

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF ALBANY

THE LANDMARKS SOCIETY OF GREATER
UTICA, JOSEPH BOTTINI,
#NOHOSPITALDOWNTON, 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.,

**AFFIDAVIT OF BRIAN
THOMAS IN
OPPOSITION TO
AMENDED PETITION**

PETITIONERS-PLAINTIFFS,

-against-

INDEX NO. 02797-19
RJI No.

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.

STATE OF NEW YORK)

ss:

COUNTY OF ONEIDA)

I, **BRIAN THOMAS**, being duly sworn, deposes and states as follows:

1. I am over 21 years of age and am employed as the Commissioner of Urban and Economic Development for the City of Utica, New York.
2. I make this affidavit in support of Respondent Planning Board of the City of Utica's motion to dismiss the hybrid Article 78 petition/Declaratory Judgment action.
3. In the course of my duties, I am charged with oversight of planning and economic development in the City of Utica. Part of my job duties include advising and providing staffing and support to the City of Utica Planning Board and the Zoning Board of Appeals. As such, I am

fully familiar with the facts and circumstances of this case.

4. The Planning Board fully complied with SEQRA prior to this project moving forward.

5. Mohawk Valley Health Systems (MVHS) submitted an application to the Oneida County Local Development Corporation (OCLDC) requesting certain financial assistance related to the proposed construction and operation of an Integrated Health Campus in Downtown Utica (Project) on January 28, 2018. See Record p. 3.

6. The Project includes a 670,000± sf hospital, central utility plant, parking facilities (one municipal parking garage to be constructed and owned by Oneida County, and multiple surface lots), medical office building (by private developer), campus grounds, utility/pedestrian bridge (over Columbia Street) and helipad. See Record p. 8.

7. The MVHS application to OCLDC included Part 1 of the full Environmental Assessment Form (EAF), pursuant to the New York State Environmental Quality Review Act (SEQRA). See Record p. 28-87.

8. Based on its review of the EAF, the OCLDC determined the Project to be a Type I action under SEQRA, thereby requiring establishment of a Lead Agency that would conduct a coordinated review; however, the OCLDC felt that it had limited jurisdiction over the Project and opted not to act as Lead Agent. See Record p. 1.

9. Given the professional planning staff at its disposal and the knowledge base required to properly conduct coordinated review for the Project, OCLDC expressed a desire for the City of Utica Planning Board to act as Lead Agent, by letter dated February 2, 2018. See Record p. 1.

10. The full EAF submitted by MVHS to OCLDC identified the City of Utica Planning Board (Planning Board), which must issue site plan approval for the Project, as an Involved Agency making it eligible to act as the Lead Agency. See Record p. 28-87.

11. At the February 15, 2018 Meeting, the Planning Board declared its intent to serve as Lead Agency and sent notice of that intention to all other involved and interested agencies. See Record at pp. 98-122.

12. After providing additional time for objections and having received no objections, on May 7, 2018, the Planning Board declared itself lead agency, identified the Project as a Type 1 action, and issued a Positive Declaration requiring the preparation of an environmental impact

statement to assess potential adverse environmental impacts and to identify possible mitigation and/or alternatives to avoid or minimize those potential impacts. See Record pp. 126-20.

13. On May 17, 2018, MVHS submitted a draft scoping document to focus the draft environmental impact statement on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or nonsignificant. See Record pp. 235-269.

14. The Planning Board held a duly noticed public scoping hearing on June 7, 2018 and accepted written comments on the draft scoping document until June 20, 2018. See Record pp. 278-368.

15. The Planning Board adopted a final scoping document on July 19, 2018. See Record pp. 368-381.

16. MVHS submitted a draft environmental impacts statement (DEIS) to the Planning Board on October 26, 2018 See Record pp. 984-986.

17. During its November 15, 2018 meeting, the Board used the final scoping document and the standards contained in Section 617.9 of the Regulations to pass a resolution accepting the DEIS, dated October 2018, as adequate with respect to its scope and content for the purpose of commencing public review. See Record pp. 975-986.

18. The Planning Board held a duly noticed public hearing on the DEIS, pursuant to 6 NYCRR 617.8(f), on December 6, 2018, at 5:00 p.m. at the New York State Office Building, 207 Genesee St., Utica, NY. See Record pp. 4522-4573.

19. The Planning Board accepted written public comments until December 27, 2018 and the Planning Board received both written and oral comments on the DEIS. See Record pp. 4745-4968.

20. Based on the comments received from the public, at the request of the Planning Board, MVHS's environmental and engineering consultants prepared a Final Environmental Impact Statement, dated February 2019 ("FEIS") in accordance with the Regulations for review by the Board, acting as SEQRA lead agency for the Project. See Record pp. 4587-5595.

21. At its regular meeting on March 21, 2019, the Planning Board, acting as the SEQRA lead agency for the Project resolved to accept the FEIS, dated February 2019, as accurate and adequate with respect to its scope and content pursuant to the standards contained in Section 617.9(b)(8) of the Regulations. See Record pp. 4574-4582.

22. Notice of the Planning Board's acceptance of the FEIS was published in the

Environmental Notice Bulletin and appears on the City of Utica website. See Record pp. 5594-5595.

23. The Planning Board issued a written findings statement regarding the relevant environmental impacts, facts and conclusions disclosed in the FEIS in accordance with the requirements of Section 617.11 on April 18, 2019. See Record pp. 5596-5673.

24. Since the completion of the SEQRA review process, this project has received final site plan approval and construction activities are underway.

25. Contrary to the misleading arguments made by Petitioners about the condition of the area of the Project footprint, this area has been in a state of perpetual decay.

26. Furthermore, the hospital project advances the stated Urban Development goals of the City of Utica.

27. The area encompassed within the footprint of the proposed MVHS hospital campus has had a blighting influence on the City of Utica and the downtown neighborhood, in particular, for the past several decades.

28. The area is the focus of an urban renewal plan that was developed in February 1990 and approved by the Utica Urban Renewal Agency on September 24, 1991. This plan was based on an analysis of the widespread slum and blighted conditions within the area and sets forth various methods and recommendations by which the area can and should be redeveloped; those methods and recommendations included select acquisition of vacant and deteriorated buildings, demolition of some existing structures and disposition of development sites to qualified public or private development entities.

29. Despite inclusion in the City's urban renewal plan, redevelopment efforts within the area in question have been nonexistent since adoption of the plan.

30. From the construction of the new Utica National building several years ago to the multimillion-dollar redevelopment projects at the Landmarc building and the former Hotel Utica to the east or to the Utica Memorial Auditorium to the north of the area, considerable investment has been made to various projects adjacent to the area.

31. Unfortunately, those investments have failed to induce any investment within the proposed area. Instead, the area has continued to languish with buildings continuing to deteriorate and disinvestment growing with each passing year.

32. For the past decade or more, the vast majority of the buildings within the footprint

of the proposed MVHS campus have been vastly underutilized and many are vacant.

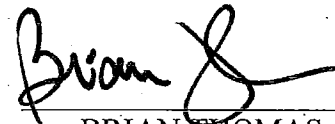
33. Portions of several of the long-time vacant buildings had begun to collapse and were beginning to threaten public health, safety and welfare, and it was becoming increasingly likely that demolition was the only economically feasible solution. In fact, the City spent months in the court system trying to force one private property owner to address his decaying building.

34. That unsafe building has now been removed.

35. And, the Project is having other beneficial environmental impacts. As buildings within the footprint are being torn down, the project sponsor is performing long-delayed environmental clean-up efforts at the site, including asbestos removal and soil clean up.

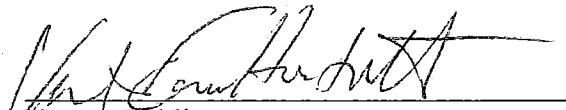
36. Therefore, this project is advancing the City of Utica's urban renewal and environmental improvement goals and should be allowed to be completed.

WHEREFORE, your deponent respectfully requests that the Petitioners' claims are dismissed, and for such other and further relief as the Court may deem just and proper.



BRIAN THOMAS,
COMMISSIONER OF URBAN AND ECONOMIC
DEVELOPMENT FOR THE CITY OF UTICA

Sworn to before me this
14th day of February, 2020


Notary Public

KATHRYN FESTINE HARTNETT
Notary Public, State of New York
Registration #02HA6336698
Qualified In Oneida County
Commission Expires Feb. 8, 2024