

STATE OF NEW YORK : APPELLATE DIVISION
SUPREME COURT : FOURTH DEPARTMENT

In the Matter of the Application of

NIAGARA FALLS REDEVELOPMENT, LLC, and
BLUE APPLE PROPERTIES, INC.,

Petitioners,

-vs-

Docket No.:
OP23-00057

THE CITY OF NIAGARA FALLS,

Respondent.

ANSWER AND OBJECTIONS IN POINT OF LAW/DEFENSES

Respondent the CITY OF NIAGARA FALLS (the “City”), by and through its attorneys Hodgson Russ LLP, for its answer to the Petition filed January 6, 2022, states as follows:

1. Admits that Petitioners are the owners of the referenced parcels in fee simple that are at issue in the proceeding (together, the “Property”), and denies knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 1.
2. Admits the allegations in paragraph 2.

3. The allegations in paragraph 3 state a legal conclusion to which no response is required. To the extent a response is required, those allegations are denied.

4. The allegations in paragraph 4 state a legal conclusion to which no response is required. To the extent a response is required, those allegations are denied.

5. Denies the allegations in paragraph 5.

6. Denies the allegations in paragraph 6. The City complied with the procedures set forth in the New York Eminent Domain Procedure Law (“EDPL”) by timely adopting determination and findings condemning the property, and then publishing notice of the same in the Niagara Gazette. The Project — a proposed public park — clearly has a public benefit use, or purpose, as explained at the public hearings and as set forth in the City’s determination and findings. Lastly, the condemnation of the Property is not an improper excess taking and condemned only that Property that was necessary for to build the Centennial Park project.

7. With respect to the allegations in paragraph 7, admits the City and Petitioners have met, from time to time, to discuss Petitioners’ proposed plans

for its use of the Property over the past twenty five years of Petitioners' ownership of the same, though no such plans have ever been implemented and the Property has sat vacant for the entirety of that time, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in said paragraph.

8. With respect to the allegations in paragraph 8, admits the City and Petitioners have met, from time to time, to discuss Petitioners' proposed plans for its use of the Property, denies Petitioners' characterizations of those meetings, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in said paragraph.

9. With respect to the allegations in paragraph 9, states the document referenced therein speaks for itself and refers to that document for its contents, and denies the remaining allegations in said paragraph.

10. With respect to the allegations in paragraph 10, admits that any written submissions Petitioners made to the City speak for themselves and refers to those submissions for their contents, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in said paragraph.

11. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11.

12. With respect to the allegations in paragraph 12, admits the Niagara Falls City Council imposed a Commercial Data Center Moratorium on or about December 21, 2021, admits that moratorium was subsequently extended beyond its initial six-month period, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in said paragraph.

13. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 13.

14. Denies the allegations in paragraph 14.

15. With respect to the allegations in paragraph 15, admits that, from time to time, the City and Petitioners have had engaged in various discussions regarding development opportunities in the City of Niagara Falls, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in said paragraph.

16. With respect to the allegations in paragraph 16, admits that, from time to time, Petitioners proposed various alternative locations for the

Centennial Park project, denies that those locations were/are appropriate for the project, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in said paragraph.

17. With respect to the allegations in paragraph 17, admits the City rejected Petitioners' proposal to build a data center on the Property because, among other things, it would require the displacement of numerous existing buildings, homes, and streets, admits the City proposed an alternate development location for Petitioners' data center, which Petitioners unreasonably rejected, and denies the remaining allegations in said paragraph.

18. With respect to the allegations in paragraph 18, state the City's synopsis of its determination and findings speaks for itself and refers to that document for its contents, denies that the City's proposed alternative development location was unsuitable for Petitioners' data center, denies that Petitioners negotiated with the City in good faith concerning that proposed alternative, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in said paragraph.

19. With respect to the allegations in paragraph 19, state the notice referenced therein speaks for itself and refers to that document for its contents,

denies Petitioners' characterization thereof, and denies the remaining allegations in said paragraph.

20. With respect to the allegations in paragraph 20, admits the City held a public hearing on June 29, 2022, where, among other things, the public use and purpose for the condemnation of the Property and the Centennial Park project was discussed, denies Petitioners' characterization of what occurred at that meeting, and denies the remaining allegations in said paragraph.

21. With respect to the allegations in paragraph 21, states the public hearing transcript speaks for itself and refers to that transcript for its contents, admits the City presented a detailed and informative vision of the Centennial Park Project at that hearing, including explaining the public use and purpose it would serve, and denies the remaining allegations in said paragraph.

22. With respect to the allegations in paragraph 22, states the public hearing transcript speaks for itself and refers to that transcript for its contents, denies Petitioners' characterization of the testimony at that hearing, and denies the remaining allegations in said paragraph.

23. With respect to the allegations in paragraph 23, states the public hearing transcript speaks for itself and refers to that transcript for its contents,

denies Petitioners' characterization of the testimony at that hearing, and denies the remaining allegations in said paragraph.

24. With respect to the allegations in paragraph 24, states the public hearing transcript speaks for itself and refers to that transcript for its contents, denies Petitioner's characterization of the testimony at that hearing, and denies the remaining allegations in said paragraph.

25. With respect to the allegations in paragraph 25, states the public hearing transcript speaks for itself and refers to that transcript for its contents, denies Petitioner's characterization of the testimony at that hearing, and denies the remaining allegations in said paragraph.

26. With respect to the allegations in paragraph 26, states the notice referenced therein speaks for itself and refers to that notice for its contents, denies that the City failed to present any plans for the Centennial Park project at the public hearings, as evidenced by the transcripts of those hearings discussing those plans, and denies the remaining allegations in said paragraph.

27. With respect to the allegations in paragraph 27, states the transcript of the September 6, 2022, public hearing speaks for itself and refers to

that transcript for its contents, denies Petitioners' characterization of the testimony at the hearing, and denies the remaining allegations in said paragraph.

28. With respect to the allegations in paragraph 28, states the public hearing transcript speaks for itself and refers to that transcript for its contents, denies Petitioners' characterization of the testimony at the hearing, and denies the remaining allegations in said paragraph.

29. With respect to the allegations in paragraph 29, states the public hearing transcript speaks for itself and refers to that transcript for its contents, denies Petitioners' characterization of the testimony at the hearing, and denies the remaining allegations in said paragraph.

30. With respect to the allegations in paragraph 30, admits that Centennial Park is being proposed for a public use and purpose, states the public hearing transcript speaks for itself and refers to that transcript for its contents, including its discussion of the public purpose for the Centennial Park project, denies Petitioners' characterization of the testimony at the hearing, and denies the remaining allegations in said paragraph.

31. With respect to the allegations in paragraph 31, states the document referenced therein speaks for itself and refers to that document for its

contents, denies the document's characterization of the City's actions, and denies the remaining allegations in said paragraph.

32. With respect to the allegations in paragraph 32, states the document referenced therein speaks for itself and refers to that document for its contents. The remaining allegations in paragraph 32 state one or more legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

33. With respect to the allegations in paragraph 33, states the document referenced therein speaks for itself and refers to that document for its contents, denies Petitioners' characterization of the same, and denies the remaining allegations in said paragraph.

34. Denies the allegations in paragraph 34.

35. Denies the allegations in paragraph 35.

36. With respect to the allegations in paragraph 36, states the document referenced therein speaks for itself and refers to that document for its contents, and denies the remaining allegations in said paragraph.

37. The allegations in paragraph 37 do not contain any affirmative statement(s) of fact, meaning no responsive answer is required. To the extent a response is required, those allegations are denied.

38. Denies the allegations in paragraph 38.

39. Denies the allegations in paragraph 39.

40. With respect to the allegations in paragraph 40, states the document referenced therein speaks for itself and refers to that document for its contents, and denies the remaining allegations in said paragraph.

41. With respect to the allegations in paragraph 41, states the document referenced therein speaks for itself and refers to that document for its contents, and denies the remaining allegations in said paragraph

42. Denies the allegations in paragraph 42.

43. With respect to the allegations in paragraph 43, denies the City failed to consider alternative locations for the Centennial Park Project, as evidenced by the contents of the determination and findings, and denies the remaining allegations in said paragraph.

44. The allegations in paragraph 44 state one or more legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

45. Denies the allegations in paragraph 45.

46. With respect to the allegations in paragraph 46, states the document referenced therein speaks for itself and refers to that document for its contents, denies that Petitioners' proposed alternative location for the Project was viable, and denies the remaining allegations in said paragraph.

47. Denies the allegations in paragraph 47.

48. Denies the allegations in paragraph 48.

49. Denies the allegations in paragraph 49.

50. Denies the allegations in paragraph 50.

51. With respect to the allegations in paragraph 51, repeats and realleges the preceding paragraphs as if fully set forth herein.

52. Admits the allegations in paragraph 52.

53. Admits the allegations in paragraph 53.

54. Denies the allegations in paragraph 54. EDPL § 204(A) only required the City to adopt its determination and findings within 90 days of the public hearing, and thereafter comply with the statute's publication requirements for those findings, which the City did. The timing of the publication of the City's determination and findings, which was in part determined by the publishing schedule of the official newspaper (the Niagara Gazette), has no effect on the validity of those findings, and is relevant only for purposes of determining when the 30-day statute of limitations begins to run for Petitioner to challenge the same under EDPL § 207(a).

55. Admits the allegations in paragraph 55.

56. Denies the allegations in paragraph 56.

57. Denies the allegations in paragraph 57

58. With respect to the allegations in paragraph 58, repeats and realleges the preceding paragraphs as if fully set forth herein.

59. The allegations in paragraph 59 state one or more legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

60. The allegations in paragraph 60 state one or more legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

61. With respect to the allegations in paragraph 61, states the document referenced therein speaks for itself and refers to that document for its contents, and denies the remaining allegations in said paragraph.

62. With respect to the allegations in paragraph 62, states the document referenced therein speaks for itself and refers to that document for its contents, and denies the remaining allegations in said paragraph.

63. Denies the allegations in paragraph 63.

64. Denies the allegations in paragraph 64.

65. Denies the allegations in paragraph 65.

66. With respect to the allegations in paragraph 66, repeats and realleges the preceding paragraphs as if full set forth herein.

67. The allegations in paragraph 67 state one or more legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

68. Denies the allegations in paragraph 68.

69. Denies the allegations in paragraph 69.

70. Denies the allegations in paragraph 70.

71. With respect to the allegations in paragraph 71, states the document referenced therein speaks for itself and refers to that document for its contents, and denies the remaining allegations in said paragraph.

72. Denies the allegations in paragraph 72.

73. Denies the allegations in paragraph 73.

74. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 74.

75. Denies any and all allegations not specifically denied, responded to, or otherwise controverted herein.

76. Denies all allegations in the prayer for relief, including in the MISCELLANEOUS and WHEREFORE clauses.

OBJECTIONS IN POINT OF LAW/DEFENSES

77. The Petition fails to state a claim upon which relief may be granted.
78. Petitioners failed to raise certain of their claims and arguments during the public hearings, thus precluding judicial review of those claims.
79. Petitioners raise claims and issues that are not properly before this Court as they are outside of the scope of judicial review under Section 207 of the Eminent Domain Procedure Law.
80. Petitioners lack standing to assert some or all of the claims raised herein.
81. The City complied fully with the procedural and substantive requirements of the EDPL.
82. The City properly provided the Petitioners with notice of the public hearing held under Article 2 of the EDPL, and Petitioners' counsel appeared and participated in the public hearings held on June 29, 2022, and September 6, 2022, as reflected in the transcripts of those public hearings.
83. Pursuant to EDPL § 204(A), the City was required, within ninety days after the conclusion of the public hearings held under EDPL Article 2,

to “make its determination and findings concerning the proposed public project,” and then must “publish a brief synopsis of such determination and findings in at least two successive issues of an official newspaper if there is one designated in the locality where the project will be situated” The City complied with these requirements.

84. Petitioners’ claims concerning just compensation, if any, are not ripe for review.

85. The City reserves the right to supplement these objections in point of law/defenses.

WHEREFORE, respondent the City of Niagara Falls demands judgment as follows:


(1) dismissing the Petition in its entirety, with prejudice, together with an award of the costs and disbursements of this proceeding;

(2) upholding the determination and findings issued by the respondent the City of Niagara Falls; and

(3) granting such other and further relief as the Court deems just and proper.

Dated: January 28, 2023
Buffalo, New York

HODGSON RUSS LLP
Attorneys for Respondent
City of Niagara Falls

By: 
Daniel A. Spitzer, Esq.
Joel J. Terragnoli, Esq.
140 Pearl Street, Suite 100
Buffalo, New York 14202
(716) 848-1754
dspitzer@hodgsonruss.com
jtterragn@hodgsonruss.com