

At a term of the IAS Part of the Supreme Court of the State of New York,  
held in and for the County of Orange, at 285 Main Street,  
Goshen, New York 10924 on the 6<sup>th</sup> day of January, 2020.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

TOWN OF WOODBURY and the TOWN OF  
WOODBURY TOWN BOARD

Plaintiffs,

-AGAINST-

VILLAGE OF WOODBURY, VILLAGE OF  
WOODBURY BOARD OF TRUSTEES and  
ORANGE COUNTY,

Defendants.

**DECISION AND ORDER**  
INDEX #EF006036/2018  
Motion date: 10/9/19  
Motion Seq.#6

**VAZQUEZ-DOLES, J.S.C.**

The following papers numbered 1 - 62 were read on Defendant Village of Woodbury and Village of Woodbury Board of Trustees' motion for summary judgment:

- Notice of Motion/Memorandum of Law/Affidavit of Desiree Potvin/Exhibits 1 - 9/  
Affidavit of Michael Queenan/Affirmation of Richard Golden/Exhibits 1 - 14 ..... 1 - 28
- Memorandum of Law in Opposition/Affirmation in Opposition of Lia Fierro, Esq./  
Exhibits A - U/Affidavit of James Wood/Exhibits A - D/Affidavit of  
Frank Palmero/Exhibits A - B ..... 29 - 59
- Affirmation in Reply of Richard Golden, Esq./Exhibit A - B/Memorandum of Law ..... 60 - 62

**PROCEDURAL HISTORY**

This case is a dispute over the transfer of real property owned by the Town of Woodbury to the Village of Woodbury in connection with a land exchange between the two municipalities. Plaintiffs, under a new administration, are challenging the deed executed by former Town Supervisor, David Sutz ("Sutz") alleging that he did not have the authority from the Town Board to transfer the property to the Village, because he did not get the final review and authorization from town counsel. Defendant's argue that they had the appropriate authorization.

Plaintiff's filed a motion for partial summary judgment(seq. #3), based *in part* on the Village Defendants' purported admission to the allegation in Paragraph 190 of the Complaint. Defendant's moved by cross-motion(seq. #4), for leave to amend their Answer to correct erroneous admissions. By decision and Order dated January 2, 2019, this Court denied Plaintiff's motion for summary judgment and granted Defendant leave to amend their Answer. The Answer was amended and e-filed on January 3, 2019. For purposes of this motion only, the Court has waived the 20 page maximum found in the Part Rules.

Village Defendants now move for summary judgment dismissing the complaint against them on several grounds. Plaintiff's oppose on all grounds.

### **FACTS**

The Village and Town are unique municipalities - their boundaries are coterminous except for a portion of the Village of Harriman that is located in the Town but not the Village. Each municipality has its own government. The two municipalities share certain governmental services and functions under intermunicipal agreements; each entity is responsible for performing different functions and providing different services. Relevant to this action, the Village is responsible for the Highway Department and Water Department and the Town is responsible for the Senior Center and Parks and Recreation Department. The Highway Department was previously a Town function but was transferred to the Village effective January 1, 2016. The Town's Parks and Recreation Department provides services that include maintaining the Earl Reservoir. (See Queenan and Potvin Aff.).

Defendants allege that up until the property exchange which is at issue, the Town owned the properties with the Highway Department's garage and shed/salt barn and the Village owned

the property at Earl Reservoir that was previously owned by the Town Water District. If either municipality needed to do work on the others' property, then permission needed to be obtained. Around this time frame, the Village wanted to expand the shed on the property. This dichotomy led the municipalities to explore a possible land exchange which the Town began discussing in the summer of 2016. At the Town Board meeting on February 16, 2017, Supervisor Sutz advocated for transferring the Town-owned Highway property in exchange for the Village-owned property at Earl Reservoir, as this would decrease insurance liability and will be less confusing when either wants to do improvements to the lands. (Potvin Aff. Exhibit 3 at p. 3). The town Board did not approve or authorize the Town Supervisor to do anything at the February 2017 meeting, except that further investigation and discussion was needed. Further discussions did occur at the March and April meetings, but still no authority was given to the Town Supervisor to act.

At the Town Board meeting of July 20, 2017, the Board did pass the following resolution;

“...to authorize the Supervisor to sign any and all documents relating to a property exchange with the Village of Woodbury as follows, *upon final preparation, review and authorization by counsel*: From the Town to the Village - Section 219, Block 5, Lot 21 and a portion of Lot 20 (highway garage and salt shed) From the Village to the Town - Section 204-1-30 (Earl's Reservoir).” (Emphasis added)

On July 27, 2017, the Village Board held a meeting and adopted the following resolution:

“...to authorize the Mayor to sign any and all documents relating to a property exchange with the Town of Woodbury as follows, upon final preparation, review and authorization by counsel: From the Town to the Village - Section 219, Block 5, Lot 21 and a portion of Lot 20 (highway garage and salt shed) From the Village to the Town - Section 204-1-30 (Earl's Reservoir)”.

On or about August 18, 2017, Supervisor Sutz signed a deed transferring the Town's property to the Village. Mayor Queenan and Supervisor Sutz also signed the necessary Real

Property Transfer Report, and the deeds were recorded on or about August 29, 2017. There is a dispute as to whether the town attorney participated in any of the transfer.

Although many arguments have been presented for dismissal, the main issue to resolve this action is whether the Supervisor had the power to act; to transfer the parcels of property. As a preliminary matter, this Court will consider the parties arguments on whether this matter should have been brought by an Article 78 proceeding, and is therefore barred by the statute of limitations.

### ANALYSIS

Whether a case fits within the purview of an Article 78 proceeding or a declaratory judgment was discussed at length by Judge Dillon in *Dandomar Co., LLC v Town of Pleasant Val. Town Bd.*, 86 AD3d 83, 87 [2d Dept 2011]. In that case, the Second Department noted that, “[r]egardless of how a pleading is styled, courts have a responsibility in the first instance to ascertain the true nature of a case in order to determine whether to apply the four-month statute of limitations governing CPLR article 78 proceedings or a longer statute of limitations that may control declaratory judgment actions (citing *Matter of Save the Pine Bush v City of Albany*, 70 NY2d 193, 202 [1987]; *Solnick v Whalen*, 49 NY2d 224, 230-231 [1980]; *Matter of Llana v Town of Pittstown*, 234 AD2d 881 [1996]). In making such a determination, where the nature of an action is at issue, it is necessary to “examine the substance of [the] action to identify the relationship out of which the claim arises and the relief sought” (citing *Matter of Save the Pine Bush v City of Albany*, 70 NY2d at 202 [internal quotation marks omitted]; and also *Press v County of Monroe*, 50 NY2d 695, 705 [1980]; *Solnick v Whalen*, 49 NY2d at 229; *Sears, Roebuck & Co. v Enco Assoc.*, 43 NY2d 389, 396 [1977]; *Matter of Llana v Town of Pittstown*,

234 AD2d at 881). If the court determines that the parties' dispute can be, or could have been, resolved through a form of action or proceeding for which a specific limitation period is statutorily provided, that limitation period governs (citing *New York City Health & Hosps. Corp. v McBarnette*, 84 NY2d 194, 201 [1994]; and *Matter of Save the Pine Bush v City of Albany*, 70 NY2d at 202; *Press v County of Monroe*, 50 NY2d at 705; *Solnick v Whalen*, 49 NY2d at 229; *Matter of Llana v Town of Pittstown*, 234 AD2d at 881).” *Dandomar Co., LLC v Town of Pleasant Val. Town Bd.*, 86 AD3d 83, 90-91 [2d Dept 2011].

In this case, the Village Defendants argue that the true nature of this action is a CPLR Article 78 proceeding, (a four month statute of limitations), while Plaintiff’s argue that is one for a declaratory judgment, (a six year statute of limitations). At first blush, it appears that this action may be in the nature of an Article 78 proceeding, as Plaintiff seeks to annul an action of a town supervisor who allegedly acted outside the scope of his authority. However, as Plaintiff correctly points out, by looking at the entire underlying allegations, it is evident that Plaintiffs did not have knowledge of the alleged improper transfer of property within the four month Article 78 proceeding time. Furthermore, the legal/factual question at issue is whether the language, “...upon final preparation, review and authorization by counsel...” limited Supervisor Sutz’s authority to complete the transfer of properties only with counsels review.

“In a declaratory judgment action, the court does not direct a party to do an act or refrain from doing an act... the court merely declares the prevailing party's rights with respect to the matter in controversy for the purpose of guiding future conduct, and then, as colloquially described by Professor David Siegel, “let[s] things go at that” (citing Siegel, NY Prac § 436, at 738 [4th ed]; CPLR 3001). By contrast, in a CPLR article 78 proceeding, the court affirmatively

directs a party, if unsuccessful, to perform an act or refrain from doing so (citing *Matter of Levine v Board of Educ. of City of N.Y.*, 186 AD2d 743, 745 [1992]; *Matter of Pecora v Queens County Bar Assn.*, 40 Misc 2d 820, 821 [1963]).” *Dandomar Co., LLC v Town of Pleasant Val. Town Bd.*, 86 AD3d 83, 89 [2d Dept 2011]. Applying this law to the case at bar, this Court finds that the action is one for a declaratory judgment and is not time barred by the four month statute of limitations. Accordingly Defendants’ motion to dismiss the Second, Third and Tenth causes of action must be denied.

As for dismissal of the Fourth cause of action which seeks to annul the transfer of lots 20 and 21, Defendant argues that Plaintiffs lack standing to sue. Standing to sue requires “an interest in the claim at issue in the lawsuit that the law will recognize as a sufficient predicate for determining the issue at the litigant's request” (citing *Caprer v Nussbaum*, 36 AD3d 176, 182 [2006]; and see *Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 772-773 [1991]; *Jacob v Conway*, 150 AD3d 973, 974 [2017]). Generally, “a plaintiff, in order to have standing in a particular dispute, must demonstrate an injury in fact that falls within the relevant zone of interests sought to be protected by law” (citing *Caprer v Nussbaum*, 36 AD3d at 183). To demonstrate an “injury in fact,” a plaintiff must “establish that he or she will actually be harmed by the challenged action, and that the injury is more than conjectural” (citing *id.*; and see *New York State Assn. of Nurse Anesthetists v Novello*, 2 NY3d 207, 211 [2004]). An organizational plaintiff must establish, among other things, that at least one of its members would have standing to sue (citing *New York State Assn. of Nurse Anesthetists v Novello*, 2 NY3d at 211).” *Am. Massage Therapy Assn. v Town of Greenburgh*, 173 AD3d 1009, 1010 [2d Dept 2019]. Applying those standards to the facts in this case, dismissal can not be granted. It is evident that

the Town Board has standing to sue as the actions of the Supervisor affected property belonging to the Town, and the Town Board alleges that it was not fully informed before the transfers were completed. Moreover, the injuries alleged are a huge difference in the value of these properties.

As to Defendants' motion to dismiss the remaining causes of action, this relief must be denied as well. "It is the movant's burden on a motion for summary judgment to "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572; *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642). Only if the movant succeeds in meeting its burden will the burden shift to the opponent to demonstrate through evidence in admissible form that there exists a triable issue of fact (citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d at 324, 508 N.Y.S.2d 923, 501 N.E.2d 572; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 560, 427 N.Y.S.2d 595, 404 N.E.2d 718). While the ultimate burden of proof at trial will be borne by the plaintiff, a defendant seeking summary judgment bears the initial burden of demonstrating its entitlement to judgment as a matter of law by submitting evidentiary proof in admissible form (citation omitted). On a summary judgment motion by a defendant, the defendant does not meet its initial burden by merely pointing to gaps in the plaintiff's case; rather, it must affirmatively demonstrate the merit of its claim or defense (citing *Marielisa R. v. Wolman Rink Operations, LLC*, 94 A.D.3d 963, 964, 942 N.Y.S.2d 215; *Rubistello v. Bartolini Landscaping, Inc.*, 87 A.D.3d 1003, 1005, 929 N.Y.S.2d 298; *Shafi v. Motta*, 73 A.D.3d 729, 730, 900 N.Y.S.2d 410; *Pace v. International Bus. Mach. Corp.*, 248 A.D.2d 690, 670 N.Y.S.2d 543). Issue finding, rather than issue determination, is the court's function on a motion for summary judgment (citing

*Chimbo v. Bolivar*, 142 A.D.3d 944, 945, 37 N.Y.S.3d 339; *Gitlin v. Chirinkin*, 98 A.D.3d 561, 561, 949 N.Y.S.2d 712).” *Vumbico v Estate of Wiltse*, 156 AD3d 939, 940-41 [2d Dept 2017].

Applying this law to the remaining arguments for dismissal, (excepting the sixth cause of action), the Court finds that Defendants have failed to meet their prima facie burden as a matter of law. The remaining arguments are built upon the premise that the Supervisor had the requisite authority to complete the property transfers. However, the only proof of this authority proffered by the Defendants is the July 20, 2017 minutes of the Town Board meeting. While part of the resolution does give the Supervisor authority to begin the process, when read in a light most favorable to the Plaintiffs’, those minutes arguably limit the Supervisor’s ability to act “...until final preparation, review and authorization by counsel.” What this phrase actually means must be determined after proper submission of evidence in a hearing or trial. Even assuming arguendo, that Defendants’ met their initial burden, Plaintiff has submitted full transcripts of the board members which suggest that the intent of those words indicated a need to have papers reviewed by counsel so counsel could report back to the Board. In either scenario, this case is not ripe for summary judgment.

As to the Sixth cause of action which alleges that the transfer from the Town Water District to the Town on behalf of the Village, is an illegal alienation of parkland, this issue also requires trial. “Under the public trust doctrine, a land owner cannot alienate land that has been impliedly dedicated to parkland without obtaining the approval of the legislature (citing *Matter of Glick v Harvey*, 25 NY3d 1175, 1180 [2015]; *Friends of Van Cortlandt Park v City of New York*, 95 NY2d 623, 630 [2001]).” *Coney Is. Boardwalk Community Gardens v City of New York*, 172 AD3d 1366, 1368 [2d Dept 2019]. Defendant argues that there is no actual dedication

of this property as parkland. However, transcript evidence submitted by Plaintiff suggests otherwise. To be successful in this cause of action, Plaintiff must show, “(1) “[t]he acts and declarations of the land owner indicating the intent to dedicate his land to the public use [are] unmistakable in their purpose and decisive in their character to have the effect of a dedication” and (2) that the public has accepted the land as dedicated to a public use (citing *Niagara Falls Suspension Bridge Co. v Bachman*, 66 NY 261, 269 [1876]; and *Holdane v Trustees of Vil. of Cold Spring*, 21 NY 474, 477 [1860] [“The owner's acts and declarations should be deliberate, unequivocal and decisive, manifesting a positive and unmistakable intention to permanently abandon his property to the specific public use”]; citing *Flack v Village of Green Is.*, 122 NY 107, 113 [1890]; *Powell v City of New York*, 85 AD3d 429, 431 [1st Dept 2011]).” *Glick v Harvey*, 25 NY3d 1175, 1180 [2015]. As a matter of law, on these papers, this Court can not determine whether or not the land is parkland.

Therefore, upon a reading of all the papers submitted herein, it is hereby

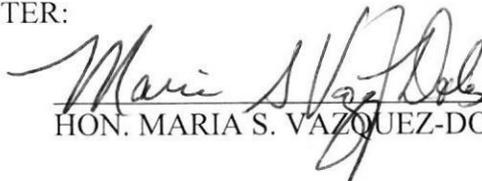
**ORDERED** that Defendants’ motion to dismiss the entire complaint is denied, and it is further

**ORDERED** that all parties are directed to appear as previously scheduled for a status conference on January 8, 2020 at 9:15 a.m..

The foregoing constitutes the Decision and Order of this Court.

Dated: January 6, 2020  
Goshen, New York

ENTER:

  
HON. MARIA S. VAZQUEZ-DOLES, J.S.C.

TO: Counsel of Record via NYSCEF