly amended its zoning map using a different type of legislative action than it used to effectuate its previous zoning map (*see Matter of Miller v. Kozakiewicz,* 289 A.D.2d 494, 495, 735 N.Y.S.2d 176).

***3** Furthermore, we agree with the Supreme Court that the respondents were entitled to a judgment declaring that the APZ law was a constitutional and valid exercise of the Town Board's zoning and police powers. "Legislative enactments are entitled to an 'exceedingly strong presumption of constitutionality' " (*Nicholson v. Incorporated Vil. of Garden City,* 112 A.D.3d 893, 894, 978 N.Y.S.2d 288, quoting *Lighthouse Shores v. Town of Islip,* 41 N.Y.2d 7, 11, 390 N.Y.S.2d 827, 359 N.E.2d 337). "A local law is cloaked with the same strong presumption of constitutionality as a statute" (*Nicholson v. Incorporated Vil. of Garden City,* 112 A.D.3d at 894, 978 N.Y.S.2d 288; *see Town of Huntington v. Park Shore Country Day Camp of Dix Hills,* 47 N.Y.2d 61, 65, 416 N.Y.S.2d 774, 390 N.E.2d 282). "With the police power as the predicate for the State's delegation of municipal zoning authority, a zoning ordinance will be struck down if it bears no substantial relation to the police power objective of promoting the public health, safety, morals or general welfare" (*Trustees of Union Coll. in Town of Schenectady in State of N.Y. v. Members of Schenectady City Council,* 91 N.Y.2d 161, 165, 667 N.Y.S.2d 978, 690 N.E.2d 862; *see Berenson v. Town of New Castle,* 38 N.Y.2d 102, 107–108, 378 N.Y.S.2d 672, 341 N.E.2d 236).

Here, the restriction by the APZ law of a largely contiguous swath of cultivated and undeveloped land to agricultural and low-density residential uses bore a rational relationship to numerous legitimate purposes, including but not limited to the preservation and promotion of agriculture (*see* Agriculture and Markets Law §§ 3, 300), the preservation of the Town's "agricultural integrity" (*Schlossin v. Town of Marilla,* 48 A.D.3d 1118, 1120, 852 N.Y.S.2d 515), and the preservation of the Town's rural aesthetics and character (*see Matter of Wallach v. Town of Dryden,* 23 N.Y.3d 728, 743, 992 N.Y.S.2d 710, 16 N.E.3d 1188; *Modjeska Sign Studios v. Berle,* 43 N.Y.2d 468, 478, 402 N.Y.S.2d 359, 373 N.E.2d 255; *Curtiss–Wright Corp. v. Town of E. Hampton,* 82 A.D.2d 551, 556, 442 N.Y.S.2d 125). The petitioner's contention that the APZ law exceeded the Town Board's zoning powers because it promoted agricultural uses is similarly meritless (*see* Agriculture and Markets Law §§ 3, 300).

Although the general rule is that a court should apply the zoning provisions in effect at the time it renders its decision (*see Matter of Jul–Bet Enters., LLC v. Town Bd. of Town of Riverhead,* 48 A.D.3d 567, 567–568, 852 N.Y.S.2d 242; *Matter of D'Agostino Bros. Enters., Inc. v. Vecchio,* 13 A.D.3d 369, 370, 786 N.Y.S.2d 90), pursuant to the "special facts" exception, a court may apply the law in effect at the time the landowner's application was made. The special facts exception may be applied where the landowner "establishes entitlement as a matter of right to the underlying land use application," and "extensive delay[ ] indicative of bad faith ... unjustifiable actions by the municipal officials ... or abuse of administrative procedures" (*Rocky Point Drive–In, L.P. v. Town of Brookhaven,* 21 N.Y.3d 729, 736–737, 977 N.Y.S.2d 719, 999 N.E.2d 1164 [internal quotation marks omitted]; *see Matter of Alscot Inv. Corp. v. Incorporated Vil. of Rockville Ctr.,* 64 N.Y.2d 921, 922, 488 N.Y.S.2d 629, 477 N.E.2d 1083; *Matter of Pokoik v. Silsdorf,* 40 N.Y.2d 769, 772–773, 390 N.Y.S.2d 49, 358 N.E.2d 874; *Matter of c/o Hamptons, LLC v. Rickenbach,* 98 A.D.3d 736, 737, 950 N.Y.S.2d 182).

The record contains inconsistencies as to whether the petitioner's application was a "completed application" when it submitted the last revised version of its site plan application in September 2003. There is evidence in the record that the petitioner needed to make additional revisions before the application could be treated as a "completed application" under the Town's rules, meaning that the petitioner was not entitled as a matter of right to the underlying land use application (*see Rocky Point Drive–In, L.P. v. Town of Brookhaven,* 21 N.Y.3d at 736–738, 977 N.Y.S.2d 719, 999 N.E.2d 1164). However, there is evidence in the record that the Town Board had determined the application to be a "completed application" when it was submitted in September 2003, meaning the Town Board may have delayed processing the petitioner's application in a manner indicative of bad faith (*see Matter of c/o Hamptons, LLC v. Rickenbach,* 98 A.D.3d at 736–738, 950 N.Y.S.2d 182). Thus, triable issues of fact exist as to the applicability of special facts.

***4** The petitioner's remaining contentions are without merit.

DILLON, J.P., LEVENTHAL, LASALLE and BRATHWAITE NELSON, JJ., concur.

All Citations

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