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

D20914
Y/prt

_____AD3d_____ Submitted - April 29, 2008

PETER B. SKELOS, J.P.
DAVID S. RITTER
ANITA R. FLORIO
THOMAS A. DICKERSON, JJ.

2007-03072 DECISION & ORDER
2007-03073

In the Matter of Campo Brothers, respondent,
v Town of Brookhaven, et al., appellants.

(Index No. 13330/05)

Karen Wilutis, Town Attorney (J. Lee Snead, Bellport, N.Y., of counsel), for appellants.

In a proceeding, inter alia, pursuant to CPLR article 78 to compel the Town of Brookhaven to issue a road-opening permit or to hold a hearing on the petitioner's application for such a permit, the Town of Brookhaven, the Building Department of the Town of Brookhaven, and the Planning Department of the Town of Brookhaven appeal from (1) an order of the Supreme Court, Suffolk County (Tanenbaum, J.), dated April 5, 2006, which denied their motion to dismiss the petition, and (2) a judgment of the same court dated October 6, 2006, which granted that branch of the petition which was to compel the Town of Brookhaven to hold a hearing on the petitioner's application.

ORDERED that the appeals are dismissed, without costs or disbursements.

We dismiss the appeal from the order dated April 5, 2006, because no appeal lies as of right from an intermediate order in a proceeding pursuant to CPLR article 78, and we decline to grant leave to appeal in light of the fact that the appeal has been rendered academic (*see* CPLR 5701[b][1]).

The appeal from the judgment dated October 6, 2006, must be dismissed because the

issues raised have been rendered academic by the sale of the subject property pursuant to which the permit at issue was sought, and no exception to the mootness doctrine is argued or present (*see Matter of Hearst Corp. v Clyne,* 50 NY2d 707, 713-714).

SKELOS, J.P., RITTER, FLORIO and DICKERSON, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court