

MINUTES

184th MEETING

**NEW YORK STATE BOARD FOR HISTORIC
PRESERVATION**

June 10, 2021

**Meeting held by WebEx
Based at Peebles Island
Waterford, New York**

Before the start of the meeting, Kathy Howe verified that people checking in remotely to the WebEx had access. James Carter reminded all to mute their microphones when not speaking.

The following historic preservation program staff of the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) participated in the WebEx remotely because the Open Meetings Law has been suspended due to COVID:

- Virginia Bartos
- Jennifer Betsworth
- Daniel Boggs
- John Bonafide
- James Finelli
- Kath LaFrank
- Linda Mackey
- Daniel McEneny
- Chelsea Towers
- Jennifer Walkowski

The following OPRHP staff participated in the WebEx from Peebles Island:

- Daniel Mackay, Deputy Commissioner for Historic Preservation
- Michael F Lynch, Director, Division for Historic Preservation and board secretary
- Julian Adams, Director, Community Preservation Services Bureau
- Kathy Howe, Survey and National Register Unit Coordinator
- James Carter, HPPA

Call to Order

The meeting was called to order at **10:02 AM** by Chair Douglas Perrelli.

Roll Call

The roll was called, during which the following responded as present and briefly described their role or function as it relates to their service on this board:

SRB Members Present

- Doug Perrelli: Board Chair, Archaeologist, Clinical Assistant Professor of Anthropology, SUNY Buffalo; President of the New York Archaeological Council
- Wint Aldrich: Historian, former Deputy Commissioner for Historic Preservation
- Carol Clark: former Deputy Commissioner for Historic Preservation, Adjunct Professor of Historic Preservation at Columbia University, Pratt Institute, and the NYU School of Professional Studies
- Jay DiLorenzo: President, Preservation League of New York State
- Kristin Herron: Program Director for Architecture + Design | Museums, New York State Council on the Arts
- Erika Krieger, R. A.: Architect, Assistant Director of the Variance Unit, Division of Building Standards and Codes, New York Department of State
- Jennifer Lemak: Chief Curator of History, New York State Museum, State Education Department
- Wayne Goodman: Executive Director, Landmarks Society of Western New York
- Lucy Waletzky: Chair, New York State Council of Parks, Recreation and Historic Preservation
- Chuck Vandrei: Archaeologist, Agency Preservation Officer, Department of Environmental Conservation

There being **ten** members participating, a quorum was confirmed.

[Note: the voting method for online meetings is that following a motion and second, there will first be a call for any “opposed” or “abstaining” votes. If there are none, the motion is carried by unanimous consent.]

Approval of Past Minutes

Secretary Lynch noted that there had been no comments received on the draft minutes and the final draft circulated to the board before this meeting. There were no corrections offered to the final draft minutes for the 183rd meeting held on March 11, 2021.

Motion to approve the minutes as submitted: **E. Krieger** Second: **L. Waletzky**

Vote: Opposed - none Abstaining - none

The minutes were approved by unanimous consent

REPORTS

Daniel Mackay, Deputy Commissioner for Historic Preservation and Deputy State Historic Preservation Officer

Deputy Commissioner Mackay welcomed the board and also those members of the public who share an interest in the projects being presented today. We appreciate the enhanced public participation this remote format allows, and we hope to continue to provide this service going forward.

D. Mackay thanked the board members for their commitment to reviewing the nominations, the slate today being a delightfully diverse group.

D. Mackay noted that as we pull out of COVID and all the State responses that have been necessary, the DHP staff has maintained an extraordinarily busy pace across all program areas. We are looking at the end of the work from home requirements in early July, and we expect that most staff will seek to work a hybrid schedule of some days in the office and some days telecommuting. Our staff has proven the efficacy of that model and I am very pleased with the adaptation that they made to that working method during the past year. Going forward it appears the new paradigm will be a blending of these two.

Later in the agenda we will be considering a resolution to honor John Bonafide’s accomplishments as head of the Technical Services Bureau. His retirement date is imminent, but I am pleased to report we have agency and DOB approval to proceed with hiring his replacement. All internal candidates eligible for promotion have been contacted, we will begin the interview process shortly, and we will be able to appoint a candidate immediately. This differs from the process we had to go through with promoting Greg Smith to the position of Bureau Chief for the Bureau of Historic Sites. Due to COVID and the hiring freeze, we were only able to designate Greg as the acting chief last June, but we could not effectuate the official promotion until just last week. I thank Greg for his patience and his willingness to work full pace in that acting capacity for a full year, but he is now officially the Chief of the Bureau of Historic Sites.

I don’t usually present slides as part of my presentation, but I would like to take the remainder of my time to present two particularly interesting projects to the board and the public today.

Pier 76, New York City. The opening ceremonies for what was briefly, for about twenty-four hours, New York's newest state park were yesterday, June 9th, featuring the governor and the commissioners from NYS DOT, OPRHP, and the Office of General Services. The agency was asked to undertake a remarkable transformation of this pier in the Hudson River at 38th Street and the Henry Hudson Parkway. This was most recently used as the NYPD tow pound, so for many New Yorkers there is a twenty-year-long unhappy history associated with this site. But it has a truly fascinating history and is probably the most interpreted-per-square foot of any state park. Meaghan Fitzgerald from the executive staff was the project manager and Steve McCorkle was the capital program manager. Late in the process, well after work had begun, the Bureau of Historic Sites was tasked with developing an interpretive program in a very, very short time frame. The entire division staff was brought on to crowdsource the research and identification of images, while Greg Smith's bureau took the lead in designing, preparing, and installing twenty-six panels that start with the Native American presence, the Lenape of Manahatta, through the Dutch and English colonial periods, up through the twentieth century use for container shipping, and lastly that much-hated tow pound. The building's skin, roof, and siding have been removed to expose the structural system, the panels have been installed, and the largest and heaviest item in our entire collection, a 32-ton propeller from the *SS United States*, which used to dock just north at Pier 85, has been moved from storage near the Intrepid museum and placed near the entrance. The park was then transferred to the Hudson River Park Trust, which will operate the park. And it is already busy, featuring the TriBeCa Festival, using the park as an outdoor movie venue.

Philipse Manor Hall, Yonkers. Pier 76 was a priority project that landed on top of an even bigger priority project, the transformation of Philipse Manor Hall. This was the seat of the Philipse family's business enterprises. Their wealth was built on the backs of enslaved Africans. They were the second-largest slave-owning family in Colonial America during both the Dutch and British periods. They sided with the Loyalists and were forced out of the country. The building has served as the village hall for the village of Yonkers, then as the city hall when Yonkers became a city. It has been a state historic site since the early 1900s.

What is proposed, and what is underway, is the landscape is being renewed, consolidating some spaces and improving parking and circulation. The biggest physical change is the new construction of an elevator shaft and gender-neutral bathrooms to meet ADA compliance and provide easy access to second-floor assembly and exhibit areas.

The most exciting change is the updating of the interpretation and exhibits. We are taking an "Our whole history" approach to focus 2,800 square feet of exhibit space not only on the Philipse family but on the history of Native Americans at this site and the African American story, including the enslaved people. These will be ground-breaking exhibits and will set a new standard for the agency in terms of planning, design, intent, and inclusiveness. This is a governor's priority project that appeared in the State of the State. We are working on a very tight schedule, but design is complete, construction documents have been released for bid, SEQRA is complete, we anticipate construction will start in August and the site, with new construction and exhibits completed, will open in June 2022. I want to commend the division staff in the bureau of historic sites who are working hard to make this happen.

D. Mackay then announced that earlier this week, after a lengthy delay, Dr. Gretchen Sorin, professor and author based at the Cooperstown Graduate Program, who has deep experience in teaching history, historic preservation, and teaching how to teach history, was confirmed for her appointment to the board. Dr. Sorin, author of the recently published *Driving While Black*, also brings to the board her experience as a person of color herself.

D. Perrelli asked how many positions remain open on the board.

D. Mackay confirmed that there are two open seats on the board, of a total of thirteen.

W. Aldrich commented that he felt this was a very strong appointment that would benefit the board and the staff.

The Aldrich & Ray Court Case: Julian Adams

The Aldrich & Ray property in Buffalo was presented to this board at the March 21, 2019 meeting, at which time the board voted not to recommend the property for nomination. Therefore, we did not forward the nomination to the Keeper of the National Register.

On August 6, 2019, the owner appealed to the Keeper requesting that the property be listed. Alexis Abernathy, designated by the Keeper as the National Register reviewer for New York, agreed with the denial by this board.

On September 30, 2019, the owner filed a case with the United States District Court in the Western District of New York (Buffalo), requesting that the court overturn the denial and instruct the Keeper to list the property on the National Register. In the decision dated December 15, 2020, the court declined to overturn the denial, stating that the court lacked the expertise to make such a determination, but the court did find fault with two parts of the process (see attached).

1. Although the meeting minutes and video recording of the meeting clearly show that two of the board members, Kristin Herron and Wint Aldrich, stated their reasons for denying the nomination, the other six members did not state their reasons, nor were the reasons for denial provided in the motion to deny on which the board voted.
2. In considering the appeal, Alexis did not conduct a *de novo* review as is required by the appeals process, but instead referenced the decision by the board and agreed with that decision. The court determined that the Keeper “acted arbitrarily and capriciously” in refusing the listing.

The plaintiffs also tried to introduce new information for the court to consider, but the court rejected that, saying it could only comment on what was in the record. The court instructed the plaintiff to present any new information to the state or the Keeper. We anticipate that this nomination will resurface, but we don’t know if it will come to this board or go directly to the Keeper. In either case, there may be new information to consider, and whoever is doing the review will have to do a *de novo* review.

The rehabilitation project itself has proceeded. We hear through our contacts that the project is almost completed, which raises other possible issues. Without pre-approval of the Part 2 by the National Park Service, the work that will be presented in the Part 3 may not meet the Standards, resulting in denial for the tax credit, even if the National Register nomination ultimately is approved.

D. Perelli: If the nomination comes back, can they bring new information or approach it from a different angle?

J. Adams: Yes, they can present new information or a completely rewritten nomination making different arguments.

D. Perrelli: When the board votes, it is based on the information presented. Doesn’t that imply those are the reasons for the motion to deny?

M. Lynch: Although the minutes reflect the discussion and the reasoning behind the motion, the motion to deny did not include any of the reasons. In the future, should the situation arise again, the motion should very explicitly state the reasons for denial.

Report of the Chair

- **State Historic Preservation Plan**

I have sent the draft SHPP to all board members for comment. The copy circulated is without graphics. I want to verify that the deadline for comments from the board is July 28, 2021.

D. McEneny confirmed that is correct

D. Perrelli asked if any board member had any initial comments on the draft?

K. Herron complimented everyone on how thorough and well-written it is, stating it represents much careful consideration. Added that she is unable to give any critical feedback because it is so thoughtful.

W. Aldrich stated it is remarkably interesting and very well done. He noted it is significantly different from previous five-year plans, and although they served their purposes well, this plan serves a new and updated purpose. He added he will provide written comments on the entire plan shortly.

D. Perrelli asked if the board will get to see a version with graphics before July 28th.

D. McEneny replied that due to the cost of change orders with the graphic designer, we will not be sharing draft versions with graphics. We want to collect all comments and deliver a final text to the designers. There will be some additional information developed and added to the draft. Early feedback is that the plan lacks guidance on treatments of historic resources, so we will be working with Julian Adams and Beth Cummings's unit to strengthen that.

D. Perrelli reminded the members that the board is charged with reviewing the draft plan. He will communicate with the members after this meeting and ask for volunteers to review some or all sections of the draft report and will set an earlier deadline than July 28th for comments to him.

D. Perrelli asked how many comments we are willing to receive and how many pages of text can be added to the report.

D. McEneny responded that we are prepared to take in all comments. We have to respect the comments, but we also have to evaluate them against the data we collected. He anticipates receiving comments from the National Park Service this week.

- **D. Perrelli** reminded members that brief biographies were due to D. Mackay and asked if Daniel had provided a template for the bios.

D. Mackay responded that he had not provided a template but had received several bios from members. He will work from those examples and prepare a template to share with the members.

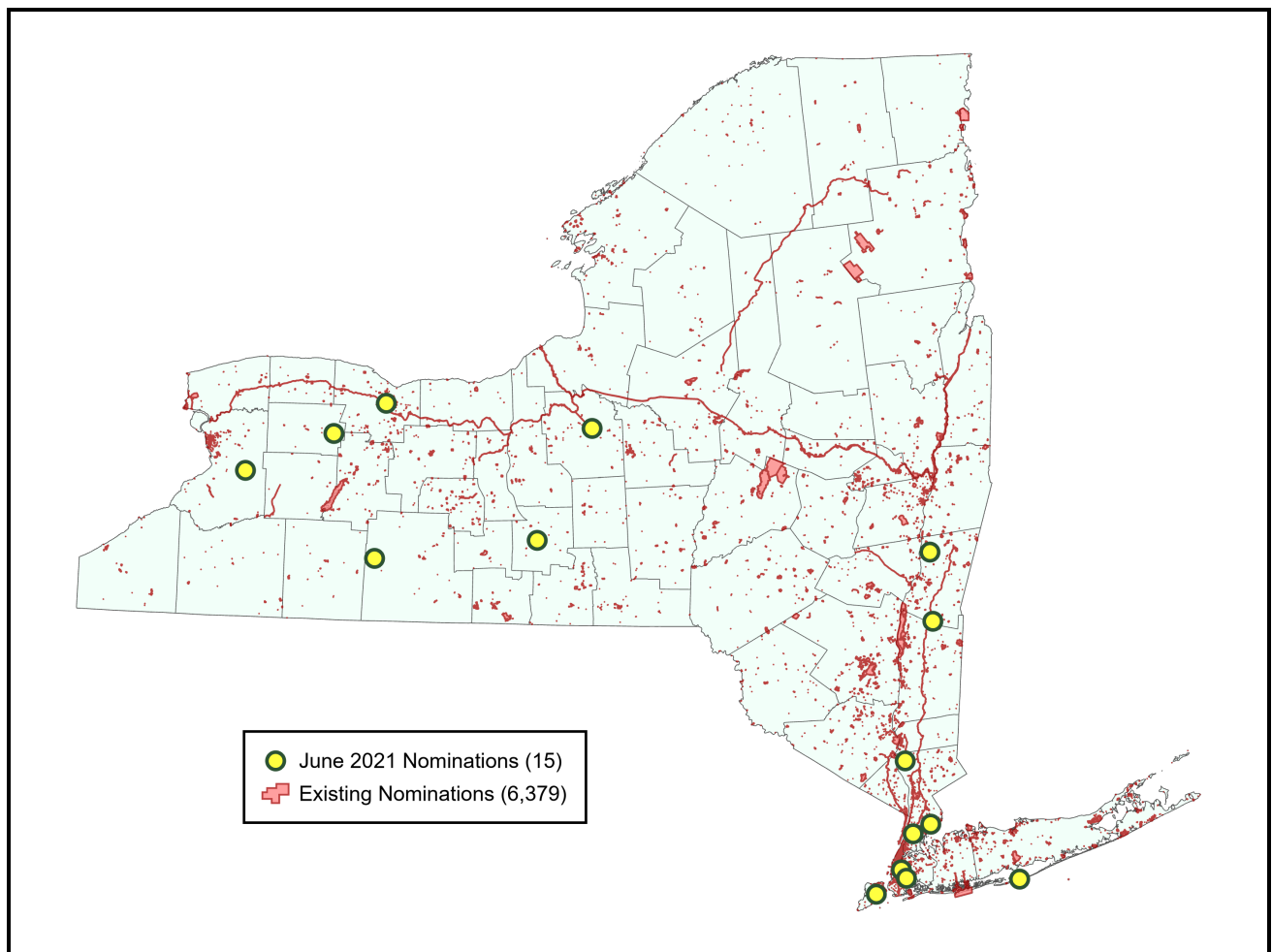
- **D. Perrelli** announced that **Paul Stewart**, Executive Director of the Underground Railroad Museum at the Stephen & Harriet Meyer Residence in Albany, resigned from the board effective May 17, 2021. A resolution will be presented later in this meeting.

NOMINATION REVIEWS

K. Howe showed a map prepared by Matt Shepherd of our Information Resources Unit (thank you Matt) that showed the distribution of the properties being presented today in yellow. The map shows good statewide coverage.

K. Howe also welcomed all the guests, property owners, and consultants who are attending the virtual meeting from all over the state. Guests with an interest in a specific nomination will be introduced after each staff presentation and should feel free to offer comments.

Daniel Mackay commented that he loves this map component of the meeting format. New York State continues to lead the nation in the number of nominations, and the readily apparent geographic diversity is increasingly matched by diverse cultural affiliations as well.



K. Howe thanked **J. Carter** for providing technical support during this meeting and **V. Bartos** for assembling the PowerPoint presentation.

K. Howe noted that joining us today as a guest is Alexis Abernathy. She is our National Register reviewer at the National Park Service in Washington, D.C.

1. Gustav & Marion Fleischmann House, Peekskill, Westchester County

Presenter: Chelsea Towers

- Letters of support: none
- Letters of objection: none
- Financial incentive program: honorific

*The Gustav and Marion Fleischmann House is locally significant under **Criterion B** in the area of Industry for its association with Gustav Fleischmann Jr. (1885 - 1976), who served as executive vice president and General Manager of the influential Fleischmann Company's sprawling manufacturing plant in Peekskill, New York, from 1920 to 1953, and under **Criterion C** in the area of Architecture as an excellent local form of Colonial Revival architecture in which the architect, Chester A. Patterson, combined elements from multiple revival influences, including Colonial, Dutch Colonial, French Colonial, and early Classical Revival.*

The period of significance begins with the construction of the house in 1927 and ends when Gustav retired from the company in 1953.

Guest Speakers: *Michael Stewart, owner and nomination author, thanked Chelsea for her assistance and guidance. This nomination began two years ago but was delayed by the pandemic, so they were glad to get back to it after a year. This is a labor of love for them; they do not consider themselves owners as much as stewards of this lovely property. They have lived in the neighborhood for almost twenty years before it came on the market and have been paying close attention to preserving the details, such as the finials on the fence that he is about to reinstall. He closed by thanking the board for its approval of the nomination.*

Board Discussion:

W. Aldrich liked the fact that this board recently approved the family's ballfield in Fleischmanns, Delaware County, and now we're doing a family house.

Motion to approve: **E. Krieger** Second: **W. Aldrich**

Vote: Opposed - none Abstaining - none

The nomination was approved by unanimous consent

2. Child Welfare Association of Mamaroneck, Mamaroneck, Westchester County

Presenter: Chelsea Towers

- Letters of support: none
- Letters of objection: none
- Incentive program: honorific

*The Child Welfare Association of Mamaroneck is locally significant under **Criterion A** in the area of Health Care for its relationship with the social history of public health in the Village of Mamaroneck and the greater Larchmont-Mamaroneck community. The Mamaroneck organization was one of many Child Welfare Associations established throughout the country during World War I by the Women's Committee of the Council of National Defense to address child welfare needs as women began to leave the home to join the workforce as part of the war effort.*

The period of significance for the Child Welfare Association extends from the 1926 construction of the building until 1970, when the center transitioned to the Larchmont-Mamaroneck Counseling Center, shifting focus from specific child welfare priorities to the overall healthcare and social wellbeing of community members.

Guest Speakers: none

Board Discussion:

J. Lemak commented that the nomination presented a great social history.

Motion to approve: **J. Lemak** Second: **E. Krieger**

Vote: Opposed - none Abstaining - none

The nomination was approved by unanimous consent

3. Rockland Silk Mill, Hornell, Steuben County

Presenter: Jennifer Walkowski

- Letters of support: none
- Letters of objection: none
- Financial incentive program: commercial investment tax credit program (ITC)-NPS approved Part 1

*The Rockland Silk Mill is locally significant under **Criterion A** in the area of Industry for its association with the silk manufacturing industry in the city of Hornell during the late nineteenth and early twentieth centuries. The silk industry dominated Hornell for roughly thirty years, between 1890 and 1920, the peak of which saw six large silk production factories operating in the area. The Rockland Silk Mill is also significant under **Criterion C** in the area of Architecture as a good example of an industrial loft model designed to house light manufacturing processes.*

The period of significance for the Rockland Silk Mill extends from the initial construction date of 1894 to 1923, when silk production in the building ceased.

Guest Speakers: *Elise Johnson-Schmidt, project architect*, thanked Jennifer and commented on the goals of the project (see prepared statement attached)

Board Discussion:

K. Herron asked if any artifacts or material culture from the silk production have been included in the rehabilitation.

E. Johnson-Schmidt responded that although they searched high and low, no artifacts or historic photos of this mill have been located.

D. Mackay offered that silk mills in Rhode Island and eastern Connecticut might be sources of artifacts to include on display at this mill.

Motion to approve: **K. Herron** Second: **W. Goodman**

Vote: Opposed - none Abstaining - none

The motion was approved by unanimous consent

4. Bank of East Aurora, East Aurora, Erie County

Presenter: Jennifer Walkowski

- Letters of support: Chair of East Aurora Planning Commission
- Letters of objection: none
- Financial incentive program: commercial ITC program - NPS approved Part 1

*The Bank of East Aurora building is locally significant under **Criterion C** in the area of Architecture as a representative intact example of an early twentieth century Classical Revival style bank building. Built in 1936, the building was designed by Aaron Riley Merritt, a Buffalo architect responsible for many commercial*
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and residential buildings in East Aurora. The building is also significant under **Criterion A** in the area of Commerce as an example of a small independent bank that supported the economic growth and prosperity of East Aurora for over a century. Constructed in 1922, the bank's history dates to 1882 when the Bank of East Aurora was established as the earliest financial institution for East Aurora.

The period of significance starts with the bank's construction in 1922 and ends in 1936 when it became a member bank of the Marine Midland Corporation and expanded services beyond the Village of East Aurora.

Guest Speakers: *Greg Pinto, preservation consultant*, thanked Jennifer for her assistance through several iterations of the nomination and noted that the developer really wanted to incorporate banking features such as the vault when converting this to a boutique hotel.

Board Discussion: none

Motion to approve: **J. DiLorenzo** Second: **D. Perrelli**

Vote: Opposed - none Abstaining - none

The nomination was approved by unanimous consent

5. Upsilon Alpha Chapter, Chi Omega House, Syracuse, Onondaga County

Presenter: James Finelli

- Letters of support: Syracuse Landmarks Preservation Board (Certified Local Government-CLG)
- Letters of objection: none
- Financial incentive program: honorific

The Upsilon Alpha Chapter House is locally significant under **Criterion A** in the area of Social History for its association with early to mid-twentieth-century collegiate life and as the home of the Upsilon Alpha Chapter of the Chi Omega national women's fraternity. The Upsilon Alpha Chapter of Chi Omega was installed on the Syracuse University campus in 1911 and purchased the building in 1919; it remained in the house until the chapter disbanded in 1992. The Upsilon Alpha Chapter House is also significant under **Criterion C** in the area of Architecture as a distinctive, intact example of an early twentieth-century fraternity house typology.

The period of significance for the Upsilon Alpha Chapter House begins in 1919, the year the chapter purchased and expanded the house, and ends in 1971 in deference to the NRHP fifty-year rule, though the chapter occupied the building until the early 1990s.

Guest Speakers:

Kristen Olson, edr preservation consultants, thanked James, and Kathy Howe and read from a statement prepared by the Upsilon Alpha Alumnae of Syracuse, New York, which has owned the building for over one hundred years (see attached).

Board Discussion: none

Motion to approve: **J. Lemak** Second: **K. Herron**

Vote: Opposed - none Abstaining - none

The nomination was approved by unanimous consent

At 11:35 D. Perrelli called for a brief five-minute break.

The meeting resumed at 11:41 and D. Perrelli confirmed there was a quorum present.

6. Third Ward Historic District Boundary Amendment/Additional Documentation, Rochester, Monroe County

Presenter: Virginia Bartos

- Letters of support: none
- Letters of objection: none
- Financial incentive program: homeowner and commercial tax credit programs

Originally listed on the National Register of Historic Places in 1974, the Third Ward Historic District encompassed a small portion of Rochester's Third Ward, or Corn Hill, neighborhood, limiting the listed district to seven blocks. The nomination indicated that the district was significant in the areas of commerce and architecture but omitted much of the rich history of the Third Ward that reflected Rochester's growth and movements of populations in the nineteenth and twentieth centuries.

*The expanded district is locally significant under **Criterion A** in the area of Community Planning as it is important to the story of local historic preservation planning at both the grassroots and city government levels. It is also significant in the areas of Social History and Ethnic Heritage: African American, as it demonstrates how changing community design patterns from the nineteenth through the mid-twentieth century resulted in the Third Ward as it appears at present.*

*The listed and nominated expansion areas are locally significant under **Criterion C** in the area of Architecture as they display similar street patterns and architectural building styles, with some resources being architect designed. Documentation is also being added to include information about listed resources omitted from the 1974 nomination. Architecture in the listed and nominated expansion areas reflects popular styles from the mid-nineteenth through the mid-twentieth centuries with prevalent styles being Greek Revival, Gothic Revival, Italianate, Queen Anne, and Colonial Revival.*

V. Bartos added that after much discussion, the end date is being extended to 1977 to include School No. 3 as contributing and adding its history to the Civil Rights and Urban Renewal history. After conferring with our National Register reviewer, Alexis, the sub-category of Civil Rights is being added to Criterion A, Social History. We will ask the authors of the nomination to add text to the nomination that addresses these issues

Guest Speakers: none

Board Discussion:

D. Perrelli requested verification that the relocated gazebo and park would then also be considered contributing.

V. Bartos responded that although the impetus for extending the end date was to include School No. 3, the park and gazebo would also be considered contributing.

D. Perrelli asked if the board would have an opportunity to review the added information before the nomination is sent to the National Park Service and if the added information will be extensive.

V. Bartos responded that it likely won't be an extensive addition, but if the board requests seeing the revised nomination before it is sent, we will do that.

Motion to approve, provided the nomination is revised to include the Civil Rights narrative, School No. 3; that the period of significance is extended to 1977, and; that the board has an opportunity to review the revised nomination before it is submitted to the National Park Service: **C. Clark Second: D. Perrelli**

Vote: Abstaining – **W. Goodman** Opposed - none

The nomination was approved.

7. St. Mark's Episcopal Church, LeRoy, Genesee County

Presenter: Virginia Bartos

- Letters of support:
- Letters of objection: none
- Financial incentive program: NY Landmarks Conservancy Sacred Sites grant

*Completed in 1869, St. Mark's Episcopal Church is locally significant under **Criterion C** in the area of Architecture as an intact representative example of mid-nineteenth-century Gothic Revival ecclesiastical design and for being the work of renowned Rochester architect Andrew Jackson Warner. The church is also significant under **Criterion A** in the area of Settlement for its association with the expansion of the Episcopal church in western New York State in the first half of the nineteenth century during the period of westward migration. The period of significance for the church building is 1868 to 1958.*

Associated with the church is a burial ground, established in 1826 when the first St. Mark's Church was located at Church and St. Mark's streets. The cemetery also represents the early settlement period of LeRoy and the need for establishing a burial ground. The church continued using the cemetery until its final burial in 1910. The period of significance for the cemetery is 1826 to 1910.

Guest Speakers: *Dennis Mellander, member of the vestry, thanked Virginia for her help with this nomination and Wayne Goodman and Cynthia Howk of the Landmarks Society of Western New York. This application to the National Register was made possible by a \$10,000 matching grant from the Sacred Sites Fund, the major portion of which is for restoration of the frames and storm windows that protect the beautiful stained glass. Additional work includes restoring the colonettes that flank the exterior doors. The congregation and the community of LeRoy have raised an additional \$25,000 for this project, which is about 20 percent complete at this point. Dennis closed by thanking the board for its consideration of this nomination.*

Board Discussion:

D. Perrelli asked for clarification of the period of significance.

V. Bartos said that although the church and the cemetery are linked historically, there are two different periods of significance since the cemetery started in 1826 but was associated with a previous church building.

D. Perrelli asked if any of the fundraising was for the restoration of the cemetery.

V. Bartos responded that the fundraising was focused on the Sacred Sites grant. However, she noted that although the cemetery is owned by the church, the Village of LeRoy maintains the site.

Motion to approve: **W. Aldrich** Second: **E. Krieger**

Vote: Abstaining – **W. Goodman** Opposed - none

The nomination was approved.

8. Point O'Woods Historic District, Fire Island, Suffolk County

Presenter: Jennifer Betsworth

- Letters of support: none
- Letters of objection: none
- Financial incentive program: honorific

*The Point O'Woods Historic District on Fire Island, Suffolk County, is locally significant under **Criterion A** in the area of Social History for its association with the Chautauqua movement as well as in the area of Entertainment and Recreation as a private resort development on Fire Island during the twentieth century.*

*It is also locally significant under **Criterion C** in the area of Architecture for its unusual plan for a Fire Island community and for its collection of buildings that reflect regional resort design by civil engineer, architect, and landscape designer Colonel John Yapp Culyer (1839-1924) and architecture during the nineteenth and twentieth centuries. Point O'Woods is the only community on Fire Island without a street grid pattern. Cars were never introduced to the island for personal transport.*

The period of significance for the district begins with the establishment of the community in 1894 and ends in 1968, when construction was completed on eleven homes in the "Beach Modernist" style.

Guest Speakers: Janet Hurley, President, Point O'Woods Association, spoke on behalf of the Point O'Woods National Register Application Committee that prepared the nomination, and read from a prepared statement (see attached).

Board Discussion:

W. Aldrich asked what happens at the expiration of the ninety-nine-year land lease.

Janet Hurley responded that the leases are renewable and, since the community is 127-years old, they have expired and been renewed.

K. Herron thanked Janet for her presentation and noted that the ban on automobiles in the community and its resulting impact on the architecture is very interesting. Kristin added that as a resident of Long Island, she was unaware that there was ever a Chautauqua on Long Island and, even though it existed for a very short time, its influence on this community is fascinating.

Motion to approve: **W. Goodman** Second: **W. Aldrich**

Vote: Opposed - none Abstaining - none

The nomination was approved by unanimous consent.

9. Peter Sander Van Alstyne House, Kinderhook, Columbia County

Presenter: Jennifer Betsworth

- Letters of support: Kinderhook Town Historian
- Letters of objection: none
- Financial incentive program: honorific

*The Peter Sander van Alstyne House, located in the Kinderhook area of Columbia County, New York, is locally significant under **Criterion C** in the area of Architecture as a good example of regional domestic architecture in Columbia County that demonstrates the transition between New World Dutch and English-derived building practices in New York State's upper Hudson Valley. Erected in the mid-1770s for van Alstyne, the brick masonry house represents the melding of regional Dutch and English-based building traditions, as manifested in physical traits such as its form, façade configuration, the construction technology used to erect it, and its floor plan. Although it was erected for van Alstyne, his occupancy of the house was fleeting, given his Loyalist leanings. He was ultimately compelled to relocate to Canada, where he became a noteworthy figure in the settlement of Ontario.*

Guest Speakers: none

Board Discussion: none

Motion to approve: **J. DiLorenzo** Second: **K. Herron**

Vote: Opposed - none Abstaining - none

The nomination was approved by unanimous consent.

10. Gallatin Reformed Church and Cemetery, Gallatinville, Columbia County

Presenter: Jennifer Betsworth

- Letters of support: none
- Letters of objection: none
- Financial incentive program: honorific

*The Gallatin Reformed Church & Cemetery is locally significant in association with **Criterion C** in the area of Architecture, given the meetinghouse's importance as an example of nineteenth-century religious design in rural Columbia County, and for the survival of the associated parsonage and church hall, both of which retain physical integrity to the cited historic period.*

*Additional significance is being claimed in association with **Criterion A** in the area of Settlement, given the collective importance of the various early Gallatin settlers whose remains are interred there. The house of worship, erected between 1823 and 1824 to replace an earlier mid-eighteenth-century edifice, is an excellent specimen of the traditional Wren-Gibbs type Protestant meetinghouse as erected during the Federal period, with historic-era alterations rendered in the early 1870s to accommodate a new organ and liturgical center. In addition to the meetinghouse, this nomination includes the original story-and-a-half parsonage, erected ca. 1803 and modified in the 1870s; a 1930s church hall, known as Vedder Hall, that sustains church-related social functions; and the cemetery, one of two principal burial grounds within the town, and one established before the American Revolution.*

Guest Speakers: none

Board Discussion:

D. Perrelli asked for clarification on the date of construction of the “heat shield” vaulted ceiling and whether the gallery columns date from that installation.

J. Betsworth responded the insulated vaulted ceiling was installed in the 1950s but that the gallery columns date to the original construction.

E. Krieger commented that it is interesting that the vaulted ceiling was done in the 1950s, well before the energy crisis of the 1970s.

Motion to approve: **W. Aldrich** Second: **E. Krieger**

Vote: Opposed - none Abstaining - none

The nomination was approved by unanimous consent.

11. Chevra Torah Anshei Radishkowitz, Brooklyn, Kings County

Presenter: Linda Mackey

- Letters of support: NYC Landmarks Preservation Commission (a Certified Local Government)
- Letters of objection: none
- Financial incentive program: honorific and grants

*Chevra Torah Anshei Radishkowitz (Society of the Law, Men of Radishkowitz), commonly known as the Amboy Street Shul and currently known as St. Timothy Holy Church, is locally significant under NRHP **Criterion A** in the area of Ethnic Heritage for its association with the Eastern European Jewish immigrant community in the Brownsville neighborhood in Brooklyn.*

*It is also eligible under NRHP **Criterion C** in the area of Architecture, as an intact and representative example of Italian Renaissance synagogue architecture, designed by local Brooklyn architect Edward M. Adelson.*

The period of significance is 1922 to 1965, encompassing the date of construction to when the building was sold to a new congregation.

Guest Speakers: *C. Tinnette Spann*, a member of the congregation and granddaughter of Bishop Mary Louise Spann, who purchased the building in the late 1960s, thanked the board for its consideration of this nomination. She was born and raised in this church, and while others may see the deterioration visible in the photos, she sees the history of the families and individuals who have passed through this place. She leads the effort to restore the building, which serves as a community asset through its food pantry and educational resources.

Board Discussion: none

Motion to approve: **C. Clark** Second: **D. Perrelli**

Vote: Opposed - none Abstaining - none

The nomination was approved by unanimous consent.

12. Moslem Mosque, Brooklyn, Kings County

Presenter: Linda Mackey

- Letters of support: NYC LPC (a Certified Local Government)
- Letters of objection: none
- Financial incentive program: honorific and grants

*The Moslem Mosque and associated caretaker's residence are eligible for the National Register at the local significance level under **Criterion A** in the areas of Social and Ethnic History. Beginning in 1931, the nominated building served as the center of social and religious life for Lipka Tatar Muslims in Brooklyn, and the activities it sheltered provided assistance to that ethnic community by easing new immigrants' transition to life in the United States. Lipka Tatars are the descendants of an ethnic community that settled in the Grand Duchy of Lithuania at the beginning of the fourteenth century. Moslem Mosque is the oldest extant mosque in New York City and is the first permanent place of worship for the American Mohammad Society, founded in 1907, one of the oldest Islamic organizations formed in the United States.*

The period of significance is 1931 to 1971.

L. Mackey noted that it is worth exploring the possibility of national level of significance related to the history of the Lipka Tatar Muslims, but additional research is needed to establish that. Once listed, the nomination can easily be amended to reflect that change.

Guest Speakers:

Alyssa Ratkewitch Haughwout, caretaker, vice-president of the board, and granddaughter of Imam Ratkewitch, thanked Linda for her help with the nomination and noted that there are not that many Tatar mosques in the United States.

Board Discussion: none

Motion to approve: **C. Clark** Second: **L. Waletzky**

Vote: Opposed - none Abstaining - none

The nomination was approved by unanimous consent.

13. St. Stephen's Mission Church Complex, Bronx, Bronx County

Presenter: Linda Mackey

- Letters of support: NYC LPC (a Certified Local Government)
- Letters of objection: none
- Financial incentive program: honorific

*The St. Stephen's Episcopal Church complex, originally St. Stephen's Mission, is significant under NRHP **Criterion C** in the area of Architecture as an intact though modest example of Gothic Revival-style religious design and the work of Charles C. Haight, a prominent American architect who practiced in New York City and specialized in buildings for the Episcopal church. The complex consists of the church, rectory, and thrift shop. Built in 1900, the church features rustic wood shingles, an asymmetrical stone chimney, and a steep gabled roof. A bell-cote, added in 1947, complements the original design. The thrift shop, originally a single-family house erected ca. 1897, and the rectory, built in 1922, which complete the complex, are representative examples of turn-of-the-century domestic architecture and early twentieth-century domestic architecture, respectively.*

The period of significance is from 1900, the date of construction for the church, to 1948, when St. Stephen's acquired the building used as the thrift shop.

Guest Speakers: none

Board Discussion: none

Motion to approve: **C. Clark** Second: **J. DiLorenzo**

Vote: Opposed - none Abstaining - none

The nomination was approved by unanimous consent.

14. Vanderbilt Cemetery and Mausoleum, Staten Island, Richmond County

Presenter: Linda Mackey

- Letters of support: NYC LPC (a Certified Local Government)
- Letters of objection: none
- Financial incentive program: honorific

*The Vanderbilt Family Cemetery and Mausoleum is locally significant under NRHP **Criterion C** in the areas of Architecture and Landscape Architecture as a remarkable and highly intact example of integrated landscape and funerary architecture constructed for one of America's premier Gilded Age families to the designs of nationally prominent architect Richard Morris Hunt and landscape architect Frederick Law Olmsted.*

The period of significance, 1883 to 1922, encompasses the commission, design, and construction of the primary contributing resources and is terminated the year six acres of associated land were sold back to the Moravian Cemetery for its expansion, leaving the nominated sixteen-acre parcel in its present form.

Guest Speakers: none

Board Discussion: none

Motion to approve: **C. Clark.** Second: **W. Goodman**

Vote: Opposed - none Abstaining - none

The nomination was approved by unanimous consent.

15. Coast Guard Motor Lifeboat 40300, Ithaca, Tompkins County

Presenter: Daniel Boggs

- Letters of support: Ithaca Landmarks Preservation Commission and the Mayor of Ithaca
- Letters of objection:
- Financial incentive program: honorific

*The U.S. Coast Guard Motor Lifeboat CG 40300 is nationally significant under **Criterion C** for its role in the evolution of twentieth-century marine engineering design as the Coast Guard's first steel, all electric-welded, motor lifeboat, which served as the prototype for later steel lifeboat designs. The experimental design of the CG 40300 set the stage for the end of the all-wood lifeboat era and the beginning of the new era of steel motor lifeboats. The pioneering vessel was built in 1940 at the Coast Guard Yard in Curtis Bay, Maryland, and remained in official service for a remarkable 39 years. The vessel continues to serve as a Coast Guard Auxiliary vessel today, though privately owned.*

*The boat is also eligible for listing under **Criterion A** – Maritime History for its long years of search and rescue service at various lifesaving stations on Lake Michigan. She was built to handle rugged sea and weather conditions with a high degree of stability, great strength of construction, self-righting and self-bailing, and ice-breaking capabilities.*

The period of significance begins with her construction in 1940 and ends with her removal from active Coast Guard service in 1979.

Guest Speakers: *John A. Frieman, owner, thanked Dan for his assistance. Being a historian but not a writer of National Register nominations, Dan's assistance was invaluable. Frieman then added new information, based on recent research, on the designer of the vessel, naval architect Alfred Hanson.*

Board Discussion:

D. Perrelli noted that having the history of all the agencies that led up to the creation of the Coast Guard was an interesting part of the nomination.

D. Mackay congratulated the sponsor and the owner for bringing this to us. It is such a unique addition to the National Register in New York State, and the owner's investment in maintaining and restoring the boat is appreciated. And it is notable to see it in interior New York instead of coastal New York.

Motion to approve: **E. Krieger** Second: **D. Perrelli**

Vote: Opposed - none Abstaining - none

The nomination was approved by unanimous consent.

BOARD BUSINESS

D. Perrelli introduced a resolution recognizing Paul Stewart for his outstanding contributions to the board; read by **M. Lynch**, motion to approve by **D. Perrelli**, second by **E. Krieger**. Approved by unanimous consent.

W. Aldrich introduced a resolution recognizing John A. Bonafide, retiring after over thirty-three years of service to the people of the State of New York; read by **M. Lynch**, motion to approve by **W. Aldrich**, second by **E. Krieger**. Approved by unanimous consent.

John Bonafide thanked the board for the resolution. He further stated:

It is rare in state service that one can have the opportunity to do something one really appreciates and loves to do. I don't think there are many state employees who have the opportunities we at the state historic preservation office have, or that have been afforded to me over thirty-three years; the chance to wander, or in the early years, crawl, through buildings, the ability to go places, see sites, meet people, work with architects from all over the world as part of our compliance program, all of which is just coming in to work every day. Or coming to work at Peebles Island and standing next to Church's "Petra" or the other works on the conservator's benches, a truly remarkable opportunity for those of us who work in the division.

John then recounted some of his National Register work before the board and closed with a recommendation that the board get to meet the other staff who work in the division, the technical reviewers, the archaeologists, and the staff of the bureau of historic sites. He thanked the board again for the resolution, for supporting his work when he appeared before the board and stated that it has been a true privilege to work for the office and with a remarkable staff for almost thirty-four years.

NEW BUSINESS

The following dates were confirmed for the next meetings in 2021, presumed to be in person, with online streaming as well:

- Thursday, September 9 at Peebles Island
- Thursday, December 9 at Peebles Island

ADJOURNMENT

There being no additional action required of the board, a motion to adjourn was made by **C. Clark**, seconded by **K. Herron**.

By voice vote, with none opposed, the motion carried.

Meeting adjourned at 1:10 PM

Prepared and submitted by board secretary Michael Lynch

Attachments: Court decision on Aldrich & Ray
Stewart and Bonafide resolutions
Prepared statements from:
Elise Johnson-Schmidt, Rockland Silk Mill
Upsilon Alpha Alumnae of Syracuse, New York, Inc.
Janet Hurley, Point O'Woods

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1485 NIAGARA, LLC,

Plaintiff,

**REPORT, RECOMMENDATION AND
ORDER**

v.

20-cv-49-JLS-JJM

NATIONAL PARK SERVICE; JOY
BEASLEY in her official capacity as Keeper
of the National Register of Historic Places
and DAVID BERNHARDT, in his official
capacity as Secretary of the U.S. Department
of the Interior,

Defendants.

In this action, plaintiff 1485 Niagara, LLC challenges defendants' September 30, 2019 "refusal to list Plaintiff's property at 1491 Niagara Street, Buffalo, New York 14213, also known as the Aldrich & Ray Manufacturing Building . . . on the National Register of Historic Places", alleging that defendants "acted arbitrarily and capriciously" in refusing the listing. Complaint [1], ¶¶2, 3, 13.¹ Plaintiff relies upon the Administrative Procedure Act ("APA"), 5 U.S.C. §706(2)(A), which authorizes the court to "set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law". The action has been referred to me by District Judge John L. Sinatra, Jr. for pretrial supervision, including initial consideration of dispositive motions [9, 40].

¹ Bracketed references are to the CM/ECF docket entries. Unless otherwise indicated, page references are to CM/ECF pagination, shown on the upper right corner of the page.

Before the court are the parties' motions for summary judgment [18, 27], defendants' motion to strike certain submissions by plaintiff [24], and plaintiff's motion to supplement the administrative record underlying the challenged decision [30]. Having reviewed the administrative record [16] as well as the parties' submissions [18, 24, 25, 27, 30, 31, 34, 35, 38 and 41], for the following reasons defendants' motion to strike [24] is granted, and plaintiff's motion to supplement the record [30] is denied. Furthermore, I recommend that plaintiff's motion for summary judgment [18] be granted in part and denied in part, and that defendants' motion for summary judgment [27] be denied.

BACKGROUND

The National Historic Preservation Act ("NHPA") authorizes the Secretary of the Interior to "maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture". 54 U.S.C. §302101. "Listing in the National Register . . . makes property owners eligible to be considered for Federal grants-in-aid for historic preservation", and offers the possibility of "favorable tax treatments for rehabilitation". 36 C.F.R. §§60.2(b), (c).

On February 24, 2019 plaintiff nominated the Aldrich and Ray building for listing on the National Register under "Criterion A" of the NHPA regulations.² [16], pp. 39 *et seq.* In support of the nomination, plaintiff argued that the building "is significant under Criterion A for its industrial history, spanning an important era of industrial manufacturing in the area and the city at large, during the period of significance from 1894-1953. During this period, the Aldrich

² "The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and . . . that are associated with events that have made a significant contribution to the broad patterns of our history". 36 C.F.R. §60.4(a)

and Ray Manufacturing Building occupied this building as its factory producing a variety of brass, copper and metal items. Built in 1894, the brick building at 1491 Niagara Street . . . is the oldest portion of the industrial complex remaining today, and the only portion specifically constructed by the company for industrial use.” Id., p. 59.

The nomination was considered at a meeting of the New York State Board for Historic Preservation on March 21, 2019, at which eight of the ten Board members were present. Id., pp. 18-25.³ At the conclusion of that meeting, the Board voted unanimously to deny the nomination. Id., p. 25. Although Board members Kristin Herron and Wint Aldrich stated their reasons for doing so (id.), the other six Board members did not - nor was the vote accompanied by a statement of the Board’s reasons for rejecting the nomination.

By letter dated March 29, 2019 ([16], p. 34), Deputy State Historic Preservation Officer Daniel Mackay notified plaintiff that “[f]ollowing a detailed review, New York State Board for Historic Preservation . . . has recommended to the Commissioner of the Office of Parks, Recreation and Historic Preservation that the property . . . should not be nominated to the National Register of Historic Places. The Commissioner serves as the State Historic Preservation Officer (SHPO) for New York State. The Board’s unanimous decision that the building does not meet the criteria for listing was based on the fact that the building had suffered a substantial loss of integrity in [a] 1976 fire, which destroyed its north half. Because of this, the board concluded that the remaining south wing lack integrity of design, materials, feeling and association and could no longer convey the significant history of the Aldrich and Ray Manufacturing Company, which had occupied the site between 1894 and 1953. After reviewing the draft nomination and reports from staff, the SHPO has agreed with the recommendation of the Board. The property

³ I have reviewed the video of that meeting, which is part of the administrative record. [16], p. 17. The CD containing that video is available for review by District Judge Sinatra.

has not been . . . forwarded to the National Park Service for consideration for National Register listing. The nomination sponsor has the right to appeal the decision of the Board and SHPO . . . for a final determination by the Keeper of the National Register.”

Accordingly, on August 6, 2019, plaintiff appealed that decision to the Keeper of the National Register pursuant to 36 C.F.R. §60.12(a) (“Any person or local government may appeal to the Keeper the failure or refusal of a nominating authority to nominate a property that the person or local government considers to meet the National Register criteria”). [16], pp. 91 *et seq.* The appeal stated that the building was originally constructed in 1894 “and connected to an independently standing police station located on the lot to the north some time before 1900”, and noted that although a 1976 fire “did destroy the former police station . . . the original structure that was built by, and for Aldrich & Ray remained standing in full. Infilled windows . . . illustrate that the extant structure was originally constructed as a distinct building”. *Id.*, pp. 91-92.

By letter dated September 30, 2019, the Keeper’s designee, Alexis Abernathy,⁴ notified plaintiff that “[a]fter carefully reviewing the documentation submitted on the appeal, including your letter, the draft National Register nomination, video of the State Review Board meeting, correspondence between your organization and the State, in the state review board minutes, I have denied your appeal”. [16], p. 142. She explained that “[t]he draft National Register nomination and supplemental materials supplied by your organization do not counter the State and State Review Board’s decision that the Aldrich and Ray Manufacturing Building no longer retains sufficient integrity for listing in the National Register of Historic Places. The loss

⁴ Since the Keeper delegated the authority for making eligibility determinations to Ms. Abernathy pursuant to 36 C.F.R. §60.3(f) ([16-1], p. 172), I will hereafter refer to her as the Keeper.

of the north half of the building in 1976 was too much for the final small industrial complex in Buffalo to retain sufficient integrity for listing in the National Register.” Id.

That decision constituted “the final administrative action” (36 C.F.R. §60.12(e)), which plaintiff challenges in this action. Complaint [1], ¶¶13-14.

DISCUSSION

A. Motions to Strike/Supplement

Defendants move to strike the affidavits of Kerry Traynor [18-1], Robert Corrao [18-2] and Robert Knoer [18-3], arguing that plaintiffs improperly seek to add materials and arguments beyond those already contained in the administrative record. Defendants note that “[u]nder the deferential arbitrary and capricious standard of review contained in the APA, judicial review is limited to the record that was before the agency at the time the agency made the challenged decision The rationale behind the ‘record rule’ is that a reviewing court, in dealing with a determination or judgment which an administrative agency *alone* is authorized to make, should not . . . substitute its opinion for that of the agency.” Defendants’ Memorandum of Law [25], p. 5 (emphasis added). Therefore, “the agency’s action must be reviewed on the basis articulated by the agency”. Id., p. 6.

I agree. Therefore, defendants’ motion to strike [24] is granted, and plaintiff’s motion to supplement [30] is denied,⁵ except to the extent consented to by defendants. *See* defendants’ Memorandum of Law [25], pp. 7-8 (“As to the affidavit of Robert Corrao (*sic* -

⁵ Both motions are nondispositive. *See Strom v. National Enterprise Systems, Inc.*, 2011 WL 1233118, *1, n. 1 (W.D.N.Y. 2011) (motion to strike); *Tackman v. Goord*, 2005 WL 2347111, *1, n. 2 (W.D.N.Y. 2005) (motion to supplement).

Corrao [18-2]) . . . some portions of the affidavit may be considered by the Court with respect to the Plaintiff's burden to demonstrate standing to pursue its claims However, paragraphs 7-10 of the affidavit . . . should be stricken").

B. Motions for Summary Judgment

1. The Standard of Review

“Under the APA, [courts] may set aside an agency action that is ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’ 5 U.S.C. §706(2)(A). An agency action is arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” Alzokari v. Pompeo, 973 F.3d 65, 70 (2d Cir. 2020).

“The scope of review under the ‘arbitrary and capricious’ standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made (citation omitted). In reviewing that explanation, we must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983). The court “must make a substantial and searching inquiry to ensure that the agency’s decisions are the product of reasoned thought and based upon a consideration

of relevant factors.” International Ladies’ Garment Workers’ Union v. Donovan, 722 F.2d 795, 815 (D.C. Cir. 1983).

2. The Keeper Did Not Review Plaintiff’s Appeal *De Novo*

“[T]he Keeper has independent authority to determine whether a property should be listed”, and “is not bound by the determinations of local authorities”. Moody Hill Farms Limited Partnership v. U.S. Department of the Interior, National Parks Service, 205 F.3d 554, 558 (2d Cir. 1999). Therefore, “[t]he appeal of state agency action to the Keeper should be a *de novo* review”. Plaintiff’s Memorandum of Law [34], p. 8. “Defendants agree.” Defendants’ Reply Memorandum [41], p. 6.

“By definition, *de novo* review entails consideration of an issue as if it had not been decided previously.” United States v. George, 971 F.2d 1113, 1118 (4th Cir. 1992). However, instead of considering plaintiff’s appeal “as if it had not been decided previously”, the Keeper concluded that plaintiff’s submission did “not counter the State and State Review Board’s decision that the Aldrich and Ray Manufacturing Building no longer retains sufficient integrity for listing in the National Register of Historic Places”. [16], p. 142. As plaintiff notes, “this apparent deference . . . is improper”. Plaintiff’s Memorandum of Law [34], p. 8. “[*D*]e *novo* review means reconsideration afresh . . . no presumption of validity applies to [previous] findings or recommendations.” Greene v. WCI Holdings Corp., 956 F. Supp. 509, 514 (S.D.N.Y. 1997), aff’d, 136 F.3d 313 (2d Cir. 1998). *See also Doe v. Chao*, 540 U.S. 614, 619 (2004) (“*de novo* . . . [is] distinct from any form of deferential review”).

3. The Keeper Did Not Consider Each of Plaintiff's Arguments

“Although there is no formula for what constitutes reasoned decision making”, at a minimum “the agency must “engage the arguments raised before it”. Sierra Club v. Salazar, 177 F. Supp. 3d 512, 532 (D.D.C. 2016). While the Keeper claims to have “carefully review[ed]” plaintiff’s appeal ([16], p. 142), “[t]he court does not defer to conclusory . . . suppositions.” Jurewicz v. United States Department of Agriculture, 741 F.3d 1326, 1331 (D.C. Cir. 2014).

To cite one example, plaintiff argued that the denial of the nomination “is inconsistent with other properties in Buffalo that have had similar, and often more loss of fabric, but have still been determined eligible by the Board for listing on the State Register, and subsequently the National Register. Examples . . . include F.N. Burt Factory ‘C’ (listed 4/17/2017) and the Ziegele-Phoenix Refrigeration House and Office (listed 1/17/2018)”. [16], pp. 93-96. However, the Keeper did not even mention that argument, much less respond to it. Her “failure to engage with [plaintiff’s] arguments crossed the line from deficient to arbitrary”. Romer v. Holder, 663 F.3d 40, 44 (1st Cir. 2011). *See also* San Luis Obispo Mothers for Peace v. U.S. Nuclear Regulatory Commission, 789 F.2d 26, 47-48 (D.C. Cir. 1986) (“we cannot even engage in meaningful review, unless we are told *which* factual distinctions separate arguably similar situations, and *why* those distinctions are important”) (emphasis in original).

Defendants attempt to explain to this court why the other properties cited by plaintiff were treated differently. *See* defendants’ Memorandum in Response [28], pp. 28-30. “The short - and sufficient - answer to [this] submission is that the courts may not accept . . . counsel's *post hoc* rationalizations for agency action [A]n agency’s action must be upheld, if at all, on the basis articulated by the agency itself.” State Farm, 463 U.S. at 50. “It is not the role of the courts to speculate on reasons that might have supported an agency’s decision. We may

not supply a reasoned basis for the agency’s action that the agency itself has not given.” Encino Motorcars, LLC v. Navarro, ___U.S.___, 136 S. Ct. 2117, 2127 (2016).

I recognize that courts should “uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned”. F.C.C. v. Fox Television Stations, Inc., 556 U.S. 502, 513-14 (2009). However, since I cannot “reasonably discern” that the Keeper applied the proper scope of review, or that she gave plaintiff’s arguments the attention which they deserve, her decision should be vacated.

4. What is the Appropriate Remedy?

Plaintiff asks this court not only to vacate the Keeper’s denial of its appeal, but to direct the Keeper to list the property on the National Register. *See* plaintiff’s Notice of Motion [18]. However, this court lacks the expertise to determine whether the property qualifies for listing. *See* National Register Bulletin, “How to Apply the National Register Criteria for Evaluation”, [16], pp. 265, 267 (“The final evaluation and listing of properties in the National Register is the responsibility of the Keeper of the National Register”).⁶

When issues “clearly fall within an area of special expertise” of an administrative agency, they “should be addressed by [the agency] in the first instance”. DiLaura v. Power Authority of the State of New York, 786 F. Supp. 241, 253 (W.D.N.Y. 1991), *aff’d*, 982 F.2d 73 (2d Cir. 1992). Therefore, if District Judge Sinatra agrees that the Keeper’s denial of plaintiff’s appeal “is not sustainable on the administrative record made”, then her “decision must be

⁶ The Bulletin is an authoritative source concerning the criteria for listing. *See, e.g., Hoonah Indian Association v. Morrison*, 170 F.3d 1223, 1231-32 (9th Cir. 1999).

vacated and the matter remanded . . . for further consideration”. Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 549 (1978). While the Keeper need not completely ignore the proceedings before the New York State Board for Historic Preservation, she may not treat them as being presumptively valid - particularly since the Board did not explain the reasons for its vote.⁷ Plaintiff’s appeal deserves “reconsideration afresh”. Greene, supra.

CONCLUSION

For these reasons, defendants’ motion to strike [24] is granted to the extent discussed herein, and plaintiff’s motion to supplement the record [30] is denied. I further recommend that plaintiff’s motion for summary judgment [18] be granted to the extent of vacating the Keeper’s September 30, 2019 decision and remanding that decision to her for further consideration, but that the motion otherwise be denied, and that defendants’ motion for summary judgment [27] be denied.

Unless otherwise ordered by District Judge Sinatra, any objections to this Report, Recommendation and Order must be filed with the clerk of this court by December 29, 2020. Any requests for extension of this deadline must be made to Judge Sinatra. A party who “fails to object timely . . . waives any right to further judicial review of [this] decision”. Wesolek v. Canadair Ltd., 838 F. 2d 55, 58 (2d Cir. 1988); Thomas v. Arn, 474 U.S. 140, 155 (1985).

Moreover, the district judge will ordinarily refuse to consider *de novo* arguments, case law and/or evidentiary material which could have been, but were not, presented to the

⁷ Although Board members Herron and Aldrich made statements immediately before the vote ([16], p. 25), the Board did “not say that it was adopting those members’ statements as the reason for its decision, and isolated statements by individual members of the board are not statements of the board itself”. Bloomstein v. Department of Public Safety, 135 N.E.3d 1051, 1056 (Mass. 2019).

magistrate judge in the first instance. Patterson-Leitch Co. v. Massachusetts Municipal Wholesale Electric Co., 840 F. 2d 985, 990-91 (1st Cir. 1988).

The parties are reminded that, pursuant to Rule 72(b) and (c) of this Court's Local Rules of Civil Procedure, written objections shall "specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection . . . supported by legal authority", and must include "a written statement either certifying that the objections do not raise new legal/factual arguments, or identifying the new arguments and explaining why they were not raised to the Magistrate Judge". Failure to comply with these provisions may result in the district judge's refusal to consider the objections.

Dated: December 15, 2020

/s/ Jeremiah J. McCarthy
JEREMIAH J. MCCARTHY
United States Magistrate Judge

Rockland Silk Mill Goals

Park Grove's goal was to rehabilitate an abandoned mill building that had a significant role in Hornell's important history of silk production, second largest in the country from 1912-1923, when there were 6 silk mills.

Strengthen Hornell's understanding of its past by revitalizing an important building in the community that had been relatively lost to time and threatened with demolition.

Provide a connection for people who once worked in the building when it was used as a factory for the production of lingerie, which ended only 20 years ago, and which still has ties to the people who worked there.

Provide market rate housing in a community where it is desperately needed due to a thriving business environment which mutually supports efforts by Gov Cuomo and the Economic Development Corporation's investment in Hornell.

And most importantly, to honor the building's history as a factory by preserving its architectural features such as:

1. its heavy timbered post and beam construction, highlighted by revealing the structural beams in the hallways and units, as well as the trusses in the lofts, which are all repainted in a contrasting color;
2. preserving and reusing the original stairways at ends of the building;
3. the once bare wood floors which had absorbed tar and dirt from over a century of use were sanded to go back to the original flooring – a process that took months and great expense to complete;

4. where half of the first floor had rotted due to its close proximity to the ground beneath it, a new wood floor was installed to match the predominant species and protect it from future deterioration;
5. Maintaining and capitalizing on the ceiling heights for light and spaciousness;
6. where salvageable, the original transomed windows in the original south end of the building were restored and the significantly deteriorated windows were replaced with a very good aluminum clad wood window to match the original sash, and the original exterior and interior trim was maintained where it was intact;
7. there are a few window openings that had been previously enlarged to create bigger openings connecting the factory to a much later roofed over (poorly constructed) addition that filled in the space between the factory and the garage. These openings were maintained and infilled with floor to ceiling glazing vs rebuilding them to look like the original windows – paying homage to the late addition which is not in the period of significance;
8. A section of this roof covering what is now the courtyard, was maintained at the north end of the space, as a covering for approaching the main entrance from the garage, also recollecting the roof built to fill in this space in the mid-20th century;
9. reusing the original location for the elevator, which was originally a freight elevator with walls clad in tongue and groove, and which were all reapplied or maintained in the elevator lobby;

- 10.** the tin clad door in the powerhouse, another original large door that existed is hung in the elevator lobby, and the original safe have all been retained;
- 11.** and the original flooring of the elevator cab was used to infill the floor in front of the new elevator, and which runs in a contrasting direction to the original, repaired, and in some cases replaced floors throughout the building (which run at an angle);
- 12.** light fixtures were selected to complement the building's utilitarian use, original steel finish found in the building and work with the color scheme, also selected to relate to its factory use;
- 13.** historic photos of silk production and local historic images of the trains that ran through Hornell were framed and installed on the entire first floor of the building to give tenants a sense of how the building had been used and some local history;
- 14.** the location for the Rockland Silk factory was chosen for its location on the train line where silk could be placed directly on the train for delivery, and along a river to supply water for the production process, and are now very much a part of the facility's interpretation since trains still pass multiple times a day and the river is a very important facet of the site's landscape which is integrated into the courtyard space;
- 15.** the powerhouse, which was connected to the factory on the northwest corner of the building was maintained and developed as two apartments and a leasing office, and a skylit shaft was built to provide additional natural light into the units;
- 16.** the parking garage, once a factory addition, supplies indoor parking for 17 of the 23 units;

- 17.** Preservation is a particularly important goal in the City of Hornell given the loss of character the downtown suffered due to the bisecting highway construction, and thus what remains must be retained.
- 18.** Rockland Silk, one of six silk factories that existed in the silk industries heyday, is now one of only two remaining factory buildings in Hornell. It therefore represents a very important part of Hornell's history and the City had planned to demolish the building if an appropriate use could not be found, which was close to happening when Park Grove struck a deal with the City and ESDC awarded a grant toward its rehabilitation, and Historic Preservation Tax credits could be utilized as an historic building which were key elements for the project being able to move forward. Listing on the State and National Registers is therefore extremely important, and although the building ultimately had an approved Part I for the project, your support of this project being an individually listed building is critical.

Upsilon Alpha Chapter House, Syracuse, NY

This statement was prepared by the Upsilon Alpha Alumnae of Syracuse, New York, Inc., who have owned the chapter house for over 100 years:

Our initial inspiration for this application came from decades of sisterhood, with the members of our women's fraternity chapter house spanning several generations. These sisters survived the Great Depression, lived through the challenges of World War II, experienced rock and roll and the desire for domesticity in the 1950's, studied new college majors and saw the student protests of the 1960s and 70's, went preppy yet embraced a wide variety of career paths for women in the 1980's, and finally, saw our chapter close in the 1990's.

We love our chapter house dearly, and while the building itself has experienced renovations and redecorating during its history, it remains the one tangible common denominator between all of us. In some cases, our mothers or grandmothers were members of this fraternity, creating a beautiful and long-lasting family legacy. In other cases, our time spent living as co-eds at the chapter house created lifelong friendships. Many of our graduates have gone on to successful and notable careers. We continue to care for and maintain our beloved chapter house.

We see this application as an affirmation of lives lived, of historical experiences, and of a period of architectural significance on the Syracuse University campus. Indeed, our house is the last remaining privately-owned historic building on the former southernmost block of Walnut Park. Other areas of campus with individual buildings of interest, such as College Place, have lost their sense of intimacy and connection with the individual as a result of redevelopment in recent decades.

Our hope in applying for National Register of Historic Places status is that we may honor the chapter house which has been such an important part of our lives and the university campus history.

Point O'Woods

Good morning. I'm Janet Hurley, President of Point O'Woods Association. It's an honor to be here today and to be among people who love history, because Point O'Woods is a community that loves history. The first history of our community was written in 1927, which was only 33 years after our founding. A community member, Henrietta Prentiss, whose story is included in our application, took it upon herself to write a short treatise entitled The History of Point O'Woods. Looking back on the 127 years since our founding, I find it remarkable that nearly 100 years ago it was already understood that our story was worth preserving and telling.

We are fortunate that in 1948, on the 50th anniversary of the formation of Point O'Woods Association, William Griffen wrote a 16-page history he titled The Genesis of Point O'Woods Association. In it he recounted how he and a handful of friends had created Point O'Woods Association out of the financial wreckage that had been the Long Island Chautauqua Assembly Association. Griffen clearly understood that the story should not be left to die when his generation passed on.

In 1991 we officially organized a historical society, the mission of which includes preserving and recovering the written and pictorial history of Point O'Woods. Today, the Historical Society provides valuable assistance maintaining the archive of our historic documents.

Perhaps the greatest gift of all was the work of community members Natalie and John Montgomery who in 1995 painstakingly documented the history of every house in Point O'Woods: When was it built; who were the owners. Their work – which we affectionately refer to as “The Cottage Book” - was the fundamental building block as we prepared our application for consideration as a historic district.

In a way it's not surprising that we have this rich historical record because for us history is personal. We're a very tight knit community and people seldom leave. We have at least one family that has been here for 7 generations. As I learned during the application process, the lack of automobiles in our community is a unique factor that has allowed our architecture to retain what would now be considered an old-fashioned relationship between public and private spaces. This orientation and openness to public spaces creates a virtuous cycle where our community remains close knit, and that feeds our love of history and preservation.

Volunteerism and service to community are a way of life for us, so it was not hard to create the committee that prepared the application before you. I would like to thank Lisa Bedell, who chaired the effort, and thanks also to Elisabeth Cannell, Bruce Gillespie, Lisa Kiernan, Scott Lethbridge, and Emily Tyrer, among others, who prepared the application. Of course we can't thank Jennifer enough for her help and wise counsel during this process. I can only describe the work you have done as a gift to our community and to everyone who loves history. So thank you for this opportunity to present our application.