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Supreme Court held in the
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York.

STATE OF NEW YORK
SUPREME COURT COUNTY OF LEWIS

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In the Matter of the Application of

Bernadette M. DeSantis,
Petitioner,

DECISION AND ORDER

-vs-

Index No.: CA-17-0345

RJI No.: S24-17-0129

Village of Constableville and Village of Constableville
Board for the Village of Constableville.
Respondents.

APPEARANCES

Bernadette M. DeSantis, Pro Se
Kevin M. McArdle, Esq., For Respondents

BACKGROUND

Before the Court is hybrid or combined petition seeking a ruling under CPLR Article 78 and/or a declaratory judgment under CPLR 3001. Said petition asks the Court for a ruling that:

- a) Nullifies and vacates Section IV of Local Law No.1 of 2017 that opens certain Village streets of portions thereof to ATV traffic by virtue of the

fact that it violates NYS Vehicle and Traffic Law Article 48-c and that it violates the New York State Constitution; and

- b) Grants declaratory judgment finding the Respondent[s] failed to make the requisite findings pursuant to VTL Section 2405 for Section IV of Local Law No. 1 of 2017 and declare said Section IV null and void; and
- c) Finds that the Respondents did not follow the proper SEQRA process, improperly issued a Negative Declaration, finds that the Village Board did not take the requisite "hard look" at environmental issues and directs the Respondent Board to prepare an EIS and declares section IV of Local Law No. 1 null and void; and
- d) Awards Petitioner costs and disbursements; and
- e) Grants Petitioner such other and further relief as this Court deems just and proper.

Through a Verified Answer filed on October 13, 2017 the Respondents denied the allegations raised against them in the Petition and opposed the relief requested therein. They also raised two affirmative defenses, initially that the action is time barred under CPLR 217 and subsequently that the local law at issue merely regulates traffic on an existing public highway and is not subject to challenge pursuant to CPLR Article 78 or by action for declaratory judgment. They request this Court issue an Order dismissing the Petition in its entirety.

Background

The Village enacted the statute at issue, Local Law No. 1 of 2017, on June 19, 2017 in furtherance of an existing County-wide ATV trail system. Prior to enacting said County-wide ATV trail system, the County undertook various steps to comply with the

State Environmental Quality Review Act, some parts of which were subject to legal challenge. The aim of the County-wide ATV trail system is to open various sections of public highway to ATV use to connect certain off-road riding areas to other such areas that would otherwise be inaccessible.

Section IV of the Local Law is entitled "Designated Highways" and purports to open .80 miles of Village roads to ATV traffic. Specifically, it provides as follows "The following streets, or portions thereof, are hereby designated as open to travel by ATV's: Starting on James Street, from the Off-Road ATV Trail on The Alpine Restaurant, LLC property (that connects to the Alpine Restaurant's parking lot and the Nice and Easy Store. Then, westerly .07 miles to the intersection with State Route 26 and to access Markham's Automotive, then .29 miles to access the Village Band Stand and public park (where James Street becomes High Street), hence .23 miles to access the Blue Silos Bed and Breakfast, then .21 miles to the Village line (where High Street becomes Crofoot Hill Road), which connect to the Off-Road ATV trail on the Todd Daniel and Brian Mueller property on the Crofoot Hill Road".

According to the Local Law itself, the stated purpose is as follows "The purpose of this Local Law is to designate certain highways or portions thereof within the Village of Constableville Highway system as being open for travel by all-terrain vehicles pursuant to the authority granted in Section 2405 of the Vehicle and Traffic Law of the State of New York. The Village Board has determined the opening of such highways is necessary for All-Terrain Vehicles to gain access to trails adjacent to such highways and adjacent to Town highways outside Village limits, and/or to travel from one off-highway trail to another, which would otherwise be impossible".

The Petitioner contends that beyond perfunctory and conclusory recitals in the Resolution, there is nothing in the Board's minutes to indicate that it documented why it is "otherwise impossible" to access "trails adjacent" to James Street and High Street. She notes that a New York State Attorney General's Opinion issued in 2005 states "However, such a construction of section 2405 (of the VTL) could potentially allow highways to be opened for ATV use at any point where they abut commercial parking lots and would therefore effectively allow ATVs to be used as substitutes for on-road vehicles such as cars and bicycles. This consequence would be contrary to the Legislature's clear intent that ATVs be used primarily off-highway, with only incidental highway use permitted, and that leads us to conclude that Section 2405 of the VTL may not be used to allow designation of highways solely to provide ATV access to commercial parking lots". It is undisputed that The Alpine, Nice and Easy and the Blue Silos Bed and Breakfast are commercial establishments.

The Petitioner also alleges that Board did not properly comply with various planning regulations, such as SEQRA and notification requirements to the State Historic Preservation Office as required under the NYS Preservation Act of 1980. In addition, the Petitioner contends that several of the planning documents that were completed contained factual mis-representations, such as the fact that there is a sidewalk along the entire James Street when in fact the section of James Street that was opened to ATV use does not feature sidewalks. Ms. DeSantis also asserts that the Respondents supported their action with conclusory findings without having conducted tests or studies.

Discussion

The Court will begin its analysis of the case by examining the constitutionality of the local law which opened the section of James Street in the Village of Constableville. In New York generally, under Article 48c of the Vehicle and Traffic Law ATVs may not operate on public highways unless a particular public highway has been specifically opened to ATV use. The controlling statute regarding the opening of public highways to ATV use is New York State Vehicle and Traffic Law 2405 which is entitled Designation of Highways and Public Lands for Travel by ATVs. Section (1) thereof provides:

“Except with respect to interstate highways or controlled access highways, the department of transportation with respect to state highways, maintained by the state and any other governmental agency with respect to highways, including bridge and culvert crossings, under its jurisdiction may designate and post any such public highway or portion thereof as open for travel by ATVs when in the determination of the governmental agency concerned, it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway. Such designations by a state agency shall be by rule or regulation, and such designations by any municipality other than a state agency shall be by local law or ordinance”.

Relevant to the Court’s analysis is the section thereof *...when in the determination of the governmental agency concerned, it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway*. The crux of the Petitioner’s argument is that it was not “impossible” for ATV’s to gain access to the areas in question on James Street. She points out, for example, that riders could trailer their ATV to the locations. On the other hand, the Village argues that its Board made a lawful determination that the stretch of

James Street was required to be opened so as to connect the Alpine and the gas station to the existing County trail system.

Relevant to the Court's examination of the issue is an Opinion of the New York State Attorney General issued in 2005 (2005-21). Although not a binding authority, an AG Opinion is probative in cases such as this where there is not an established body of case law on point that interprets the statute. Two cases which directly touch on the interpretation of VTL 2405 are *Hutchins v. Town of Colton*, 8 Misc.3d 1020 (St. Lawrence County Supreme Ct. 2004) and *State v. Town of Horicon*, 46 AD 3d 1287 (2007). In these cases the courts determined that the municipality in question had failed to substantiate its conclusion that it was "otherwise impossible" for ATVs to get from one trail to another without the use of public roads. In both cases that failure was found to be a fatal flaw resulting in the annulment of the contested local law.

The streets opened under the local law at issue were a means to connect a new off-road trail within the Village boundaries to the larger Lewis County ATV trail system which can be accessed via the previously opened Crofoot Hill Rd in the Town of West Turin. The new Village trail extends from the parking lot of The Alpine, located near the corner of State Route 26 and James Street, approximately 665 feet to the parking lot of a Nice N Easy convenience store. The Village streets opened to ATV traffic under the Local Law are a .44 mile section of High Street and a .29 mile section of James Street.

VTL 2405 clearly requires that prior to opening a public highway for ATV use that the municipality make a determination that it is otherwise impossible for ATVs to gain access to the trail(s) adjacent to the highway. A review of the language found in the resolution adopting Local Law No. 1 of 2017 provides in relevant part as follows:

"WHEREAS, the Board of Trustees wishes to make certain determinations based upon the information heretofore submitted to the Board as well as received during the public hearing;

1. Opening of the designated Village Streets is necessary to connect two existing trails which would otherwise be impossible to connect; and
2. Opening of the designated Village streets is necessary to access certain areas such as the Village Bandstand Park and the Blue Silo Bed & Breakfast."

The Local Law itself provides in relevant part:

"SECTION 2. PURPOSE: The purpose of this Local Law is to designate certain highways or portions thereof within the Village of Constableville Highway System as being open for travel by all-terrain vehicles pursuant to the authority granted in Section 2405 of the Vehicle and Traffic Law of the State of New York. The Village Board has determined the opening of such highways is necessary for the all-terrain vehicles to gain access to trails adjacent to such highways and adjacent to Town highway outside the Village limits, and/or to travel from one off-highway trail to another, which would otherwise be impossible."

In the aforesaid 2004 case of *Hutchins v. Town of Colton*, Justice Demarest explored whether the plain language of VTL 2405 regarding impossibility should be given a narrow or broad interpretation. In concluding that a narrow interpretation should be applied, he held "had the Legislature's intention been to the contrary, VTL 2405 need not have contained any language requiring the municipality (or governmental agency) to make a determination that it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway. Instead, the statute would

simply read that municipalities may, by local law, and state agencies may, by rule or regulation, designate and posit its highways (excepting interstate or controlled access highways) as open for travel by ATVs". *Hutchins, Id.*

Likewise, the 2007 Appellate Division, 3rd Department case of *State v. Town of Horicon* cautions that, although public highways may be opened to ATV use under VTL 2405 when, in the determination of the governmental body concerned, it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway, but a mere recital to this effect in a local law is insufficient unless substantiated by other findings *Horicon, Id.*

Based on the evidence presented by the parties, the actions of the Village Board are similar to those of the municipality in *Town of Horicon* in that the record does not substantiate the Board's findings beyond stating a conclusion. If this type of conclusory finding were allowed to stand, any section of public highway subject to being opened under VTL 2405 could in fact be so opened by simply including a determination that unless the public highway(s) were so opened ATVs could not gain access to trails. As Justice Demarest noted, had this been the intention of the Legislature when it enacted said statute, then there would have been no need to require a determination by the municipality regarding impossibility of access. The fact that the Legislature included the term "otherwise impossible" and mandated a specific determination by the municipality requires the Court to conclude it was not the Legislature's intent to allow any section of public highway to be opened to ATV use simply by a municipality deciding to do so. There must be fact finding following an investigative process which then concludes with the required determination. Quite frankly, clearing the "otherwise impossible" hurdles seems like a daunting, if not impossible task. However, modifying or eliminating that hurdle is a matter for the Legislature.

Probative to this Court's decision is the September 7, 2005 Attorney General's Opinion (2005-21) which provides "Thus, when read together, the statutes regulating ATV use indicate that the Legislature did not intend ATVs to regularly travel on highways, and accordingly, did not intend highways or roads meant for ordinary vehicular traffic to be considered 'trails' as that term is used in VTL 2405(1). A contrary conclusion could result in the opening of a substantial number of municipal highways to ATV use, thus eviscerating the Legislature's intent that ATVs be primarily operated off-highway". Additionally, it concludes "...under the statutory scheme, the county may not designate roads as open to ATV use merely in order to provide convenient access to private trails or areas open to public ATV use. The privately-owned trails or areas must be adjacent to the highway and 'otherwise impossible to reach' except by use of the designated county highway". Also, "...and leads us to conclude that section 2405 may not be used to allow designation of highways solely to provide ATV access to commercial parking lots". It is difficult to conclude anything but that the local law in question was passed solely to allow access to The Alpine parking lot and the Nice N Easy parking lot.

While the Court understands the economic development and ease of use arguments to be made in favor of such a plan, it is nevertheless constrained to apply the law as written.

In reaching its decision, the Court notes the overall positive role the Lewis County ATV trail system has played in terms of both economic development for the County and increased ATV riding options now open to the general public. There is nothing in the record to suggest that the Board intentionally violated VTL 2405 when it opened the section of James Street to ATV use. Nevertheless, for the reasons stated

herein Local Law No 1 of 2017 must be annulled as contrary to the provisions of VTL 2405(1).

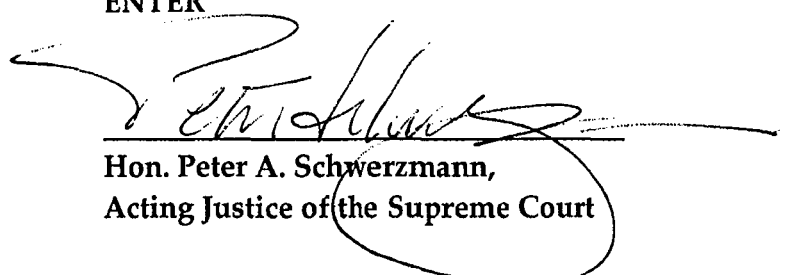
The Court finds the two affirmative defenses raised by the Respondents in their Verified Answer to be without merit.

Likewise, given its decision to annul said law, the Court will not consider other arguments raised by the Petitioner.

The foregoing shall constitute a Decision of this Court, and it is SO ORDERED.

Dated: May 3, 2018
Watertown, New York

ENTER



Hon. Peter A. Schwerzmann,
Acting Justice of the Supreme Court