

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

D15685
O/gts

_____AD3d_____

Submitted - June 11, 2007

HOWARD MILLER, J.P.
GLORIA GOLDSTEIN
STEVEN W. FISHER
JOSEPH COVELLO, JJ.

2006-05332

DECISION & ORDER

Town of Dover Town Board, appellant, v
Salvatore Cascino, etc., et al., respondents.

(Index No. 1619/06)

Rappaport, Meyers, Whitbeck, Shaw & Rodenhausen, LLP, Hudson, N.Y. (Denise Fitzpatrick of counsel), for appellant.

Nolan & Heller, LLP, Albany, N.Y. (David A. Engel of counsel), for respondents.

In an action to enjoin the violation of certain provisions of a town zoning ordinance, the plaintiff Town of Dover Town Board appeals from an order of the Supreme Court, Dutchess County (Pagones, J.), dated May 23, 2006, which denied its motion for a preliminary injunction.

ORDERED that the order is reversed, on the law, with costs, the plaintiff's motion for a preliminary injunction is granted, and the matter is remitted to the Supreme Court, Dutchess County, for further proceedings before a different justice.

Town Law § 268 permits a town to seek preliminary injunctive relief prohibiting the violation of a town zoning ordinance without establishing special damage or injury to the public, or the nonexistence of an adequate remedy at law. To obtain preliminary injunctive relief based on a violation of its zoning ordinances, a town need only show that it has a likelihood of success on the merits and that the equities are balanced in its favor (*see First Franklin Sq. Assoc., LLC v Franklin Sq. Prop. Account*, 15 AD3d 529).

Here, the Town of Dover Town Board (hereinafter the Board) made a strong showing

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that the defendants committed acts in violation of the town's zoning ordinances, among other violations of the Town Code and violations of state laws and regulations. Therefore, the Board showed that it is likely to succeed on the merits. Furthermore, the equities are balanced in the Board's favor, given that the defendants had the opportunity to remedy the violations but failed to do so, despite repeated notices of violations and orders to remedy, stop work orders, and a signed agreement with the state Department of Environmental Conservation (*see Village of Chestnut Ridge v Roffino*, 306 AD2d 522).

MILLER, J.P., GOLDSTEIN, FISHER 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