

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

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In the Matter of the Application of

PROSPECT HEIGHTS NEIGHBORHOOD DEVELOPMENT  
COUNCIL, INC, et al.,

Petitioners,

Index No. /2009

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules,

SUPPORTING  
AFFIDAVIT OF  
GIB VECONI

- against -

EMPIRE STATE DEVELOPMENT CORPORATION and  
FOREST CITY RATNER COMPANIES, LLC,

Respondents

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STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK )

GIB VECONI, being duly sworn, deposes and says:

1. I am a member and the Secretary of the PROSPECT HEIGHTS NEIGHBORHOOD DEVELOPMENT COUNCIL, INC. ("PHNDC"), one of the petitioners in this proceeding. I reside at 284 Park Place in the Prospect Heights area of Brooklyn and to the extent I have been permitted, I have participated in the administrative process centered on the proposed Atlantic Yards Project (the "Project"). As a result, I am familiar with both the chronology and the limitations of the process. I submit this affidavit in support of the Petition

in this proceeding to provide the court with a sense of how that process largely excluded the neighboring communities and residents.

2. The Atlantic Yards Project was announced in December of 2003 by the Forest City Ratner Companies (“FCRC”), which intended to develop the Project on 22 acres of land at the intersection of Atlantic and Flatbush Avenues in Brooklyn, located within Prospect Heights and immediately adjacent to the Clinton Hill and Boerum Hill communities and in close proximity to the Park Slope and Brooklyn Heights areas. As outlined, the Project was to center on a new arena for the New Jersey Nets, with a seating capacity of 18,000; and it was also include 16 high-rise towers with 6,000 residential units and commercial office space. The immense size of the development, as well as the Arena, caused immediate interest and concern in the adjoining residential neighborhoods.

3. On February 4, 2004, FCRC invited members of community groups to a meeting about the Project at the developer’s MetroTech offices. Hoping to hear details of the Project and some identification of its expected impacts, upon arriving at the meeting, the PHNDC members discovered that the purpose of the event was to plan the organization of BUILD, a group expected to sign a Community Benefit Agreement with FCRC. The meeting was led by BUILD organizers, who dismissed questions about impacts to the surrounding neighborhood as not being germane to the discussion.

4. On September 4 and November 29, 2004, the Brooklyn Borough President convened meetings at Borough Hall to discuss the potential impacts of the Project. Individuals and groups expressing opposition to the Project were not permitted to attend. At

the November 29 meeting, FCRC official James Stuckey made a presentation, after which each attendee was allowed to ask one question. That was it.

5. During the spring and summer of 2005, representatives from PHNDC, the Pratt Area Community Council (“PACC”), the Boerum Hill Association (“Boerum Hill”) and other community groups had several meetings with the Brooklyn Borough President to discuss providing the community with resources to assist in the evaluation of the Project’s draft environmental impact statement. It was suggested that the SEQRA law gave the Empire State Development Corporation (“ESDC”), which had signed on as the governmental sponsor of the Project, the right to fund such resources through an assessment on the developer. However, these discussions did not result in any funds being made available for expert resources to assist the community in understanding Atlantic Yards’ impacts. Nor was any other help offered to the communities in the course of their efforts to analyze the impacts.

6. On May 26, 2005, the Economic Development Committee of the New York City Council held an informational hearing on the Project. Invited witnesses were all proponents of the plan; only the last panel contained one community sympathetic traffic engineer and Daniel Goldstein, who has subsequently led the opposition to the Project. The rest of the public was sent home without being able to testify, though written submissions were accepted. Nothing came of these.

7. On June 27, 2005, FCRC CEO Bruce Ratner signed a Community Benefits Agreement with affordable housing advocacy group ACORN, BUILD and several other recently-created community organizations. The signing ceremony also included Mayor Michael Bloomberg, who signed the document, creating the impression of City oversight

(something that has not occurred). All organizations participating in the CBA were to receive compensation from the FCRC to provide various services as a function of the Project. In addition, FCRC could exit the agreement at any time by paying fees of \$500,000 to ACORN and the other participants.

8. On November 29, 2005, representatives of the Park Slope Civic Council (“PSCC”) met with Mr. Stuckey of FCRC. Among other topics, the group asked Mr. Stuckey to re-open the Community Benefits Agreement to address the concerns of the stakeholders of the neighborhoods surrounding the Atlantic Yards project. He expressed interest in working on a Neighborhood Benefits Agreement that would cover issues of concern to Brownstone Brooklyn if the Atlantic Yards project came to fruition, and acknowledged that FCRC had not yet addressed such issues. However, neither Mr. Stuckey nor other officials from FCRC ever followed up on this offer.

9. Some months later, in July 2006, ESDC released the Draft EIS for the Project. This was during the summer, at a time when the interested community boards were not in session and many were away from the city. The ESDC’s public hearing on the DEIS took place on August 23, 2006. The ESDC hearing officer in charge of the hearing allowed representatives of building trade unions and the signatories to the Community Benefits Agreement to disrupt the meeting and intimidate members of the public who came to testify about their concerns regarding the Project’s environmental impacts. The hearing officer cut off witnesses who addressed environmental issues while letting proponents who addressed broad social issues to speak beyond the three minute time limit. PHNDC, Boerum Hill,

PACC, PSCC and the Fifth Avenue Committee (“FAC”) submitted detailed written comments on the DEIS to ESDC.

10. In September of 2006, PHNDC, PSCC, Boerum Hill, PACC, FAC and other Brooklyn-based and citywide civic organizations came together under an initiative called “BrooklynSpeaks” calling for change to the Project plan. The BrooklynSpeaks sponsors called on the ESDC to

1. Respect and integrate with surrounding neighborhoods
2. Include a transportation plan that works
3. Include affordable housing that meets the community’s needs
4. Involve the public in a meaningful way

There was no response from ESDC or FCRC.

11. ESDC approved the General Project Plan and the FEIS for the Project in November 2006.

12. On April 15, 2007, more than 200 people braved rain and strong winds to hear elected officials and community leaders call for a halt to FCRC’s planned demolition of two city blocks of Prospect Heights to create massive surface parking lots to service the Arena during the first phase of Project. Addressing the assembled crowd were City Council members Letitia James, David Yassky and Bill DeBlasio; State Senator Eric Adams; and Assemblyman Hakeem Jeffries. The rally was organized by the BrooklynSpeaks sponsors.

13. On May 7, 2007, the ESDC announced new “oversight measures” with respect to the Project. The measures included (1) the designation of an Atlantic Yards ombudsperson, (2) the designation of an owner’s representative for constructions activities, (3) the creation of an interagency working group between the ESDC, MTA, NYCEDC, NYCDOT, NYCDOB,

and others to review approved and planned work on a monthly basis, (4) the creation of a transportation working group (including city and state agencies, elected officials and community representatives), and (5) a promise to hold regular meetings with elected officials. The ombudsman was hired seven months later. The hiring of the owner's representative was not announced publicly (and may not have occurred). No record of the interagency working group's meeting (if any have taken place) has ever been made public. The transportation working group met only once, on October 15, 2007. "Regular" meetings with local elected officials were never scheduled.

14. On May 31, 2007, representatives from the sponsoring organizations of BrooklynSpeaks met with officials from the ESDC, including Chairman Patrick Foye, to discuss questions about Atlantic Yards decision-making, and concerns about construction impacts. Rachel Schatz of the ESDC offered to convene a meeting with FCRC and the assembled community organizations to address concerns about the use of the block 1129 for construction staging and interim surface parking. This meeting was never held.

15. In August of 2007, the BrooklynSpeaks sponsors released a proposal for the reform of the Project's governance. The proposal was endorsed by the Assembly members and State Senators from the districts surrounding the Atlantic Yards project. On August 23, 2007, the groups sent Mr. Foye a copy of the proposal under a cover letter reminding him of Ms. Schatz' offer to convene a meeting with FCRC to discuss interim parking on block 1129. No response was ever received.

16. On October 15, 2007, ESDC convened a "Transportation Working Group" meeting as called for in the agency's May announcement. The meeting was attended by

representatives of NYCDOT, FCRC, ESDC, elected officials and community groups. Elected officials and community representatives asked for an open discussion about mitigating construction traffic impacts and dealing with changes to the Project. Representatives of ESDC responded by stating that the Project was already approved, and no changes were envisioned. ESDC said another meeting would be scheduled, but no such second meeting ever took place.

17. On November 14, 2007, the BrooklynSpeaks sponsors convened a meeting for representatives of the sponsor organizations and elected officials. The sponsors invited ESDC Director of Intergovernmental Affairs Jennifer Maldonado, who was asked to speak to the process for ongoing decision making on Atlantic Yards, but refused to do so, stating, "It is far too premature to discuss any GPP changes, if any were to occur." Ms. Maldonado resigned from the ESDC shortly thereafter.

18. On December 5, 2007, the BrooklynSpeaks sponsors convened another meeting of the same stakeholders and invited Forest Taylor, the ESDC's newly-hired Atlantic Yards ombudsman, to attend. At that time, Mr. Taylor was informed of Ms. Schatz' offer to convene a meeting with FCRC to discuss interim surface parking for the Project. Mr. Taylor was reminded of the same offer at similar meetings on January 18, 2008 and February 29, 2008. After the February 29 meeting, Mr. Taylor organized and confirmed a meeting with FCRC for March 28, 2008, the purpose of which was to discuss traffic impacts and possible mitigation, but Mr. Taylor subsequently cancelled that meeting.

19. During the spring of 2008, PHNDC and other BrooklynSpeaks sponsors worked with local State legislators to draft a bill that would create a new public benefit corporation to oversee the Atlantic Yards project. The structure of the proposed Atlantic

Yards Development Trust was based upon a governance proposal released the previous August. The bill was introduced into the New York State Legislature by Assemblyman Hakeem Jeffries and State Senator Velmanette Montgomery in June of 2008. However, it expired in committee before action was taken.

20. On July 15, 2008, members of the BrooklynSpeaks sponsor organizations met with officials from the ESDC, including ESDC Chair Avi Schick. The sponsor representatives expressed concern that the Project build-out, including demolition of existing structure, had already started to create construction impacts in the surrounding communities. At the same time, the Project had not gone forward on schedule and further delay seemed inevitable. Given the delay, the use of block 1129 for interim parking was an even bigger concern. Mr. Schick (who had already announced plans to resign from the ESDC) promised to convene a meeting of ESDC's transportation experts, but the meeting was never scheduled.

21. On December 31, 2008, the BrooklynSpeaks sponsors wrote Governor David Paterson asking for his help in ensuring remediation of specific construction impacts that were being worsened by the delay in the Project. No reply from the Governor was ever received. A local legislator sent the letter under separate cover to the ESDC asking for a response. The ESDC responded by forwarding the letter to FCRC's Maryanne Gilmartin and asking for her response, which was largely to deny the concerns raised in the Brooklyn-Speaks' letter.

22. On May 29, 2009, State Senator Bill Perkins, Chair of the Senate Committee on Authorities and Corporations, convened a hearing on the Atlantic Yards project at Pratt Institute in Brooklyn. Order in the hearing was continually disrupted by organized supporters of the Project. ESDC Chair Marisa Lago, MTA Acting Chair Helena Williams, and NYC



EDC Chair Seth Pinsky offered seemingly inconsistent testimony that the Project would not change, but that negotiations were underway with FCRC to downscale aspects of the Project in light of challenging economic conditions.

23. In June of 2009, FCRC announced that Frank Gehry had been replaced as the project architect by Ellerbe Becket, a firm known for designing arenas in several Midwestern cities. ESDC subsequently released an Atlantic Yards modified general project plan (MGPP) and Technical Memorandum for public comments. The documents released by the ESDC did not include a revised site plan, even though renderings clearly showed that the size and orientation of the Phase I buildings had been changed. The new Arena design was compared to an airline hangar by architecture critics. The new Arena renderings were subsequently disavowed by the FCRC, leaving the public only to guess at what sort of design the revised Project would have. The MGPP also contained a provision allowing FCR to sell its interest in the Arena to a buyer approved by the ESDC prior to the completion of the Arena's construction. The reason for this was shortly to appear.

24. The MGPP confirmed many of the fears that had been previously expressed by the BrooklynSpeaks sponsors, including: (A) A radical change in the design of Atlantic Yards and the arena, and the departure of Frank Gehry from the Project; (B) Relaxation of the Project schedule and developer commitments, such that the completion of the project may be 20 years away, if ever; (C) A likely extended delay in providing the affordable housing benefits claimed by the Project; and (D) A blighting influence from so-called "interim" surface parking lots that could go on for decades.

25. Faced with these changes, on July 28, 2009, the BrooklynSpeaks sponsors, together with City Council Member Letitia James, Assembly Members Hakeem Jeffries, Joan Millman and Jim Brennan, and State Senators Eric Adams and Velmanette Montgomery, sent a letter to ESDC Chair Dennis Mullen calling on his agency to provide a complete set of documentation for public review and to prepare a supplemental EIS prior to taking action to vote on the MGPP. No response was received. City Councilman Bill DeBlasio subsequently sent a separate letter with the same demand.

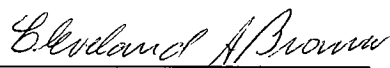
26. The deadline for public comments on the MGPP and the Technical Memorandum expired on August 31, 2009. Ten days later, on September 9, 2009, FCRC announced yet another new design for the Arena, this one by the New York firm SHoP Architects. The renderings that have been released show only the Arena and do not indicate how commercial or residential buildings will be included in Phase I.

27. The ESDC board approved the MGPP at its meeting on September 17, 2009.

28. On September 22, 2009, FCRC announced that Russian billionaire Mikhail Prokhorov had purchased an eighty percent stake in the Nets basketball team, with an option to acquire a forty-five percent stake in the Arena. Thanks to the MGPP, FCRC was free to transfer those interests.

  
Gib Veconi

Sworn to before me this  
18 day of November, 2009

  
Notary Public

