

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

THE LANDMARKS SOCIETY OF GREATER UTICA,
JOSEPH 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 Pules,

-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.

STATE OF NEW YORK)
) ss:
COUNTY OF SARATOGA)

JOHN BONAFIDE, being duly sworn, deposes and says:

1. I am the Director of the Bureau of Technical Preservation Services in the Division for Historic Preservation (Division) within the New York State Office of Parks, Recreation and Historic Preservation (Parks). I have held this position for eight years and have been employed by Parks for almost 32 years. Prior to serving as Director of the Division, I was the Historic Preservation Services Coordinator for the State for 7 years and Historic Preservation Information

Systems Manager before that. I have a B. A. in Fine Art and a M.A. in Public History from the State University of New York (SUNY) at Albany. I have been an adjunct professor at SUNY Albany since 2002 and I currently teach an introductory historic preservation course at the graduate level. I became a Certified Architectural Historian with the National Park Service in 1994, and have served on various committees, co-authored numerous surveys and reports, and received awards related to my historic preservation work at Parks.

2. I submit this affidavit in support of the State's motion to dismiss this action against Parks, which has no discretionary approval authority for the Project that is the subject of this litigation.

3. My responsibilities include reviewing State agency projects that may affect sites of historic significance in New York State. As part of those responsibilities, I am familiar with Parks, Recreation and Historic Preservation Law (PRHPL), commonly known as the State Historic Preservation Act (SHPA), sections §§ 14.01, 14.03, 14.05, 14.07 and 14.09. Section 14.09 of SHPA (Section 14.09) defines the duties of state agencies to consult with Parks on impacts to historic resources.

4. I am familiar with and participated in the Section 14.09 review for the project that is the subject of this litigation.

5. I am also familiar with the regulations that Parks promulgated to implement Section 14.09, found at 9 NYCRR §§ 428.1- 428.10, as well as Parks' general practice and preferences for consultations.

6. I base this affidavit on my personal knowledge of SHPA review for this project, as well as my general familiarity and knowledge of the relevant statutes, regulations and Parks' practices in consulting with State agencies under Section 14.09.

7. Section 14.09 requires a state agency to consult with Parks before carrying out, approving or funding a project (undertaking) that has the potential to impact a historic resource that is eligible for, or listed in, the State or National Registers of Historic Places (Registers), or determined by the commissioner of Parks to be eligible for listing.

8. The Section 14.09 consultation process allows State agencies to fully explore all feasible and prudent alternatives to avoid or mitigate adverse impacts on eligible or listed historic resources.

9. I am designated by Parks to consult with Agency Preservation Officers (APOs) who carry out consultation under Section 14.09 of SHPA on behalf of their State agencies. Site visits are rarely undertaken by Parks as part of the consultation process because we review more than 8,500 total projects annually.

10. Under Section 14.09, an undertaking is considered to be adverse when the effect on a historic property “is likely to cause: 1) destruction or alteration of all or part of the property; 2) isolation or alteration of the property’s environment; 3) introduction of visual, audible or atmospheric elements which are out of character with the property or alter its setting; 4) neglect of the property resulting in its deterioration or destruction.” PRHPL § 14.09(1).

11. For some projects, adverse impacts are unavoidable. However, if at all possible, the consultation process should lead to a Letter of Resolution.

12. A Letter of Resolution is an agreement executed by Parks and the involved state agency, or agencies, that sets out an agreed-upon course of action to mitigate any adverse impact associated with the proposed undertaking. 9 NYCRR § 428.10 (b). It is a flexible document that

helps State agencies to identify, avoid, minimize and mitigate adverse impacts to historic and archaeological resources in particular as a complex undertaking progresses.

13. Parks encourages State agencies to execute Letters of Resolution as early as possible in the consultation process for large scale or phased projects, once it is known that an adverse impact will occur.

14. There are also other possible outcomes to the consultation process. If an agency determines that there are no feasible and prudent alternatives that would avoid or satisfactorily mitigate the project's adverse impacts, and also that it is in the public interest to proceed with the project, it could, on notice to the commissioner of Parks, unilaterally terminate the consultation process and proceed with the undertaking. 9 NYCRR § 428.10 (d). Another possible outcome is that the agency and Parks could mutually agree that, although there are no feasible or prudent alternatives to avoid or mitigate the project's impacts, the agency could still proceed with the undertaking because it is in the public interest and the parties could issue a "joint declaration" instead of a Letter of Resolution. 9 NYCRR § 428.10(e).

15. This consultation process is separate from the environmental review that occurs pursuant to the State Environmental Quality Review Act (SEQRA). *See* 9 NYCRR § 428.10.

16. I have participated in many Section 14.09 consultations on behalf of Parks, including the consultation for the Mohawk Valley Health System's (Project Sponsor's) plan to develop certain properties in the City of Utica for a new regional hospital, and parking facilities.

17. For this project, the Project Sponsor's consultant submitted the initial information to Parks on October 3, 2016. The information identified a Project Impact Area (PIA) under Section 14.09 of approximately 25 acres bounded to the west by the North-South Arterial

Highway, to the east by Broadway, to the south by Columbia Street, and to the north by Oriskany Street.

18. Parks determined that the PIA was archaeologically sensitive, and requested a Phase IA Archaeological Assessment by letter dated October 6, 2016. Generally, this kind of assessment, also known as a literature search and sensitivity study, is used to inform subsequent archaeological testing strategies and to provide the contextual framework within which to interpret identified historic properties. It is used often as a first assessment step in urban areas.

19. Parks received the results of the Phase IA survey on May 23, 2018. By letter dated June 18, 2018, Parks asked for additional archaeological testing. (Exh. A). This request included a recommendation for Phase IB and Phase II testing for several areas and sites within the PIA.

20. Phase IB testing is the next step after the Phase IA assessment and entails an on-site field inspection by the consultant. Field work can include a systematic surface survey, subsurface testing, and remote sensing studies. Phase II survey work is designed to obtain detailed information on the integrity, site limits, and cultural/historic context of an archaeological site. This level of investigation is used to determine whether a site is eligible for inclusion in the Registers. Parks has not received a response to its June 2018 request.

21. Parks determined that the PIA contained historic buildings within its boundary, or was adjacent to them, and requested a survey of potential historic architecture in the PIA on October 19, 2016.

22. Panamerican Consultants, Inc., the consultant to the Project Sponsor, submitted to Parks a building inventory and assessment report on May 22, 2018. The report identified 49 buildings for review in the PIA. After reviewing the report, Parks determined that 10 of the identified

buildings were historic and eligible for inclusion in the Registers. The report also identified 3 historic buildings that contribute to the adjacent the Downtown Genesee Street Historic District (Listed in 2018 on the Registers).

23. On May 22, 2018, Parks received a copy of the City of Utica's notice that the project had been classified as a Type I action under SEQRA. The notice included the City's Positive Declaration under SEQR, which listed potential moderate to large impacts on historic or archaeological resources among other concerns.

24. Based on Parks' assessment of archaeological and architectural potential impacts in the PIA, which includes the proposed demolition of up to 10 Register-eligible buildings and up to 2 Register-listed buildings, Parks determined that the proposed hospital development would have an adverse impact on historic and archaeological resources. Accordingly, Parks issued a letter to the Project Sponsor's consultant outlining its adverse impact finding on July 17, 2018. (Exh. B)

25. In its July 17, 2018, letter to the Project Sponsor's consultant, Parks suggested the Project Sponsor explore alternatives that might avoid or lessen the direct and/indirect impacts associated with the project as proposed.

26. On August 18, 2018, the Project Sponsor's consultant provided additional project information relating to the need to phase the next steps of the Section 14.09 process to coordinate with the requirements of the ongoing SEQRA process.

27. Since, upon information and belief, the Dormitory Authority of New York State (DASNY) may, in the future, issue bonds related to the Project, which would constitute an undertaking under Section 14.09, Parks and DASNY began a separate consultation process in September 2018.

28. Parks, DASNY and the Project Sponsor discussed avoidance, minimization and mitigation measures that would allow DASNY to carry out its Section 14.09 responsibilities. In recognition of the complex land acquisition and site control issues associated with the project DASNY, Parks and the Project Sponsor agreed to develop a Letter of Resolution. Other historic resources could be affected, and mitigation options could be identified as the project progresses.

29. The parties entered into the Letter of Resolution on January 10, 2019, setting forth a course of action based on the complexities of the project, which Parks, DASNY and the Project Sponsor agreed could avoid, minimize and mitigate adverse impacts, to the extent possible. (Exh. C); See 9 NYCRR § 428.10(b). Section 428.10(b) does not specifically define or constrain the scope or limits of the “course of action” chosen during consultation so long as efforts are made to seek mitigation.

30. The parties agreed that “ongoing consultation” will “explore alternatives that would avoid or minimize impacts to identified historic/archaeological resources” (Exh. C at 2).

31. The stipulations in the Letter of Resolution (LOR) are “intended to take into account the impacts of the Project on known and as of yet unknown Historic resources.”

32. The LOR acknowledges that the project will require demolitions and establishes a series of “options” to be considered to mitigate losses to the extent possible. It further provides that “No ground disturbance activities in the PIA will commence until all archaeological testing has been completed at each identified site and the results of the testing have been reviewed by OPRHP.” (Exh. C at 2, 3).

33. LORs are often executed early in the review process especially where, as here, the archaeological assessments have not been completed. These projects require ongoing consultation relating to the scope of work and level of effort to be expended to protect archaeological resources as the projects advance.

34. The LOR provides a series of steps for the Project Sponsor and the agencies to assess impacts as the consultation process moves forward. These steps include assessing the impacts of parcels that the Project Sponsor does not currently own, complete assessment of buildings the Project Sponsor owns, and archaeological testing.

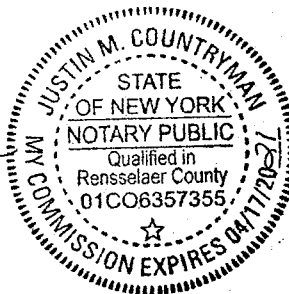
35. It has also been Parks' practice to encourage State agencies and project sponsors to sign LORs and not terminate consultation, even in circumstances where impacts to historic resources are unavoidable.

36. The LOR here has a 5-year timeframe. Parks and DASNY'S actions to date, regarding the proposed phases of the MVHS Hospital project, implementation of Section 14.09 and its regulations and the consultation process, are ongoing.


JOHN BONAFIDE

Sworn to before me this
7 day of June 2019.


Notary Public





Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO
Governor

ROSE HARVEY
Commissioner

June 18, 2018

Mr. Steve Eckler
O'Brien & Gere
333 West Washington St
Syracuse, NY 13202

Re: DOH
Proposed Utica Hospital/Mohawk Valley Health Systems
Utica, Oneida County, NY
16PR06600

Dear Mr. Eckler:

Thank you for requesting the comments of the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the report prepared by Panamerican Consultants, Inc. entitled "Phase IA Archaeological Investigation for the Proposed Mohawk Valley Health System Utica Hospital, City of Utica, Oneida County, New York" (Hanley et al. April 2016), in accordance with the New York State Historic Preservation Act of 1980 (section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8) and its implementing regulations (6NYCRR Part 617).

Based upon information available to our office and the review of the above-mentioned report, the OPRHP offers the following recommendations:

1. We concur with the recommendation that the 442 Lafayette Street Historic Site (USN 06540.001655/NYSM 12153) be subject to a Phase II Site Examination.
2. We further recommend Phase IB subsurface testing be conducted in relation to the following:
 - a. Due to the potential of sections of the Chenango Canal and associated Huntington Basin remaining intact within the project's Area of Potential Effect (APE) (possibly deeply), we recommend testing within the following parcel addresses:
 - i. *Chenango Canal*: 318-333 Oriskany St., 402 Oriskany St., 514-524 Lafayette St., 506 Columbia St., and depending on the degree of disturbance related to recent arterial construction, possibly 509 Lafayette St.;

...2

Mr. Steve Eckler

Division for Historic Preservation

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June 18, 2018

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- ii. *Huntington Basin*: 401 & 402 State St., and the section of State Street between these addresses;
 - b. 437 Lafayette Street;
 - c. 458 Columbia Street;
 - d. Witzemberer Building, 460-464 State Street;
 - e. 450-454 State Street. A foundation associated with a structure on this property was previously partially exposed during some sidewalk related impacts.

The OPRHP welcomes the opportunity to discuss the proposed archaeological investigations prior to fieldwork with the appropriate cultural resource firm, and provide additional information about our concerns for potential archaeological resources at these locations.

Finally, please verify all state and/or federal agencies involved in this project, from which permits, permissions and/or funding are being sought, and provide the OPRHP with the appropriate contact names and addresses, including email, for each involved agency.

If further correspondence is required regarding this project, please refer to the project number (PR) noted above. If you have any questions, I can be reached at 518-268-2218 or via email at Josalyn.Ferguson@parks.ny.gov.

Sincerely,



Josalyn Ferguson (B.A., M.A.)
Historic Preservation Specialist/Archaeology

via e-mail only

c.c. Brian Thomas, City of Utica
c.c. Chirsty Rosenbarker, O'Brien & Gere
c.c. Christine Longiaru, Panamerican Consultants
c.c. Robert Hanley, Panamerican Consultations
c.c. Charles Vandreï, DEC



Parks, Recreation and Historic Preservation

ANDREW M. CUOMO
Governor

ROSE HARVEY
Commissioner

July 17, 2018

Mr. Steve Eckler
O'Brien & Gere
333 West Washington St
Syracuse, NY 13202
(via email)

Re: DOH/DEC/SEQRA
Proposed Utica Hospital/Mohawk Valley Health Systems/New Construction
Columbia St., Oriskany St. W., State St. and Broadway (vic), Utica, Oneida County
16PR06600

Dear Mr. Eckler:

Thank you for your ongoing consultation with the Division for Historic Preservation regarding this undertaking. We continue to review the project in accordance with the New York State Historic Preservation Act of 1980 (Section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the OPRHP and relate only to Historic/ Archaeological resources.

Most recently we have received and reviewed the Phase IA Architectural Inventory Report prepared by Panamerican Consultants (May 2018). Based upon this review, we have determined that your project area includes a portion of the Downtown Genesee Street Historic District, which is listed in the New York State and National Registers of Historic Places. The project area also includes 10 other buildings, which have been found by this office to be eligible for inclusion in the registers. A full list of the identified resources is appended to this letter.

At this time, we are also evaluating information that is being provided from the ongoing archaeological investigations at the project area. Additional comments regarding potential impacts to archaeological sites will be provided once all archaeological investigations are completed.

In reviewing the recently submitted project materials, it appears that at least 2 contributing buildings within the listed historic district and 10 eligible historic resources may be demolished as part of this undertaking. Based on these proposed demolitions we have determined that the project as designed will have an Adverse Impact on historic resource as defined in 9 NYCRR Part 428.7(a)(b)(c).

As a result of this determination, we would request that the project sponsor undertake an assessment of alternatives that might avoid or lessen the adverse impacts associated with the proposed demolition of historic buildings. This assessment should include an exploration of alternatives that might:

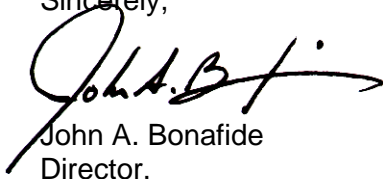
- Save in place and adaptively repurpose some of the historic structures.
- Relocate one or more key buildings out of the project area for adaptive reuse.

Division for Historic Preservation

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If you should have any questions regarding my comments, I can be reached at (518) 268-2166 or john.bonafide@parks.ny.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Bonafide", with a stylized flourish extending from the end.

John A. Bonafide
Director,
Technical Preservation Services Bureau
Agency Historic Preservation Officer

att: Historic Resources List

cc: NY CRIS Contact List

List of Historic Resources

SHPO USN	Address	Property Name	Determination of Eligibility
06540.002010	301 Columbia Street NR Listed in the Downtown Genesee Street Historic District	Brick Commercial	Date of construction: c. 1900; storefront remodeled c. 1970. Description: A four-story brick commercial block of rectangular plan and with a flat roof, seven bays wide on Columbia Street and nine bays long on its Broadway face. The Columbia Street elevation is subdivided into three broad bays by pilasters; this treatment returns along part of the Broadway façade. The first-floor storefront was remodeled (c. 1970) and presently consists of large brick piers flanking a recessed entrance and display windows set within anodized aluminum panels. The upper floors have undivided double-hung sash with brick arched lintels with double keystones. Sills connect the windows and are interrupted by the pilasters. A stamped metal neoclassical cornice with dentils extends along both street fronts of the building. History: In 1907 this structure was occupied by A. W. Blackburn.
06540.002095	326-334 Columbia Street	Haberer Building	The Haberer Building is eligible for the State and National Registers of Historic Places under Criterion A as examples of the continuing commercial development of the city of Utica at the end of the nineteenth century. They are also eligible under Criterion C, Architecture, as examples of late-nineteenth-century large Romanesque Revival commercial buildings at the western edge of the city's commercial district. The Haberer Building was constructed with four commercial storefronts with a center entrance and three stories of non-commercial uses above. It is attributed to Utica architect Frederick Hamilton Gouge, who was born in 1845 in rural Oneida County. Gouge received a bachelor of arts degree from Hamilton College in 1870 and spent one year working in civil engineering before joining William H. Miller, an architect in Ithaca, New York. He moved to Utica in 1876 and established his architecture practice there and remained in Utica until his death in 1927. The building is constructed in the Romanesque Revival style executed in brick, and is four stories in height. The façade is divided into five bays separated by three-story brick pilasters. The center bay has a single window with a stone lintel on the second story, a brick-arched window on the third, and a flat-arched window with brick voussairs on the fourth. Above that is a slightly raised parapet that may have lost brick finials at the tops of the pilasters. Symmetrical bays of paired windows flank the center with round-arched windows on the second story, segmentally-arched windows with brick voussairs on the third, and flat-arched windows with brick voussairs on the fourth. Above the fourth-story windows is corbelled brick in each of the bays. The storefronts have been altered but the remainder of the façade is substantially intact. The eastern elevation has no opening on the first story but five windows on each of the upper stories. Although deteriorated, the building retains integrity of design, materials, and craftsmanship. Sources: 1. Henry J. Cookinham (1912). History of Oneida County, New York: From 1700 to the present time of some of its prominent men and pioneers. The S. J. Clarke Publishing Company. 2. Daniel E. Wager (1896). "Oneida County, New York Biographies From Our County and Its People, Part III: Family Sketches". The Boston Historical Company. p. 136.
06540.002096	336 Columbia Street	Jones Building	The Jones Building was constructed as a three-bay mixed-use building with one commercial storefront and three stories of non-commercial uses above in a style similar to the Haberer Building. Although there is no information about commercial tenants, it also was constructed in the Romanesque Revival style executed in brick, and is four stories in height. The façade is divided into three bays with a single window in each bay. The second story has round-arched windows connected by terra cotta decoration and stone keystones; third and fourth-story windows have segmental arches with stone keystones and in the center bay of the top story is a corbelled brick frame. Within that frame is a stone panel with the lettering "JONES", and a slightly raised parapet wall with brick corbelling that matches the remainder of the parapet. The first-story storefront is currently boarded up but appears to contain few if any historic features. Although deteriorated, the building retains integrity of design, materials and craftsmanship. Sources: 1. Henry J. Cookinham (1912). History of Oneida County, New York: From 1700 to the present time of some of its prominent men and pioneers. The S. J. Clarke Publishing Company. 2. Daniel E. Wager (1896). "Oneida County, New York Biographies From Our County and Its People, Part III: Family Sketches". The Boston Historical Company. p. 136.
06540.002011	401 Columbia Street NR Listed in the Downtown Genesee Street Historic District	Brick Commercial	Date of construction: c. 1900; c. 1910; c. 1920; early 21st century alterations. Description: A four story brick commercial block, of rectangular plan with a flat roof. The Columbia Street elevation is divided into six bays, each having paired sash set between brick pilasters. This treatment extends, in modified form, along three bays of the Cornelia Street elevation. The pilasters are faced with stone at the first-floor level, below a narrow-bracketed entablature with cornice. Between the first floor pilasters, original storefronts have been infilled with brick and fixed sash windows. The majority of the upper-story windows in the building have been replaced with smaller metal-frame sash, or are boarded over; however, the original openings are visible and restorable. Windows have simple metal lintels and stone sills. An entablature, consisting of a stone architrave with large dentils, a brick frieze and a modillioned cornice, extends along the full length of both street elevations. The west half of the building constitutes an early addition and replicates all of the details found in the earlier portion of the building. A three-bay wide addition constructed at the south end of the building c. 1920 also replicates the detailing of the c. 1900 portion of the building.
06540.002107	460-464 Columbia Street	Witzenberger Building	The Witzenberger Building is eligible for the State and National Registers of Historic Places under Criterion C, Architecture, as an example of a late-nineteenth-century brick commercial/residential building that retains its upper stories and the basic layout of the first-story storefront configuration with the center door providing access to the residential floors above. This 3.5-story brick two-part commercial mixed-use building has two storefronts and a center entrance to the upper stories. The south façade is divided into three bays, with a glass-block window in the center bay (above the center entrance door) and three windows in the flanking symmetrical bays. The first story bay divisions are marked by rusticated stone blocks and modified storefronts. Second-story windows have segmentally-arched windows with brick voussairs and stone sills. Third-story windows have stone lintels and sills, above which is a corbelled brick cornice with a name panel spelling "WITZENBERGER" above the center bay. The top story has a gabled parapet with a square window and flanking that, above the wider bays, are single dormers punctuating a mansard roof. The west wall is blank where an earlier building stood, and the rear wall has three brick stories with a mix of windows and doors in each half of the building. Four tall chimneys puncture the roofline. Above the first story, the building retains a high degree of architectural integrity.
06540.000101	300 Lafayette Street	Former Utica & Mohawk Valley Railway Car Barn/Electric Express/Girard Chevrolet Service Garage	The former Utica & Mohawk Valley Railway car barn at 300-306 Lafayette Street in Utica, Oneida County, is eligible for the State and National Registers of Historic Places under Criterion A, Transportation, for its connection with the history of electric transit in the western Mohawk Valley. Built in 1908, it is also eligible under Criterion C, Architecture, as an example of a building type specifically designed to house both the offices of the transit company and for the storage of electric trolley cars. It served as a trolley barn from 1908 until the end of electric streetcar service in Utica in 1941 and as a bus garage until some time in the 1950s. Fixed-rail transportation in Utica began around the time of the Civil War, and in 1886, the Utica Belt Line Company was organized to obtain control of all street railroads in Utica. Electricity was substituted for horse cars before the turn of the twentieth century, and in 1901, all city and suburban streetcar lines serving Utica were unified into the Utica and Mohawk Valley Railway. In 1907, the Rome City Street Railway was acquired and a double-track interurban line was completed between Rome and Little Falls to the east, by way of Utica. In 1912, the Utica & Mohawk Valley Railway and the Oneida Railway merged with New York State Railways with its headquarters in Utica. At its peak, the Utica lines operated 17 routes with more than 100 cars, but in 1941, all electric lines in Utica ceased operations and were replaced with gas-powered buses. In 1948, the Utica Transit Corporation was organized and used this building as a bus garage for several years after that. It later became an auto repair garage. The brick building is comprised of two major components: at the street corner is a small two-story office building with four windows on the Lafayette Street side on the second story only and three windows on the Broadway elevation on both stories. There are undecorated corner pilasters and between them is a corbelled brick cornice and brick paneled parapet wall, now partly covered.

			<p>300 Lafayette St. Continued</p> <p>The first story of the Lafayette Street elevation was altered, probably around the time the building ceased to serve its original function. First-floor windows on the Lafayette Street elevation were eliminated but their historic voussoirs were left in place; second story windows remain intact. On the Broadway elevation, first-floor windows have been infilled, but their openings remain; on the second floor, windows remain intact. The brick pilasters serve to visually separate the office function from the garage function on both Lafayette and Broadway elevations. West of the corner office along Lafayette Street is a colossal one-story garage with pilasters dividing the long Lafayette Street elevation into sections: the section closest to the office is approximately the same width, as is the western section, but the western section has been divided in half by another pilaster. Garage opening heights have been changed, but the original rhythm of the openings and façade divisions has not. At the far west is a one-story garage visible on the Sanborn Insurance Map of 1950. Hidden behind the tall parapet wall of the Lafayette Street elevation are three gabled roofs set adjacent to each other. This wing is only visible on the Broadway side where a wide bracketed overhang runs the length of this wing along the street. There are three large windows along the Broadway elevation and garage doors on the north (rear). The brick gables are terminated with heavy terra cotta parapet caps. The roof appears to have once contained skylights that have since been roofed over. The original post-and-beam construction of the open garage area remained intact as late as the 1970s. Despite exterior alteration, 300-306 Lafayette may be the only remaining building in Utica that illustrates the history of electrical street railway service in the city.</p>
06540.02114	333 Lafayette Street	Childs Building	<p>Childs Building (Charles H. Childs & Co. Building) 333 Lafayette St 1909 The Childs Building is eligible for the State and National Registers of Historic Places under Criterion A as an example of the continuing industrial development of the city of Utica into the twentieth century. It is also eligible under Criterion C, Architecture, as an example of an early-twentieth-century large masonry industrial/commercial building. The building was constructed in 1909 by the C.H. Childs Company, which sold carriages, bicycles, and vehicle chassis. Built as a factory and showroom, the company had a factory nearby before this building was constructed and once produced farm tools, wagons, carriages, bicycles, and automotive coachwork at the earlier location for over 60 years. The building is a four-story brick two-part commercial/industrial block with frontages on two streets. The north façade has a modified storefront with a non-historic exterior wall cladding system. There is a recessed central replacement entry and new window openings and wraps the first bay of the west side. All upper story windows are boarded up except for a few on the second story, so it is not known whether historic window sash exist. A stone panel with the name "CHILDS" is placed above the third story windows. All windows are trimmed with cast stone lintels and sills on the north elevation. Contrasting stone and brick voussoirs cap windows on the twelve bays of the west elevation and the eight bays of a matching extension marked by a vertical separation in the brick. The extension has a secondary cornice above the first story and brick piers relating to the upper-story bay division. The openings in this elevation are covered with vertical non-historic material.</p>
06540.002119	437 Lafayette Street		<p>437 Lafayette Street in Utica, Oneida County, is eligible for the State and National Registers under Criterion C, architecture, as a substantially intact Italianate style residence from the middle of the nineteenth century. It is located in an area just west of downtown Utica near the site of the junction of the former Erie and Chenango Canals, which brought unprecedented prosperity to Utica, causing a boom in both industrial and residential development in the city. Once one of the most common residential building types in Utica, today this is the only remaining Italianate residential building in the immediate vicinity. The brick building is two-and-one-half stories tall on a low stone basement. The façade is divided into two bays with a double-door entry in the west bay with pilasters supporting a bracketed hood and a three-sided bay window in the east bay with brick segmentally arched windows with keystones. Above the second story are flat-headed windows situated immediately beneath the wood bracketed cornice. The wood bracketed cornice continues along the east elevation of the main block and behind that is a lower two-story block that does not include the half-story at the front. Window configurations are the same as on the front except that the brick arches do not include keystones. A large industrial building that appears to be an older brick structure with a modern sheet-metal front borders the building on the east. The west elevation is similar to the east except for the presence of a porch (partially altered) where the main block intersects the rear. There is a detached 2-story, 2-bay-wide outbuilding (carriage house) with double-leaf wood panel (3) and glass (8 lights) doors, hay door, and corrugated metal exterior siding on the southwest corner of the property. Despite its deterioration, the building retains a high degree of architectural integrity.</p>
06540.001489	440 Lafayette Street	L. Snyder House	<p>The adjacent brick buildings at 440, 442 and 444 Lafayette Street are eligible for the National Register of Historic Places under Criterion C, Architecture, as rare survivors of canal-era residential buildings from the earliest period of Utica's development along the Erie Canal and the lateral Chenango Canal. The three simple Greek Revival-inspired buildings are situated just a short distance east of the Chenango Canal (now covered by the arterial highway of NY Routes 5, 8 and 12) and one block south of Oriskany Street, the former location of the Erie Canal. The Chenango Canal opened in 1837 and connected the Erie Canal one block northwest of this location with the Susquehanna River at Binghamton, nearly 100 miles to the south. The canals ushered in a period of great prosperity in Utica that saw significant residential, commercial and industrial development adjacent to the canals. They are surviving residential buildings in a neighborhood that later evolved to become the western edge of the central business district of Utica. Industrial buildings were located along both the Erie and Chenango canals north and west of this former residential district and later scattered along Lafayette, Columbia, and perpendicular streets. A railroad was constructed near the canal and this eventually replaced the canal as the major transportation route to the south after it closed in 1878. Maps made between the middle of the nineteenth century and into the 1950s illustrate the gradual replacement of residential buildings by industrial buildings as well as the installation of commercial uses in the first stories of some former residences. After the 1950s, large areas in the neighborhood were stripped of buildings altogether, leaving the area with large open spaces between buildings of all types. In addition, in some cases, modern infill has replaced earlier buildings. 444 Lafayette is similar in age, materials and scale to its neighbors at 440 and 442 but is a two-story flat-roofed building with three bays, a high stone basement but an altered doorway and surround. A simple brick frieze cornice with brick dentils and a wood overhang remain. Window openings are filled with non-historic 1/1 sash.</p>
06540.001490	442 Lafayette Street	S. Isele House	
06540.001491	444 Lafayette Street	C & A Eichmeyer House	

06540.001555	509 Lafayette Street	Utica Turn Hall/Utica Turnverein	<p>The former Turnverein Hall is eligible for the National and State Registers of Historic Places under Criterion A, Social History, for its association with the history of German immigration to Utica in the second half of the nineteenth century. It is also eligible under Criterion C, Architecture, as a rare example of the rundbogenstil (German Romanesque) in Utica. It was built in 1894 by the German-American community as a gymnasium and social hall. "The Turnverein movement was the most important secular organization in German immigrant communities in the United States. It was founded by Friedrich Ludwig Jahn and involved a systematic approach to gymnastics intended to prepare Germans physically and mentally to combat the conquering French. The Turnplatz, or gymnastic field, included places for long jumping, high jumping, pole vaulting, as well as gymnastic equipment such as the balance beam, horse, ladders and parallel bars. The Utica Turnverien was established in 1854 and Turner societies in New York State formed the Amerikanischer Turnerbund, or American Gymnastic Union in the 1860s. The Utica Turnverein was formally reorganized in 1882 and in 1894 the membership constructed this Turn-Halle. These clubs built spacious halls that functioned as centers of nineteenth-century community life, housing gymnasiums, bowling alleys, ballrooms, theaters, and saloons. Most Turnvereins also had benevolent, intellectual, and social goals, including caring for the needy, establishing schools, and providing entertainment. Turner societies were proponents [of] German language instruction and physical education in public schools as well as function as German-American social clubs." Source: DOT Survey (PIN 2134.41), NY 5/8/12 arterial, 2008. This building served the as Utica Turnverein until 1922, and by 1925, it was being used as an auto and truck body shop. The brick building is a one-and-one-half-story, front-gabled building originally used as a gymnasium. It rests on a cut stone foundation and the roof is asphalt. The rundbogenstil became popular in Germany in the second quarter of the nineteenth century and in the middle of the nineteenth century in the United States, likely for its historical associations. The gable end (north) has a tri-partite window located above the central double doors which are flanked by two small round windows. The east façade has five large windows in bays marked by brick pilasters. A modern brick warehouse has been added to the west and south sides of the building.</p>
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**LETTER OF RESOLUTION
AMONG
THE DORMITORY AUTHORITY STATE OF NEW YORK AND
THE NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC
PRESERVATION AND
MOHAWK VALLEY HEALTH SYSTEMS**

WHEREAS, Mohawk Valley Health Systems (“Applicant”) is proposing to construct a new regional hospital to replace two existing outdated inpatient facilities: Faxton-St. Luke’s Healthcare and St. Elizabeth’s Medical Center (the “Hospital”), together with surface parking and a parking garage (“Parking Areas” and together with the Hospital, the “Project”);

WHEREAS, the Dormitory Authority of the State of New York (“DASNY”) will be working with the New York State Department of Health (“DOH”) to administer a grant awarded under Section 2825-b of the Public Health Law to the Applicant for the purpose of creating the Project,

WHEREAS, DASNY recognizes its responsibilities pursuant to Article 14 of New York State Parks, Recreation and Historic Preservation law (“PRHPL”) to avoid, minimize or mitigate adverse impacts to historic resources and/or archaeological sites (“Historic Properties”), to the fullest extent practicable consistent with other provisions of the law;

WHEREAS, OPRHP has reviewed the preliminary scope of the Project provided by O’Brien & Gere and submitted to OPRHP via their Cultural Resource Information System (“CRIS”) on October 3, 2016, including the proposed Project Impact Area (“PIA”);

WHEREAS, the PIA includes areas upon which the Hospital and the Parking Areas will be constructed;

WHEREAS, the PIA includes approximately 55 properties (80 tax map parcels) in the City of Utica, which are expected to be acquired by either negotiated sale or eminent domain;

WHEREAS, OPRHP has identified several Historic Properties that are listed in the New York State and National Registers of Historic Places or appear to be eligible for inclusion in the Registers (See attached Appendix A);

WHEREAS, OPRHP has also identified several areas that warrant additional assessment for archaeological potential and are potentially eligible for the Registers based on preliminary analysis as outlined in the SHPO Consultation Materials, dated April 2018, and submitted by O’Brien & Gere;

WHEREAS, it has been determined that one or more of the identified Historic Properties will be directly impacted during the development of this undertaking;

WHEREAS, such impacts are defined under 9 NYCRR Part 428.7 as constituting an Adverse Impact to Historic Properties;

WHEREAS, the parties acknowledge that the full extent of the potential impacts cannot be ascertained at this time, since the Applicant does not currently own all of the parcels comprising the PIA;

WHEREAS, the parties have determined that it is desirable to progress with the certain pre-construction activities concurrent with efforts to secure the parcels within the PIA;

WHEREAS, the parties agree that ongoing consultation, in accordance with PRHPL Section 14.09 and its implementing regulations at 9 NYCRR Part 428, will explore alternatives that would avoid or minimize impacts to identified historic/archaeological resources within the PIA;

WHEREAS, all parties agree that if reasonable and prudent alternatives that might avoid direct and indirect impacts to yet to be identified resources cannot be found, that appropriate mitigation measures will be developed to offset any loss to Historic resource;

NOW THEREFORE, DASNY, OPRHP and the Applicant agree that DASNY's Section 14.09 responsibilities will be addressed by implementing the following stipulations, which are intended to take into account the impacts of the Project on known and as of yet unknown Historic resources.

I. STIPULATIONS

DASNY along with Mohawk Valley Health Systems will insure that the following measures are implemented:

BUILDINGS

- As soon as practicable, the Applicant will commence a complete assessment of buildings it currently controls that are listed in Appendix A and proposed for removal.
- Upon site control of the remaining buildings, the Applicant will commence a complete assessment of the remaining buildings listed in Appendix A.
- This assessment will include photographs of exterior and interior conditions. Sufficient (10 to 20) images should be prepared to provide OPRHP with a general understanding of the state of the resource. These images, along with a written assessment of the general condition of the building, will be submitted to OPRHP via the CRIS program.

ARCHAEOLOGY

- Archaeological testing, as previously requested by OPRHP in their letter to O'Brien & Gere dated June 18, 2018, will commence once the Applicant obtains site control. Reports associated with the testing must be filed with OPRHP in a timely manner and must meet NYS Archaeological Standards.
- No ground disturbing activities in the PIA will commence until all archaeological testing has been completed at each identified site and the results of the testing have been reviewed by OPRHP. Notwithstanding the above, the parties acknowledge and agree that MVHS will be allowed to perform certain environmental testing and engineering surveys (borings) as needed on properties MVHS or the City of Utica control within the PIA.
- Unanticipated discoveries, including the discovery of human remains during construction, will follow the protocol outlined in Appendix C.

TREATMENT MEASURES (BUILDINGS)

In accordance with Section 14.09, efforts that would avoid or minimize impacts to historic buildings should be explored and documented. An alternatives analysis relating to the

disposition of historic buildings in the PIA must be submitted to OPRHP for review and comment prior to any activity on the site that might damage the resources. This analysis should explore the following opportunities:

- The parties expressly agree that buildings located within the footprint of the hospital building and parking garage structure will not be retained. If appropriate and agreed upon, salvageable, architecturally significant features of the removed buildings (*i.e.*: building name panels, significant intact architectural elements, *etc.*) will be incorporated into the new structure or hospital site.
- Avoidance: To the extent practicable, efforts to avoid the removal or direct impacts to buildings identified as historic (Appendix A) and located outside of the footprint of the Hospital and Parking Garage will be explored. Documentation outlining this exploration of alternatives will be provided to OPRHP prior to any action that would directly impact the involved resource(s).
- Minimization: If practicable, efforts that would include options to lessen the overall, as of yet to be fully documented, impacts to historic resources located outside of the hospital building and parking structure footprints will need to be explored. This assessment should include a discussion of the potential retention of *some* of the historic resources as part of the development planning and mitigation.
- Mitigation Options: Where it has been determined by the parties that *some or all* of the historic resources must be removed from the PIA, the following mitigation measures may be applied:
 1. Exploration of the potential reuse of existing structures located outside of the hospital building and parking structure's footprints, deemed retainable and adaptable for a productive hospital-associated use, provided sufficient resources to complete the project remain.
 2. Where buildings cannot be retained the Applicant will follow OPRHP's standard resource documentation process outlined in Appendix B.
 3. Other appropriate mitigation for the loss of historic resources as agreed to by the parties (*i.e.*: reuse of building name panels, significant intact architectural elements, *etc.*) will be incorporated into the new structure or hospital site creating historic linkage and homage to the history of this portion of the City of Utica.

II. DURATION

This Letter of Resolution (LOR) will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, DASNY may consult with the other signatories to reconsider the terms of the LOR and amend it in accordance with Stipulation IV below.

Should any, as-of-yet determined resources be identified, OPRHP would make determinations of significance and any mitigation measures would be developed by DASNY, after consultation among MVHS, OPRHP, and DASNY, and would be based on the characteristics and significance of the resource. Any mitigation measures would be conducted pursuant to the Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in

New York State, prepared by the New York Archaeological Council and adopted by OPRHP (1994).

III. DISPUTE RESOLUTION

Should any signatory to this LOR object at any time to any actions proposed or the manner in which the terms of this LOR are being implemented, DASNY shall consult with OPRHP to resolve the objection.

IV. AMENDMENTS

This agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy is signed by all the signatories.

The following staffs (or their designees) are primary contacts for the parties:

DASNY Contact:

Robert S. Derico, R.A.
Acting Director, Office of Environmental Affairs and Agency Preservation Officer
DASNY
515 Broadway
Albany, New York 12207-2964
rderico@dasny.org
(518) 257-3214

OPRHP Contact:

John Bonafide
Director, Technical Preservation Services Bureau/OPRHP Agency Preservation Officer
Division for Historic Preservation
PO Box 189, Waterford, NY 12188-0189
john.bonafide@parks.ny.gov
(518) 268-2166

MVHS Contact:

Robert C. Scholefield, MS RN
Executive Vice President/ Chief Operating Officer
Mohawk Valley Health System
2209 Genesee Street
Utica, New York 13501
bscholef@mvhealthsystem.org
(315) 801-4978

V. TERMINATION

If any signatory to this LOR determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation IV, above. If, within a time-period agreed to by all signatories, an amendment cannot be reached, any signatory may terminate the LOR upon written notification to the other signatories in accordance with 9 N.Y.C.R.R. §428.10(d).

VI. CONCLUSION

At the conclusion of the Project, DASNY shall certify in writing to OPRHP that the undertaking has been completed in accordance with this LOR.

VII. COUNTERPARTS; ELECTRONIC SIGNATURES; SUCCESSIONS OR ASSIGNS:

This LOR consists of six (6) pages plus APPENDICES A-C. It shall be signed and acknowledged in four original counterparts and shall take effect on the date it is signed by the last signatory. The counterparts (including counterparts delivered to the other parties by facsimile, e-mail or other electronic means) taken together shall form one legal instrument. A manually or electronically signed copy of this LOR delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of the LOR. FOB and/or NYRA shall ensure that this LOR is complied with by their successors or assigns.

VIII. LIST OF APPENDICES

APPENDIX A: List of identified historic resources within the Project Impact Area

APPENDIX B: Historic Resource Documentation Format

APPENDIX C: Human Remains Discovery Protocol & Unanticipated discoveries

SIGNATURES (3 Pages)

SIGNATURES (1 of 3)

DORMITORY AUTHORITY OF THE STATE OF NEW YORK




Date: 1.9.19

Robert Derico, RA

Acting Director, Office of Environmental Affairs and Agency Preservation Officer

SIGNATURES (2 of 3)

NYS OFFICE OF PARKS RECREATION AND HISTORIC PRESERVATION



Michael F. Lynch, AIA, PE
Director, Division for Historic Preservation

Date: 1/10/19

SIGNATURES (3 of 3)

MOHAWK VALLEY HEALTH SYSTEMS



Robert C. Scholefield, MS RN
Executive Vice President/ Chief Operating Officer

Date: 1/8/19

APPENDIX A**List of identified historic resources within the Project Impact Area**

USN	Property Name	Address	Status
06540.000101	Former Utica & Mohawk Valley Railway Car Barn/Electric Express/Girard Chevrolet Service Garage	300 Lafayette Street	Eligible
06540.002096	Jones Building	336 Columbia Street	Eligible
06540.001489	C. & AJ Eichmeyer House (1907)	444 Lafayette Street	Eligible
06540.001490	S Isele House (1907)	442 Lafayette Street	Eligible
06540.002107	Witzenberger Building	460-464 Columbia Street	Eligible
06540.001491	L Snyder House	440 Lafayette Street	Eligible
06540.001555	Utica Turn Hall/Utica Turn Verein	509 Lafayette Street	Eligible
06540.002119		437 Lafayette Street	Eligible
06540.002095	Haberer Building	326-334 Columbia Street	Eligible
06540.002114	Childs Building	333 Lafayette Street	Eligible
06540.002010	Brick Commercial (Downtown Genesee Street Historic District)	301 Columbia Street	Listed
06540.002011	Brick Commercial (Downtown Genesee Street Historic District)	401 Columbia Street	Listed

APPENDIX B

Historic Resource Documentation

The buildings will be documented prior to their demolition using the following format:

Photographs

- Photographs submitted as documentation should be clear, well-composed, and provide an accurate visual representation of each building and any significant features. Submit as many photographs as needed to depict the current condition and significant features of each building, both exterior and interior (where safely accessible).
- Digital photographs should be taken using a ten (10) mega pixel or greater digital camera.
- Images should be saved in Tag Image File (TIFF) format. This allows for the best image resolution. RGB color digital TIFFs are preferred.
- Several historic images (if available) depicting the facility should be included in the documentation.
- Images should be named or labeled with the building name, photo direction and date.

Historic Narrative

A brief narrative history pertaining to development and construction of the building(s) and the development of the neighborhood should be provided with the photos, to the extent it is known. Historic period documentation, *if available*, should also be included.

Report

The final report (including images and a PDF version of the Historic Narrative) should be saved on digital media (CD, DVD, or USB thumb drive) and submitted to the OPRHP's Division for Historic Preservation.

The documentation package must be prepared and submitted no later than 6-month post demolition of the resources.

APPENDIX C

Human Remains Discovery Protocol

In the event that human remains are encountered during construction or archaeological investigations, the New York State Historic Preservation Office ("SHPO") recommends that the following protocol is implemented:

- At all times human remains must be treated with the utmost dignity and respect. Should human remains be encountered work in the general area of the discovery will stop immediately and the location will be immediately secured and protected from damage and disturbance.
- Human remains or associated artifacts will be left in place and not disturbed. No skeletal remains or materials associated with the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed.
- The county coroner/medical examiner, local law enforcement, the SHPO, DASNY, and the appropriate Indian Nations will be notified immediately. The coroner and local law enforcement will make the official ruling on the nature of the remains, being either forensic or archaeological.
- If human remains are determined to be Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred choice of the SHPO and the Indian Nations. The involved agency will consult SHPO and appropriate Indian Nations to develop a plan of action that is consistent with the Native American Graves Protection and Repatriation Act (NAGPRA) guidance.
- If human remains are determined to be non-Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred choice of the SHPO. Consultation with the SHPO and other appropriate parties will be required to determine a plan of action.

Unanticipated Discoveries

Although archaeological resources are not expected to exist in your project area, unanticipated discoveries may occur. If during ground-disturbing activities artifacts and/or structural remains that appear to be of Native American or pre-modern (i.e. early 20th Century or earlier) origin are exposed, OPRHP/SHPO recommend that the following procedures be carried out.

If the discovery includes human remains or other indications of human interment, please follow our Human Remains Discovery Protocol.

If the discovery does not appear to include human remains or other indications of human interment, please do the following.

- Suspend activities in the vicinity of the discovery and protect it from any further disturbance.
- Notify OPRHP and DASNY regarding the discovery, digital photographs which can be transmitted electronically would be very helpful.
- OPRHP will then make a determination whether the discovery warrants additional examination and, if so, will recommend what should be done next.