

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

Matter of

RICHARD A. BRUMMEL, JOSHUA DICKER
and DAVID GREENGOLD

Petitioners ~~Pro Se~~, - Appellants

For Judgements and an Order Pursuant to Article 78,
Section 3001 (Declaratory Judgement), Section 6311
(Preliminary Injunction) and Section 6313 (Temporary
Restraining Order) of the Civil Practice Law and Rules
("CPLR")

-against-

THE TOWN OF NORTH HEMPSTEAD TOWN BOARD
a/k/a TOWN COUNCIL, THE NASSAU COUNTY
LEGISLATURE, NASSAU COUNTY EXECUTIVE EDWARD P. MANGANO, and
THE ROSLYN WATER DISTRICT

Respondents and Necessary Parties

ORDER TO SHOW CAUSE

Appellate Division Docket
Number:

2014 - 10641

Supreme Court Index No.:

6150/14

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#11 *RJ*

Upon the annexed affidavit of Richard A. Brummel, Joshua Dicker, and David
Greengold, dated November ____, 2014, and the papers annexed thereto:

Let the Respondents the Town of North Hempstead Town Board a/k/a Town
Council, the Nassau County Legislature, Nassau County Executive Edward P.
Mangano, and the Roslyn Water District,

SHOW CAUSE BEFORE THIS COURT, at the courthouse hereof, located at
45 Monroe Place, Brooklyn NY 11201, on the 26 day of NOVEMBER,
2014, at 9:30 O'Clock in the forenoon of that date or as soon thereafter as
counsel may be heard, why an order should not be made and entered:

(a) Reversing the order of Justice James P. McCormack, A.J.S.C. signed
September 19, 2014, that granted the motion to dismiss the special proceeding

and in its place denying said motion and affirming Petitioners' legal standing to pursue the special proceeding on the merits; and

(b) Annulling the decision of the Town of North Hempstead to fund the Roslyn Water District "air stripper" project in Christopher Morley Park; and

(c) Annulling the Home Rule Message of Nassau County to seek permission of the State Legislature to alienate public parkland in Christopher Morley Park to build the "air stripper"; and

(d) Annulling the decisions of the Roslyn Water District to (i) locate the "air stripper" in Christopher Morley Park, (ii) approve the Environmental Assessment Forms ("EAFs") of June 5, 2014 and July 17, 2014, (iii) approve Negative Declarations of environmental significance based on those EAFs and iv. approve construction contracts and lease, purchase or lease-type agreements related to the "air stripper", and

(e) Declaring the "air stripper" project an action with a Positive Declaration of potential significant adverse environmental impact(s) requiring the completion of an Environmental Impact Statement under the State Environmental Quality Review Act ("SEQRA"),

Upon the grounds that none of the Respondent agencies performed proper environmental review under the provisions of SEQRA at the time they each undertook the actions they did with respect to the "air stripper", to wit:

(a) The Town of North Hempstead purported to lawfully rely on the Environmental Assessment Form and Determination of Significance of the Roslyn Water District in relation to the "air stripper" project despite the facts that (i) the District was not constituted as a lead agency under SEQRA for that purpose, and (ii) the Environmental Assessment Form on which the Town

purportedly relied made no mention of the plan to build the "air stripper" in the public forest-land of Christopher Morley Park, but rather described the plan only to locate it in an entirely different location, outside the Park, in a pre-existing developed compound, resulting in none or almost none of the attendant significant adverse environmental impacts connected with the building of an "air stripper" compound and access road in the Park; and

(b) Nassau County approved a Home Rule bill for parkland alienation without making any findings under the State Environmental Quality Review Act ("SEQRA") prior to its vote, despite the ruling of the state Department of Environmental Conservation that such a vote was an "action" under SEQRA and thus required compliance prior to such a vote; and

(c) the Water District (i) voted on May 1, 2014 to locate the "air stripper" within the forest-land of Christopher Morley Park despite the fact that no EAF or other SEQRA analysis was in existence from the District or any other agency that analyzed the impact of such a location prior to the vote; (ii) approved a Negative Declaration with respect to the EAF of June 5, 2014 despite the fact that the EAF contained only Part I of three parts, and was missing the crucial and mandatory Part II that sets out a multiplicity of environmental factors that must be analyzed and considered; (iii) Approved the Negative Declaration of June 5, 2014 in the absence of a written Determination of Significance; iv. approved a second EAF on July 17, 2014 and made a Negative Declaration with respect to the proposed "air stripper" based on it despite numerous crippling deficiencies in its analysis and the absence of a required elaboration in its Determination of Significance section.

Sufficient grounds having been presented it is hereby ORDERED that pending determination of this ~~appeal~~, *motion*

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Respondents and their agents are hereby enjoined from (1) ~~In any way providing the Roslyn Water District or its agents any lease, license or other permission to build an "air stripper", compound, roadway or any related construct in Christopher Morley Park or to damage or alter the forest there;~~ (2) Damaging or otherwise altering in any way the forest-land in Christopher Morley Park for the purpose of constructing an "air stripper" or access road thereto, or any construct appurtenant to it, and (3) ~~Such other relief as may be just and equitable.~~

ORDERED that service of a copy of this order to show cause and the papers upon which it was made upon Respondents

_____, by

- ☒ personal delivery pursuant to CPLR 2103(b)(1) *or*
☒ office delivery pursuant to CPLR 2103(b)(3) *or*
☒ overnight delivery service pursuant to CPLR 2103(b)(6)

on or before November 19, _____ 2014, shall be deemed sufficient service thereof.

Dated: Brooklyn, New York

November 19, 2014


Associate Justice

Appellate Division: 2nd Department

NOTE: On the return date all motions and proceedings are deemed submitted. Oral argument is not permitted (22 NYCRR 670.5(b)).

Hon. Sandra L. Sgroi
Associate Justice
Appellate Division 2nd Dept.