

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1626

CA 10-01408

PRESENT: MARTOCHE, J.P., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ.

IN THE MATTER OF STATE UNIVERSITY OF NEW YORK,
PETITIONER/PLAINTIFF-APPELLANT-RESPONDENT,

V

MEMORANDUM AND ORDER

TOWN OF AMHERST, SATISH MOHAN, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS SUPERVISOR OF
TOWN OF AMHERST, TOWN BOARD OF TOWN OF AMHERST,
ZONING BOARD OF APPEALS OF TOWN OF AMHERST,
GMH COMMUNITIES, LP, COLLEGE PARK INVESTMENTS,
LLC, DAVID LADE, NANCY LADE, WILLIAM S. SCHLEGEL,
JOSE OLIVERA, MICHELE OLIVERA, LESTER C.
BUSDIECKER, MATTHEW MAROTTA, PAMELA MAROTTA,
MARK R. KELLAM, PAUL CUMMINS, PAMELA CUMMINS,
ETTORE INFANTI, MARTIN KEITZ, KIMBERLY MAST,
JEFFREY BROOKS, BARBARA BROOKS, DANIEL P. HULL,
THOMAS KETCHUM, IN HIS OFFICIAL CAPACITY AS
DIRECTOR OF TOWN OF AMHERST BUILDING DEPARTMENT,
RESPONDENTS/DEFENDANTS-RESPONDENTS,
AND EUGENE TENNEY,
RESPONDENT/DEFENDANT-RESPONDENT-APPELLANT.
(APPEAL NO. 3.)

HODGSON RUSS LLP, BUFFALO (BENJAMIN M. ZUFFRANIERI, JR., OF COUNSEL),
FOR PETITIONER/PLAINTIFF-APPELLANT-RESPONDENT.

E. THOMAS JONES, TOWN ATTORNEY, WILLIAMSVILLE (ALAN P. MCCrackEN OF
COUNSEL), FOR RESPONDENTS/DEFENDANTS-RESPONDENTS TOWN OF AMHERST,
SATISH MOHAN, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SUPERVISOR
OF TOWN OF AMHERST, TOWN BOARD OF TOWN OF AMHERST, ZONING BOARD OF
APPEALS OF TOWN OF AMHERST AND THOMAS KETCHUM, IN HIS OFFICIAL
CAPACITY AS DIRECTOR OF TOWN OF AMHERST BUILDING DEPARTMENT.

LAW OFFICES OF EUGENE C. TENNEY, BUFFALO (EUGENE C. TENNEY OF
COUNSEL), FOR RESPONDENT/DEFENDANT-RESPONDENT-APPELLANT.

HOPKINS & SORGI, PLLC, WILLIAMSVILLE (SEAN W. HOPKINS OF COUNSEL), FOR
RESPONDENTS/DEFENDANTS-RESPONDENTS GMH COMMUNITIES, LP, COLLEGE PARK
INVESTMENTS, LLC, DAVID LADE, NANCY LADE, WILLIAM S. SCHLEGEL, JOSE
OLIVERA, MICHELE OLIVERA, LESTER C. BUSDIECKER, MATTHEW MAROTTA,
PAMELA MAROTTA, MARK R. KELLAM, PAUL CUMMINS, PAMELA CUMMINS, ETORE
INFANTI, MARTIN KEITZ, KIMBERLY MAST, JEFFREY BROOKS, BARBARA BROOKS
AND DANIEL P. HULL.

Appeal and cross appeal from a judgment (denominated order and judgment) of the Supreme Court, Erie County (Gerald J. Whalen, J.), entered June 9, 2010 in a CPLR article 78 proceeding and a declaratory judgment action. The judgment granted the motions of respondents/defendants to dismiss the petition/complaint.

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

Same Memorandum as in *Matter of State Univ. of N.Y. v Town of Amherst* ([appeal No. 1] ___ AD3d ___ [Feb. 18, 2011]).

Entered: February 18, 2011

Patricia L. Morgan
Clerk of the Court