

**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 SUPPORT
OF MOTION TO DISMISS**

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.
4. Within my department, I and my staff review every application submitted to the

Planning Board for site plan approvals, and every application submitted to the Zoning Board of Appeals for Area and Use Variances, and Special Use Permits.

5. It is my duty to ascertain which Planning Board or Zoning Board of Appeals approvals are required for any given proposed project within the City of Utica.

6. If the required approvals are not sought and/or granted, a project may not proceed to construction. If construction has begun without approvals, a stop work order may be issued until such necessary approvals are made.

7. Barring certain exceptions, construction projects in the city costing more than \$500 require a building permit.

8. Projects requiring building permits and located within a commercial zone require site plan approval by the Planning Board in accordance with Utica City Code § 2-29-542 (b) before a building permit may be issued.

9. The Mohawk Valley Health System Downtown Hospital Project is a new construction project for which building permits are required, and it is located in an area zoned Central Business District, a commercial zoning designation. Accordingly, site plan approval is required.

10. If and when an complete application is submitted to the Planning Board for preliminary site plan approval, the board may deny, approve, or approve with modifications the site plan. Modifications may alter the size, design, landscaping, and/or engineering of the project.

11. Before granting preliminary site plan approval, the Board must consider several factors including, but not limited to the following, in accordance with § 2-29-564 of the Code of the City of Utica:

- a. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic control.
- b. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
- c. Location, arrangement, appearance and sufficiency of off-street parking and loading.
- d. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.

- e. Adequacy of stormwater and drainage facilities.
- f. Adequacy of water and sewage disposal facilities.
- g. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
- h. In the case of multifamily dwellings, the adequacy of usable open space for play areas and informal recreation.
- i. Protection of adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features.
- j. Adequacy of fire lanes and other emergency zones and the provisions of fire hydrants.
- k. Special attention to the adequacy of structures, roadways, and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- l. Overall sensitivity to the environment.

12. After receiving preliminary site plan approval, an applicant must also submit a plan for final site plan approval. The final site plan must conform substantially to the preliminary site plan as approved. If more than six months have passed from preliminary site plan approval or if there are substantial changes to the final site plan, the Planning Board may require resubmission of a preliminary site plan for review.

13. As of this date, Mohawk Valley Health System has not submitted a complete application for preliminary site plan approval for the Downtown Hospital Project.

14. As no complete application has been submitted to be considered by the Planning Board, there is no site plan approval as would be necessary to secure a building permit and begin construction of the Downtown Hospital Project.

15. In addition to site plan approval, an intended use of land may also require area or use variances granted by the Zoning Board of Appeals prior to issuance of a building permit.

16. The Mohawk Valley Health System Downtown Hospital Project is planned for construction in an area zoned as Central Business District. However, the proposed footprint of the project is also subject to overlay zoning known as the Gateway Historic Canal District.

17. The Downtown Hospital project does not conform to the Gateway Historic Canal District Design guidelines. As a form-based code, the Design Standards for the Gateway Historic

Canal District are a highly prescriptive set of standards that govern the aesthetics of a building, rather than its use. The Design Standards, however, contemplate the possibility that some projects won't fully comply. As such, the Design Standards provides for a set of minimum regulations (§2-29-170(E)(3)(b) of the Utica City Code) that are tantamount to the height/bulk regulations of a Euclidean zoning code. See Gateway Historic Canal District Design Standards, annexed hereto as Exhibit A.

18. In the case of the proposed Downtown Hospital Project, preliminary reviews of the draft site plan (submitted without a completed application) by City Planning staff against these minimum regulations determined that certain regulations would not be met and that area variances would be necessary.

19. As of this date, no application for an area variance has been submitted to the Zoning Board of Appeals for review.

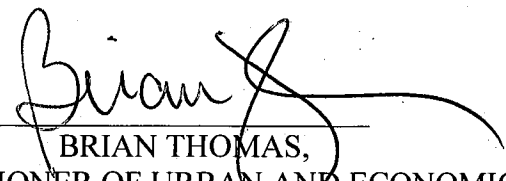
20. After receiving site plan approval and area variances, a building permit would also need to be acquired through an application process with the codes department before work could commence.

21. Furthermore, new construction related to the project would occur after demolition of existing buildings on the proposed site. No application for a demolition permit related to the project has been received at this time.

22. In summary, for construction of the Downtown Hospital Project to proceed, Mohawk Valley Health System would need to apply and obtain demolition permits, preliminary site plan review, final site plan review, and area variances for the project's deviance from codified height and bulk requirements. After receiving those approvals, a building permit would also need to be acquired.

WHEREFORE, your deponent respectfully requests that the Respondent Planning Board of the City of Utica's Motion to Dismiss be granted, and for such other and further relief as the Court may deem just and proper.

Dated: June 12, 2019


BRIAN THOMAS,
COMMISSIONER OF URBAN AND ECONOMIC
DEVELOPMENT

Sworn to before me this

12th day of June, 2019

Catherine M. Mack

Notary Public

CATHERINE M. MACK
Notary Public, State of New York
Reg.# 01MA6061896
Appointed in Oneida County
My Commission Expires July 23, 20 21