

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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EUGENE DEGAN, ERNST WAGNER and THE
PAUL RUDOLPH HERITAGE FOUNDATION,
Petitioners,

2015 005038

vs.

VERIFIED PETITION

COUNTY OF ORANGE, ORANGE COUNTY
LEGISLATURE, HOLT CONSTRUCTION
MANAGEMENT, INC., CLARK PATTERSON
& LEE, HELMER CRONIN CONSTRUCTION,
INC.,

Respondents.

FOR AN ORDER AND JUDGMENT PURSUANT
TO ARTICLE 78 OF THE CPLR

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INTRODUCTION

1. This is an Article 78 proceeding to challenge the May 7, 2015 resolution by which the County of Orange, acting by and through the majority of its County Legislature, revised its Environmental Assessment Form [hereinafter "EAF"] and approved a new version of the Government Center project [hereinafter "the project"]. Other respondents are interested parties who are currently engaged in

the demolition of critical elements of the Government Center and are responsible for implementing construction activities at the site.

2. As the recent SEQRA approval was both required and, as adopted, contrary to law, this Court should enjoin any further construction activities associated with the underlying project.

I. PARTIES

3. Petitioner Eugene Degan resides in the Village of Goshen, County of Orange, State of New York, within 1/8 of a mile of the Government Center site, and shall be affected by the adverse environmental impacts associated with the project in a manner more acute and distinct from the general public.

4. Petitioner Ernst Wagner is the President of the Paul Rudolph Heritage Foundation, a not-for-profit corporation with principal headquarters in the State of New York.

5. Petitioner, The Paul Rudolph Heritage Foundation [hereafter “the Foundation”], is comprised of architects and non-architects committed to the preservation of buildings designed by Mr. Rudolph, one of the most influential architects of the post-World War II era.

6. The Foundation is run by a Board of Directors which approved the initiation of this action.

7. As one of its organizational purpose, the Foundation sponsors educational programs and publications which highlight and celebrate the buildings Rudolph, the former Dean of the Yale School of Architecture and Design, created.

8. The Orange County Government Center was built upon the design of Mr. Rudolph and opened in 1971.

9. Since Mr. Rudolph's death, the Foundation's leaders, including petitioner Wagner, have repeatedly visited the building in Goshen and studied and taught about its unique and innovative architectural features.

10. The destruction/demolition of part of the building, specifically Division 2 and/or the building's facade, represents an irreparable and substantial loss to petitioners Foundation and Wagner as it is a unique representation of Mr. Rudolph's highly acclaimed work.

11. Petitioners have not sought relief previously in this Court from any aspect of the project.

12. Respondent County of Orange is a municipal corporation organized pursuant to the laws of the State of New York. It may sue and be sued.

13. Respondent Orange County Legislature has been recognized as a juridical body which may sue and be sued and, in this case, declared itself lead agency under the New York State Environmental Quality Review Act [hereinafter "SEQRA"] for the project.

14. Respondent Holt Inc. is a construction management company doing business in the County of Orange and working under a contract with the County on the project.

15. Respondent Clark Patterson & Lee is a firm which provides architecture, engineering, consulting and professional design services and has contracted with the County of Orange to design the demolition, renovation and new construction of and at the Government Center. It does business within the County of Orange.

16. Respondent Helmer Cronin is a demolition company which has contracted with the County of Orange to engage in demolition work which petitioners seek to enjoin. It does business within the County of Orange.

II. JURISDICTION

17. Pursuant to Article 78 of the CPLR, this Honorable Court has jurisdiction to annul the Resolution [No. 81 of 2015] adopted by the legislature, which failed to comply with SEQRA, and enjoin the project until and unless the legislature approves a lawful study of its environmental impacts and takes steps necessary to mitigate harms, as broadly defined by SEQRA. See, Exhibit 1 for Resolution.

III. CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION

18. SEQRA required THE COUNTY respondents to assess the likely and potential environmental impacts of the project and to conduct a full environmental study of any potentially significant impact.

19. Instead, THE COUNTY respondents under-stated the significant environmental impacts of the project and did not conduct a full environmental study of any potentially significant impacts.

20. Specifically, as presently constituted, the project will demolish the façade of the entire building and Division II, one of its three component sections.

21. A total of at least 9,500 tons of concrete will thereby be separated from the building and/or demolished.

22. COUNTY respondents' revised environmental assessment form [EAF] fails to acknowledge the quantum of demolition the County intends to accomplish during the project. See, Exhibit 2 for May 7, 2015 Long Form EAF.

23. Indeed, despite being advised by petitioners in prior litigation that it had understated that quantum by a factor of at least two, COUNTY respondents failed to amend the revised long form to reflect the reality of its activities. Id. at Part I, page 8, D.2.r.

24. Such demolition activities will require the use of heavy equipment including front-end loaders, dump trucks and crushers.

25. However, notwithstanding the necessity to utilize such equipment, COUNTY respondents' revised Environmental Assessment Form states that no heavy equipment will be used on or at the site during its renovation and does not, therefore, recognize, let alone account for and study, the air, ground water or noise pollution thereby occasioned. See, Exhibit 2 at Part I, p. 6, D.2.f.

26. In addition, while the updated EAF concedes that the demolition will utilize crushers, Id. at Part I, page 8, D.2.r.ii., despite being specifically prompted, the defendants fail to account for the air emissions caused by these machines. Id. at Part I, page 6, D.2.f.ii. ; Id. at Part I, page 7, D.2.i.

27. By failing to acknowledge the use of such equipment and to study the impacts of the same, respondents violated SEQRA.

AS AND FOR A SECOND CAUSE OF ACTION

28. Petitioners incorporate paras. 1–27, as if fully set forth herein.

29. The demolition set forth in first cause of action required COUNTY respondents to affirmatively respond to the EAF queries acknowledging significant environmental effects from the project.

30. However, contrary to law, COUNTY respondents and those acting in concert with them failed to acknowledge the significant environmental effects

deriving from the scope of demolition and construction activities planned for the site.

31. COUNTY respondents so proceeded to intentionally thwart the purpose and function of SEQRA and did not take a "hard look" at significant environmental impacts and determine whether there are feasible and available alternatives which either altogether avoid or mitigate the projected environmental effects.

32. COUNTY respondents sought to avoid this inquiry precisely because they knew that other alternatives to demolition existed, i.e., the sale of the government center for conversion to an Arts Center or for another viable use or its renovation without demolition.

33. Absent the conduct of an Environmental Impact Study, respondents simply ignored the analysis required by SEQRA, which would have led to the inexorable conclusion that the adverse environmental impacts to be sustained by the current project are unnecessary and could have been mitigated, as is required by law.

AS AND FOR A THIRD CAUSE OF ACTION

34. Petitioners incorporate paras. 1-33 as if fully set forth herein.

35. For purposes of proper environmental review, SEQRA disallows the segmentation of a single project into several distinct projects and, instead, requires review of the project taken as a whole. See, 6 NYCRR 617.3(g).

36. Furthermore, if a lead agency believes that circumstances warrant a segmented review, SEQRA requires the agency to clearly state in its determination of significance the reasons supporting segmentation and must demonstrate that such review is clearly no less protective of the environment than a non-segmented review. See, 6 NYCRR 617.3(g)(1).

37. Additionally, the proponent of a covered activity must identify all related actions and review related environmental impacts to the fullest extent possible. Id.

38. Here, when compared with COUNTY respondent's initial EAF, the May 7, 2015 revision shows a substantial diminution in the area of the site to be used for parking. Cf. Exhibit 2 at Part I, Page 7, D.2.j. with Exhibit 3 at Part I, page 7, D.2.j.

39. The May 7, 2015 EAF reports a five-acre decrease in paved or impervious surface and a corresponding five acre increase in non-vegetated land when compared to the prior EAF. Cf. Exhibit 2, Part I, page 9, E.1.b with Exhibit 3, at Part I, page 9, E.1.b.

40. This change in the anticipated land use corresponds with the elimination of 130 parking spaces. Cf. Exhibit 2, Part I, Page 7, D.2.j. with Exhibit 3, Part I, page 7, D.2.j.

41. Said diminution represents an illegal segmentation of the project as, in fact, respondents continue to plan to convert additional vacant land on the site to parking.

42. COUNTY respondents have engaged in this segmentation to reduce the quantum of land being subject to soil disturbance in a blatant effort to circumvent the requirement that they obtain a State Pollutant Discharge Elimination System [hereinafter "SPDES"] permit from the NY State Department of Environmental Conservation upon the disturbance of one acre or more of soils on the site.

43. As this motivation circumvents this statutory requirement and represents prohibited segmentation, COUNTY respondents conduct violates SEQRA and is, therefore, illegal.

AS AND FOR A FOURTH CAUSE OF ACTION

44. Petitioners incorporate paras. 1–43 as if fully set forth herein.

45. Likewise, in comparison with the COUNTY respondents' initial EAF, the revised version eliminates retention chambers under the parking lot intended to handle projected runoff from major rain events. Cf., Exhibit 2, at Part I, page 6, D.2.e with Exhibit 3, at Part I, page 6, D.2.e.

46. Historically, such events have caused substantial flooding and icing in the extant parking area. Indeed, the current SEQRA acknowledges that 100% of the site is poorly drained. See, Exhibit 2, at Part I, page 11, E.2.e.

47. COUNTY respondents were required to either acknowledge the need to build these retention chambers, or in the alternative, address the environmental impact of the runoff that remains likely to occur should the COUNTY respondents fail to provide adequate drainage on the site.

48. However, again due to the desire to circumvent the need to obtain a SPDES permit, which construction of the originally planned retention ponds would have caused, COUNTY respondents revised the long form to eliminate these needed retention chambers, again segmenting this aspect of the project though its provision remains necessary to sustain a viable Government Center and was so designated and understood in the May 1, 2014 EAF, itself based upon expert recommendations received by respondents.

AS AND FOR A FIFTH CAUSE OF ACTION

49. Petitioners incorporate paras. 1 – as if fully set forth herein.

50. SEQRA requires analysis of the impact of any project on public resources, including those upon or adjacent to the project site.

51. More specifically, SEQRA requires that a developer study the impacts, if any, of a project upon buildings bearing significant historic or architectural significance.

52. The Government Center has been designated as such a structure. See, Exhibit 5.

53. Accordingly, an Environmental Impact Statement was required to assess and minimize the project's impact upon this historical resource.

54. The revised EAF inconsistently treats the Government Center, at once recognizing its historic status and otherwise ignoring it. Specifically, while E.3.g of Part I of the EAS recognizes the historic nature of the building, E.3.e of Part I of the EAS fails to recognize that the NYS Board of Historic Preservation nominated the site for inclusion on State Register of Historic places. See, Exhibit 2 at Part I, page 13.

55. Moreover, Part II of the revised SEQRA fails to recognize that tearing down a third of the historically significant structure and replacing it with a discordant building may impact the properties setting or integrity or may result in the introduction of visual elements that are out of character with the site. See, Exhibit 2 at Part II, page 7, 10.e.

56. Shockingly, although the project clearly entails the complete demolition and replacement of Division 2, one of the Government Center's three principal components, Part II of the SEQRA fails to acknowledge any impact resulting from the required replacement or elimination of a structure of historic significance. Id. at Part II, page 10, 18.a.

57. Moreover, Part III of the County's May 7, 2015 EAF is facially deficient in that it fails to comply with the explicit instructions enumerated on the form.

58. The instructions to Part II state that the lead agency must describe the magnitude of the impact and consider the extent, size, severity of the same. See, Exhibit 2, Part III.

59. Part III also requires the lead agency to assess the importance of the impact as it relates to geographic scope, duration, probability of the impact occurring, number of people affected by the impact, and any additional environmental consequences if the impact were to occur. Id., Exhibit 2, Part III.

60. The revised EAF clearly fails to meet these mandates.

61. Neither its Attachment 'B' nor its "Reasons to Support Determination of Significance" contains any discussion of these factors as relates to the large and potentially moderate impacts identified in Part II. Id. at Attachment 'B' and "Reasons to Support Determination of Significance".

62. Instead, the revised EAF ludicrously asserts that a proper mitigation for the adverse environmental effects of demolition of significant components of the building can be achieved by taking and preserving photographs of the extant structure. See, Exhibit 2, Part III, Attachment B.

63. In any event, even if it were true that taking photos of the building could adequately mitigate any potential environmental impacts to historical resources, in deciding whether to issue a negative declaration, such mitigating effects can only be analyzed in unlisted actions pursuant to the issuance of a Conditional Negative Declaration. See, 6 NYCRR §617.2(h); 6 NYCRR §617.2(n); 6 NYCRR §617.12(a)(2)(i).

64. Nor does the revised EAF evaluate alternatives with less adverse impact on the Government Center, including its renovation without demolition and/or its sale and redevelopment, without demolition, for another productive use.

65. Here, the lead agency's evaluation of the impact to historic resources fails at every level.

66. Since the County failed to identify substantial adverse impacts to historic structures and also failed to properly assess those impacts where they did identify them, the County failed to take a hard look at the project in violation of SEQRA.

67. Since moderate to large impacts to historical resources were identified, and since the mitigation efforts do not adequately eliminate the substantial environmental impact to the historic structure, the County was required to issue a Positive Declaration and perform an Environmental Impact Statement.

AS AND FOR A SIXTH CAUSE OF ACTION

68. Petitioners incorporate paras. 1-67 as if fully set forth herein.

69. Upon application for a SPDES permit, received from the DEC, an applicant is subjected to a 106 review performed in collaboration with the State Historic Preservation Office [hereinafter "SHPO"].

70. COUNTY Respondent's environmental review radically understates the soil disturbance to be caused by the creation of more than 200 parking spaces.

71. An accurate acknowledgment of the area upon which soil shall be disturbed for the project would have triggered both an application for a SPDES permit and a concomitant section 106 review.

72. Such review would require a more intensive review of the impact of the project upon the historic structure.

73. The revised EAF intentionally and unlawfully understates the impact of the project so as to avoid completion of these reviews and is, therefore, arbitrary, capricious and contrary to law.

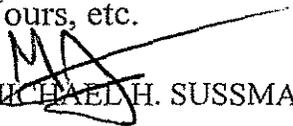
PRAYER FOR RELIEF

WHEREFORE, petitioners pray that this Court [a] accept jurisdiction over this matter; [b] issue a temporary, preliminary and permanent injunction against demolition of the government center, or any part thereof, until the County complies with SEQRA; [c] issue a temporary, preliminary and permanent injunction against

construction activities at the government center site, or any part thereof, until the County complies with SEQRA; [d] maintain jurisdiction over this matter to insure that the County respondents do not violate the injunctive relief so entered until and unless COUNTY respondents have fully complied with SEQRA; [e] award petitioners the costs and disbursements incurred in initiating and litigating this matter and [f] enter any other relief required by law and/or equity.

Dated: July 2, 2015

Yours, etc.


MICHAEL H. SUSSMAN

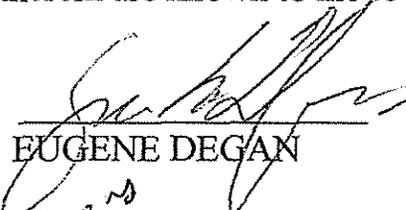
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VERIFICATION

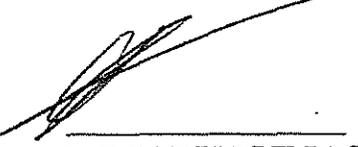
STATE OF NEW YORK)
) SS:s.
COUNTY OF ORANGE)

EUGENE DEGAN, having been duly sworn, hereby states that I am one of the petitioners in the within matter, that I have reviewed the annexed Verified Petition, that the facts set forth therein are known to me to be true and accurate and I so verify.



EUGENE DEGAN

Signed and sworn to before me this 2nd day of July 2015.



NOTARY PUBLIC

CHRISTOPHER D. WATKINS
Notary Public, State of New York
No. 02WA6124421
Qualified in Ulster County
Commission Expires March 28, 2017