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STATE OF NEW YORK
COUNTY OF ULSTER SUPREME COURT

-----X
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, 328 WALL STREET LLC, and
JAMES F. SHAUGHNESSY, JR.,

Plaintiffs

For a Judgement Pursuant to Article 78 of the
Civil Practice Law and Rules ("CPLR") and a
Declaratory Judgment Pursuant to Section 3001
of the CPLR

Index No.
EF2021-3243

- against -

CITY OF KINGSTON COMMON COUNCIL, STEVEN
T. NOBLE in his capacity as MAYOR OF THE
CITY OF KINGSTON, CITY OF KINGSTON DEPARTMENT
OF PUBLIC WORKS, 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

-----X

B e f o r e: Hon. Richard Mott
Supreme Court Justice

Appearances

RODENHAUSEN CHALE & POLIDORO, LLP
Co-Counsel for Plaintiffs
61 Crown St, 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
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of Counsel.

1 APPEARANCES (Cont'd)

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 3 Co-Counsel for Plaintiffs
 4 61 Crown St, LLC, 311 Wall
 5 Street, LLC, 317 Wall Street
 6 LLC, 323 Wall Street Owners,
 7 LLC, 63 North Front Street
 8 LLC, 314 Wall Street, LLC,
 9 and 328 Wall Street, LLC
 10 510 Haight Avenue, Suite 202
 11 Poughkeepsie, New York 12603
 12 J. SCOTT GREER, ESQ.
 13 of Counsel.
 14 ANDREW LESSIG, ESQ.,
 15 of Counsel.

16 WAYNE THOMPSON, ESQ.
 17 Co-Counsel for Plaintiff
 18 James F. Shaughnessy, Jr.
 19 17 Hasbrouck Drive
 20 Poughkeepsie, New York 12603

21 COUCH WHITE, LLP
 22 Attorneys for Defendants
 23 JM Development Group, LLC,
 24 Herzog Supply Co., Inc.,
 25 Kingstonian Development, LLC,
 and Patrick Page
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 of Counsel.

19 CITY OF KINGSTON, OFFICE
 20 OF CORPORATION COUNSEL
 21 Attorneys for Plaintiffs, City
 22 of Kingston Common Council,
 23 Steven. T. Noble in his capacity
 24 as Mayor of the City of
 25 Kingston, and City of Kingston
 Department of Public Works
 BARBARA GRAVES-POLLER, ESQ.
 of Counsel

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Appearances (Cont'd)

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STENOGRAPHIC MINUTES OF THE PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER held at the Ulster County Courthouse,
Kingston, New York, 12401, on December 10, 2021, at
11:35 a.m.

Beth Newton
Court Reporter

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 THE COURT: 61 Crown, et al. v. City of
2 Kingston Common Council, et al. Can I have the
3 appearances for the Petitioners.

4 MR. GREER: Scott Greer, Lewis & Greer,
5 P.C., Poughkeepsie, on behalf of all Petitioners
6 except for the individual.

7 THE COURT: Mr. Greer, good morning.

8 MR. GREER: Good morning.

9 THE COURT: We have Ms. Polidoro.

10 MS. POLIDORO: Victoria Polidoro,
11 Rodenhausen, Chale & Polidoro.

12 MR. THOMPSON: Wayne Thompson, 17 Hasbrouck
13 Drive, Poughkeepsie, on behalf of co-petitioner James
14 Shaughnessy.

15 THE COURT: Good morning.

16 MR. THOMPSON: Good morning.

17 MR. LESSIG: Andrew Lessig, Lewis & Greer,
18 Poughkeepsie, on behalf of all Petitioners except Mr.
19 Shaughnessy.

20 THE COURT: I'm sorry, I didn't catch your
21 last name.

22 MR. LESSIG: Lessig.

23 THE COURT: You work with Mr. Greer.

24 MR. LESSIG: Correct.

25 THE COURT: Good morning. We have Mr. Kevin

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 Bryant present.

2 MR. BRYANT: Yes, Your Honor. Kevin Bryant
3 on behalf of the City of Kingston.

4 THE COURT: And we have Ms. Barbara
5 Graves-Poller.

6 MS. GRAVES-POLLER: Barbara Graves-Poller,
7 for the City of Kingston.

8 THE COURT: Good morning to you.

9 MS. GRAVES-POLLER: Good morning.

10 THE COURT: And we have Daniel Gartenstein,
11 as well.

12 MR. GARTENSTEIN: Yes. Good morning.

13 THE COURT: Good morning, sir. Last but not
14 least, we have Ms. Giuda, and you are for JM
15 Development, Herzog Supply, Kingstonian, and Patrick
16 Page, correct?

17 MS. GIUDA: That's correct.

18 MR. COOK: Your Honor, if I may, I'm Michael
19 Cook.

20 THE COURT: Oh, I'm sorry. I missed you
21 Mike, how are you?

22 MR. COOK: I'm good. Michael Cook.

23 THE COURT: You're Blue Stone and Wright.

24 MR. COOK: Correct. Thank you, Judge.

25 THE COURT: Although I do wonder why you're

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 still in this lawsuit.

2 MR. COOK: I wonder that as well, Your
3 Honor.

4 THE COURT: Maybe people should think about
5 that. Anyway, I called you in here all today to see
6 if we can avert which seems to be some litigation that
7 could be protracted and costly to everyone.

8 I read with more than a slight dismay the papers
9 submitted by Ms. Polidoro in support of her
10 application which is presently before us by way of
11 Order to Show Cause, which I have not signed for
12 obvious reasons. I didn't get it until and wasn't
13 aware of it until the 7th. We had a problem with
14 notice that we brought to Ms. Polidoro's attention;
15 correct, Ms. Polidoro?

16 MS. POLIDORO: I had noticed it the night
17 before, but we did not have a date for the hearing, so
18 I re-noticed.

19 THE COURT: Right, so you remedied that.

20 MS. POLIDORO: Yes.

21 THE COURT: And gave an opportunity to
22 anyone on the other side to submit papers in
23 opposition to your request for temporary relief,
24 correct?

25 MS. POLIDORO: Correct.

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 THE COURT: And the only papers I received,
2 correct me if I'm wrong, were those that were filed by
3 Ms. Giuda.

4 MS. GIUDA: I sent in a letter yesterday.

5 THE COURT: Yes. You're Couch & White,
6 correct?

7 MS. GIUDA: Yes.

8 THE COURT: You sent a two-page letter
9 asking why a temporary order should not be granted.
10 But in the interim, the City Council acted, correct?

11 MS. GRAVES-POLLER: They did act.

12 THE COURT: Was the City Council unaware,
13 can somebody answer this question, that there was an
14 impending Order to Show Cause which was seeking the
15 very relief that is now rendered moot? Can someone
16 tell me? From the City, Ms. Graves- Poller?

17 MS. GRAVES-POLLER: The City received the
18 initial email from Ms. Polidoro. At some point, the
19 papers became unavailable through NYSCEF. It was
20 unclear whether or not they had been filed again or
21 not. As we note, though, in the material that we
22 submitted by email to the Court, to Your Honor's
23 chambers, we did not receive --

24 THE COURT: My question is, why did the City
25 act so quickly if they knew that there was going to be

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 an application in front of me where there were such
2 allegations that, quite frankly, have a disquieting
3 effect on my psyche?

4 MS. GRAVES-POLLER: The City acted because
5 we are confident that we complied with the Open
6 Meeting Law. There is nothing about that public
7 hearing that occurred, which was a hybrid proceeding
8 at --

9 THE COURT: Well, I'm not going to take
10 argument on it now. Don't you think they may have
11 raised an issue of fact in their papers that may
12 militate and may result in a hearing that will further
13 protract matters in this case?

14 MS. GRAVES-POLLER: Your Honor, there is no
15 question that by their own description of the
16 proceedings that occurred, there was absolutely --

17 THE COURT: I'm not talking about a
18 Temporary Restraining Order. I am talking about the
19 ultimate relief they're looking for. Don't you think
20 a hearing might be required in this case based upon
21 facts that are set forth in the affidavits of Mr.
22 Shaughnessy and Ms. Adamis, let alone what Ms.
23 Polidoro submitted in support of her application?

24 MS. GRAVES-POLLER: Your Honor, the ultimate
25 issues that are raised in this proceeding have already

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 been passed on and decided by this Court to the
2 extent --

3 THE COURT: Excuse me. The propriety of the
4 hearing proceedings have already been, the law of the
5 case in this case?

6 MS. GRAVES-POLLER: I'm sorry, Your Honor.
7 I was referring -- I thought Your Honor was asking
8 about the question about whether or not the public has
9 had an opportunity to --

10 THE COURT: No, no, no. I'm talking about
11 the notice for the particular purpose of the public
12 hearing, which dealt with them abandoning Fair Street
13 Extension and giving the mayor authority to transfer
14 the property to the Kingstonian project. That's the
15 subject matter of your Order to Show Cause; is it
16 not, Ms. Polidoro?

17 MS. POLIDORO: It is.

18 THE COURT: That is my question.

19 MS. GRAVES-POLLER: In answer to that
20 question, we had an improperly served and unsigned
21 Order to Show Cause.

22 THE COURT: The Order to Show Cause has not
23 been signed yet. I intend to sign it today.

24 MS. GRAVES-POLLER: We are fully prepared to
25 explain why the hearing that went out was proper.

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 THE COURT: You may not have that
2 opportunity unless I hold a hearing. That's why I
3 called you in today to see if you think you might be
4 able to resolve that issue because make no mistake
5 about it, if I find for the Petitioners in this case,
6 there will be financial sanctions. Make no mistake
7 about it. What I have read so far is more than a
8 little disconcerting.

9 MS. GRAVES-POLLER: I don't know if that is
10 a direct question to the City, Your Honor, but if
11 you're asking about whether or not the parties are --

12 THE COURT: I'm asking if you want to come
13 to some kind of accommodation on the issue because if
14 I hold a hearing in this case, it can take quite a
15 while to conclude depending on the numbers of the
16 witnesses. Now, of course, you have not had an
17 opportunity to submit any affidavits from any people
18 who may controvert what was said in the affidavits of
19 Ms. Polidoro, Adamis and Mr. Shaughnessy. However, I
20 can't see too many trajectories this case can take
21 that will not include a hearing, unless you somehow or
22 another can dissipate the allegations that are set
23 forth in those affidavits.

24 MS. GRAVES-POLLER: Then we would ask for an
25 opportunity to submit.

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 THE COURT: Of course, you can have an
2 opportunity, but I called you in here first to see if
3 you can reach some accommodation on that particular
4 issue to conference with Petitioners.

5 MS. GRAVES-POLLER: We are happy to have any
6 conversation Your Honor believes would be productive,
7 but again, because the --

8 THE COURT: You read the allegations in
9 those affidavits; did you not?

10 MS. GRAVES-POLLER: Absolutely.

11 THE COURT: Those people are complaining
12 they couldn't hear, that their thoughts were not
13 heard, that some of the remote people who attended the
14 meeting did not hear or could not hear. Although I
15 concede that some of the affidavits do have hearsay in
16 them, they at least -- Mr. Shaughnessy and Ms. Adamis
17 have raised some serious issues here as to the
18 propriety of the conduct of that hearing and whether
19 it comports with the law. And make no mistake about
20 it, if I find after a hearing that it doesn't comport
21 with the law, I shall have no reluctance whatsoever to
22 abrogate 251, Resolution 251 that was just hurriedly
23 passed two days ago.

24 MS. GRAVES-POLLER: The City absolutely is
25 aware that is within Your Honor's authority to do so,

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 but again, we would ask to have an opportunity to
2 review that --

3 THE COURT: Of course you can have an
4 opportunity. I'm going to sign the Order to Show
5 Cause today. I'm going to set a return date, but I
6 thought that before you invest time and effort, you
7 might want to talk to your colleagues on the other
8 side of the aisle and see if we can reach some
9 accommodation.

10 MR. BRYANT: Your Honor --

11 THE COURT: You may remain seated, of
12 course.

13 MR. BRYANT: To resolve this as quickly as
14 possible, I would think that rescheduling a new public
15 hearing would satisfy everyone and --

16 THE COURT: It certainly would.

17 MR. BRYANT: That would be the best
18 approach.

19 MS. POLIDORO: A new public hearing with
20 proper notice so the public understands what portion
21 of Fair Street Extension is being discontinued, that
22 would satisfy my client.

23 MR. BRYANT: We would be willing to schedule
24 a public hearing based on the same method and manner
25 to ensure that everyone has a proper opportunity.

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 THE COURT: That makes perfect sense to me
2 Mr. Bryant.

3 MS. GRAVES-POLLER: And a withdrawal of 251,
4 or some kind of agreement.

5 THE COURT: So you withdraw your Order to
6 Show Cause based upon that representation, correct?

7 MS. POLIDORO: That they will hold a new
8 public hearing with proper notice of the road to be
9 terminated, and Resolution 251 will be withdrawn or
10 rescinded.

11 THE COURT: It would have to be rescinded,
12 otherwise they wouldn't be getting any relief.

13 MR. BRYANT: For clarification purposes,
14 because obviously while we are willing to reschedule a
15 public hearing, again, it was based on the method and
16 manner that we had originally scheduled it. Now it
17 appears that --

18 THE COURT: Their concern is not only the
19 scope of the notice, but the manner in which the
20 hearing was conducted. It was fraught with all kinds
21 of technical difficulties ostensibly.

22 MR. BRYANT: And so, for clarification
23 purposes, you're adding what to it now?

24 MS. POLIDORO: We would like to have a
25 properly noticed public hearing.

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 MR. GARTENSTEIN: Clarify what properly
2 noticed is.

3 THE COURT: Excuse me, one person at a time.

4 MR. BRYANT: Judge, the clarification is for
5 proper notice.

6 THE COURT: Obviously, there's going to be
7 another hearing. Resolution 251 has to be rescinded.

8 MR. BRYANT: That's not a problem. That's
9 not the issue I'm trying to address.

10 THE COURT: Well, that goes hand in hand
11 with setting a new hearing.

12 MR. BRYANT: Yes, Your Honor, that is.

13 THE COURT: That would avoid everything, Mr.
14 Bryant.

15 MR. BRYANT: That's not the problem. I
16 mean, we are willing to rescind that resolution.

17 THE COURT: I think it needs to be done with
18 little fanfare, though, okay? Can we do that?

19 MS. POLIDORO: With little fanfare?

20 THE COURT: With little fanfare. We don't
21 need this plastered on the front page of the
22 newspapers.

23 MS. POLIDORO: I can't help what they
24 report. They report on this constantly and often get
25 it wrong.

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 THE COURT: There's no one from the press
2 present in the courtroom right now.

3 MS. POLIDORO: That's true. The City
4 Council will have to rescind it by vote, however, so
5 there --

6 THE COURT: There could be a stipulation
7 which I can So Order.

8 MS. POLIDORO: Okay.

9 MR. BRYANT: Your Honor, we are willing to
10 make this as simple as possible.

11 THE COURT: And I quite agree.

12 MR. BRYANT: We will do an in-person public
13 hearing.

14 THE COURT: That would eliminate a lot of
15 problems.

16 MR. BRYANT: It sure would.

17 MS. POLIDORO: Your Honor, we still
18 request --

19 THE COURT: I think he understands your
20 request is that the notice be broad enough so the
21 public knows to what extent the road or the street is
22 being partially abandoned.

23 MS. POLIDORO: Correct.

24 THE COURT: So they can have all the details
25 so that they can make informed decisions and

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 communicate their feelings one way or the other.

2 MS. POLIDORO: At this point, it's not clear
3 whether you're cutting off access to the public
4 parking lot, you know, and what does this mean for the
5 people. There's just not enough information.

6 THE COURT: That shouldn't be something
7 that's difficult for the two of you to come to an
8 agreement on as to how the notice should read.

9 MR. BRYANT: Your Honor?

10 THE COURT: Yes, sir.

11 MR. BRYANT: Just so we're not revisiting
12 this --

13 THE COURT: Hold on a second. People are
14 talking here. Go ahead.

15 MR. BRYANT: Is it possible --

16 THE COURT: You prefaced that with so we
17 don't have to revisit this --

18 MR. BRYANT: Yes.

19 THE COURT: -- and I'm about not revisiting
20 things, okay?

21 MR. BRYANT: Okay.

22 THE COURT: Go ahead.

23 MR. BRYANT: The suggestion we would make is
24 to prepare the notice and have the Court So Order it,
25 so it satisfies everyone, and everybody knows exactly

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 what it's going to do, if Your Honor is inclined.

2 THE COURT: That doesn't sound like a
3 problem to me. Then you can sign off on the notice,
4 Ms. Polidoro.

5 MS. POLIDORO: That sounds reasonable.

6 THE COURT: But we will not get into minutia
7 on this, okay? Understood? We are not going to delay
8 this public hearing. We are going to get it noticed
9 and it's going to happen, and this matter is going to
10 come to fruition sooner rather than later. But this
11 should now cause you to withdraw your petition based
12 upon that representation, your present petition.

13 MS. POLIDORO: Right. We still have the other
14 petition filed challenging --

15 THE COURT: I understand that, but that does
16 not have anything to do with the issue at hand here
17 today, the propriety of the conduct of the public
18 hearing of December 2nd, correct?

19 MS. POLIDORO: Correct.

20 THE COURT: I want to see a stipulation to
21 me in writing by 2 p.m. this afternoon to my chambers,
22 so I would suggest you draw it, and I don't care if
23 it's written on handwritten on paper. I want a
24 stipulation today, and the stipulation will also
25 indicate that the petition is withdrawn, okay?

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 MS. POLIDORO: Your Honor --

2 THE COURT: In fact, if you want to work out
3 the details of it, I encourage you do that right here
4 at the court house. If you want to put it on the
5 record, I will do that, as well.

6 MR. GREER: I will do that, as well. I was
7 going to suggest that.

8 THE COURT: Is everyone in accord that it
9 would be best to do this and strike while the iron is
10 hot and get a stipulation on the record here today?

11 ALL COUNSEL: Agreed, Your Honor.

12 THE COURT: Let's do that. You folks can
13 use this courtroom if you want to. I will happily
14 step out for whatever time it takes, and someone will
15 recite the stipulation, but I want to make certain
16 everyone puts his or her imprimatur on that before we
17 come back into the courtroom to avert revisiting this
18 down the road. Mr. Bryant, thank you for your
19 suggestion. It's a very good one.

20 MR. BRYANT: You're welcome.

21 THE COURT: Anything further?

22 MS. POLIDORO: No, Your Honor.

23 THE COURT: Thank you, all. Also, maybe
24 some thought can be given to Gray Stone Realty. Who's
25 your other client?

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 MR. COOK: It's Blue Stone Realty and Wright
2 Architecture. Thank you, Your Honor.

3 THE COURT: I know it's not the top priority
4 for today, but I would just encourage it. I see that
5 name peripherally in every application. It is pretty
6 peripheral.

7 MS. POLIDORO: We'll talk to the parties.

8 THE COURT: Thank you all very much. See
9 you back here when you're ready.

10 (Recess taken at 11:52 a.m.)

11 (Court reconvened at 12:52 p.m.)

12 THE COURT: Who is going to articulate the
13 stipulation?

14 MS. POLIDORO: Your Honor, I will articulate
15 what we agreed to and what we cannot agree on what.

16 THE COURT: What? I thought we had a
17 complete agreement.

18 MS. POLIDORO: We are close, Your Honor.

19 THE COURT: What do you mean close? What's
20 the disparity here? What's the problem?

21 MS. POLIDORO: The disparity is the date of
22 this new public hearing.

23 THE COURT: When do you want it?

24 MS. POLIDORO: We would like it in January
25 after the holidays.

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 THE COURT: When do you want it?

2 MS. GRAVES-POLLER: We are ready to move
3 forward on the 22nd.

4 THE COURT: Let's make it after the
5 holidays, okay? Do it after the holidays.

6 MR. GREER: I'm fine with that, Your Honor.

7 MR. THOMPSON: My client is fine with that,
8 Your Honor.

9 THE COURT: I'm directing that it be after
10 the holidays.

11 MR. THOMPSON: Perfect.

12 THE COURT: Can you give me an exact date?

13 MS. GRAVES-POLLER: I can't give an exact
14 date right now.

15 THE COURT: I'll give you the week then it's
16 going to be held. How much notice do you have to give
17 under the law?

18 MS. GIUDA: Five days.

19 MS. POLIDORO: Five days.

20 THE COURT: Is there a particular day of the
21 week?

22 MS. POLIDORO: Common Council normally meets
23 on Tuesdays.

24 THE COURT: Are you okay with a Tuesday?

25 MS. GRAVES-POLLER: Your Honor, we would ask

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 it be on a Wednesday, just it's easier for our
2 schedule.

3 THE COURT: Supposed it were on Friday,
4 would you get a better turnout on a Friday? Is that
5 one of your concerns?

6 MS. POLIDORO: Our concern is the chilling
7 effect if holding it during the holidays.

8 THE COURT: It's not going to be on the
9 holidays. That's already been decided.

10 MS. POLIDORO: The other concern is the
11 in-person --

12 THE COURT: I'm going to let her have it on
13 Wednesday, okay?

14 MR. GREER: That's fine.

15 THE COURT: It's going to be on a Wednesday.
16 Let's make it Wednesday, January 12th. That's far
17 enough away from the holidays.

18 MS. POLIDORO: Thank you, Your Honor.

19 MR. LESSIG: Thank you, Your Honor.

20 MS. GRAVES-POLLER: The other point, Your
21 Honor, to avoid any potential issues with technology,
22 we want to have an in-person hearing.

23 THE COURT: Absolutely in person.

24 MS. GRAVES-POLLER: No virtual.

25 THE COURT: Look, it's you guys who/are

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 complaining about it. If there is going to be any
2 potential for a problem in this next one, I think that
3 can be totally averted if it's in-person.

4 MS. POLIDORO: The only concern we have is
5 over 200 people attended the last hearing.

6 THE COURT: It has to be in a big enough
7 place.

8 MS. POLIDORO: So, I mean, like even here
9 you can only have one in the bathroom at a time. It
10 needs to be where people feel safe going.

11 THE COURT: Exactly. So where is it going
12 to be held?

13 MS. GRAVES-POLLER: Council chambers just as
14 before.

15 THE COURT: Why can't it be held somewhere
16 else in a larger area?

17 MS. GRAVES-POLLER: That's the largest space
18 in City Hall, Your Honor.

19 THE COURT: Does it have to be held in City
20 Hall? Mr. Bryant, what do you say, sir?

21 MR. BRYANT: Judge, I don't make the
22 arrangements.

23 THE COURT: I understand that, but are there
24 not facilities in this city --

25 MS. POLIDORO: There's the high school, the

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 cafeteria.

2 THE COURT: Excuse me one second. -- that
3 would accommodate the number of people that would be
4 anticipated, which you think -- give me a range, the
5 number of people.

6 MS. POLIDORO: It was about 200, we believe,
7 at the last hearing. If it's in person, we expect it
8 to be less, but over a hundred.

9 MR. GREER: There was roughly 140.

10 MS. GRAVES-POLLER: There were approximately
11 70 people in the council chambers.

12 THE COURT: Fine. I want to err on the side
13 of caution so that everybody in the City of Kingston
14 can appear if they want to.

15 MR. GREER: There was approximately 140
16 people --

17 THE COURT: I'm not going to argue about it.
18 I just want to have a place that will accommodate 200
19 people. So get a place. That's where it's going to
20 be held.

21 MR. BRYANT: The City will make the requests
22 to other agencies with the property available ---

23 THE COURT: Well, let's cut through the
24 bureaucratic tape immediately and make some phone
25 calls today. Make it happen. I'm sure you can. I'm

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 not going to have this come back on some technical
2 ground again. That's what I am trying to avoid, and I
3 am trying to accommodate everyone. But, look, if we
4 are going to have conceivably that number of people,
5 we need to have them come to a place where it's safe.
6 I don't want to have an application with affidavits
7 saying, oh, I was afraid to come to the meeting
8 because I didn't want to get too close to people, that
9 kind of situation. Then they'll be saying, well, why
10 wasn't it done virtually? We are doing it in person
11 to avoid the technical problems that occurred in the
12 first hearing, and you can't guarantee it won't happen
13 in the second hearing, I would imagine, can you?

14 MS. GRAVES-POLLER: I can't, Your Honor.
15 Nobody can.

16 THE COURT: I just don't want to see you
17 folks back here on this issue again, okay? I
18 understand there are a lot of issues, and I am happy
19 to entertain them, but this doesn't have to be one of
20 them. So, there has to be someplace in the city, and
21 the high school would be logical to me. The high
22 school auditorium or the field house.

23 MR. GARTENSTEIN: Judge, if I may?

24 THE COURT: Mr. Cook, you're from the area.

25 MR. COOK: what about the Midtown

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 Neighborhood Center?

2 THE COURT: Where?

3 MR. COOK: Midtown Neighborhood Center.

4 THE COURT: Yes, I know where that is.

5 MR. GARTENSTEIN: That's not going to fit
6 200 people. We certainly can make contact with the
7 school district and find out whether the school
8 district will make a facility available to us, but we
9 have no control.

10 THE COURT: I just don't want to find out
11 that we don't comport with the dates that I'm giving
12 you. Notice has to be given so it happens. So it has
13 to be done.

14 MR. GARTENSTEIN: Yes, sir.

15 THE COURT: If it were the summertime, we
16 could hold it at Dietz Stadium and sell hotdogs on the
17 side.

18 MR. GARTENSTEIN: We can still hold it at
19 Dietz Stadium.

20 MS. GRAVES-POLLER: That would really be
21 chilly.

22 THE COURT: Okay. Anything else, Ms.
23 Polidoro?

24 MS. POLIDORO: I can give you the rest of
25 the stipulation.

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 THE COURT: No other issues, correct?

2 MS. POLIDORO: No, that was it.

3 THE COURT: So, you put the stipulation on
4 the record, and who's going to speak for the City?

5 MR. BRYANT: Corporation Counsel.

6 THE COURT: Ms. Polidoro, we will hear from
7 you, and we will hear from Corporation Counsel, Ms.
8 Graves-Poller.

9 MS. POLIDORO: Resolution 251 is voided by
10 the Judge, and it's --

11 THE COURT: It's voided on the consent of
12 the parties. This is a stipulation I'm going to So
13 Order, correct?

14 MR. BRYANT: Yes.

15 MS. POLIDORO: Yes, and entered into the
16 minutes of the next Common Council meeting.

17 THE COURT: It is hereby stipulated and
18 agreed by and between the parties, as follows: One:

19 MS. POLIDORO: Number 1: Resolution 251 is
20 voided on consent of the parties, and it shall be
21 noted in the minutes of the next Common Council
22 meeting.

23 THE COURT: Why would it even have to be
24 noted in the minutes, because this Order is going to
25 be directed.

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 MS. POLIDORO: Your Honor, were are just
2 concerned that we want a record.

3 THE COURT: I think the less publicity you
4 have on this the better, frankly.

5 MS. POLIDORO: Okay. I mean, I believe that
6 when we go back to look at this in six months to a
7 year, it looks like 251 was adopted and there's no
8 notation that it was voided.

9 THE COURT: Well, you have that Order. The
10 Order will become part of the record, okay?

11 MS. POLIDORO: So the Order will be entered
12 into the minutes.

13 THE COURT: It will become part of the
14 record.

15 MS. POLIDORO: Okay. Number 2: The Common
16 Council --

17 THE COURT: How is that going to read? Read
18 that to me.

19 MS. POLIDORO: 251 --

20 THE COURT: 251 heretofore enacted on
21 12/7/2021 --

22 MS. POLIDORO: Is hereby rescinded.

23 THE COURT: Is rescinded. That's it. You
24 will have to preface it with: It is stipulated and
25 agreed by and between the parties hereto that, 1 --

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 MS. POLIDORO: Is rescinded.

2 THE COURT: Right.

3 MS. POLIDORO: Number 2: Common Council
4 shall schedule --

5 THE COURT: Wait. And this Order will be
6 entered into the Common Council record -- is that what
7 it is?

8 MS. POLIDORO: Yes.

9 THE COURT: Common Council's record. You're
10 good with that?

11 MS. GRAVES-POLLER: Yes, Your Honor.

12 THE COURT: Go ahead. Number 2.

13 MS. POLIDORO: A new public hearing is
14 scheduled for January 12th.

15 THE COURT: At what time?

16 MS. GRAVES-POLLER: Our hearings are 6:30.

17 MR. GARTENSTEIN: 6:00.

18 MS. GRAVES-POLLER: 6:00, Your Honor.

19 THE COURT: What time do you usually have
20 them?

21 MS. GRAVES-POLLER: There's some variation
22 in the schedule, so let's say six.

23 THE COURT: Do you have a problem with time?

24 MS. POLIDORO: The last meeting was 6:30.

25 THE COURT: Let's do 6:30. Are you good

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 with 6:30? That gives people time to get their
2 dinner.

3 MS. POLIDORO: And out of work.

4 THE COURT: Yes. Make it 6:30 p.m.

5 MS. POLIDORO: At a location to be
6 determined which has a capacity of at least 200 --
7 that can fit at least 200 people safely under COVID
8 guidelines.

9 THE COURT: Yes, and you have to designate
10 this place, and you've got to give five days' notice.
11 I don't know whether that falls on a weekend or not.
12 Weekends, I assume, are excluded from the five days,
13 right?

14 MS. GRAVES-POLLER: I don't believe so.

15 MS. POLIDORO: They are not.

16 THE COURT: So what day of the week is the
17 7th?

18 MS. GRAVES-POLLER: Friday, Your Honor.

19 THE COURT: Friday, okay. So notice has to
20 be given by Friday the 7th.

21 MS. POLIDORO: Yes.

22 THE COURT: And this will be designated by
23 no later than -- today is the 10th, right? The place
24 has to be designated by the 24th of December.

25 MS. GRAVES-POLLER: Okay.

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 THE COURT: That gives you ample time to do
2 it. A place to be determined by no later than
3 12/24/21 that will accommodate at least 200 people.

4 MS. POLIDORO: Safely.

5 THE COURT: Sorry?

6 MS. POLIDORO: Safely accommodate.

7 THE COURT: Well, look, if we're going to
8 start interpreting everything, I don't want you back
9 here telling me that it was held at a facility that
10 wasn't safe.

11 MS. POLIDORO: We can probably fit 200 in
12 here, but we want to make sure --

13 THE COURT: You're not going to get 200 in
14 here, COVID regulations.

15 MS. POLIDORO: Right, that's what I mean.

16 MS. GIUDA: In compliance with COVID
17 protocol.

18 MS. POLIDORO: Yes.

19 THE COURT: So you need to endeavor to get
20 this done. I don't want to hear you're looking for a
21 place two days before it. You have to know where it
22 is, okay? So make it happen. What else? Number 3.

23 MS. POLIDORO: Number 3: The notice of the
24 public hearing is to include the time, place,
25 location, a description of the area to be abandoned,

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 and will reference a map to be provided on the City
2 website.

3 THE COURT: You need to agree on that.

4 MS. POLIDORO: We did.

5 THE COURT: You already agreed?

6 MS. GRAVES-POLLER: We agreed on that.

7 THE COURT: So put down the agreed upon map.

8 MS. POLIDORO: Well, we have not seen a map
9 yet.

10 MS. GRAVES-POLLER: We have agreed that a
11 map will be linked --

12 THE COURT: But it will be an agreed upon
13 one.

14 MS. POLIDORO: So a map to be agreed upon by
15 the parties.

16 THE COURT: But I don't want you back here
17 telling me you can't agree on it.

18 MS. GRAVES-POLLER: That's right, Your
19 Honor. As you mentioned before, we're not trying to
20 get an assessor's metes & bounds description on a map,
21 therefore, the map will provide adequate notice to the
22 members of the public of what we are talking about.

23 THE COURT: You need to agree on it. That's
24 what the stipulation says. I'm not going to
25 micromanage this. I just want it to be such that

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 there is no misinterpretation as to what the intent
2 is on the stipulation; understood?

3 MS. POLIDORO: Yes.

4 THE COURT: Is there another provision?

5 MS. POLIDORO: Number 4: Upon the
6 completion of items 1 through 3, the Order to Show
7 Cause and petition will be automatically withdrawn
8 without prejudice.

9 THE COURT: What do you mean? No, no, it is
10 withdrawn now. You lawyers, I take at your word that
11 things will happen. I'm not going to hold that over
12 anyone's head. The petition is withdrawn in
13 consideration of this agreement.

14 MR. GREER: Without prejudice.

15 THE COURT: Obviously without prejudice. I
16 can't fathom what could happen in the future. You
17 don't even need to put the word without prejudice in
18 here. It's clear that any new petition would be based
19 upon new facts. So 4 is out, other than to say that
20 "In consideration of this agreement, the petition is
21 hereby withdrawn."

22 MS. POLIDORO: Right.

23 THE COURT: Okay. Anything further, Ms.
24 Polidoro?

25 MS. POLIDORO: Not from me.

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 MR. BRYANT: Your Honor?

2 THE COURT: Yes, sir.

3 MR. BRYANT: Your Honor, just so we have no
4 issues moving forward, the Court should be aware that
5 we are actually going to try and work with the school
6 district because they may have the largest facility
7 available.

8 THE COURT: That makes sense to me.

9 MR. BRYANT: In the event a decision or vote
10 is required by the school board to approve the use,
11 which it shouldn't, but you never know --

12 THE COURT: Could be an insurance issue,
13 right?

14 MR. BRYANT: It could be. And so, for that
15 very reason, Mr. Shaughnessy should be recused from
16 any vote or any action involved in that decision.

17 THE COURT: Sure. That goes without saying.

18 MR. THOMPSON: That goes without saying,
19 yes.

20 THE COURT: Obviously what my concern is, is
21 that you make this happen so you're not back here
22 saying, uh-oh, we don't have a place to do this
23 because then the can gets kicked down the road, and
24 I'm not going to countenance that, all right? So,
25 anything further in the stipulation?

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 MS. POLIDORO: No, Your Honor.

2 THE COURT: Okay. Ms. Graves-Poller,
3 anything further you would like to put in the
4 stipulation?

5 MS. GRAVES-POLLER: No, Your Honor.

6 THE COURT: Okay. So as to the four
7 paragraphs of the stipulation that were just recited
8 on the record, Ms. Polidoro, do you so stipulate on
9 behalf of your client?

10 MS. POLIDORO: I do.

11 THE COURT: And let's ask Mr. Thompson if he
12 also concurs.

13 MR. THOMPSON: I concur and so stipulate,
14 Your Honor.

15 THE COURT: So stipulate. Actually,
16 although you're co-counsel, I'll ask Mr. Greer, as
17 well.

18 MR. GREER: So stipulated, Your Honor.

19 THE COURT: Very good. Excellent. I don't
20 need to get a further stipulation from your colleagues
21 because you're in the same firm, correct?

22 MR. LESSIG: Correct.

23 THE COURT: So on behalf of the City, Ms.
24 Graves-Poller, do you so stipulate?

25 MS. GRAVES-POLLER: I do.

(61 Crown, et al. v City of Kingston Common Council
et al.)

1 THE COURT: And you and Mr. Bryant and Mr.
2 Gartenstein are all in the same office, so I don't
3 need to ask that, correct?

4 MS. GRAVES-POLLER: Correct.

5 THE COURT: All right. Ms. Giuda, do you so
6 stipulate?

7 MS. GIUDA: I do.

8 THE COURT: And finally, we have Michael
9 Cook for Blue Stone and Wright.

10 MR. COOK: So stipulated, Your Honor.

11 THE COURT: Okay, excellent. I will So
12 Order upon submission. Very good. Thank you very
13 much. I'm glad to see that you could work this out
14 collegially as you did. Happy holidays to everyone.

15 MS. POLIDORO: Thank you, Your Honor.

16 MS. GRAVES-POLLER: Thank you, Your Honor.

17 MR. BRYANT: Thank you, Your Honor.

18 MR. LESSIG: Thank you, Your Honor.

19 MS. GIUDA: Thank you, Your Honor.

20 MR. GREER: Thank you, Your Honor.

21 MR. GARTENSTEIN: Thank you, Your Honor.

22 (Whereupon, the proceedings were
23 concluded.)

24

25

(61 Crown, et al. v City of Kingston Common Council
et al.)

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C E R T I F I C A T I O N

Certified to be a true and accurate transcript.



Beth Newton
Official Court Reporter