

Breakers Lawsuit in Court's Hands

In limbo more than a year, Southampton Town supervisor is a defendant
By T.E. McMorrow | August 10, 2017 - 2:51pm

A lawsuit filed in New York State Supreme Court against the East Hampton Town Zoning Board of Appeals, the town's Building Department, and the owners of the Breakers Motel in Montauk, which has been in limbo since it was filed in May of 2016, is expected to be decided upon in the coming months in the Riverside courtroom of Martha L. Luft, an acting New York State justice, who has agreed to preside in the case.



The fate of Seamore's, the seafood restaurant that opened this year at the Breakers Motel in Montauk, could hang on a decision by a State Supreme Court Justice as to whether it is subject to site plan approval.
T.E. McMorrow

Action on the 2016 lawsuit bogged down because a number of judges recused themselves, explaining that they knew one of the owners of the Breakers, Southampton Town Supervisor Jay Schneiderman. Before Justice Luft agreed to take the case, the last justice to recuse himself was Peter H. Mayer, and he had stepped away from the matter last August.

Besides being Southampton's supervisor, Mr. Schneiderman was the Town of East Hampton supervisor from 2000 to 2004 and also served for many years as a Suffolk County legislator. He owns the Breakers with his sister, Helen Ficalora, a designer of jewelry.

The lawsuit was filed by Jane Concannon, who is the motel's neighbor. According to her attorney, Christian Browne of Sahn Ward Coschignano, which is based in Uniondale, she alleges that the zoning board erred when it declined to consider the merits of her appeal of its action that confirmed the legality of a building permit issued by the town in 2015 for a restaurant, now known as Seamore's, at the Breakers.

Mr. Schneiderman, however, believes the zoning board did exactly what it was required to do under state law. Both men spoke about the matter recently. The East Hampton Town attorney's office is defending the town and has presented the court with a written response to the suit.

Seamore's, which leases the space at the Breakers from Mr. Schneiderman and his sister, is owned by a group including Michael Chernow. It has two locations in Manhattan. Mr. Chernow also was a founding partner in the Meatball Shop, which has seven restaurants in the city.

"The restaurant closed down in the early 1970s," Mr. Browne said of the Breakers space. He called the restaurant use abandoned. Mr. Browne also questions why a certificate of occupancy that included a restaurant was issued by the Building Department in 2005 since the restaurant was not functioning at the time. He said Ms. Concannon had no way of knowing a restaurant was mentioned in that certificate of occupancy, so had no reason to challenge it at the time.

The problem with that argument, according to Mr. Schneiderman, is that Ms. Concannon had every reason to know there was a restaurant at the site, because the Breakers went through site plan review by the town planning board in 2010, when he and his sister wanted to add a deck to the building. "They tried to argue that they didn't know about it, but she showed up at the planning board meeting," Mr. Schneiderman said, basing his opinion on an LTV video of the planning board hearing on the matter, which shows Ms. Concannon in attendance. The restaurant was mentioned three times during that hearing, at which no one from the public spoke, Mr. Schneiderman said. In addition, Ms. Concannon had received and signed a certified letter notifying her of the hearing, which described a restaurant at the site, Mr. Schneiderman said.

"What? Was she supposed to launch an investigation?" Mr. Browne responded when told of Mr. Schneiderman's statement. The issue was the building permit issued for the restaurant in 2015, Mr. Browne said, calling the proceedings in 2005 and 2010 irrelevant.

"When a building inspector decides to issue a building permit, he is making a new decision and is giving you new rights, which she challenged," Mr. Browne said. He called the Z.B.A.'s major mistake failing to examine that building permit. Ms. Concannon "is not trying to outright stop him, she is just saying it needs to be reviewed," he said. In his opinion, he said, there was never proper site plan review, including such matters as parking, for a restaurant at the site.

However, Mr. Schneiderman insisted that under state law Ms. Concannon needed to challenge the 2005 certificate of occupancy within 60 days of learning that it included a restaurant. He called this requirement vital, saying, "If we were forced back to planning, it would make every single building permit in the State of New York vulnerable." If challenges to such certificates were allowed at any point after they were issued, how could anyone invest in a building, Mr. Schneiderman asked. He said that would stifle reasonable growth and development.

In its written response to the suit, the town said the Z.B.A. was correct in its finding. First, the town said that in such a lawsuit the scope of the court's review is limited to "ascertaining whether the action taken is illegal, arbitrary and capricious, or an abuse of discretion." Instead, the brief, written by John Jilnicki, a town attorney, states that the "decision was rational, and supported by substantial evidence." It reiterates Mr. Schneiderman's point that Ms. Concannon was notified of the presence of a restaurant on the certificate of occupancy in 2010, and failed to act. It is, Mr. Jilnicki wrote, "a matter of fundamental fairness to landowners, who are entitled to rely on a decision after the 60-day statute of limitations has passed."

About the Author

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T.E. McMorrow began freelancing for The Star in 2009, before coming on staff, full time, at the end of 2011. He is a member of the Drama Desk in New York. His book, "The Nutcracker in Harlem," illustrated by James Ransome, is scheduled for publication in the fall of 2017 by HarperCollins children's division.