1	MINER V. TOWN OF DUANESBURG, El AL
2	THE COURT: All right. Listen, you know,
3	my review of this and not only the papers but also
4	listening to your arguments is that there were certain
5	obligations that the Miners had, that your clients had
	and
6	I am most troubled by the equitable arguments that are
7	being made by the town and by Bob because I think that
8	they are right.
9	As I think about this case, during the
10	course of this entire process through the decision made
	by
11	the code enforcement officer that disqualified for a
12	special use permit through the being referred to the
13	planning board, the planning board's intervention,
14	starting the SEQR process back in December and ultimately
15	making a decision in March, that, in fact, a zoning
16	ordinance was being complied with and that Long had dotted
17	their I's and crossed their T's and complied with
18	everything, that during this entire process your client
19	who now claims to be aggrieved is sitting back, he's
20	across the street, directly across the street from this
21	facility and he's just taking pictures. You're attaching
22	for me the pictures. He's taking pictures and maybe
23	considering bringing on this request for preliminary
24	relief and temporary restraining orders, temporary
25	preliminary relief but he takes no action, no action

1 MINER V. TOWN OF DUANESBURG, EL AL 2 whatsoever. Meanwhile, he's watching this facility being 3 dug, being put in there, property being acquired, closing 4 taking place, everything being done to the tune of 5 hundreds of thousands of dollars but now he comes in and 6 he wants this stopped and basically I do agree, a 7 draconian remedy of removing this entire thing after 8 waiting all this time and doing nothing. It's incumbent 9 upon him to do something and that's why I think that it is 10 draconian what you're requesting. The argument that they did not act in good 11 12 faith I think is just not there. They were following 13 permits that were lawfully issued. They had the right to 14 put it up. They were putting it up. They even had 15 discussions with him as to when they would move forward, 16 whatever they would do but he was watching it. He was 17 watching it go forward, so they come in here with clean 18 hands. The decision had been made by the municipality to 19 grant it, to permit it. He was part of that entire 20 process and I think this falls absolutely in line with both doctrines of both laches and mootness and that this 21 2.2 would be a substantial cost and problem for Long if they 23 had to remove this entire facility at this time. 24 Now, again, your client had the choice. He 25 could have -- I believe he had notice and I put some

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

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

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 SEQR process. They ultimately
	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 also -- I also believe that the town did take a hard look 6 7 under SEQR. 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, commercial zone, one down the road, Route 20, character 10 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 satisfied. This is in compliance and so I think that the 15 16 safety analysis was made here. Furthermore, in looking at it now with the 17 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 2.1 the zoning ordinance. I do not think this was an 22 arbitrary and capricious decision. I do think they had a rational basis for all the reasons stated and I think 23 that.

your application must be denied based upon your client's

24

1 MINER V. DUANESBURG, ET AL 2 the Respondents and so I'm going to dismiss the petition. 3 MR. SIEGEL: Your Honor, do we need an order prepared and how would you like that done? 4 5 THE COURT: I definitely want you to attach 6 a copy of my decision to a proposed order and do it on notice. 7 8 Thank you. MR. SIEGEL: 9 GIACALONE: So you're MR. dismissing both 10 the first and second claim? 11 THE COURT: Yes 12 MR. GIACALONE: I quess I'm trying to 13 understand how their SEOR claim falls under the mootness and laches. 14 15 THE COURT: I didn't say that it did. 16 MR. GIACALONE: Okay. I've gone through my analysis 17 THE COURT: 18 of their review, safety analysis, area in question, 19 character of neighborhood, commercial zone and making a 20 determination under all those reviews, that was a hard 2.1 look, that they felt there was no adverse impact on the 22 environment and they made a negative declaration. I'm not 23 tying it to the equitable arguments. MR. GIACALONE: I want a clarification that 24 it's the merits you're dismissing it on. 25

1	MINER V. TOWN OF DUANESBURG, ET AL
2	THE COURT: I am.
3	MR. GIACALONE: Okay. Thank you.
4	(Whereupon, the matter was concluded.)
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8	
9	I, MELISSA A. MATTHEWS, C.S.R.,
Offic	ial
10	Senior Court Reporter in and for the State of New York,
11	do hereby certify that I attended at the time and place
12	above-mentioned and took a stenographic record of the
13	proceedings and testimony in the above-entitled matter,
14	and that the foregoing is a true and correct copy of the
15	same and the whole thereof, according to the best of my
16	ability
	17
18	
19	MELISSA A. MATTHEW^, C.S.R
20	Official Senior Court Reporter
	21
22	
23	
24	