

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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.,

Petitioners-Plaintiffs

For a Judgment pursuant to Article 78 and Section 3001 of the
Civil Practice Laws and Rules,

against-

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,

Respondents-Defendants.

**VERIFIED ANSWER TO
AMENDED VERIFIED
PETITION AND COMPLAINT**

Index No. 02797-19

Assigned Judge:
Hon. Michael Mackey, J.S.C.

Respondent-Defendant, Mohawk Valley Health System ("Respondent" or "MVHS"), by and through its Attorneys, Bond, Schoeneck & King, PLLC, as and for its Verified Answer herein, responds to the allegations in the Amended Verified Petition and Complaint, dated November 4, 2019 (the "Petition"), as modified by the Decision and Order of the Court dated December 23, 2019 and entered December 26, 2019,¹ as follows:

NATURE OF THE PROCEEDING

1. MVHS neither admits nor denies the allegations set forth in paragraph 1 of the

¹ Following the Respondents' motions to dismiss, the Court dismissed the first, second and sixth causes of action in the Amended Petition and converted the hybrid CPLR Article 78 proceeding and declaratory judgment action to an Article 78 proceeding. Respondent submits this answer to the remaining third, fourth and fifth causes of action.

Petition, and further states that the allegations set forth the nature of the proceeding, but to the extent that paragraph 1 is construed to contain allegations of fact, denies the allegations in paragraph 1 of the Petition; specifically denies that the project site is 34 acres; and further denies any inference of illegality in the City of Utica's Gateway Historic Canal District (the "Downtown Site").

2. MVHS neither admits nor denies the allegations set forth in paragraph 2 of the Petition, and further states that the allegations set forth the nature of the proceeding, but to the extent that paragraph 2 is construed to contain allegations of fact, denies the allegations in paragraph 2 of the Petition; and further denies any inference of illegality.

3. With respect to the allegations set forth in paragraph 3 of the Petition, MVHS admits only that the Dormitory Authority of the State of New York ("DASNY") and the Office of Parks, Recreation and Historic Preservation ("OPRHP") entered into a Letter of Resolution ("LOR") together with MVHS; denies the remainder of the allegations and respectfully refers the court to the LOR which speaks for itself.

4. With respect to the allegations set forth in paragraph 4 of the Petition, denies that the Respondent-Defendant Planning Board of the City of Utica ("Planning Board"), as lead agency under SEQRA, also has signed off on the Project; and only admits that the Planning Board accepted the Final Environmental Impact Statement, dated March 21, 2019 ("FEIS"), and issued its SEQRA Findings Statement on or about April 18, 2019 ("Findings Statement"); but denies any inference of illegality and further states that these steps were not a final agency action because the Planning Board had an additional project approval to issue.

5. MVHS denies the allegations set forth in paragraph 5 of the Petition and states in the affirmative that the Planning Board took a hard look at all the environmental impacts as

demonstrated by the three thousand plus page EIS submitted to the court as part of the record.

6. MVHS denies the allegations set forth in paragraph 6 of the Petition and states in the affirmative that Petitioners mischaracterize the nature of the “historic impacts” to the area.

PARTIES

7. MVHS denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Petition.

8. MVHS denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Petition.

9. MVHS denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Petition.

10. MVHS denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Petition.

11. MVHS denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Petition.

12. MVHS denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Petition.

13. MVHS denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Petition.

14. MVHS denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Petition.

15. MVHS denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Petition.

16. MVHS denies knowledge or information sufficient to form a belief as to the truth

of the allegations in paragraph 16 of the Petition.

17. MVHS denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Petition.

18. MVHS denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Petition.

19. With respect to the allegations contained in paragraph 19 of the Petition, MVHS states that Respondent-Defendant MVHS is an affiliation of Faxton St. Luke's Healthcare (a not-for-profit health care organization) and St. Elizabeth Medical Center (a Catholic hospital affiliated with the Sisters of St. Francis of the Neumann Communities and the Syracuse Dioceses), with principal office located at 1656 Champlin Avenue, Utica, New York 13502 (or 2209 Genesee Street, Utica, New York 13501) and mailing address P.O. Box 4308, Utica, New York 13504-4308.

JURISDICTION AND VENUE

20. MVHS denies the allegations set forth in paragraph 20 of the Petition.

21. MVHS denies the allegations set forth in paragraph 21 of the Petition.

FACTUAL BACKGROUND

22. MVHS denies the allegations set forth in paragraph 22 of the Petition and respectfully refers the Court to Response 32 in the FEIS.

23. With respect to the allegations set forth in paragraph 23 of the Petition, MVHS admits that the Project is a nine-story, 165-foot hospital building (with associated uses, including parking facilities) that will require certain street closures, but denies the remainder of the allegations in their entirety.

24. With respect to the allegations set forth in paragraph 24 of the Petition, MVHS

states that it owns or controls all of the properties located within the footprint of the hospital building, further states that the properties that are not yet owned or controlled by MVHS are needed for other parts of the project such as parking and medical offices; and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 24 of the Petition.

25. With respect to the allegations in paragraph 25 of the Petition, MVHS admits that the Project is a public benefit project, further admits that MVHS indicated that the use of eminent domain by certain municipal entities could be an option used to acquire the properties that MVHS could not acquire voluntarily; but denies the remainder of the allegations and denies any inference of illegality; and respectfully refers the court to the referenced documents which speak for themselves.

26. With respect to the allegations set forth in paragraph 26 of the Petition, MVHS states that it owns or controls all of the properties located within the footprint of the hospital building, further states that the properties that are not yet owned or controlled by MVHS are needed for other parts of the project such as parking and medical offices; further admits that it owns other properties, namely St. Luke's and St. Elizabeth, but denies the remainder of the allegations and further denies any inference of illegality.

27. MVHS admits the allegations set forth in paragraph 27 of the Petition and denies any inference of illegality.

28. With respect to the allegations set forth in paragraph 28 of the Petition, MVHS states that St. Luke's was analyzed together with a number of other sites in the site selection analysis; denies the remainder of the allegations, denies any inference of illegality; and respectfully refers the Court to the site selection analysis which is included in the DEIS.

29. With respect to the allegations set forth in paragraph 29 of the Petition, MVHS states that St. Luke's was analyzed together with a number of other sites in the site selection analysis; denies the remainder of the allegations, denies any inference of illegality; and respectfully refers the Court to the site selection analysis which is included in the DEIS.

30. With respect to the allegations set forth in paragraph 30 of the Petition, MVHS states that St. Luke's was analyzed together with a number of other sites in the site selection analysis; further states that the Oneida County Health Care Transformation Program, Public Health Law § 2825-b provided for up to \$300 million in grant monies for an integrated health care facility located in the "largest population center in Oneida County;" denies the remainder of the allegations, denies any inference of illegality; and respectfully refers the Court to the site selection analysis which is included in the DEIS and to the Public Health Law, which speaks for themselves.

31. With respect to the allegations set forth in paragraph 31 of the Petition, MVHS states that it sought funding pursuant to the Oneida County Health Care Transformation Program, states that St. Luke's was analyzed together with a number of other sites in the site selection analysis; denies the remainder of the allegations, denies any inference of illegality; and respectfully refers the Court to the site selection analysis which is included in the DEIS and to the Public Health Law, which speak for themselves.

32. With respect to the allegations set forth in paragraph 32 of the Petition, MVHS states that St. Luke's was analyzed together with a number of other sites in the site selection analysis; denies the remainder of the allegations, denies any inference of illegality; and respectfully refers the Court to the site selection analysis which is included in the DEIS and to the DEIS itself, which speak for themselves.

33. With respect to the allegations set forth in paragraph 33 of the Petition, MVHS

states that in September of 2016, it announced its selection of the Downtown Site as the preferred alternative for the Project; but denies the remainder of the allegations, and further denies any inference of illegality.

34. MVHS admits the allegations set forth in paragraph 34 of the Petition; but denies any inference of illegality.

35. MVHS admits the allegations set forth in paragraph 35 of the Petition; but denies any inference of illegality.

36. MVHS admits the allegations set forth in paragraph 36 of the Petition; but denies any inference of illegality.

37. MVHS admits the allegations set forth in paragraph 37 of the Petition; but denies any inference of illegality.

38. MVHS admits the allegations set forth in paragraph 38 of the Petition; but denies any inference of illegality.

39. With respect to the allegations set forth in paragraph 39 of the Petition, MVHS states that by letter dated June 18, 2018, OPRHP identified certain potential impacts with respect to historic resources; but denies the remainder of the allegations, and further denies any inference of illegality; and respectfully refers the court to the letter from OPRHP which speaks for itself.

40. With respect to the allegations set forth in paragraph 40 of the Petition, MVHS states that by letter dated June 18, 2018, OPRHP identified certain potential impacts with respect to historic resources; but denies the remainder of the allegations, and further denies any inference of illegality; and respectfully refers the court to the letter from OPRHP and the DEIS which speak for themselves.

41. With respect to the allegations set forth in paragraph 41 of the Petition, MVHS

states that by letter dated August 16, 2018, its consultant responded to OPRHP; but denies the remainder of the allegations, and further denies any inference of illegality; and respectfully refers the court to the letter from MVHS which speaks for itself.

42. With respect to the allegations set forth in paragraph 42 of the Petition, MVHS states that by letter dated August 16, 2018, its consultant responded to OPRHP; but denies the remainder of the allegations, and further denies any inference of illegality; and respectfully refers the court to the letter from MVHS and to the DEIS which speak for themselves.

43. MVHS denies the allegations set forth in paragraph 43 of the Petition

44. MVHS denies the allegations set forth in paragraph 44 of the Petition.

45. With respect to the allegations in paragraph 45, MVHS states that in January 2019, the parties executed the LOR; but denies the remainder of the allegations, and further denies any inference of illegality; and respectfully refers the court to the letter from MVHS and to the DEIS which speak for themselves.

46. MVHS denies the allegations set forth in paragraph 46 of the Petition and respectfully refers the court to the LOR which speaks for itself.

47. MVHS denies the allegations set forth in paragraph 47 of the Petition and respectfully refers the court to the FEIS and the LOR which speak for themselves.

48. MVHS denies the allegations set forth in paragraph 48 of the Petition and respectfully refers the court to the LOR, the FEIS and the Findings Statement, which speak for themselves.

49. With respect to the allegations set forth in paragraph 49 of the Petition, MVHS states that the public raised questions about alternative sites; but denies the remainder of the allegations and denies any inference of illegality.

50. MVHS denies the allegations in paragraph 50 of the Petition; and respectfully refers the court to the Siting Memo and the DEIS which speak for themselves.

51. MVHS denies the allegations in paragraph 51 of the Petition; states that the public comments were just the public's opinions, that were addressed in the FEIS and were not consistent with the goals and objectives of MVHS; and respectfully refers the court to the Siting Memo and the EIS which speak for themselves.

52. MVHS denies the allegations in paragraph 52 of the Petition.

53. MVHS denies the allegations in paragraph 53 of the Petition.

54. With respect to the allegations set forth in paragraph 54 of the Petition, MVHS states that the Oneida County Health Care Transformation Law requires that a new hospital be sited in the "largest population center of Oneida County," which according to the latest census data is the City of Utica, denies the remainder of the allegation and respectfully refers the court to the text of the statute which speaks for itself.

55. MVHS denies the allegations set forth in paragraph 55 of the Petition.

56. MVHS denies the allegations set forth in paragraph 56 of the Petition and respectfully refers the Court to the DEIS which speaks for itself.

57. With respect to the allegations set forth in paragraph 57 of the Petition, denies knowledge or information sufficient to form a belief as to the truth of "Finally, demographics analyses show that St. Luke's is in a greater population center than is the Downtown Site relative to Oneida County as a whole, the combined 3-County Region of Oneida, Madison and Herkimer Counties (denominated by MVHS as its service area), and the geometric center (triangulated center) of the geospatial centers of Utica, Oneida County and the 3-County Region;" denies knowledge or information sufficient to form a belief as to the truth of "Interestingly, the only

instance where the Downtown Site qualifies as a being in a larger population center than the St. Luke's campus is where only the City of Utica is considered;" denies "Since the integrated health care facility is not meant to be limited to the City of Utica, however, but is meant to serve all of Oneida County and the 3-County Region, the Downtown Site is not within 'the largest population center.'" *See generally*, Affidavit of Joseph Minicozzi, sworn to May 3, 2019 ("Minicozzi Affidavit"); denies "Therefore, a location in the City of Utica is not a pre-condition to state funding under Public Health Law § 2825-b;" and further states that this information was not part of the Record before the Planning Board and is improper opinion evidence by a purported, but as of yet, not qualified expert and should be stricken from record of this court as requested in MVHS's motion to strike.

58. MVHS denies the allegations set forth in paragraph 58 of the Petition.

59. MVHS denies the allegations set forth in paragraph 59 of the Petition.

60. MVHS denies the allegations set forth in paragraph 60 of the Petition.

61. MVHS denies the allegations set forth in paragraph 61 of the Petition.

62. MVHS denies the allegations set forth in paragraph 62 of the Petition.

63. MVHS denies the allegations set forth in paragraph 63 of the Petition.

64. MVHS denies the allegations set forth in paragraph 64 of the Petition.

65. MVHS denies the allegations set forth in paragraph 65 of the Petition.

66. MVHS denies the allegations set forth in paragraph 66 of the Petition.

67. With respect to the allegations set forth in paragraph 67 of the Petition, MVHS states that it owns or controls all of the properties located within the footprint of the hospital building, further states that the properties that are not yet owned or controlled by MVHS are needed for other parts of the project such as parking and medical offices; states that MVHS does have

authority to condemn and no municipal entity with such authority has commenced eminent domain proceedings in accordance with the process provided by the EDPL; and denies the remainder of the allegations.

68. MVHS denies the allegations set forth in paragraph 68 of the Petition.

69. MVHS denies the allegations set forth in paragraph 69 of the Petition.

70. MVHS denies the allegations set forth in paragraph 70 of the Petition.

**AS AND FOR A FIRST CLAIM FOR RELIEF —
A DECLARATION THAT THE LOR IS INVALID BECAUSE
IT IS INCONSISTENT WITH PRHPL 14.09 AND 9 NYCRR § 428.10**

71- 88. [The first claim was dismissed by the Court.]

**AS AND FOR A SECOND CLAIM FOR RELIEF —
A DETERMINATION THAT THE LOR IS IRRATIONAL
BECAUSE IT IS BASED ON A LEGALLY INACCURATE PREMISE**

89 - 95. [The second claim was dismissed by the Court.]

**AS AND FOR A THIRD CLAIM FOR RELIEF —
A DETERMINATION THAT THE FEIS IS FATALLY DEFECTIVE BECAUSE IT
DEFERS ASSESSING ARCHEOLOGICAL/HISTORIC IMPACTS AND
DEVELOPING MITIGATION PLANS UNTIL AFTER CONCLUSION OF THE
SEQRA PROCESS**

96. MVHS repeats and realleges each and every response set forth in paragraphs 1 through 95 as if fully set forth herein.

97. MVHS denies the allegations set forth in paragraph 97 of the Petition and respectfully refers the Court to the FEIS which speaks for itself.

98. MVHS denies the allegations set forth in paragraph 98 of the Petition and respectfully refers the Court to the FEIS which speaks for itself.

99. MVHS denies the allegations set forth in paragraph 99 of the Petition and respectfully refers the Court to the FEIS which speaks for itself.

100. MVHS denies the allegations set forth in paragraph 100 of the Petition and respectfully refers the Court to the FEIS which speaks for itself.

101. MVHS denies the allegations set forth in paragraph 101 of the Petition and respectfully refers the Court to the FEIS which speaks for itself.

102. MVHS denies the allegations set forth in paragraph 102 of the Petition and respectfully refers the Court to the FEIS which speaks for itself.

103. MVHS denies the allegations set forth in paragraph 103 of the Petition and respectfully refers the Court to the FEIS which speaks for itself.

104. MVHS denies the allegations set forth in paragraph 104 of the Petition and respectfully refers the Court to the FEIS which speaks for itself.

105. MVHS denies the allegations set forth in paragraph 105 of the Petition and respectfully refers the Court to the FEIS which speaks for itself.

**AS AND FOR A FOURTH CLAIM FOR RELIEF —
A DETERMINATION THAT THE FEIS IS FATALLY DEFECTIVE
BECAUSE IT FAILS TO ADEQUATELY CONSIDER CUMULATIVE IMPACTS**

106. MVHS repeats and realleges each and every response in paragraphs 1 through 105 as if fully set forth herein.

107. MVHS denies the allegations set forth in paragraph 107 of the Petition and respectfully refers the Court to the FEIS which speaks for itself.

108. With respect to the allegations set forth in paragraph 108 of the Petition, MVHS states that Section 1.5 of the Final Scoping Document addresses the assessment of Cumulative Impacts with respect to the Project; and further states that Section 1.5 identified certain projects

that would potentially be occurring within or proximal to the project area and within a similar timeframe as the Project; and further states that Expansion of the Utica Memorial Auditorium, including the proposed NEXUS center is one of those projects; and further states that traffic and utility infrastructure are two of the cumulative impacts that would be assessed; denies the remainder of the allegations; denies any inference of illegality and refers the Court to the Final Scoping Document.

109. MVHS denies the allegations set forth in paragraph 109 of the Petition and respectfully refers the Court to the FEIS which speaks for itself.

110. MVHS denies the allegations set forth in paragraph 110 of the Petition and respectfully refers the Court to the FEIS which speaks for itself.

111. With respect to the allegations set forth in paragraph 111 of the Petition, MVHS states that the goals and objectives of the Applicant include “providing one integrated location for acute care with greater access to residents of the City of Utica, Oneida County and the region, particularly those populations of refugees and low-income individuals; to improve operational efficiency, patient satisfaction, and safety for both patients and caregivers; attracting new and younger providers; and to act as a catalyst for economic growth in downtown Utica in compliance with the Oneida County Health Care Facility Transformation Program Law;” denies any inference of illegality and denies the remaining allegations. See, FEIS, Section 3.3, Responses 26.

112. MVHS denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 112 because it is not the proposed developer of the Nexus Center; further denies any inference of illegality.

113. With respect to the allegations set forth in paragraph 113 of the Petition, MVHS states that the proposed Nexus Center is located within close proximity to the Project; further states

that the FEIS evaluated cumulative impacts to infrastructure and traffic; denies any inference of illegality and further denies the remaining allegations.

114. MVHS denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 114 and further denies any inference of illegality.

115. MVHS denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 115 and further denies any inference of illegality.

116. With respect to the allegations set forth in paragraph 116 of the Petition, MVHS states as follows: the Final Scoping Document addresses the assessment of Cumulative Impacts with respect to the Project; and further states that Section 1.5 of the Final Scoping Document identified certain projects that would potentially be occurring within or proximal to the project area and within a similar timeframe as the Project; and further states that Expansion of the Utica Memorial Auditorium, including the proposed NEXUS center is one of those projects; and further states that traffic and utility infrastructure are two of the cumulative impacts that would be assessed; further states that those cumulative impacts were adequately assessed in the FEIS; denies the remainder of the allegations; denies any inference of illegality and refers the Court to the Final Scoping Document; and further denies any inference of illegality and denies the remaining allegations.

117. MVHS admits the allegations set forth in paragraph 117 of the Petition, but denies any inference of illegality.

118. MVHS admits the allegations set forth in paragraph 118 of the Petition, but denies any inference of illegality.

119. With respect to the allegations in paragraph 119 of the Petition, MVHS states that expert opinion, corroborated by the Department of Transportation supports the statement that

typical commuter peak periods will not be impacted; denies any inference of illegality; and further states that Petitioners offered no expert studies to the contrary.

120. With respect to the allegations in paragraph 120 of the Petition, MVHS states that traffic generated from special events associated with the Nexus Center was considered by traffic experts and by the Department of Transportation; further states that Petitioners offer no expert opinion to the contrary; denies any inference of illegality and denies the remainder of the allegations.

121. With respect to the allegations in paragraph 121 of the Petition, MVHS states that traffic generated from special events associated with the Nexus Center was considered by traffic experts and by the Department of Transportation; further states that Petitioners offer no expert opinion to the contrary; denies any inference of illegality and denies the remainder of the allegations.

122. With respect to the allegations in paragraph 122 of the Petition, MVHS states that traffic generated from special events associated with the Nexus Center was considered by traffic experts and by the Department of Transportation; further states that Petitioners offer no expert opinion to the contrary; denies any inference of illegality and denies the remainder of the allegations.

123. MVHS denies the allegations set forth in paragraph 123 of the Petition.

**AS AND FOR A FIFTH CLAIM FOR RELIEF —
A DETERMINATION THAT THE FEIS IS FATALLY DEFECTIVE BECAUSE
IT FAILS TO EVALUATE VIABLE ALTERNATIVES IN SUFFICIENT DETAIL**

124. MVHS repeats and realleges each and every response in paragraphs 1 through 123 as if fully set forth herein.

125. MVHS denies the allegations set forth in paragraph 125 of the Petition.

126. MVHS denies the allegations set forth in paragraph 126 of the Petition.

127. MVHS denies the allegations set forth in paragraph 127 of the Petition.

128. MVHS denies the allegations set forth in paragraph 128 of the Petition.

129. With respect to the allegations in paragraph 129 of the Petition, MVHS states that Public Health Law § 2825-b requires that the Project be “located in the largest population center in Oneida county,” which according to the most recent census data is the City of Utica; denies the remaining allegations and refers the Court to the text of the Public Health Law which speaks for itself.

130. With respect to the allegations set forth in paragraph 130 of the Petition, MVHS denies knowledge or information sufficient to form a belief as to the truth of “Demographics analyses demonstrate that St. Luke's is in a greater population center than is the Downtown Site relative to Oneida County, the 3-County Region (Oneida, Herkimer, Madison) (denominated by MVHS as its service area), and the geometric (triangulated) population center of the population centers of the City of Utica, Oneida County, and the 3-County Region. *See generally*, Minicozzi Affidavit & Exhibits thereto;” further denies any inference of illegality; and further states that this information was not part of the Record before the Planning Board and is improper opinion evidence by a purported, but as of yet, not qualified expert and should be stricken from record of this court as requested in MVHS’s motion to strike.

131. MVHS denies the allegations set forth in paragraph 131 of the Petition.

132. With respect to the allegations set forth in paragraph 132 of the Petition, MVHS states that page 27 of the DEIS reads as follows: “However, the Level 2 analysis did not weight any of the criteria and sub-criteria based on the Oneida County Health Care Facility Transformation Program found in Section 2825 of the New York State Public Health Law. Rather,

all Level 2 sites were deemed equal with regard to their status in terms of the legislation"; further states that all sites were treated equally so as not to skew the results of the site selection study, denies any inference of illegality, and denies any remaining factual allegations or implications.

133. MVHS denies the allegations set forth in paragraph 133 of the Petition.

134. MVHS denies the allegations set forth in paragraph 134 of the Petition.

135. MVHS denies the allegations set forth in paragraph 135 of the Petition.

136. MVHS denies the allegations set forth in paragraph 136 of the Petition.

137. MVHS denies the allegations set forth in paragraph 137 of the Petition.

138. MVHS denies the allegations set forth in paragraph 138 of the Petition.

139. MVHS denies the allegations set forth in paragraph 139 of the Petition.

140. With respect to the allegations set forth in paragraph 140 of the Petition, MVHS states that the FEIS identifies the economic revitalization of downtown Utica as a benefit of siting the Project in downtown Utica; denies any inference of illegality; and denies the remainder of the allegations.

141. MVHS denies the allegations set forth in paragraph 141 of the Petition.

142. MVHS denies the allegations set forth in paragraph 142 of the Petition.

143. MVHS denies the allegations set forth in paragraph 143 of the Petition.

144. MVHS denies the allegations set forth in paragraph 144 of the Petition.

**AS AND FOR A SIXTH CLAIM FOR RELIEF —
A DETERMINATION THAT THE PLANNING BOARD DECISION APPROVING
PART OF THE PROJECT AND ALL SUBSEQUENT APPROVALS ISSUED FOR THE
PROJECT ARE FATALLY DEFECTIVE DUE TO RELIANCE ON AN INVALID LOR
AND INCOMPLETE, DEFECTIVE FEIS**

145-149. [The sixth claim was dismissed by the Court.]

AS AND FOR A FIRST OBJECTION IN POINT OF LAW

150. Venue is not proper in Albany County.

AS AND FOR A SECOND OBJECTION IN POINT OF LAW

151. The remaining claims are time barred.

AS AND FOR A THIRD OBJECTION IN POINT OF LAW

152. The remaining claims are not ripe for judicial review.

AS AND FOR A FOURTH OBJECTION IN POINT OF LAW

153. The remaining claims are moot.

AS AND FOR A FIFTH OBJECTION IN POINT OF LAW

154. Petitioners have failed to state a claim upon which relief can be granted.

AS AND FOR A SIXTH OBJECTION IN POINT OF LAW

155. Petitioners have failed to name Oneida County as a necessary party.

AS AND FOR A SEVENTH OBJECTION IN POINT OF LAW

156. Petitioners' claims are barred by the doctrines of laches and unclean hands.

AS AND FOR AN EIGHTH OBJECTION IN POINT OF LAW

157. Petitioner Brett Truett lacks standing because he purchased his property for the sole purpose of obtaining standing to challenge the Project.

WHEREFORE, MVHS respectfully requests that this Court issue a Judgment and/or

Order:

1. Denying the Petition in its entirety;
2. For costs, expenses and fees, including attorneys' fees pursuant to CPLR §8601;

and

3. For such other and further relief as this Court may deem just and proper.

Dated: February 12, 2020

BOND, SCHOENECK & KING PLLC

By: 

Kathleen M. Bennett, Esq.

Attorneys for Respondent-Defendant

MOHAWK VALLEY HEALTH SYSTEM

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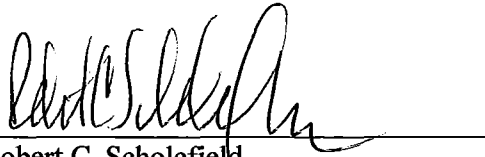
VERIFICATION

STATE OF NEW YORK)

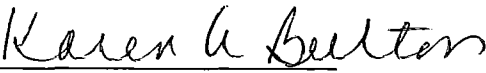
COUNTY OF ONEIDA) ss.:

Robert C. Scholefield, being duly sworn, deposes and says:

That he is the Executive Vice President of Facilities and Real Estate for the Mohawk Valley Health System, Respondent-Defendant in this proceeding; Deponent knows the contents of this Answer in relation to the proceeding challenging action concerning the environmental review for the Integrated Health Care Campus Project in downtown Utica; that the same is true to Deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters Deponent believes them to be true.


Robert C. Scholefield

Sworn to before me this
10th day of February, 2020.


Notary Public

KAREN A. BURTON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01BU6251652
Qualified in Oneida County
My Commission Expires 11-21-2023