

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

61 CROWN STREET, LLC, 311 WALL STREET, LLC,
317 WALL STREET, LLC, 323 WALL STREET
OWNERS, LLC, 63 NORTH FRONT STREET, LLC,
314 WALL STREET, LLC, and 328 WALL STREET,
LLC

Plaintiffs,

- against -

CITY OF KINGSTON COMMON COUNCIL,
STEVEN T. NOBLE in his capacity as MAYOR OF THE
CITY OF KINGSTON, JM DEVELOPMENT GROUP,
LLC, HERZOG SUPPLY CO., INC., KINGSTONIAN
DEVELOPMENT, LLC, PATRICK PAGE HOLDINGS,
L.P., BLUE STONE REALTY LLC, and WRIGHT
ARCHITECT, PLLC,

Defendants.

VERIFIED COMPLAINT

Index No.:

Assigned Judge

Plaintiffs, 61 Crown Street, LLC, 311 Wall Street, LLC, 317 Wall Street, LLC, 323 Wall
Street, LLC, 63 North Front Street, LLC, 314 Wall Street, LLC and 328 Wall Street, LLC,
("Plaintiffs") by and through their attorneys, Rodenhausen Chale & Polidoro LLP and Lewis &
Greer, P.C., as and for their Verified Complaint respectfully allege as follows:

PRELIMINARY STATEMENT

1. This is a declaratory judgment action under §3001 of the Civil Practice Law and
Rules and General Municipal Law §51 seeking a judgment:

- a. declaring that a portion of the property owned by the City of Kingston and
encompassed by tax parcel 48.80-1-26 is parkland [hereinafter "the Park"] and is
subject to the public trust doctrine;
- b. permanently enjoining the Mayor Steven T. Noble and the City of Kingston
Common Council from selling or otherwise alienating the Park without prior

authorization from the State in the form of legislation enacted by the New York State Legislature and approved by the Governor of New York State and completion of SEQRA on the alienation;

- c. declaring that Mayor Steven T. Noble's ("the Mayor's") execution of a Memorandum of Understanding dated January 10, 2017 with Wright Architect PLLC is null and void;
- d. declaring that Mayor Steven T. Noble's ("the Mayor's") consent to the Assignment of the Memorandum of Understanding from Wright Architects PLLC to JM Development Group, LLC is null and void;
- e. declaring an amendment to the Zoning Map enacted by the City of Kingston Common Council which added a portion of the parcel located at 51 Schwenk Drive, tax parcel 48.80-1-24.120 ("51 Schwenk Drive"), to the Mixed Used Overlay District ("MUOD") is null and void;
- f. awarding Plaintiffs such other and further relief as the Court deems just and proper, with the costs and disbursements of this proceeding.

PARTIES

2. Plaintiff 61 Crown Street, LLC is a duly created limited liability company organized in the State of New York which owns certain properties located at 61 Crown Street and 156-162 Green Street, identified as tax parcels 48.330-3-10 and 48.330-3-28.100, respectively. Plaintiff 61 Crown Street, LLC's properties are located in close proximity to the Project's property and are within the National Register-listed Kingston Stockade Historic District ("KSHD").

3. Plaintiff 311 Wall Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 311 Wall Street, identified as tax parcel 48.331-1-16. Plaintiff 311 Wall Street, LLC's property is located in close proximity to the Project's property and is within the National Register-listed KSHD.

4. Plaintiff 317 Wall Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 317 Wall Street, identified as tax parcel 48.331-1-15. Plaintiff 317 Wall Street, LLC's property is located in close proximity to the Project's property and is within the National Register-listed KSHD.

5. Plaintiff 323 Wall Street Owners, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 323 Wall Street, identified as tax parcel 48.331-1-13. Plaintiff 323 Wall Street, LLC's property is located in close proximity to the Project's property and is within the National Register-listed KSHD.

6. Plaintiff 63 North Front Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 63 North Front Street, identified as tax parcel 48.314-2-15. Plaintiff 63 North Front Street, LLC's property is located in close proximity to the Project's property and is within the National Register-listed KSHD.

7. Plaintiff 314 Wall Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 314 Wall Street, identified as tax parcel 48.331-2-10. Plaintiff 314 Wall Street, LLC's property is located in close proximity to the Project's property and is within the National Register-listed KSHD.

8. Plaintiff 328 Wall Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 328 Wall Street,

identified as tax parcel 48.331-2-4. Plaintiff 328 Wall Street, LLC's property is located in close proximity to the Project's property and is within the National Register-listed KSHD.

9. Each of the properties owned by Plaintiffs individually has an assessment that amounts to more than one thousand (\$1,000.00) U.S. Dollars.

10. The sum of the Plaintiffs' assessments amounts to more than one thousand (\$1,000.00) U.S. Dollars.

11. Based on their assessments, individually and collectively, Plaintiffs have standing to bring this action pursuant to General Municipal Law §51 to prevent any illegal official act on the part of the Mayor and the City of Kingston Common Council ("the Common Council") or to prevent waste or injury to, or to restore and make good, any property.

12. Plaintiffs will be injured by the Project as it will impact their enjoyment of their respective properties. The Project involves the construction of a massive mixed-use development in a nationally recognized historic district which has the potential to negatively impact the historic resources and character of the KSHD. The Project also involves changes to traffic flow, including the closure of the Fair Street Extension. The Project will permanently alter the historic character of the KSHD, in which Plaintiffs' properties are located, and will interfere with the appearance and environment of the district. Plaintiffs purchased their properties in part due to the unique setting of the KSHD which the Project will now disrupt.

13. Plaintiffs have standing to pursue the claims asserted herein because they are owners of real property in the City of Kingston and have unique property and personal interests that will be adversely affected by the proposed Project.

14. Upon information and belief, the City of Kingston is the owner of the parcel at 21 North Front Street, identified as tax parcel number 48.81-1-26, as well as the portion of Fair

Street that is proposed to be discontinued and be developed as part of the Project.

15. Upon information and belief, for the Project to be developed, the City of Kingston will have to convey the parcel at 21 North Front Street, identified as tax parcel number 48.81-1-26, to the Applicants.

16. Upon information and belief, Defendant City of Kingston Common Council (the “Common Council”) is a duly created body established pursuant to the New York General City Law, whose authorized powers include, among other things, to approve the sale or lease of real property belonging to the City.

17. Upon Information and belief, Steven T. Noble is the Mayor of the City of Kingston.

18. Upon information and belief, Defendant JM Development Group, LLC is a New York limited liability company with offices at 2975 Route 9W South, New Windsor, NY, and a developer of and/or applicant for the Project.

19. Upon information and belief, Defendant Herzog Supply Co., Inc. is a duly created New York business corporation with offices at 151 Plaza Road, Kingston, NY, and the owner in whole or in part of real property located at 9-17 N Front Street and 51 Schwenk Drive, identified as tax parcel nos. 48.80-1-26 and -24.120, which is a portion of the Project property.

20. Upon information and belief, Defendant Kingstonian Development, LLC is a New York limited liability company with offices at 2975 Route 9W South, New Windsor, NY, and a developer of and/or applicant for the Project.

21. Upon information and belief, Defendant Patrick Page Holdings, d/b/a Patrick Page Properties, is a New York limited partnership with offices at 1613 Route 300, Newburgh, NY, and a developer of and/or applicant for the Project.

22. Upon information and belief, Defendant Blue Stone Realty, LLC is a New York limited liability company with offices at 200 Fair Street, Kingston, NY, and has an interest in the Project.

23. Upon information and belief Defendant Wright Architect, PLLC is a professional service limited liability company with offices at 200 Fair Street, Kingston, NY 12401, and has an interest in the Project.

24. Collectively, Defendants herein, with the exception of the Common Council and the Mayor, are referred to hereafter as the “Applicants.”

VENUE

25. This action is properly venued in New York Supreme Court, Ulster County as all of the real property that is the subject of this action is located in Ulster County.

BACKGROUND

A. History of the KSHD

26. The KSHD comprises approximately 32.11 acres of uptown Kingston which once housed the Kingston stockade. A copy of the National Register of Historic Places Nomination Form is annexed hereto as Exhibit 1.

27. This section of the City of Kingston was laid out as a Dutch village in the mid-seventeenth century. The site of the village was “carefully chosen in relation to topography on a high delta-like plain which provided good drainage, as well as effective strategic protection from attack.” Exhibit 1 at 6.

28. In 1658, a log stockade was completed to fortify the village, and the streets along the boundaries of the stockade are still seen in modern uptown Kingston. Exhibit 1 at 6.

29. Since its establishment, the KSHD has had tremendous historical significance. The settlement became the first capital of the State of New York, hosted a constitutional convention to permit the framing of New York's Constitution, and contained the First Term of the New York Supreme Court, as presided over by future U.S. Supreme Court Justice John Jay. Exhibit 1 at 6.

30. At present, over 300 years after its establishment, remnants of the historic Dutch settlement are evident. The street patterns are intact, and the area contains colonial-era Dutch stone houses. Moreover, even the development that has occurred since the colonial era has contributed to the KSHD's historic character; "The district contains a number of building[s] which individually exemplify the city's architectural development from the seventeenth through twentieth centuries. Together, however, with the street patterns and landscaping they form an environment that is a critical and irreplaceable part of the historical heritage of Kingston and of New York State." Exhibit 1 at 6.

B. Proposed Development in the District

31. On October 27, 2016, the Common Council published "Request for Qualifications #K16-10, Adaptive Development of Uptown Parking Sites for Mixed Use" (the "RFQ"). A copy of the RFQ is annexed hereto as Exhibit 2.

32. The RFQ sought responses "from qualified developers to design, construct and operate a mixed-use development on three separate parcels owned currently by the City of Kingston" Exhibit 2 at 1.

33. Upon information and belief, the Mayor executed a Memorandum of Understanding awarding the RFQ to Defendant Wright Architects, PLLC an entity related to Defendant Blue Stone Realty LLC on January 10, 2017. A copy of the Memorandum of

Understanding is attached as Exhibit 3.

34. Upon information and belief, the Common Council never voted on and never passed a resolution authorizing the Mayor to execute the Memorandum of Understanding.

35. The Memorandum of Understanding specifically states that it may not be assigned without the prior written consent of the non-assigning party. See Exhibit 3 at 3.

36. Upon information and belief, the Mayor executed a letter dated June 26, 2017 stating that “the City of Kingston consents to the Assignment as required by the Memorandum of Understanding dated January 10, 2017” a copy of which is attached as Exhibit 4.

37. Upon information and belief, the Mayor executed the June 26, 2017 letter without obtaining a resolution from the City Council approving the assignment of the Memorandum of Understanding.

38. Upon information and belief, the Memorandum of Understanding has been assigned to JM Development Group, LLC, Patrick Page Holdings d/b/a Patrick Page Properties, and Herzog Supply Co., Inc., which eventually proposed the Project and submitted applications to the City of Kingston Planning Board for site plan and special use permits for the same as well as for a rezoning of 51 Schwenk Drive. A copy of the assignment is attached as Exhibit 5.

39. Upon information and belief, Blue Stone Realty LLC and its related entities retain a right of reverter and may develop the portion of the property owned by the City of Kingston if the Project is not approved.

40. Upon information and belief, Wright Architect, PLLC and its related entities retain a right of reverter and may develop the portion of the property owned by the City of Kingston if the Project is not approved.

41. The Project seeks to construct a 420 car garage, 143 apartments, 32 room

boutique hotel, and 9,000 square foot retail/restaurant space, pedestrian plaza and walking bridge at the property, which is located within the City of Kingston's Central Commercial ("C-2") District. The exact size and makeup of the commercial spaces varies amongst the various documents provided by the Applicant.

42. All of the property within the Project site is also located within the City of Kingston's Stockade Mixed Use Overlay ("MUO") District, with the City having amended the Zoning Map to include said 51 Schwenk Drive, the only parcel not originally in the MUO District so that parcel could be included in the Project.

The Park

43. The City of Kingston owns a parcel of land located partly within the KSHD which was formerly developed with a parking garage. Upon information and belief, in the spring of 2008 the City demolished the garage as a result of its failure to maintain the structure.

44. The municipally owned site, located at 21 North Front Street and identified as tax parcel 48.80-1-26, now contains a 144 car parking lot to the north as well as a park located along its southern boundary facing North Front Street, between Wall Street and Fair Street (the "Park").

45. The Park consists of a passive recreation area with playground games painted on the pavement, several picnic tables, a rectangular sitting wall, trees and other landscaping elements, and a walkway. See Exhibit 6, Affidavit of William Vickery.

46. The Park is identified in the Ulster County tax records for the parcel as a "picnic site." A copy of the County parcel records for this parcel is attached hereto at Exhibit 7.

47. Upon information and belief, the Park was first constructed as a picnic site in 1971. See Exhibit 7 at 2.

48. An aerial photo of tax parcel 48.80-1-26 that, upon information and belief, was taken in 2016 and printed from the Ulster County Parcel Viewer on July 24, 2020, is attached at Exhibit 8. The Park is located and can be seen at the south side of the parcel in the aerial photo.

49. Upon information and belief, the City of Kingston maintains this Park, and has allowed it to be used for hosting events for the public, including but not limited to a holiday tree lighting attended and led by the Mayor of Kingston. See, Exhibit 9 (Map of the 2019 Snowflake Festival showing the use of the Park for Tree Lighting (#1) and Ice Carving (#4)); Exhibit 10 (Newspaper photo and caption from the Daily Freeman dated November 18, 2019 showing the City's electrician helping to erect the tree); Exhibit 11 (Newspaper article and photo from the Daily Freeman dated December 6, 2018); Exhibits 12 & 13 (Photos printed from the website Kingston Happenings (<http://kingstonhappenings.org/fire-ice-santa-headline-years-snowflake-festival/>) showing the lit tree and ice sculpture from 2016, respectively; Exhibit 14 (Press Release published by the City of Kingston on December 6, 2013, "Snowflake Festival 2013").

50. Upon information and belief, the City Council and the Mayor have no intention of seeking the approval of a parkland alienation bill by the State Legislature and Governor prior to proceeding with the Project and the sale of tax parcel 48.80-1-26 which contains the Park.

C. Rezoning of 51 Schwenk Drive

51. At the time of the application for the Project, all portions of the Property were located within the MUOD except 51 Schwenk Drive which was located solely within the C-2 District.

52. As the C-2 District does not permit residential uses, the Defendant Applicants sought an amendment to the City of Kingston Zoning Map to extend the MUOD to include 51 Schwenk Drive.

53. By Complaint dated June 4, 2019, Defendant Kingston Development Group LLC formally requested that the City amend the Zoning Map to extend the MUOD to include 51 Schwenk Drive.

54. The City of Kingston Common Council Law and Rules Committee held a public hearing on the rezoning Complaint on January 15, 2020.

55. On April 15, 2020, the Common Council Law and Rules Committee discussed the proposed zoning amendment.

56. During this discussion, the Councilmembers made clear that the amendment was solely for the benefit of the Project. A recording of this discussion can be found at <https://www.youtube.com/watch?v=60upJ9jXcR0> ["Committee Discussion"].

57. Alderman Reynolds Scott-Childress stated, "It's perfectly in line with the development. It streamlines the process for the developer." Committee Discussion at [1:35:10]

58. Alderman Scott-Childress further elaborated on why the rezoning would benefit the Project, stating that, "[The rezoning] is going to bring all the property under one jurisdiction so that as the property owner goes forward in thinking about the project it won't create different kinds of paperwork and other kinds of difficulties for them." Committee Discussion at [1:38:25]

59. Alderman Jeffrey Ventura Morell, who is Chairman of the Laws and Rules Committee, however, acknowledged that the City was not yet ready to move forward with the rezoning, stating "I still have outstanding questions of why [the MUOD] was drawn the way it was and why it mimics the historic district and what will be the repercussions of extending it." Committee Discussion at [1:36:10]

60. Despite Alderman Morell having raised these issues, the Common Council Law and Rules Committee voted to send the Complaint to the full Common Council.

61. On May 5, 2020, by Common Council Resolution # 92, the City of Kingston Common Council voted to amend the Zoning Map to extend the MUOD to include 51 Schwenk Drive (the “Zoning Amendment”). A copy of Resolution # 92 is attached hereto as Exhibit 15.

**AS AND FOR A FIRST CAUSE OF ACTION
(SEEKING A DECLARATION THAT THE PARK IS PARKLAND UNDER THE
NEW YORK STATE PUBLIC TRUST DOCTRINE)**

62. Plaintiffs repeat and reallege all the foregoing allegations set forth in this Complaint with the same force and effect as though set forth herein at length.

63. As recognized by the Court of Appeals, “A park is a pleasure ground set apart for recreation of the public, to promote its health and enjoyment. Williams v Gallatin, 229 NY 248, 253 (1920) (citation omitted).

64. For this reason, Courts in New York have applied the public trust doctrine to municipal parkland since the late 1800s, see, e.g., Brooklyn Park Comm’rs v. Armstrong, 45 N.Y. 234 (1871), finding that when a city acquired title to land used as a park, it “is impressed with a trust to hold the lands for the public use as a park, and it cannot, of itself, convey or dispose of them in contravention of the trust.”

65. Like all parks, the Park in this case is subject to the public trust doctrine.

66. “[A] parcel may become a park either through express provision, such as restrictions in a deed or legislative enactment, or by implied acts, such as a continued use of the parcel as a park or by certain acts of” a municipality. Lazore v. Bd. of Trustees of Vill. of Massena, 191 A.D.2d 764, 765–66, 594 N.Y.S.2d 400, 402 (1993).

67. The Park has become parkland by the implied acts of the citizens who use it for park purposes as well as by the acts of the City of Kingston which maintains the Park

continuously as parkland with benches and other park amenities, and by the acts of the City's officers and employees participating in public events at the Park such as the Snowflake Festival.

68. Accordingly, this Court should issue a judgment declaring that the Park is parkland and subject to the public trust doctrine.

**AS AND FOR A SECOND CAUSE OF ACTION
(SEEKING TO ENJOIN THE CITY OF KINGSTON FROM ALIENATING
THE PARK WITHOUT AN ACT OF THE NEW YORK STATE LEGISLATURE)**

69. Plaintiffs repeat and reallege all the foregoing allegations set forth in this Complaint with the same force and effect as though set forth herein at length.

70. Parks and recreational spaces are important to our communities. As noted by the New York State Office of Parks, Recreation and Historic Preservation, "Municipally-owned parkland . . . is a nonrenewable resource that should be protected. Once lost to another use recreational or open space is difficult to recover." Handbook on the Alienation and Conversion of Municipal Parkland, New York State Office of Parks, Recreation and Historic Preservation, at 1. (2017) (a copy of the alienation handbook can be found at <https://parks.ny.gov/documents/publications/AlienationHandbook2017.pdf>).

71. It is for this reason that parks are subject to the public trust doctrine and cannot be alienated without approval from the State Legislature.

72. All parks are subject to the doctrine, no matter their size. See Handbook on the Alienation and Conversion of Municipal Parkland at 4.

73. The Park cannot be conveyed or have its use as a park changed without approval of a parkland alienation bill by the State Legislature and Governor. New York "courts have time and again reaffirmed the principle that parkland is impressed with a public trust, requiring specific legislative approval before it can be alienated or used for an extended period for non-

park purposes.” *Friends of Van Cortlandt Park v. City of New York*, 750 N.E.2d 1050, 1053-54 (N.Y. 2001) (citing *Miller v. City of New York*, 15 N.Y.2d 34, 37 (1964)).

74. At no time during the SEQRA review for this project, nor during any other review related to this project, has the City of Kingston addressed or even acknowledged the fact that approval is needed from the State Legislature for project to proceed. See, e.g., Exhibit 16 the EAF at 2, failing to identify a parkland alienation bill as one of the approvals required for the project to proceed. A separate but related action has been filed with this court challenging the Planning Board’s SEQRA review of the Project. See Index No. EF2020-253.

75. General Municipal Law §51 provides that Plaintiffs may maintain an action against the Common Council and the Mayor to prevent any illegal official act. N.Y. Gen. Mun. Law § 51 (McKinney) (emphasis added).

76. To convey the Park without approval of the State Legislature and Governor would be an illegal act by the Common Council and the Mayor. Therefore, pursuant to GML §51, this Court must enjoin the Common Council and the Mayor from selling or otherwise alienating the Park without an act of the New York State Legislature and approval from the Governor and until the SEQRA review of the Project, including alienation of parkland, has been completed.

**AS AND FOR A THIRD CAUSE OF ACTION
(SEEKING A DECLARATION THAT THE
MEMORANDUM OF UNDERSTANDING IS NULL AND VOID)**

77. Plaintiffs repeat and reallege all the foregoing allegations set forth in this Complaint with the same force and effect as though set forth herein at length.

78. The conveyance of real property owned by the City of Kingston requires a resolution approved by a vote of 2/3 of all members of the Common Council. City of Kingston Code §106-1, a copy of which is attached at Exhibit 17.

79. The Project that is the subject of the Memorandum of Understanding requires the conveyance of real property from the City to the Defendant Applicants to bring the Project to fruition. As such, the execution of the Memorandum of Understanding by the Mayor on behalf of the City of Kingston requires the approval of the Common Council pursuant to City of Kingston Code §106-1.

80. The City of Kingston can only act through its Common Council. Accordingly, the Mayor did not have the power to execute the Memorandum of Understanding without a resolution of the Common Council authorizing him to do so.

81. Upon information and belief, the Common Council never passed such a resolution.

82. The Mayor exceeded his jurisdiction in executing the Memorandum of Understanding without a resolution of the Common Council; and therefore, this Court should nullify the Memorandum of Understanding dated January 10, 2017.

AS AND FOR A FOURTH CAUSE OF ACTION
(SEEKING A DECLARATION THAT THE ASSIGNMENT OF
THE MEMORANDUM OF UNDERSTANDING IS NULL AND VOID)

83. Plaintiffs repeat and reallege all the foregoing allegations set forth in this Complaint with the same force and effect as though set forth herein at length.

84. Even if the City can show that the Mayor was authorized by the Common Council to execute the Memorandum of Understanding, the same arguments outlined above at ¶¶ 78 to 82 apply.

85. Because the project that is the subject of the Memorandum of Understanding requires the conveyance of real property from the City to the Defendant Applicants, any

assignment of the Memorandum of Understanding by the City of Kingston would also require the approval of the Common Council pursuant to City of Kingston Code §106-1.

86. Upon information and belief, no such resolution exists.

87. The City of Kingston can only act through its Common Council. Accordingly, the Mayor does not have the power to approve the assignment of the Memorandum of Understanding without a resolution of the Common Council authorizing him to do so.

88. The Mayor exceeded his jurisdiction in consenting to the assignment of the Memorandum of Law without a resolution of the Common Council; and therefore, this Court should declare the consent of the City of Kingston to the assignment of the Memorandum of Understanding null and void.

AS AND FOR A FIFTH CAUSE OF ACTION
(SEEKING A DECLARATION THAT RESOLUTION # 92
REZONING 51 SCHWENK DRIVE IS NULL AND VOID)

89. Plaintiffs repeat and reallege all the foregoing allegations set forth in this Complaint with the same force and effect as though set forth herein at length.

90. In adopting the Zoning Amendment, the Common Council engaged in illegal spot zoning because the amendment was intended solely to benefit the Project, was to the detriment of neighboring properties, and was not adopted in accordance with the City's Comprehensive Plan.

A. *The Zoning Amendment Is for the Sole Benefit of the Project and Defendant Applicants*

91. The Zoning Amendment constitutes illegal spot zoning because it was only adopted to benefit the Project.

92. The Zoning Amendment is for the sole benefit of the Project because it alters the boundaries of the MUOD to include 51 Schwenk Drive in order to make the Project permissible

under the Zoning Ordinance.

93. The Zoning Amendment was considered and ultimately adopted in direct response to the Defendant applicants' application for rezoning in order to permit the Project.

94. Absent the Zoning Amendment, the Project could not continue as planned, as it sought to place residential uses on property located solely within the C-2 District (51 Schwenk Drive).

95. Prior to the Zoning Amendment, placing residential uses on 51 Schwenk Drive would have been an unequivocal violation of the Zoning Ordinance.

96. Upon information and belief, the sole motivation behind the Zoning Amendment was to benefit the Project.

97. Multiple members of the Common Council have stated during their discussions of the Zoning Amendment that its purpose would be to allow the Project, with one Alderman going so far as to repeatedly state that the effect of the amendment would be to "streamline" the Project and save the applicants from other "difficulties."

98. The Common Council has failed to offer any valid reason for this rezoning other than to support the special interests of the Defendant applicants and allow the Project to move forward.

99. This lack of any other justification for the Zoning Amendment, combined with the Councilmembers' overt statements that the amendment is meant to support and allow the Project, shows the Zoning Amendment was solely for the benefit of the Defendant applicants.

B. The Zoning Amendment Is Detrimental to Nearby Properties

100. The Zoning Amendment constitutes illegal spot zoning because it is detrimental to neighboring properties and the community.

101. The Zoning Amendment is detrimental to neighboring properties and the Kingston community because it allows the development of an intrusive, out-of-scale, and out-of-character Project that will negatively impact the surrounding area.

102. As detailed above, the sole purpose of the Zoning Amendment was to permit the Project in any area where the Zoning Ordinance otherwise would not have allowed.

103. Therefore, the negative impacts of the Zoning Amendment are congruous with the numerous impacts of the Project itself.

104. The negative impacts of the Project include, but are not limited to: interference with the integrity of the State and National Register Listed Historic Stockade District; elimination of a topographical bluff that delineates the KSHD; visual intrusion into the character of the KSHD; increased noise; increased traffic; permanent closure of a roadway within the area; and elimination of the Park.

105. These impacts have been brought to the City's attention on countless occasions to no avail.

106. Rather than consider these impacts and attempt to foster a solution that would not be to the detriment of the neighborhood, the Common Council decided to move forward with the Zoning Amendment in order to allow to Project to advance.

107. Notably, one Alderman raised issues during the Common Council's discussion of the proposed amendment, asking what the repercussions of the Zoning Amendment would be.

108. Upon information and belief, no answers to this inquiry were provided prior to the City's deciding to move forward with the amendment.

109. Thus, the record is replete with concerns of neighbors and citizens groups regarding the Project and the Zoning Amendment, but the Common Council disregarded these

concerns in adopting the Zoning Amendment.

C. The Zoning Amendment Was Not Adopted Pursuant to the City of Kingston Comprehensive Plan.

110. The City of Kingston's Comprehensive Plan establishes the City's plan for future development, and the Zoning Ordinance must only be imposed in accordance with this plan.

111. The Zoning Amendment constitutes illegal spot zoning because it was not adopted in accordance with the City's Comprehensive Plan, which among other things limits the MUOD to the boundary of the KSHD and requires visual intrusions into the KSHD to be minimized.

112. The boundaries of the MUOD were drawn to be consistent with the historical area of the KSHD.

113. This was acknowledged by Alderman Morell and is apparent in the descriptions of the KSHD and MUOD within the Comprehensive Plan.

114. The Comprehensive Plan states that the area known as "Uptown" Kingston is also identified as the KSHD. Exhibit 18 at 8.

115. The Comprehensive Plan also notes that the MUOD is meant to apply within Uptown. See, e.g., Exhibit 18 at 22.

116. As the Comprehensive Plan states MUOD is only meant to cover areas within Uptown (aka the KSHD), its boundaries may not be expanded beyond that area.

117. The Zoning Amendment, however, does precisely that. It adds new property to the MUOD that is not within the KSHD in violation of the Comprehensive Plan. See Exhibit 18 at 8 and 51.

118. To the extent the Comprehensive Plan discusses any expansion of mixed uses into the vicinity of 51 Schwenk Drive, it explicitly limits any such development to the west side of

Fair Street. Exhibit 18 at 85, §9.6.2.

119. This limitation is rational as it accords with the boundaries of the KSHD.

120. However, 51 Schwenk Drive is on the east side of Fair Street, not the west. It is outside of the historic district and extends the MUOD beyond the geographic boundaries of the stockade.

121. The lack of any discussion of expanding mixed uses to the east side of Fair Street is conspicuous and supports the notion that such development would contradict the clear directives of the Comprehensive Plan.

122. Finally, the Comprehensive Plan repeatedly emphasizes the importance of the historic nature of the KSHD and cautions against any development that would impact the District.

123. For example, at page 54, the Comprehensive Plan notes that while appropriate development should be encouraged, “[p]reservation of valuable historic resources must be ensured...”

124. The Comprehensive Plan goes on to specifically mention how the value of the KSHD is based, in part, on the relative lack of visual intrusion from modern development:

“The unique character of the Stockade District is magnified at night when modern details and distractions are difficult to see in the darkness. This character could be exploited and the setting made even more dramatic than it already is by installing authentic gas lamps at appropriate locations near the districts oldest buildings. This would help to magnify the feeling, already present at night, of having stepped back in time.”

125. Despite the Comprehensive Plan’s directives to preserve the historic resource that is the KSHD, the Common Council adopted the Zoning Amendment in order to allow a the development of a 420-car garage, 143 apartments, a 32 room boutique hotel, and 9,000 square

feet of retail/restaurant space within and adjacent to the District.

126. The Project's scale is massive and out of character with the surrounding uses in the KSHD, and it would permanently affect and intrude upon the District.

127. Pursuant to the above, in adopting the Zoning Amendment in order to allow this Project, the Common Council has acted disregarded and affirmatively frustrated multiple tenets of the Comprehensive Plan.

128. Accordingly, the Common Council engaged in illegal spot zoning, and the Zoning Amendment must therefore be annulled.

WHEREFORE, Plaintiffs respectfully request that this Court enter a Judgment and Order granting the Verified Complaint in its entirety and awarding judgment to Plaintiffs as follows:

- (a) Declaring that a portion of the property owned by the City of Kingston and encompassed by tax parcel 48.80-1-26, the Park, is parkland and subject to the public trust doctrine;
- (b) Enjoining the Common Council and the Mayor from selling or otherwise alienating the Park without an act of the New York State legislature and approval by the Governor and completion of SEQRA on the alienation;
- (c) Declaring that Mayor Steven T. Noble's ("the Mayor's") execution of a Memorandum of Understanding dated January 10, 2017 with Wright Architect PLLC is null and void;
- (d) Declaring that the consent of the City of Kingston to the Assignment of the Memorandum of Understanding from Wright Architects PLLC to JM Development Group, LLC is null and void; and

- (e) Declaring that the rezoning of 51 Schwenk Drive, tax parcel 48.80-1-24.120 is null and void; and
- (f) Awarding Plaintiffs such other and further relief as the Court deems just and proper, with the costs and disbursements of this proceeding.

Dated: August 21, 2020
Rhinebeck, New York

RODENHAUSEN CHALE & POLIDORO LLP

LEWIS & GREER P.C.

By: 

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By: 

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VERIFICATION

STATE OF NEW YORK)
) Ss.:
COUNTY OF DUTCHESS)

Julio Hernandez, being duly sworn, deposes and says as follows:

1. I am an authorized agent of 61 CROWN STREET, LLC, 311 WALL STREET, LLC, 317 WALL STREET, LLC, 323 WALL STREET OWNERS, LLC, 63 NORTH FRONT STREET, LLC, 314 WALL STREET, LLC, and 328 WALL STREET, LLC, the Petitioners in this matter.

2. I have read the foregoing Verified Petition and the same is true to my own knowledge, except those matters stated to be upon information and belief, and as to those matters, I believe them to be true. The source of my belief is my review of the pertinent documents and public information.



Julio Hernandez

STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

On the 21st day of August in the year 2020, before me by audio-video conference, the undersigned, personally appeared Julio C. Hernandez, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Pursuant to NY Executive Order [Andrew M. Cuomo] No. 202.7 [9 NYCRR 8.202.7, effective March 19 - April 18, 2020, and extended to September 4, 2020, I certify that this notarial act was performed utilizing audio-video technology, which met the following conditions: the video conference allowed for direct interaction between the individual and me; the individual whose name is subscribed to the within instrument presented valid photo ID to me during the video conference if not personally known to me, affirmatively represented that he/she is physically situated in the County of Bronx, State of New

York, and transmitted by fax or electronic means a legible copy of the signed document directly to me on the same date it was signed; and, whereas I may notarize the transmitted copy of the document and transmit the same back to the individual(s), if I repeat the notarization of the original signed document as of the date of execution then I shall have received such original signed document together with the electronically notarized copy within thirty days after the date of execution.



Notary Public State of New York

VICTORIA L. POLIDORO
Notary Public, State of New York
Registration No. 02PO6232211
Qualified in Dutchess County
Commission Expires December 6, 2018 