

To commence the statutory time period for appeals as of right (CPLR 5513(a)), you are advised to serve a copy of this order, with notice of entry upon all parties.

FILED
AND
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ON 2/20 2003
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - ENVIRONMENTAL CLAIMS PART

-----X
METRO ENVIRO TRANSFER, LLC.

Petitioner,

-against-

THE VILLAGE OF CROTON-ON HUDSON and
THE VILLAGE BOARD OF TRUSTEES OF THE
VILLAGE OF CROTON-ON HUDSON,

Respondents.
-----X

NICOLAI, J.

SHORT FORM ORDER

Index No. 1788/03
Motion Date: Feb. 14, 2003

The following papers numbered 1 to 83 were read on this application by Petitioner for an Order annulling the determination of the Respondents Village Board of Trustees which denied Metro Enviro Transfer's application for renewal of its special use permit and staying the Board's decision requiring Metro Enviro Transfer to cease accepting waste at its transfer station and closing the facility on February 17, 2003; and cross motion by Respondents for an Order pursuant to CPLR 7804(g) transferring this proceeding to the Appellate Division Second Department.

Order to Show Cause - Petition - Affidavits	1-6
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Upon the foregoing papers, it is ordered that this motion and cross motion are decided as follows:

This matter came before the undersigned in the Central Calendar Part on February 13, 2003 at which time the Petitioner's application for a stay of the Board's decision requiring Metro Enviro Transfer to cease accepting waste at its transfer station and closing the facility on February 17, 2003, was granted. Decision was reserved on the balance of the relief requested by

the Petitioner as well as the cross motion for an Order pursuant to CPLR 7804(g) transferring this proceeding to the Appellate Division Second Department.

In 1988, the Village of Croton-on-Hudson issued a special use permit to Industrial Recycling Systems (hereinafter "IRS"), authorizing it to operate a wood processing and recycling transfer station on the property. The ten acre parcel located immediately adjacent to a large rail facility was allegedly ideally suited and situated for the operation of a solid waste management transfer station. In 1997, Greentree Realty LLC purchased the property and leased it to Metro Enviro L.L.C. (an entity distinct from Petitioner) who requested and received a renewal and transfer of the pre-existing special use permit held by "IRS." The Department of Environmental Conservation (hereinafter DEC) issued a Part 360 Solid Waste Management Permit to Metro Enviro L.L.C. to operate a transfer station on the property and imposed a number of conditions on the issuance of the permit. The permit set capacity limitations for the transfer station and required the comprehensive monitoring of the transfer station by DEC personnel at the operator's expense. Thereafter, Metro Enviro L.L.C. spent approximately \$1.5 million dollars on the extensive clean-up of the property and approximately \$2.0 million dollars on site improvements. In 1998, the special use permit which included numerous conditions, was issued for a three-year duration. In March 2000, Petitioner acquired the assets of Metro Enviro L.L.C. (whose ultimate parent company is Allied Waste Industries) for \$10 million dollars with the expectation that it would operate on the leased premises for many years. Notwithstanding Petitioner's substantial investment and timely request for renewal, on January 27, 2003, the Board issued a Statement of Findings denying the renewal application based upon certain violations of the special use permit. Specifically, the Board cited mishandling of unauthorized waste, exceeding the maximum permitted tonnage, failure to collect leachate on one occasion and failure of certain training, reporting and record-keeping requirements.

Petitioner now seeks to annul the determination of the Respondents Village of Board of Trustees which denied the application for renewal of its special use permit. In support of the present application, Petitioner asserts that a review of the transcript of the 1998 Hearing establishes that Respondents engaged in a detailed and exhaustive analysis of the land use and environmental implications when the 1998 permit was issued. Petitioner maintains that a review of the documents supporting the renewal application establishes that the Board had no test results or other data of adverse traffic impacts, air emissions, odor or aesthetics and no other documentation evidencing harm or adverse impact to the public welfare or the environment. According to Petitioner's expert, who considered each of the admitted violations of the special use permit, Petitioner has not operated its transfer station in such a manner as to have had any adverse impact on the health, safety and welfare of the Village residents or the environment. More importantly, Petitioner contends that the Respondents' expert – whose uncorroborated affidavit was obtained on the same day that the Board issued its findings – did not dispute the statements by Petitioner's expert. Finally, it is argued that the Board had no empirical evidence that Metro Enviro Transfer has "caused any adverse impact to the health, safety or welfare of the Village residents or to the environment." In view of the barren record, the Petitioner asserts that the Board should not be permitted to invoke the drastic remedy of non-renewal of the special use permit.

In opposition to the instant application, the Village Board asserts that Metro Enviro Transfer has demonstrated its inability to comply with the permit and that the repeated violations of the permit conditions created a threat to public health, safety and the environment. Based upon a full review of the available documentary evidence including the information and presentations provided by Metro Enviro Transfer, the proceedings at the public hearings and Village Board meetings, information gathered by the Village Board and the affidavit of an expert retained by the Board, the Village asserts that its decision not to renew the special use permit falls into four general categories. These categories include tonnage exceedances (falsified daily tonnage reports), receipt of industrial and municipal waste, stockpiling of tires and failure to carry out required training. Most importantly, the Village maintains that during its course of operation, Metro Enviro Transfer admitted to 42 instances of intentional acceptance and processing of unacceptable industrial waste and 26 instances of intentional exceedances of tonnage limitations as well as the falsification of facility records. Furthermore, the Village contends that the Village Code provides for non-renewal upon a determination that the special permit conditions have not been complied with in whole or in part and therefore, these numerous violations are grounds for denial.

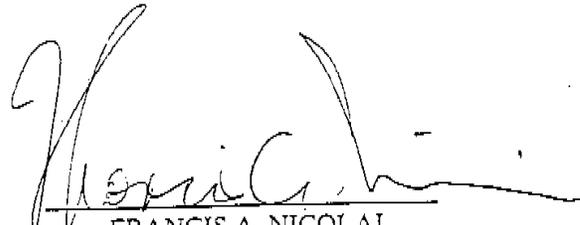
Generally, a special permit is the authority to use property in a manner expressly permitted (see Matter of North Shore Steak House v Board of Appeals, 30 NY2d 238; Matter of Texaco Ref. & Mktg. v Valente, 174 AD2d 674). The classification of a particular use as permitted in a zoning district is "tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood" (see Matter of Twin County Recycling Corp. v Yevoli, 90 NY2d 1000; Matter of Lee Realty Co. v Village of Spring Val., 61 NY2d 892). While the Village Board still retains some discretion to evaluate each application for a special use permit, to determine whether applicable criteria have been met and to make commonsense judgments in deciding whether a particular application should be granted, such determination must be supported by substantial evidence (Twin County Recycling Corp. v Yevoli, 90 NY2d 1000; Matter of Market Sq. Props. v Town of Guilderland Zoning Bd. of Appeals, 66 NY2d 893, 895; Matter of Pleasant Val. Home Constr. v Van Wagner, 41 NY2d 1028, 1029). Although there is no entitlement to such a special permit, once the Petitioner shows that the contemplated use is in conformance with the conditions imposed, the special permit must be granted unless there are reasonable grounds for denying it that are supported by substantial evidence (Matter of C.B.H. Props. v Rose, 205 AD 2d 686). While the Respondents maintain that the violations of the special use permit constitute sufficient and substantial evidence supporting the denial of the permit renewal, they failed to recognize that the violations have been cured, penalties have been assessed and paid and Petitioner has implemented measures to assure ongoing permit compliance. Moreover, Respondents and its expert have failed to point to any evidence that an adverse environmental condition has resulted from the almost five years of operation of the Metro Enviro Transfer's facility. Despite the cited violations, the DEC has taken into account Metro Enviro Transfer's history of cooperation with and responsiveness to the Village. In fact, on February 7, 2003, the DEC – the state agency with regulatory control and jurisdiction over this solid waste management facility – renewed Petitioner's permit for five years and increased the maximum capacity of waste that the transfer station may accept to an average of 1,000 tons per day. While the Village is not bound by the

DEC renewal, the issuance of the DEC permit indicates to this Court that corrective action has been taken and that Metro Enviro Transfer's violations did not pose a threat to the health, safety and general welfare of the public or the environment.

Under the totality of circumstances present herein, the Court finds that the Board's denial of the permit is not supported by substantial evidence. The determination by the Village Board has been impermissibly based, in part, upon generalized opposition, which remains uncorroborated by any empirical data. Accordingly, the petition to annul the determination of the Respondents Village of Board of Trustees is granted. The matter is remitted to the Village of Croton-on-Hudson for the purpose of issuing a permit in accordance herewith, upon such reasonable conditions as it may deem appropriate.

When a planning board's ruling regarding a special use permit is challenged, the general requirement of CPLR 7804(g) gives way to specific statutory language authorizing Supreme Court to determine all questions which includes substantial evidence issues (see PDH Properties, LLC v Planning Bd. Of Town Of Milton, 298 AD2d 684; Matter of Iza Land Mgt. v Town of Clifton Park Zoning Bd. of Appeals, 262 AD2d 760). Because this proceeding was commenced to appeal a Village Zoning Board determination, it remains with Supreme Court, even where there is an issue of substantial evidence (see Matter of Barreca v DeSantis, 226 AD2d 1085; Matter of Bovadjian v Board of Appeals, 136 AD2d 548). Contrary to the Respondents' position, the Court finds that the denial of the petitioner's application for renewal of its permit was not supported by substantial evidence. Respondents' cross motion for an Order transferring this Article 78 proceeding to the Appellate Division pursuant to CPLR 7804(g) is therefore, denied.

Dated: White Plains, New York
February 19, 2003



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