

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

D23346
W/kmg

_____AD3d_____

Argued - April 17, 2009

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
RUTH C. BALKIN, JJ.

2008-03620

DECISION & ORDER

In the Matter of Village of Haverstraw, respondent,
v Ray River Co., Inc., et al., appellants.

(Index No. 8853/07)

Goldstein, Goldstein, Rikon & Gottlieb, P.C., New York, N.Y. (Michael Rikon of counsel), for appellants.

Watkins & Watkins, LLP, White Plains, N.Y. (John E. Watkins, Jr., and Liane V. Watkins of counsel), for respondent.

In a condemnation proceeding pursuant to EDPL 402, inter alia, for authorization to file an acquisition map, the claimants Ray River Co., Inc., and Haverstraw Riverfront, Inc., appeal from a judgment of the Supreme Court, Rockland County (La Cava, J.), entered March 27, 2008, which, upon an order of the same court dated December 14, 2007, among other things, granted the petition.

ORDERED that the judgment is affirmed, with costs.

“Having failed to comply with the requirements of EDPL 207 by filing a timely petition for review of the condemnor's determination in this court, the appellants ‘may not circumvent the command of the statute with respect to the procedures governing judicial review by raising [their] objection . . . within the context of an article 4 vesting proceeding’” (*Matter of City of New Rochelle v O. Mueller, Inc.*, 191 AD2d 435, 435, quoting *Metropolitan Transp. Auth. v Pinelawn Cemetery*, 135 AD2d 686, 688-689; see *Matter of Town of Southold [Town Hall Expansion Project]*, 50 AD3d 1045, 1046; *Matter of Incorporated Vil. of Patchogue v Simon*, 112 AD2d 374). Accordingly, the

May 26, 2009

Page 1.

MATTER OF VILLAGE OF HAVERSTRAW v RAY RIVER CO., INC.

Supreme Court properly granted the petition for authorization to file an acquisition map referable to the subject property (see *Matter of New York City School Constr. Auth.*, 286 AD2d 441, 441; *Matter of City of New Rochelle v O. Mueller, Inc.*, 191 AD2d at 435; *Metropolitan Transp. Auth. v Pinelawn Cemetery*, 135 AD2d at 688-689). To the extent that the appellants allege that they have sustained damages as a result of a denial of their due process rights (see *Brody v Village of Port Chester*, 434 F3d 121, 127), such damages, if warranted, may be determined in a proceeding pursuant to EDPL 501(B) (see *Brody v Village of Port Chester*, 2008 US Dist LEXIS 61604, 2008 WL 3398111 [SDNY 2008]).

The appellants' remaining contention is without merit.

SPOLZINO, J.P., SANTUCCI, FLORIO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court