

**Matter of Micklas v Town of Halfmoon Planning Bd.**

2018 NY Slip Op 33709(U)

January 10, 2018

Supreme Court, Saratoga County

Docket Number: Index No. 20171554

Judge: Thomas D. Buchanan

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
SUPREME COURT COUNTY OF SARATOGA

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In the Matter of the Application of

JOSEPH J. MICKLAS, JR.; DONNA MICKLAS;  
the JAMES FREDERICK HOPECK REVOCABLE  
TRUST; and JAMES FREDERICK HOPECK and  
MARIA JEAN HOPECK, as Trustees of the JAMES  
FREDERICK HOPECK REVOCABLE TRUST;

Petitioners;

vs.

TOWN OF HALFMOON PLANNING BOARD,  
TOWN OF HALFMOON ZONING BOARD OF APPEALS  
and THE FAIRWAYS OF HALFMOON, LLC;

Respondents;

For a Judgment Pursuant to Article 78 of the  
New York Civil Practice Law and Rules  
Annuling Determinations of the Town of Halfmoon  
Planning Board and the Town of Halfmoon Zoning  
Board of Appeals.

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FILED

DECISION, ORDER  
AND JUDGMENT

Index No. 20171554

Buchanan, J.:

In this CPLR art 78 proceeding, Petitioners seek annulment of approvals granted by the Halfmoon Town Planning Board ("Planning Board") for an addition to the building currently housing the club house and banquet facility operated by respondent The Fairways of Halfmoon, LLC ("Fairways"). The addition is to include an expanded pro shop and a brew pub. Petitioners also seek annulment of a decision of the Town of Halfmoon Zoning Board of Appeals ("Zoning Board") that affirmed a determination made by the Director of Code Enforcement in response to correspondence from petitioner Joseph Micklas, Jr.

Preliminarily, Respondents raise two arguments to preclude the Court's consideration of the merits of Petitioners' claims. First, Respondents argue that the Court is without subject matter jurisdiction over Petitioners' challenge to the Zoning Board decision. Respondents argue that Petitioners' request that the Court annul the Zoning Board decision effectively requests an advisory opinion, in that the question asked of the Zoning Board was hypothetical and did not involve the substantial rights of any party. Respondents' argument is well taken.

The question asked by Petitioners was not "hypothetical" in every sense of the word. A review of the minutes from the Zoning Board meeting of September 5, 2017, shows that all concerned were well aware that Petitioners were directing their inquiry toward the Fairways brew pub project. Nonetheless, Petitioners were not challenging or opposing the grant of a variance, permit or other approval given to respondent Fairways by the Director of Code Enforcement. While it is a fair assumption that Petitioners would have used an interpretation that a brew pub is not allowed to further their opposition to the Fairways project, neither the interpretation given by the Director nor the decision of the Zoning Board actually affected the substantial rights of Fairways or Petitioners. Petitioners thus present the Court with the sort of academic or hypothetical question upon which it cannot pass (*Matter of Hearst Corp. v. Clyne*, 50 NY2d 707 [1980]).

Second, Respondents argue that Petitioners' challenge to the Planning Board approvals is barred by laches. As pointed out in Respondents' memoranda of law, laches is the neglect to assert a claim promptly when such neglect operates to the prejudice of one's adversary (*Matter of Stockdale v. Hughes*, 189 AD2d 1065 [3d Dept 1993]). In contrast to the situation presented to the Court on Petitioners' application for preliminary injunction, Petitioners' action in commencing this proceeding to challenge the determinations of the Planning Board can only be realistically viewed as prompt. The disputed resolution of the Planning Board was issued on May 8, 2017, and the Petition was filed on June 7, 2017. Respondents do not actually argue that there was any sort of prejudice associated with delay by Respondents in filing the Petition. Indeed, Fairways did not apply for a building permit until September 5, 2017. Instead, Respondents offer the somewhat conclusory argument that Petitioners' delay in seeking a preliminary injunction somehow warrants dismissal of the Petition. This argument fails.

The core issue in this proceeding is whether a brew pub can legally be constructed at the Fairways facility, which is located in an area zoned as an "A-R Agriculture-Residence District" under the Code of the Town of Halfmoon ("Town Code"). The Agriculture-Residence District is found in §165-9 of the Code. Permitted uses within this district are listed in §165(A) and uses which require issuance of a special use permit are listed in §165-9(B). The relevant provision here is §165-9(B)(4), which authorizes issuance of a special use permit for "Private or public recreation or playground area, golf club, country club, or other open recreation uses but not including commercial facilities or amusement parks." This is the section under which Fairways was permitted to begin operations, and later, to add its restaurant, bar and banquet facilities.

Petitioners point out that a brew pub simply is not found among either the permitted uses listed in §165-9(A) or special uses allowed in §165-9(B). Rather, Petitioners argue, a brew pub is effectively a brewery, and as such, is the sort of commercial facility specifically prohibited under §165-9(B)(4). Petitioners also argue that the Planning Board failed to follow the criteria found at Town Law §274-b and §165-83 of the Town Code, as well as the State Environmental Quality Review Act ("SEQRA") when granting a special use permit to Fairways.

In general, a court will "accord great deference to a planning board's interpretation of a zoning ordinance" and will uphold it if the planning board's determination has a rational basis and is supported by substantial evidence (*Matter of North Country Citizens for Responsible Growth, Inc. v. Town of Potsdam Planning Board*, 39 AD3d 1098, 1100 [3d Dept 2007]). The Court's review of the administrative record shows that, when presented with the Fairways plan, the Planning Board examined the very the types of concerns now advanced by Petitioners. Board members and the Town Attorney questioned whether Fairways was going beyond activities that are incidental to operation of a golf club and entering the realm of brewery or tavern operation.

In addition to matters of safety, parking and fire fighting, specific concerns were raised about noise and traffic, change to the character of the golf course operation and change to the character of the neighborhood. The Planning Board verified the amount of beer that could be brewed annually and whether Fairways would be able to conduct off-site sales of beer. Changes to the Fairways plan were required to prohibit advertising of the

brew pub as separate from the golf club, to prohibit live music or other entertainment and to limit the hours of operation. The plan was reviewed by the Town Engineer, the Saratoga County Planning Board, the Hillcrest Fire District and the Town Attorney. Reports by these entities were received and reviewed. It is worth noting that the Town Engineer termed the Fairways plan a "Type II" action under SEQRA and stated that no additional environmental review was required. A completed "Short Environmental Assessment Form" is also part of the record, in which there is a finding that no significant adverse environmental impacts will obtain. A public hearing was held and correspondence from petitioner Joseph Micklas, Jr. was read into the record at the May 8, 2017 Planning Board meeting.

The Court's review of the record shows that the Planning Board fulfilled its duties under Town Law §274-b, Town Code §165-83 and SEQRA. The Planning Board determination had a rational basis and was supported by substantial evidence. Petitioners argument that this was a question of legal interpretation, so that the Planning Board was not entitled to deference, is unavailing. True, deference is not required where the issue is one of purely legal interpretation (*Matter of Albany Basketball & Sports Corp. v. City of Albany*, 116 AD3d 1135, 1137 [3d Dept 2014]). While the meaning of the term "commercial facilities" used in §165-9(B) of the Town Code was relevant, the Planning Board conducted a broader inquiry, seeking to determine whether the proposed brew pub was incidental to the operation of the golf course.

Moreover, the Planning Board action survives scrutiny under CPLR §7803 without additional deference. The Planning Board's compliance with the Town Law, Town Code and SEQRA shows that the approval of the Fairways project was not taken in violation of lawful procedure and was not affected by error of law. The evidence and discussions found in the record also show that the Planning Board approval was neither arbitrary and capricious nor an abuse of discretion (*see e.g. Matter of Ellsworth v. Town of Malta*, 16 AD3d 948, 950 [3d Dept 2005]; *cf. Matter of Wallkill Valley Acres, Inc. v. Planning Board of Town of Shawangunk*, 139 AD2d 822 [3d Dept 1988]).

The parties' remaining contentions have been considered, but do not alter the outcome. Therefore, in consideration of the foregoing, it is hereby

ORDERED, ADJUDGED AND DECREED that Petitioners' challenge to the September 5, 2017 determination of the Town of Halfmoon Zoning Board of Appeals is DISMISSED; and it is further

ORDERED, ADJUDGED AND DECREED, that Petitioners' challenge to the May 8, 2017 determinations of the Town of Halfmoon Planning Board is DENIED and the said determinations are AFFIRMED.

Dated: *January 10, 2018*

ENTER.

*[Signature]*  
Thomas D. Buchanan  
Supreme Court Justice  
SARATOGA COUNTY  
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ENTERED

ENTERED  
Craig A. Hayner

*[Signature]*  
Saratoga County Clerk

Papers considered:

Notice of Petition and Verified Petition with annexed exhibits [Planning Board];  
Notice of Petition and Verified Petition with annexed exhibits [Zoning Board of Appeals];  
Verified Answer and Administrative Record of the Town of Halfmoon Planning Board;  
Verified Answer and Administrative Record of the Town of Halfmoon Zoning Board of Appeals;  
Verified Answer of The Fairways of Halfmoon, LLC; Affirmation of Jacquelyn P. White, Esq., with annexed exhibits; Petitioners' Memorandum of Law; Affidavit of Richard Harris; Affidavit of Paul Marlow; Town of Halfmoon Planning Board and Zoning Board of Appeals Memorandum of Law; Affidavit of John J. Henry, Esq., with annexed exhibit; Fairways' Memorandum of Law; Halfmoon Town Code [<https://ecode360.com/HA2075>].