
ZONING & PLANNING - NEW YORK

Town of Southampton v. New York State Department of Environmental Conservation

Court of Appeals of New York - February 9, 2023 - N.E.3d - 2023 WL 1824432 - 2023 N.Y. Slip Op. 00689

Town, civic organizations, environmental organizations, and neighboring landowners commenced article 78 proceeding seeking to annul settlement agreement between owner and operator of sand and gravel mine and Department of Environmental Conservation (DEC), DEC's amended negative declaration with respect to application for modification permit seeking expansion of mining operations, and DEC's issuance of renewal permit for mining operations, and seeking to enjoin DEC from processing modification application.

After DEC granted modified permit, petitioners filed supplemental petition seeking to annul modified permit. The Supreme Court, Albany County, denied petitions. Petitioners appealed. The Supreme Court, Appellate Division, modified. Operator was granted leave to appeal.

The Court of Appeals held that:

- The phrase "permit to mine," as used in the statute barring agencies from considering an application for a permit to mine as complete or processing such an application if local zoning laws or ordinances prohibit mining uses within the area proposed to be mined, encompasses all applications to mine, including applications for renewal and modification, and
- Statute does not eliminate or alter non-conforming use.

The statute barring agencies from considering an application for a permit to mine as complete or processing such an application if local zoning laws or ordinances prohibit mining uses within the area proposed to be mined does not eliminate or alter non-conforming use; rather, the statute acts only as a protection against further expansion of those mining activities beyond the permissible non-conforming use.

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