FILED: NEW YORK COUNTY CLERK 10/18/2021 05:21 PM

NYSCEF DOC. NO. 72

INDEX NO. 154812/2021

RECEIVED NYSCEF: 10/18/2021

NOTICE OF ENTRY

Index No. 154812/2021

I.A.S. Part 37

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

------ X

SOUTH STREET SEAPORT COALITION, INC., SAVE OUR SEAPORT, SEAPORT COALITION, CHILDREN FIRST, LINDA HELLSTROM, JAY HELLSTROM, EMILY HELLSTROM, ZETTE SIMMONS and COLLEEN ROBERTSON,

Petitioners,

-against-

LANDMARKS PRESERVATION COMMISSION OF THE CITY OF NEW YORK,

Respondent.

- and -

250 SEAPORT DISTRICT, LLC,

Intervenor-Respondent.

PLEASE TAKE NOTICE that the within is a true copy of a decision and order signed by the Honorable Arthur Engoron, dated October 4, 2021, which was duly entered and filed in the Office of the Clerk of the County of New York on October 7, 2021.

Dated:

New York, New York October 18, 2021

GEORGIA M. PESTANA
Corporation Counsel of the
City of New York
Attorney for Respondent
100 Church Street, Room 5-156
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By:

Diana M. Murray

Assistant Corporation Counsel

YORK CLERK

YORK COUNTY CLERK 10/07/2021 09:48

NYSCEF DOC. NO. 71

INDEX NO. 154812/2021 RECEIVED NYSCEF: 10/18/2021

RECEIVED NYSCEF: 10/04/2021

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

PRESENT:	HON. ARTHUR ENGORON	PART	37
	Justice		
	Χ	INDEX NO.	154812/2021
SEAPORT, S LINDA HELL	REET SEAPORT COALITION INC., SAVE OUR SEAPORT COALITION, CHILDREN FIRST, LSTROM, JAY HELLSTROM, EMILY M, ZETTE EMMONS, COLLEEN ROBERTSON, Petitioners,	MOTION DATE MOTION SEQ. NO.	06/03/2021, 06/22/2021 001, 002
	- V -		
LANDMARK OF NEW YO	S PRESERVATION COMMISSION OF CITY	N OF CITY DECISION + ORDER ON MOTION	
	Respondent.		
*******	Χ		
	e-filed documents, listed by NYSCEF document no 3, 39, 40, 41, 44, 45, 46, 47, 48, 49, 50, 51, 66, 67, 6		7, 17, 24, 30, 33,
were read on this motion for		CPLR ARTICLE 78	······································
	e-filed documents, listed by NYSCEF document nu 7, 31, 34, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 6		9, 10, 13, 14, 15,
were read on	this motion to	DISMISS	
	egoing documents, and upon the oral argument ross-motion to dismiss it, respondent's motion		

challenged administrative action is not final and thus not ripe for judicial review.

The papers that all parties have submitted are scholarly, but this Court will address the dispositive issue in this CPLR Article 78 proceeding simply. In order to challenge an administrative determination, a petitioner must suffer an immediate and concrete harm. Here, the Certificate of Appropriateness ("CoA") that Respondent Landmarks Preservation Commission of the City of New York ("LPC") issued for a tall building in the South Street Seaport Historic District is just an initial step, even by the LPC itself, in the actual construction of a building, which, after all, is what petitioners are seeking to prevent. Simply put, the Certificate approved the design, but not the construction, of the building, and the LPC must approve the latter, too. Of particular note, in addition to various other approvals, the city Department of Buildings must approve detailed construction plans, and the LPC must approve those, in a final CoA, before the proverbial shovels can be put in the proverbial (and in this case mercury-contaminated) ground. Viewed holistically, and as a practical matter, the CoA is not final because the developer cannot build until the LPC grants a final approval, and the CoA is only a provisional approval

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Petitioners claim that the CoA is causing immediate, concrete harm because they will (or at least may) have to challenge the project in the Uniform Land Use Review Procedure ("ULURP"), because property values will fluctuate, because anxiety will increase, because decisions will have to be made under short deadlines, etc. However, as respondents argue, none of these are legally cognizable injuries. Any ULURP opposition is discretionary, and life is full of uncertainty not giving rise to causes of action.

The 800-pound gorilla in the room, at least in petitioner's room, is the well-known Beacon Theater case, which found that a provisional approval was not final, and which is practically on all fours with the instant case. Comm. to Save the Beacon Theater by Meltzer v City of New York, 146 AD2d 397, 404 (1st Dep't 1989. Petitioners' attempts to distinguish it are unconvincing, and the developer's reply demolishes them.

Finally, petitioner's creative request to convert the instant proceeding into a declaratory judgment action is unavailing because any such action would suffer from the same infirmity, addressed herein, as the instant proceeding, to wit, lack of finality.

Thus, the clerk is hereby directed to enter judgment denying and dismissing the instant proceeding, without prejudice to a future challenge to a final Certificate of Appropriateness from the Landmarks Preservation Commission, if, that is, the Commission ever issues one.

10/4/2021		
DATE		ARTHUR ENGORON, J.S.C.
CHECK ONE;	X CASE DISPOSED	NON-FINAL DISPOSITION
	GRANTED DENIED	GRANTED IN PART X OTHER
APPLICATION:	SETTLE ORDER	SUBMIT ORDER
CHECK IF APPROPRIATE:	INCLUDES TRANSFER/REASSIGN	FIDUCIARY APPOINTMENT REFERENCE