

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

D21431  
W/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 18, 2008

ROBERT A. SPOLZINO, J.P.  
EDWARD D. CARNI  
RANDALL T. ENG  
JOHN M. LEVENTHAL, JJ.

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2008-02184

DECISION & JUDGMENT

In the Matter of Anthony Venditti, et al., petitioners,  
v New York State Department of Environmental  
Conservation, respondent.

(Index No. 80292/07)

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Menicucci, Villa & Associates PLLC, Staten Island, N.Y. (Richard A. Rosenzweig of counsel), for petitioners.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Benjamin N. Gutman, Monica Wagner, Norman Spiegel, and Lisa Feiner of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of the Commissioner of the New York State Department of Environmental Conservation dated August 7, 2007, which, upon adopting, in part, the findings and conclusions of an Administrative Law Judge, made after a hearing, that the petitioners violated the Freshwater Wetlands Act (ECL art 24) and 6 NYCRR 663.4, imposed a penalty upon the petitioners, and directed them to submit a restoration plan to the New York State Department of Environmental Conservation.

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

Judicial review of an administrative determination made after a hearing required by law, and at which evidence is taken, is limited to whether that determination is supported by substantial evidence (*see 300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 179). Substantial evidence “means such relevant proof as a reasonable mind may accept as adequate

December 9, 2008

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DEPARTMENT OF ENVIRONMENTAL CONSERVATION

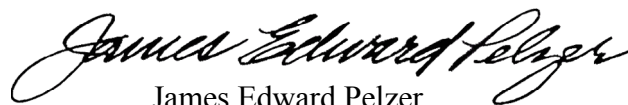
to support a conclusion or ultimate fact” (*id.* at 180; *see Matter of Steward v Mulligan*, 47 AD3d 822, 823; *Matter of Lynnann P. v Suffolk County Dept. of Social Servs.*, 28 AD3d 484, 485). “In the final analysis, it is not the function of the reviewing court to weigh the evidence or substitute its own judgment for that of an administrative body to whose expertise a subject matter has been entrusted, but rather to determine whether there is a ‘reasonable fulcrum of support in the record’ to sustain the body’s findings” (*Matter of Bradley Corporate Park v Crotty*, 39 AD3d 632, 634, quoting *Matter of Furey v County of Suffolk*, 105 AD2d 41, 43).

Here, the respondent’s determination that the petitioners violated the Freshwater Wetlands Act (*see* ECL art 24) by performing certain activities on land officially designated as a freshwater wetland and on adjacent land within 100 feet thereof, without the required permit, is supported by substantial evidence. In addition, it cannot be concluded as a matter of law that the respondent’s determination to order the petitioners to perform restoration to the extent possible “is so disproportionate to the offense as to be shocking to one’s sense of fairness” (*Matter of Waldren v Town of Islip*, 6 NY3d 735, 736, citing *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 233; *see Matter of Rutkunas v Stout*, 8 NY3d 897, 899).

The petitioners’ remaining contentions are without merit.

SPOLZINO, J.P., CARNI, ENG and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court