

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

STATE OF NEW YORK and CENTRAL
PINE BARRENS JOINT PLANNING AND POLICY
COMMISSION,

-against-

Plaintiffs,

HAMPTON HILLS ASSOCIATES,
BARRY BEIL, and STANLEY PINE,

Defendants.

X X

At the 1st Term, Part XL of
the Supreme Court, of the State
of New York, held in and for the
County of Suffolk, at the Supreme
Court House, ~~Long Island~~ New York
on the 19th day of July 2016

Index No. 0 2015-20852
(Hudson, J.)

CONSENT ORDER

RECEIVED

JUL 22 2016

DEPARTMENT OF LAW
ENVIRONMENTAL PROTECTION
BUREAU - N.Y.C.

1. WHEREAS, pursuant to the Long Island Pine Barrens Protection Act (Pine Barrens Act), Environmental Conservation Law (ECL), Art. 57, the Central Pine Barrens Joint Planning and Policy Commission (Commission) has jurisdiction over land use activities in the Long Island Central Pine Barrens (Pine Barrens). The Commission adopted and enforces the Comprehensive Land Use Plan (Land Use Plan), which implements the Pine Barrens Act.

2. WHEREAS, defendants Barry Beil and Stanley Pine are the principals of Hampton Hills Associates (Hampton Hills) (collectively, defendants), which owns and operates the property known as Hampton Hills Golf and Country Club (the Golf Club or Site), located in the Town of Southampton, County of Suffolk.

3. WHEREAS, the Golf Club is located in the Core Preservation Area of the Pine Barrens, which is under the jurisdiction of the Commission and subject to the Pine Barrens Act and Land Use Plan.

4. WHEREAS, the Pine Barrens Act and Land Use Plan require any entity that wishes to engage in development activity, as defined in ECL § 57-0107(13), and includes

clearing, excavation, and construction, in the Central Pine Barrens to first apply for a hardship waiver from the Commission.

5. WHEREAS, during a January 23, 2015 site visit, Commission staff observed clearing and excavation work at the Site.

6. WHEREAS, during a March 23, 2015 site visit, Commission staff saw that the metal framework of a building had been erected at the Site.

7. WHEREAS, during a May 26, 2015 site visit, Commission staff observed a newly completed building at the Site.

8. WHEREAS, defendants did not apply for a hardship waiver before commencing development work, but submitted an application on June 12, 2015, after the building observed by Commission staff had been erected.

9. WHEREAS, at its August 20, 2015 meeting, the Commission adopted a resolution: 1) canceling the public hearing scheduled on Hampton Hills' June 12, 2015 application for an after-the-fact hardship waiver; 2) issuing a Notice of Violation to Hampton Hills, stating that it was in violation of Environmental Conservation Law Article 57 by excavating and removing trees and other vegetation and constructing a golf cart storage building at the Site without first obtaining the permission of the Commission; 3) authorizing the commencement of an enforcement action against Hampton Hills for the described violations; and 4) authorizing the Attorney General of the State of New York to represent the Commission in such an enforcement action.

10. WHEREAS on December 7, 2015, the State of New York (State) and the Commission filed a Verified Complaint (Complaint) against defendants, alleging that defendants had violated the Pine Barrens Act and the Land Use Plan when they engaged in development by

excavating, clearing vegetation, including removing trees, and constructing an accessory building at the Site without first obtaining a hardship waiver from the Commission, as required by the Pine Barrens Act and Land Use Plan.

11. WHEREAS, the Complaint seeks judgment enjoining defendants to: 1) remove the unlawful structure; 2) submit to the Commission a proposed restoration plan that includes the removal of the unauthorized structure and remediation of the cleared and excavated areas and make any modifications to the plan requested by the Commission; 3) implement an approved plan under the oversight of the Commission; 4) pay a civil penalty pursuant to ECL § 57-0136(2)(b) of up to \$25,000 for each violation and an additional \$1,000 for each day each violation continues.

12. WHEREAS, Defendants contend that in 1991, three years before the enactment of the Pine Barrens Act and Land Use Plan, the Golf Club sold to the County of Suffolk approximately 1,430 acres of land and granted a conservation easement across its remaining property, which defendants contend entitled them to perform certain building and development thereon. Defendants further contend that their excavation involved the area of the existing tennis court area and their clearing of vegetation was limited to five (5) small trees.

13. WHEREAS, the parties have agreed to resolve the State and Commission's claims by the entry of this Order on Consent.

NOW THEREFORE, IT IS HEREBY ADJUDGED, ORDERED AND DECREED:

14. **Jurisdiction and venue.** This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto, and venue is proper in this Court pursuant to CPLR §§ 503(a) and 507. The Court retains jurisdiction for any necessary or appropriate purpose, including enforcement and punishment for any violation of this Consent Order's terms

and conditions.

15. The entry of this Consent Order shall resolve the violation for unauthorized development in the Central Pine Barrens Core Preservation Area issued by the Commission at its August 19, 2015 meeting.

16. Hampton Hills agrees to withdraw its suspended application for a Core Preservation Area hardship waiver with respect to the construction and operation of a golf cart storage building.

The Golf Cart Storage Building

17. The Commission will allow the golf cart storage building (Building) depicted in the plan with a June 10, 2015 revised dated and prepared by The Raynor Group, P.E. & L.S. PLLC, annexed hereto as Exhibit A (Building Plan), to remain at its current location, subject to the following conditions:

a. Defendants may complete the work necessary on the Building, in accordance with the Building Plan, to obtain a certificate of occupancy from the Town of Southampton.

b. The Building shall not be expanded beyond the existing footprint depicted in the Building Plan, and no additional vegetation removal shall occur in order to complete the Building, except as described in paragraph 17(c) below.

c. To the limited extent necessary to complete access to the Building, the Defendants may relocate vegetation to alternate suitable location(s). All vegetation proposed to be relocated must be clearly identified as "Relocated Vegetation" and submitted to the Commission for its approval pursuant to the process described in paragraph 22 below.

d. The Building shall not be used for any purpose other than the storage of golf carts, and the intensity of its use for that purpose shall not increase materially.

e. Any change in the Building's use or the material increase of its use requires an application for a hardship waiver.

Additional Site Improvements

18. Defendants may also make the following improvements as depicted on and in accordance with the Building Plan:

- a. Creation of an asphalt cart path;
- b. Installation of leaching pools, grate and associated pipes for drainage/stormwater from the Building;
- c. Drain pipe from roof to leaching pools;
- d. Resurfacing of two existing 55' x 115' tennis courts;
- e. Installation of 9.5' x 20' roofed viewing area between the two tennis courts depicted on the Building Plan;
- f. Installation of a new barbecue;
- g. Removal of existing paved road which currently leads to the new cart barn;
- h. Removal of shed located on existing tennis courts.

Penalties

19. Defendants, jointly and severally, are liable for, and shall pay, a penalty of \$75,000 for their violation of ECL article 57 and the Comprehensive Land Use Plan in accordance with the following schedule:

- a. \$20,000 within 20 days of this Consent Order being signed by the Court;
- b. \$10,000 by October 15, 2016;
- c. \$22,500 by October 16, 2017;
- d. \$22,500 by October 15, 2018.

e. All payments shall be sent by overnight or other delivery service intended to arrive on the due dates specified above.

20. **Method of payment.** All payments shall be made by bank check made payable to "Central Pine Barrens Joint Planning and Policy Commission." Each payment shall have "State of New York and Central Pine Barrens Joint Planning and Policy Commission v. Hampton Hills et al." on the face of the check. All payments shall be sent to:

Yueh-ru Chu, Assistant Attorney General
Office of the Attorney General
Environmental Protection Bureau
120 Broadway, 26th Floor
New York, New York 10271.

21. In the event that Defendants default on any of the above-listed payments, and such default continues for more than ten (10) days after written notice of such default is given to Defendants and their counsel by email, the Attorney General may then enter judgment against defendants, jointly and severally, without notice to defendants, for the remaining balance of the penalties, with statutory interest on that balance from the date of judgment.

Revegetation Plan

22. Defendants shall jointly and severally submit to the Commission an approvable revegetation plan (Revegetation Plan) certified to the Commission that comports with the revegetation guidelines (Guidelines) annexed hereto as Exhibit B and the following requirements:

a. Defendants shall have a site survey prepared by licensed land surveyor and certified to the Commission. This survey may be an update of a previously prepared site survey. The site survey shall include a depiction of the area that was cleared for the construction of the Building; the footprint of the Building itself; the boundaries of the total cleared area; any area

from and to which vegetation will be relocated to complete access to the Building, and the revegetation sites. Once completed, the site survey shall be submitted to the Commission and will be used as the base map for the Revegetation Plan.

b. The Revegetation Plan shall be prepared by a qualified professional, such as a Registered Landscape Architect, who is familiar with Central Pine Barrens native plant species and their propagation, planting and care.

c. The Revegetation Plan shall:

i) Include the boundaries of the general area that will contain the revegetation sites, including the sites for the relocated vegetation.

ii) Identify the location, size and boundaries of the individual revegetation sites.

The revegetation sites should be located in already cleared areas of the Site or other areas suitable for revegetation. Suitable sites must receive ample sunlight, such as a southern exposure. Locations in perpetual or significant shade (e.g. on the north side of buildings) are not suitable. Revegetation sites must be protected from future disturbance and clearing by the Golf Club and may not be used for golfing or other activities conducted at the Golf Club. The revegetation sites should be protected by a fence, such as a split-rail fence. Natural succession should be allowed to occur at the revegetation sites in accordance with the natural succession guidelines annexed hereto as Exhibit C.

iii) Indicate the number, species, and size of the trees and/or vegetation that will be planted at each revegetation site. The total number, species type, and size of the trees and vegetation to be planted shall conform to the requirements in the Guidelines.

d. All planting shall be done between September 1 and December 15, or April 15 and June 15, to optimize the plants' likelihood of survival.

e. Defendants shall guarantee the plants' survival in accordance with the Guidelines, including an 85% survival rate for three years, starting from the date of the last planting. This survival rate shall also apply to the relocated vegetation described in Paragraph 17(c) above.

i) After revegetation has been completed, Defendants shall submit an annual statement, by February 15 of each subsequent calendar year and for three years after revegetation has been completed, confirming 85% survival.

ii) The annual statement shall be sent to:

John W. Pavacic, Executive Director
Central Pine Barrens Joint Planning & Policy Commission
624 Old Riverhead Road
Westhampton Beach, NY 11978

f. Extraordinary Weather And/or Natural Disaster Event. Defendants shall not suffer any penalty if they cannot comply with the survival requirement in paragraph 22(e) because of a prohibitively severe or extraordinary weather event or a natural disaster event such as a forest fire or insect infestation.

i) If defendants intend to invoke this provision, they shall notify the Attorney General in writing within ten (10) days of obtaining knowledge of an extraordinary weather or natural disaster event that will prevent them from meeting their obligations under the Revegetation Plan. Defendants shall include in such notice the measures taken to prevent or minimize the damage from the extraordinary weather and/or natural disaster event. Failure to give such notice within the ten day period constitutes a waiver of any claim that defendants' failure to meet their obligations is attributable to an extraordinary weather and/or natural disaster event.

ii) In the event of a dispute regarding the applicability of this provision, defendants shall bear the burden of proving that their inability to fulfill their obligations under

the Revegetation Plan is attributable to an extraordinary weather and/or natural disaster event.

iii) A lack of sufficient financial resources does not constitute an extraordinary weather and/or natural disaster event.

23. A proposed Revegetation Plan shall be submitted to the Commission within 40 days of this Consent Order being signed by the Court. The Commission will review the proposed Plan and return it with any required revisions to defendants within 20 days of receipt. Defendants will then have 20 days to make the revisions required by the Commission and resubmit the proposed plan. If the Commission requires further revisions on any subsequent version of the proposed Plan, defendants will have 20 days to make the required revisions and resubmit the proposed plan, and the Commission will have 20 days to review the Plan. Defendants shall implement the final plan approved by the Commission.

24. If defendants fail to comply with any provision of the Revegetation Plan, the Attorney General may seek further relief from the Court, including injunctive relief and additional penalties.

25. **Stipulated Penalties.** In addition to the relief provided in paragraphs 21 and 24, above, the defendants shall be liable for stipulated penalties as follows: (a) for failure to make a timely payment pursuant to paragraph 18, above, defendants shall pay \$100.00 per calendar day for each and every day that defendants fail to transmit the requisite payment. The timeliness of a payment shall be determined based on the day that payment is actually received by the Office of the Attorney General; and (b) for failure to fully implement by December 15, 2016, the initial revegetation required by the Revegetation Plan pursuant to paragraph 21, unless the Proposed Revegetation Plan is not approved by the Commission on or before November 30, 2016, in which case, for failure to fully implement the initial revegetation required by the Revegetation

Plan by June 15, 2017, defendants shall pay \$1,000.00 as a stipulated penalty. All stipulated penalties shall be paid by check and transmitted pursuant to paragraph 19 above within twenty days of the date of a written demand by the Office of Attorney General for such payment. If defendants believe that they have not violated their obligations under subparagraph (a) or (b) above, they must seek judicial review brought on by notice of motion served within twenty days from the date of the demand for payment of stipulated penalties. Failure to timely move for such review shall constitute a waiver of defendants' objection to the demanded payment.

26. **Notice.** Any notice required pursuant to this Order on Consent shall be given to the parties' and their attorneys, as follows:

To Plaintiffs:

Yueh-ru Chu
Assistant Attorney General
Office of the Attorney General
Environmental Protection Bureau
120 Broadway, 26th Floor
New York, New York 10271
212-416-6588
Yueh-ru.Chu@ag.ny.gov
Attorney for Plaintiffs

To Defendants:

David Besso, Esq.
Long Tuminello LLP
120 Fourth Avenue
P.O. Box 5591
Bay Shore, New York 11706-0420
631-666-2500
dbesso@ltesq.com
Attorney for Defendants

Barry Beil
barrybeil@gmail.com
Defendant

Stanley Pine
stanleypine@gmail.com
Defendant

27. **Binding Effect.** The provisions of this Order shall inure to the benefit of and be binding upon the Commission and defendants and their successors, including successors in title, and assigns.

28. **Access and Verification.** Representatives of the Commission shall be permitted access to the Golf Club property at reasonable hours and intervals in order to inspect and determine

the status of the property and to inspect and/or perform such tests as may be deemed appropriate to determine the status of Defendants' compliance, during which access they shall be accompanied and transported by Golf Club representatives.

SO AGREED:

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway, 26th floor
New York, New York 10271
212-416-6588

BY: Yueh-mu Chu
Yueh-mu Chu, Ass't Attorney General
Attorney for Plaintiffs

LONG TUMINELLO LLP
120 Fourth Avenue
P.O. Box 5591
Bay Shore, New York 11706-0420
631-666-2500

BY: Michelle Aulivola
Attorney for Defendants

HAMPTON HILLS ASOCIATES
P.O. Box 1087
Country Road 31
Westhampton Beach, New York 11978

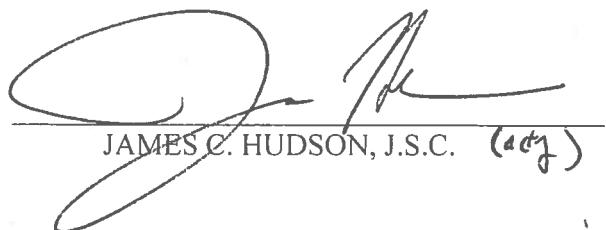
BY: Barry Beil
Managing Partner, Hampton Hills Associates
President, Hampton Hills Operating Corp.
President, Hampton Hills Country Club

Barry Beil
BARRY BEIL
P.O. Box 1087
County Road 31
Westhampton Beach, New York 11978

Stanley Fine
STANLEY FINE
P.O. Box 1087
County Road 31
Westhampton Beach, New York 11978

Dated: July 19, 2016
Riverhead, New York

SO ORDERED AND ADJUDGED,



JAMES C. HUDSON, J.S.C. (act)

GRANTED

JUL 19 2016

Judith A. Pascale
CLERK OF SUFFOLK COUNTY