

MEMORANDUM

SUPREME COURT - STATE OF NEW YORK

I.A.S. PART 7 SUFFOLK COUNTY

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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Anthony G. Petrello  
and Cynthia A. Petrello,

Petitioners,

-against-

Board of Trustees of the Village of Sagaponack,  
Planning Board of the Village of Sagaponack and  
New York State Department of Environmental  
Conservation,

Respondents.

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Index No.: 26159/2011

Motion Sequence No.: 001; SETTJ

Motion Date: 9/27/11

Submitted: 12/14/11

Motion Sequence No.: 002; MG

Motion Date: 9/27/11

Submitted: 12/14/11

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Attorney for Respondents

Board of Trustees of the Village  
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New York State Department  
of Environmental Conservation:

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In this hybrid Article 78 proceeding and declaratory judgment action commenced on August 18, 2011, petitioners/plaintiffs Anthony Petrello and Cynthia Petrello (hereinafter the Petrellos) seek a judgment annulling and declaring invalid all provisions of Local Law No. 1 of 2011, Chapter 42 of the Code of respondent/defendant Village of Sagaponack, entitled "Village of Sagaponack Coastal Erosion Hazard Area Law" (hereinafter Local Law No. 1).

The Petrellos are owners in fee of two parcels of oceanfront real property located in the Village of Sagaponack. On November 23, 2010 and December 18, 2010, plaintiffs applied to the New York State Department of Environmental Conservation (NYSDEC) for a permit to construct a single family residence on the parcels of land. In letters dated December 21, 2010 and January 18, 2011, the NYSDEC states that as the construction of the subject property is located "landward of the landward edge of the 'Coastal Erosion Hazard Area Limit Line'," it is located beyond the jurisdiction of Article 34 of the Environmental Conservation Law and thus, no permits are required from the NYSDEC for construction in the subject area. Furthermore, according to a letter dated June 6, 2011, plaintiffs' application to the Village of Sagaponack Planning Board for approval of their site plan to change the natural grade for the construction of the residence was approved with certain conditions.

On December 13, 2010, the Board of Trustees of the Village of Sagaponack enacted Local Law 11 of 2010, which later was renumbered Local Law No.1 of 2011. Local Law No. 1, among other things, places restrictions on building and rebuilding structures in areas defined by Local Law No. 1 as the "Erosion Hazard Adjacent Area." The Petrellos' parcels of land are partially located within the "Adjacent Area," which is defined by Local Law No.1 as "all lands lying between the erosion hazard area limit line and the inland boundary of the shoreline lot or 400 feet landward of the erosion hazard area limit line, whichever is more seaward."

The petition/complaint alleges that Local Law No. 1, which purports to restrict landowners' rights to engage in certain activities on their property, including building structures, in the "adjacent areas" is ultra vires and invalid, as Article 34 the New York Environmental Conservation Law only empowers the Board of Trustees of the Village of Sagaponack to regulate the coastal erosion hazard area as identified by the NYSDEC. It also alleges that the NYSDEC improperly certified Local Law No.1 as it purports to regulate "adjacent areas," which is outside of its jurisdiction. As to the second cause of action, it alleges that Local Law No.1 is illegal and void for failure to comply with the area variance requirements of Village Law §7-712b(3). In the third cause of action, it alleges that the Petrellos are entitled to a declaration that the approval of the site plan by the Village of Sagaponack is valid and unaffected by the law as the intended improvements to the subject property would be unlawful and non-conforming if Local Law No.1 is upheld.

By notice of motion, the Petrellos move for summary judgment: on the first cause of action, annulling and declaring Local Law No. 1 invalid and declaring that the NYSDEC improperly certified Local Law No. 1; on the second cause of action, annulling and declaring invalid the provisions of Local Law No. 1 purporting to vary the area variance criteria set forth in Village Law 7-912; and on the third cause of action, declaring that the site plan approval issued by the planning board is not governed by Local Law No.1 and that no coastal erosion approval is required from the Village of Sagaponack for development of the subject property.

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The Petrellos' motion for summary judgment in their favor on the cause of action for declaratory relief is granted. The proof adduced by movants was sufficient to discharge their initial burden upon their claims for a declaratory judgment as sought in the instant motion. There is no opposing proof; accordingly, the motion is granted.

To such extent that the instant petition seeks relief pursuant to CPLR article 78, it is denied (see, Save the Pine Bush, Inc. v. Albany, 70 NY2d 193 [1987]; Merced v. Fisher, 38 NY2d 557 [1976]; Peekskill Suburbs, Inc. v. Morabito, 74 AD2d 843 [2<sup>nd</sup> Dept., 1980]).

Settle Judgment.

So ordered.

Dated:

5/9/2012

  
HON. WILLIAM B. REBOLINI, J.S.C.

  X   FINAL DISPOSITION            NON-FINAL DISPOSITION