

SUPREME COURT OF THE STATE OF NEW YORK
IAS/ TRIAL PART 34- SUFFOLK COUNTY

COPY

PRESENT:

HON. JOSEPH C. PASTORESSA
JUSTICE OF THE SUPREME COURT

Mot Seq: #001- MD
002-MG
003-MG; CASE DISP

In the Matter of the Application of
EQUINE FACILITY, LLC, CAROLYN JOLLY and
JAMES P. EAGAN,

Petitioners,

For an Order Pursuant to Article 78 of the Civil
Practice Law and Rules

-against-

JOHN PAVACIC, EDWARD ROMAINE,
STEVEN BELLONE, SEAN M. WALTER and
ANNA E. THRONE-HOLST, in their capacity as
Members of the Central Pine Barrens Joint Planning
& Policy Commission and the CENTRAL PINE
BARRENS JOINT PLANNING & POLICY
COMMISSION, BASIL SEGGOS, ACTING
COMMISSIONER, New York State Department of
Environmental Conservation and the NEW YORK
STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION and the STATE OF NEW
YORK,

Respondent,

ATTYS FOR PETITIONER(S):

THE LAW OFFICES OF RICHARD I. SCHEYER
110 LAKE AVENUE SOUTH, SUITE 46
NESCONSET, NY 11767

ATTYS FOR RESPONDENT(S):

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL OF THE STATE OF NY
120 BROADWAY, 26th FLOOR
NEW YORK, NY 10271

Pages Numbered

Notice of Motion/Order to Show Cause/ _____
Petition/Cross Motion and Affidavits (Affirmations) Annexed _____ 1-4
Opposing Affidavits (Affirmations) _____ 5
Reply Affidavits (Affirmations) _____ 6
Affidavit (Affirmation) _____
Other Papers _____

Upon the foregoing papers, it is

ORDERED that the petition for a judgment, pursuant to CPLR article 78, is denied, and it
is further

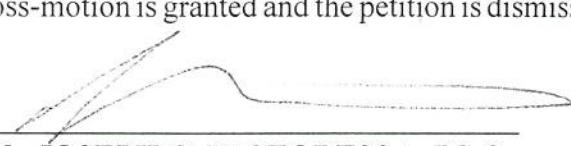
ORDERED that the cross-motion by the respondents for an order dismissing the petition is
granted and the proceeding is dismissed.

The petitioners are the owners of real property consisting of approximately 34 acres in the Town of Brookhaven and operate a horse farm at the site. The property is located in the Core Preservation Area of the Central Pine Barrens and is zoned as a Horse Farm Residence District, which also allows A-Residence uses. The petitioners sought to subdivide the property and build 34 residential units which they assert is permissible under the Town Zoning Code. The petitioners requested a determination from the respondent Central Pine Barrens Joint Planning and Policy Commission (hereinafter the Commission) that the proposed subdivision was not subject to the jurisdiction of the Commission under the Long Island Pine Barrens Protection maritime reserve act (see Environmental Conservation Law § 57-0119). At a meeting on October 21, 2015, the Commission adopted a resolution declaring that the proposed subdivision was a development and the petitioners would be required to submit a Core Area Hardship Waiver Application. The petitioners then commenced this proceeding, pursuant to CPLR Article 78, challenging that determination. The respondents' cross-move to dismiss the petition on the grounds that the matter is not ripe for review.

Administrative actions as a rule are not final "unless and until they impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process" (*Matter of Essex County v Zagata*, 91 NY2d 447, 453 quoting *Chicago & S. Air Lines v Waterman Corp.*, 333 US 103, 113). To determine if agency action is final, consideration must be given to the completeness of the administrative action and a pragmatic evaluation must be made of whether the decision maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury (see *Matter of Essex County v Zagata*, *supra*; *Church of St. Paul & St. Andrew v Barwick*, 67 NY2d 510). Thus, a determination will not be deemed final because it stands as the agency's last word on a discrete legal issue that arises during an administrative proceeding (see *Matter of Essex County v Zagata*, *supra*). There must additionally be a finding that the injury purportedly inflicted by the agency may not be "prevented or significantly ameliorated by further administrative action or by steps available to the complaining party" (*Matter of Essex County v Zagata*, *supra* quoting *Church of St. Paul & St. Andrew v Barwick*, *supra* at 520).

Here, the Commission has not rendered a final definitive decision with respect to the petitioners' proposal to subdivide their property. The Commission merely determined that the proposal was a development subject to the Commission's jurisdiction. Such a determination is not a final action by the agency (see *Matter of Hunt Brothers v Glennon*, 81 NY2d 906; *Church of St. Paul & St. Andrew v Barwick*, *supra*; *Matter of Town of Riverhead v Central Pine Barrens Joint Planning & Policy Commission*, 71 AD3d 679). The record demonstrates that the petitioners may still obtain approval of their proposal by submitting a hardship waiver application. The mere participation in an ongoing administrative process is not, in and of itself, an actual concrete injury (see *Matter of Town of Riverhead v Central Pine Barrens Joint Planning & Policy Commission*, *supra*). Therefore, the dispute is not ripe for judicial review (see *Matter of Town of Riverhead v Central Pine Barrens Joint Planning & Policy Commission*, *supra*; *Matter of Shepherd v Maddaloni*, 103 AD3d 901). Accordingly, the cross-motion is granted and the petition is dismissed.

DATED: September 29, 2016



HON. JOSEPH C. PASTORELLA, J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION