

**SUPREME COURT OF THE STATE OF NEW YORK  
IAS PART XXI - COUNTY OF SUFFOLK**

PRESENT:

**HON. JEFFREY ARLEN SPINNER**  
Justice of the Supreme Court

**PUBLISH**

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In the Matter of the Application of  
**55 WAINSCOTT HOLLOW, LLC,**

Petitioner,

INDEX NO.:           **2009-49444**

For a Judgment pursuant to Article 78 of  
the Civil Practice Law and Rules

MTN SEQ NO:       001-CASE DISP

ORIG MTN DATE:   02/05/10

- against -

FINAL MTN DATE: 10/12/11

**PLANNING BOARD OF THE  
TOWN OF EAST HAMPTON,**

Respondent.  
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UPON the following paper(s) numbered 1-8 read on the Petition:

- Petition and Petitioner's Support [001] (Papers 1-3);
- Respondent's Verified Answer, Record and Return (Papers 4-6);
- Respondent's Opposition (Paper 7);
- Petitioner's Reply (Paper 8);

it is,

**ORDERED**, that the Petitioner's applications are hereby decided as follows: Petition is granted to the extent set forth herein below.

Petitioner moves this Court [001] for a judgment pursuant to CPLR Article 78 annulling and reversing the "Findings and Determination of the Board" adopted by the Planning Board on November 18, 2009 and filed with the Town Clerk of the Town of East Hampton on November 19, 2009, upon the grounds that said Findings and Determination of the Board was made in violation of lawful procedure, was affected by errors of law and capricious, was an abuse of discretion, and was not supported by a rational basis on the record.

Petitioner ("Petitioner") is the owner of the parcel which is the subject herein ("subject parcel"), with an address of 55 Wainscott Hollow Road, Wainscott, in the Town of East Hampton, County of Suffolk, said parcel consisting of a total lot area of 1,740,416 square feet, or approximately 40 acres, and designated on the Suffolk County Tax Map as parcel numbered 300-197-4-2.1. The northeastern portion of Petitioner's parcel is adjacent to a higher-density residential development of relatively small parcels fronting on Sayres Path ("Sayres Path development"), while the southwestern portion along Wainscott Hollow Road was improved with numerous residential and agricultural structures, some of which having since been demolished.

The remainder of Petitioner's parcel consists of vacant agricultural lands of prime soils, connected on both its northwestern and southeastern sides to other vacant agricultural lands, such that the central/northern vacant portion of Petitioner's parcel forms part of a larger tract of vacant agricultural lands that runs in a generally northwest-to-southeast direction, in the area between Wainscott Hollow Road and Sayres Path. The Parcel is zoned A5 for residential use, and located in the Agricultural Overlay District.

Prior to May 6, 2005, the bulk of Petitioner's parcel was located in the "A2" Residential zoning district of the Town of East Hampton ("Town"), which required a minimum of 84,000 square feet (approximately 2 acres) of lot area for each single-family residential building lot. On May 6, 2005, the Town Board adopted a new Comprehensive Plan and zoning code amendments, resulting in "upzoning" of Petitioner's parcel to "A5" Residence District, which requires a minimum of 200,000 square feet (approximately five acres) of lot area for each residential building lot.

In addition to the upzoning of Petitioner's property, the 2005 Comprehensive Plan and zoning code amendments also upzoned the other properties, to the northwest and southeast of the Petitioner's parcel, that form the contiguous tract of vacant agricultural lands, as described above.

Unlike Petitioner's parcel and the other vacant agricultural lands that were upzoned, the properties in the Sayres Path development were left unchanged and subject to their prior high-density residential district designations of "A" and "B" Residence Districts, requiring only 40,000 square feet (less than one acre) and 20,000 square feet (less than a half-acre) of lot area, respectively, for each single-family building lot.

Three years later, in 2008, in response to a proliferation of large houses being constructed in East Hampton, which was claimed to negatively affect neighbors and the visual character of the neighborhoods, the Town Board adopted a zoning code change setting maximum "gross floor area" limits for single-family residences in proportion to the size of the lot, and thereby assuring that new construction would be more compatible with the scale and character of existing development.

Accordingly, Local Law No. 12 of 2008 added a subsection 10 to § 255-11-67(A)(10) of the Town Code, which provides, *inter alia*, that "[T]he gross floor area of a single-family residence may not exceed 12% of the lot area plus 1,600 square feet", up to a maximum of 20,000 square feet ("Notwithstanding any prior provision to the contrary, no single-family residence may exceed 20,000 square feet".)

On February 15, 2008, Petitioner submitted an application for site plan approval to the Respondent Board ("Respondent") of the Town, pursuant to §255-6-30(A)(6) of the Town Code, because the project involved "a parcel having a lot area of 10 acres or more and located wholly or partly within the Agricultural Overlay District."

The Town Code established six Overlay Districts to apply uniform land use regulations to specific categories of land sharing certain important characteristics, to reasonably control and, to the extent possible, to prevent the unnecessary loss of those currently open lands within the Town containing

large and contiguous areas of prime agricultural soils. According to the Town Code, the Respondent's role was to ensure that 70% of the parcel's prime soils were still preserved upon the approval of the Petitioner's site plan application. The application herein proposed a demolition and removal of all existing structures, and the construction of a 14,566 square foot single-family home with an attached garage, a tennis court, a pool, and a 160 square-foot pool house with porch.

Under the proposal, the total building lot coverage would be reduced, due to the demolition of the existing structures, with the new structures grouped along the Wainscott Hollow Road portion of the parcel, leaving the remainder of the property as vacant agricultural lands. As a result, the proposed structures would comprise less total area of Petitioner's parcel along Wainscott Hollow Road as compared to the more scattered existing structures, creating a wider expanse of public views from Wainscott Hollow Road of the vacant agricultural lands remaining on the parcel.

In its Site Plan Initial Evaluation, dated February 20, 2008, the Planning Department characterized Petitioner's parcel as contained within the Town Community Preservation Fund List, Recommended Scenic Area of Statewide Significance, New York State Agricultural District and Town's Agricultural Overlay District.

The Planning Department, without objection to the size of the proposed residence, advised that *"the current proposed location for the project will not impact a significant amount of the prime agricultural soils. As a result, the Planning Department does not object outright to the current proposal but feels that both Respondent Board and the applicant should consider re-locating the proposed structures. At the very least, Respondent Board should consider requiring that all structures be moved closer to Wainscott Hollow Rd. as this would result in less intrusion into the areas of prime soils."* Accordingly, the Planning Department recommended that Respondent discuss these issues with the applicant and *"form a consensus on the best location for the residence and its accompanying structures."* The Planning Department further recommended that Respondent assume lead agency status pursuant to SEQRA.

On March 5, 2008, Respondent held its first public work session on Petitioner's application, during which Respondent and the Petitioner's attorney agreed to relocate the proposed residence toward the southeast corner the property. Some of Respondent members inquired whether Respondent could direct Petitioner to reduce the size of the proposed dwelling. It was concluded that the size of the project was of no consequence to the site plan review pending before Respondent because, being less than 20,000 square feet requirement, or even less than 15,000 square feet, it complied with restrictions contained in the Town Code.

Respondent members also expressed a desire to review the actual plans for a subdivision of the parcel before deciding the outcome of Petitioner's application. Petitioner's attorney, however, informed Respondent that there was no finalized/existing development plan for the parcel, other than the application for a single family residence currently under review.

While Respondent acknowledged that none of the existing buildings, for which Petitioner held valid

demolition permits, were officially declared historic, and their preservation was not part of Petitioner's application, it nevertheless proposed that Petitioner attempt to retain the Edward's House, requesting that a local historian opine as to its historic value. Petitioner was amenable.

By letter dated March 6, 2008, Respondent informed Petitioner that, *inter alia*, it assumed the lead agency status pursuant to SEQRA, and that it would prefer location of the proposed residence to be moved further south and away from the agricultural soils. The letter did not contain any objections or comments regarding the size of the proposed structures, nor did it request a plan of a future subdivision as a pre-condition to the continuation or approval of the pending site plan review. Petitioner complied with Respondent's request and relocated the proposed house toward the southeast corner of the property. In addition to moving the proposed structures, Petitioner also grouped the accessory structures, placing them directly behind the dwelling, minimizing impact on vista of the agricultural lands.

The new location of the proposed residence was approved by Respondent during its July 9, 2008 work session, without objection, wherein Robert Schaeffer, a Board member, remarked that he was satisfied with its new location, stating: *"I am quite happy how the building has been moved further this way, which we have requested."*

Following the work session, by letter dated July 10, 2008, Respondent requested that Petitioner submit revised drainage and grading plans, and a plan to control storm water runoff for the new location. Petitioner satisfactorily complied with all requests. By letter dated September 11, 2009, the consulting engineer hired to review Petitioner's application informed Respondent that the Petitioner's site and drainage plans were acceptable.

After evaluating the new location of the proposed residence and the receipt of the engineer's report, the Planning Department advised Respondent in its September 12, 2008 Memorandum that the new location of the proposed residence will [would] not prevent a future subdivision from preserving the 70% of prime agricultural soils on the parcel required by the Town Code, and that as a result, no significant negative impact to the agricultural resources of the parcel was anticipated, by stating the following: *"the proposed location of the new residence will not prevent a future subdivision from preserving the requisite 70% of prime agricultural soils on the property. Therefore, a significant negative impact to the agricultural resources of the property is not anticipated."*

During the following 14 months of review, Respondent remained satisfied with the proposed residence being sited in the southeast corner of the parcel, as they had requested and with which the Petitioner had complied with. Respondent also continued discussing with Petitioner the feasibility and legal implications of their suggestion of leaving the Edward's House in its present location, and the preservation of the existing trees along Wainscott Hollow Road.

Some of the owners of the adjacent parcels requested that Respondent order Petitioner to remove the trees it had recently planted along the property line abutting the Sayres Path development, because they effectively blocked their farm views/private vista of Petitioner's farmland, which they have been

enjoying for many years. Respondent declined the request, stating that there was no legislation, local or state, preventing the planting of trees on a private residential lot in an agricultural district, and that the trees planted by Petitioner only affected private vista, as opposed to public vista, the latter being defined as pertaining to, or affecting a population or a community as a whole, and thereby afforded greater protection.

By memorandum dated January 26, 2009, the Planning Department advised Respondent that Petitioner's application was a Type II Action under SEQRA and that the lead agency declaration from Respondent was not required; that, according to the soil map submitted by Petitioner, the percentage of agricultural soils on the property that would remain undeveloped will constitute "90% of the existing prime agricultural soils."; and further that, under those circumstances, "*an open space subdivision could still be designed with the required 70% (of prime soil) reserved area.*" The Planning Department also recommended that Respondent review the annexed survey of Petitioner's parcel, and "*decide whether the location and size of the currently proposed single-family residence would necessarily preclude an appropriately designed open-space subdivision from being planned for this lot at a future date.*" (emphasis added)

As to the Edward's House, the Planning Department noted that the conversion of the Edward's House into an accessory structure was not feasible, and that the two remaining options for Petitioner were either to request a variance from the Zoning Board of Appeals or to re-locate the structure to another site. Respondent has subsequently adopted the Type II classification for Petitioner's application during its February 4, 2009 work session.

Throughout the pendency of the application, Respondent has received numerous written submissions from members of the public opposing the granting of the application. Likewise, during the public hearing held on August 19, 2009, most of the comments received from the public were in opposition to the project.

The majority of the comments reflected the desire to have the Respondent conduct a full environmental review under SEQRA of an open space subdivision, which would include clustered, smaller lots. The Court notes that, pursuant the Town Code, this would involve the clustering of approximately eight (8) residences, and that the clustering of more than 8, and/or smaller lots, would be a violation of the Town Code.

The opposition alleged that any development of the subject parcel may directly or indirectly degrade the prime agricultural soils, which they stated would necessitate a Type I Action, and likewise, any alteration of the Edward's House would also constitute a Type I Action, since the structure had a local historic significance. The Court notes that the Edward's House, having no such official designation, such could not be the case, and no such requirement could be imposed.

Another issue raised by the opposition was that of segmentation under SEQRA. Because the issue of how to subdivide the subject parcel has been frequently discussed during the review process, Respondent was urged to stop reviewing the pending application, and to require Petitioner to submit

...potential open space subdivision of the parcel, in order to avoid the approval process by taking a mechanical approach, leading to segmentation. The Court notes that Respondent's determination that the reserved area could later be accomplished during a subdivision had already addressed this concern, negating any possible claim of segmentation.

Some members of the opposition also emphasized the incongruity of the size of the proposed residence and the resultant parcel on which it would be situated in case of subdivision, with the general size of the majority of existing residences and lots within Wainscott. They opposed Petitioner's application because its approval would allegedly result in estate-style lots upon a future subdivision, which would be incompatible with much smaller neighboring properties. The Court notes that size of the proposed residence being in compliance with the Town Zoning Code, as amended, said alleged incongruity was a product of the existing statute, and legal as proposed.

Describing Respondent's goal as maintaining consistency with previous farmland developments in the area, the opposition urged Respondent not to approve any project which may intrinsically require the creation of large lots, but, instead, to ensure that a future subdivision would follow the previous ones, not only in terms of meeting reserved area requirements, but also in terms of mirroring the general size of the lots therein and the general size of lots within Wainscott, all in contravention of the zoning enacted by the Town of East Hampton Town Board, in fact, and therefore in violation of Petitioner's land use rights.

In a post-hearing memorandum, dated September 15, 2009, the Respondent responded to the comments received from the members of the public:

Regarding the opposition's comments concerning possible degradation of the prime soils due to the construction of the proposed residence, and the request for a full SEQRA review, the Respondent explain that *"by demonstrating that (well over) the required reserved area percentage can be maintained as part of a potential future open space subdivision; the applicants have clearly demonstrated compliance with [Chapter 193] Code section and have ensured the requisite preservation of agricultural soils."*

The Planning Department reminded Respondent that *"the nature of this project, (construction of a single-family residence) clearly places it within SEQRA's Type II."*

Addressing the opposition's recommendation to compel Petitioner to submit a formal plan for subdivision, the Planning Department reminded Respondent that the pending site plan review *"represents a Type II Action and that Respondent Board cannot legally require the applicants to submit a subdivision application at this time."*

As to the Edward's House, Respondent pointed out that Respondent that had little recourse with which to preserve it, since the building is not formally recognized by Town, State or Federal governments as historically significant, and Petitioner currently holds a demolition permit.

Throughout the review process, the issue of possible future subdivision of Petitioner's parcel has been raised on numerous occasions. In reply, Petitioner stated through its attorney that although the parcel may be divided in the future, it had no plans to do so at this point in time and that no such a plan is legally required to be submitted together with a site plan review application.

After the close of the public comments, Respondent further discussed and then voted on Petitioner's application in its work session on September 23, 2009.

While it was acknowledged that Respondent had no discretion to consider the size of a proposed house, as it was not in its jurisdiction, several members nonetheless stated that they would vote against the application because the mass and placement of the proposed home seemed utterly incompatible with the rural and farmland character of the community. As proposed, they noted that the house was not only 7000 square feet bigger than any other house in Wainscott, but it also allegedly obstructed almost the whole view on Wainscott Hollow Road, thereby interfering with public vista, conclusions not supported by the facts herein, and circumstances either enabled by the amended Town Code, as amended by the Town Board, or resulting from modifications by Petitioner at the direction of Respondent.

In essence, Respondent concluded that the proposed house, due to its size and the nature of placement, was incompatible with the character of the neighborhood, which Respondent was charged with preserving. In fact, the Court notes that said authority is limited by the parameters set forth in the Town Code, which does not support Respondent's conclusions.

Petitioner's attorney attempted to address these newly-raised concerns regarding the size and the siting of the proposed residence, which has been relocated upon Respondent's written request toward the southeast corner of the parcel, and without objection approved by it during the July 9, 2008 work session, but she was not permitted to do so, Respondent taking the position that the public record was already closed.

In the Findings and Determinations of Respondent, dated November 18, 2009, Respondent denied the application, concluding that the proposed residence in the proposed location "*would result, at the time of subdivision, in an inappropriately sized 'estate' style-lot in an area of East Hampton in which there are few lots of this size,*" and it would create "*a large lot of at least five acres, in contrast to the other lots created in the Wainscott area on farmland pursuant to an open space subdivision.*" The Court notes that Respondent, decided to ignore the fact that the 5 acre lot size is a requirement of minimum lot size in the Town Code in that zoning district.

Respondent determined that the proposed application does not conform to Section 255-60(A) because the "*scenic vista from and along Wainscott-Hollow Road provided by the parcel as it exists*

is worthy of preservation and the new construction of 'larger, more massive buildings' in the locations proposed by the Petitioner would impede this vista." The Court notes that Respondent apparently decided to ignore the fact that the location of the proposed "massive building" was determined by their direction and the size of the proposed residence substantially less than the limit set forth in the Town Code, as amended.

Respondent found the "location for the currently-proposed 'estate-style' residence to be averse to preserving a historic and valuable view of farmland," and as such not conforming to Section 255-6-60(G). The Court again notes that Respondent apparently decided to ignore the fact that the proposed residence was moved to that location on the parcel at their request.

Respondent further determined, in light of the legislative intent and the primary objective of the Local Law No.1-1999, that "the farmland vista from Wainscot Hollow Road will be negatively impacted by the construction of a large home in a location on the front and near the center of the parcel and that even the reconfiguration of the buildings in that location impedes the existing vista." Respondent apparently decided to ignore the facts that all construction was within the prior existing construction area, in compliance with the Town Code's preferences, in order to preserve the agricultural soil quality.

Respondent also found that "the proposed residence could have been situated so as to preserve additional valuable farmland that would be contiguous to the surrounding farmland as well as create a regularly shaped tract of farmland on this parcel." Accordingly, the proposed location failed to "meet Respondent Board's goals with respect to the preservation of large tracts, of contiguous farmland in the event of a future subdivision of this property." The Court notes that this is actually in contravention of the requirement of preserving the agricultural soil quality, since it would cause the construction in virgin agricultural soil areas of the subject parcel, instead of keeping it within the prior construction area where multiple buildings had been built.

Respondent explained that its approval of the proposed residence currently located "on the road side of the parcel" would negatively impact the future of Wainscott, because it would "force the Respondent Board at subdivision to create a lot where lots are normally not encouraged." Furthermore, Respondent's approval of the current location would be inconsistent with other subdivisions of farmland in Wainscott, since in the past new developments were located near other existing residential developments "in order to preserve the farm views and the availability of contiguous tracts of farmable lands which are required to be preserved as part of a subdivision." The Court notes that Respondent apparently decided to ignore the facts that the lot size is not only encouraged, but required by the Town Code, as amended, and, again, the residence was located where proposed at their direction and urging.

Specifically, Respondent stated that "the southeast corner of the property would be better suited for the current proposal as opposed to the northeast corner as proposed." Respondent explained the



proposed site plan places the development in an area that is surrounded by active farming on three sides and the roadway on the fourth. By moving it next to the existing development, the impact on the farmland would be reduced and contiguous farmlands preserved. The Court notes that Respondent apparently decided to ignore the fact that the proposed residence, in fact, was located in the southeast corner of the property, where they directed and urged it to be located, and that same cannot be considered a scrivener's error, since if the residence were proposed to be in the northeast corner of the subject parcel, then it would, in fact, be closer to existing development, but would also be in the midst of, and dividing agricultural farmland they are charged with protecting.

So, the Court notes that, as evidenced by the revised site plan/survey submitted by Petitioner to Respondent on or about June 25, 2008, the structures proposed by Petitioner are located in close proximity to the property line in the southern corner of the parcel, and not, as stated by Respondent, in the "northeast corner," which is directly adjacent to the Sayres Path development, but in the midst of, and dividing contiguous farmland.

Finally, Respondent concluded that the "*location of the proposed residence and accessory structures is authoritative in terms of the future development of the parcel*," therefore, if Respondent neglects to insist on the best location for a proposed residence at this point, "*the future development of the parcel may not be successful in preserving both the scenic farmland views the creation of a laudable subdivision in the future*," Respondent apparently ignoring the contrary conclusions issued by the Planning Department, and the overwhelming evidence cited herein above.

Respondent states in its Findings and Determinations that it "*has taken its legislative directives very seriously in this application*" and yet, in fact, Respondent has violated its legislative authority regarding this application, because its conclusions in its Findings and Determinations are in violation of the requirements, parameters and limitations imposed on this subject parcel by the proper authority, the Town Board of the Town of East Hampton.

It is well settled law in the State of New York that a Court may not substitute its own judgment for that of the reviewing board (*see: Janiak v Planning Board of the Town of Greenville*, 159 AD2d 574 [2nd Dept], *appeal denied*, 76 NY2d 707 [1990]; *Mascony Transport and Ferry Service v Richmond*, 71 AD2d 896 [2nd Dept 1979], *aff'd*, 49 NY2d 969 [1980]). Therefore, if the decision rendered by the reviewing board is within the scope of the authority delegated to it, the Court may not interfere and annul it, unless said decision is arbitrary, capricious or unlawful (*see: Castle Properties Co v Ackerson*, 163 AD2d 785 [3rd Dept 1990]). It is, therefore, indisputable that the standard of review for determinations of Respondent is whether the decision rendered is, first, within the scope of the authority delegated to it, and second, whether said decision is arbitrary, capricious and/or unlawful.

Although this Court is not to substitute its own judgment for that of Respondent, it is clear that said Respondent's decision was arbitrary, inconsistent and at preposterous discrepancy with the legislative

authority granted to it by the Town Code. Furthermore, the decision was no less arbitrary, capricious and at preposterous discrepancy with their own history of review and their instructions. The record demonstrates an overwhelming history of inconsistency and back-tracking, in an obvious attempt to satisfy dissenters, at the very costs of Respondent's obligation to follow the laws adopted by their own Town Board. Therefore, this Court is compelled by law to grant the relief requested in the underlying Petition, as set forth herein below.

For all the reasons stated herein above and in the totality of the papers submitted herein, it is, therefore,

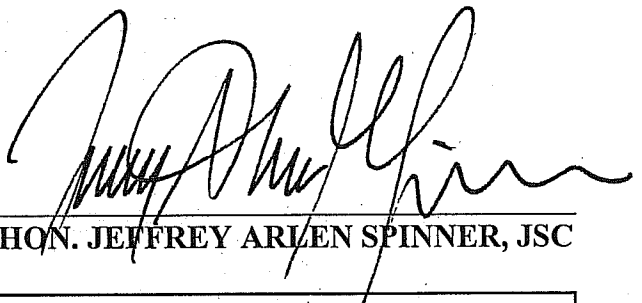
**ORDERED**, that the above referenced Petition [001], is hereby granted to the extent set forth herein:

1. The decision of Respondent is hereby annulled, reversed and set aside;
  2. This matter is hereby remanded to Respondent for proper site plan review, with the direction to approve the application consistent with the Court's decision, with all due haste;
- and it is further

**ORDERED**, that this Court hereby retains jurisdiction over this proceeding, for all purposes; and it is further

**ORDERED**, that Counsel for Petitioner is hereby directed to serve a copy on this Order, with Notice of Entry, upon Counsel for all other parties, within 20 days of entry of this Order by the Suffolk County Clerk.

**Dated:** Riverhead, New York  
December 23, 2011



HON. JEFFREY ARLEN SPINNER, JSC

✓ FINAL DISPOSITION	...NON-FINAL DISPOSITION
✓ SCAN	DO NOT SCAN

**TO:**

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Town Attorney, Town of East Hampton  
159 Pantigo Road  
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JUDITH A. PASCALE  
SUFFOLK COUNTY CLERK

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