

1

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

4

5 -----
6 In the Matter of the Application of the
7 LONG ISLAND PINE BARRENS SOCIETY, INC.,
8 RICHARD AMPER as Executive Director and
9 as an Individual and Taxpayer, NEIGHBORHOOD
10 NETWORK RESEARCH CENTER, NEAL LEWIS as
11 Executive Director, NORTH FORK AUDUBON SOCIETY,
12 MARY MULCAHY as President, NORTH FORK
13 ENVIRONMENTAL COUNCIL, HOWARD MEINKE as
14 President, NORTH SHORE AUDUBON SOCIETY,
15 JENNIFER WILSON PINES as President, OPEN SPACE
16 NOW, INC., ALEX WIPF, as President,
17 WAYNE RAMBO, SCOTT NEARY, MARGARET CAPUTO,
18 ROBERT and JOYCE MOSS and LOUISE FASTORE, as
19 individuals and Taxpayers, and as Members of
20 the LONG ISLAND PINE BARRENS SOCIETY;
21
22 Petitioners,

23

-against-

24 THE TOWN BOARD OF THE TOWN OF RIVERHEAD,
25 ROBERT KOZAKIEWICZ, as Town Supervisor and
26 THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT
27 AGENCY, ROBERT KOZAKIEWICZ as Chairman,
28 COUNTY OF SUFFOLK, ROBERT GAFFNEY as
29 County Executive, SUFFOLK COUNTY DEPARTMENT
30 OF HEALTH SERVICES, CENTRAL PINE BARRENS
31 JOINT PLANNING AND POLICY COMMISSION and
32 NEW YORK MUSIC FESTIVAL, LLC, ANDREW DRESKIN
33 as CEO and ANDREW DRESKIN INVESTMENTS, LLC,
34
35 Respondents.

36

37 -----
38 400 Carleton Avenue
39 Central Islip, NY 11722
40 May 30, 2003

41

42 B E F O R E:

43

44 HONORABLE ROBERT WEBSTER OLIVER
45 SUPREME COURT JUDGE

46

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

48

49 REGINA SELTZER, ESQ.
50 For the Petitioners
51 30 South Brewster Lane
52 Bellport, NY 11713

53

INDEX NO.:
03-13625

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
5 Riverhead, NY 11901

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

8 FISCHBEIN, BADILLO, WAGNER & HARDING
9 For the Respondent Pine Barrens Commission
48 South Service Road
10 Melville, NY 11747
BY: MICHAEL C. SCHMIDT, ESQ.

11 TWOMEY, LATHAM, SHEA & BELLEY, LLP
12 For the Respondents Andrew Dreskin, et al.
33 West Second Street
13 Riverhead, NY 11901
BY: MAUREEN T. LICCIONE, ESQ.

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

17 DONNA A. HILL
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

-Proceedings-

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

If counsel wishes to submit, if you wish to submit memoranda on the issue of standing on the three, if you get something to me by Thursday I think we would be doing fine. If you want.

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

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

This Order to Show Cause by the remaining petitioner in this proceeding for preliminary injunction, restraining the respondents from conducting a concert or camp outs of any kind on property owned by the Town of Riverhead Community Development Agency located at the former United States Navy-Grumman facility in Calverton, New York prohibiting the Suffolk County Department of Health and specifically the Commissioner from issuing a Chapter 90 mass participation permit, declaring

dah

-Proceedings-

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

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

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

dah

-Proceedings-

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.

The movants herein must show by their affidavit or other admissible evidence that, "there is a cause of action and either that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment in effectual; or that the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which if committed or continued during the pendency of the action will

can

-Proceedings-

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

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

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

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

dah

-Proceedings-

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

The specific environmental concerns raised by the music festival have been addressed and continued to be addressed by the County, the Town and the promoter.

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-

have acted arbitrarily in addressing these
concerns. .

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

Submit order.

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



Donna A. Hill

Official Court Reporter