

22-101  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of

Index No. 150659/2022

NYC FREEDOM TRAIL FOUNDATION INC.,

Petitioner(s),

**AFFIDAVIT OF  
JACOB MORRIS**

-against-

PUBLIC DESIGN COMMISSION OF THE  
CITY OF NEW YORK,

Respondent(s).

For a Judgment under Article 78 of the CPLR.

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STATE OF NEW YORK    }  
                                  } ss.:  
COUNTY OF NASSAU    }

JACOB MORRIS, being duly sworn, deposes and states the following:

1. I am the President of the New York City Freedom Trail Foundation Inc., the Petitioner in the above-referenced matter.

2. I submit this affidavit in opposition to the Respondent’s motion to dismiss and in further support of Petitioner’s petition seeking to set aside the determination of the Respondent dated September 20, 2021, with respect to Agenda 27861, wherein the Respondent determined to move Agenda Item 27861 from the “Public Hearing Agenda” to the “Consent Agenda”.

3. The purpose of this affidavit is for one purpose, primarily: to demonstrate to the Court that by the Respondent violating its own methods and procedures, it effectively turned its “provisional approval” into a de facto final approval.

4. I am a Public Historian specializing in Lower Manhattan, Harlem, and Downtown Brooklyn, as well as an activist, and am therefore very engaged in issues related to history and the built environment. I advocate for quality and historical appropriateness in New York City's public art collection.

5. By way of background in 2008, Mayor Bloomberg tasked the Economic Development Corporation to award a \$2,000,000.00 contract to the Brooklyn Historical Society for what was known at the time as Willoughby Square, and was later renamed Abolitionist Place Park. The purpose of the contract was to develop programming and to establish a memorial in the park explicitly to honor Brooklyn's great role in the Abolitionist movement.

6. The local community worked very hard for quite a few years for this to come about, which explains why an unprecedented 17 members of the community came out on very short notice and testified against the so-called concept proposal of the artist who was selected in secret in January 2020 by the Department of Cultural Affairs and its Percent for Art Program. The local community and indeed all of Brooklyn is very proud of its history and cares about it passionately, which is why the community still cares enough and has not forgotten the importance of the sacrifice of those great abolitionists who lived and worked in the immediate neighborhood of this park and Memorial and wants them honored accurately and with integrity.

7. Among other regular activities, I follow the agenda of every meeting of the Public Design Commission, and I testify regularly on matters before the commission.

8. Explicitly within its mission to oversee and protect the public sphere, the Public Design Commission enables the public to speak on important matters, including the commissioning of all historical public monuments, memorials, and works of art.

9. I can affirm that the “standard rules” of the Commission necessitate the Agency to permit public testimony, and to move items from the consent agenda to the public agenda when there is a reasonable request.

10. I have been involved and observed many situations where Agenda items have been moved – most notably in recent months in the case involving the statue of Thomas Jefferson at City Hall, which received national publicity and attention.

11. However, the Jefferson reversal only occurred after days of being requested under major media scrutiny and pressure, I can point to an increasing pattern of the Executive Director of the Commission, Keri Butler, abusing her authority to appease major agency and government requests and pressure and circumvent the giving of testimony on controversial matters.

12. Up until August 2019, the regular agendas of the Commission stated explicitly that if the public desired to testify on an item, they should contact the Commission and the item would be rescheduled for a proper presentation according to standard rules.

13. I have witnessed this growing abuse of the consent agenda in the cases of Abolitionist Place Park, the Thomas Jefferson Statue in City Hall, and Inwood's Sherman Creek Park Boathouse.

14. The case of Abolitionist Place Park and the Abolitionism Monument is an especially arbitrary and capricious action in my view and experience. The Commission had explicitly said that it would not advance the matter until robust public engagement had taken place.

15. It reversed that decision under pressure from the Economic Development Corporation, and now claims that a public hearing would not have been “productive”, because the proposal was substantially unchanged from January 2021. That rationale was subsequently

found to be inaccurate pursuant to documents produced in response to a FOIL submission. Just another example of the Design Commission violating its own procedures and mission in blocking community input.

16. During the January 19, 2021 hearing, the Respondent heard testimony from 17 members of the community, who unanimously testified against the artist concept, as presented.

17. In response, the Respondent tabled the proposal. The Respondent's Chairperson explicitly stated that they would not reconsider the proposal without robust community outreach and input from those knowledgeable activists and scholars who were involved in the multi-year struggle to create a respectful and historically accurate memorial to Brooklyn's great role in the Abolitionist movement.

18. Subsequent to the January 19, 2021 hearing, there was zero community outreach by the artist or the Respondent, the Department of Cultural Affairs or the Economic Development Corporation, despite numerous public promises, announcements and assurances.

19. The Respondent then unexpectedly, on very short notice, advised that they were putting the hearing on for September 20, 2021, and it was placed on the calendar as a consent-agenda item that precluded the community, scholars and activists an opportunity to be heard on the design concept, on any changes to the design concept since the January 2021 hearing, and lack of community outreach as called for by the Respondent itself.

20. As stated in the underlying Petition, on September 20, 2021, the Public Design Commission violated its own rules and customs in approving the conceptual design for Item 27861, an artwork for Abolitionist Place (Park), which did not meet its requirements given to agencies for the required content of conceptual proposals or align with the legally required description of its procedures defined in its annual report, mandated by the City Charter due to

reform legislation in 2017. There was no visual models or drawings provided, or language that was to be engraved in stone, that was provided to the Respondent or to the community at large.

21. The agency violated its own rules and acted arbitrarily and capriciously by refusing to place Item 27861 on the public agenda of its meeting on September 20, 2021 or at a later date – denying the community members and scholars the opportunity to testify on the approval of the final conceptual design proposal, or even learn about changes that were made to the proposal since January 2021.

22. The City of New York, through its construction manager, signed a contract with the artist, Kameelah Janan Rasheed, back on June 21, 2021. Per the contract, retrieved by Petitioner through a FOIL request, the total contract price amounts to \$689,000.00. See Exhibit “1”. Upon information and belief, pursuant to the language of the contract, signed after the January 2021 hearing but prior to the September 20, 2021 hearing, it would seem that the Economic Development Corporation, as the responsible party for the completion of the park and memorial for Abolitionism, pushed the Respondent to expedite its “provisional” approval of the design concept.

23. Per Exhibit C, Fee Schedule, of the contract, the artist and construction manager are entitled to 30% of those funds by virtue of the fact that the Respondent granted its “provisional approval” at the September 20, 2021 hearing – which avoided any public comments and inquiries.

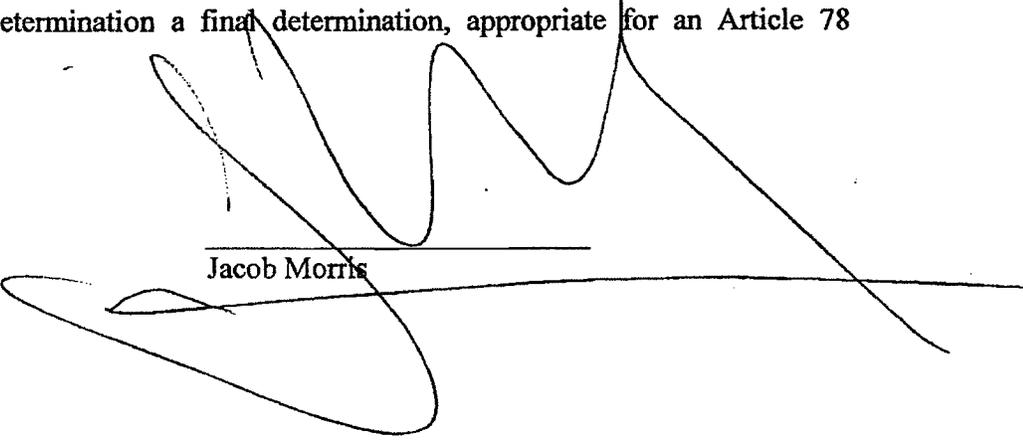
24. Per the Fee Schedule, the artist is to be entitled to the 30% benchmark, for total payments of \$206,700.00, “upon approval by the Design Commission of the Preliminary Design, including the Preliminary Maintenance Recommendations.” Upon information and belief, the artist received these funds promptly after the September 20, 2021 hearing and determination.

25. As Section 1.3 addresses the Preliminary Design, it would appear that per the requirements set forth therein, by granting this “provisional approval”, the artist has already met its threshold, and the Respondent is obligated to pay up to 30% of the total contract price.

26. The project is rapidly approaching the Notice to Fabricate stage, which would then trigger another 30% payment, an additional \$206,700.00. Upon information and belief, site construction has already begun at the project location, as heavy construction equipment at the site is already undertaking activity to carry out the design concept. See photographs annexed as Exhibit “2”. While the artist’s contract only accounts for a small portion of the overall contract between the City and the contractor, the concept design will be the centerpiece of Abolitionist Place Park.

27. Effectively, by the time the Respondent would be in a situation to give its “final approval”, a substantial portion of the project will have been completed. This, in effect, renders the current “provisional approval” to be a de facto final approval.

28. Accordingly, the September 20, 2021 hearing and determination, while procedurally a “provisional approval”, it is in fact a de facto “final determination” – rendering the September 20, 2021 determination a final determination, appropriate for an Article 78 proceeding.

  
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Jacob Morris

Sworn before me this  
2nd day of August, 2022

  
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Notary Public

**DANIEL HIRSCHEL**  
Notary Public, State of New York  
No. 02HI6384483  
Qualified in Nassau County  
Commission Expires Dec. 10, 2022