

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

STOP IRRESPONSIBLE FRICK DEVELOPMENT,

Petitioner,

-against-

THE LANDMARKS PRESERVATION COMMISSION  
AND THE FRICK COLLECTION,

Respondents.

Index No. \_\_\_\_/2018

**VERIFIED PETITION FOR  
RELIEF UNDER ARTICLE 78  
OF THE NEW YORK CIVIL  
PRACTICE LAWS AND RULES**

Petitioner Stop Irresponsible Frick Development (“SIFD”), for its verified petition for judgment pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”), by its undersigned attorneys Morrison Cohen LLP, alleges as follows.

**INTRODUCTION**

1. Respondent The Frick Collection (the “Frick”), located across from Central Park on Fifth Avenue between East 70th and East 71st Streets, is one of New York City’s (if not the world’s) most precious and preeminent house museums. Originally the personal mansion of industrialist Henry Clay Frick, upon his death in 1919, he bequeathed it to the City to be preserved for posterity as a “House Museum” for the display of his family’s personal art collection in its original Gilded Age setting. The Frick is by design and by mandate more intimate in size and stature than larger and more commercial museums, such as the Metropolitan Museum of Art and the Museum of Modern Art. The Frick contains artwork by some of the most heralded artists in history, including Giovanni Bellini, Rembrandt van Rijn, Johannes Vermeer, Thomas Gainsborough, and Francisco Goya.

2. For nearly a century since being constructed, and more than four decades since being officially designated as Historical Landmarks by Respondent The Landmarks Preservation Commission (the “LPC,” and together with the Frick, “Respondents”), the Frick’s mansion, library building, and the world-renowned “viewing garden” designed by Russell Page have been beloved and meticulously preserved landmarks enjoyed not only by the Frick’s patrons, but also by the thousands of pedestrians and other New Yorkers who pass by on a daily basis over the course of a year. The Frick is a landmark in every sense of the word.

3. The Frick’s landmark status is supposed to be safeguarded by the LPC. The LPC is an administrative body of the City of New York, governed by a set of rigid procedural and substantive rules. Those rules are in place for a reason. Similar to our judicial system, administrative agencies are required to ensure that all those who appear before them are afforded procedural and substantive due process. As such, the rules governing the LPC ensure that the public is afforded a meaningful opportunity to voice its opinion on applications that will impact any neighborhood, building, or room that has been granted landmark status.

4. The Frick’s application to the LPC pending at Docket No. LPC-19-25099, received by the LPC on April 25, 2018 (the “Frick Application”), proposing to significantly alter the Frick, is an astonishing end-run around these rules. The enumerated rules have been upended and replaced with years of backroom wheeling and dealing hidden entirely from the public. For example, the public was not informed until two days before Memorial Day weekend that the Frick Application had been scheduled for a public hearing on the Tuesday immediately following the holiday, May 29, 2018. Despite this flagrant attempt to hide the Frick Application and the Frick’s eighty-two page glossy presentation from the public, members of the public still mobilized and voiced their dissent at the May 29, 2018 hearing.

5. But the misconduct only got worse. After the May 29, 2018 hearing, the public heard nothing until June 14, 2018, at which time it was informed that the Frick would be heard again by the LPC at the June 19, 2018 public meeting and was provided with another twenty-six page glossy presentation. After SIFD informed the LPC of its numerous violations, the LPC postponed the June 19, 2018 public meeting with respect to the Frick Application. Thereafter, notwithstanding the fact that the LPC had not cured its violations, on June 21, 2018, the Frick produced yet another further revised thirty-one page glossy presentation and the LPC scheduled a public meeting in connection with the Frick Application for June 26, 2018.

6. The hastiness and ever evolving substance of the Frick Application has led to the blatant disregard of the rules governing LPC applications.

7. First, the LPC violated its own rules and improperly closed the May 29, 2018 public hearing with respect to the Frick Application without making a motion. This error stifled the public's ability to voice its dissent to the Frick Application.

8. Second, the LPC is not even a properly constituted body. It lacks the eleven members mandated by the New York City Charter (the "NYC Charter"), as well as a chair and vice chair who can vote on the Frick Application.

9. Third, a "Request for Evaluation" (an "RFE") has been submitted to the LPC to consider designating the Music Room as a landmark. Under the Frick's current proposal, the Music Room would be demolished to make way for a massive new building. The RFE submitted in connection with the Music Room will be rendered moot.

10. Despite these violations, the LPC intends to proceed with the Frick Application at the June 26, 2018 public meeting, at which members of the public will not be able to speak and voice their dissent. For the reasons discussed more fully below, the LPC's decision to proceed

with the Frick Application at the June 26, 2018 public meeting is a violation of the LPC's own rules as well as the NYC Charter and should be reversed pursuant to this Court's powers under Article 78.

### **PARTIES**

11. Petitioner Stop Irresponsible Frick Development is an unincorporated association consisting of concerned Frick neighbors, preservationists, and open space activists who stand for the responsible development of the Frick.

12. Respondent The Landmarks Preservation Commission is a public agency of the City of New York, established in 1965 pursuant to Chapter 74 of the New York City Charter. The LPC is an administrative body within the meaning of CPLR Section 7802. The LPC office is located at the David N. Dinkins Municipal Building, 1 Centre Street, 9th Floor North, 1 Centre Street, 9th Floor North, New York, New York 10007.

13. Respondent The Frick Collection is an organization located at 1 East 70th Street, New York, New York 10021.

14. This Court has jurisdiction over this matter pursuant to Article 78 of the CPLR. The LPC's actions complained of are final and cannot be adequately reviewed by another court, entity, or officer. This Verified Petition has been brought within four months of LPC's actions.

15. Venue is proper in New York County pursuant to CPLR Sections 506 and 7804(b) because the principal offices of the LPC are located there and this is the County where the LPC made its improper determinations.

## GENERAL ALLEGATIONS

### I. THE HISTORY OF THE FRICK

16. Located on Fifth Avenue between East 70th and East 71st Streets, the Frick is one of New York City's most precious historical and cultural institutions, not only for what it is (*i.e.*, one of the world's most intimate house museums) but equally for what it is not (*i.e.*, a commercial museum of which New York City already has many).

17. Originally the personal mansion and Fifth Avenue garden of Henry Clay Frick, pursuant to his will written in 1915, upon Frick's death in 1919 he bequeathed it to the City of New York to be preserved for posterity to become a gallery of art in his dwelling place called the "Frick Collection" for the display of his family's personal art collection in its original Gilded Age setting.

18. Today, the Frick Complex is comprised of several landmarked buildings and exterior spaces:

a. **The Mansion**. The original three-story mansion and residence, fronting on Fifth Avenue, was conceived and constructed by the firm Carrère and Hastings between 1912 and 1914. The mansion was designed with the full expectation and intention of becoming an intimate collection following the deaths of Henry Clay Frick and his wife. In the 1930s, architect John Russell Pope made certain additions to the original residence to better suit it for use as a public gallery of art and to tie it to the newly constructed East Gallery and the Frick Art Reference Library (the "Library").

b. **The Library**. Constructed in the 1930s by architect John Russell Pope, the Library is a much more vertical structure – the equivalent of an eleven-story building – situated behind (to the east of) the mansion.

c. **The Russell Page Garden.** Between 1940 and 1972, the Frick acquired three adjacent townhouses (5, 7 and 9 East 70th Street) on the north side of East 70th Street. Each was demolished. In 1977, through the vision and genius of architects John Barrington Bayley, Harry Van Dyke, G. Frederick Poehler, and Russell Page, those empty lots were converted into a small grand entry hall pavilion, coat room, and gift shop (with exhibition galleries on a lower floor) and the world-renowned “Russell Page Garden.” Situated along East 70th Street between the original residence, the rear of the Library, and the building at 15 East 70th Street, the Russell Page Garden is truly unique. It was designed specifically by Page as a “viewing garden” that visitors were never meant to enter. Rather, like other pieces of art in the Frick, it was meant to be *viewed*, almost like an impressionist painting, from the street and/or from the reception hall. Page employed his signature design elements of four blind-lattice windows on the north wall and a large tree planter behind the north wall; this was an illusionary technique to draw one’s eye through the Russell Page Garden into a presumed garden behind the wall. The Russell Page Garden is also a candidate for National Historic Landmark designation with significance in landscape architecture.

19. For decades, the Frick buildings and complex have been beloved and meticulously preserved monuments enjoyed not only by the Frick’s patrons, but by the millions of individuals who live, walk, drive, bike, or ride past it every day of the year.

20. The Frick was first designated as a landmark by the LPC in 1973. The LPC then extended that landmark status in 1974 to include the forthcoming pavilion and the Russell Page Garden. In fact, the Frick is a designated landmark five times over: at the City, State, and National levels.

21. At that time, the LPC stated: “The Frick Collection is one of the finest examples of French Louis XVI architecture in New York City, that is well-proportioned and displays beautiful detail, [which] has been greatly enhanced by the sensitive architectural blending of alternations and additions with the original mansion. . . . [It] has a truly monumental quality.” The LPC further found at that time, with respect to the Library building, that it “is an impressive structure . . . including monumental pedimented windows with balusters below them [and] an elaborately decorated frieze.”

22. Although not *yet* designated a landmark, another interior space within the Frick Collection warrants special attention: the circular Music Room.

23. John Russell Pope’s intimate, top-lit Music Room is said to have flawless acoustics, and has been in heavy demand as a concert venue since it was completed in 1935. As the *New York Times* music critic wrote in an article from September 7, 2003, the “round concert room at the Frick Collection, with its 175 seats and its intimate atmosphere, is probably the best place in New York to hear chamber music. It is certainly the most authentic; much of the repertory was written to be played in exactly such a room, not in a huge concert hall.”

24. Although prized as a chamber music performance venue, the Music Room is a true multi-purpose space. It can be used for concerts, lectures and as a gallery, as acknowledged by the Frick on its website.

25. An RFE has been submitted to the LPC to consider designating the Music Room as a landmark.

## II. AN OVERVIEW OF THE FRICK'S UNSUCCESSFUL 2014 EXPANSION PLANS

26. To understand the Frick Application that is the subject of this proceeding, it is necessary to retrace some of the history behind the Frick's most recent ill-fated attempt at expansion.

27. In June 2014, the Frick announced a highly ill-advised expansion proposal (the "2014 Proposal").

28. The 2014 Proposal contemplated (among other things) the complete destruction of the Russell Page Garden and the adjoining Reception Hall and their replacement with a massive 40,000 square foot, 106-foot high addition that, at its peak, would have been the equivalent of a ten-story building, located predominately on the 70th Street side of the Frick complex.

29. Hardly any of the massive new structure was to be for new exhibition space. Rather, it was proposed to be for offices, a café, a larger gift shop, a new entry hall, a lab, an underground auditorium, and a loading dock.

30. The 2014 Proposal triggered a global outcry of opposition, particularly (although not exclusively) due to the proposed destruction of the Russell Page Garden and the loss of intimacy associated with the loss of the House Museum.

31. Horrified by the 2014 Proposal, Unite to Save the Frick ("Unite") was created to mobilize and unify the hundreds of individuals, and preservation and landscape groups who shared the conviction that there were better alternatives to enable the Frick to meet its true core programmatic needs without jettisoning the very integrity that make it such a beloved landmark. Unite is supported by concerned individuals and organizations from New York City, across the United States and around the world. Unite is currently working with SIFD.



32. Unite retained and worked with award-winning architect David Paul Helpern to conceptualize a thoughtful, elegant and viable alternative approach. By embracing strategies such as renovation and reconfiguration, Helpern's alternative conceptual plan proved that the Frick's stated programmatic goals could indeed be accommodated without sacrificing the Russell Page Garden, the Reception Hall pavilion or the intimate residential experience of the Frick.

33. Helpern's alternative plan identified two ways by which the Frick could expand without destroying the Russell Page Garden or the pavilion:

- a. Reconfiguration of the Frick's existing warren of spaces now occupied by mechanical equipment and inefficient storage areas; and
- b. Below-grade excavation, following the example of many other comparable institutions in New York City and around the world.

34. Helpern's alternative conceptual plan was the result of his own rigorous research of the Frick space, together with consultation with one of the City's top structural engineers to ensure that excavation and structural changes were feasible, and with mechanical engineers experienced in museum renovations.

35. Through Unite's efforts, the Helpern alternative plan was presented informally to the LPC during 2015 and later, at LPC's suggestion, to the Frick and its then-architects.

36. As a result of that iterative process, the Frick was ultimately persuaded to abandon the 2014 Proposal.

### **III. THE CURRENT FRICK APPLICATION**

37. Following Unite's discussions with the Frick's architects and management in 2015, there was radio silence from the Frick for close to three years despite repeated offers by Unite for the Frick to meet with Helpern to discuss his alternate plans.

38. It is now apparent that the Frick and its team of professionals were quite busy during that time period preparing the current proposal. None of that, however, was known to or visible by the public at large.

39. Given that Unite and Helpern had openly discussed the Helpern alternative conceptual proposal with the Frick, and given that Unite spoke for the concerns of many well-known preservation and landscape advocacy groups, Unite expected that the Frick would have had a dialogue with Unite prior to informing Leslie B. Samuels of Unite on April 4, 2018 that the Frick was about to launch a new plan.

40. That was not the case. Instead, on the afternoon of April 4, 2018, Samuels received a phone call from the Director and the Chairman of the Board of the Frick informing him that the Frick's new plan would be announced shortly and that a related article would appear in *The New York Times*.

41. On or about April 25, 2018, the Frick submitted its current application to the LPC.

42. In general terms, the latest Frick Application consists of the following elements:

a. Destruction of the Russell Page Garden to enable the Frick to excavate below it and reconfigure the below-grade vault space into a 200-plus person auditorium and lecture hall; with the Russell Page Garden then being only *partially* restored to Page's original design specifications and concepts thereafter;

b. Southward expansion of the Library by approximately twenty-two feet to accommodate new spaces in the Library building;

c. Erection of a massive forty-five foot wide by nearly eighty foot high building between the original mansion and the Library ostensibly to house curatorial and other administrative staff, with the associated destruction of the Music Room;

d. Erection of an approximately sixteen-foot connecting passage, with floor-to-ceiling windows, between the Library and the proposed new approximately eighty foot massing;

e. Relocation of certain administrative offices from the second floor of the mansion to enable the second floor to be opened to galleries;

f. Installation of a full-service café and extended gift shop and reconfiguration of a new entrance (together with the remodeling of the interior of the Reception Hall); and

g. Installation of new disabled access ramps on both the 70th and 71st Street sides of the complex.

43. On May 14, 2018, the Frick Application was referred to and considered by Manhattan Community Board 8's ("CB-8") Landmarks Committee (the "CB-8 Landmarks Committee").

44. After considering the matter, the CB-8 Landmarks Committee voted, six to four, to disapprove of the Frick Application. The CB-8 Landmarks Committee's reasons for disapproval are reflected in the minutes of its May 14, 2018 meeting and include (without limitation):

a. The Frick Application lacked details such as proposed dimensions, site line studies, or instructive models;

b. The proposed additions are "too large and not in scale with the landmark mansion or the Russell Page designed garden;"

c. "programmatic requirements can be met with other functional iterations that would reduce the size of the above grade additions;"

d. The proposal will result in a loss of visual perspective from the garden to the north because of the “overwhelming mass of the library addition;”

e. Failure to fully restore the Russell Page Garden (due to changes to the architectural elements in the north wall);

f. The proposed “two-story addition over the Music Room is very visible and extends the more institutional scale and character of the library into the sector of the mansion;” and

g. Whereas “the experience of the mansion from the exterior is of a large house, the proposed enlargements will change the character of the mansion and detract from the experience of the Frick Collection as a House Museum.”

45. Two days later, on May 14, 2018, the Frick Application was considered by the entire board of CB-8. The application did not obtain the support of the entire board of CB-8.

46. It was not until May 24, 2018 that the public at large first became officially aware (by virtue of a posting on the LPC website) that a new Frick expansion proposal had been scheduled for a public hearing<sup>1</sup> first thing in the morning on Tuesday, May 29, 2018. That same day, an eighty-two page PowerPoint presentation prepared by the Frick, comprised almost exclusively of glossy renderings, but lacking in any retail architectural, mechanical, engineering, or other detail, was made available for the first time on the LPC’s website.

47. Of course, May 28 was Memorial Day.

48. Thus, the public was given notice of the Frick Application, certainly one of the most significant recent applications to come before the LPC, a few days before a major holiday,

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<sup>1</sup> A public hearing is a meeting at which members of the public may submit a written statement in advance and also provide oral testimony, for no longer than three minutes, with respect to a pending LPC application. In contrast, a “public meeting” is a meeting at which the public may submit a written statement in advance, but can only observe the LPC meeting without participating in the meeting itself.

and was expected over the course of that holiday weekend to analyze the eighty-two page proposal and prepare testimony to be given first thing in the morning on Tuesday, May 29.

49. The LPC conducts public hearings and public meetings on nearly every Tuesday of the year. It does not take a deep degree of perception to understand that the scheduling of a “public hearing” for the Frick Application on the Tuesday immediately following Memorial Day was carefully selected with the specific intention of chilling meaningful public knowledge of, or commentary on, that application.

**IV. THE LPC IS NOT LAWFULLY CONSTITUTED  
PURSUANT TO THE NYC CHARTER**

50. In fact, the timing was doubly suspicious.

51. For over a month before the May 29, 2018 public hearing, it was widely known that the LPC’s former Chair Meenakshi Srinivasan would resign her position effective June 1, 2018. It is hardly coincidental that the Frick selected May 29, 2018 as the date for the public hearing on its application.

52. SIFD believes that the Frick is actively trying to exploit the current unsettled situation at the LPC (with no chair and only nine commissioners eligible to act on the Frick Application because the LPC’s vice chair, Frederick Bland, has recused himself from the Frick Application because he is employed by the Frick’s architecture firm) for its own advantage and to the great disadvantage and exclusion of interested members of the public who are being pushed aside and silenced.

53. Section 3020 of Chapter 74 of the NYC Charter mandates (in pertinent part) that the LPC “*shall*” be comprised of eleven commissioners; there “*shall*” be a chair (who “*shall*” appointed by the Mayor); there “*shall*” be a vice chair (who also “*shall*” be appointed by the

Mayor); and if there is a vacancy, the Mayor “shall” make an interim appointment. After chair Srinivasan resigned on June 1, 2018, none of these statutory mandates is currently met.

54. The Mayor has not yet designated a replacement to fill either the vacant commissioner position or the vacant chair position. Indeed, the LPC website only lists ten commissions and no chair.

55. Further, because Vice Chair Bland recused himself from considering the Frick Application, there is neither a chair nor a vice chair supervising the Frick Application – arguably one of the most significant and polarizing matters to come before the LPC in recent memory. That is unprecedented and unlawful.

**V. THE LPC DID NOT LAWFULLY MOVE TO  
CLOSE THE MAY 29, 2018 PUBLIC HEARING**

56. Notwithstanding the limited notice window, preservationist groups and interested members of the public attended the May 29, 2018 LPC public hearing to challenge the latest Frick Application. In addition to Unite, the following well-known preservation groups and other credible individuals spoke in opposition to the Frick Proposal, raising both substantive concerns about the propriety of the proposed construction as well as procedural concerns about the legitimacy of the process given the limited public notice just prior to the Memorial Day holiday weekend:

- a. the Society for the Architecture of the City;
- b. the Historic Park Avenue;
- c. the Historic Districts Council;
- d. Friends of the Historic Upper East Side;
- e. Municipal Arts Society;
- f. Theodore Grunewald;

g. Martha Frick Symington Sanger (Frick descendant, author, historian and conservationist); and

h. interested citizens.

57. A common thread in the criticisms is that, just as was the case in 2014, the Frick has still failed to fully consider viable alternatives that would enable it to meet its programmatic needs.

58. In fact, SIFD just recently engaged Helpern, who has already begun work on yet another concrete “alternative proposal” to demonstrate, once again, how the Frick could achieve its programmatic needs through better use of existing space and expanded subterranean space and acquisition or lease of nearby and adjacent space.

59. According to Helpern, an analysis such as this cannot be done in a mere matter of days over a holiday weekend, nor in fits and starts in reaction to the “on-again-off-again” matter in which this application has been handled. Nor can it be fully accomplished without detailed information, thus far withheld from the public, about the Frick Application. Notwithstanding specific requests to the Frick and its architects to provide it and notwithstanding pleas to the LPC to direct the Frick to do so, that detail has not been provided, nor has Helpern (or others interested in providing input) been given even the barest amount of time to provide useful input.

60. At the May 29, 2018 public hearing, the then-LPC chair acknowledged that these criticisms required a “much more full response” from the Frick.

61. At the May 29, 2018 public hearing, counsel for SIFD specifically requested that the LPC continue to hold open the public hearing on the Frick Application so that further testimony from the public could be taken with respect to any response or revision provided by

the Frick. Despite that request, the LPC prematurely terminated public testimony and improperly silenced the public.

62. The purported closing of the public testimony was unlawful.

63. Title 63, Ch. 1, Section 1-05 of the Rules of the City of New York requires adoption of a motion to close a public hearing. The rule states that the LPC “will neither make a final determination nor take any final action on an item while the Record is open on that item.” In this case, the LPC failed to follow the required procedure. At the May 29, 2018 public hearing, at the conclusion of the Frick’s presentation of the Frick Application, the then-chair of the LPC simply stated, “we can close the hearing.” No motion was made or passed to close the public hearing on the Frick Application prior to the chair making that statement.

64. As a result of the LPC’s error, the public hearing with respect to the Frick Application was not closed.

65. This was no mere procedural technicality. Several of the LPC commissioners spoke openly at the May 29, 2018 public hearing about their reservations over the Frick Application in light of public comments. It is far from clear that, had a motion been properly made to close public hearings, the motion could have been passed. That is precisely why the LPC rules require a motion and a vote.<sup>2</sup>

66. The closure of the public hearings on Frick Application was not only unlawful. It was also premature.

67. Public comment on the Frick Application to date has been limited to a *single public hearing*, scheduled for the morning of the Tuesday after Memorial Day. The public only learned of that public hearing – and received for the first time the Frick’s eighty-two page glossy

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<sup>2</sup> By contrast, at its most recent meeting on June 19, 2018, the LPC followed the proper procedure to close a public hearing by requesting that a motion be made, a motion being made, and the motion being subject to a vote.



presentation – a few days before the Memorial Day weekend. It is baffling that the LPC would close public testimony on an application of this magnitude after holding only a single public hearing noticed a few days before a major holiday weekend. The public has much more to say and should be afforded the opportunity to do so before the LPC takes any action on the Frick Application.

**VI. THE RFE SUBMITTED IN CONNECTION WITH THE MUSIC ROOM WILL BE RENDERED MOOT**

68. An RFE has been submitted to the LPC to designate the Music Room as a landmark.

69. However, pursuant to the Frick Application, the Frick proposes to destroy the Music Room to make way for a massive new building which will house a bland, low-ceiling gallery on the main floor extending up two more floors to include a conservation center.

70. If the LPC is permitted to vote on the Frick Application, the RFE submitted in connection with the Music Room will be rendered moot because the Music Room will be demolished.

**VII. INSTEAD OF THE FRICK SUBMITTING A “MORE FULL RESPONSE,” THE LPC INTENDS TO CONSIDER THE FRICK APPLICATION AT ITS JUNE 26, 2018 PUBLIC MEETING**

71. The Frick Application was not even filed with the LPC until April 25, 2018. Now, just two months later, with only *one* public hearing, it is already poised to be voted on at the June 26, 2018 meeting. That is ludicrous on its face.

72. Despite the then-chair’s directive to come back with a “much more full response,” there was nothing but radio silence from the LPC and the Frick for two weeks. Suddenly, on Thursday, June 14, it was disclosed that the Frick Application had been scheduled for an LPC meeting on the following Tuesday, June 19. That same day, a new twenty-six page glossy

presentation was made available to the public for the first time on the LPC website. Interested parties were forced to scramble, again over the weekend, to understand that new presentation and to submit written commentary on it.

73. By letter dated June 14, 2018, counsel for SIFD wrote to the LPC's General Counsel, Mark Silberman, Esq., noting the unlawful nature of the LPC purporting to act on the Frick Application without of a chair or a non-conflicted vice-chair. The next day, counsel for SIFD also wrote to counsel for the Frick, requesting that the Frick agree to postpone its June 19 presentation, or at the very least any vote on the Frick Application, until the Mayor installs a new chair and the public is afforded a full opportunity to analyze and constructively comment on the application. He also noted that the Frick would suffer no prejudice in such a postponement because it concedes it will not commence construction until two years from now.

74. On Friday, June 15, 2018, the LPC's General Counsel advised counsel for SIFD that the Frick Application was being pulled from the agenda for the June 19 public meeting.

75. Although the Frick Application was not considered at the LPC's June 19, 2018 meeting, Silberman announced during that meeting that Vice Chair Bland would not be present at the next LPC meeting on June 26, 2018. He then suggested that the LPC pass a resolution to have sitting Commissioner John Gustafsson replace Bland as vice chair while Bland is absent. Commissioner Wellington Chen made the resolution that had been suggested that Silberman, and the resolution was passed and purportedly adopted unanimously.

76. While clearly acknowledging the legal deficiencies outlined in the letters from SIFD's counsel, this charade does nothing to legally remedy them. There is *nothing* in the NYC Charter remotely suggesting that sitting commissioners on the LPC have the right or authority to *sua sponte* designate from their own ranks a new chair or vice chair. And, of course, the Mayor

still has yet to appoint a *chair* or to fill the empty commissioner seat, neither of which was rectified by anything done at the June 19 meeting.

77. The NYC Charter is clear and unambiguous: the chair and vice chair positions “shall” be appointed by the Mayor. He, and only he, has the authority to do so.

78. The purported resolution passed by the sitting commissioners on June 19, 2018 is a nullity.

79. More to the point, the resolution passed on June 19, 2018 is even more compelling evidence of the urgent need for this Court to intervene. Mindful of the deficiencies outlined in the letters from SIFD’s counsel, the LPC and its legal staff are now simply trying to make things up on their own, in flagrant disregard of the NYC Charter provisions that specifically address this issue.

80. Respondents’ pattern of eleventh-hour notice repeated itself once again.

81. On June 21, 2018, the LPC informed the public that it would reschedule the Frick Application for the June 26, 2018 meeting. Once again, *another* new thirty-one page glossy presentation was made available to the public. Once again, the public was given, essentially, two business days and an intervening weekend to react and to prepare written commentary.

82. Crucially, the public meeting scheduled for June 26, 2018 is not a “public hearing.” As such, if the Frick Application goes forward on June 26, 2018, the public will not be able to speak or participate in the meeting itself. If the Frick Application goes forward on June 26, 2018, the public will not be able to speak or participate.

**FIRST CLAIM FOR RELIEF*****The LPC Violated the Its Own Procedure In Closing the Public Hearing In Connection With the Frick Application.***

83. SIFD repeats and realleges Paragraphs 1 through 82 as though fully set forth herein.

84. The rules concerning the manner in which an LPC public hearing can be closed are clear.

85. Pursuant to the Rules of the City of New York, Title 63, Ch. 1, Section 1-05:

The Commission may, **upon the adoption of a motion**, close the hearing and leave the Record open on a particular item until a stated date to allow for the submission of additional written information. . . . **The Commission will neither make a final determination nor take any final action on an item while the Record is open on that item.**

86. Put differently, absent a motion by a commissioner, a public hearing cannot be closed while leaving the record open to permit the applicant to submit additional written materials.

87. The LPC failed to follow the required procedure.

88. At the May 29, 2018 public hearing, at the conclusion of the Frick's presentation of the Frick Application, the then-chair of the LPC simply stated, "we can close the hearing."

89. None of the commissioners made a motion to close the hearing prior to the chair making that statement.

90. As a result of the LPC's error, the public hearing with respect to the Frick Application was not closed. That undisputable conclusion leads to two distinct additional errors. First, the LPC improperly plans to consider the Frick Application on June 26, 2018 in the context of a public meeting, where the public is not permitted to speak, instead of at a public hearing where the public can provide testimony. Second, any vote conducted by the LPC on June 26,

2018 (or on any subsequent date) will be invalid because the LPC could not make a “final determination” while the hearing remained open.

91. Nevertheless, the LPC intends to proceed with the Frick Application at the June 26, 2018 public meeting despite the fact that the public hearing with respect to the Frick Application was never closed. For the foregoing reasons, the LPC’s decision to proceed with the Frick Application at the June 26, 2018 public meeting is a determination made in violation of the LPC regulations.

### **SECOND CLAIM FOR RELIEF**

#### ***The LPC Violated the NYC Charter’s Procedure Regarding the Constitution of the LPC and the Replacement of Commissioners.***

92. SIFD repeats and realleges Paragraphs 1 through 91 as though fully set forth herein.

93. The NYC Charter explicitly states that:

- “[t]here **shall** be a landmarks preservation commission consisting of eleven members,” NYC Charter § 3020(1) (emphasis added);
- “[i]n the event of a vacancy occurring during the term of a member of the commission, the mayor **shall** make an interim appointment to fill out the unexpired term of such member,” *id.* § 3020(2)(b) (emphasis added); and
- “[t]he mayor **shall** designate one of the members of the commission to be chair and one to be a vice-chair,” *id.* § 3020(4) (emphasis added).

94. The NYC Charter’s use of the word “shall” imposes a mandatory duty and is not subject to discretion. The mandatory nature of these requirements is further emphasized by the fact that other sections of the NYC Charter provide that the mayor or the LPC “may” take a certain action.

95. Based on these provisions, the LPC, in its presently improperly constituted form, is not permitted to vote on the Frick Application.

96. The previous LPC chair, Meenakshi Srinivasan, stepped down on June 1, 2018.

97. The LPC now only has ten members instead of the mandatory eleven.

98. Despite the NYC Charter's requirement that the LPC have a chair and a vice chair, no replacement for former Chair Srinivasan has been named.

99. The LPC's vice chair, Frederick Bland, has recused himself from the Frick Application because he is employed by the Frick's architecture firm. As such, with respect to the Frick Application, there is neither a chair nor a vice chair on the LPC.

100. Moreover, the June 19, 2018 LPC hearing, the LPC adopted a motion to appoint Commissioner John Gustafsson to "run" LPC public meetings and public hearings in the event that Bland is absent or has recused himself due to a conflict. The plain and unambiguous terms of the NYC Charter require that the Mayor make those appointments.

101. Nevertheless, the LPC intends to proceed with the Frick Application at the June 26, 2018 public meeting. For the foregoing reasons, the LPC's decision to proceed with the Frick Application at the June 26, 2018 public meeting is a determination made in violation of the NYC Charter.

### **THIRD CLAIM FOR RELIEF**

#### ***The LPC's Decision to Vote On the Frick Application Will Render as Moot the RFE to Designate the Music Room as a Landmark***

102. SIFD repeats and realleges Paragraphs 1 through 101 as though fully set forth herein.

103. Recently, a RFE was submitted to the LPC for the LPC to designate the Music Room as a landmark.

104. According to the Frick Application, the Music Room is slated for destruction, to be replaced by a two-story addition.

105. As a result, if the LPC is permitted to vote on and subsequently approves the Frick Application prior to its analysis of the RFE submitted in connection with the Music Room, the RFE submitted in connection with the Music Room will be rendered moot.

106. For the foregoing reasons, the LPC should not be permitted to vote on and approve the Frick Application prior to its consideration of the RFE to designate the Music Room as a landmark.

**WHEREFORE**, SIFD respectfully request that this Court enter judgment against Respondents pursuant to CPLR §§ 7803 and 7806 as follows:

1. Adjudging and declaring that the LPC's decision to consider the Frick Application at the June 26, 2018 public meeting was in violation of the LPC's own rules because the May 29, 2018 public hearing with respect to the Frick Application was never closed by a motion;
2. Adjudging and declaring that the LPC's decision to consider the Frick Application at the June 26, 2018 public meeting was in violation of the NYC Charter, which requires that the LPC have eleven members, requires the LPC to have a chair, and requires that vacancies be filled;
3. Adjudging and declaring that the LPC cannot vote on the Frick Application until it has rendered a decision on the RFE to designate the Music Room as a landmark;
4. Reversing and revoking the LPC's determination to proceed with the Frick Application at the June 26, 2018 public meeting despite the violations of the LPC

rules, the violations of the NYC Charter, and the fact that it has not rendered a decision on the RFE to designate the Music Room as a landmark;

5. Reversing and revoking any determination made by the LPC with respect to the Frick Application at the June 26, 2018 public meeting due to the violations of the LPC rules and the NYC Charter, and the fact that it has not rendered a decision on the RFE to designate the Music Room as a landmark;
6. Granting SIFD the costs and disbursements of this action; and
7. Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
June 24, 2018

MORRISON COHEN LLP

By: 

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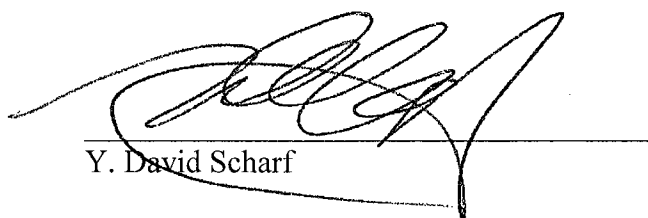
*Attorneys for Petitioner*



**VERIFICATION**

Y. David Scharf, an attorney duly admitted to practice before the Courts of this State, verifies that the forgoing Verified Petition is true pursuant to CPLR 2106 and under penalties of perjury; and that the grounds of his knowledge and of his belief are the Affirmation of Leslie Samuels dated June 24, 2018 and the exhibits thereto; the Affidavit of Martha Frick Symington Sanger dated June 22, 2018; the Affidavit of David Helpern dated June 22, 2018 and the exhibit thereto; and the exhibits annexed to the Emergency Affirmation of Y. David Scharf.

Dated: June 24, 2018  
New York, New York



Y. David Scharf

Index No.

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

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STOP IRRESPONSIBLE FRICK DEVELOPMENT,

Petitioner,

-against-

THE LANDMARKS PRESERVATION COMMISSION  
AND THE FRICK COLLECTION,

Respondents.

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VERIFIED PETITION

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ATTORNEYS FOR PETITIONER

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