SHORT FORM ORDER

INDEX NO:12044/08

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

PRESENT: HON. ARTHUR G. PITTS

In the Matter of the Application of

DIANA CLEMENTE,

Petitioner,

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

-against

COUNTY OF SUFFOLK, TOWN BOARD OF THE TOWN OF EASTHAMPTON, and BOYS AND GIRLS

Respondent.

ORIG. RETURN DATE:4/30/08
FINAL SUBMIT DATE: 3/12/09
MOTION SEQ. NO. 001-CDISPSJ

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Upon the following papers numbered 1 to 66 read on this motion article 78 Notice of Motion/OSC and supporting papers 1-14- Notice of Cross-Motion and supporting papers ___; Affirmation/affidavit in opposition and supporting papers 15-25 ; Affirmation/affidavit in reply and supporting papers 26-34 ; Other 35-37/38-42/43-65/66 ; ~~(and after hearing counsel in support of and opposed to the motion)~~ it is,

ORDERED that the application of petitioner Diana Clemente for a judgment pursuant to CPLR Article 78 vacating and annulling Suffolk County Legislature Resolution No. 1199-2007 upon the grounds that said Resolution was adopted in violation of the State Environmental Quality Act and its implementing regulations and Chapter 279 of the Suffolk County Code is granted under the circumstances presented herein.

Petitioner Diana Clemente is the owner of a 1.2 acres parcel of real property which is improved

with a single family residence known as 21 Springwood Way, East Hampton, Suffolk County, New York. Her property is located 50 feet to the east of two parcels totaling 28 acres which the respondents County of Suffolk and the Town Board of East Hampton seek to jointly acquire from respondent Boys and Girls Harbor, Inc., f/k/a Boys Harbor, Inc. for parkland purposes. Each municipality will pay equal shares towards the purchase price of $7,349,125.00. The Town of East Hampton's Department of Land Acquisition prepared a memorandum regarding the subject parkland project on or about September 26, 2007 entitled "Boys Harbor, Concept for Park uses." The memorandum set forth the proposed uses of the parkland and included the following: (1) creation of adequate parking facilities; (2) creation of a new ingress and egress to the property subject to any regulation and necessary permits; (3) creation of a new roadway extending along the east side of the property to connect with the existing roads on the parcel; (4) the demolition of some of the existing structures on the property and the conversion of some structures for year round use such as for educational uses, bathrooms, offices for park staff, first aide and maintenance areas and the creation and maintenance of trails throughout the property. The respondent Suffolk County's appropriations resolution for the purchase provided in part as follows:

> The parcel(s) shall be transferred to the Department of Parks, Recreation and Conservation primarily for passive recreational uses including the creation and maintenance of an entrance road (approx. 326 feet in length) and walking/jogging trails with the addition of certain, limited active recreational uses including; picnic areas with nearby restroom facilities; the continued use of an existing ball field; horseshoes; climbing wall; ropes course and the use of 7 or 8 existing buildings for park activities, park staff and maintenance needs with adequate parking provided for these intended uses.....

The respondent County and respondent Town agreed that the County would be the SEQRA lead agency on the parkland project. On or about October 4, 2007 the Suffolk County Planning Department prepared a Environmental Assessment Form ("EAF") for the project. The Suffolk County Council on Environmental Quality ("CEQ") received the EAF together with a draft Introductory Resolution regarding the proposed acquisition of the Boys and Girls Harbor, Inc. property. The action before the CEQ and the Legislature was limited to the acquisition of the property and not for any planned or proposed development of the property. The Town of East Hampton submitted a concept plan on September 27, 2007 which indicated that it was planning to do a detailed management plan for the property after the acquisition of the property was completed. The CEQ met on October 17, 2007 and after hearing testimony and reviewing the EAF recommended to the Legislature and the County Executive that the proposed joint acquisition be considered a Type I action pursuant to SEQRA and that the Legislature issue a negative declaration. On November 2, 2007, prior to the County making a SEQRA determination, the respondent Town Board adopted Resolution 2007-1520 authorizing the Town Supervisor to acquire the subject property in a 50/50 partnership with the County. On November 20, 2007 Resolution No. 1129-2007 was adopted by the Legislature and approved by the County Executive on November 23, 2007. Resolution

1129-2007 authorized the acquisition of the property and contained a SEQRA negative declaration. It also authorized the County Department of Parks, Recreation and Conservation to negotiate and enter into a municipal cooperative agreement for the management of the park. Pursuant to the terms of the management agreement, the Town would submit a detailed management plan for any improvements planned for the park. Upon the completion of the plan, a detailed SEQRA review in connection with any development or improvements would be conducted. The detailed site plan would be submitted to CEQ for review under SEQRA and such review would also be required on the Town level as well.

On November 20, 2007 Introductory Resolution 2144-2007 was offered that made a separate SEQRA negative resolution which was approved by the Legislature as Resolution 1199-2007 on December 3, 2007 and signed by the County Executive on December 17, 2007. The petitioner avers that said Resolution was adopted and approved after the County had already appropriated the funds for the acquisition pursuant to Resolution 1129-2007 and was done so in an attempt to cure its violation of Chapter 279 of the County Code which requires the County to adopt a SEQRA resolution before it approved and action where the County is the lead agency. (County Code 279-2; 279-5[H])

In support of the instant petition the petitioner alleges that the County in reviewing and approving the SEQRA resolution improperly segmented review of the potential environmental impacts from the proposed parkland project and it also improperly failed to consider the cumulative environmental effects of the proposed development of the property in to a park.

It is well settled that "it is impermissible under SEQRA to 'segment" the environmental review of a proposed action. 'Segmentation' is defined as ' the division of the environmental review of an action such that various activities or stages are addressed as though they were independent, unrelated activities needing individual determinations of significance.' (6 NYCRR 617.2) The practice of improperly dividing a single project into separate projects to evade consideration of their cumulative effects under SEQRA is known as segmentation. (see ***City of Buffalo v. New York State Department of Env. Conservation,*** 184 Misc 2d 242, 707 N.Y.S.2d 606) Under SEQRA, consideration of 'only a part or segment of an action is contrary to the intent of SEQRA related actions should be identified and disclosed to the fullest extent possible' (6 NYCRR 617.3 (g) (1)) The Court of Appeals in the case of ***In the Matter of Save the Pine Bush, Inc., et al v. City of Albany, et al*** (70 N.Y.2d 193, 200, 512 N.E.2d 526, 518 N.Y.S.2d 943) held that '.....when an action with potential adverse effects on the environment is part of an integrated project to designed to balance conflicting environmental goals within the subsection of a municipality that is ecologically unique, the potential cumulative impact of other proposed or pending projects must be considered pursuant to SEQRA before the action may be approved..' " (***Waldbaum, Inc. v. Inc. Village of Great Neck,*** 10 Misc 3d 1078A, 814 N.Y.S.2d 893, 2006 Misc LEXIS 160 [Sup Ct, Nassau Cty 2006])

In the matter at bar the respondent Suffolk County acknowledges that it was going to conduct a detailed SEQRA review for the proposed park project only after the Town of East Hampton submitted a detailed management plan for any development or improvements planned for the park and that the negative declaration after SEQRA review as set forth in both Resolution No. 1129-2007 and Resolution No. 1199-

2007 was limited solely to the acquisition of the property and not for any planned development of the property. However, " for the purpose of determining whether an action will cause a significant effect on the environment, the reviewing agency must consider reasonably related long-term, short-term and cumulative effects, including other simultaneous or subsequent actions which are included in any long-range plan which the action under consideration is a part. (6 NYCRR 617.3 (k) (1)) ' Considering only a part or segment of an action is contrary to the intent of SEQRA. If a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance and any subsequent EIS the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible." (***Farrington Close Condominium Board of Managers v. Incorporated Village of Southampton,*** 205 A.D.2d 623, 626, 613 N.Y.S.2d 257 [2nd Dept 1994]) Herein, the respondent County has admittedly failed to do so and instead proffers that it will do so only after the purchase of the subject property and after a management plan has been provided by the Town of East Hampton. Clearly the respondent County has not discussed the related actions to the fullest extent possible even knowing prior to the acquisition the specific planned uses of the park as set forth in the Town of East Hampton's Department of Land Acquisition's memorandum dated September 26, 2007. As such, pursuant to the foregoing and under the circumstances presented, the petition is granted and Suffolk County Legislature Resolution No. 1199- 2007 is vacated upon the grounds that it was adopted in violation of SEQRA.

The Court notes that the respondent has raised an objection in point of law as to the petitioner's standing to bring the within action. Her property is located fifty feet east of the proposed parkland and as such she is entitled to a presumption of injury in fact. (***Muir v. Town of Newburgh,*** 49 A.D.2d 744, 854 N.Y.S.2d 727 [2nd Dept 2008]) The remainder of the respondents' objection in point of law are also without merit.

This shall constitute the decision and order of the Court.

Settle judgment.

So ordered.

Dated: Riverhead, New York
June 26, 2009

J.S.C.

CHECK ONE: __XX__ FINAL DISPOSITION __NON-FINAL DISPOSITION _____ DO NOT SCAN