

SUPREME COURT OF THE STATE OF NEW YORK
IAS/ TRIAL PART 34- SUFFOLK COUNTY

COPY

PRESENT:

HON. JOSEPH C. PASTORESSA
JUSTICE OF THE SUPREME COURT

_____^x
IN THE MATTER OF THE APPLICATION OF
LITTLE FRESH POND ASSOCIATION, JOHN
BARONA, FOSTER MAER, CELESTE FRANK,
AND STUART A. SUMMIT,

Petitioner(s),

FOR A JUDGMENT PURSUANT TO ARTICLE
78 OF THE CIVIL PRACTICE LAW AND
RULES,

-against-

TOWN OF SOUTHAMPTON ZONING BOARD
OF APPEALS,

Respondent(s).

AND SOUTHAMPTON DAY CAMP REALTY,
LLC,

Additional Respondent(s).

_____^x

ATTYS FOR PETITIONER(S):

MATTHEW LIVITS, ESQ.
50 LEXINGTON AVE.
NEW YORK, NY 10010

FOSTER MAER
99 HUDSON ST.
NEW YORK, NY 10013

ATTYS FOR RESPONDENT(S):

KATHLEEN MURRAY, ESQ.
TOWN OF SOUTHAMPTON
116 HAMPTON ROAD
SOUTHAMPTON, NY 11968

ATTYS FOR ADDITIONAL RESPONDENT(S):

WAYNE D. BRUYN, ESQ.
O'SHEA MARCINCUK & BRUYN, LLP
250 N. SEA RD.
SOUTHAMPTON, NY 11968

THOMAS J. GARRY, ESQ.
HARRIS BEACH, PLLC
333 EARLE OVINGTON BLVD., STE. 901
UNIONDALE, NY 11553

THOMAS G. TERESKY, ESQ.
191 NEW YORK AVE.
HUNTINGTON, NY 11743

Having entertained oral argument by all sides, and having considered papers submitted in connection therewith, the petitioners' application for a TRO/Preliminary Injunction staying construction of a swimming pool on the subject premises and enjoining the Southampton ZBA from issuing any certificate of occupancy for said pool is, for the reasons stated by the court on the record, denied.

As recited by the court on the record, those reasons include, inter alia, the failure of the petitioners to name necessary parties; the failure of the petitioners to establish a likelihood of success on the merits; a balancing of the equities against the petitioners application; and the lack of irreparable harm. As cited by the court, a pool was already found to be a permissible accessory use to the already existing tennis club and camp. The petitioners' allegations that the construction of the pool will facilitate transition of the premises from a "tennis camp" to a "day camp" and engender additional traffic flow is sheer speculation. There is no meaningful irreparable harm discernible from the construction and putative use of the pool. Petitioners' claim that children coming to and from the premises for the use of the pool would increase traffic flow from that of children coming there to play tennis is pure conjecture. Furthermore, as the court noted, pool construction, essentially a hole in the ground, can be undone; the hole can be filled, should petitioners prevail in their arguments that no pool should be on this 17 acre parcel. This is not a toxic waste case where an irreparable and irreversible harm to the property is in the offing.

Finally, the petitioners request to enjoin the ZBA from issuing any certificate of occupancy is a nullity as it is the Town Building Department/Town of Southampton, neither named as parties herein, and not the ZBA that issues certificates of occupancy.

This shall constitute the decision and order of the court.

DATED: April 10, 2013



HON. JOSEPH C. PASTORELLA, J.S.C.

FINAL DISPOSITION ___ **NON-FINAL DISPOSITION** ~~___~~