

<b>Matter of Heights of Lansing Dev., LLC v Village of Lansing</b>
2017 NY Slip Op 30410(U)
March 2, 2017
Supreme Court, Tompkins County
Docket Number: 2016-0775
Judge: Eugene D. Faughnan
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At a Special Term of the Supreme Court of the State  
of New York held in and for the Sixth Judicial  
District at the Tompkins County Courthouse, Ithaca,  
New York, on the 3<sup>rd</sup> day of February, 2017.

PRESENT: HON. EUGENE D. FAUGHNAN  
Justice Presiding

STATE OF NEW YORK  
SUPREME COURT : TOMPKINS COUNTY

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In the Matter of

THE HEIGHTS OF LANSING DEVELOPMENT, LLC,  
IJ CONSTRUCTION II OF ITHACA, LLC, JANET  
JONSON AND LISA BONIWELL,

Petitioners,

DECISION AND ORDER

Index No. 2016-0775  
RJI No. 2016-0595-M

-vs-

VILLAGE OF LANSING, NEW YORK, DONALD  
HARTILL, RONNY HARDAWAY, GERRY  
MONAGHAN, PATRICIA O'ROURKE and JOHN  
O'NEIL, each in their capacity as Trustees of the  
Village of Lansing Board of Trustess,

Respondents.

For a Declaratory Judgment and Judgment Pursuant to  
Article 78 of the Civil Practice Law and Rules

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APPEARANCES:

COUNSEL FOR PETITIONERS:

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COUNSEL FOR RESPONENTS:

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**EUGENE D. FAUGHNAN, J.S.C.**

This matter comes before the Court upon a combined Article 78 proceeding and Declaratory Judgment action filed by The Heights of Lansing Development, LLC, *et al*<sup>1</sup> (“Petitioners”) on December 6, 2016, as well as an Order to Show Cause signed by this Court on December 9, 2016. Petitioners seek to annul an amendment to the Village of Lansing Zoning Ordinance. The Order to Show Cause, among other things, restrained the Village of Lansing, *et al* (“Respondents”) from issuing any permits with regard to the subject property. Pursuant to a Motion filed January 26, 2017, Respondents seek summary judgment and dismissal of the Petition pursuant to CPLR 3212.

The Village of Lansing has had a series of comprehensive zoning plans for many years. The Village most recently updated its comprehensive plan in December of 2015. The subject property is 19.46 acres on the southern side of Bomax Drive, Village of Lansing in a Business and Technology District (“BTD”). This property is adjacent to property developed and owned by Petitioner The Heights of Lansing Development, LLC and adjacent to property owned by Petitioner owners. Petitioners’ properties are zoned for Medium Density Residential.

In May of 2016, a developer sought a re-zoning of the subject property from BTD to High

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<sup>1</sup>Petitioners Janet Johnson and Lisa Bonniwell are homeowners adjacent to the property subject to re-zoning.

Density Residential (“HDR”)<sup>2</sup>. The request was sent to the Planning Board for review and recommendation. In July of 2016, the Planning Board recommended that the property be re-zoned from BTM to HDR. The Village Board of Trustees met on September 19, 2016 and discussed the re-zoning of the subject property. A public hearing was held on October 17, 2016 and the developer presented information regarding a 140 unit “high end” apartment complex for the subject property. The Village Board then scheduled a meeting for November 7, 2016 for discussion of Proposed Local Law 3 (2016) which would incorporate the subject property into an adjoining HDR district. The Board also undertook a State Environmental Quality Review Act (“SEQRA”) review regarding the proposed re-zoning and issued a short form Environmental Assessment Form (EAF)<sup>3</sup> and issued a negative declaration. The Board then unanimously approved Local Law 3 (2016) re-zoning the subject property to HDR.

Petitioners argue that the re-zoning of the subject property is unlawful in that it represents impermissible “spot zoning” since it is inconsistent with the Village’s comprehensive zoning plan, and failed to conduct a proper review under SEQRA. Respondents assert that the re-zoning of the subject property was within the authority of the Village Board and did not represent “spot zoning” as it was not done for the benefit of a single developer, nor to any cognizable detriment of the Petitioners, and was otherwise consistent with the comprehensive plan for zoning.

## SEQRA

Petitioners challenge the Village Board’s negative declaration following a SEQRA evaluation alleging that the it failed to take a “hard look” at the potential environmental consequences of re-zoning the subject property from BTM to HDR. They allege that the negative declaration is

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<sup>2</sup>Developer did not own the subject property but allegedly had plans to develop the property with “high end rental properties”.

<sup>3</sup>The EAF included detailed explanations for the various negative findings in part 2 of the short form.

affected by error of law, and that its detailed responses are contrivances meant to ensure the conclusion of little or no environmental impact.

Generally, a Court's review of a legislative body's determination regarding SEQRA "is limited to whether the determination was made in accordance with lawful procedure and whether, substantively, the determination 'was affected by an error of law or was arbitrary and capricious or an abuse of discretion'" *Akpan v. Koch*, 75 NY2d 561, 570 (1990), *quoting* CPLR 7803 [3]. The Respondent is required "to identify the relevant areas of environmental concern, take a hard look at such areas and make a reasoned elaboration of the basis for its determination" *Matter of Anderson v. Lenz*, 27 A.D.3d 942, 943 (3<sup>rd</sup> Dept. 2006); *see Matter of Jackson v. New York State Urban Dev. Corp.*, 67 NY2d 400, 417 (1986). "Assuming respondent fulfills its obligations in that regard, our inquiry is at an end, for it is not the role of this Court to second-guess respondent's determination and/or substitute our judgment for the conclusions it has reached". *Anderson* at 944.

In the present matter, the Village Board, with the authority to alter village zoning, declared itself the lead agency. The Board determined that the proposed change in zoning was an unlisted action, a conclusion not challenged by Petitioners. As a result, the Board undertook an evaluation of the environmental impact utilizing the "Short Environmental Assessment Form" ("Short Form"). In Part 2 of the Short Form, the Village found "no or small impacts" in each of the enumerated categories. In an attachment to Part 2, the Village provided more detailed responses to the questions and provided detailed explanations of why a small or no impact was anticipated. Among other things, the Village found consistency of this re-zoning with the Village's Comprehensive Zoning Plan in that it provided "transition areas" between commercial and residential zones.

The Court concludes that the Village "evaluated the necessary criteria, took the required hard look at areas of environmental concern and explained the basis for its determination to issue a negative declaration" *Matter of Citizens for Responsible Zoning v. Common Council of City of Albany*, 56 A.D.3d 1060, 1062 (3<sup>rd</sup> Dept. 2008) *see Matter of Cathedral of St. John the Divine v.*

*Dormitory Auth. of State of N.Y.*, 224 AD2d 95 (3<sup>rd</sup> Dept. 1996); *Matter of Ahearn v. Zoning Bd. of Appeals of Town of Shawangunk*, 158 AD2d 801, 803-804 (3<sup>rd</sup> Dept. 1990), *Matter of Citizens for Responsible Zoning v. Common Council of City of Albany*, 56 A.D.3d 1060, 1062 (3<sup>rd</sup> Dept. 2008). Therefore, the Court finds that the negative declaration was not arbitrary, capricious or affected by error of law.

### Spot Zoning

“Generally, zoning determinations enjoy a strong presumption of validity and will only be overcome by a showing, beyond a reasonable doubt, that the determination was arbitrary and unreasonable or otherwise unlawful” *Matter of Rotterdam Ventures, Inc. v. Town Bd. of the Town of Rotterdam*, 90 AD3d 1360, 1361-1362 (3<sup>rd</sup> Dept. 2011); see *Asian Ams. for Equality v. Koch*, 72 NY2d 121, 131 (1988); *Boyles v. Town Bd. of Town of Bethlehem*, 278 AD2d 688, 690 (3<sup>rd</sup> Dept. 2000); *Save Our Forest Action Coalition, Inc. v. City of Kingston*, 246 AD2d 217, 221 (3<sup>rd</sup> Dept. 1998). 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 Citizens for Responsible Zoning v. Common Council of City of Albany*, 56 AD3d 1060, 1062 (3<sup>rd</sup> Dept. 2008), quoting *Matter of Daniels v. Van Voris*, 241 AD2d 796, 799 (3<sup>rd</sup> Dept. 1997). However, “town land use regulations must be in compliance with a town's comprehensive plan in order to limit ad hoc or ‘spot’ zoning, which affects the land of only a few without proper concern for the needs or design of the entire community” *Matter of Bergami v. Town Bd. of The Town of Rotterdam*, 97 A.D.3d 1018, 1020 (3<sup>rd</sup> Dept. 2012) see *Gernatt Asphalt Prods. v. Town of Sardinia*, 87 NY2d 668, 685 (1996). “[I]n reviewing whether a zoning change is contrary to a town's comprehensive plan, we must ultimately consider, among other things, whether the change ‘conflict[s] with the fundamental land use policies and development plans of the community’” *Bergami* at 1020, citing *Gernatt* at 685.

In the present matter, it cannot be said that the Village Board singled out a small parcel of land for a use classification totally different from the surrounding area. Rather, Local Law 3 (2016)

enlarges an existing HDR district by including 19.46 acres from an adjacent BTB district. The resulting HDR district is contiguous to Petitioners' MDR district. One of the stated purposes of this re-zoning was to create a larger buffer between the BTB and MDR districts.

Further, Petitioners argue that The Heights of Lansing Development, LLC is harmed in light of expenditures it was required to make while developing its own project. However, it is unclear how this bears on this zoning determination. Further, the Village, through its SEQRA evaluation, found any negative impacts minimal and speculative. Petitioners' concerns may be more properly addressed if and when an actual development plan is submitted for approval.<sup>4</sup>

Petitioners also argue that the proposed re-zoning is inconsistent with the Village's Comprehensive Plan. They point out that the updated Comprehensive Plan was enacted mere months before the developer requested re-zoning of the subject property. However, the updated Comprehensive Plan does find that there is no undeveloped HDR property in the Village. It further notes that a stated goal of the revised plan is to ensure the existence of housing to "address the needs of the homeless and housing-cost burdened individuals and families including senior citizens. It is certainly reasonable to conclude that additional rental property in the Village would be at least one method to meet the stated goal of affordable housing."<sup>5</sup>

Based upon the submissions of the parties and a review of the certified record including the Village of Lansing Comprehensive Plan 2015-2025, the Court concludes that the Petitioners have failed to sustain their burden that the re-zoning of the subject property represents impermissible spot zoning. Petitioners have failed to establish, beyond a reasonable doubt, that the re-zoning of the subject property was inconsistent with the Comprehensive Plan or that the re-zoning improperly affects the land of only a few without proper concern for the needs or design of the

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<sup>4</sup>A developer did submit a plan with its request for re-zoning. However, that plan has not been evaluated and is not the subject of this Petition.

<sup>5</sup>Although the re-zoning was initiated by a developer seeking to build "high end" rental properties, the issue before the Court is not any particular project but rather the re-zoning of a particular property which can be developed into higher density residential facilities such as apartments.



entire community.

The Respondents' motion to for summary judgment is hereby **GRANTED** and the combined Petition seeking relief pursuant to Article 78 and declaratory judgment are hereby **DISMISSED**. The Order to Show Cause dated December 9, 2016 is hereby **VACATED**.

This constitutes the **DECISION AND ORDER** of the Court. The transmittal of copies of this Decision and Order by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: March 2, 2017  
Ithaca, New York

  
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HON. EUGENE D. FAUGHNAN  
Supreme Court Justice

The following papers were received and reviewed by the Court in connection with this motion:

- 1) Notice of Petition dated December 5, 2016, Petition dated December 5, 2016 with Exhibits (Exhibit M subsequently amended by letter dated December 20, 2016), and Affidavit of Khandikile Mvunga Sokoni, Esq. dated December 6, 2016 with Exhibit.
- 2) Petitioner's Memorandum of Law dated January 9, 2017.
- 3) Verified Answer dated January 20, 2017.
- 4) Respondents' Notice of Motion dated January 24, 2017, with Affidavit of Ronny Hardaway, sworn to on January 24, 2017, Affidavit of Deborah Dawson, sworn to on January 24, 2017, and Affidavit of Martin Moseley, sworn to on January 24, 2017 (with Exhibits) and Memorandum of Law dated January 24, 2017
- 5) Record required to be filed pursuant to CPLR 7804(e)- Volumes I and II.