

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

 COPY

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4 LONG ISLAND PINE BARRENS SOCIETY, INC.,
RICHARD AMPER

Plaintiffs,

5
6 -against- INDEX NO.:
022619/2011

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

8 Defendant.

9
10 400 Carleton Avenue
Central Islip, NY 11722
02/16/2012

11 B E F O R E :

12 HONORABLE H. PATRICK LEIS III
13 SUPREME COURT JUDGE

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

15 REGINA SELTZER, ESQ.
16 For the Plaintiff
30 S. Brewster Lane
Bellport, NY 11713

17 OFFICE OF THE ATTORNEY GENERAL
18 For the Pine Barrens Society
120 Broadway
19 New York, NY
20 BY: ISAAC CHENG, ESQ.

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

25 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-

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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

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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

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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-

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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

H. PATRICK LEIS III

9 S O O R D E R E D:

HONORABLE H. PATRICK LEIS III

10 Date: 3/22/12

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

Donna A. Hill
14 Donna A. Hill
15 Official Court Reporter

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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

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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**

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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, 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

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

, 2011 at

Dated,

Yours, etc.

REGINA SELTZER, ESQ.

Attorney for: Petitioners

**30 SOUTH BREWSTER LANE
BELLPORT, NEW YORK 11713**