

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY**

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THE LANDMARKS SOCIETY OF GREATER UTICA,  
JOE 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 Law 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.

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**AFFIRMATION OF  
THOMAS S. WEST  
IN RESPONSE TO  
MOTIONS TO DISMISS**

Index No. 02797-19

2019 JUN 20 PM 1:15  
CLERK OF THE COUNTY  
OF ALBANY COURTS

**THOMAS S. WEST**, an attorney duly admitted to practice law in the State of New York, affirms the following under penalties of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules:

1. I am an attorney admitted to practice law in the courts of New York State and one of the attorneys for the Petitioners-Plaintiffs in this hybrid proceeding. I have been representing certain of the Petitioners-Plaintiffs in proceedings before the Planning Board of the City of Utica, New York ("Planning Board"), relative to the Final Environmental Impact Statement ("FEIS") that was adopted by the Planning Board on or about March 21, 2019, and the findings that were adopted by that agency pursuant to the State Environmental Review Act ("SEQRA") on or about

April 18, 2019 (the “SEQRA Findings”). As such, I am fully familiar with the facts pertinent to this case.

2. As is reflected in the Affidavit of Brett B. Truett, sworn to June 19, 2019, the focus of this litigation is to challenge the final decisions in the FEIS and the SEQRA Findings selecting the site in downtown Utica as the final site for the Mohawk Valley Hospital System (“MVHS”) project.

3. This hybrid proceeding has raised three claims challenging the site selection decision based upon an illegal Letter of Resolution (“LOR”) relative to archaeological and historical impacts, which resulted in a gaping hole in the FEIS and SEQRA Findings through the inability to properly evaluate archaeological and historical impacts and mitigate impacts to the maximum extent practicable as is required by SEQRA.

4. The Verified Petition-Complaint also alleges that the FEIS and SEQRA Findings are defective since they failed to evaluate cumulative impacts or engage in any meaningful analysis of alternatives, such as the existing St. Luke’s campus, which could accommodate this project without any of the impacts that are the focus of this litigation.

5. Again, the focus of Petitioners’-Plaintiffs’ claims is the Planning Board’s selection of the downtown site for MVHS’s project, without adequate information substantiating that determination and without mitigation that is required by law to mitigate impacts to archaeological and historic resources that have been conceded by Respondents-Defendants. And, the Planning Board’s decision to locate the hospital in downtown Utica is as final as final gets. No further administrative action will reverse that decision or mitigate the resulting injury.

6. I make this Affirmation to call to this Court's attention events that occurred last evening, after our responsive papers were served, which events have a direct bearing on the motions before this Court and shed light on the overall strategy of the Respondents-Defendants.

7. Annexed hereto and incorporated herewith as Exhibit "A" is a copy of a news article covering events that occurred yesterday, including a public hearing before the Planning Board and a vote by the Common Council of the City of Utica to authorize the transfer of certain properties owned by the City of Utica to MVHS for \$1.

8. That article also reveals the following: "Demolition of buildings in the hospital footprint will begin later this summer, and the hospital groundbreaking will take place by year's end, hospital officials have said."

9. These facts make it abundantly clear that MVHS and the other Respondent-Defendants are engaged in a concerted strategy to acquire properties and demolish buildings to create a gaping hole in downtown Utica that is as large as the hole that they left in the SEQRA process through the illegal LOR and other defects in the SEQRA process outlined in this case.

10. As is demonstrated in the responsive papers filed on June 19, 2019, the concerted Motions to Dismiss are frivolous and a patent attempt to delay this case so that MVHS and others can pursue property acquisitions and demolish historic structures in a blatant attempt to moot this controversy.

11. Under these circumstances, we respectfully request that this Court deny the Motions to Dismiss promptly and establish a schedule to expedite resolution of this case on the merits.

Dated: June 20, 2019  
Albany, New York



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Thomas S. West

**EXHIBIT A**

**By Samantha Madison**

Posted Jun 19, 2019 at 9:31 PM Updated Jun 19, 2019 at 9:48 PM

UTICA — The sale of five properties in the footprint of the planned downtown hospital campus was approved 7-1 Wednesday evening by the Utica Common Council, following a public hearing.

The properties at 326-334 Columbia St., 336 Columbia St., 414-416 Lafayette St., 509 State St. and 401 State St. are owned by the Urban Renewal Agency, but with the passing of the ordinance Wednesday, they can be sold to the Mohawk Valley Health System for \$1. The properties will be used for the Utica downtown hospital project.

Of the more than 50 people in attendance at Wednesday's meeting, 12 spoke about the project, with the majority against the sale of the property. A few people, including Common Council attorney Anthony Garramone, spoke in favor of the sale.

"I always thought, especially when I was a councilman and thereafter, that Utica was its own worst enemy," Garramone said after everyone had spoken. "Quite frankly, no one can say for sure what will happen when all of the properties are removed and a brand new building is put there, nobody can tell us what will happen then because you can't predict the future accurately. ... I can guarantee you when you have a state-of-the-art facility, doctors will come, good doctors who want to be here and see a growing city."

Those against the sale of the properties reiterated their frustration that the city has chosen to write off that area of the city and bulldoze it to build the new hospital. Others against it asked the council to wait until a lawsuit against the project is decided.

Joseph Bottini was one of those residents speaking out about both issues, as well as the dangers of the idea of urban renewal.

"Don't sell your soul for politics," he said. "Two truths: Everyone in this room knows there is not one medical health care advantage to a downtown hospital location. Everyone in this room knows there are many medical health care advantages to the Champlain Avenue location. After much research, listening to medical personnel, reading, extensive contemplation, my conclusion is secure, Utica and Oneida County are making a colossal mistake."

The Common Council approved 5-3 a purchase option agreement in May 2018, which gave the Mohawk Valley Health System the option of purchasing five city-owned properties for \$1, payable to the Urban Renewal Agency. Council members

Dave Testa, Robert DeSanctis and Mark Williamson opposed the approval at that time, and Samantha Colosimo Testa was absent.

But under that agreement, the sales could not move forward without a public hearing and another council approval.

During Wednesday's vote, DeSanctis voted against the approval of the sale because he disagrees with the amount the hospital system is going to pay. Williamson was absent from the meeting.

Colosimo Testa, who voted in favor of approving the sale, said the sale of the properties will bring more investment into the community.

"The properties that we sold to the MVHS have been an eyesore to that area for several years now," she said. "I'm in support of an investment in our health care and a focus of moving that area forward."

The health system has reached purchase agreements with all the owners whose properties sit in the footprint of the hospital building and has begun closing on those properties. It is still negotiating with three owners whose properties will be converted to parking lots. Four property owners in the garage footprint have refused to negotiate with the health system.

Demolition of buildings in the hospital footprint will begin later this summer, and the hospital groundbreaking will take place by year's end, hospital officials have said.

*Contributing: Amy Neff Roth, Observer-Dispatch*