

**South St. Seaport Coalition, Inc. v Landmarks
Preservation Commn. of the City of N.Y.**

2023 NY Slip Op 30104(U)

January 11, 2023

Supreme Court, New York County

Docket Number: Index No. 156106/2022

Judge: Arthur F. Engoron

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

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

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SOUTH STREET SEAPORT COALITION, INC., LINDA HELLSTROM, JOHN HELLSTROM, ZETTE EMMONS, COLLEEN ROBERTSON, Petitioners,	INDEX NO. <u>156106/2022</u> MOTION DATE <u>08/05/2022, 09/29/2022</u> MOTION SEQ. NO. <u>001, 002</u>
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- v -

LANDMARKS PRESERVATION COMMISSION OF THE CITY OF NEW YORK, CITY OF NEW YORK, 250 SEAPORT DISTRICT, LLC,

DECISION + ORDER ON MOTION

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 84, 85, 111, 112, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 132, 133, 134, 135, 136, 137

were read on this motion for CPLR ARTICLE 78 RELIEF.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 52, 53, 54, 55, 57, 59, 61, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 113, 114, 127, 128, 129, 130, 131

were read on this motion for a PRELIMINARY INJUNCTION.

Upon the foregoing documents, it is hereby ordered that the petition is granted, and the cross-motions to dismiss are denied.

In this CPLR Article 78 special proceeding petitioners seek to invalidate a Certificate of Appropriateness (“COA”) that respondent the Landmarks Preservation Commission (“LPC”) issued that would permit an affiliate of the Howard Hughes Corporation (“Hughes Corp.”) to build a 324-foot tower at 250 Water Street, located in the South Street Seaport Historic District (the “Historic District”).

Background

LPC is an independent city agency entrusted with the responsibility of preserving historically and architecturally significant buildings and districts that are of importance to the City of New York. LPC designated the Historic District in 1977. In so doing, it noted as one of its key characteristics the “dramatic contrast” between “the small-scale brick buildings” in the Historic District and the “soaring skyscrapers nearby.” NYSCEF Doc. No. 20.

At the time LPC created the Historic District, 250 Water Street was a parking lot, and it continues to be a parking lot to the present day. As the Historic District was being created, the

then-owner of 250 Water Street protested that it did not belong in the Historic District because it was only a parking lot, lacked historical significance, and should be subject to the same regulations that exist for the large-scale Southbridge Towers across the street. NYSCEF Doc. No. 21. Notwithstanding, LPC rejected the then-owner's request to remove 250 Water Street from the Historic District.

In 1989, LPC expanded the boundaries of the Historic District to include an additional city block. In so doing, it noted that the extended block's "buildings are of the same era, in the same scale and height" as those buildings already in the Historic District, and that the extended block would form a "seamless fabric with the District and enhance its physical integrity and architectural cohesiveness." NYSCEF Doc. No. 22. LPC further elaborated that:

[T]he integrity of the Extension with the Historic District is further enhanced by the clear and distinct boundaries formed by the Southbridge apartment complex on its west and by the Brooklyn Bridge on the north, and as seen from the Brooklyn Bridge the Extension is an indistinguishable part of the fabric of the South Street Seaport Historic District.

Id. at 5.

Once the Seaport Historic District was created, pursuant to New York City Administrative Code § 25-305, any developer who proposed to build there was required to obtain a COA from LPC.

Prior to the Hughes Corp., developers had tried, and failed, to obtain a COA to build high-rise buildings at 250 Water Street. Each time, LPC rejected the applications on the ground that the proposed high-rises would relate more closely to the tall buildings outside the district and thus "visually confus[e] the present clear boundary of the district." NYSCEF Doc. No. 23. In rejecting prior proposals, LPC also stated that the proposed high rises "would dominate and overwhelm the neighboring buildings in the district by virtue of [their] sheer size and boldly geometric massing" and "would cause an abrupt change in scale within the district which would be disruptive of the district's homogenous quality." Id.

At least four times, when presented with a proposal for a high-rise building at 250 Water Street, LPC rejected the proposal, always on the grounds set forth above. NYSCEF Doc. Nos. 23-25.

In January of 2018 representatives of Hughes Corp. began meeting with LPC staff about developing 250 Water Street. That June Hughes Corp. purchased the property. Freedom of Information Law ("FOIL") responses indicate that representatives of Hughes Corp. met and communicated with LPC staff continuously from January 2018 through (and beyond) October 2020, when Hughes Corp. filed its application for a COA for a 324-foot tower (the "Tower") at 250 Water Street; in fact, LPC scheduled a recurring bi-weekly "project meeting" with representatives of Hughes Corp. to discuss, *inter alia*, how to provide "political cover" for the Tower by "emphasiz[ing] [the] linkage of air rights transfer to Seaport Museum's survival." NYSCEF Doc. Nos. 3-9. Moreover, the week before the first public hearing, LPC senior staff

met privately with Hughes Corp. representatives to conduct a “practice hearing.” NYSCEF Doc. No. 6.

That first public hearing on the proposals for 250 Water Street and the Seaport Museum, which were held in tandem, was on January 5, 2021. That day Hughes Corp. representatives stressed that “the museum is under the threat of permanent closure” and that “[t]his proposal provides the museum with a secure revenue stream that will allow it to advance the first phase of restoration and reopen,” and that the proposal “combines a plan to secure the survival of the museum together with the construction of a new appropriate building.” NYSCEF Doc. No. 28. To the extent that there was any doubt that the Tower and the funding for the museum were a package deal, Hughes Corp. stressed that it “was excited about these appropriate and linked applications.” Id.

The January 5, 2021 public hearing adjourned with a plan for a follow-up public meeting the next week. Notably, the very next day, on January 6, 2021, LPC senior staff again met with Hughes Corp. representatives.

At the next public hearing, on January 12, 2021, LPC Commissioners Gustafsson and Goldblum objected to Hughes Corp. linking the survival of the Seaport Museum with approval of the proposed Tower. NYSCEF Doc. No. 29.

Rather than taking a vote on the two projects at the conclusion of the January 12, 2021 meeting, LPC Chair Carroll suggested LPC “take no action” and “ask the applicants to take some time to consider all the comments.” The private meetings between LPC senior staff and Hughes Corp. continued. NYSCEF Doc. No. 3.

The next public meeting was not held until April 6, 2021, when, once again, the funding for the Seaport Museum and the approval for the Tower were presented and considered in tandem. Hughes Corp. again stressed that the proposals “will deliver a substantial funding package to provide financial stability to the South Street Seaport Museum.” In fact, despite expressly conceding that “this may not be strictly within the purview of the Landmarks Commission,” Hughes Corp. went on to state that “we believe the goal of leveraging the available development rights in this district to create meaningful benefits for the Historic District, the museum, and the community at large is certainly consistent with the original concept, planning and preservation history of the Seaport District.” NYSCEF Doc. No. 30, at 16-17. Hughes Corp. again began its presentation by stating that it was “enthusiastic about these appropriate and linked applications.” Id.

After the public hearing on April 6, 2021, the LPC commissioners discussed the project. LPC Chair Carroll began by stating that despite “hav[ing] heard a lot in the testimony about benefits to the museum or other social benefits to the Community... these are not factors that we can consider under the Landmarks Law.” NYSCEF Doc. No. 30. Chair Carroll went on to state that she believed that the proposal for the Tower was appropriate because 250 Water Street is a vacant lot on the edge of the Historic District with tall buildings nearby. Id. Chair Carroll failed to address the fact that LPC had repeatedly rejected previous proposals for high-rise towers at the same location.

Commissioner Goldblum expressly opposed the linkage of the Seaport Museum to the Tower's approval, stating:

Tying the life of the Seaport Museum to the outcome of this application is deeply unfair and it's a devil's bargain. It's awful that the museum is in such dire straits but the museum space should not be dependent on LPC's approval of an inappropriate proposal. If the City wants to support the museum, the same legislative bodies and regulatory agencies that created the situation, the incentives and structures that allowed for it, can change the rules so that developers can monetize their assets by selling the development rights in a more appropriate way to a better site or in a way that doesn't entail the evisceration of a previous, intact Historic District.

Id. at 496-497. Commissioner Gustafsson emphatically agreed, stating "I agree with just about every word that Commissioner Goldblum uttered earlier" and added that "I don't see myself in this context as having the authority to move the line of the district in that fashion." Id. at 519-521.

Following the discussion, Chair Carroll once again declined to call a vote by LPC. Hughes Corp. and LPC senior staff then resumed their regular communications, meeting weekly until LPC conducted its final hearing on May 4, 2021. Following the hearing, LPC Commissioners voted on the two proposals, with six commissioners voting in favor, two commissioners opposing, and three commissioners recusing themselves from the vote. LPC then issued its "Findings," as required by law. NYSCEF Doc. No. 32. Nowhere in the two page "Commission Findings" does LPC acknowledge that it was departing from its previous determinations as to the permissible height of proposed developments in the Historic District, much less provide the reasoning for such departure.

Petitioners now move, pursuant to CPLR Article 78, to invalidate LPC's May 4, 2021 findings and to vacate the COA. Petitioners' arguments essentially fall into two categories: (1) that LPC violated black-letter administrative law by deviating from long-established precedent without adequately explaining its reasoning for so doing; and (2) that LPC improperly considered financial benefits to the Seaport Museum (and the inclusion of "affordable" housing) in finding the Tower to be "appropriate" in the Historic District.

Respondents cross-move to dismiss the petition.

Discussion

The law is well-settled law that "[a] decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious." Matter of Charles A. Field Delivery Serv., Inc., 66 NY2d 516, 517 (1985).

Respondents argue that the holding of Field cannot apply to LPC determinations because LPC is charged with “aesthetic” and “architectural design issues.” NYSCEF Doc. No. 112 at 17. In support of this, they cite to Stahl York Ave. Co., LLC v City of New York, 76 AD3d 290, 296 (1st Dep’t 2010), which upheld LPC’s departure from its precedent in an historic landmark (i.e., “aesthetic”) determination. However, respondents’ argument is unavailing, as Stahl specifically holds that “even where there has been a reversal of a prior administrative decision, it will be upheld if the *proffered reasons* for the reversal or modification find rational support.” Id. at 296 (emphasis added). Petitioners’ objections to the COA in this proceeding are based upon the notion that LPC failed to proffer *any* reasons for its reversal, finding that the Tower was appropriate without acknowledging that it was a direct reversal of decades of LPC precedent at the exact same location.

Since the creation of the Historic District, 250 Water Street has been a parking lot. At the time of its creation, the then-owner of 250 Water Street advocated for its removal from the Historic District for the very reason that it was a parking lot; LPC rejected this argument wholesale. LPC repeatedly rejected prior proposals to build high-rise towers at 250 Water Street despite the location being a parking lot. If LPC wanted to change its position and determine that a parking lot in a historic district could now be converted into a 324-foot tower, that is LPC’s prerogative; however, it had a legal duty to acknowledge the departure and explain its reasoning. LPC’s May 4, 2021 findings are completely silent as to this reversal, and the overall record fails to explain why a parking lot that was previously repeatedly found to be a part of the Historic District could now appropriately be the site of a high-rise tower that would loom over the remainder of the protected neighborhood.

LPC also failed to explain its departure from its “clear boundary” precedent. In at least three of its previous denials for high-rise buildings at 250 Water Street, LPC unambiguously asserted that approving such projects would “visually confus[e] the present clear boundary of the district.” NYSCEF Doc. No. 23-25. In its May 4, 2021 findings, LPC entirely fails to address this reversal.

Moreover, and contrary to respondents’ arguments, Field makes clear that its holding applies in both administrative and judicial contexts:

The policy reasons for consistent results, given essentially similar facts, are, however, largely the same whether the proceeding be administrative or judicial—to provide guidance for those governed by the determination made; to deal impartially with litigants, promote stability in the law; allow for efficient use of the adjudicatory process; and to maintain the appearance of justice. *The underlying precept is that in administrative, as in judicial, proceedings “justice demands that cases with like antecedents should breed like consequences.”*

Field, 66 NY2d at 519 (emphasis added).

The policy reasons articulated by Field further support petitioners' next argument—that the Tower's approval was the result of an impermissible quid pro quo. Petitioners' assert that allowing Hughes Corp. to consolidate the application for the Tower with the Museum's application was improper and that it influenced LPC to consider the potential benefits for the museum in approving the Tower, rather than considering the appropriateness of the tower on its own merits. This argument is supported by the record, which demonstrates extensive coordination, over a period of more than three years, between LPC and Hughes Corp. on how to provide “political cover” for the project.

In City of New York v 17 Vista Assocs., the Court of Appeals invalidated an agreement between the plaintiff City and the defendant “whereby the plaintiff, in exchange for a predetermined sum of money, would provide to defendant an expedited and favorable determination as to the SRO status of a building defendant was seeking to purchase.” 84 NY2d 299, 306 (1994) (finding agreement violated public policy and was thus unenforceable). Here, the influence of the museum funding and the “affordable” housing on the COA determination is as unmistakable as it is improper, despite the LPC Chairperson's “window-dressing” (“Ignore that man behind the curtain”) curatives.

In a Decision and Order dated August 5, 2022 in a related case (Index No. 151186/2022, NYSCEF Doc. No. 291), this Court denied and dismissed a petition against the City Planning Commission and the City Council, seeking to prevent construction of the subject proposal, essentially on the ground that as the City's ultimate legislative body, within certain guidelines the City Council can approve whatever building it wants, particularly because the City Council controls zoning. LPC is an independent organization, which casts a shadow of sorts over all of its communications with the Hughes Corp., the Council, and the Mayor's Office. More importantly, LPC is tasked with a particular mission, to wit, to preserve the historic character of designated areas and buildings. LPC has less discretion than the City Council, and here, it abused that discretion by diverging from prior practice without explaining why, and by pairing two separate applications, one of which promised to provide significant, conditional, financial assistance to the construction proposed by the other.

In the final analysis, the Citizens of New York City are entitled to feel confident that a controversial, counter-intuitive decision to allow a skyscraper to be built in a low-rise historic district, after repeated decisions disallowing such a structure, and without a coherent explanation, was made solely on the merits, and not because of a quid pro quo, even one with the laudable purpose of museum funding. The instant record does not justify any such confidence.

The Court has considered respondents' other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Thus, for the reasons stated herein, the petition is hereby granted; the cross-motions to dismiss are hereby denied; the Certificate of Appropriateness, dated May 4, 2021, issued by the Landmarks Preservation Commission to approve an application for 250 Water Street is hereby declared null and void and is vacated; and respondent 250 Seaport District LLC is hereby ordered to cease any construction work at 250 Water Street, New York, New York, absent further court order.



1/11/2023

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE