



**Volunteer Fire Association of Tappan, Inc., Appellant, v Town of Orangetown,
Respondent. (Index No. 534/07)**

2007-04507

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND
DEPARTMENT**

**54 A.D.3d 850; 863 N.Y.S.2d 502; 2008 N.Y. App. Div. LEXIS 6861; 2008 NY Slip Op
6984**

September 16, 2008, Decided

PRIOR HISTORY: *Volunteer Fire Ass'n of Tappan, Inc. v. Town of Orangetown*, 2007 N.Y. Misc. LEXIS 3312 (2007)

HEADNOTES

Municipal Corporations - Planning.--Plaintiff, which provided fire protection services and sought building permit to construct new firehouse, was not exempt from defendant's local laws and regulations--plaintiff was not exempt from submitting its site plan to Planning Board for site plan review; plaintiff did not have its own land use approval process with public hearings and comment period, and if project were not subjected to site plan review by Planning Board, there would be no equivalent review by any other entity.

COUNSEL: [***1] Dwight D. Joyce, Stony Point, N.Y., for appellant.

John S. Edwards, Town Attorney, Orangeburg, N.Y. (Robert V. Magrino of counsel), for respondent.

JUDGES: ROBERT A. SPOLZINO, J.P., STEVEN W. FISHER, EDWARD D. CARNI, THOMAS A. DICKERSON, JJ. SPOLZINO, J.P., FISHER, CARNI and DICKERSON, JJ., concur.

OPINION

[*850] [**502] In an action, inter alia, for a judgment declaring that the plaintiff is exempt from the defendant's local laws and regulations, [*851] the plaintiff appeals from an order of the Supreme Court, Rockland County (Nelson, J.), dated April 3, 2007, which denied its motion, in effect, for summary judgment and, upon searching the record, awarded summary judgment to the defendant.

Ordered that the order is affirmed, with costs, and the matter is remitted to the Supreme Court, Rockland County, for the entry of a judgment declaring that the plaintiff is not exempt from the defendant's local laws and regulations.

The plaintiff provides fire protection services for the Tappan Fire District. In [**503] April 2006 the defendant Town of Orangetown (hereinafter the Town) denied the plaintiff's application for a building permit with respect to the construction of a new firehouse on the ground that the project required [***2] site plan approval from the Town of Orangetown Planning Board (hereinafter the Planning Board). The plaintiff then commenced this action, inter alia, for a judgment declaring that it is exempt from the Town's local laws and regulations. The Town does not contest the plaintiff's argument that, with respect to the issues presented here,

54 A.D.3d 850, *851; 863 N.Y.S.2d 502, **503;
2008 N.Y. App. Div. LEXIS 6861, ***2; 2008 NY Slip Op 6984

the plaintiff stands in the same position as the fire district. During the pendency of the action, the Zoning Board of Appeals (hereinafter the ZBA) held a hearing for the purpose of conducting a "balancing of the public interests" pursuant to *Matter of County of Monroe* (72 NY2d 338, 341, 530 NE2d 202, 533 NYS2d 702 [1988]) and making its own determination as to whether the plaintiff was exempt from the Town's zoning laws. After the hearing, the ZBA determined that the plaintiff would be exempt from applying for variances from the Town's zoning regulations but would nevertheless be required to submit its site plan to the Planning Board for site plan review.

The Supreme Court, after conducting its own balancing of the public interests, properly found that the plaintiff is not exempt from submitting its site plan to the Planning Board for site plan review (*see Matter of Board*

of Fire Commrs. of Tappan Fire Dist. v Planning Bd. of Town of Orangetown, 253 AD2d 875, 678 NYS2d 508 [198]). [***3] Unlike the encroaching governmental unit in *Matter of County of Monroe* (72 NY2d at 344, 530 NE2d 202, 533 NYS2d 702), the plaintiff in this case does not have its own land use approval process with public hearings and a comment period, and if the project were not subjected to site plan review by the Planning Board, there would be no equivalent review by any other entity.

Since this is, in part, a declaratory judgment action, we remit the matter to the Supreme Court, Rockland County, for the entry of a judgment declaring that the plaintiff is not exempt from the Town's local laws and regulations (*see Lanza v Wagner*, 11 NY2d 317, 183 NE2d 670, 229 NYS2d 380 [1962], *appeal dismissed* 371 US 74, 83 S Ct 177, 9 L Ed 2d 163 [1962], *cert*

54 A.D.3d 850, *852; 863 N.Y.S.2d 502, **503;
2008 N.Y. App. Div. LEXIS 6861, ***3; 2008 NY Slip Op 6984

[*852] *denied 371 U.S. 901, 83 S Ct 205, 9 L Ed 2d 164* concur.
[1962]). Spolzino, J.P., Fisher, Carni and Dickerson, JJ.,