

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

PRESENT: HON. JOSEPH C. PASTORESSA

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In the Matter of the Petition of

ROBERT'S PREMIER DEVELOPMENT
LLC,

Petitioner,

For an order pursuant to article 78 of the
Civil Practice Law and Rules, and for a
declaratory judgment

- against -

CENTRAL PINE BARRENS JOINT
POLICY AND PLANNING COMMIS-
SION,

Respondent.
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DECISION AND ORDER

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Mot. Seq. 001: MD

Mot. Seq. 002: MG; CASEDISP

Scheyer & Stern, LLC, Nesconset, NY,
for petitioner

Letitia James, Esq., New York State
Attorney General, New York, NY, for
respondent

This hybrid CPLR article 78 proceeding and declaratory judgment action stems from a determination of respondent, Central Pine Barrens Joint Policy and Planning Commission, regarding certain activity taken by petitioner, Robert's Premier Development LLC. Specifically, petitioner built a 5,500 square foot pole barn on property it owns in Manorville, New York. Petitioner obtained a building permit from nonparty Town of Brookhaven to construct the pole barn. In April 2023, respondent issued a notice of violation (NOV) to petitioner, claiming that erection of the pole barn violated Environmental Conservation Law (ECL) article 57.

In February 2024, petitioner's counsel sent a letter to respondent demanding a letter of non-development, claiming that "the pole barn is currently being used for residential purposes only, making it non-development as that term is defined in [the] Long Island Pine Barrens Act of 1993." Respondent failed to issue one. Petitioner then com-

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menced this proceeding for (1) mandamus to compel respondent to issue a Letter of Non-Development and (2) a judgment declaring that the use of the pole barn is residential and, therefore, considered non-development under ECL article 57. Respondent moves to dismiss the petition under CPLR 3211 (a) (5) and (7).

A petitioner is only entitled to a writ of mandamus “to compel the performance of a purely ministerial act [that] does not involve the exercise of official discretion or judgment, and only when a clear legal right to the relief has been demonstrated” (*Matter of Harper v Neary*, 225 AD3d 595, 596 [quotation marks and citations omitted], *appeal dismissed* 41 NY3d 1007; see *Matter of Dickson v New York City Dept. of Bldgs.*, 226 AD3d 1014; *Matter of Woodside Manor Nursing Home, Inc. v Zucker*, 223 AD3d 94, *appeal dismissed* 41 NY3d 991, *lv denied* __ NY3d __, 2024 NY Slip Op 77114). Even if a petitioner has established that it has a clear legal right to the performance of a purely ministerial act, a court cannot “direct how [the respondent] shall perform that duty” (*Alliance to End Chickens as Kaporos v New York City Police Dept.*, 32 NY3d 1091, 1093 [quotation marks and citations omitted], *cert denied* 139 S Ct 2651, *rehearing denied* 140 S Ct 18).

Here, petitioner has not shown that it has a clear legal right to a letter of non-development. Indeed, it does not point to any statutory or regulatory requirement for respondent to issue such a letter. Moreover, petitioner has not conclusively demonstrated that the pole barn constitutes a non-residential use.

Inasmuch as petitioner challenges the NOV, such challenge is time-barred (CPLR 217; ECL § 57-0135). So much of the petition as seeks a judgment declaring that the pole barn is a non-residential use seeks relief that could have been obtained by challenging the NOV in a CPLR article 78 proceeding and, therefore, is similarly time-barred (e.g. *Matter of Save the Pine Bush v City of Albany*, 70 NY2d 193; *Merrill v Friends Academy*, 298 AD2d 439). Thus, respondent’s motion is granted, and the petition is dismissed.

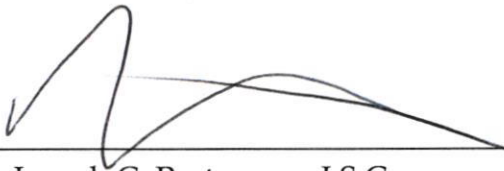
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This shall constitute the decision and order of the Court.

Dated: December 6, 2024



Hon. Joseph C. Pastoressa, J.S.C.

Papers considered: NYSCEF documents 1 through 17