

FILED
AND ENTERED
ON 4/1 2013
WESTCHESTER
COUNTY CLERK

SUPREME COURT STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THOMAS SIMONE, RMA ENTERPRISES, ROBERT
ARMANINI, and HOLLY CROSSIE-FOOTE,

Petitioners-Plaintiffs,

against-

Decision & Order
Index No.: 7194/2010

THE VILLAGE OF CROTON ON HUDSON,
THE VILLAGE BOARD OF TRUSTEES of the
VILLAGE OF CROTON ON HUDSON and its individual
members in their official capacity as Trustees, THIRTY-SIX
ONEIDA AVENUE COMPANY, ANTONIO TUCCI and
SARINA TUCCI, as Trustees, or their successors in trust,
under the TUCCI LIVING TRUST, TUCCI LIVING TRUST,
BRENDA, LLC, FAY PAPPAS, JOHN PAPPAS, JOHN
PALLADINO, JANICE SWERDLOFF, KUSSA CORP.,
KARL FRANK, MAF REALTY, LTD., also known as
MAF REALTY LTD., ZEV NREGA, ZOJA NREGAL,
SUNG SING REALTY CORP., J&E SERVICE, INC.,
LITTLE GIRL REALTY LLC., DOMINICK ANFITEATRO and
PATRICIA M. ANFITEATRO, as TRUSTEES of the
DOMINICK ANFITEATRO LIVING TRUST, DOMINICK
ANFITEATRO LIVING TRUST, MAF HOLDINGS #1 LLC,
SHIRLEY PERILLO, JOSEPH S. BORGES ENTERPRISES, LLC.,
J P J ENTERPRISES, INC., also known as JPJ ENTERPRISES,
INC., RIVERSIDE REALTY OF CROTON CORP., GUPPY
REALTY CORP., RONALD NAPOLITANI, KPT RIVERSIDE
REALTY, LLC., DEVENDRA K. SHARMA, KANWAL SHARMA,
LVM REALTY CORP., DR. CYNTHIA C. ELDREDGE, also
known as CYNTHIA ELDREDGE, and DAJA VIFW REAL
ESTATE, INC.,

Respondents-Defendants,

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CACACE, J.

This is a hybrid proceeding pursuant to §3001 and Article 78 of the Civil Practice Law and Rules wherein petitioner seeks a judgment annulling a determination by the respondent, The Board of Trustees of the Village of Croton on Hudson which enacted the Local Law 1 of the Year 2012 which made certain changes to the Zoning law of the Village

and declaring that the adoption of said law violates provisions of New York State Law and is invalid.

The Village of Croton on Hudson adopted a Comprehensive Plan in 2003, pursuant to Village Law §7-722. The Comprehensive Plan called for the establishment of three commercial Gateway Districts at determined entry points into the Village. In 2004, the Village enacted legislation establishing these districts. The 2004 legislation included the implementation of overlay zoning regulations to address the particular conditions present in each of the gateway districts.

In 2007, Village officials and residents realized that the improvements envisioned by the Gateway legislation were not being achieved. There was community concern over persistent property vacancies and a large number of auto repair shops located in the Harmon Business District. The Harmon Business Development Committee ("HBDC") was formed to study the Harmon/South Riverside Gateway District and to make recommendations to the Village Board.

On November 16, 2009, the Village Board adopted Local Law 4 of 2009 which enacted several of the recommendations of the HBDC. This law was the subject of a CPLR Article 78 proceeding brought by the petitioners in this proceeding.

The original proceeding was settled by a stipulation staying the enforcement of the law pending the repeal of the 2009 law and the adoption of a replacement rezoning law.

In August, 2010, the Village Board began the review process for the proposed rezoning legislation. This review included a full Environmental Assessment pursuant to the State Environmental Quality Review Act ("SEQRA").

On August 9, 2010, the Village Board declared itself the Lead Agency for SEQRA

review. It also referred the draft of the proposed law to the Village Planning Board, the Waterfront Advisory Committee and the Westchester County Planning Board for review.

In March, 2011, the Village Board amended the proposed law in response to comments and recommendations received from the various governmental boards as well as from the public. Comments and recommendations resulted in another amendment to the proposed law in October, 2011. This amended law was again subjected to the environmental review process. The amended law was also referred to the Village and County Planning Boards and the Waterfront Advisory Committee for additional review and comment.

The Village Board considered the proposed law at its April 2, 2012 meeting. Counsel for the petitioners expressed her opposition to the proposal and submitted documentation challenging the findings of the environmental review. The Board held the item over to review the submitted documents.

On April 16, 2012, the Village Board issued a negative declaration under SEQRA.

On June 4, 2012 the Village Board passed a resolution adopting the proposed law which was filed as Local Law No. 1 of 2012.

The petitioners now bring this proceeding challenging that action.

Absent a showing that a determination of an administrative agency was arbitrary and capricious or unsupported by substantial evidence, the Court is obligated to sustain that agency's decision. The reviewing Court may not substitute its own judgment for that of the administrative agency (*Doyle v. Amster*, 79 NY2d 592; *Matter of Cowan v. Kern*, 41 NY2d 591; *Arceri v. Town of Islip Zoning Bd. of Appeals*, 16 AD 3d 411). It cannot be said that the determination of the respondents lacked a rational basis or was an abuse of discretion.

The board did not act in an arbitrary manner. This proposal was considered for more than four years and was the subject of almost continuous review and revision. The record consists of more than two thousand six hundred pages, the contents of which clearly show that the respondents acted in a deliberate and responsible manner taking into account and addressing each issue which reasonably needed to be considered.

The petitioners cite several areas where they contend the respondents erred in the conclusions reached or acted arbitrarily and capriciously, however the petitioners fail to meet their burden of establishing facts to support that argument.

The fact that one may disagree with an act does not make it arbitrary or capricious. The court does not find the actions of the respondents to be arbitrary or capricious or in violation of law.

Accordingly, the petition is denied.

The Court considered the following papers in connection with this application: (1) Summons dated October 12, 2012; (2) Notice of Amended and Supplemental Petition dated October 12, 2012; (3) Amended and Supplemental Petition and Complaint verified October 12, 2012; (4) Affidavit of Petitioner Thomas Simone sworn to October 9, 2012 with attached exhibits; (5) Affidavit of Petitioner Robert Armanini sworn to October 10, 2012; (6) Affidavit of Petitioner Holly Crosbie-Foote sworn to October 9, 2012 with attached exhibit; (7) Answer to Amended and Supplemental Petition and Complaint verified December 21, 2012; (8) Affidavit of Léo W. Wiegman sworn to December 21, 2012 with attached exhibits; (9) Affidavit of John Saccardi sworn to December 19, 2012 with attached exhibits; (10) Affirmation of Patricia Moran in support of Memorandum of law dated February 14, 2013 with attached exhibits; (11) Petitioner's Memorandum of Law in support.

of petition and complaint dated February 14, 2013; (12) Respondents memorandum of law dated February 14, 2013; (13) Petitioners' reply memorandum of law dated February 28, 2013; (14) Respondents' reply memorandum of law dated February 28, 2013; and (15) certified record.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York
April 1, 2013


HON. SUSAN CACACE

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Chief Clerk
Westchester County

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