

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

ORAL ARGUMENT
REQUESTED

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 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.

**NOTICE OF CROSS-MOTION
TO CONVERT AND DISMISS**

Index No. 02797-19

PLEASE TAKE NOTICE that upon the affidavit John A. Bonafide of the New York State Office of Parks, Recreation and Historic Preservation, sworn to June 7, 2019, and the affidavit of Robert S. Derico of the New York State Dormitory Authority, sworn to June 11, 2019 (together "State Defendants/Respondents") and the Memorandum of Law in support of the motion to dismiss, the State Defendants/Respondents will move this Court at Special Term, to be held at the Albany County Supreme Court, Albany County Courthouse, 16 Eagle Street, Albany, New York, on June 21, 2019 at 9:30 a.m., the date set as the Return date, for an order pursuant to CPLR § 103(c), § 7801(1), § 7804 (f), § 3211(a)(2) § 3211(a)(7): 1) converting this hybrid proceeding to a CPLR Article 78 proceeding; and 2) dismissing the first and second claims on the grounds that they are not ripe for judicial review, fail to state a cause of action and for such other further relief as this Court finds just and proper.

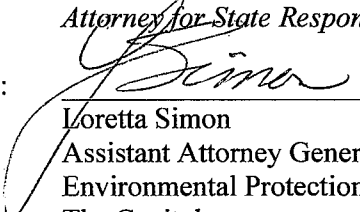
PLEASE TAKE FURTHER NOTICE that in the event the Court denies this motion, the State Defendants/Respondents request that the Court grant thirty (30) days from the date of entry of the Court's order to file and serve an answer, record, memorandum of law and other papers in opposition to the petition/complaint.

Dated: June 12, 2019
Albany, New York

Respectfully,

LETITIA JAMES
Attorney General of the State of New York
Attorney for State Respondents-Defendants

By:


Loretta Simon
Assistant Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York 12224-0341
(518) 776-2416
Loretta.Simon@ag.ny.gov

TO: Thomas S. West, Esq.
Cindy M. Monaco, Esq.
The West Firm, PLLC
677 Broadway, 8th floor
Albany, NY 12207

Kathleen M. Bennett, Esq.
Bond, Schoeneck & King PLLC
1 Lincoln Center
110 West Fayette Street
Syracuse, NY 13202-1355

Kathryn Hartnett, Esq.
Assistant Corporation Counsel
City of Utica
1 Kennedy Plaza
Utica, NY 13502