

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

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Submitted - May 16, 2008

ROBERT A. SPOLZINO, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2007-07262

DECISION & JUDGMENT

In the Matter of Town of Huntington, petitioner,
v Thomas Maul, etc., et al., respondents.

(Index No. 24059/06)

John J. Leo, Town Attorney, Huntington, N.Y. (Ellen Schaffer of counsel), for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Benjamin N. Gutman and Ann P. Zybert of counsel), for respondent Thomas Maul, Commissioner of the New York State Office of Mental Retardation and Developmental Disabilities.

Moritt Hock Hamroff & Horowitz LLP, Garden City, N.Y. (Robert L. Schonfeld of counsel), for respondent Adults and Children with Learning and Developmental Disabilities, Inc.

Proceeding pursuant to CPLR article 78 to review a determination of the respondent Thomas Maul, Commissioner of the New York State Office of Mental Retardation and Developmental Disabilities, dated August 21, 2006, which, after a hearing, rejected the petitioner's objection to the establishment of a community residential facility for the disabled in the Town of Huntington.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with one bill of costs.

“[T]he only ground for sustaining a municipality's objection to the establishment of a community residential facility for the disabled is that it would create such a concentration of similar

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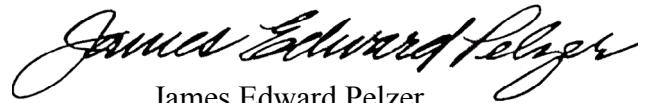
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facilities in an area that it would substantially alter the nature and character of the area” (*Matter of Town of Oyster Bay v Maul*, 231 AD2d 579; see Mental Hygiene Law § 41.34[c][1][C], [5]), which the municipality must establish by clear and convincing evidence (see *Matter of Village of Port Chester v Ayotte*, 34 AD3d 489; *Matter of Town of Mount Pleasant v New York State Off. of Mental Health*, 200 AD2d 576). “The petitioner's claim that there is a disproportionate distribution of community residential facilities for the disabled in the [town] and that it has more than its fair share of such facilities was insufficient to meet its burden” (*Matter of Town of Mt. Pleasant v Toulon*, 292 AD2d 615, 616; see *Matter of Town of Oyster Bay v Maul*, 231 AD2d 579).

The remaining concerns raised by the Town and its residents regarding, among other things, the safety of the facility’s residents, increased traffic, the adequacy of parking, the safety of children, the erosion of the area’s tax base, and the decline of property values were properly rejected, since these concerns were “speculative and undocumented” (*Matter of Town of Oyster Bay v Maul*, 231 AD2d at 579; see *Matter of Town of Mt. Pleasant v Toulon*, 292 AD2d at 616). Accordingly, the determination was supported by substantial evidence and must be confirmed (see Mental Hygiene Law § 41.34[c][5]; *Matter of Jennings v New York State Off. of Mental Health*, 90 NY2d 227).

SPOLZINO, J.P., COVELLO, DICKERSON and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court