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

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_____AD3d_____ Argued - May 1, 2008

ROBERT A. LIFSON, J.P.
HOWARD MILLER
MARK C. DILLON
RANDALL T. ENG, JJ.

2007-01500 DECISION & ORDER

In the Matter of Timothy J. Dowd, et al., appellants,
v Planning Board of Village of Millbrook,
et al., respondents.

(Index No. 5182/06)

James Bacon, New Paltz, N.Y., for appellants.

McCabe & Mack, LLP, Poughkeepsie, N.Y. (Richard J. Olson of counsel), for respondent Planning Board of Village of Millbrook, and Corbally, Gartland and Rappleyea, LLP, Poughkeepsie, N.Y. (Allan B. Rappleyea of counsel), for respondents Richard Crowe and Joan Crowe (one brief filed).

In a proceeding pursuant to CPLR article 78 to review a determination of the Planning Board of Village of Millbrook dated July 20, 2006, which granted an application for final approval of a proposed residential subdivision on Nine Partners Lane in the Village of Millbrook, the petitioners appeal from an order and judgment (one paper) of the Supreme Court, Dutchess County (Pagones, J.), dated January 8, 2007, which granted the motion of the Planning Board of Village of Millbrook, and the separate motion of Richard Crowe and Joan Crowe to dismiss the proceeding pursuant to CPLR 3211(a)(5) and (8), and dismissed the proceeding.

ORDERED that the appeal is dismissed as academic, without costs or disbursements.

In a companion case, we dismissed, as academic, a related appeal from an order and judgment, inter alia, dismissing the petitioners' CPLR article 78 proceeding, which challenged preliminary subdivision approval of the subject project, in light of the petitioners' failure to timely

do all that they could to safeguard their interests while the project was substantially completed (*see Matter of Dowd v Planning Bd. of Village of Millbrook,* _____AD3d_____ [Appellate Division Docket Nos. 2006-07715, 2007-01502, decided herewith]). The petitioners have not established that, in the interim between the preliminary approval of the subdivision by the Planning Board of Village of Millbrook (hereinafter the Planning Board) and the final approval of the subdivision, anything occurred which would warrant a different result. Thus, this appeal from the judgment dismissing the petition challenging final subdivision approval must also be dismissed as academic.

Our dismissal of the instant appeal is without prejudice to any remedy at law which the petitioners may have with respect to the allegations that the owners of the subject property presented falsified hydrology test results to the Planning Board in connection with the proposed subdivision.

LIFSON, J.P., MILLER, DILLON and ENG, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court