

SUPREME COURT - STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. JAMES V. BRANDS

Justice.

SUPREME COURT: DUTCHESS COUNTY

_____ x
In the Matter of the Petition of
OLGA RASHID and ABDUL RASHID,
Petitioners,

DECISION AND ORDER

For a Judgment Under Article 78 of
the CPLR Annuling the Determination
of the Planning Board of the Town
of Beekman Denying Petitioner's Application
for Preliminary Subdivision Approval,

Index No: 1280/04

-against-

TOWN OF BEEKMAN and TOWN OF
BEEKMAN PLANNING BOARD,
Respondents.

_____ x
The following papers were read and considered on this petition pursuant to Article 78 of the
CPLR.

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The petitioner seeks an order and judgment pursuant to CPLR Article 78 annulling the November 21, 2002 decision of the planning board, annulling the February 19, 2004 decision of the planning board, and granting petitioners' application for preliminary subdivision approval. Petitioner, Olga Rashid is the owner of the subject property located on Lime Ridge Road in the Town of Beekman, Poughquag, County of Dutchess, State of New York. It consists of 36.7 acres of land

located in the R-45 Zoning Use District. Olga Rashid became the owner on or about February 5, 1991 when her husband, Abdul Rashid, transferred title to her.

On or before May 7, 2001 Olga Rashid submitted a subdivision application to the planning board seeking preliminary approval of a proposed 5 lot single family home residential subdivision. ("the subdivision application"). On November 21, 2002 the planning board denied the subdivision application. This denial was reaffirmed by the planning board on February 19, 2004 following remittal from the Supreme Court.

Petitioners claim that the denial was arbitrary and capricious, in violation of lawful procedure, and not supported by the substantial evidence before it. After the initial denial, in November of 2002, petitioners commenced an Article 78 proceeding which resulted in this court's predecessor, the Hon. Mark C. Dillon, remitting the matter to the Town of Beekman Planning Board for reconsideration on the basis that the board had failed to adequately identify its reasons for denying the subdivision application. On or about January 15, 2004 the planning board commenced reconsideration of the subdivision application and provided the town attorney and petitioner with an opportunity to be heard. The planning board considered additional written submissions by the petitioners' attorney and the town attorney, before its February 19, 2004 meeting. On February 19, 2004, after extensive discussion, the planning board chairman made a motion to approve the subdivision application. However, the planning board voted against it by a three to two vote.

According to petitioners, the planning board has refused to issue written findings in support of the February 19, 2004 determination. Petitioners state that at the end of the February 19, 2004 meeting they specifically asked the board whether this was the "final action" on the subdivision application. The board stated it was final. This is undisputed.

As to the merits of petitioners' application, they state each of the 5 proposed lots complies with the Town's Zoning Law for the R-45 Zoning Use District. The largest of the 5 proposed lots is a 31.766 acre parcel already improved by a single family residence occupied by petitioners ("the improved lot"). Each of the remaining 4 unimproved lots is more than 1 acre. Access to the improved lot is from Lime Ridge Road through an existing gravel driveway. The subdivision application proposes private driveways for each of the other 4 lots. Each of those would be accessible from Lime Ridge Road.

Pursuant to the Town Zoning Law, the minimum lot area in the R-45 District is 45,000 square feet, minimum front setbacks are 50 feet, minimum rear setbacks are 35 feet, minimum side setbacks are 20 feet, minimum lot width is 150 feet, and minimum road frontage is 25 feet. It is undisputed that the proposed lots comply with each of these requirements. Petitioners had originally submitted, before May 7, 2001, and Environmental Assessment Form ("EAF") pursuant to the New York State Environmental Quality Review Act ("SEQRA"). The planning board made a negative declaration stating that this subdivision did not pose any significant adverse environmental impact. This was on or about July 18, 2002.

Despite the foregoing, on November 21, 2002 the subdivision application was denied. The apparent basis is the board's interpretation of a 1985 Supreme Court decision involving the former "Willowbrook Farm" which included this property. The 1985 decision dealt with issues relating to the doctrine of prior lawful nonconforming uses as applied to a variance application sought by petitioner, Abdul Rashid, for construction of apartments in certain existing buildings. Mr. Rashid applied then to the Dutchess County Supreme Court when the Zoning Board of Appeals denied his application. The 1985 decision held that the use of 4 existing structures as apartments did not require a variance as long as any new apartments were constructed within the existing 4 buildings. Those structures became "The Lime Ridge Condominiums" and are located on a separate parcel of property (lot 2B) created by the 1989 subdivision of the former Willowbrook Farm. The remaining 36.7 acre property (lot 2A) was not addressed in the 1985 decision. There is no prohibition against further subdivision of the property contained in the 1985 decision. It is on this basis that the petitioners claim that the planning board's denial of the subdivision application was arbitrary and capricious, in violation of the law, and not supported by substantial evidence.

In fact, petitioners point to portions of the record wherein the board members give their reasons for voting against the subdivision. Those reasons include a vote against because the planning board voted against it in November of 2002; a vote against in order to err on the side of caution; a vote against because the 1989 subdivision should not have been approved in that board member's opinion; a vote against because a different method of subdividing the property would have been more desirable in 1989, or there never should have been a 1989 subdivision; a vote against because a board member believed that the 1989 planning board did not properly analyze the subdivision and should have configured the lots differently.

Petitioners further argue that the planning board improperly took into account the owner of adjoining lot indicating it would treat the subdivision application differently if someone other than petitioner, Olga Rashid, was the current owner of the subject property.

In opposition to this proceeding, counsel for the respondents asserts that Abdul Rashid obtained, through board error, approval of a site plan for 17 new apartments employing the original 4 structures but adding an additional farm building, without obtaining a use variance. He states that in June of 1989, Abdul Rashid applied for a "lot line adjustment" on the same property. His then counsel stated "we are simply cutting of the complex which is pre-existing for remodeling. No new buildings will be added". Though he obtained approval, what Rashid actually did, according to respondents' counsel, was to sever the 4.7 acre parcel (now identified as lot 2B) which encompassed the entire apartment complex. Those were converted to 27 condominium units which were ultimately conveyed by Abdul Rashid to a third party. It is respondents' position that the 1985 decision has been ignored, and evaded, but remains the law of the case.

With respect to the SEQRA determination, the negative declaration regards the 4.7 lot subdivision in July of 2002. According to respondents' counsel, it was not until July of 2002 that the planning board realized that that subdivision was actually one more stage of the condominium unit development for which compliance with the 1985 Supreme Court decision would have required

a use variance. This, counsel concludes, is the way by which the petitioners have evaded the operation of SEQRA and the principal of comprehensive planning, as opposed to piece meal planning.

In reply, Abdul Rashid states that his participation in The Lime Ridge Condominium Units was limited to construction within the 4 buildings identified in the 1985 decision. He states that title to lot 2B was involuntarily transferred by the bank who financed the proposed development which bank then transferred title to an unrelated third party. He states he did not participate in any subsequent development of those condominium units. He argues that lot 2A is a separate subdivision from lot 2B. He asserts that any construction on lot 2B in excess of that which was permitted by the board and/or the 1985 decision may be remedied by the town's demolition of the offending condominiums and/or structures on lot 2B, but not by prohibition of further subdivision of the separate lot 2A.

Mr. Rashid states that respondents' attorney has incorrectly asserted that he approached the planning board for the first time after the 1985 decision, in June of 1989, for the purpose of pursuing a lot line adjustment. He states he had approached the board on several occasions including November 2, 1988, January 10, 1989, March 7, 1989, March 24, 1989 and April 27, 1989. He states this was for subdivision approval and a lot line adjustment which adjustment involved only two tenths of an acre. He states he primarily appeared before the board to subdivide the former Willowbrook Farm to create two lots, lots 2A (the subject property") and lot 2B (The Lime Ridge Condominium Property).

He counters respondents' attorney's argument that the planning board did not understand it was granting subdivision approval creating two separate lots in 1989, citing the June 15, 1989 planning board meeting minutes. These, he points out, indicate that preliminary subdivision approval had been previously granted, that the board voted to grant final subdivision approval for the 2 lot subdivision, that final approval was subject to Mr. Rashid paying certain recreation fees, that the planning board chair was authorized to sign the final plat pursuant to Town Law Section 276 upon payment of those fees. Moreover, he argues that respondents' assertion is belied by the 1989 subdivision plat filed with the County Clerk's Office identified as "Property Line Re-Alignment and Subdivision Plat", and contains the standard "Final Plat" certification signed by the planning board chairperson. Mr. Rashid asserts that although neither the 1985 decision, the 1989 subdivision, nor the segmentation argument raised by counsel justifies the planning board's current refusal to grant preliminary subdivision approval for the subdivision of lot 2A. He points out that although counsel suggests that segmentation was a possible issue for the planning board, none of the planning board members discussed segmentation as a basis for their determination. Moreover, the segmentation argument was raised in a letter from neighbors in opposition to the subdivision application at the July 2, 2002 meeting, and a negative declaration under SEQRA was nonetheless granted.

In reply, and in further support of the petitioner, petitioners' counsel points out that other than restricting the development of non-conforming apartments on the former Willowbrook Farm to the then 4 existing buildings, the 1985 decision is silent with respect to further subdivision or development of the property.

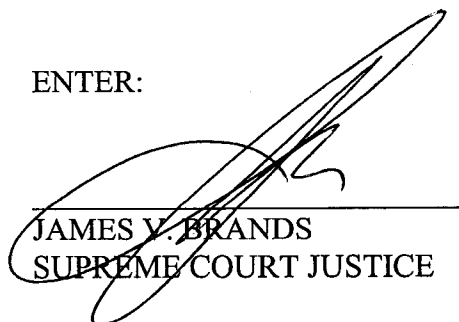
On the basis of the foregoing, this court finds that the respondents' determination to deny preliminary subdivision approval of the subject property located on Lime Ridge Road in the Town of Beekman, was arbitrary and capricious, and an abuse of discretion. It is noted that although petitioners use the words "substantial evidence" it is referenced in conclusory terms only. No actual argument of lack of substantial evidence is made which would warrant reference of this proceeding to the Appellate Division pursuant to CPLR Section 7804 (g). It is clear from the facts not in dispute in this matter that the board's determination to deny preliminary subdivision approval to petitioners is based upon what respondents' counsel characterizes as errors by the 1985 and/or 1989 planning boards and/or misleading and/or abusive tactics by Abdul Rashid and/or the subsequent owners of the Lime Ridge property (parcel 2B). The current board's determination to deny subdivision approval to the current owner of the subject property (parcel 2A) is made without determination of or reference to any alleged non-compliance with current zoning. Accordingly, it is hereby

ORDERED that the petition for an order and judgment annulling the November 21, 2002 decision of the planning board, and the February 19, 2004 decision of the planning board, and granting petitioners' application for a preliminary subdivision approval is granted.

The foregoing constitutes the decision, order and judgment of this court.

Dated: August 30, 2004
Poughkeepsie, New York

ENTER:



JAMES V. BRANDS
SUPREME COURT JUSTICE

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AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS AFTER SERVICE BY A PARTY UPON THE APPELLANT OF A COPY OF THIS ORDER WITH WRITTEN NOTICE OF ITS ENTRY, OR WITHIN 30 DAYS OF SERVICE BY THE APPELLANT OF A COPY OF THIS ORDER AND NOTICE OF ITS ENTRY, OR 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO THE APPELLANT BY THE CLERK OF THE COURT, WHICHEVER IS EARLIEST.