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Concerned Citizens of Farmington v Town of Farmington
2020 NY Slip Op 50690(U)
Decided on June 16, 2020
Supreme Court, Ontario County
Schiano Jr., J.
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Decided on June 16, 2020

Supreme Court, Ontario County

Concerned Citizens of Farmington, JAMES FALANGA, NANCY FALANGA, DANIEL GEER, and JAMES REDMOND, Petitioners,

against

Town of Farmington, TOWN OF FARMINGTON PLANNING BOARD, DELAWARE RIVER SOLAR, LLC, ROGER SMITH A/K/A RODGER SMITH, CAROL SMITH, ROCHESTER GAS AND ELECTRIC CORPORATION, JOHN DOES, AND ABC CORPORATIONS, Respondents.

126079-2019

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Charles A. Schiano Jr., J.

ORDERED that the motion by the Respondents for an order pursuant to CPLR 321 1 (a)(7) and 7804(f) dismissing the petition/declaratory judgement proceeding/action is granted and Petitioners proceeding/action is dismissed without prejudice.

ORDERED that Petitioners/Plaintiffs may re-file under the same index number without additional fees related to filing from the Ontario County Clerks Office.

Background

This is a combined Article 78/Declaratory Judgment proceeding/action (hereinafter referred to as "proceeding," and the parties will be referred to as Petitioners and Respondents). Petitioners seek to annul and vacate Respondent Planning Board of Farmington's ("Planning Board") August 7, 2019 and December 18, 2019 Negative Declarations of Environmental Significance pursuant to the State Environmental Quality Review Act ("SEQRA"), and seek a temporary and permanent injunction prohibiting Respondent Delaware River Solar, LLC ("DRS"), from commencing any site work at the project site. Petitioners claim the Planning Board's Negative Declaration violated the substantive and procedural requirements of SEQRA.

In 2018, Respondent DRS proposed to build a solar farm project on 135 acres of land in the Town of Farmington owned by Respondents Roger and Carol Smith. This large scale solar farm is considered a Type I action under SEQRA and required an environmental review to determine whether a comprehensive environmental impact statement was necessary prior to approval of the project. The Planning Board was designated the lead agency and held numerous public hearings concerning the proposed solar farm project. On August 7, 2019, the Planning Board issued a Negative Declaration of Environmental Significance (Negative Declaration).

Petitioners commenced this action on September 6, 2019 and filed a Verified Amended Petition and Complaint on September 1 1, 2019. The Town brought a Motion to Dismiss on October 7, 2019 and DRS and the Smiths filed a similar

Motion to Dismiss three days later on October 10, 2019. During the pendency of these motions, the Town of Farmington Zoning Board ("Zoning Board") denied DRS's request for setback variances necessary to the project. In response, DRS revised its project plan so that setback variances would not be necessary.

The planning board then conducted additional public hearings and further deliberated concerning DRS's revised site plan. The Planning Board issued a second Negative Declaration relative to the revised site plan for the solar farm on December 18, 2019.

On January 16, 2020, the parties entered into an agreement permitting Petitioners to file a Second Amended Petition without leave of the court and tolling claims as of the date of the agreement.

Petitioners filed their Second Amended Verified Petition on February 5, 2020 and

the Respondents filed the present motion on March 5, 2020.

The Present Motion

Respondents present seeks an order pursuant to CPLR 321 1(a)(7); 7804(f), and 7801(1), dismissing Petitioners' Second Amended Petition and Complaint on the ground that it fails to state a claim upon which relief can be granted due to lack of ripeness. Respondents point to the fact that the Planning Board must still approve the subdivision plat, a special use permit, and the final site plan. Thus, Respondents contend, final agency action has not yet occurred.

Petitioners counter that the Negative Declaration is a final agency action by the Planning Board causing an actual, concrete, injury to them which cannot be significantly ameliorated by further administrative action or steps available to them. Consequently, Petitioners contend, whether the Planning Board violated the substantive and procedural requirements of SEQRA is a justiciable controversy ripe for review.

Discussion

Whether an agency action is ripe for review depends upon several considerations. First, the action must "impose an obligation, deny a right or fix some legal relationship as a [*2]consummation of the administrative process" and "consideration must be given to the completeness of the action" (Matter of Essex County v Zagata, 91 NY2d 447, 453 [1998] [internal citations and quotations omitted]). Stated another way, "a pragmatic evaluation must be made of whether the decision maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury" (Essex County, 91 NY2d at 453]). Further, "there must additionally be a finding that the injury purportedly inflicted by the agency may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party"(Essex County, 91 NY2d at 453 [citations and quotations omitted]).

The question in Essex Countywas when did the agency reach a final determination that rendered the appellants claims amenable to review under article 78 (Matter of Essex Co v Zagata, 91 NY2d at 453). "[T]he Court has recognized, the ripeness doctrine is closely related to the finality requirement, and in order for an administrative determination to be final, and thus justiciable, it must be ripe for judicial review" (Matter of Ranco Sand & Stone Corp. v Vecchio, 27 NY3d 92,98 [2016] [citing Matter of Essex County, 91 NY2d at 453-454, 454 n).

Petitioners contend they have suffered an actual concrete injury because the Negative Declaration of December 1 8, 2019, allows the solar farm project to proceed without the benefit of an Environmental Impact Statement that would have been required had the Planning Board issued a Positive Declaration. According to Petitioners, the Planning Board will be unable to identify significant adverse impacts to the community and to require mitigation as a condition of project approval. Petitioners view this as final agency decision because the Planning Board will not necessarily be required to revisit its Negative Declaration decision at any point in the subsequent project approval process.

In this case, the Court does not agree the Planning Board's Negative Declaration of December 1 8, 201 9 was the "last action taken by the Agency whose determination petitioners challenge" (Matter of Eadie v Town Bd. Of Town of N. Greenbush, 7 NY3d 306, 317 [2006]). In Eadie, the Court was called upon to determine whether the four month article 78 statute of limitations ran from the earlier time of the Town Board's completion of the SEQRA process, with the release of a Generic environmental impact statement, or the latter time of the adoption of the proposed re-zoning. The Court of Appeals held that the "statute of limitations ran from the adoption of the re-zoning, not from the earlier completion of the SEQRA process" (Eadie, 7 NY3d at 312). The Court found that petitioners "suffered no concrete injury until the Town Board approved the re-zoning. Until that happened, their injury was only contingent; they would have suffered no injury at all if they had succeeded in defeating the re-zoning through a valid protest petition, or by persuading one or more members of the Town Board to vote their way" (Eadie, 7 NY3d at 317).

As in Eadie, Petitioners injury, at this point, is only contingent. If the Planning Board declines to approve the subdivision plat, or the special use permit, or the final site plan, the project cannot go forward and no harm would accrue to Petitioners. It is not controverted that the Planning Board has yet to approve the developers proposed subdivision plat, special use permit, and the final site plan. That the Planning Board granted preliminary subdivision plat approval, and posted a draft resolution on its web site granting the projects special use permit, does not alter this fact. These preliminary steps do not constitute approval, as an agency's position will not be considered final if it is "tentative, provisional or contingent, subject to recall, revision, or [*3]reconsideration" (Nat'l Treasury Empls. Union v FLRA, 712 F2d 669, 671 [1 983][cited with approval for this proposition by Essex County, 91 NY2d at 453]). In any event, there is no evidence the Planning Board has granted any sort of approval of the final site plan.

Accordingly, the Court finds this matter is not ripe for review under article 78. ' Contrary to petitioners' contenticn, their challenge d[oes] not relate to a final agency decision. CPLR article 78 prohibits challenges to non-final determinations (see CPLR 7801 [1]; Matter of Witryol v CWA4 Chem. Servs., LLC, 174 AD3d 1449, 1451 [4th Dept 2019]).

Petitioners suit for declaratory judgment must also be dismissed, this form of action is improper here. A "declaratory judgment action is not an appropriate procedural vehicle for challenging the . . . administrative determination[ ] [in question], and thus the proceeding/declaratory judgment action . . is properly only a proceeding pursuant to CPLR article 78" (Matter of Witryol v CWM Chem. Servs., LLC, 174 AD3d at 1450][citing Matter of Smoke v Planning Bd. of Town of Greig, 1 38 AD3d 1437 [4th Dept 2016], Iv denied 28 NY3d 901 [2016]). Petitioners challenge the Planning Board's determination under SEQRA, contending the Planning Board violated certain substantive and procedural aspects of SEQ RA. "[W]here, as here, issues of law are limited to whether a determination was affected by an error of law, arbitrary and capricious, an abuse of discretion, or irrational, the issues are subject to review only pursuant to CPLR article 78" (Matter of Smoke v Planning Bd. of Town of Greig, 138 AD3d 1437, 1438 [4th Dept 2016][internal citations and quotations omitted]).

Dated: June 16, 2020.

Candaigua, New York

HONORABLE CHARLES A. SCHIANO, JR.

Supreme Court Justice

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