

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

D27506
W/prt

_____AD3d_____

Argued - April 23, 2010

STEVEN W. FISHER, J.P.
RUTH C. BALKIN
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2008-06763

DECISION & ORDER

In the Matter of Wallkill Cemetery Association, Inc.,
et al., appellants, v Town of Wallkill Planning
Board, et al., respondents.

(Index No. 3907/06)

Joseph J. Haspel, Goshen, N.Y. (John Cameron of counsel), for appellants.

Ostrer Rosenwasser, LLP, Chester, N.Y. (Benjamin Ostrer and Cynthia Dolan of counsel), for respondents Town of Wallkill Planning Board and Town of Wallkill Building Inspector.

Rosemary Stack, Syracuse, N.Y., for respondents E. Tetz and Sons, Inc., and Concrete Properties, LLC.

In a hybrid proceeding pursuant to CPLR article 78 to review a determination of the Planning Board of the Town of Wallkill dated April 19, 2006, which granted E. Tetz and Sons, Inc., a special use permit and conditional final site plan approval regarding the construction of an asphalt plant, and action for a judgment declaring that the Planning Board of the Town of Wallkill acted illegally in granting the special use permit and conditional final site plan approval, and enjoining the Town of Wallkill Building Inspector from issuing any permits with respect to the construction of the asphalt plant, the petitioners/plaintiffs appeal from a judgment of the Supreme Court, Orange County (Nicolai, J.), dated May 15, 2008, which denied the petition and dismissed the proceeding.

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

May 25, 2010

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MATTER OF WALLKILL CEMETERY ASSOCIATION, INC. v
TOWN OF WALLKILL PLANNING BOARD

The petitioners/plaintiffs commenced this hybrid proceeding and action to challenge a determination of the Planning Board of the Town of Wallkill (hereinafter the Planning Board) which granted E. Tetz and Sons, Inc., a special use permit and conditional final site plan approval in connection with the construction of an asphalt plant asserting, inter alia, that the approvals were granted despite the Planning Board's failure strictly to comply with the State Environmental Quality Review Act (ECL art 8). We dismiss the appeal as academic for the reasons stated in our decision and order on a companion appeal (*see Matter of Wallkill Cemetery Assoc. v Town of Wallkill Planning Bd.*, _____AD3d_____ [Appellate Division Docket No. 2008-05859; decided herewith]).

FISHER, J.P., BALKIN, ROMAN and SGROI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court