

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

D25254
W/kmg

_____AD3d_____

Argued - October 23, 2009

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
PLUMMER E. LOTT, JJ.

2008-04272

DECISION & ORDER

In the Matter of Coalition to Save Cedar Hill,
et al., appellants, v Planning Board of Incorporated
Village of Port Jefferson, et al., respondents.

(Index No. 1811/07)

Frederick Eisenbud, Commack, N.Y., for appellants.

Bracken & Margolin, LLP, Islandia, N.Y. (Linda U. Margolin of counsel), for
respondent Liberty Meadows, LLC.

In a proceeding, inter alia, pursuant to CPLR article 78 to review a determination of the Planning Board of the Incorporated Village of Port Jefferson dated December 14, 2006, which conditionally approved a certain final subdivision map, the petitioners appeal, as limited by their notice of appeal and brief, from so much of a judgment of the Supreme Court, Suffolk County (Pines, J.), dated April 2, 2008, as denied those branches of the petition which were to annul the determination on the grounds asserted in the first, second, and sixth causes of action, and dismissed that portion of the proceeding.

ORDERED that the appeal is dismissed as academic, without costs or disbursements.

The petitioners commenced this proceeding pursuant to CPLR article 78 to review a determination of the Planning Board of the Incorporated Village of Port Jefferson (hereinafter the Planning Board) conditionally approving a certain final subdivision map. Specifically, the petitioners

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sought a judgment annulling the determination and remitting the matter to the Planning Board with a direction that it undertake certain additional review before making a new determination regarding the final subdivision map.

The Supreme Court rendered a judgment annulling the determination, based on its finding that the Planning Board, in adopting the resolution making the determination, violated a certain provision of the Code of the Village of Port Jefferson (hereinafter the Village Code). The Supreme Court remitted the matter to the Planning Board with a direction, in effect, that it comply with that provision of the Village Code before making a new determination regarding the final subdivision map.

The petitioners appealed from the judgment to the extent that it denied those branches of the petition which were to annul the determination on certain other grounds, including those branches which were to annul the negative declaration issued by the Planning Board pursuant to the State Environmental Quality Review Act (ECL art 8), to compel the Planning Board to prepare a draft environmental impact statement in connection with the proposed subdivision, and to compel the Planning Board to recalculate allowable yield for the proposed subdivision. During the pendency of this appeal, and in accordance with the judgment appealed from, the Planning Board adopted a new resolution dated July 24, 2008, conditionally approving the final subdivision map.

Under such circumstances, this appeal has been rendered academic, and must be dismissed (*see Matter of Hearst Corp. v Clyne*, 50 NY2d 707).

FISHER, J.P., ANGIOLILLO, ENG and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court