

Planning Board Blocks Retail Store in Scenic Locale

The Appellate Division, Third Department recently ruled that a planning board's decision to block a retail store in the town should be upheld.

The case, Wal-Mart Stores, Inc. v. Planning Board of the Town of North Elba, decided February 5, 1998, involved the review of a determination of the planning board which denied applications by Wal-Mart Stores, Inc. for a conditional use permit and site plan approval. What makes this case particularly interesting is the proposed location for the store — the premier resort and tourist community of Lake Placid. The case was referred to the Appellate Division by order of the Essex County Supreme Court.

In October 1994, petitioner Wal-Mart Stores, Inc. applied to respondent Town Planning Board for a conditional use permit and site plan approval for a large retail store it proposed to construct and operate in the town. Respondent assumed lead agency status for review under the State Environmental Quality Review Act (SEQRA), and in May 1995 petitioner voluntarily filed a draft environmental impact statement, concluding that the project would have little significant impact on the surrounding area. Following a public hearing, respondent adopted a final environmental impact statement in which it responded to written comments concerning the visual impact of the proposed structure and parking lot upon the scenic area in which it was to be located, and the effect this retail operation, and the secondary growth it could be expected to spawn, would have on the general character and ambience of the community.

Thereafter, the consultant hired by respondent to assist in reviewing petitioner's applications and completing the SEQRA process submitted two sets of proposed findings, one supporting approval of the project and one supporting disapproval. On January 6, 1996, respondent voted to adopt the second set of findings, and deny petitioner's applications. This proceeding to annul that determination was commenced by petitioner and an owner of the land on which the store was to be built, arguing that it was not supported by substantial evidence and was arbitrary, capricious, and infected by legal error.

In upholding respondent's determination, the Court found that while the analysis required to be undertaken by SEQRA necessitates that an agency weigh the environmental consequences of its action, the basis for the agency's decision is not restricted to those considerations alone; indeed, the agency's capacity to regulate activity on other legal grounds within the sphere of its authority continues unabated.

In this case, respondent concluded not only that the proposal did not meet the requirements of SEQRA, but also that it did not satisfy the relevant criteria set forth in the Town Land Use Code, including two of the three specific conditions for obtaining a conditional use permit — specifically, those providing that a permit will only be granted if the proposed use “will not have a materially adverse impact upon adjoining and nearby properties,” and “will not result in a clearly adverse aesthetic impact.” Additionally, respondent found that several “general development considerations,” which it was constrained to evaluate and which have as their aim the avoidance of “any undue adverse impact on the natural, physical, social and economic resources of the Town,” were not met. In making these findings, respondent was entitled to consider factors outside the scope of SEQRA, insofar as they bear on matters legitimately within the purview of the Town Land Use Code.

Counsel's Corner

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The Court found that "it does not appear that the determination was based upon impermissible considerations such as public sentiment or 'community pressure.' Moreover, while the decision refers to the economic effect the proposed store would be expected to have upon other local businesses, it does so in the context of assessing the probability and extent of the change it would work upon the overall character of the community, as a result of an increased vacancy rate among commercial properties in the downtown area — an entirely proper avenue of inquiry, even within SEQRA."

The Court also found that the record discloses ample factual foundation for respondent's decisions, especially with regard to the negative aesthetic impact of the project as a whole. "Given the location of the project, at the western 'gateway' into a resort community noted for its rustic nature and striking scenery, and the fact that the store and parking lot would lie partially within an area designated a 'Scenic Preservation Overlay,' established to protect the view of nearby Whiteface Mountain, it was appropriate for respondent to place great weight on the visual effect of this large development."

In conclusion, the Court found that "it was in no way irrational to find that petitioners failed to carry their burden of showing that their contemplated use of the subject property 'conforms with the standards imposed by the zoning ordinance' or to conclude 'that the use, though permitted, is not desirable at the particular location.'"

Historic Preservation Grants Available

Applications are now available to municipalities and not-for-profit organizations to compete for grants through the Preservation League of NYS/NYS Council on the Arts Grant Program. A total of \$77,800 is available for historic structure reports, historic landscape projects and cultural resource surveys.

Eligible projects include: historic structure reports for public buildings, historic landscape reports for municipal parks, and cultural resource surveys of downtowns and residential neighborhoods. Funding criteria include: significance of the building, landscape or neighborhood; extent of local support for the project; and the likelihood that significant restoration or planning work will result. Those interested in applying should contact either the Preservation League's Ithaca office at (607) 272-6510, or the Albany office at (518) 462-5658 for an application and to discuss their projects. The postmark application deadline is:

MAY 15, 1998.

NLC Publishes Book on Privatization of Services

Municipal Service Delivery: Thinking Through the Privatization Option, is a new publication from the National League of Cities (NLC) to help local officials evaluate the options, procedures and common issues associated with contracting out for municipal services.

The guidebook offers a concise, step-by-step approach to identify potential areas for privatization of public service delivery. It also outlines some other alternatives — such as redesign and using non-profit groups — that cities may adopt to help improve overall practices. The guide uses a flow chart to identify various checkpoints in the decision process. In progressing through the chart, the book explains potential long-term and short-term consequences of each decision. It also emphasizes specific points such as goal specification, scope definition, analysis of current processes, and the need to be explicit about current problems.

Two of the biggest problems cities report after attempting to privatize a service — the impact on city employees and difficulty in ensuring that service continues to be performed adequately by an outside contractor — are also covered in detail. The book includes examples from cities that have successfully contracted out services, and has descriptions of suggested prominent strategies and current practices to help cities avoid common difficulties.

Above all, the guidebook suggests, cities must be sure to complete a comprehensive side-by-side comparison of all alternatives, ensuring that both direct costs and indirect costs are considered. Reviewing the potential number of service providers to ensure competitive bidding and avoiding the appearance of impropriety when selecting a contractor are also vital elements in the privatization process.

Municipal Service Delivery: Thinking Through the Privatization Option (#3540) may be ordered from the NLC Publications Center, P.O. Box 491, Annapolis Junction, MD 20701. Telephone (888) 571-2939 or (301) 725-4299; fax (301) 206-9789. Cost: \$15 NLC members; \$20 non-members, plus \$4 shipping and handling.