

This issue discusses three recent land use decisions. In two, the courts show a great willingness to defer to the expertise of local decisionmakers in assessing the merits of development applications and interpreting the zoning code. However, the third case illustrates the very limited tolerance courts have for ambiguous notice provisions, especially when such provisions are intended to alert subsequent purchasers of development restrictions.

Court deferential to Zoning Board on both factual determinations and interpretation of zoning law. Shop-Rite Supermarkets v. Planning Board of the Town of Wawarsing

The proposal involved the construction of a superstore at the site of an existing strip mall. Although the project was SEQRA Type I and there were many issues raised at the public hearing, the court upheld the negative declaration. The Board hired an outside consultant to evaluate all the submittals and comments and gave a reasoned elaboration for its action.

The court was also satisfied with the Board's interpretation of the term "complete application" that was pertinent to the applicability of grandfathering clause in the new zoning law. Although, both the Town Law §276 and ECL §8-0109 require SEQRA compliance prior to an application being considered complete, the court accepted board's interpretation that completeness for purpose of grandfathering occurred prior to the zoning change because all the submission requirements had been met by that time.

Denial of application to change building façade to conform to company branding upheld on aesthetic impact grounds. Rallye Motors v. Village of Roslyn

An auto dealership sought approval to change the façade of its showroom to make it readily identifiable with the brand sold. The Board denied the application on the grounds that the existing building had historic architectural significance. The court reaffirmed the ability of localities to regulate based on aesthetics and found the decision itself adequate supported by the record.

Appellate Court rules that minutes of meeting are insufficient notice to subsequent third party of open space restriction. Fuentes v. Planning Board of the Village of Woodbury

A notation on a filed subdivision map designated two parcels as "Open Area." This designation was held insufficient to place a subsequent purchaser on notice that the land was restricted and undevelopable.

The subdivision was originally proposed as a cluster development. Cluster developments allow higher density than otherwise permitted by zoning in exchange for a commitment to preserve open space. However, the court held that the Planning Board had not acted in accordance with the legal requirements and so had failed to create a cluster subdivision. While a planning board can require an open space set aside in other situations, it is not required to do so. If it does restrict development elsewhere in the subdivision, it must provide adequate notice to subsequent purchasers. The only clear notice of the intended restrictions was in the meeting minutes. The Court found this inadequate.

Lessons: Local land use authorities are given wide latitude to address development applications. So long as they document their findings, they will be upheld so long as there a reasonable person could come to the same conclusion based on the record before the board. Similarly, courts will respect a locality's interpretation of its own zoning law if there is any rationale construction to do so.

On the other hand, where a local land use authority seeks to restrict future development of particular parcels, courts will not be deferential. Restrictions will not be upheld unless public records that are "in the chain of title" make those restrictions clear. Even though other records that document a restriction may be publicly available, examining records that are outside the chain of title is beyond the commercially acceptable practice for due diligence in real property transactions.

For further information on these cases or on other land use issues, please contact:

Robert H. Feller, Esq.
Bond, Schoeneck & King, PLLC
111 Washington Avenue | Albany, New York 12210
518.533.3222 | rfeller@bsk.com
