

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

D23730
C/kmg

_____AD3d_____

Submitted - May 26, 2009

ROBERT A. SPOLZINO, J.P.
MARK C. DILLON
HOWARD MILLER
THOMAS A. DICKERSON, JJ.

2008-00256

DECISION & ORDER

In the Matter of Eagle Valley Corp., appellant,
v Thomas F. Bollatto, Jr., etc., respondent.

(Index No. 06-9658)

Donald Tirschwell, New City, N.Y., for appellant.

Ira M. Emanuel, P.C., New City, N.Y., for respondent.

In a proceeding pursuant to CPLR article 78 to compel Thomas F. Bollatto, Jr., the Village Clerk of the Village of Sloatsburg, to issue a certificate approving a preliminary subdivision plat pursuant to Village Law § 7-728(8), the petitioner appeals from a judgment of the Supreme Court, Rockland County (Weiner, J.), dated November 14, 2007, which denied the petition and dismissed the proceeding.

ORDERED that judgment is affirmed, with costs.

Under the circumstances, the petitioner was not entitled to a certificate approving a preliminary subdivision plat pursuant to Village Law § 7-728(8) (*see Matter of Two Trees Farm, Inc. v Seaman*, 29 AD3d 917). “[T]he extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act, and only when there exists a clear legal right to the relief sought” (*Matter of Best v Queens County Supreme Ct.*, 54 AD3d 438, 439; *see Matter of Legal Aid Socy. of Sullivan County v Scheinman*, 53 NY2d 12, 16). The petitioner has failed to demonstrate a clear legal right to the relief sought (*see Matter of Best v Queens County Supreme Ct.*, 54 AD3d 438).

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In light of our determination, it is unnecessary to address the petitioner's remaining contentions.

SPOLZINO, J.P., DILLON, MILLER and DICKERSON, JJ., concur.

2008-00256

DECISION & ORDER ON MOTION

In the Matter of Eagle Valley Corp., appellant,
v Thomas F. Bollatto, Jr., etc., respondent.

(Index No. 06-9658)

Motion by the respondent on an appeal from a judgment of the Supreme Court, Rockland County, dated November 14, 2007, inter alia, to dismiss the appeal on the ground that it has been rendered academic. By decision and order on motion of this Court dated November 3, 2008, that branch of the motion which was to dismiss the appeal on the ground that it has been rendered academic was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers submitted in support of the motion, the papers submitted in opposition thereto, and upon the submission of the appeal, it is,

ORDERED that the branch of the motion which was to dismiss the appeal on the ground that it has been rendered academic is denied.

SPOLZINO, J.P., DILLON, MILLER and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

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