



Browne of Sahn Ward reps property owner in special use permit case

July 14, 2014 - Long Island

Christian Browne, a partner with Sahn Ward Coschignano & Baker, PLLC, represented a commercial property owner in an Article 78 proceeding in NYS supreme court against the town of Hempstead's zoning board of appeals. The court overturned the board's decision to impose a five-year durational time limit on a special use permit for a laundromat. The court held that the zoning board lacked the authority to impose a time limit on the life of the special permit. This decision marks a victory for business property rights.

In 1999, Mark Wieboldt and Laundry Palace U. applied for a special permit authorizing them to conduct a coin-operated laundromat on commercial property in Uniondale. The board granted the application, but placed a durational limitation on the permit, requiring Wieboldt to reapply every five years in order to continue his business operations.

The board renewed the laundromat's permit in 2008 with the same conditions. In 2013, Wieboldt retained Browne, who asked the board to lift the five-year limit on the permit, arguing that the laundromat was entitled to permanently use the land for the operation of the business. Despite this request, the board renewed the application and, once again, placed the five-year limit on the laundromat's special permit.

In court, Browne successfully demonstrated that the town's zoning ordinance does not give the board the power to impose time limits on special permits. As cited by Browne, in order for a board to impose a durational limit, the relevant local ordinance must expressly empower it to do so. The firm also persuaded the court that these types of time limitations run counter to basic principles of zoning law that empower zoning boards only to regulate the use of land, not the duration of a use.

"This decision is a big victory for property owners and local businesses," Browne said. "A business needs to know that once a zoning board approves its use of land, the approval is permanent, so long as the owner operates lawfully. Property owners who seek and gain zoning approvals and who follow the law should not be forced to forever seek the permission of local authorities in order to simply operate an approved business."

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540