Matter of 545 Halsey Lane Props., LLC v Town of Southampton Planning Bd.
2014 NY Slip Op 33277(U)
December 12, 2014
Supreme Court, Suffolk County
Docket Number: 11-07938
Judge: Daniel Martin
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MEMORANDUM

SUPREME COURT, SUFFOLK COUNTY

I.A.S. PART 9

In the Matter of the Application of

545 HALSEY LANE PROPERTIES, LLC

Petitioner,

for a Judgment under Article 78 of the Civil Practice Law and Rules

- against -

TOWN OF SOUTHAMPTON PLANNING BOARD,

Respondent.

By: Martin, A.J.S.C.
Dated: December 12, 2014

Index No. 11-07938

Mot. Seq. # 001 - MD; CDISPSUBJ
Return Date: 4-15-11
Adjourned: 6-24-14

In the Matter of the Application of

545 HALSEY LANE PROPERTIES, LLC

Petitioner,

for a Judgment under Article 78 of the Civil Practice Law and Rules

- against -

TOWN OF SOUTHAMPTON PLANNING BOARD,

Respondent.

Index No. 12-33393

Mot. Seq. # 002 - MotD; CDISPSUBJ
Return Date: 12-6-12
Adjourned: 6-24-14

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In these CPLR Article 78 proceedings the petitioner seeks judgments annulling and striking certain modifications and conditions contained in the resolutions of the Town of Southampton Planning Board (Planning Board) dated February 10, 2011 and September 27, 2012, which approved the petitioner's site plan/special exception applications filed on or about April 22, 2008, and on or about December 12, 2011. The petitioner alleges that the modifications and conditions that were included in the Planning Board's resolutions are in violation of lawful procedure, and that the Planning Board's decisions were affected by errors of law, were arbitrary and capricious, were abuses of discretion, and were not supported by a rational basis in the record(s).

After the Planning Board adopted the resolution dated February 10, 2011, the petitioner filed a verified petition on March 11, 2011 challenging the determinations therein under Index No. 11-07938 (Halsey I). The matter was adjourned on the consent of the parties in an attempt to settle the dispute, and in support of that effort, the petitioner filed an amended site plan/special exception application on December 12, 2011. After the Planning Board adopted the resolution dated September 27, 2012, the petitioner filed a verified petition on November 1, 2012 challenging the determinations therein under Index No. 12-33393 (Halsey II). By so-ordered stipulation and order dated February 20, 2013, the undersigned consolidated these matters "for the purpose of briefing by the parties and decisions of the court" under the caption set forth above.

The petitioner, 545 Halsey Lane Properties, LLC (petitioner), is the owner of a 40.747 acre parcel of land (the premises) located in the Town of Southampton's R-80 Zoning District, and also within the Town's Agricultural Overlay District. Furthermore, the premises is designated an Agricultural Reserve Area (ARA) pursuant to a filed subdivision map and a grant of easement in favor of the Town, dated July 15, 1980, filed in the office of the Suffolk County Clerk at Liber 8884, page 125. Pursuant to the grant of easement, the grantors conveyed to the Town an "agricultural, scenic and conservation use easement in gross with respect to the premises, reserving to themselves "the exclusive right of occupancy and of use" of the ARA, subject to the covenants and restrictions contained in the grant. The grant of easement provides in pertinent part:

> 1. The use and development of the Agricultural Reserve Area will forever be restricted to some or all of the following: (1) farming operations and activities, including ... farm buildings, ...all as designed and intended to promote and enhance agricultural production, encompassing the production for commercial purposes of field crops ..., fruits (including, without limitation, apples, peaches, grapes, cherries and berries), vegetables ... (ii) open, fallow, landscaped and wooded areas, with lanes, walkways, foot path, and ponds or brooks; (iii) recreational areas, for compatible recreational uses; and (iv) one single family dwelling and customary accessory uses and structures incidental thereto.

The premises is an irregular shaped parcel located east of Halsey Lane in Bridgehampton, New York. At its northern end it only consists of a driveway into the 40.747 acre parcel, and the residence located therein. South of the driveway, and abutting the east side of Halsey Lane, are single family dwellings. Behind, and east of, the single family dwellings lies the bulk of the ARA, which is currently

a grass lawn. However, a portion of the premises turns west and abuts Halsey Lane south of the subject dwellings. Additional single family dwellings are located south of the premises. Subsequent to a decision of the Town Board of the Town of Southampton (Town Board) in 1997, the premises was improved by, among other things, a two-story single family dwelling, garage, deck porch, swimming pool, spa, tennis court, pergola, pool house, and two-story garage with second-floor living area, within a building enclosure area set by the Town Board. In addition, and without prior approvals, a baseball field and children's play ground equipment/jungle gym were added in the area of the ARA consisting of grass lawn.

Halsey I

On or about April 22, 2008, the petitioner filed its original site plan/construction permit/wetlands permit application for the construction of a pre-manufactured steel building (barn) of 11,250 square foot to serve a newly proposed orchard, with a 20' wide gravel driveway, and a 30' x 130' parking area. The main area of the proposed orchard lies in the southerly portion of the premises which abuts Halsey Lane, and lies between the single family dwellings located north and south along Halsey Lane and elsewhere. At the time of the application, the area included an existing orchard of 3.05 acres, which had not been well maintained, or used for the commercial production of fruits. Thereafter, the petitioner submitted multiple revisions of the plans, reducing the size of the barn to 7,920 square feet, and relocating it within the orchard.

Public hearings on the petitioner's application were held on August 13, 2009, December 17, 2009, February 25, 2010, May 13, 2010, September 23, 2010, October 28, 2010, and February 3, 2011. The petitioner's representative, and some of the owners of nearby properties, attended the hearings, the latter voicing complaints concerning the location, size, and height of the proposed barn, the use of the property and the barn, and the fact that the petitioner was not engaged in agricultural production for commercial purposes. At the hearing on August 13, 2009, the petitioner's representative acknowledged that a portion of the barn was intended to be used to store the landscaping equipment used to mow the 30 acres of lawn area at the premises, and that the ball field was outside of the building envelope for the single family residence on the premises. At the hearing on December 17, 2009, the petitioner's representative repeated his statements regarding the use of the barn, that the landscaping equipment was used to maintain the landscaping around the single family residence on the premises, and he indicated that the barn had been relocated to the southeast corner of the property. An attorney for one of the neighboring homeowners pointed out that the size of the barn violated the spirit of the grant of easement which includes a scenic easement, and that the grant requires that the ARA be used for "commercial agricultural production." The attorney argued that the application should be denied as it did not show that the improvements were for commercial purposes.

On February 25, 2010, a third public hearing was held. The petitioner's representative submitted an analysis comparing the size of barns relative to the acreage of farms located in the Town. He argued that the ball field was contemplated within the recreational uses permitted in the grant, and he acknowledged that the petitioner was required to go before the Town's Agricultural Advisory Committee (AAC) for review regarding the size, use, and other relevant factors regarding its application. Thereafter, the petitioner's representative appeared before the AAC on a number of occasions, and he

took the opportunity to communicate with, and submit modifications suggested by the committee. On June 7, 2010, the AAC recommended that the Planning Board deny the application or, in the alternative, approve a 2,400 square foot barn for the orchard based on the petitioner's final revision showing the size of the orchard to be 10 acres.

In the final three public hearings, the petitioner's representative again argued that the barn should be sized according to the 40-plus acres of the premises/ARA, and not the 10 acres proposed for the development of an orchard in this application, as the petitioner intended to increase the agricultural use of the premises in the future. The opponents of the project repeated their arguments that the orchard project failed to meet the requirements of the Agricultural and Markets Law (AML), that the petitioner only intends to grow fruit for its personal use, and that the ball field and jungle gym are located outside the building envelope for the single family residence on the premises.

By adopted resolution decision dated February 10, 2011 and filed with the Town Clerk on February 11, 2011, the Planning Board approved the petitioner's application subject to the following modifications and conditions:

> Changes to the plans:
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> ***
>
> 2. Submission of a revised Site Plan, architectural elevations and floor plans, for the reduced barn size of 2,400 square feet, for signature.
> 3. Show and note removal of the ball field, prior to Building Permit.
> 4. Show and note removal of the play ground/jungle gym equipment, prior to Building permit.
> 5. Reduction of the proposed parking area, relative to the reduced size of the building.
>
> General conditions:
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> ***
>
> 16. No landscaping and lawn equipment is permitted within the proposed agricultural building or shall be stored within the Agricultural Reserve.

The Planning Board made the following findings in reaching its decision: that based on the multiple recommendations of the AAC and the recommendations in the Staff Report dated February 10, 2011, the proposed barn shall be reduced to 2,400 square feet and located centrally in relation to the existing driveway; that the size reduction is based, in part, on the fact that the existing orchard of 3.05 acres does not meet the threshold of a "commercial agricultural operation," or the definition of "land used in agricultural production" within the Agricultural and Markets Law; that nothing precludes the applicant from coming back to the Planning Board once the premises is in full production; that the size reduction and relocation of the proposed barn allow the property to "remain in its natural and scenic beauty, desirable and productive for farming and agricultural purposes;" and that the size reduction and relocation of the proposed barn satisfies the objectives and requirements of Town of Southampton Code

Sections 330-50[D][2d Dept 2000] and 330-182, the intent of the grant of easement, and is more consistent with the existing drainage easement on the premises.

The petitioner commenced this CPLR article 78 proceeding (Halsey I) challenging the resolution dated February 10, 2011 adopted by the respondent Planning Board which granted the petitioner's application subject to the enumerated modifications and conditions. The verified petition was filed on March 11, 2011. By its verified answer, the Planning Board asserts ten affirmative defenses (objections in point of law), which must be disposed of in determining this special proceeding. First, the respondent asserts that the petitioner lacks standing. "The standing of a party to seek judicial review of a particular claim or controversy is a threshold matter which, once questioned, should ordinarily be resolved by the court before the merits are reached" (***Hoston v New York State Dept. of Health***, 203 AD2d 826, 611 NYS2d 61 [3d Dept 1994], *citing* ***Society of Plastics Indus., Inc. v County of Suffolk***, 77 NY2d 761, 570 NYS2d 778 [1991]; ***Matter of New York State Nurses Assn. v Axelrod***, 152 AD2d 888, 544 NYS2d 236 [3d Dept 1989]). Standing to bring a CPLR article 78 proceeding requires the existence of an injury in fact, an actual legal stake in the matter being adjudicated, which must be distinct from that of the general public [citations omitted] (***Matter of Brown v County of Erie,*** 60 AD3d 1442, 876 NYS2d 801 [4th Dept 2009]). Here, the petitioner's actual legal stake in the matter is indisputable.

The respondent's second affirmative defense (objection in point of law) contends that the petitioner's claims if any are barred by the statute of limitations. A person aggrieved by a Planning Board decision must commence a proceeding under CPLR article 78 within thirty days after the filing of the decision in the office of the town clerk (Town Law § 274-a [11]; ***Matter of Hampshire Mgt. Co., No. 20, LLC v Feiner***, 52 AD3d 714, 860 NYS2d 204 [2d Dept 2008]). Here, the adduced evidence reveals that the subject resolution was filed in the Town Clerk's office on February 11, 2011, that the end of the 30-day period fell on a Sunday, and that this proceeding was commenced by the petitioner on Monday, March 14, 2011. The Court finds that the proceeding was commenced within the applicable statute of limitations (GCL 25-a).

The respondent's third, fourth, fifth, sixth, eighth and tenth affirmative defenses (objections in point of law) respectively contend that: the Planning Board's decision was not arbitrary and capricious, the Court may not substitute its judgment for that of the Planning Board, the Planning Board's decision was rationally based, the petitioner has failed to overcome the presumption that the Planning Board's decision was valid, the petitioner improperly attempts to submit proof outside the administrative record, and the petitioner's proposed use of the premises is not consistent with the Town of Southampton Code. Said contentions go to the ultimate findings of the Court in this special proceeding, and do not establish the respondent's entitlement as a matter of law to a determination in its favor regarding any of the claims raised in the petition.

The respondent's seventh affirmative defense (objection in point of law) contends that the petition fails to state a cause of action. Pursuant to CPLR 3211(a) (7), the Court is limited to examining the pleading to determine whether it states a cause of action (***Guggenheimer v Ginzburg***, 43 NY2d 268, 401 NYS2d 182 [1977]). The pleadings shall be liberally construed, the facts as alleged accepted as true, and every possible favorable inference given to plaintiffs ***(Leon v Martinez***, 84 NY2d 83, 614 NYS2d 972 [1994]). Here, the Court finds that the petition states a cognizable cause of action under CPLR article

78.

The respondent's ninth affirmative defense (objection in point of law) contends that the petitioner is not entitled to recover its legal fees in connection with this proceeding. A review of the petition does not reveal any allegations in which the petitioner claims such relief, nor does it contain a demand or prayer for such relief. Here, the affirmative defense (objection in point of law) is academic.

Accordingly, the respondent's ten affirmative defenses (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 its analysis of the ratio of barn size to farm acreage within the Town of Southampton (Town) indicates that the Planning Board's decision to limit its barn to 2,400 square feet is arbitrary and capricious, that the AAC may not consider the size of a farm building in making its recommendations to the Planning Board, that the Planning Board's decision must be based on the proposed future agricultural use of all 40 acres of the premises, and that the Planning Board's decision is not based on the criteria set forth in the Town of Southampton Code § 330-182. Initially, the Court notes that the petitioner's analysis of the size of barns within the Town does not establish that the Planning Board's decision should be overturned. A reasoned analysis of the appropriate size of a structure must take into account the specific uses of the building, and the petitioner's analysis does not take into account the varying agricultural uses permitted within the Town, or the uses of the buildings that it analyzed. The Planning Board was entitled to credit the findings of the experts that a barn of 2,400 square feet would adequately serve the proposed 10-acre orchard while meeting the competing interests of the community and the Town (*see* ***Gladstone v Zoning Bd. of Appeals of Inc. Village of Southampton***, 13 AD3d 445, 785 NYS2d 697 [2d Dept 2004]), as well as the interests of the Town relative to the grant of easement.

The Court finds that the Planning Board properly considered the application for a proposed 10-acre orchard, and that, in taking into consideration the reservation of rights for other uses contained in the grant of easement, it was not required to take into account the undefined and speculative future development of the premises for agricultural purposes. In addition, as set forth below, it is determined that the AAC had the authority to consider the size of the proposed barn under the circumstances.

Finally, a review of Town of Southampton Code § 330-182 indicates that the Planning Board properly considered the relevant criteria set forth therein.

Addressing the petitioner's contention regarding the jurisdiction of the AAC, the record reveals that the petitioner acknowledged its obligation to appear before the committee regarding its application in the public hearings before the Planning Board. In addition, the petitioner never raised the issue of the AAC's allegedly limited jurisdiction at any time during the application process or requested a ruling on that issue from an appropriate municipal authority. Generally, "one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law" (***Watergate II Apts. v Buffalo Sewer Auth.***, 46 NY2d 52, 57, 412 NYS2d 821 [1978]; *see* ***Matter of Mirenberg v Lynbrook Union Free School Dist. Bd. of Educ.***, 63 AD3d 943, 881 NYS2d 159 [2d Dept 2009]; ***Matter of Laureiro v New York City Dept. of Consumer Affairs***, 41 AD3d 717, 837 NYS2d 746 [2d Dept 2007]). More importantly, as set forth below, it is determined that the AAC has, and had, jurisdiction to review the petitioner's application.

It is determined that the petitioner's remaining contentions are included within the challenges made to the Planning Board's determinations in Halsey II. In addition, it is determined that, except for the few additional issues included within Halsey II, the issues in the two proceedings are identical, and that any relief sought herein would be resolved by the Court's decision in that proceeding. More importantly, the parties have fully briefed the issues in Halsey II, and the Court deems that a significant benefit to a complete resolution of the issues raised by the petitioner. Therefore, it is determined that a further review of this proceeding is unnecessary, that the determinations rendered below in Halsey II resolve all of the issues in this proceeding, and that, under the circumstances, this proceeding is academic.[1]

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

Submit judgment.

Halsey II

On or about December 12, 2012, in accordance with the parties' desire to settle their dispute, the petitioner filed an amended site plan/construction permit/wetlands permit application for the construction of a 4,000 square foot barn to serve the proposed 10-acre orchard in the southerly portion of the premises, and a 2,000 square foot barn near the single-family residence at the northerly end of the premises. At the time of the application, the orchard in the southerly portion of the premises had been reduced to approximately 1.5 acres, and it remained unused for the commercial production of fruits. Public hearings on the petitioner's application were held on April 26, 2012, and June 14, 2012. The petitioner's representative, and some of the owners of nearby properties, attended the initial public hearing, the latter voicing concerns that the provisions of the grant of easement maintaining the natural

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[1] This is true despite the parties' prior agreement and intention to have the two site plan/special exception applications be treated independently.

and scenic qualities of the premises be upheld, and complaints concerning the location, size, and height of the proposed barns, the use of the property and the barns, and the fact that the petitioner was not engaged in agricultural production for commercial purposes. At that hearing, the petitioner's representative indicated that the petitioner would agree to plant the rest of the orchard when the Planning Board approvals were granted.

On June 14, 2012, the second public hearing was held. The petitioner's representative indicated that the petitioner agreed to move the smaller north barn a maximum of ten feet south of the northerly property line to accommodate its neighbors, to omit other items near the north barn, and to some landscaping to shield said barn. The petitioner's representative acknowledged that the "town has the ability to make sure that anything that's stored in [the north] barn is agricultural," and that the "residential uses are not allowed passed [sic] the 2½ acre [building enclosure area]" set by the Town Board in 1997.

By adopted resolution and decision dated September 27, 2012, filed with the Town Clerk on October 2, 2012, the Planning Board approved the petitioner's application subject to the following modifications and conditions, which are challenged by the petitioner in this special proceeding:

> Changes to the plans:
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> ***
>
> 2. Submission of a revised Site Plan, architectural elevations and floor plans, for the reduced barn size of 2,400 square feet, for the southern barn, prior to signature.
> 3. The revised Site Plan shall eliminate the proposed northern barn.
> 4. Show and note removal of the ball field, prior to Building Permit.
> 5. Show and note removal of the play ground/jungle gym equipment, prior to Building permit.
> 6. Reduction of the proposed parking area, relative to the reduced size of the building.
>
> ***
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> 8. Revise Site Plan to show the appropriate number and staggered spacing of Eastern Red Cedars on the southern and northern elevation of the barn.
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> ***
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> 12. The applicant shall show and note the removal of the existing private hedge row along Halsey Avenue.
>
> General conditions:
>
> ***
>
> 7. No landscaping and lawn equipment is permitted within the proposed agricultural building or shall be stored within the Agricultural Reserve.

***

Covenant:

1. The applicant shall submit a covenant regarding the inspection of the subject property for incidental accessory use to the agricultural operations on site.

To be completed prior to the issuance of a building permit.

1. Removal of the ball field, art sculptures and playground/jungle gym, prior ro Building Permit.

This special proceeding challenges the essentially identical changes/conditions and terms as those set forth in Halsey I, as well as the newly added changes #3, #8, and #12, new covenant #1, and the addition of the art sculptures to the list of items to be removed contained in the Planning Board's resolution dated September 27, 2012. The petitioner commenced this CPLR article 78 proceeding by the filing of a verified petition on October 25, 2012. By its verified answer, the Planning Board asserts fourteen affirmative defenses (objections in point of law), which must be disposed of in determining this special proceeding. The first ten affirmative defenses (objections in point of law) are identical to those set forth in the Planning Board's answer in Halsey I. The facts and circumstances in every instance, except the respondent's second affirmative defense (objection in point of law) which contends that the petitioner's claims if any are barred by the statute of limitations, are identical to those in Halsey I, and they are dismissed for the reasons set forth above. Regarding the respondent's second affirmative defense (objection in point of law), the adduced evidence reveals that the subject resolution was filed in the Town Clerk's office on October 2, 2012, and that this proceeding was commenced on October 25, 2012, well within the applicable 30-day statute of limitations period (Town Law § 274-a [11]; ***Matter of Hampshire Mgt. Co., No. 20, LLC v Feiner***, *supra*). Accordingly, said affirmative defense (objection in point of law) is dismissed.

The respondent's eleventh, twelfth, thirteenth and fourteenth affirmative defenses (objections in point of law) respectively contend that: the petition fails to state a claim for deprivation of any constitutional right, the petitioner has failed to comply with the statutory conditions precedent to bringing an action against the respondent, that the Planning Board properly evaluated the evidence and did not yield to community pressure, and that some or all of the petitioner's claims are barred by the doctrines of collateral estoppel, waiver and res judicata. Said contentions go to the ultimate findings of the Court in this special proceeding, and do not establish the respondent's entitlement as a matter of law to a determination in its favor regarding any of the claims raised in the petition.

Accordingly, the respondent's fourteen affirmative defenses (objections in point of law) are dismissed.

Turning to the merits of the petition, the Court will address those contentions of the petitioner which have not been addressed by the Court in Halsey I above, and it specifically incorporates the record filed in that prior proceeding in determining this proceeding, while noting the relevant differences and

distinctions, if any, between the petitioner's two applications. In general, the petitioner's challenge to both Planning Board resolutions can be summarized as: 1) a challenge to the determination to the reduction in the size of the south barn and elimination of the northern barn, and 2) the contention that the conditions and covenants imposed are unlawful. Although not set forth in the order in the petitioner's submission herein, the Court will attempt to address each issue raised by the petitioner by grouping appropriate issues and discussing them in that manner.

Reduction In The Size Of the South Barn And Elimination Of The Northern Barn

The Planning Board Lacked the Authority To Conduct a Site Plan Review

The petitioner contends, among other things, that the Town of Southampton Code (Town Code) exempts agricultural buildings from site plan review, and that Town Code 330-50 and 330-51 providing for such review should be interpreted to refer only to land "exclusively" preserved for agricultural production. Town Code 330-51, entitled "Farmlands preservation program; procedure for construction on lands preserved by easement or Suffolk County purchase" provides, in pertinent part:

> A. Acquisition of development rights or easements via subdivision or site plan procedure. No structures of any kind whatsoever shall be permitted to be erected or maintained on lands which have been preserved for agricultural purposes as a condition of subdivision or site plan approval by grant of easement ... except those structures that may be permitted by the ... Agricultural Advisory Committee and/or Planning Board pursuant to the same procedural requirements as set forth in § 330-50D(2).

It is undisputed that the Town of Southampton (Town) acquired the right to preserve all of the premises for agricultural purposes by the grant of easement herein, subject only to the petitioner's reservation of rights to the other permitted uses therein. To what extent the petitioner can unilaterally dictate the percentage of non-agricultural use is not before the Court. However, once the petitioner has expressly set aside a portion of the premises for agricultural use, it cannot claim that the other permitted uses can defeat the Town's right to preserve that portion of the premises so dedicated by the use of the Town Code and the normal procedures of its agencies and offices. It is determined that the Planning Board has, and had, the authority to require the petitioner to submit to site plan review of the proposed construction(s).

Town Code 330-50 and 330-51 May Not Be Applied As They Are Preempted By GML 247(4).

The gravamen of the petitioner's contention is that any local law that is inconsistent with a state general law is invalid as outside of the municipality's home rule authority, and that GML 247(4) provides that its rights under the grant of easement cannot be defeated. It is undisputed that GML 247 is the enabling statute permitting municipalities to acquire "open spaces" and "agricultural lands" by "purchase, gift, grant, bequest, devise, ... development right, easement, covenant, or other contractual right." GML 247(4) provides, in pertinent part:

> 4. For purposes of this section, any interest acquired pursuant to this section is hereby enforceable by and against the original parties and the successors in interest, heirs and assigns of the original parties .... Such enforceability shall not be defeated because of any subsequent ... waiver, change in character of the surrounding neighborhood or any rule of common law. No general law of the state ... shall operate to defeat the enforcement of any acquisition pursuant to this section, unless such general law expressly states the intent to defeat the enforcement of any acquisition pursuant to this section.

In matters of statutory interpretation, the primary consideration is to discern and give effect to the Legislature's intention (*see* ***Yatauro v Mangano***, 17 NY3d 420, 426, 931 NYS2d 36 [2011]). The text of a provision "is the clearest indicator of legislative intent and courts should construe unambiguous language to give effect to its plain meaning" (***Matter of DaimlerChrysler Corp. v Spitzer***, 7 NY3d 653, 660, 827 NYS2d 88 [2006]; *see also* ***Matter of Albany Law School v New York State Off. of Mental Retardation & Devendra. Disabilities***, 19 NY3d 106, 120, 945 NYS2d 613 [2012]). Additionally, the court should inquire "into the spirit and purpose of the legislation, which requires examination of the statutory context of the provision as well as its legislative history" (***Nostrom v A.W. Chesterton Co.***, 15 NY3d 502, 507, 914 NYS2d 725 [2010] [internal quotation marks and citation omitted]). Finally, it is well settled that a statute must be construed as a whole and that its various sections must be considered with reference to one another (*see* ***Friedman v Connecticut Gen. Life Insurance. Co.***, 9 NY3d 105, 846 NYS2d 64 [2007]).

A review of the above statute establishes the lack of merit of the petitioner's claims that the Town Code is preempted by the GML, and that its rights under the grant of easement cannot be defeated by the Town's zoning laws. A plain reading of GML 247(4) indicates that it serves to protect the rights of a municipality, or other party, that acquires rights pursuant to the relevant transaction. Here, it is undisputed that the grantors did not acquire any rights under the grant of easement. Rather, the grantors reserved to themselves certain rights and uses of the premises that the petitioner succeeded to upon its purchase of the property. In addition, the statute does not expressly indicate that a zoning law cannot defeat an acquired right, or that such a right cannot be defeated under certain conditions. Moreover, the cases cited by the petitioner in support of its contentions are inapposite as they involve a party's change in position in reliance upon, or substantial performance under, a previously approved plat plan (*see* ***Ward v City of New Rochelle***, 20 Misc2d 122, 197 NYS2d 64 [Sup Ct, Westchester [1959]; *affd* 9 AD2d 911, 197 NYS2d 128 [2d Dept 1959]; *affd* 8 NY2d 895, 204 NYS2d 144 [1960]; ***Matter of Ellington Constr. Corp. v Zoning Bd. of Appeals of Inc. Vil. of New Hempstead***, 152 AD2d 365, 549 NYS2d 405 [2d Dept 1989]; *affd* 77 NY2d 114, 564 NYS2d 1001 [1990]).

The Planning Board Exceeded Its Authority Even If The Site Plan Review Was Appropriate.

The petitioner contends that Planning Board exceeded its authority because the size of an agricultural building is not a criteria under the Town Code, that the Planning Board violated the grant of easement by applying a "necessity standard," that the Planning Board's decision is the result of "ad hoc" zoning, and that said decision ignores the state policy that encourages the use of agricultural land. It is

well settled that site plan review includes a review of the "size" of the proposed structure. Town Law 274-a(a)(2) provides that site plan elements include the "location and dimensions of buildings." In addition, the procedure set forth in the Town Code for reviewing agricultural buildings on land preserved for that purpose pursuant to GML 274 includes an assessment of the "scale and density" of the development (Town Code 330-182[D]), and the scale of the building's facade (Town Code 330-182[I]). As noted above, the petitioner's contention that its analysis of the ratio of barn size to farm acreage establishes that the Planning Board's decision to limit its barn to 2,400 square feet is arbitrary and capricious is without merit, as is its contention that size is not a criteria in this matter.

Under the circumstances, the petitioner's remaining contentions are also without merit. Here, a balance must be struck between the right of the petitioner to some non-agricultural use of the premises and the Town's interests in preserving agricultural lands and encouraging its use. Considering that the petitioner's application expressly limits the size of the agricultural use of the premises, and considering the nature of the proposed agricultural use, the current use of the open space, and the competing nature of the permitted uses under the grant of easement, it is determined that the Planning Board's review of the size of the barn(s) does not amount to a necessity standard, nor is it "ad hoc" zoning.

Here, the AAC carefully reviewed the petitioner's proposed construction, its planned agricultural use of the premises, and the equipment that the petitioner indicated it needed to store in the south barn. In a report to the Planning Board, the AAC noted that the majority of said equipment was related to the maintenance of a vineyard, which had been proposed and then removed in amended site plans filed by the petitioner. Much of the remaining equipment listed was not needed for agricultural use; rather, it was equipment for maintaining the grass lawn at the premises.

It is determined that the Planning Board's reliance on the AAC's expertise, and its acceptance of the AAC report, was not arbitrary and capricious. In addition, said report serves to encourage further agricultural use of the premises as it presently limits the petitioner's ability to use agricultural lands for the maintenance of any other permitted, or allegedly permitted, uses of the premises under the grant of easement including, but not limited to, maintenance of the grass lawn and baseball field.

Collateral Estoppel and Stare Decisis Mandate The Issuance Of The Petitioner's Application

The petitioner contends that collateral estoppel bars the Planning Board from relying on Agriculture and Markets Law (AML) 301 to deny the petitioner's application. Said statute defines the term "land used in agricultural production" to mean "not less than seven acres of land used as a single operation in the preceding two years for the production for sale of crops ... with an average gross sale value of ten thousand dollars or more ... " Almost identical to a finding in the resolution in Halsey I, the Planning Board indicates in the subject resolution that "the Planning Board bases the size reduction, in part, upon the fact that the existing orchard of 1.5 acre orchard does not meet the threshold of a commercial agricultural operation, or the definition of land used in agricultural production in the NYS Agricultural and Markets Law §301(4)(b)." It is undisputed that the Planning Board litigated the issue of the application of AML 301 to site plan reviews in *Mantello v Finnerty*, Supreme Court, Suffolk County, Index No. 05-20339. The petitioner contends that the Planning Board took the opposite position in *Mantello*, where it successfully argued that it had the authority to issue approval for the construction

of a barn on agricultural land of less than seven acres that had not yet generated gross sales. While it may be true that the Planning Board would have been on more solid ground to omit any such reference to the AML, it is determined that the issue is academic. Here, it is undisputed that the Planning Board granted an approval to the petitioner despite the fact that the orchard covered only 1.5 acres of the premises, and before any sales of the subject crops were completed. It is noted that the petitioner conveniently omits the Planning Board's full statement that it's finding as to the size of the barn(s) is also based on the phrase "commercial agricultural operation," and that said phrase is at least comparable to the phrase "production for commercial purposes" used in the grant of easement to define what agricultural uses are permitted. As set forth herein, it is determined that the Planning Board's use of the latter phrase in deciding the appropriate size of the barn or barns to be constructed was not arbitrary and capricious, and that the petitioner's claim that collateral estoppel bars the application of the AML to this matter is academic.

The petitioner further contends that stare decisis mandates that the Planning Board treat applicants equally, and that its analysis of the ratio of barn size to farm acreage for applications previously approved by the Planning Board establishes a violation of the rule of administrative stare decisis. Said contention is without merit. As indicated previously, the petitioner's analysis fails to take into account all of the variables that the Planning Board's is obligated to consider in determining the size of an agricultural barn under the Town Code. While it is true that administrative stare decisis requires that an agency treat applicants equally, there is no indication that the Planning Board failed to do so in this instance, or that there was a departure from its precedent mandating an explanation of the differential treatment of the applicant. This is especially true here, where the petitioner continues to emphasize the unique nature of the subject grant of easement, and the somewhat unique reservations of permitted uses of the premises thereunder.

Conclusion Regarding The Reduction In The Size Of The South Barn And Elimination Of The Northern Barn.

The Court finds that the Planning Board properly considered the application for a proposed 10-acre orchard, and that its determination that the construction of one 2,400 square foot barn in the southerly portion of the premises should be approved is not arbitrary and capricious. As discussed above, Town Code 330-51 requires the permission of the Planning Board and the AAC to construct on lands preserved for agricultural purposes by grant of easement. In its resolution dated September 27, 2012, the Planning Board states that it based its findings on the recommendations of the AAC and the Staff Reports dated February 10, 2011 and September 27, 2012, incorporated by reference in its decision. Said resolution includes, among other things, findings that the 1.5 acre orchard does not meet the threshold of a "commercial agricultural operation," that the 2,400 foot barn "is more than adequate for the proposed use of the property, once it is in full production," that the size reduction and relocation of the barn would allow the premises to "remain in its natural and scenic beauty, (and remain) desirable and productive for agricultural purposes," consistent with the stated purpose and intent of the grant of easement and Town Code. Based on finding said determination rational, and based on the acknowledgment by the petitioner's representative at the hearing on June 14, 2012, that the Planning Board has the ability to ensure that only agricultural equipment is stored in the northern barn, the Court finds that the Planning Board's decision to eliminate the northern barn situated on "non-agricultural"

land is not arbitrary and capricious.

A review of the record reveals that the orchard did not meet the definition of "production for commercial purposes" of crops, vegetables, or other items, as set forth in the grant of easement. In light of the incompatible uses permitted under said grant, and the balance that needed to be struck between those uses, it is determined that the Planning Board was entitled to take the fact that, in its words, the 1.5 acre orchard is not a "commercial agricultural operation" into consideration. More importantly, as discussed briefly above, the AAC had the authority to both review the subject application and to consider the use and size of the southern barn. Upon the request of the AAC in Halsey I, the petitioner provided barn layouts and cross sections indicating the equipment to be stored in, and the uses of, the southern barn. It is undisputed that the documents revealed that a large portion of the proposed barn included equipment needed for the proposed vineyard, which was eliminated by the petitioner by the filing of an amended site plan, and the equipment used to mow the grass lawn. It is also undisputed that the petitioner never submitted amended barn layouts or cross sections indicating that it needed more than 2,400 square feet to store the equipment necessary to maintain its proposed 10-acre orchard. While the petitioner contends that it was never asked for such documents, it certainly was on notice that the AAC and the Planning Board had considered the issue an important factor in deciding Halsey I, and that the original documents would also be considered herein.

In addition, it is determined that the Planning Board's determination that the size reduction and relocation of the southern barn would allow the premises to remain in its natural and scenic beauty, (and remain) desirable and productive for agricultural purposes is not arbitrary and capricious. The grant of easement dated July 15, 1980, indicates that "[p]ortions of the Halsey Lane Property constitute areas of natural and scenic beauty ... and the existing openness, natural conditions and present state of use would, if retained, maintain and enhance the conservation of the natural, agricultural, and scenic resources of the Town of Southampton." Said grant conveys "an agricultural, scenic and conservation easement in gross" as to the 40.747 acres of the premises to the Town. Noted in the grant was the acceptance by the Town of the easement in furtherance of the legislative policy that brought forth the enactment of General Municipal Law 247 to preserve and maintain open areas and spaces of varied size and character, many having significant scenic or aesthetic value, which are being encroached upon or eliminated by the rapid growth and spread of urban development so that said preserved areas or spaces would be aesthetic or economic assets to existing or future development.

A scenic-and-conservation easement bars development on a portion of the grantee's property but does not grant public access thereto (*see* General Municipal Law 247; ***Matter of Grogan v Zoning Bd. of Appeals of Town of East Hampton***, 221 AD2d 441, 633 NYS2d 809 [2d Dept 1995], *appeal dismissed* 88 NY2d 919, 646 NYS2d 987 [1996]; ***Matter of Bleier v Board of Trustees of Inc. Village of East Hampton***, 191 AD2d 552, 595 NYS2d 102 [2d Dept 1993]). Here, the entire premises is bound by the covenant not to develop the property in a manner that destroys the scenic, open and natural condition of the premises absent some aesthetic or economic benefit.

In light of the foregoing, the Court finds that the September 27, 2012 determination of the Planning Board that a 2,400 square foot barn will permit the petitioner to conduct its agricultural

operations at the premises, making the need for an additional barn superfluous, 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]).

The Changes, Conditions, And Covenant Imposed Are Unlawful

Initially, the Court notes that changes #2 and #3 set forth in the subject resolution, and challenged in this proceeding, have been resolved as discussed above, that changes #6 and #8 have not been addressed by the petitioner in its submission and the record reveals that the Planning Board's determination to add said changes was not arbitrary and capricious, and that changes #4 and #5 are essentially conditions upon the grant of approval herein. A condition may be imposed upon property so long as there is a reasonable relationship between the problem sought to be alleviated and the application concerning the property (*see* ***Matter of Greencove Assoc v Town Bd of Town of N. Hempstead***, 87 AD3d 1066 [2d Dept 2011]; ***Matter of International Innovative Tech. Group v Planning Bd of Town of Woodbury***, 20 AD3d 531 [2d Dept 2005]).

The petitioner contends that the requirement that the ball field and jungle gym be removed from the ARA (changes #4 and #5), and that the prohibition against storing landscaping and lawn equipment in the barn or within the ARA (condition #7), were affected by errors of law, were arbitrary and capricious, were an abuse of discretion, and were not supported by a rational basis in the record. The petitioner further contends that condition #12 requiring the removal of the existing private hedge row (Privet) along Halsey Lane, and covenant #1 requiring the petitioner to submit a covenant permitting inspection of the premises for incidental accessory use of the agricultural operations, suffer from the same disabilities.

It is undisputed that, pursuant to the grant of easement, the Town has "the continuing right to inspect the said Agricultural Reserve Area to the extent reasonably required to monitor compliance with the covenants, terms, and provisions" of the grant. The petitioner has failed to establish that the imposition of said covenant is in any way more burdensome than its admitted obligation to allow inspections of the premises under the grant, or how it is aggrieved by said covenant. Under the circumstances, it is determined that the Planning Board's imposition of the subject covenant was not arbitrary and capricious.

The Court now turns to the remaining items challenged by the petitioner. In its resolution dated September 27, 2012, the Planning Board states that "the existing privet hedge row precluding the view from the right of way of Halsey Lane is not in compliance with the intent" of the scenic-and-conservation easement contained in the grant of easement. In addition, said resolution incorporates the findings contained in the reports of its staff that the baseball field and playground equipment are not agricultural uses, and that the storage of the "landscaping and lawn equipment" is not permitted in the proposed agricultural building, or permitted to be stored within the ARA.

While the Court considers the findings immediately above to be rational, legal, and not arbitrary and capricious on the record as far as they relate to the agricultural use of the premises, the Planning Board has failed to consider these items under the petitioner's permitted use of the ARA as open, fallow, landscaped, and wooded areas. Absent findings by the Planning Board, the Court is unable to determine, for example, whether the baseball field, playground equipment, and art sculptures are permitted within the area which is currently neither residential or agricultural, whether a structure allowing for the storage of the lawn equipment in said area is or is not permitted, and whether the privet hedge is permitted as landscaping or not within the intent of the subject scenic-and-conservation easement. That is, what is the impact, if any, of the petitioner's permitted use of the premises as open, fallow, landscaped, and wooded areas, and the related "compatible recreational uses," on the subject application.

Accordingly, the matter is remitted to the Board for reconsideration of the questions of fact generally noted herein and, depending on the findings of fact by the Board, following a further hearing if necessary, whether the enumerated conditions, if any, are appropriate.

Submit judgment.

A.J.S.C.