SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

THE VILLAGE OF MONROE, THE VILLAGE OF MONROE BOARD OF TRUSTEES, NEIL S. DWYER, as MAYOR of the VILLAGE OF MONROE, EQUITY TRUST COMPANY, CUSTODIAN FBO ALYSE D. TERHUNE IRA, VILLAGE OF HARRIMAN and VILLAGE OF HARRIMAN BOARD OF TRUSTEES, BRUCE CHICHESTER, WAYNE MITCHELL, CAROL SCHNEIDER, RENA SANDOVAI and DAVID JONES,

Petitioners/Plaintiffs,

For a Judgment Pursuant to CPLR §§ 7803(1), (2) and General Municipal Law § 51 and Declaratory Judgment

-against-

TOWN OF MONROE, THE TOWN BOARD OF THE TOWN OF MONROE, ANTHONY CARDONE, as SUPERVISOR OF THE TOWN OF MONROE and its CHIEF FINANCIAL OFFICER,

Respondents/Defendants.

DECISION AND ORDER

Index No. EF006346-2024

McElduff, A.J.S.C.

The court has considered the following submissions on Defendants' motion to dismiss the petition/complaint herein (Motion #3):

1. Defendants' Notice of Motion, Nugent Affirmation in Support with Exhibits A through H, Cardone Affidavit, Memorandum of Law in Support;
2. Gailey Affirmation in Opposition with Exhibit A, Terhune Affirmation in Opposition with Exhibits A and B, Chichester Affidavit in Opposition, Dwyer Affidavit in Opposition; and
3. Defendants' Memorandum of Law in Reply.

Background

The Village Plaintiffs filed a combined petition/complaint (Motion Seq. No. 1) seeking declaration that the $19,000,000.00 purchase price paid by the Town of Monroe to purchase the Rye Hill Corridor Property is a "litigation expense" related to "zoning and planning matters" for the purposes of Town Law § 261. As a result, the Village Plaintiffs argue that the funds to pay said purchase price must be appropriated by and payable from the Town-Outside-Village "B" Fund instead of the Townwide "A" Fund. In this way, the Village Plaintiffs argue that they should not be paying for the Town's purchase of the Rye Hill Corridor Property in the form of increased taxes from Village residents.

According to the Town Defendants, the purchase of the Rye Hill Corridor Property (the "Subject Property," containing approximately 247 acres of undeveloped land) mooted several pending litigations against the Town and afforded it the opportunity to not only acquire the land itself but to minimize the future development or disturbance of the property, maintain open space (65%), protect the watershed and allow for recreation or other public use of the land through re-zoning. The Settlement Agreement included a Contract of Sale of the Subject Property for the sale price/consideration of $19,000,000.00. The Settlement Agreement did not include any payment of damages, costs, attorney's fees or other settlement monies related to the litigations. *See* Cardone Affd.; *see also* Exhibit B to Nugent Affm.

In Motion Seq. No. 2, the Village Plaintiffs moved for a preliminary injunction to enjoin the Town Defendants from approving any budget for the 2025 fiscal year that includes paying the expenses of settling the Rye Hill Corridor Property litigation from the Townwide "A" Fund and prohibiting the Town from levying property taxes on Village landowners toward payment of the land purchase. The motion was fully submitted; however, the Village Plaintiffs did not request any temporary restraining orders pending the determination of the preliminary injunction motion. *See* ECF Doc. Nos. 24-33.

In Motion Seq. No. 3, the Town Defendants moved to dismiss the petition/complaint in its entirety. The question presented is whether or not, under these circumstances, the monies expended for the purchase of the Subject Property by the Town are properly taxed on a townwide basis.

Analysis

Town Law § 261, "Grant of power; appropriations for certain expenses incurred under this article," is described as a general grant of zoning authority to towns. It states as follows:

> For the purpose of promoting the health, safety, morals, or the general welfare of the community, the town board is hereby empowered by local law or ordinance to regulate and restrict the height, number of stories and size of buildings and other structures,

> the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes; provided that such regulations shall apply to and affect only such part of a town as is outside the limits of any incorporated village or city; **provided further, that all charges and expenses incurred under this article for zoning and planning shall be a charge upon the taxable property of that part of the town outside of any incorporated village or city. The town board is hereby authorized and empowered to make such appropriation as it may see fit for such charges and expenses, provided however, that such appropriation shall be the estimated charges and expenses less fees, if any, collected, and provided, that the amount so appropriated shall be assessed, levied and collected from the property outside of any incorporated village or city.** Such regulations may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent, and in accordance with general or specific rules therein contained.

See Town Law § 261, emphasis added.

There is a dearth of caselaw on this aspect of § 261. The Village Plaintiffs rely on the case of *Leahy et al v. Town of Montgomery et al*, which addressed Town Law § 261. In *Leahy*, the Orange County Supreme Court (Slobod, J.S.C.) found that damages awarded in a prior litigation ($561,789.00 for attorney's fees) arose out of the Town's zoning activities and were, thus, improperly paid from the Townwide "A" Fund instead of the Town-Outside-Village "B" Fund. *See* ECF Doc. No. 18, *Leahy et al v. Town of Montgomery et al* (Orange Co. Sup. Ct., Feb. 16, 2012 [unpublished]). In so holding, the Supreme Court relied upon an Opinion of the New York State Comptroller, which stated that damages payable pursuant to a judgment were a "part-town charge" pursuant to Town Law § 261 where the judgment arose from the town's zoning and planning activities. *See* 1996 Opns. St. Compt. 96-15.

The prior litigation discussed in the *Leahy* decision was a case entitled *Land Master Montg I, LLC v. Town of Montgomery* [13 Misc. 3d 870 (Sup. Ct. 2006), *aff'd,* 54 A.D.3d 408 (2d Dept. 2008)]. In *Land Master*, the Orange County Supreme Court (Owen, J.S.C.) held that the Town's Comprehensive Plan and Local Laws Nos. 4 and 5 were unconstitutionally exclusionary upon petitioner/plaintiff's motion for summary judgment. The Supreme Court further held that the Town's resolution granting SEQRA approval of the Comprehensive Plan and Local Laws Nos. 4 and 5 was arbitrary and capricious and affected by error of law for failure to take the requisite "hard look" at potential environmental impacts. Since the Supreme Court had found that the Comprehensive Plan and Local Law Nos. 4 and 5 were unconstitutional, the Supreme Court

awarded attorney's fees to the petitioners/plaintiffs pursuant to 42 U.S.C. 1988. *See Land Master,* 13 Misc. 3d at 883.

Ultimately, the Town thereafter paid $561,789.00 to the firm of Jacobowitz & Gubits and took the funds from the Townwide "A" Fund to do so. To finance that expense, the Town of Montgomery enacted a bond resolution that would apply an annual levy to all taxable property in the Town of Montgomery, both inside and outside of the incorporated Villages of Walden, Maybrook and Montgomery. Citing Town Law § 261, Village residents objected to the levy on their property based upon the damages award/attorney's fee award in *Land Master* since their property was located inside incorporated villages. *See* ECF Doc. No. 18, *Leahy et al v. Town of Montgomery et al* (Orange Co. Sup. Ct., Feb. 16, 2012 [unpublished]).

Here, the pending litigations against the Town were related to planning or zoning matters. In comparison, however, the Town Defendants' purchase of the Rye Hill Corridor Property was not the result of a compulsory court order or judgment, as the payment of adjudicated damages/attorney's fees was in *Leahy* and *Land Master*. While it is true that the purchase, in effect, resolved pending litigations, the Town Defendants' purchase of land did not represent a settlement payment towards a party's claim for damages or reimbursement of a party's litigation expenses. Instead, the acquired real property in consideration for an agreed upon purchase price. Significantly, no party has shown that the transaction lacked consideration or was otherwise fraudulent as defined under the law. As a result, this Court finds that the Defendant Town's purchase of the Rye Hill Corridor Property for $19,000,000.00 cannot properly be deemed "charge" or "expense" relating to planning or zoning matters for the purposes of Town Law § 261. To hold otherwise would be to interpret Town Law § 261 well beyond its facial meaning and to stretch *Leahy*, *Land Master* and 1996 Opns. St. Compt. 96-15 well beyond their facts. Addiitonally, to hold otherwise could imply that any time a town makes a controversial land purchase it may somehow be deemed a cost or expense relating to planning or zoning matters, whenever it is made, whether pre-dispute, during-dispute or post-dispute or with or without litigation.

Consequently, the Village Plaintiffs/Petitioners' requests for relief pursuant to CPLR Article 78 (i.e., regarding alleged/potential failure of a body or officer to perform a duty enjoined upon it by law, proceeding without or in excess of jurisdiction, a determination in violation of lawful procedure, affected by error of law or was arbitrary or capricious, etc.), even assuming that valid or ripe questions were raised thereunder, are mooted.

Similarly, the Village Plaintiffs' GML § 51 claims are mooted. Further, Petitioners/Plaintiffs failed to allege or demonstrate that the purchase of the subject property or potential assessment of taxes therefor was fraudulent or entirely illegal for the purposes of GML § 51. *See Godfrey v. Spano*, 13 N.Y.3d 358 (2009) (affirming dismissal for failure to state a claim under GML § 51).

Conclusion

For the above-stated reasons, it is hereby

ORDERED that Defendants/Respondents' motion to dismiss (Motion No. 3) is granted and, accordingly, Plaintiffs/Petitioners' combined petition/complaint herein (Motion No. 1) is dismissed in its entirety; and it is further

ORDERED that Plaintiffs/Petitioners' motion for a preliminary injunction (Motion No. 2) is denied as moot.

This constitutes the Decision and Order of the Court.

Dated: March 5, 2025
Goshen, New York

Hon. Timothy P. McElduff, Jr., A.J.S.C.