

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

PRESENT:  
HON. WILLIAM A. KELLY  
SUPREME COURT JUSTICE

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In the Matter of the Application of  
RAMAPO TOWERS OWNERS CORP.,  
Petitioner,

Index No. 34684/2014

DECISION and ORDER

-against-

ZONING BOARD OF APPEALS OF THE  
VILLAGE OF SPRING VALLEY, *et al.*,

Respondents.

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The following papers were read on the petitioner’s motion for a preliminary injunction and on the motion by respondent Menashe Horowitz to dismiss the petitioner’s Article 78 proceeding:

Order to Show Cause - Paris Affidavit - White Affidavit - Exhibit A (Notice of Petition and Petition with Exhibits A-K) - Memorandum of Law	1-3
Miles Affirmation in Opposition	4
Notice of Motion - McCreedy Affidavit - Exhibits A-Q - Horowitz Affirmation - Exhibits A-F - Licata Affirmation - Exhibits A&B - Memorandum of Law	5,6

Finger Affirmation in Opposition	7
Richmond Affirmation in Reply	8

Upon the foregoing, it is hereby ORDERED that the petitioner's motion for a preliminary injunction is denied; and Mr. Horowitz' motion to dismiss the petition is granted on the ground of laches.

On July 13, 2011, respondent Menashe Horowitz obtained from the Zoning Board of Appeals of the Village of Spring Valley ("ZBA") variances for the construction of two buildings with a total of 36 units on a parcel of property known as 275-287 Route 59, in Spring Valley, New York. On September 1, 2011, the Spring Valley Planning Board gave final site plan approval to the project. After an extension of the variances, work on the project began in July, 2013.

The petitioner, whose property is adjacent to the project, commenced this Article 78 proceeding seeking to have the various approvals for the project declared void and to enjoin further construction. Mr. Horowitz has moved to dismiss the petition on the grounds that (1) the proceeding is time-barred, (2) the petitioner is guilty of laches, (3) the petitioner failed to exhaust its administrative remedies, (4) the petitioner's claims are barred by the doctrine of vested rights, and (5) the petition fails to state a cause of action.

With respect to the timeliness of the proceeding, Mr. Horowitz has not

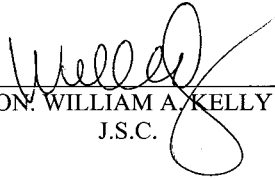
conclusively established that the minutes of the relevant ZBA and Planning Board meetings were filed with the Village Clerk, triggering the statute of limitations. Nonetheless, on the issue of laches, Mr. Horowitz has established that in 2011, notice of the relevant proceedings were mailed to the petitioner, posted on the property, and published in the local newspaper; and that work on the site was begun shortly after a building permit was issued in July, 2013. This work was well within view of the petitioner's property, and when this proceeding was commenced, the foundation of Building A was in place and the walls framed. By waiting until October, 2014, to commence this proceeding, the petitioner was guilty of laches. *See Caprari v Town of Colesville*, 199 AD2d 705 (3d Dept 1993).

In view of this determination, the Court need not address Mr. Horowitz remaining grounds for dismissal.

This decision shall constitute the Order of the Court.

ENTER

Dated: New City, New York  
December 03, 2014

  
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HON. WILLIAM A. KELLY  
J.S.C.

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