

1 ***MINER V. TOWN OF DUANESBURG, ET AL***

2 questions to you. He knew this was the position being
3 taken by the town through the zoning enforcement officer,
4 code enforcement officer, whatever you want to call him
5 and ultimately the planning board and throughout the
6 entire stage here he knew because he was trying to
 acquire

7 it himself for his own property and he had notice and,
 you

8 know, you're to be knowledgeable about the law especially
9 if you're interested in acquiring the site. You talk
10 about them being in bad faith; they should have known
 this

11 didn't qualify under a special use. He should have known
12 too. He was talking to them. He didn't look at it but he
13 knew the position they were taking and as I said to you,
14 his recourse was to appeal that to the Zoning Board of
15 Appeals. That's where you go with an interpretation of a
16 Zoning Board.

17 MR. GIACALONE: At what point, your Honor?

18 I don't understand.

19 THE COURT: He could have brought it at

20 any
21 point that he became knowledgeable about it or even after
22 the Planning Board. I'm not going to say whether the
 statute would have run or not run after the Planning
 Board

23 made a decision whether it had run but he could have done
24 it then. He didn't do it because he knew that they were
25 accepting this. They took a position. Clearly I guess
it

1 **MINER V. TOWN OF DUANESBURG, ET AL**

2 came up during the hearing that their job, their function
3 was not to interpret whether or not it complied with the
4 special use. That was the code enforcement officer's
5 position and they were merely to go forward and as the
6 lead agency determine the SEQOR process. They ultimately
7 made a negative declaration, said there were no adverse
8 impacts on the environment. They said this was a
9 commercial zone. They said the existing neighborhood,
10 welding, whatever establishments were there was complied
11 with. They said there was a facility down the road that
12 did the same thing, had the same kind of a facility as
13 Jeff has now said, another C-1 zone and they took a hard
14 look. They said for what they believe their function was,
15 they said this is in compliance with our review of the
16 zoning ordinance and, you know, this question of
17 interpretation, oh, it's very clear, retail store and
18 shop, this doesn't comply. This was the code enforcement
19 officer's call. He made the call and there can be -- you
20 can make an argument both ways, right, wrong, they're
21 selling some to retail, yes, it's a transfer station but
22 is it retail? There's another one down the road. He made
23 the call and it was his call and I think that failing to
24 appeal to the zoning board and I said to you at both
25 stages of this proceeding that he failed to exhaust his

1 ***MINER V. TOWN OF DUANESBURG, ET AL***

2 administrative remedies and he should be precluded to
3 bring it forth at this time in an Article 78 proceeding.
4 This is a measure that would be absolutely unfair at this
5 point in time to the town and to Long, in my view. I've
6 also -- I also believe that the town did take a hard look
7 under SEQOR. I talked about the equitable part of it.

8 Now I'm going to talk about the technical
9 part of it, zoning ordinance. I said they looked,
10 commercial zone, one down the road, Route 20, character
of

11 neighborhood, no negative environmental impact. They
12 looked -- you argue about, well, they said they put up a
13 fence but they are in compliance, setbacks, sideline,
fire

14 safety code. The town looked at it. They said we're
15 satisfied. This is in compliance and so I think that the
16 safety analysis was made here.

17 Furthermore, in looking at it now with the
18 special use permit that was granted, looking at the --at
19 what the planning board did in terms of any buffer that
20 they called for, I think they made a good faith review of
21 the zoning ordinance. I do not think this was an
22 arbitrary and capricious decision. I do think they had a
23 rational basis for all the reasons stated and I think
that

24 your application must be denied based upon your client's

25 inaction in a timely fashion here now to the detriment of

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MINER V. DUANESBURG, ET AL

the Respondents and so I'm going to dismiss the petition.

MR. SIEGEL: Your Honor, do we need an order prepared and how would you like that done?

THE COURT: I definitely want you to attach a copy of my decision to a proposed order and do it on notice.

MR. SIEGEL: Thank you.

MR. GIACALONE: So you're dismissing both the first and second claim?

THE COURT: Yes.

MR. GIACALONE: I guess I'm trying to understand how their SEQOR claim falls under the mootness and laches.

THE COURT: I didn't say that it did.

MR. GIACALONE: Okay.

THE COURT: I've gone through my analysis of their review, safety analysis, area in question, character of neighborhood, commercial zone and making a determination under all those reviews, that was a hard look, that they felt there was no adverse impact on the environment and they made a negative declaration. I'm not tying it to the equitable arguments.

MR. GIACALONE: I want a clarification that it's the merits you're dismissing it on.

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MINER V. TOWN OF DUANESBURG, ET AL

THE COURT: I am.
MR. GIACALONE: Okay. Thank you.
(Whereupon, the matter was concluded.)
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I, MELISSA A. MATTHEWS, C.S.R.,
Official

Senior Court Reporter in and for the State of New York,
do hereby certify that I attended at the time and place
above-mentioned and took a stenographic record of the
proceedings and testimony in the above-entitled matter,
and that the foregoing is a true and correct copy of the
same and the whole thereof, according to the best of my



ability
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MELISSA A. MATTHEW[^], C.S.R
Official Senior Court Reporter
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