

**Matter of Long Is. Pine Barrens Socy., Inc. v  
County of Suffolk**

2007 NY Slip Op 31055(U)

May 2, 2007

Supreme Court, Suffolk County

Docket Number: 0022354/2006

Judge: Gary J. Weber

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SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 6 - SUFFOLK COUNTY

*P R E S E N T:*

Hon. Gary J. Weber MOTION DATE September 25, 2006  
Acting Justice of the Supreme Court Motion Seq. # 005-MD  
# 006-MG  
# 007-MG  
# 008-MG

In the Matter of the Application of the LONG ISLAND PINE BARRENS SOCIETY, INC., RICHARD AMPER, as Executive Director and in his Individual Capacity, SOUTH YAPHANK CIVIC ASSOCIATION, JOHAN MCCONNELL, and President and in her individual capacity, DOUGLAS STEIGERWALD, residents taxpayers and members of the LONG ISLAND PINE BARRENS SOCIETY and SOUTH YAPHANK CIVIC ASSOCIATION.

Petitioners

-against-

THE COUNTY OF SUFFOLK, HUNTER SPORTS SHOOTING GROUNDS, INC., & THE CENTRAL PINE BARRENS JOINT PLANNING & POLICY COMMISSION,

Respondents

JOHANNESSEN & JOHANNESSEN, ESQS.  
ATTORNEYS FOR PLAINTIFFS/PETITIONERS  
LONG ISLAND PINE BARRENS SOCIETY, INC.  
ET. ALS.  
544 BUSINESS RTE 25A  
ROCKY POINT, NY 11778

CHRISTINE MALAFI, ESQ.  
BY: ADRIANA LOPEZ, ESQ.  
ATTORNEY FOR DEFENDANT RESPONDENT  
SUFFOLK COUNTY  
100 VETERANS MEM HWY, P.O.BOX 6100  
HAUPPAUGE, NY 11788

ANDREW CUOMO, ESQ.  
ATTORNEY GENERAL  
BY: GREGORY J. NOLAN, ESQS.  
ASSISTANT ATTORNEY GENERAL  
ATTORNEY FOR CENTRAL PINES BARRENS  
JOINT PLANNING & POLICY COMMISSION  
3525 SUNRISE HWY, 2ND FLOOR  
GREAT RIVER NY 11739

ANDREW L. CRABTREE, ESQS.  
ATTORNEY FOR  
HUNTER SPORTS SHOOTING GROUNDS, INC.  
4166 SUNRISE HWY  
MASSAPEQUA NY 11758

The Petitioner, by Notice of Petition dated August 10, 2006, has moved (Mot. #005) this Court for: a judgment and declaration that the Central Pine Barrens Joint Planning & Policy Commission violated ECL Article 57 by failing to enforce the Pine Barrens Protection Act; for a writ of prohibition restraining the respondents from proceeding with any further development at the Suffolk County Trap & Skeet Range; and a judgment declaring that the lease between Suffolk County and the lessee and concessionaire are null in void as in violation of ECL Article 57. The Petitioners have submitted a Memorandum of Law dated November 9, 2006. The Respondent-COUNTY OF SUFFOLK, by "Amended" Notice of Motion dated October 2, 2006, has moved (Mot. #006) this Court for an Order dismissing the Petition upon the grounds that the Petition is barred by the statute of limitations, that all of the petitioners lack standing, that the petitioners fail to state a cause of action, or, in the alternative, it seeks an Order striking paragraphs

forty-six through forty-nine of the petition. The Respondent- CENTRAL PINE BARRENS JOINT PLANNING & POLICY COMMISSION, by Notice of Motion dated October 12, 2006, has moved (Mot. #007) to dismiss the petition pursuant to CPLR 3212(a)(2) and (7) for lack of subject matter jurisdiction and for failure to state a cause of action as to the Commission. Respondent-HUNTER SPORTS SHOOTING GROUNDS, INC., by Notice of Motion dated November 10, 2006, has moved (Mot. #008) this Court for an Order dismissing the Petition upon the grounds that the Petition is barred by the statute of limitations, that all of the petitioners lack standing and that the petitioners fail to state a cause of action, at least as to it.

The Petitioners have submitted an Affirmation in Opposition dated January 9 200[6] *sic* 2007. The Respondent-County of Suffolk has submitted a Memorandum of Law dated September 15, 2006. The Respondent-CENTRAL PINE BARRENS JOINT PLANNING & POLICY COMMISSION has submitted a Memorandum of Law in Support of its motion to dismiss which is dated October 12, 2006. Respondent-HUNTER SPORTS SHOOTING GROUNDS, INC. has submitted a Memorandum of Law in Support of its Motion to Dismiss which is dated November 10, 2006. The Respondent-COUNTY OF SUFFOLK has submitted a Reply Affirmation in Support of its Motion to dismiss which is dated December 20, 2006. The Respondent-CENTRAL PINE BARRENS JOINT PLANNING & POLICY COMMISSION has submitted a Memorandum of Law In Reply in Support of its motion to dismiss which is dated January 9, 2007. Respondent-HUNTER SPORTS SHOOTING GROUNDS, INC. has submitted a Memorandum of Law in Support of its Motion to Dismiss which is dated January 9, 2007.

#### DECISION

The Petitioners seek to cause Article 57 of the Environmental Conservation Law, as they interpret it, to be enforced. The Legislature provided the enforcement mechanism for Article 57 in ECL § 57-0136. The Legislature did not provide for a private cause of action to enforce the terms of Article 57. An Article 78 proceeding can be used to mandate that a government official perform a ministerial act. *See New York Civil Liberties Union v. State, 4 NY3d 175*. However, without specific legislative authority, there is no such private right of enforcement extending to the performance of discretionary acts, and the enforcement of the law has long been held to involve an important element of discretion. *Boung Jae Jang v. Brown, 161 AD2d 49 (2nd Dept. 1990)*.

Here, the Legislature has created a scheme which authorizes Towns and Villages, The Respondent-Commission, and the Attorney General, to enforce the provisions of this Article. None of the aforementioned authorities have elected to commence an action against the Suffolk County Trap & Skeet Range as the Petitioners would wish. Simply because the Petitioner's wish these agencies to act does not, *ipso facto*, mean that they must; or that their failure to behave in such a way as to decide a discretionary matter in a manner to the liking of Petitioners renders them, under these circumstances, subject to legal action on this account by the Plaintiffs-Petitioners.

The respective considerations of the authorized enforcement agencies are not, on the facts of this petition, justiciable. Accordingly, the Petition is dismissed.

#### ORDER

**ORDERED** that the Petition is dismissed (Mot. #005) is granted and the case is dismissed; and it is further

**ORDERED** that the Respondents' motions (Mot. #006-008) to dismiss are granted; and it is further

**ORDERED** that the Respondent-SUFFOLK COUNTY is directed to serve a copy of this decision and order together with a notice of entry on all other parties to this proceeding as soon as is practicable.

This shall constitute the decision and order of the court.

Dated: May 2, 2007

  
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Gary J. Weber, Acting J.S.C.

Non-Final Disposition  
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