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COUNTY OF ERIE

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COUNTY EXECUTIVE
DEPARTMENT OF LAW

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FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

November 6, 2014

Ms. Karen McCarthy, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Ms. McCarthy:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Wilfred Turner, Joel Giambra and Joseph Golombek, Jr. v. County of Erie, et al.*
Document Received:	Verified Petition
Names of Petitioners:	Wilfred Turner, Joel Giambra & Joseph Golombek, Jr.
Petitioners' attorney:	Richard G. Berger, Esq. 705 Brisbane Building 403 Main Street Buffalo, New York 14203

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

MAS:dld

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

This paper received at the
Erie County Attorney's Office
from Richard Berger on
the 3 day of Nov., 2014
at 4:24 a.m./p.m.
Assistant County Attorney

IN THE MATTER OF THE APPLICATION OF
WILFRED TURNER, JOEL GIAMBRA, &
JOSEPH GOLOMBEK, JR.,

Petitioners,

vs.

COUNTY OF ERIE,
ERIE COMMUNITY COLLEGE, a part of the
STATE UNIVERSITY OF NEW YORK, and
TRUSTEES OF THE STATE UNIVERSITY OF NEW YORK,

Respondents.

For review, pursuant to Article 78 of the CPLR, of a
Decision not to prepare an Environmental Impact
Statement, pursuant to the New York State
Environmental Quality Review Law, ECL Article 8

NOTICE OF PETITION

Index No. 2014-000191

PLEASE TAKE NOTICE that on the petition of WILFRED TURNER, JOEL GIAMBRA, and JOSEPH GOLOMBEK, Jr., verified the 24th day of October, 2014, and the exhibits attached thereto, copies of which are herewith served upon you, let the Respondents or their attorneys show cause at a Special Term of the Supreme Court for the County of Erie to be held at 25 Delaware Ave., Buffalo, New York before the Hon. Jeremiah J. Moriarty, III on the 11th day of November, 2014, Part 15, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why a judgment should not be entered herein enjoining the Respondents from proceeding with the construction of a building for Erie Community College dedicated to Science, Technology, Engineering and Math, until Respondents have complied with the New York State Environmental Quality Review Act, E.C.L. Article 8, and for such other and further relief as may be just.

PAID
10/27/2014 16:46:40
ERIE COUNTY CLERK
RCPT # 14173895
I 2014000191

Dated: October 24, 2014
Buffalo, New York

RICHARD G. BERGER, ESQ.
FRANCIS C. AMENDOLA, ESQ.
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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

IN THE MATTER OF THE APPLICATION OF
WILFRED TURNER, JOEL GIAMBRA, &
JOSEPH GOLOMBEK, JR.,

Petitioners,

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PETITION

Index No.

The Petitioners, WILFRED TURNER, JOEL GIAMBRA, and JOSEPH GOLOMBEK, JR., by their attorneys, Richard G. Berger, Esq. and Francis C. Amendola, Esq., for their Petition against the Respondents, allege as follows:

THE ISSUE OF THIS LAWSUIT

1. The Respondents, with the County of Erie as lead agency, propose to construct a new Science, Technology, Engineering & Mathematics (STEM) Building on the campus of the Erie County Community College located at 6205 Main Street, Amherst, New York 14221. The Respondents propose to build a building at a cost of $30,000,000.00. The building itself will occupy approximately 110,000 square feet fronting on Youngs Road. (See **Exhibit 1**)

2. The Respondents propose to undertake this construction in direct violation of the New York State Environmental Quality Review Act ("SEQRA"), Environmental Conservation

Law Article 8. The proposed project is a major undertaking of the County of Erie, the Erie Community College and the State of New York.

3. The adoption of a negative declaration by the Respondents on July 10, 2014, declaring that no Environmental Impact Statement was necessary for the proposed project, violated SEQRA. **(Exhibit 2)** The Petitioners are requesting a preliminary injunction enjoining the construction of the proposed facility until completion of the proper Environmental Impact Statement.

THE PARTIES

4. Petitioner, WILFRED TURNER, was and is at all times relevant to the instant Petition a resident of the City of Lackawanna, County of Erie, New York. Petitioner is a full-time registered student at Erie County Community College

5. Petitioner, JOEL GIAMBRA, at all times mentioned herein, has been a resident of the City of Buffalo, County of Erie and State of New York. JOEL GIAMBRA has been a member of the Buffalo City Council, Comptroller of the City of Buffalo, and for eight years, from 2000 through 2007, was the County Executive of the County of Erie, New York.

6. Petitioner, JOEL GIAMBRA, is a graduate of Erie County Community College, and has maintained a keen interest in its mission, well-being and future.

7. The Petitioner, JOSEPH GOLOMBEK, Jr., is and was, at all times herein mentioned, a resident of the City of Buffalo, County of Erie and State of New York. Since 2000, Petitioner GOLOMBEK has been a member of the City Council of the City of Buffalo for the North District.

8. The Respondent, COUNTY OF ERIE, is a municipal Corporation existing under the laws of the State of New York. Hon. Mark C. Poloncarz is the County Executive of the County of Erie.

9. The Respondent, ERIE COMMUNITY COLLEGE, (ECC) is, upon information and belief, a not-for-profit educational corporation under the auspices of the COUNTY OF ERIE. ERIE COMMUNITY COLLEGE is a part of the State University of New York.

10. ERIE COMMUNITY COLLEGE was chartered by the legislature of the State of New York in 1946 as a two-year junior college. In 1948 it became a part of the State University of New York. In 1953 the COUNTY OF ERIE assumed sponsorship of ECC. Currently, ECC maintains three campuses; one in the Town of Amherst, one in the City of Buffalo, and one in the Town of Orchard Park. The President of ECC is Jack Quinn. ECC is the second largest institution of higher education in Western New York, serving over 14,000 students.

11. The Amherst campus (also known as the "North" campus) of ECC is located at 6205 Main St. in the Town of Amherst, New York. This campus is bounded by Main Street on the north, Youngs Road on the west and is Wehrle Drive on the South.

12. The Buffalo campus of ECC is located at 121 Ellicott St., Buffalo, NY 14203 in the former Post Office building, a site that is listed on the National Register of Historic Places. The Buffalo campus contains a large athletic facility and is located in the heart of downtown Buffalo.

13. The Orchard Park campus (also known as the "South" or "Southtowns" campus) of ECC is located at 4041 Southwestern Blvd., Orchard Park, New York 14127.

14. Respondent, TRUSTEES OF THE STATE UNIVERSITY OF NEW YORK (hereinafter referred to as "Trustees") is the governing body of the State University of New York

(hereinafter referred to as "SUNY"). SUNY is a public corporation established pursuant to § 353 of the Education Law. Pursuant to E.L. § 353, SUNY is governed by the TRUSTEES.

BACKGROUND

15. In 2011, the Respondents agreed to build a major facility as part of the ECC complex, to focus on the areas of Science, Technology, Engineering and Math, (STEM) at a cost of $30 million. The proposal was to create a state-of-the-art facility to train students for jobs available in the emerging areas of medical technology, computer science, and the other jobs requiring highly technical skills.

16. On August 27, 2013 the Respondents, ECC and COUNTY OF ERIE executed a Memorandum of Understanding agreeing to construct the new STEM building at the North campus of ECC. **(Exhibit 3)**

17. On July 19, 2013, the COUNTY OF ERIE, acting as Lead Agency under SEQR, issue a "REQUEST FOR PROPOSAL (RFP) TO PREPARE APPROPRIATE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW (SEQR) DOCUMENTS ASSOCIATED WITH CONSTRUCTION OF A NEW ACADEMIC BUILDING FOR ERIE COMMUNITY COLLEGE. (RFP# 1321VF)" The proposal sought bids to prepare the environmental review for the proposed STEM building, as required by SEQR. **Attached as Exhibit 4.**

18. The RFP described the proposed project as follows:

> "A new Science, Technology, Engineering, and Math (STEM) building is proposed for Erie Community College. Funds are available to construct an approximate 56,700 gross square foot structure. A possible future expansion to 110,000 gross square feet has been agreed to by Erie Community College and Erie County. Given the uncertainty of funding, the expansion would likely be undertaken via a separate design and construction process. For the purposes of SEQR however, the project (action) assumes the

> immediate construction of the larger 110,000 square foot building would serve primarily STEM program classrooms, labs, and ancillary space.
>
> Erie Community College and Erie County have identified the Erie Community College North Site as the preferred alternative. Attachment 1 to this Exhibit graphically describes the suggested location within the campus." (RFP Page 13)

19. Respondent, COUNTY OF ERIE, was designated Lead Agency for the purposes of compliance with SEQRA, pursuant to ECL §8-0111(6).

20. Upon information and belief, on November 11, 2013, the Respondents, with the COUNTY OF ERIE as lead agency, entered into a contract with Fisher Associates, a New York State consulting group, to prepare the necessary environmental documents for the project in order to comply with SEQR.

THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT

21. In 1976, the New York State Legislature enacted the Environmental Quality Review Act (SEQR), Article 8 of the Environmental Conservation Law, declaring State policy to be one which

> "will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state." (E.C.L. §8-0101).
>
> Pursuant to §8-0105(6), "Environment" is defined as,
>
> "The physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or esthetic significance, ***existing patterns of population, concentration, distribution, or growth, and existing community and neighbor character.***"

22. In enacting SEQRA, the Legislature of New York State gave protection of the environment high priority.

> "It is the intent of the Legislature that ***to the fullest extent possible*** the policies, statutes, regulations, and ordinances of the state, and its political subdivisions should be interpreted and administered in accordance with the policies set forth in this article."
> **ECL §8-0103(6)**

23. The Legislature further found that,

> "7. It is the intent of the legislature that the protection and enhancement of the environment, human and community resources shall be given appropriate weight with social and economic considerations in public policy. Social, economic, and environmental factors shall be considered together in reaching decisions on proposed activities. **ECL §8-0103(7)**

24. In order to accomplish the goals set forth in the Act, the Legislature required every state agency to prepare a detailed environmental impact statement for every major action which may have a significant effect upon the environment.

> **§8-0109(2)** "All agencies (or applicant as hereinafter provided) shall prepare, or cause to be prepared by contract or otherwise an environmental impact statement on any action they propose or approve ***which may have a significant effect on the environment.*** Such a statement shall include a detailed statement setting forth the following:
> (a) a description of the proposed action and its environmental setting;
> (b) the environmental impact of the proposed action including short-term and long-term effects;
> (c) any adverse environmental effects which cannot be avoided should the proposal be implemented;
> (d) alternatives to the proposed action;
> (e) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;
> (f) mitigation measures proposed to minimize the environmental impact;
> (g) the growth-inducing aspects of the proposed action, where applicable and significant;
> (h) effects of the proposed action on the use and conservation of energy resources, where applicable and significant, provided

that in the case of an electric generating facility, the statement shall include a demonstration that the facility will satisfy electric generating capacity needs or other electric systems needs in a manner reasonably consistent with the most recent state energy plan;

(i) effects of proposed action on solid waste management where applicable and significant; and

(i) effects of any proposed action on, and its consistency with, the comprehensive management plan of the special groundwater protection area program, as implemented by the commissioner pursuant to article fifty-five of this chapter; and

(j) such other information consistent with the purposes of this article as may be prescribed in guidelines issued by the commissioner pursuant to section 8-0113 of this chapter.

Such a statement shall also include copies or a summary of the substantive comments received by the agency pursuant to subdivision four of this section, and the agency response to such comments. The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake or approve such action. Such statement should be clearly written in a concise manner capable of being read and understood by the public, should deal with the specific significant environmental impacts which can be reasonably anticipated and should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts.

25. SEQR's requirement for a full Environmental Impact Statement is triggered if there may be only one, single significant adverse environmental effects of the proposed project. SEQR does not require that there be multiple effects in order to mandate an EIS. Nor does the one, single significant adverse environmental effect have to be definite. The language of the statute requires an EIS if the governmental action "***may have a significant effect upon the environment.***" **ECL §8-0109(2)** One of the purposes of the Impact Statement is to determine the severity and the significance of likely adverse environmental effects.

26. The statements of SEQRA are not only procedural, they also have substantive effect.

> E.C.L. §8-0109(8) "When an agency decides to carry out or approve an action which has been the subject of an environmental impact statement, it shall make an explicit finding that the requirements of this section have been met and that consistent with social, economic and other essential considerations, *to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided.*"

27. Pursuant to SEQRA, the Commissioner of Environmental Conservation has issued regulations defining criteria for determining whether or not a proposed action may have a significant effect upon the environment and for identifying actions or classes of actions that are likely to require preparation of environmental impact statements. E.C.L. §8-0113(2)(b)(c) The regulations of the Department of Environmental Conservation for SEQRA are contained in 6 N.Y.C.R.R. Part 617.

28. Regulation 6 N.Y.C.R.R. §617.4 lists "TYPE I Actions", or those actions

> "that are more likely to require the preparation of an EIS than Unlisted Actions.... ***The fact that an action or project as been listed as a Type I Action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS.*** 6 N.Y.C.R.R. §617.4(a)(1)

Among those Type I Actions which presumptively require an EIS are:

> §617.4(b) (6) activities, other than the construction of residential facilities, that meet or exceed any of the following thresholds; or the expansion of existing nonresidential facilities by more than 50 percent of any of the following thresholds:
> (i) a project or action that involves the physical alterationof 10 acres;
> (ii) a project or action that would use ground or surface water in excess of 2,000,000 gallons per day;
> (iii) parking for 1,000 vehicles;
> (iv) in a city, town or village having a population of150,000 persons or less, a facility with more than 100,000 square feet of gross floor area;
> (v) in a city, town or village having a population of more than 150,000 persons, a facility with more than 240,000 square feet of gross floor area;

29. The regulations implementing SEQRA provide an illustrative (as opposed to exhaustive) list of criteria for determining the significance of an action, which criteria are considered indicators of significant adverse impacts on the environment. 6 NYCRR §617.7(c)

> (1) To determine whether a proposed Type I or Unlisted action may have a significant adverse impact on the environment, the impacts that may be reasonably expected to result from the proposed action must be compared against the criteria in this subdivision. The following list is illustrative, not exhaustive. These criteria are considered indicators of significant adverse impacts on the environment:
>
> (i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
>
> (iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;
>
> (v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;
>
> (vi) a major change in the use of either the quantity or type of energy;
>
> (ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;
>
> (x) the creation of a material demand for other actions that would result in one of the above consequences;
>
> (xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or
>
> (xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have

a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

(2) For the purpose of determining whether an action may cause one of the consequences listed in paragraph (1) of this subdivision, the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are:

(i) included in any long-range plan of which the action under consideration is a part;

(ii) likely to be undertaken as a result thereof; or

(iii) dependent thereon.

(3) The significance of a likely consequence (i.e., whether it is material, substantial, large or important) should be assessed in connection with:

(i) its setting (e.g., urban or rural);

(ii) its probability of occurrence;

(iii) its duration;

(iv) its irreversibility;

(v) its geographic scope;

(vi) its magnitude; and

(vii) the number of people affected.

THE PROJECT PROPOSED BY THE RESPONDENTS

30. The Respondents propose to construct a major new academic facility for the sciences on the North (Amherst) campus of ECC that will occupy 110,00 square feet. It is a major commitment of State, local and institutional funds that will determine the locus of educational opportunity for students of ECC for the next several decades.

31. The Respondents admit that the construction of this facility is a Type I action pursuant to the regulations of the Department of Environmental Conservation. In the Request

For Proposals (RFP), **Exhibit 4**, the Respondents declare, "The new building is considered a Type 1 action under SEQR with Erie County acting as lead agency." (Page 13)

32. In the above-mentioned RFP, it is noted that the County of Erie and ECC previously produced a Draft Generic Environmental Impact Statement (DGEIS) in January of 2004. (RFP, Exhibit 4, page 14) The DGEIS noted that the North Campus, being the oldest part of ECC, was dysfunctional and would be the most difficult to modernize. Alternative 2 under the DGEIS was a proposal to sell the North and South Campuses, and to consolidate all of ECC at the City Campus location. The Environmental Impact Statement process was not completed, and no Final Generic Environmental Impact Statement was issued.

33. Upon information and belief, in February 2014, the County of Erie prepared an Environmental Assessment Form Part 1, setting forth the purported adverse environmental impacts of the proposed project. **Exhibit 5**

34. Upon information and belief, in June 2014, Fisher Associates, the consultant hired by the Respondents, issued a Supplemental Report regarding the project. It notes that the determination had already been made by the Respondents not to require the issuance of an Environmental Impact Statement, due to the Respondents' finding that the project would not result in even one significant adverse environmental impact.

35. On or about July 10, 2014, the Legislature of the County of Erie approved a resolution declaring that a Negative Declaration should be issued, finding that the construction of the STEM Building on the ECC North Campus would not result in a significant adverse impact upon the environment. **Exhibit 2**

36. On or about July 11, 2014, Maria Whyte, Commissioner of Environment and Planning for the County of Erie, signed the Negative Declaration on behalf of the County of Erie,

and sent a copy of the document to the New York State Department of Environmental Conservation, as required by 6 NYCRR §617.12(c), for publication in DEC's Environmental Notice Bulletin. **Exhibit 6**

37. On July 30, 2014, the Notice of the issuance of a Negative Declaration was published in the Environmental Notice Bulletin. **Exhibit 7**

38. Contrary to the findings of the Respondents, the construction of the proposed facility would have serious, permanent and irreversible adverse environmental, economic, and social effects upon the County of Erie and its citizens. It will also have adverse effects upon ECC students and employees, present and future.

39. The construction and development of the proposed project is a Type I Action that absolutely required the Respondents to prepare a full Environmental Impact Statement pursuant to SEQR.

40. The Respondents have failed and refused to prepare an Environmental Impact Statement for the proposed project in contravention of the New York State Environmental Quality Review Act.

41. Instead, the Respondents have filed a Negative Declaration with the New York State Department of Environmental Conservation, on July 30, 2014, claiming that the proposed action, which will cost almost $30 million dollars, will not have any significant adverse environmental effects whatsoever. The Petitioners herein request that the decision of the Respondents to file a Negative Declaration be reversed and annulled, and that the Respondents be required to prepare a full Environmental Impact Statement in accordance with **SEQR, E.C.L. §8-0109**.

THE PROBABLE ADVERSE IMPACTS OF THE PROPOSED PROJECT

42. The decision of the Respondents to locate the STEM Building in the Amherst Campus of ECC would be a permanent and indefensible planning mistake that will cause great harm, including environmental harm, to the citizens of Erie County.

43. One of the main purposes of the STEM Building will be to train students in the field of medical technology. The respondents, in making their decision to locate locate the STEM Building in Amherst, have ignored the fact that most jobs available in Western New York in the field of medical technology will be located in Buffalo, at the Kaleida Medical Campus directly north of the City Campus of ECC, on Ellicott Street in Buffalo.

44. By locating the training facility for jobs in the field of medical technology in Amherst, New York, the Respondents would deny the necessary training to minority students who reside predominantly in the City of Buffalo.

45. The Petitioner, Wilfred Turner, is an African-American student who attends ECC. As he resides in the City of Lackawanna, and depends upon public bus transportation in order to travel from home to ECC classes and back, he would be unable to attend classes at the Amherst Campus. The Petitioners submit that for those ECC students who reside in the City of Buffalo or in the suburbs south of Buffalo, the current public transportation schedule does not provide service at the proper times, and frequently enough, to permit students who lack private vehicles to attend most classes at the ECC North campus.

46. The Respondents avoidance of the required Environmental Impact Statement is merely an attempt to cover the inadequate environmental analysis that was done, purposely, in order to bury the obvious environmental and planning shortcomings of the proposed project.

47. The Respondents' analysis of traffic and transportation problems, as contained in its Negative Declaration, is wholly inadequate.

48. The Respondent's decision to locate the STEM Building at the Amherst Campus will have the effect of contributing to urban sprawl, denying the central city, Buffalo, of the necessary institutions and infrastructure needed to make the city economically viable.

49. The Petitioner, JOEL GIAMBRA, is the former County Executive of the County of Erie. During his administration, steps were taken to promote the consolidation of Erie Community College to a single campus located in Buffalo, New York. As stated previously, a Draft Generic Environmental Impact Statement was prepared by the Giambra Administration which demonstrated the educational and economic advantages of consolidation.

50. In furtherance of the planning for the expansion of the City Campus of ECC, two large properties located next to the Campus were acquired by the County of Erie during the Giambra Administration for the specific purpose of future expansion. As shown on **Exhibit 8**, 45 Oak Street has already been converted to use by ECC as a modest, one-story building. The entire block to the north, known as 100 North Division Street, is simply vacant, used as a surface parking lot for ECC Students. The Respondents have ignored these readily available sites for the location of the STEM building in Buffalo, New York.

51. On April 19, 2011 the Common Council of the City of Buffalo unanimously expressed its opposition to the construction of the new STEM building for ECC on the Amherst Campus of ECC in a Resolution of the Council. Instead, the Council urged the County of Erie and ECC to locate it in the City of Buffalo, near to the City Campus and to the Buffalo Medical Campus. **Exhibit 9.** Among other findings, the Council noted:

> "Whereas: Over 30% of Buffalo households have no access to an automobile and depend on public transportation to access job and

educational opportunities, making it critical to place a ajor regional investment like an ECC Health Sciences Center for Excellence where transportation is a viable and convenient alternative; and

Whereas: The is plenty of room to grow ECC's City Campus, including two 1.3 acre sites that Erie County already owns at 45 Oak St. ;and 100 N. Division St.; and

Whereas: The County-owned parcel at 45 Oak St., currently the sit of an unsightly, one-story "bunker" now occupied by ECC for temporary classroom space, is an especially inspiring redevelopment opportunity and visually prominent site that is ideal for a Health Sciences Center for Excellence;"

52. Because of the close proximity between the Buffalo Medical Campus and the City Campus of ECC, there would be a direct dramatic reduction in the need for private and public transportation in order to avail students at ECC to work with companies and institutions established in and around the Medical Campus, thereby reducing air pollution and use of carbonaceous fuels.

53. The Petitioner, JOSEPH GOLOMBEK, Jr., is a member of the Common Council of the City of Buffalo. Councilman GOLOMBEK voted to express the unanimous will of the City of Buffalo to locate the new STEM building at the City Campus.

54. By refusing to prepare a full Environmental Impact Statement, the Respondents have attempted to conduct the decision-making process for this project in private, without public participation or comment. The preparation of an Environmental Impact Statement necessarily requires the Respondents to prepare a Draft EIS, which then must be circulated to the public for comments. **6 NYCRR §617.9(a)(3)** Regulations also provide for a public hearing regarding the Draft Statement. **ibid., §617.9(a)(4).** By issuing a Negative Declaration, the Respondents, illegally, attempted to exclude the public from the decision-making process, despite the fact that it is the public's money that will provide 100% of the financing for the project.

55. The transportation study conducted by the Respondents consists of an analysis of traffic problems in Amherst, New York, and potential air pollution that may be caused by additional vehicles travelling to the North Campus due to the construction of the STEM Building. Only a few lines are devoted to the larger, public transportation system, and its inadequacy to serve the needs of ECC students.

565. A Local "Traffic Study" is included as Appendix B to the Supplemental Report prepared by Fisher Associates as part of its Environmental Assessment. Its review of transportation data is cursory. The Report notes:

> "Several NFTA bus stops are located within and around the Campus: at the intersection of Main Street and Youngs Road; on Wehrle Drive between Youngs Road and Tech Drive; the midpoint of Arrow Drive; and within Lot 1 located at the intersection of Youngs Road and Arrow Drive.
>
> In addition to the public transit provided by the NFTA, bus shuttle service is operated by ECC with the daily schedule and route that circulates between ECC's North, City, and South campuses. The shuttle runs approximately once an hour from 7:20 AM to 5:45 PM." (Appendix B, Page 11)

57. The Petitioners submit that the proposed project, to build a major building for Science, Technology, Engineering and Mathematics, is one of the largest initiatives in the history of Erie Community College, one that requires a thorough environmental investigation, with an opportunity for public comment and public scrutiny. Before going ahead with such a major project, one that is likely to have long-range consequences for the College, for the County and for the community, it is mandatory that an Environmental Impact Statement be prepared pursuant to SEQR. The Respondents attempt to proceed by keeping the public in the dark should be reversed, so that the light of public scrutiny can be shined upon this proposal.

58. As stated above, Petitioners submit that the construction of the proposed project on the grounds of the North Campus of Erie Community College, requires the preparation of an Environmental Impact Statement. The Negative Declaration filed by the Respondents for this major action was arbitrary and capricious and was issued in dereliction of their responsibilities pursuant to SEQR.

WHEREFORE, the Petitioners demand judgment annulling the Negative Declaration of Environmental Impacts filed by the Respondents, enjoining the Respondents from taking any steps in furtherance of the design, construction and development of a proposed Science, Technology, Engineering and Math facility at the Amherst Campus of Erie Community College until full compliance with the New York State Environmental Quality Review Act, declaring that the proposed project requires the preparation of an Environmental Impact Statement, and for such other and further relief as to the Court may seem just under the circumstances, including attorneys' fees and the costs and disbursements of this action.

Dated: October 27, 2014

RICHARD G. BERGER, ESQ.
email: rgberger@rgbergerlaw.com

FRANCIS C. AMENDOLA, ESQ.
email: famandola@rgbergerlaw.com
Attorneys for the Petitioners
705 Brisbane Building
403 Main Street
Buffalo, New York 14203
Tel. (716) 852-8188
Fax (716) 852-0775

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE)ss:

JOEL GIAMBRA, being duly sworn, deposes and says that deponent is one of the Petitioners in the within proceeding; that deponent has read the foregoing **PETITION** and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponents believes it to be true.

JOEL GIAMBRA

Sworn to before me this
24 day of October, 2014.

Notary Public

FRED K. HEINLE
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 2016

STATE OF NEW YORK)
COUNTY OF ERIE)ss:

JOSEPH GOLOMBEK, Jr., being duly sworn, deposes and says that deponent is one of the Petitioners in the within proceeding; that deponent has read the foregoing **PETITION** and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponents believes it to be true.

JOSEPH GOLOMBEK, Jr.

Sworn to before me this
27th day of October, 2014.

Notary Public

RICHARD G. BERGER
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES FEB. 28, 2018

STATE OF NEW YORK)
COUNTY OF ERIE)ss:

WILFRED TURNER, being duly sworn, deposes and says that deponent is one of the Petitioners in the within proceeding; that deponent has read the foregoing **PETITION** and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponents believes it to be true.

WILFRED TURNER

Sworn to before me this
24 day of October, 2014.

Notary Public

FRED K. HEINLE
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 31, 2016