

STATE OF NEW YORK
APPELLATE DIVISION FOURTH DEPARTMENT

525-527 ORISKANY ST. LLC,
Petitioner

vs.

**MEMORANDUM OF LAW
IN OPPOSITION TO
MOTION FOR LEAVE TO
INTERVENE**

ONEIDA COUNTY BOARD OF LEGISLATORS,
ONEIDA COUNTY, JOHN DOE CORPORATIONS
AND JOHN DOES,

Index No. OP 21-00726

Respondents.

INTRODUCTION

Mohawk Valley Health System (“MVHS”) has made a motion to intervene in this action in order to make factual allegations which are not relevant to the Oneida County Board of Legislators’ (the “Board’s”) failure to follow proper procedure in condemning petitioner’s real property located at 525-525 Oriskany Street in the City of Utica (the “Property”). MVHS’s motion for leave to intervene must be denied.

ABRIDGED STATEMENT OF FACTS

This action was commenced pursuant to Article 2 of the Eminent Domain Procedure Law (“EDPL”) to set aside the May 14, 2021 Determinations and Findings of the Oneida County Board of Legislators (the “Findings”) for failure to comply with the procedural prerequisites of the EDPL and the State Environmental

Quality Review Act (“SEQRA”). The Board intends to condemn the Property for construction of a parking garage. Verified Petition, paras. 23-29.

MVHS raises its involvement in the City of Utica’s SEQRA review of its hospital project as the basis for intervention. Affirmation of Jonathan B. Fellows, Esq. dated June 7, 2021 (“Fellows Affirmation”) at para. 7. The adequacy of the SEQRA review by the City of Utica as relates to the MVHS project is not at issue in this litigation. Affirmation of Bridget O'Toole, Esq. dated June 14, 2021 (“O’Toole Affirmation”) at para. 8. Further, MVHS does not have the power of eminent domain and is not the condemnor of the Property; MVHS will not have an ownership interest in the proposed municipal garage; nor will its patrons have exclusive use of the proposed garage. O’Toole Affirmation, paras, 9-10.

POINT I
MVHS HAS NOT ESTABLISHED STANDING TO INTERVENE

MVHS has not established that it has standing to intervene in this proceeding.

Motions for leave to intervene in an original proceeding pursuant to the EDPL are governed by CPLR §1013, not CPLR §7802.

Under CPLR 1013, the court has discretion to permit any person to intervene in an action “when the person's claim or defense and the main action have a common question of law or fact.” CPLR §1013. However, a potential intervenor has no right to intervene unless the interest which it seeks to protect gives it the

necessary standing. *See, Unit. Universalist Church of Cent. Nassau v Shorten*, 64 Misc 2d 851, 856 (Nassau Co. Sup Ct 1970), *vacated*, 64 Misc 2d 1027 (Nassau Co. Sup Ct 1970) (rev'd on other grounds). The burden is, therefore, upon movants to establish that the granting of the relief requested in the petition will cause them to suffer special damage. *Unit. Universalist Church of Cent. Nassau v Shorten*, 64 Misc 2d 1027, 1029 (Nassau Co. Sup Ct 1970).

In its proposed answer, MVHS interposes no claims or affirmative defenses. Fellows Affirmation, Exhibit A. MVHS's articulated basis for intervention is that Oneida County relied on the SEQRA for the MVHS application for approval in its Findings. Fellows Affirmation, para. 7. This is patently insufficient to show standing in this proceeding. As is MVHS's self-serving, conclusory allegation that "successful completion of the parking garage project is essential to the overall success of the hospital project." Fellows Affirmation, para. 8. Contrary to MVHS's assertion, the proposed garage is not for the exclusive use of MVHS's "hospital employees, patients and their families." *See*, Affidavit of Robert Scholefield sworn to June 4, 2021 ("Scholefield Affidavit") at para. 4. Rather, the county-owned garage is meant to serve visitors to MVHS, the Adirondack Bank Center, the Nexus Center, Utica City Court and other downtown businesses and offices. AR-249-250, the Findings, at para. 5.

Accordingly, MVHS has failed to assert a special damage which entitles it to standing in this proceeding. Its motion for leave to intervene must be denied.

POINT II
INTERVENTION BY MVHS WILL NEEDLESSLY DELAY THE
PROCEEDING

In addition to the fact that MVHS does not have standing, its participation in this proceeding will cause needless delay the proceedings.

It is well settled law that intervention “should be restricted where the outcome of the matter to be determined will be needlessly delayed, the rights of the prospective intervenors are already adequately represented, and there are substantial questions as to whether those seeking to intervene have any real present interest in the property which is the subject of the dispute.” *Matter of Osman v Sternberg*, 168 AD2d 490 (2d Dept 1990). Further, the court may properly balance the benefit to be gained by intervention, and the extent to which the proposed intervenor may be harmed if it is refused, against other factors, such as the degree to which the proposed intervention will delay and unduly complicate the litigation. *Matter of Pier v Bd. of Assessment Review of Town of Niskayuna*, 209 AD2d 788, 789 (3d Dept 1994).

For example, the Second Department has held that intervention would delay the proceedings and prejudice the petitioner where intervenors seek to raise various environmental questions which are not relevant to the resolution of the issue

therein. *Patterson Materials Corp. v Zagata*, 237 AD2d 365, 366 (2d Dept 1997) (Denying of intervention by town, civic associations and local resident in action by landowner seeking mining permit against NYSDEC was proper as intervention would delay proceedings and prejudice landowner where underlying issue was whether DEC had previously granted mining permit encompassing certain property and intervenors sought to raise various environmental questions that were not relevant to resolution of that issue.). Similarly, it is inappropriate to allow intervention where the issues to be raised are not relevant to the procedural nature of the proceeding. *See, E. Deane Leonard v Planning Bd. of Town of Union Vale*, 136 AD3d 866, 868 (2d Dept 2016) (denying adjacent property owner's motion for leave to intervene when issues raised by intervenor were not relevant to procedural issue raised in petition).

Here, the issues raised in this action relate to whether respondents complied with the procedural aspects of SEQRA and the EDPL. MVHS's intervention will not add anything to the resolution of those issues as Respondents--not MVHS--were responsible with full compliance with those laws. Neither the adequacy of the City of Utica's SEQRA review of the proposed hospital project nor the benefits of the proposed hospital are at issue in this proceeding. MVHS's participation will merely slow down the resolution of this proceeding and burden the Court and the parties with details which are not relevant to the causes of action.

Accordingly, MVHS's motion for leave to intervene must be denied.

CONCLUSION

For the foregoing reasons, petitioner requests that the Court deny proposed intervenor MVHS's motion for leave to intervene for lack of standing and because it will unduly delay the proceedings and prejudice petitioner.

Dated: June 14, 2021
Rochester, New York



THE ZOGHLIN GROUP, PLLC

Bridget O'Toole, Esq.

Jacob H. Zoghlin, Esq.

Attorneys for Petitioners

300 State Street, Suite 502

Rochester, New York 14614

Tel.: (585) 434-0790

E-mail: Bridget@zoglaw.com

To: WHITE OSTERMAN & HANNA
Alan J. Goldberg, Esq.
Christopher McDonald, Esq.
Attorneys for Respondents
Via NYSCEF

BOND SCHOENECK & KING
Jonathan Fellows, Esq.
Attorneys for Proposed Intervenors
Via NYSCEF

PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman

Point size: 14

Line spacing: Double

Word Count. The total number of words in this Memorandum of Law, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service and this statement is 1,096.

Dated: June 14, 2021