

Brookhaven rezoning rocked

Klar victory could invalidate status of nearly 800 parcels

By **JEREMY HARRELL**

When the Klar Organization won a case voiding Brookhaven's rezoning of 25 acres of Klar property, the East Meadow company might have struck a much larger blow.

Suffolk County Supreme Court Judge Ralph F. Costello ruled Aug. 16 that Klar's acreage on Route 112 in Coram – owned by subsidiary Yaphank Realty Corp. – was improperly rezoned to a designation that prohibits multifamily housing. At the time of the 2003 rezoning, engineered by former Brookhaven Planning Director Daniel Gulizio, Klar was seeking permission to build a multifamily development. The rezoning killed that plan.

In his decision, however, Costello decided that Brookhaven didn't follow procedure and sent an incomplete rezoning package to the Suffolk County Planning Commission – which must issue an advisory ruling before the town board can ratify a zoning change.

"I'm not saying the decision to change the zoning was wrong," Costello said in his decision, which he read into the record. "Our main concern is the procedural aspect. The problem with this process that took place in Brookhaven was that the town didn't send a complete package to the county."

John Armentano, the Farrell Fritz partner who represented Klar, said Costello's ruling affects more than

just Klar's property. That specific rezoning was a small part of a much larger, townwide rezoning of some 795 parcels – and those rezonings are now all invalidated, according to Armentano.

"They should have sent the whole package with a bow on it to the Suffolk County Planning Commission," he said. "They made a major error under state law."

Armentano is now pushing for the town to reconsider Klar's multifamily development proposal.

The town, meanwhile, plans to appeal and has asked the court to stay the ruling, pending the outcome of the appeal, according to a town spokesman. The town has described the defeat as the result of an easily remediable technical glitch and referred questions to an outside attorney.

State Sen. Ken LaValle, who represented Brookhaven for Twomey, Latham, Shea, Kelley, Dubin, Reale & Quartararo, the Riverhead, law firm declined to comment.

The town could also send a new rezoning package to the Suffolk County Planning Commission. County Planning Commissioner Thomas Isles said he's not yet received a proposal from Brookhaven.

Three years ago, the county planning commission deemed the rezoning a local issue that didn't need county approval. Although Isles wouldn't pass judgment on a possible rehearing of the issue, he noted the county doesn't usually get involved in rezonings.

"We'll make a determination based on the information submitted to us,"

Isles said. "We may make the same determination; we may not."

The real test for the rezoning, however, will probably take place at the town level, and this is why Armentano thinks Costello's ruling presents more than a technicality. In the three years since Brookhaven officials adopted the plan, town residents elected a new supervisor, the town board's control changed political parties and voters ratified councilmatic districts that have created a governmental structure more attuned to local voices, according to Armentano.

"It could be very short, sweet and simple," he said of the town's potential effort to rezone 795 parcels. "Or there could be a different dynamic."

Eric Alexander, executive director of Vision Long Island, which is heavily involved in Brookhaven land-use efforts, said the town's political winds have changed, but the base-level support for the rezoning effort remains strong.

"I think there's been political support for the land use policy that shaped those planning decisions," he said.

Keith Archer, a partner with Haras, Archer & Bloom in Melville, agreed the town's political dynamic has changed, and said the town, in the more likely event that it loses its appeal, will have to restart the zoning process.

In the meantime, Archer said Brookhaven's case should present a cautionary tale for towns that deal with county planning commissions.

"You've got to send them everything," he said.