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VIA ELECTRONIC MAIL

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Hon. Bernadette T. Clark
Oneida County Supreme Court
Oneida County Courthouse
200 Elizabeth Street #4
Utica, New York 13501

**RE: The Landmarks Society of Greater Utica, Joseph Bottini,
#NoHospitalDowntown, Brett B. Truett, James Brock, Jr., Frank Montecalvo,
Joseph Cerini, and O'Brien Plumbing & Heating Supply, a division of Rome
Plumbing and Heating Supply Co Inc. v. Planning Board of the City of Utica,
New York State Office of Parks, Recreation and Historic Preservation, Erik
Kulleseid, Acting Commissioner, Dormitory Authority of the State of New
York and Mohawk Valley Health System
Index No. 02797-19**

Dear Justice Clark:

On behalf of our clients, the Petitioners in this proceeding, we write to respectfully urge Your Honor to decide the merits of this case as expeditiously as possible. Petitioners commenced this case in May of 2019, and this matter has languished due in large measure to the purposeful delay tactics of the Respondents. This, in turn, has resulted in extreme prejudice to Petitioners who have been witnessing the continued destruction of irreplaceable historic and cultural resources, in the face of what Petitioners' claim is a glaringly defective review under ECL Article 8, the New York State Environmental Quality Review Act ("SEQRA"), which matter remains undecided after more than a year. Complicating the circumstances still further is the Covid-19 pandemic, which shut down the court system, including in Albany County where this matter was initially properly venued. While the pandemic shut down the court system (and any movement on this case), it did not shut down or even slow down the activities of Respondent Mohawk Valley Health System ("MVHS") relative to this Project. Rather, MVHS has forged ahead with haste and continued with site clearing and commenced construction, to the further detriment of Petitioners and the historical/cultural resources that have fallen in MVHS's wake.

During all this time, and due to Respondents' persistent delay tactics, a voluminous record has resulted in this case. Now that the matter is finally before Your Honor, we write to summarize the background of this case, including the parties' numerous submissions. We do this with the

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two-fold aim of (1) providing what hopefully is a useful road map to this Court regarding the extensive papers before it; and (2) demonstrating the need for, and propriety of, a merits-based decision on the three outstanding SEQRA issues.

Procedural Background¹

- On May 9, 2019, Petitioners commenced a hybrid action/proceeding against the non-State Respondents (Planning Board and MVHS) and the State Respondents, asserting five (5) claims for relief – two alleging defects in the Letter or Resolution (“LOR”) and process under the New York State Parks, Recreation and Historic Preservation Law (“PRHPL”) and three alleging SEQRA defects (i.e., as to historic/archeological/cultural resources, cumulative impacts, and alternatives), hence rendering any decision-making based thereon fatally defective.
 - Verified Petition and Complaint, dated May 9, 2019
 - Memorandum of Law of Petitioners-Plaintiffs, dated May 9, 2019
 - Affidavit of Steven Grant, sworn to May 7, 2019
 - Affidavit of Brett B. Truett, sworn to May 7, 2019
 - Affidavit of James G. Brock, Jr., sworn to May 7, 2019
 - Affidavit of Frank Montecalvo, sworn to May 7, 2019
 - Affidavit of Joseph Cerini, sworn to May 7, 2019
 - Affidavit of Joseph Minicozzi, sworn to May 3, 2019
- On June 12, 2019, Respondents moved to dismiss all claims and convert from a hybrid action proceeding to a straight Article 78 proceeding.
 - Planning Board Notice of Motion to Dismiss, dated June 12, 2019
 - Affidavit of Kathryn Hartnett, Esq. in Support of Motion to Dismiss, dated June 12, 2019
 - Affidavit of Brian Thomas In Support of Motion to Dismiss, sworn to June 12, 2019
 - MVHS Notice of Motion to Dismiss, dated June 12, 2019
 - Affirmation of Kathleen M. Bennett, Esq. in Support of Motion to Dismiss, dated June 12, 2019
 - MVHS Memorandum of Law in Support of Motion to Dismiss, dated June 12, 2019
 - State Respondents’ Notice of Cross Motion to Convert the Action and Dismiss, dated June 12, 2019
 - Affidavit of John Bonafide in Support of State Motion to Dismiss, sworn to June 7, 2019

¹ In the procedural history that follows, Petitioners have made a good faith effort to identify for the Court the document submissions to date in this litigation. Given the voluminous record, in the event of any omission, Petitioners respectfully maintain that such is inadvertent.

- Affidavit of Robert S. Derico in Support of State Motion to Dismiss, sworn to June 11, 2019
- State Memorandum of Law in Support of Cross-Motion to Convert Action and Dismiss, dated June 12, 2019
- Petitioners filed responsive papers on June 19, 2019 and June 20, 2019.
 - Affidavit of Brett B. Truett, sworn to June 19, 2019
 - Petitioners'-Plaintiffs' Memorandum of Law in Opposition to Motion to Dismiss, dated June 19, 2019
 - Affirmation of Thomas S. West, Esq. in Response to Motion to Dismiss, dated June 20, 2019
- Respondents filed reply papers, dated June 20, 2019.
 - Reply Affirmation of Kathryn Hartnett, Esq. in Support of Motion to Dismiss, dated June 20, 2019
 - Affirmation of Kathleen M. Bennett, Esq. in Support of Motion to Dismiss, dated June 20, 2019
 - MVHS Memorandum of Law in Further Support of Motion to Dismiss, dated June 20, 2019
 - State Respondents' Reply Letter Brief, dated June 20, 2019
- Petitioners filed sur-reply papers, dated June 25, 2019, to address new matter raised in Respondents' submissions.
 - Petitioners'-Plaintiffs' Sur-Reply Memorandum of Law in Opposition to Motion to Dismiss, dated June 25, 2019
- Respondents filed objection letters to Petitioners' sur-reply papers by submissions dated June 26, 2019 and June 27, 2019
 - Planning Board objection letter, dated June 27, 2019
 - MVHS objection letter, dated June 26, 2019
 - State objection letter, dated June 26, 2019
- Oral argument was held on October 31, 2019.
- On November 4, 2019, Petitioners amended the pleadings to assert a sixth claim for relief, challenging the Planning Board's partial site plan approval premised on the defective final environmental impact statement ("FEIS").
- On November 21, 2019, Respondents moved to strike the amended pleading and/or strike/dismiss the sixth claim for relief based on statute of limitations grounds and/or failure to have sought permission to amend.
- On November 25, 2019, Petitioners responded to, and opposed, Respondents submissions seeking to strike/dismiss the amended pleading (and/or sixth claim for relief).
- By Decision and Order, dated December 23, 2019, and entered December 26, 2019 (the "December 2019 Order"), Justice L. Michael Mackey decided the pending motions by (1) dismissing the two LOR/PRHPL claims against State Respondents; (2) denying the motions to dismiss as to the three initial SEQRA claims; (3) denying

the motion to strike the amended pleading in its entirety; (4) dismissing the newly added sixth claim for relief (challenging site plan approval) on statute of limitations grounds (finding the relation back doctrine inapplicable); and (5) converting to an Article 78 proceeding. The December 2019 Order thus found the three initial SEQRA claims ripe for judicial review and ready for a decision on the merits. The December 2019 Order also directed the non-State Respondents to answer the Petition within 15 days after service of decision with notice of entry. Petitioners served the December 2019 Order (with notice of entry) on Respondents on December 26, 2019.

- On December 31, 2019, the Respondent Planning Board served a demand to change venue from Albany County to Oneida County.
- In early January 2020, discussions ensued among counsel for all parties to resolve scheduling issues given the Planning Board's demand for a change of venue. During this time, Petitioners also indicated their intent to pursue a motion for renewal/reargument relative to the LOR/PRHPL claims. Relative to scheduling, the point of contention concerned Petitioners wanting all matters submitted to Justice Mackey at the time of the motions, versus the non-State Respondents wanting to delay submission of their answers and the administrative record until after the motions were decided. The parties continued to attempt to resolve this difference. Ultimately, however, the Planning Board belatedly indicated that even if agreement were reached culminating in a scheduling order before Justice Mackey, the Planning Board might elect to move for the venue change before the Oneida County Court, regardless of the terms of the scheduling order before Justice Mackey. Counsel for the Planning Board then advised that the Planning Board would forego moving before the Oneida County Court if Petitioners would agree to the non-State Respondents' submission of their answers and the record no earlier than 10 days after decision on all motions.
- Based on this interchange, which Petitioners viewed as disingenuous tactics by the Planning Board, on January 10, 2020, Petitioners filed two sets of papers – one opposing the Planning Board's demand for change of venue, and the other moving to renew/reargue/amend.
 - Affirmation of Thomas S. West, Esq., dated January 10, 2020, Opposing Demand to Change Venue
 - Affidavit of Steven Grant, sworn to January 10, 2020, Opposing Demand to Change Venue
 - Affidavit of Brett B. Truett, sworn to January 10, 2020, Opposing Demand to Change Venue
 - Notice of Motion, dated January 10, 2020, to Renew/Reargue/Amend
 - Affidavit of Steven Grant, sworn to January 10, 2020, in Support of Motion to Renew/Reargue/Amend
 - Affirmation of Thomas S. West, Esq., dated January 10, 2020, in Support of Motion to Renew/Reargue/Amend

- These filings precipitated a flurry of motion practice by the Planning Board and MVHS, all aimed at delaying submissions on the merits, and, ultimately, a determination on the merits:
 - (1) On the morning of January 21, 2020, the Planning Board, by order to show cause, moved before the Oneida County Supreme Court (MacRae, J.) to change venue to Oneida County, which motion was denied at 1:56 pm.
 - Notice of Motion, dated January 21, 2020
 - Affirmation of Kathryn F. Hartnett, Esq., dated January 21, 2020, in Support of Planning Board Motion, by Order to Show Cause to Change Venue
 - Affirmation of Kathleen M. Bennett, Esq., dated January 21, 2020, in Support of Venue Change and Seeking Stay
 - Letter Order of Hon. Patrick F. MacRae (Sup. Ct., Oneida County), dated January 21, 2020
 - (2) At 3 pm on January 21, 2020, MVHS moved before Justice Mackey, by order to show cause, to stay all proceedings pending a determination on the motion to change venue.
 - Notice of Motion, dated January 21, 2020
 - Affirmation of Kathleen M. Bennett, Esq., dated January 21, 2020, in Support of Order to Show Cause to Stay Proceedings/Answering Deadline;
 - Affirmation of Kathryn Hartnett, Esq., dated January 21, 2020, in Support of MVHS Motion, by Order to Show Cause, for Stay
 - (3) During a conference call with Justice Mackey on the afternoon of January 21, 2020, an agreement was reached resulting in a scheduling order (“so ordered” on January 22nd), setting forth the timing as to all matters, including answers and the return being due on February 14, 2020 and Respondents’ papers regarding the venue matter being due on January 22, 2020.
 - Scheduling Order (Mackey, J.), dated January 22, 2020
 - (4) Shortly after the conference call, the Planning Board moved before Justice Mackey for a change in venue.
 - Notice of Motion for Change of Place of Trial, dated January 21, 2020
 - Affirmation of Kathryn F. Hartnett, Esq., dated January 21, 2020, in Support of Order to Show Cause to Change Place of Trial
 - Affirmation of Kathleen M. Bennett, Esq., dated January 21, 2020, in Support of Planning Board’s Motion to Change Place of Trial
 - (5) On Sunday, January 26, 2020, four days after the deadline, and just two days before Petitioners’ reply papers were due regarding the Planning Board’s motion to change venue, MVHS emailed its memorandum of law in support of the Planning Board’s motion to change of venue.

- MVHS Memorandum of Law in Support of Motion for Change of Venue, dated January 24, 2020
- (6) Then, the next morning, January 27, 2020, MVHS moved, by order to show cause, before the Appellate Division, Third Department, seeking permissive leave to appeal Justice Mackey's December 2019 Order and for a stay of all proceedings (including the time to answer) pending disposition of the appeal.
 - Notice of Motion, dated January 27, 2020
 - Affirmation of Kathleen M. Bennett, Esq., dated January 27, 2020, in Support of Motion for Permissive Appeal and for Stay
 - In response, Petitioners made two submissions: (1) Affirmation of Thomas S. West, Esq., dated January 28, 2020, in Opposition to Proposed Order to Show Cause; and (2) Affirmation of Thomas S. West, Esq., dated February 7, 2020, in Response to Order to Show Cause and Opposition to MVHS Motion for Leave to Appeal and in Support of Cross-Motion
 - By Decision and Order, dated February 7, 2020, the Appellate Division denied MVHS's motion.
- (7) In accordance with Justice Mackey's Scheduling order, on January 28, 2020, Petitioners made their submissions opposing the Planning Board's motion to change venue and cross-moving to retain venue in Albany County.
 - Notice of Cross-Motion, dated January 28, 2020
 - Affirmation of Thomas S. West, Esq., dated January 28, 2020, in Support of Cross-Motion and in Opposition to Motion to Change Venue
- (8) On January 30, 2020, MVHS moved to reargue and also opposed Petitioners' motion for renewal/reargument.
 - MVHS Notice of Cross-Motion for Reargument, dated January 30, 2020
 - Affirmation of Kathleen M. Bennett, dated January 30, 2020, in Support of MVHS Cross-Motion for Reargument and Opposition to Petitioners' Motion to Renew/Reargue
 - MVHS Memorandum of Law, dated January 30, 2020
- (9) On January 31, 2020, MVHS and the Planning Board made submissions in opposition to Petitioners' cross-motion regarding venue
 - Affirmation of Kathryn Hartnett, Esq., dated January 31, 2020, in Opposition to Petitioners' Cross-Motion regarding Venue
 - Affirmation of Kathleen M. Bennett, Esq., dated January 31, 2020, in Opposition to Petitioners' Cross-Motion regarding Venue
- Having been unsuccessful in their repeated attempts to delay submissions on the merits, on February 14, 2020, the non-State Respondents submitted their answers,

the administrative return, and supporting papers in opposition to the Amended Verified Petition.

- Planning Board's Verified Answer, dated February 14, 2020
- Affirmation of Kathryn Hartnett, Esq., dated February 14, 2020, in Opposition to Amended Verified Petition
- Affidavit of Brian Thomas, sworn to February 14, 2020, in Opposition to Amended Verified Petition
- Article 78 Return (Volumes 1-10)
- MVHS Verified Answer, dated February 14, 2020
- MVHS Memorandum of Law in Opposition to Amended Verified Petition, dated February 14, 2020
- Affirmation of Kathleen M. Bennett, Esq., dated February 14, 2020, in Opposition to Amended Verified Petition
- Affidavit of Robert Scholefield, sworn to February 13, 2020, in Opposition to Amended Verified Petition
- Affidavit of Eric Lints, sworn to February 13, 2020, in Opposition to Amended Verified Petition
- Affidavit of Steven Eckler, sworn to February 13, 2020, in Opposition to Amended Verified Petition
- On February 14, 2020, MVHS also moved to strike the affidavit (including exhibits) of Joseph Minicozzi, dated May 3, 2019.
 - MVHS Notice of Motion to Strike, dated February 14, 2020
 - MVHS Memorandum of Law in Support of Motion to Strike, dated February 14, 2020
 - Affirmation of Kathleen M. Bennett, Esq., dated February 14, 2020, in Support of Motion to Strike
- In accordance with Justice Mackey's Scheduling Order, on February 20, 2020, the State Respondents made their submissions opposing Petitioners' motion to renew/reargue.
 - Affidavit of John Bonafide, sworn to February 14, 2020
 - Affidavit of Robert S. Derico, sworn to February 20, 2020
 - State Memorandum of Law, dated February 20, 2020
- In accordance with Justice Mackey's Scheduling Order, on February 21, 2020, Petitioners made their submissions opposing MVHS motion to reargue.
 - Affirmation of Thomas S. West, dated February 21, 2020, Opposing MVHS's Reargument Motion
- In accordance with Justice Mackey's Scheduling Order, on February 25, 2020, Petitioners made their submissions in reply to the non-State Respondents' submissions on the merits and the State Respondents' opposition to Petitioners' motion for renewal/reargument.
 - Affirmation of Thomas S. West, Esq., dated February 25, 2020, In Reply to non-State Respondents' Opposition to Amended Verified Petition

Hon. Bernadette T. Clark

July 24, 2020

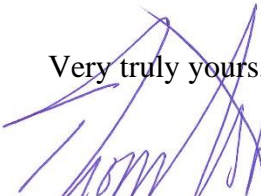
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- Affirmation of Thomas S. West, Esq., dated February 25, 2020, in Opposition to non-State Respondents' Motion to Strike the Minicozzi Affidavit
- Affirmation of Thomas S. West, Esq., dated February 25, 2020, in Reply to State Respondents' Opposition to Petitioners' Motion for Renewal/Reargument
- Amidst the Covid-19 pandemic, on April 13, 2020, Justice Mackey issued his Decision and Order (the "April 2020 Order"): (1) denying all motions relative to reargument/renewal; and (2) granting the Planning Board's motion to change venue to Oneida County.
- By denying MVHS's motion for reargument, the April 2020 Order reconfirms that the three SEQRA claims set forth in the Amended Verified Petition are ripe for a determination on the merits.

After issuance of the April 2020 Order, I made numerous attempts to determine the status of the transfer of this matter to the Oneida County court. Due to the Covid-19 pandemic, and per various Executive Orders restraining activities throughout the State, the Albany County Clerk's office (and the court system) were shut down, not even opening mail for an extended timeframe. There was no word on filing the April 2020 Order (with notice of entry) until June 22, 2020. In the interim, MVHS continued with due haste – and at its own risk – to demolish additional buildings and commence construction on this massive Project, notwithstanding the pending litigation charging a flagrant lack of SEQRA compliance on multiple grounds. And, it was not until this week that the case actually found its way to Oneida County and your office after repeated phone calls from this office to the Albany County Clerk.

Given the extended period of time in which this case has languished and the harm that MVHS has caused (and continues to cause), Petitioners respectfully urge this Court to make a determination on the merits as expeditiously as possible, with or without oral argument. In the event the Court wishes to have oral argument, I am available, at the Court's convenience, by conference on in person, per the Court's directive.

Very truly yours,



Thomas S. West

TSW/cmm

cc: Oneida County Clerk (via First Class Mail)

Kathryn Hartnett (via electronic mail)

Jonathan Fellows (via electronic mail)