

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
3

4 SUMMARY ORDER
5

6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER
7 AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY
8 OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY
9 OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED
10 CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES
11 JUDICATA.
12

13 At a stated term of the United States Court of Appeals for
14 the Second Circuit, held at the Thurgood Marshall United States
15 Courthouse, at Foley Square, in the City of New York, on the 6th
16 day of October, two thousand and four.
17

18 PRESENT:
19

20 Hon. John M. Walker, Jr.,
21 Chief Judge,
22 Hon. Chester J. Straub,
23 Circuit Judge,
24 Hon. Jed S. Rakoff,
25 District Judge.*
26

27 -----X
28

29 R-GOSHEN LLC,
30

31 Plaintiff-Appellant,
32

33 - v. -
34

35 REYNALL ANDREWS, c/o Planning Board of the
36 Village of Goshen, GEORGE URBANNICK, c/o
37 Planning Board of the Village of Goshen,
38 JEROME O'DONNELL, c/o Planning Board of the
39 Village of Goshen, ELAINE McCLUNG, c/o
40 Planning Board of the Village of Goshen,
ROGER A. PIKUL, VILLAGE OF GOSHEN, MARCIA

No. 03-9359

*The Honorable Jed S. Rakoff, United States District Judge
for the Southern District of New York, sitting by designation.

1 MATTHEWS, ** WELDON A. ABT,

2
3 _____ Defendants-Appellees.
4

5 -----X
6
7 APPEARING FOR APPELLANT: RICHARD D. MALMED,
8 Philadelphia, PA.
9

10 APPEARING FOR APPELLEES: JAMES M. SKELLY (Noe Ramon N.
11 Ilano, Marks, O'Neill, O'Brien
12 & Courtney, P.C., on the
13 brief), Elmsford, NY, for
14 Appellees Village of Goshen,
15 Marcia Mattheus, Jerome
16 O'Donnell, Roger A. Pikul,
17 Reynell Andrews, and George
18 Urbannick;
19

20 RICHARD B. GOLDEN, Burke,
21 Miele & Golden, LLP, Goshen,
22 NY, for Appellee Elaine
23 McClung;
24

25 BRADEN H. FARBER, Milber
26 Makris Plousadis & Seiden,
27 LLP, Garden City, NY, for
28 Appellee Weldon A. Abt.
29

30 Appeal from the United States District Court for the
31 Southern District of New York (Colleen McMahon, Judge).
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33 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND**
34 **DECREED** that the judgment of the district court be and it hereby
35 is **AFFIRMED**.

36 Plaintiff-appellant R-Goshen LLC ("R-Goshen") appeals from
37 the order of the United States District Court for the Southern
38 District of New York (Colleen McMahon, Judge) denying plaintiff-
39 appellant's motion for summary judgment and granting defendants-
40 appellees' cross-motion for summary judgment. The district court
41 held that (1) the 42 U.S.C. § 1983 claim against defendant-
42 appellee Weldon A. Abt was not actionable because, as a

**Marcia Mattheus was sued incorrectly under the name
Matthews, which appears in the official caption of the case.

1 professional consultant, he was not a state actor; (2) the § 1983
2 claims against the Village of Goshen defendants-appellees should
3 be dismissed because (a) the takings claim was not ripe for
4 review, (b) R-Goshen did not have a legitimate, constitutionally
5 protected property interest to support a substantive due process
6 violation claim, (c) the procedural due process violation claim
7 was without merit, and (d) there was no evidence of impermissible
8 motive for R-Goshen's equal protection violation claim; and (3)
9 the 42 U.S.C. § 1985 claim, as against all defendants-appellees,
10 should be dismissed because there was no evidence of class-based
11 animus. Familiarity with the facts and procedural history is
12 assumed.

13 On appeal, R-Goshen, which brought suit against the Village
14 of Goshen and individuals involved in the consideration of R-
15 Goshen's application for a land use permit, argues: (1) Section
16 15 of the Village of Goshen's Zoning Code is unconstitutional;
17 (2) defendants-appellees were aware of or recklessly indifferent
18 to the alleged unconstitutionality of the ordinance; (3)
19 defendants-appellees avoided Article 78 review of the
20 constitutionality of the ordinance; and (4) assuming the
21 ordinance is unconstitutional, R-Goshen presented sufficient
22 disputed issues of material fact to survive summary judgment.

23 The district court found that plaintiff's takings claim was
24 unripe, R-Goshen LLC v. Village of Goshen, 289 F. Supp. 2d 441,
25 450 (S.D.N.Y. 2003), and we conclude that all of plaintiff's §
26 1983 claims were unripe, see Williamson County Reg'l Comm'n v.
27 Hamilton Bank of Johnson City, 473 U.S. 172, 186, 194 (1985)
28 (establishing two-part test for assessing ripeness of takings
29 claims); Dougherty v. Town of N. Hempstead Bd. of Zoning Appeals,
30 282 F.3d 83, 88-89 (2d Cir. 2002) (extending Williamson County's
31 ripeness analysis to procedural due process and equal protection
32 violation claims that arise "in the context of land use
33 challenges"); Southview Assocs., Ltd. v. Bongartz, 980 F.2d 84,
34 96-97 (2d Cir. 1992) (same for substantive due process violation
35 claims). Following the planning board's indication that the
36 proposal did not conform to the zoning provisions, R-Goshen and
37 the planning board continued to discuss possible modifications to
38 R-Goshen's plan. R-Goshen did not press the board to a final
39 determination and, instead, brought this suit. Under these
40 circumstances, none of R-Goshen's § 1983 claims were ripe,
41 jurisdiction was lacking, and thus their dismissal was
42 appropriate.

43 We have carefully considered all of R-Goshen's remaining
44 arguments and find them to be without merit.

45 Accordingly, and for the foregoing reasons, the judgment of
46 the district court is hereby **AFFIRMED**.

1 FOR THE COURT:
2 Roseann B. MacKechnie, Clerk
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5 By: _____
6 Lucille Carr, Deputy Clerk