

Bloodgood v Town of Huntington

2007 NY Slip Op 31064(U)

April 30, 2007

Supreme Court, Suffolk County

Docket Number: 0023516/2006

Judge: Arthur G. Pitts

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**Supreme Court of the State of New York
IAS Part 43- County of Suffolk**

COPY

PRESENT:

HON. ARTHUR G. PITTS

JUSTICE OF THE SUPREME COURT

ROY E. BLOODGOOD, MARY T. ENGLISH,
JOHN D'ESPOSITO, ALEXANDER FUSARO,
RICHARD H. RANKIN, ROBERT
SARDUCCI, DENNIS A. GARETANO and
THE ALLIANCE FOR THE PRESERVATION
OF HUNTINGTON HARBOR,

Plaintiff-Petitions

-against-

TOWN OF HUNTINGTON, TOWN BOARD
OF THE TOWN OF HUNTINGTON and
BUILDING DEPARTMENT OF THE TOWN
OF HUNTINGTON,

Defendant-Respondents

ORIG. RETURN DATE: 10/26/06

FINAL SUBMIT DATE: 2/8/07

MOTION SEQ. NO.: 001-Mot-D

002-MG

003-MD

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Upon the following papers numbered 1 to 59 read on this motion /article 78/dismissal/summary judgment
Notice of Motion/OSC and supporting papers 1-11 ; Notice of Cross-Motion and supporting papers 12-18/19-26 ;
Affirmation/affidavit in opposition and supporting papers 27-28 ; Affirmation/affidavit in reply and supporting papers 29-58
Other 59 ; (~~and after hearing counsel in support of and opposed to the motion~~) it is,

ORDERED that respondents Town of Huntington, Town Board of the Town of Huntington and the building department of the Town of Huntington's motion for an order dismissing the within petition is granted under the circumstances presented herein. It is further

ORDERED that the petitioners cross motion for summary judgment is denied as being moot.

The matter at bar is a hybrid declaratory judgment / Article 78 proceeding whereby the petitioners herein, Roy E. Bloodgood, Mary T. English, John D'Esposito, Alexander Fusaro, Richard H. Rankin, Robert Sarducci, Dennis A. Garetano and The Alliance for the Preservation of Huntington

Harbor seek a judgment reversing, annulling and setting aside Local Law No. 14-2006 adopted by the respondent Town Board on May 10, 2006 and filed with the New York Secretary of State on or about May, 2006. Said Local Law amended the Code of the Town of Huntington, Chapter 198, Article IV, section 198-27 as follows:

198-27 C-6 General Business District

- A. Use regulations. In the C-6 General Business District, a building or premises shall be used only for the following purposes:

[(22)] Existing text is repealed in its entirety.

(22) Mixed use building(s) where the principle use is one which is permitted and located on the ground floor and where one or more of the upper stories are residential in use and (a) do not exceed the footprint of the ground floor, and (b) meet all of the height, area and bulk requirements of the district. Notwithstanding any other section of this chapter to the contrary, parking for residence above commercial uses shall be calculated at the rate of one and one half (1 1/2) spaces per dwelling unit.

In support of the instant petition, the petitioners aver that the respondent Town Board failed to comply with the New York State Environmental Quality Review Act (“SEQRA”); that is, the Town failed to take a “hard look” required to complete a meaningful and lawful SEQRA analysis of the environmental impacts of the amendment including but not limited to increased population, traffic congestion, sewage and wastewater, parking and schools.

By way of their motion to dismiss the respondents submit that the petitioners lack standing to bring the instant petition. “Generally standing to challenge an administrative action turns on a showing that the action will have a harmful effect on the challenger and that the interest to be asserted is within the zone of interest to be protected by the statute’ (*Matter of Gernatt Asphalt Prods. v. Town of Sardinia*, 87 NY2d 668, 687 [1996]) Thus, to prevail on the instant application, petitioners must demonstrate ‘(1) that they will suffer an environmental injury that is in some way different from that of the public at large, and (2) that the alleged injury falls within the zone of interest sought to be protected or promoted by the statute under which the governmental action was taken’ (*Matter of Nature’s Trees v. County of Suffolk*, 293 AD2d543, 544 [2nd Dept 2002])

However, standing to raise a SEQRA violation further requires the challenger to demonstrate that they stand to suffer an injury that is *environmental* and not solely economic in nature should the

decision be upheld (*Gernatt Asphalt Prods.* at 687; *see also Matter of Mobil Oil Corp. v. Syracuse Indus. Dev. Agency*, 76 NY2d 428 [1990]) as an economic injury is not, by itself, within the zone of interest which SEQRA seeks to protect (*Vinnie Montes Waste Sys. v. Town of Oyster Bay*, 199 AD2d 493 [2nd Dept 1993]). Prevailing case law also dictates that in order to establish standing as an environmental organization, the organization must demonstrate that one or more of the organization's members have standing to sue (*Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761 [1991]; *Matter Long Is. Pine Barrens Socy. v Planning Bd. of the Town of Brookhaven*, 213 AD2d 484 [2nd Dept 1995]; *Matter of Long Is. Pine Barrens Socy. v Town Bd. Of Town of E. Hampton*, 293 AD2d 616 [2nd Dept 2002]).

For the purpose of determining standing 'the zone of interests, or concerns, of SEQRA encompasses the impact of agency action on the relationship between the citizens of this State and their environment. Only those who can demonstrate legally cognizable injury to that relationship can challenge administrative action under SEQRA' (*Society of Plastics Indus.*, 77 NY2d at 777) ” (*Chatham Towers, Inc., v Bloomberg*, 6 Misc 3d 814, 819-820, 793 N.Y.S.2d 670 [Sup Ct NY Cty, 2004])

In the matter at bar one of the petitioners is The Alliance for the Preservation of Huntington Harbor, an unincorporated civic association comprised of over 500 active local citizen/members organized for the purpose of protecting Huntington's harbors and environment. It is well settled that the burden of establishing standing to raise a claim is on the party seeking review. (*Bridon Realty Corp. v. Town Board of the Town of Clarkson*, 250 AD2d 667, 672 N.Y.S.2d 887 [2nd Dept 1998]) In determining whether an association or an organization has standing, the association must demonstrate that the interests it asserts are germane to its purposes as to satisfy the Court that it is an appropriate representative of those interests. (*Society of Plastics v. County of Suffolk*, 77 NY2d 761, 570 N.Y.S.2d 778 [1991]) Based upon such criteria the petitioner association has failed to meet such burden. The respondents assert that the petitioner association's purpose, which was not controverted, is to preserve and protect the Town's harbors and waterways. Herein, the subject local law seeks the amendment of the Town Code as it relates to the mixed use of buildings located in a C-6 General Business District, clearly not germane to its stated purpose. Accordingly, pursuant to the foregoing, the defendants motion to dismiss as to petitioner The Alliance for the Preservation of Huntington Harbor is granted.

As to the remaining individual petitioners, they are residential and/or commercial property owners within the Town of Huntington residing or operating a commercial premises at eight addresses set forth within the petition. The owners of such properties, although the individual petitioners, are not specifically identified. Two of the properties, 104 West Hills Road, Huntington Station and 1624 New York Avenue, Huntington are commercial properties located in the subject C-6 General Business District, an auto repair shop and a restaurant respectively. Clearly the owners of these properties fail to fall within the "zone of interest" required to be protected. It has consistently been held that the protection of commercial interest is insufficient to support a challenge to the SEQRA determination of

a legislative body. (*Society of Plastics v. County of Suffolk*, supra)

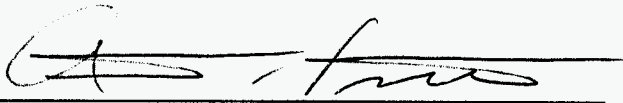
As to the remaining individual petitioners, they are owners of residential properties located in either the R-10 Residence Zoning District, R-5 Residence Zoning District or R-40 Residence Zoning District. It is well settled that landowners whose property is located in the immediate vicinity of the subject property (i.e. C-6 General Business District) are entitled to a presumption that they will be adversely affected in a way different from the community at large. However, they still have the burden of coming forward with competent evidence to support a finding that their property is in fact located within the immediate vicinity of the subject District. Conclusory allegations lack probative value and by themselves fail to meet such burden. (*Piela v. Van Voris*, 229 AD2d 94, 655 N.Y.S.2d 105 [3rd Dept 1997; *In the Matter of Long Island Contractor's Association v. Manzi*, 17 AD2d 590, 793 NY.S.2d 494 [2nd Dept 2005]) In the matter at bar a petition indicating that the individual petitioners either reside or own properties located at specific addresses with allegations that they are located across the street, adjacent to or in close proximity to the subject district fail to meet such burden in that the allegations are not supported by competent evidence. Accordingly the individual standing to bring the instant proceeding has also not been established and as such, the respondents' motion to dismiss as to those remaining petitioners is also granted.

This shall constitute the decision and order of the Court.

Submit judgment.

So ordered.

**Dated: Riverhead, New York
April 30, 2007**



J.S.C.

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