

# Truett: Additional Comments, Oneida County Eminent Domain Proceedings for a Proposed Municipal Parking Garage, Dated January 22, 2021

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## Table of Contents

A. Background .....	1
B. Comments .....	3
C. Additional References .....	23
D. Appendix .....	26
E. Acronyms .....	35

## A. Background

I, Brett B. Truett I'm the owner of the parcel, and a historic building, at 442 Lafayette Street ( tax map number 318.34-1-33)<sup>1</sup> herein "442", and a party to this proceeding.

I've been a resident in Utica since 1986. Subsequently, have purchase multiple properties, pay considerable taxes to both the City of Utica and Oneida County, and have made significant investments in downtown. Please see "AFFIDAVIT OF BRETT TRUETT," Appendix I, which offers more context. Additionally, Appendix E offers a few acronyms that may be used throughout this document.

My opposition to locating a hospital into downtown began in August of 2015. It came after learning a large hospital concept threatened numerous blocks of surround Columbia and Lafayette Streets. **This targeted area was home to numerous businesses, over 40<sup>2</sup>, significant and historical buildings key to Downtown Utica's rebirth.** Utica media initially portrayed the targeted hospital site as a smaller 12-acre site, and only a "few or several businesses," but if you located a hard-to-find public record it outlined 34-acres.<sup>3</sup>

I later acquired the 442 parcel with the purpose of saving this historic building, and others, but is now threatened by this eminent domain proceeding and demolition. To make way for a "Project," a.k.a. a parking garage. Persevering old buildings is what Utica's Master Plan<sup>4</sup> called for, as did the Gateway<sup>5</sup> project, and numerous other initiatives carried out to bolster downtown. Myself and others were doing just this, redeveloping historical buildings, both in the immediate area, and throughout downtown. But then a giant hospital project, one that would wipe-out an entire neighborhood, was being quietly planned.

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<sup>1</sup> See, "History of 442 Lafayette Street," at <http://betteruticadowntown.com/442-lafayette-history-of.php>

<sup>2</sup> See "40+ Businesses Utica Is Pushing-out of Downtown for a 5th Hospital District!," per [www.nohospitaldowntown.com/businesses-to-be-displaced-within-the-downtown-utica-hospital-zone.php](http://www.nohospitaldowntown.com/businesses-to-be-displaced-within-the-downtown-utica-hospital-zone.php)

<sup>3</sup> See, "Additional References" citation #4

<sup>4</sup> See "Master Plans", at <http://www.nohospitaldowntown.com/master-plans.php>

<sup>5</sup> See "Gateway Historic Canal District," at <http://www.nohospitaldowntown.com/gateway-historic-canal-district.php>

In my investigations I came to know the former owner of the 442 parcel, he ran an upholstery shop there. However, he was not in a position to fight to save it, so I acquired this historic property intending to save it from the wrecking ball. While I knew a lawsuit was likely, I was not deterred. **I'm opposing Oneida County's effort to use eminent domain for the same and additional reasons many people opposed Oneida County's new hospital in Downtown Utica, see "Community Voices Of Opposition".**<sup>6</sup> Both decisions (the hospital location and this Project) were arbitrary and capricious- and ignored many facts. Many issues<sup>7</sup> needed to be analyzed out in the open, but never were. Public support was a fabrication and highly contrived<sup>8</sup>. Emails clearly show political and economic development forces orchestrated the hospital into downtown. For example:

**"My whole thought process in bringing Elan on board is to make sure that we guide siting decision in favor of downtown," DiMeo said in the email to other project partners.**<sup>9</sup>

All the emails that reveal the hospital and parking garage "backstory" can be read on the "Oneida County Email Dump" webpage at: [www.nohospitaldowntown.com/oneida-county-hospital-email-dump.php](http://www.nohospitaldowntown.com/oneida-county-hospital-email-dump.php)

While the most recent "Clark Decision"<sup>10</sup> ended myself and others' efforts in opposing the new hospital's location, my feeling remains that the Columbia and Lafayette Street neighborhood (and downtown's development) is much better with a more compact hospital layout. My overarching belief is just because MVHS's architects drew a parking garage (on land they did not own), does not mean Oneida County needs these parcels.

Other plans, I believe better plans, would accommodate the new hospital, parking facilities, and allow much better downtown development to occur without the use of eminent domain. A large parking garage, as proposed<sup>11</sup>, is wrongheaded. Why not look at alternate designs? An alternate design would still allow parking options for all uses named in these proceedings, but also introduce greater mixed-use elements, especially room for historic preservation! Respectfully I request that my following comments, all citations per the "Additional References" and "Appendix," be made part of my remarks already offered at

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<sup>6</sup> See "Community Voices of Opposition," per [www.nohospitaldowntown.com/voices.php](http://www.nohospitaldowntown.com/voices.php)

<sup>7</sup> See "Index of Issues," per [www.nohospitaldowntown.com/index-of-issues.php](http://www.nohospitaldowntown.com/index-of-issues.php)

<sup>8</sup> See "Astroturfing," per [www.nohospitaldowntown.com/astroturfing.php](http://www.nohospitaldowntown.com/astroturfing.php)

<sup>9</sup> See, "Officials: Email about Utica hospital wasn't attempt to rig site study" <https://www.timestelegram.com/news/20181210/officials-email-about-utica-hospital-wasnt-attempt-to-rig-site-study>

<sup>10</sup> See, Additional References, citation #4, "Clark Decision"

<sup>11</sup> See "Proposed Project", per <https://www.facebook.com/photo.php?fbid=3900194316708964&set=p.3900194316708964&type=3>

the December 23, 2020 Public Hearing<sup>12</sup>- to all be used and answered within the subsequent “Findings and Determination” proceedings.

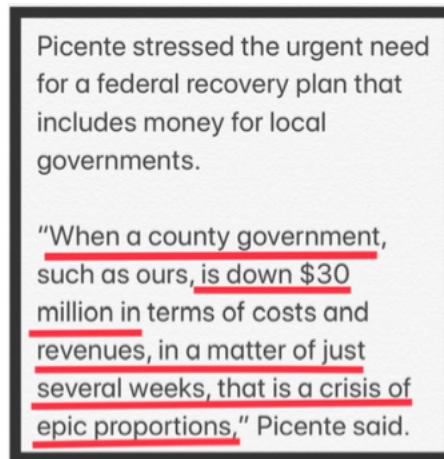
In closing, I fully understand stopping eminent domain in NYS is very difficult, but I hope my comments WILL NOT be quickly disregarded out-of-hand as “not pertinent,” Please consider my over 5-years investigating the hospital project. It has been out of deep caring and concern for Downtown Utica’s long-term redevelopment. An immense amount of study in downtown urban developments (here and in numerous other cities), as well as researching urban hospitals, especially those benchmarked by MVHS<sup>13</sup> was completed. The proposed parking garage as not ideal, for the hospital being built in downtown, nor for Downtown Utica’s development. It should be reconsider, as should the use of eminent domain by Oneida County.

## **B. Comments**

### **1. Oneida County’s Budget Cannot Afford the Project**

Oneida County and taxpayers are in a very poor position to fund this project. Consider, “Coronavirus: Picente calls for federal relief for local governments”

<https://www.uticaod.com/story/news/coronavirus/2020/07/22/coronavirus-picente-calls-for-federal-relief-for-local-governments/113413402/>



There are numerous other media reports where the County Executive explains dire budget problems. For example, Picente’s request for federal money went to Washington with this statement, “a threat of layoffs and more joblessness” and explained Oneida

<sup>12</sup> See, “Oneida County’s Public Hearing Transcript”, per <http://betteruticadowntown.com/oneida-county-public-hearing-on-executive-picente-eminant-domain-threat.php>

<sup>13</sup> See, “MVHS Benchmarking Hospitals,” per [www.nohospitaldowntown.com/mvhs-benchmarking-hospitals.php](http://www.nohospitaldowntown.com/mvhs-benchmarking-hospitals.php)

County's budget has "dried up". On June 4, 2020, per the UticaOD<sup>14</sup>, Federal funding requests were broken into sections, but two sections clearly indicate Oneida County needed money and also wanted to build a "MVHS parking garage"...

#### **Economic Development**

\$30M MVHS parking garage

\$37.8M Marcy Nanocenter

#### **Transportation**

\$11M Intelligent transportation systems for  
Oneida & Herkimer counties

This request was further covered on June 25, 2020 as New York State Counties sought Federal help, see "Counties Renew Call for Federal Funding in Response to Report Warning that Millions of Jobs May be Lost Without Further Stimulus"<sup>15</sup> Oneida County cannot afford this project, eminent domain should be halted.

Oneida County does not have the cash to build the garage, it would come from additional bonding and supported by taxpayer debt. Per this story,<sup>16</sup> "Oneida County earmarks \$500,000 for downtown hospital parking garage" we read,

**"Envisioned as a shared endeavor between the city and county,  
the county is taking the lead on funding, with plans to borrow  
for a majority of the costs."**

The county's finances were not strong enough to build a garage without financing, and today the virus makes this much more evident.

## **2. City of Utica's Budget Cannot Afford the Project**

Robert Palmieri, Mayor City of Utica Mayor made a Memorandum of Agreement (MOA)<sup>17</sup> to fund a Mohawk Valley Health System (MVHS) parking garage with Oneida County and MVHS. It was signed by the mayor on August 21, 2017. It was used by MVHS to advance the application to New York's Department of Health in order to prove the

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<sup>14</sup> June 20, 2020 – "Oneida County Goes To The Top For Help With Infrastructure"

<https://www.uticaod.com/news/20200626/oneida-county-goes-to-top-for-help-with-infrastructure>

<sup>15</sup> New York State Association of Counties press release, [https://www.nysac.org/blog\\_home.asp?display=974](https://www.nysac.org/blog_home.asp?display=974)

<sup>16</sup> "Oneida County earmarks \$500,000 for downtown hospital parking garage," per <https://www.uticaod.com/news/20180808/oneida-county-earmarks-500000-for-downtown-hospital-parking-garage>

<sup>17</sup> Memorandum of Agreement (MOA) Between City Of Utica, Oneida County, and MVHS, see <http://nohospitaldowntown.com/city-of-utica-county-of-oneida-mvhs-moa.php>

hospital project was completely funded and a Certificate of Need (CON)<sup>18</sup> would be issued.

However, since then Common Councilmembers have stated the City cannot afford it. According to WKTV, Fourth Ward Councilman Frank Meola says he doesn't think the city can afford their portion. "I don't think we'll be able to afford the \$300,000. We don't have it. I'll tell you right now we do not have...the money for that parking garage,"<sup>19</sup>

Furthermore, numerous stories in the Utica news have reported on multiple existing downtown parking garages facing very expensive repairs, for example "Officials: Utica parking garages need major repairs"<sup>20</sup> which reads,

*"To repair the Washington, Utica Place, Kennedy and City Hall parking garages, Stantec estimates **it will cost between \$15.5 million to \$20.5 million.** The low end cumulative cost includes no contingency; the upper range of the estimate includes 20 percent contingency and 10 percent for soft costs."*

Also, per a City of Utica debt schedule<sup>21</sup>, parking garages already significantly impact Utica's budgets for many years to come.

Early math that related to the hospital's cost, and this Project, and how it was advantageous to Utica's budget was poor and unrealistic. For example, Mr DiMeo of MVEDGE, supplied a spreadsheet<sup>22</sup> to the Utica Common Council, one projection it offered was inaccurate and misleading, blatantly deceptive, for instance "Taxable Sales" and formula "3,500 x \$15.00 x 365 days." There will not be 3,500 employees in downtown 365 days per year. And as notes indicate on the spreadsheet, numerous current hospital employees (Faxton, St. Elizabeth, and even those at St. Luke's) are probably already spending money in Utica, so the forecast offered is even less accurate.

Additionally, from the time when taxpaying business were removed from Utica's tax base, until a time when taxable sales (and an unknown taxpaying MOB arrives), it will

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<sup>18</sup> "Certificate of Need Blog", see links at <http://nohospitaldowntown.com/con.php>

<sup>19</sup> "Future funding for downtown hospital parking garage uncertain until budgets finalized", per <https://www.wktv.com/content/news/Future-funding-for-downtown-hospital-parking-garage-uncertain-until-budgets-finalized-573070501.html>

<sup>20</sup> "Officials: Utica parking garages need major repairs" per <https://www.uticaod.com/news/20200126/officials-utica-parking-garages-need-major-repairs>

<sup>21</sup> MVEDGE's City Debt Schedule, per <http://www.nohospitaldowntown.com/images/2-mvhs-ccp-spreadsheet.jpg>

<sup>22</sup> MVEDGE's "Estimated- Revenues & Avoided Cost – City of Utica" spreadsheet per, <http://www.nohospitaldowntown.com/images/mvhs-edge-math-on-downtown-utica-hospital-concept-revenue-and-avoided-costs.png>

more likely five years (or more) of lost revenues- NOT the three years of hospital construction time as Mr. DiMeo offered<sup>23</sup> to city legislators.

To illustrate that City of Utica legislators were made to believe they had no authority on the hospital, and this Project, listen to Common Councilmember Mark Williams speak during a South Utica Neighborhood Association meeting...

**Mark Williams, Common Council at Large, December 17, 2017**

<https://www.facebook.com/commoncentsnewyork/videos/739428679600785>

To further show that City of Utica officials were missing the true impacts of the hospital and this Project, Michael Galime, Common Council President warned, "We have a lot to lose" ...

**Michael Galime, Common Council President, January 19, 2017**

<https://www.facebook.com/mikeforutica/videos/625723570962804>

Ask any member of the Utica Common Council<sup>24</sup> today, and you'll find answers on the impacts to the City of Utica's budget remain missing and unknown. With "the virus" of 2020-2021, municipal budgets are even more perilous and unpredictable. Finally, looking at the famed "Pink House" eminent domain case, in "Kelo v. City of New London"<sup>25</sup> where a neighborhood was eliminated, private owners removed, only to have the intended project canceled due to an economic downturn.

### **3. MVHS 's Budget Cannot Afford the Project**

More recently officials have tried to separate MVHS from this proposed Project. What was first clearing parking garage(s) for a new downtown hospital, in more recent months MVHS is not immune from their influence on it, nor impact and outcomes to the downtown environment.

MVHS has the implications of paying the would be operation and maintenance costs<sup>26</sup> of the proposed Project, thus making them and their finances party to this eminent domain proceeding...

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<sup>23</sup> MVEDGE's "MVHS Downtown Hospital Project" per, <http://www.nohospitaldowntown.com/images/1-mvhs-ccp-spreadsheet.jpg>

<sup>24</sup> Utica Common Council, per <http://www.cityofutica.com/government/common-council/index>

<sup>25</sup> "The Little Pink House, 15 Years Later," per <https://www.theamericanconservative.com/articles/the-little-pink-house-15-years-later>

<sup>26</sup> From "County says it will pay 60% of Utica parking garage cost," per <https://www.uticaod.com/news/20170810/county-says-it-will-pay-60-of-utica-parking-garage-cost>

*“The health system has pledged to handle the costs of operating and maintaining the garage, and would receive any parking revenues to offset those costs.”*

MVHS hospitals have not been reliably profitable<sup>27</sup>, and this was before the new downtown hospital started. During the promotional talks, the MVHS CEO projected a new and single hospital would provide MVHS with “\$15M to \$17M in efficiencies.”

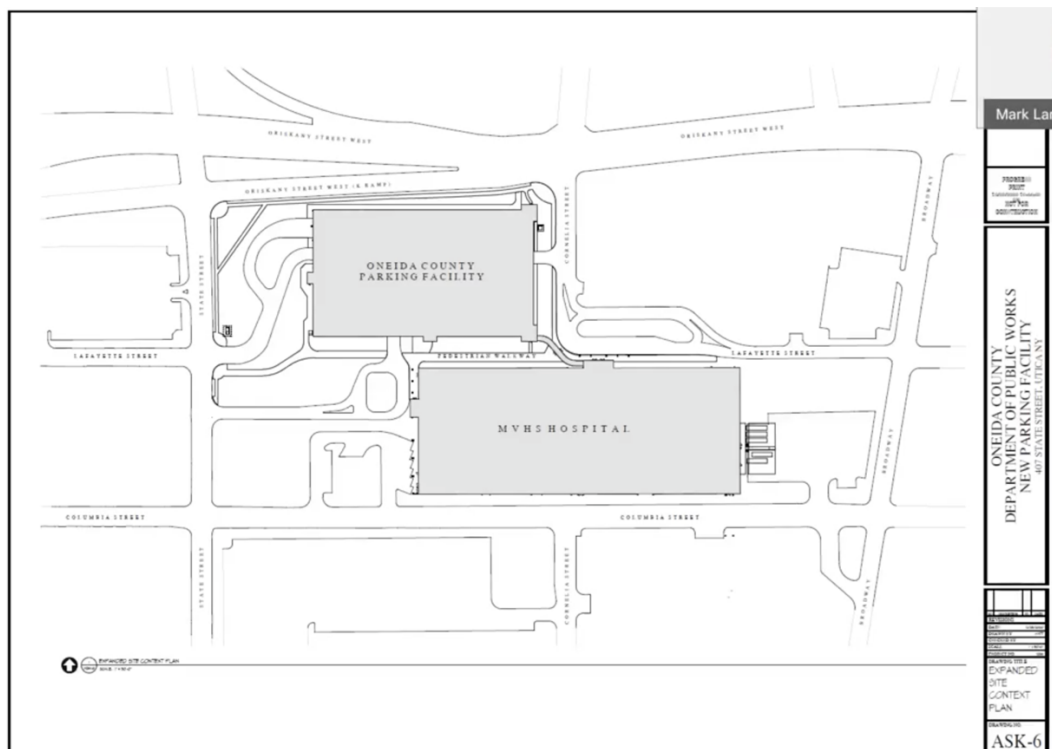
Scott Perra, MVHS CEO, speaks to Oneida County Legislature, May 14, 2017

<http://nohospitaldowntown.com/audio/new-hospital-in-black-maybe-but-theres-big-bogies.mp4>

In 2016 MVHS looking to add \$98M<sup>28</sup> to their debt for construction of a new downtown hospital, but in the fall of 2019 they borrowed \$ and now owe \$15M+/- every year to bondholders until 2049. But the plan changed and elements of each of the three hospital campuses will remain, so one integrated hospital is forecasted to have four footprints.

#### 4. Oneida County Project Site Plan, Drawing No. ASK-6

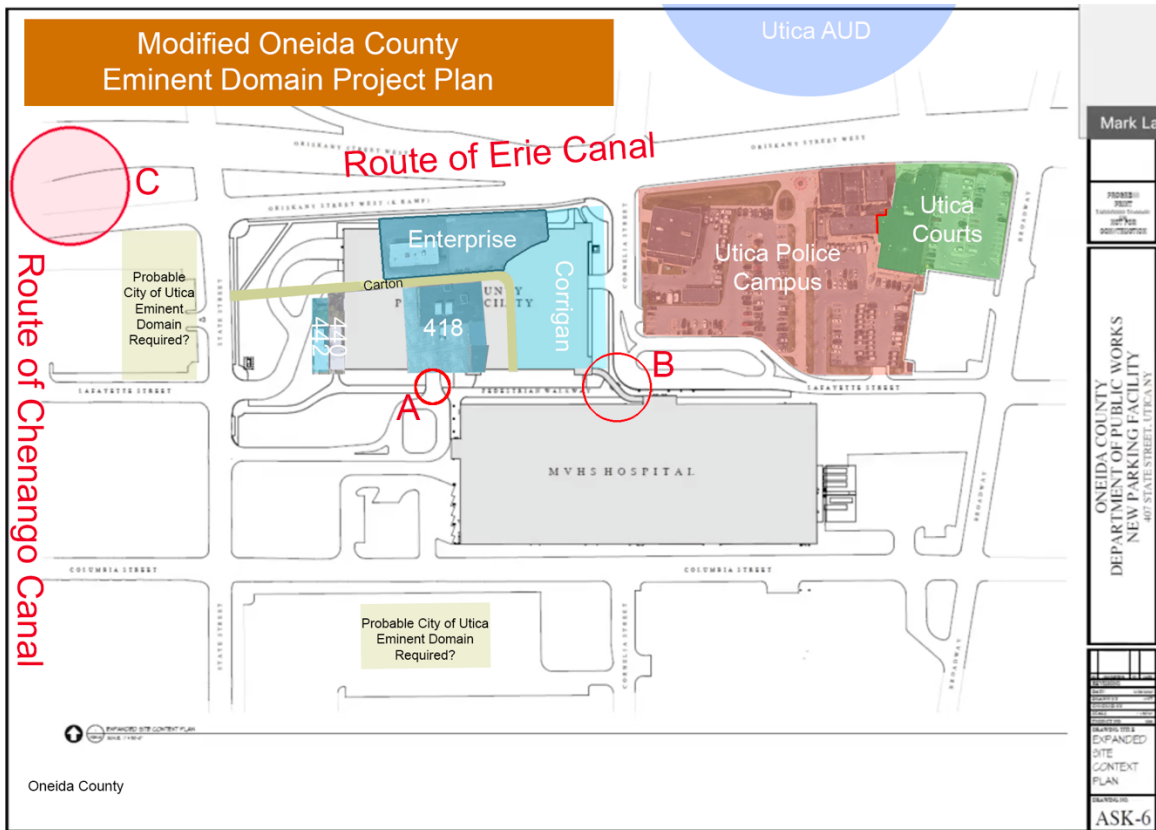
The site plan was very basic and did not reveal much detail...



<sup>27</sup> “IRS 990 Tax Forms Utica Hospitals & MVHS,” per <http://nohospitaldowntown.com/990.php>

<sup>28</sup> “Health system to appraise downtown site,” per <https://www.uticaod.com/news/20160808/health-system-to-appraise-downtown-site>

I have added elements to this site plan that I feel are important to this proceeding...



The targeted Project area is a historic area, one of Utica's oldest neighborhoods, where once the paths of the Erie and Chanango Canals converged, see "C". As one sees comparing the footprints of the parking garage structure in both site plans, "most of the land" where the proposed parking garage is shown, is not owned by Oneida County, it is 60% (or more) is privately owned, i.e. the 418, 442, Enterprise, and Corrigan properties. Another illustration shows this as well...



Why did Oneida County not show the Utica AUD/Nexus Center, Utica Courts, as well as the Utica Police Campus in their site plan? Why wasn't the Utica Police Campus named as one of the "public needs" by Oneida County? The Utica Police building is physically connected to the courts, and as shown, the new hospital consumes (and reduces) the police department's parking. Numerous media stories<sup>29</sup> reported on the police station's relocation, and the city has paid for relocation study. If the station is to be moved, a parking facility opportunity unfolds making this eminent domain process even more unjustifiable.

Per EDPL, Article Two, Section 203, paragraph one reads, "...property descriptions of the property to be acquired and adjacent parcels." Oneida County has provided no description or the impacts on adjacent parcels; the old "Columbia Bar" at the corner of State and Columbia, the historic German Athletic Hall on Lafayette Street, nor the archeological assets possibly buried along the meeting place of the Erie and Chenango Canals. Even the MVHS SEQR Review wasn't able to complete this inventory and it appears Oneida County made no effort, and is in violation of state SEQRA laws.

## **5. NOT a "Public" Project**

In the last figure above, circles "A" (a driveway) and "B" (an elevated pedestrian bridge) show connections between the new MVHS hospital grounds and this Project. While the Utica AUD is further away and on the opposite of the very busy Oriskany Boulevard.

I believe locals bundled their needs for AUD parking, with MVHS 's new hospital, so Albany and MVHS would foot their parking bill. In fact it is why the new hospital concept was pushed into downtown. But MVHS's weak financials prevented them to pay for two or even one parking garages. Unable to get the hospital funded, locals began separating the parking garage as they pushed for Oneida County taxpayers to pay the bill.

As MVHS advanced plans for a downtown hospital, funding was a worry. In fact the new hospital story only started when local leaders told Utica hospital administrators, "Albany has money for a new hospital." Oddly residents never saw a plan for a new hospital, never heard our hospitals' physical plants were unantiquated, nor ever seeing a list of code violates. For year I have been waiting for the NYS Department of Health to supply a copy of such a study, but for years after my first letter they've stalled<sup>30</sup> since June 2016, and have sent "FOIL extension" requests continuously- with the latest one dated, January 7, 2021<sup>31</sup>.

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<sup>29</sup> See "Utica's Police Station," per [www.nohospitaldowntown.com/utica-police-station-another-excuse-for-a-downtown-hospital.php](http://www.nohospitaldowntown.com/utica-police-station-another-excuse-for-a-downtown-hospital.php)

<sup>30</sup> NYSDOH's first FOIL response: <https://twitter.com/NoHospitalDwtn/status/741809387195486208/photo/1>

<sup>31</sup> NYSDOH's latest FOIL response letter: <https://pbs.twimg.com/media/EsZYJmW4AA936o?format=jpg&name=large>

The MVHS board controls two hospitals that lose money on the services they provide, and historically have million dollar losses- only showing profits if investment funds are moved between accounts. As a result, the MVHS board only voted for downtown when another unanimous vote was casted stating, "In the event the downtown site proves not to be financially viable, we will move on to our second site option at the St. Luke's campus, which the board feels will also serve the community well,"<sup>32</sup> For 4-5 years throughout the Utica-Rome news residents have read headlines like this, "**Oneida County earmarks \$500,000 for downtown hospital parking garage,**" as story after story always portrayed the downtown garage as a "hospital garage".<sup>33</sup>

In another 2018 reporting, a caption reads "**About the proposed hospital**" and states **the parking garage is part of the hospital and in "their" footprint ...**

#### **About the proposed hospital**

- **Estimated cost:** \$480 million
- **Campus size:** 25 acres
- **Also on the campus:** Parking garage, five parking lots, medical office building (to be built by private developers)
- **Location:** Neighborhood of Oriskany, Columbia and State streets, and Broadway

See, "[Utica hospital secures \\$180 million loan.](#)"

Early talks called for a hospital, **two parking garages**<sup>34</sup>, plus at least one (privately owned) Medical Office Building (MOB). The hospital was going to pay for everything beyond Albany's promise of \$300 million. Later, on November 3, 2016, the hospital shrunk in both size and cost. At the time, in 2016, their \$27 million parking garage or garages were off-loaded to other "interested parties."<sup>35</sup>

In 2016 Utica-area residents read this newspaper passage<sup>36</sup>...

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<sup>32</sup> "Downtown Utica location top choice for new hospital" per <https://romesentinel.com/stories/downtown-utica-location-top-choice-for-new-hospital,42077>

<sup>33</sup> "Oneida County earmarks \$500,000 for downtown hospital parking garage," per <https://www.uticaod.com/news/20180808/oneida-county-earmarks-500000-for-downtown-hospital-parking-garage>

<sup>34</sup> "Community forum next week to discuss downtown hospital," per <https://www.uticaod.com/news/20170103/community-forum-next-week-to-discuss-downtown-hospital>

<sup>35</sup> "Downtown Hospital Price Tag Downsized," per <https://www.uticaod.com/news/20161103/downtown-hospital-price-tag-downsized>

<sup>36</sup> "Health system to appraise downtown site," per <https://www.uticaod.com/news/20160808/health-system-to-appraise-downtown-site>

*The Mohawk Valley Health System has chosen three firms to conduct appraisals of the downtown Utica properties that sit in the area proposed for a new hospital. "We want to begin the valuation of the downtown properties as we anticipate it will take three to six months to complete the appraisals," said health system President/CEO Scott Perra in a news release. "We have been working with Mohawk Valley EDGE, which will be the entity who will retain the appraisal firms and assist MVHS in the valuation process. EDGE will manage the outreach and scheduling with property owners and assist us in the formulation of our acquisition strategy." The appraisal will include private properties between Oriskany and Columbia streets, Broadway and Route 12, as well as properties on the far side of Columbia Street. The properties bounded by Oriskany, Columbia, Broadway and State Street are all expected to be included within the hospital footprint. Properties on the other side of Columbia and between State and Route 12 are under consideration as sites for a parking garage or two and a medical office building, but it's still not certain how many of those properties will end up being included in the plan. Letters have been sent to affected property owners informing them of the appraisal process and timeline, hospital officials said.*

This passage clearly shows the property for this Project was being purchased for a parking garage (or two) for a private hospital. [Note: At this time there was a "single" new hospital "footprint" It later became "two footprints," and still later it became "three footprints." This as MVHS had to reduce their "new hospital footprint" to ONLY describe land and parcels required for the new hospital's main structure<sup>37</sup>, as a way to obtain, what I continue to suggest was a fraudulent site plan approval process.

In 2017 we read, *"It has been made clear in recent meetings to both the city and county that without the garage, there is no \$480 million hospital."*<sup>38</sup> **Clearly this was a parking garage for a privately owned hospital system.** Placing a point on this, one morning the Utica newspaper headline rang out, **"No Garage, No Downtown Hospital"**<sup>39</sup> Citizen closely followed the story of all parking related stories in downtown, the proposed hospital, and beyond.<sup>40</sup>

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<sup>37</sup> "Downtown Utica hospital site plan approved," per <https://www.uticaod.com/news/20190919/downtown-utica-hospital-site-plan-approved>

<sup>38</sup> "County says it will pay 60% of Utica parking garage cost," see <https://www.uticaod.com/news/20170810/county-says-it-will-pay-60-of-utica-parking-garage-cost>

<sup>39</sup> "Warning to city: No garage, no new hospital" <https://www.uticaod.com/news/20170725/warning-to-city-no-garage-no-new-hospital>

<sup>40</sup> "Hospital Parking: Surfaces, Garage, Oh the Cars!," see [www.nohospitaldowntown.com/parking.php](http://www.nohospitaldowntown.com/parking.php)

The public has always been told this was a “**hospital parking garage**”, see the story, See, "Appraisals finished for hospital parking garage properties."<sup>41</sup>

Then there is the traffic study within the MVHS SEQR FEIS<sup>42</sup>, hundreds of pages, but the SEQR was not for the parking garage per a MVS lawyer. So where is Oneida County’s SEQR and their traffic analysis? Also, what roadways in and around the proposed parking garage changed? Were traffic studies adjusted by a private company’s vendors, but adopted by Oneida County?

Also, two hospital garages became one hospital garage, and still another Utica concept shown below, offered to place a garage at the Utica “AUD.” This concept makes sense as it would keep; the teams, fans and visitors on the northern side of the very busy Oriskany Boulevard, City Hall’s concept:



Baseball, Parking Garage, Apartments

Opened in 1960, the AUD is a 3,860-seat arena with capacity for 5,700 concert-goers.<sup>43</sup> The newly expanded property has very little dedicated parking, just a small lot with the majority of parking done on surrounding city streets and lots. Much of this capacity has been wiped out by the new hospital construction and street abandonments/closings.

<sup>41</sup> <https://www.uticaod.com/news/20200508/appraisals-finished-for-hospital-parking-garage-properties>

<sup>42</sup> MVHS FEIS, Appendix D, “Traffic Impact Study Addendum” <http://nohospitaldowntown.com/pdfs/feis/x-feis-appendix-d.pdf>

<sup>43</sup> The Utica Memorial Auditorium (AUD), now the “Adirondack Bank Center.” See [https://en.wikipedia.org/wiki/Adirondack\\_Bank\\_Center](https://en.wikipedia.org/wiki/Adirondack_Bank_Center)

Newly expanded box seats, a new restaurant, the partially constructed Nexus Center<sup>44</sup>, and planned “U District”<sup>45</sup> is creating growing parking demands.

It’s clear the AUD’s parking needs were bundled with a proposed hospital’s needs. AUD-centered managers apparently attempted to use the new hospital (and Albany’s deep pockets) for funding purposes. However the parking garage(s) and hospital project were “segmented” when MVHS had funding troubles. New York’s SEQRA laws cover issues regarding, for example see “Cumulative Impacts and Segmentation”<sup>46</sup>

The Utica media’s positive reporting has been declaring “hundreds of thousands of visitors” with new AUD-based expansions, however the parking plans have never been comprehensively shown nor rationally explained.

Lastly, yes the AUD is a municipal building, however the revenues vastly flow to private operators. One only as to compare payrolls of MV Gardens (It’s subsidiaries) vs. AUD authority and government share of revenue. It’s an entertainment complex and private individuals and their businesses are deriving the revenue, not taxpayers. Oneida County’s claim this a “Public” Project is dubious.

It is also troublesome that Mr. Rayhill incorrectly stated “Most of the land where the garage will be built has been acquired.” This appears untrue and misleading. Furthermore Legislator Julian reported, it was difficult to find out about this public hearing, and nothing was placed into monthly informational packets send to the Oneida County legislators. Many facts have be hidden, not addressed, and Oneida County appears to be using significant obfuscation in matters very material to this Project.

## 6. 442 Lafayette Street (442)

The parcel and building at 442 Lafayette Street<sup>47</sup> is historically significant and eligible to on the National Register of Historic Places, per the MVHS SEQR Review. It is a mid-1800’s row house (circa. ~1835), is nearly as solid as day it was constructed. The backyard opens to an Erie Canal-era cobblestone street, Carton Avenue.

Per the Greater Utica Landmarks Society:<sup>48</sup>

*“[442] is one of three remaining townhouses on a thoroughfare once lined with similar dwellings. **These three structures [now***

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<sup>44</sup> Nexus Center, see <https://nohospitaldowntown.com/nexus.php>

<sup>45</sup> U District, see <https://nohospitaldowntown.com/u-district.php>

<sup>46</sup> “Cumulative Impacts and Segmentation” (PDF) <https://www.nyenvlaw.com/wp-content/uploads/2014/11/Cumulative-Impacts-and-Segmentation.pdf>

<sup>47</sup> 442 Lafayette Street, [www.betteruticadowntown.com/442-lafayette-street.php](http://www.betteruticadowntown.com/442-lafayette-street.php)

<sup>48</sup> 442 Lafayette Street, The Bington/Isele House (Circa.1835), By Michael Lehman, AIA,per [www.betteruticadowntown.com/442-lafayette-history-of.php](http://www.betteruticadowntown.com/442-lafayette-history-of.php)

***only two] are the last evidence of their existence. They are part of only a handful of examples of early-19th century residential buildings remaining in Utica.”***

And per MVHS’s SEQR FEIS:<sup>49</sup>

*“More specifically, a Phase IA archaeological investigation was completed for the Project area, resulting in a finding that **the Downtown Site is sensitive for pre-contact archaeological sites and a variety of historic archaeological resources, including a historic site (442 Lafayette Street)**. A Phase IA architectural survey of existing buildings within the Downtown Site was also conducted, resulting in a finding of 49 architectural resources, including a portion of the Downtown Genesee Street Historic District (which is listed in the State and National Register of Historic Places), three contributing buildings to that historic district, and ten other buildings eligible for inclusion in the State and National Registers. See generally, DEIS Section 3.6 & Appendix E.”*

The 442 building is solid and some interior work was been started. A full historical restoration only awaits the outcome of what I knew would be a battle against eminent domain.<sup>50</sup> See Appendix II for a photograph.

Hopes were that the new hospital architects would reach out and desire to integrate 442, 418 and Carton Avenue into the campus design.<sup>51</sup> While more could have been done to make 442’s exterior more appealing, I had zero confidence investing \$10,000 or \$50,000 to do further exterior renovations would motivate my opponents from deciding to save the property. I believe this because backing of the hospital and MVHS have already bulldozed what were totally functional historical building, for example...

**The former Wilcor building on Lafayette Street:**

<https://pbs.twimg.com/media/EOP5WnyXUAI3nus?format=jpg&name=900x900>

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<sup>49</sup> MVHS’s SEQR FEIS,” (PDF) per [www.nohospitaldowntown.com/pdfs/mvhs-final-environmental-impact-statement-combined-3-21-19.pdf](http://www.nohospitaldowntown.com/pdfs/mvhs-final-environmental-impact-statement-combined-3-21-19.pdf)

<sup>50</sup> “Downtown hospital opponent: I’m ‘buying myself a lawsuit’”, per <https://www.uticaod.com/news/20180226/downtown-hospital-opponent-im-buying-myself-lawsuit>

<sup>51</sup> “County prepares for eminent domain in Utica hospital project,” per <https://www.uticaod.com/story/news/2020/09/24/county-prepares-for-eminent-domain-in-utica-hospital-project/42685253/>

Finally the purchase of 442 was done to save this historic building<sup>52</sup> and others too. It was also just one of many tactics used to save as much (or all) of the “Columbia Lafayette Neighborhood”<sup>53</sup> as we could- by motivating the hospital to build elsewhere.

Two websites, [#NoHospitalDowntown](#) and [BetterUticaDowntown](#), plus over \$100,000 dollars was personally spent trying to keep the new hospital on what I coined, but is very factually, the current Oneida County Medical District.<sup>54</sup> My comments here and in opposition to this current Project remains to save 418, 442, and Carton Avenue, all key assets to Utica’s Erie Canal past.

## 7. 418 Lafayette Street (418)

My friend and neighbor on Lafayette Street, Joe Cerini has placed twenty-years of care into his building at 418 Lafayette Street.

NY’s EDP laws, [Article 3, Section 303](#), reads... **“In no event shall such amount be less than the condemnor's highest approved appraisal.”** Oneida County has worked hand-in-hand, as has their agent MVEDGE, to carryout appraisals with and for MVHS. Owner of 418 had a much higher offer from MVHS, which was not offered by Oneida County, and as a result these parties negotiated in bad faith and did not meet this statute.

The owner’s buildings should be preserved. They date back to the Erie Canal and offers Utica a chance to recreate celebrate the city’s heritage as home to furnace and boilermakers, see [“Utica Boilermaker?”](#) to learn that “Carton Boilers”, were produced in Columbia Lafayette neighborhood during the 1800’s, Joe’s building played a role!



Citation Services, looking southwest from Oriskany Boulevard, 2018

<sup>52</sup> “Downtown Utica hospital opponent buys property,” per <https://www.wrvo.org/post/downtown-utica-hospital-opponent-buys-property-prevent-it#stream/0>

<sup>53</sup> The Columbia Lafayette Neighborhood (CoLa), per [www.betteruticadowntown.com/cola.php](http://www.betteruticadowntown.com/cola.php)

<sup>54</sup> The “Oneida County Medical District,” per [www.nohospitaldowntown.com/ocmd.php](http://www.nohospitaldowntown.com/ocmd.php)

The front of his building was first Coles Hotel and then a showroom for The International Heater Company. The picture above is worth saving and can add the hospital neighborhood if only officials were willing.

Historic preservation<sup>55</sup> is a known economic driver. A mixed use neighborhood is much more ideal when creating a downtown neighborhood, much more so than a homogenous hospital "healthcare only" district.

Oneida County as not addresses the environmental issues that SEQR requires, and in doing so they failed to realize what preserving history can do for municipal budgets, consider...

**"Cities and towns that have embraced their heritage and allowed it to remain often take on a vibrant, eclectic feel, a trick that could not be pulled off in a new construction by the cleverest architects."**

This passage is from, "[National Park Service Historic Preservation Economic Impact](#)."

Utica has an opportunity, Oneida County has an opportunity. In Utica on June 10, 1898, The International Heater Company was organized by merging five firms: Russel Wheeler & Son, est. 1842 The Carton Furnace Company, est. 1847 J. F. Pease Furnace Company, est. 1870 Howard Furnace Company, est 1888 Kernan Furnace Company, est 1890. **At the time Utica was said to be the largest producer of heating equipment for homes and businesses.**

The 418 buildings are poised to become a greater historical asset for residents, and tourists, and even an attraction for who access the new hospital. The rear of 418 forms one side of Carton Avenue, an original and restorable cobblestone street.

## **8. Carton Avenue**

Named after the founder of the [Carton Furnace Company](#), Carton Avenue is perhaps the last of Utica's original streets.<sup>56</sup> While paved-over, cobblestone are visible and could be resurrected. Carton Avenue, and infill developments, could create a powerful attraction along with 418 and 442.

Consider, "the terms "adaptive reuse" and "infill development" reveals a wide range of award-winning projects across the country reflecting just such a collaborative

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<sup>55</sup> See our research on, "Preservation", per [www.nohospitaldowntown.com/preservation.php](http://www.nohospitaldowntown.com/preservation.php)

<sup>56</sup> See, "The Streets of Downtown Utica's CoLa Neighborhood," per [www.betteruticadowntown.com/the-streets-of-cola.php](http://www.betteruticadowntown.com/the-streets-of-cola.php)

approach.”<sup>57</sup> NBBJ, MVHS, and now Oneida County are missing a great opportunity. Eminent domain should be called off and the proposed Project’s design and implementation revisited.

Finally were the laws abided by correctly, did the City of Utica, MVHS, and Oneida County convey the Carton Avenue land properly? This will become an issue if I must take legal action against Oneida County Project, as well as other land/parcel transfers.

## 9. Federal Funding?

Federal laws and Federal funding, Utica-area Congressman Brindisi states, “...**this project will provide easier access for residents and generate real economic development downtown.**”<sup>58</sup>

MVHS has stated that money from the Federal government’s “CARES” Act allowed them to meet “bond obligations,” this makes hospital and related components a federal project. “[The Federal Coronavirus Aid, Relief and Economic Security \(CARES\) Act](#)” was passed by Congress and signed into law on March 27, 2020. This, along with Oneida County request for Federal funding of the Project, seem very relevant to and future legal challenge to this eminent domain effort by Oneida County.

## 10. “Grabbing Land” for Future Private Businesses

The Oneida County Executive states, “hospital looking at future growth, in their best interest to get it now, than later...” listen-in at minute 19:55...

**Anthony Picente talks about Downtown Utica Hospital**

<https://www.youtube.com/watch?t=829&v=rfOEPHOL51A&feature=youtu.be>

The threat of eminent domain has displaced private businesses only to make way for future private businesses. This is not what eminent domain was intended for and will scare developers away from the city and county, because who could say who’d be next?

## 11. Neighborhood Mischaracterized, Environmental Impacts Ignored

According to EDPL, Article Two, Section 204, paragraph (3), one reads “...the general effect of the proposed project on the environment and residents of the locality;”

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<sup>57</sup> See, “Infill housing on historic sites? Preservationists say ‘yes, in our backyards.’,” per [https://napavalleyregister.com/opinion/letters/infill-housing-on-historic-sites-preservationists-say-yes-in-our-backyards/article\\_45c8203a-89cf-585e-8f27-c3895b638c84.html](https://napavalleyregister.com/opinion/letters/infill-housing-on-historic-sites-preservationists-say-yes-in-our-backyards/article_45c8203a-89cf-585e-8f27-c3895b638c84.html)

<sup>58</sup> See, “Brindisi welcomes groundbreaking new Mohawk Valley health system medical center,” per <https://brindisi.house.gov/media/press-releases/brindisi-welcomes-groundbreaking-new-mohawk-valley-health-system-medical-center>

Oneida County has failed to explain the impacts on the environment and residents. Oneida County has made no attempt to explain the neighborhood's history and archeological assets, and appears to have skipped this and buy into the mis-characterized of the few remaining buildings. Where is the Project's SEQR Review, all it entails and the necessary public hearings? The new hospital has destroyed much, but the effects of this proposed Project would do more damage that is totally avoidable,

The Columbia Lafayette neighborhood had 40+ businesses and many investments had and were being made. Joe Cerini (party to this proceedings and owner of 418 Lafayette Street) and his son were staging a fitness center business and an Italian restaurant, however the hospital project and threats of eminent domain halted these plans. Many other investments and projects were listed and a total investment was being complied, see "Developments & Investments: Downtown Utica Neighborhoods,"<sup>59</sup> as well as "Downtown Utica Development Stories"<sup>60</sup>

Unfortunately these good stories were overrun by the \$300M and a big hospital project. It is my belief Downtown Utica was better without the hospital project and still has a chance to save history by relocating the huge parking garage, or splitting the uses so the AUD/Nexus have a parking faculty and the hospital has a smaller and more compact foot print.

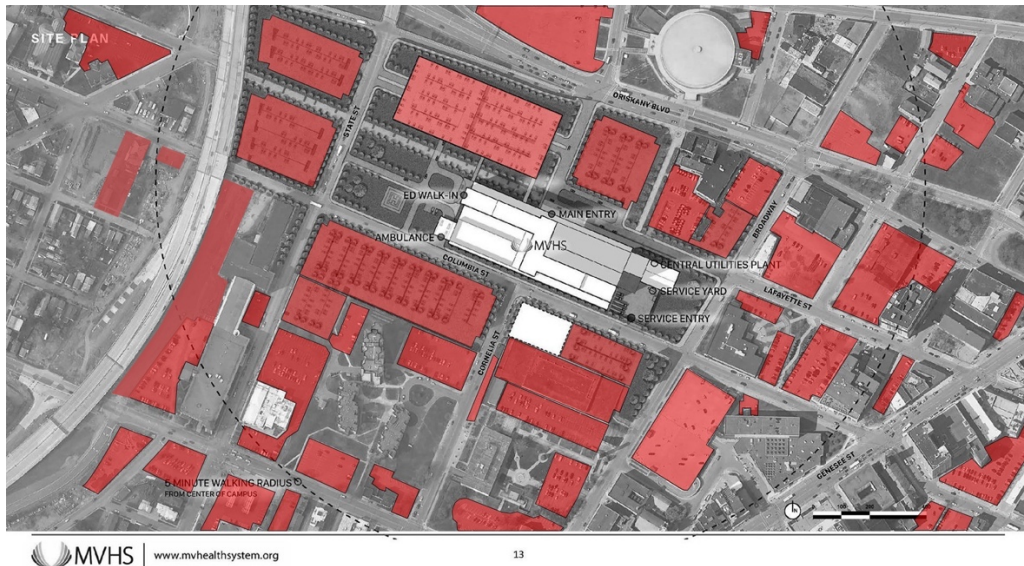
## **12. Too Much Parking, Too Many Building Already Lost**

As shown below in red, the image illustrates existing or planned parking facilities. Knocking down more buildings, especially ones that have historical and tourism potential, is unwise. Oneida County should not use eminent domain, but instead allow parcels 442 and 418 to remain and be redeveloped. Doing so would allow Utica-Rome residents and tourists from afar, a chance to experience, feel, and live Utica's historic past.

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<sup>59</sup> "Developments & Investments: Downtown Utica Neighborhoods," per [www.nohospitaldowntown.com/developments.php](http://www.nohospitaldowntown.com/developments.php)

<sup>60</sup> "Downtown Utica Development Stories," per <http://nohospitaldowntown.com/downtown-utica-development-stories.php>



Downtown Utica Parking: Colorized hospital site plan

### 13. Alternative Parking Facilities/Designs Possible

Eminent Domain is not required, as shown above (Fig. 1, Comment number 5) and below other designs and proposed parking garage solutions are possible. In Comment 14 below, the City Court has its own parking and other better option than the proposed Project. In the online hearing portion of this Project, Oneida County's Mr Laramie stated, "No other location under consideration could realistically serve all these facilities." Okay, "under consideration," but it clearly possible other locations do exist surround the hospital, AUD and City Courts, see below.

### 14. Traffic Congestion- Where is the SEQR?

The public was told the new downtown hospital SEQR was not for the parking garage at the first SEQR Public Hearing. Has traffic truly been addressed? Consider,

*"Echoing statements made at the Feb. 12 Oneida County Board of Legislators meeting by Utica Comets President and Mohawk Valley Garden CEO Robert Esche, Zemsky said **Nexus is expected to hold 24 hockey and 26 lacrosse tournaments and bring in over 300,000 people from around the northeastern United States and Canada.**"*

This is from a press release at "[Groundbreaking Held at Nexus.](#)"

And then Oneida County Executive states,

**"I'm concerned about it, obviously," says Oneida County Executive Anthony Picente, Jr. "...People are going to have to walk a little further, or maybe there's some shuttle things we can work in conjunction with the city and the Aud Authority to do. So... I think we've got to see what happens first."**

This from news story titles [“Few On-Street Parking Spaces for Comets Home Opener”](#)

## 15. Public “Need”?

The public “need” is dubious, for a number of reasons; first the hospital system is made up of private entities; MVHS is a private nonprofit, so are the two separate hospitals and other entities they manage. The tax returns of both hospitals and MVHS are offered and reveal their EIN numbers and financial results.<sup>61</sup> Citizens have had very little visibility of plans and studies, and current status of their hospitals’ financials. The CEO are on record saying they are private and did not need to disclose their “new hospital site study” (most likely funded by MVEDGE via Oneida County taxpayers), nor their “hospital reuse study.” When the made the study public, they had no details, just a descriptive paragraph and a single photo for each of four campuses.

The revenues generated at the AUD largely flow to privately held management entities and operations they control. The proposed Nexus Center is not charging tickets.

The Utica Courts have a dedicated parking lot, as shown below. There is street parking on Broadway. Also, more recently, a new city parking lot was added at the corner of Broadway and Oriskany Boulevard. Current enhancements underway are adding more parking lots as well. Finally there is vacant lot on the corner of Washington and Lafayette Streets...



<sup>61</sup> “IRS 990 Tax Forms Utica Hospitals & MVHS,” per <http://nohospitaldowntown.com/990.php>

## 15. Why am I fighting this to the bitter end?

I fear the hospital project, if given “free rein”, will act as has St. Elizabeth and Faxon have (and countless, if not every urban, hospital have) they will eat further-and-further into their neighborhoods. They consume more historical buildings and community character in the name of healthcare and development. This was NOT in Utica’s Master Plan. Meanwhile, MVEDGE created economic justification for Utica by stating three MOB would offset income from 40+ former businesses. Where is the study of those impacts. Downtown Utica was better without the hospital, and will be better without this parking garage Project.

## 16. Environmental Impact, Carton Avenue

Carton Avenue, is of broken asphalt, and cobblestones below. What happens with cobblestone vs. a massive concrete catchment pad (a parking garage) in rainy weather? MVHS claimed their hospital project satisfied rainwater runoff, storm water drainage, etc., but what of a parking garage that wasn’t yet designed and NOT part of the MVHS concept or SEQR review process? What of the oil and gas consuming vehicles, perhaps electric vehicles (their charging station’s components), and impacts on the environment? What of the salt debris-collecting winter traffic deposited in the garage? Where has Oneida County fulfilled their SEQRA requirements for their Project?

## 17. Necessary?

Per EDPL [Article 3, Section 301 on Policy](#), “The condemnor, at all stages prior to or subsequent to an acquisition by eminent domain of real **property necessary for a proposed public project** shall make every reasonable and expeditious effort to justly compensate persons for such real property by negotiation and agreement.”

As others have during the online public hearing, I’d like to challenge Oneida County regarding the word “necessary,” where is the data supporting the parking needs at the City Courts? As shown above, they have options without eminent domain. What is the status of the police station? As the AUD expands, Nexus Center, U District, it appears that public use should be located on the north side of Oriskany Boulevard. Thousands of people traversing this business road seems unwise.

## 19. Prevesting Discovery

According to [EDPL Article 3, Section 302](#), Appraisals; prevesting discovery, “In order to adequately prepare such appraisal upon which the condemnor's offer is based, the condemnor shall have the right to inspect such property prior to vesting.” Oneida County has not seen, nor has its appraiser seen the interior of 442, nor its grounds? Built

in 1835, there are likely archeological assets to investigate. I believe Oneida County has once again failed to abide by NYS's SEQRA laws.

## 20. Unequal Treatment

Per EDPL, [Article 2, Section 101](#), the law reads "...to establish rules to reduce litigation, and to ensure equal treatment to all property owners." Oneida County violated the EDP law here and used "unequal treatment." I have heard a "deal" was offered to the owner of the Enterprise parcels, it was to allow them to remain and become part of the proposed Project. Myself and others were not made such an offer. Additionally, offering Enterprise to become part of the Project would add a new number of employees, vehicles (those of Enterprise staff and customers), as well as vehicular traffic not part of any traffic studies, thus making any traffic studies obsolete. Oneida County has acted illegally and in bad faith.

To this point, the 442 parcel that I own (shown in "orange") could easily be integrated into the Project. 442 fits in a grassy area between parking garage access roads, as shown here...



## 21. Wording "May be required..."

Per EDPL, [Article 2, Section 103](#), (G) "Public project", the reads "... means any program or project for which acquisition of property may be required for a public use, benefit or purpose." The word "may" should give us great pause. To use eminent domain to seize property and then not have Oneida County use it is HIGHLY troublesome. Consider that there is a track record of failed eminent domain projects, "**20 Failed Projects Involving Eminent Domain Abuse.**"<sup>62</sup> The City of Utica should avoid being on such a list

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<sup>62</sup> See "20 Failed Projects Involving Eminent Domain Abuse," (PDF) per <http://castlecoalition.org/pdf/publications/Redevelopment%20Wrecks.pdf>

at all costs, as so many budget and legal issues surround this proposed Oneida County Project.

## 22. Alternate Locations

NY EDP law, [Article 2, Section 203](#), “Conduct of the public hearing” reads...“At the public hearing **the condemnor shall outline the purpose, proposed location or alternate locations** of the public project...” No alternative location were offered, but are obviously possible, see below illustration (blue) showing five (5) options...

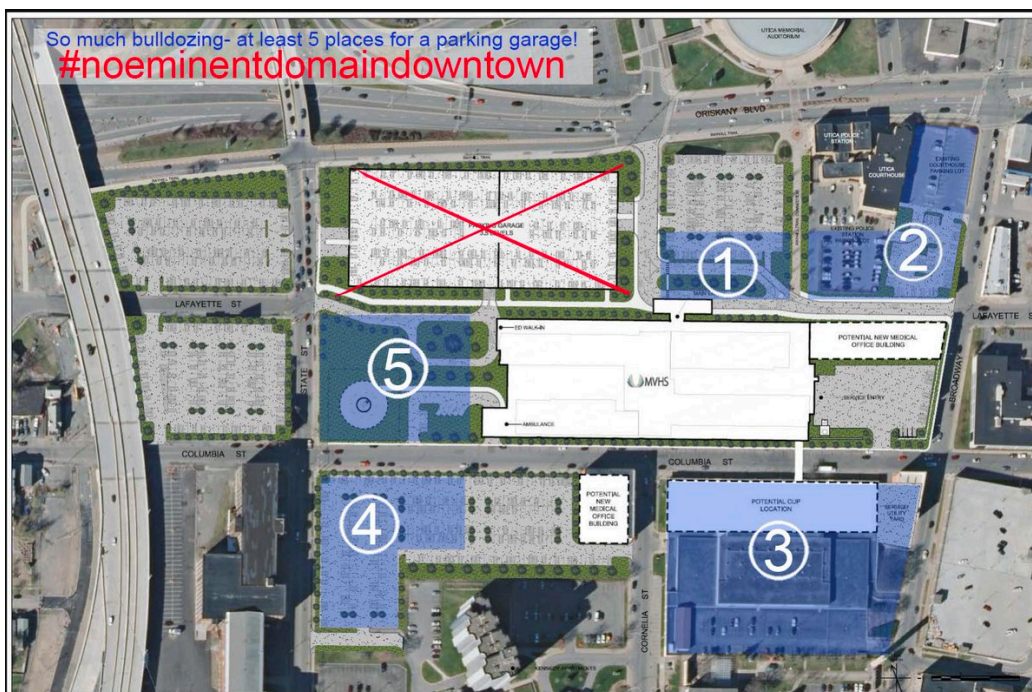


Figure 3. Integrated Health Campus (IHC)

It was unreasonable for Oneida County to suggest there are no alternative locations based on the acquired parcels by MVHS (the largest proposed user of the proposed Project). Plus lands own or controlled by the City of Utica (a hospital project partner) has parcels to lend. As explained earlier, if the police department relocates, significant additional acreages becomes available.

Oneida County appears to have simply “lifted” the schematic from MVHS’s architects and made zero attempts to consider alternatives.

## 22. Public Participation

According to NYS EDP law, [Article 1, Section 101](#) – the law reads “It is the purpose of this law... **to establish opportunity for public participation in the planning** of public projects necessitating the exercise of eminent domain...” Oneida County failed to create an “opportunity for public participation in the planning,” we were only invited to a hearing

stating they were taking our land and had zero planning input. The Oneida County public was not made part of this Project's planning, Oneida County has violated SEQRA laws of New York State.

Eminent Domain law also reads, **"to give due regard to the need to acquire property for public use..."** and elsewhere **"due process."** However a private company, MVHS, hired their "hospital architects" who drew an illustration of a parking garage (years prior), and Oneida County simply adopted the location. Oneida County offer no 'due regard' they simply used a private firm's (MVHS) concept who simply used Oneida County "as only a tool for land acquisition". **Oneida County's "regard" was limited to, "We need your land, no study, no alternatives, we're taking it."** Oneida County has violated NYS's eminent domain law.

As an example, from December 22, 2017<sup>63</sup> (three years ago!), **"MVHS attorneys to meet with downtown business owners as eminent domain looms."** Where not only elected officials threatened eminent domain, but lawyers representing a private company (MVHS) threatened eminent domain to the same parcel owners in this very Project! Story reads...

***"The [MVHS] attorney, however, is pretty confident. "We probably resolve I'd say a good 80% of them, 80-90%, but there's alwyas (sic) a handful who continue to hold out and in that situation we're kind of forced to go through the court process, the eminent domain process," says Bennett."***

Again in 2018, in a news story with MVHS officials, residents read, **"Eminent domain proceedings could be initiated if agreements cannot be reached."**<sup>64</sup>

There are obvious legal implications here. I plan to support whatever efforts are allowed by the law to save the historic buildings at 442 and 418 Lafayette streets.

## **23. "LOR", MVHS SEQR Review**

A "Letter of resolution" in MVHS's SEQR Review allowed demolition of historic buildings before a total investigation. However, this Project has been said to not be legally tied of MVHS's project (thus justifying use of eminent domain), then the LOR doesn't apply to Oneida County. Furthermore, Oneida County nor MVHS, has complete a complete archeological investigation of 442, a violation of SEQRA laws.

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<sup>63</sup> See, "MVHS attorneys to meet with downtown business owners as eminent domain looms," per <https://www.wktv.com/content/news/MVHS-attorneys-to-meet-with-downtown-business-owners-as-eminent-domain-looms-465769233.html>

<sup>64</sup> See "Utica hospital project secures \$180 million loan," per <https://www.uticaod.com/news/20180831/utica-hospital-project-secures-180-million-loan>

## C. Additional References

1. Website and links on **#NoHospitalDowntown**, see <http://www.nohospitaldowntown.com>, and an index page at <http://www.nohospitaldowntown.com/index-of-issues.php>
2. Website of and links on **#BetterUticaDowntown**, see <http://betteruticadowntown.com>
3. **“Changing MVHS Downtown Maps”**, <http://www.nohospitaldowntown.com/pdfs/nhd-changing-mvhs-maps-rev3.pdf>
4. **“Clark Decision”**, The Landmarks Society of Greater Utica, et al v. Planning Board of the City of Utica and Mohawk Valley Health System, Index No.: CA2020-001365, RJL No.: 32-20-0370. Posted at <http://www.nohospitaldowntown.com/october-judge-clark-ruling.php>
5. **Commissioner Policy 29, Environmental Justice and Permitting**  
<https://www.dec.ny.gov/regulations/36951.html>
6. **NYSDEC (2020), SEQR Handbook**  
[https://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/seqrhandbook.pdf](https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf)
7. **The Laws Of New York, Consolidated Laws, Environmental Conservation**  
<https://www.nysenate.gov/legislation/laws/ENV/A8>

#### **D. Appendix**

- I. Truett Affidavit
- II. Photograph, 442 Lafayette Street

## Appendix I

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

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THE LANDMARKS SOCIETY OF GREATER UTICA,  
JOE BOTTINI, #NOHOSPITALDOWNTOWN, BRETT B. TRUETT,  
JAMES BROCK, JR., FRANK MONTECALVO, JOSEPH CERINI,  
AND O'BRIEN PLUMBING & HEATING SUPPLY, a division of  
ROME PLUMBING  
AND HEATING SUPPLY CO. INC.,

Petitioners-Plaintiffs,

**AFFIDAVIT OF  
BRETT TRUETT**

For a Judgment pursuant to Article 78 and Section 3001  
of the Civil Practice Law and Rules,

-against-

Index No. \_\_\_\_\_

PLANNING BOARD OF THE CITY OF UTICA, NEW YORK  
STATE OFFICE OF PARKS, RECREATION  
AND HISTORIC PRESERVATION, ERIK KULLESEID, ACTING  
COMMISSIONER, DORMITORY AUTHORITY OF THE STATE  
OF NEW YORK AND MOHAWK VALLEY HEALTH SYSTEM,

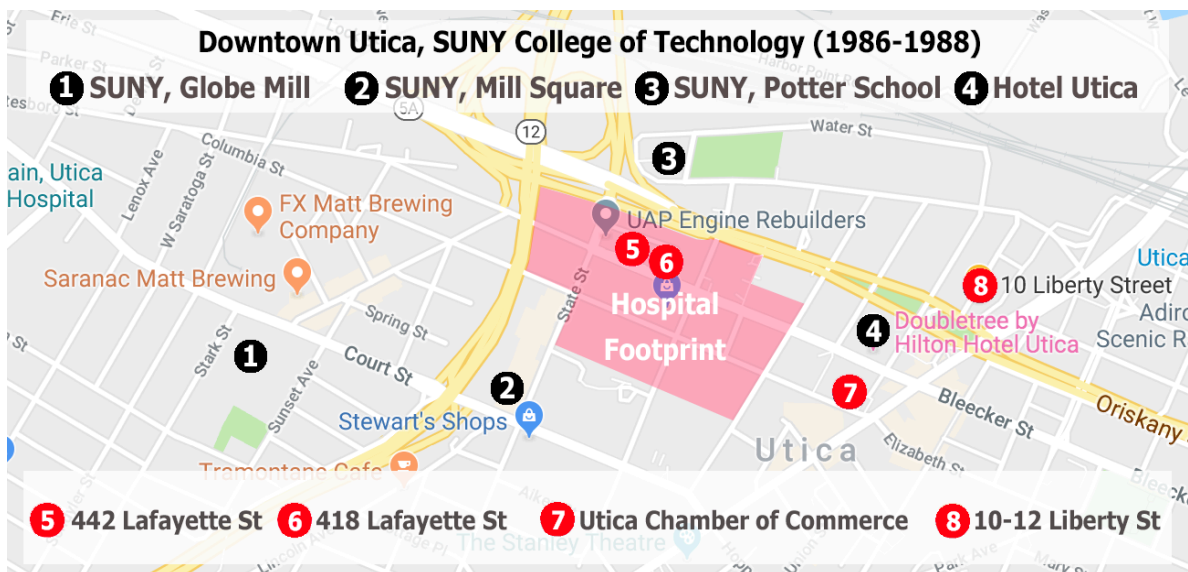
Respondents-Defendants.

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**BRETT B. TRUETT**, being duly sworn, deposes and says as follows under the  
penalties of perjury:

1. I have been a resident of the City of Utica since 1986.
2. Presently, I and my family live in South Utica at 88 Emerson Street, 1-1/2 miles south of proposed hospital downtown site.
3. Since 2002, I have also owned 10-12 Liberty Street, which is a 20,000 square foot Erie Canal-era historic property located just 900 feet from the proposed hospital footprint.

4. Much of my adult life has revolved around downtown Utica. Addresses of college classes, as well as my current property interests, surround the proposed MVHS hospital's footprint ("Downtown Site").



5. I have also been active in community matters. For example, in 2000, I was elected to serve on the Board of Directors for the Mohawk Valley Chamber of Commerce (now called the "Greater Utica Chamber of Commerce") and have been active in community groups and activities relative to the development of downtown Utica.

6. While serving at the Chamber, I met board member Jim Brock.

7. In mid-2015, I became aware of the proposal by MVHS to site the hospital project at the Downtown Site. Jim Brock had called me seeking my help to prevent demolition of the Downtown Site to make way for the hospital.

8. Working together, Jim Brock and I co-founded #NoHospitalDowntown.

9. #NoHospitalDowntown is an unincorporated organization, specifically a Facebook Community Group, whose purpose is to save the historic Columbia-Lafayette neighborhood, its businesses and its historic assets, from being demolished to make way for the hospital.

10. Since the time of Jim Brock's call in 2015, I have dedicated my fulltime efforts to our group #NoHospitalDowntown and opposition to the hospital's downtown concept.

11. A second group, named Better Utica Downtown (BUD), was created by property owners opposing being displaced. I have also worked tirelessly to advance BUD's effort.

12. As a BUD and NHD member, I came to know the then-owner of a ~1840's townhouse at 442 Lafayette Street.

13. I ultimately purchased 442 Lafayette Street and have engaged in repair/restoration work on the building, begun redevelopment of the interior, and improved the property's curb appeal. My intention is to protect and fully restore the property.

14. 442 Lafayette Street is eligible for listing on the National Register, is archeologically sensitive, has been designated by the Landmarks Society of Greater Utica as being among its "Sixteen to Save" endangered buildings list, and, therefore, is certainly historically significant. See Table 1.

Table 1. 442 Lafayette Street	
<b>Per MVHS DEIS:</b>  <b>Page 61</b> - The archaeological site reported within the APE is a historic period site (NYSM 12153; USN A06540.001655). A scatter of historic materials (e.g., ceramics, glass, nails, and bricks) was found at the site. National Register eligibility of the site is undetermined. Based on field reconnaissance, the site is located within the yard of the extant building. Access was not available during the Phase 1A field reconnaissance, but	

aerial imagery and site photographs show this to be a small grass yard. A view toward the site from outside the property limits is presented in Appendix E, Photograph 18).

**Page 62** - The site's National Register eligibility is presently undetermined and, therefore, the site will likely require Phase 2 investigation to assess its significance.

**Page 63** - Four existing National Register-eligible architectural resources are in the Project APE, one is 442 Lafayette Street (USN 06540.001490).

**Archaeological Sensitivity-**  
In correspondence dated June 18, 2018 (Appendix E), SHPO identified the following potential project-related impacts on archaeological resources: Disturbance of a known archaeological site – 442 Lafayette Street (NYSM 12153; USN A06540.001655)



### **Per The Landmarks Society of Greater Utica**

In 2016, The Landmarks Society of Greater Utica included the #440-444 Lafayette Street townhouses on its "Sixteen to Save" endangered buildings list. All three townhouses are currently threatened by demolition for the proposed MVHS downtown hospital campus parking garage as are several other National Register Eligible Buildings in this historic neighborhood.

Reference, The Landmarks Society Of Greater Utica, March/April 2016 Newsletter. Digital reproduction at: <http://betteruticadowntown.com/442-lafayette-history-of.php>

15. On all sides of 442 Lafayette Street are additional canal-era buildings and Carton Avenue which retains its original cobblestone foundation.

16. Locating the MVHS hospital project at the Downtown Site will result in the destruction of these significant historic resources (including my property) and the fabric of the existing Columbia-Lafayette neighborhood.

17. It is my belief that the City of Utica's Master Plan and numerous other initiatives are being violated by MVHS's out-of-scale, single-use hospital footprint.

18. Troublingly, it also appears that selection of the Downtown Site was a political one which was forced upon the MVHS Board.

19. In addition, state-mandated review processes have been ends-oriented and truncated at both the state and local level, resulting in a lack of sufficient information to support the ultimate result – namely, the unbridled destruction of irreplaceable historic resources that make this area culturally unique and an abrupt, irreversible change to the vision of Utica espoused in the City of Utica's Master Plan and regulations pertaining to the Gateway Historic Canal District (of which the Downtown Site is a part).

20. Given the politically-motivated decision-making, public deception and blatant short-cuts that have plagued this process, I remain passionately opposed to the downtown hospital concept. And I respectfully request this Court to force decisionmakers, at the very least, to abide by the procedures and substantive requirements imposed by State law.

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Brett B. Truett

Sworn to before me to this  
\_\_\_\_ day of May, 2019.

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Notary Public

## Appendix II



442 Lafayette Street

## E. Acronyms

- **ED:** Eminent domain
- **Project:** This ED proceeding/the proposed Oneida County parking garage
- **442:** Parcel at 442 Lafayette Street
- **418:** Parcels at and connected to 418 Lafayette Street
- **MVEDGE:** Mohawk Valley EDGE
- **MVHS:** Mohawk Valley Health System
- **SEQRA:** New York's "State Environmental Quality Review Act"
- **FEIS:** Final Environmental Impact Statement