

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

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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.,

Petitioners-Plaintiffs,

**VERIFIED PETITION-
COMPLAINT**

For a Judgment 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.:

- against -

Assigned Judge:
Hon.

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,

Respondents-Defendants.

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Petitioners-Plaintiffs, 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, and James F. Shaughnessy, Jr. (“Petitioners”), by and through their attorneys,
Rodenhausen Chale & Polidoro LLP, Lewis & Greer, P.C., and Wayne Thompson, Esq., as and
for their Verified Petition-Complaint (“Petition”) respectfully allege as follows:

PRELIMINARY STATEMENT

1. This is a hybrid CPLR Article 78 and Declaratory Judgment action commenced
pursuant to CPLR Article 78, CPLR § 3001, and Public Officers Law § 107, seeking to enjoin or

annul any actions to be taken by the Respondent-Defendant (“Respondent”) City of Kingston Common Council (“Common Council”) based upon the public hearing (“Hearing”) held by the Common Council on December 2, 2021, and seeking that the Hearing be rescheduled and held again due to serious deficiencies in the conduct of the Hearing that prevented meaningful and legally sufficient public participation thereat.

2. Specifically, Petitioners seek to prevent the Respondents or any related party from voting on City of Kingston Common Council Resolution 251 of 2021 entitled “Resolution of the Common Council of the City of Kingston, New York, Requesting Authorization of the Partial Abandonment of Fair Street Extension and Authorizing the Mayor to Execute any and all Documents Necessary” (“Resolution 251”) or taking any action purportedly authorized by the Resolution as the Common Council has failed to satisfy the legal conditions precedent of a legally adequate public hearing before voting to abandon a public street. A Copy of Resolution 251 as proposed is attached hereto as Exhibit “A”.

3. Resolution 251 authorizes the partial discontinuance of an unspecified portion of Fair Street Extension and authorizes the Mayor to execute any and all documents related to the partial abandonment of Fair Street Extension to allow the construction of permanent structures on the to-be discontinued portion thereof.

4. The abandonment and discontinuance of a public street as contemplated by Resolution 251 can only be accomplished if the appropriate legal strictures are followed, including the requirement of a public hearing by City of Kingston Code § 355-62 and General City Law § 29.

5. A public hearing was planned and publicly noticed by the Common Council pertaining to the abandonment of Fair Street Extension for the evening of December 2, 2021, and

Resolution 251 was posted online prior to the Hearing. The Hearing was held in a joint in-person and digital videoconferencing format, with members of the public invited to testify and give their opinion either in person or via the software Zoom, and to witness the Hearing live in-person, via Zoom, or via a livestream on the City of Kingston's YouTube channel.

6. The Hearing held did not satisfy the legal requirements of a public hearing due to significant delays and technological issues throughout the night that prevented adequate and meaningful participation by members of the public and which further erased the testimony of some members of the public. The rights of the public to witness and participate in the Hearing were severely prejudiced by these issues. See attached as Exhibit B, Affidavit of James Shaughnessy, Jr. wherein he explains his testimony at the Hearing was not heard by all participants or members of the Common Council and was not made part of the record. See attached as Exhibit C, Affidavit of Charlotte Adamis, wherein she explains she was in attendance virtually and was unable to hear some who testified, and was subjected to grating feedback and noise at other times, and coupled with the severe delays to the taking of testimony, resulted in her abandoning her attempt to exercise her right to testify before her turn arrived. See attached as Exhibit D, Attorney's Affidavit of Victoria L. Polidoro, Esq. wherein she explains she attended the Hearing and was not able to view or listen to Mr. Shaughnessy's testimony.

7. The closure and abandonment of Fair Street Extension is intended to facilitate the construction of a mixed-use project known as the Kingstonian which includes a 420-car garage, 143 apartments, 32-room boutique hotel, and 9,000 square foot retail/restaurant space, pedestrian plaza, and walking bridge located at the intersection of Fair Street and North Front Street (the "Project") in the City of Kingston. The Project is to be located, in part, on municipal property

identified as tax parcel 48.80-1-26 and is also proposed to be built over and upon Fair Street Extension.

8. The Project has not received all prerequisite governmental approvals for its construction including from, *inter alia*, the City of Kingston Planning Board, and may never receive these approvals required for construction to commence.

9. Were the City of adopt Resolution 251, which is scheduled for consideration at the Common Council's meeting on Tuesday, December 7, 2021, the City would be authorizing the abandonment of the currently in-use Fair Street Extension immediately, to facilitate a construction project that may not commence construction for months, if ever, all without a legally sufficient condition precedent, a meaningful public hearing, being satisfied in violation of New York State Law.

10. Accordingly, Petitioners seek judgment for the following relief:

- a. Declaring that the City of Kingston Common Council and Mayor Steven T. Noble, and other Respondents are without authority to authorize the abandonment of Fair Street Extension as the Hearing held by the Common Council on the proposed closure and abandonment of Fair Street Extension on December 2, 2021, failed to comply with the Open Meetings Law, Chapter 417, General City Law § 29, and City of Kingston Code § 355-62;
- b. Enjoining the Common Council, Mayor, and other Respondents from considering or voting upon Resolution 251 or declaring any vote by the Common Council thereupon to be void or enjoining implementation of Resolution 251 until such time as a new public hearing can be held in compliance with law as well as the requisite other approvals are obtained and findings made;

- c. Declaring that a new public hearing on the abandonment of the Fair Street Extension must be scheduled and held at a future date in compliance with General City Law § 29 and Kingston Code § 355-;
- d. Granting the Petitioners a preliminary injunction restraining, during the pendency of this action, any actions by the Common Council, Mayor, or other Respondents from taking any further steps to close, convey, encumber, or in any other way interfere with the public right of way and public property interest in Fair Street Extension until such time as a legally sufficient public hearing can be scheduled, noticed, and held;
- e. Granting the Petitioners a preliminary injunction restraining, the exercise of any authority purportedly permitted by Resolution 251, and further restraining the Mayor and the Common Council from adopting any resolution, or taking any other steps towards, authorizing the abandonment, closure, discontinuance, or impediment to the public use of Fair Street Extension;
- f. Awarding Petitioners' costs and reasonable attorneys' fees pursuant to Pub. Off. Law § 107(2); and,
- g. Awarding Petitioners such other and further relief as the Court deems just and proper, with the costs and disbursements of this proceeding.

PARTIES

11. Petitioner 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, and located within the National Register-listed Kingston Stockade Historic District ("KSHD").

Petitioner 61 Crown Street, LLC's properties are located in close proximity to the Project. Petitioner 61 Crown Street, LLC's properties can be accessed by Fair Street Extension and will be harmed by its discontinuance, conveyance, or encumbrance which will hamper the public use of and access thereto.

12. Petitioner 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, within the KSHD. Petitioner 311 Wall Street, LLC's property is located in close proximity to the Project. Petitioner 311 Wall Street, LLC's properties can be accessed by Fair Street Extension and will be harmed by its discontinuance, conveyance, or encumbrance which will hamper the public use of and access thereto.

13. Petitioner 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, in the KSHD. Petitioner 317 Wall Street, LLC's property is located in close proximity to the Project. Petitioner 317 Wall Street, LLC's properties can be accessed by Fair Street Extension and will be harmed by its discontinuance, conveyance, or encumbrance which will hamper the public use of and access thereto.

14. Petitioner 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, within the KSHD. Petitioner 323 Wall Street Owners, LLC's property is located in close proximity to the Project. Petitioner 323 Wall Street Owners, LLC's properties can be accessed by Fair Street Extension and will be harmed by its discontinuance, conveyance, or encumbrance which will hamper the public use of and access thereto.

15. Petitioner 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 within the KSHD. Petitioner 63 North Front Street, LLC's property is located in close proximity to the Project. Petitioner 63 North Front Street, LLC's properties can be accessed by Fair Street Extension and will be harmed by its discontinuance, conveyance, or encumbrance which will hamper the public use of and access thereto.

16. Petitioner 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, within the KSHD. Petitioner 314 Wall Street, LLC's property is located in close proximity to the Project. Petitioner 314 Wall Street, LLC's properties can be accessed by Fair Street Extension and will be harmed by its discontinuance, conveyance, or encumbrance which will hamper the public use of and access thereto.

17. Petitioner 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, within the KSHD. Petitioner 328 Wall Street, LLC's property is located in close proximity to the Project. Petitioner 328 Wall Street, LLC's properties can be accessed by Fair Street Extension and will be harmed by its discontinuance, conveyance, or encumbrance which will hamper the public use of and access thereto.

18. Petitioner James F. Shaughnessy, Jr., is a resident of the City of Kingston who was denied the right to participate meaningfully in the Hearing due to the City's failure to hold a proper public hearing in compliance with applicable law. See Aff. J. Shaughnessy.

19. Petitioners are aggrieved persons under Public Officers Law § 107(1) and bring this hybrid CPLR Article 78 and Declaratory Judgment action to remedy the deprivation of their

statutory right to a legally adequate public hearing by the Common Council before said body can vote on the proposed abandonment or closure of Fair Street Extension.

20. Upon information and belief, Respondent City of Kingston 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 disposition of real property belonging to the City.

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

22. Upon information and belief, Defendant City of Kingston Department of Public Works ("DPW") is the department within the City of Kingston that exercises control over City streets and sidewalks, including the authority to discontinue streets.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

VENUE

29. Venue is proper for this action in the New York State Supreme Court, Ulster County, as pursuant to CPLR §§ 7804(b) and 506(b) this is where the official actions being challenged took place, where the material events took place, and where the principal office of most or all Respondents are located.

30. Venue is further proper for this action in the New York State Supreme Court, Ulster County, as the public highway that is the subject of this action is located in Ulster County.

BACKGROUND

KSHD Background

31. The Project, including the portion of Fair Street Extension it is planned to be built upon, is located within in the KSHD which comprises eight-blocks in northwestern or uptown Kingston, New York. It is the original site of the mid-17th century Dutch settlement that grew to become Kingston and is listed on the U.S. National Register of Historic Places due to its unique architecture and historic character. *See* attached as Exhibit E the affidavit of historian K. Culhane

filed in the related matter of *Creda, LLC, et al. v City of Kingston Planning Board, et al.*, NYSCEF No. EF2020-253, Doc. No. 135, which also involved the impacts of the Project on the KSHD.

32. The KSHD contains many historic buildings from as early as the 1600's including the Senate House which served as the first Capital of the State of New York in 1777, the Old Dutch Church which is a National Historic Landmark in its own right, and the only intersection in America in which all four buildings on each corner predate the United States of America where Crown and John Streets cross.

33. The Public at large, including those who do not reside within the City of Kingston, have an interest in the preservation of the historic area as fellow New Yorkers and Americans.

Project Background

34. From its inception, the Kingstonian Project has been the subject of haphazard and rushed procedures and generally questionable actions by public officials and entities in order to expedite the necessary approvals for its construction that have had the overall effect of drawing widespread criticism to the process and lessening the Public's overall faith in local government.

35. On October 27, 2016, the City of Kingston Common Council published its "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 F.

36. 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." Ex. F at 1.

37. The parcels of land offered in the RFQ did not include the land upon which any portion of Fair Street Extension is located. Ex. RFQ. Instead, the RFQ was limited to the site of

a municipally owned parking lot, formerly a parking garage, to the immediate west of Fair Street Extension.

38. Mayor of the City of Kingston Steve T. Noble executed a Memorandum of Understanding with Wright Architects, PLLC, on January 10, 2017, indicating their intent to develop the parking lot on property known as 21 North Front St (SBL: 48.80-1-26). Fair Street or Fair Street Extension were never mentioned in the Memorandum of Understanding, a copy of which is attached as Exhibit G.

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

40. The Memorandum of Understanding specifically states that it may not be assigned without the prior written consent of the non-assigning party. Ex. G p. 3.

41. Upon information and belief, the Mayor executed a letter dated June 26, 2017, that stated “the City of Kingston consents to the Assignment as required by the Memorandum of Understanding dated January 10, 2017.” Ex. H.

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

43. Upon information and belief, the Memorandum of Understanding was assigned to Respondents JM Development Group, LLC, Patrick Page Properties, and Herzog Supply Co., Inc. (the “Applicants”), who eventually proposed the Kingstonian in its current iteration which is contemplated to be built across and upon Fair Street Extension and to encompass 51 Schwenk Drive (SBL: 48.80-1-25.100) as well. Ex. H.

44. The Applicants submitted applications to the City of Kingston Planning Board for site plan and special use permits for the same as well as an application to the City for the rezoning of 51 Schwenk Drive in or about November of 2018.

45. The Project seeks to construct a 420-car garage, 143 apartments, a 32-room boutique hotel, a 9,000 square foot retail/restaurant space, a pedestrian plaza and a 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 comprising the Project vary amongst the various documents provided by the Applicants.

46. Although not originally contemplated by the City, the Applicants have sought to include land currently occupied by Fair Street Extension as part of the Project for, *inter alia*, the construction of a parking garage and a pedestrian plaza thereupon. To facilitate this, Fair Street Extension would have to be closed and discontinued as a public road, reverting simply to a parcel of land owned by the City of Kingston. However, the legal structures required of the City to make that possible have not been followed and that is what is Petitioners herein challenge and seek compliance with by the Respondents.

Fair Street Extension

47. The portion of Fair Street Extension between the parcels contemplated between the two parcels contemplated to be the site of the Project is an approximately 400 foot long, two-lane, two-way road which provides access into the KSHD from Schwenk Drive and Herzog's Plaza (a shopping center to the north across Schwenk Drive) to its intersection with North Front Street within the KSHD.

48. The portion of Fair Street Extension adjacent to the site of the Project is one of the few means of direct access to the northern portion of the KSHD, as well as the preferred route for

Fire Trucks from Kingston Fire Station 2 - Wiltwyck Station responding to calls in or otherwise accessing the KSHD. *See* attached as Exhibit I a study prepared by Langan Engineering summarizing the impact a closure of Fair Street Extension would have on the pedestrian, vehicular, and emergency services traffic patterns in and around the KSHD. The increase in traffic and congestion as well as safety concerns for residents in and around the KSHD are among the issues the public is rightly concerned about regarding the proposed abandonment and closure of Fair Street Extension and the public's statutory right to a legally sufficient public hearing on these concerns must be robustly protected.

49. Fair Street Extension is also historically significant in its own right as it is included within the KSHD and is one of the only remaining places where the KSHD's northern stockade boundary dating to 1658 is still discernible. (*See* Culhane Affidavit attached as Exhibit E). The discontinuance and abandonment of Fair Street Extension, or even just a portion of it, will thereby permanently detract from the public's interest in the historic character of the KSHD and result in the loss of the historic street pattern and the public's statutory right to a legally sufficient public hearing as to these concerns must be robustly protected.

50. Fair Street Extension also provides access to the municipal parking lot located at 21 North Front Street and identified as tax parcel 48.80-1-26 which contains approximately 144 spaces. The parking lot will be redeveloped in part into a parking garage as part of the Project to primarily serve the Project. While the Applicants claim that some parking spots within the garage will be reserved for public use, the number of spaces that would be reserved for public use vary among sources, and in any event, the demand for spaces caused by the residents and occupants of the Project will create a net loss of parking in the area overall. The public's statutory right to a legally sufficient public hearing as to parking and congestion concerns must be robustly protected.

51. Currently, the Project has not received all legally required approvals for construction to commence, including approval from the City of Kingston Planning Board. Resolution 251 which “authorizes the partial abandonment of Fair Street Extension [...] shall take effect immediately.” Ex. A. The discontinuance of Fair Street Extension may eliminate public access to the publicly owned parking lot from as early as the date of adoption of Resolution 251, and this possible long-term loss of all parking in the area until and unless the project is completed is of public concern and the public’s statutory right to a legally sufficient public hearing must therefore be robustly protected.

Prior Resolution 215

52. Resolution 251 is composed of the language removed from the original Resolution 215 the Common Council considered at their November 9, 2021 meeting which was entitled, “Resolution of the Common Council of the City of Kingston, New York, Requesting Authorization for Conveyance of an Easement to the Kingstonian Development, LLC, and for an Easement to the Kingstonian Development, LLC, Written Consent for the Partial Abandonment of Fair Street Extension, and Authorizing the Mayor to Execute Any and All Documents Necessary” and would have authorized the Mayor to discontinue an unspecified portion of Fair Street Extension and to sign and execute unspecified easements for Kingstonian Development, LLC, and to allow the construction of permanent structures on the to-be discontinued portion of Fair Street Extension (the “Easements”). A copy of Resolution 215 as first proposed by the Common Council is attached hereto as Exhibit “J”.

53. Several of the Petitioners herein filed suit against the City on November 8, 2021 seeking to enjoin or delay the adoption of Resolution 215 by the Common Council on *inter alia*, the grounds that the Common Council had failed to hold a public hearing on the proposed

abandonment of Fair Street Extension as required prior to the abandonment or conveyance of a property interest in any public street within the City of Kingston by City of Kingston Code § 355-62 and General City Law § 29. *See* Index. No. EF2021-3014.

54. On the evening of November 8, 2021, in a meeting of the majority caucus of the Common Council meeting, the Council planned to amend Resolution 215 to remove the portions pertaining to the abandonment of Fair Street Extension into a separate resolution, while the remaining, amended Resolution 215 would cover just the conveyance of easements on Fair Street Extension, subject to the approval of the abandonment of the road.

55. On the evening of November 9, 2021, the Common Council held a meeting wherein they amended Resolution 215 as planned the previous evening, passed the amended version that remained, and they further indicated there would be a new resolution containing the removed language authorizing the abandonment of Fair Street Extension, which Council members indicated would be the subject of a public hearing.

Resolution 251

56. On or about November 18, 2021, the City of Kingston's website was updated to reflect that a public hearing relating to the "abandonment of Fair Street Ext." had been scheduled for December 2, 2021, from 6:30 p.m. to 9:30 p.m.

57. There was confusion as the hearing was originally scheduled for December 9, 2021, but was rescheduled without explanation. Notice of the public hearing scheduled for December 9, 2021, is attached hereto as Exhibit "K".

58. The Hearing was noticed and advertised to be open to members of the public wishing to testify in-person or virtually via the videoconferencing platform Zoom, and that the

Hearing would also be livestreamed on the City of Kingston's YouTube channel. *See* attached as Exhibit L the Notice of Public Hearing as published in the *Daily Freeman* on November 19, 2021.

59. Resolution 251 was published on the City of Kingston's website in the days leading up to the December 2, 2021, Hearing.

60. The public was not provided with meaningful notice as to what portion of Fair Street Extension was proposed to be abandoned, no map or legal description of the portion of the road to be discontinued was published before, during, or after the Hearing.

61. The City posted a "Preliminary Illustrative Site Plan" last revised July 15, 2019, as part of the Hearing materials which did not provide sufficient information to enable the public to adequately assess and opine on the proposed closure of Fair Street Extension as the document does not label Fair Street Extension or indicate where the city street would terminate. *See* attached as Exhibit "M" the Preliminary Illustrative Site Plan.

62. The City provided no information before, during, or since the Hearing regarding what the impacts of Resolution 251 would be once passed, such as when Fair Street Extension would be closed or abandoned, how the municipal parking lot will still be accessed by the public, if at all, without Fair Street Extension.

63. The City provided no information before, during, or after the Hearing as to how the Americans with Disabilities Act ("ADA") compliance issues that would be created by the closure and abandonment of Fair Street Extension would be addressed. *See* Ex. I a copy of a report prepared by Langan Engineering dated November 23, 2021, which identifies the potential ADA issues with the Project.

64. The Hearing was also scheduled to conflict with the contemporaneously scheduled City of Kingston Joint Historic Landmarks Preservation/Heritage Area Commissions meeting that

took place from 6:30 p.m. to 8:00 p.m. on December 2, 2021, where the Kingstonian Project was also going to be reviewed.

65. Several of the Petitioners raised the lack of public information regarding the above issues and the apparently purposeful conflict with another public meeting on the same topic which would hamper public participation in both in a letter to the Common Council, and City of Kingston Corporation Counsel, among other, sent on December 2, 2021, but received no meaningful response thereto. *See* attached as Exhibit N the December 2, 2021, letter from V. Polidoro to the Common Council.

66. Ultimately, the Hearing was held by the Common Council on the issue of the closure and abandonment of Fair Street Extension on the evening of December 2, 2021.

67. The Hearing was held in a hybrid in-person and digital videoconferencing format, with members of the public invited to testify and give their opinion either in person or via the software Zoom, and to witness the Hearing live either in-person, via Zoom, or via a livestream on the City of Kingston's YouTube channel.

68. Three members of the Common Council attended in-person.

69. At least three members of the Common Council attended virtually via Zoom.

70. The execution of the videoconferencing options for the public during the Hearing fell short of the legal requirements for such a public meeting. The commencement of the Hearing was delayed approximately a half-hour due to technical issues in getting the livestream and videoconferencing software to operate, and then was interrupted and adjourned several times throughout the night as the software repeatedly malfunctioned with the digital streams and recordings failing at times, as well as the audio feed for those attending or viewing remotely failing or garnering so much feedback that listening was deeply uncomfortable if not impossible.

71. Upon information and belief, the audio feed of those testifying in-person at the Hearing failed during the testimony of several members of the public. See Aff. J Shaughnessy attached as exhibit “B”. Those viewing remotely could not hear their testimony, and their testimony was not recorded.

72. Upon information and belief, not only were members of the public online not able hear at least several members of the public who testified, but the multiple members of the Common Council also attending the Hearing via Zoom to whom the testimony was directed at members of the deliberative body were unable to hear and consider the testimony of numerous members of the public as well.

73. The Common Council members and other City officials running the Hearing ultimately allowed all those in attendance physically to testify first in an attempt to remedy some technological issues despite having advertised and initially attempted to alternate between in-person and remote speakers.

74. The in-person speakers were overwhelmingly in favor of the abandonment of Fair Street Extension as most in-person attendees were associates of the developers or members of local unions who stand to gain from the construction of the Kingstonian Project which as currently planned, is to be built on and access what is currently Fair Street Extension.

75. The significant delays in time which amounted to over an hour of the three hours scheduled for the Hearing and the relegation of those online to the end of the Hearing seriously prejudiced the rights of those members of the public who were online from participating in the Hearing.

76. Upon information and belief, the technological issues, and the delays and inability to hear speakers or to participate at times frustrated multiple individuals from taking part and

testifying, negatively impacting the statutory rights of many members of the public and the overall confidence in the public in the proceedings of the Common Council. See Aff. C. Adamis attached as exhibit “C”.

77. Multiple public speakers asked during their testimony that the Common Council adjourn the hearing to another evening, but the Councilmembers present did not respond to or accede to these requests.

78. The Councilmember who was running the Hearing informed participants several times that testimony could be submitted in writing until 5 p.m. on Monday, December 6, 2021, but no further opportunity for spoken testimony was scheduled or to be taken by the Common Council.

AS AND FOR A FIRST CAUSE OF ACTION
(PROCEDURAL DUE PROCESS)

79. Petitioners repeat and reallege all the foregoing allegations set forth in this Petition with the same force and effect as though set forth herein at length.

80. Procedural due process requires that there will be no deprivation of any liberty or property interest without notice and the opportunity to be heard. *Lai Chun Chan Jin v. Bd. of Estimate of City of New York*, 92 A.D.2d 218, 222 (1st Dept 1983), *aff'd*, 62 N.Y.2d 900 (1984) (internal citations omitted). “The Fourteenth Amendment does not create protected property interests. Its purpose is to provide procedural safeguards to insure [sic] that rights otherwise created or existent are protected.” *Id.*

81. Here, the right at issue here is created by statute and provided to the public at large. GML § 29 and City of Kingston Code § 355-62 both require a public hearing on notice to the public when, as here, a city street is proposed to be closed and abandoned.

82. Without adequate notice of the proposed action, the public, Petitioners included, cannot be said to have been presented a constitutionally adequate opportunity to present their objections since the average member of the public would not be able to discern from the notice provided what, if anything, they would be objecting to.

83. Without a description of the Official Map or the changes proposed thereto, the public, Petitioners included, are effectively deprived of their statutory right to be heard and present their objections, if any. The elementary principle being that one must have actual notice as to what matter is at issue is in order to discern an informed opinion as to that matter.

84. Further, the Respondents can hardly be said to have provided the public, Petitioners included, with a “reasonable time” to make their appearance as the public hearing has coincidentally been scheduled for the same date and time as the presentation of revised Project renderings to the HLPC, a decision that will suppress public participation, as those with strong opinions for or against the Kingstonian Project will find it difficult to participate in two different meetings regarding the same Project at the same time.

85. To offer public notice with no details of what is being noticed during simultaneous public meetings and hearings that an interested party will not be able to attend (both of which pertain to necessary approvals for the Kingstonian) is hardly the meaningful notice and is more akin to a mere gesture.

86. Accordingly, Petitioners respectfully request this Court issue a judgment declaring that the City of Kingston Common Council has failed to render the appropriate notice due to the public, requiring the Hearing be noticed consistent with the law and Constitution, requiring the public hearing be rescheduled to a date and time when it has been sufficiently noticed and does not conflict with any other public meetings pertaining to the Project and/or the proposed

discontinuance of Fair Street Extension which is intended to further said Project, and further enjoining the Respondents from taking any further steps by legislative action or otherwise from closing, conveying, encumbering, or in any other way interfering with the public right of way or public's property interests in Fair Street Extension during the pendency of this case.

AS AND FOR A SECOND CAUSE OF ACTION
(SEEKING A DECLARATION THAT THE HEARING VIOLATED THE NEW YORK STATE OPEN MEETINGS LAW)

87. Petitioners repeat and reallege all the foregoing allegations set forth in this Petition with the same force and effect as though set forth herein at length.

88. The rights of the public in city streets are inalienable, and may only be sold or conveyed in limited circumstances. See NYS General City Law §§ 20(2), (7).

89. The procedures for discontinuing a public highway or street are laid out by NYS law and expanded upon by a city's charter or code and must be strictly complied with. *E & J Holding Corp. v Noto*, 126 A.D.2d 641, 643 (2d Dept 1987) ("It is imperative that statutes enabling such subordinate governmental agencies to discontinue roadways be adhered to when terminating the public's easement over such a roadway") (citing, *McCutcheon v Terminal Station Comm'n of City of Buffalo*, 217 N.Y. 127 (1916); *St. Luke's German Evangelical Lutheran Church v City of Rochester*, 115 Misc. 2d 199, 202-03 (Monroe Cty. Sup. Ct. 1982)).

90. Fair Street Extension is a street under NYS Law and the City of Kingston Code. See VTL § 148 (defining street as "[t]he entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel") and § 134 (defining "Public Highway" as "[a]ny highway, road, street, avenue, alley, public place, public driveway or any other public way); Kingston City Code § 405-3 (defining "Street" for zoning purposes as "[a]ny public street, court, place, square, lane or way

set aside or used as a right-of-way, which affords legal access to abutting property”) and § 390-1 (defining “Street” for vehicle and traffic purposes as “[a]ny public street, avenue, road, boulevard, highway or other public place located in the City of Kingston and established for the use of vehicles”); *see also*, *Williams v State*, 34 AD2d 101 (3d Dept 1970) (finding sidewalks are also part of a “street” as they fall into the boundaries of streets’ rights-of-way).

91. Public streets are and remain public highways under all circumstances once established until the public ceases to travel on them or the public authorities act to officially close them pursuant to law. *Clark v State*, 41 Misc. 2d 714 (Ct. Cl. 1963) (finding failure of government to build a public highway to its full length and width does not extinguish the right of the public to the parts unopened); *Rinaldo v State*, 32 Misc. 2d 1016 (Ct. Cl. 1962) (finding once a highway is laid out and opened for public use, it remains a public highway until it ceases to be such by action of the general public in no longer traveling upon it or by action of the public authorities in formally closing it).

92. The City of Kingston therefore may only discontinue or convey a public road after following the requirements set forth in, inter alia, General City Law § 29 and Chapter 355 of the City of Kingston Code (“the Code”).

93. The Common Council and Mayor have failed to comply with the statutory requirement to hold a public hearing regarding the abandonment of the Street.

94. Public Officers Law Article 7 (“Open Meetings Law”) authorizes any aggrieved person to enforce its provisions against a public body by commencing a proceeding pursuant to Article 78 of the CPLR and/or by an action for declaratory judgment and injunctive relief. Pub. Off. Law § 107(1); *see also*, *News 12 Co. v. Hempstead Pub. Sch. Bd. of Educ.*, 52 Misc. 3d 479,

483 (Sup. Ct. Nassau 2016) (petitioners within their rights to bring a hybrid petition for both article 78 and declaratory relief under the Open Meetings Law).

95. The Hearing constituted a public meeting pursuant to the Open Meetings Law to which Chapter 417 applied as its requirements are incumbent upon, “any entity for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for an entity limited in the execution of its official functions to a portion only of the state, or a political subdivision of the state, or for an agency or department thereof.” *Id; see also*, Committee on Open Government (“COOG”) Advisory Opinion 5641 attached as exhibit “O” (stating that “any gathering of a quorum of a public body for the purpose of conducting public business constitutes a ‘meeting’ subject to the Open Meetings Law, regardless of whether there is an intent to take action or the characterization of the gathering”).

96. The ongoing COVID-19 pandemic gave rise to a series of executive orders which altered the Open Meetings Law, and those executive orders were codified into NYS Chapter 417 of the Laws of 2021 (“Chapter 417”) which temporarily allows public bodies during all times relevant in this action, to continue to hold virtual or partially virtual meetings, as the Common Council did here, subject to certain requirements and restrictions. *See*, 2021 Sess. Law News of N.Y. Ch. 417.

97. Chapter 417 temporarily allows meetings to be held virtually or for there to be both an in-person or virtual option, “provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.” *See*, 2021 Sess. Law News of N.Y. Ch. 417 Part E § 1.

98. The language of Chapter 417 mirrors that of Executive Order 202.1 issued in March 2020 which it supplanted. The COOG had issued several opinions pertaining to

compliance with EO 202.1 and has since confirmed that these opinions equally apply to the almost identical Chapter 417. See attached as Exhibit “P” the COOG memo dated November 9, 2021.

99. The COOG Advisory Opinion most pertinent to the case at bar is 5631A, wherein the COOG addresses whether remote meetings that are not livestreamed, but are recorded and later posted online or otherwise made available, comply with the OML. The COOG determined that they do not but that the new allowance for remote or virtual meetings was “expressly contingent upon the Board affording the public the ability contemporaneously to view or listen to such proceeding – i.e., livestreaming the audio or video to the public” (emphasis added). See attached as Exhibit “Q” COOG AO 5631A.

100. The right to contemporaneously hear and witness the proceeding of a public body predate the pandemic and are well rooted in the OML and are inviolable as participants in a public hearing do not testify in a vacuum but must and are entitled to listen to others and consider their own opinions in response which is why it is vital that remote meetings be streamed live. See Pub. Off. Law § 100 (“It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.”); see also, COOG AO no. 2243 dated July 7, 1993 and attached as exhibit “R” (public body could not speak so quietly that the public could not hear its deliberations but was required to “situate itself and conduct its meetings in a manner in which those in attendance can observe and hear the proceedings. To do otherwise would [...] be unreasonable and fail to comply with a basis requirement of the Open Meetings Law.”)

101. As stated above, the Hearing constituted a public meeting of the Common Council, and therefore was required to comply with the OML. OML § 103.

102. The Hearing took place at a hybrid remote/in-person meeting pursuant to the modifications to the OML by NYS Chapter 417 of the Laws of 2021 (“Chapter 417”).

103. Throughout the meeting, the audio broadcast over both Zoom and YouTube dropped repeatedly, and often during public comments. See Aff. V. Polidoro. As a result, entire speakers provided comments in person that were never broadcast over Zoom or online. This clearly was deprivation of the public’s right to address their elected representatives and make their opinions heard by them.

104. For example, Petitioner Shaughnessy spoke at the meeting but the many members of the public that chose to attend the Hearing remotely never even knew he commented until well after the fact.

105. As the audio failed and cut out during the testimony of multiple members of the public who appeared before the Common Council in-person, their testimony was not recorded, in whole or in part, and cannot be transcribed as required by Chapter 417. There is therefore no record of his comments as they were not recorded and therefore cannot be the basis of any future legal challenge, denying him of his rights.

106. In addition, Charlotte Adamis, a Kingston resident, signed up to speak at the Hearing and was eventually called upon to speak well into the 3-plus hour meeting. She had at that point left the meeting due to the delays and technical issues. See Aff. Adamis. Other members of the public informed the Council of this development during the Hearing itself. Despite this, the Council simply skipped over Ms. Adamis and decided not to reschedule or extend the Hearing.

107. Comments from members of the public were garbled, blocked out by feedback, and generally indecipherable.

108. Those that attended the Hearing remotely, as permitted under the OML and the notice of public hearing for the Hearing, were deprived of the opportunity to contemporaneously listen to what occurred at the meeting in direct violation of the OML. By failing to both make the testimony available contemporaneously to the policymaker and public for their consideration, or even record said testimony for later consumption or review, those whose testimony was lost due to the audio failures throughout the Hearing effectively did not testify at all despite their efforts to do so, which is highly prejudicial and injurious to their rights under the OML and under the laws entitling to be heard regarding the Closure of Fair Street Extension which they sought to exercise and must not be allowed to stand by this Court.

109. This deprivation materially affects the legitimacy of the public hearing because the public was unable to meaningfully participate.

110. This deprivation of rights by the Common Council's technological shortcomings amounts to good cause for this Court to declare the Hearing void and require another to be scheduled and held in compliance with the OML and Chapter 417 on the issue of the abandonment and closure of Fair Street Extension as the entire purpose of the OML was frustrated by the persistent technological failures during the Hearing. The remote participants at the Hearing were therefore denied the opportunity to participate that is meant to be guaranteed by the City Code and the OML.

111. As at least three members of the Common Council – Rita Worthington, Jeffrey Ventura-Morrell, and Steven Schabot – attended the Hearing via Zoom, they were not able to hear all of the testimony provided at the Hearing. This deprivation materially affects the legitimacy of

the Hearing because those voting members of the Common Council were deprived of the opportunity to hear testimony.

112. The YouTube recording contains these same technological issues meaning that members of the Common Council that participated remotely were not able to hear the in-person testimony.

113. These violations of the OML are numerous and patent. The Hearing therefore simply cannot form a basis for any vote taken by the Council regarding the abandonment of the Street and Petitioners are likely to succeed in their claims that the Council's purported "Hearing" is a nullity.

114. Accordingly, the Petitioners respectfully request this Court issue judgment pursuant to Pub. Off. Law § 107(1) and CPLR §§ 7806 and 7803(1) declaring that the Hearing held by the Common Council pertaining to the closure and abandonment of Fair Street extension on December 2, 2021, failed to comply with the OML, Chapter 417, General City Law § 29, and City of Kingston Code § 355-62; declaring that any action taken in reliance upon the Hearing held on December 2, 2021, including any vote or implementation of Resolution 251 to be wholly void; enjoining the Common Council from taking any further steps by legislative action or otherwise from closing, conveying, encumbering, or in any other way interfering with the public right of way or public's property interests in Fair Street Extension during the pendency of this case and until such time as a legally sufficient public hearing can be scheduled, noticed, and held; and awarding Petitioners' costs and reasonable attorney fees pursuant to Pub. Off. Law § 107(2).

AS AND FOR A THIRD CAUSE OF ACTION
(SEEKING AN ORDER THAT THE COMMON COUNCIL HOLD THE
STATUTORILY REQUIRED PUBLIC HEARING)

115. Petitioners repeat and reallege all the foregoing allegations set forth in this Petition with the same force and effect as though set forth herein at length.

116. Pursuant to General City Law § 29 and Kingston Code § 355-62, the Common Council was required to hold a public hearing on the proposal to abandon Fair Street Extension.

117. The City failed to hold an adequate public hearing, as the Hearing took place during a meeting that violated various provisions of the Open Meetings Law, the Hearing did not afford the public due process, and the Hearing did not provide a meaningful opportunity for public participation.

118. Without satisfying the conditions precedent under law to consider the closure and abandonment of Fair Street Extension, the Common Council in voting upon or implementing Resolution 251 is proceeding in excess of jurisdiction and without having performed the duties enjoined upon it under law.

119. Petitioners therefore seek an order mandating the Common Council, pursuant to CPLR §§ 7803(1) and 7803(2), directing that the Common Council perform the duties enjoined upon it by law by directing that the Common Council schedule and hold another public hearing as to the closure and abandonment of Fair Street Extension; and prohibiting any action be taken to advance the closure and abandonment of Fair Street Extension or Resolution 251 until such time as the aforementioned directions are complied with.

WHEREFORE, the Petitioners seek judgment for the following relief:

- a. Declaring that the City of Kingston Common Council and Mayor Steven T. Noble, and other Respondents are without authority to authorize the abandonment of Fair Street Extension as the Hearing held by the Common Council on the proposed closure and abandonment of Fair Street Extension on December 2, 2021 failed to

comply with the OML, Chapter 417, General City Law § 29, and City of Kingston Code § 355-62;;

- b. Enjoining the Common Council, Mayor, and other Respondents from considering or voting upon Resolution 251 or declaring any vote by the Common Council thereupon to be void or enjoining implementation of Resolution 251 until such time as a new public hearing can be held in compliance with law as well as the requisite other approvals are obtained and findings made;
- c. Declaring that a new public hearing on the abandonment of the Fair Street Extension must be scheduled and held at a future date in compliance with General City Law § 29 and Kingston Code § 355-62;
- d. Granting the Petitioners a preliminary injunction restraining, during the pendency of this action, any actions by the Common Council, Mayor, or other Respondents from taking any further steps to close, convey, encumber, or in any other way interfere with the public right of way and public property interest in Fair Street Extension until such time as a legally sufficient public hearing can be scheduled, noticed, and held;
- e. Granting the Petitioners a preliminary injunction restraining, the exercise of any authority purportedly permitted by Resolution 251, and further restraining the Mayor and the Common Council from adopting any resolution, or taking any other steps towards, authorizing the abandonment, closure, discontinuance, or impediment to the public use of Fair Street Extension;
- f. Awarding Petitioners' costs and reasonable attorneys fees pursuant to Pub. Off. Law § 107(2); and,

g. Awarding Petitioners such other and further relief as the Court deems just and proper, with the costs and disbursements of this proceeding.

Dated: Rhinebeck, New York
December 6, 2021

Yours, etc.



Victoria L. Polidoro, Esq.
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LLP

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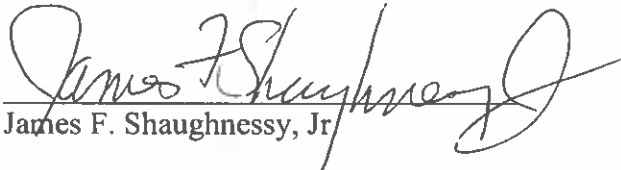
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VERIFICATION


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

James F. Shaughnessy, Jr., being duly sworn, deposes and says as follows:

1. I am a Petitioner-Plaintiff in this proceeding. I have read the foregoing Verified Petition-Complaint 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.


James F. Shaughnessy, Jr

Sworn to before me this 6
day of December, 2021



Notary Public

SHANE NISSEN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01NI6304478
Qualified in Ulster County
My Commission Expires May 27, 2022