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New Laws Encourage Regional Planning

BY ANTHONY S. GUARDINO

On July 1, a new law came into effect in New York state that recognizes that certain zoning actions can affect areas beyond the boundaries of the municipality that is deciding a zoning application. The new law, General Municipal Law §239-nn, which was added by Chapter 658 of the Laws of 2005, seeks to encourage regional planning by providing that local governments taking certain zoning actions with respect to property that is within 500 feet of an adjacent municipality must notify such adjacent municipality.

This law comes on the heels of an amendment to §A14-15 of the Suffolk County Administrative Code that became effective on June 12, and that now requires the Suffolk County Planning Commission to notify adjoining towns and village governments when a zoning action is referred to it that affects real property lying within 500 feet of a town or village boundary. The county legislation also imposes additional notification obligations on developers of commercial buildings in excess of 25,000 square feet.

These changes are likely to have a significant practical impact on Long Island, and throughout the rest of the state. Indeed, a recent dispute between the Town of Huntington and the Town of Smithtown might have turned out differently if new General Municipal Law §239-nn, or perhaps even the new Suffolk County law, had applied.

Anthony S. Guardino *is a partner with Farrell Fritz in Uniondale.*

Smithtown Rezoning

Town of Huntington v. Town of Smithtown[1] arose in March 2003, when P.J. Venture II, LLC, a contract-vendee under a contract for the sale of several parcels of vacant land in Smithtown, all or part of which bordered, within 500 feet, Huntington's eastern boundary, filed an application with Smithtown for a change in the zoning classification of the property to permit development of the property as a retail shopping center. After Smithtown designated itself as "lead agency" under the State Environmental Quality Review Act (SEQRA), it classified the proposed zone change and development project as a Type I action, thus requiring the extensive environmental review mandated by SEQRA and its regulatory framework.[2]

Smithtown referred the proposed zone change with the Suffolk County Planning Commission as required by county Administrative Code §A14. The commission reviewed and disapproved the proposed zoning change, but Smithtown continued its environmental review and, on Aug. 24, 2004, published a notice of the completion of the Final Environmental Impact Statement. On Nov. 9, 2004, the Smithtown Town Board issued its Environmental Finding Statement and on Nov. 23, the Smithtown Town Clerk notified the Huntington Town Clerk and other neighboring municipalities of the scheduling of a public hearing before the Smithtown Town Board on Dec. 16.

The Smithtown Town Board approved the zoning change requested by P.J. Venture on Feb. 8, 2005; the Smithtown Town Clerk notified Huntington, the Suffolk County Planning Commission, and other municipalities of the zoning change.

Thereafter, P.J. Venture obtained site plan approval for development of the property, obtained a building permit, and began clearing the land. On Aug. 8, 2005, Huntington brought suit, challenging Smithtown's decision on both procedural and substantive grounds. Smithtown moved to dismiss, arguing, among other things, that Huntington lacked standing to assert its claims.

In its decision, Suffolk County Supreme Court pointed out that §§264[3] and 265 of the Town Law impose certain notice and hearing requirements with which Smithtown was obligated to comply in order for its Feb. 8, 2005, resolution granting the zoning change to be valid. The court observed, however, that although those sections of the Town Law entitled Smithtown to be notified, Town Law §264(4) expressly denied adjoining municipalities the right of judicial review.[4]

As the court explained, the denial of the right of judicial review to adjoining municipalities that were nonetheless afforded the right to be noticed and heard with respect to zoning amendments under consideration by neighboring towns, villages, and cities was derived from the state's delegation of its zoning powers to towns, villages, and cities and the "supremacy of the sovereign power concomitantly conferred on each of them by reason of such delegation." Indeed, the court continued, the express denial of judicial review has been recognized as a statutory embodiment of the "long standing axiom" that no municipality may impose the view of what constitutes proper zoning control on another "because there is no right of veto by one municipality against another."

The court therefore concluded that Huntington was without standing to litigate its claims challenging Smithtown's decision with respect to the property within its boundaries.

Other Decisions

This decision is not unique. Indeed, more than two decades ago in another case arising on Long Island, *Town of North Hempstead v. Village of North Hills*,[5] the Court of Appeals ruled that the Town of North Hempstead lacked standing to seek a judgment striking down a zoning ordinance and amendment adopted by the Village of North Hills. The Court rested its decision that North Hempstead was prohibited from seeking judicial review by the express terms of the Village Law that mirrored Town Law §264(4).[6] The Court noted that it had found standing in *Matter of Town of Bedford v. Village of Mount Kisco*,[7] a dispute involving two local governments in Westchester County, but emphasized that the Westchester County Administrative Code applicable in that case contained a "specific statutory grant of standing to challenge an adjacent municipality's zoning actions." New General Municipal Law §239-nn is based on the Westchester statutory provision,[8] and would appear to meet that standard.

The New Laws

General Municipal Law §239-nn begins by stating that its intent and purpose is to encourage the coordination of land-use development and regulation among adjacent municipalities in order that each adjacent municipality may recognize the goals and objectives of neighboring municipalities, so that development can occur in a manner which is supportive of the goals and objectives of the general area. The statute broadly defines "municipality" as a city, except a city having a population in excess of 1 million, a town, or a village. "Adjacent municipality" means a city, except a city having a population in excess of 1 million, a town, or a village that has a portion of its boundary that is contiguous with another municipality.

The new laws may help local governments better coordinate their decisions, and as a practical matter are likely to result in local governments taking the interests of adjoining communities into consideration when reviewing zoning applications.

The statute states that the legislative body or other authorized body having jurisdiction in a municipality "shall give notice to an adjacent municipality" when a hearing is held by such body relating to:

(a) the issuance of a proposed special use permit or the granting of a use variance on property that is within 500 feet of an adjacent municipality;

(b) site plan review and approval on property that is within 500 feet of an adjacent municipality; or

(c) a subdivision review and approval on property that is within 500 feet of an adjacent municipality.

Such notice is required to be given by mail or electronic transmission to the clerk of the adjacent municipality at least 10 days prior to any such hearing.

Finally, the statute simply concludes that "[s]uch adjacent municipality may appear and be heard." It contains no bar to judicial review similar to what is contained in Town Law §264(4) and, therefore, suggests that judicial review is available to adjacent municipalities.

The change to the Suffolk County Administrative Code imposes a similar notice requirement, although it does not contain a specific provision allowing adjacent municipalities to "appear and be heard."

Conclusion

Local governments and practitioners should pay particular attention to these new statutory developments. Although they do not delegate zoning decisions to adjacent municipalities, they authorize them to appear and to be heard, and it would appear that adjacent municipalities now may challenge neighboring municipalities' zoning decisions on both procedural and substantive grounds.

At the least, the new statutes are likely to increase communications between and among local governments. They also may help local governments better coordinate their decisions, and as a practical matter are likely to result in local governments taking the interests of adjoining communities into consideration when reviewing zoning applications.

1. Index No. 05-018631 (Sup. Ct. Suffolk Co., Sept. 26, 2005).

2. See 6 NYCRR Part 617.

3. Town Law §264(2) provides, in part, that, at least 10 days prior to the date of a public hearing on a zoning ordinance or zoning amendment, "written notice of any proposed regulations, restrictions or boundaries of such districts, including any amendments thereto, affecting property within five hundred feet of the following shall be served personally or by mail by the town upon each person or persons listed below: ...

(b) The boundary of a city, village or town; upon the clerk thereof.

(c) The boundary of a county; upon the clerk of the board of supervisors or other person performing like duties...

Town Law §265 similarly requires such notice.

4. This section provides, in part: "The public, including those served notice pursuant to subdivision two of this section, shall have an opportunity to be heard at the public hearing. Those parties set forth in paragraphs...(b) [and] (c)...of subdivision two of this section, however, shall not have the right of review by a court as hereinafter provided."

5. 38 N.Y.2d 334 (1975).

6. Village Law §7-706(1) provides, in relevant part, that towns, villages, or cities notified of a proposed zoning change had the right to appear and be heard at a public hearing "but shall not have the right of review by a court."

7. 33 N.Y.2d 178 (1973).

8. See, Sponsor's Memorandum in Support of Legislation (Koon), Bill A06219A.