

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
In the Matter of the Application of
Patrick J. Nelligan,

Petitioner,

-against-

Town of Amenia Zoning Board of Appeals,

Respondent.
-----X

PAGONES, J.D., A.J.S.C.

DECISION, ORDER
AND JUDGMENT

Index No. 1424/06

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The instant petition pursuant to CPLR Article 78 seeks to review a determination of the respondent ZBA dated February, 2006 denying the petitioner's appeal in a resolution containing specific findings of fact. The petitioner contends, *inter alia*, "that the Final Determination (sic) has no basis in the evidence or facts of the case, and does not even attempt to make reference to law or evidence in said determination." The petitioner also contends that the determination is arbitrary and capricious. The petitioner seeks a judgment annulling and vacating the resolution of the Zoning Board of Appeals.

CPLR §7803(3) requires this court to determine whether a municipality's "determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." It is well established that zoning boards have broad discretion in interpreting local

zoning ordinances and a court may not substitute its judgment for that of the zoning board. (Mueller v. Zoning Board of Appeals of the Town of Southold, 10 AD3d 687, 690 [2d Dept. 2004].)

The original complaint to the zoning administrator by the petitioner alleged that the town's review, consideration and proposed construction of a town well project at the water treatment plant was subject to special use permit and site plan provisions of the Town of Amenia Zoning Code. The zoning administrator denied the petitioner's complaint and the petitioner took an appeal to the zoning board of appeals. The record reflects that the zoning board of appeals properly considered the petitioner's appeal and carefully made specific findings of fact before denying the appeal. I find that the determination of the respondent ZBA was reasonable, rational and well-supported by statutory authority. (Halperin v. City of New Rochelle, 24 AD3d 768 [2d Dept. 2005].) There is no evidence presented on this petition that the determination of the respondent ZBA was arbitrary, unreasonable, irrational or indicative of bad faith.

An Article 78 proceeding must be treated by the court in the same manner as a motion for summary judgment and the court must determine whether or not there is a triable issue of fact. (CPLR §7804 [h]; Matter of Gagnon v. Board of Education of Manhasset Union Free School District, 119 AD2d 674, 675 [2d Dept. 1986].)

CPLR Rule 409(b) requires the court to make a summary determination on the pleadings and papers submitted as if a motion for summary judgment were before it. (Friends World College v. Nicklin, 249 AD2d 393 [2d Dept. 1998].) I find that there are no triable issues of fact in this proceeding. Therefore, it is ordered that the respondent shall have judgment against the petitioner dismissing the instant petition.

The Court read and considered the following documents upon this application:

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The foregoing constitutes the decision, order and judgment of the Court.

Dated: Poughkeepsie, New York
July 6, 2006

ENTER



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