

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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SOUTH STREET SEAPORT COALITION INC.,
SAVE OUR SEAPORT, SEAPORT COALITION,
CHILDREN FIRST, LINDA HELLSTROM,
JAY HELLSTROM, EMILY HELLSTROM,
ZETTE EMMONS, COLLEEN ROBERTSON

Petitioners,

- against -

Petition

LANDMARKS PRESERVATION
COMMISSION OF CITY OF
NEW YORK,

Index No.

Respondent,

_____X

As and for their Petition, Petitioners, by their attorney, Michael S. Gruen,
respectfully plead:

INTRODUCTION:

1. This proceeding concerns the South Street Seaport Historic District and its future. New York City has many historic districts, thanks to a law adopted in 1965 to ensure that architectural masterpieces and cultural monuments remain a part of the City as reminders of structures that define the City, even though they are not new, provide

pleasure to the public, educate children and adults in the City's past and its culture, and attract tourists. The Landmarks Preservation Law silently reminds that there is value – even commercial value – in the past.

2. The Law provides for two principle means of preservation: individual landmarks which stand alone as outstanding measures of greatness, and historic districts that define areas that are great not only for individual structures but for the assemblage of an entire area defined by its unique character. In a sense, it reminds us that New York City is both a melting pot and a composite of neighborhoods which, like villages, each has its own visual identity.

3. The South Street Seaport stands out, among all historic districts, as a small area that had a gigantic role in the development of the City as one of the most important business centers of the world. For many decades, from the late 18th century when the nation gained its independence, through at least the middle of the 19th century when the steamship required deeper harborage than was available in the East River, the South Street Seaport was New York's key harbor. It was the central element to a period of rapid growth built on commerce – and commerce meant shipping goods, literally, on ships.

4. Thus, the South Street Seaport is not just a recognizably unique commercial center of maritime character, but the heart of a whole City that benefited from and participated in its wealth creation. Unlike most historic districts in the City, it represents

the driving force that made the entire City what it is today. It is an historic district that has meaning to the entire City and all its citizens.

5. It is vulnerable too. Real estate entrepreneurs see it as developable space in the heart of downtown. In particular, the Howard Hughes Corporation, which owns or controls much of the Seaport area, sees it as a goldmine. And so, in a relatively small district which has miraculously maintained its pre-skyscraper era scale of buildings commonly three to five stories high, the Howard Hughes company has convinced the Landmarks Preservation Commission that it should be allowed to build a 24 story behemoth.

6. The theory is that the site borders on the line that divides the Historic District from the rest of down town. What harm, supporters postulate, can come from building a downtown sort of building next to a forest of such buildings? The answer is that it effectively moves the dividing line from three narrow blocks away East River shore to two blocks away; it severely diminishes the size of the district. And one exception invites the next, and that invites more.

7. The authors, and adopters, of the Seaport District and its plans were keenly aware of the need for a clean boundary line. The Designation Report for the District overtly recognizes that the District must be seen as a distinctive counterpart to the totally different style of its downtown, skyscraper, neighbors. The essence of the district and its boundaries, the Report's closing statement says, is in "the small-scale brick buildings

which contrast dramatically with the soaring skyscrapers nearby.” (Designation Report pg. 39). The “small-scale brick buildings” are, of course, those inside the boundary line of the District; the “soaring skyscrapers nearby” are the downtown skyscrapers.

8. There are “realities” as one Commissioner says, that make it hard not to take a flexible attitude towards installing a skyscraper in a low-rise historic district. If the Hughes company is allowed to build say four or five times the amount of bulk that it could if it complied with existing law, it offers to donate up to \$50 million to a worthy and needy South Street Seaport Museum.¹ On the other hand, if the Commission had not caved in to this scheme for buying one’s way out of compliance with law, the Hughes company threatened that it would just build the maximum allowable structure as of right. That may or may not be accomplishable, but it illustrates what appears to be a hardball inclination vis-à-vis the Commission.

9. This designation in 1977 came not very long after the destruction of Penn Station in the mid-60s, and the consequent adoption of the Landmarks Preservation Law in 1965, and its significant strengthening by amendment in 1973.

I. PROCEDURAL MATTERS

PETITIONERS

¹ Whether such funding would actually come from the Hughes organization is a question. It appears that it may come from transfer of air rights that are owned by a City agency owns.

10. South Street Seaport Coalition Inc. is a not-for-profit corporation, exempt from taxation under IRC 501(c)3. Among its goals are to ensure that public assets are used to maximize public benefits, increase maritime use of the District's waterfront, rejuvenate District buildings, ships and activities, and promote the work of the South Street Seaport Museum. Its officers live within the District or in adjacent buildings. The President of the Coalition, Michael Kramer is a member of CB 1. Its vice-president, Paul Goldstein, is chair of the CB 1 Waterfront, Parks and Cultural Committee.

11. Save Our Seaport is a grassroots organization devoted to creating a new vision for the future of the South Street Seaport Museum, the Museum's waterfront and boats, the Historic District and the old Fulton Market. It is an all-volunteer group of concerned New Yorkers who want to revitalize the South Street Seaport in a way that preserves its inherent character as the public steward of New York City's maritime history. It has 57 dues-paying members comprised of local residents, volunteers at the South Street Seaport Museum, and other individuals from around the City.

12. Seaport Coalition a group of about 30 people associated with Save Our Seaport, Southbridge Towers (a large residential community bordering the Seaport) and Children First.

13. Children First is an organization that promotes the welfare and learning resources of students attending three lower level schools that are all located on Water Street directly across the street from the subject site. It has 659 subscribers (people who

support the organization's purposes), many of whom live within the Seaport District or nearby. One of the organization's significant activities includes promoting projects that teach the students about the downtown area, including a third grade course on the unique history of the Seaport.

14. Linda and Jay Hellstrom are residents of 273 Water Street, located directly across the street from the subject site and within the Historic District. Their building is one of the oldest surviving in New York City, and is especially outstanding architecturally, according to the District's Designation Report. They would be immediately affected by the proposed project. Jay is treasurer of South Street Seaport Coalition Inc.

15. Emily Hellstrom lives outside the District but her parents live in the District and she has a child who goes to school on Water Street opposite the project site and within the District. These circumstances instill in her a strong interest in the District and its welfare.

16. Zette Emmons resides at 275 Water Street, also located directly across the street from the proposed construction site and within the Seaport Historic District, and would be directly affected by the proposed project.

17. Colleen Robertson resides at 62 Pearl Street. She is active in the PTA and School Leadership Team of the Peck Slip School, one of the three school opposite the project site. In these capacities she participates in creating and promoting school

programs that teach students about the early history of lower Manhattan, including the South Street Seaport.

18. Each of the persons and the entity named in the preceding paragraphs has interest(s) in this matter which exceed the interests of members of the general public.

19. Each Petitioner has one or more of the following interests:

(a) Protection of property values against decreasing due to changes in the character of the Historic District.

(b) Protection of property values against decreasing due to perceived present and future lessening of concern of Respondent Landmarks Commission in maintaining the character of the Historic District.

(c) Enjoyment of the unique benefits of living in, and circulating about, an exceptionally beautiful, well-maintained and culturally inspiring community.

(d) Loss of light and air, and enjoyment of the benefits of the present state of openness to light and air due to the allowance of a new tall building that is very out of scale with present conditions of the community.

(e) Probable overcrowding due to occupancy and use of the proposed new building, including, without limitation, congestion of neighboring sidewalks and streets, especially due to reduction of off-street parking.

(f) Loss and impairment of views.

JURISDICTION AND VENUE

17. The Court has jurisdiction pursuant to CPLR Article 78.

18. Venue is based on the location of the office of the Landmarks Preservation Commission at 1 Centre Street, Manhattan (New York County), as well as the location of the subject Historic District in Manhattan.

II. THE LANDMARKS PRESERVATION LAW

19. Famously, as late as 1965, New York City had no effective means of protecting its magnificent array of outstanding individual buildings, and its dozens of neighborhoods which, by sharing architectural styles and complementary bulk to a significant extent, established a pattern of identifiable areas – often referred to as “villages” as in the cases of Greenwich Village, the East Village, and the West Village. These exemplified individual buildings of architectural or other significant cultural importance, and prized “districts” that reflected a style of metropolis that was proud of the idea that the City was not only a magnificent whole but a whole that is quite explicitly an assemblage of separate identifiable historic sections with their own individual styles and coherence.

20. The City was shocked into action when the iconic Penn Station, an elegant beacon that glorified the excitement of railroad travel, was torn down and replaced by pure conventionality in the form of the present Penn Station beneath Madison Square

Garden in the 1960s. (The conventionality description does not include the very recently opened, and beautiful, western portion of Penn Station across Eighth Avenue.)

Concerned citizens demanded legislation that would prevent such disregard in the future. Adopted in 1965, New York City's Landmarks Preservation Law was one of the earliest such laws. It was strengthened by amendment in 1973 which, among other changes, added the powers to create interior landmarks and scenic landmarks.

21. Some of the basic terms of the Law include:

a. The Landmarks Law starts with a strong statement of legislative intent explaining the need for such a law and the public policies that its administration should fulfill. (Admin. Code 25-301).

b. It has long been the practice of the Commission to prepare a detailed designation report for each landmark and historic district that the Commission designates. These include extensive descriptions of reasons for designation and details regarding significant features such as architectural style and noteworthy features. These provide a basis for understanding the reasons for designation and using that information to guide the manner of enforcement.

c. An owner who wishes to build or alter landmark or historic district structures must obtain the Commission's approval. If the plan involves very minor work that will involve no material impact, the Commission may issue, in the case of a landmark or property in an historic district, a certificate of no exterior effect.

In all other cases, the Commission must determine whether the action would be “appropriate” and “consistent.” The Commission takes an up or down vote: If the plan meets these criteria, the Commission must issue a “certificate of appropriateness”; if it does not meet these criteria, the Commission must deny a “Certificate of A”. Appropriately, the Commission’s practice is to state its reasons in a formal decision, creating a record which, when properly compiled, provides a basis for a reviewing court to intelligently assess the legality of the action.

d. The Commission must work within the scope of its legislatively assigned duties. They are, with regard to determining “appropriateness”, to apply standards pertaining to design, architecture, aesthetics, and similar considerations, and to do so mindful of the objectives set in the legislative objects of the Law. (See Admin. Code 25-307 and 25-301); Matter of Save America’s Clocks, Inc. v. City of New York, 33 N.Y.3d 198, 209 (2019). They are not to make concessions in consideration of such extrinsic considerations as the financial needs of the developer, or political or general social policy issues, or promoting a good cause. Hilbertz v. City of New York. 84 Misc. 3d 698, 740-741 (Sup. Ct. Kings Co. 2019).

e. “Consistency” is a factor appearing alongside “appropriateness” in Admin. Code 25-307. Neither term is specifically defined. But their side by side usage implies that their meanings are at least somewhat different. In the absence

of judicial discussion, we posit that “appropriateness” tends to be associated more with aesthetic judgments that may have some measure of flexibility, and “consistency” to issues more susceptible to precision such as questions of law or, as is the case under the Landmarks Law, application of the criteria of Section 301 such as promotion of preservation which leaves less room for variant construction. “Consistency” rather obviously also relates to following precedent.

f. The law recognizes that there must be a safety valve for situations where strict application of the appropriateness/consistency standards (or other circumstances) may push the owner into a situation where complying with the law would be financially burdensome to the point where the owner could not realize a reasonable financial return. In such cases the Law prescribes a formula for measuring reasonable return and affording various possible ameliorative measures including de-designation. (Admin. Code 25-309). The process is not easy. See Stahl York Ave. Co., LLC v. City of New York, 162 A.D.3d 103, 107 (1st Dep’t 2108), appeal dismissed, leave to appeal denied, 32 N.Y. 3d 1090 (2018), and cert. denied sub nom. Stahl York Ave. Co. v. City of New York, New York, 140 S. Ct. 117 (2019). But it has been successfully invoked. See Lutheran Church in America v. City of New York, 35 N.Y.2d 121 (1974). Its existence as an option emphasizes that the Commission may not deviate from the standards of the “appropriateness” test because of sympathy to the owner, political pressure, or any

other untoward motivation. If an application for a certificate of appropriateness is denied on the basis of applicable aesthetic standards, the above-described alternative approach is available to the owner.

For present purposes, the availability Section 309 is for any expectation of severe adverse financial consequence actually appearing, as it is to point out that a remedy exists for financial hardship. That existence suggested that relief is not available (and nothing in the Landmarks Law suggests that it would be available) for lesser financial hardship. In other words, the Commission does not have available the option of easing up on the consistent application of the general provisions merely because an applicant for a certificate of appropriateness asserts that the application of the Law would cut his profit below a figure he deems appropriate.

22. A party wishing to alter construct will generally find that height and bulk are important considerations in deciding the appropriateness and consistency of a new or enlarged structure in an historic district or with respect to a landmark. The New York Court of Appeals, in the leading case of Penn Cent. Transp. Co. v. City of New York, 42 N.Y.2d 324, 329 (1977), aff'd, 438 U.S. 104 (1978), implicitly made it absolutely clear that the issue facing it, where the Commission had rejected two different plans for adding height to Grand Central Station, was not whether rejecting such an application was barred merely because it prevented the owner from building what it pleased (or at least was

allowed by zoning), but only whether the impact on the owner of LPC's denial of permission was of such severity as to require compensation under the constitutional takings clause. On appeal, the Supreme Court agreed, and in stronger terms. (438 U.S. at 113-115, 118). Cf. In re Save Gansevoort, LLC v. City of New York, 158 A.D.3d 483, 484-485 (1st Dep't 2018), lv. den. 31 N.Y.3d 947 (2108) (confirming Commission's right to exact reduction of height to conform to style of district); Citineighbors Coalition of Historic Carnegie Hill v. New York City Landmarks Preservation Com'n, 306 A.D.2d 113 (1st Dep't 2003, app. disp. 2 N.Y.3d 727 (2004) (similar to Gansevoort).

III. THE SOUTH STREET SEAPORT HISTORIC DISTRICT

23. This historic district was designated by the Landmarks Preservation Commission in 1977. It was formed with about ten full and partial blocks plus three piers extending into the East River. (Designation Report pg. 2) Its prized characteristics include extraordinary collective age going back into the late 18th century (id. Pg. 5); an unparalleled roll in New York's accession as world leadership as a shipping center (id. Pp. 2-4); home to fine antique commercial architecture (id. Pp. 5-7); and home to the South Street Seaport Museum.

IV. PETITIONERS' CLAIMS

A. FIRST CLAIM: THE DECISION FAILS TO ESTABLISH THAT THE PLAN IS APPROPRIATE AND CONSISTENT

24. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 23 hereof.

25. This case concerns an application for a Certificate of Appropriateness pursuant to NYC Admin. Code 25-307 on the ground that its application to build on the vacant lot at 250 Water Street, New York, New York, including the plans submitted to the Landmarks Commission for that purpose, are appropriate and consistent. The application and plan do not comply for numerous reasons appearing elsewhere in this Petition.

26. Such grounds include, without limitation,

a. The Decision fails to identify and discuss numerous issues at the heart of the requirements of appropriateness and consistency (Admin. Code 25-307(a)).

Among them are:

i. That in the cases of historic districts and individual landmarks, both of which apply here, an historic district, the district should be considered as a whole without isolating and considering only, or almost only, the impacts of the proposed project on just a portion of the District. The Commission considered almost exclusively only the 250 Water Street block and paid almost no attention to the effects beyond the immediately adjacent portions of the District.

ii. That the defining characteristics of the affected landmark or historic district must be identified so that the Commission can effectively assess whether the project would be appropriate and consistent. The Commission failed to do that.

iii. That the agency must apply agency precedents where appropriate, and describe in the agency's decision the grounds for failure to follow precedent if that be the case. The Commission failed to do that.

iv. That the agency must sufficiently identify and describe the evidentiary and legal bases of decision so that the decision can be properly reviewed by the judiciary. The Commission failed to do that.

v. Where the applicable law requires findings of fact (in this case, described as "determinations") – by mandating in this instance that "the commission *shall determine* whether the proposed work would be appropriate for and consistent with the effectuation of the purposes of this chapter" – the Commission must do so. The Commission failed to do that.

b. Most particularly, the Commission failed to identify the attributes of height and mass that serve to define the character of the District and relevant portions of the District so that the Commission can reasonably decide whether the subject project should be limited in height and mass, and to what degree.

B. SECOND CLAIM: THE DECISION ILLEGALLY RESTS ON FACTORS THAT ARE NOT WITHIN THE AUTHORITY OF THE LPC TO APPLY

27. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 26 hereof.

28. The Developer freely emphasized that it would provide affordable housing and a \$50 million grant to the South Street Seaport Museum. The Commissioners are not permitted to consider such factors. Yet, it is inevitable that, presented with such prospects, they will in fact factor them into the decision-making process.

29. The Commission failed to ensure that such factors would not be considered.

30. The failure of the Commission to identify and analyze affirmatively reasons for approving the request implies that such information did not exist, thereby increasing the likelihood that the Commissioners could reach the conclusion they did reach because they were influenced by the illegal considerations that had been presented to them.

C. THIRD CLAIM: THE DECISION WAS ILLEGALLY INFLUENCED BY OTHER CITY OFFICERS

31. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 30 hereof.

32. NYC Charter §3020 requires that Landmarks Commissioners be appointed for three year terms. The obvious purpose is to give these unsalaried public servants a reasonable tenure so as to be able to perform the required services in accordance with the applicable law without being unduly influenced to perform contrary to their honest convictions because, directly or indirectly, the Mayor or other city officials ask for a particular result. In this instance, it is not even essential that a direct request would have been made; it would suffice that anybody who reads the news or receives it on radio or television knows that Mayor de Blasio is a strong proponent of what is called affordable housing and has committed to provide it in quantities that may not be realistic. Thus, it is virtually inevitable that Landmarks Commissioners will pay a great deal of attention to the concern that taking a position contrary to the Mayor's is extremely risky if one values holding the position. (Almost certainly, Commissioners take their jobs for the personal satisfaction the work offers. It is not for the pay, that being nil.)

33. Documentary evidence provided to counsel in response to a FOIL request to Respondent indicates that not a single one of the eleven Commissioners now in office is protected by a continuing appointment; all such protection has expired. All of the Commissioners serve solely at the Mayor's pleasure.

D. Fourth Claim: THE COMMISSION FAILED TO FOLLOW ITS OWN PRECEDENT IN ITS DECISION IN THIS MATTER

34. Petitioners repeat and reallege the allegations contained in paragraphs 1 through hereof.

35. Administrative agencies must follow their own relevant precedent unless they credibly determine that the facts in the former decision are materially different, or that the previous decision was wrong on the law as to the point at issue. Further, they must set forth their reasoning in the decision so that a court has a reasonable base for review. (See Matter of Charles A. Field Delivery Service Inc., 66 N.Y.2d 516 (1985)).

36. On information and belief, the Landmarks Commission has received and processed approximately five previous requests for approval to build on the subject lot. The requests varied as to proposed height. The lowest proposal sought permission to build to a height of approximately 10 stories. The Commission denied all of the applications. On information and belief, the basis for denial in each instance was excessive height and/or other bulk. It appears that these decisions constitute applicable precedent and that the Commission must, therefore, be charged with proving that the apparent precedent does not apply. The height of the recently approved proposal far exceeds what has previously been disapproved of, the recently approved height being 324 feet or 26 stories.

AS TO ALL CLAIMS:

37. With respect to all claims made herein, the Commission has acted in violation of lawful procedure, and its actions are each affected by errors of law, and are arbitrary, capricious, and/or an abuse of discretion.

WHEREFORE, Petitioners respectfully request judgment determining and declaring that the decision of the Landmarks Preservation Commission in this matter is in violation of lawful procedure, was affected by errors of law, and was arbitrary, capricious and/or an abuse of discretion; that said decision is void; and for such other and further relief as the Court may deem just and proper.

Dated: May 16, 2021

Respectfully submitted,

S/

Michael S. Gruen

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VERIFICATION

The undersigned, being duly sworn, deposes and says:

I am a party to the captioned proceeding, directly or by being an officer of a corporate Petitioner. I have read, and am familiar with, the content of the annexed Petition. I confirm that the allegations contained therein are true and correct to the best of my knowledge and belief, except as to allegations stated to be made on the basis of information and belief, and as to those matters I believe them to be true, and base such belief on documents and persons and other sources I believe to be reliable.

Dated: May 16, 2021

Michael Kramer

Sworn to before me this 16th day
of May, 2021

Notary Public