

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

M86942  
E/sl

ROBERT A. SPOLZINO, J.P.  
DANIEL D. ANGIOLILLO  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL, JJ.

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2009-02406

DECISION & ORDER ON MOTION

In the Matter of Home Depot U.S.A., Inc.,  
et al., respondents, v Town Board of Town  
of Southeast, et al., appellants.

(Index Nos. 07-11725, 07-23675)

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Motion by the respondents on appeals from an order and judgment of the Supreme Court, Westchester County, entered February 5, 2009, to dismiss the appeal by the appellants Town Board of the Town of Southeast and Town of Southeast on the ground that it was untimely taken, or, in the alternative, to direct that the appeal be perfected by a date certain and for a preference in the calendaring of that appeal. Separate cross motions by the appellants Town Board of the Town of Southeast and Town of Southeast, and the appellant Independent Sewage Works, Inc., pursuant to CPLR 5520(a) to deem their notices of appeal, which were timely filed, to be timely served. Separate motion by the respondents to direct that the appeal by Independent Sewage Works, Inc., be perfected by a date certain and for a preference in the calendaring of that appeal.

Upon the papers filed in support of the motions and the cross motions, and the papers filed in opposition thereto, it is

ORDERED that the cross motions are granted, and the notices of appeal, which were timely filed, are deemed timely served (*see* CPLR 5520[a]); and it is further,

ORDERED that the branch of the motion which is to dismiss the appeal of Town Board of Town of Southeast and Town of Southeast is denied; and it is further,

ORDERED that the branches of the motions which are to direct that the appeals be perfected by a date certain are granted, and the appellants shall perfect their appeal on or before July 6, 2009; and it is further,

May 21, 2009

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ORDERED that the motions are otherwise denied.

SPOLZINO, J.P., ANGIOLILLO, CHAMBERS and HALL, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court