

COPY

**SUPREME COURT OF THE STATE OF NEW YORK
I.A.S. PART 9 SUFFOLK COUNTY**

INDEX NO.: 21518-15

PRESENT:

HON. DANIEL MARTIN

x

Motion Date: 1/7/16

Submitted: 6/14/16

Motion Sequence No.: 01 -MD

In the Matter of the Application of

RICHARD LEVIN,

Petitioner,

PETITIONER'S ATTY:

Stephen A. Grossman & Associates

17 Main Street

P.O. Box 1949

Sag Harbor, NY 11963

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

-against-

RESPONDENTS' ATTY:

for Town Board and Town of East Hampton

Town of East Hampton Attorney's Office

159 Pantigo Road

East Hampton, NY 11937

**TOWN BOARD OF THE TOWN OF
EAST HAMPTON, THE TOWN OF
EAST HAMPTON and THE NATURE
CONSERVANCY,**

Respondents.

Esseks, Hefter, Angel, Di Talla & Pasca, LLP

for the Nature Conservancy

108 East Main Street

P.O. Box 279

Riverhead, NY 11901-0279

x

The following named papers have been read on this motion:

Notice of Motion/Order to Show Cause	X
Cross-Motion	
Answering Affidavits	X
Replying Affidavits	X

Petitioner moves pursuant to CPLR Article 78 to prevent the respondent Town of East Hampton from acquiring property for preservation purposes utilizing the Community Preservation Fund Program (hereinafter "CPF").

This litigation involves 76 and 78 Squaw Rd., East Hampton New York owned by the Nature Conservancy. The properties are in a residential area, contiguous to Three Mile Harbor, and immediately north of the Petitioner's property. The CPF is a program specified in NYS Town Law §634-e which provides for the acquisition of properties for preservation purposes in the Peconic Bay Region.

Petitioner asserts that the proposed acquisition by the Town as open space will negatively impact his right to private enjoyment of his property and that of the other contiguous neighbor, Koch; however, this is speculation on his part and ignores the intent of the program which is motivated by the greater good of the entire town and the Peconic Bay Region. Petitioner also alleges the town resolution was "arbitrary, capricious, without any evidence and no foundation in law or fact." Petitioner also alleges that the decision to purchase was predetermined and that there was therefore a due process violation.

The court has reviewed the entire record and believes the Respondent Town of East Hampton has correctly followed the requirements and intent of the CPF program and 64 -e of the Town Law. On August 6, 2015, as required by statute, the Town Board adopted two resolutions providing notice of a public hearing. The resolutions contain specific findings regarding the qualifications of the subject property for the CPF program. On August 20, 2015, a lengthy public hearing was held including both testimony and written submission. The Town also presented their Land Management Specialist, Scott Wilson, who testified to the steps taken concerning the CPF Advisory Board and why the separate parcels were recommended for acquisition. While Petitioner and the family of the other contiguous owner (Koch) spoke in opposition based on the possible detriment to their quality of life, 11 surrounding property owners testified in support of acquisition as well as an attorney representing 5 neighbors supporting acquisition with an in-depth analysis of the rationale for acquisition utilizing the CPF program.

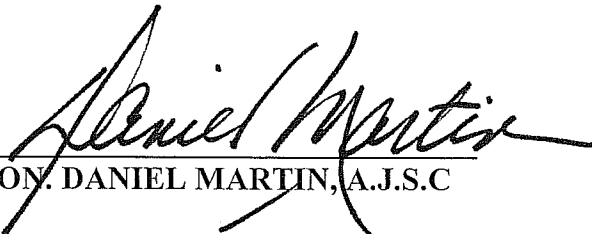
Based upon the substantial amount of material and evidence presented at the August 20, 2015 hearing, the Town Board voted to purchase properties for \$2,600,000 which was \$1,600,000 less than the appraised market value. The contract was signed eight days later on August 28, 2015 and after all testimony had been heard and submitted materials reviewed by the Town Board.

Having following all the mandates of 64-e of the Town Law concerning the CPF, and basing their decision on the substantial evidence provided and accepted at the required public hearing of August 20, 2015, the Court finds the Town of East Hampton has correctly decided to proceed with acquisition of #76 and #78 Squaw Rd., East Hampton, N.Y. (T.M. #300-59-2-5.1 and 5.2) and close title with the Nature Conservancy pursuant to their contract dated August 28, 2015.

For the above reasons, the court denies Petitioner's request for a judgment vacating and annulling the Town's resolution authorizing the purchase of the Conservancy property.

So Ordered.

Dated: June 30, 2016
Riverhead, NY


HON. DANIEL MARTIN, A.J.S.C