

 ORIGINAL

STATE OF NEW YORK
SUPREME COURT

COUNTY OF SARATOGA

In the Matter of
DAVE EVANS, JAMIE EVANS, JACK DESPART,
ALICE SMITH, DENNIS HULTAY,

Petitioners-Plaintiffs

DECISION and JUDGMENT

-against-

RJI #45-1-2020-0392

Index # EF2020-1044

CITY OF SARATOGA SPRINGS, CITY OF
SARATOGA SPRINGS CITY COUNCIL

Respondents-Defendants.

APPEARANCES

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ANN C. CROWELL, J.

Petitioners-plaintiffs Dave Evans, Jamie Evans, Jack Despart, Alice Smith and Dennis Hultay (“petitioners”) commenced this combined proceeding/action pursuant to Article 78 of the Civil Practice Law and Rules (CPLR) to annul, vacate and set aside the respondents City of Saratoga Springs and City of Saratoga Springs City Council’s (hereinafter “respondent”) decisions issuing a negative declaration and amending the City of Saratoga Springs zoning map. Following a procedural stipulation, respondent moved for summary judgment dismissing the proceeding/action. Petitioners have cross- moved for

summary judgment.

On June 16, 2015, respondent adopted the current Comprehensive Plan. On December 23, 2019, respondent adopted zoning amendments to eighteen different parcels in the City. Parcel #1 is at issue in this proceeding and consists of 17 acres of land currently owned by Saratoga Hospital. Parcel #1's zoning designation was changed from Urban Residential (UR-1), a residential district to Office Medical Business 2 (OMB2), a commercial district. The Comprehensive Plan contains a Future Land Use Map showing the types of future land use categories the City encourages for various areas. On the Future Land Use Map Parcel #1 is designated as Core Residential Neighborhood (CRN) and Institutional (INST). The INST designation is intended to include "areas that provide services such as religious, educational, health, cultural and tourism." The OMB2 zoning district is intended to "accommodate business, medical and professional office uses as well as health related institutional facilities."

Petitioners contend that Parcel #1's change from UR-1 to OMB2 was arbitrary and capricious, irrational and unlawful spot zoning in violation of the Comprehensive Plan. Respondent contends that the change of zoning conforms to the City's Comprehensive Plan.

In *Matter of Troy Sand & Gravel Co., Inc. v Town of Sand Lake*, 185 AD3d 1306 [3d Dept. 2020], the Appellate Division, Third Department has recently set forth the law regarding zoning changes:

"A municipality is free to alter its zoning regulations, but must do so in a manner that comports with its comprehensive plan" (*Matter of Wir Assoc., LLC v. Town of Mamakating*, 157 A.D.3d at 1042-1043, 69 N.Y.S.3d 130 [citations omitted]; see *Udell v. Haas*, 21 N.Y.2d 463, 469-470, 288 N.Y.S.2d 888, 235 N.E.2d 897 [1968]; *Greenport Group, LLC v. Town Bd. of the Town of Southold*, 167 A.D.3d 575, 579, 90 N.Y.S.3d 188 [2018], *lv denied* 33 N.Y.3d 910, 2019 WL 2623972 [2019]). "A town's zoning determination is

entitled to a strong presumption of validity; therefore, one who challenges such a determination bears a heavy burden of demonstrating, beyond a reasonable doubt, that the determination was arbitrary and unreasonable or otherwise unlawful” (*Matter of Birchwood Neighborhood Assn. v. Planning Bd. of the Town of Colonie*, 112 A.D.3d 1184, 1185, 977 N.Y.S.2d 454 [2013] [internal quotation marks and citations omitted]). “Even if the validity of a provision is fairly debatable, [a municipality’s] judgment as to its necessity must control” (*Matter of Bonacker Prop., LLC v. Village of E. Hampton Bd. of Trustees*, 168 A.D.3d 928, 930, 93 N.Y.S.3d 328 [2019] [internal quotation marks, brackets and citations omitted], *lv denied* 33 N.Y.3d 904, 2019 WL 2041632 [2019]). “Thus, when a [petitioner] fails to establish a clear conflict with the comprehensive plan, the zoning classification must be upheld” (*Matter of Youngewirth v. Town of Ramapo Town Bd.*, 155 A.D.3d 755, 759, 65 N.Y.S.3d 540 [2017] [internal quotation marks and citations omitted]). “All that is required is that the court be able to satisfy itself, based upon a review of all available evidence, that *such plan in fact exists* and that the municipality is acting in the public interest in furtherance thereof” (*Matter of Skenesborough Stone v. Village of Whitehall*, 254 A.D.2d 664, 666, 679 N.Y.S.2d 727 [1998] [emphasis added and citations omitted], *appeal dismissed* 95 N.Y.2d 902, 716 N.Y.S.2d 641, 739 N.E.2d 1146 [2000]).”

Whether an OMB2 zoning designation is applicable to the future land use category of Institutional in the Comprehensive Plan is debatable. The Institutional designation in the Comprehensive Plan includes “areas that provide services such as religious, educational, health, cultural and tourism.” The inclusion of the words “such as” in this definition demonstrates that the listed uses are not exhaustive. The OMB2 district accommodates “business, medical and professional office uses as well as health related institutional facilities.” Respondent’s determination that the OMB2 zoning district falls with the purview of the non-exhaustive list of services under the Institutional designation is not arbitrary and capricious. While such a determination is debatable, the petitioners have not sustained their heavy burden of beyond a reasonable doubt to overcome the presumption of the determination’s validity. *Troy Sand & Gravel Co., Inc. v Town of Sand Lake*, 185 AD3d 1306 [3d Dept. 2020]. Since the inclusion of the OMB2 zoning district in the Institutional

zoning category is debatable, petitioner has failed to show a clear conflict with the Comprehensive Plan. *Youngewirth v Town of Ramapo Town Bd.*, 155 AD3d 755 [2d Dept. 2017]. Respondent's determination that additional office space in the vicinity of Saratoga Hospital is necessary and will benefit the public in general, despite the opposition from the neighboring residential owners, must control. *Matter of Bonacker Prop., LLC v Village of E. Hampton Bd. of Trustees*, 168 A.D.3d 928 [2d Dept. 2019]. Petitioners' first cause of action is denied and dismissed.

Petitioners' second cause of action contends that the respondent impermissibly engaged in "spot zoning". Saratoga Hospital owns the entirety of Parcel #1. In 2015, Saratoga Hospital had previously submitted a Planned Unit Development ("PUD") for the construction of a 75,000 square foot office building with 300 parking spaces. The PUD was not approved. Saratoga Hospital then presented a request to the Comprehensive Plan Committee to change the Comprehensive Plan's Future Land Use Map. The Comprehensive Plan was amended in 2015 resulting in a portion of Parcel #1 being given the INST designation on the land use map. Saratoga Hospital has publically supported the current zoning change with the intention to build a medical office building in close proximity to the hospital. Saratoga Hospital's possible plans to expand were discussed at the December 23, 2019 meeting when the zoning change was approved. However, Saratoga Hospital does not have any pending application before the City for specific development plans on Parcel #1.

"Spot zoning 'is defined as the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of said property to the detriment of other owners.'" *Matter of Rotterdam Ventures, Inc. v. Town Bd. of the Town of Rotterdam, supra* at pg. 1362. In evaluating a claim of spot

zoning, the courts consider whether the rezoning is consistent with the comprehensive plan, whether it is compatible with surrounding uses, the likelihood of harm to surrounding properties, and the recommendations of professional planning staff. *Id.*

Respondent has provided a rational basis for its determination that the OMB2 zoning district falls within the purview of the non-exhaustive list of services under the INST designation in the Comprehensive Plan. The zoning change supports the viability and growth of the hospital in accordance with the stated objectives of the Comprehensive Plan. While the zoning change will undoubtedly benefit Saratoga Hospital, the zoning change is in conformance with respondent's interpretation of the Comprehensive Plan. "Fundamentally, and relevant here, if a zoning amendment is consistent with the municipality's comprehensive plan, it is not spot zoning." *Dodson v Town Bd. of Rotterdam*, 182 AD3d 189 [3d Dept. 2020], quoting *Heights of Lansing, LLC v Village of Lansing*, 160 Ad3d 1165, 1168 [3d Dept. 2018]. Since respondent's zoning change is consistent with the Comprehensive Plan, petitioners' second cause of action is denied and dismissed.

Petitioners' third cause of action contends that respondent failed to take the necessary "hard look" at the effects of the zoning change and impermissibly segmented the review from the probable development by Saratoga Hospital. Judicial review of a lead agency's SEQRA determination is limited to determining whether the agency identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration of the basis for its determination." *see, Akpan v Koch*, 75 NY2d 561 [1990], *see also, Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400 [1986]. A court may not substitute its judgment for that of the agency responsible for making the

determination, for it is not the Court's role to weigh the desirability of any action or to choose among alternatives. *Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d 219, 232 [2007]. The Court's inquiry is whether there is a rational basis for the decision or whether it is arbitrary and capricious. *see, Matter of Regional Action Group v Zagata*, 245 AD2d 798 [3d Dept. 1997], *lv. den.* 91 NY2d 811 [1998]. Courts review an agency's substantive obligations "in light of a rule of reason", the degree of discussion of each factor will vary with the circumstances and nature of the proposal. *Friends of P.S. 163, Inc. v Jewish Home Lifecare*, 30 NY3d 416 [2017], citing *Matter of Jackson, supra*.

Respondent determined that the zoning change constitutes a Type 1 action under SEQRA and designated itself as lead agency. The project summary for the proposed zoning change specifically noted Saratoga Hospital's 2015 PUD application and the SEQRA review completed by the Saratoga Springs Planning Board for that proposed PUD. The 2015 SEQRA review included a Traffic Impact Study and a NYS OPRHP determination of no impact on archeological or historic resources. The 2015 SEQRA review resulted in a negative declaration for the proposed PUD.

On April 30, 2019, the Saratoga County Planning Board issued an advisory opinion approving the proposed zoning change. On June 24, 2019, the Saratoga Springs City Planning Board issued an advisory opinion finding that the proposed changes in relation to Parcel #1 were consistent with the Comprehensive Plan, but recommended a zoning designation of OMB1 rather than OMB2. On December 3, 2019 and December 17, 2019, duly noticed public hearings were held. On December 23, 2019, respondent completed Part 2 of the Full Environmental Assessment Form (FEAF) and issued a negative declaration. Respondent was fully aware of the opposition to the zoning change for Parcel #1, including

the potential claim of segmented SEQRA review. Although respondent's resolution did not contain an effective "reasoned elaboration of the basis for its determination", the finding that the zoning changes would not result in any large and important impacts by referencing the FEAF Part 1 and Part 2 is sufficient for judicial review. Respondent went through each of the questions on Part 2 of the FEAF (the parties each reference the video of the proceedings available on the internet) and answered them in the negative. A courts review of an agency's substantive obligations must be measured "in light of a rule of reason." *Friends of P.S. 163, Inc. v Jewish Home Lifecare, supra*. Respondent's failure to effectively copy, or regurgitate, the negative responses into its written conclusion for a negative declaration should not result in an annulment of that determination. The Town's inquiry was sufficient to meet SEQRA's "hard look" standard.

Petitioners also contend respondent impermissibly segmented the SEQRA review for the zoning change and the probable future development of the parcel by Saratoga Hospital. Segmentation is the division of the environmental review of an action in such a way that the various segments are addressed as though they were independent and unrelated activities, needing individual determinations of existence. *Adirondack Historical Assoc. v Village of Lake Placid*, 161 AD3d 1256 [3d Dept. 2018]; *Matter of Saratoga Springs Preservation Foundation v. Boff*, 110 AD3d 1326 [3d Dept. 2013]; *Matter of Concerned Citizens for the Environment v Zagata*, 243 AD2d 20, 22 [3d Dept. 1998]. The possibility of Saratoga Hospital's development of Parcel #1 was fully set forth in the record and raised by those opposing the zoning change. There is no current specific project pending for the development of the parcel. Respondent acknowledged the potential for development in its determination. Respondent relied on and considered the studies and reviews undertaken on Saratoga Hospital's prior 2015 PUD application. To the extent that

respondent's review could be considered segmentation, respondent has adequately and rationally determined that a later review will be no less protective of the environment than a speculative review with no clearly defined project in existence. *Matter of Saratoga Springs Preservation Foundation v. Boff, supra*. Petitioner's SEQRA claim and related claim of segmentation are denied and dismissed.

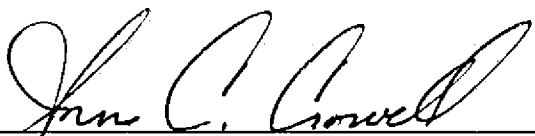
Petitioners' fourth cause of action claiming that respondent's determination is unlawfully tainted by the receipt of campaign contributions is denied. While the receipt of campaign contributions casts a cloud over many aspects of government decision making at all levels of the government, the receipt of campaign contributions does not create an appearance of impropriety necessitating the annulment of respondent's determination. The receipt of campaign contributions is not analogous to a political member pre-judging a determination or writing letters in support of a project. *Compare, Schweichler v Village of Caledonia*, 45 AD3d 1281 [4th Dept. 2007]. Petitioner has affirmatively stated that their claim is not based upon the General Municipal Law or the City's Ethics Code.

Petitioner's fifth cause of action alleges a violation of the Open Meetings Law based upon a reference to two commissioners having a discussion about the amendments privately in early December 2019. Members of a board may discuss issues privately providing a quorum of the board is not present and the private meetings are not designed to evade the Open Meetings Law. *Tri-Village Publishers, Inc. v St. Johnsville Bd. of Educ.*, 110 AD2d 932 [3d Dept. 1985]. Petitioners have failed to allege or offer any proof that a quorum was present during the private conversation or that the private conversations by members of the board were designed to evade the Open Meetings Law. Petitioner's fifth cause of action is denied and dismissed.

Respondent's affirmative defenses relating to standing and improper verification

need not be addressed. The Petition and Complaint is dismissed. Any relief not specifically referenced is denied. No costs are awarded to any party. This decision shall constitute the judgment of the Court.

Dated: November 6, 2020
Ballston Spa, New York


ANN C. CROWELL, J.S.C.

Papers Received and Considered:


Entered Saratoga County Clerk

Notice of Petition, dated May 26, 2020

11/09/2020

Summons, dated May 26, 2020

Verified Petition, sworn to May 26, 2020, with Exhibits A-O

Affidavit of Alice Smith, sworn to May 26, 2020

Stipulation, dated June 12, 2020

Notice of Motion, dated July 17, 2020

Affidavit of Vincent J. DeLeonardis, Esq., sworn to July 17, 2020, with Exhibits A-BB

Memorandum of Law, dated July 17, 2020

So Ordered Letter, dated August 5, 2020

Verified Answer, sworn to August 21, 2020

Certified Return, dated August 21, 2020, with Exhibit CC

Notice of Motion, dated September 9, 2020

Affirmation of Claudia K. Braymer, Esq., dated September 9, 2020, with Exhibits A-F

Affidavit of Vincent J. DeLeonardis, Esq., sworn to September 23, 2020, with Exhibit A