To be Argued by:
BRIDGET O'TOOLE
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—Fourth Department

525-527 ORISKANY ST. LLC,

Petitioner,

– against –

ONEIDA COUNTY BOARD OF LEGISLATORS, ONEIDA COUNTY, JOHN DOE CORPORATIONS and JOHN DOES,

Respondents.

Docket No.: OP 21-00726

BRIEF FOR PETITIONER

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INTRODUCTION

This action is the latest step in a long battle over Mohawk Valley Health System's ("MVHS") decision to move into the West Utica neighborhood. Despite the fact that petitioner repeatedly rejected MVHS's offers to purchase its property, rather than reconfigure its plans, MVHS got Oneida County to intervene and condemn the property which is home to a successful Enterprise Rent A Car operation.

New York's Eminent Domain Procedure Law ("EDPL") allows government bodies to take private property only for a good faith public purpose. In doing so, the condemnor must strictly comply with the procedure outlined in the law, including: performing environmental review under the State Environmental Quality Review Act ("SEQRA"); holding public hearings; maintaining a record of the proceeding available for public review; issuing a decision within 90 days of the hearing; and acting in accordance with State and Federal Constitutions. Petitioner 525-527 Oriskany St. LLC contends that respondents failed to comply every step of the way.

Petitioner asks this Court to reject the Oneida County Board of Legislator's May 14, 2021, Determinations and Findings in support of eminent domain of its property (the "Determinations and Findings"), 525-527 Oriskany Street in the city

of Utica for failure to comply with proper procedure or adhere to the New York and Federal Constitutions.

STATEMENT OF FACTS

This action was commenced pursuant to Article 2 of the EDPL to set aside the May 14, 2021 Determinations and Findings of the Oneida County Board of Legislators (the "Findings") for failure to comply with the procedural prerequisites of the EDPL and SEQRA. The Board intends to condemn 525-527 Oriskany Street, Utica, New York (the "Property), along with others, for construction of a parking garage. Verified Petition, paras. 23-29.

The Property is a 0.82-acre parcel, located on Utica's west side, in one of its oldest neighborhoods. AR-414, AR-430; Verified Petition, paras. 17-19. It is owned by 525- 527 Oriskany Street, LLC. Verified Petition, para. 7. Since 2018, Enterprise Rent A Car ("Enterprise") has operated a vehicle rental facility at the Property, investing approximately $433,000 into the Property during that time. Verified Petition, para. 21-22; AR-508-509.

Mohawk Valley Health System ("MVHS") sought to obtain an option to purchase the Property from Petitioner in December 2017. Verified Petition, para. 25; AR-510-512. Petitioner declined to sell the Property to MVHS. Verified

Petition, para. 26. After Petitioner refused to sell the Property to MVHS, the Oneida County Board of Legislators authorized the County Attorney to begin acquisition of the Property (along with other properties) through Eminent Domain. This was done by Resolution 2019-53 ("Resolution 53") on February 19, 2019. Verified Petition, para. 29; AR-80.

A public meeting was held by the Oneida County Board of Legislators via video conference only on December 23, 2020. At the conclusion of the hearing, there was no vote to continue the hearing. Instead, an additional 30 days to submit written comments was provided. Verified Petition, paras. 30-32; AR-129-245.

Months after the December 23, 2020 public hearing, the Oneida County Board of Legislators enacted Resolution 83 "adopting the determinations and findings pursuant to section 204 of the Eminent Domain Procedure Law in connection with the acquisition of property for the construction of a public parking facility in the city of Utica" on April 14, 2021. The Board of Legislator's Determinations and Findings do not include a finding, or any supporting evidence, that there is a need for the amount of parking being proposed or that all of the properties being condemned are required to achieve the desired outcome. In addition, Respondents did not perform SEQRA review, made no SEQRA determination in connection with this action, and simply "accepted the Findings Statement issued by the City of Utica Planning Board," dated April 30, 2019,

instead of performing its own review and making its own findings. Verified Petition paras. 34-37; AR-246-252.

A copy of the City of Utica's April 30, 2019 Findings Statement was not included in the Oneida Board of Legislators Decision and Findings and was not available on the County's website. In fact, the City's April 30, 2019 Findings Statement related to the development of MVHS, not the eminent domain of properties on Oriskany and Lafayette Streets. Verified Petition, paras. 38-39.

Without any documentation to support its conclusions, the Board of Legislators stated, "that there will be no significant adverse effect to the environment or upon the residents of the area and locality immediately adjacent and in close proximity to the Properties from the aforesaid land acquisition and the construction of the parking garage. There will be positive environmental effects on the surrounding area, through the reduction of traffic congestions, reduction of on-street parking, and the prevention of over-development on surface parking lots in the area." The Board also failed to certify that it complied with SEQRA. Verified Petition, para. 41-42; AR-246-252.

Documents that were said to be available to the public were not. In its Determinations and Findings, the Board of Legislators states that, "following the closing of the Public Hearing, copies of the complete record of the hearing were filed with Oneida County Clerk, and were also made available for download on the

Oneida County website." Verified Petition para. 43; AR-251. It also states, "Copies of all documentation concerning the above acquisition and condemnation are on file at the offices of the Oneida County Clerk…which include the transcript of the public hearing held on December 23, 2020 and all documentation submitted to the County concerning said acquisition. The same is available for download on the Oneida County Web Page at http://www.ocgov.net." Verified Petition para. 44; AR-251.

Petitioner's counsel requested a copy of the record of the proceeding pursuant to EDPL §203 from the Clerk of the Board of Legislators on May 10, 2021, but was directed to a link on the Oneida County website. Verified Petition para. 46; AR-277; AR-517-519. The link provided is for the Oneida County's eminent domain website, where the only documents provided are the transcript of the December 23, 2020 hearing and Resolution 83. There were no copies of notices, appraisals, meeting minutes, or other pertinent resolutions concerning the eminent domain of the property. Verified Petition paras. 47-49; AR-520-522.

Several documents were referenced in the December 23, 2020 Hearing Transcript but were not posted on the County's website, including: (a) Site Plan, referenced by Mark Laramie (Commissioner of Public Works for Oneida County) and allegedly shown via screen share. AR-133; (b) Article in Newspaper, June 17, 2016, "Warning to City: No Garage, no new hospital," referenced by Joseph

Cerini. AR-135; (c) Appraisal of Joseph Cerini's Property (owner of 418-430 Lafayette Street), referenced by Joseph Cerini.AR-136; (d) Statement of Utica Common Council President Michael Galime, read into the record and referenced by Legislator Timothy Julian. AR-142-144; (e) Original plan for the Project, referenced by Legislator Timothy Julian. AR-144.

STANDARD OF REVIEW

In an action brought pursuant to EDPL Article 2, in rejecting or confirming the condemnor's determination and findings, the scope of review is limited to whether: (1) the proceeding was in conformity with the federal and state constitutions, (2) the proposed acquisition is within the condemnor's statutory jurisdiction or authority, (3) the condemnor's determination and findings were made in accordance with procedures set forth in this article and with article eight of the environmental conservation law, and (4) a public use, benefit or purpose will be served by the proposed acquisition. EDPL 207(c).

POINT I
THE COUNTY FAILED TO COMPLY WITH SEQRA

As a mandatory process before making any decision under the Eminent Domain Procedure Law, the respondent is required to comply procedurally and substantively with the State Environmental Quality Review Act ("SEQRA"), ECL §§ 8-0101 to 8-0117, N.Y. Comp. Codes R. & Regs. tit. 6, Part 617. The basic purpose of SEQRA is to incorporate the consideration of environmental factors into the planning, review, and decision-making processes of state and local government agencies at the "earliest possible time." To accomplish this goal, SEQRA requires that all agencies determine whether the actions they directly

undertake, fund or approve may have a significant effect on the environment. When an action may have a significant effect, the agency must minimize adverse environmental impacts to the greatest extent practicable. ECL 8-0103; 6 NYCRR 617.1(c). Early environmental review of a proposed action serves three purposes: "To relate environmental considerations to the inception of the planning process, to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision-making process in determining the environmental consequences of a proposed action." ECL 8-0109(4).

Compliance with SEQRA is mandatory. "No agency involved in any action shall carry out, fund or approve the action until it has complied with the provisions of SEQRA." 6 NYCRR 617.3(a). SEQRA requires the municipal board to take a "hard look" at the environmental issues, which requires the evaluation of potential impacts and considerations of alternatives, and that there be an elaboration of the basis for decisions made. When the municipal board fails to do so, "the governmental action is void, and in a real sense, unauthorized," *E.F.S. Ventures Corp. v. Foster*, 71 N.Y.2d 359 (1988).

Even where an agency is not the lead agency, it must conduct its own jurisdictional review of the environmental impact of the proposed action, and is

required to make findings that provide a basis for its actions. *Troy Sand & Gravel Co., Inc. v. Fleming*, 156 A.D.3d 1295, 1300 (3d Dep't 2017). Where SEQRA involves coordinated review, each involved agency must issue its own written findings statement. 6 NYCRR 617.11(c); NYS Department of Environmental Conservation, *SEQR Handbook*, p. 63-64, 146 (4th Ed. 2020); *Brady v. Genesee and Wyoming R. Co.*, 225 A.D.2d 1024 (4th Dep't 1996) (Stating that involved agencies must participate in SEQRA review of condemnation). The involved agency's findings statement must be issued ***before*** the agency decides whether to commence, engage in, fund or approve an action. *Id.* (emphasis added). The Findings Statement must:

> (1) consider the relevant environmental impacts, facts and conclusions disclosed in the final EIS;
>
> (2) weigh and balance relevant environmental impacts with social, economic and other considerations;
>
> (3) provide a rationale for the agency's decision;
>
> (4) certify that the requirements of this Part have been met; and
>
> (5) certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental

> impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

6 NYCRR 617.11(d); *see also*, *SEQR Handbook*, p. 62-64, 146 (4th Ed. 2020). Additionally, in its findings, the involved agency must certify that it has complied with SEQRA prior to taking an action that is subject to SEQRA. 6 N.Y.C.R.R. §617.11(d); ECL §8-0109(8). Failure to comply with SEQRA in the context of a condemnation proceeding under the EDPL requires rejection of the agency's determination and findings in support of the taking. *Riverso v. Rockland Co. Solid Waste Management Auth.*, 96 A.D.3d 764 (2d Dep't 2012) (rejecting authority's EDPL findings and determinations where it failed to fully comply with SEQRA); *Sun Co., Inc. (R&M) v. City of Syracuse Indus. Devel. Agency*, 209 A.D.2d 34 (4th Dep't 1995) (rejecting SIDA's EDPL determination and findings for failure to make SEQRA findings in accordance with ECL Art. 8).

It cannot seriously be disputed that respondents did not prepare a SEQRA findings statement: respondents did not proffer a SEQRA Findings Statement in its administrative record on review. NYSCEF Doc. 8. In its answer, it refers only to the Findings Statement prepared by the City of Utica Planning Board. NYSCEF Doc. 7, paras. 38-39. The City of Utica's Findings Statement is not enough to

show compliance with SEQRA. Respondent's lone statement concerning potential adverse effects to the environment in its EDPL 204 findings is also patently insufficient to show compliance with the spirit or letter of SEQRA. Exhibit G, para. 8.[1] The Findings Statement fails to: (1) consider the relevant environmental impacts, facts and conclusions disclosed in the final EIS; (2) weigh and balance relevant environmental impacts with social, economic and other considerations; (3) provide a rationale for the agency's decision; (4) certify that the requirements of this Part have been met; and (5) certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable. A perfunctory and conclusory statement, citing no evidence whatsoever, does not satisfy these criteria.

Accordingly, Respondents determinations and findings must be rejected.

[1] Stating "that there will be no significant adverse effect to the environment or upon the residents of the area and locality immediately adjacent and in close proximity to the Properties from the aforesaid land acquisition and the construction of the parking garage. There will be positive environmental effects on the surrounding area, through the reduction of traffic congestions, reduction of on-street parking, and the prevention of over-development of surface parking lots in the area." Exhibit G, para. 8.

POINT II
THE COUNTY FAILED TO COMPLY WITH THE EDPL

The EDPL must be uniformly applied to all acquisitions of property via eminent domain within New York State. EDPL 104. Due to respondents' failure to comply with the EDPL's procedural requirements, its findings and determinations must be rejected.

A. THE COUNTY IMPERMISSIBLY HELD A PUBLIC HEARING VIA ZOOM ONLY

Respondent failed to comply with mandatory procedural requirements required by the Eminent Domain Procedure Law because the public hearing held on December 23, 2020, was held virtually via zoom only. EDPL §§201-203.

The EDPL requires, "prior to acquisition, the condemnor, in order to inform the public and to review the public use to be served by a proposed public project and the impact on the environment and residents of the locality where such project will be constructed, shall conduct a public hearing in accordance with the provisions of this article at a location reasonably proximate to the property which may be acquired for such project." EDPL §201. Thus, a public hearing is required prior to acquisition, and it must be held in reasonable proximity to the property in question. *Id*.

Furthermore, the condemnor must provide the public with any pertinent information regarding the project at the public hearing, and a record of the hearing

must be kept and made available to the public. EDPL §203. Additionally, "[a]t the public hearing the condemnor shall outline the purpose, proposed location or alternate locations of the public project . . . including maps and property descriptions of the property to be acquired and adjacent parcels." *Id.* At the public hearing, "any person in attendance shall be given a reasonable opportunity to present an oral or written statement and to submit other documents concerning the proposed public project." *Id*. In person public hearings are a critical step in the eminent domain process and must adhere to the EDPL. Respondent failed to comply with EDPL §203 by holding the public hearing only virtually.

Solely virtual public hearings are not permissible under the EDPL or under any Executive Orders that may have been in place at that time. On March 7, 2020, New York State Governor Andrew Cuomo, issued Executive Order 202 which declared a Disaster Emergency in the State of New York due to the COVID-19 worldwide pandemic. N.Y. Exec. Order No. 202 (2020). He continued to issue Executive Orders due to the COVID-19 pandemic through June 25, 2021. N.Y. Exec. Order No. 210 (2021). Executive Order 210, issued on June 25, 2021, rescinded Executive Orders 202 through 202.111. *Id*.

Between March 7, 2020, and June 25, 2021, Governor Cuomo issued numerous Executive Orders, and some of these Orders pertained to modifying or

suspending certain public hearing requirements.[2] N.Y. Exec. Order Nos. 202-202.111 (2020-2021). However, these Executive Orders were not blanket suspensions of all hearing requirements and did not suspend or modify the hearing requirements provided for in EDPL Article 2. *Id*. This is evident because Executive Order 202.94 specifically modified the EDPL, which had not been specified before in any other Executive Orders issued during the state of Disaster Emergency. N.Y. Exec. Order No. 202.94 (2021). On February 14, 2021, Governor Cuomo issued Executive Order 202.94 which stated the following:

> Sections 201, 202, and 203 of the Eminent Domain Procedure Law, to the extent necessary to permit the ***MTA or subsidiary entities*** to hold public hearings remotely and through use of telephone conference, video conference, and/or other means of transmission, provided that public comments must be permitted electronically or by mail, and to permit all required documentation and records to be available electronically or by mail, and to permit all required documentation and records to be available electronically upon request. (Emphasis added). *Id*.

[2] *i.e.* Executive Order 202.1 suspended the Public Officers Law that required any public body to meet in person and permit public access; Executive Order 202.5 required in-person public hearings to be held by conference call or similar electronic means which are recorded and later transcribed etc.

This modification of the EDPL made it apparent that virtual hearings did not comply with the requirements of EDPL Article 2. EDPL §§201-203. Thus, Executive Order 202.94 demonstrates that every hearing conducted pursuant to the EDPL, up until February 2021 should have been conducted in person, and only the MTA or subsidiary entities were allowed to conduct remote public hearings. *Id*. Therefore, all EDPL Article 2 hearing requirements applied to Respondent at the time of the Oriskany Street public hearing.

Respondent does not deny that it held its public hearing via zoom only. NYSCEF Doc. 7, para. 30. Respondent held the virtual public hearing regarding 525-527 Oriskany Street on December 23, 2020 which was before Executive Order 202.94, and regardless, Respondent is not the MTA or a subsidiary entity. N.Y. Exec. Order No. 202.94 (2021);AR-129-245. Thus, Respondent could not rely on Executive Order 202.94 and no other Executive Order suspended or modified the requirements of EDPL Article 2 in person public hearings. N.Y. Exec. Orders, 202-202.111 (2020-2021).

During the virtual public hearing Robert Pronteau, Esq. explained that, "[t]his virtual public hearing . . . is a public hearing being held pursuant to Section 203 of the Eminent Domain Procedure Law of the State of New York." AR-131. As this public hearing was held pursuant to EDPL §203, it was required to be in

person, and Respondent's failure to do so results in a failure to comply with mandatory procedural requirements.

B. RESPONDENT DID NOT PROVIDE A FULL COPY OF THE RECORD UPON REQUEST AS REQUIRED BY EDPL § 203

Respondent failed to comply with the Eminent Domain Procedure Law because a full record was unavailable to the public for inspection without cost. EDPL §203.

Under Article 2 of the EDPL, there must be a public hearing where the condemnor will, "outline the purpose, proposed location or alternate locations of the public project and any other information it considers pertinent, including maps and property descriptions of the property to be acquired and adjacent parcels." *Id*. Additionally, "[a] record of the hearing shall be kept, including written statements submitted [and] . . . [c]opies of such record shall be available to the public for examination without cost during normal business hours at the condemnor's principal office and the office of the clerk or register of the county in which the property proposed to be acquired is located." *Id*.

The Oneida County Board of Legislators provided that, "following the closing of the Public Hearing, copies of the complete record of the hearing were filed with Oneida County Clerk and were also made available for download on the

Oneida County website." (Emphasis addedAR-251, para. 13. Further, the Board provided that, "[c]opies of all documentation concerning the above acquisition and condemnation are on file at the offices of the Oneida County Clerk . . . which include the transcript of the public hearing held on December 23, 2020, and all documentation submitted to the County concerning said acquisition." (Emphasis added). *Id*. at para 19.

However this proved to be inaccurate because when counsel for petitioner requested a copy of the record from the County, counsel was merely directed to the Oneida County website. Verified Petition para. 46; AR-277; AR-517-519. The link provided is for the Oneida County's eminent domain website, where the only documents provided are the transcript of the December 23, 2020 hearing and Resolution 83. There were no copies of notices, appraisals, meeting minutes, or other pertinent resolutions concerning the eminent domain of the property. Verified Petition paras. 47-49; AR-520-522.

Similarly, there were several documents referenced in the December 23, 2020 Hearing Transcript that were not included on the County's website, including: (a) Site Plan, referenced by Mark Laramie (Commissioner of Public Works for Oneida County) and allegedly shown via screen share. AR-133; (b) Article in Newspaper, June 17, 2016, "Warning to City: No Garage, no new hospital," referenced by Joseph Cerini. AR-135; (c) Appraisal of Joseph Cerini's

Property (owner of 418-430 Lafayette Street), referenced by Joseph Cerini.AR-136; (d) Statement of Utica Common Council President Michael Galime, read into the record and referenced by Legislator Timothy Julian. AR-142-144; (e) Original plan for the Project, referenced by Legislator Timothy Julian. AR-144.

Critically, "[o]ne of the purposes of an [EDPL] article 2 hearing is to inform the public." *City of Buffalo Urb. Renewal Agency v. Moreton*, 100 A.D.2d 20, 23 (1984). Therefore, maintaining a complete record of the hearing is essential to inform the public about the project and these records are supposed to be readily available to the public at no cost. *Id*; EDPL §203.

In *Tadasky*, the Third Department found that where "minutes of the public hearing were indeed recorded by respondent's clerk . . . [that] reflect[ed] . . . the scope and purpose of the proposed acquisition were reviewed by respondent's attorney, that a 'public response' was solicited, [and] that petitioner's attorney spoke on its behalf," complied with EDPL §203. *Tadasky Corp. v. Vill. of Ellenville*, 45 A.D.3d 1131, 1131 (2007). The Court rejected petitioner's argument that "respondent had an obligation to actually transcribe each word of the public hearing." Id. at 1132. Unlike *Tadasky*, the public hearing for Oriskany was transcribed, but Respondent failed to include meeting minutes or any other pertinent documents pertaining to the Property in the publicly available record. *Id*; Website Exhibit.

Further, the Second Department rejected petitioner's argument that, "the City was . . . required to provide a map or to state whether there were any neighboring properties," to comply with EDPL §203. *River St. Realty Corp. v. City of New Rochelle,* 181 A.D.3d 676, 678 (N.Y. App. Div. 2020). However, when maps or other pertinent documents are actually provided during a hearing, they become part of the record and must be readily available to the public at no cost pursuant to EDPL §203.

Thus, Respondent failed to comply with EDPL §203 because a full record was unavailable to the public.

C. RESPONDENTS FAILED TO MAKE DETERMINATIONS AND FINDINGS WITHIN 90 DAYS

Respondent failed to make the required determinations within 90 days of the public hearing and thus, its determinations and findings were untimely. Under EDPL §204, "[t]he condemnor, within ninety days after the conclusion of the public hearings . . . shall make its determination and findings concerning the proposed public project and shall publish a brief synopsis of such determination and findings." EDPL §204(a).

The virtual public hearing was conducted on December 23, 2020, and the hearing was not continued or postponed. Cite to Transcript Exhibit. However, Respondent provided the public an additional 30 days to submit written comments about the Project. Exhibit Transcript p. 16-17. On April 14, 2021, more than ninety

days from the public hearing, the Oneida County Board of Legislators enacted Resolution 83 which "adopt[ed] the determinations and findings pursuant to section 204 of the Eminent Domain Procedure Law in connection with the acquisition of property for the construction of a public parking facility in the city of Utica." Cite to Exhibit Resolution 83.

It is required for "the condemnor . . . [to] hold a public hearing pursuant to EDPL 201 through 203 and issue a written determination and findings within 90 days thereafter pursuant to EDPL 204." (Emphasis added). *Zutt v. State*, 99 A.D.3d 85, 96–97 (2012).

In *Legal Aid Soc. of Schenectady City*, the Court found that where, "a brief synopsis of respondent's determination and findings was published on two excessive days in Schenectady Gazette, viz., May 30 and May 31, 1980, well within the 90 days of the conclusion of the public hearings." *Legal Aid Soc. of Schenectady Cty., Inc. v. City of Schenectady*, 78 A.D.2d 933, 933, (1980). However, here Respondent failed to publish the determination and findings within the ninety days after the public hearing on December 23, 2020.

In *Gray*, there was an adjournment of the public hearing, and the Third Department found, "respondent's published notice of the purpose, time, and location of the *initial* date of the public hearing and publication of a brief synopsis of its determination and findings within 90 days of the *final* date of the hearing

constituted sufficient compliance with the publication requirements of EDPL 202(A) and 204(A).” *Gray v. Town Of Oppenheim*, 289 A.D.2d 343, 346 (2001). Unlike *Gray*, Respondent did not adjourn the hearing, and the only date of the virtual public hearing is December 23, 2020, and thus that is the only date that can be used to determine the ninety days under EDPL §204. *Id*; EDPL §204; Exhibit Transcript.

Therefore, Respondent failed to comply with EDPL §204 and the determinations and findings were untimely.

D. RESPONDENTS FAILED TO CONFORM WITH SEQRA

EDPL § 207(C)(3) requires the condemnor to act in conformity with SEQRA. For the reasons set forth in Point I, *infra,* respondents have failed to do so and their determinations and findings must be rejected.

POINT III
THE COUNTY VIOLATED PETITIONER’S RIGHT TO DUE PROCESS

Respondents’ failure to conform to the procedural requirements of the EDPL deprived petitioner’s right to procedural due process.

Individuals or entities whose properties are taken by eminent domain are entitled to judicial process. *Tioronada, LLC v. New York*, 386 F.Supp.2d 342, 351 (SDNY 2005). A municipal body violates an individual’s right to procedural due process where it deprives the individual of a property without effecting due

process. *Ahmed v Town of Oyster Bay*, 2014 WL 1092363 (EDNY Mar. 18, 2014), citing *Local 342, Long Island Pub. Serv. Employees, UMD, ILA, AFL–CIO v. Town Bd. of Huntington,* 31 F.3d 1191, 1194 (2d Cir.1994).

Procedural due process requires that a Condemnation Proceeding be fair and reasonable and that the government not act arbitrarily or unfairly interfere with Plaintiffs' property rights, *Daniels v. Williams*, 474 U.S. 327, 330 (1986). Likewise, a procedural due process claim is present where the condemnor fails to comply with the procedural requirements of the EDPL. *Compare*, *Goldstein v. New York State Urban Devel. Corp.*, 64 A.D.3d 168, 185-86 (2d Dep't 2009).

As discussed in Points I and II, *infra*, respondents failed to follow proper procedure under EDPL Article 2 by holding a virtual hearing, making untimely findings, failing to make a full copy of the record of this proceeding available by request, and failing to comply with SEQRA.

Accordingly, petitioner has not been accorded due process of law as required by the New York and Federal Constitutions and the determinations and findings must be rejected.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that the court issue and order rejecting the May 14, 2021 Determinations and Findings of the Oneida County Board of Legislators.

Dated: August 2, 2021
Rochester, New York

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PRINTING SPECIFICATIONS CERTIFICATION

Pursuant to 22 NYCRR §1250.8(f) an (j)

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