

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

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In The Matter of the Application of

LANDMARK WEST!; et al.,

Petitioners,

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

- against -

AMANDA M. BURDEN, Chair of the New York City
Planning Commission; et al.,

Respondents.

-----X

STATE OF NEW YORK)

: SS:

COUNTY OF NEW YORK)

**AFFIDAVIT OF
ROBERT R.
KULIKOWSKI,
Ph.D.**

Assigned to: Hon.
Walter B. Tolub

Index No. 03/119036

IAS Part 15

ROBERT KULIKOWSKI, Ph.D. being duly sworn deposes and says:

1. I am the Director of the New York City Office of Environmental Coordination (“OEC”). I have held this position since my appointment in October 2002. My responsibilities include advising the Mayor on matters of environmental policy, assisting City agencies in carrying out their environmental review responsibilities, and serving as the City’s liaison to State and federal agencies on environmental matters. Under my direction, and in my capacity as an Assistant to the Mayor, I also prepare, execute, and review any necessary environmental review documents when the Office of the Mayor is the lead agency. Each year, this office scrutinizes hundreds of environmental assessment statements (EASs), environmental impact statements (EISs), and other environmental review documents.

2. From 1999 until 2002, I was the senior environmental policy advisor to Manhattan Borough President C. Virginia Fields, where I was involved in the environmental

review of several projects, including the Second Avenue Subway and development of the City's Solid Waste Management Plan. Before that I served as a consultant on science policy to the U.S. Nuclear Regulatory Commission and as the director of the Radiation Protection Program at the New York City Department of Health and Mental Hygiene. I performed a post-doctoral fellowship at the University of Chicago, and hold a Ph.D. in molecular biology from the State University of New York at Albany.

3. This affidavit is based on personal knowledge, the books and records of this and other City offices, and conversations with employees of this and other City offices, including the New York City Economic Development Corporation ("EDC"). This affidavit is submitted in support of the City's verified answer to the Verified Petition.

THE CITY'S ENVIRONMENTAL REVIEW OF THE 2 COLUMBUS CIRCLE PROJECT

A. Requirements Under ULURP and CEQR

4. I understand that the City intends to sell 2 Columbus Circle to EDC, who will then sell the property to the Museum of Arts and Design (the "Museum" or "MAD"). Typically, under New York City Charter Section 197(c)(10), the City must fulfill the requirements of the Uniform Land Use Review Procedure ("ULURP") prior to the disposition of a City-owned parcel of land. An environmental determination under the City Environmental Quality Review ("CEQR") is required as part of the ULURP application process, and is designed to determine whether a particular action will have a significant adverse impact on the environment. 62 RCNY §§ 5-01, et. seq.

5. On or about August 30, 2002, the Office of the Deputy Mayor for Economic Development and Rebuilding in the Office of the Mayor assumed lead agency status for the City's disposition of the building for CEQR purposes, as is the general practice when the City proposes to transfer property to EDC for sale to another party.

6. Because the Museum's proposed redevelopment of 2 Columbus Circle (the "Project") did not present any of the criteria to constitute either a Type I or Type II action, by letter dated August 30, 2002 this office determined that it was an "Unlisted" action for CEQR purposes.

B. The Environmental Assessment Statement

7. Review by the lead agency and, when applicable, other agencies that have been determined to be "involved" or "interested," is part of the CEQR process. Because the project was determined to be an "unlisted action," an EAS was prepared that analyzed the potential for any significant adverse environmental impacts resulting from the proposed project and would warrant preparation of an EIS. My staff and I participated in the oversight, preparation, and review of the EAS, which was drafted by Philip Habib & Associates, an environmental consultant.

(a) LPC's Technical Assistance

8. One purpose of a coordinated environmental review process is to allow technical agencies to offer their expert opinions. That guidance generally weighs heavily on the determination of a project's potential impacts. The opinion of the Landmarks Commission – the City agency with vast technical expertise regarding City landmarks and historic resources – is an integral component of any analysis of architectural resources set forth in an EAS. This practice reflects guidance set forth in the CEQR Technical Manual which states that "[c]onsultation with LPC is advised; LPC can assist in making determinations of eligibility...." The relevant chapter of the CEQR Technical Manual is annexed as Exhibit "B."¹ See Ex. "B", § F-322.2.

¹ Each of the exhibits referred to here are found in the accompanying "Volume of Exhibits."

9. During the preparation of the EAS, the Landmarks Commission was consulted with about the building and surrounding area during the EAS review process. On or about January 15, 2003, a draft EAS was forwarded for review and comment to interested and involved agencies, including the Landmarks Preservation Commission (“Landmarks Commission” or “LPC”). The draft EAS stated that, among other things, “although the building is eligible for NYC landmark designation, the site does not meet the criteria for designation as set forth in the New York City Landmarks Law.” Portions of the January 15, 2003, draft EAS are annexed as Exhibit “C.” See Ex. “C,” p. C-1. It also stated that the building is “eligible for New York City Landmarks Preservation Commission’s designation.” See Ex. “C,” p. C-9.

10. On or about January 24, 2003, the Landmarks Commission provided its comments on the draft EAS. LPC noted that, among other things, 2 Columbus Circle was not eligible for designation as a City landmark and specifically requested that this phrase be removed from the EAS. It also commented that there were other designated local and national landmarks within a 400 foot radius of the building. These comments were incorporated into the final EAS. As is the general practice for remarks which have significance for a project, LPCs comments were also annexed in an Appendix to the EAS.

C. The Final EAS

11. A revised and final EAS was prepared and submitted on March 18, 2003. I thoroughly reviewed and evaluated the EAS, including the chapter and other sections that examined historic resources. The EAS was also reviewed by OEC staff. I noted that LPC’s comments were incorporated into the revised EAS. The final EAS is annexed as Exhibit “D.” The Landmarks Commission’s comments are attached to the EAS as Appendix A.

12. The EAS included a completed EAS form; an overview of the areas analyzed; and a detailed analysis of the project's potential impacts upon, among other things, historic resources, traffic, transit and pedestrians, and air quality.

(a) The EAS Form

13. The CEQR EAS form sets forth the conclusions drawn by the lead agency regarding an action's potential for significant adverse impacts, including those affecting City, State or National landmarks. Here, the EAS form showed that the 2 Columbus Circle project would have no impact on any such buildings or structures at the project site.

14. Part III of the EAS form, "Environmental Assessment and Determination," noted that the project would have no significant adverse impacts on historic resources. This conclusion was based upon my review of the whole record, including, importantly, the input received from the Landmarks Commission.

(b) The Extensive Historic Resources Analysis

15. Based on my experience and knowledge, an environmental assessment of a potential architectural resource should include research and documentation on, among other things: historically significant events and patterns of activity associated with the property; periods of time during which property was in use; historically significant persons associated with the property; whether the property represents a style, period or method of construction; persons responsible for design or construction of the property; and the quality of style, design, workmanship and materials. It should also include enough information (including description, maps and photographs) so that a decision concerning the significance of the resources using the National Register and local criteria can be made. When discussing architectural resources that are potentially significant, design elements that contribute to the structure's architectural importance should also be noted. I also know that it is appropriate for the lead agency to make a

determination regarding any such potential resource and if any potential architectural resources are identified, the future without the proposed action as well as impacts caused by the action should be assessed. Thereafter, it is appropriate to determine whether the action will result in any significant adverse impacts.

16. As outlined below, the EAS identified and scrutinized the areas for consideration, and reached a rational conclusion about any impacts based on both the assessment and consultation with LPC.

17. First, the EAS included extensive documentation of the building, including, among other things, seven photographs of its interior and exterior. See Ex. “D,” Figures C-3, 4a, 4b, 4c, 6, 7a, 7b. It also included the ground floor plan and the sectional layout of the building. See Ex. “D,” Figures C-5a, 5b.

18. In the “Analyses” Chapter, the EAS discussed a wide variety of potential impacts related to the project, including issues related to land use and zoning, socioeconomic conditions, community facilities and services, open space, shadows, historic resources, urban design and visual resources, neighborhood character, natural resources, hazardous materials, infrastructure, solid waste and sanitation services, energy, traffic and parking, transit and pedestrians, air quality, noise, construction impacts, and public health. See Ex. D, Attachment B.

19. An overview of the historic resources analysis discussed the building’s current conditions and historic uses. It noted, among other things, that in 1996, the LPC’s Research Department and Designation Committee carefully reviewed the building’s architectural merits and its historical and cultural associations, and declined to recommend the building to the full Commission for consideration. It also stated that, because of this review, the building is not eligible for designation as a City Landmark. See Ex. “D,” pp. B6-7.

20. A lengthy chapter of the EAS, titled “Historic Resources,” closely evaluated the building’s status as an architectural resource, and examined the potential for any adverse impacts upon, among other things, any significant architectural features and cultural associations of the building. Potential impacts on historic resources near the project site - such as buildings with landmark status, Central Park, and buildings eligible for LPC designation and inclusion on the State and National Registers of Historic Places - were also examined. See Ex. “D,” p. C-2.

21. This chapter also analyzed the historical development of Columbus Circle and the surrounding area and the development of the building at 2 Columbus Circle. It discussed the existing conditions of both the building and of other historic resources in the area; the anticipated future of the site without the proposed action; and probable impacts of the project on historic resources. See Ex. “D,” pp. C-2 – 11.

22. The EAS described the building at 2 Columbus Circle as “a unique and highly controversial structure that has inspired spirited debate about urban design since its construction in 1964.” Ex. “D,” p. C-1. In that vein, it extensively discussed both the form and the historic connotations of the building. See Ex. “D,” pp. C-1, 11. Among other things, the EAS stated that the “poured concrete structure ... is sheathed in white, gray-veined Vermont marble” and “is a compact, slender structure that features an almost windowless façade with distinctive Middle Eastern-influenced filigreed masonry details.” Ex. “D,” p. C-4. It described the lattice of “[s]mall, porthole-like windows lining the building’s outer edges” as well as the “open concrete Venetian-inspired arcade with lollipop-like columns” at its base, the inlays of “[c]ircular panels of red granite,” and the “second more elegant open Venetian-styled arcade or loggia [that] encircles the building at its eighth and ninth stories.” Ex. “D,” pp. C-4, 5.

23. The EAS also discussed the building's interior design. See Ex. "D," pp. C-5, 6. It recognized, among other things, that the interior spaces of the building are "highly unique" and "expertly manipulated," and noted that, following the building's anti-modernist motif, "no expense was spared on the elaborate details" in an attempt to "make the museum's visitors/patrons feel as if they were at home or at an exclusive club surrounded by luxury." Ex. "D," p. C-5. The EAS stated that "[m]ost of the building's gallery spaces were richly decorated and had beautifully paneled walls of macassar ebony or walnut, and thick red and gold carpeting and/or parquet wood floors." Ex. "D," p. C-6.

24. The EAS examined both the building and the varied opinions concerning its controversial beginnings. It noted that, among other things, it was commissioned by "the high-profile A & P supermarket heir Huntington Hartford in 1955" and "envisioned to be a monumental structure and a major cultural institution and anti-modernist art gallery." Ex. "D," p. C-4. It remarked on Hartford's intent to "counter and contrast the Museum of Modern Art's (MOMA) and the Guggenheim Museum's bias toward the reductionist modern art movement" and establish "a place where the public could come to 'get another point of view' on the contemporary art world." *Id.* It recognized the building as the work of Edward Durell Stone, whom it described as "one of America's most important and admired architects" of the era, and noted that the building "evolved from [his] own personal architectural style." *Id.* It stated that the building is "a distinctive structure that does not represent any one stylistic category of the times, but is an attempt to challenge the Modernistic aesthetic development style that dominated post WWII architecture in the 1950s and early 1960's," and is "one of the first and most notable oppositions to the typically simplistic Modernist form and stringent International architectural style." Ex. "D," p. C-5.

25. The EAS also addressed the limited functionality of the building. The EAS explained that “[a]lthough the building ... is a most unusual structure that has endured a significant amount of public scrutiny, praise and criticism ... [it] was specifically designed to accommodate its intended use and client, Huntington Hartford.” *Id.* It then recited the building’s subsequent, unremarkable history, including its abandonment by Hartford and others, its use as an art gallery and as offices, and periods when it was vacant. See Ex. “D,” p. C-6. It stated that the building “never attained the status of a major cultural center and attraction in New York. Financial crises and the building’s unusual interior and exterior design have led to the slow deterioration and abandonment of the site.” Ex. “D,” p. C-4. Thus, “[m]uch of the building’s exterior marble facades are in poor condition and crumbling.” Ex. “D,” p. C-6.

26. Since the building was considered a potential architectural resource, the chapter contained sections on the future of the site in 2005 (the build year) without the proposed project, and one on the probable impacts of the project. In the “no action” section, the EAS stated that the building “will most likely remain vacant” even as Columbus Circle undergoes significant redesign and redevelopment. Ex. “D,” p. C-9.

27. In the section examining the probable impacts of the project, it stated that the renovation of 2 Columbus Circle is “intended to benefit the site and complement the site’s colorful history, as well as further the redevelopment of Columbus Circle.” *Id.* Indeed, this section stated:

The proposed relocation of MAD to Two Columbus Circle would adaptively reuse, refurbish, renovate and potentially expand a long-neglected, deteriorating structure, and establish a cultural hub at Columbus Circle. An accessory restaurant, museum store, 154-seat auditorium, and artist studio space, as well as a Center for the study of Contemporary Craft have all been proposed to be

housed within the reuse of the existing structure....The entire building would be fully occupied.

Ex. "D," p. C-10.

28. This section disclosed that the building is "an important historic civic structure in northern Midtown Manhattan that stands out among the high-rise residential and/or office buildings in Midtown." Ex. "D," pp. C-10. It also noted that since the Project will maintain the mass and form of the building it "is not expected to significantly change the existing structure." *Id.* Nonetheless, the EAS noted that LPC had reviewed the "building's architectural merits and its historical and cultural associations" and, despite the foregoing, declined to recommend it for consideration as a landmark. *Id.*

29. The Historic Resources analysis in the EAS concluded that the "proposed project is not expected to result in any adverse impacts." Ex. "D," pp. C-10, 11. This finding was based upon, and fully supported by, the totality of the record, including the analysis set forth in the EAS and input received from the Landmarks Commission.

30. The input and comments received from the Landmarks Commission during the environmental review for this project were an important part of my consideration because LPC serves as the City's technical expert in matters involving architectural resources. That the Landmarks Commission had previously reviewed the building's architectural merits and declined to recommend this more than 30-year old building for further review as a landmark was an important consideration. It was also significant that the LPC requested that the draft EAS statement that the building is eligible for designation as a landmark be removed because it "is not eligible for [LPC] designation."

31. Additional consideration was given by me to the fact that the EAS determined that while the façade would be altered by the project, the structure's height, bulk and

footprint would not be significantly changed, and, among other things, the fact that work to the building was unlikely to cause any significant adverse impacts to the actual, designated historic resources within its immediate vicinity.

D. The Negative Declaration

32. By memorandum dated March 26, 2003, I issued a Negative Declaration, declaring that the proposed sale of 2 Columbus Circle to the Museum would not have a significant adverse impact on the environment. The Negative Declaration is annexed as Exhibit “E.”

33. The finding was based on this office’s review of the entire record. The Negative Declaration explained, among other things, that the project would not result in any significant adverse impacts in several areas that were studied in the EAS including, land use and zoning, urban design and visual resources, or traffic. See Ex. “E,” pp. 2 - 3. It described many of the improvements that would accompany the project, and referred to the findings in the EAS. See Ex. “E,” pp. 1 - 2.

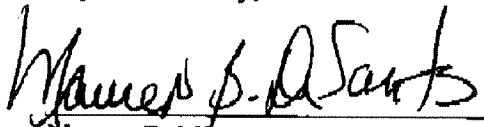
34. There was no need to again discuss “Historic Resources” since the EAS extensively discussed the building and contained input from the LPC; found that the building was an “important historic civic structure” that would not be changed significantly; and determined that the project would not result in any related significant adverse impacts. Indeed, referring to each individual EAS finding in the Negative Declaration would be both burdensome and unnecessary since the EAS is incorporated into the body of the document. See Ex. “E,” p. 2.

35. In sum, the findings in the EAS and the Negative Declaration were fully supported by the hard look taken of the building's potential as an architectural resource and the other potential impact areas, as is required by CEQR.

Dated: New York, New York
February 2, 2004


ROBERT R. KULIKOWSKI, Ph.D.

Sworn to before me this 2nd
day of February, 2004.


Notary Public
2nd February 2004

MAUREEN B. DESANTIS
Notary Public, State of New York
No. 01DE5048991
Qualified in Kings County
Commission Expires 9/3/05