

ASTON'S MINING LAW CASE REVIEWS™



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Jurisdiction : United States

Complimentary Case No. 11-09-02

ZONING SPECIAL USE PERMIT FOR SAND MINING UPHELD IN NEW YORK

In *Town of Riverhead v. T.S. Haulers, Inc.*, 275 A.2d 774 (N.Y.App.Div.2d Dept., 2000), the defendant appealed the lower court's decision where a sand mine operator had been permanently enjoined by the Supreme Court, Suffolk County on May 10, 1999, from sand and soil mining and processing and directed to apply for a special permit under Riverhead Town Code § 108-45 (B) (6). Defendant's motion, in effect, for reargument was also denied.

The defendant-operator of the sand mine argued that it was not required to obtain a special permit from the plaintiff, Town of Riverhead, to carry on its mining and processing operation. It contended that any local special permit requirement is superseded by the State's Environmental Conservation Law and, since it holds a valid mining permit from the New York State Department of Environmental Conservation (hereafter, the DEC), it needs no other authorization.

The Court's Analysis and Decision :

The Appeals Court noted that "the Mined Land Reclamation Law (MLRL) explicitly states that it 'shall supersede all other state and local laws relating to the extractive mining industry', but does not prevent any local government from 'enacting or enforcing local zoning ordinances or laws which determine permissible uses in zoning districts'. The MLRL 'does not preempt a municipality's authority, by means of its zoning powers, to regulate or prohibit the use of land within its municipal boundaries for mining operations'. The incidental control resulting from the municipality's exercise of its right to regulate land use through zoning laws does not amount to regulation 'relating to the extractive mining industry'. Only those laws that deal 'with the actual operation and process of mining' are superseded'. Here, since Riverhead Town Code § 108-45 (B) (6) is a zoning regulation that does not address the actual operation and process of mining, and any restriction on sand mining was incidental to the Town's exercise of its right to regulate land use through zoning regulation. The MLRL did not supersede the Town requirement that the defendant obtain a special use permit from the Town Board." (*Riverhead @ 775.*)

The Court also noted that the defendant's motion for essentially reargument, which was denied, is not appealable. The lower court's decision was affirmed. The sand mine operator had to apply for a town special use permit.
