

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

D21246
W/hu

_____AD3d_____

Argued - November 3, 2008

PETER B. SKELOS, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
EDWARD D. CARNI, JJ.

2007-05605

DECISION & ORDER

In the Matter of East End Property Company #1,
LLC, et al., appellants, v Planning Board of Town
of Brookhaven, et al., respondents.

(Index No. 29596/06)

Rosenberg Calica & Birney LLP, Garden City, N.Y. (Robert M. Calica and Judah Serfaty of counsel), for appellants.

Devitt Spellman Barrett, Smithtown, N.Y. (John M. Denby of counsel), for respondent Planning Board of Town of Brookhaven.

Westerman Ball Ederer Miller & Sharfstein, LLP, Mineola, N.Y. (Jeffrey A. Miller and Richard Gabriele of counsel), and Beveridge & Diamond, P.C., New York, N.Y. (Stephen L. Gordon and Michael Murphy of counsel), for respondent Caithness Long Island, LLC (one brief filed).

In a proceeding pursuant to CPLR article 78 to review a determination of the Planning Board of Town of Brookhaven dated September 25, 2006, which granted site plan approval for the construction of a 350-megawatt dual-fuel, combined cycle combustion turbine electric power generator, the petitioners appeal from a judgment of the Supreme Court, Suffolk County (Spinner, J.), dated May 22, 2007, which dismissed the proceeding on the ground that the petitioners lacked standing.

ORDERED that the judgment is affirmed, with one bill of costs.

November 25, 2008

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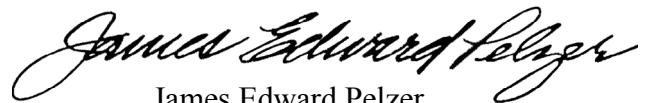
MATTER OF EAST END PROPERTY COMPANY #1, LLC v
PLANNING BOARD OF TOWN OF BROOKHAVEN

The Supreme Court properly concluded that the petitioners lacked standing to commence this proceeding (*see Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 774; *Matter of Long Is. Contractors' Assn. v Town of Riverhead*, 17 AD3d 590, 595; *Matter of Rediker v Zoning Bd. of Appeals of Town of Philipstown*, 280 AD2d 548; *Matter of Many v Village of Sharon Springs Bd. of Trustees*, 218 AD2d 845; *Matter of Casement v Town of Poughkeepsie Planning Bd.*, 162 AD2d 685; *see also Matter of Piela v Van Voris*, 229 AD2d 94).

The petitioners' remaining contentions need not be reached in light of our determination.

SKELOS, J.P., LIFSON, SANTUCCI and CARNI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court