

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT

Cade v. Stapf

91 A.D.3d 1229, 937 N.Y.S.2d 673 (N.Y. App. Div. 2012) · Decided January 26, 2012

SUMMARY

The court held that the petitioner had standing to challenge the Planning Board’s SEQRA determination and its approval of a cluster subdivision, based on his proximity to the project and related interests. It concluded that the Planning Board adequately addressed the project’s environmental impacts, including the water tower’s visual effects, growth-inducing effects, and alternatives. The court also found no fatal procedural error arising from the Zoning Board of Appeals not being identified as an involved agency and affirmed the judgment without costs.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Rose, J.; Mercure, A.E.J.; Peters, J.; Lahtinen, J.; Garry, J.
JURISDICTION	New York
DECIDED	January 26, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed from a Supreme Court judgment concerning his challenge to a Planning Board's SEQRA determination and conditional approval of a cluster subdivision application.
STANDARD OF REVIEW	The court reviewed standing and the Planning Board's compliance with SEQRA and the applicable town ordinance; SEQRA compliance was assessed under whether the agency identified relevant environmental concerns, took a hard look at them, and made a reasoned elaboration of the basis for its determination.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Cade v. Stapf

TOPICS

- environmental impact review
- judicial review of agency action
- administrative law
- zoning
- municipal law

PRACTICE AREAS

environmental law

land use

administrative law

municipal law

real estate

QUESTIONS PRESENTED

1. Whether petitioner had standing to challenge the Planning Board's SEQRA determination regarding all relevant visual and other environmental impacts of the project.
2. Whether petitioner had standing to challenge the Planning Board's approval of the cluster subdivision under the applicable town ordinance.
3. Whether the Planning Board's failure to identify and include the Zoning Board of Appeals as an involved agency rendered the SEQRA review invalid.
4. Whether the SEQRA review was impermissibly segmented because the water tower and related variance issues were addressed after the initial agency identification process.
5. Whether the Planning Board adequately considered the water tower's visual impact, growth-inducing impact, and alternatives, and properly supported its environmental determination.
6. Whether the Planning Board's conditional approval complied with the town ordinance governing cluster subdivisions and preserved the Town Board's authority over open-space management and ownership.

HOLDINGS

1. Once petitioner established an injury-in-fact within SEQRA's zone of interests based on the proximity of his property and the project's visual effects, he had standing to challenge whether the Planning Board considered all relevant and identified environmental concerns, including views beyond his own home.
2. Petitioner had standing to challenge the Planning Board's approval of the cluster subdivision because he established an injury from his close proximity to the subdivision and that injury fell within the zone of interests protected by the town ordinance.
3. The Planning Board complied with the applicable town ordinance by conditioning final approval on the Town Board's approval of the management and ownership of the resulting open space.
4. The Planning Board's failure to identify the Zoning Board of Appeals as an involved agency was not fatal under the circumstances, the review was not impermissibly segmented, and the record supported the Planning Board's conclusion that it had taken the required hard look at the project's environmental impacts.

KEY QUOTATIONS

"identified the relevant areas of environmental concern, took a 'hard look' at them, and made a 'reasoned elaboration' of the basis for its determination" (91 A.D.3d at 1230-1231)

FACTUAL BACKGROUND

Petitioner owned property near a proposed cluster subdivision and a proposed water tower located approximately 400 feet from his house, with potential visual effects on his property and the Helderberg Escarpment. The project underwent review involving a long-form environmental assessment form, draft and final environmental impact

statements, engineering and planning reports, visual simulations, agency input, and public hearings. The Planning Board conditionally approved the subdivision, including conditions addressing open-space ownership and management, and considered mitigation measures and alternatives concerning the water tower.

PROCEDURAL HISTORY

Supreme Court found that petitioner had standing to challenge the Planning Board's SEQRA determination based on the proximity of his property and his view of the proposed water tower, but limited the scope of his standing and rejected standing for certain additional claims. The Appellate Division held that petitioner had standing to raise the broader SEQRA and cluster-subdivision challenges, rejected his procedural and substantive challenges to the Planning Board's actions, and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Society of Plastics Indus. v. County of Suffolk, 77 N.Y.2d 761, 773-774 (1991)
- Matter of Ziemba v. City of Troy, 37 A.D.3d 68, 70-71 (2006), leave denied, 8 N.Y.3d 806 (2007)
- Matter of Steele v. Town of Salem, Planning Bd., 200 A.D.2d 870 (1994), leave denied, 83 N.Y.2d 757 (1994)
- Matter of Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d 400, 417 (1986)
- Matter of West Beekmantown Neighborhood Assn., Inc. v. Zoning Bd. of Appeals of Town of Beekmantown, 53 A.D.3d 954, 956 (2008)
- Matter of Mombaccus Excavating, Inc. v. Town of Rochester, N.Y., 89 A.D.3d 1209, 1210 n. (2011)
- Matter of Sun-Brite Car Wash v. Board of Zoning & Appeals of Town of N. Hempstead, 69 N.Y.2d 406, 413-414 (1987)
- Matter of Wittenberg Sportsmen's Club, Inc. v. Town of Woodstock Planning Bd., 16 A.D.3d 991, 992-993 (2005)
- Matter of Hickey v. Planning Bd. of Town of Kent, 173 A.D.2d 1086, 1088 (1991)
- Matter of Heritage Co. of Massena v. Belanger, 191 A.D.2d 790, 792 (1993)
- Matter of Scenic Hudson v. Town of Fishkill Town Bd., 266 A.D.2d 462, 464 (1999), leave denied, 94 N.Y.2d 761 (2000)
- Matter of King v. County of Monroe, 255 A.D.2d 1003, 1004 (1998), leave denied, 93 N.Y.2d 801 (1999)
- Matter of Mirabile v. City of Saratoga Springs, 67 A.D.3d 1178, 1181 (2009)
- Matter of Reed v. Village of Philmont Planning Bd., 34 A.D.3d 1034, 1036 (2006), leave denied, 8 N.Y.3d 807 (2007)
- Matter of Oates v. Village of Watkins Glen, 290 A.D.2d 758, 762 (2002)