At the term of the Supreme Court of the State of New York, held in and for the County of Rockland, at 1 South Main Street, New City, NY 10956 on April 2, 2025

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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111 SOUTH LIBERTY DRIVE LLC
Petitioner-Plaintiff

Index No.: 030301/2024

DECISION AND ORDER
(Motion Sequences 1&2)

-against-

DOUGLAS J. SCHUETZ, as Acting Commissioner of the Department of Planning, Rockland County, and ROCKLAND COUNTY PLANNING BOARD, and PLANNING BOARD OF THE TOWN OF STONY POINT,
Respondents-Defendants

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Greenwald, J.

The following NYSCEF Doc. Nos. 1-64 were considered by the Court in deciding Petitioner-Plaintiff Motion Sequence 1 and Respondents-Defendants Motion Sequence 2:

RELEVANT BACKGROUND

Petitioner-Plaintiff has labeled its action a hybrid Article 78 proceeding, seeking to nullify the December 15, 2023 decision of the Town of Stony Point Department of Planning (TSPDOP), which denied the Petitioner-Plaintiff's application for final site plan and conditional use approval for premises designated as Section 20.11, Block 2, Lot 29 on the Tax Map of the Town of Stony Point, also known as 111 South Liberty Drive/9W, Stony Point, New York 10980 in the County of Rockland. Petitioner-Plaintiff also seeks declaratory judgments declaring that (1) the Rockland County Department of Planning (RCDOP) issued an ultra vires determination on March 21, 2023 and should be deemed to have no force or effect; (2) said determination is arbitrary and capricious; (3) said determination was rendered in violation of the Open Meetings Law, and for said reason has no force or effect; and (4) the December 15, 2023 decision of the TSPDOP is ineffective.

Petitioner-Plaintiff argues that the pretext for the December 15, 2023, decision issued by TSPDOP is based on the March 21, 2023, determination by RCDOP which Petitioner-Plaintiff

refers to as Determination II[1]. Petitioner-Plaintiff argues that the Town of Stony Point made the referral to the RCDOP pursuant to GML §§239-l and 239-m, and as such RCDOP was to only assess whether the Petitioner-Plaintiff's site plan would have had an adverse impact on any county-wide interests. Petitioner-Plaintiff argues that RCDOP exceeded its authority when it issued Determination II and as such the determination was an ultra vires act. Petitioner-Plaintiff states that RCDOP seeks to overrule the prior FAR determinations established by the RCDOP determination dated September 28, 2021, which Petitioner-Plaintiff refers to as Determination I. Petitioner-Plaintiff alleges that the RCDOP Determination II is inconsistent with Determination I. Petitioner-Plaintiff contends the RCDOP Determination II violates the home rule, as it annuls the Town of Stony Point's zoning code. Petitioner-Plaintiff declares that RCDOP violated the open meetings law as the issues raised in its determination were not discussed before the public. Thus, Petitioner-Plaintiff seeks to have the March 21, 2023, determination of RCDOP set aside and declared ultra vires, in violation of the open meetings law and arbitrary and capricious. Petitioner-Plaintiff argues that since TSPDOP relied on Determination II, this is a basis for the Court to declare the decision of December 15, 2023, void and ineffective. It is noted that Petitioner-Plaintiff asserts that the Acting Commissioner, RCDOP and Rockland County are one single agency in its claims herein.

Respondents-Defendants oppose the petition and argue that this petition should be dismissed. Respondents-Defendants contend that its actions were not ultra vires, it did not violate the open meetings law or the home rule, and Petitioner-Plaintiff fails to articulate arguments with evidence in support of these allegations therefore the application should be denied. Respondents-Defendants state that the county planning makes advisory reports to the referring body, and it is not a final determination but recommendation on the issue for which it is referred. Thus, such advisory recommendations are not subject to review under an Article 78 proceeding. Respondent declares that despite the RCDOP determination not being subject to Article 78 proceedings, the statute of limitations to bring an Article 78 action for the March 21, 2023, determination expired before the commencement of this action. Respondents-Defendants argue that none of its recommendations are binding on the referring body. Respondents-Defendants declare that the final determination to disapprove of the Petitioner-Plaintiff's site plan application was made by

[1] To avoid confusion, the Court maintains the terms "Determination I and Determination II" to aid in consistency and understanding as to the referenced recommendations by RCDOP.

TSPDOP not RCDOP.

Respondents-Defendants declare that Petitioner-Plaintiff confuses the issues and RCDOP did not issue an inconsistent determination. Respondents-Defendants argue that two different agencies sought review and recommendations on differing issues regarding the same subject property. RCDOP argues that recommendation that Petitioner-Plaintiff references as Determination I, was not an approval of the FAR at issue but a remand to the local body for their determination of the application of the FAR should be applied when the structure is a mixed-use building. Respondents-Defendants contend that Determination II recommendation is unlike Determination I because the referrals concerned two different issues. Determination II was based upon the referral by the TSPDOP for review of a site plan and conditional use application as the GML statutory requirement. Respondents-Defendants state that Determination II recommendation was not inconsistent with the prior recommendation, as it was the second disapproval based on the same or similar issues. Respondents-Defendants argue that its determination was not arbitrary and capricious because there is a rational basis for its determination.

It is noted that Determination I was followed by a determination of the Zoning Board of Appeals for the Town of Stony Point (ZBA) dated November 19, 2021. That determination reversed the building inspector's determination of July 14, 2021, in favor of Petitioner-Plaintiff and it states

> *"that the Building Inspector's July 14, 2021 determination/interpretation that the FAR applicable to the underlying commercial use also applies to the residential portion of this residential mixed-use project pursuant to Zoning Code § 215-92.2 in the BU Zoning District, is hereby reversed; the FAR applicable to the underlying commercial use does not apply to the residential uses above, but all other bulk requirements from the underlying commercial use (including the required setbacks, maximum overall building height, etc.) all do apply and the intensity of use at the site is to be determined and limited in accordance with same and through the diligent review process and criteria to be applied by the Planning Board."*[2]

[2] *See,* NYSCEF Doc. No. 7.

Thereafter RCDOP issued a GML report dated March 16, 2022, which was a review of the site plan for said property and was a disapproval with approximately 30 issues. The first issue stated is about the FAR of the entire structure, in light of the ZBA's resolution and is calculated as 0.73, which exceeded the maximum allowed FAR for every use permitted within the BU zoning district of 0.40. Both Determination I, the ZBA determination and the first GML review mention concern about the need for site plan review and development keeping in character of the community.

It is also noted that the Determination II recommendation states approximately 35 issues with the application for the project at the subject property. Included in that list were issues such as a traffic impact study, NYS DOT review, and review of vehicle maneuverability, fire lanes, etc. However, consistent with the prior GML review site plan report, the FAR remained an issue. The Planning Board acknowledged that the FAR could not be applied to the residential portion of the structure and stated that the FAR for the proposed structure was 0.63, exceeding the maximum allowed FAR permitted within the BU zoning district, as the greatest allowed FAR permitted in the BU zoning district is 0.40. There is no information about the basis of the decreased calculation from the prior report. Nonetheless the FAR still exceeded the maximum FAR allowed. Petitioner-Plaintiff does not refute that maximum allowed FAR permitted in the BU zoning district is 0.40, or that the non-residential portion of the structure exceeded the FAR allowed.

It is further noted that the public hearing for the project on the subject property was adjourned several times at the request of the Petitioner-Plaintiff. The transcript from the October 26, 2023, and December 14, 2023, public hearing demonstrate that the October public hearing was adjourned to December 14, 2023, and reflect discussion of the procedural issues that transpired with regard to the disapproval of the site plan for the subject property and the motion to override the recommendation was denied.

DISCUSSION

In a hybrid proceeding and action, separate procedural rules apply to those causes of action which are asserted pursuant to CPLR article 78, on the one hand, and those which seek declaratory relief, on the other hand. The Supreme Court may not employ the summary procedure applicable to a CPLR article 78 cause of action to dispose of causes of action to recover damages or seeking

a declaratory judgment. *See,* Matter of Lake St. Granite Quarry, Inc. v Town/Vil. of Harrison, 106 AD3d 918, 920 [2d Dept 2013].

In a proceeding pursuant to CPLR Article 78, the scope of judicial review is limited to the issue of whether the administrative action has a rational basis for its determination. The arbitrary and capricious test chiefly relates to whether a particular action should have been taken or is justified and whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts. Deference is given to the agency in interpreting the regulations it administers because of its expertise in those matters, and its determination must be upheld as long as it is reasonable. *See,* Ahmed v City of New York, 44 Misc 3d 228, 236 [Sup Ct 2014]. If the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency. *See,* Armand Gustave, LLC v Pavacic, 173 AD3d 1170, 1171 [2d Dept 2019].

An action for a declaratory judgment must be supported by the existence of a justiciable controversy. There must be a genuine, concrete dispute between adverse parties, not merely the possibility of hypothetical, contingent, or remote prejudice to the plaintiff. *See,* Hargraves v City of Rye Zoning Bd. of Appeals, 162 AD3d 1022, 1024-25 [2d Dept 2018].

Declaratory Judgments

Petitioner-Plaintiff's argument that the RCDOP recommendation dated March 21, 2023, was an ultra vires act lacks merit. Petitioner-Plaintiff contorts the language of the law and the determinations. Petitioner-Plaintiff argues that the Rockland County Charter Law, §C5.02 grant of power to the acting commissioner is impermissible. Petitioner-Plaintiff has failed to demonstrate a legal basis that warrants deeming this law impermissible.

The Municipal Home Rule Law gives counties the power to adopt county charters and determine the agencies, executives, their duties and their powers within their municipality. Powers granted by the County Charter shall be in addition to any other powers granted to counties by any other provision of general or special laws. When courts must review said laws, they harmonize all parts of the statutes with each other as well as with the general intent of the whole statute and the effect and meaning must, if possible, be given to the entire statute and every part and word thereof. It is well settled law, that the language of Article 12-B General Municipal Law, or to Petitioner-

Plaintiff's specific argument GML 239-c, does not mandate a multi-member county planning agency for recommendations of special permits and when the charter grants the commissioner legal authority on par with its planning board, it is not in violation of the law. *See,* Vanderveer v Van Rouwendaal, 75 Misc 2d 593, 597-99 [Sup Ct 1973]. The County Charter is permitted to give authority to its commissioner of planning. Such authority is read in harmony with the other existing laws, which is why this Court does not find that Petitioner-Plaintiff demonstrated any impermissible law or act of the County or the commissioner regarding such authority. There is no evidence that the acting commissioner exceeded his legal authority or acted contrary to the legal authority granted by the charter, allowed by RCDOP or the applicable county and state laws. The Courts have generally concluded that a town has the power to adopt a local law in connection with site plan approval, stating "this is hardly license for an "arrogation of undelegated power" or a "profound change giv[ing] municipalities virtually unconstrained authority to act. Rather, their conclusion represents a faithful application of the dictates of the Municipal Home Rule Law which—within narrow confines—permits the town to adjust a provision of the Town Law so that in its local application it will have exactly the effect intended by the Legislature. *See,* Kamhi v Town of Yorktown, 74 NY2d 423, 434 [1989]. Herein, as the charter provides the commissioner of planning with authority to act as the planning board, (even as there is no allegation that the commissioner has acted as the planning board) and where the acting commissioner has acted within its legal authority and has not violated any law, there is no violation of the Home Rule, and the Rockland County Charter Law, §C5.02 is valid.

Plaintiff fails to demonstrate that Respondents-Defendants' Determination II effectively annulled the Town of Stony Point's zoning code. Petitioner-Plaintiff does not refute that the matters referred to the RCDOP were statutorily required. However, Petitioner-Plaintiff merges the issues that were before RCDOP and their recommendations. The FAR was an issue in both determinations, but distinct and separate issues. One referral was Petitioner-Plaintiff's appeal of the building inspector's determination of the applicability of the FAR to mixed-used structure, which resulted in Determination I. However, that recommendation did not resolve the FAR issue.

The implication by Petitioner-Plaintiff that RCDOP determined that the FAR did not impact county-wide concerns is erroneous. Determination I only spoke to the interpretation of the zoning code. Determination I did not state that the FAR itself had no adverse impact on county-wide concerns. RCDOP stated that the requested interpretation would have no adverse impact on

any county-wide interests and remanded the issue for local determination. That is why the ZBA had to make a determination on how the FAR would be applied. ZBA's determination was that the FAR did not apply to the residential portion of the mixed-use structure. Once the issue of how to apply the FAR to the mixed-use structure was resolved, the GML review of the site plan could commence because calculations of the FAR could be assessed.

Determination II results from a GML site plan approval referral – it is a different review. A calculation of the FAR on the non-residential portion of the structure was rendered in the GML review report of RCDOP and stated that the structure exceeded the maximum FAR requirement within the BU zoning district. RCDOP in this not overriding the zoning code but applying the zoning code that exists, in its review of the site plan. RCDOP speaks to the FAR, as part of the process of site plan review. Petitioner-Plaintiff does not refute the accuracy of the RCDOP calculation of the FAR for the non-residential portion of the structure or that the proposed structure did not exceed the maximum FAR for the area as stated within Determination II. Determination II and Determination I are consistent reports from RCDOP regarding the subject property. However, the determinations that were relevant and rendered in the duration are necessary to this understanding.

Petitioner-Plaintiff's arguments of that RCDOP acts were ultra vires and outside of the legislative intent of a county planning agency lack merit. Pursuant to GML §§239-l and 239-m, the county planning agency reviews proposed actions referenced for inter-community and county-wide considerations inclusive but not limited to the compatibility of other land uses with one another, protection of community character, traffic and such other matters as may relate maintaining of a satisfactory community environment, as well as referrals of proposed planning and zoning actions, that includes but is not limited to approval of site plans. *See,* General Municipal Law §§239-l and 239-m.

Petitioner-Plaintiff fails to acknowledge that prior to Determination II, RCDOP issued a GML report dated March 16, 2022, which was a review of the site plan for said property that was also a disapproval with approximately 30 issues. The FAR was the first issue raised on that review, stating that "*the significant residential density and the oversized structure was a countywide concern that needed to be evaluated*."[3] Plaintiff arguments that the FAR issue was only raised in Determination II and after organized public pressure is disingenuous.

[3] *See,* NYSCEF Doc. No. 28 as GML Review dated March 16, 2022.

Determination II raised the FAR issue, as well as other issues pertaining to the intercommunity and county-wide concerns, consistent with the prior GML review report on the site plan. Petitioner-Plaintiff admits that the building was significantly scaled down from the 2021 version to the 2023 version but produced no evidence to demonstrate that said structure is within the maximum FAR allowed as ascertained by RCDOP. There is no evidence demonstrating that Determination II was inconsistent with the prior reports or an overruling of the ZBA's FAR determination. Thus, there is no evidence that Respondents-Defendants exceeded its authority when it rendered Determination II or acted inconsistent with the law and any prior recommendations of the agency. Additionally, there is a rational basis for the recommendation, and there has been no evidence to demonstrate the contrary. *See*, Matter of Jamil v Vil. of Scarsdale Planning Bd., 24 AD3d 552, 554 [2d Dept 2005]. Thus, Determination II is not ultra vires, and it is not arbitrary and capricious.

In enacting the Open Meetings Law, the Legislature sought to ensure that public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. In furtherance of that objective, the Legislature has granted the courts the discretionary power, upon good cause shown, to declare void any action taken by a public body in violation of the Open Meetings Law. It is well settled law that even when a record supports a finding that the Open Meetings Law has been violated the Petitioner-Plaintiff- Plaintiffs must establish good cause to annul the Board's determination. The Court found that it was error of the Court to annul the determination of the board, even when it was an improperly noticed meeting, but had been open to the public and the determination at issue was adopted at a publicized, public meeting, after a series of public meetings on the issue had previously been held. *See*, Chestnut Ridge Assoc., LLC v 30 Sephar Lane, Inc., 169 AD3d 995, 998-99 [2d Dept 2019].

Petitioner-Plaintiff argues that the issues which led to disapproval contained in Determination II were never raised before the public but fails to articulate good cause to annul the Board's determination. Petitioner-Plaintiff's argument also conflicts with Petitioner-Plaintiff's earlier statement that the planning board only changed its position after organized public pressure was exhibited to the Town Planning Board. The purpose of the Open Meetings Law and the intent of the Legislature in enacting that law dictate that the harm or injury is the alleged unlawful

exclusion of the public from a municipal meeting. The Court looks at the harm or injury of being excluded from municipal meetings, not just the exclusion when considering violations of the Open Meetings Law. *See,* McCrory v Vil. of Mamaroneck Bd. of Trustees, 181 AD3d 67, 74 [2d Dept 2020]. Courts are empowered, in their discretion and upon good cause shown, to declare void any action taken by a public body in violation of the mandate of this legislation. It is the challenger's burden to show good cause warranting judicial relief. *See,* Matter of Gernatt Asphalt Products, Inc. v Town of Sardinia, 87 NY2d 668, 686 [1996]. Where the record does not suggest that the Board's failure to comply with the precise requirements of the Open Meetings Law was anything more than mere negligence, it was error for the court to void the determination at issue. *See,* Cunney v Bd. of Trustees of Vil. of Grand View, 72 AD3d 960, 962 [2d Dept 2010]. If there is no evidence to suggest that the failure to comply with the law was anything more than mere negligence, it is an insufficient ground to invalidate a board's actions. *See,* Matter of Roberts v Town Bd. of Carmel, 207 AD2d 404, 405 [2d Dept 1994]

Petitioner-Plaintiff fails to demonstrate good cause to annul the recommendation of RCDOP. Petitioner-Plaintiff admits that public hearings scheduled before the TSPDOP and RCDOP had been adjourned at Petitioner-Plaintiff's request from August 24, 2023, to September 28, 2023, then from October 26, 2023, to December 14, 2023. The evidence submitted by Petitioner-Plaintiff of the TSPDOP agenda for October 26, 2023, shows that while the public hearing was adjourned, the site plan application for the subject property was a line item on the agenda. The transcript of the meeting held on October 26, 2023, demonstrates that the agenda item was discussed in front of the public. The discussion to vote on the site plan and what was needed to override the RCDOP recommendation was all done and heard in the presence of the community at that meeting. Pursuant to the transcript of the December 14, 2023, meeting, to clarify whether the vote on October 26, 2023, was dispositive of Petitioner-Plaintiff's application, the Board made a motion to read a resolution into the record, formalizing the denial of the application. In light of the fact that the public hearings were delayed by repeated adjournments requested by Petitioner-Plaintiff, and as the issues were discussed at public meetings, and as alleged by Petitioner- Plaintiff the public had enough information to organize and pressure the Town in opposition of said, there is no evidence that there were any intentional tactic by Respondents-Defendants to prevent the public being present and heard on their concerns on this issue. Petitioner-Plaintiff has not demonstrated that Respondents-Defendants violated the Open

Meetings Law, or that such violation, if any, was more than mere negligence. The law has established that violation of the law alone is insufficient to annul a determination. Where there has been a non-prejudicial, technical violation of the Open Meetings Law in connection with the disputed issue, given the purpose of the Open Meetings Law and the nature of interests at stake, annulment of the determination is unwarranted. Matter of Specht v Town of Cornwall, 13 AD3d 380, 381 [2d Dept 2004]. Petitioner-Plaintiff has not articulated the injury or good cause for annulling the determination, other than its own interest. Thus, there is no basis to annul the RCDOP recommendation, herein labeled as Determination II.

For the foregoing reasons, Petitioner-Plaintiff's request for declaratory judgments finding that Determination II was ultra vires, arbitrary and capricious, in violation of the Open Meeting Law requiring that the determination be annulled and that the site plan denial rendered by the Town of Stony Point on December 15, 2023 be void and ineffective due to its reliance on Determination are all **denied.**

Article 78

Petitioner-Plaintiff asserts that the Article 78 proceeding are directed only at the Town of Stony Point's denial of its site plan application. Petitioner-Plaintiff argues that Determination II is null and void and could not be the foundation of TSDOP denial, therefore the denial of the site plan should be reversed and annulled. The applicable standard of review is whether the challenged determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion. *See,* Troiano v Schroeder, 232 AD3d 801, 802 [2d Dept 2024].

As stated above, the Court does not declare Determination II null and void or without effect. Again, Determination II was the recommendation of RCDOP and the second disapproval of the site plan. Petitioner-Plaintiff has not demonstrated that the information reported within said recommendation was inaccurate, or that Determination II was ultra vires, arbitrary and capricious or warranted annulment due to a violation of the open meetings law. As Determination II remains a valid and effective GML report on the site plan, the determination by TSPDOP to deny Petitioner-Plaintiff's site plan was not made in violation of lawful procedure and it was not affected by an error of law. The TSPDOP determination to deny the site plan was not arbitrary and capricious, as it has a rational basis. The issuance of the denial of the site plan is not an abuse of

discretion, and TSPDOP may rely on RCDOP's recommendation and has the authority render a vote to adhere 0or override such recommendation. To that extent, Petitioner-Plaintiff's Article 78 petition to reverse and annul the Town of Stony Point's Department of Planning determination dated December 15, 2023, is **denied.**

Motion to Dismiss

The Court deems Respondents-Defendants' Motion to Dismiss to be deemed moot, in light of the foregoing decision.

Accordingly, it is hereby,

ORDERED, that Petitioner-Plaintiff's request for declaratory judgments finding that Determination II was ultra vires, arbitrary and capricious, in violation of the Open Meeting Law and that the site plan denial rendered by the Town of Stony Point on December 15, 2023, be void and ineffective due to its reliance on Determination are all denied; and it is further

ORDERED, that Petitioner-Plaintiff's Article 78 petition to reverse and annul the Town of Stony Point's Department of Planning determination dated December 15, 2023, is denied; and it is further

ORDERED, that Respondents-Defendants' Motion to Dismiss is deemed moot, in light of the foregoing decision.

Any relief not specifically granted herein is denied.

The foregoing constitutes the decision and order of this Court.

Dated: April 2, 2025
New City, New York

ENTER:

Hal B. Greenwald

Hon. Hal B. Greenwald, J.S.C.

CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.