SUPREME COURT OF THE STATE OF NEW YORK COUNTY	NEW YORK		
In the Matter of the Applicati	ion of		
PROSPECT HEIGHTS NEIGHBORHOOD COUNCIL, INC., et al,	DEVELOPMENT	Index No. 116323/09	
	Petitioners,	Assigned to Justice Friedman	
For a Judgment Pursuant to Article of the Civil Practice Law and Rule		AFFIDAVIT OF STUART PERTZ	
- against -		IN SUPPORT OF	
EMPIRE STATE DEVELOPMENT CORPORATION and FOREST CITY RATNER COMPANIES, LLC,		SUPPLEMENTAL PETITION	
	Respondents.		
	x		
STATE OF NEW YORK)) ss.: COUNTY OF NEW YORK)		·	

STUART PERTZ, being duly sworn, deposes and says:

I am an architect, an urban designer, an urban planner, a facility strategist and a management consultant with more than forty years' experience in urban development. I am a Fellow of the American Institute of Architects, a past director of its New York City chapter, and a past member of the American Institute of Certified Planners. I am a Professor of Architecture and Planning at Pratt Institute, was Chair of the Graduate Program in Urban Design and have served as a Member of the NYC Planning Commission. As an architect, I have designed housing for the New York State Urban Development Corporation, master plans for Lehman College, the headquarters for Shering Plough Corporation, the American University in Beirut's rebuilt Main Hall and many other corporate, commercial and interior design projects. As an urban designer and planner I have developed zoning and urban design plans for Charleston S.C., downtown plans for New Britain and Norwalk, Connecticut, Master Plans and a new community in the Town Of Islip, L.I., planning for Brooklyn's MetroTech Center, and plans for development in Taipei, Taiwan, Haiko, Hainan, Guangzhou, China, Yerevan, Armenia and the waterfront of Kuwait City.

I have been asked to give my professional opinion on the question of what additional impact might occur as a result of the Atlantic Yards Development Project's construction should the build-out of the project be as much as 25 years rather than the 10 years presented in the Project Plan and assessed in the project's Environmental Impact Statement (EIS).

There are two general circumstances to be considered:

- 1. in which the project is considered unchanged from the present ten year project and either stretched out over an additional 15 years or delayed but built unchanged ten, 15 or 20 years later; and
- 2. in which the project is built differently in response to the extended timeframe.

In the first circumstance it could be argued that relatively little might change because the EIS would have anticipated all the possible impacts and they would simply have been (a) extended, diluting the impact, or (b) delayed, having caused the impact at another time when the environment effected would be generally the same.

However, even if the present project plan could be unchanged and maintained over 25 years there would still be significant potential increases in impact not considered in the ten-year EIS. This is due to the following:

- 1. The EIS considers the impact of the completed project, whether it is 10 years or 25 years out. But the EIS does not consider the additional 15 years of open, unshaded asphalt "temporary" parking, "temporary" fencing and construction sheds, "temporary" street closures, "temporary" traffic diversion and ongoing residual disruption that will occur over a protracted period of time before the project is complete.
- 2. It does not anticipate an extending of the period of noise, upheaval and mess that invariably accompanies construction. Drawn out construction does not maintain the level of the local or community impact of a shorter period, it extends the annoyance and disruption, in this case to almost half the lifetime of those effected. (The project construction is considered to move from site to site but it is the state of the unconstructed sites that may be equally if not more troublesome for the community.)
- 3. It does not adequately anticipate the delay in mitigations that include school construction, park completion, road improvements, all of which would be extended or delayed, increasing the impact of the project without them.
- 4. It does not adequately anticipate a changed community and city, for example
 - in which gentrification could increase car ridership in the adjacent communities;
 - · in which infrastructure improvements were delayed;
 - · in which school demand increased locally; and/or
 - in which 15 years of surrounding development reflects a growing Brooklyn economy that increases the baseline for all environmental impact measures.
- 5. The matter of interim, "temporary" use while the project proceeds needs to be examined more closely. The interim parking proposed will last in part, if not entirely, at least two decades. During that time, the nature of the traffic generated is far different than that generated when the project is complete and the impact is measured.
 - Residents use their cars rarely commuters and construction workers use them
 every day. The "temporary" lots will be filled and emptied every day, all at virtually
 the same time, far differently than the completed project.
 - Residents have the option of using their cars when there is the least traffic
 possible –commuters and construction workers have no choice, they drive at high
 volume times. Unlike the completed project, the "temporary", unconsidered
 condition creates far more impact than the completed project.

The second circumstance, in which the project as described by the Modified General Project Plan and analyzed in the EIS will <u>not</u> remain fixed over 25 years, is far more likely. A project running over 25 years will almost certainly have changed significantly, encountering numerous and potentially serious environmental impacts that the existing EIS does not analyze.

Regardless of which circumstance prevails, changing or not changing over time, the most basic omission to the existing EIS is the lack of a project plan or schedule that outlines how the 25-year effort would be organized. Without a plan that says what will be built and when, it is impossible to assess with any semblance of accuracy, what specifically the impact would be.

The present project plan and schedule was out of date at the time of approval of the 2009 MGPP. Building access, parking, temporary parking, construction routes, road and pedestrian route closings, construction schedules and mitigation implementation have all changed. And although it has been argued that such incremental change does not increase the project's impact, the cumulative effect of this occurring over multiple decades without a revised project plan and its environmental analysis flies in the face of the purpose of an EIS in informing the public of potential impact.

Some change cannot be anticipated in an EIS whatever the timeframe and the longer the timeframe the less that can be anticipated. Markets change and management changes. A sudden call for commercial space, or a continued lack of residential demand might cause a change in use. Parking, ridership, classroom demand, infrastructure disruption could all occur. And a new or a number of new developers with differing interests and motivations could take responsibility for the project.

Given reasonable expectation that market and organizational conditions could change the project plans and schedules over an additional 15 years, the Atlantic Yards development could significantly

- increase road usage and construction inconvenience;
- overwhelm the community with unsheltered "temporary" asphalt parking lots and desolate, inactive construction sites; and/or
- · delay or impede essential mitigations.

Nonetheless, without a plan, without a schedule and without a clear assessment of environmental data for a 25-year project we can only assert that it will be vastly different.

Given the same lack of information, the technical advisors to the project cannot, without stretching responsible conjecture, claim otherwise.

Stuart Pertz

Sworn to before me this

1571/day of January /2011

ER!CA RICH Notary Public, State of New York No. 01RI6086616

Qualified in Kings County
Commission Expires 0 6 12