

PRESENT
HONORABLE W. BROMLEY HALL
JUSTICE
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
LONG ISLAND PINE BARRENS SOCIETY,
INC., et al.,

At a N 1 A S term Part 34 of
the Supreme Court, of the State
of New York, held in and for the
County of Suffolk, at the County
Court House, Riverhead, New York
on the 28 day of April, 1999

Petitioners,

JUDGMENT

-against-

Index No.: 5363/94

CENTRAL PINE BARRENS JOINT
PLANNING AND POLICY COMMISSION,

Hon. W. Bromley Hall

Respondent.

-----X
Petitioner, Long Island Pine Barrens Society, Inc., having filed a petition seeking, among other things, to declare void a certain resolution dated February 9, 1994 which was adopted by respondent, Central Pine Barrens Joint Planning and Policy Commission, and the petition having regularly come on to be heard before the Honorable W. Bromley Hall, at I.A.S. Part 34 of this Court located at 235 Griffing Avenue, Riverhead, New York on the 28th day of April 1998, and the petition having been granted, and a memorandum decision dated May 29, 1998 granting the petition, having been issued by the court, which memorandum decision having been modified by the court, a copy of which is annexed hereto as Exhibit A, *By stipulation "So ORDERED", dated April 28, 1999.*

NOW, on motion of McMillan, Rather, Bennett & Rigano, P.C., attorneys for Respondents, and Regina Seltzer, Esq., attorney for Petitioners, it is

"ORDERED, ADJUDGED AND DECREED that the petition is granted in its entirety.

Judgment signed this _____ day of _____, 1999.



J.S.C.
FILED
MAY 6 1999
EDWARD P. ROMAINE
CLERK OF SUFFOLK COUNTY

[Signature]
APR 28 1999

Firemen's Rank

MEMORANDUM

COPY

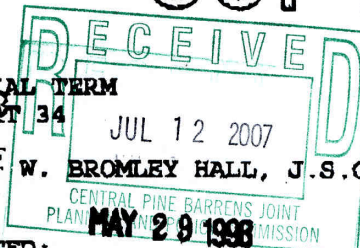
SUPREME COURT, STATE OF NEW YORK,
COUNTY OF SUFFOLK,

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TRIAL TERM
PART 34

Matter of Long Island Pine Barrens
Society, Inc., et. al.

EDWARD F. RUMAINE
CLERK OF THE
SUFFOLK COUNTY



W. BROMLEY HALL, J.S.C.

Petitioners,

DATED:

-against-

MOTION DATE: Apr. 28, 1998

SEQ. NO.: 005

Central Pine Barrens Joint Planning
And Policy Commission.

RETURN DATE: Mar. 17, 1998

MNEMONICS: CDISPJ

INDEX No.: 5363/94

Respondent.

PLTF'S/PET'S ATTORNEY:
Regina Seltzer
30 South Brewster Lane
Bellport, N.Y. 11713

DEF'S/RESP'S ATTORNEY:
McMillan, Rather, Bennett
& Rigano
395 N. Service Road
Melville, N.Y. 11747

This proceeding, as amended, seeks to declare void respondent's resolution which permitted the Longwood Youth Sports Association to construct athletic facilities on 30 acres of underdeveloped pine barrens. The resolution was adopted because the respondent found that the use qualified as "non-development" within the scope of the New York State Environmental Conservation Law. Petitioner claims respondent's action was arbitrary and capricious and --in violation the New York State Environmental Quality Review Act.

To protect and manage the Pine Barrens-Peconic Bay maritime region, the State Legislature enacted the Long Island Pine Barrens Maritime Reserve Act. ECL Art. 57. The purpose of that law is "to allow the state and local governments to protect, preserve and properly manage the unique natural resources of the Pine Barrens-Peconic Bay system and to encourage coordination of existing programs and studies affecting land and water resources in the region and to protect the value of the existing public and private investment that has already been made to acquire land in the region." ECL 57-105. It was understood that there would be restriction on development of private land but restrictions were deemed to be necessary and desirable to protect and preserve the hydrologic and ecologic integrity of the Central Pine Barrens area for future generations. Id.

To manage, plan and oversee land use within the Central Pine barrens

area of Long Island Pine Barrens Maritime reserve, the State Legislature created the Central Pine Barrens Joint Planning and Policy Commission (Commission). ECL 57-119. That Commission was required to prepare a draft comprehensive land use plan and generic environmental impact statement, after consultation with the Central Pine Barrens Advisory Committee. ECL 57-121. The advisory committee was created to "actively assist and advise the commission in the preparation, adoption and implementation of the Central Pine Barrens comprehensive land use plan." ECL 57-119 (9). The Commission was required to file maps of the Central Pine Barrens with the Secretary of State classifying and depicting a portion of the Central Pine barrens to be identified as the "core preservation area" and another to be identified as the "Compatible growth area." The core preservation area was comprised of the largest essentially intact areas of undeveloped Central Pine Barrens ecology and the compatible growth area was comprised of areas of the Central Pine Barrens where appropriate patterns of development and required growth would be permitted. In the core preservation area, there should be prohibition or redirecting of new development.

The Act provides that, without limitation, the following activities or uses shall be taken to constitute development:

- (a) a change in type of use of a structure or land or, if the ordinance or rule divides uses into classes, a change from one class of use designated in an ordinance or rule to a use in another class so designated;
- (b) a material increase in the intensity of use of land or environmental impacts as a result thereof;
- (c) commencement of mining, excavation or material alternation of grade or vegetation on a parcel of land excluding environmental restoration activities;

Development does not include: Existing or expanded recreational use consistent with the purposes of this article including scouting activities, the maintenance or expansion of facilities associated with or necessary for such scouting activities including but not limited to, the addition, modification, expansion or replacement of structures necessary for such activities and such clearing as may be reasonably required for the maintenance or expansion of scouting activities.

On February 9, 1994, the Commission, in response to a proposal of Longwood Youth Sports Association, adopted the resolution which permitted Longwood to lease approximately 30 acres of undeveloped pine barrens within the boundaries of the "core preservation area" in Fireman's Park and to construct various athletic facilities holding that the proposed use constituted "non-development" within the meaning of Article 57. Fireman's

Park, which is approximately 300 acres, presently consists of softball fields, a firing range and a fireman's training facility, which attract over 15,000 participants and spectators annually. The proposal allows the construction of baseball, football and soccer fields and would require tree-clearing on substantially all of the 30 acre.

The approval was based upon respondent's determination that the proposal was included in the recreational exception. "It is the Central Pine Barren Commission's interpretation of §57-0107(13)(vii) that the recreational uses contemplated under this section are not limited to scouting activities and that non-scouting recreational activities such as those proposed by LYSA may fall within the definition of 'non-development'". The Commission concluded that scouting activities are not the only types of recreational uses under the exemption. Finally, the Commission determined that LYSA's proposal to expand the park's existing recreational facilities was consistent with the goal of protecting groundwater, since LYSA agreed to conduct the project in accordance with certain conditions that would ensure protection of the groundwater. As to SEQRA, the Commission determined that because it was not undertaking, funding or approving LYSA's proposal, and was merely asked to render an interpretation of the Act as it applied to the proposal, it was not engaged in an "action" under SEQRA.

By order dated January 10, 1997, this Court determined that Petitioner, Richard Amper, Jr. and the Long Island Pine Barrens Society, Inc. had standing to continue the proceeding. Furthermore, the Court requested the parties to resubmit only those materials relating to the remaining issues.

The focus is whether the plan calls for development under the act. Contrary to respondent's position, statutory construction is the function of the courts who are responsible for resolving legal issues of the applicability of a statute to a particular situation. See *Finger Lakes Racing Assoc. v. New York state Racing & Wagering Bd.*, 45 N.Y.2d 471. Although a Court will defer to an agency's expertise in situations where such expertise is relevant, an agency's construction of a statute merits less weight and will not be accorded special deference when the question is purely one of statutory analysis dependent on accurate determination of legislative intent. *Yong-Myun Rho v. Amback*, 74 N.Y.2d 318. Consequently, this Court believes that respondent's determination does not have any taliamatic qualities.

In interpreting the statute, the intent of the legislature is the controlling factor. *State of New York v. Ford Motor Co.*, 74 N.Y.2d 495.

Initially, such intent is to be ascertained from the plain meaning of the statute. *Albano v. Kirby*, 36 N.Y.2d 526. A reading of the exception, ECL §57-0107(13)(vii), indicates that it is limited to scouting activities. This is in harmony with the legislative aides of construction. The stated legislative intent includes the "preservation of the core area", ECL §57-0105. "The Long Island Pine Barrens, an area encompassing over one hundred thousand acres in the county of Suffolk, is of critical importance to the state because it overlies the largest source of pure groundwater in New York." Memorandum in Support of Legislation, S.8961-A, L.1990, ch. 814. Furthermore, the statute specifically states that core area should be preserved in its natural state. ECL §57-0121(3)(a). The legislature purpose was to have "the ecologic and hydrologic integrity" protected. Memorandum in Support of Legislation, S.8961-A, L.1990, ch. 814. It is understood that a statutory exception is to be strictly construed and any doubts should be resolved in favor of the general provision rather than the exception. 97 N.Y.Jur.2d Statutes §213(1992). Therefore, respondent's interpretation would undermine the legislative intent and expand the exception beyond its limitations.

This is further seen in the verification submitted by Assemblyman Englebright. He states:

During bill discussions which took place prior to passage, anticipated recreation was limited to those activities for the Pine Barrens Core which were agreed to only for such activities that were relevant to and dependent upon the existence of the pine forest itself. These discussions were stimulated by a request of the Boy Scouts of America that their pre-existing camping, hiking and other pre-existing scouting activities at Camp Wauwaupeh not be precluded from possible expansion in the future. The bill drafters viewed these Boy Scout-sponsored recreational and learning experiences as compatible with and important to the long-term preservation of the Pine Barrens resource and were concerned that without specific accommodation being made in the law these worthwhile Pine Barrens woodland related recreational activities might otherwise inadvertently be prohibited. For these reasons, preexisting scouting and like activities were defined as "non-development" in the language of the law. No recreational activities that were not either pre-existing or Pine Barrens forest dependent were discussed or contemplated when the Pine Barrens Protection Act was drafted. Activities meeting this definition were meant to include such recreation and learning experiences as hiking, canoeing and related launch site activity, and other recreational uses which were dependent upon the continued existence of the Pine Barrens and which, if enabled by the law, would have no or minimal impacts upon the natural resources of the Pine Barrens. the provision enabling such activities was not meant to include destruction of the woodland environment.

The Court understands that postenactment history is of little, if any, use in construing the statute. See *Consolidated Edison Co. v. D.E.C.*, 71 N.Y.2d 186. However, it does provide some evidence of the debates during passage, which can be used as a weak tool of statutory construction. 97

N.Y. Jur. 2d Statutes §165(1992).¹

Even if the Court accepted respondent's position that the exception could apply here, the Court would reject respondent's conclusion that the plan is "consistent with the purposes of this article".² As noted, the legislature stated that the purpose of the act was to "provide for the preservation of the core preservation area." As Professor Weinberg notes, the core area goal is to preserve it in its natural state. P. Weinberg, Practice Commentaries, McKinney's Consol. Laws of NY, Book 17 1/2, ECL §57-0101, p. 485. The Court can take judicial notice that pine trees are the natural state of the Pine Barrens core. Therefore, destruction of 30 acres of pine trees is antithetic³ to the purpose of the statute. Consequently, the determination of respondent can not stand and the petition is granted.

Settle judgment.


W. BROMLEY HALL J.S.C.

¹. Except to the verification quoted, neither party provided legislative history on the issue.

². And, during this analysis, the Court accepts respondent's position; i.e. the interpretation given to a statute by the agency charged with its enforcement is accorded great weight and judicial deference as long as the interpretation is reasonable. Grant v. Cuomo, 73 N.Y.2d 820. However, as will be seen, the interpretation is unreasonable.

³. Just as it is difficult to have the Clean Water Act without water or the Clean Air Act without air, so it is to have a Pine Barrens' reserve act without pine trees.

It must be noted, that while the project by Longwood youth Sports Association is very important, providing avenues for athletic endeavors fundamental to society, going back to the Greek Olympics, as with most legitimate undertakings, balancing is required where two social goals come into contact. In this case, the State's Legislature established the balance, in that the long range ecological concern of protecting the groundwater must be paramount.

