

permit the MC Overlay District to extend beyond the boundaries of the HVPC campus and to include lands “substantially contiguous” to the MC District.

2. The amendment to the proposed local law to expand the scope of lands that could be included in the MC District was not included in the Notice of the Public Hearing for the local law in violation of the N.Y. Municipal Home Rule Law § 20(5). The amended proposed local law was not provided to the Dutchess County Planning Board in violation of New York General Municipal Law §239-m. Furthermore, the text of the amendment to proposed local law was not provided to all of the members of the Town Board until the afternoon of February 27th, the same day the law was adopted. The last minute submission of materially different language for the local law was in violation of N.Y. Municipal Home Rule Law § 20(4). The Town Board also violated §149-69(B) of the Dover Zoning Law by failing to forward the proposed amendment regarding expansion of the MC Overlay District to the Town Planning Board.

3. The last minute amendment to the local law was a blatant attempt to sneak in a material and substantive change to the scope of the MC Overlay District without providing adequate notice to the public, local planning agencies or even all of the members of the Town Board itself. Due to the fundamental violation of basic procedural requirements associated with the adoption of changes to a zoning law and the process for adopting local laws, Local Law No. 1 of 2008 must be annulled.

PARTIES

4. Petitioner Coalition for the Responsible Growth of Dover (“Coalition”) is an unincorporated association in Dover, New York. The Coalition is dedicated to the responsible and sustainable development and redevelopment of the Town of Dover and surrounding areas that directly effect the quality of life and the environment of Dover. The Coalition supports land

use planning that protects the character of the town, preserves open spaces, protects the local environment, habitat, water quality and ecology and particularly protects the Great Swamp and the Housatonic Valley Watershed. The Coalition supports development plans, including redevelopment of the Harlem Valley Psychiatric Center of a scale and nature that is compatible with the Town and will not present burdens to the Town's infrastructure or significantly adversely impact the environment. Carolyn B. Handler is the President of the Coalition.

5. The Coalition has numerous members who live, own property or recreate in the Town of Dover and surrounding areas that may be impacted by improper development within the Town. Some members of the Coalition live adjacent to and others are in close proximity to the HVPC property. The illegal amendment of the MC Overlay District will directly impact members of the Coalition by permitting the Town Board to extend the Overlay District beyond the boundaries of the HVPC property thus resulting in a type and density of development that would not otherwise be permitted under the zoning code. Coalition members were harmed by the Town Board's violation of the Municipal Home Rule by not having adequate notice of the nature of the proposed amendment and by not allowing all of the members of the Town Board sufficient time to consider the proposed amendment. Members of the Coalition were also harmed by the inadequate referral and notice to the Dutchess County Planning Board. Members of the Coalition were also harmed by the Town Board's failure to provide proper notice to the Town Planning Board preventing the Town Planning Board from commenting upon the proposed amendment.

6. Petitioner Barbara Clay lives at 194 Leather Hill Road in the Town of Dover, immediately adjacent to the HVPC property. Ms. Clay's property is a 170 acre farm. Ms. Clay is also a member of the Coalition. She has been closely interested in proposals to redevelop the

HVPC property in the MC Overlay District. She had no advance knowledge of the proposed amendment to permit the inclusion of lands adjacent to the HVPC property within the MC Overlay District. Permitting the expansion of the MC Overlay District could not only effect her property directly, as it is contiguous to the HVPC property, but other properties adjoining hers that are also contiguous to HVPC. She could be faced with development of far greater density and uses which are inconsistent with existing zoning restrictions. Ms. Clay was denied notice of the proposed amendment and denied the protections afforded by Municipal Home Rule Law § 20, General Municipal Law § 239-m and Sec. 145-69 of the Town Zoning Law since not all of the Town Board members, and the County and Town Planning Boards were not informed of the amendment and afforded an opportunity to comment.

7. Upon information and belief Respondent Town Board of the Town of Dover is the duly elected and constituted legislative body of the Town of Dover empowered to adopt local laws. The principal place of business of Respondent is at 126 East Duncan Hill Road, Dover Plains, New York.

VENUE

8. This proceeding is venued in Dutchess County as it is the county where the Town of Dover is located and where the actions of concern here occurred.

THE ADOPTION OF LOCAL LAW NO. 1

9. The Dover Zoning Law provides for the Mixed-Use Institutional Conversion Overlay District (MC), Zoning Law § 145-16 whose purpose “is to facilitate the redevelopment of the former Harlem Valley Psychiatric Center as a mixed-use community that fulfills the goals of the Town of Dover Master Plan . . .”.

10. The MC Overlay District allows the for a greater variety of uses and greater density and size of buildings than would otherwise be allowed in the underlying zone, in order to facilitate the kind of mixed-use development that the Zoning Law recognized was conducive to the site.

11. Prior to the adoption of Local Law No. 1 of 2008, § 145-16 provided a two-step approval process. The Town Board had authority to approve a conceptual site plan and a comprehensive development plan and any necessary zoning amendment associated with the plan and the Planning Board had site plan authority for the actual development.

12. For several years the Town Board had been in the process of considering a proposal for the redevelopment of the HVPC. The project was known as the Knolls of Dover and was proposed by the Benjamin Companies.

13. In August 2007, the Benjamin Companies abruptly withdrew its application under the MC Overlay District due to its perception that the Town Board was hostile to the application.

14. In January 2008 a new Town Board including a new Supervisor took office in Dover.

15. On January 15, 2008, shortly after taking office, the new Town Board moved to amend the MC Overlay District and passed a resolution directing the Town Attorney to draft an amendment to §145-16 to vest complete authority in the Town Board.

16. On January 23, 2008, the Town Board accepted a draft local law entitled “A Local Law Amending the Procedures for Applications in the Mixed-Use Institutional Overlay District” and passed a resolution setting a public hearing on the draft local law for February 27, 2008 and directing that the draft local law be referred to the Dutchess County Planning Board pursuant to

General Municipal Law §239-m and to the Dover Planning Board pursuant to Zoning Law § 145-69.

17. The text of the draft local law accepted on January 23rd and circulated for comment consisted of six sections. Section 1 of the draft contained the Purpose and Intent and stated that it was designed to further streamline the approval process by keeping all of the approval authority for conceptual site plan, comprehensive development plan and site plan approval with the Town Board. The Town Board would refer the project to the Planning Board for review and recommendation, but the Town Board would retain sole approval authority.

18. The other five sections of the draft local law consisted of amendments to § 145-16 to substitute Town Board for most references to the Planning Board reflecting the Town Board's assumption of the Planning Board's site plan approval authority and providing the mechanism for the review and recommendations by the Planning Board.

19. Other than the procedural changes shifting approval authority to the Town Board, there were no substantive amendments proposed to the MC Overlay District.

20. By letter dated February 1, 2008 the Dutchess County Planning Board informed the Town Board that based upon its review it determined the proposed amendment to § 145-16 was a matter of local and not county concern.

21. The Town Clerk posted a Notice of the Public Hearing and caused to have it published in the Poughkeepsie Journal. Both notices set forth the time and place of the public hearing and stated that the purpose of the public hearing is “ to consider an amendment to the Article IX, Chapter 145-16 of the Zoning Code for the Town Board to assume Site Development Plan Approval from the Planning Board for projects located in the MC Overlay District (the “Zoning Text Amendment”) and to consider information relevant to any potential environmental

impact of the proposed action. A copy of the zoning Text Amendment may be seen at Town Hall in the office of the Town Clerk”.

22. On February 25, 2008 the Planning Board met to consider the proposed amendment to the Zoning Law. The Planning Board unanimously voted to recommend that the Town Board not adopt the proposed the amendment and specifically included comments about the inadequate time allotted for the Planning Board to review and comment on proposed applications, the lack of information sharing and the absence of affirmative statements that the Town Board would give serious consideration to the Planning Board’s comments.

23. On February 27, 2008 the Town Board opened the Public Hearing on the proposed zoning amendment. At the beginning of the hearing, the Town Supervisor announced that there was an revised draft of the local law. That revised version of the local law was only provided to the Town Board members either late in the afternoon of that day or at the hearing that evening.

24. The January 23rd draft of local law that had been publicly noticed had six sections. The amended draft local law had nine sections.

25. The Town Supervisor asked the Town Attorney to review the amendments.

26. Michael Liguori, the Town Attorney briefly explained the proposed changes. He explained that many of them were in response to comments of the Planning Board and were intended to provide the Planning Board more time for review of the plans and to assure that the Planning Board received timely copies of the plans.

27. Mr. Ligouri also explained that Section 4 of the amended local law contained a new amendment to § 145-16(C)(2) which would allow lands outside of the MC Overlay District,

beyond the boundaries of the HVPC to be treated as part of the MC Overlay District and be rezoned as part of the comprehensive development plan.

28. Mr. Ligouri explained that while no application for Dover Knolls was currently pending, there had been discussions with Benjamin Companies and the Town Board was aware that a new application would be submitted shortly and that it would include lands outside the MC Overlay District and outside the HVPC. Mr. Ligouri claimed that since an application was being submitted to include lands beyond HVPC, then the zoning law should be changed now to permit lands contiguous to be included in the comprehensive development plan. Mr. Ligouri claimed that this was not a substantial change.

29. Mr. Ligouri did not state who requested the change in the draft law.

30. The new amendment was to the first sentence of §145-16(C)(2). Before amendment, that sentence provided:

The Town Board may, by zoning amendment in its sole discretion, rezone all or a portion of the MC District pursuant to a comprehensive development plan for a portion of the property that includes at least 40 acres.

31. As amended, the sentence provided:

The Town Board may, by zoning amendment in its sole discretion, rezone all or a portion of the MC District and rezone lands substantially contiguous to the MC District pursuant to a comprehensive development plan for a portion of the property that includes at least 40 acres.

32. There were no comments submitted on the original draft local law requesting the change in §145-16(C)(2).

33. Copies of the amended draft of Local Law No. 1 were not available to the public, were not posted at the Town Hall and had not been provided to the County or Town Planning Boards.

34. Many members of the public during the hearing commented about their surprise upon hearing of the inclusion of lands outside the HVPC and objected to not having a copy of the proposed language or an opportunity to consider its significance before the public hearing.

35. Two members of the Town Board also objected to only receiving the revised local law that afternoon and not having an opportunity to fully consider the amendments.

36. Those members also stated they had no advance knowledge of the plan to include lands outside the MC District.

37. Despite the objections the Supervisor proceeded to move the adoption of the local law and the law was adopted by a 3-2 vote. The Town Board members who objected to not having received copies of the amended local law voted nay.

38. The local law continued to be entitled “A Local Law Amending the Procedures for Applications in the Mixed-Use Institutional Overlay District”.

39. The law was far more than an amendment to procedures. It now contained a major substantive change that could bring large parcels of land within the MC Overlay District.

AS AND FOR A FIRST CAUSE OF ACTION

40. Petitioners repeat and reallege the allegations set forth in Paragraphs 1 through 39 as if fully set forth herein.

41. The amendment to the local law to include the amendment of §145-16(C)(2) was a substantial and significant change to the scope and content of the local law. The amendment

for the first time extended the reach of MC Overlay District beyond the boundaries of the Harlem Valley Psychiatric Center and dramatically altered the scope of the lands that could be included.

42. Copies of the amended Local Law were not available in a timely manner before the public hearing.

43. Notice of the public hearing only indicated procedural changes in the consideration of applications for the MC Overlay District.

44. Notice of the substantial change in the scope of the Local Law was not properly made as required by N.Y. Municipal Home Rule (“MHRL”) § 20(5).

45. Failure to provide proper public notice of the scope of the local law requires that Local Law No. 1 of 2008 be annulled.

AS AND FOR A SECOND CAUSE OF ACTION

46. Petitioners repeat and reallege the allegations set forth in Paragraphs 1 through 45 as if fully set forth herein.

47. MHRL §20(4) mandates that no local law “shall be passed until it shall have been in its final form and either (a) upon the desks or table of the members at least seven calendar days, exclusive of Sunday, prior to its final passage, or (b) mailed to each of them...at least ten calendar days, exclusive of Sunday, prior to its final passage.”

48. The final form of Local Law No. 1 of 2008 was not presented to the members of the Town Board until February 27, 2008, the date the law was passed.

49. The final form provided of the local law was materially and substantially different than the version previously placed on the desks of the Town Board members on January 23, 2008.

50. The final form of the local law, specifically Section 4 of Local Law No. 1 of 2008, contained elements and provisions that had not been previously contemplated or discussed by the Town Board and materially expanded the scope of the MC Overlay District.

51. Local Law No. 1 of 2008 must be annulled as being adopted in violation of MHRL § 20(4).

AS AND FOR A THIRD CAUSE OF ACTION

52. Petitioners repeat and reallege the allegations set forth in Paragraphs 1 through 51 as if fully set forth herein.

53. Respondent violated General Municipal Law § 239-m by failing to provide the County Planning Board with a full statement of the proposed action that was being referred.

54. General Municipal Law §239-m(1)(c) states that The term “full statement of such proposed action” shall mean all materials required by and submitted to the referring body as an application on the proposed action . . . When the proposed action referred is the adoption or amendment of a zoning ordinance or local law, “full statement of such proposed action” shall also include the complete text of the proposed ordinance or local law as well as all existing provisions to be affected thereby, if any, if not already in the possession of the county planning agency or regional planning council [Emphasis added]

55. The County Planning Board was not provided a copy of the February 27th version of the local and was not provided notice of the intent to extend the scope of the MC Overlay District.

56. The change to the local law was not simply a procedural change but affected the zoning of a significant area of land that could have changed the view of the County Planning Board regarding the proposed amendment to the zoning law.

57. Failure to properly provide the County Planning Board with the complete text of the proposed amendment and to inform them of the substantive change to the zoning law is a violation of General Municipal Law § 239-m and requires annulment of Local Law No. 1.

AS AND FOR A FOURTH CAUSE OF ACTION

58. Petitioners repeat and reallege the allegations set forth in Paragraphs 1 through 57 as if fully set forth herein.

59. Section 145-69(B) of the Town of Dover Zoning Law requires proposed amendments to the zoning law to be referred to the Town Planning Board for review and recommendation.

60. The Town Board only provided the January 23rd version of the proposed amendment to the Planning Board.

61. The Planning Board was not informed that the Town Board was considering an amendment to §145-16(C)(2) of the zoning law and changing the reach of the MC Overlay District to include properties “substantially contiguous” to the MC District.

62. The Town Board’s failure to circulate the complete draft of the proposed zoning amendment to the Town Planning Board was a violation of §145-69 of the Town of Dover Zoning Law and requires the annulment of Local Law No. 1 of 2008.

WHEREFORE, Petitioners demand judgment:

- (1) Annuling Local Law No. 1 of 2008
- (2) Awarding Petitioners the costs and disbursements of this action; and
- (3) Granting such other and further relief as this Court deems just and proper

Dated: March 28, 2007
Albany, New York

**YOUNG, SOMMER, WARD, RITZENBERG,
BAKER & MOORE, LLC**

By: _____

Jeffrey S. Baker, Esq.
Attorneys for Petitioners
Executive Woods
5 Palisades Drive
Albany, New York 12205
(518) 438-9907
(518) 438-9914 (fax)

