

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

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CA 15-02003

PRESENT: WHALEN, P.J., SMITH, NEMOYER, CURRAN, AND SCUDDER, JJ.

IN THE MATTER OF CASSARA PROPERTIES, LLC, AND
CASSARA MANAGEMENT GROUP, INC.,
PETITIONERS-APPELLANTS,

V

MEMORANDUM AND ORDER

TOWN OF GREECE, TOWN BOARD OF TOWN OF GREECE,
AND FULLER ROAD MANAGEMENT CORPORATION, NECESSARY
PARTY, RESPONDENTS-RESPONDENTS.

MCCONVILLE, CONSIDINE, COOMAN & MORIN, P.C., ROCHESTER (PETER J.
WEISHAAR OF COUNSEL), FOR PETITIONERS-APPELLANTS.

BRIAN E. MARIANETTI, TOWN ATTORNEY, GREECE, FOR
RESPONDENTS-RESPONDENTS TOWN OF GREECE AND TOWN BOARD OF TOWN OF
GREECE.

WHITEMAN OSTERMAN & HANNA LLP, ALBANY (JOHN J. HENRY OF COUNSEL), FOR
RESPONDENT-RESPONDENT FULLER ROAD MANAGEMENT CORPORATION, NECESSARY
PARTY.

Appeal from a judgment (denominated order and judgment) of the
Supreme Court, Monroe County (Evelyn Frazee, J.), entered April 7,
2015 in a proceeding pursuant to CPLR article 78. The judgment denied
the petition.

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

Memorandum: We affirm for reasons stated in the decision at
Supreme Court. We add only that petitioners' contentions that
respondent Town Board of the Town of Greece (Town Board) violated the
Open Meetings Law by granting the application of respondent Fuller
Road Management Corporation (FRMC) without considering, inter alia,
the testimony from the public hearing, and that the Town Board acted
in an arbitrary and capricious manner in granting FRMC's application
by adopting the resolutions drafted by the attorney for respondent
Town of Greece without first reviewing them are improperly raised for
the first time on appeal (*see generally Accadia Site Contr., Inc. v
Erie County Water Auth.*, 115 AD3d 1351, 1351). In any event, those
contentions are without merit.

Entered: September 30, 2016

Frances E. Cafarell
Clerk of the Court