

**SUPREME COURT OF THE STATE OF NEW YORK**  
**IAS PART XXI - COUNTY OF SUFFOLK**

PRESENT:

**HON. JEFFREY ARLEN SPINNER**

Justice of the Supreme Court



<b>ROBERT LIERE, JOHN LIERE &amp; LORRAINE LIERE</b>  - against -  <b>CENTRAL PINE BARRENS JOINT PLANNING &amp; POLICY COMMISSION,</b>	Petitioners,  Respondent.	INDEX NO.: <b>2009-5910</b>  MTN SEQ NO: 002 - CASEDISP ORIG MTN DATE: 04/24/09  MTN SEQ NO: 003 - CASEDISP ORIG MTN DATE: 05/13/09  FINAL MTN DATE: 10/13/10
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UPON the following papers numbered 1 to 8 read on this Petition:

- Petition (Papers 1-2);
- Respondent's Motion (Papers 3-6);
- Petitioner's Opposition (Papers 7-8);

it is,

ORDERED, that the application of Petitioners is hereby denied; and the application of Respondent is hereby granted.

Petitioner moves this Court for a Judgment, pursuant to CPLR 7803(2), that the Respondents' assertion of regulatory jurisdiction over the Proposed Yaphank Sports Complex is without and/or in excess of, jurisdiction.

Respondent moves this Court for an Order dismissing the Petition, pursuant to CPLR 3211(2) & (7), on the ground that the Petition fails to state a cause of action upon which relief can be granted and the Court lacks subject matter jurisdiction over the Petition.

Petitioners are the owners of certain parcels of real property located within the County of Suffolk, Town of Brookhaven, State of New York, known and designated by tax map numbers District 0200, Section 703, Block 1, Lots 39.001 & 39.002, District 200, Section 662, Block 2, Lots, 1.001 & 1.003 and District 0200, Section 703, Block 2, Lots, 25.001 & 25.002 (the Premises), said Premises being located within the compatible growth area of the Central Pine Barrens (the Pine Barrens), and currently being used for farming activities including the production of horticultural specialities, i.e. mulch and topsoil, made from land clearing debris. Respondent is an organization created by Environmental Conservation Law Article 57, Long Island Pine Barrens Maritime Reserve Act, for the purpose of implementing the Central Pine Barrens Comprehensive Land Use Plan [the Plan]. Pursuant to said legislation, the Pine Barrens has been determined to be an area of great ecological diversity that overlies an aquifer that is the largest source of pure groundwater in New York State, and provides almost all of Long Island's drinking water, and therefore development therein is restricted.

By letter dated February 7, 2009, Petitioners submitted to Respondent their plans to create the Yaphank Sports Complex (the Proposed Complex) on the Premises, requesting "Determination of Jurisdiction".

The Proposed Complex consists of a 3 story office retail building, a 3 story hotel, an 8,000 square foot restaurant and 11 overlapping baseball and soccer fields inside an inflatable dome. By letter dated February 20, 2009, Respondent's staff informed Petitioners that, based on a review of the information provided by Petitioners letter and the Plans submitted, the Proposed Complex is defined as "development", and therefore they had to seek approvals from the Town of Brookhaven in conformance with its Zoning Code, at which time the Town would decide if the application should be resubmitted to Respondent.

Not surprisingly, while Petitioners argue that this was a final determination, Respondents argue that it was not, and that Petitioners failed to exhaust their administrative remedies. This Court has determined that the response to Petitioner's letter by Respondent's staff was not a determination of Respondent, as same would require a majority vote of a quorum of the membership of Respondent, that referral by Respondent's staff to the Town of Brookhaven for the filing of their application in fact directed them to the proper body for its consideration, a necessary step in order to exhaust their administrative remedies. For those reasons, Respondent's Motion herein must be granted, and Petition must be dismissed (see: *Church of St Paul & St Andrew v Barwick*, 67 NY2d 510 [1986]; *Matter of Essex County v Zagata*, 91 NY2d [1998]; *Matter of Hunt Bros Inc v Glennon*, 81 NY2d 906 [1993]; *Matter of Sterling idea Ventures v Planning Board of the Town of Southold*, 173 AD2d 475 [2 Dept 1991]).

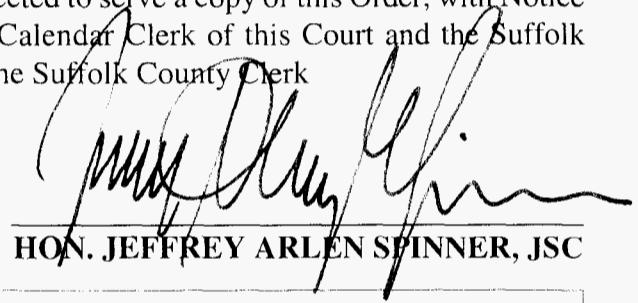
For all the reasons stated herein above and in the totality of the papers submitted herein, it is, therefore,

**ORDERED**, that the above referenced application of Petitioners is hereby denied and the above referenced application of Respondent is hereby granted; that the Petition herein is dismissed without prejudice to renew upon exhausting of Petitioners' administrative remedies; and that this matter is therefore disposed, and it is further

**ORDERED**, that Part 21 hereby retains jurisdiction over this proceeding, for all purposes; and it is further

**ORDERED**, that Counsel for Respondent is hereby directed to serve a copy of this Order, with Notice of Entry, upon Counsel for all remaining parties, the Calendar Clerk of this Court and the Suffolk County Clerk within 20 days of entry of this Order by the Suffolk County Clerk

**Dated:** Riverhead, New York  
October 19, 2010



HON. JEFFREY ARLEN SPINNER, JSC

✓ FINAL DISPOSITION	NON-FINAL DISPOSITION
✓ SCAN	DO NOT SCAN
TO:	
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