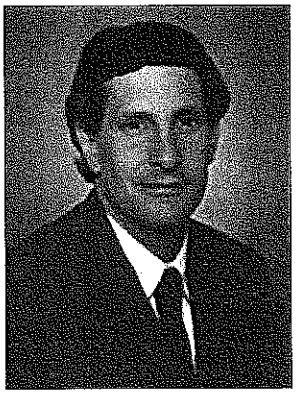
Courts Push Back Against Municipalities in State Environmental Quality Review Act Cases

By Eric L. Gordon



Legal commentators have observed that lawsuits contesting actions taken by municipalities under the State Environmental Quality Review Act (SEQRA) are often unsuccessful because courts must defer to the discretion enjoyed by local boards acting as lead agency under SEQRA. However, recent cases confirm that courts will not passively rubber stamp SEQRA determinations and carefully examine whether a municipality has overstepped its review authority:

- Two years ago, the Environmental Claims Part of the Westchester County Supreme Court issued an order and judgment annulling an Environmental Findings Statement (EFS) issued by the Village of Mamaroneck Planning Board restricting the number of seasonal residential units that could be constructed on property owned by the Mamaroneck Beach & Yacht Club within a marine recreation zoning district. The court held the seasonal residential units were a permitted accessory use and therefore, the Planning Board could not, on the premise of exercising its environmental review authority, limit the number of seasonal residences without consideration of appropriate environmental and socio-economic as factors required under SEQRA.[1]

- Similarly, in *Fortress Bible Church v. Feiner, et al.*, a federal district court, among other determinations, nullified findings made by the Town of Greenburgh under SEQRA with respect to the proposed construction of a church and school.[2] Although the Town's SEQRA findings were overturned based upon the violation of a federal statute, the Religious Land Use and Institutionalized Persons Act, the case confirms that courts will not uphold SEQRA determinations that are not based on legitimate environmental or socio-economic factors. The U.S. Court of Appeals for the Second Circuit recently affirmed the lower court decision in this case. The Second Circuit held environmental review by a municipality that is intertwined with, and a primary vehicle for, zoning decisions is considered application of a zoning law under the statute. The court reasoned that, to hold otherwise would be to allow a municipality to evade liability by simply re-characterizing its zoning decisions as environmental determinations.

This past year also saw legal victories for applicants who went to court over municipal agencies' delays or denials of their applications based on environmental reviews undertaken pursuant to SEQRA. Here are a few examples.

- In *Center of Deposit, Inc. v. Village of Deposit*, a New York state appeals court overturned a lower court decision and determination by the Village of Deposit Planning Board requiring the petitioner to submit a draft environmental impact statement (DEIS) when seeking a simple subdivision of a single parcel of his property.[3] The court ruled the planning board "had completely failed to articulate" how the proposed action could potentially alter drainage flow or patterns or surface water runoff, affect air quality, affect public health and safety, result in the diminution of open space or affect the character of the existing community by changing the density of land use, thereby requiring a DEIS.

- In *Kinderhook Development, LLC v. City of Gloversville Planning Board*, 18 N.Y.3d 805, 963 N.E.2d 791 (2012), a New York state appeals court overturned a planning board's denial of a special use permit for a housing project based on alleged environmental impacts.[4] The court found that the planning board's decision was not based on substantial evidence when the planning board ignored its own preliminary study and determination that no environmental impact statement was required under SEQRA.

- In another case, *Costco Wholesale Corp. v. Town Bd. of Town of Oyster Bay*, a New York state court of appeals held that the Town of Oyster Bay failed to comply with SEQRA procedural requirements concerning the timely filing of a final EIS and required the town to proceed with the SEQRA review.[5]

Of course, not all challenges under SEQRA are successful in light of the deferential standards a court must apply. In one unusual twist involving a dispute between two Westchester municipalities, rather than an applicant and a municipal agency, an unsuccessful

challenge under SEQRA recently resulted in a large development project going forward.

- The Village of Sleepy Hollow and General Motors recently prevailed in a lawsuit brought by the neighboring Village of Tarrytown contesting the SEQRA findings made by the Village of Sleepy Hollow with respect to the redevelopment of the former GM assembly plant. The Village of Sleepy Hollow's approval of the Lighthouse Landing mixed-use development project followed an eight-year review process that entailed more than 50 public meetings and hearings and the adoption of a detailed Environmental Findings Statement. Tarrytown challenged the project approvals, claiming that Sleepy Hollow had failed to take a "hard look" at its traffic impacts in Tarrytown pursuant to SEQRA. The Supreme Court, Westchester County, adopted many of Sleepy Hollow's arguments and held it was "unreasonable" for Tarrytown to dispute the traffic mitigation measures specified in the Sleepy Hollow's Environmental Findings Statement when Tarrytown had incorporated the same measures in approving a significant waterfront development within its borders. The court, in upholding the SEQRA Environmental Findings Statement, held that Sleepy Hollow had engaged in a comprehensive review and taken the required "hard look" at environmental impacts associated with the redevelopment of the GM property.[6]

As current developments illustrate, applicants should take heart that actions taken, or not taken, by municipal agencies acting as lease agency under SEQRA must be based upon legitimate environmental and socio-economic factors, as confirmed by the administrative record developed before the local agencies, or the determinations may not be upheld in court.

Endnotes

1. *Mamaroneck Beach & Yacht Club, et al. v. Galvin*, West. Cty. Sup Ct. Index No. 24348/07 (June 18, 2010).
2. *Fortress Bible Church v. Feiner, et al.*, 734 F. Supp. 2d 409, 414 (S.D.N.Y. 2010), *aff'd*, 694 F.3d 208 (2d Cir. 2012).
3. 90 A.D.3d 1450, 936 N.Y.S.2d 709 (3d Dep't 2011).
4. 88 A.D.3d 1207, 931 N.Y.S.2d 447 (3d Dep't 2011).
5. 90 A.D.3d 657, 934 N.Y.S.2d 430 (2d Dep't 2011).
6. *Mayor and the Board of Trustees of the Village of Tarrytown v. Mayor and the Board of Trustees of the Village of Sleepy Hollow*, West. Cty. Sup. Ct. Index No. 11630/11 (Sept. 12, 2012).

Eric Gordon represents businesses, developers, individuals, property managers and public entities in numerous matters in state and federal courts, both defending and prosecuting litigations. Mr. Gordon joined Keane & Beane, P.C. in 1999 after previously practicing law in California.