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ZONING AND LAND USE PLANNING

Rockland Court Rulings Strictly Apply Standing Rules

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Under well-established New York law, challenges to a local government's zoning determinations may only be made by an "aggrieved" party.[1] That requires that the party seeking judicial review demonstrate that it had been adversely affected by the changes to the zoning law; put differently, such a party must demonstrate that it had sustained special damage, different in kind and degree from the community in general. The harmful effect on petitioners must be "direct injury different from that suffered by the public at large."[2] In other words, to establish standing in a CPLR article 78 proceeding, a petitioner must demonstrate "that the administrative action will in fact have a harmful effect on the petitioner and that the interest asserted is arguably within the zone of interest to be protected by the statute."[3]

As stated by the Appellate Division, Second Department, almost a decade ago, "Where a claim of standing is based upon the adverse impact of challenged administrative action, a petitioner must show that he or she will suffer a harm that is in some way different from that suffered by the public at large and that the alleged injury falls within the zone of interest sought to be promoted or protected by the statute under which the government agency has acted."[4]

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One year ago, in *Matter of Save the Pine Bush Inc. v. Common Council of the City of Albany*,[5] the N.Y. Court of Appeals considered the standing of petitioners seeking to challenge a rezoning of property in Albany to allow for the construction of a hotel. The city relied on *Society of Plastics Indus. v. County of Suffolk*,[6] involving allegations of environmental harm from the manufacture of paper, where the Court had observed that "it would be residents close to those facilities"—i.e., landfills and paper manufacturing plants—"that would directly suffer the alleged harms." In *Save the Pine Bush*, the city argued that the petitioners lacked standing because none of the individual petitioners, and no member of petitioner Save the Pine Bush Inc., resided sufficiently close to the site of the proposed hotel development; the closest lived approximately half a mile away. The Court found that the petitioners had standing, and it pointed out that *Society of Plastics* did not hold or suggest that residence close to a challenged project was an "indispensable element" of standing in every environmental case—although it clearly is sufficient to establish standing.

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Now, decisions by the Supreme Court, Rockland County, involving challenges to rezoning by the Town of Ramapo suggest it may be time to reevaluate the "neighbor" test for standing. In these cases, Rockland County Supreme Court Justice Linda S. Jamieson went behind the alleged facts supporting the petitioners' arguments in favor of standing and found that they could not challenge the town's rezoning. The decisions are well reasoned. Indeed, they may lead other courts to reject petitioners' standing arguments in cases in the future where the petitioners' standing otherwise would have been assumed.

Proximity Rejected

In *Shapiro v. Town of Ramapo*,[7] the petitioners, Sonya and Milton Shapiro, sought to annul certain zoning changes made by the Ramapo town board relating to an application for a zone change submitted by Scenic Development, LLC. Both Scenic and Ramapo moved to dismiss the petition.

In its decision, the court acknowledged that the petitioners' property was across the street from the edge of Scenic's property. However, it continued, the petitioners' home was "not adjacent to that portion of the property actually affected by the zoning change." The court noted that the petitioners complained of the zoning change from R-40 to MR-8, which, it explained, affected "only part of the site." The court stated that, as Ramapo, Scenic and the exhibits submitted by the parties made clear, the portion that was changed from R-40 to MR-8 was "not

at the edge of the parcel," but was "in the middle" of it; in other words, the zoning change only affected "the central portion of the site."

More significantly, the court observed that the land across the street from the petitioners would not contain any of the re-zoned multi-family housing that formed the crux of the petitioners' complaint, but would simply have single family homes on one acre lots. The court also emphasized that, although the distance between the petitioners' property and the re-zoned portion, "as the crow flies," was a little over 1,000 feet, there were no roadways between the petitioners' property and the portion affected by the zoning change. The court explained that to reach the re-zoned portion of the property from the petitioners' land would necessitate a journey of nearly one mile.

The court thus found that the distance between the petitioners' home and the re-zoned land was too far and was insufficient, without more, to confer standing, without the petitioners' demonstrating "actual injury."[8] Concluding that the petitioners had demonstrated no actual injury to themselves that was different from any injury to the community at large, the court dismissed their petition for lack of standing.

The court reached the same result in another case brought by a neighboring property owner, *Youngewirth v. Town of Ramapo Town Board*,[9] finding that the issue of standing was nearly identical to the issue in *Shapiro*. In *Youngewirth*, the petitioner's property was across the street from the edge of Scenic's land, but again the petitioner's home was "not adjacent to that portion of the property actually affected by the zoning change." In this case, the court continued, although the distance between the petitioner's property and the re-zoned property, "as the crow flies," was a little over 1,155 feet, there were no roadways between her parcel and the portion affected by the zoning change. As a result, the re-zoned portion of the property was more than one mile from the petitioner's land—"too far" and "insufficient, without more, to confer standing." Again finding no actual injury to the petitioner different from any injury to the community at large, the court dismissed the petition for lack of standing.[10]

A third related case, *Village of Pomona v. Town of Ramapo*,[11] presented different standing issues—but with the same result. Here, the neighboring Village of Pomona sought to annul the zoning changes made by the Ramapo town board relating to Scenic's property, and Scenic and Ramapo moved to dismiss Pomona's petition.

In its decision, the court first observed that "the right of a municipality to challenge the acts of its neighbors must be determined on the basis of the same rules of standing that apply to individual litigants generally." Thus, for Pomona to have standing, it had to have "a demonstrated interest in the potential environmental impacts of the project." The court ruled that although Pomona set forth certain substantive criticisms of the Final Environmental Impact Statement and the Draft Environmental Impact Statement, it failed to assert with any specificity or detail that any of these problems had or would have a direct impact on Pomona. The court noted that Pomona had argued that "the noise, air pollution and traffic impacts from more than 1,000 vehicles per day" that would be generated by the new units on Scenic's site would enter Pomona within a few feet of the project's driveway; that some of the water runoff from the site would enter Pomona's stormwater system even if the majority of the water was directed in another direction; and that the visual impacts of "almost wall-to-wall development" would change the character of the surrounding Pomona neighborhoods.

However, the court continued, Pomona did not provide "any support for these conclusory allegations," many of which Scenic contradicted. The court noted that the Appellate Division, Second Department, had decided in another case involving Ramapo, *Matter of Village of Chestnut Ridge v. Town of Ramapo*,[12] that municipalities had standing to maintain a cause of action concerning the State Environmental Quality Review Act where they demonstrated that they had an interest in the potential environmental impacts of the project as it affected their "community character."

Here, the court found, Pomona had "not made any such showing," aside from what it characterized as "conclusory assertions" that the "visual impact of almost wall-to-wall development on the site will change the character of the surrounding Pomona neighborhoods." In the court's view, Pomona did not make any attempt to show that the alleged "wall-to-wall" development would be visible from any particular Pomona neighborhoods and did not describe the character of the allegedly affected neighborhoods, or explain how they would suffer. It therefore dismissed Pomona's petition.

Conclusion

Given the liberal standing rules articulated by the Court of Appeals just last year, the results in the Ramapo cases are rather surprising: neighboring property owners, and a neighboring municipality, were denied the ability to challenge Ramapo's zoning changes on standing grounds. The court's careful application of the facts suggests it may not only make it difficult for its decision to be overturned on appeal, but may also lead other courts in other cases to reject challenges to zoning changes on standing grounds. On the other hand, because these decisions were based on specific facts, they can be easily distinguished by judges and other petitioners to justify a different result.

1. See, e.g., *Sun-Brite Car Wash Inc. v. Board of Zoning and Appeals of Town of North Hempstead*, 69 N.Y.2d 406 (1987).
2. *Riverhead PGC, LLC v. Town of Riverhead*, 73 A.D.3d 931 (2d Dept. 2010).
3. *Legacy at Fairways, LLC v. McAdoo*, 76 A.D.3d 786 (4th Dept. 2010).
4. *Rediker v. Zoning Bd. of Appeals of Town of Philipstown*, 280 A.D.2d 548 (2d Dept. 2001).
5. 13 N.Y.3d 297 (2009).
6. 77 N.Y.2d 761 (1991).
7. No. 5195/2010 (Sup. Ct. Rockland Co. Oct. 13, 2010).
8. *Many v. Village of Sharon Springs Bd. of Trustees*, 218 A.D.2d 845 (3d Dept. 1995) (although petitioner could not rely on the proximity argument to convey standing, court found that he did have standing because he would suffer actual injury, in that he had demonstrated that runoff water from the site would directly affect his well water).
9. No. 5194/2010 (Sup. Ct. Rockland Co. Oct. 13, 2010).
10. Interestingly, the court added that because the petitioner in this case had never appeared at the public hearing, she had no right to petition a court for a review of the decision rendered in that proceeding.
11. No. 5197/2010 (Sup. Ct. Rockland Co. Oct. 25, 2010).
12. 45 A.D.3d 74 (2d Dept. 2007).