



273 A.D.2d 474, 710 N.Y.S.2d 605, 2000 N.Y. Slip
Op. 06568

In the Matter of LCS Realty Co., Inc.,
Appellant,
v.
Incorporated Village of Roslyn et al.,
Respondents.

Supreme Court, Appellate Division, Second
Department, New York
1999-03443
(June 26, 2000)

CITE TITLE AS: Matter of LCS Realty Co.
v Incorporated Vil. of Roslyn

HEADNOTE

MUNICIPAL CORPORATIONS ZONING

(1) Comprehensive Master Plan and local law are void and unenforceable--Village had duty to comply with procedural requirements of General Municipal Law § 239-m in order to properly enact its Comprehensive Master Plan and local law which rezoned area of Village from commercial to residential; General Municipal Law § 239-m mandates that Village refer its proposed planning and zoning actions to County Planning Commission (CPC) for review and recommendation; furthermore, Village was required to submit to CPC "full statement of such proposed action", including "all materials required by and submitted to the referring body as an application on a proposed action, including a completed environmental assessment form"; in addition, General Municipal Law requires that CPC "shall have" at least 30 days, after receipt, to consider materials before making its recommendations, if any--after referral by Village, CPC should have been in possession of all of materials which Village needed in order to pass new zoning resolution, including final version and complete text of proposed new

zoning law and final generic environmental impact statement; however, it is clear that CPC did not have these materials for requisite 30-day period before Village acted and adopted subject zoning law; under circumstances, Village did not comply with General Municipal Law § 239-m and, as consequence, local law and Comprehensive Master Plan were improperly adopted and are void--there were substantial changes between draft environmental impact statement and final generic environmental impact statement, and thus new public hearings are warranted.

In a hybrid proceeding pursuant to CPLR article 78 to review a determination of the Incorporated Village of Roslyn dated July 15, 1997, which adopted a Comprehensive Master Plan and enacted Local Laws, 1997, No. 4 of the Incorporated Village of Roslyn, and an action for a judgment declaring that the Comprehensive Master Plan and Local Laws, 1997, No. 4 of the Incorporated Village of Roslyn are void and unenforceable, the appeal is from a judgment of the Supreme Court, Nassau County (Davis, J.), entered March 17, 1999, which dismissed the proceeding.

Ordered that the judgment is reversed, on the law, without costs or disbursements, the petition is granted, the determination of the Incorporated Village of Roslyn dated July 15, 1997, is annulled, and it is declared that the Comprehensive Master Plan and Local Laws, 1997, No. 4 of the Incorporated Village of Roslyn are void and unenforceable.

It is undisputed that the respondent, the Incorporated Village of Roslyn (hereinafter the Village), had a duty to comply with the procedural requirements of General Municipal Law § 239-m in order to properly enact its Comprehensive Master Plan and Local Laws, 1997, No. 4 of the Village, which rezoned an area of the Village from commercial to residential. Among other provisions, General Municipal Law § 239-m mandates that the Village refer its proposed planning and zoning actions to the Nassau County Planning Commission (hereinafter NCPC) for review and recommendation (*see*, General Municipal Law § 239-m [2], [3]). Furthermore, the Village was required to submit to the NCPC the "full statement of such proposed action", including "all materials required by and submitted*475 to the referring body as an application on a proposed action, including a completed environmental assessment form" (General Municipal Law § 239-m [1] [c]). In addition, the General Municipal Law requires that the NCPC "shall have" at least 30 days, after receipt, to consider the materials before making its recommendations, if any (General

Municipal Law § 239-m [4] [b]).

After referral by the Village, the NCPC should have been in possession of all of the materials which the Village needed in order to pass a new zoning resolution, including the final version and complete text of the proposed new zoning law and the final generic environmental impact statement. However, it is clear that the NCPC did not have these materials for the requisite 30-day period before the Village acted and adopted the subject zoning law. Under such circumstances, the Village did not comply with General Municipal Law § 239-m and, as a consequence, Local Laws, 1997, No. 4 of the Incorporated Village of Roslyn and the Comprehensive Master Plan were improperly adopted and are void (*see, Matter of Ferrari v Town of Pennfield Planning Bd.*, 181 AD2d 149; *see also, Matter of Ernalex Constr. Realty Corp. v Bellssimo*, 256 AD2d 336).

Contrary to the Village's contention, there were substantial changes between the draft environmental impact statement and the final generic environmental impact statement, and thus new public hearings are warranted (*cf., Caruso v Town of Oyster Bay*, 250 AD2d 639).

Santucci, J. P., McGinity, Luciano and Schmidt, JJ.,
concur.

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