

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

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**WG WOODMERE LLC, SG BARICK LLC and LH  
BARICK LLC,**

**IAS Part 17  
Index No. 606719/2018**

**Plaintiffs,**

**-against-**

**DECISION AND ORDER**

**TOWN OF HEMPSTEAD and TOWN OF  
HEMPSTEAD TOWN BOARD,**

**Defendants.**

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**LEONARD D. STEINMAN, J.**

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The following papers, in addition to any memoranda of law submitted by the parties, were reviewed in preparing this Decision and Order:

Plaintiffs' Notice of Motion, Affirmation & Exhibits.....	1
Defendants' Affirmation in Opposition & Exhibits.....	2
Plaintiffs' Reply Affirmation & Exhibit.....	3
Plaintiffs' Supplemental Affirmation & Exhibits.....	4
Defendants' November 9, 2018 letter submission.....	5
Defendants' November 13, 2018 letter submission.....	6

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Plaintiffs are the owners of the Woodmere Club, a 120-acre private country club and golf course that spans the unincorporated hamlet of Woodmere, the Village of Woodsburgh and the Village of Lawrence, all within the Town of Hempstead on Long Island. Plaintiffs desire to subdivide and develop the golf course property. They are being prevented from doing so, even within the bounds of existing zoning restrictions, because of a Town moratorium on golf course development that was adopted in November 2016 and has been extended multiple times since then. The latest extension of the moratorium was approved on November 13, 2018 and is set to expire on February 23,

2019. Plaintiffs challenge the extended moratorium and seek a declaration that it is null and void. Before the court is plaintiffs' contested motion for summary judgment.

For the reasons set forth below, plaintiffs' motion is granted, and plaintiffs are entitled to summary judgment on their Second Cause of Action, which alleges that the moratorium has been extended for an unreasonable duration and is therefore unconstitutional. In reaching this conclusion, the court assumes, without deciding, that the moratorium was enacted for a proper purpose and procedurally has been properly extended.<sup>1</sup> Nonetheless, the defendants have failed to set forth any proper basis for the extension of the moratorium through the past six months; have not explained why it needs to be extended another two months; and have not provided any hint as to when it shall terminate.

### **BACKGROUND**

The following facts are uncontested:

Plaintiffs purchased the property at issue in April 2017 with the intent to develop it into residential housing. Current zoning within the Town of Hempstead would permit such development. Prior to the closing of the sale, community opposition to the development sprang up, bringing the issue to the attention of the Town of Hempstead Board. This led the Board to issue its November 15, 2016 moratorium, effective December 5, 2016.

The moratorium provides that the Town's Department of Buildings and other agencies and departments will not issue any final building permit or other necessary approval in connection with an application for the residential development of any part of a privately-owned golf course provided that the course is located within 500 feet of an incorporated village. The moratorium was for a 180-day period, subject to 90-day extensions if the Board were to determine "that any such extension is necessary to

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<sup>1</sup> Plaintiffs have challenged the propriety of the "administrative" extensions of the moratorium and further allege that they have been singled out because of community pressure. Plaintiffs allege that the Town's sole motivation for the moratorium is to stop their development. The court has not reached these arguments given its finding that the duration of the moratorium renders it unconstitutional.

maintain the status quo while it shall properly conduct and complete it's [sic] study and enact new regulations, as it may deem appropriate.”

The intent of the moratorium, as expressed therein, was to “allow the Town the time to conduct a full review of the layout of existing homes and current area-based zoning regulations” so that it could “determine whether to enact comprehensive new lot sizes and other area-based regulations that would apply to...residential development of golf course” properties. The Town was “greatly concerned” that area character and property values be preserved and believed that as a matter of sound land-use planning the moratorium was prudent.

On January 5, 2017, the Town retained Cameron Engineering & Associates, L.L.P. to analyze the potential for conversion of golf courses to residential developments within the Town, assess the impact of such development and prepare proposed zoning regulations relating to the impacted areas. Cameron was to prepare a draft report for the Town’s review and then prepare a final report incorporating any comments.

Four months later, Cameron had not completed its work. As of May 2017, Cameron had simply identified the potential golf courses to study (there were three, including plaintiffs’), reviewed the existing zoning regulations, identified existing environmental restraints to development (such as wetlands) and determined the amount of potential residential development. Cameron had not analyzed the impact of such development, prepared zoning proposals or performed a SEQRA analysis relating to zoning proposals. As a result, Cameron requested that the moratorium, set to expire on June 5, 2017, be extended for 90 days from that date. It was—extending the moratorium to September 5, 2017.

Three months later—eight months from the effective date of the moratorium and seven months after they were hired—Cameron still had not analyzed the impact of golf course development, prepared potential zoning or performed a SEQRA analysis relating to zoning proposals. As a result, Cameron again requested that the moratorium be extended 90 days. It was—to December 4, 2017.

Although the moratorium expressly identified the preservation of property values as a great concern of the Board, in late October 2017 Cameron asked that the moratorium again be extended 90 days so that it could “expand” its study to include the impact of development on property values and project the assessed value of new homes under existing and proposed zoning regulations. On November 14, 2017, over one year after it was originally enacted, the Board again extended the moratorium 90 days, to March 5, 2018.

The Moratorium was again extended on February 6, 2018 for an additional 90 days, to June 4, 2018. Presumably, Cameron still had not completed its now 13 month review.

Finally, sometime in April 2018, Cameron apparently issued a report to the Board, which caused the Board on April 24, 2018 to pass a resolution scheduling a public hearing on May 8, 2018 concerning new zoning regulations pertaining to residential development of golf courses. But “in response to concerns from the community” and because Cameron apparently had not delivered its final report to the Board, on May 1 certain members of the Board announced that they would seek to postpone the hearing. Those Board members, together with Cameron representatives, held a well-attended public “informational meeting” concerning the new proposed regulations on May 7.

On or about May 3, 2018, the Town received Cameron’s final report: Expanded Environmental Assessment: Potential Residential Development of Golf Course Properties in the Town of Hempstead. On May 8, 2018, the hearing on the proposed zoning regulations was adjourned to June 19. Members of the Board explained that they had only received the report a few days before. The moratorium, set to expire on June 4, was extended another 90 days to September 4, 2018. In early June, Cameron also provided to the Board an easily completed, routine Environmental Assessment Form.

On June 19, rather than vote on the new zoning regulations, the Board again adjourned the hearing—this time without a new scheduled date. At the hearing, it was remarked that the Board wanted additional time to study other alternatives with respect to plaintiffs’ property, such as creating a park or a municipal golf course. At oral argument

on November 1, 2018, counsel for the Board conceded that the Board was now contemplating these options. No new hearings have been held or scheduled concerning the proposed zoning regulations.

The Board has extended the moratorium twice more: once on August 7, 2018 and again on November 13, 2018.<sup>2</sup> The moratorium is now set to expire on March 4, 2019, but it is unknown if it will be further extended because it is unclear what purpose it is currently serving. The court invited the defendants to suggest a date by which the moratorium would definitively end, but they have failed to do so.

### LEGAL ANALYSIS

The Town Board unquestionably has authority to enact zoning regulations and may amend such regulations as it deems advisable. *Sherman v. Frazier*, 84 A.D.2d 401 (2d Dept. 1982). A corollary to its power to adopt zoning regulations is the Town's authority to adopt a moratorium on the issuance of building permits as a valid stop-gap measure to maintain the status quo pending the preparation and enactment of a comprehensive zoning ordinance. *Cellular Telephone Co. v. Village of Tarrytown*, 209 A.D.2d 57 (2d Dept. 1995); *Matter of Dune Associates, Inc. v. Anderson*, 119 A.D.2d 574 (2d Dept. 1986)(approving 90-day moratorium); *Lakeview Apartments of Hunns Lake, Inc. v. Town of Stanford*, 108 A.D.2d 914 (2d Dept. 1985). As stated by the Court of Appeals, "Temporary restraints necessary to promote the overall public interest are permissible" and the "municipal power to act in furtherance of the public health and welfare may justify a moratorium on building permits...which are reasonably limited as to time." *Charles v. Diamond*, 41 N.Y.2d 318 (1977).

At some point, however, a "moratorium" can amount to an unconstitutional taking or violation of a property owner's due process rights. *See Golden v. Planning Board of the Town of Ramapo*, 30 N.Y.2d 359, 380 (1972); *Ecogen, LLC v. Town of Italy*, 438 F.Supp.2d 149, 161 (W.D.N.Y. 2006).

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<sup>2</sup> The parties agreed at oral argument that plaintiffs' complaint and this motion would be deemed amended to include any future moratorium extensions approved by the Board.

Typically, there is no stop-watch measuring the speed of governmental action. Absent the constraints imposed by law or contract, governmental officials may conduct the affairs of government at their own pace. *Charles v. Diamond*, 41 N.Y.2d at 326. But where, as here, a municipality has barred the use of private property for a lawful purpose under existing zoning regulations, unreasonable delay is not an option. The perpetuation of a moratorium on development for its own sake evidences that governmental powers have been invoked impermissibly as a pretext to assuage strident community opposition. *Cellular Telephone Co. v. Village of Tarrytown*, 209 A.D.2d at 66.

For this reason, courts look at the reasonableness of the duration of a moratorium. “The critical question is...how much time the municipality needs to study the situation before it and develop a comprehensive zoning plan or other response to the situation.” *Ecogen, LLC v. Town of Italy*, 438 F.Supp.2d at 161. The Supreme Court has observed that, “It may well be true that any moratorium that lasts more than one year should be viewed with special skepticism.” *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 341 (2002). But in that very case the Supreme Court rejected any *per se* rule and approved a moratorium of 32 months. *Id.*

In *Golden*, the Court of Appeals approved an 18-year moratorium—this amount of time was not irrational given the purpose the moratorium was to serve. *See Golden v. Planning Board of the Town of Ramapo*, 30 N.Y.2d at 380-83. In contrast, in *Cellular Telephone Co.*, the Second Department found that the passage of successive moratoria was invalid because the village board had all the information it needed to act and therefore the moratoria were unreasonable in duration—presumably from inception. *Cellular Telephone Co. v. Village of Tarrytown*, 209 A.D.2d at 68. In between these two extremes are the holdings in *Russo v. N.Y. State Dept. of Environmental Conservation*, 55 A.D.2d 935 (2d Dept. 1977) and *Lakeview Apartments of Hunns Lake, Inc. v. Town of Stanford*, 108 A.D.2d at 914, where the court struck down moratoria that were three and eight years old at the time the appellate decisions were rendered.

This court must therefore examine whether there is any rational basis that supports the Town’s latest extensions of the moratorium in June, September and November 2018.

Over two full years have passed since the moratorium was first instituted. Although this court may question why it took nearly a year and a half for Cameron to write its report, it is undisputed that the Town had the analyses it sought and new zoning regulations to vote on in May of this year. That vote was scheduled to take place in May, and then in June. Instead, the vote was indefinitely postponed, and the Board chose instead to extend the moratorium three more times.



In its opposition to the motion, the defendants do not proffer *any reason* for these latest extensions. Absent a valid reason for the continuation of the moratorium it must be stricken down. And although at oral argument the Board asserted that it was exploring alternatives other than zoning changes with respect to plaintiff's land, such as condemnation, "there is neither case authority nor statutory authority for adopting an ordinance to prevent a property owner from building upon his property because the municipality in the future may seek to obtain it in condemnation." *Oakwood Island Yacht Club, Inc. v. City of New Rochelle*, 59 Misc.2d 355, 357 (Sup. Ct. Westchester Co. 1969), *aff'd* 36 A.D.2d 796 (2d Dept.), *aff'd* 29 N.Y.2d 704 (1971).

Plaintiffs have established as a matter of law that the moratorium is unconstitutional because it currently serves no proper purpose and it has now been extended beyond a reasonable time. Defendants have failed to set forth any evidence to create an issue of fact to be tried. As a result, plaintiffs' motion is granted and they are entitled to summary judgment. Plaintiffs are to submit a judgment upon notice.

This constitutes the Decision and Order of the court.

Dated: December 26, 2018  
Mineola, New York

ENTER:

  
LEONARD D. STEINMAN, J.S.C.