

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

D23502  
W/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - May 4, 2009

WILLIAM F. MASTRO, J.P.  
MARK C. DILLON  
FRED T. SANTUCCI  
RUTH C. BALKIN, JJ.

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2008-05758

DECISION & ORDER

In the Matter of Christine Girard, et al.,  
respondents, v Town of East Hampton,  
New York Zoning Board of Appeals, appellant.

(Index No. 30823/06)

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Cahn & Cahn, LLP, Melville, N.Y. (Daniel K. Cahn of counsel), for appellant.

MacLachlan & Eagan LLP, East Hampton, N.Y. (David E. Eagan of counsel), for respondents.

In a proceeding pursuant to CPLR article 78 to review a determination of the Zoning Board of Appeals of the Town of East Hampton dated September 26, 2006, which, after a hearing, required the petitioners to grant a scenic and conservation easement to the Town of East Hampton as a condition to the issuance of a natural resources special permit, the appeal is from a judgment of the Supreme Court, Suffolk County (Baisley, J.), dated May 22, 2008, which, upon a decision of the same court dated February 14, 2008, granted the petition and remitted the matter to the Zoning Board of Appeals of the Town of East Hampton for the issuance of the natural resources special permit without the subject condition.

ORDERED that the judgment is affirmed, without costs or disbursements.

The Supreme Court correctly concluded that the imposition of a condition on the issuance of a natural resources special permit so as to require the petitioners to grant a scenic and conservation easement to the Town of East Hampton was arbitrary and capricious (*see Matter of St.*

June 9, 2009

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NEW YORK ZONING BOARD OF APPEALS

*Onge v Donovan*, 71 NY2d 507, 515-516; *Matter of Voetsch v Craven*, 48 AD3d 585, 586). Thus, the determination imposing the condition was properly annulled.

MASTRO, J.P., DILLON, SANTUCCI and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court