

SPECIAL BOARD MTG.
May 10, 2007

TOWN OF RIVERHEAD

Adopted

Resolution # 449

DETERMINING THAT THE COUNTY OF SUFFOLK'S FUELING FACILITY AT INDIAN ISLAND GOLF COURSE, LOCATED ON RIVERSIDE DRIVE, RIVERHEAD, NEW YORK, MUST COMPLY WITH THE TOWN CODE OF THE TOWN OF RIVERHEAD.

COUNCILMAN DENSIESKI offered the following resolution, was seconded

by COUNCILWOMAN BLASS :

WHEREAS, the Town of Riverhead is a municipal corporation existing under the laws of the State of New York having those powers of zoning and land use regulation specified in New York Town Law Article 16; and

WHEREAS, the County of Suffolk is a municipal corporation existing under the laws of the State of New York; and

WHEREAS, the County of Suffolk has constructed a fueling facility at Indian Island Golf Course located on Riverside Drive, in Riverhead, New York; and

WHEREAS, the Town of Riverhead commenced litigation against the County of Suffolk for failing to obtain the necessary New York State legislative and local approvals required prior to alienating public parkland and constructing a fueling facility in the Town of Riverhead; and

WHEREAS, in order to determine whether the County of Suffolk must comply with the Town Code of the Town of Riverhead in the construction and siting of the fueling facility, a "balancing of public interests" test must be conducted as set forth in the Court of Appeals' decision in *Matter of County of Monroe v. City of Rochester*, 72 N.Y.2d 338; and

WHEREAS, under the balancing test, the Town of Riverhead should weigh the following factors to determine whether the County of Suffolk must comply with the Town Code in the construction and siting of the facility:

1. the nature and scope of the instrumentality seeking immunity,
2. the encroaching government's legislative grant of authority,

3. the kind of function or land use involved,
4. the effect local land use regulation would have upon the enterprise concerned,
5. alternative locations for the facility in less restrictive zoning areas,
6. the impact upon legitimate local interests,
7. alternative methods of providing the proposed improvement,
8. the extent of the public interest to be served by the improvements, and
9. intergovernmental participation in the project development process and an opportunity to be heard; and

WHEREAS, by Resolution #365, adopted on April 17, 2007, the Town Board of the Town of Riverhead scheduled a public hearing for May 1, 2007, to consider whether the construction and siting of the fueling facility must comply with the Town Code of the Town of Riverhead under the balancing test set forth in the *County of Monroe* decision; and

WHEREAS, notice of the public hearing was duly given; and

WHEREAS, the Town Board of the Town of Riverhead conducted a public hearing on May 1, 2007, and heard testimony from all interested parties requesting to speak on the matter at issue; and

WHEREAS, the Town Board of the Town of Riverhead accepted written documents concerning the matter into the record until May 8, 2007; and

WHEREAS, the Town Board of the Town of Riverhead has carefully considered all the evidence submitted in connection with this matter in the context of the "balancing of public interests" test;

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Riverhead makes the following Findings and Determination:

FINDINGS AND DETERMINATION

1. Pursuant to *Matter of County of Monroe v. City of Rochester*, (72 N.Y.2d 338), the County's construction of the fueling facility is presumed to be subject to the Town Code of the Town of Riverhead absent an expression of contrary legislative intent.

2. There is no expression of legislative intent to exempt the County's construction of the fueling facility from compliance with the Town Code.

3. The James A. Coon Local Government Technical Series, promulgated by the New York State Department of State, instructs a municipality that is developing a project in another community to assume that the project be subject to the host community's zoning requirements and that any disagreement between the parties should be resolved by the appeals process of the host community.

4. The County of Suffolk is a municipality created pursuant to New York State law without any overriding authority to construct a fueling facility in the Town of Riverhead.

5. The fueling facility was constructed at Indian Island Golf Course Park, located on Riverside Drive, within the Tourism/Resort Campus ("TRC") zoning district of the Town of Riverhead.

6. The fueling facility is similar to a commercial gas station and will be utilized by Suffolk County trucks and other vehicles in the area for non-park related purposes.

7. The gas-powered golf carts utilized at Indian Island Park use a separate and distinct fueling pump located at a completely different portion of the park located near the "barn" where the carts are stored.

8. Pursuant to the Town Code of the Town of Riverhead, the siting and construction of the subject fueling facility would require, among other things, a variance, site plan approval, coordinated review pursuant to the State Environmental Quality Review Act ("SEQRA"), fire safety review, a building permit, and a certificate of occupancy.

9. A fueling facility is not a permitted use in the Town's TRC zoning district.

10. A fueling facility is a specially permitted use in the Town's Industrial A zoning district.

11. The fueling facility as constructed does not comply with applicable setback requirements of the Town Code.

12. The fueling facility as constructed does not have site plan approval as required by the Town Code.
13. Prior to commencing construction of the fueling facility, the County of Suffolk failed to notify the Town of Riverhead about the project and failed to secure approvals required under the Town Code for such a project.
14. On June 2, 2005, the Riverhead Building Department served the County with a Stop Work Order directing that construction of the facility be stopped until a building permit was obtained. The County ignored the Stop Work Order.
15. The Town of Riverhead's permitting process would allow full analysis to be made regarding the suitability of the site from a land use and environmental perspective.
16. Traffic issues for the site need to be studied. The County constructed the fueling facility in an area that will generate additional traffic. It will draw additional vehicles specifically to the site for the purpose of re-fueling as opposed to "peeling" vehicles off of existing traffic routes. It is also likely that the increase in traffic will have a significant adverse impact on Riverside Drive, which is a single lane residential road, as well as the already crowded intersections of Riverside Drive at Routes 25 and 105.
17. As constructed, the fueling facility fails to conform to the Town of Riverhead's safety standards and guidelines as promulgated by the Riverhead Fire Marshall. Among other things, problems identified with the facility's fire suppression and fuel-spill containment systems need to be addressed.
18. By letter dated May 7, 2007, the Planning Board of the Town of Riverhead advised the Town Board that proper site plan review is required for this facility for several reasons.
19. Among other things, site plan review by the Planning Board would address zoning, traffic, safety, and SEQRA concerns, and provide for the mitigation of these concerns.
20. Alternative locations for the fueling facility exist in less restrictive zoning areas and more practical locations. The County owns nearby property located in an industrial zone more aptly suited for such a use. The County also owns property off of Hubbard Avenue in Riverhead presently utilized as a pump-out site for recreational vehicles. The County Parks Police substation is in very close proximity, as well. The County also maintains a substantial maintenance compound directly across Riverside Drive from where it constructed the fueling facility. These other sites would be far more appropriate than the present site unilaterally picked by the County.

21. Prior to the construction of the fueling facility, the Town of Riverhead enacted a Comprehensive Master Plan and adopted new zoning legislation to encourage conformity with the Master Plan.

22. The fueling facility as constructed is not in conformity with the Master Plan.

23. There is a significant degree of public interest in the fueling facility in that it is located on public parkland and in a primarily residential neighborhood.

24. As described above, the fueling facility creates serious potential adverse impacts on the community. In fact, the Town has received repeated complaints regarding the facility.

25. The Town of Riverhead has historically followed a policy of requiring municipal projects within the Town to comply with the Town Code. Most recently, the Long Island Power Authority, the Riverhead Fire District, the Riverhead Water District, and the Town itself have been subjected to the requirements of the Code.

26. Prior to commencing construction of the fueling facility, the County of Suffolk did not permit the Town of Riverhead to participate in the planning or siting of the fueling facility. In addition, neither the Town of Riverhead nor the public was provided with an opportunity to be heard in connection with the project.

27. After hearing of the project, the Town Board advised the County that it believed the fueling facility must comply with local code requirements. The County of Suffolk ignored the Town's requirements resulting in the commencement of litigation against the County.

28. All issues with respect to the Town's contention raised in the litigation that the project constitutes an improper alienation of parkland were expressly reserved by the Town Board at the public hearing. The hearing was limited to the issue of conducting the "balancing of public interests" test under the *County of Monroe* decision; and

BE IT FURTHER

RESOLVED, that based upon the foregoing, the Town Board of the Town of Riverhead, after due deliberation, finds that the construction and siting of the County of Suffolk's fueling facility at Indian Island Golf Course, located on Riverside Drive, Riverhead, New York, must comply with the Town Code of the Town of Riverhead; and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a certified copy of this resolution to the Riverhead Planning Department, the Riverhead Building Department, the Riverhead Fire Protection Division, the Riverhead Town Attorney, Smith, Finkelstein, Lundberg, Isler & Yakaboski, LLP., 456 Griffing Avenue, Riverhead, New York, 11901; the Suffolk County Attorney, at 100 Veterans Memorial Highway, Hauppauge, New York, 11788; and Assistant Suffolk County Attorney, John R. Petrowski, at 100 Veterans Memorial Highway, Hauppauge, New York, 11788.

THE VOTE

Dunleavy yes ___ no ___ Bartunek yes ___ no ___
Blass yes ___ no ___ Densieski yes ___ no ___
Cardinale yes ___ no ___

THE RESOLUTION WAS ___ WAS NOT
THEREFORE DULY ADOPTED

Adopted

TOWN OF RIVERHEAD

Resolution # 450

ADOPTS A LOCAL LAW AMENDING CHAPTER 108 ENTITLED, "ZONING" OF THE RIVERHEAD TOWN CODE
(§108-322. Commercial site plan administration)

COUNCILMAN BARTUNEK offered the following resolution, was seconded by

COUNCILMAN DUNLEAVY :

WHEREAS, the Town Clerk was authorized to publish and post a public notice to hear all interested persons to consider a local law amending Chapter 108 entitled, "Zoning" of the Riverhead Town Code; and

WHEREAS, a public hearing was held on the 1st day of May, 2007 at 7:05 o'clock p.m. at Town Hall, 200 Howell Avenue, Riverhead, New York, the date, time and place specified in said public notice, and all persons wishing to be heard were heard.

NOW THEREFORE BE IT RESOLVED, that a local law amending Chapter 108 entitled "Zoning", of the Riverhead Town Code be and is hereby adopted as specified in the attached notice of adoption; and be it further

RESOLVED, that the Town Clerk be and is hereby authorized to publish the attached notice of adoption once in the News Review, the official newspaper, and to post same on the signboard at Town Hall; and be it further

RESOLVED, that the Town Clerk be and is hereby authorized to forward a certified copy of this resolution to the Riverhead Planning Board; the Riverhead Planning Department; the Riverhead Zoning Board of Appeals; the Riverhead Building Department and the Office of the Town Attorney.

THE VOTE

Dunleavy yes no Bartunek yes no
Blass yes no Densieski yes no
Cardinale yes no

**THE RESOLUTION WAS WAS NOT
THEREFORE DULY ADOPTED**

**TOWN OF RIVERHEAD
NOTICE OF ADOPTION**

PLEASE TAKE NOTICE, that the Town Board of the Town of Riverhead adopted a local law amending Chapter 108 entitled, "Zoning" of the Riverhead Town Code at its regular meeting held on May 10, 2007. **Be it enacted** by the Town Board of the Town of Riverhead as follows:

ARTICLE LXII
Transfer of Development Rights

§ 108-332. Commercial site plan administration.

A. The ~~Town Board~~ agency responsible for commercial site plan approval shall be the administrator for application of preservation certificates on commercial site plan application as follows:

- (1) In the event that preservation credit certificates are to be applied to commercial development as set forth in this chapter, the agency responsible for commercial site plan approval ~~Town Board~~ shall have the authority to vary the development standards set forth in this chapter; including but not limited to parking, floor area ratio and lot coverage requirements. The agency responsible for commercial site plan approval ~~Town Board~~ shall utilize the standards set forth in ~~276~~ § 267-b of the Town Law of the State of New York in determining whether to vary development standards as set forth herein.
- (2) Section 108-332 is adopted pursuant to the Municipal Home Rule Law of the State of New York and is expressly intended to supersede the provisions of Town Law ~~276~~ §267-b and §108-76 of the Town Code of the Town of Riverhead.

- Underline represents addition(s)
- Overstrike represents deletion(s)

Dated: Riverhead, New York
May 10, 2007

**BY ORDER OF THE TOWN BOARD
OF THE TOWN OF RIVERHEAD**

BARBARA GRATTAN, Town Clerk