



DECISION AND ORDER

To commence the statutory period of appeals as of right CPLR (5515 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
LAS PART, PUTNAM COUNTY**

**Present: Hon. Andrew P. O'Rourke
Supreme Court Justice**

-----X
PATRICIA A. FRIEDERICH,

INDEX NO.: 931/2009
MOTION
DATE: 4/24/2009

Plaintiff,
-against-

ROBERT BONDI, SUPERVISOR OF PUTNAM COUNTY
AND NEW YORK STATE DEPARTMENT OF
TRANSPORTATION.

Defendant.
-----X

The following documents numbered 1 to 25 read on this motion by plaintiff for an injunction enjoining defendants from construction a car commuter parking lot.

- Notice of Motion- Affidavits 1-2
- Cross Motion
- Answering Affidavits 10-11
- Replying Affidavits 22
- Affidavits
- Pleadings-Exhibits-Stipulations-Minutes 3-9, 12-21, 23-25
- Briefs: Plaintiff
- Defendant

Motion is decided as follows:

Plaintiff is a resident of Mahopac owning a home at 22 Greenfield Road. Plaintiff contends the County of Putnam and the New York State Department of Transportation should be enjoined from constructing a sixty (60) car commuter parking lot at the intersection of Mr. Hope Road, Route 6 and Heather Drive/Echo Drive in Mahopac.

Plaintiff alleges the County failed to give proper notice of the construction to residents directly effected by same; that the notice given was vague, inadequate and did not meet the requirements of due process; that the County failed to obtain the proper use variance from the Town of Carmel changing the zoning from residential to commercial zoning; that the Department of Transportation has adversely impacted upon plaintiff's use of an easement across defendant's property to Route 6; failed to perform necessary SEQR review; failed to review noise, traffic and environmental factors; violated the Town of Carmel Wetlands Ordinances and the States' "Final Plan Construction Guideline." Plaintiff requests the property be restored and a permanent injunction be granted.

The commuter park will be approximately 66,000 square feet and extends to Mahopac Ridge a residential area comprised of 150 homes.

In and about March 2009, plaintiff saw 4-5 construction vehicles enter the vacant parcel of land directly across from her home. They cut down approximately 150 trees. After inquiring as to what they were doing, she learned of the proposed construction of the parking lot. Plaintiff and her neighbors had no prior notice of the construction.

Plaintiff states the Notice of Public Hearing posted was defective because it did not specify the specific location of the parking lot. It only referred to 8 commuter parking lots in

Putnam County and the creation of four (4) lots in the Towns of Patterson, Carmel and Southeast. Plaintiff states the notice was vague as to the exact location of the construction.

The only other Notice of a Public Hearing appeared in the Putnam Courier in 2002 (a now defunct paper). Said notice also failed to state important particulars. Furthermore the discussion at the hearing referred to the corner of Route 6 and Croton Falls Road in Mahopac where a park and ride lot has existed for four (4) years.

Plaintiff alleges the change in location of the parking lot from Croton Falls Road to Mt. Hope and Route 6 took place in 2004-2005 with no public notification or hearing.

Plaintiff states Putnam County used residential land for a commercial use without obtaining a variance. No hearing was conducted and had it been, plaintiff would have appeared to protest the construction directly across the street from her residence.

Plaintiff state in order to obtain a variance the County was required to prove that it could not obtain a reasonable return on the present use of the property and that the proposed change will not alter the character of the neighborhood.

The County purchased the property subject to the residential zoning and cannot, claim hardship, in requesting a variance.

Plaintiff state the proposed construction must be stopped until the County seeks proper approval from the Town of Carmel Zoning Board, which application Plaintiff will protest.

Plaintiff states a Notice of Violation was issued by Wetland Inspector David J. Klotule which stated

“Work is done without a local permit from the Town of Carmel and is in violation of the above cited local law.”

The Violation also required the County of Putnam,

“to stop all work and return the wetlands to its original natural condition.”

Plaintiff states the County never filed a SEQR application for the Route 6, Mount Hope Road project but unitized another SEQR application filed for a project at the corner of Route 6-Route 312 in the Tilly Farms section of Southeast.”

Plaintiff alleges defendant’s project engineer noted on the final plans that the project would have an adverse effect on traffic conditions on Route 6/Mt. Hope. The plans include erection of a sign “Do Not Block Side Road.” The County never assessed the potential traffic problems at the Mt. Hope/Route 6 intersection.

The high traffic between 5:30 am to 7:30 am and 5:30 pm to 8pm will create excessive pollution and noise from idling buses and cars. Snow conditions will have plows out between 4:30 am and 5:15 am adding “beep” dragging plows and horns to the noise. Also the parking lot may provide the newest “hang out” for teens on the weekends. Adding radios, loud noise and revving cars to the mix. There is to be constructed (12) twelve (20) twenty foot high light polls about the area. Other park and ride areas have no lights. Plaintiff’s home and houses directly behind the parking lot and three other homes will have lights glaring through their windows from 5:15 am until daylight and sun-down to 8 pm everyday.

Plaintiff states her deed grants her an easement to “free and reasonable access” to Lake Mahopac. The construction of the parking lot will interfere with that easement which goes “through the proposed park and ride and across Route 6.” These easements have been used by plaintiff and other residents for over 10 years. The pathways/easements have been open and notorious. The construction of an eight foot fence around the park and ride, deprives plaintiff of

the use of her easement.

Plaintiff states the construction site does not comply with the contractor's own Construction Guidelines and the project should be enjoined.

The planting of 6 trees in front of Plaintiff's residence to "hide" the noise etc. is woefully ineffective since the construction workers removed 150 trees.

Plaintiff requests the project be enjoined because she is being deprived of her right to live in a residential area and cannot access her recorded easement.

The State of New York indicates its only relation to this project is the funding. The NYSDOT receives the money from the federal government and transfers it to the County of Putnam.

The State takes no position on the substantive issues raised in the motion.

In opposition the County states "plaintiff fails to state any cognizable claim with respect to the planning and development of the proposed parking lot in question."

Defendant County alleges plaintiff's challenge to the determination made by the County and the environmental impact should have been raised within the statute of limitations for SEQRA review. Defendant alleges plaintiff's easement is nowhere near the proposed parking lot. The cases cited by plaintiff "actually excuse the County from any alleged violation of local ordinances.

Defendant alleges considering "the amount of time, energy and funds that have already been expended by the County in planning and developing the commuter parking lot project, as well as the potential cost in delaying such a project, the balance of equities certainly favors the continuation and completion of the project."

In 2001 the County accepted the State's request to construct or expand park and ride lots. Seven sites were proposed. By 2002, two of those sites were withdrawn and three other proposed-Route 6-Mt. Hope Road being one of them.

In December 2002 a public hearing was held. The Town of Carmel owned several parcels of the land in question. The meeting was attended by a representative of the County Planning Department, project engineer and individual homeowners whose lots would be purchased for the construction of the Mt. Hope park and ride. Defendant annexes a copy of the transcript of that hearing.

The County of Putnam became the lead agency for the project. On February 4, 2003, it completed its SEQRA review of the three proposed lots, including Rt. 6/Mt. Hope Road and the Putnam County Legislature adopted a Negative Declaration with respect to all three location. The County then went about purchasing the land including that parcel owned by the Town of Carmel.

In June 2006 the Town Board of the Town of Carmel issued a "Resolution Authority Sale of Town Property for Access to County Owned Commuter Parking Lot." The final sale took place in May 2007.

Defendant states any challenges to SEQRA determination must be made by an Article 78 proceeding within "four months of the final determination of the agency." The SEQRA review of Mt Hope Road lot was completed and finalized in February 2003. Plaintiff's challenge should have been filed by June 2003. Plaintiff's challenge raised six years after finalization must be dismissed.

Defendant claims in the case of a negative declaration no notice of and no public hearings

required. Therefore plaintiff's claim that she was never given notice of the proposed construction or of the public hearing regarding the project has no basis.

Furthermore, defendant states notices of the December 2002 hearing was published in October 2002. Also between 2002 and 2006 the Putnam County Legislature and the Town Board of the Town of Carmel discussed the project at various public meetings.

Defendant further states applying the "balancing of public factors" test in the case of "County of Monroe v City of Rochester, 72 NY2d 338, "it is clear that the project is not subject to the restrictions set forth in the Town of Carmel's local ordinances." In this instance there was intergovernmental participation and the Town sale of property to the County, "it is clear that the Town of Carmel has already exempted the County [from] the Town's zoning and wetlands regulations."

A review of plaintiff's deed regarding her easement indicates the easement lies "between Lake Blvd. and Lake Mahopac which is two streets west of the Mt. Hope Road lot, not as plaintiff attempts to argue, on or part of the Mt. Hope Road lot or the proposed commuter parking lot thereon."

Plaintiff's claim that failure to adhere to Construction Guidelines warrants injunctive relief is misplaced. The problem complained of can be remedied "closing of the site, providing signage, parking the construction vehicles elsewhere and placing the construction material elsewhere."

Plaintiff has failed to show any irreparable injury. A parking lot has existed right next to the proposed site, for 25 years. The existing parking lot "apparently has not caused any problems for plaintiff during her twenty-five years of quiet enjoyment in her residence."

To enjoin this project will be a financial hardship. Over \$367,000 has been appropriated for the park and ride property, if the project is cancelled "the County will lose any and all state funding for the Hope Road lot project."

In reply plaintiff states she and 150 other residents have a deeded "Reservation of Interest" in the easement/right-of-way. The County should have been aware of this recorded interest and should have individually notified each resident by letter or certified mail.

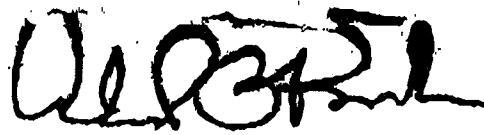
Plaintiff claims without notification the County "has taken plaintiff's valuable and irreplaceable property right to access over its parcel of land." Therefore plaintiff claims all actions "taken with respect to the "park and ride" at Mr.. Hope/Rte. 6 are void and of no force and effect."

After a review of all documents submitted the Court notes, Plaintiff has not addressed the defendants' proof that the recorded easement in the deeds is not effected by the site of the Park and Ride. The easement is specifically noted on the map (plaintiff's exhibit B in her Reply) and it is two blocks west of Mt. Hope Road lot. Plaintiff's easement is not effected.

The Court finds notice was given of the public hearing and a hearing was held, to wit, property owners near the MT. Hope area were present.

Plaintiff's order to show cause to permanently enjoin the construction of the Park and Ride at Mt. Hope/Route 6 is denied.

This constitutes the decision and order of the Court.



Andrew P. O'Rourke
Justice of the Supreme Court

Dated: May 15, 2009
Carmel, NY

Patricia Friederich
22 Greenfield Road
Mahopac, NY 10541

Gelardi and Randazzo LLP
800 Westchester Avenue Suite S 608
Rye Brook, NY 10573

Andrew Courno
Attorney General of the State of New York
101 East Post Road
White Plains, NY 10601