

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF SUFFOLK : PART 16

 COPY

3 -----  
4 LONG ISLAND PINE BARRENS SOCIETY, INC.,  
5 RICHARD AMPER

Plaintiffs,

6 -against-

INDEX NO.:  
022619/2011

7 THE CENTRAL PINE BARRENS JOINT  
8 PLANNING and POLICY COMMISSION & JCJC  
9 HOLDING COMPANY, INC.

Defendant.

10 -----  
11 400 Carleton Avenue  
12 Central Islip, NY 11722  
13 02/16/2012

14 B E F O R E:

15 HONORABLE H. PATRICK LEIS III  
16 SUPREME COURT JUDGE

17 A P P E A R A N C E S:

18 REGINA SELTZER, ESQ.  
19 For the Plaintiff  
20 30 S. Brewster Lane  
21 Bellport, NY 11713

22 OFFICE OF THE ATTORNEY GENERAL  
23 For the Pine Barrens Society  
24 120 Broadway  
25 New York, NY  
BY: ISAAC CHENG, ESQ.

MACLACHLAN & EAGAN, LLP  
For JCJC Holding Co., Inc.  
241 Pantigo Road  
East Hampton, NY 11937  
BY: DAVID E. EAGAN, ESQ.

DONNA A. HILL  
Senior Court Reporter

1           THE COURT: As you can probably see, I spent a  
2           fair amount of time reviewing these papers before you got  
3           here today. I rely on counsel because I want to make sure  
4           I haven't missed something in the papers and I do  
5           appreciate your arguments.

6           I have to compliment counsel, each of you, in  
7           knowing your areas and you have provided the Court with  
8           very good argument.

9           Unfortunately, one side has to win, one side has  
10          to lose and trust me, it has nothing to do with your  
11          lawyering today because your lawyering, all of you, has  
12          been excellent, but it also has to do with my reading of  
13          the law and my understanding of the area which can be  
14          right or it can be wrong and that's why we have a Court  
15          above this Court and a Court above that Court.

16          The way I read the law is what I am having  
17          difficulty with, and I am starting off with respect to the  
18          standing, the way I, in reading this, I do not see the  
19          standing of the Petitioner to bring this cause of action,  
20          and for the purpose of standing the petitioner must show  
21          that they suffered direct harm, injury, and this is in  
22          some way different from that of the public at large, and  
23          an organization to have standing must have proof that the  
24          agency action will directly harm the association members  
25          in their use and enjoyment of the affected natural



-Proceedings-

3

1 resources.

2 And that standard has been set forth in the Pine  
3 Bush, Inc. versus the Common Counsel of the City of Albany  
4 at 13 NY3d, 297.

5 More disturbing than that are two cases which the  
6 Court had read, one is Long Island Pine Barrens Society et  
7 al. versus the Town Board of the Town of East Hampton.  
8 That is found at, it is an Appellate Division case, it is  
9 found at 293 AD2d, 616, that is a 2002 case, and what the  
10 Court finds in that, and I am reading from the case, is as  
11 follows:

12 The instant case demonstrates the legal barriers  
13 to securing any cumulative impact review of the  
14 development in the Long Island Pine Barrens. The  
15 petitioner's frustration at the legal process is  
16 understandable; however, it is the province of the  
17 legislature to fashion a solution to this problem or to a  
18 finding of no standing.

19 In another case, Long Island Pine Barrens Society  
20 versus Planning Board of the Town of Brookhaven found at  
21 213 AD2d, 484. The Appellate Division in that case found  
22 that, the individual petitioner may not avail themselves  
23 of the presumption that they are discussing because they  
24 have not demonstrated that their property lies in close  
25 proximity to the parcel to be zoned. But it goes onto

-Proceedings-

4

1 say, therefore, the individual petitioners must  
2 demonstrate that they would suffer environmental injury  
3 which is in some way different from that of the public at  
4 large.

5 The individual petitioners have failed to meet  
6 this burden in being, their generalized allegations, which  
7 is what I have heard here, their generalized allegations  
8 that the project will have a deleterious impact upon the  
9 Aquifer lying beneath the South Setauket Pine Barrens are  
10 insufficient to establish the standing to raise this  
11 claim. That is, the subject allegation does not  
12 demonstrate that the individual petitioners will suffer an  
13 environmental injury which in any way is different in any  
14 kind of degree from the community generally.

15 Similarly, the Long Island Pine Barrens Society  
16 lacks standing because it has failed to meet the key  
17 requirement to organizational standing. That is, that one  
18 or more of the society members would have standing to sue.

19 Now, with those two Appellate Division cases  
20 along with my reading of the Court of Appeals case, I find  
21 that there is no standing to bring this proceeding;  
22 however, going on, if the Court is wrong in that regard  
23 and the Appellate Division feels there is standing, the  
24 Court then determines that the Article 78 petition would  
25 be denied in any event, 001, and that the Court finds

-Proceedings-

5

1 that the Pine Barrens Commission's determination is not  
2 arbitrary and capricious.

3 In so finding the Court looks at the decision and  
4 finds that there is a rational basis for it. Even if the  
5 Court were to say that it agrees one hundred percent with  
6 Miss Seltzer and her arguments on behalf of her client, it  
7 is not whether the Court agrees with their arguments that  
8 is the determining factor, it is whether or not the agency  
9 being reviewed actions lack any rational basis.

10 Here the Commission carefully considered in their  
11 decision criteria for core preservation area hardship  
12 waivers and found that there was an extraordinary hardship  
13 at the project site that did not apply to other properties  
14 in the immediate vicinity because all the other properties  
15 are wooded preserved lands in the core and are under  
16 public ownership and the developmental activity arises out  
17 of the characteristics of the subject property rather than  
18 the personal situation of the applicant. I find that the  
19 arguments made by counsel I agree with, I do not see that  
20 this was self-created in any manner. The property itself  
21 is what created the issue.

22 I further find that the property is developed and  
23 based on the review of existing regulations the change of  
24 use to office is not expected to adversely affect the  
25 environmental conditions. There will be no site

-Proceedings-

6

1 disturbances.

2 The project aims to preserve existing natural  
3 resources, hydrologic function. The waiver they feel is  
4 the minimal relief necessary to relieve the extraordinary  
5 hardship on behalf of the applicant.

6 The change of the use to meet the needs of the  
7 owner's business avoids adverse environmental impact on  
8 the project site, occupies an existing building in the  
9 core and avoids new construction.

10 The finding also is not arbitrary and capricious  
11 and has a rational basis that this property did not have a  
12 beneficial use if used for any other than an office  
13 without demolition for removal of the existing building.

14 The argument about the Pine Barrens credit is not  
15 part of the record, cannot be considered by this Court.

16 When the property was purchased it was being used  
17 for municipal use and had been granted a CO as a police  
18 station and the Court finds that the adoption of a  
19 negative declaration pursuant to SEQR by the Commission  
20 does not lack a rational basis, is not arbitrary and  
21 capricious.

22 So denied, your application I find you have no  
23 standing and even if you did under 001, I find that your  
24 application is denied in its Article 78 for the reasons  
25 set forth on the record.

1           You may approach the reporter after I leave the  
2           bench and order the decision. I would so order it and you  
3           can take your appeal accordingly.

4           Again, I want to compliment counsel, your  
5           arguments were excellent but that is the way that I read  
6           the law.

7           Have a good day.

8

9       S O O R D E R E D:

**H. PATRICK LEIS III**

HONORABLE H. PATRICK LEIS III

10

Date: 3/22/12

11

12

13

CERTIFIED THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT  
OF THE ORIGINAL STENOGRAPHIC MINUTES IN THIS CASE.

14

*Donna A. Hill*  
Donna A. Hill

Official Court Reporter

15

16

17

18

19

20

21

22

23

24

25



In the Matter of the Application of the LONG ISLAND  
PINE BARRENS SOCIETY INC., RICHARD AMPER., as  
Executive Director and in his Individual capacity,  
Petitioners  
-against-

THE CENTRAL PINE BARRENS JOINT PLANNING  
& POLICY COMMISSION, and JCJC HOLDING COMPANY, INC.  
Respondents

RECEIVED  
MAR 28 2012  
DEPARTMENT OF LAW  
ENVIRONMENTAL PROTECTION  
BUREAU - N.Y.C.

**JUDGMENT**

**REGINA SELTZER, ESQ.**

*Attorney for:*

**30 SOUTH BREWSTER LANE  
BELLPORT, NEW YORK 11713  
(631)286-8849**

RECEIVED  
MAR 8  
DEPARTMENT OF LAW  
ENVIRONMENTAL PROTECTION  
BUREAU - N.Y.C.

To:

Attorney(s) for:

**ATTORNEY'S AFFIRMATION**

Pursuant to 22 NYCRR 130-1.1a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief, and after reasonable inquiry, the contentions contained in the annexed documents, are not frivolous.

Dated: March 25, 2012

*Regina Seltzer*  
Regina Seltzer, Esq.

Sir: Please take notice

☐ NOTICE OF ENTRY

that the within is a (*certified*) true copy of a  
duly entered in the office of the clerk of the within named court on

, 2011

☐ NOTICE OF SETTLEMENT

that an order  
settlement to the HON.  
of the within named court, at  
on

, 2011

at

of which the within is a true copy will be presented for  
, one of the judges

Dated,

Yours, etc.

**REGINA SELTZER, ESQ.**

*Attorney for:* *Petitioners*

**30 SOUTH BREWSTER LANE  
BELLPORT, NEW YORK 11713  
(631)286-8849**