

Decided on December 6, 2011

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

MARK C. DILLON, J.P.
DANIEL D. ANGIOLILLO
ANITA R. FLORIO
THOMAS A. DICKERSON, JJ.

2010-11588
(Index No. 8225/10)

In the Matter of 92 MM Motel, Inc., et al., appellants,
v
Zoning Board of Appeals of Town of Newburgh, et al., respondents.

Corbally, Gartland and Rappleyea, LLP, Poughkeepsie, N.Y. (Jon Holden Adams of counsel), for appellants.
Dickover, Donnelly, Donovan & Biagi, LLP, Goshen, N.Y. (David A. Donovan of counsel), for respondent Zoning Board of Appeals of Town of Newburgh .

DECISION & ORDER

In a proceeding pursuant to CPLR article 78 to review a determination of the Zoning Board of Appeals of the Town of Newburgh, which granted an application of NOWAB Hotel, Inc., for certain area variances in relation to the proposed construction of a hotel, the petitioners appeal from an order and judgment (one paper) of the Supreme Court, Orange County (Bartlett, J.), dated October 5, 2010, which granted the motion of the Zoning Board of Appeals of the Town of Newburgh, and the separate motion of NOWAB Hotel, Inc., pursuant to CPLR 3211(a)(5) to dismiss the proceeding as time-barred and dismissed the proceeding, with prejudice.

ORDERED that the order and judgment is affirmed, with costs.

The respondent NOWAB Hotel, Inc. (hereinafter NOWAB), is the owner of a hotel situated on approximately 12 acres of land at 90 Route 17K in the Town of Newburgh. NOWAB applied for area variances in relation to its proposed construction of another hotel on a lot to be subdivided from the property. At a meeting held on May 27, 2010, the Zoning Board of Appeals of the Town of Newburgh (hereinafter the ZBA) granted NOWAB's application and determined that the area variances involved a type II action not subject to review under the State Environmental Quality Review Act (ECL art 8 [hereinafter SEQRA]). Each board member's vote was duly recorded. The minutes from this meeting were filed in the office of the Town Clerk on June 10, 2010, and a written decision was filed with the Town Clerk on June 29, 2010. On July 26, 2010, the petitioners, who own homes and businesses in proximity to NOWAB's property, commenced this proceeding pursuant to CPLR article 78 to challenge the ZBA's determination. The ZBA and NOWAB (hereinafter together the respondents) each made a pre-answer motion pursuant to CPLR 3211(a)(5) to dismiss the proceeding as time-barred pursuant to the 30-day limitations period specified in Town Law § 267-c(1).

A proceeding pursuant to CPLR article 78 seeking review of any determination of a zoning board of appeals "shall be instituted within thirty days after the filing of a decision of the board in the office of the town clerk" (Town Law § 267-c[1]). Likewise, a proceeding challenging [*2] a determination based on alleged violations of SEQRA is to be commenced within the applicable 30-day limitations period following "a decision that renders final the consideration of SEQRA issues" (*Matter of Save the Pine Bush v Zoning Bd. of Appeals of Town of Guilderland*, 220 AD2d 90, 94 [internal quotation marks omitted]). The minutes of a meeting, in which a determination is made and each board member's vote is set forth, constitutes the decision of a zoning board of appeals, and the filing of those minutes commences the running of the statute of limitations (*see Matter of Kennedy v Zoning Bd. of Appeals of*

Vil. of Croton-on-Hudson, 78 NY2d 1083, 1084-1085; *Matter of Mosher [Town of Southport Zoning Bd. of Appeals]*, 5 AD3d 840, 841; *Matter of Sullivan v Dunn*, 298 AD2d 974; *Matter of Casolaro v Zoning Bd. of Appeals of Vil. of Elmsford*, 200 AD2d 742).

Here, the 30-day limitations period of Town Law § 267-c(1) commenced to run on June 10, 2010, when the minutes of the ZBA's meeting of May 27, 2010, were filed in the office of the Town Clerk. The petitioners untimely commenced the proceeding more than 30 days later, on July 26, 2010. Contrary to the petitioners' contention, their allegation that the ZBA made an erroneous SEQRA determination failed to establish a jurisdictional defect which tolled the limitations period ([*see 420 Tenants Corp. v EBM Long Beach, LLC*, 41 AD3d 641](#), 643). Accordingly, the Supreme Court properly granted the respondents' motions pursuant to CPLR 3211(a)(5) to dismiss the proceeding as time-barred and dismissed the proceeding, with prejudice.

DILLON, J.P., ANGIOLILLO, FLORIO and DICKERSON, JJ., concur.

ENTER:

Aprilanne Agostino

Clerk of the Court