

SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY

In the Matter of an Article 78 Proceeding

CITIZENS EMERGENCY COMMITTEE

TO PRESERVE PRESERVATION, Index No.

Petitioner, VERIFIED PETITION

FOR WRIT OF

-against- MANDAMUS

MICHAEL R. BLOOMBERG, Mayor of the City of
New York,

Respondent.

Petitioner, by its undersigned attorneys, as and for its Petition herein, respectfully alleges as follows:

PRELIMINARY STATEMENT

1. This is a proceeding under CPLR Article 78 seeking a Writ of Mandamus ordering and directing MICHAEL R. BLOOMBERG, Mayor of the City of New York, to re-appoint or replace without further delay all holdover members of the New York City Landmarks Preservation Commission whose terms have expired.

PARTIES

2. Petitioner CITIZENS EMERGENCY COMMITTEE TO PRESERVE PRESERVATION is a voluntary unincorporated public education and citizens advocacy association dedicated to supporting the purposes and objectives of the New York City Landmark Preservation Commission. The Committee's mailing address is: Neighborhood Preservation Center, 232 East 11th Street, New York NY 10003. The Committee's website is: www.savelpc.org. This Petition is verified by William E. Davis, Jr., a former member of the Landmarks Preservation Commission, who serves as Acting Chair of the Committee.

3. This proceeding is brought on behalf of the Committee and also on behalf of the following taxpayers, many of whom are also individual members of the Committee:

Eric Allison

Hunter Armstrong

Hope Arsrelesky

Sharon A. Barnes

Hal Bromm

Mark Caserta

Joy Chatel

Burnley Duke Dame

William E. Davis, Jr.

Joseph Ferris

Cheshire Frager

Patricia H. Hagan

Robert Holden

Hilary Hinds Kitasei

Sharon Daniel Kroeger

Jeffrey Kroessler

David M. Martowski

Jeanne G. Martowski

Francis Morrone

Everett Ortner

Irene Peveri

Amy Robbins

Gerard S. Rotondi

Peter Salwen

Joyce Pomeroy Schwartz

Arlene Simon

Bruce H. Simon

David Sprouls

Jack Taylor

Anthony M. Tung

Annie Venesky

Anthony C. Wood

Katherine Wood

Ege Yildirim

4. Respondent MICHAEL R. BLOOMBERG is Mayor of the City of New York, with offices at City Hall in New York County.

FACTS

5. The New York City Landmarks Preservation Commission is a New York City agency created pursuant to Chapter 3 of the New York Administrative Code. The Commission was established in 1965 to protect the City's architectural and historic resources. In performing its functions, the Commission identifies, designates, and regulates buildings, districts, sites, and interiors considered significant for their architectural, historic, cultural, or aesthetic qualities. The Commission consists of eleven members appointed for three-year terms by the Mayor, ten of whom are unsalaried. The Commission membership must include at least three architects, a historian qualified in the field, a city planner or landscape architect, a realtor, and at least one resident each of the five boroughs. The Chair and Vice Chair are designated by the Mayor. The purpose for which the agency was established is set forth in Section 25-301 of the Administrative Code.

6. Section 3020 of the New York City Charter provides in pertinent part as follows;

§ 3020. Landmarks preservation commission. 1. There shall be a landmarks preservation commission consisting of eleven members. The membership of such commission shall include at least three architects, one historian qualified in the field, one city planner or landscape architect, and one realtor. The membership shall include at least one resident of each of the five boroughs.

2. (a) The members of the commission shall be appointed by the mayor for terms of three years, provided that of those members first taking office, three shall be appointed for one year, four for two years, and four for three years. Each member shall serve until the appointment and qualification of his or her successor. The terms of members first taking office shall commence on the date of their appointment.

(b) Before making any appointment of a member who is required to be an architect, historian or city planner or landscape architect, the mayor may consult with the fine arts federation of New York and any other similar organization. In the event of a vacancy occurring during the term of a member of the commission, the mayor shall make an interim appointment to fill out the unexpired term of such member, and where such member is herein required to have specified qualifications, such vacancy shall be filled by interim appointment of a person having such qualifications, in the manner herein prescribed.

7. Section 31 of the New York City Charter provides as follows:

§ 31. **Power and advice and consent.** Appointment by the mayor of the commissioner of investigation and of the members of the art commission, board of health (other than the chair), board of standards and appeals, city planning commission (other than the chair), civil service commission, landmarks preservation commission, tax commission, taxi and limousine commission and the public members of the environmental control board shall be made with the advice and consent of the council after a public hearing. Within thirty days after the first stated meeting of the council after receipt of a nomination, the council shall hold a hearing and act upon such nomination and in the event it does not act within such period, the nomination shall be deemed to be confirmed.

8. A majority of the present members of the Commission currently are holdovers most of whose terms of appointment have long since expired. These include:

Members Term Expired

Thomas F. Pike July 28, 2000

Christopher Moore June 28, 2001

Joan Gerner June 28, 2001

Jan Hird Pokorny June 28, 2001

Pablo E. Vengoechea June 28, 2003

Roberta Brandes Gratz June 28, 2003

Stephen Byrns June 28, 2005

Richard Olcott June 28, 2006

WHY WRIT SHOULD ISSUE

9. Protracted delay in re-appointing or replacing Commissioners whose terms have expired has a negative and harmful effect on the Commission's independence and effectiveness; undermines the lawful functioning of City government; and circumvents checks and balances that are an essential component of popular democracy.

10. Holdover Commissioners who desire to be re-appointed are vulnerable to direct and indirect pressures from City Hall and from developers who have made large campaign contributions to the Mayor's election and re-election. Holdover Commissioners are subconsciously subject to the natural human desire to avoid losing favor or causing offense to the Mayor, his staff or his major campaign contributors. When this happens, the public interest is subject to being replaced by private and political interests in the Commission's decision-making process.

11. Holdover Commissioners who do not desire to be re-appointed are susceptible to distractions from other interests. They are prone to lose motivation and interest in performing their responsibilities conscientiously as members of the Commission, knowing they may be abruptly terminated and replaced at any moment.

12. Long delays in making appointments or re-appointments to the Commission destroys accountability to the people of the City by thwarting the advice and consent responsibilities of the City Council and, even more significantly, by denying citizens and citizen organizations their opportunity to participate in public hearings guaranteed by the City Charter to discuss the qualifications and performance of individual candidates.

12. On August 8, 2001, during Mr. Bloomberg's first election campaign for Mayor, he spoke about the Landmarks Preservation Commission at a candidates' breakfast on the West Side of Manhattan. At that time, Mr. Bloomberg said:

We have to support Landmarks. We have to give Landmarks a budget that will give them some enforcement capability. All of the rules and regulations that everybody talks about always leave me cold when I then go out to the streets and see that it is totally meaningless. It is just a bunch of people talking about solving a problem without ever actually doing it.

* * *

We have got to constantly measure and make sure that the policies that we're trying to implement are actually working.

* * *

Landmarks is like your top management and organization, that's where you really want to spend your money. If you've great people and structures at the top, it filters all the way down.

Mayor Bloomberg has failed to honor his own campaign promise to the people of New York. The Landmarks Commission should be, in his words, part of the City's "top management and organization," and it is essential that the Mayor show the Commission respect and support by making timely appointments of "great people" at the top.

13. The Mayor's chronic delay over many years in re-appointing or replacing the Commissioners whose terms have expired is unreasonable and inexcusable. It therefore becomes necessary to ask the Court to intervene and order the Mayor to perform his mandatory legal duty in conformity with the requirements of Section 31 of the City Charter and Section 3020 of the NYC Administrative Code.

14. The individual taxpayers on whose behalf this proceeding is brought, listed in paragraph 3 above, as well as all other taxpayers of the city, have been actually prejudiced by the Mayor's inordinate delay in making appointments to the Commission by (a) deprivation of their Free Speech constitutional right to be heard on the qualifications of appointees through public hearings before the City Council; (b) deprivation of their constitutional right of access to government for the redress of grievances and consideration of landmark designations by independent commissioners; (c) usurpation of the Commission's expertise by the Commission's Chair; and (d) payment of higher taxes due to the loss of tourism and other revenues resulting from the loss and destruction of significant parts of its historic, cultural and architectural heritage.

WHEREFORE, Petitioner requests the Court to issue a Writ of Mandamus ordering and directing the Mayor of the City of New York to re-appoint or replace without further delay all present holdover members of the Landmarks Preservation Commission whose terms have expired; to award Petitioner its costs and attorneys fees; and to enter judgment granting such other and further relief as the Court deems appropriate.

Dated: New York, New York

December 5, 2006

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Attorneys for Petitioner

VERIFICATION

State of New York)

s.s.:

County of New York)

WILLIAM E. DAVIS, JR., being duly sworn, says that he is Acting Chair of the Steering Committee of Petitioner CITIZENS EMERGENCY COMMITTEE TO PRESERVE PRESERVATION, that he has read the foregoing Petition and that it is true to the best of his knowledge and belief.

Sworn to before me this

5th day of December, 2006

Notary Public