
REFORMING THE GOVERNANCE OF ATLANTIC YARDS

A roadmap

This document is a working draft. Please send comments to contact@brooklynspeaks.net.

BrooklynSpeaks.net

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DRAFT

1. INTRODUCTION

1.1 Overview

Since the time Atlantic Yards was announced in December 2003 until now, local residents, civic and community organizations and local elected officials have been excluded from meaningful involvement in the decision-making process for Brooklyn's biggest development project. While the announcement in May from the Empire State Development Corporation of new measures to increase government oversight and coordination over the Atlantic Yards project is a positive step, the State has yet to propose how the local community, local elected officials and the general public will be meaningfully engaged in the planning for a project that is likely to be built out over several decades. This document attempts to analyze how the existing governance for the project excludes the public and proposes the creation of new mechanisms to more fully involve the local community, elected officials and the general public in the project's decision-making.

The contents of this document are as follows:

- Section 1 describes the background to how Atlantic Yards came to be approved without any meaningful community input.
- Section 2 analyses the current governance structure of the Atlantic Yards project and describes the initiatives announced by the ESDC on May 7, 2007.
- Section 3 proposes governance bodies to be created in order to provide representative local input into project planning, design and oversight.

The analysis presented in this document is based upon research by the Brooklyn Law School Clinic performed for the BrooklynSpeaks.net sponsors. The BLS research report is included as Appendix A. Atlantic Yards oversight and monitoring measures announced by the ESDC are included as Appendix B.

1.2 Background

This report argues that the public has been excluded from any meaningful involvement in the decision-making for the Atlantic Yards Project. This is principally due to the follow factors:

1. The State and the Mayor chose to use the land use approval process set out by the Urban Development Corporation act of 1968, which required only votes by the ESDC board and the Public Authorities Control Board, rather than the review mandated by the city's Uniform Land Use Review Procedure (ULURP). Other projects, while still nominally under State control, have nevertheless been governed by the ULURP process (e.g. Battery Park City). ULURP would have required a full review by the local community boards, Borough President, City Planning Commission, and ultimately would have been voted on by the City Council. Instead, the Community Boards, Borough President and City Council had no formal role in the approvals process, with the result that all the local elected officials who represented the neighborhood residents who were likely to be most impacted by the project were essentially sidelined.
2. While the public had the opportunity to participate in the environmental review for the project as mandated by the New York State Environmental Quality Review Act (SEQRA), no significant changes to the project to the project resulted from the public's participation. The ESDC under Governor Pataki's leadership was focused on getting the project approved before the end of the governor's term in December 2006 and made little or no effort to address community concerns. The following is evidence of this:
 - The ESDC initially allowed only the statutory minimum of 60 days for public comment on the Draft Environmental Impact Statement. While this period was later extended, it remained significantly lower than the review period for other comparable projects, such as the Hudson Yards project in Manhattan or Yankee Stadium in the Bronx.
 - Despite thousands of public comments submitted in the course of the public comment period, the only significant changes to the project were made in response to comments submitted by the Department of City Planning and the Borough President of Brooklyn. According to press reports, many of these changes were agreed upon well in advance of the public comment period.
 - Despite extensive calls for the approval process to be slowed down following the release of the Final EIS to allow for the public to fully understand the implications of the project's impacts, the project was approved by the Public Authorities Control Board on December 2006 after a minimum of review.
3. The public and local elected officials were never given the opportunity to fully understand the financial implications of the project to the taxpayer during the approvals process. Only recently have financial assumptions concerning the project been made public.

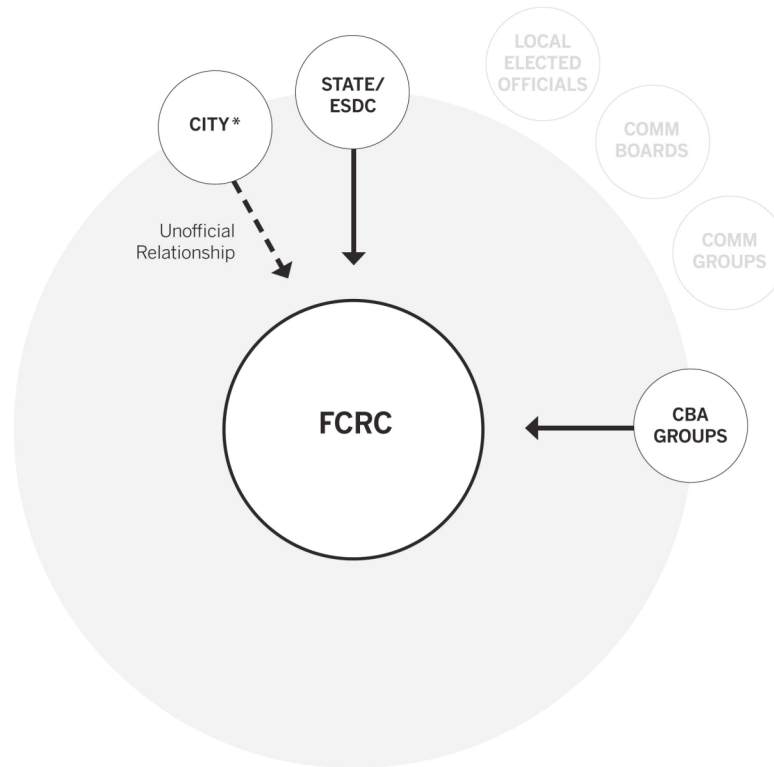
1.3 Audience and stakeholders

This document has been written to inform and advise the following stakeholders:

- the Governor of the State of New York, who is the chief executive responsible for the State authority executing the project;
- the Mayor of the City of New York, who is the chief executive responsible for City agencies that are largely responsible for mitigating the project impacts;
- representatives of the New York State Assembly and State Senate, who will vote whether to provide further State funding to the project sponsors;
- representatives of the New York City Council, who will vote whether to provide further City funding to the project sponsors;
- the Brooklyn Borough President, who has actively promoted the development of large projects in Brooklyn, and is expected to have a continuing interest in the evolution of Atlantic Yards;
- the Chairman and senior staff of the Empire State Development Corporation, who are responsible for seeing that the Atlantic Yards project achieves the goals outlined in its General Project Plan;
- the management of Forest City Ratner Companies (FCRC); the management of Forest City Enterprises, and its directors and shareholders; and the owners of the New Jersey Nets basketball team;
- members of Community Boards 2, 3, 6 and 8 who serve the neighborhoods most immediately affected by the project's impacts, and who have responsibility for review of land use proposals under the New York City Charter;
- the boards of community organizations and associations that serve constituents in the neighborhoods affected by the project; and
- the residents and merchants of Prospect Heights, Fort Greene, Clinton Hill, Boerum Hill, Park Slope, Crown Heights and Brooklyn Heights, who will bear the impacts of the development for many years to come.

2. CURRENT PROJECT GOVERNANCE

EXISTING
ATLANTIC YARDS
GOVERNANCE
STRUCTURE



***INCLUDES:**
Department of Buildings
Department of City Planning
Department of Transportation
Department of Housing,
Preservation and Development, etc.

Figure 1: Current project governance

2.1 Existing governance structure

Under the governance structure in place before the ESDC's May 7 2007 announcement, the State and the City were technically responsible for overseeing the project, but neither entity had established specific mechanisms in order to do so. It was anticipated that construction work, traffic mitigation and other issues would be monitored by the responsible city agency, such as the Department of Buildings or Department of Transportation. However, no mechanism was in place to coordinate between the different agencies, liaise with the public, or continually review the planning and design of the project over its lifespan.

Instead, many of these responsibilities were assumed by Forest City Ratner and quasi-governmental entities established by the developer. For example, in February 2007, the developer established a Construction Liaison Office to manage and address community concerns with construction work on the project. As this entity reports to the developer, it could not reasonably be expected to represent the public by providing timely and accurate information or meaningfully addressing the public's concerns with construction.

In July 2005, the developer announced the creation of a Community Benefits Agreement which was intended to demonstrate that the local community would benefit from the project. Although no government entity representing the public was involved in the creation of the CBA, many of the other roles that might normally be the responsibility of government entities appear to have been assigned to its signatories. These include the monitoring of the delivery of affordable housing, job training and other public benefits of the project.

The CBA is structured around a central group of signatories who form an Executive Committee that collaborates with the developer to deliver these benefits. All of the signatories, except for one, establish "councils" whose function includes community outreach. However, the councils have neither accountability to the public nor a voice in any decision-making relative to the delivery of benefits under the CBA. Each council is formed and controlled by a CBA signatory; the CBA explicitly states that the actions of each council must be "approved by" its respective CBA signatory. Therefore, no matter what governance structure was established for an individual council, the council itself would serve only in an advisory capacity to a CBA signatory, which itself is only a party to an agreement with a subsidiary of the project's developer.

Typically, Community Benefits Agreements are organized by government entities, such as the Staples Center Agreement in Los Angeles. The Atlantic Yards Community Benefits Agreement was essentially a private agreement between the parties, rather than a publicly negotiated document, and no government entity is bound by its provisions. Compliance with the terms of the CBA is determined by an Independent Compliance Monitor who is responsible only to the CBA Executive Committee. Clearly, the CBA's structure provides neither a

channel for the community to have its voice heard with respect to project decision-making, nor a representative governance structure for managing the delivery of benefits, nor accountability to any agency of State or City government, including the ESDC.

2.2 ESDC Changes

On May 7, 2007, the ESDC announced several initiatives with respect to the Atlantic Yards project geared toward improving project coordination and communications. These included the following:

- the designation of an Atlantic Yards ombudsperson who will coordinate communications of project activities to elected officials and community members, and who will also “facilitate the cooperation” of various government agencies involved in the project;
- the designation of an Owner’s Representative to monitor construction activities performed by the developer;
- the creation of an interagency working group, including representatives of the MTA, NYCEDC, NYCDOB and NYCDOT to “review approved and planned work on a monthly basis”;
- the creation of a transportation working group, to include City and State agencies, local elected officials and community organizations to “discuss anticipated issues and available mitigation opportunities”; and
- the scheduling of regular meetings “to update and inform elected officials about overall progress and key project milestones.”

The following diagram represents the ESDC’s announced changes in the larger project context.

There are a number of positive aspects to the announced initiatives. An ombudsperson accountable to a state agency is clearly preferable to the current “Community Liaison Office” run by FCR. The interagency working group should provide the formal, institutionalized channel of communication between State and City agencies that is clearly needed for a project of this magnitude. And the inclusion of community representatives in the transportation working group would be the first time community members were asked for input into the Atlantic Yards Project.

However, the changes announced by the ESDC on May 7 fall short of providing meaningful local participation and public accountability.

- The only policy-making entity established by the ESDC appears to be the transportation working group. While traffic and transit issues are of great concern to the local community, there are other subjects for which public input should be sought that are not addressed by the ESDC’s proposed changes. Construction impacts, environmental impacts (e.g., air quality, water and sewer impacts, noise,

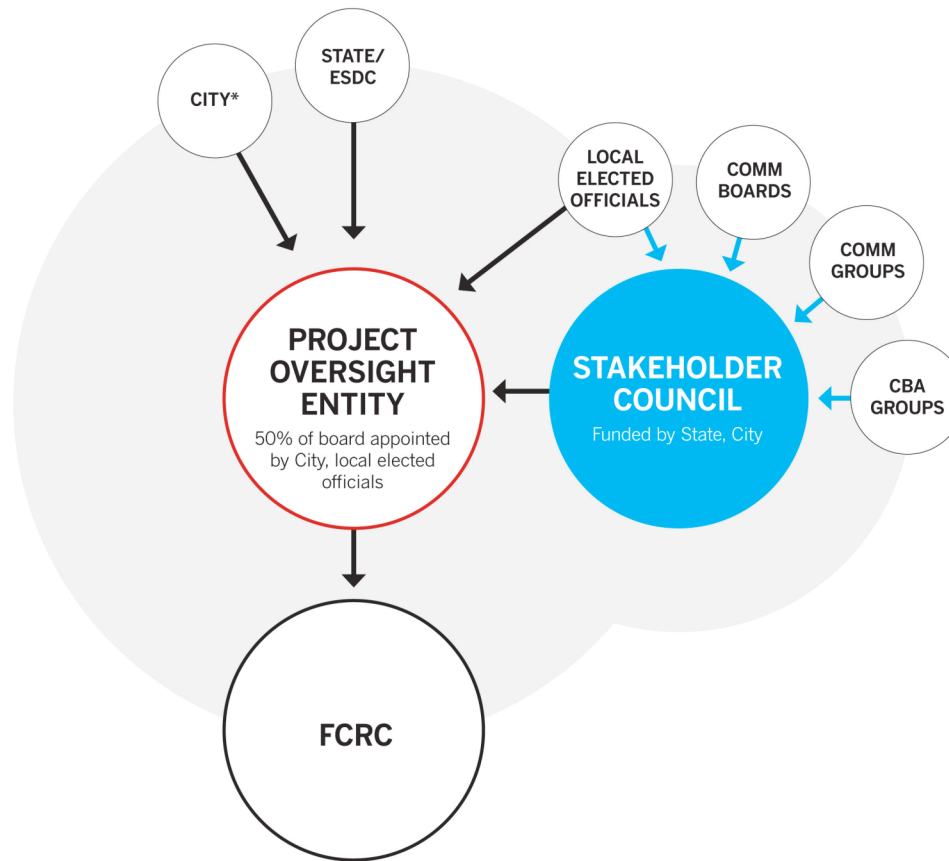
etc.), secondary displacement, public services, safety and security, workforce development and project phasing will all have major effects on the neighborhoods that surround Atlantic Yards.

- While there is a commitment to “meet with” local elected officials regularly, there is no mention of a role for local elected officials in project decision-making. Informing elected officials of committed plans is of limited value if the officials have no ability to shape those plans.
- There is no role defined for Community Boards in any part of the process, despite their relevance to almost every aspect of the Atlantic Yards project as defined by the City Charter.
- Most importantly, there is still no mechanism for the public and the local community to have a meaningful voice in the decision-making and planning for the project.

In short, the ESDC changes assume that the current Atlantic Yards project will be built out as currently proposed. Even if this were desirable, it is highly unlikely to occur, if the experience of other large-scale projects – such as Queens West or Battery Park City – is a guide. Given that almost every aspect of the project is likely to change during the project's life cycle, it is unacceptable for the public to continue to be unrepresented in the decision-making process for Atlantic Yards.

3. PROPOSED GOVERNANCE AND ACCOUNTABILITY MODEL

PROPOSED
ATLANTIC YARDS
GOVERNANCE
STRUCTURE



***INCLUDES:**
Department of Buildings
Department of City Planning
Department of Transportation
Department of Housing,
Preservation and Development, etc.

Figure 2: Proposed governance structure

The sponsors of BrooklynSpeaks.net believe that two new structures should be created in order to meaningfully involve stakeholders from the local community prospectively, coordinate effectively between the City and the State agencies, and generally improve the quality and accountability of project decision-making.

- A *Project Planning and Oversight Entity* should be created. This could be established as an ESDC subsidiary, comparable to Brooklyn Bridge Park Development Corporation or Queens West, both of which were created specifically to involve local representation in the decision-making for those projects. The Project Planning and Oversight Entity would include as part of its board representatives from the ESDC, City agencies responsible for planning and provision of infrastructure, as well as local elected officials. This Planning and Oversight Entity would be responsible for reviewing and approving all changes to the project and policy surrounding it. The entity would also ensure mitigations were being implemented according to agreed-upon standards, and that the actual delivery of public benefits under the project was consistent with the stated goals of the project.
- A *Stakeholder Council* should be chartered by ESDC to provide a forum for community dialog and input into the project on a continuing basis. This Council could establish working committees to address particular categories of project issues (e.g., transportation, public services, open space, urban design, workforce development, etc.). The representatives of the Council would include members of local Community Boards and leaders of community organizations and civic groups, including the signatories of the CBA. The Stakeholder Council would serve in an advisory capacity to the Project Planning and Oversight Entity.

The establishment of representative decision-making and community advisory bodies would help make the Atlantic Yards project a genuine public/private partnership. However, their simple establishment alone will not resolve the flaws in the project, including its overwhelming density and height of its buildings; its lack of a transportation plan; and its failure to address the housing needs of thousands of local families whose incomes would not qualify them for housing in the new project. These flaws are the direct result of Atlantic Yards having been conceived and planned without adequate public participation, and can only begin to be addressed as Atlantic Yards moves forward if public is meaningfully engaged in the decision-making for the project.