Matter of Town of Riverhead v Central Pine Barrens Joint Planning & Policy Commn.
2008 NY Slip Op 30292(U)
January 30, 2008
Supreme Court, Suffolk County
Docket Number: 0014186/2007
Judge: Paul J. Baisley
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MEMORANDUM

COPY

SUPREME COURT - SUFFOLK COUNTY
PRESENT:
HON. PAUL J. BAISLEY, JR., J.S.C.

I.A.S. PART 36

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In the Matter of the Application of
THE TOWN OF RIVERHEAD and THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY,

Petitioners/Plaintiffs,

-against-

CENTRAL PINE BARRENS JOINT PLANNING AND POLICY COMMISSION,

Respondents/Defendants,

For Relief Pursuant to Article 78 of the New York Civil Practice Law and Rules.

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By: Baisley, J.S.C.

Dated: January 30, 2008

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Petitioners/plaintiffs the Town of Riverhead (the "Town") and the Town of Riverhead Community Development Agency (the "CDA") commenced this hybrid Article 78 proceeding/declaratory judgment action to challenge the assertion of jurisdiction by

respondent/defendant Central Pine Barrens Joint Planning and Policy Commission (the Commission") over properties located within Enterprise Park at Calverton (commonly referred to as "EPCAL") owned by the CDA, property leased by the CDA to the Town for the creation of a municipal park known as the Recreational Facility at Calverton Enterprise Park (the "Recreational Facility"), and property sold by the CDA to non-party Island Water Park Corporation (whose motion to intervene is determined hereinafter).

Petitioners/plaintiffs seek a judgment prohibiting the Commission from exercising jurisdiction pursuant to Environmental Conservation Law Article 57 over properties within EPCAL owned, leased or sold by the CDA for the purpose of economic development, declaring the assertion of jurisdiction by the Commission to be in excess of its statutory jurisdiction, and permanently enjoining and prohibiting the Commission from exercising jurisdiction over the EPCAL properties approved by the Town for economic development.

The proceeding/action was brought on by an order to show cause (BURKE, J.) dated May 3, 2007, which granted a temporary restraining order restraining the Commission, pending the return date of the order to show cause, from asserting jurisdiction over the Recreational Facility and any pending EPCAL economic development project or application and from enforcing a notice of violation dated May 2, 2007 issued by the Commission to the Town. After hearing oral argument by counsel for the parties on the return date of the order to show cause, the Court continued the temporary restraining order and set the matter down for a hearing on the petitioners' request for injunctive relief. At the close of the hearing on June 11, 2007, the Court continued the temporary restraining order pending its determination.

Also considered together with the petition/complaint and decided herewith are the motions (motion sequence nos. 002 and 004, respectively) of the Long Island Pine Barrens Society, brought on by order to show cause (BAISLEY, J.) dated May 9, 2007, and of Island Water Park Corp. and Eric Scott, brought on by order to show cause (BAISLEY, J.) dated May 22, 2007, for an order pursuant to CPLR §1013 and §7802(d) permitting them to intervene as interested parties in this proceeding; together with the motion (motion sequence no. 003) of the Commission, brought on by order to show cause (BAISLEY, J.) dated May 15, 2007, for a temporary restraining order and preliminary injunction enjoining and restraining the Town from proceeding with construction of the proposed Recreational Facility pending the hearing and determination of this proceeding; as well as the motion (motion sequence no. 005) of the Commission for an order pursuant to CPLR §3025(b) permitting it to amend its verified answer and either "clarifying" or "modifying" the temporary restraining order issued by this Court (BURKE, J.) and continued by the undersigned to permit the Commission to assert jurisdiction to review the new Island Water Park project pending before petitioners.

EPCAL is the site of the former Naval Weapons Industrial Reserve Plant which was owned by the U.S. Navy and leased to the Grumman Corporation. In 1998, pursuant to Public Law 103-c337, §2833, the U.S. Navy transferred the 2,900-acre EPCAL site to the CDA for no consideration conditioned on the Town's use of the property for economic redevelopment to offset the economic distress caused to the region when the Grumman Corporation ceased operations at the site. The CDA, in conjunction with the Town and the Calverton Air Facility Joint Planning and Reuse Commission, commissioned a comprehensive "Reuse Plan" for the EPCAL site, which was finalized

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after years of study and planning and incorporated the input of numerous individuals and community agencies and organizations. The Reuse Plan, which was formally adopted by the Town in 1996, provides for a hybrid of industrial land use and regional recreational development which, *inter alia*, seeks to "encourage specifically those types of industrial, commercial and recreational uses which are integrated with the overall economic policy of the Town of Riverhead." Reuse Plan, p. 6. The proposed development scheme required the Town to amend its Comprehensive Master Plan, which it did with the approval of the Suffolk County Planning Commission, and to prepare a Generic Environmental Impact Statement analyzing the impact of the proposed development. In addition, the entire EPCAL site was designated an urban renewal area pursuant to Article 15 of the General Municipal Law. The Town also adopted a Pine Barrens Overlay District and amended its zoning code to create two new zoning use districts to implement the Reuse Plan: the Planned Industrial Park (PIP) district and the Planned Recreational Park (PRP) district. The zoning changes and the Reuse Plan conform to the development standards for the compatible growth area ("CGA") of the Central Pine Barrens as set forth in the Comprehensive Land Use Plan drafted by the Commission pursuant to its statutory mandate under the Long Island Pine Barrens Protection Act.

The Long Island Pine Barrens Protection Act (the "Act") was enacted in 1993 to bolster the 1990 Long Island Pine Barrens Maritime Reserve Act which is codified in Article 57 of the Environmental Conservation Law ("ECL"). The Act created a Central Pine Barrens Joint Planning and Policy Commission comprising the Suffolk County Executive, the supervisors of the Towns of Brookhaven, Riverhead and Southampton, and a member appointed by the governor of the State of New York; and charged the Commission with the responsibility of planning, managing and overseeing land use within the environmentally sensitive Central Pine Barrens area of the Long Island Pine Barrens Maritime Reserve. ECL §57-0119.

In furtherance of that responsibility, the Act mandated that the Commission draft a comprehensive land use plan and generic environmental impact statement for the Central Pine Barrens area designed to preserve the ecology and ensure the high quality of groundwater within the area, and to balance public and private interests in development and in protection of the ecology consistent with the objectives of the land use plan. ECL §57-0121. The comprehensive land use plan (the "Land Use Plan") was adopted in June of 1995 after having been duly ratified by the town boards of the Towns of Brookhaven, Riverhead, and Southampton and signed by the town supervisors, the county executive and the governor.

Pursuant to ECL §57-0123(2)(a), the Commission has jurisdiction to review and approve all proposed "development" within the Central Pine Barrens area which has "a significant adverse impact on the goals of the land use plan."[1] "Development" is defined generally in the Act as "the performance of any building activity or mining operation, the making of any material change in the use or intensity of use of any structure or land and the creation or termination of rights of access or riparian rights." ECL §57-0107(13). The statute enumerates an illustrative list of activities or uses constituting "development," and then identifies a finite list of specific operations or uses that do not constitute "development" for purposes of the Act. First and foremost of the latter, and most relevant

[1] The Commission has "automatic" jurisdiction over the core preservation area, where development is generally prohibited unless a "hardship" permit is granted; and discretionary review over development within the compatible growth area by majority vote of the Commission upon the petition of a commissioner. ECL §57-0123(2(a).

for purposes of this proceeding, is "public improvements undertaken for the health, safety or welfare of the public." ECL §57-0107(13)(i).

The Land Use Plan adopted by the Commission pursuant to the Act specifically addressed the development of the EPCAL property in furtherance of the congressional mandate. Section 9.2, entitled "Calverton redevelopment policy," provides as follows:

> "Pursuant to Public Law 103-c337, Section 2833, the Secretary of the Navy is authorized to convey to the Town of Riverhead Community Development Agency a 2,900 acre tract of real property at Calverton, more particularly described as the Calverton Naval Weapons Industrial Reserve Plant, subject to the condition that the real property is used for the economic redevelopment of the site and that the redevelopment authority be comprised of entities having an interest in the land use of the region.
>
> "The Pine Barrens Protection Act, Section 57-0107(13)(i), provides that public improvements undertaken for the public welfare do not constitute development within the meaning of the law.
>
> "Based upon the above referenced Public Law, *all economic development activity upon the lands of the Calverton Naval Weapons Industrial Reserve Plant conveyed by the Secretary of the Navy is considered a* ***public improvement*** *pursuant to Section 57-0107(13)(i) of the Pine Barrens Protection Act and therefore does not constitute 'development' within the meaning of all sections of the Pine Barrens Protection Act* [emphasis supplied]. Further, Public Law 103-c337 contemplates the development of a Comprehensive Master Plan and attending Generic Environmental Impact Statement to guide the location and intensity of economic development activity on the site; such plan and GEIS to be adopted prior to the conveyance of the property to the Town."

Beginning in 2003, the Town, in conjunction with the CDA, began planning for the construction of a public park, to consist of multipurpose ballfields, courts, and playgrounds, on a 62-acre site within the SP Sports Park subdistrict of the PRP district of EPCAL which the Town leased from the CDA for that purpose. In April 2007, the Town commenced construction of the Recreational Facility. "Phase I" of the construction consisted of clearing, grading, seeding, etc., and had been largely completed by April 18, 2007, when the Commission adopted a resolution purporting to exercise review jurisdiction over the Town's development of the Recreational Facility. The Commission based its determination to exercise jurisdiction on its finding that "the Project and its associated construction activities may have significant adverse impacts upon [the Land Use Plan], the goals thereof and the Environmental Conservation Law Article 57," and requested that the Town "submit suitable materials to the Commission to permit the Commission to determine whether the Project has a significant adverse impact on the Article 57, the [Land Use Plan] or the goals thereof." On May 2, 2007, the Commission served the Town with a Notice of Violation pursuant to ECL §57-0136 predicated on the Town's continued development of the Recreational Facility in violation of Article 57.

The Town thereupon commenced the instant action/proceeding, asserting that its development of the Recreational Facility in accordance with the Reuse Plan constitutes a "public

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improvement" as well as "economic development" as contemplated by ECL §57-0107(13) and §9.2 of the Land Use Plan and thus is expressly exempted from Commission jurisdiction. The Town points out that the Commission reviewed and approved the Town's zoning amendments applicable to EPCAL as well as its adoption of the Pine Barrens Overlay District, and expressly determined that "the PIP and PRP Districts' amendments comply with, and are in conformance with, both the [Act] and the [Land Use Plan]." Petition, Exhibit U. Accordingly, the Town argues, as long as the proposed development within the compatible growth area of the EPCAL site is in accordance with the applicable PIP or PRP zoning district requirements, it is consistent with the goals of the Land Use Plan and ECL Article 57 and thus exempt from Commission review. Holding otherwise, asserts the Town, would render §9.2 of the Land Use Plan meaningless and result in the piecemeal, fragmented, and unduly delayed development of EPCAL that that provision was expressly designed to avoid.

The Town's arguments are echoed by proposed intervenors Island Water Park and Eric Scott, the owner and principal, respectively, of a 42-acre parcel adjacent to the Town's Recreational Facility where they are constructing a water ski park. (The proposed intervenors are hereinafter referred to collectively as "Island Water Park"). In July 2006, the Commission adopted a resolution purporting to assert review jurisdiction over the Island Water Park project, prompting Island Water Park to commence an Article 78 proceeding, under Index No. 21016/2006, for relief virtually identical to that sought by petitioners/plaintiffs herein. The petition was withdrawn several weeks thereafter without the Court having rendered a determination, apparently because Island Water Park had abandoned its plan to construct two waterskiing lakes and instead plans to submit an amended site plan calling for a single waterskiing lake and a racetrack, thus rendering the original proceeding moot."[2] Although the Commission has not acted to assert jurisdiction over the revised proposal (which in any event would appear to violate the temporary restraining order presently in effect), the intervenors are concerned that the Commission will do so in the future, and that its intervention will further frustrate, delay and impede development of the project. Indeed, part of the relief that the Commission is seeking (in its motion sequence no. 005) is an order clarifying or amending the temporary restraining order so that it can take action with respect to the Island Water Park project. The proposed petition of Island Water Park is virtually identical to the petioners/plaintiffs' pleading herein: both seek a determination that the Commission does not have jurisdiction over their proposed projects (and, by extension, future developments on the EPCAL site). Island Water Park is unquestionably an "interested party" as set forth in CPLR §7802(d), with a real and substantial interest in the outcome of the matter. *White v. Incorporated Village of Plandome Manor*, 190 A.D.2d 854, 593 N.Y.S.2d 881 (2d Dept. 1993); *Rectory Realty Associates v. Town of South*

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[2] Island Water Park's original proposal, for which an Environmental Impact Statement ("EIS") was prepared, had called for the construction within the PRP district of two artificial lakes for waterskiing which would be constructed above the water table and lined with a bentonite liner to protect the groundwater. Approximately midway during construction, it was determined that the water table was actually several feet higher than had been predicted, requiring Island Water Park to revise its design. Under the revised plan, the two ski lakes would extend to a depth ten feet below the water table, eliminating the need for a liner but requiring additional excavation, thus necessitating an amended mining permit and the preparation of a Supplemental Environmental Impact Statement ("SEIS"). After Island Water Park's SEIS was accepted by the DEC as lead agency for the project, the Commission asserted review jurisdiction for the first time, based on its assertion that the revised project may have significant adverse impacts on the goals of the Land Use Plan. It appears that Island Water Park has now abandoned its plan to construct two unlined lakes and instead plans to submit an amended site plan that calls for a single lined lake and the construction of an "all-terrain-vehicle track" on the excavated site of the second lake. (The record reflects that both the waterskiing and racetrack uses are permitted uses under the applicable zoning regulations.)

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Hampton, 151 A.D.2d 737, 543 N.Y.S.2d 128 (2d Dept. 1989). Accordingly, intervention is appropriate, and the proposed intervenors' motion (motion sequence no. 004) is granted.

The motion (motion sequence no. 002) of Long Island Pine Barrens Society (the "Society") for leave to intervene is denied. The interests of the proposed intervenor in supporting the assertion of jurisdiction by the Commission are adequately represented by the respondents herein, and the Society's participation herein is thus unnecessary. *Osman v. Sternberg*, 168 A.D.2d 490, 562 N.Y.S.2d 731 (2d Dept. 1990). The fact that the Society has previously engaged in litigation against the Commission is irrelevant to the issues raised herein, where the issues and interests of the proposed intervenor and the respondents appear to be identical. The submissions do not establish that the Society has a "legally cognizable interest" as opposed to a general interest in the result so as to render it an "interested person" pursuant to CPLR §7802(d).

In opposition to the petition/complaint, the Commission acknowledges that "economic development" at EPCAL is exempt from Commission review pursuant to §9.2 of the Land Use Plan. Resp. Memo. of Law, p. 12. The Commission argues, however, that only those activities that are identified in the SEQRA record for the Land Use Plan constitute "economic development" for purposes of §9.2, *i.e.*, "manufacturing," "research and development," "international free trade zone," "aviation industry," "planned office and industrial park," and "entertainment industry." The Commission asserts that "[i]f a proposal is not within one of the six identified categories, it is simply not exempt development." Resp. Memo. of Law, p. 14. The Commission characterizes the Town's position as "an attempt to transform any land use activity at EPCAL into exempt economic activity because it is made in the name of urban renewal." The Commission argues, for example, that "the development of the [Recreational] Facility will not foster economic development" because its purpose, as set forth in the petition, is to "provide recreational opportunities, i.e., ball fields, courts and playgrounds, to a population that was underserved with recreational opportunities within the Town of Riverhead." Resp. Memo. of Law, p. 13. The Commission further argues that the issue is not ripe for judicial review because the Town has not exhausted its administrative remedies. According to the Commission, the Town is required to submit an application to the Commission, and then await its determination to ascertain whether it is or is not aggrieved by the Commission's assertion of review jurisdiction (pursuant to the statute, the Commission has 120 days to make a decision, or the application is deemed approved [ECL §57-0123(2)(a)]).

The Court has carefully reviewed the parties' extensive submissions and the voluminous record, as well as the testimony and documentary evidence adduced upon the hearing, and has considered the well-reasoned and articulate arguments presented on both sides of this issue. Upon such review and consideration, the Court is constrained to conclude that the assertion of review jurisdiction by the Commission over the Town's Recreational Facility, as well as that of Island Water Park's project, is in excess of its authority under Article 57 of the Environmental Conservation Law, and accordingly grants the petition.

The fundamental issue presented by the parties' submissions is whether the challenged development activity at EPCAL constitutes "economic development," which the Commission concedes is exempt from its review pursuant to §9.2 of the Land Use Plan (the validity of which is affirmatively asserted by the Commission's answer). The "economic development" exception is grounded in Act §57-0107(13)(i), which provides that public improvements undertaken for the

public welfare do not constitute "development" within the meaning of the law. The Commission thus implicitly concedes that "economic development" falls within the "public improvement" exception of the Act. The term "economic development," however, is not defined in the Land Use Plan, nor is it within the definitions contained in §57-0107 of the Act, and therein lies the seed of the parties' dispute. It appears that the precise issue has never before been litigated, making this an issue of first impression for this Court.[3]

The Commission argues that the only activities that can be deemed to represent "economic development" are those six activities identified in the "SEQRA record." That argument is unsupported by the record. The excerpt of the Final Environmental Impact Statement submitted by the Commission in support of its argument (Return, Ex. F) discusses likely future land uses of the EPCAL property based on the Town's preliminary plans. The FEIS does not, however, indicate an intent to exclusively define the list of land use activities that would constitute "economic development" for purposes of the Land Use Plan. Moreover, one cannot infer from the FEIS that recreational and sports uses are intended to be excluded from the definition of "economic development," and the record as a whole does not support that inference.

In fact, the record reflects that recreational and sports uses were an integral component of plans for the economic development of the EPCAL site from the very earliest planning stages, and that the Commission was aware of and approved of such plans. The Reuse Plan, the Urban Development Plan, the zoning district amendments adopted by the Town, and the Town's FEIS in support of the zoning amendments all contemplate recreational and sports uses as part of the Town's comprehensive plan to revitalize the area. The stated purpose of the Town's designation of the Planned Recreational Park zoning district is "to attract private investment, increase the Town's tax base, create jobs and enhance the quality of life in the community and region" and "to draw[] upon the leisure and tourism market of the east end of Long Island" and "transform... [the area] into a major regional family-oriented recreational amusement park and sports venue." Riverhead Town Code §108.235. In light of the foregoing, the Commission's argument that the Recreational Facility is not "economic development" and thus is not exempt from Commission review is disingenuous. Indeed, the record reflects an expectation and intention on the part of the Commission and the other signatories to the Land Use Plan that, consistent with the Reuse Plan and the Urban Renewal Plan and the applicable zoning, all development on the EPCAL site was designed to contribute to the economic development of the site and the region.

The GEIS prepared in connection with the adoption of the Land Use Plan made the following findings: "The SEQRA record identifies the level of economic development contemplated to occur within the CGA of the Calverton site and provides that proposed land uses which conform to prescribed Standards and Guidelines for Land Use and the Planned Development District ("PDD") ordinance adopted by the Town, *which is deemed to be consistent with the Plan by the Commission*, will be considered environmentally appropriate developments which support regional economic

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[3] In *Matter of the Application of Long Island Pine Barrens Society, Inc., et al. v. The Town Board of the Town of Riverhead, et al.*, this Court (OLIVER, J.), in a bench decision after a preliminary injunction hearing, opined 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." As discussed *infra*, the proceeding became moot when the event that was the subject of the proceeding was cancelled.

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growth as contemplated by the Act....The Plan provides that the redevelopment activity in the CGA contemplated for the Calverton site is considered public improvement and shall in no instance be considered a development of regional significance as defined by the Act, so as to warrant an automatic review by the Commission." Therefore, those development activities on the Calverton site which conform to both the development standards for the CGA as well as those zoning ordinances enacted by the Town of Riverhead to implement the Plan, *which are deemed to be consistent with the Plan by the Commission, shall be presumed not to require formal review or consideration of the Commission*" [emphasis added]. FGEIS, p. 12 (Ex. D to Notice of Motion dated July 10, 2007).

Moreover, the record reflects that the Commission has consistently declined to exercise jurisdiction over development activities at the EPCAL site, in at least an implicit acknowledgment of the broad and pervasive intended scope of the §9.2 exclusion. According to the testimony of CDA Director Andrea Lohneiss, which was not refuted by respondents, approximately 30 projects, which include industrial, warehouse, distribution, manufacturing and recreational uses – have been developed at EPCAL without Commission involvement. Hearing transcript, 5/25/07, pp. 40, 48. A December 21, 2000 letter of the Commission's then counsel, James Rigano, Esq., expresses the legal conclusion that "[in] accordance with Section 9.2 of the [Land Use Plan], activity within the Calverton site does not constitute 'development' within the meaning of the [Act]" and "only activity that is 'development' must be reviewed by the Commission. As a result, activities at the Calverton Site under Section 9.2 of the Plan are *not* required to be reviewed by the commission." Petition, Ex. R. The record reflects that the first time the Commission even presumed to assert jurisdiction over an EPCAL activity was in May 2003, when the Commission asserted review jurisdiction only over so much of a proposed two-day concert on the EPCAL property (the so-called "Field Day Music Festival") as impacted on the Core Preservation Area.[4] In its resolution the Commission specifically excepted jurisdiction with respect to the Field Day activity slated to occur within the Compatible Growth Area. Return, Exhibit D. (The promoters of the Field Day Music Festival eventually cancelled the event.) All of the foregoing reflects the intent of the Commission to abstain from project-by-project oversight of development activities at EPCAL in favor of municipal oversight consistent with the Land Use Plan and Article 57.[5]

Moreover, there is nothing in the record to suggest that development at EPCAL is occurring in a manner that is not consistent with the goals and objectives of the Land Use Plan or the Act, or without regard for the significant natural resources, ground and surface water systems, vegetation, and wildlife habitat that are features of the site. In addition to the zoning regulations of the Town and the Pine Barrens Overlay District, the EPCAL site is also subject to stringent governmental regulations by reason of its location within the Wild, Scenic and Recreational Rivers Area, a Critical Environmental Area and a Special Ground Water Protection Area, as well as being a habitat for

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[4] It is undisputed that the Commission retains unfettered jurisdiction over the core preservation area pursuant to the Act. ECL §57-123(3)(a).

[5] Once a municipality has conformed its zoning code to the Land Use Plan, it is permitted to administer development within its portion of the compatible growth area. ECL §57-0123. If the Commission determines that the municipality has changed or administered its land use regulations in a manner that is inconsistent with the Land Use Plan, it may withdraw approval of the land use regulations and thereafter development is subject to the review and approval of the Commission. ECL §57-0123(1), §57-1021(8), (9), (10),

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endangered species, including the tiger salamander. EPCAL is thus subject to the jurisdiction and oversight of numerous government agencies including the Suffolk County Department of Health Services and the New York State Department of Environmental Conservation.In light of the significant environmental protections already in place to protect the area's groundwater and other natural resources, there is no demonstrated need for the Commission to assert review jurisdiction over individual development projects at EPCAL.

The conclusion is inescapable that, viewed in the context of the overall plan for development of this site, both the Town's recreational facility and the Island Water Park project constitute *economic* development that is not required to be reviewed by the Commission. Indeed, permitting the Commission to invoke its review jurisdiction at this juncture would appear to jeopardize the future development of the EPCAL site, and raise the spectre of every single proposed development's having to undergo Commission scrutiny, thereby negating the intent of §9.2 and impeding the expeditious economic development of the EPCAL site that Congress, the Town, the CDA, and the Commission itself deemed to be imperative.

In light of the foregoing, the petition is granted, the resolution asserting jurisdiction is vacated and annulled, the notice of violation is vacated and annulled, and it is declared that development at EPCAL that comports with the Reuse Plan, the Urban Renewal Plan, and the applicable zoning regulations is exempt from Commission review jurisdiction pursuant to §9.2 of the Land Use Plan and that the Commission is permanently enjoined from purporting to exercise review jurisdiction over such projects.

The motion of the Commission for a preliminary injunction enjoining and restraining the Town from proceeding with construction of the ballfields at its proposed park (motion sequence no. 003) is denied in light of the foregoing determination.

The further motion of the Commission (motion sequence no. 005) for an order pursuant to CPLR §3025(b) permitting respondent/defendant to amend its verified answer and to "clarify"or "modify" the temporary restraining order previously issued by this Court is denied in all respects. The proposed amendment to place before the Court an additional item of proof is a belated attempt to supplement the record upon the hearing before the undersigned and is improper. Moreover, the proposed "counterclaim" is merely a reiteration of respondent's previous request for a restraining order which the Court has already denied and in any event is moot in light of the determination herein, as is the request for "clarification" or "modification" of the temporary restraining order.

Settle order and judgment. A copy of this decision shall accompany any proposed order/judgment submitted to the Court.

Dated: January 30, 2008

HON. PAUL J. BAISLEY, JR.
J.S.C.