

**SUPREME COURT OF THE STATE OF NEW YORK
I.A.S. PART 30 SUFFOLK COUNTY**

PRESENT:

HON. DAVID T. REILLY, JSC

INDEX NO.: 001152-2018

SUNRISE TUTHILL I LLC,

Petitioner,

**Michael G. Walsh, Esq.
Attorney for Petitioner
860 Montauk Highway, Unit 4
Water Mill, NY 11976**

**For a Judgment under Article 78
of the Civil Practice Law and Rules and
a Declaratory Judgment Pursuant to CPLR 3001,**

-against

**Gayle Pollack, Esq.
Morrison, Cohen, LLP
Attorneys for Petitioner
909 Third Avenue
New York, NY 10022**

**TOWN OF EAST HAMPTON, BUILDING DEPARTMENT
OF THE TOWN OF EAST HAMPTON and ANN M.
GLENNON as PRINCIPAL BUILDING INSPECTOR OF THE
TOWN OF EAST HAMPTON,**

Respondents.

**James M. Catterson, Esq.
Arnold & Porter Kaye Scholer LLP
Attorneys for Petitioner
250 West 55th Street
New York, NY 10019**

SUNRISE TUTHILL I LLC,

Petitioner,

**Steven C. Stern, Esq.
Sokoloff Stern, LLP
Attorney For Respondent
159 Pantigo Road
East Hampton, NY 11937**

**For a Judgment under Article 78
of the Civil Practice Law and Rules and
a Declaratory Judgment Pursuant to CPLR 3001,**

-against

INDEX NO.: 001188-2018

**TOWN OF EAST HAMPTON and ANN M. GLENNON as
PRINCIPAL BUILDING INSPECTOR OF THE TOWN OF
EAST HAMPTON,**

Respondents.

In the Matter of SUNRISE TUTHILL I LLC,

Petitioner,

INDEX NO.: 001256-2018

-against

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

Respondents.

**For a judgment pursuant to Town Code Chapter 255, Articles
II and IX seeking to correct an error on the Use District Map
and/or Mandamus to compel action.**

**PEOPLE OF THE STATE OF NEW YORK BY THE
PEOPLE OF THE TOWN OF EAST HAMPTON,**

-against

INDEX NO.: 100199-2017

SUNRISE TUTHILL I, LLC,

Defendant.

MOTION DATE: 04/09/19
 SUBMITTED: 03/20/24
 MOTION SEQ. NO. 002
 MOTION: MG

Upon the reading and filing of the following papers in this matter: (1) Order to Show Cause [Mot. Seq. # 002] by respondents Town and Town Board, filed on April 9, 2019, and supporting papers; (2) Petitioner's Memorandum of Law in Opposition, filed on April 10, 2019, and supporting papers; and all documents related thereto, e-filed on NYSCEF as Docket ## 72-168, 178-207, 232-260 and 265; and ~~(after hearing counsel in support and in opposition to the motions)~~ upon due deliberation and consideration by the Court, it is hereby,

ORDERED that the motion [Mot. Seq. # 002] by respondents Town and Town Board to vacate the So-Ordered Stipulation of Settlement is GRANTED, to the extent indicated herein.

Petitioner Sunrise Tuthill I, LLC ("Sunrise") is the owner of a parcel of land located at 65 Tuthill Road in Montauk, Town of East Hampton, New York. Sunrise operates a marina and lobster bar known as Duryea's at the subject location. In 2017, respondents Town of East Hampton ("Town"), through its Building Department employees, and the Town Board of the Town of East Hampton ("Town Board") issued a stop work order after the Town determined that a structure on Sunrise's property was gutted and with the further belief that petitioner intended to rebuild it without obtaining the requisite Town permits.

A. Pending Article 78 Proceedings

On March 6, 2018, petitioner filed an Article 78 proceeding to compel the issuance of a Certificate of Occupancy. (*See* Index No. 001152/2018). On March 7, 2018, petitioner filed a second Article 78 proceeding to prohibit the Town from regulating a dock and related structure constructed in Fort Pond Bay prior to 1930. (*See* Index No. 001188/2018). Finally, on March 12, 2018, petitioner filed a third Article 78 proceeding to change the Use District Map and/or seek a mandamus to compel a zoning district line amendment to correct an inadvertent mistake. (*See* Index No. 001256/2018).

B. Settlement Negotiations and Agreement

During multiple appearances before this Court concerning these special proceedings, respondents' Town Attorney and petitioner's attorney conducted negotiations to resolve these matters. On January 24, 2019, counsel for the parties executed a Stipulation of Settlement. (*See* Docket # 5 under Index No. 001152/2018). The Town Attorney signed the agreement in two places and under two different signature lines — both as counsel for the Town and on behalf of the Town as its agent. (*Id.* at p. 13). This Court So-Ordered the agreement on January 25, 2019 without a formal Court record.

C. Instant Motion to Annul and Vacate the Stipulation of Settlement [Mot. Seq. # 002 under Index No. 001152/2018]

On April 9, 2019, respondents Town and Town Board under Index Number 001152/2018

moved by Order to Show Cause to *inter alia* annul and vacate the January 24, 2019 So-Ordered Stipulation of Settlement with the petitioner, Sunrise. (See Docket # 232 under Index No. 001152/2018).¹ The Town Board members submitted affidavits stating that they never saw a draft of the Stipulation of Settlement and first saw the signed agreement on February 5, 2019. The petitioner contends that the respondents were aware of the terms of the Stipulation of Settlement prior to its execution and received a copy of the agreement soon after its execution. From the time of its execution in January 2019 to the time of the filing of this application to vacate the settlement in April 2019, both the petitioner and the Town abided by and began implementing the terms of the agreement. The Court before making a determination on the application granted petitioner limited discovery. Supplemental submissions were received by the Court, at which time the motion was submitted to the Court for a determination.

In general, stipulations of settlement are favored and are “not lightly set aside.” *Inwood Tower, Inc. v V.F.*, 75 Misc3d 1211(A), 168 NYS3d 299 [Sup Ct NY Cnty 2022]. However, courts have discretion to vacate stipulations of settlements in certain circumstances. (See *Matter of Frutiger*, 29 NY2d 143, 150 [1971] (stipulation of settlement may be vacated where there is evidence of “fraud, collusion, mistake, accident, or some other ground of the same nature”); see also *Par Builders, Inc. v Assessor of the Town of Orangetown*, 234 AD2d 374, 375, 651 NYS2d 88 [2d Dep’t 1996] (reversing trial court’s grant of entry of judgment pursuant to a stipulation of settlement where stipulation was not approved by Town Board).

In this case, respondents aver that the Town Board never approved the Stipulation of Settlement pursuant to New York Town Law § 68. In addition, respondents contend that Town Board members never saw the Stipulation of Settlement before it was So-Ordered by this Court nor did they adopt a resolution authorizing the Town Attorney to execute the Stipulation of Settlement on behalf of the Town. Respondents also contend that the Stipulation of Settlement violates the Open Meetings Law (Public Officers Law §§ 100, *et seq.*) Finally, respondents challenge the agreement’s legality in that they allege it usurps the authority of its Planning Board by circumscribing its review and approval of the site plan and the issuance of special permits.

Petitioner claims that the Town approved the agreement as evidenced by the Town Attorney’s signature on the Stipulation of Settlement, and the Town has acted upon the terms of the agreement and by its conduct has assented to its terms.

This Court addresses the parties’ arguments, below.

1. Adoption or Approval of the Stipulation of Settlement

The relevant section of the governing statute, Section 4 of Town Law § 68, entitled “*Compromise of actions proceedings or claims*” states:

Notwithstanding the foregoing provisions of this section, the town board of any town may compromise or settle any action, proceeding

¹ Although the caption on the moving papers with respect to the instant motion [Mot. Seq. # 2] contains four different Index Numbers (Index Nos. 001152/2018, 001188/2018, 001256/2018, and 100199/2017), the OSC was only filed and sequenced under Index No. 001152/2018 as Mot. Seq. # 2. (See Index No. 001152/2018, Docket # 232 (OSC); see generally Docket ## 72-168; 178-207; and 232-260).

or claim against the town upon such terms as said board shall determine are just, reasonable and to the interest of the town.

Town Law § 68(4).

The statute is notably silent with respect to *how* the board must effectuate its determination, nor does it expressly prescribe any specific method. Here, neither the Town Supervisor nor a single councilman has stated that the Town *only* settles disputes of this nature via a formal vote of the Board at a public meeting. However, the Appellate Division Second Department in *JRP Old Riverhead Ltd. v Town of Southampton*, 44 AD3d 905, 909 [2nd Dept. 2007] has stated:

As a general rule, settlements approved in open court which are not approved by a town board are not binding, and all parties, including the plaintiffs here, are charged with knowledge of the statute. [Citations omitted]

This Court finds that generally, town boards act by adopting resolutions at regularly scheduled or special board meetings. It is by a resolution duly adopted by a town board that it expresses its assent to a settlement agreement. (See, e.g., *Par Builders, Inc. v Assessor of the Town of Orangetown*, 234 AD2d 374, 375, 651 NYS2d 88 [2d Dep't 1996] (reversing trial court's grant of entry of judgment pursuant to a stipulation of settlement where such was not approved by Town Board; holding "[t]he stipulation was never approved by the Town Board [], and, therefore, never became binding upon the appellants"). Accord, *Joon Mgmt. One Corp. v Town of Ramapo*, 142 AD3d 587, 589, 36 NYS3d 673 [2d Dep't 2016] ["the Supreme Court properly denied that branch of the plaintiff's cross motion which was, in the alternative, to enforce the alleged settlement agreement, as the Stipulation of Settlement was never approved by the Town Board and, therefore, never became binding upon the Town"]).²

In this case, it is clear from the record that members of the Town Board were aware of the efforts of their Town Attorney to settle the litigation with Sunrise and had a general understanding

²The case law cited by petitioner is not to the contrary. In the lead case cited by petitioner, *Haberman v Zoning Bd. of Appeals of City of Long Beach*, 9 NY3d 269, 275–76, 849 NYS2d 189, 191 [2007], the Court of Appeals held that the City and its ZBA were bound by a stipulation/letter agreement by attorneys extending the time period for petitioner to apply for building permits, even though it was undisputed that applications and/or grants of a variance require a ZBA vote. The court held that neither the statutory regime governing the ZBA, nor case law, required the ZBA to vote on an extension of time. (See *Haberman, supra* at 275 ("once a variance has been issued, the same formality is not required to extend the variance's duration")). The case addresses statutory and case law requirements with respect to the ZBA, and does not address Town Law § 68 whatsoever. In addition, unlike in the instant case, in *Haberman*, the court noted that the ZBA did not claim that the city's attorney, in signing the agreement, violated its instructions or concealed its actions from the ZBA. The respondents in this case do assert lack of authority on the part of the Town Attorney. Accordingly, this Court concludes that the case is inapposite.

of its substance and/or provisions prior to the signing of the Stipulation of Settlement.³ This Court infers from the record that, as part of his settlement discussions with his clients, the Town Attorney assessed the Board's commitment to resolution and believed he had the support of a majority of the Board. The record simply does not support a conclusion that the Town Attorney was acting entirely *ultra vires*.

The Court does not contest that the Town Attorney acted with a good faith belief that his actions were approved by the Town Board, but nevertheless concludes that such good faith belief is insufficient to bind the Town to the Stipulation of Settlement. The record before this Court firmly establishes that the Town Attorney signed the agreement before any formal resolution was adopted (indeed, no such resolution was adopted in this case). This Court concludes that, without more, the Town is not bound by the Stipulation of Settlement.

Even assuming, *arguendo*, petitioner is correct that Town Law § 68 does not require the Town Board to adopt a resolution approving a settlement agreement (but rather such Board is merely required to "approve" a settlement agreement in order to be bound by it), in this case, this Court finds that petitioner failed to meet its burden of proof that the Town Board "approved" the settlement. To the extent petitioner contends that the Town is bound to the settlement here because its attorney had the authority to enter into the agreement, the petitioner again failed to meet its burden of proof that the Town Attorney's actions were, in fact, authorized by the Town Board. (*See, e.g., Slavin v Polyak*, 99 AD2d 466, 467, 470 NYS2d 38, 39-40 [2d Dept. 1984] ["A party who relies on the authority of an attorney to compromise an action in his client's absence deals with such an attorney at his own peril, and if the settlement is thereafter challenged, he has the burden of establishing that the attorney's actions were, in fact, authorized."].

2. Ratification of the Stipulation of Settlement

A municipality, through subsequent conduct may ratify a settlement agreement. *JRP Old Riverhead Ltd v Town of Southampton*, 44 AD3d 905, 909 [2nd Dept. 2007]. "Ratification occurs when a party accepts the benefits of a contract and fails to act promptly to repudiate it." *Allen v Riese Organization, Inc.*, 106 AD3d 514, 517 [1st Dept. 2013].

In *JRP Old Riverhead Ltd.*, the Southampton Town Board authorized a settlement with the plaintiff on August 28, 2001 which was previously reached by their attorneys and placed on the record in open Court. Thereafter, the same parties entered into further stipulations concerning the same subject matter, a recharge basin and plaintiff's damages arising from the Town's alleged negligent maintenance and repair of certain storm drains. The Town claims that it never approved these subsequent agreements. The Appellate Division in *JRP Old Riverhead Ltd.*, *supra* at 909 noted that a resolution voted by the town board is not the only means by which a town may approve

³ Notably, the affidavits submitted by the Board members do not state that the Board members had *no* conversations with the Town Attorney about efforts to settle the litigation, nor do they state that the Board members were entirely unaware of the general settlement terms discussed; rather, the affidavits make the more circumscribed assertion that the Board members did not "see" a copy of the final agreement until after it was So-Ordered (*see* Docket # 232, Affirmation of Attorney Steven C. Stern in Support of OSC at ¶ 16, pp. 4-5, and pp. 8-9/234 of PDF (citing Board Members' Affidavits), along with the undisputed assertion that the Town Board did not adopt a resolution approving such settlement. (*See* Docket # 232, Aff. in Support, at ¶ 15, p. 4, and p. 8/234 of PDF).

or authorize a settlement:

However, a settlement which is not approved by the relevant municipal body may be ratified by the municipality by subsequent conduct, such as making payments pursuant to a settlement agreement.

Respondents claim that once executed, both parties acted in reliance on the agreement. The Building Department issued a Certificate of Occupancy on February 19, 2019, the Planning Department and Planning Board accepted the petitioner's Site Plan Application on February 22, 2019, the Planning Department after review of the application filed its initial report on March 1, 2019 and the Planning Board scheduled and held a work session on petitioner's Site Plan Application for March 6, 2019.

In this case, based on a close examination of the record, this Court concludes that none of the steps undertaken by the Town in furtherance of the Stipulation of Settlement involved or required Town Board action or approval and, therefore, they do not establish the Town's intent to ratify the agreement. In *JPR Old Riverhead Ltd.*, the Appellate Division remitted the matter to the Supreme Court for a hearing to determine the validity of the subsequent Stipulations of Settlement in light of alleged ratification by implementation. Here, however, the narrow expanse of time that transpired in the proceedings before this Court since the signing of the Stipulation of Settlement and its subsequent repudiation, as well as the limited steps undertaken by the Town and the manner in which such steps were directed, afford the Court the opportunity to conclude, without a further hearing, that the respondents did not ratify the Stipulation of Settlement.

For the reasons set forth above, this Court vacates the Stipulation of Settlement So-Ordered by the Court on January 25, 2019.⁴ In so doing, this Court notes that this protracted litigation to untie the Gordian Knot of the 2019 agreement effectively puts both parties back at square one. Therefore, the Court orders and directs that the *status quo* be maintained by the parties herein in all actions and proceedings currently before this Court related to the subject matter herein, pending the determination of the various Article 78 proceedings before this Court, or the determination of any Appeal from this Order, which ever is later.

Further, the Court denies respondents' application to declare Certificate of Occupancy Number 34607, dated February 19, 2019, null and void without prejudice to request this relief within the appropriate pending special proceeding.

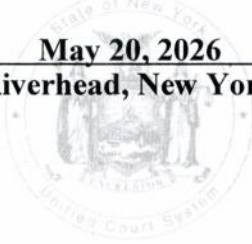
The parties' remaining arguments, if any, are without merit. Any other relief requested by any party not otherwise granted herein is denied.

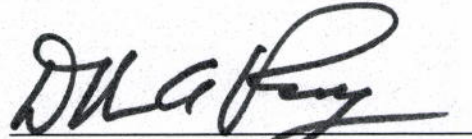
A conference of these and other related matters is scheduled for **June 8, 2026 at 11:30 a.m.**

⁴ In light of this Court's determination that the Stipulation of Settlement was neither adopted, nor ratified by the Town, this Court need not reach the respondents' further contentions that the Stipulation of Settlement is invalid because it was entered into in violation of the Open Meetings Law and/or usurped the Planning Board's authority by circumscribing its review and approval of the site plan and the issuance of special permits.

This constitutes the decision and Order of the Court.

Dated: May 20, 2026
Riverhead, New York





DAVID T. REILLY
JUSTICE OF THE SUPREME COURT

_____ FINAL DISPOSITION

X NON-FINAL DISPOSITION