

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

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_____AD3d_____

Argued - January 2, 2007

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
PETER B. SKELOS
JOSEPH COVELLO, JJ.

2005-10187

DECISION & ORDER

In the Matter of John Stanton, appellant, v Town of
Islip Department of Planning and Development, et al.,
respondents.

(Index No. 18896/04)

Certilman Balin Adler & Hyman, LLP, Hauppauge, N.Y. (Leigh Rate of counsel), for
appellant.

Pierce Fox Cohalan, Town Attorney, Islip, N.Y. (Janice Shea of counsel), for
respondents.

In a proceeding pursuant to CPLR article 78 to review a determination of the Town
of Islip Department of Planning and Development, dated May 6, 2004, which, inter alia, granted the
petitioner's application for a wetlands and watercourses permit only to the extent of permitting him
to reinstall six mooring poles, the petitioner appeals from a judgment of the Supreme Court, Suffolk
County (Mullen, J.), dated October 5, 2005, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

Generally, the petitioner has the burden of proving the allegations of his or her petition
in a CPLR article 78 proceeding (*see Matter of Poster v Strough*, 299 AD2d 127, 138). Here, the
petitioner's allegations of bad faith and disparate treatment on the part of the respondents are
unsupported by the record (*see generally Matter of International Innovative Tech. Group Corp. v*
Planning Bd. of Town of Woodbury, N.Y., 20 AD3d 531, 533). Thus, the petitioner failed to carry
his burden of proving the allegations of his petition.

February 6, 2007

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OF PLANNING AND DEVELOPMENT

Moreover, the limitation placed by the respondents on the number of mooring poles the petitioner could reinstall on his property had the effect of limiting the number of boat berths the petitioner could maintain in accordance with the provisions of Islip Town Code § 68-48(A)(1)(f). Therefore, contrary to the petitioner's contention, the respondents' determination was rational, and not arbitrary and capricious (*see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-231). Accordingly, the Supreme Court properly denied the petition and dismissed the proceeding.

The petitioner's remaining contention is without merit.

SCHMIDT, J.P., SANTUCCI, SKELOS and COVELLO, 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