

1

2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF SUFFOLK : PART 18

4 -----

5 In the Matter of the Application of the
6 LONG ISLAND PINE BARRENS SOCIETY, INC.,
7 RICHARD AMPER as Executive Director and
8 as an Individual and Taxpayer, NEIGHBORHOOD
9 NETWORK RESEARCH CENTER, NEAL LEWIS as
10 Executive Director, NORTH FORK AUDUBON SOCIETY,
11 MARY MULCAHY as President, NORTH FORK
12 ENVIRONMENTAL COUNCIL, HOWARD MEINKE as
13 President, NORTH SHORE AUDUBON SOCIETY,
14 JENNIFER WILSON PINES as President, OPEN SPACE
15 NOW, INC., ALEX WIFF, as President,
16 WAYNE RAMBO, SCOTT NEARY, MARGARET CAPUTO,
17 ROBERT and JOYCE MOSS and LOUISE FASTORE, as
18 individuals and Taxpayers, and as Members of
19 the LONG ISLAND PINE BARRENS SOCIETY;
20 Petitioners,

21

22 -against-

23 THE TOWN BOARD OF THE TOWN OF RIVERHEAD,
24 ROBERT KOZAKIEWICZ, as Town Supervisor and
25 THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT
1 AGENCY, ROBERT KOZAKIEWICZ as Chairman,
2 COUNTY OF SUFFOLK, ROBERT GAFFNEY as
3 County Executive, SUFFOLK COUNTY DEPARTMENT
4 OF HEALTH SERVICES, CENTRAL PINE BARRENS
5 JOINT PLANNING AND POLICY COMMISSION and
6 NEW YORK MUSIC FESTIVAL, LLC, ANDREW DRESKIN
7 as CEO and ANDREW DRESKIN INVESTMENTS, LLC,
8 Respondents.

9 -----

10 400 Carleton Avenue
11 Central Islip, NY 11722
12 May 30, 2003

13

14 B E F O R E:

15

16 HONORABLE ROBERT WEBSTER OLIVER
17 SUPREME COURT JUDGE

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

19 REGINA SELTZER, ESQ.
20 For the Petitioners
21 30 South Brewster Lane
22 Bellport, NY 11713

dah

2 A P P E A R A N C E S: (Continued)

3 DAWN THOMAS, ESQ., Town Attorney
4 For the Respondent Town of Riverhead
200 Howell Avenue
Riverhead, NY 11901

5 DERRICK J. ROBINSON, ESQ.
6 For the Respondent County of Suffolk
7 100 Veterans Memorial Highway
Hauppauge, NY 11788

8 FISCHBEIN, BADILLO, WAGNER & HARDING
9 For the Respondent Pine Barrens Commission
48 South Service Road
Melville, NY 11747

10 BY: MICHAEL C. SCHMIDT, ESQ.

11 TWOMEY, LATHAM, SHEA & TELLEY, LLP
12 For the Respondents Andrew Dreskin, et al.
33 West Second Street
Riverhead, NY 11901

13 BY: MAUREEN T. LICCIONE, ESQ.

14 CHRISTOPHER E. KENT, ESQ.
15 For the Respondents Andrew Dreskin, et al.
445 Griffing Avenue
Riverhead, NY 11901

16 DONNA A. HILL
17 Senior Court Reporter

18 *****

19

20 THE COURT: It has been a long day. First, I
21 would remind counsel that I have reserved decision
22 on the issue of standing concerning Mr. Rambo, the
23 Society and Mr. Amper.

24 I am not going to get to that, I have an
25 Election Law case coming in Monday which has just

dah

1. **-Proceedings-**

2 been thrown in my direction, so you are not going
3 to get much out of me for a good part of the week.

8 I am not directing anything. I am just
9 saying that is up to you all.

10 Now, as far as what we have today is
11 concerned, I will read the decision of the Court
12 which is in answer to petitioner's counsel's
13 request, addressing only the issue of the temporary
14 restraining order, we'll get to the other stuff
15 later.

dah

1 -Proceedings-

2 that the Central Pine Barrens Joint Planning and
3 Policy Commission failed to perform the statutory
4 obligation with regard to the reviewing proposed
5 concerts and other related relief is denied in its
6 entirety.

7 I am not sure, I wrote this quickly, I
8 want to make sure that that only relates to the
9 temporary restraining order and to the request for
10 a preliminary injunction.

11 The underlying petition served by the
12 movants seeks a permanent injunction prohibiting
13 the Town of Riverhead from permitting New York
14 Music Festival, LLC and Andrew Dreskin Investments,
15 LLC from conducting a series of concerts on Town
16 owned property in Calverton, declaring that the
17 Town of Riverhead acted unlawfully in violation of
18 the State Environmental Quality Review Act, the
19 Pine Barrens Protection Act, the sole Source
20 Aquifer Protection Act and the other federal and
21 state laws that have not been itemized, declaring
22 that the Central Pine Barrens Joint Planning and
23 Policy Commission has not complied with the
24 Environmental Conservation Law Article 57 and
25 prohibiting the County of Suffolk from issuing a

dah

1 -Proceedings-

2 Chapter 90 mass participation permit.

This litigation arises out of a proposal to hold a musical concert on June 7th and 8th of this year at the former Grumman site located in the Town of Riverhead. The promoters are selling single day tickets, two-day passes, two-days passes with camping to this musical festival. The promotor has represented to the Court that approximately 32,000 tickets have been sold on Saturday and 22,000 have been sold on Sunday. Of the 32,000 tickets sold for Saturday approximately 12,000 are for campers.

can

1 -Proceedings-

2 produce injury to the plaintiff." And that is
3 verbatim from CPLR Rule 6312.

4 In other words, the movant must show a
5 likelihood of success, which means a strong
6 showing, an affidavit and other proof supplying
7 evidentiary detail, and that a balancing of the
8 equities favors the movants position. The movants
9 bargain have failed to establish both the likelihood
10 that they would be successful on the underlying
11 merits or that there will be irreparable injury
12 absent the granting of the preliminary injunction.

13 It appears from the papers before the the
14 Court that the Central Pine Barrens Joint Planning
15 and Policy Commission actually has no authority
16 over the Grumman property since that parcel has
17 been specifically exempted from Environmental
18 Conservation Law under Article 57.

19 Further, in the past, a full
20 environmental statement covering the Calverton
21 property was drafted and on the basis of the SEQRA
22 Review and other proceedings the Town of Riverhead
23 enacted the zoning regulations covering the
24 Calverton property at this time. These zoning
25 regulations specifically permit mass gatherings and

dah

1 -Proceedings-

2 mass gatherings have been held at the site in the
3 past. The Town of Riverhead has followed its own
4 internal procedures throughout the planning process
5 for the concert and there is no proof that they
6 have acted contrary to law or statute.

In fact, the concert may not be held unless the Town and the promotor can satisfy the County that it should issue a mass participation permit among other things. While there have been allegations that the EAF is not completed, the possible defects therein are de minimus in light of the prior history of the use of the Calverton property and the subsequent scrutiny of the environmental concerns raised by all individuals during the review process.

With regard to the health and safety issues raised by the petitioners concerning police protection and congested roadways affecting transportation and response to medical emergencies, the Court cannot find that the County or the Town

dah

-Proceedings-

2 have acted arbitrarily in addressing these
3 concerns.

4 And under these circumstances the relief
5 sought, that is the temporary injunction, is
6 denied.

7 Submit order.

8

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

12

17

14

Donna A. Kell

Donna A. Hill

Official Court Reporter

15