

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D15108  
Y/hu/kmg

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Submitted - April 10, 2007

ROBERT A. SPOLZINO, J.P.  
STEVEN W. FISHER  
JOSEPH COVELLO  
WILLIAM E. McCARTHY, JJ.

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2006-06493

DECISION & ORDER

In the Matter of Huntington Hills Associates,  
LLC, petitioner, v Town of Huntington, et al.,  
respondents.

(Index No. 4624/06)

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Weber Law Group, LLP, Melville, N.Y. (Garrett L. Gray of counsel), for petitioner.

John J. Leo, Town Attorney, Huntington, N.Y. (Thelma Neira of counsel), for  
respondents.

Hybrid proceeding pursuant to CPLR article 78 to review so much of Local Law No. 2-2006 of the Town of Huntington, as, in effect, classified certain property as a “golf course property,” and action for a judgment declaring that the subject property is not a “golf course property” and that a moratorium imposed by the local law governing the issuance of approvals, grants, and/or permits for “golf course properties” is inapplicable to the subject property, to permanently enjoin the Town of Huntington and the Town Board of the Town of Huntington from applying the moratorium to the subject property, and, in effect, to recover damages for a taking of real property without just compensation. Motion by the Town of Huntington and the Town Board of the Town of Huntington, inter alia, pursuant to CPLR 3211 and 7804(f) to dismiss the proceeding. Cross motion by Huntington Hills Associates, LLC, inter alia, for summary judgment on the complaint.

ORDERED that the branch of the motion which is pursuant to CPLR 3211 and 7804(f) to dismiss the proceeding is granted; and it is further,

March 11, 2008

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ORDERED that the matter is remitted to the Supreme Court, Suffolk County, for further proceedings, including a determination of the remaining branches of the motion and the cross motion, and thereafter for the entry of an appropriate judgment, inter alia, dismissing the proceeding and making an appropriate declaration as to whether the subject property is a “golf course property” and whether the moratorium is applicable to the subject property; and it is further,

ORDERED that one bill of costs is awarded to the Town of Huntington and the Town Board of the Town of Huntington.

The Supreme Court should have determined that branch of the motion which was to dismiss the proceeding (*see* CPLR 7804[f],[g]). Moreover, the Supreme Court erroneously transferred the proceeding to this Court pursuant to CPLR 7804(g) (*see Matter of Halperin v City of New Rochelle*, 24 AD3d 768, 769-770). However, the record is sufficient to facilitate review and disposition of that branch of the motion which was to dismiss the proceeding (*see* CPLR 7804[g]; *Matter of 125 Bar Corp. v State Liq. Auth.*, 24 NY2d 174, 180). A declaratory judgment action, and not a proceeding pursuant to CPLR article 78, is the proper vehicle by which to challenge the determination of the Town Board of the Town of Huntington to classify the subject property as a “golf course property” (*see generally P & N Tiffany Props., Inc. v Village of Tuckahoe*, 33 AD3d 61, 64). Accordingly, the proceeding pursuant to CPLR article 78 must be dismissed.

To the extent that relief in addition to that sought pursuant to CPLR article 78 is requested, any issues pertaining to such relief must be determined by the Supreme Court, Suffolk County, in the first instance, as transfer to this Court is not authorized (*see Matter of Herman v Incorporated Vil. of Tivoli*, 45 AD3d 767, 769).

SPOLZINO, J.P., FISHER, COVELLO and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court