

**East Hampton Indoor Tennis Club, LLC v Zoning
Bd. of Appeals of the Town of E. Hampton**

2009 NY Slip Op 32231(U)

September 24, 2009

Supreme Court, Suffolk County

Docket Number: 0040919/2008

Judge: John J.J. Jones

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MEMORANDUM

I.A.S. TERM
PART 10

BY: HON. JOHN J.J. JONES, JR.
Justice

SUPREME COURT, SUFFOLK COUNTY

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EAST HAMPTON INDOOR TENNIS CLUB, LLC,

Petitioner,

-against-

ZONING BOARD OF APPEALS of the TOWN OF
EAST HAMPTON, THE ROSS SCHOOL and
GALAPAGOS HAMPTON, INC.,

Respondents.

For a judgment pursuant to C.P.L.R. Article 78.
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DATE: 24 Sept. 2009

SUBMIT DATE: 5/27/2009

INDEX NO.: 0040919/2008

MOTION DATE: 12/17/2008

MOTION NO: MD;CASEDISP

Seq 002

This petition by East Hampton Indoor Tennis Club, LLC, for a judgment pursuant to CPLR Article 78 annulling, rescinding and vacating the determination of the Zoning Board of Appeals of the Town of East Hampton issued on or about October 14, 2008 upholding the decision of the Chief Building Inspector dated March 5, 2008 that the proposed use of a certain sports complex facility by the Ross School was an "accessory use" is denied and the petition is hereby dismissed, without costs or disbursements.

Petitioner is the operator of private tennis facility in the Town of East Hampton which challenges the use of a sports complex facility on the grounds of the Ross School for year-round after-school private tennis programs. In particular, petitioner commenced this proceeding pursuant to CPLR Article 78 to challenge the determination by the Zoning Board of Appeals of the Town of East Hampton dated October 14, 2008

which denied petitioner's appeal of a decision made by the Town of East Hampton Chief Building Inspector on March 5, 2008 that the proposed use for facilities included in the Ross School Recreational Facilities Site Plan/Special Permit application does not constitute a "Recreational Facility, Major" as defined in §255-1-20 of the Town Code.

On or about January 10, 2008, respondent Ross School, a private, coeducational institution chartered under the State of New York Education Department, submitted a site plan / special permit application to the Planning Board of the Town of East Hampton (Planning Board) for the construction and use of on-site recreational facilities consisting of two multi-purpose playing fields, a rope course, a basketball court, six outdoor tennis courts, a parking lot with sixty spaces, path, drainage pools and asphalt access road. On or about February 5, 2008, the application was amended to include the construction of a 8,353 square foot field house with restrooms and locker rooms adjacent to the proposed tennis courts, with a seasonally inflated bubble dome which would cover the tennis courts. The property on which the recreational facilities is proposed to be built is zoned "A-5 Residential." The existing facilities are operated pursuant to a special permit issued to the Ross School as a "semipublic facility" use under the Town of East Hampton Zoning Code (Zoning Code), the definition of which includes "a church, community center, day-care center, geriatric home, hospital, library, museum, cemetery, clinic or medical arts building, fraternal brotherhood hall or lodge, college, university, school, nursery school or any similar nongovernmental building or use impressed with a predominantly public character, and all accessory structures and uses associated therewith" (Town of East Hampton Zoning Code § 255-1-20). It is petitioner's contention that the proposed recreational facilities constitute a "Recreation Facility, Major" within the meaning of the Zoning Code, and that such use is specifically prohibited within an "A-5 Residential" zone. Under § 255-1-20 of the Zoning Code, a "Recreation Facility, Major" is defined as:

An indoor or outdoor privately run business, which may involve large amusements areas, rides, playing fields, courts, arenas, stadia or halls, designed to accommodate sports and recreational activities and including, by way of example but not by way of limitation, bowling, dancing, ice-skating and roller-skating and outdoor sports, recreational pursuits and athletic competitions generally. This definition shall include gymnasiums, health spas, shooting ranges, the lease of land by any person to a club and tennis facilities not conforming to the definition of a 'tennis club.'

Since the proposed bubble dome would enclose the tennis courts, petitioner asserts that the proposal does not conform to the definition of a "club, tennis" under the Town Code § 255-1-20, which is defined as:

A club or privately run business established for the principal purpose of providing nonenclosed outdoor tennis courts for use by members or by the general public. Such structures as a clubhouse or bath house, pro shop no greater than 200 square feet in gross floor area and/or nonenclosed outdoor swimming pool shall be deemed structures accessory to this use, but restaurants, bars, stadia and arenas shall be prohibited.

On or about February 22, 2008, petitioner wrote to Donald Sharkey, Chief Building Inspector for the Town of East Hampton, inquiring how the proposed recreational facilities would be classified under the Town Code. On the same day, the Planning Board asked Sharkey to determine whether the proposed use of the recreational facilities was consistent with the semipublic facility use under the Zoning Code. In a memorandum to the Planning Board dated March 5, 2008, Sharkey opined “that being open to the general public after school hours, on weekends and during the summer would not constitute the use being labeled a ‘Major Recreational Facility’ as defined by the Code.” Sharkey further explained that he was advised by two local public schools that they, too, make their facilities available to outside groups when school is not in session, on weekends and during the summer. Requested by the Planning Board to provide additional information about the existing recreational facilities at the Ross School and about the planned use of the proposed facilities, a letter dated March 7, 2008 to the Planning Board provided further detail about the proposal. It was explained on behalf of the Ross School that the principal use of the proposed recreational facilities “is for the benefit of Ross students and specifically, to allow additional practice sessions and team sports to be held on campus. . . the [present] cost of rental of and transport to off-site facilities is an added financial burden to the not-for-profit Ross School.” It was indicated that the proposed recreational facilities would be used by the students at the school as well as for community programs, sports clinics and after-school programs. In addition, it was explained that when existing school facilities are not in use by students, they are made available to local community organizations, at times for a fee, and that the same policy would be in force for the proposed facilities. It was also indicated “that due to the principle purpose and function of the proposed facilities to serve the school in providing on campus recreational facilities for its students and because the school will control the schedule of all community use in a manner designed to avoid conflict and overuse, it is not anticipated that community use of the facilities will conflict with these principle [sic] school functions nor will it create traffic or circulation difficulties [on adjacent roadways].”

By resolution dated April 21, 2008, the Architectural Review Board approved the proposed facilities, and by memo dated February 29, 2008, the Town Engineer found all elements of the site plan to be satisfactory. On May 21, 2008, the Planning Board noted

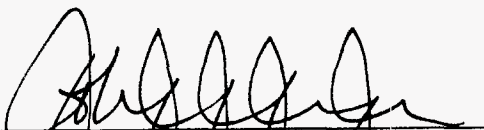
that the proposed recreational facilities “are common to schools and other educational institutions in the Town and throughout the State” and it approved the site plan and the issuance of a special permit for the semi-public recreational facilities, it having been determined that the proposed recreational facilities would constitute a permissible “accessory use” to the “semipublic facility” use of the property as a school. Under the Zoning Code, an “accessory use” is defined as “a use which is customarily incidental or subordinate to a principal use” (Town of East Hampton Zoning Code § 255-1-20).

On March 11, 2008, the petitioner appealed Building Inspector Sharkey’s interpretation of the Zoning Code to the East Hampton Zoning Board of Appeals (Zoning Board of Appeals) pursuant to Zoning Code § 255-10-21 and § 255-8-30[A]). Under that provision, the Zoning Board of Appeals has jurisdiction to review determinations made by the Building Inspector. A hearing was held before the Zoning Board of Appeals on June 24, 2008, and in a five-page decision dated October 14, 2008, the Zoning Board of Appeals ultimately denied the application to revoke and/or annul the determination made by the Chief Building Inspector Sharkey that the proposed use for the facilities would not constitute a “Recreation Facility, Major” within the meaning of the Zoning Code.

The law is well-established that an interpretation by a zoning board of appeals must be “given great weight and judicial deference, so long as the interpretation is neither irrational, unreasonable nor inconsistent with the governing statute” (*Ass’n of Friends of Sagaponack v Zoning Bd. of Appeals*, 287 AD2d 620, 867 NYS2d 189 [2d Dept 2001], quoting *Matter of Trump-Equitable Fifth Ave. Co. v Gliedman*, 62 NY2d 539, 545). Here, the determination by the Building Inspector and the subsequent affirmance of that determination by the Zoning Board of Appeals were supported by substantial evidence and were neither arbitrary nor capricious.

Educational institutions are generally permitted to engage in activities and locate on their property facilities for such social, recreational, athletic, and other accessory uses as are reasonably associated with their educational purpose (*see Town of Islip v Dowling College*, 275 AD2d 366, 712 NYS2d 160 [2d Dept 2000], citing *Matter of Brown v Board of Trustees*, 303 NY 484; *Matter of Lawrence School Corp. v Lewis*, 174 AD2d 42). Practices at other local schools support the conclusion that recreational facilities, such as playing fields and tennis courts, are customary and incidental to the educational use of a school, and the use of the facilities after school hours does not deter from their primary use by students. By restricting the public use of the tennis facilities to hours when school is not in session, the Building Inspector and the Zoning Board of Appeals underscored the reasoning that such use of the athletic facilities is an accessory use to the principal educational use. Accordingly, the determination by the Zoning Board of

Appeals was a rational interpretation of the zoning code. This Court has considered the remaining arguments set forth by petitioner and finds them to be without merit.


HON. JOHN J. JONES, JR.
J.S.C.

CHECK ONE: FINAL DISPOSITION

NON-FINAL DISPOSITION

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