



Freshwater Wetlands permit is required in order to allow Petitioners to resume construction.

Prior to May 22, 1974, Petitioners owned two parcels of land in the Town of Manlius which were zoned Restricted Agricultural and Commercial B under the Town's zoning ordinance. At that time, Petitioner Earl L. Oot, reports that a severe shortage of doctors existed in the Town. Petitioners decided to embark on a joint enterprise with certain physicians to provide local medical services, and a plan was conceived for the erection of a medical facility to be called Medical Center East. It was for this purpose that, at the May 22, 1974 meeting of the Manlius Town Board, Petitioners sought a zoning change to Commercial A for the above-described parcels. Support for such a change on the part of the Syracuse-Onondaga County Planning Agency and the Town of Manlius Planning Board was noted, and a resolution was passed unanimously calling for a public hearing on the proposed zone change. This resolution is attached hereto as Exhibit A.

The public hearing pertaining to the zoning change was incorporated into the June 12, 1974, Town Board meeting. The sole objection raised related to concern for potential traffic congestion as a result of the medical facility. At the close of the hearing the Board voted unanimously to adopt a resolution approving the zone change.

This resolution is annexed hereto as Exhibit B. The following language appears in the June 12, 1974 resolution:

"and be it further

RESOLVED and ORDERED, that the foregoing zone changes be subject to the following conditions:

1. The applicant shall file with the Town Clerk, copy to the Town Attorney, his commitment in writing that the rezoned property will be developed in specific conformity with the plan of W.F. Bruning, Landscape Architects, presented to the Board at the public hearing, which plan has been filed with the Town Clerk on April 17, 1974 and marked 'approved plan' on June 12, 1974.

Said commitment shall be submitted in a form suitable for recording in the Onondaga County Clerk's Office."

As originally conceived, Medical Center East called for four inter-connecting buildings (See Exhibits C and D). However, Petitioners state that because of financing difficulties and insufficient leasing commitments, construction of the entire complex was not feasible at that time. A phased implementation plan was devised, providing for erection of the two most westerly buildings as a first step. The timetable for completion of the facility was dependent on future availability of funds and leases. This phasing of the project

involved no substantive modification of the original plan. This Declaratory Ruling assumes as facts that the commitment required in the June 2, 1974, resolution was duly given and that the four unit plans are not altered materially since approved.

Construction was begun on October 24, 1977, yielding the two buildings referenced above. Petitioners are seeking to commence construction of the third building and have obtained a permit therefor from the Town Building Department, dated March 16, 1984. The present Petition followed.

ECL 24-1305, the Freshwater Wetlands Act's "grandfathering" provision, provides, in pertinent part, as follows:

"The provisions of Article 24 shall not apply to any land use, improvement or development for which final approval shall have been obtained prior to the effective date of this article from the local governmental authority or authorities having jurisdiction over such land use. As used in this section, the term 'final approval' shall mean:"

\* \* \* \*

"(b) in the case of a site plan not involving the subdivision of land, approval by the appropriate body or office of a city, village, or town of the site plan . . ."

The ruling on this petition turns upon whether the site plan for Medical Center East was given the appropriate final approval required by the Freshwater Wetlands Act, prior to the September 1, 1975, effective date of the Act. Exemption from the Freshwater Wetlands Act in this case requires a showing that the Petitioners' site plan for Medical Center East received final approval under the then-existing zoning ordinance for the Town of Manlius, prior to September 1, 1975.

The ordinance in question was adopted in 1950 and does not contain an explicit procedural mechanism for site plan approval, apparently because very limited commercial development existed at that time. The Town of Manlius records establish that:

- 1) At the time the original petition for zoning changes and site plan were submitted (April 17, 1974), the Town Board had authority for approval for all building and zoning matters (except proposed subdivisions, which were subject to approval by the Town Planning Board);
- 2) site plan approval was coexistent with approval of a zone change to "commercial"; and
- 3) in the case of a site plan, a subsequent change (such as the phased implementation herein) not resulting in substantive alterations would not have required a separate approval; and

- 4) the June 12, 1974, resolution of the Town Board approved the requested zoning changes and also made a reference to the site plan having been marked "approved plan" on the same date.

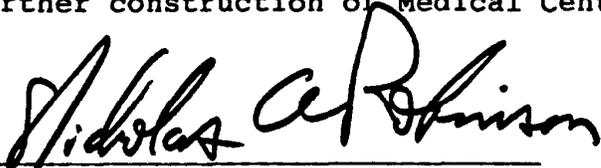
In view of these facts, no further approvals of any kind were necessary for the site plan. Thus, final approval was given by the Town Board at the June 12, 1974 meeting. Accordingly, the project is grandfathered under the Freshwater Wetlands Act.

This conclusion is bolstered by Miracle Mile Associates v. Department of Environmental Conservation, 98 Misc. 2d 519, 414 N.Y.S.2d 277 (Supreme Court, Monroe County 1979), aff'd 73 A.D. 2d 807, 423 N.Y.S.2d 732 (Fourth Dept. 1979), which held that ECL 24-1305 is to be construed as establishing a low threshold for exemption from the Act, in accordance with legislative intent to remedy the unfairness inherent in retroactive application of the permit requirements to owners and developers who had secured all previously needed authorization from the locality. This view has been applied by this agency in a Declaratory Ruling 24-03, dated September 18, 1979 (In the Matter of Dwight Enterprises, Inc.).

Aside from its broad interpretation of the statute, Miracle Mile is noteworthy on its underlying facts. The litigation resulted from Declaratory Ruling 24-01, dated July 13, 1978. That ruling addressed

a town's rezoning of a construction site and approval of the developer's construction plan. The overall site plan in question did receive town board approval, but the board required that supplemental detailed plans covering aspects such as drainage, parking, and lighting be submitted for review and approval. The Department essentially concluded that this did not amount to final approval because the original plan, though approved, was deficient in numerous and substantial respects. This determination was successfully challenged by the developer in the context of an Article 78 proceeding, and the Monroe County Supreme Court's holding was affirmed on appeal. Clearly, if the site plan in Miracle Mile could be deemed to have received final approval in spite of its incompleteness and need for further future approvals, it follows that the present plan, which was substantively complete when submitted and which requires no other approval than that already given, must similarly be considered to have received the final approval contemplated by ECL 24-1305.

Accordingly, Article 24 of the ECL and its implementing rules and regulations are inapplicable to further construction of Medical Center East as approved on June 12, 1974.

  
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NICHOLAS A. ROBINSON  
Deputy Commissioner and  
General Counsel

DATED: June 25, 1984  
Albany, New York