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ZONING AND LAND USE

Joining Necessary Parties in Article 78 Proceedings

A recent decision in a Long Island case by the New York Court of Appeals, *Matter of Headriver, LLC v. Town Board of Riverhead*,¹ and an even more current Court ruling, in *Matter of Emmett v. Town of Edmeston*,² highlight an important issue that is all too often misunderstood, or overlooked, in land use and zoning disputes: the need to name necessary parties in Article 78 proceedings.

Complying with this rule can be crucial for a petitioner seeking to overturn a local government's decision. That is because under well-established law, the failure to join a necessary party within the applicable limitations period can be a fatal defect in an Article 78 petition that may mandate dismissal of the proceeding.³ Where a respondent therefore realizes that a petition has not named all necessary parties, a motion to dismiss very well may be granted.

Court of Appeals Decisions

The *Emmett* case arose when petitioners challenged the grant of a variance by the Town of Edmeston Zoning Board of Appeals. Significantly, however, the petitioners failed to join the zoning board. The case reached the Court of Appeals, where the petitioners argued that their petition should not be dismissed.

The Court rejected the petitioners' argument. In its view, the zoning board was a "necessary party" to the proceeding pursuant to CPLR §1001, which defines necessary parties as "[p]ersons who ought to be parties if complete relief is to be accorded between parties to the action or who might be inequitably affected by a judgment in the action." Citing CPLR §1003, which allows for the dismissal of an action for the nonjoinder of a necessary party, the Court concluded that the petitioners' failure to name the zoning board was a fatal defect that doomed their petition.

Although, at least in hindsight, there



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seems little doubt that the zoning board was a necessary party in *Emmett*, whether a party is "necessary" may not always be so clear. In the Court's recent Long Island case, *Headriver, LLC*, was the contract vendee of a parcel of real property located in the Town of Riverhead on eastern Long Island, on which *Headriver* intended to build and operate a Lowe's Home Center. *Headriver* applied to the town board to obtain a special use permit. The board referred the application to the Suffolk County Planning Commission for its recommendation. After reviewing the application, the commission recommended that the special use permit be denied.

Following a public hearing, the town board voted 3-2 to grant the special use permit. However, as provided by General Municipal Law §239-m, only a super-majority vote by the board could override the commission's recommendation. Because the super-majority requirement was not satisfied, the permit was denied. *Headriver* then brought an Article 78 proceeding claiming that the board's determination was arbitrary and capricious because the record established that *Headriver* met every requirement of the town code. The board moved to dismiss the petition for failure to include the commission as a necessary party. Supreme Court, Suffolk County, denied the motion; that decision was affirmed by a divided Appellate Division, Second Department, which concluded that because

the commission's decision could be overridden by a super-majority vote, the commission was not a necessary party.

The Court of Appeals noted that the town board could have voted to override the commission's determination and approve the proposed action, but that it did not do so. It then affirmed the Appellate Division's decision that the commission's decision was "merely advisory" and that the board therefore was the proper party in the proceeding. Accordingly, because the commission was not a necessary party, the Court concluded that the board's motion to dismiss the petition had been properly denied.

General Rule

Whether or not it is difficult to decide whether a particular entity or individual should be named, it is clear that naming all necessary parties is crucial. Courts have repeatedly held that a petition brought under Article 78 to challenge a local government's determination must name, as respondents, not only the board that rendered the determination, but also any person or entity whose interests might be adversely affected by the judgment.⁴

With respect to necessary parties, the general rule is that "[a] party whose interest may be inequitably or adversely affected by a potential judgment must be made a party in a CPLR Article 78 proceeding."⁵ It should not be overlooked that the owner of the property that is the subject of the determination "falls squarely within the definition of a necessary party."⁶ Indeed, the Appellate Division, Third Department, has stated that it is "unmistakably clear" that the owner of the real property to whom a challenged use variance was issued might well have been inequitably and adversely affected if the relief requested in the petition had been granted and, thus, was a necessary party.⁷

Numerous court decisions also make clear that the failure to join the property owner — or other necessary party — prior to the expiration of the applicable statute of limitations is a fatal defect in the petition that mandates

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