

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

D23610  
O/kmg

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

Argued - May 1, 2009

REINALDO E. RIVERA, J.P.  
RANDALL T. ENG  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL, JJ.

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2008-03932

DECISION & ORDER

In the Matter of Jonathan Elwyn, et al., appellants,  
v Planning Board of Village of Irvington, et al.,  
respondents.

(Index No. 23473/06)

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Zarin & Steinmetz, White Plains, N.Y. (Daniel M. Richmond of counsel), for appellants.

Podvey, Meanor, Catenacci, Hildner, Coccoziello & Chattman, P.C., New York, N.Y. (Lino J. Sciaretta of counsel), for respondent Planning Board of the Village of Irvington.

Mark E. Constantine, Tarrytown, N.Y., for respondent C.M. Pateman & Associates, Inc.

In a proceeding pursuant to CPLR article 78 to review a determination of the Planning Board of the Village of Irvington dated November 1, 2006, which issued a conditioned negative declaration under the State Environmental Quality Review Act (ECL art 8) with respect to the construction of a single-family residence in the Village of Irvington, and granted watercourse and wetlands permits, the petitioners appeal from a judgment of the Supreme Court, Westchester County (R. Bellantoni, J.), entered April 11, 2008, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with one bill of costs.

Contrary to the petitioners' contention, the Planning Board of the Village of Irvington (hereinafter the Planning Board) identified the relevant areas of environmental concern, specifically,

June 16, 2009

Page 1.

MATTER OF ELWYN v PLANNING BOARD OF VILLAGE OF IRVINGTON

the presence of elevated levels of nickel and zinc in the soil, took a hard look at that issue, and made a “reasoned elaboration” (*Akpan v Koch*, 75 NY2d 561, 570; *see Matter of Muir v Town of Newburgh Planning Bd.*, 49 AD3d 742, 744).

Since the Planning Board properly issued a conditioned negative declaration, the preparation of an environmental impact statement was not required (*see* 6 NYCRR 617.2[h]; *Matter of Coca-Cola Bottling Co. of N.Y. v Board of Estimate of City of N.Y.*, 72 NY2d 674, 680; *see also Stop-The-Barge v Cahill*, 1 NY3d 218, 223-224).

The petitioners' remaining contentions are without merit.

RIVERA, J.P., ENG, CHAMBERS and HALL, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court