



**"The"**  
**Town of Amherst**

**Brian J. Kulpa, Supervisor**  
**June 14, 2018**

**Center for Innovation**  
**Center For Life Long Learning**  
**Center of Arts & Culture**

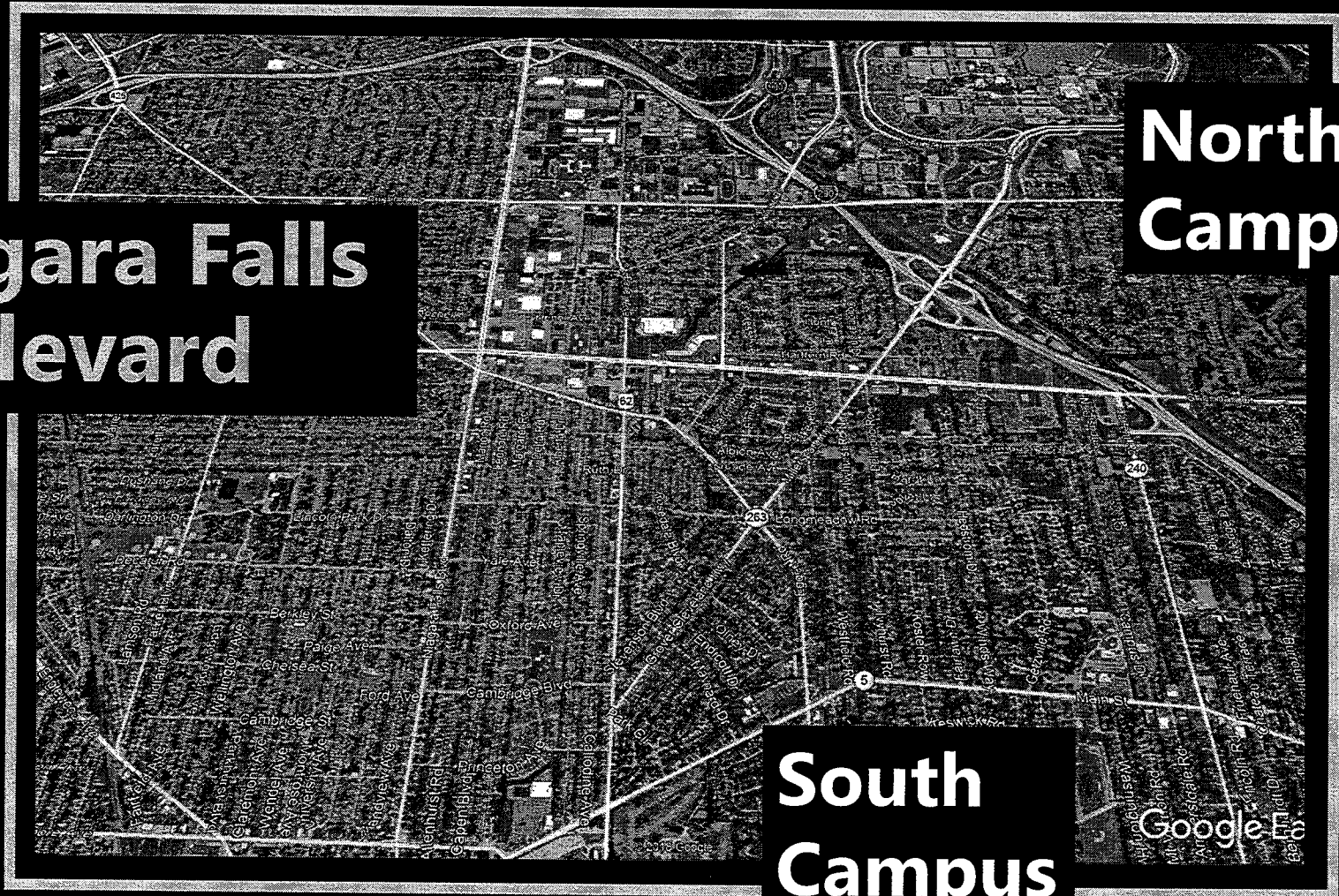
Our Town  
Our Story

**Niagara Falls  
Boulevard**

**North  
Campus**

**South  
Campus**

Google Earth



**Light Rail  
Vision**



**North  
Campus**

**South  
Campus**

Google Earth

**EGGERTSVILLE  
URBAN CORE**

**14,972**

People

**5**

Schools

**\$672**

Median Monthly Rent

**4,800 /sq. mi**

Density

**\$122,131**

Median Home Value

# Amherst's Downtown

14,972 People

4,800 people/sq. mi

Population Density

Greater than:

East Aurora

Dunkirk

Lockport

Olean

Lackawanna

Lancaster

Williamsville





# Amherst's Downtown

- 14,972 People
- \$122,131 Median Home Value (2017)
- \$672 Median Monthly Rent
- 2 Low-income Housing Complexes
- 9 Bus Routes
- 5 Top-rated Schools
- 5 Major Grocery Stores & 5 Ethnic Groceries
- 738 Businesses (half retail)
- 10,778 Employees

Google Earth

# Property Values - Eggertsville

	11/1/15 – 10/31/16	11/1/16 – 10/31/17	% Change	% Not Owner Occupied
<b>Amherst Town Wide</b>	\$230,115	\$236,401	2.73%	
<b>Eggertsville</b>				
West of Bailey, South of Longmeadow (3700)	\$122,520	\$136,254	11.21%	19.4%
North of Longmeadow, Straddling Sheridan (3701)	\$125,618	\$126,579	0.77%	13.04%
East of Bailey, Millersport Area (3800)	\$153,934	\$156,443	1.63%	9.58%
North of Eggert, South of Sheridan, West of Millersport (3900)	\$96,669	\$92,656	-4.15%	24.2%
<b>Total Eggertsville</b>	\$124,685	\$127,983	2.64%	
<b>Total Eggertsville Excluding 3700</b>	\$125,407	\$125,226	-0.583%	



Where We  
are Going



# Boulevard Gateway

Search

THE BUFFALO NEWS

Sign



One of five former gas station properties owned by United Refining Co. in Erie County, this former Red Apple at 159 Niagara Falls Blvd. in Amherst has been a source of frustration for local officials for years. (John Hickey/Buffalo News)

## 'Zombie' gas station lots frustrate municipalities throughout Erie County

By Stephen T. Watson | Published April 7, 2018 | Updated April 9, 2018

SHARE TWITTER EMAIL

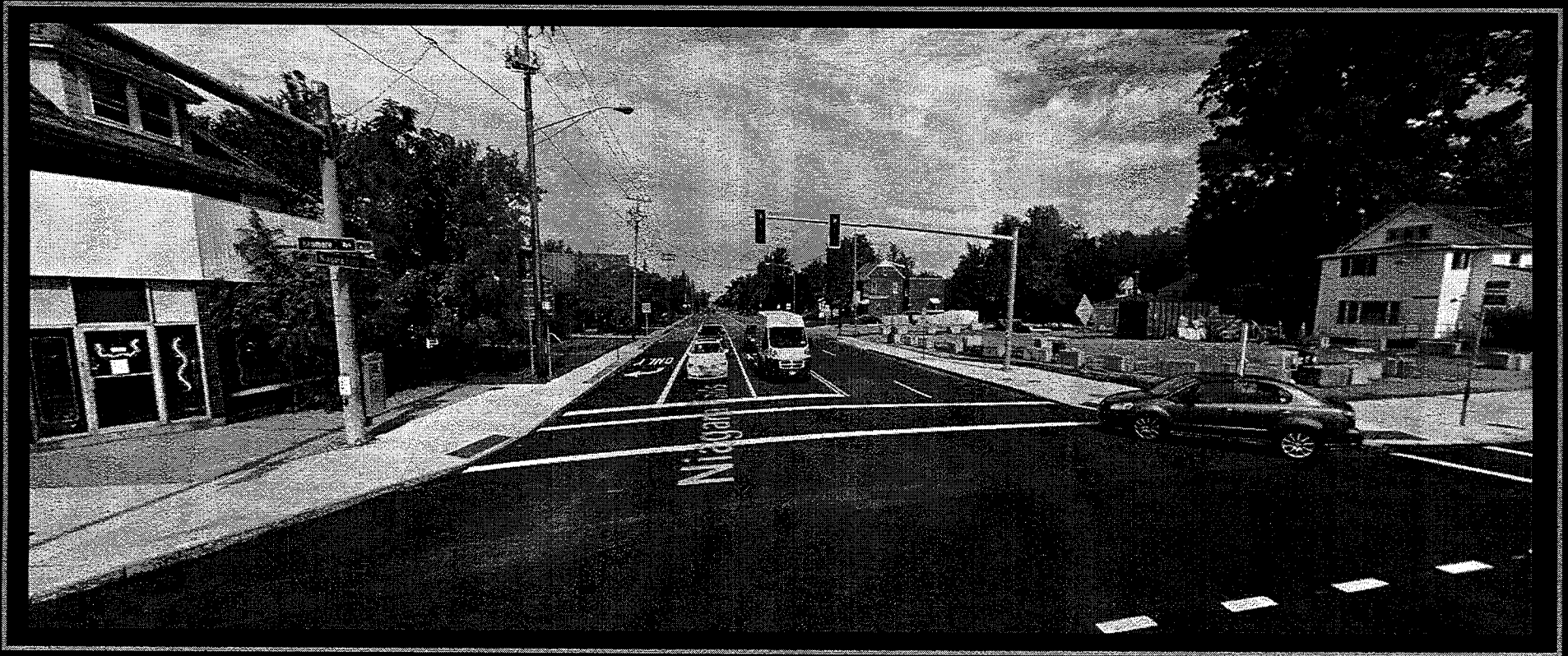
Amherst says it has an un-welcome mat greeting visitors at its front door.

The vacant former Red Apple gas station property at the corner of Niagara Falls Boulevard and Kenmore Avenue has long

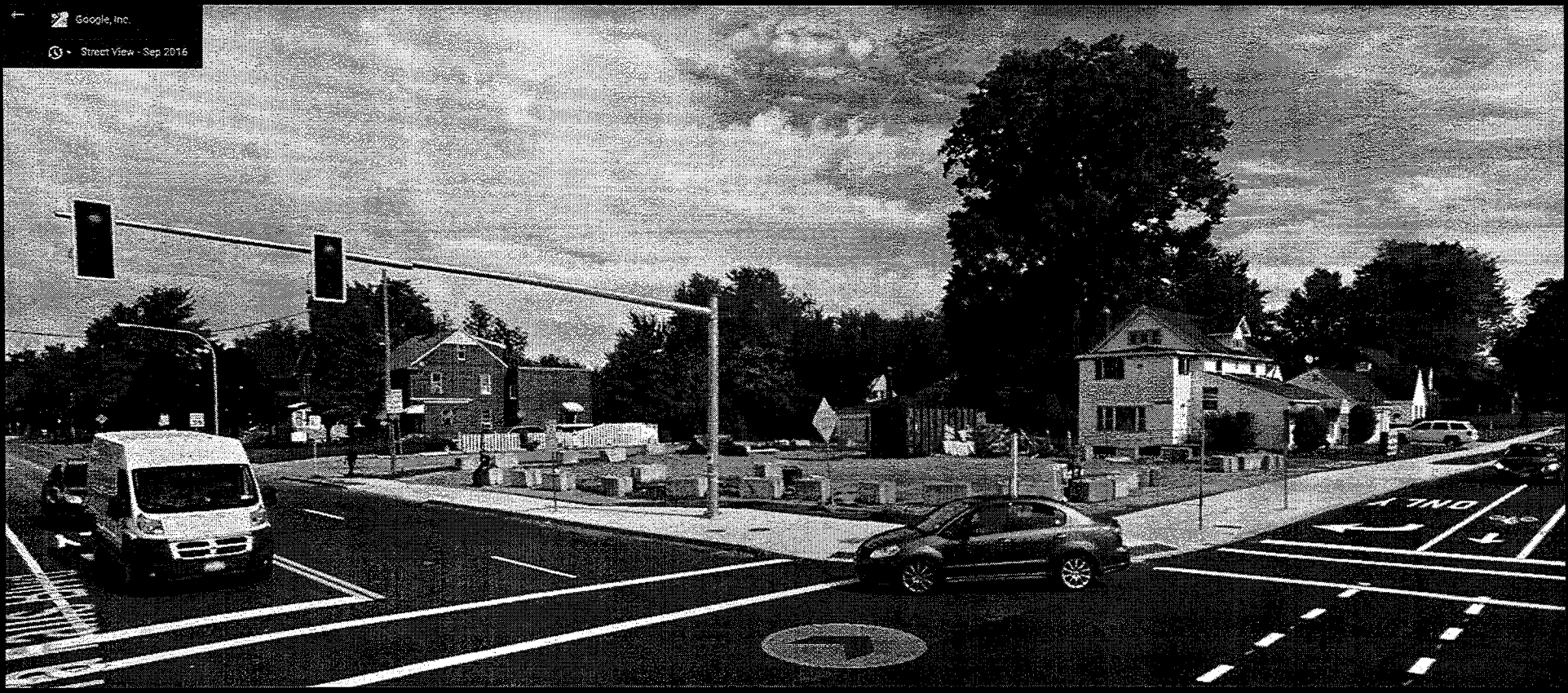


# Boulevard Gateway

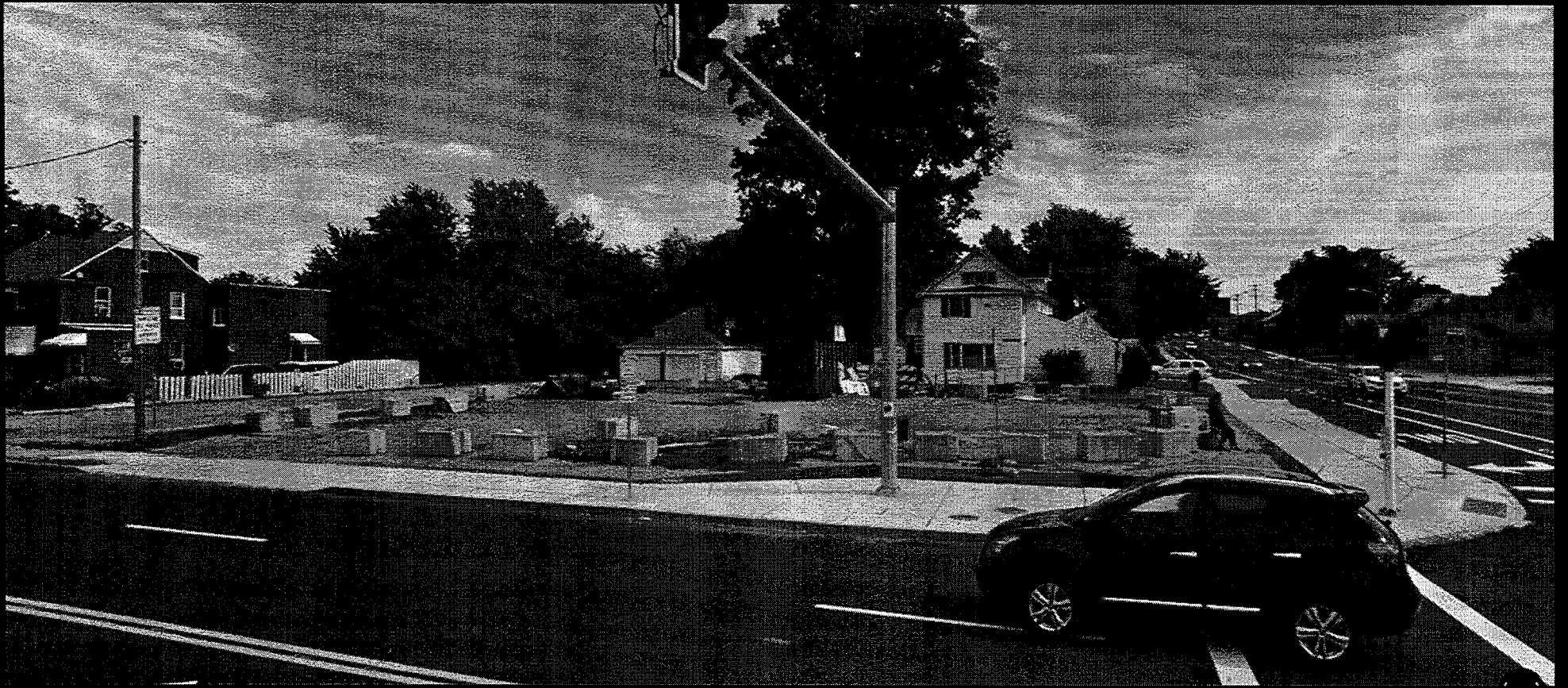
## Kenmore Ave. and Niagara Falls Blvd.



Google, Inc.  
Street View - Sep 2016

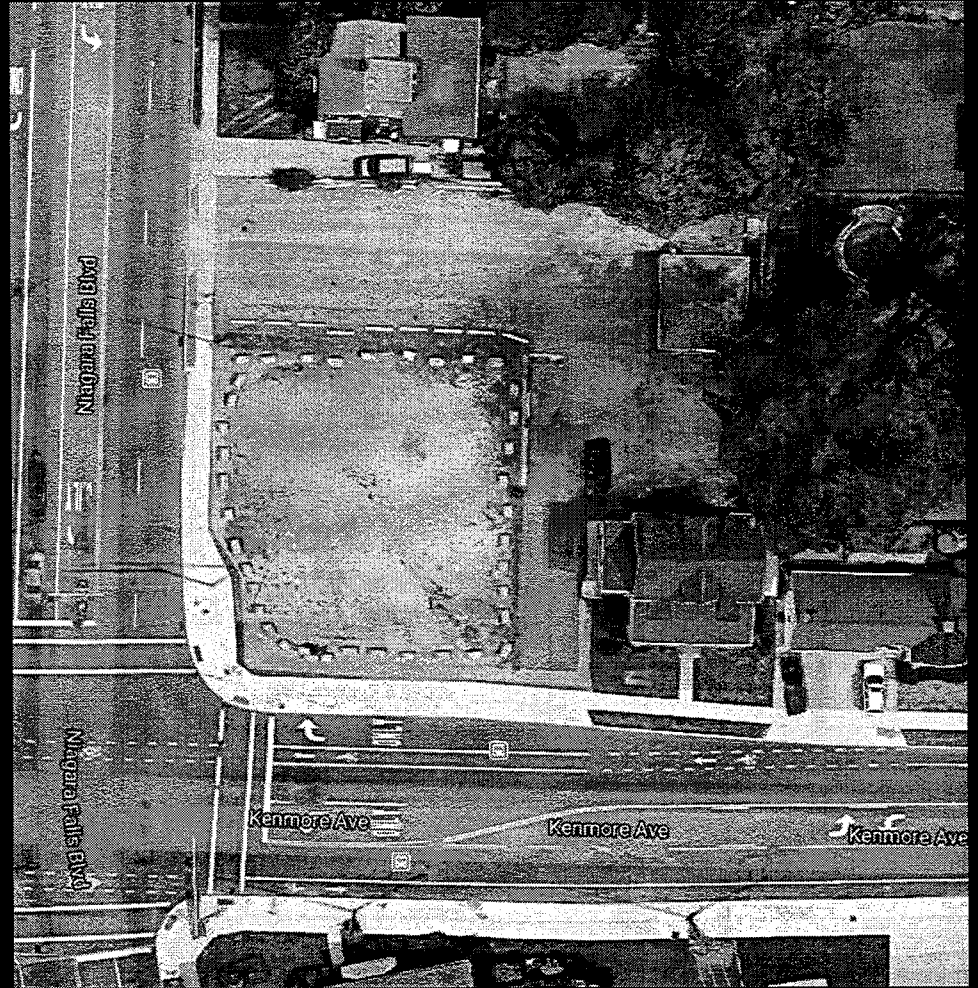


# Boulevard Gateway



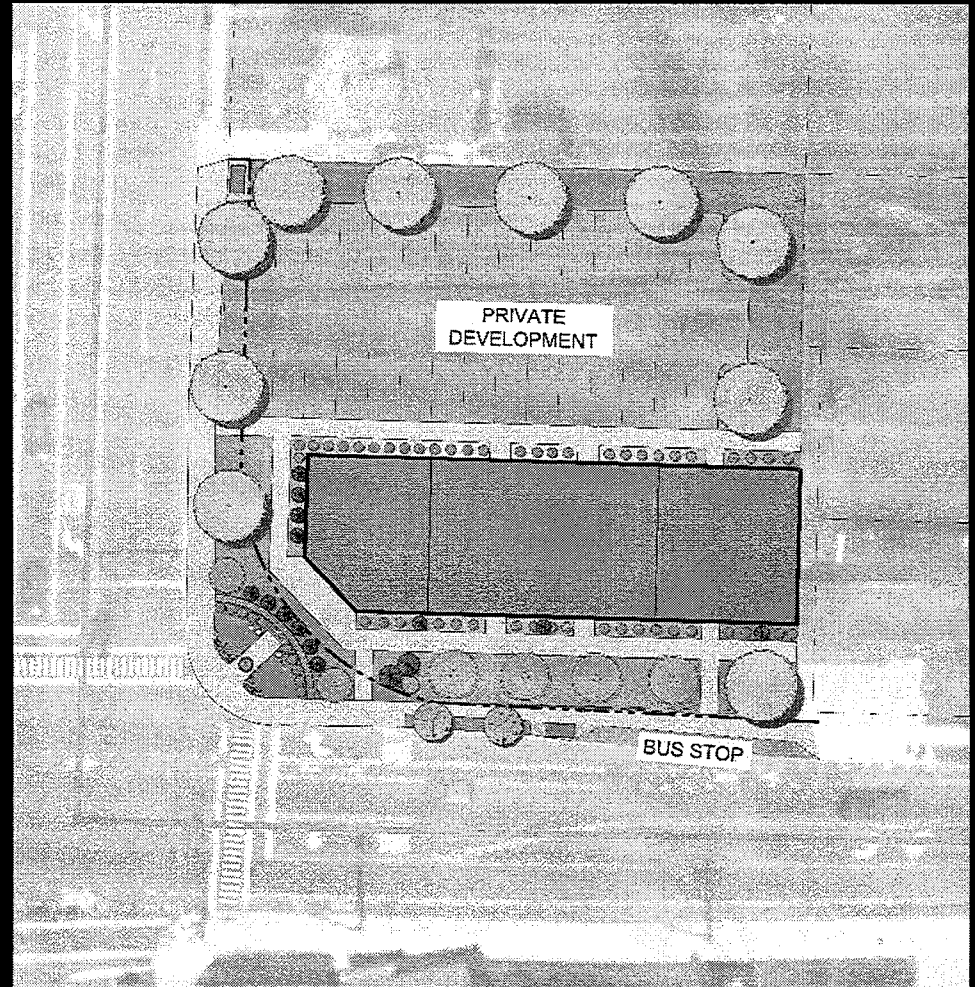
# Boulevard Gateway

# Boulevard Gateway

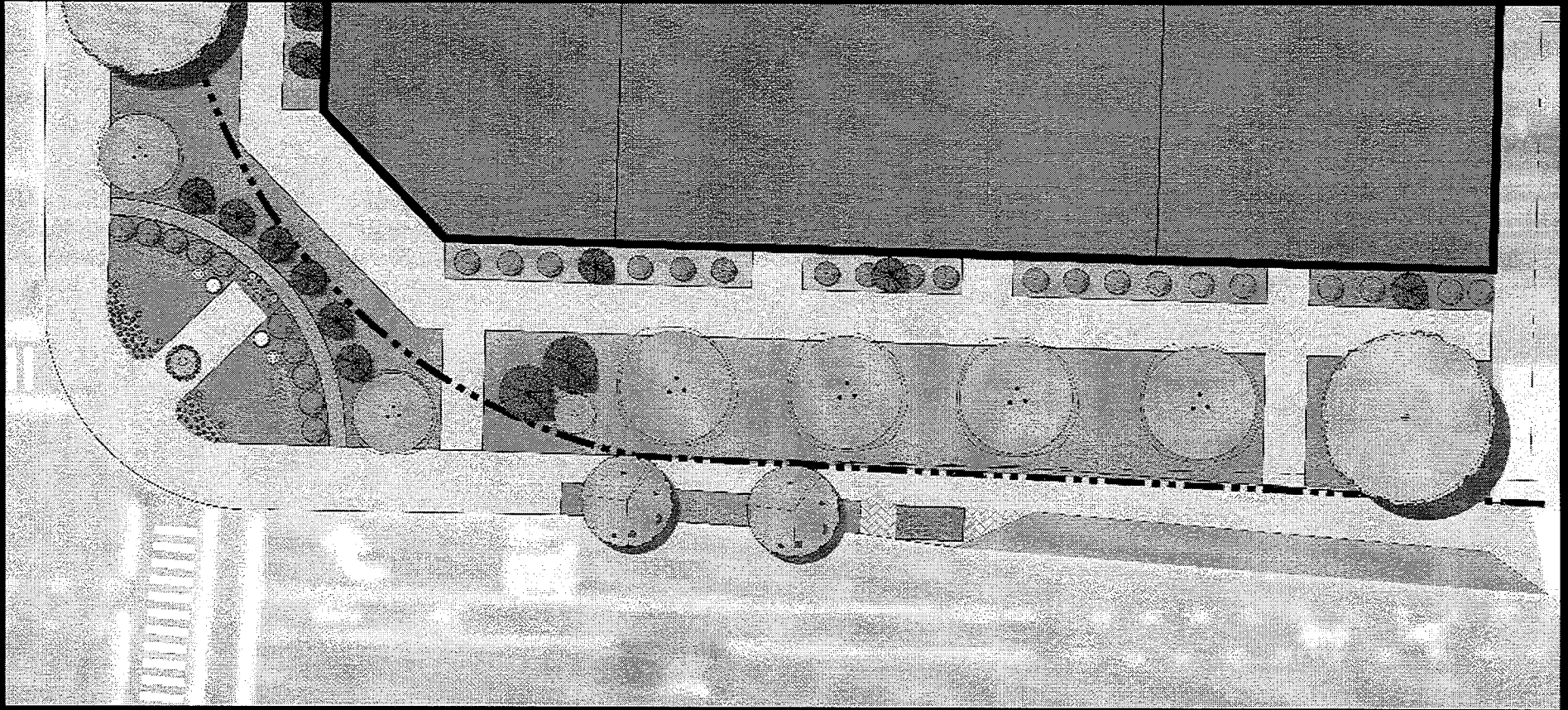


# Boulevard Gateway

- Parklet, gateway, bus stop, Mixed-use Building







# Boulevard Gateway

TOWN OF AMHERST  
5583 Main Street  
Williamsville, New York 14221

In the Matter of: )  
EMINENT DOMAIN PROCEEDINGS )  
159 NIAGARA FALLS BOULEVARD )  
DATE: June 22, 2018 )  
)  
)  
)  
)  
)  
)

Held at Windermere Elementary School Auditorium on  
June 22, 2018, 291 Windermere Boulevard, Amherst, New York  
14223, at 7:00 P.M. pursuant to notice.

FOR THE TOWN: STANLEY J. SLIWA, ESQ  
(Town Attorney)

FOR UNITED REFINING: VINCENT HANLEY, ESQ

TRANSCRIPTION SERVICE: Associated Reporting Service  
Post Office Box 674  
229 West Genesee Street  
Buffalo, New York 14201-0674  
(716) 444-5165

Proceedings recorded by electronic sound recording  
transcript produced by transcription service.

Associated Reporting Service  
(716) 444-5165

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INDEX

<u>SPEAKERS</u>	<u>PAGE</u>
Stanley Sliwa, Esq.	3
Bryan Culpa	5
Vincent Hanley, Esq.	10
Georgia Puehm	12

159 Niagara Falls Boulevard

P R O C E E D I N G S

1  
2 MR. SLIWA: Good evening. My name is Stanley  
3 Sliwa. I'm the Town Attorney for the Town of Amherst.  
4 We're here today to conduct a public hearing pursuant to  
5 eminent domain procedure law section 203, to outline the  
6 public purposes regarding the acquisition of a parcel  
7 located at 159 Niagara Falls Boulevard, which is adjacent to  
8 Kenmore Avenue, in the Town of Amherst, pursuant to Town  
9 Board resolution 2018-538.

10 Tonight's meeting is being audio recorded for  
11 purposes of producing a transcript of the proceedings. ~~Due~~<sup>Due</sup>  
12 to this, we would ask that anyone wishing to speak, please  
13 state your name fully and clearly, spelling your last name  
14 and also provide your address, so that we may keep an  
15 accurate record of your comments.

16 Any comments not made in to a microphone will not  
17 be included in the official record of tonight's proceeding,  
18 so we that, if anyone wishes to be heard, you can come up to  
19 the podium and speak in to the microphone and be recorded.  
20 We ask that you speak clearly and slowly. Thank you for  
21 your anticipated cooperation in this matter.

22 There are two exits on both side of the  
23 stage, in case there's an emergency. As well as two  
24 in the back.

25 The property at issue is presently owned by

159 Niagara Falls Boulevard

1 United Refining Company of Pennsylvania and is  
 2 described as a all that tract, or parcel of land,  
 3 situated in the Town of Amherst, County of Erie, State  
 4 of New York, as being part of lot 21, Township 12,  
 5 range 7 of the Holland Land Company survey, bounded  
 6 and described as follows.

7 It's the parcel that begins at the point of  
 8 intersection of the easterly line of Niagara Falls  
 9 Boulevard, 66 feet wide, and the northerly line of  
 10 Kenmore Avenue, 66 feet wide, running then northerly  
 11 along the easterly line of Niagara Falls Boulevard,  
 12 104 feet, then easterly, parallel to Kenmore Avenue  
 13 for 93 feet, then southernly parallel with Niagara  
 14 Falls Boulevard 104 feet to the northerly line of  
 15 Kenmore and then westerly along the northerly line of  
 16 Kenmore Avenue 93 feet to the point it of beginning.

17  
 18 This included the parcel, except for that  
 19 part that was appropriated on their map, number 142,  
 20 parcel 154 in liber (sic), 10920 of deeds at page  
 21 9334, which relates to an easement obtained by the  
 22 State of New York.

23 Publication fo the notice regarding this  
 24 hearing was done in the Amherst Bee on May 23, May  
 25 30<sup>th</sup>, June 1<sup>st</sup>, June 13<sup>th</sup> and June 20<sup>th</sup>, 2018. And we

159 Niagara Falls Boulevard

1 have marked as exhibits the notice of publication as  
2 appeared in the Amherst Bee.

3 This project itself, will be described by  
4 Town Supervisor Brian Kulpa, who will outline the  
5 public purposes regarding the acquisition of these  
6 premises.

7 After Supervisor Kulpa gives his  
8 presentation, we will hear from any representative, if  
9 present, from United Refining Company, who will be  
10 afforded the opportunity to provide their input  
11 regarding the proposed acquisition of this property.  
12 And then from any resident which is -- who wishes to  
13 speak. I see only three people here, so if all of us  
14 speak, even take up 15 minutes, we'll still be out of  
15 here by 8:00. Thank you very much.

16 MR. KULPA: It's a little funny speaking in to  
17 a microphone with only a few people, but. Hi, I'm  
18 Brian Kulpa. I'm the Supervisor in the Town of  
19 Amherst. And, when I say the Town of Amherst, I mean  
20 the Town of Amherst, right? There's only one of these  
21 places.

22 Amherst is the center of innovation, the  
23 center of lifelong learning, the center of arts and  
24 culture. Sometimes we do a better job with that than  
25 others.

## 159 Niagara Falls Boulevard

1           Tonight we're here to talk a little but about  
2           a portion of our town and a portion of our story. If  
3           you look at the area west of, you know, sort of the  
4           Eggertsville area, the area that is known as, as  
5           Eggertsville. It's an area that is bounded by Niagara  
6           Falls Boulevard, approximately Getzville Road,  
7           although there's some deliberation over whether  
8           somebody's from Eggertsville and Snyder, along those  
9           routes.

10           It's an area that is long been in need of  
11           Town reactivation and reinvestment, in the public  
12           sector. We know, based on plans submitted for the  
13           SEQR process, that right now the State and the NFTA  
14           are considering an extension of light rail from south  
15           campus, either on Bailey or on Niagara Falls  
16           Boulevard, north to connect to Maple to the,  
17           ultimately to the University's north campus.

18           It's an area of significant interest to us  
19           because, right now it is an area that's highly dense.  
20           It's a 4,800 per square mile density, with 5 schools  
21           and almost 15,000 people living within it. And it's  
22           an area that the Town is going to be paying a lot of  
23           attention to over the next year.

24           Ultimately, that's a, just kind of a  
25           geographic map, showing where the Town's seeking to

1 make serious reinvestments and serious public  
 2 investments. Again, that density basically is, is  
 3 greater than the density found in East Aurora,  
 4 Dunkirk, Lockport, Olean, Lackawanna, Lancaster and  
 5 Williamsville. So give you a sense of place.

6 All right. It's, you know, ultimately what  
 7 we're seeing in this area right now is a shift to non  
 8 homeowner occupied facilities. We have tremendous  
 9 divestment from families and owner occupied housing  
 10 is, is starting to drop off.

11 As we see that happening, what we see is this  
 12 decline in property values, so areas north of Eggert,  
 13 south of Sheridan and west of Millersport, some of the  
 14 first areas to see that type of drop off, have begun  
 15 to hit negative 4.15% home values. Areas that are now  
 16 starting to see that become a trend, like west of  
 17 Bailey, south of Longmeadow.

18 You can see, right now the property values  
 19 are sitting up, but you can see that with -- at 19.4%  
 20 non homeowner occupancy, the area is starting to turn  
 21 around.

22 Our goal, as a Town, is to take this  
 23 challenge on and to invest in the community, with  
 24 community facilities that people will be proud of and  
 25 proud to call this area home.



## 159 Niagara Falls Boulevard

1           So where we are going. A lot of this has to  
2 do with, with vacant areas and underutilized spaces  
3 surrounding Eggertsville. For the purposes of this  
4 I've turned the map so that north is to your right.  
5 And we are making targeted efforts in the Boulevard  
6 Mall area, with new street grids, lighting, trees and  
7 sewer. We're committed to new street grid, lighting,  
8 trees and sewer in that block south of Sheridan,  
9 between Sheridan and Eggert.

10           Ultimately then we're looking at a slew of  
11 other potential areas where we know we need  
12 significant public investment in order to make the  
13 community more beautiful, more whole, create safe  
14 places for people, create good opportunities for  
15 people to get off of the, of a fairly worn out street  
16 grid and wait for busses, or, you know, to be able to  
17 sit, be able to commune.

18           And, in this area, we're looking at places  
19 like the old Pizza Hut at Grover Cleveland and Bailey.  
20 We're looking at some of those empty land. And, of  
21 course, the parcels that we're talking about here  
22 tonight at the corner of Niagara Falls Boulevard and  
23 Kenmore.

24           So, right now the Boulevard is sort of been  
25 talked about a lot in the Buffalo News. I'm not here

## 159 Niagara Falls Boulevard

1 to editorialize on the Buffalo News' comments. But  
2 this is a glimpse at the gateway of the Boulevard,  
3 that New York State calls the future of the  
4 northtowns.

5 And the entrance and the beginning of that  
6 gateway is an enclosed jersey barrier, stoned lot.  
7 It's been that way for a long time. And it does not  
8 do the Town justice. And it is unsafe, as you see  
9 people waiting for busses on jersey barriers, not on  
10 appropriate benches, in the elements. They're sitting  
11 right next to the street.

12 It's corner with two bus, major bus routes,  
13 so you get people waiting along Kenmore. You get  
14 people waiting along the Boulevard.

15 Ultimately It's a fairly high trafficked  
16 area. Kenmore itself was rebuilt recently in the  
17 area. One of our goals is to be able to get people  
18 off of Kenmore Avenue, with a pulled over bus lane,  
19 give this area a new face.

20 To do that, we're pursuing the action on the  
21 United Refining parcel. In addition, we'll be  
22 purchasing the parcel, the "L" shaped parcel  
23 surrounding it. And that will give us clearance to  
24 take an area that looks like this in its vacancy, and  
25 turn it in to something that looks a little bit more

159 Niagara Falls Boulevard

1 like this.

2 You know, we have basically an idea that, at  
3 the end of the day, we can build pocketed parks and  
4 sitting areas, somewhat similar to what the Village of  
5 Williamsville has in the front of the Benderson  
6 property at Main and Union. Tree line, spaces with  
7 sheltered bus stops and bus pull overs.

8 Ultimately the plan would be to then take the  
9 balance of the property and, using action through our  
10 LDC, return it to the private sector for reinvestment.

11 And that's -- completes my sort of project. And,  
12 with that, I'll turn this back over to Stan.

13 MR. SLIWA: Thank you. At this time I'm  
14 asking if any, is there any representative of United  
15 Refining of Pennsylvania present and do they wish to  
16 speak? Yes. Mr. Hanley?

17 MR. HANLEY: Good evening. My name is Vincent  
18 Hanley. I'm with Bond, Shoeneck and King, a law firm  
19 in Buffalo. 12 -- I'm sorry. We're at 200 Delaware  
20 Avenue in the City of Buffalo. And I represent United  
21 Refining Company of Pennsylvania, the owner of this  
22 parcel known as 159 Kenmore (sic) Avenue.

23 Earlier, before the hearing started, I  
24 delivered to the Town Attorney and the Supervisor, a  
25 letter on behalf of United Refining, opposing the

159 Niagara Falls Boulevard

1 taking. My client is opposed to the taking on a  
2 number of grounds that are detailed in the letter. I  
3 will spare you the, all of the details. I won't read  
4 the, the entire letter to you.

5 But, in a nutshell, United Refining is  
6 opposed to this proposed taking on the grounds that  
7 it's un-Constitutional, it's a pretext to involve  
8 another developer. That's it's a proposed excessive  
9 taking and that it's fundamentally unfair to United  
10 Refining.

11 The Town adopted a resolution back on May  
12 16<sup>th</sup>, saying that there were complaints regarding the  
13 property, for well over 15 years and that it's  
14 deteriorating and blighted. My client maintains the  
15 property regularly. The concrete barriers were  
16 imposed, really, in response to complaint that the  
17 Town raised back in 2003. Somebody had left an  
18 abandoned car there.

19 But no code violations have been cited since  
20 2003, since those barrier were placed there. And the  
21 Town maintains it, pays tax on it. I'm sorry. The,  
22 my client maintains the property, pays taxes on it.  
23 And is not interested in seeing the Town take it away  
24 from my client, to give to another developer.

25 United Refining is willing to talk to the

1 Town. Would be happy to talk to the Town about  
2 development of the property. And I've assured the  
3 Town Attorney that I have a line of open communication  
4 with the General Counsel for United Refining, and  
5 would be happy to go back to the company with any  
6 proposals. And happy to work with the Town and  
7 discuss the future development of the property.

8 United refining had already previously  
9 indicated that it would work with the Town in  
10 establishing some type of a more attractive  
11 surrounding other than the concrete barriers. And to  
12 allow the Town to put some type of a welcome sign  
13 there, welcoming people to the Town of Amherst.

14 But, at this point, the Town is seeking to  
15 acquire the property and United Refining intends to  
16 oppose that proposed taking, on the grounds that are  
17 described in the detailed letter that I delivered to  
18 the Town. And, unless anybody has any questions, I  
19 really don't have anything further. Yes?

20 MR. KULPA: This lady has a question over  
21 here.

22 MS. PUEHM: Georgia Puehm, P-U-E-H-M, at 195  
23 Niagara Falls Boulevard. We were in business on the  
24 opposite side of the corner, on Kenmore and Niagara  
25 Falls Boulevard. I pass that corner twice a day and

159 Niagara Falls Boulevard

1 sometimes more, since 1957 till 1992. When the gas  
2 station closed, that corner has not been maintained.  
3 I have picked up garbage from the corner, all, nearly  
4 all the way down to my house all these years, and I'm  
5 still picking up because I live on a busy street.

6 But truthfully, your company has not  
7 maintained that corner very well. I look forward to  
8 see something done, not just because of me, because I  
9 hardly walk by it now, like I would. But truthfully,  
10 it is an awful eyesore. I welcome any improvement,  
11 for the rest of the neighborhood and for people  
12 driving by. It is disgraceful, truthfully, sir.

13 MR. SLIWA: Is there anyone else present that  
14 wants to make an oral presentation regarding the  
15 proposed acquisition?

16 (No response)

17 MR. SLIWA: There isn't anyone else present?

18 (No response)

19 MR. SLIWA: Okay. The hearing will then be  
20 closed. And I'll outline for you with the procedure,  
21 so that you understand what's going to happen after  
22 this.

23 Within 90 days of today's date, formalized,  
24 preparations of determinations of facts and  
25 conclusions will be made by the Town of Amherst.

159 Niagara Falls Boulevard

1 These will be then published in the -- a brief  
2 synopsis of determination will be then published in at  
3 least two successive issued of the Towns official  
4 newspaper, which in the Amherst Bee.

5 Under the provisions of EDPL 207, anybody  
6 seeking a judicial review regarding attempting to  
7 oppose that taking, will need to fil a petition with  
8 the Appellate Division, 4<sup>th</sup> Department. And, at which  
9 point, the Court will determine whether or not there  
10 is a public purpose behind the hearing.

11 Once the determination has been made of the  
12 public purpose, or the time period to challenge that  
13 determination has elapsed, a formal proceeding will be  
14 made, in which the Town files legal documents which  
15 them gives us title to the property.

16 At that point, the only issue becomes how  
17 much is the property worth. We take title and then  
18 pay for it later. Unless, in the interim, we attempt  
19 to negotiate a purchase of the property.

20 We are actively involved in such negotiations  
21 presently and are waiting a response from United  
22 Refining.

23 Does anybody have any questions regarding  
24 that procedure?

25 (No response)

159 Niagara Falls Boulevard

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MR. SLIWA: Okay. Thank you. That closes the hearing.

(Proceedings concluded)



CERTIFICATE

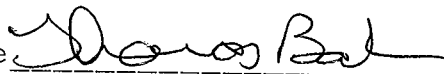
I, Thomas Baker, certify that the foregoing transcript of proceedings in the matter of:

EMINENT DOMAIN PROCEEDINGS INVOLVING

159 NIAGARA FALLS BOULEVARD

was transcribed using the required transcription equipment and is a true and accurate record of the proceedings herein.

Signature



Associated Reporting Service

Post Office Box 674

229 West Genesee Street

Buffalo, New York 14201-0674

Date: 06/24/18

EXHIBIT 1

6122118

R.D

Adopted  
May 16, 2018 7:00 PM



**Town of Amherst  
Erie County, New York**

**Resolution  
RES-2018-539**

**Amherst Gateway Park  
Eminent Domain Proceedings - 159 Kenmore Avenue**

Information

**Department:** Town Attorney      **Sponsors:**  
**Category:** Resolution

Attachments

Printout

Financial Impact

None for the purposes of this resolution. Costs of eminent domain procedure TBD.

Body

**AGENDA ITEM : MAY 16, 2018**

**TO: Town Board**  
**FROM: Stanley J. Sliwa, Esq., Town Attorney**  
**DATE: May 8, 2018**  
**RE: Amherst Gateway Park  
Eminent Domain Proceedings - 159 Niagara Falls Boulevard**

Kindly adopt the following resolution with respect to the above matter:

**WHEREAS**, the Amherst Town Board has been addressing complaints regarding the condition of 159 Niagara Falls Boulevard for well over 15 years; and

**WHEREAS**, this parcel is in a deteriorating and blighted condition and is maintained only minimally, creating an eyesore to the public as well as surrounding residents; and

**WHEREAS**, this parcel is located at the corner of Kenmore Avenue and Niagara Falls Boulevard and serves as one of the significant entry points into the Town of Amherst; and

**WHEREAS**, this area of the Town of Amherst continues to be a targeted area for redevelopment, infrastructure improvements, and related neighborhood improvements; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Amherst Town Board directs the Planning Department and the Town Attorney's Office to commence proceedings required to acquire this parcel (159 Kenmore Avenue).

SJS:nmb

c: Kathy Cooper, Deputy Town Clerk (**Agenda Item - May 16th, 2018**)

### Meeting History

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**May 16, 2018 7:00 PM Video**      **Town Board**      **Regular Meeting of the Town Board**

**RESULT:**      **ADOPTED [UNANIMOUS]**  
**MOVER:**      Brian Kulpa, Supervisor  
**SECONDER:**      Deborah Bruch Bucki, Councilmember  
**AYES:**      Brian Kulpa, Francina Spoth, Deborah Bruch Bucki, Jacqueline Berger, Shawn Lavin

### Discussion

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 Add Comment

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**— LEGAL NOTICE —**

NOTICE OF PUBLIC HEARING  
TOWN OF AMHERST  
NOTICE OF PUBLIC HEARING IN  
CONNECTION WITH THE  
PROPOSED ACQUISITION OF  
159 NIAGARA FALLS  
BOULEVARD, AMHERST, NEW  
YORK, FOR A PUBLIC PROJECT  
PRIOR TO ACQUISITION  
PURSUANT TO SECTIONS 201  
AND 202 OF THE EMINENT  
DOMAIN PROCEDURE LAW

NOTICE is hereby given that pursuant to Article 2 of the Eminent Domain Procedure Law the Town Board of the Town of Amherst, New York will hold a Public Hearing to determine the need and public purpose for the acquisition of 159 Niagara Falls Boulevard for the construction of Amherst Gateway Park prior to acquisition for the purposes of outlining and describing the proposed acquisition of this parcel.

PLEASE TAKE FURTHER NOTICE that the hearing will be held on the 22nd of June at 7:00 p.m. at the Windermere Boulevard Elementary School, 291 Windermere Boulevard, Amherst, New York 14226.

PLEASE TAKE FURTHER NOTICE that the public improvements shall consist of the construction of a park and other public improvements at the corner of Niagara Falls Boulevard and Kenmore Avenue, including the acquisition of property commonly known as 159 Niagara Falls Boulevard, Amherst, New York, SBL 79.31-3-23, presently owned by United Refining Company of Pennsylvania, 15 Bradley Street, Warren, Pennsylvania.

PLEASE TAKE FURTHER NOTICE that acquisition of the above-described property will include acquisition of the land and all other real property interests of any kind and nature.

PLEASE TAKE FURTHER NOTICE that at the Public Hearing, the Town of Amherst shall outline the purpose, proposed location and use of the public project and other information, including the economic, ecological and social effect upon the community and any other pertinent information including maps and descriptions of the property to be acquired.

PLEASE TAKE FURTHER NOTICE that all persons having an interest in the project are invited to attend the hearing and give oral and written comments and to submit other documents concerning the public project. This hearing is held pursuant to the provisions of Sections 201 and 202 of the Eminent Domain Law of the State of New York.

PLEASE TAKE FURTHER NOTICE that pursuant to Article 2 of the

New York State Eminent Domain Procedure Law, any property owners who may subsequently wish to challenge condemnation of their property via judicial review may do so only on the basis of issues, facts and objections raised at such Public Hearing.

For additional information, please contact Maggie Winship, Director of Strategic Planning, Town of Amherst Supervisor's Office, 5583 Main Street, Williamsville, New York 14221, (716) 631-7035.

By Order of the Town Board of the  
Town of Amherst  
Marjory Jaeger, Town Clerk  
Town of Amherst  
County of Erie, New York

May 23

EXHIBIT 2  
6/22/18  
RIB

EXHIBIT 3  
6/22/18  
R.B

**— LEGAL NOTICE —**

TOWN OF AMHERST  
NOTICE OF PUBLIC HEARING IN  
CONNECTION WITH THE PRO-  
POSED ACQUISITION OF 159 NI-  
AGARA FALLS BOULEVARD,  
AMHERST, NEW YORK, FOR A  
PUBLIC PROJECT PRIOR TO AC-  
QUISITION PURSUANT TO SEC-  
TIONS 201 AND 202 OF THE EMI-  
NENT DOMAIN PROCEDURE  
LAW

NOTICE is hereby given that pur-

suant to Article 2 of the Eminent Domain Procedure Law the Town Board of the Town of Amherst, New York will hold a Public Hearing to determine the need and public purpose for the acquisition of 159 Niagara Falls Boulevard for the construction of Amherst Gateway Park prior to acquisition for the purposes of outlining and describing the proposed acquisition of this parcel.

PLEASE TAKE FURTHER NOTICE that the hearing will be held on the 22nd of June at 7:00 p.m. at the Windermere Boulevard Elementary School, 291 Windermere Boulevard, Amherst, New York 14226.

PLEASE TAKE FURTHER NOTICE that the public improvements shall consist of the construction of a public park and other public improvements at the corner of Niagara Falls Boulevard and Kenmore Avenue, including the acquisition of property commonly known as 159 Niagara Falls Boulevard, Amherst, New York, SBL 79.31-3-23, presently owned by United Refining Company of Pennsylvania, 15 Bradley Street, Warren, Pennsylvania.

PLEASE TAKE FURTHER NOTICE that acquisition of the above-described property will include acquisition of the land and all other real property interests of any kind and nature.

PLEASE TAKE FURTHER NOTICE that at the Public Hearing, the Town of Amherst shall outline the purpose, proposed location and use of the public project and other information, including the economic, ecological and social effect upon the community and any other pertinent information including maps and descriptions of the property to be acquired.

PLEASE TAKE FURTHER NOTICE that all persons having an interest in the project are invited to attend the hearing and give oral and written statements and to submit other documents concerning the public project. This hearing is held pursuant to the provisions of Sections 201 and 202 of the Eminent Domain Law of the State of New York.

PLEASE TAKE FURTHER NOTICE that pursuant to Article 2 of the New York State Eminent Domain Procedure Law, any property owners who may subsequently wish to challenge condemnation of their property via judicial review may do so only on the basis of issues, facts and objections raised at such Public Hearing.

For additional information, please contact Maggie Winship, Director of Strategic Planning, Town of Amherst Supervisor's Office, 5583 Main Street, Williamsville, New York 14221, (716) 631-7035.

By Order of the Town Board of the  
Town of Amherst  
Marjory Jaeger, Town Clerk  
Town of Amherst  
County of Erie, New York  
May 30, June 6, 13, 20



# TOWN OF AMHERST

# FILE COPY

ERIE COUNTY, NEW YORK

5583 MAIN STREET  
WILLIAMSVILLE, NEW YORK 14221  
(716) 631-7030  
FAX (716) 631-7101  
www.amherst.ny.us

EXHIBIT 4  
6/22/18  
R.B

Stanley J. Sliwa  
Town Attorney

Nicole M. Burroughs  
Paralegal

Melissa S. Lynch  
Paralegal

Joanne A. Schultz  
Sr. Deputy Town Attorney

Jeffrey E. Marion  
Deputy Town Attorney

May 29, 2018

**VIA FAX 814-726-4709**

United Refining Company of Pennsylvania  
**ATTN: John Wagner, General Counsel**  
15 Bradley Street  
Warren, Pennsylvania 16365

**Re: 159 Niagara Falls Boulevard, Amherst, New York  
SBL 79.31-3-23**

Dear Mr. Wagner:

By letter dated May 21, 2018 I advised United Refining that the Town Of Amherst Town Board adopted a Resolution 2018-539 authorizing me to commence eminent domain/condemnation proceedings against the above referenced property. I requested that in anticipation of the condemnation that United Refining contact me to discuss a voluntary sale of this property to the Town of Amherst. To date, I have not received any response despite the fact I left you two (2) phone messages in this regard.

Enclosed is a Public Notice pursuant to New York's Eminent Domain Procedure Law 201 reflecting that a public hearing on the Town's acquisition of this parcel will occur on Friday June 22, 2018 at 7:00 PM at the Windermere Elementary School located at 291 Windermere Boulevard, Amherst New York. If you wish to discuss a sale of this property, please contact me prior to the public hearing.

Very truly yours,

*Stanley Sliwa*  
Stanley J. Sliwa, Esq.  
Town Attorney

SJS:bs  
Enclosure

c: Daniel Howard, Director of Planning (*w/o enclosure*)  
Ellen M. Kost, Assistant Director of Planning (*w/o enclosure*)  
Town Board (*w/o enclosure*)

**NOTICE OF PUBLIC HEARING**

**LEGAL NOTICE**

**TOWN OF AMHERST**

**NOTICE OF PUBLIC HEARING IN CONNECTION WITH THE PROPOSED  
ACQUISITION OF 159 NIAGARA FALLS BOULEVARD, AMHERST, NEW YORK,  
FOR A PUBLIC PROJECT PRIOR TO ACQUISITION PURSUANT TO SECTIONS 201  
AND 202 OF THE EMINENT DOMAIN PROCEDURE LAW**

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For additional information, please contact Maggie Winship, Director of Strategic Planning, Town of Amherst Supervisor's Office, 5583 Main Street, Williamsville, New York 14221, (716) 631-7035.

By Order of the Town Board of the Town of Amherst

**Marjory Jaeger, Town Clerk  
Town of Amherst  
County of Erie, New York**

MEMORY TRANSMISSION REPORT

TIME :05-30-2018 09:16  
FAX NO.1 :7166317101  
NAME :TOA Attorney

FILE NO. : 665  
DATE : 05.30 09:15  
TO : 18147268012  
DOCUMENT PAGES : 4  
START TIME : 05.30 09:15  
END TIME : 05.30 09:16  
PAGES SENT : 4  
STATUS : OK

\*\*\*SUCCESSFUL TX NOTICE\*\*\*



Stanley J. Sliwa  
Town Attorney

Nicole M. Burroughs  
Paralegal

Melissa S. Lynch  
Paralegal

**TOWN OF AMHERST**

ERIE COUNTY, NEW YORK

5583 MAIN STREET  
WILLIAMSVILLE, NEW YORK 14221  
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FAX (716) 631-7101  
www.amherst.ny.us

Joanne A. Schultz  
Sr. Deputy Town Attorney

Jeffrey E. Marlon  
Deputy Town Attorney

May 29, 2018

**VIA FAX 814-726-4709**  
United Refining Company of Pennsylvania  
ATTN: John Wagner, General Counsel  
15 Bradley Street  
Warren, Pennsylvania 16365

Re: 159 Niagara Falls Boulevard, Amherst, New York  
SBL 79.31-3-23

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Very truly yours,

*Stanley J. Sliwa*  
Stanley J. Sliwa, Esq.  
Town Attorney

EXHIBIT 5  
6/22/18 R.B.

# BOND SCHOENECK & KING

200 Delaware Avenue | Buffalo, NY 14202-2107 | bsk.com

VINCENT O. HANLEY, ESQ.  
vhanley@bsk.com  
P: 716.416.7022  
F: 716.416.7322

June 22, 2018

## VIA HAND DELIVERY

Hon. Brian Culpa  
Supervisor  
Amherst Town Board  
5583 Main Street  
Williamsville, NY 14221

Re: *Amherst Gateway Park Eminent Domain Proceeding - 159 Kenmore Avenue*

Dear Mr. Culpa:

We represent United Refining Company of Pennsylvania ("United Refining"), the owner of 159 Kenmore Avenue, Amherst, New York, further identified as tax map parcel 79.31-3-23 (the "Property"). This letter is submitted on behalf of United Refining in opposition to the Town's proposed plan to take the Property using the power of eminent domain. The proposed taking is an egregious example of government overreach in that it is: unconstitutional; a pre-text to aid another developer; excessive; and fundamentally unjust. Put simply, the Town may not take property merely because it disagrees with United Refining's use of its own land. To do so would deprive United Refining of its property rights and would not serve any public purpose.

### Factual Background

#### 1. The Town's Plan

The Town Board has provided shockingly little detail regarding why it intends to take the Property. The Town Board's resolution states that there have been "complaints" regarding the property "for well over 15 years", that the parcel is in a "deteriorating and blighted condition" and is "maintained only minimally." (See **Exhibit A.**) However, United Refining has not received a single code violation concerning the Property since 2003. It is hard to understand how the Property is deteriorating, given that no structure has been located on the Property since 2006. It is true that the Property is vacant, however, there is nothing illegal or sinister about owning a vacant lot.

The resolution further states that the area is "targeted ... for redevelopment." The Buffalo News reported on May 14, 2018 that the Town Supervisor "is looking to partner with the private sector on a redevelopment of most of the property and also

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incorporate a pocket park, signs welcoming people to Amherst and an off-road bus shelter for public transit riders.” (See **Exhibit B.**) In other words, it appears that the Town plans to take the Property from United Refining and sell it to another private developer of its choosing.

The Town has approved the purchase of the neighboring property at 143 Kenmore Avenue for \$193,950. (See **Exhibit C.**) 143 Kenmore is directly adjacent to the Property and has access to both Kenmore Avenue and Niagara Falls Boulevard. The 143 Kenmore Avenue Property is large enough to accommodate a sign and off-road bus shelter, along with landscaping and green space.

2. United Refining's Ownership and Use Of The Property

United Refining maintains the Property in a safe and sanitary condition. The Property is improved by a surface parking lot. United Refining maintains the lot in good condition, which includes contracting to have the lot plowed in the winter and the surrounding grass mowed. There are no structures on the Property. The edges of the parking lot are secured by concrete barricades to prevent the Property from being used for illegal purposes.

Although the Town would paint the picture of a “deteriorating” and “blighted” parcel, such a representation is clearly false. Again, there is no structure present on the Property to maintain. There is no evidence of any crime or vandalism on the Property. To the contrary, United Refining pays its taxes and has not received a zoning violation in over 15 years (the last ticket was issued on May 16, 2003 for having an abandoned car in the lot). United Refining's use of the Property is permitted and legal under the zoning law and all other applicable ordinances.

Notwithstanding the above, United Refining remains willing to cooperate with the Town to allow the construction of a “gateway feature” or other aesthetic improvement on the Property. United Refining has repeatedly stated that it is willing to cooperate with the Town. For example, the Buffalo News recently reported as follows:

United Refining has told The Buffalo News it is willing to replace the concrete barriers with something more attractive and to grant a rolling lease to the town that would let it spruce up the site and post a "Welcome" sign while maintaining United Refining's ownership.

Unfortunately, the Town continues to refuse this offer and demands complete ownership of the Property. If the Town's true desire is to make aesthetic improvements such as a welcome sign and additional landscaping, fee ownership is not required. One can only conclude that the Town intends something more that it does not wish to articulate at this time.

Simply taking the Property will not further redevelopment in any meaningful way. United Refining owns over 350 retail locations and employs over 4000 people. If the Town wishes to propose a radical new development plan for the Property, it should propose it to United Refining, which has substantial experience and resources that it could employ in the redevelopment of the Property.

### Legal Analysis

#### 1. No Public Purpose Has Been Articulated.

It is black letter law that a condemnor must provide a detailed plan before taking property for economic development. Kelo v. City of New London, 545 U.S. 469 (2005); Matter of Goldstein v. New York State Urban Dev. Corp., 13 N.Y.3d 511 (2009); Matter of Kaur v. New York State Urban Dev. Corp., 15 N.Y.3d 235 (2010).

For example, in Kelo, the City of New London presented a planned development in concert with the creation of a state park, the construction of a \$300 million research development by a major pharmaceutical company and the designated for a hotel, restaurants, retail and office space, multiple marinas, a pedestrian riverwalk, approximately 80 new residences, a museum, and parking, and the plan would create approximately 1,000 new jobs. Similarly, In Matter of Goldstein v. New York State Urban Dev. Corp., 13 N.Y.3d 511 (2009), there was a plan that described a new stadium, public open space, affordable housing, and the redevelopment of a blighted area. And in Matter of Kaur v. New York State Urban Dev. Corp., 15 N.Y.3d 235 (2010), the plan described the construction of sixteen new buildings for use by Columbia University, as well as areas devoted to services for the local community, multi-level below grade support space, two acres of publicly accessible open space, a retail market, and wider tree-lined sidewalks. In short, the condemnation of private property for the purpose of economic development has been tolerated only where detailed plans were presented that gave a concrete expectation of tangible benefits to the public.

There is no such plan in this case. The Town has made only vague references to the need for redevelopment. The resolution to proceed with the taking was passed at the May 16<sup>th</sup> meeting of the Town Board without comment or discussion. The Town has not identified a prospective buyer and no study has been presented articulating a concrete plan for the redevelopment of the site.

Taking the Property without any plan would actually be contrary to the public good. United Refining currently pays taxes and spends significant money to plow snow and mow grass. Acquisition would not change the Property's status as a vacant parking lot. However, it would remove the Property from the tax rolls while simultaneously incurring public expenses in maintenance.

Overall, the condemnation cannot be approved because the proposed acquisition of the Property by eminent domain is not being pursued pursuant to any articulated integrated development plan. Without such plan, the condemnation is unconstitutional.

2. The Taking Is Unconstitutional Because It Is Merely a Pretext.

Where the stated public use is merely a pretext, or a bad faith representation by the condemnor, the proposed taking is unconstitutional and may not proceed. Matter of Syracuse Univ. v Project Orange Assoc. Servs. Corp., 71 A.D.3d 1432, 1433-35 (4th Dept. 2010). A merely incidental public benefit coupled with a dominant private purpose will invalidate a condemnor's determination. See Matter of Aspen Cr. Estates, Ltd. v Town of Brookhaven, 47 A.D.3d 267 (2d Dept. 2007), aff'd 12 N.Y.3d 735 (2009).

For example, in 49 WB, LLC v. Village of Haverstraw, a village attempted to take a private office building so that property could be used as affordable housing and office space for a non-for-profit organization. 44 A.D.3d 226 (2d Dept. 2007). The property owner had repeatedly offered to lease the property to the non-for-profit organization. Nevertheless, the village sought to condemn the property. The court held that such a taking was unconstitutional because there was no valid public purpose.

Here, the Town's reasons for the condemnation are a mere pretext. The Town has attempted to invent a public purpose including the allegedly "blighted" status, the need for a sign / off-road bus shelter, and unspecified redevelopment. In reality, the Town simply disagrees with United Refining's ownership and use of the property as a parking lot. Such an objection is not a valid reason to exercise the power of eminent domain and deprive a private entity of its property.

Specifically, many of the Town's proposed "public purposes" can be achieved without eminent domain. Much like in 49 WB, LLC v. Village of Haverstraw, United Refining has agreed to lease the Property to the Town to erect a welcome sign or bus shelter. The Town refuses these offers. The only logical conclusion is that there is no actual need for such improvements and that such reasoning is being used as a pretext to exercise the power of eminent domain.

Similarly, the allegations of "blight" are also a pretext. The Town has not provided any documentation of blight in this Amherst neighborhood. To the contrary, the Property is located in a productive middle-class and college student oriented neighborhood. The University at Buffalo is a short walk away. The adjacent property located at 165 Niagara Falls Boulevard is assessed at \$140,000 and the other neighboring parcels are in similarly good condition with reasonably high assessments. Simply put, the Town has not made the requisite showing required to condemn for blight and such a finding would not be supported by the facts. Russin v. Union, 133 A.D.2d 1014 (3d Dept. 1987).

3. The Proposed Taking Is An Unconstitutional Taking Because It Is Excessive.

The United States Supreme Court long ago recognized the problem inherent in evaluating a proposed condemnation without adequate information as to what use the government intended for the property when it articulated the rule against excessive takings:

We are thus asked to sustain the excess appropriation in these cases upon the bare statements of the resolution and ordinance of the city council, by considering hypothetically every possible, but undefined, use to which the city may put these properties, and by determining that such use will not be repugnant to the rights secured to the property owners by the Fourteenth Amendment. We are thus either to assume that whatever the city, entirely uncontrolled by any specific statement of its purpose, may decide to do with the properties appropriated, will be valid under both the state and Federal Constitutions, or to set up some hypothesis as to use and decide for or against the taking accordingly, although the assumption may be found to be foreign to the actual purpose of the appropriation as ultimately disclosed and the appropriation may thus be sustained or defeated through a misconception of fact.

Cincinnati v. Vester, 281 U.S. 439, 446 (1930). New York courts have reiterated that "there is no right to condemn land in excess of the need for public purposes, and . . . no more may be taken than is required for the particular public purpose." Hallock v State, 32 N.Y.2d 599, 605 (1973); Matter of Zutt v. State, 99 A.D.3d 85, 104-05 (2d Dept. 2012); Matter of Davis Holding Co., LLC v. Vill. of Margaretville, 55 A.D.3d 1101, 1104-05 (3d Dept. 2008). "Applying this principle, even in cases involving no bad faith on the part of the condemnor, we have modified determinations of condemnation when the taking is excessive and the specific public purpose may be achieved by a more limited taking." Zutt, 99 A.D.3d at 104-05.

Here, the proposed condemnation is excessive. To the extent that Town desires a welcome sign, landscaping or off-road bus-shelter, the Town has ample space on the adjacent 143 Kenmore Avenue for such improvements (which has access to both Kenmore Avenue and Niagara Falls Boulevard). To the extent that such improvements absolutely must be placed on 159 Kenmore Avenue, United Refining has offered to lease the Property to allow for such improvements.

Furthermore, there has similarly been no showing that the Property is actually needed for redevelopment. To the contrary, there is no plan for redevelopment and no potential buyer.

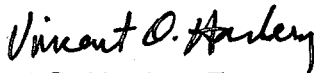
Finally, the Town has not articulated the need for another pocket park at this location. Templeton Park is located less than 0.1 miles away - a three minute walk. (See **Exhibit D.**) The area also has substantial open space in the form of Grover Cleveland Park (a golf course), the campus of the University at Buffalo and the Minnesota Linear Park. The Town has not even attempted to demonstrate that additional park space is needed or that the proposed pocket park would satisfy that need. While a park may serve a public purpose in the abstract, merely appending an unneeded park to an unneeded redevelopment plan does not inoculate the Town from having to demonstrate a public purpose.

### **Conclusion**

The Town should abandon its plan to take the Property from United Refining and instead speak with United Refining about what could be done cooperatively to achieve its goals. United Refining stands ready to listen and work collaboratively with the Town, but will also take whatever steps it deems necessary to defend its property rights from an unlawful taking.

Sincerely,

BOND, SCHOENECK & KING, PLLC



Vincent O. Hanley, Esq.



Exhibit A



# TOWN OF AMHERST

ERIE COUNTY, NEW YORK

5583 MAIN STREET  
WILLIAMSVILLE, NEW YORK 14221  
(716) 631-7030  
FAX (716) 631-7101  
www.amherst.ny.us

Stanley J. Sliwa  
Town Attorney

Joanne A. Schultz  
Sr. Deputy Town Attorney

Jeffrey E. Marion  
Deputy Town Attorney

Nicole M. Burroughs  
Paralegal

Melissa S. Lynch  
Paralegal

May 21, 2018

**VIA FEDERAL EXPRESS - OVERNIGHT DELIVERY**

United Refining Company of Pennsylvania  
ATTN : LEGAL DEPARTMENT  
15 Bradley Street  
Warren, Pennsylvania 16365

**VIA FEDERAL EXPRESS - OVERNIGHT DELIVERY**

John A. Catsimatitis, CEO  
United Refining Company of Pennsylvania  
800 Third Avenue, 5th Floor  
New York, New York 10022

Re: 159 Niagara Falls Boulevard, Amherst, New York  
SBL 79.31-3-23

To Whom This May Concern:

Based upon tax records maintained by the Town of Amherst, United Refining Company of Pennsylvania is the record owner of the parcel located at 159 Niagara Falls Boulevard. This parcel is presently vacant, having formally been the location of a Red Apple Food Mart and gas station-convenience mart. It is our understanding that the convenience store was demolished on December 20, 2006 and that the property has been vacant since. Since then, it has been an eyesore and serious distraction to the aesthetics of the surrounding neighborhood.

**RECEIVED**

MAY 22 2018

**LAW DEPT**

Please be advised that the Amherst Town Board has recently passed a Resolution, Resolution 2018-539 (copy enclosed) authorizing me to commence eminent domain/condemnation proceedings against this property. In anticipation of the same, please contact me to discuss a voluntary sale of this property to the Town of Amherst.

Very truly yours,

*Stanley Sliwa*  
Stanley J. Sliwa, Esq.  
Town Attorney

SJS:nmb

Enclosure

c: Daniel Howard, Director of Planning *(w/o enclosure)*  
Ellen M. Kost, Assistant Director of Planning *(w/o enclosure)*  
Town Board *(w/o enclosure)*



**Amherst Town Board**  
5583 Main Street  
Williamsville, NY 14221  
www.amherst.ny.us

Marjory Jaeger  
Town Clerk

Meeting: 05/16/18 07:00 PM  
Department: Town Attorney  
Initiated by: **Stanley J. Sliwa**  
Co-Sponsored by:

DOC ID: 18734

**RESOLUTION 2018-539**

**ADOPTED**

## **Amherst Gateway Park Eminent Domain Proceedings - 159 Kenmore Avenue**

### **AGENDA ITEM : MAY 16, 2018**

**TO: Town Board**  
**FROM: Stanley J. Sliwa, Esq., Town Attorney**  
**DATE: May 8, 2018**  
**RE: Amherst Gateway Park  
Eminent Domain Proceedings - 159 Niagara Falls Boulevard**

Kindly adopt the following resolution with respect to the above matter:

**WHEREAS**, the Amherst Town Board has been addressing complaints regarding the condition of 159 Niagara Falls Boulevard for well over 15 years; and

**WHEREAS**, this parcel is in a deteriorating and blighted condition and is maintained only minimally, creating an eyesore to the public as well as surrounding residents; and

**WHEREAS**, this parcel is located at the corner of Kenmore Avenue and Niagara Falls Boulevard and serves as one of the significant entry points into the Town of Amherst; and

**WHEREAS**, this area of the Town of Amherst continues to be a targeted area for redevelopment, infrastructure improvements, and related neighborhood improvements; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Amherst Town Board directs the Planning Department and the Town Attorney's Office to commence proceedings required to acquire this parcel (159 Kenmore Avenue).

SJS:nmb

c: Kathy Cooper, Deputy Town Clerk (**Agenda Item - May 16th, 2018**)

**FINANCIAL IMPACT:**

None for the purposes of this resolution. Costs of eminent domain procedure TBD.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Brian Kulpa, Supervisor
<b>SECONDER:</b>	Deborah Bruch Buckl, Councilmember
<b>AYES:</b>	Kulpa, Spoth, Buckl, Berger, Lavin

Exhibit B

Sections Search

(<https://buffalonews.com/>)

# THE BUFFALO NEWS



*One of five former gas station properties owned by United Refining Co., a former Red Apple once at at 159 Niagara Falls Blvd., in Amherst. Town officials are considering taking over the property through eminent domain. (John Hickey/Buffalo News)*

## Amherst weighs using eminent domain to take 'blighted' former gas station site

---

By **Stephen T. Watson** ([https://buffalonews.com/author/stephen\\_t\\_watson/](https://buffalonews.com/author/stephen_t_watson/)) |  
Sections Search (<https://buffalonews.com/>) |  
Published May 14, 2018 | Updated May 14, 2018

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([HTTP://WWW.FACEBOOK.COM/SHARER.PHP](http://www.facebook.com/sharer.php))

([HTTPS://TWITTER.COM/INTENT/TWEET](https://twitter.com/intent/tweet))

Amherst may try to use eminent domain to take over a former gas station property in Eggertsville that town officials for two decades have blasted as an unwelcome eyesore.

A resolution on the agenda for Wednesday's Town Board meeting would start eminent domain proceedings for the former Red Apple gas station at Kenmore Avenue and Niagara Falls Boulevard owned by United Refining Co.

Municipalities have stirred up controversy when they've attempted to use the eminent domain process to acquire property, and the matter can end up in court.

A second resolution would approve the town's purchase of a neighboring property on Kenmore Avenue for \$193,950.

The resolutions decry the "deteriorating and blighted condition" of both properties and show the town would convert the combined parcel into a gateway park.



) "Now is the time. We need to indicate what our intentions are on Niagara Falls Boulevard, and there's no better place to do it than right at the intersection with Kenmore," Amherst Supervisor Brian J. Kulpa said in an interview. "The bottom line is there's a rare opportunity where the neighboring parcel is available on the market. So now is the time to act."

) Kulpa has made improving the prominent property a priority of his since taking office in January. But he's not the first town official to complain about the site's condition, as The Buffalo News reported one month ago (<https://buffalonews.com/2018/04/07/reminds-me-of-a-war-zone-officials-seek-revival-of-former-gas-stations/>).

The Red Apple at 159 Niagara Falls Blvd. closed in the late 1990s. By 2001, town leaders floated a plan to let the Eggertsville Fire Company demolish the vacant store as part of a training exercise and to replace the structure with a grassy field and a "Welcome to Amherst" sign. Nothing ever came of it.

The store and pumps came down a dozen years ago, but it remains a gravel and asphalt lot surrounded on all sides by concrete barriers.

) "It's been a moonscape since 2006,"

Town Attorney Stanley J. Sliwa said.  
Sections Search (<https://buffalonews.com/>)

By 2015, the Town Board was so frustrated that members agreed to explore whether the town could acquire the property through eminent domain. But, again, nothing happened.

This is one of five vacant former Red Apple or Kwik Fill properties that United Refining owns in Erie County.



**'Zombie'  
gas station  
lots  
frustrate**

---

**municipalities throughout**

Amherst officials say the Niagara Falls Boulevard site is particularly troublesome because it sits at the border of Amherst, the Town of Tonawanda and the City of Buffalo, a gateway property passed by tens of thousands of motorists every day.

The neighboring parcel at 143 Kenmore Ave. wraps around the former gas station, to the north and the east, and includes a one-time hair salon that has been closed for months.

The two Town Board resolutions would give Kulpa the authority to buy the hair salon property on the town's behalf and

would give the town attorney and the  
Sections Search (https://buffalonews.com/)  
town Planning Department the green

light to start eminent domain  
proceedings.

The town is looking to partner with the  
private sector on a redevelopment of  
most of the property and also  
incorporate a pocket park, signs  
welcoming people to Amherst and an  
off-road bus shelter for public transit  
riders, Kulpa said.

"We would love to see a nice gateway  
element there - some kind of park,  
some kind of signage," Kulpa said. "But  
more importantly, we want a safe place  
for people off that intersection. It's a  
busy intersection."

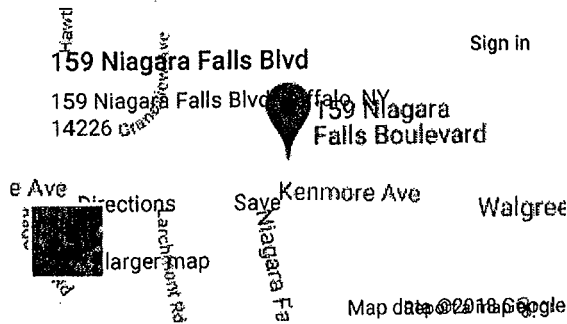
Eminent domain gives the government  
the right to acquire private property, for  
a public use, as long as it pays fair  
compensation to the former property  
owner. The property is assessed at  
\$32,000.

The town would have to show the  
property is necessary for this public  
improvement and must hold a public  
hearing on its plans. Sliwa said that  
wouldn't happen until late June or early  
July, based on the need to provide  
sufficient notice. United Refining could  
try to block the town by filing a legal  
challenge.

Sliwa also said the eminent domain process could end up with a negotiated purchase, if the town can make a deal with United Refining. [\(https://buffalonews.com/\)](https://buffalonews.com/)

United Refining has told The Buffalo News it is willing to replace the concrete barriers with something more attractive and to grant a rolling lease to the town that would let it spruce up the site and post a "Welcome" sign while maintaining United Refining's ownership. A company official did not respond to requests for comment Friday afternoon and Monday morning.

News Staff Reporter Joseph Popiolkowski contributed to this report.



There are no comments - be the first to comment

Recommended for you

Exhibit C



**Amherst Town Board**  
5583 Main Street  
Williamsville, NY 14221  
www.amherst.ny.us

Marjory Jaeger  
Town Clerk

Meeting: 05/16/18 07:00 PM  
Department: Town Attorney  
Initiated by: **Stanley J. Sliwa**  
Co-Sponsored by:

DOC ID: 18741

**RESOLUTION 2018-540**

**ADOPTED**

## **Amherst Gateway Park - Acquisition of 143 Kenmore Avenue**

### **AGENDA ITEM : MAY 16, 2018**

**TO:** Town Board  
**FROM:** Stanley J. Sliwa, Esq., Town Attorney  
**DATE:** May 8, 2018  
**RE:** Amherst Gateway Park  
Acquisition of 143 Kenmore Avenue

Kindly adopt the following resolution with respect to the above matter:

**WHEREAS**, the Amherst Town Board has been addressing complaints regarding the condition of the corner of Niagara Falls Boulevard and Kenmore Avenue for well over 15 years; and

**WHEREAS**, this parcel as well as the adjoining parcel of 143 Kenmore Avenue at is in a deteriorating and blighted condition and is maintained only minimally, creating an eyesore to the public as well as surrounding residents; and

**WHEREAS**, these parcels are located at the corner of Kenmore Avenue and Niagara Falls Boulevard and serves as one of the significant entry points into the Town of Amherst; and

**WHEREAS**, this area of the Town of Amherst continues to be a targeted area for redevelopment, infrastructure improvements, and related neighborhood improvements; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Amherst Town Board authorizes the Town to purchase 143 Kenmore Avenue for the amount of \$193,950.00;

**THEREFORE BE IT FURTHER RESOLVED**, that the Town Board authorizes the Supervisor to execute any and all documents associated with the acquisition and purchase of 143 Kenmore Avenue.

SJS:nmb

c: Kathy Cooper, Deputy Town Clerk (**Agenda Item - May 16, 2018**)

**FINANCIAL IMPACT:**

Purchase price of \$193,950.00, together with other costs yet TBD.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Brian Kulpa, Supervisor
<b>SECONDER:</b>	Deborah Bruch Bucki, Councilmember
<b>AYES:</b>	Kulpa, Spoth, Bucki, Berger, Lavin

Exhibit D



**There is no public need for a new pocket park.**

Templeton Park is located less that 0.1 mile (a 3 minute walk) from the new proposed pocket park at 159 Niagara Falls Blvd.

