

Adopted

10/13/98

TOWN OF RIVERHEAD

Resolution # 900

APPOINTS THE LAW FIRM OF SMITH, FINKELSTEIN, LUNDBERG, ISLER & YAKABOSKI, ESQS. IN CONNECTION WITH LAWSUIT ENTITLED "RIVERHEAD BUSINESS IMPROVEMENT DISTRICT ASSOCIATION, INC., ET AL., V. JAMES R. STARK, ET AL." (N.Y.S. COURT OF APPEALS)

COUNCILMAN LULL offered the following resolution, was seconded by

COUNCILMAN KWASNA

RESOLVED, that the Law Firm of Smith, Finkelstein, Lundberg, Isler & Yakaboski, Esqs. is hereby retained to make application to appeal the decision of the Appellate Division, Second Department in connection with the lawsuit entitled, "Riverhead Business Improvement District Association, Inc., et al., v. James R. Stark, et al."; and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a certified copy of this resolution to Law Firm of Smith, Finkelstein, Lundberg, Isler & Yakaboski, Esqs., 456 Griffing Avenue, P.O. Box 389, Riverhead, New York, 11901; Supervisor Vincent Villella; Councilman James Lull; Councilman Phil Cardinale; Councilman Mark Kwasna; Councilman Christopher Kent; the Office of Accounting and the Office of the Town Attorney

THE VOTE

Cardinale Yes No Kent Yes No
Kwasna Yes No Lull Yes No
Villella Yes No

THE RESOLUTION WAS WAS NOT
THEREUPON DULY DECLARED ADOPTED

SIRS:

PLEASE TAKE NOTICE, that the within is a true copy of a Decision and Order of the Appellate Division, Second Department, dated and entered September 14, 1998.

Dated: September 17, 1998

Ciarelli & Dempsey

By: Patricia A. Dempsey
 Patricia A. Dempsey
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To : Adam B. Grossman, Town Attorney
 Town of Riverhead
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1ST CASE of Level 1 printed in FULL format.

Riverhead Business Improvement District Management Association, Inc., et al., appellants, v James R. Stark, etc., et al., respondents; Riverhead Centre LLC, intervenor-respondent.

98-01417

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

1998 N.Y. App. Div. LEXIS 9454

June 29, 1998, Argued
September 14, 1998, Decided

CE: [*1] THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGING RELEASE OF THE FINAL PUBLISHED VERSION.

R HISTORY: In a hybrid proceeding pursuant to CPLR article 78 to review a termination of the Town Board of the Town of Riverhead, dated March 18, 1997, which adopted Resolution No. 227 to amend the Zoning Ordinance of the Town of Riverhead, and an action for a judgment declaring that the subject zoning amendment is void and unenforceable, the petitioners appeal from a judgment of the Supreme Court, Suffolk County (Floyd, J.), entered January 15, 1998, which granted the petition and dismissed the proceeding, and declared that the subject zoning amendment "is neither void nor unenforceable".

POSITION: ORDERED that the appeals of Schwing Electrical Supply Corp. and Riverhead Business Improvement District Management Association, Inc., are dismissed as withdrawn, without costs or disbursements; and it is further, ORDERED that the judgment is reversed, on the law, without costs or disbursements, the petition is granted, Resolution No. 227 of the Town Board of the Town of Riverhead is annulled, and it is declared that the zoning amendment adopted pursuant to Resolution No. 227 is void and unenforceable.

TERMS: zoning amendment, environmental, shopping center, public health, plan, groundwater, preparation, intervenor, toxic

SEL: [*2] Ciarelli & Dempsey, Melville, N.Y. (Patricia A. Dempsey and L. Ciarelli of counsel), for appellants.

B. Grossman, Riverhead, N.Y., for respondents.

Grossman & Colin, LLP, New York, N.Y. (Richard G. Leland and Karen Leo of counsel), for intervenor-respondent.

ATTORNEYS: THOMAS R. SULLIVAN, J.P., MYRIAM J. ALTMAN, WILLIAM D. FRIEDMANN, LEO F. SULLIVAN, J.J.

DECISION: DECISION & ORDER

On March 18, 1997, the respondent Town Board of the Town of Riverhead (hereinafter the Town Board) adopted Resolution No. 227 which enacted a zoning

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ment that created a "Destination Commercial Planned Development Overlay District" (hereinafter the PDD). Among the permitted uses in the PDD are retail uses with a minimum of 10,000 square feet of building area for each store. It is contested that the intervenor, Riverhead Centre LLC, seeks to build a shopping center on an assemblage of 51.32 acres within the PDD. The intervenor's plan application was not before the Town Board when it enacted the zoning amendment.

In connection with the enactment of the zoning amendment, an Environmental Assessment Form (hereinafter EAF) was prepared. Among the findings made in the EAF was that increased [*3] development permitted by the zoning amendment would increase traffic volume by approximately 11% over the volume which would be generated if the area were developed under the existing zoning law. Moreover, the EAF indicated that enactment of the zoning amendment could result in potentially large impacts on the existing transportation system, public health, and the character of the neighborhood. Indeed, the EAF noted that there could be a potentially large impact on public health in the form of "Degradation to groundwater (public water supply)". In addition, specified as a potentially significant and important impact" was the possible release of toxic or hazardous materials into "groundwater aquifers". These toxic materials, which also posed a significant safety and health risk due to accidental release or explosion, were mostly to be stored for sale at sites to be developed in the PDD. A potential impact on air quality was also noted.

The Town Board, as lead agency under the State Environmental Quality Review Act (see, ECL art 8 [hereinafter SEQRA]) recognized that the zoning amendment was a "Type I action" (6 NYCRR 617.4). Nevertheless, the Town Board issued a negative declaration under [*4] SEQRA. This determination was challenged by the petitioners in the instant proceeding. The Supreme Court dismissed the petition. We reverse.

It is well settled that "SEQRA's goal [is] to incorporate environmental considerations into the decisionmaking [sic] process at the earliest possible opportunity" (Matter of Neville v Koch, 79 NY2d 416, 426, 583 N.Y.S.2d 802, 593 AD2d 256; see also, ECL 8-0109[4]). Indeed, one of the purposes of SEQRA is to ensure the preparation and availability of an environmental impact statement (hereinafter EIS) at the time any significant authorization is granted that may have a significant environmental impact (see, Matter of New York Canal Improvement Assn. v Town of Kingsbury, 240 AD2d 930, 931-932, 658 N.Y.S.2d 765; also, Matter of Tri-County Taxpayers Assn. v Town Bd. of Town of Queensbury, 79 AD2d 41, 46-47, 447 N.Y.S.2d 699, 432 N.E.2d 592). Here, several potentially significant impacts were identified in this Type I action, but were essentially remedied upon the issuance of the negative declaration. Under the circumstances, the Town Board failed to take the requisite "hard look" at the environmental impacts of the zoning amendment and [*5] its determination in this regard was arbitrary and irrational (see, Matter of Omni Partners v County of Westchester, 237 AD2d 440, 442, 654 N.Y.S.2d 824; see also, Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400, 417, 503 N.Y.S.2d 298, 494 N.E.2d 429; Matter of Koch, 75 NY2d 561, 570, 555 N.Y.S.2d 16, 554 N.E.2d 53; Matter of Kahn v Matter of Koch, 90 NY2d 569, 664 N.Y.S.2d 584). We note that it is well settled that there is a relatively low threshold for the preparation of an EIS and that, however, under the SEQRA regulations a Type I action, such as the one at issue here, "carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS" (6 NYCRR 617.4[a][1]; Matter of Chemical Specialties Mfrs. Assn. v Jorling, 85 NY2d 382, 397,

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6 N.Y.S.2d 1, 649 N.E.2d 1145; Matter of Omni Partners v County of Nassau, supra).

We find without merit the respondents' argument that a full SEQRA review will ultimately be achieved in connection with the eventual site plan approval process for the proposed shopping center. To comply with SEQRA, the Town Board was obligated to consider the environmental concerns [*6] that were reasonably likely to result from its zoning amendment at the time of its enactment (see, Matter of Kirk-Astor Dr. Neighborhood Assn. v Town Bd. of Town of Pittsford, 106 AD2d 868, 483 N.Y.S.2d 526; see also, Matter of New York Canal Improvement Assn. v Town of Kingsbury, supra; Matter of Young v Board of Trustees of Vil. of Blasdell, 221 AD2d 975, 634 N.Y.S.2d 605, affd 89 NY2d 846, 652 N.Y.S.2d 729, 675 N.E.2d 464; Matter of Eggert v Town Bd. of Town of Westfield, 217 AD2d 975, 630 N.Y.S.2d 179; Matter of Brew v Hess, 124 AD2d 962, 663-964, 508 N.Y.S.2d 712; cf., Matter of People for Westpride v Board of Estimate of City of N.Y., 165 AD2d 555, 568 N.Y.S.2d 732). Accordingly, since the resolution was not enacted in accordance with lawful procedure as set forth in SEQRA, the petition should have been granted and the resolution annulled (see, Matter of Omni Partners v County of Nassau, supra).

The respondents' argument concerning the petitioners' standing, implicitly rejected by the Supreme Court, is without merit (see, Society of Plastics Indus. v County of Suffolk, 77 NY2d 761, 570 N.Y.S.2d 778, 573 N.E.2d 1034; Matter of Open Space Council v Planning Bd. of Town of Brookhaven, [*7] 152 A.D.2d 593, 543 N.Y.S.2d 754 [2d Dept., Dec. 8, 1997]; cf., Matter of Bridon Realty Co. v Town of Clarkstown, A.D.2d [2d Dept., May 11, 1998]). In view of our determination, we do not reach any of the other issues raised by the parties.

SULLIVAN, J.P., ALTMAN, FRIEDMANN and MCGINITY, JJ., concur.