



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

June 26, 2019

Hon. L. Michael Mackey
Supreme Court, Albany County
Albany County Courthouse
16 Eagle Street
Albany, NY 12207-1077

**Re: *The Landmarks Society of Greater Utica, et al. v. Planning Board of
the City of Utica, et al.,*
Index No. 02797-19**

Dear Judge Mackey:

I write to object to petitioners' affirmation and sur-reply memorandum of law submitted, apparently without permission of the Court, in opposition to the respondents' motions to dismiss the above-captioned matter. Counsel for petitioners served the State Respondents (New York State Office of Parks, Recreation and Historic Preservation and the New York State Dormitory Authority[DASNY]) with an affirmation dated June 20, 2019 and a sur-reply memorandum of law dated June 25, 2019, to further bolster their opposition to motions to dismiss filed by the respondents. CPLR § 2214 does not authorize sur-replies in motion practice and Court rules of motion procedure limit such submissions: "All motions shall be returnable before the assigned judge, and all papers shall be filed with the court on or before the return date." 22 NYCRR § 202.8 (a). The Return date for the above-captioned matter was Friday June 21, 2019. Furthermore, the sur-reply inappropriately opines on how State funding "could have been obtained" for placing the project at another location. *See* June 25, 2019 sur-reply memorandum of law at 6. Petitioners' opinions are not relevant. The State's motion to dismiss for ripeness clearly states that DASNY has not approved or authorized financing for the project. *See* June 11, 2019 Affidavit of Robert S. Derico ¶ 9. These belated, unauthorized submissions, with irrelevant opinions, should not be considered by the Court.

Respectfully,

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cc Thomas S. West, Esq.
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CLERK OF SUPREME COURT