

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

**PRESENT: HON. LYLE E. FRANK PART 11M**

*Justice*

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NYC FREEDOM TRAIL FOUNDATION INC.

Petitioner,

- v -

PUBLIC DESIGN COMMISSION OF THE CITY OF NEW YORK,

Respondent.

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**INDEX NO. 150659/2022**

**MOTION DATE 03/09/2022**

**MOTION SEQ. NO. 001**

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Petitioner brings the instant petition pursuant to New York Civil Practice Law and Rules ("CPLR") Article 78 to set aside the determination of the respondent dated September 20, 2021. Specifically, respondents moved agenda item 27861 from the "Public Hearing Agenda" to the "Consent Agenda". Respondent opposes the instant petition, and moves to dismiss the petition, on the ground that the petition is not ripe for review, as no final determination has been made. For the reasons set forth below, the petition is denied, and the motion to dismiss is granted without prejudice for an additional action to be brought upon a final agency determination.

Petitioner's challenge arises out of the respondents September 20, 2021 resolution granting Conceptual Approval for the artwork installation project entitled Questions Worth Having Answers To by Kameelah Janan Rasheed proposed for Abolitionist Place in Downtown Brooklyn.

Petitioners contend that respondents moving an agenda item from a public hearing agenda to a consent agenda is violative of its rules and procedures, thus arbitrary and capricious.

Respondents contend that the resolution complained of, is not a final agency determination as the artwork installation is not yet approved.

In support of this position, respondents annex the affidavit of Kerri Butler, Executive Director of the Public Design Commission of the City of New York ("PDC"), that explains respondents approval process. Respondent has a three-step review and approval process for artwork installation submissions: Conceptual Review, Preliminary Review, and Final Review. See NYSCEF Doc. 29.

CPLR § 7801(1) states that a proceeding pursuant to Article 78 “shall not be used to challenge a determination: (1) which is not final or can be adequately reviewed by appeal to a court or to some other body or officer or where the body or officer making the determination is expressly authorized by statute to rehear the matter upon the Petitioner’s application.”

Here, the Court agrees with the respondents and finds that its September 20, 2021 resolution is not a final determination, thus the matter is not yet ripe for Article 78 review. A plain reading of the resolution itself provides that the artist will undertake community engagement and that the project must be submitted for preliminary review and approval, establishing that the project is not yet approved and that the ultimate issue raised by petitioner, community involvement, may ultimately be resolved. The Court has reviewed petitioner’s remaining contentions and finds them unavailing. Accordingly, it is hereby

ADJUDGED that the petition is dismissed without prejudice.

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9/12/2022  
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
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<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE