

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
SECOND JUDICIAL DEPARTMENT

Matter of Town of Mount Pleasant v. Loomis

2023 NY Slip Op 03922 (App. Div. 2023) · No. 2019-06899 · Decided July 26, 2023

SUMMARY

The Appellate Division, Second Department, confirmed an administrative determination approving a community residential facility for six developmentally disabled adults in the Town of Mount Pleasant. The court held that the Town failed to establish by clear and convincing evidence that the facility would create an overconcentration of similar facilities substantially altering the nature and character of the area, and dismissed the proceeding as against the hearing officer because he was not the final decision-maker.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                           |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Paul Wooten, J.P.; William G. Ford, J.; Deborah A. Dowling, J.; Lillian Wan, J.                                                                                                                                                                                                                           |
| JURISDICTION          | New York                                                                                                                                                                                                                                                                                                  |
| DECIDED               | July 26, 2023                                                                                                                                                                                                                                                                                             |
| DOCKET                | 2019-06899                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | CPLR article 78 proceeding to review the Acting Commissioner's determination approving a community residential facility for developmentally disabled adults after an administrative hearing.                                                                                                              |
| STANDARD OF REVIEW    | Whether the administrative determination was supported by substantial evidence; the municipality bore the burden of demonstrating by clear and convincing evidence that the facility would create an overconcentration of similar facilities substantially altering the nature and character of the area. |
| PRECEDENTIAL VALUE    | precedential                                                                                                                                                                                                                                                                                              |

## PARTIES

Town of Mount Pleasant v. Peter S. Loomis, Theodore Kastner, New York State Office for People with Developmental Disabilities, Young Adult Institute, Inc.

## TOPICS

municipal law

judicial review of agency action

administrative law

appellate procedure

civil procedure

## PRACTICE AREAS

municipal law

administrative law

disability law

civil procedure

appellate procedure

## QUESTIONS PRESENTED

1. Whether Peter S. Loomis, the hearing officer who did not issue the final administrative determination, was a proper party to the CPLR article 78 proceeding.
2. Whether the Acting Commissioner's determination approving the community residential facility was supported by substantial evidence.
3. Whether the Town established by clear and convincing evidence that the proposed facility would create an overconcentration of similar facilities substantially altering the nature and character of the area.

## HOLDINGS

1. A hearing officer who did not render the final determination under review is not a proper party to the article 78 proceeding.
2. The only ground on which a municipality may sustain an objection to establishment of a community residential facility for disabled persons is that the facility would create such a concentration of similar facilities in the area that it would substantially alter the area's nature and character.
3. The Acting Commissioner's determination rejecting the Town's objection and approving the facility was supported by substantial evidence.

## KEY QUOTATIONS

*"the only ground for sustaining a municipality's objection to the establishment of a community residential facility for the disabled is that it would create such a concentration of similar facilities in an area that it would substantially alter the nature and character of the area"* ([\*2])

## FACTUAL BACKGROUND

In November 2018, Young Adult Institute, Inc. notified the Town of Mount Pleasant of its intent to establish a community residential facility for six developmentally disabled adults. The Town objected after a public hearing and requested an administrative hearing. Following that hearing, the Acting Commissioner of the New York State Office for People with Developmental Disabilities rejected the Town's objection and approved the proposed facility.

## PROCEDURAL HISTORY

YAI notified the Town that it intended to establish a community residential facility for six developmentally disabled adults. After the Town objected and requested an administrative hearing under Mental Hygiene Law § 41.34(c)(5), the Acting Commissioner rejected the objection and approved the facility. The Town commenced an article 78 proceeding, and Supreme Court transferred it to the Appellate Division under CPLR 7804(g).

## DISPOSITION

other

## CASES CITED

- Matter of Gurariy v Zucker, 196 AD3d 574, 576
- Matter of La Russo v Neuringer, 105 AD3d 743, 744
- Matter of Town of Huntington v Maul, 52 AD3d 725, 726
- Matter of Town of Oyster Bay v Maul, 231 AD2d 579, 579
- Matter of Jennings v New York State Off. of Mental Health, 90 NY2d 227, 240-241
- Matter of Village of Port Chester, N.Y. v Delaney, 148 AD3d 1163, 1164
- Matter of City of Mount Vernon v OMRDD, 56 AD3d 771, 772

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