

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION SECOND JUDICIAL DEPARTMENT

Richard Brummel, Petitioner/Appellant

v.

Village of East Hills, NY for the East Hills
Architectural Review Board and the East Hills
Zoning Board of Appeals, Respondent(s)

AFFIDAVIT IN SUPPORT
OF ORDER TO SHOW
CAUSE

Appellate Division Docket
Number:

Supreme Court Index No.:
3109 / 13

State of New York)
County of Nassau)ss.:

I Richard Andrew Brummel, being duly sworn, depose and say that:

1. Petitioner appeared along with legal counsel for Respondent, James F.X. Hiler, before the Honorable Justice Anthony L. Parga of the NY State Supreme Court, Nassau County in the above matter on March 18, 2013.
2. Upon hearing arguments for and against the Temporary Restraining Orders requested in the attached Order to Show Cause (Exhibit 1) (hereinafter the original Order to Show Cause) and the attached Petition in support of that order (Exhibit 2) (hereinafter the Petition), Justice Parga denied all the relief sought therein, as shown in Exhibit 1, except to schedule a hearing more than two weeks later. A transcript of the hearing is attached (Exhibit 3).
3. An emergency affidavit (Exhibit 4) demonstrated the urgency of the matter: permits issued or due to be issued in the near future upon decisions taken by the Architectural Review Board (ARB) of the Village of East Hills, NY (hereinafter the Village) would permit demolitions of houses, destruction of large trees, and construction and

renovation of new and existing houses.

4. Justice Parga (hereinafter the Court) denied the relief sought with no opinion issued, despite the urgency of the cause.
5. The Petition demonstrated that Petitioner had the right under the Village Code of East Hills (hereinafter the Village Code) to appeal a decision of the ARB to the East Hills Zoning Board of Appeals (ZBA) because as a resident Petitioner satisfied the definition of an “aggrieved applicant”. In Paragraph 3, Petitioner showed his deep connection with the local environment of his community, and in Paragraph 9, Petitioner showed that Village Code defined “aggrieved applicant” in a manner that included himself.
6. Petitioner incorporates the factual and legal statements of the Petition in this affidavit by reference in the interest of economy and time, and hereby swears to that content as well.
7. Court of Appeals precedent allows parties in environmental actions to assert injury or aggrievement both without suffering economic damage and without living in proximity to the environmental damage occurring, to wit, “In recognizing that injury of the kind the petitioners here allege can confer standing, we adopt a rule similar to one long established in the federal courts....[A] generalized 'interest' in the environment could not confer standing...but that injury to a particular plaintiff's '[a]esthetic and environmental well-being” would be enough....” (In the Matter of Save the Pine Bush, Inc., et al., Respondents, v. Common Council of the City of Albany, Appellant, et al., Respondent, 13 N.Y. 3d 297 at page 305).
8. Petitioner cited the Pine Bush precedent to the Court (Exhibit 3, page 5).
9. In testimony before the Court, Petitioner stated clearly that “I believe I have

standing...because I'm a resident, because I'm a long-term member of the community and because it is affecting my personal enjoyment and appreciation of the community," ((Exhibit 3, page 5) and "I personally take great value and pride in the community for its trees as well as for its architectural beauty" (Exhibit 3, page 3).

10. The Petition outlines the unique ways in which Petitioner has shown his special embrace of the environmental characteristics and assets under threat, by way of his strong action to preserve them (Exhibit 2, Paragraph 3).

11. The Petition showed how Petitioner participated in meetings of the ARB, stated cogent objections to the applications at issue for building, demolition and or tree removal with respect to the construction and other ARB applications described in the Petition, was overruled by the ARB in each case, and when he tried to appeal the decisions was further denied, as shown in Petition Paragraphs 26 through 94.

12. In addition to demonstrating that he had the right to appeal the decisions of the ARB, Petitioner demonstrated that the actions of the ARB in the decisions taken were arbitrary and capricious, an abuse of discretion, made in violation of lawful procedure, were affected by an error of law, and not supported by substantial evidence, as defined in New York Civil Procedure Law and Rules, Article 78.

13. The law clerk to Justice Parga, "Danielle," stated to Petitioner on March 14, 2013 that the judge "never gives TRO's [temporary restraining orders]" and that that day, the Court denied the TRO because notice had not been given to Respondent, notwithstanding Petitioner's submission of an affidavit seeking permission to proceed without notice (see Petition Paragraph 2 and referenced Exhibits in that Petition, particularly Exhibit B of the lower court action). The Clerk made no reference to the request for leave to file without notice.

14. Petitioner objected to Danielle that such a course of action was depriving Petitioner of lawful remedies, but as stated in Petition Paragraph 2, Petitioner withdrew the motion under duress to re-submit the original Order to Show Cause in compliance with the Court's demands for notice.

15. On the day of the hearing, March 18, 2013, Danielle spoke to Petitioner and Respondent in the hallway outside Justice Parga's courtroom and told them that the judge was denying the requests for TRO's, but that the parties could argue the case, which Petitioner stated he wished to do, and which occurred (see Exhibit 3).

16. For the foregoing reasons Petitioner asserts that the proceedings before the Justice Parga were defective as a matter of law.

17. As stated in the Petition, Petitioner will suffer irreparable injury without the relief sought in the original Order to Show Cause and the Petition, and Petitioner hereby incorporates the causes of action and requests for relief sought in that Petition, Paragraphs 95 to 133, to demonstrate the urgency of those issues and the bases for seeking immediate relief, as well as the likelihood of success and balance of equities.

Dated: March 21, 2013

Richard Brummel, Appellant

Sworn before me this _____

day of _____, 2013

Notary Public