

# **Bond Case Briefs**

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## **ZONING & PLANNING - NEW YORK**

### **Red Wing Properties, Inc. v. Town of Rhinebeck**

**Supreme Court, Appellate Division, Second Department, New York - June 3, 2020 - N.Y.S.3d - 2020 WL 2892671 - 2020 N.Y. Slip Op. 03119**

Quarry owner filed petition pursuant to article 78 seeking review of decision of city zoning board of appeals, which denied owner's application for a determination that it has a vested right to mine its entire parcel of property as a prior nonconforming use, and filed action for a declaratory judgment.

Owner filed motion, in effect, for summary judgment, which the Supreme Court, Dutchess County denied owner's petition, and dismissed proceeding. Owner appealed.

The Supreme Court, Appellate Division, held that quarry owner established that it had a vested right to mine non-quarried portion as a nonconforming use.

Where the owner of a quarry engages in substantial quarrying activities on a distinct parcel of land over a long period of time and these activities clearly manifest an intent to appropriate the entire parcel to the particular business of quarrying, the extent of the protection afforded by the nonconforming use will extend to the boundaries of the parcel even though extensive excavation may have been limited to only a portion of the property.

Quarry owner demonstrated its intent to appropriate 94 acre, non-quarried portion of its property to the business of quarrying, as required to establish that it had a vested right to mine non-quarried portion as a nonconforming use in existence when city enacted zoning ordinance, which allowed mining on only those lands upon which there were existing, Department of Environmental Conservation (DEC) permitted mining operations; before ordinance was enacted, owner amended its application to the DEC, which sought a permit to engage in mining activities throughout its entire property, to cover only 94 acres of property.