

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of

**KATHLEEN MECCA; ANTHONY F. MECCA;
STEPHEN L. GREENE; JAMES R. GLOSE;
ELIZABETH A. MARTINA;
WILLIAM MARK WESTERHOLT;
PETER J. CERTO; JOANNE CERTO;
MELISA HOLDEN and ROBERT HOLDEN**
Petitioners/Plaintiffs

INDEX NO.: 160/2014

For a Judgment pursuant to CPLR Art. 78 & SFL §123-b

MEMORANDUM

**EMPIRE STATE DEVELOPMENT, a/k/a NEW YORK
STATE URBAN DEVELOPMENT CORPORATION,
KENNETH ADAMS, in his capacity as President & CEO
of Empire State Development
NEW YORK STATE DEPARTMENT OF TRANSPORTATION,
JOAN McDONALD, in her capacity as Commissioner of the
New York State Department of Transportation, and
CITY OF BUFFALO, NEW YORK**
Respondents/Defendants

APPEARANCES:

ARTHUR J. GIACALONE, ESQUIRE
Attorney for Petitioners/Plaintiffs

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL
TIMOTHY HOFFMAN and
JANE C. CAMERON
ASSISTANT ATTORNEYS GENERAL, of Counsel
Attorney for Respondents/Defendants

TIMOTHY A. BALL, CORPORATION COUNSEL
DAVID M. LEE, ASSISTANT CORPORATION COUNSEL
Attorney for Respondents/Defendants, **City of Buffalo**

O'DONNELL, J., Supreme Court Justice

Petitioners are residents of the west side of the City of Buffalo. They reside in proximity to an international crossing known as the Peace Bridge. They have brought this petition to halt two projects undertaken by respondents in connection with the Peace Bridge. The essence of their complaints is that respondents have failed to comply with the letter and spirit of the New York State environmental review statutes.

In each of the two projects; the Gateway Project, and the Episcopal Church Home project, respondents have undertaken environmental reviews and issued "Negative Declarations". Petitioners claim these reviews were insufficient and the findings erroneous.

Petitioners proceeded by Order to Show Cause and were granted a temporary restraining order. Respondents moved to dismiss the petition. Following argument, the temporary restraint was vacated.

In reviewing a petition of this nature, the court's role is limited to determining whether an agency identified the relevant areas of environmental concern, took a hard look at them and made a reasoned determination, (Chinese Staff and Workers Association v. City of New York, 68 NY2d 359, see also, Spitzer v. Farrell, 100 NY2d 186; Eisenhauer v. County of Jefferson, ___ AD3d ___ (Fourth Dept. 11-14-14).

Petitioners' claims are generally conclusory and/or speculative. Little detail is provided that could lead a court to determine that respondents have not taken a hard look at environmental concerns and made reasoned determinations. In fact, respondents' submissions lead to a different conclusion.

Petitioners make much of the fact that certain members of respondents boards displayed an

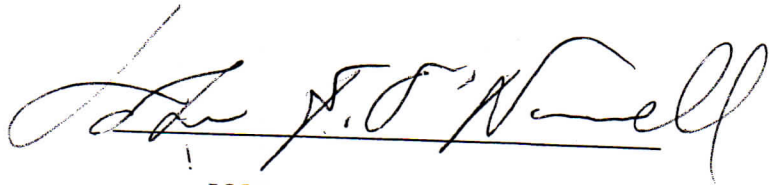
arrogance, a misunderstanding of the duties of public servants, and attempted to avoid transparency. While the court agrees those actions (and comments) were reprehensible, those alone are insufficient to conclude a few small minded individuals were able to avoid their principal's lawful obligations.

While the matter was pending, petitioners filed an amended petition. This petition adds a claim that respondents have violated Public Officers Law §89 and various regulations by failing to comply with counsel's freedom of Information requests. Petitioners claimed the right to amend their petition pursuant to CPLR 3025(a). Respondents objected on the grounds that CPLR 7804 prohibits such amendment as of right and brought a motion to dismiss. Petitioners have now brought a motion seeking leave to supplement, rather than amend, their petition. They seek to add the same allegations of FOIL violations.

The court has determined that the original petition must be dismissed. The additional claim, although related to the original claims, is not such an integral part that it would revive the original. The claim is not of an environmental violation, but one of inefficiency or malfeasance. While the court is mindful of the additional cost of requiring a new petition, this new claim requires a new petition.

Therefore, respondents' motions to dismiss will be granted. Petitioners cross motion to supplement will be denied.

Submit order in accordance with this memorandum.



JOHN F. O'DONNELL
Supreme Court Justice

DATED: March 31, 2015