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ZONING AND LAND USE PLANNING

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Notice of Zoning and Planning Decisions Weak Under Current Scheme

The law provides that, once a zoning or planning board has rendered an unfavorable decision on a land use application, an applicant has 30 days after the decision is filed to obtain judicial review of the board's determination. In addition, the applicable statutes do not mandate that the applicant be mailed or otherwise provided with a copy of the board's decision within any specific time frame. Accordingly, if an applicant does not carefully monitor the actions of the zoning and planning boards of the smaller towns and villages on Long Island, which meet only monthly, it is conceivable that the statute of limitations will expire before the applicant even knows that its application has been denied.

Final Decision

A zoning or planning board concludes its review of a land use application when it renders its final decision on the application. The decision may be in the form of a vote by board members taken at a public meeting or in a written decision approved by the board. In many municipalities on Long Island, a board's decision may exist in both forms. This

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occurs because it is common practice for zoning and planning boards to vote on an application at the conclusion of a public hearing and then to direct the board's counsel to prepare a written decision containing findings of fact that support the board's determination.

State law requires that the board's decision be filed in the office of the municipal clerk.¹ The requisite filing must take place within five business days

after the day the decision is rendered.² The law further requires that a copy of the decision be mailed to the applicant, but it does not specify a time frame within which the mailing must occur.³

Persons aggrieved by a zoning or planning board decision may seek judicial review of that decision in a proceeding brought pursuant to Article 78 of the Civil Practice Law and Rules. Although the statute of limitations for Article 78 proceedings is generally four months after a determination becomes final,⁴ CPLR §217(1) expressly recognizes that a shorter limitations period may apply. Indeed, in the case of Article 78 proceedings that challenge zoning and planning board decisions, the applicable statutes provide for a 30-day statute of limitations period.⁵

This 30-day period commences upon the filing of a board's decision in the office of the municipal clerk.⁶ A decision, like any other document, is deemed filed when it is placed in the custody of the municipal clerk for keeping in a public place so that any interested person can examine it.⁷

Clearly, the filing of a written decision will start the running of the 30-day period. However, several courts have held that the limitations period also may be triggered by the filing of the minutes

of a meeting at which a decision was rendered, provided that the minutes reflect the vote of each board member.⁸ It has also been held that mere delivery of the meeting minutes reflecting the board's vote to the municipal clerk is equivalent to filing the decision, even though an applicant is unaware of the delivery of the minutes to the clerk and even though no copy of the minutes is mailed to the applicant.⁹

In *Kennedy v. Zoning Board of Appeals of the Village of Croton-on-Hudson*,¹⁰ the petitioner challenged a zoning board decision that granted a variance at a public hearing, which took place on Dec. 10, 1988. A copy of the minutes of the meeting reflecting the board's vote was filed with the village clerk on Jan. 4, 1989. However, the petitioner did not commence her Article 78 proceeding until February 10. The petitioner argued that, notwithstanding the Jan. 4 filing, the limitations period should be tolled because, inter alia, the board did not approve the filed minutes until a subsequent meeting. The Court of Appeals, agreeing with the courts below, found that the filing of the board's minutes on Jan. 4 was sufficient to trigger the running of the statute of limitations and, therefore, concluded that the Article 78 proceeding was time barred.

Similarly, in *Casolaro v. Zoning Board of Appeals of the Village of Elmsford*,¹¹ the petitioner commenced an Article 78 proceeding against the zoning board that denied his application. The court below dismissed the proceeding as time barred. On appeal, the Appellate Division affirmed on the basis that the filing of the minutes of the meeting at which the board voted was sufficient to begin the

running of the limitations period. The court further held that the fact that the board did not render findings of fact at the time of its decision, but did so at a later date, did not toll the running of the 30-day period.

Mandated Mailing

It is important to note that, although a municipal clerk is mandated by law to mail a copy of a zoning or planning board decision to the applicant,¹² the statutes that direct that a proceeding to challenge such decisions be commenced within 30 days after the decision is filed contain no toll if the clerk is delinquent in mailing the decision to the applicant, or fails to mail the decision at all.

In *Platzman v. Munno*,¹³ the petitioners claimed that the 30-day statute of limitations did not bar their proceeding because a copy of the board's decision had not been mailed to them. The court determined that, regardless of whether the decision had been sent or had been lost in the mail, it was incumbent on petitioners to inquire as to the status of the decision. The court warned that "one should not depend upon the mailing of a copy of the decision and must conscientiously seek to ascertain the actual date of filing of a decision."¹⁴

In light of the 30-day statute of limitations, and in the absence of a time frame for mailing a board's decision, these statutes potentially deny unsuccessful applicants their day in court. Inasmuch as the mailing requirement permits a clerk to mail a copy of a board decision after the 30-day limitations period has expired, these statutes also may violate an applicant's constitutional right of due process.¹⁵

At a minimum, there should be a requirement that copies of zoning and planning board decisions be mailed to applicants within a specified time after a decision is rendered. Moreover, given the exceptionally short limitations period, fairness also dictates that the 30-day period commence five days after a copy of the decision is mailed by the clerk to the applicant.¹⁶



(1) Village Law §7-712-a(9); Town Law §267-a(9); General City Law §81-(9).

(2) Id.

(3) Id.

(4) See, CPLR §217(1).

(5) Village Law §7-712-c; Town Law §267-c; General City Law §81-c.

(6) Id.

(7) *Stanley v. Board of Appeals of the Village of Piermont*, 168 Misc. 797 (Sup. Ct., Rockland Co. 1938).

(8) See, e.g., *Kennedy v. Zoning Board of Appeals of the Village of Croton-on-Hudson*, 78 N.Y.2d 1083 (1991); *Casolaro v. Zoning Board of Appeals of the Village of Elmsford*, 200 A.D.2d 742 (2nd Dept. 1994).

(9) See, *Pickett v. Town of Tusten Zoning Board of Appeals*, 169 A.D.2d 906 (3rd Dept. 1991); *King v. Chmielewski*, 146 A.D.2d 102 (3rd Dept. 1989), affirmed, 76 N.Y.2d 182 (1990).

(10) 78 N.Y.2d 1083 (1991).

(11) 200 A.D.2d 742 (2nd Dept. 1994).

(12) See, fn. 1, supra.

(13) 184 Misc.2d 201 (Sup. Ct., Rockland Co. 2000).

(14) Id. at 205, quoting Rice, "Practice Commentaries," McKinney's Cons. Laws of NY, Book 61, Town Law §§267-c, 2000 Pocket Part, at 189.

(15) See, *Garden Homes Woodlands Company v. Town of Dover*, 95 N.Y.2d 516 (2000) (holding that "where the interest of a property owner will be substantially affected by an act of government, and where the owner's name and address are known, due process requires that actual notice be given").

(16) The additional five days is consistent with the additional time period provided by CPLR §2103(b)(2) for the service of papers by mail.