

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

803

CA 07-02277

PRESENT: HURLBUTT, J.P., SMITH, CENTRA, PINE, AND GORSKI, JJ.

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IN THE MATTER OF DONALD GRASSO, DAVID  
MONOLOPOLUS, AND DANIEL T. WARREN,  
PETITIONERS-APPELLANTS,

V

MEMORANDUM AND ORDER

TOWN OF WEST SENECA, ZONING BOARD OF APPEALS  
OF TOWN OF WEST SENECA, TOWN OF WEST SENECA  
BUILDING DEPARTMENT, WILLIAM CZUPRYNSKI, AS CODE  
ENFORCEMENT OFFICER OF TOWN OF WEST SENECA, CANISIUS  
HIGH SCHOOL, ALSO KNOWN AS CANISIUS HIGH SCHOOL  
OF BUFFALO, NEW YORK, AND JAMES P. HIGGINS, S.J.,  
AS PRESIDENT OF CANISIUS HIGH SCHOOL,  
RESPONDENTS-RESPONDENTS.  
(APPEAL NO. 1.)

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DANIEL T. WARREN, DONALD GRASSO, AND DAVID MONOLOPOLUS, PETITIONERS-  
APPELLANTS PRO SE.

CONNORS & VILARDO, LLP, BUFFALO (LAWRENCE J. VILARDO OF COUNSEL), FOR  
RESPONDENTS-RESPONDENTS TOWN OF WEST SENECA, ZONING BOARD OF APPEALS  
OF TOWN OF WEST SENECA, TOWN OF WEST SENECA BUILDING DEPARTMENT, AND  
WILLIAM CZUPRYNSKI, AS CODE ENFORCEMENT OFFICER OF TOWN OF WEST  
SENECA.

HARRIS BEACH PLLC, BUFFALO (RICHARD T. SULLIVAN OF COUNSEL), FOR  
RESPONDENTS-RESPONDENTS CANISIUS HIGH SCHOOL, ALSO KNOWN AS CANISIUS  
HIGH SCHOOL OF BUFFALO, NEW YORK, AND JAMES P. HIGGINS, S.J., AS  
PRESIDENT OF CANISIUS HIGH SCHOOL.

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Appeal from a judgment of the Supreme Court, Erie County (Diane  
Y. Devlin, J.), entered October 23, 2007 in a proceeding pursuant to  
CPLR article 78. The judgment dismissed the petition.

Now, upon the stipulation dismissing the petition against  
respondent James P. Higgins, S.J., as president of Canisius High  
School, signed by petitioners and the attorneys for respondents and  
filed in the Erie County Clerk's Office on May 1, 2009,

It is hereby ORDERED that said appeal with respect to respondent  
James P. Higgins, S.J., as president of Canisius High School, is  
unanimously dismissed upon stipulation and the judgment is otherwise  
affirmed without costs.

Memorandum: Petitioners commenced this CPLR article 78 proceeding seeking, inter alia, to annul the determination of respondent Zoning Board of Appeals of the Town of West Seneca (ZBA) issuing a building permit for the construction of athletic facilities to respondent Canisius High School, also known as Canisius High School of Buffalo, New York, and respondent president thereof. They also sought to annul the negative declaration issued pursuant to article 8 of the Environmental Conservation Law (State Environmental Quality Review Act [SEQRA]). We note at the outset that we agree with petitioners that Supreme Court erred in determining that it lacked jurisdiction over petitioners Donald Grasso and David Monopolus based on their failure to verify the petition. Respondents are deemed to have waived that omission inasmuch as they never raised the issue or notified petitioners of it (*see Lepkowski v State of New York*, 1 NY3d 201, 210; *Matter of Kocur v Erie County Water Auth.*, 292 AD2d 858). We further conclude, however, that the petition need not be reinstated with respect to those petitioners because the court properly dismissed the petition in its entirety, on the merits. The determination of the ZBA that the proposed high school athletic facilities constituted a permissible educational use under the Town Code within the subject zoning district was neither unreasonable nor irrational (*see Matter of Frishman v Schmidt*, 61 NY2d 823, 825; *see generally Town of Islip v Dowling Coll.*, 275 AD2d 366, 367). Further, we conclude on the record before us that respondent Town of West Seneca complied with SEQRA, i.e., it "identified the relevant areas of environmental concern, took a 'hard look' at them, and made a 'reasoned elaboration' of the basis for its determination" (*Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 417). We have reviewed petitioners' remaining contentions and conclude that they are without merit.

Entered: June 5, 2009

Patricia L. Morgan  
Clerk of the Court