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**New York Supreme Court**  
**Appellate Division—Fourth Department**

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525-527 ORISKANY ST. LLC,

*Petitioner,*

**Docket No.:**  
**OP 21-00726**

– against –

ONEIDA COUNTY BOARD OF LEGISLATORS,  
ONEIDA COUNTY, JOHN DOE CORPORATIONS  
and JOHN DOES,

*Respondents.*

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**NOTICE OF PETITION AND  
VERIFIED PETITION WITH EXHIBITS A-I**

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STATE OF NEW YORK  
APPELLATE DIVISION FOURTH DEPARTMENT

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525-527 ORISKANY ST. LLC,

Petitioner

**NOTICE OF PETITION**

vs.

ONEIDA COUNTY BOARD OF LEGISLATORS,  
ONEIDA COUNTY, JOHN DOE CORPORATIONS  
AND JOHN DOES,

Index No. \_\_\_\_\_

Respondents.

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**PLEASE TAKE NOTICE** that upon the annexed verified petition of 525-527 Oriskany St., LLC verified May 14, 2021 Petitioner will move this Court at a motion term to be held in in and for the Appellate Division Fourth Department on \_\_\_\_\_ day of \_\_\_\_\_ at 10:00 AM or as soon thereafter as counsel can be heard, or on such other date as specified by the Court,, for an order pursuant to CPLR Article 78 and EDPL Article 2:

- A. Rejecting the May 14, 2021 Determinations and Findings of the Oneida County Board of Legislators;
- B. Awarding damages under 42 USC §1983; and
- C. Awarding attorneys fees, costs and disbursements.

**PLEASE TAKE FURTHER NOTICE** that pursuant to CPLR 7804(C), all answering papers shall be served at least five (5) days prior to the return date of this Petition.

Dated: May 14, 2021  
Rochester, New York

A handwritten signature in black ink, appearing to read "Bridget O'Toole". The signature is written in a cursive style with a horizontal line underneath it.

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STATE OF NEW YORK  
APPELLATE DIVISION FOURTH DEPARTMENT

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525-527 ORISKANY ST. LLC,

Petitioner

**VERIFIED PETITION**

vs.

ONEIDA COUNTY BOARD OF LEGISLATORS,  
ONEIDA COUNTY, JOHN DOE CORPORATIONS  
AND JOHN DOES,

Index No. OP-00726

Respondents.

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Petitioner 525-527 Oriskany St. LLC (the “LLC”), by its attorneys, The Zoghlin Group PLLC, complains of Respondents Oneida County Board of Legislators, Oneida County, John Doe Corporations and John Does (collectively the “Respondents”) as follows:

**PRELIMINARY STATEMENT**

1. This is a proceeding brought pursuant to Article 2 of the Eminent Domain Procedure Law (“EDPL”) to review the determinations of respondent Oneida County Board of Legislators with regard to the eminent domain of certain property for the construction of a public parking facility in the City of Utica, Oneida County.

2. In this action petitioner seeks an Order:

- A. Rejecting the May 14, 2021 Determinations and Findings of the Oneida County Board of Legislators;
- B. Awarding damages under 42 USC 1983; and
- C. Awarding attorneys fees, costs and disbursements.

3. [Section 6 of Article I of the New York Const.](#) provides that “no person shall be deprived of life, liberty or property without due process.” The [Constitution \(Article 1, § 7, subd \[a\]\)](#) and the Eminent Domain Procedure Law permits the exercise of the power of eminent domain

only for a good faith public purpose. An arbitrary or capricious exercise of that power is a wrongful invasion of private property rights and is violative of the due process guarantee.

4. This petition sets forth the argument that the respondent should not be allowed to exercise the power of eminent domain under the circumstances of this case; and in the alternative, that the respondent in multiple respects has failed procedurally and substantively to comply with the State Environmental Quality Review Act, the Eminent Domain Procedure Law, and related statutes.

5. The Oneida County Board of Legislators' Determinations and Findings must be rejected.

### **PARTIES**

6. Petitioner 525-527 Oriskany St. LLC is a domestic limited liability company with an address of 1601 Gibson Road Utica, New York 13501.

7. Petitioner is the owner of 525-527 Oriskany Street in the City of Utica, Oneida County, bearing Tax ID Numbers 318.34-1-23./1 and 318.34.23./2 (the "Property").

8. Respondent Oneida County Board of Legislators is the governing legislative body of Oneida County.

9. Respondent Oneida County is a municipal entity bound by New York County Law.

10. John Does and John Doe Corporations are other persons or entities that may be necessary parties to this action that have not yet presently been identified.

### **PROCEDURAL PREREQUISITES**

11. Petitioner has exhausted its administrative remedies.

12. Petitioner served a demand to produce a written transcript of the record of the underlying proceeding on the Oneida County Board of Legislators and Oneida County pursuant

to EDPL §207(A). Copies of the demand are attached hereto as Exhibit A.

13. Petitioner has no adequate remedy at law.

14. No previous application has been made for the relief sought herein.

### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this special proceeding/action pursuant to EDPL Article 2.

16. Venue is proper in the Appellate Division Fourth Department pursuant to EDPL §207 as the proposed taking will take place in Oneida County, a county within the Appellate Division Fourth Department.

### **FACTUAL BACKGROUND**

#### **THE PROPERTY AND ITS ENVIRONS**

17. 525-527 Oriskany Street is located within the City of Utica, Oneida County.

18. Oriskany Street is also known as NY Route 5. It is a four-lane, divided commercial corridor in this part of West Utica.

19. Upon information and belief, the Property is located in one of Utica's oldest neighborhoods.

20. Upon information and belief, Oriskany Street is also the site of the historical convergence of the Erie and Chanango Canals.

21. Enterprise Rent A Car ("Enterprise") has operated at the Property since 2018. A photograph of the property obtained from Google Maps is attached hereto is Exhibit B.

22. Upon information and belief, since 2018 Enterprise has invested approximately \$433,000 into the Property. A copy of an e-mail from Philip Snyder, CFM to Oneida County dated December 28, 2020 is attached hereto as Exhibit C.

### THE PARKING GARAGE PROPOSAL

23. Upon information and belief, in 2015 Mohawk Valley Health System (“MVHS”) proposed to construct a hospital facility in West Utica.

24. Upon information and belief, a ramp garage was initially sought by MVHS.

25. In December 2017, MVHS sought to obtain an option to purchase the Property from Petitioner. A copy of the December 6, 2017 offer is attached hereto as Exhibit D.

26. Petitioner declined to sell to MVHS.

27. Upon information and belief, after several iterations of the project and litigation, MVHS was allowed to move forward with the construction of the Hospital without a ramp garage.

28. Upon information and belief, meanwhile, Oneida County decided to take by Eminent Domain what existing property owners such as Petitioner refused to sell to MVHS.

### THE EMINENT DOMAIN PROCEEDING

29. On February 19, 2019, the Oneida County Board of Legislators, by Resolution 2019-53 (“Resolution 53”), authorized the County Attorney to begin acquisition of the Property through Eminent Domain. A map depicting the parcels to be taken by eminent domain in relation to MVHS owned parcels, City of Utica owned parcels is attached hereto as Exhibit E

30. On December 23, 2020 the Oneida County Board of Legislators purported to hold a public hearing via zoom only. The Transcript of the December 23, 2020 hearing with after-submitted public comment is attached hereto as Exhibit F.

31. At the conclusion of the December 23, 2020 public hearing, there was no vote to continue the hearing. Exhibit F, p. 16-17.

32. Rather, an additional 30 days to submit written comments was provided. Exhibit

F, p. 16-17.

33. Upon information and belief, the hearing was not reconvened at a later date. The basis of this belief is that, the meeting minutes of the Oneida County Board of Legislators from December 23, 2020 to the present show that the December 23, 2020 public hearing was not reconvened.

34. On April 14, 2021, more than ninety days after the conclusion of the December 23, 2020 public hearing, the Oneida County Board of Legislators enacted Resolution 83 “adopting the determinations and findings pursuant to section 204 of the Eminent Domain Procedure Law in connection with the acquisition of property for the construction of a public parking facility in the city of Utica.” A copy of Resolution No. 83 with the annexed Determinations and Findings is attached hereto as Exhibit G.

35. The Board of Legislators’ Determinations and Findings do not include a finding, or any supporting evidence, that there is a need for the amount of parking being proposed or that all of the properties being condemned are required to achieve the desired outcome.

36. Further, Respondents did not perform SEQRA review and made no SEQRA determination in connection with this action.

37. Instead, it impermissibly “accepted the Findings Statement issued by the City of Utica Planning Board,” dated April 30, 2019, rather than performing its own review and making its own findings. Exhibit G, para. 16.

38. A copy of the City of Utica’s April 30, 2019 Findings Statement was not included in Board of Legislators Decision and Findings and was not made available on the County’s website.

39. The City of Utica Planning Board’s (the “Planning Board”) April 30, 2019



Findings Statement related to the development of MVHS, not the eminent domain of properties on Oriskany and Lafayette Streets.

40. Even if the Board of Legislators' "acceptance" of the City of Utica's April 30, 2019 Findings Statement had been permissible (it was not), the subject of the Planning Board's Findings Statement (i.e., the development of MVHS) is irrelevant to the action taken by the Board of Legislators and Oneida County (i.e., the condemnation of the Property).

41. The Board of Legislators stated, without any documentation to support its conclusions, "that there will be no significant adverse effect to the environment or upon the residents of the area and locality immediately adjacent and in close proximity to the Properties from the aforesaid land acquisition and the construction of the parking garage. There will be positive environmental effects on the surrounding area, through the reduction of traffic congestions, reduction of on-street parking, and the prevention of over-development of surface parking lots in the area." Exhibit G, para. 8.

42. Respondent also failed to certify that it complied with SEQRA, even though the law expressly requires lead and involved agencies to make such a certification prior to taking an action that is subject to SEQRA. N.Y.C.R.R. §617.11(d); ECL §8-0109(8).

43. In its Determinations and Findings, the Board of Legislators states that, "following the closing of the Public Hearing, copies of the complete record of the hearing were filed with Oneida County Clerk, and were also made available for download on the Oneida County website." Exhibit G, para. 13.

44. It further states that "Copies of all documentation concerning the above acquisition and condemnation are on file at the offices of the Oneida county Clerk . . . which include the transcript of the public hearing held on December 23, 2020 and all documentation

submitted to the County concerning said acquisition. The same is available for download on the Oneida County Web Page at <http://www.ocgov.net>.” Exhibit G, para. 19.

45. These statements were inaccurate.

46. On May 10, 2021, counsel for petitioner requested a copy of the record of the proceeding pursuant to EDPL §203 from the Clerk of the Board of Legislators. Counsel for Oneida County responded instead and directed counsel for petitioner to a link on the Oneida County website. A copy of the May 10, 2021 e-mail exchanged between Bridget O’Toole, Esq. and Robert E. Pronteneau, Esq. is attached hereto as Exhibit H.

47. The website link provided in Attorney Pronteneau’s e-mail directs to Oneida County’s eminent domain website. A print-out of that website, accessed on May 13, 2021, is attached hereto as Exhibit I.

48. The only documents provided on that website are the transcript of the December 23, 2020 hearing attached to this petition as Exhibit F and Resolution 83 attached to this petition as Exhibit G.

49. The website did not provide copies of any notices, appraisals, meeting minutes, or other pertinent resolutions concerning the eminent domain of the Property.

50. Further, the following documents are referenced in the December 23, 2020 Hearing Transcript but were not posted on the County’s website:

- A. Site Plan, referenced by Mark Laramie (Commissioner of Public Works for Oneida County) and allegedly shown via screen share. Hearing Tr. 4:14-15.
- B. Article in Newspaper, June 17, 2016, “Warning to City: No Garage, no new hospital,” referenced by Joseph Cerini. Hearing Tr. 6:10-12.
- C. Appraisal of Joseph Cerini’s Property (owner of 418-430 Lafayette Street),

referenced by Joseph Cerini. Hearing Tr. 7:10-12.

- D. Statement of Utica Common Council President Michael Galime, read into the record and referenced by Legislator Timothy Julian. Hearing Tr. 13:25 — 15:19.
- E. Original plan for the Project, referenced by Legislator Timothy Julian. 15:13-15.

### **PETITIONER HAS STANDING**

51. The Oneida County Board of Legislators' condemnation of the Property will cause Petitioner to suffer one or more injuries in fact, including the loss of the Property and the deprivation of Constitutional rights to due process of law.

52. The deprivation of a Constitutional Right is cognizable injury in fact.

53. As government entities, Respondents' failure to follow the law is also an injury.

54. Petitioner's injuries are fairly traceable to Respondents actions because Petitioner is suffering a loss of the Property and a deprivation of rights as a direct result of the Oneida County Board of Legislators' condemnation proceeding.

55. Petitioner's injuries are different from those suffered by the public at large because it is Petitioner's Property that the Oneida County Board of Legislators seeks to take by eminent domain.

56. A favorable judicial determination in this matter rejecting Oneida County Board of Legislators' Determinations and Findings will address the injuries sustained by Petitioner.

### **FIRST CAUSE OF ACTION FAILURE TO COMPLY WITH THE STATE ENVIRONMENTAL QUALITY REVIEW ACT**

57. Petitioner repeats and realleges paragraphs 1 – 56 as if set forth herein at length.

58. As a mandatory process before making any decision under the Eminent Domain Procedure Law, the respondent is required to comply procedurally and substantively with the

State Environmental Quality Review Act (“SEQRA”), [ECL §§ 8-0101 to 8-0117](#), N.Y. Comp. Codes R. & Regs. tit. 6, Part 617.

59. The basic purpose of SEQRA is to incorporate the consideration of environmental factors into the planning, review, and decision-making processes of state and local government agencies at the “earliest possible time.” To accomplish this goal, SEQRA requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant effect on the environment. When an action may have a significant effect, the agency must minimize adverse environmental impacts to the greatest extent practicable. ECL 8-0103; 6 NYCRR 617.1(c).

60. Early environmental review of a proposed action serves three purposes: “To relate environmental considerations to the inception of the planning process, to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision-making process in determining the environmental consequences of a proposed action.” ECL 8-0109(4).

61. Therefore, whenever a proposed agency “action” “may include the potential for at least one significant environmental impact,” the environmental impact of the action must be carefully studied through the preparation of an Environmental Impact Statement (an “EIS”) 6 NYCRR 617.7(a)(1). An EIS provides a means for agencies, project sponsor and the public to systematically consider significant environmental impacts, alternatives and mitigation. An EIS facilitates the weighing of social, economic and environmental issues early in the planning and decision-making process. 6 NYCRR 617.1(d).

62. Compliance with SEQRA is mandatory. “No agency involved in any action shall

carry out, fund or approve the action until it has complied with the provisions of SEQRA.” 6 NYCRR 617.3(a).

63. SEQRA requires the municipal board to take a “hard look” at the environmental issues, which requires the evaluation of potential impacts and considerations of alternatives, and that there be an elaboration of the basis for decisions made. When the municipal board fails to do so, “the governmental action is void, and in a real sense, unauthorized,” [E.F.S. Ventures Corp. v. Foster](#), 71 N.Y.2d 359 (1988).

64. Respondent did not perform any SEQRA review and made no SEQRA determination.

65. Instead, it impermissibly adopted the findings of a different municipal entity for a different action involving the MVHS project.

66. Respondent also failed to certify that it complied with SEQRA.

67. Respondent’s lone statement “that there will be no significant adverse effect to the environment or upon the residents of the area and locality immediately adjacent and in close proximity to the Properties from the aforesaid land acquisition and the construction of the parking garage. There will be positive environmental effects on the surrounding area, through the reduction of traffic congestions, reduction of on-street parking, and the prevention of over-development of surface parking lots in the area.” Exhibit G, para. 8. This statement is patently insufficient to show compliance with the spirit or letter of SEQRA.

68. Because Respondents failed to comply with **any** provision of SEQRA its action in condemning the Property, its determination to condemn the Property is invalid.

69. Accordingly, the Oneida County Board of Legislators’ Determinations and Findings must be rejected.

**SECOND CAUSE OF ACTION  
FAILURE TO COMPLY WITH THE PROCEDURAL REQUIREMENTS  
OF EMINENT DOMAIN PROCEDURE LAW ARTICLE 2**

70. Petitioner repeats and realleges paragraphs 1 – 69 as if set forth herein at length.

71. [EDPL § 203](#) requires that the hearing be held and that the condemnor produce certain maps and descriptions of the property and of adjacent parcels, that there be an opportunity for public input, and that a record be kept. The respondent failed to comply with [EDPL § 203](#) by holding a hearing virtually only and did not keep a complete record.

72. [EDPL § 203](#) further requires that the record be available for inspection without cost. Petitioner believes that no complete record is on file with the Clerk and available for inspection.

73. [EDPL § 204](#) requires the condemnor within 90 days to make determinations and findings, specify certain factors, publish a synopsis of same, and have copies of same available upon written request at no cost. The condemnor failed to make the required determinations and findings within 90 days of the public hearing and its determinations and findings were untimely.

74. [EDPL § 207\(C\)\(3\)](#) requires the condemnor to act in conformity with SEQRA. It has failed to do so.

75. Accordingly, the respondent has not acted in conformity with the Eminent Domain Procedure Law, [EDPL § 207\(C\)\(3\)](#) and the Oneida County Board of Legislators' Determinations and Findings must be rejected.

**THIRD CAUSE OF ACTION  
VIOLATION OF PETITIONER'S RIGHT TO  
DUE PROCESS OF LAW**

76. Petitioner repeats and realleges paragraphs 1 – 75 as if set forth herein at length.

77. Petitioner has a constitutionally protected ownership interest in the Property.

78. Respondents, through their acts and omissions, have advanced the taking of its

real property without conforming to lawful procedure.

79. [EDPL § 207\(C\)\(1\)](#) requires respondents to act in conformity with the federal and state constitutions. Respondents have failed to do so.

80. By reason of the foregoing, the Oneida County Board of Legislators' Determinations and Findings must be rejected and petitioner is entitled to compensatory damages as set forth in 42 USC §1983, attorneys' fees, costs, and disbursements.

**WHEREFORE**, petitioner respectfully requests that the Court issue an order:

- A. Rejecting the May 14, 2021 Determinations and Findings of the Oneida County Board of Legislators;
- B. Awarding damages under 42 USC §1983; and
- C. Awarding attorneys fees, costs, and disbursements.

Dated: May 14, 2021  
Rochester, New York

  
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**VERIFICATION**

STATE OF NEW YORK)  
COUNTY OF MONROE) s.s.:

Bridget O’Toole an attorney admitted to practice in the State of New York, affirms under penalty of perjury that she is the attorney for the Petitioner; that she maintains offices in Monroe County, New York, which is a different county than Oneida County, New York, where the Petitioner is located; and that she has read the annexed verified petition, and that it is true to her knowledge based upon review of relevant supporting documents, except as to the matters stated to be alleged upon information and belief, and as to such matters she believes them to be true.

Dated: May 14, 2021

  
BRIDGET O’TOOLE

Sworn before me this 14<sup>th</sup>  
day of May, 2021.

  
Notary Public

**LISA LATUS**  
Notary Public, State of New York  
Reg. No. 01LA6335764  
Qualified in Monroe County  
My Commission Expires Jan. 19, 2024