

**Citizens for St. Patrick's v City of Watervliet Zoning  
Bd. of Appeals**

2013 NY Slip Op 33897(U)

July 10, 2013

Supreme Court, Albany County

Docket Number: 1446-13

Judge: Kimberly A. O'Connor

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STATE OF NEW YORK  
SUPREME COURT

COPY

COUNTY OF ALBANY

CITIZENS FOR ST. PATRICK'S, an unincorporated  
association by president CHARLEEN AKULLIAN,  
solely in her representative capacity as president, AND  
ROSEMARY NICHOLS,

Petitioners,

-against-

**DECISION AND  
ORDER/JUDGMENT**

Index No. 1446-13

CITY OF WATERVLIET ZONING BOARD OF  
APPEALS, CITY OF WATERVLIET BUILDING  
INSPECTOR, and PCP WATERVLIET, LLC,

Respondents.

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For a Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules



(Supreme Court, Albany County, All Purpose Term)

(Justice Kimberly A. O'Connor, Presiding)

APPEARANCES:

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Attorney for Petitioners  
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Watervliet, New York 12189

GOLDMAN ATTORNEYS, PLLC  
Attorneys for Municipal Respondents  
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Albany, New York 12203

WHITEMAN, OSTERMAN & HANNA, LLP  
Attorneys for Respondent PCP Watervliet, LLC  
(Robert L. Sweeney, Esq., Of Counsel)  
One Commerce Plaza  
Albany, New York 12260

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O'CONNOR, J.:

This Decision and Order/Judgment addresses the Petition in this Article 78 proceeding, as well as respondent PCP's application for the imposition of sanctions and costs against the petitioners. The respondents oppose the relief requested by the petitioners. In addition, the petitioners oppose the application for the imposition of sanctions and costs. It should be noted that at the oral argument before this Court regarding the preliminary injunction sought by the petitioners, the attorney for the petitioners withdrew all relief requested in the petition, except for the relief described in paragraph three of the Notice of Petition, which reads "An order to the City of Watervliet Building Inspector to notify PCP Watervliet, LLC that City of Watervliet Building Permits 13-006, 13-004, 13-002, and 13-003 are suspended pending determination of the Petitioners' appeal to the City of Watervliet Zoning Board of Appeals." The facts regarding this case have been set out in great detail in the previous Decision and Order issued by this Court on March 26, 2013. As such, the Court adopts the facts and procedural history of this case as outlined in the Court's previous Decision and Order and incorporates the same in this Decision and Order/Judgment by reference. Based upon the detail presented, and for the reasons that follow, the Court has attached a copy of the previous Decision and Order as Exhibit A to this Decision and Order/Judgment.

The only factual developments that have occurred since the issuance of the previous Decision and Order relate to the withdrawal of certain petitioners from the action, the amendment of the caption, and the progress of the demolition of the former Church. The caption noted above reflects the withdrawal of certain petitioners, and was the subject of a stipulation among the parties, that was "So Ordered" by this Court on June 20, 2013. In a conference held on April, 2013, which was requested by PCP Watervliet, LLC (hereinafter "PCP"), during which reported that demolition was

substantially complete, rendering any further action in this Article 78 proceeding, and the related case, moot, in their opinion. The municipal respondents echoed this determination. The petitioners disagreed. The Court determined that a decision regarding the remaining relief requested in the Petition, as well as the application for sanctions and costs, would be issued.

#### ARTICLE 78 PETITION

The petitioners have failed to overcome the findings previously made by this Court in the prior Decision and Order relating to the request for a preliminary injunction. The fundamental bases upon which the petitioners sued in this action were addressed by the municipal respondents and PCP in the context of the petitioners' request for a preliminary injunction. As such, in the context of the analysis required regarding a request for a preliminary injunction, the Court determined the likelihood of success on the merits of the relief sought. In the context of that analysis, the Court made specific findings determining that the petitioners would not be successful in their claims. These findings relate to the same contentions made by the municipal respondents and PCP in the context of their opposition to the Petition.

The Court adopts the findings made in the prior Decision and Order, and, thus, determines that the municipal respondents and PCP have demonstrated that the petitioners fail to state a cause of action upon which relief can be granted. This determination is made primarily based upon the Court's previous determination, which remains undisturbed, that the City of Watervliet Zoning Board of Appeals (hereinafter "ZBA") does not have jurisdiction to hear an appeal of the issuance of demolition permits by the Building Inspector. In addition, as determined by this Court in the previous Decision and Order, the respondents established that the automatic stay provision of General City Law §81-a (6) does not apply to appeals brought to the ZBA by third parties. As a

result, the petition is dismissed.

### SANCTIONS AND COSTS

Respondent PCP has moved this Court for the imposition of sanctions and costs against the petitioners. PCP alleges that this Article 78 proceeding is frivolous litigation pursuant to 22 NYCRR §130-1.1. John Nigro, Managing Member of PCP, alleges that the applications for a TRO, preliminary injunction and the entire Article 78 proceeding meet each definition of “frivolous,” as defined in 22 NYCRR §130-1.1.

The Court recognizes that several lawsuits have been filed by representatives of Citizens for St. Patrick’s, and each of the applications for temporary relief has been denied. The Court also recognizes that the respondents have had to defend each of these lawsuits at considerable expense, and that the constant barrage of litigation has caused the respondent PCP concerns regarding the continued viability of the project. The sale of the church property, the plans for redevelopment and the re-zoning of the area in question have been the subject of much public debate and, ultimately, litigation. However, while it is a close question regarding whether this most recent litigation is frivolous, the Court has determined that the respondent has not quite demonstrated that the litigation is frivolous as defined by 22 NYCRR §130-1.1. The record is clear that the litigation strategy of the petitioners is somewhat disjointed, and has resulted in multiple lawsuits being filed; however, this misguided litigation strategy does not rise to the level of frivolous litigation. As such, the application for sanctions and costs is denied.

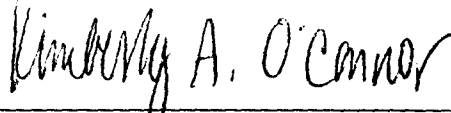
This memorandum constitutes the Decision and Order/Judgment of the Court. The original Decision and Order/Judgment is being returned to the attorney for the Respondent PCP. A copy of the Decision and Order/Judgment together with all other papers are being forwarded to the County

Clerk for filing. The signing of this Decision and Order/Judgment and delivery of the copy of the same to the County Clerk shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule with respect to filing, entry, and notice of entry of the original Decision and Order/Judgment.

**SO ORDERED.**

**ENTER.**

Dated: July 10, 2013  
Albany, New York

  
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HON. KIMBERLY A. O'CONNOR  
Acting Supreme Court Justice

**Papers Considered:**

1. Notice of Petition, dated March 11, 2013; Verified Petition, dated March 11, 2013; Affidavit of Christine Bulmer, sworn to March 11, 2013, with Exhibits A-C annexed;
2. Respondent PCP Watervliet, LLC's Verified Answer to Verified Petition, dated March 28, 2013; Affidavit of Robert L. Sweeney, sworn to March 28, 2013, with Exhibits A-E annexed;
3. Municipal Respondents' Verified Answer with Objections in Point of Law, dated March 28, 2013; Affidavit of Paul J. Goldman, sworn to March 28, 2013; Affidavit of Mark Gilchrist, sworn to March 27, 2013, with Exhibits 1-4;
4. Affidavit of John Nigro, sworn to April 24, 2013, with Exhibit A annexed; *and*
5. Affirmation of Attorney in Opposition to Application of Respondent PCP Watervliet, LLC for Fees and/or Sanctions, dated April 30, 2013.

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