

MEMORANDUM

SUPREME COURT, SUFFOLK COUNTY
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THE LONG ISLAND PINE BARRENS
SOCIETY, INC., RICHARD L. AMPER,
as Executive Director and in his
Individual capacity, PETER
MANISCALCO, JOHN SCULLY and
LESLIE HANELLIN, residents and
taxpayers,

Petitioners,

SPECIAL TERM XXXII

RETURN DATE: 6/19/97
SUB. DATE: 12/18/97
MOT 003 MG CASE DISP SJ

BY: MARY M. WERNER
SUPREME COURT JUSTICE

-against-

INDEX NO. 24091/96

THE CENTRAL PINE BARRENS JOINT
PLANNING & POLICY COMMISSION

Respondents.

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This amended petition pursuant to CPLR Article 78 seeking a judgment declaring that respondent Central Pine Barrens Joint Planning and Policy Commission ("respondent") proceeded without or in excess of its authority when it granted permission to Joseph Marando Nurseries, Inc. to commence a mining operation, and that said approval is an invalid, unauthorized, unlawful action in violation of Environmental Conservation Law Article 57 and in violation of the Central Pine Barrens Comprehensive Land Use Plan, is determined as follows.

L.I. PINE BARRENS
v
CENTRAL PINE BARRENS
INDEX NO. 24081/96
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The Long Island Pine Barrens Maritime Reserve Act (Env. Cons. Law Art.57) was enacted by New York State on a finding by the legislature that it is "in the public interest to protect and manage the Pine Barrens-Peconic Bay system, in the County of Suffolk, by establishing a Long Island Pine Barren Maritime Reserve" (ECL §57-0103).

The Pine Barrens Act ("Act") established the Long Island Pine Barrens Maritime Reserve which consists of a "core preservation area" and a "compatible growth area" (ECL §57-0109). The subject property is located within the compatible growth area.

The Act further established the Central Pine Barrens Joint Planning and Policy Commission consisting of one member appointed by the governor and four *ex officio* members consisting of the County Executive and the Supervisor of the Towns of Brookhaven, Riverhead and Southampton. (ECL §57-0119[2]). The Commission is empowered to prepare a comprehensive land use plan designed to *inter alia* protect the Pine Barrens ecosystem and protect the quality of surface water and ground water as well as to "accommodate development in a manner consistent with the long term integrity of the Pine Barrens Ecosystem" (ECL §57-012[2] [a], [b] and [e]).

The Act further provides that subsequent to the adoption of the land use plan, "no application for development within the Central Pine Barrens area shall be approved by any municipality, or County or agency thereof, or the commission ... unless such

approval or grant conforms to the provisions of such land use plan ..." (ECL §57-0123[3][a]). Since the proposed development is outside the "core area" the Commission did not have automatic jurisdiction. However, the Commission, by majority vote of its members exercised its jurisdiction (ECL §57-0123[2][a]).

Pertinent to the proceeding at bar, the Central Pine Barrens Comprehensive Land Use Plan provides that "clearance of vegetation shall be strictly limited" and shall not, together with previously cleared areas, exceed the percentages found in figure 5-1 (Plan 5.3.3.6.1). The percentages shall be taken over the "total site" (*Id.*). Clearance Standards in Figure 5-1 indicate that the maximum clearance for commercial, industrial zoned property is 65% while maximum clearance for residential 2-acre zoning lots is 35%.

The subject project involves the clearing of all vegetation on 24.7 acres on a 38-acre mining site. In its approval, the Commission notes that this constitutes 65% of the 38-acre site. The "total site" however consists of 119 acres, broken down as follows: 62 acres = existing nursery; 38 acres = proposed expansion and 19 acres = land division. Considering the "total site" the areas to be cleared combined with the areas already cleared on the adjacent nursery will equal 86.7 acres or 72.85 percent clearance. "It is well settled that the determination of an administrative agency will be accepted by the courts if it has warrant in the record and a reasonable basis in law" Matter of Pell v. Bd. of Educ., 34 NY2d 222, 230-232; 356 NYS2d 833 [1974]).

The proposal which provides for 72.85 per cent clearance, is violative of the plan which again allows for only 65% clearance. The Commission violated ECL §57-012(3) (a) by approving this project which is not in conformity with the plan. The Approval is thus arbitrary and capricious and must be annulled.

Since the Court is granting this petition on the ground that the approval is violative of the plan, it need not reach the other issues raised by the parties.

Accordingly, the petition is granted and the court declares that the Central Pine Barrens Joint Planning and Policy Commission Approval dated August 26, 1996, is invalid.

Settle judgment.

Dated: February 10, 1998


MARY M. WERNER, J.S.C.