SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department

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CA 08-02124

PRESENT: HURLBUTT, J.P., CENTRA, PERADOTTO, GREEN, AND GORSKI, JJ.

IN THE MATTER OF RESIDENTS INVOLVED IN COMMUNITY ACTION (RICA), DANIEL BEYER AND DANIEL O'BRIEN, PETITIONERS-APPELLANTS,

V MEMORANDUM AND ORDER

TOWN/VILLAGE OF LOWVILLE PLANNING BOARD AND MJL CRUSHING, LLC, RESPONDENTS-RESPONDENTS.

SCOTT F. CHATFIELD, MARIETTA, FOR PETITIONERS-APPELLANTS.

BOND, SCHOENECK & KING, PLLC, UTICA (RAYMOND A. MEIER OF COUNSEL), FOR RESPONDENT-RESPONDENT TOWN/VILLAGE OF LOWVILLE PLANNING BOARD.

THOMAS P. HUGHES, NEW HARTFORD, FOR RESPONDENT-RESPONDENT MJL CRUSHING, LLC.

Appeal from a judgment (denominated order and judgment) of the Supreme Court, Lewis County (Joseph D. McGuire, J.), entered April 30, 2008 in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioners commenced this proceeding pursuant to CPLR article 78 challenging the determination of respondent Town/Village of Lowville Planning Board (Board) approving the application of respondent MJL Crushing, LLC (MJL) for a special use permit to place a limestone mining operation in an agricultural zone. Supreme Court properly dismissed the petition. "The classification of a particular use as permitted in a zoning district is 'tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood' " (*Matter of Twin City Recycling Corp. v Yevoli*, 90 NY2d 1000, 1002, quoting *Matter of North Shore Steak House v Board of Appeals of Inc. Vil. of Thomaston*, 30 NY2d 238, 243). Contrary to petitioners' contention, the record supports the Board's determination that MJL demonstrated that the proposed mining operation is in conformance with the standards imposed by Article XII of the Town Code of the Town of Lowville with respect to special use permits, and we thus conclude that the application was properly granted (*cf. Matter of Schadow v Wilson*, 191 AD2d 53, 57; *see generally Matter of Boyer v Davenport*,

304 AD2d 1028, *appeal dismissed and lv denied* 100 NY2d 601).

Entered: April 24, 2009

Patricia L. Morgan
Deputy Clerk of the Court