

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - November 27, 2006

STEPHEN G. CRANE, J.P.
ROBERT A. SPOLZINO
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN, JJ.

2005-09287

DECISION & JUDGMENT

In the Matter of David Watts, et al., petitioners,
v New York State Department of Environmental
Conservation, et al., respondents.

(Index No. 9486/05)

Shlimbaum and Shlimbaum, Islip, N.Y. (Lark J. Shlimbaum of counsel), for
petitioners.

Andrew M. Cuomo, Attorney-General, New York, N.Y. (Michael S. Belohlavek,
Norman Spiegel, and Janice B. Taylor of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the Assistant
Commissioner of the New York State Department of Environmental Conservation, dated April 4,
2005, which, after a hearing, found that the subject property is not exempt from freshwater wetlands
regulations and denied the petitioners' application for a freshwater wetlands permit.

ADJUDGED that the determination is confirmed, the petition is denied, and the
proceeding is dismissed, with costs.

The determination of the Assistant Commissioner of the New York State Department
of Environmental Conservation (hereinafter the Assistant Commissioner) that the subject property
is not exempt from regulations concerning freshwater wetlands must be confirmed, as there is no
evidence that the petitioners obtained final approval for their proposed project prior to the effective
date of the Freshwater Wetlands Act (*see* Environmental Conservation Law § 24-1305[a] and [c]).

January 9, 2007

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ENVIRONMENTAL CONSERVATION

Moreover, the Assistant Commissioner's determination denying the petitioners' application for a freshwater wetlands permit must also be confirmed as it was supported by substantial evidence (*see Matter of Kroft v New York State Dep't of Envtl. Conservation*, 7 AD3d 714).

The petitioners' remaining contentions are either unpreserved or without merit.

CRANE, J.P., SPOLZINO, KRAUSMAN and GOLDSTEIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court