

Practice Update

Challenge to Gowanus Neighborhood Rezoning Dismissed

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By Richard G. Leland

In a decision and order issued June 27, 2022, Justice Consuelo Mallafre Menendez of the New York State Supreme Court, Kings County, dismissed the challenge to the Gowanus Neighborhood Rezoning filed by the Voice of Gowanus and other neighborhood groups. In a twelve- page decision, the court found that the case was time barred by the four- month statute of limitations applicable to proceedings under Article 78 of New York’s Civil Practice Law and Rules (CPLR).

Although the petition was filed within four months of the City Council’s final determination approving the rezoning on November 23, 2021, the petitioners failed to service their papers on the City agencies named as respondents in the case within 15 days after the four-month limitations period ended as is required by CPLR 206. The court found that the petitioners did not show that there was either “good cause” for their failure to serve the papers in a timely fashion, or that the interests of justice would have allowed the court to grant them an extension of time after they had already violated the statute.

The court did an extensive analysis of the merits of the case and determined that the petitioner’s claims that the City had violated the State Environmental Quality Review Act (SEQRA) or City Environmental Quality Review (CEQR) were not meritorious. It is

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likely that the petitioners will file a Notice of Appeal seeking a review of the June 27 decision and order by the Appellate Division, Second Department. They must file a Notice of Appeal within thirty (30) days of the entry of the decision. Since there are no other challenges to the rezoning, nor can there be (at least in State Court), this means that developer and investors are now free to move forward with redevelopment plans for this area.

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