

<b>Matter of Long Is. Pine Barrens Socy., Inc. v Suffolk County Legislature</b>
2013 NY Slip Op 34131(U)
July 8, 2013
Supreme Court, Suffolk County
Docket Number: 37937-10
Judge: Thomas F. Whelan
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[\*1]

**ORIGINAL**

**PUBLISH**

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 33 - SUFFOLK COUNTY

**PRESENT:**

Hon. THOMAS F. WHELAN  
Justice of the Supreme Court

MOTION DATE 4/17/13  
ADJ. DATES 6/14/13  
Mot. Seq. # 004 - Mot D  
CDISP Y    N   X  

-----X  
In the Matter of the application of LONG ISLAND :  
PINE BARRENS SOCIETY, INC., RICHARD :  
AMPER, as Executive Director, THOMAS CASEY :  
and ROBERT McGRATH, Residents, Taxpayers :  
and Property Owners, :  
:  
Plaintiffs, :  
:  
-against- :  
:  
SUFFOLK COUNTY LEGISLATURE, SUFFOLK :  
COUNTY FARMLAND COMMITTEE and LONG :  
ISLAND FARM BUREAU, INC., :  
:  
Defendants. :  
-----X

GORDON & JUENGST, PC  
Attys. For Plaintiffs  
1785 Express Dr. North  
Hauppauge, NY 11788  
  
DENNIS M. BROWN, ESQ.  
Suffolk County Atty.  
By: LEONARD G. KAPSALIS, ESQ.  
Assist. Cty. Atty.  
Atty. For County Defendants  
PO Box 6100  
Hauppauge, NY 11788

Upon the following papers numbered 1 to 7 read on this motion to compel disclosure and to declare a waiver of the defendant's right to depose the plaintiffs.; Notice of Motions/Order to Show Cause and supporting papers 1-3; Notice of Cross Motion and supporting papers   ; Answering Affidavits and supporting papers 4-5; Replying Affidavits and supporting papers 6-7; Other   ; (and after hearing counsel in support and opposed to the motion) it is,

**ORDERED** that this motion (#004) by the plaintiffs for an order directing the defendant County of Suffolk [incorrectly /s/h/a/ the Suffolk County Legislature & Farmland Committee] to furnish the documents that were the subject of the plaintiffs' notice to produce documents dated December, 2011 and January of 2012 is considered under CPLR 3124 and is granted to the extent set forth below, while the plaintiffs' demand for an order declaring the defendants' waiver of its right to depose the plaintiffs is denied as academic.

The plaintiffs commenced this proceeding for a judgment declaring the invalidity of Local Law # 52-2010 adopted by resolution of the Suffolk County Legislature on September 16, 2010. This legislative enactment amended an existing local law codified as Chapter 8 of the Suffolk County Code entitled "Development Rights to Agricultural Land". Pursuant to the challenged resolution and its prior formulation, a process was provided by which the County of Suffolk could purchase development rights from landowners whose premises were dedicated to agriculture. In exchange therefor, the landowners agreed to limit the

development of their agricultural lands. These purchases are funded, in part, by a quarter cent increase in the sales tax imposed by Suffolk County.

The resolution at issue provides that it is applicable to all agricultural lands in which the County acquired interests or rights under the Purchase of Development Rights Program and to lands so acquired in the future (*see* Resolution 1835-2010, § 8-3). The resolution further provides criteria to be employed in considering which lands should be encumbered by the purchase of development rights. All development rights acquired by the County are inalienable except under the limited circumstances set forth in § 8-6. It provides that permits and special use permits may be available to those owning or occupying agricultural lands within the Program by which said owners and/or occupants may expand current agricultural uses by the erection or construction of new or additional structures (*see* Resolution 1845-10, §§ 8-8; 8-9; 8-10). Lot coverage limitation and other restrictions are governed by § 8-10(A) and (B), although relief therefrom is available if a hardship waiver is granted under § 8-10(C) of the subject resolution. In no event, however, may the lot coverage of any parcel within the Program exceed 25% of the lot area.

The plaintiffs challenge the subject resolution as unconstitutional under both the State and Federal Constitutions. They further challenge the subject resolution as inconsistent and/or violative of the General Municipal Law and several local laws aimed at protecting and conserving farm land. The plaintiffs also claim that the Resolution violates the Public Trust Doctrine. The plaintiffs demand a judgment declaring and setting aside the subject Resolution and preliminary and permanent injunctive relief with respect to any and all action purportedly undertaken thereunder

The caption of this action was originally styled as a special proceeding pursuant to CPLR Article 78 in accordance with the petition served by the plaintiffs. However, in an order dated March 30, 2011 issued by this court on prior motion practice, the action was converted into a plenary action pursuant to CPLR 105(c) and the petition was deemed to be a complaint. The court found this conversion to be necessary since the local law under siege was found to be a legislative act akin to a zoning amendment and the challenges thereto were aimed, not at the procedures employed in its adoption, but rather, to the wisdom and/or merit of such resolution and its constitutionality. Judicial review of said resolution could thus be had only within the context of a plenary action for declaratory relief (*see Matter of Save the Pine Bush v City of Albany*, 70 NY2d 193, 203, 518 NYS2d 943 [1987]; *P&N Tiffany Prop., Inc. v Village of Tuckahoe*, 33 AD3d 61, 817 NYS2d 345 [2d Dept 2006]).

By the instant motion, the plaintiffs demand an order compelling the defendant, County of Suffolk, to respond to the plaintiffs' document demands of December of 2011 and January of 2012. The first demand targets documents purportedly in the possession of the office of the County Executive while the second demand is aimed at securing documents from the offices of the County Attorney, Counsel to the Legislature, the Department of Environment and Energy as well as documents specifically testified to at depositions of employees or former employees of the County. The plaintiff further seeks an order declaring that the County waived its rights to depose the plaintiffs.

The County opposes the motion except those portions wherein the plaintiff sought the declaration of waiver, as the County has expressly waived its rights to depose the plaintiffs. Those portions of the instant motion wherein the plaintiffs seek a declaration of waiver are thus denied as moot. The County's opposition to the remaining portions of the plaintiffs' motion rest upon the following: 1) that the County has already

furnished numerous documents to the plaintiffs in response to its first document demand of June, 2011 by production of hundreds of documents copied and cataloged electronically on a disc; 2) the plaintiffs' demands are overbroad and unduly burdensome; and 3) the documents that are the subject of the second and third demands are neither material nor relevant because the issues framed by the plaintiffs' complaint present only questions of law, as opposed to questions of fact, on which discovery does not lie. For the reasons set forth below, the motion is granted only to the extent stated.

CPLR 3101(a) provides that there shall be full disclosure of all matter, material and necessary in the prosecution or defense of an action. The phrase "material and necessary" should be "interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v Crowell-Collier Pub. Co.*, 21 NY2d 403, 406, 288 NYS2d 449 [1968]; see *Andon v 302-304 Mott St. Assoc.*, 94 NY2d 740, 746, 709 NYS2d 873 [2000]). Although the disclosure provisions of the CPLR are ordinarily construed liberally, "the scope of permissible discovery is not entirely unlimited and the trial court is invested with broad discretion to supervise discovery and to determine what is 'material and necessary' as that phrase is used in CPLR 3101(a)" (*Auerbach v Klein*, 30 AD3d 451, 816 NYS2d 376 [2d Dept 2006]); see *Greenfield v Board of Assessment Review for Town*, 106 AD3d 908, 965 NYS2d 555 [2d Dept 2013]; *Conte v County of Nassau*, 87 AD3d 558, 929 NYS2d 741 [2d Dept 2011]; *Friel v Papa*, 87 AD3d 1108, 930 NYS2d 39 [2d Dept 2011]).

Upon application of these principles to the facts presented on the instant motion, the court finds that the County must respond to the plaintiffs' demands for document production but only to the limited extent set forth below. With respect to these documents, the court rejects the County's contention that production of such documents is unnecessary because the only issue presented by the pleadings are issues of law, and as such, discovery is not required. Also rejected is the County's claim that all of the plaintiffs' demands call for the production of material that is neither relevant nor material to the matters before the court.


The plaintiffs are clearly entitled to all of the documents in the possession of the County that were referred to or otherwise testified about by the witnesses deposed by the plaintiffs and are the subject of Items numbered 4 & 5 of the January 23, 2012 Notice to Produce. The defendant County shall thus furnish all such documents to the plaintiffs within 60 days of the date hereof or furnish an affidavit by a qualified affiant that such documents do not exist or have not been found to be in the possession of the County or any of its divisions or departments after a due and diligent search. The remaining documents demanded in the January 23, 2012 Notice to Produce need not be furnished, as these "sweeping demands" are overbroad and unduly burdensome. In such demands, the plaintiff failed to specify with reasonable particularity many of the documents demanded and their unlimited nature as to date and topic render such demands improper (see *Greenfield v Board of Assessment Review for Town*, 106 AD3d 908, *supra*; *Astudillo v St. Francis-Beacon Extended Care*, 12 AD3d 469, 784 NYS2d 645 [2d Dept 2004]; *Optic Plus Enter., Ltd. v Bausch & Lomb Inc.*, 35 AD3d 1263, 827 NYS2d 895 [4<sup>th</sup> Dept 2006]). The County's objections to these demands as overbroad and burdensome are thus sustained.

With respect to the December 30, 2011 Notice to Produce, the court finds that the demands for document production set forth in item numbered 1 are relevant and material only with respect to the documents that were prepared between January 1, 2008 and September 16, 2010, the latter date being the date on which the Local Law at issue was adopted by resolution of the County Legislature. The County's objection to the relevancy and materiality of the documents called for after such date are thus sustained. The County is thus directed to furnish copies of the documents in its possession called for by item 1 of the

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December 30, 2011 Notice to Produce as limited in time by the court to the period beginning on January 1, 2008 and ending on September 16, 2010, within 60 days of the date of this order. In the event that such documents are not in the possession of the County, it must, within the sixty day time period, furnish plaintiff an affidavit by a qualified affiant that such documents do not exist, or have not been found to be in the possession of the County or any of its divisions or departments after a due and diligent search.

DATED: 7/8/13

  
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THOMAS F. WHELAN, J.S.C.