

ENVIRONMENTAL CLAIMS PART

Hon. Francis A. Nicolai

Hon. Joan B. Lefkowitz

Daronco - Westchester County Courthouse

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1. CRITERIA FOR SELECTION TO ENVIRONMENTAL CLAIMS PART

The ECP may hear and determine disputes and controversies where the predominant claims involve the adjudication of potential impacts to the environment, including but not limited to, potential impacts to the land, air, water, traffic and transportation, minerals, natural resources, forest management, flora, fauna, noise, patterns of population concentrations, distribution or growth, existing community neighborhood character and human health.

A. Actions or Proceedings in which the principal claims involve the following may be Retained in the Environmental Claims Part:

- (i) determinations made under, among other environmental laws, the State Environmental Quality Review Act, State Environmental Conservation Law, Urban Renewal Law, Eminent Domain and Procedure Law, New York State Historic Preservation Act, Coastal Erosion Law, and the relevant governing and implementing rules and licenses based on environmental criteria;
- (ii) determinations made by a local Legislative body, Planning Board, and Wetland Board or Commission, including, the approval or denial of zoning, subdivision, wetland, site plan and excavation permits, regulatory interpretations, and other land disturbance and other permits and licenses based on environmental criteria;
- (iii) determinations of local Zoning Boards of Appeals;

- (iv) regulatory taking and other constitutional claims challenging land use and other environmentally related laws, regulations, ordinances and determinations;
- (v) determinations made under the New York City Watershed Rules and Regulations, the New York City Water Supply and Sources, and the New York State Department of Health Regulations pertaining to the protection of the water supply; or
- (vi) actions involving the remediation, civil enforcement and/or cost allocation or recovery relating to the discharge, threatened discharge or regulation of those elements, wastes, materials, substances or compounds identified or regulated as hazardous or toxic under local, state or federal law, pursuant to, without limitation, New York State common law, the New York State Navigation Law, Industrial Hazardous Waste Management Act, Inactive Hazardous Waste Disposal Sites, Resource Conservation and Recovery Act, Comprehensive Environmental Response Compensation and Liability Act, Clean Water Act, Lead Based Paint Hazardous Reduction Act, National Emission Standard or Asbestos, New York State Department of Labor Industrial Code Rule 56, Insecticide, Fungicide and Rodenticide Act, and all other laws regulations, legal requirements, and statutes, as may be amended or enacted from time to time, relating to the regulation of hazardous and toxic substances and the protection of the environment;

B. The following Actions and Proceedings may be Excluded from the Environmental Claims Part:

- (i) challenges to the granting or denial of area variances involving single-family, two-family or three family residences;
- (ii) challenges involving easement disputes by or among single-family, two family or three family residences;

- (iii) any of the aforementioned core environmental cases involving disputes or controversies by or among single-family, two-family or three family residences, except as they relate to the discharge, threatened discharge or regulation of those elements, wastes, materials, substances or compounds identified or regulated as hazardous or toxic materials as set forth in the above subparagraph (vi); provided that the ECP justice may accept such cases in the event that he or she determines in his or her discretion that the action involves exceptional or unique issues of environmental law or the resolution of the action could potentially result in significant environmental impacts;
- (iv) determination of compensation under Article 5 of the Eminent Domain and Procedure Law;
- (v) criminal enforcement and other criminal proceedings;
- (vi) matters arising under the Occupational Safety and Health Act; or
- (vii) all matters to be tried.

2. ENVIRONMENTAL CLAIMS PART ASSIGNMENT PROCEDURES

A. Application Procedure for Assignment to the ECP

Counsel in any action or proceeding raising substantial environmental issues, as set forth herein, may seek to have the matter adjudicated in the ECP by submitting a filed copy of an RJI together with a one page letter stating why assignment to the ECP would be appropriate. The letter, which shall be served on all parties or counsel, shall, in addition, set forth the name of the matter, its index number and a statement indicating the nature of the action and the specific basis why adjudication in the ECP would be appropriate. The Chief Clerk shall refer the letter application and RJI to the Administrative Judge for review.

Within 5 days of service of the RJI and letter application, opposing counsel or any unrepresented party may join in the application or oppose it by submitting to the Administrative Judge a one page letter, including the criteria set forth above, on notice to all adverse counsel and unrepresented parties. The determination of whether a matter is to be assigned to the ECP or to an IAS Justice is an administrative matter. The determination of the Administrative Judge or his designee with respect to the granting or denial of admission to the ECP is final and subject to no further review or appeal. Nothing, however, shall prevent the Administrative Judge or his designee from later transferring an appropriate case from the ECP to an IAS part.

B. Consent to Change Venue

If a matter arising out of a dispute involving property or proposed development in Westchester County is not accepted into the ECP it shall remain with the IAS justice previously assigned or be given a random assignment. Where an action arises out of a dispute involving property or proposed development in Rockland, Orange, Dutchess or Putnam Counties and is denied admission to the ECP, the letter of counsel seeking admission to the ECP shall be deemed to be counsel's motion to change venue and consent to transfer the matter to the county where the proposed development or disputed property is actually located.

C. Case Tracking

Assignment to the ECP shall by-pass the DCM Preliminary Conference Part and proceed on an expedited track.

3. GENERAL RULES

A. Appearances by Counsel with Knowledge and Authority

Counsel who appear in the ECP must be familiar with the case in regard to which they appear and fully authorized to enter into agreements, both substantive and procedural,

on behalf of their clients. Attorneys appearing of counsel to the attorney of record, and parties appearing pro se, shall be held to the same requirement. Failure to comply with this rule may be regarded as a default and dealt with appropriately. It is important that counsel be on time for all scheduled appearances.

B. Settlements and Discontinuances

If an action is settled, discontinued or otherwise disposed of, counsel shall immediately inform the Court by submission of a copy of the stipulation or a letter directed to the Clerk of the ECP. Filing a stipulation of discontinuance with the County Clerk shall not be sufficient.

C. Papers by FAX

Copies of letters confirming an adjournment may be sent by fax to (914) 995-4552, Attn: Albert J. Degatano, Court Attorney Referee. No other submissions by fax will be accepted or considered unless indicated otherwise by the Court in advance in a particular case. The original of all correspondence must be mailed to the Clerk of the ECP.

4. MOTION/PETITION PRACTICE

The Court will entertain motions/petitions on submission on each day when Court is in session. There shall be no motion/petition calendar called by the Court. There shall be no oral arguments heard on motions/petitions and no appearances shall be required unless the Court otherwise directs. Questions or problems concerning the ECP calendar should be addressed to the Clerk of the ECP.

A. Filing of Papers

Except with the express permission of the Court, all motion/petition papers submitted to the ECP, including pleadings, opposition and reply papers, and Orders to Show Cause, must be typewritten, double-spaced, on single, front-faced letter size pages, securely bound

and entirely legible, and all exhibits must be legible and labeled with tab markings. The ECP may refuse to accept or consider any such papers which do not conform to the foregoing. Motion/petition papers and all correspondence must indicate the index number assigned to the action and that the action has been assigned to the ECP. Counsel shall simultaneously submit with their motion/ petition a disc version saved in WordPerfect 8.0 or translatable into same of the affidavits, affirmations and memoranda submitted with the application. Courtesy copies should not be submitted.

B. Requests for Temporary Restraining Orders

Applications for temporary injunctive relief, including applications for temporary restraining orders, are subject to section 202.7(f) of the Uniform Rules for Trial Courts. Therefore, any application for such relief must include “an affirmation demonstrating there will be significant prejudice to the party seeking the restraining order by the giving of notice. In the absence of a showing of significant prejudice, the affirmation must demonstrate that a good faith effort has been made to notify the party against whom the temporary restraining order is sought of the time, date and place that the application will be made in a manner sufficient to permit the party an opportunity to appear in response to the application.” 22 NYCRR 202.7(f). Where the party against whom the temporary restraining order is sought is a public officer, board or municipal corporation the affirmation must also demonstrate that the applicant does not seek to restrain such party in the performance of its statutory duties in violation of section 6313(c) of the Civil Practice Laws and Rules.

C. Motion/Petition Return Date

The moving party may select a motion/petition return date which shall be set forth in the notice of motion/petition. Motions/petitions may be made returnable at 9:30 a.m. on any day of the week on which the Court is in session. In those instances in which a motion is brought by order to show cause, the return date shall be determined by the Court.

D. Motion/Petition Adjournments

Upon the consent of all attorneys, the Court will routinely grant an adjournment of a motion/petition. The attorney seeking the adjournment must obtain the consent of opposing counsel and notify the Clerk of the ECP of the requested adjourned date at least 48 hours before the return date. The Court will then assign an adjourned date for the motion/petition. In assigning that date, the Court shall give consideration to any date agreed upon by all counsel.

All non-consensual requests to adjourn the return date require Court approval, which shall be directed to the Clerk of the ECP at least 48 hours before the return date. Prior to seeking permission from the Court, the requesting counsel must first attempt to obtain consent from all other counsel in the action.

E. Length of Papers

Unless otherwise permitted by the Court for good cause, briefs shall not exceed 70 pages and reply briefs shall not exceed 30 pages. Affidavits and affirmations shall not exceed 25 pages each. Papers submitted to the Court in violation of this rule may not be considered by the Court without notice to the submitting party in advance of the decision on the motion/petition.

F. Filing of Papers for Adjourned Motions/Petitions

If the Court, upon its own motion, adjourns the return date, no additional papers will be allowed to be submitted beyond the service dates for the original motion/petition return date, except by leave of the Court.

G. Papers Required on Particular Motions

(i) On any motion seeking summary judgment, dismissal of a complaint/petition, cross-claim or counterclaim, or the striking of a pleading, copies of all pleadings filed as of the date of the motion must be provided to the Court by the moving party. The failure to comply with this requirement shall result in the denial of the motion unless the pleadings are

provided to the Court by another party.

(ii) On any motion seeking leave to renew or reargue a prior motion, copies of all papers submitted on the prior motion must be provided to the Court by the moving party. The failure to comply with this requirement shall result in the denial of the motion unless the papers on the prior motion are provided to the Court by another party.

(iii) When an order to show cause is presented to the Court which seeks a temporary restraining order or a preliminary injunction, copies of the summons and complaint or petition commencing the underlying action must be provided to the Court by the moving party. No order to show cause seeking such relief will be considered by the Court if the moving party fails to comply with this requirement.

H. Reply Papers

Counsel shall not set forth factual claims or legal arguments in reply papers which were not set forth in the papers initiating the motion/petition.

I. Sur-Reply and Post-Submission Papers

Counsel are reminded that the CPLR does not provide for sur-reply papers, however denominated. Nor is the presentation of papers or letters to the Court after submission of a motion/petition permitted. Absent express permission in advance, such materials will be filed with the County Clerk unread. Opposing counsel who receives a copy of materials submitted in violation of this rule should not respond in kind.

J. Decisions and Orders

In most instances, a written Decision and Order will be issued following the submission of the motion/petition. This Decision and Order, with supporting papers, will be filed in the Westchester County Clerk's Office by the Court. A copy of the Decision and

Order shall be sent to counsel who have submitted a self addressed envelope with first class postage affixed, after filing.

5. EX PARTE

The ECP sits "ex parte" at all times for matters assigned to it. All ex parte matters are filed with the Civil Calendar Office. The Clerk of the Supreme Court will review an ex parte application on an expedited basis to determine whether it is a ECP matter. All ex parte applications will be forwarded to the ECP, unless the ECP Judge is not available. Under these circumstances, the regular IAS Duty Judge will act in his or her place. Following review and action, if any, by the regular IAS Duty Judge, the case will be returned to the ECP.

6. CONFERENCES

It is envisioned that preliminary, discovery and pretrial conferences will not be required for the matters selected for the ECP. However, the purpose of this Court is to help litigants resolve their disputes in a fair and equitable manner. Should the attorneys have need of the Court's services at any time, a conference with all parties present in person or by telephone can be arranged through the Clerk of the ECP. Attorneys are reminded, however, that ex parte communications to the Court are prohibited by the CPLR and the Code of Professional Conduct.