

MEMORANDUM

SUPREME COURT, SUFFOLK COUNTY

I.A.S. PART 10

-----X
In the Matter of the Application of

SAGAPONACK VENTURES, LLC,

Petitioner,

For an Order Pursuant to Article 78 of the Civil
Practice Law and Rules,

- against -

THE BOARD OF TRUSTEES OF THE
VILLAGE OF SAGAPONACK (ACTING AS
THE Planning Board of the Village of
Sagaponack), Donald Louchheim (individually,
and in his capacity as a member of the Board of
Trustees of the Village of Sagaponack), Lisa
Duryea (individually, and in her capacity as a
member of the Board of Trustees of the Village of
Sagaponack) and Joy Sieger (individually, and in
her capacity as a member of the Board of Trustees
of the Village of Sagaponack),

Respondents.
-----X

By: Santorelli, J.S.C.

Dated: **OCT 20 2015**

Index No. 15-2284

Mot. Seq. # 001 - MD; CDISPSUBJ

Return Date: 3/13/15

Adjourned: 4/2/15

EAGAN & MATTHEWS PLLC
Attorney for Petitioner
241 Pantigo Road
East Hampton, New York 11937

ANTHONY B. TOHILL, P.C.
Attorney for Respondent
12 First Street, P.O. Box 1330
Riverhead, New York 11901

In this CPLR Article 78 proceeding the petitioner seeks a judgment vacating and annulling a determination by the Board of Trustees of the Village of Sagaponack (the Board) dated January 12, 2015, entitled Decision No. 7 of 2013 (the Decision), which denied the petitioner's site plan application filed on or about August 9, 2013. The petitioner alleges that the Decision was made in violation of lawful procedure, was affected by errors of law, was arbitrary and capricious, was an abuse of discretion, and was not supported by a rational basis in the record.

The petitioner, Sagaponack Ventures LLC, is the managing partner of the owner of a 43.5 acre parcel of land (the premises) located in the Village of Sagaponack's R-120 Zoning District, which is also within a Village of Sagaponack Agricultural Overlay District. Furthermore, the premises is encumbered by

a conservation easement in favor of the Peconic Land Trust (the Trust) recorded in the office of the Suffolk County Clerk on January 8, 2007. Pursuant to the grant of easement, the grantor conveyed to the Trust an agricultural, scenic and conservation use easement in gross with respect to the premises, reserving to itself the right to subdivide the premises into no more than four residential lots located in two limited building areas designated therein, and providing for 25.25 acres of open space.

The premises is an ocean front parcel of vacant land located south of Daniels Lane and east of Peters Pond Lane in the Village of Sagaponack (the Village), with 953 feet of frontage on Daniels Lane and running approximately 2100 feet south to the Atlantic Ocean. The petitioner purchased the premises, located at 461 Daniels Lane, in the Village, Town of Southampton (Town), New York, in 2000 and submitted a preliminary subdivision plan to the Town in August of that year. At the time the Village had not yet incorporated. Said plan provided for the development of three lots in the southern portion of the premises along the Atlantic Ocean,¹ and a single lot in the northwest corner of the property (northwest lot or Lot 4) at the intersection of Daniels Lane and Peters Pond Lane (the intersection) and within the area designated as open space. Said plan conformed to the location of the two limited building areas set forth in the conservation easement. On April 11, 2002, the Town Planning Board passed a resolution adopting the pre-application report dated April 11, 2002 recommending the approval of the subdivision plan subject to certain open issues.

The petitioner did not proceed upon the 2002 pre-application, which expired on April 11, 2003. In February 2007, the owner filed a new preliminary subdivision application with the Town proposing to subdivide the premises in the same manner as the earlier application. Although the Village had been incorporated immediately prior to the application, it had not yet assumed the planning functions of the Town, which proceeded with the review of the application while permitting the Board to issue comments with respect to the subdivision application. Sometime thereafter, the Village assumed responsibility for the application.² By letter dated November 8, 2007, the petitioner submitted a revised subdivision plan to the Board which reflected two of the more important comments previously made to the Town by the Board, and indicated that it would satisfy those comments by seeking approval from the Trust to increase the open space requirement to 28.28 acres, or 65 per cent of the premises, and to relocate the northwest building lot to the southern portion of the property above the westernmost lot in the southern limited building area (Lot 1) and abutting Peters Pond Lane.

At a public meeting on March 17, 2008, the Board adopted a resolution deeming the petitioner's pre-application complete, and scheduling a public hearing for April 21, 2008. At said hearing, the petitioner's representative, Joseph Lombardi (Lombardi) noted the changes made to the plan as set forth above, and agreed to the removal of a hedge and the placing of restrictions along the frontage of the intersection so that the "views across this Agricultural Reserve Area (ARA) would forever be open and free" [acronym added]. Lombardi represented that, after discussions with the Board, the petitioner felt that the Board wanted the northwest corner to be "left open," and that moving said lot south made it a separate

¹ The three southern lots are numbered 1, 2, and 3, running west to east, with Lot 1 the most westerly lot.

² The Village initially created a Planning Board which consisted of the members of the Board of Trustees. Thereafter, the Village placed its planning functions directly in the Board of Trustees. The distinction will be ignored for the purposes of this special proceeding.

lot from the open space lot “so that what was once a conservation easement will now be an agricultural reserve.” He indicated that the new location of the former northwest lot would be outside the area of the property which includes a surface water runoff swale, that with the required set backs there would be no disturbance of the runoff of water across the property to Peters Pond, and that a topographic survey would be performed to determine the issue. After comments from the audience, and additional discussions not of great significance herein, the Board voted to close the public hearing.

At the Board meeting on May 19, 2008, Lombardi presented, among other things, the completed topographic survey and there was extensive discussion about the drainage area which extends from well north of Daniels Lane towards Peters Pond which is located on the southeast corner of the property across Peters Pond Lane and west of the premises. He indicated that the petitioner was trying to shift the building areas in the lots affected away from the lower elevations of said lots, and that some type of drainage easement over those low lying areas could be created. Despite issues over the drainage area, Lombardi declined the offer of a 30-day extension of the time for the issuance of a pre-application report saying that he knew that there might be some changes between the report and the petitioner’s next submission.

On or about May 28, 2008, the Village Planner issued his pre-application report finding and recommending, among other things, that no wetlands were found on-site that would meet the definition contained in the Village Code, that the subject plan accurately presented a maximum number of lots that could be accomplished on this site, and that the applicant had presented an alternative building envelope plan, shifting the development toward the east, with the intention of protecting the drainage swale and thus accommodating the overland flow of storm water. In addition, the Village Engineer reported that the Board had indicated it would restrict the installation of any feature that would interfere with the public view shed that exists across the agricultural reserve area as viewed from the northerly 300 feet of Peters Pond Lane and the entire frontage of Daniels Lane as part of any future subdivision, and recommending the establishment of a “drainage easement over that portion of Lots 1 and 4 which will encompass all of the area from the western property line (adjacent to Peters Pond Lane) to the 10 foot contour line on these two lots.”

At the Board meeting on June 16, 2008, the Village Planner presented his report, discussions were held with counsel for the petitioner, and the Board voted unanimously to adopt said report. The petitioner acknowledges that the 2007 preliminary subdivision application report (2007 Report) expired by its own terms one year following its issuance.

On or about May 16, 2013, the petitioner submitted a new preliminary subdivision application to the Board proposing to subdivide the premises with three lots in the southern portion of the premises and one lot in the northwest corner of the property as set forth in the 2002 application and the original proposal in the 2007 application. On June 5, 2013 and June 7, 2013 respectively, the Village Planner and the Village Engineer submitted their written comments to the Board regarding the petitioner’s submissions. At the initial meeting of the Board regarding this pre-application held on June 10, 2013, the Board noted that all but one of its current members had been involved in the review of the 2007 subdivision application, that the Board would not be taking public comments, and that the application would be adjourned to the July meeting at the applicant’s request. The Village Planner reviewed his report of June 5, 2013 with the Board noting, among other things, that the current application had modified the 2007-2008 design “to accommodate for the stormwater runoff in the southwest corner of the property by shifting of the lot lines,”

to place an area of potential development in the northwest corner of the premises although the Trust easement allows for the movement of the building areas, and that the 2007-2008 review moved that building area to the south. He further noted that his review revealed a number of questions that needed to be addressed, including the preservation of prime agricultural soils on the premises, and the differences between the 2007-2008 proposal and this application, as well as the drainage control issues on the property.

The Village Engineer reviewed his report dated June 7, 2013 including the drainage course on the property, and he discussed the need for additional information, such as soil borings and a "design analysis demonstrating flow and retention capacity of the natural drainage course onsite" to determine the impact of development on said drainage course. The Board instructed the Village Clerk to release the two reports to the applicant's attorney and adjourned the meeting.

At the Board meeting on July 8, 2008, the Board noted that the applicant had not submitted any new information, and that no one had appeared on behalf of the applicant. At the next meeting of the Board on August 12, 2013, the Board noted that it had received a letter from the applicant requesting the withdrawal of its preliminary subdivision application.

On or about August 9, 2013, the petitioner submitted the subject site plan application for the construction of a single family residence with attached garage, pool, pool house, tennis court, driveway and parking area in the northwest corner of the premises. At the initial Board meeting regarding this application, held on September 9, 2013, the Village Planner and the Village Engineer indicated that they had not yet had the chance to review the petitioner's submissions as they had been reviewing the property under the subdivision standards, and the Village Planner stated that he had questions as to how the applicant decided where to place the residence. Counsel for the applicant, David E. Eagan (Eagan) responded that the location was consistent with the conservation easement on the property. The Village Attorney reminded Eagan that the Board had already spoken to the issue and did not want the northwest corner developed. Eagan responded that there has been a change in circumstances because the relocation of the residence to the south was to preserve the view shed, and, since the time of the 2007 application, houses on the north side of Daniels Lane have been constructed narrowing the vista from Hedges Lane, the road north of Daniels Lane. The Board noted that there is a significant visual impact by locating the residence as proposed, discussed the possible future subdivision of the property, and deemed the application incomplete.

At the meeting of the Board on October 15, 2013, the Village Planner reviewed his report of the same date and noted eight comments that the Board should consider or to which the petitioner should provide responses including, among other things, the need for revised drainage plans, and his concerns that a portion of the residence is located in the drainage swale and certain accessory structures are not located on flat ground. The Village Planner also noted that a letter from Dean Foster, who had farmed a portion of the premises raised questions about the quality of the soils on the premises relative to the site plan review standards. After some discussion, the Board indicated that it would require the petitioner to submit a soils analysis of the buildable portions of the property. The Village Engineer reviewed his report noting that the proposed residence is partially located in the drainage course which runs through the premises and is associated with a watershed of approximately 150 acres which runs from Hedges Lane towards Peters Pond. He indicated that substantial grading is proposed in the planned construction of the residence which would jeopardize the drainage course, that his inspection of the property revealed potential discrepancies with the topographic survey submitted, and that the drainage plan was incomplete. The Board questioned Eagan

regarding statements in the applicant's submission that FEMA flood regulations would require that any buildings in the southern portion of the property would have to be raised and, after some discussion, it was determined that one could build a residence on the southeastern portion of the premises without any FEMA restrictions. The Board noted that, while the conservation easement restricts development of the premises to four lots, the petitioner is not entitled to develop four lots and that in order to evaluate this site plan application it is necessary to consider the future development of the property. Eagan responded that the petitioner would provide a yield map, and emphasized that the petitioner believes that the least desirable soils are located in the northwest corner of the premises.

At the Board meeting on January 13, 2014, the petitioner's representatives submitted additional documents to the Board, and noted that the plans for the residence had been modified to reduce the footprint of the building and relocate it in a manner to remove it from the drainage course. Eagan indicated that he believed that the northwest location for this residence is the most preferable under the Village's site plan review standards which require consideration of soils, views and vistas, encouraging continuity of farmland areas, and future development. He stated that the best evidence of his contention is that the Trust already approved a conservation plan for the premises. The Village Engineer responded that, based on the topography, the tennis court and residence remain in the drainage course, and he indicated that his report sets forth a number of items which needed to be addressed by the petitioner including the need for photograph renderings to assess the visual impact of the placement of the residence. The Board questioned the yield map submitted by the petitioner, and Eagan agreed that it did not reflect the intended development of the premises and withdrew it.

This application was further reviewed at a Board meeting on February 10, 2014, wherein Eagan stated that the report of the petitioner's engineers indicated that moving the site of the residence to the southwest portion of the property would more directly impact the drainage course, and that he contended that such a move places the development in the area of Class I prime agricultural soils on the property and within an area subject to FEMA restrictions. Eagan's office also submitted photograph renderings taken with a wide angle lens which it contended demonstrate that the location of the residence in the northwest corner of the premises has little or no impact on the vista traveling from west to east, and minimal impact traveling east to west. The Village Engineer noted that the petitioner had responded to most of the Village's comments, that it appeared that the development would not require the importation of a large amount of fill, and that moving the residence to the south along Peters Pond Lane would be visually more desirable, but would place the residence in the ground water swale. The Village Engineer explained that he needed the data that the petitioner's engineers used to calculate the watershed, and a map delineating the watershed, to consider the application complete.

At the Board meeting on March 10, 2014, the Board noted that the petitioner had submitted the supplemental information requested and that the Village Engineer considered the application complete. The Board unanimously adopted a resolution scheduling a public hearing on this application for April 14, 2014.

Public hearings on the petitioner's application were held on April 14, 2014, May 12, 2014, June 10, 2014, July 14, 2014, August 11, 2014, September 18, 2014, October 14, 2014, and December 8, 2014. The petitioner's representative, and some Village residents, attended the initial public hearing on April 14, 2014, the latter voicing complaints that the location of the residence in the northwest would have a "major

negative impact” on the established farmland vistas, that the residence would be better located on the southern portion of the property and clustered with any future development of the premises, and that this application was merely the first step in a two-step process to avoid an appropriate subdivision plan for the premises. A local resident, Dean Foster, stated that he and his family had been farming the property for 12 to 13 years, planting cover crops so the land would not go fallow, that the northwest corner was the worst soil on the property, and that, although there is a serious drainage flow on the site, he believed that the residence would not impact said flow.

On May 12, 2014, a second public hearing was held. The Village Engineer indicated that the proposed development was still located in the drainage course, that the basement of the residence would be subject to flooding, and that the petitioner’s drainage analysis significantly underestimated the water flow because it is based on a 75-acre watershed area, rather than the 150-acre watershed area he believes affects the premises. The Village Planner noted that the Board needed verifiable data regarding the visual impact of development, and suggested that a visual analysis be completed by the petitioner. Eagan responded that photograph renderings had been submitted. However, the Board noted that said renderings had not been placed into the record, and that the petitioner’s representatives had indicated that said photographs were taken with a wide-angle lens, which does not give an accurate portrayal of the view. The petitioner was directed to submit scaled architectural drawings to aid in the visual analysis.

At the public hearing held on June 16, 2014, the Village Engineer noted that the floor plans for the residence were not to scale so that it was impossible to tell the size of the residence, that Eagan’s statements on the visual impact of the building were incorrect, and that any photograph renderings would need to be taken with a “naked eye lens.” He stated that the document submitted as Exhibit B indicates that the watershed affecting the premises is 148 acres, that the central line of the drainage course runs through the eastern portion of the northwest limited building area, and that, while the primary part of the residence is outside the drainage course, the building is not narrow as it spans 145 feet east-west and “basically” 145 feet north-south. The Village Planner stated that photograph renderings taken with a wide-angle lens distort the view of objects, and that the visual impact of the project could better be analyzed by placing poles into the ground at the corners of the intended building to show its mass. After some discussion between the Board and Eagan regarding the size of the residence, Eagan agreed that the placement of poles might assist in a determination of the visual impact of the residence.

At the next public hearing held on July 14, 2014, the petitioner submitted its proposed procedure for preparing the photograph renderings with the poles placed to indicate the size of the residence, and a conceptual subdivision plan. The Board noted and Eagan agreed that, instead of removing said poles after the taking of the photographs as proposed by the petitioner, the poles should remain for a period to allow the members of the Board and its consultants to view them.

At the August 11, 2014 public hearing, the petitioner submitted three photograph renderings of the residence, a surveyor’s drawing indicating the pole elevations and the locations where the photographs were taken, and an elevation analysis. The Village Planner indicated that the submissions had been dropped off at Village Hall on the Friday before this Monday hearing, and that he had not had the opportunity to review them carefully. He submitted three partially completed photograph renderings taken by his office. The Board indicated that the poles placed at the premises allows one to assess the visual impact of the residence which appears to be significant, and that the applicant might wish to consider moving the building area to

the southeastern portion of the premises to lessen the visual impact of the residence, to remove it from the flood zone, and to cluster the building with the eventual subdivision. The Board directed that the subject poles remain on the property until August 15, 2014 to allow the Board members to view the site with the photograph renderings.

At the continued public hearing on September 8, 2014, the Village Planner noted that he reviewed two factors included in the Village Code section regarding site plan review. The first is the requirement that any development be located in an area to minimize the impact on the loss of prime agricultural soils, the second its location in an area where the visual impact from public rights-of-way are minimized. He indicated that the Suffolk County Soils Survey reveals that the premises is comprised entirely of prime agricultural soils, with some areas with different classifications depending on type of soil and the slope of the land, and that due to a grading of the southern portion of the premises in 2006 when the topsoil was scraped and fill brought in, there is a question whether that area now contains prime agricultural soils. The Village Planner stated that his review of the metadata for the photograph renderings taken by the petitioner reveals that they were not taken with a "naked eye lens," but a zoom lens without a fixed focal point, and that his photographs show a different height for the poles used to assess visual impact because of the "lensing" used by the petitioner. The Board delivered to the petitioner a copy of the analysis of the petitioner's and the Village's photographs by an expert photographer dated August 22, 2014 who opines that the petitioner's photographs were taken with a wide angle lens which made the height of certain parts of the proposed residence appear "shorter and more distant than the human eye would see from the same location." The Board noted that the proposed residence is almost twice as large "under roof" as the two houses at the intersection which the petitioner contends should be considered a clustering of development.

At the public hearing held on October 14, 2014, Eagan noted that the latest submission by the petitioner removed the tennis court from the proposal, which the petitioner believed "mutes" the issue of the drainage course regarding the application. The petitioner's representatives indicated that their photographer followed the protocols set forth for the photograph renderings while acknowledging that they had not spoken with their photographer regarding the "lensing" issue. In light of the petitioner's contention that the northwest lot consists of Class II, or poorer soils, the Board noted that the petitioner's experts had submitted "desktop" analyses, and it offered to have the petitioner conduct an on site soils analysis of the premises, at the Board's cost, to determine the areas best suited for farming. The petitioner's representatives indicated that they would need to speak to their client regarding the offer. The attorney for the owner of the residence across Peters Pond Lane at the intersection, noted that his firm had submitted the report of Land Use Environmental Services Inc. to the Board. Charles Bowman (Bowman), who helped draft said report, indicated that his company's soil analysis generally supports the conclusions of the Village's consultants, and that the differences in soils comes down to slope, which is not always a good indicator of crop yields. Bowman further stated that the drainage swale on the property leads down to Peters Pond, a regulated fresh water wetland, that homeowners generally have a higher use of pesticides, and that development in the northwest corner of the premises "is going to have the potential to affect Peters Pond."

By letter dated November 5, 2014, Eagan advised the Board that the petitioner would not be available to attend the November Board meeting, and requested that further discussion or consideration of the application be adjourned until the December meeting. He also indicated that the petitioner had decided to decline the Board's request to conduct a soils analysis of the site believing it to be onerous at this late

stage in the review process.

At the December 8, 2014 public hearing, the Board noted the recusal of one board member regarding this application, the resignation of the Village Planner, the petitioner's denial of the Board's request to conduct a soil survey at its cost to determine if the soils on the disturbed southern portions of the property could still be classified as prime agricultural soils, and its submission of the record of trial in federal litigation commenced by the petitioner against its partners in the LLC which owns the premises. The Board then voted to close the public hearing and adjourned the matter until January 12, 2015 for the purposes of rendering a determination. At said meeting, the Mayor read the Decision into the record, and the Board voted unanimously to approve its issuance.

The Decision, dated January 12, 2015, sets forth the history of the petitioner's attempts to obtain subdivision and site plan approval to develop the premises, including a summary of the public hearings held to review the site plan application, and it sets forth the text of Village Code 245-67(M) which states:

Agricultural Overlay District. In considering site plan applications for all buildings or other structures that are to be situated on a lot equal to or greater than five acres and located within the Agricultural Overlay District, the Planning Board shall use the following factors to determine the most suitable location of the buildings or other structures for the current and future development of the property and the most suitable area for future farmland preservation:

- (1) Development areas shall be located on the portion of the lot where impacts on the loss of prime agricultural soils are minimized.
- (2) Development areas shall be located on the portion of the lot where impacts on views and vistas of the farmland areas from public rights-of-way are minimized.
- (3) Farmland areas shall be located on the portion of the lot to encourage continuity of farmland and farming operations on the lot and adjoining properties.
- (4) Development and farmland areas shall be located to minimize impacts on the future subdivision of the lot in accordance with open space requirements.

In assessing the first factor, the Board issued the following findings: all of the subject 43.5 acres is prime agricultural soils; topsoil at the southern portion of the premises was removed in 2007, fill was deposited and the elevation was changed; a "desktop analysis" of the soils submitted by applicant was prepared by two persons neither of whom addressed the disturbed portion of the property or challenged the fact that the soils at the northwestern corner are prime agricultural soils; applicant refused the request of the Board to allow a soil scientist to inspect the premises at the Village's expense; various sources stated that the soils are prime agricultural soils; there is no evidence in the record of any difference in crop yield between the soils at the northwestern corner and the balance of the farmable land at this site; and

development of the northwestern corner would reduce the amount of the parcel currently maintained by cover crop as farmable by the applicant.

In assessing the second factor, the Board issued the following findings: proposing structures totaling 13,780 square feet enable a perception that the structure as proposed was not designed so as to minimize impacts on views and vistas of farmland south of the proposed structure; use of a wide angle lens on a camera to depict the proposed structure served to distort the impacts and to disable this part of the review process; erection of the vertical poles enabled a comprehension of the mass and scale of the proposed structure including its significant, not minimal, impact on views and vistas; an examination of the photographs using a human eye view allows a comprehension of the significant impact of the proposed residence on views and vistas; and locating a residence at the southernmost 15.7 acres of the 43.5 acres would minimize visual impacts as stated in the Village Code.

In assessing the third factor, the Board issued the following findings: none of the 43.5 acre premises has been actively farmed for at least eight (8) years. Rather, the premises is annually planted with a cover crop by Dean Foster; the open space acreage across Daniels Lane to the north has not been farmed in recent years; the contiguous open space to the east is now the subject of a development proposal, albeit with all development at the southernmost portion of that parcel and a commitment to maintain the balance of the parcel along Daniels Lane as open space; and no part of the subject 43.5 acres which is not encumbered by the conservation easement is contiguous to land now actively farmed.

In assessing the fourth factor, the Board issued the following findings: the institutional record and memory of the Board includes a prior 2007-2008 subdivision review which expressly addressed the inappropriateness of the development of the northwest corner which was unchallenged; the now proposed development of the northwest corner would render the parcel nonconforming upon any later subdivision because the requirements for open space would not include a lot partially improved and partially a part of the 65% requirement; any approval of a residence at this time would prevent any later submission or consideration of a cluster plan; any subdivision consideration would not place a 13,780 square foot - residential development between the public streets and the open space; and applicant's submission of a conceptual subdivision plat which ignored the 2007/2008 subdivision layout evidenced an absence of good faith and enabled an inference that this site plan submission was an end run around the May 2013 subdivision submission.

On the basis of its finding, the Board reached the conclusion that the northwest corner was not the most suitable location for the proposed residence, and denied the application without prejudice to a re-submission consistent with the requirements of Village Code 245-67(M). It is undisputed that the Decision dated January 12, 2105 was filed with the Village Clerk on January 13, 2105, and that this special proceeding was timely commenced on February 11, 2015. By their verified answer, the respondents assert five affirmative defenses (objections in point of law), which must be disposed of in determining this special proceeding. First, the respondents assert that any challenge to a municipal proceeding other than the Decision is time-barred. While true, it is determined that the issue is academic.

In their second through fifth objections in point of law, the respondents respectively assert that the Board's decision has a rational basis, that the Board made detailed findings and rendered a determination consistent with the facts and the law, that the Board properly evaluated this application pursuant to Village

Code 245-67(M), and that the Decision is appropriate under the doctrine of administrative agency precedent. Said contentions go to the ultimate findings of the Court in this special proceeding, and do not establish the respondents' entitlement as a matter of law to a determination in their favor regarding any of the claims raised in the petition. Accordingly, the respondents' objections in point of law are dismissed.

Turning to the merits of the petition, "[a] local planning board has broad discretion in reaching its determination on applications ... and judicial review is limited to determining whether the action taken by the board was illegal, arbitrary, or an abuse of discretion" (see *Matter of Kearney v Kita*, 62 AD3d 1000, 1001, 879 NYS2d 584 [2d Dept 2009]; see also *Matter of In-Towne Shopping Ctrs., Co. v Planning Bd. of Town of Brookhaven*, 73 AD3d 925, 901 NYS2d 331 [2d Dept 2010]; *Matter of Davies Farm, LLC v Planning Bd. of Town of Clarkstown*, 54 AD3d 757, 864 NYS2d 84 [2d Dept 2008]). "The planning board's determination should be sustained upon judicial review if it was not illegal, has a rational basis, and is not arbitrary and capricious" (*Matter of Kearney v Kita*, *supra* at 1001; see *Fairway Manor, Inc. v Bertinelli*, 81 AD3d 821, 916 NYS2d 630 [2d Dept 2011]; *Matter of Gallo v Rosell*, 52 AD3d 514, 859 NYS2d 675 [2d Dept 2008]). "When reviewing the determinations of a local planning board, courts consider substantial evidence only to determine whether the record contains sufficient evidence to support the rationality of the Board's determination" (*Matter of Kearney v Kita*, *supra* at 1001).

The petitioner contends, among other things, that the Board was predisposed against the application and the petitioner, that the Board refused to permit the petitioner's experts to communicate with the Board's consultants, and that the Board improperly referenced the 2007 subdivision application in its review of this site plan. The petitioner further contends that the Board improperly rejected its photograph renderings and the Suffolk County Soil Survey, and that it improperly made continued requests "post public hearing," including the untimely request for a soil analysis.

Addressing the petitioner's contentions, the record reveals that the Board, despite its misgivings regarding the motives of the petitioner in making the subject application, carefully reviewed the submission, adequately explained its reasoning in requiring all communications between experts to take place in a public forum, and reasonably considered the "history" of the petitioner's prior attempts to develop the premises, as well as its intentions for the future development thereof. In addition, the record demonstrates that the Board considered all of the petitioner's allegations, consulted with the appropriate experts, reviewed comments and submissions from the public hearings, and considered alternative locations so as to minimize the visual impact of the proposed residence on the "views and vistas of the farmland areas from public rights-of-way" as well as the loss of prime agricultural soils.

The petitioner does not dispute, and actually relies upon, the fact that Village Code 245-67(M) mandates that the Board must "determine the most suitable location of the buildings or other structures for the current and future development of the property and the most suitable area for future farmland preservation." The statute does not create a hierarchy or set forth priorities regarding the factors that the Board must consider in making its determinations. Regardless whether there is a measurable or ascertainable difference between certain prime agricultural soils, the Board has the discretion to weigh all of the factors enumerated in the statute. In reviewing an administrative action, a court may not substitute its judgment for that of the agency responsible for making the determination (see *Matter of Sasso v Osgood*, 86 NY2d 374, 633 NYS2d 239 [1995]; *Matter of Chemical Specialties Mfrs. Assn. v Jorling*, 85 NY2d 382, 626 NYS2d 1 [1995]). Further, the court "may not weigh the evidence or reject the choice made by

the zoning board ‘where the evidence is conflicting and room for choice exists’” (*Matter of Calvi v Zoning Bd. of Appeals of City of Yonkers*, 238 AD2d 417, 418, 656 NYS2d 313 [2d Dept 1997] quoting *Matter of Toys “R” Us v Silva*, 89 NY2d 411, 654 NYS2d 100 [1996]).

In light of the foregoing, the Court finds that the January 12, 2015 determination of the Board was not arbitrary or capricious, was not illegal, and had a rational basis (see *Fairway Manor, Inc. v Bertinelli*, 81 AD3d 821, 916 NYS2d 630 [2d Dept 2011]; *Herzog v Planning Bd. of E. Hampton*, 281 AD2d 419, 721 NYS2d 272 [2d Dept 2001]).

Accordingly, the petition is denied and the proceeding is dismissed.

Submit judgment.

GRANTED
OCT 20 2015
Judith A. Pascale
CLERK OF SUFFOLK COUNTY



HON. JOSEPH A. SANTORELLI
J.S.C.