



STATE OF NEW YORK
THIRD JUDICIAL DISTRICT
SUPREME COURT CHAMBERS
RENSSELAER COUNTY COURTHOUSE
80 SECOND STREET
TROY, NEW YORK 12180
(518) 283-6132

HON. MICHAEL H. MELKONIAN
JUDGE OF THE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE

JAIME CZAJKA LOURIDAS
LAW CLERK

JANE A. SPICKLER
SECRETARY TO JUDGE

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TO:

Kelly Pressler

FROM:

Jane

DATE:

4/14/15

FAX NUMBER:

845-778-5173

TOTAL PAGES INCLUDING THIS PAGE:

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RE:



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**JANE A. SPICKLER
SECRETARY TO JUDGE**

March 26, 2015

Hodgson Russ LLP
140 Pearl Street
Suite 100
Buffalo, New York 14202

Re: Town of New Paltz and Town Board of the Town of New Paltz, et al. v. Ulster County
Industrial Development Agency, et al.
Index No.: 14-2535

Counselor:

Enclosed please find the original Decision and Order in the above-entitled matters.

New rules from the Administrative Judge now require Chambers to return all original supporting papers to the County Clerk. Prevailing counsel, upon receipt of the original Decision and Order, must continue to file the same with the County Clerk, and then serve the appropriate parties with the Decision and Order with notice of entry.

If you have any questions or concerns, please feel free to contact Chambers.

Very truly yours,

Jane Spickler
Jane Spickler
Secretary to Judge

enclosure

cc Jacobowitz and Gubits, LLP
Harris Beach PLLC
Bond, Schoeneck and King, PLLC
Riseley & Moriello, PLLC
Beatrice Havranek
Nina Postupack, County Clerk

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ULSTER

TOWN OF NEW PALTZ AND TOWN BOARD OF
THE TOWN OF NEW PALTZ, SUSAN ZIMET,
KEVIN BARRY, JEAN GALLUCI, JEFF LOGAN and
DAN TORRES, each in his or her individual capacity,
Petitioners,

DECISION
AND
ORDER

-against-

ULSTER COUNTY INDUSTRIAL DEVELOPMENT
AGENCY, WILMORITE, INC., PARK POINT NEW
PALTZ, LLC, GOSHAWK, LLC, J.A.M. OF NEW
PALTZ, INC., FALL LINE LIMIT, LLC, MICHAEL A.
MORIELLO and JEAN MORIELLO, COUNTY OF
ULSTER, and NEW PALTZ CENTRAL SCHOOL
DISTRICT,

Respondents.

(Supreme Court, Ulster County, Motion Term, February 3, 2015)

Index No. 14-2535

(RJ1 No. 55-14-01524)

(Acting Justice Michael H. Melkonian, Presiding)

APPEARANCES: Jacobowitz and Gubits, LLP
Attorneys for Petitioners the Town of New Paltz, the
Town Board of the Town of New Paltz, Susan
Zimet, Kevin Barry, Jean Gallucci, Jeff Logan and
Dan Torres
(George Lithco, Esq., J. Benjamin Gailey, Esq., of
Counsel)
158 Orange Avenue
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Harris Beach PLLC
Attorneys for Respondents Wilmorite, Inc. and Park

Point New Waltz, LLC
(Joseph D. Picciotti, Esq., John A. Mancuso, Esq.,
of Counsel)
99 Garnsey Road
Pittsford, New York 14534

Bond, Schoeneck and King, PLLC
Attorneys for Respondent Goshawk, LLC
(Kevin Recchia, Esq., of Counsel)
350 Linden Oaks
Suite 310
Rochester, New York 14625

Riseley & Moriello, PLLC
Attorneys for Respondents J.A.M. of New Paltz,
Inc., Fall Line Limit, LLC, Michael A. Moriello and
Jean Moriello
(Michael A. Moriello, Esq., of Counsel)
111 Green Street
Kingston, New York 12402

Hodgson Russ LLP
Attorneys for Respondent Ulster County
Development Authority
(Daniel Spitzer, Esq., of Counsel)
140 Pearl Street
Suite 100
Buffalo, New York 14202

Beatrice Havranek, Ulster County Attorney
Attorney for Respondent the County of Ulster
(Clinton G. Johnson, Esq., First Assistant County
Attorney, of Counsel)
244 Fair Street
PO Box 1800
Kingston, New York 12402

New Paltz Central School District
No Appearance

MELKONIAN, J.:

Petitioners commenced this combined declaratory judgment action/CPLR article 78 proceeding seeking a judgment annulling a determination of respondent the Ulster County Industrial Development Authority approving a Payment in Lieu of Tax Agreement ("PILOT") with respect to an off-campus residential development for State University of New York at New Paltz students, faculty and staff (the "Park Point project") to be constructed in the Town of New Paltz.

At the time petitioners filed this petition, a separate proceeding was pending seeking to annul the determination of the Planning Board of the Town of New Paltz (the "Planning Board") denying approval of the Park Point project. In a Decision and Order dated March 17, 2015, this Court held that the Planning Board's denial of the project was indeed supported by the record and dismissed the petition.¹

Here, the relief sought by petitioners in this proceeding, if granted, would result in the voiding of PILOT granted to respondent Park Point New Paltz, LLC. The project, if it had been approved, would thereby become subject to full taxation. However, inasmuch as the Park Point project has not been approved, the tax exemptions granted by the IDA will have no application to the real property at issue.

¹In dismissing the petition, this Court held that while the IDA possesses the authority to grant tax exemptions, the Planning Board under SEQRA simultaneously possesses the authority to determine that the revenue provided by the PILOT to the Town of New Paltz is insufficient to mitigate the fiscal impacts of the project. Recently, in Troy Sand & Gravel Co., Inc. v Town of Nassau, 125 AD3d 1170 (3rd Dept. 2015), the Third Department reaffirmed the authority of two permitting agencies to reach different conclusions based upon the same Environmental Impact Statement.

Accordingly, without addressing the merits of the parties' standing or limitations claims, this Court finds that the denial of the proposed Park Point project by the Planning Board renders the tax instant proceeding moot.

Accordingly, it is **ORDERED** and **DECLARED** that the petition is dismissed in its entirety without costs.

This constitutes the Decision and Order of the Court. This Decision and Order is returned to counsel for respondent the Ulster County Industrial Development Agency. All other papers are delivered to the Supreme Court Clerk for transmission to the County Clerk. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of this rule with regard to filing, entry and Notice of Entry. This Memorandum constitutes the Decision and Order of the Court.

SO ORDERED.
ENTER.

Dated: Troy, New York
March 23, 2015


MICHAEL H. MELKONIAN
Acting Supreme Court Justice

Papers Considered:

- (1) Notice of Petition dated August 11, 2014;
- (2) Petition dated August 11, 2014, with exhibits annexed;
- (3) Notice of Motion dated September 8, 2014;
- (4) Affirmation of Clinton G. Johnson, Esq., dated September 8, 2014;
- (5) Affidavit of Victoria A. Fabella dated September 8, 2014;
- (6) Memorandum of Law;
- (7) Affidavit of Michael Calimano dated October 9, 2014, with exhibits annexed;

- (8) Affidavit of Susan Zimet dated October 9, 2014, with exhibits annexed;
- (9) Affidavit of Lorry King dated October 9, 2014, with exhibits annexed;
- (10) Amended Verified Petition/Complaint dated October 10, 2014, with exhibits annexed;
- (11) Memorandum of Law;
- (12) Notice of Motion to Dismiss dated October 30, 2014;
- (13) Affirmation of Clinton G. Johnson, Esq., dated October 30, 2014;
- (14) Affirmation of J. Benjamin Gailey, Esq., dated November 26, 2014, with exhibit annexed;
- (15) Affidavit by Michael Horodyski dated December 11, 2014, with exhibits annexed;
- (16) Affidavit of Michael J. Bernholz dated December 12, 2014, with exhibits annexed;
- (17) Notice of Motion to Dismiss and/or for Summary Judgment dated December 15, 2014;
- (18) Answer of Respondent Goshawk, LLC dated December 15, 2014;
- (19) Affirmation of Thomas W. Daniels, Esq., dated December 15, 2014, with exhibits annexed;
- (20) Answer of Respondents Wilmorite, Inc. and Park Point New Paltz, LLC dated December 15, 2014;
- (21) Answer of Jam of New Paltz, Fall Line Limit, LLC, Michael A. Moriello and Jean Moriello dated December 15, 2014;
- (22) Joint Memorandum of Law;
- (23) Answer of Respondent the Ulster County Industrial Development Agency dated December 15, 2014, with exhibits annexed;
- (24) Reply Affirmation of Clinton G. Johnson, Esq., dated December 15, 2014;
- (25) Affidavit of Robert Sudlow dated December 15, 2014;
- (26) Notice of Cross-Motion for Summary Judgment dated January 16, 2015;
- (27) Affirmation of J. Benjamin Gailey, Esq., dated January 16, 2015, with exhibits annexed;
- (28) Affidavit of Lorry King dated January 15, 2015, with exhibit annexed;
- (29) Memorandum of Law;
- (30) Affirmation of Joseph D. Picciotti, Esq., dated February 6, 2015, with exhibits annexed;
- (31) Certification of Administrative Record and Administrative Record.



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