

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

D20080
W/cb

_____AD3d_____

Argued - May 27, 2008

WILLIAM F. MASTRO, J.P.
ROBERT A. SPOLZINO
THOMAS A. DICKERSON
JOHN M. LEVENTHAL, JJ.

2006-10166

DECISION & ORDER

In the Matter of Land Master Montg I, LLC, et al.,
respondents-appellants, v Town of Montgomery,
et al., appellants-respondents, et al., respondents.
(Matter No. 1)

In the Matter of Roswind Farmland Corp., et al.,
respondents-appellants, v Town of Mongomery,
appellants-respondents, et al., respondents.
(Matter No. 2)

(Index Nos. 8125/04, 8126/04)

Hodges, Walsh & Slater, LLP, White Plains, N.Y. (Paul E. Svensson of counsel), for
appellants-respondents.

Jacobwitz & Gubits, LLP, Walden, N.Y. (J. Benjamin Gailey of counsel), for
respondents-appellants (one brief filed).

In related hybrid proceedings, inter alia, pursuant to CPLR article 78 to review a
resolution of the Town Board of the Town of Montgomery dated July 29, 2004, adopting a
Comprehensive Plan for the Town of Montgomery, and actions, among other things, for a judgment
declaring that Local Laws Nos. 4 and 5 (2004) of the Town of Montgomery are unconstitutional as
exclusionary zoning, the Town of Montgomery, Town Board of the Town of Montgomery, Planning

August 19, 2008

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MATTER OF LAND MASTER MONTG I, LLC v TOWN OF MONTGOMERY
MATTER OF ROSWIND FARMLAND CORP. v TOWN OF MONTGOMERY

Board of the Town of Montgomery, Susan I. Cockburn, Carol Jennings, Daniel S. Dempsey, Jr., Mark W. Hoyt, Anthony Trapini, Jeffery Crist, Carl Helstrom, William Kelley, Jr., Rose Pennings, Gregory Schloemer, Harry Mills, Comprehensive Plan Special Committee of the Town of Montgomery, Richard Montemarano, John Schmoll, and Joan Elliott appeal, as limited by their brief, from so much of an order of the Supreme Court, Orange County (Owen, J.), dated September 18, 2006, as granted the motions of the petitioners/plaintiffs in Matter No. 1 and Matter No. 2 for summary judgment declaring that the Comprehensive Plan for the Town of Montgomery adopted July 29, 2004, and Local Laws Nos. 4 and 5 (2004) of the Town of Montgomery are null and void and unconstitutional as exclusionary zoning and denied those branches of their cross motions which were for summary judgment dismissing the complaints in Matter No. 1 and Matter No. 2 and declaring that the Comprehensive Plan for the Town of Montgomery adopted July 29, 2004, and Local Laws Nos. 4 and 5 (2004) of the Town of Montgomery are valid and constitutional, and the petitioners/plaintiffs cross-appeal, as limited by their brief, from so much of the order as granted those branches of the cross motions of the Town of Montgomery, Town Board of the Town of Montgomery, Planning Board of the Town of Montgomery, Susan I. Cockburn, Carol Jennings, Daniel S. Dempsey, Jr., Mark W. Hoyt, Anthony Trapini, Jeffery Crist, Carl Helstrom, William Kelley, Jr., Rose Pennings, Gregory Schloemer, Harry Mills, Comprehensive Plan Special Committee of the Town of Montgomery, Richard Montemarano, John Schmoll, and Joan Elliott which were for summary judgment dismissing the causes of action to recover damages for the deprivation of rights secured by the federal and state constitutions, the Federal Housing Act, and the General Municipal Law in Matter No. 1 and Matter No. 2.

ORDERED that the appeal and cross appeal are dismissed, without costs or disbursements.

The appeal and cross appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the proceedings and actions on May 8, 2007 (*see Matter of Aho*, 39 NY2d 241, 248; *Matter of Land Master Montg I, LLC v Town of Montgomery*, _____AD3d_____ [Appellate Division Docket No. 2007-03940, decided herewith]).

MASTRO, J.P., SPOLZINO, DICKERSON and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court