

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

D20516
X/kmg

_____AD3d_____

Argued - September 8, 2008

REINALDO E. RIVERA, J.P.
HOWARD MILLER
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS, JJ.

2007-04636

DECISION & ORDER

In the Matter of North Shore Farms, appellant,
v Town of Riverhead, etc., et al., respondents.

(Index No. 19019-05)

Arthur V. Graseck, Jr., Islip Terrace, N.Y., for appellant.

Jaspan Schlesinger Hoffman LLP, Garden City, N.Y. (Maureen T. Liccione and John C. Farrell of counsel), for respondents.

In a proceeding pursuant to CPLR article 78 to compel the Town of Riverhead and the Riverhead Town Board to issue a special use permit, the petitioner appeals from a judgment of the Supreme Court, Suffolk County (Tanenbaum, J.), dated April 5, 2007, which denied the petition and dismissed the proceeding as time-barred.

ORDERED that the judgment is affirmed, with costs.

In January 2005, at a meeting with Town officials, the petitioner received notice that its property had been rezoned to preclude its use as a composting business, and that its application for a special permit for that use of the property was considered academic. The instant proceeding to compel the issuance of the special use permit was not commenced until approximately seven months later, in August 2005. Accordingly, the Supreme Court properly concluded that the proceeding was time-barred by the four-month statute of limitations applicable to proceedings pursuant to CPLR article 78 (*see* CPLR 217; *Matter of Eadie v Town Bd. of Town of N. Greenbush*, 7 NY3d 306, 316; *Joseph L. Balkan, Inc. v City of New York*, 41 AD3d 136).

September 30, 2008

Page 1.

MATTER OF NORTH SHORE FARMS v TOWN OF RIVERHEAD

The petitioner's remaining contentions are either without merit or not properly before this Court.

RIVERA, J.P., MILLER, ANGIOLILLO and CHAMBERS, 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