

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,

Index No. 116323/09

Petitioners,

Assigned to
Justice Friedman

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

- against -

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

Respondents.

AFFIDAVIT OF
RONALD SHIFFMAN
IN SUPPORT OF
SUPPLEMENTAL
PETITION

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

RONALD SHIFFMAN, being duly sworn, deposes and says:

I have over 47 years of experience providing program and organizational development assistance to community-based groups in low- and moderate-income neighborhoods. In 1964, I co-founded the Pratt Institute Center for Community and Environmental Development (PICCED), the nation's largest public interest architectural, planning and community development office. I have been a member of the American Institute of Certified Planners (AICP) since May 1985 and in April 2002 was elected a Fellow of the AICP. I served as a mayoral appointee on the New York City Planning Commission from 1990 to 1996. I am currently a professor at the Pratt Institute School of Architecture, where I chaired the Department of City and Regional Planning from 1991 to 1999. I have served as a consultant to HUD, the USAID and the Ford Foundation on national and global community-based planning, design and development initiatives; and I have also served on a number of gubernatorial and mayoral task forces.

I submit this affidavit in regard to the findings presented by the Empire State Development Corporation in its response to the Remand Order issued by the Court on November 9, 2010. The ESDC finds that "A delay in the 10-year construction schedule, through and including a 25-year final completion date, would not result in any new significant adverse environmental impacts not previously identified and considered in the FEIS and 2009 Technical Memorandum and would not require or warrant an SEIS." The methodology through which this finding is reached does not adhere to CEQR guidelines, and its conclusion is therefore invalid on technical grounds. The guidelines would require a specific environmental impact statement to be prepared that would properly account for the large increase in construction duration.

Moreover, experience has shown that extended build-out periods, postponements and or delays in large urban renewal projects can have serious environmental and economic consequences for surrounding communities, so that the balance of facts clearly indicates that an SEIS is not only warranted, but critical to ensure a thriving community is not harmed by "planner's blight" brought on by the reckless approval of the project in question.

The Atlantic Yards EIS takes as its guideline the New York City Environmental Quality Review Manual (the "CEQR Manual"). The current CEQR Manual was originally drafted by AKRF, which company serves as consultant to ESDC and Forest City Ratner Companies (FCRC) on the Atlantic Yards project, and was updated in 2010.

The projected build year is central to analysis of environmental impacts under CEQR as almost all the quantitative data to be analyzed is predicated on it. Section 2.B.100 of the CEQR Manual states that "For some generic actions or small area rezonings, where the build-out depends on market conditions and other variables, the build year cannot be determined with precision. A ten-year build year is generally considered reasonable for these projects as it captures a typical cycle of market conditions and *generally represents the outer timeframe within which predictions of future development may usually be made without speculation* (emphasis added)." The Atlantic Yards FEIS, approved in 2006, projected future conditions over a ten-year construction period, and therefore adhered to the "reasonable" standard of the CEQR guideline.

However, CEQR does not support an arbitrary extrapolation of projected ten-year conditions into a timeframe of twenty-five years. Long-term trends in public policy, demographics, population, health and economics can and do result in significant and unpredictable environmental changes over decades. We know from the 2010 Census that the population of Brooklyn has increased more than 4% in the last decade, and that the areas surrounding the Atlantic Yards project have become less diverse. We can assume further change over the next two or three decades, but the exact nature and outcome of the change can't be predicted. It may also seem likely at this point that State and City budget crises will force significant changes in public spending and policy, but neither the specifics nor the outcome over the coming decades can be known. Sometimes, the direction of change can be unexpected: as pointed out in the Technical Analysis submitted by ESDC with its response to the Remand Order, traffic levels in Brooklyn may have actually decreased since the 2006 FEIS. But surely if this trend was to continue twenty-five years into the future, it would have implications for the programming of parking at Atlantic Yards! At the same time it would be foolhardy to project that trend on a

straight line if for some reason the economy rebounds and traffic then reverses itself as a function of the economy.

It's possible that environmental conditions twenty-five years into the future could be analyzed using a scenario-based approach projecting multiple outcomes of the convergence of expected trends in population, public policy, transportation, and market conditions, although this approach would still involve a degree of speculation. However, the CEQR Manual recommends another alternative: "For phased projects, interim build years are assessed in addition to the final build year when the entire project is scheduled to be completed. Interim build years are the first full year after each phase is completed. Large-scale projects that would be constructed over a long period, with the different elements becoming operational or occupied as they are completed, often assess interim build years as well. *These interim build years are often assessed to ensure that impacts are identified at the earliest points in which they would occur in the course of development and that mitigations are implemented at that time, rather than at the complete build-out of the project, which may occur years later.* Typically, one interim year is chosen, usually based on an estimate of the year when enough development to produce impacts requiring mitigation would have occurred (emphasis added)."

This guidance is clearly relevant to the Atlantic Yards project, which is proposed to be built in two phases, now spanning more than ten, and perhaps even more than twenty-five, years. The merit of assessing an interim build year when the Arena, the phase 1 residential buildings, and the surface parking lot are complete, is apparent given the uncertainty of the schedule for completion of phase 2. Further, the FEIS identified interim impacts (among them impacts to open space) that were to be mitigated by the completion of the project. The use of an interim build year for aligning mitigations with the extended project schedule is indicated by the CEQR guidance. ESDC and its consultants would surely have been aware of this, and the agency's failure to undertake a supplemental environmental impact statement is an obvious omission. Such an analysis would likely have led to further specific mitigations for the blighting impacts of unfinished construction and the 1,100-space surface parking lot on block 1129.

A supplemental environmental impact statement should also have studied alternatives that would have enabled the project to maintain a 10-year build out. Economic uncertainty may have prompted the developer to renegotiate the project delivery schedule, but an equally appropriate response by the ESDC should have been to consider the opportunity to subdivide the property in the project footprint and bid out development to others in order to reduce completion risk. This approach was a key element of the Unity Plan, which was presented to the ESDC in 2009 by myself and local residents as a project alternative.

ESDC's failure to conduct an SEIS before approving the 2009 MGPP is troubling. The agency would clearly have been aware of the CEQR guidance regarding projecting a long-range build year, and also was aware of at least one proposed option to reduce completion risk by subdividing development. The decision to prepare an SEIS appears to have been an intentional omission and possibly negligent.

The consequences of extending the build year without a proper environmental analysis and mitigations may be adverse and severe. As an example, one need look no further than the

Atlantic Terminal Urban Renewal Area (ATURA) that overlaps the Atlantic Yards site. ATURA was designated in 1962, and in 1968, a plan was approved for construction of "2,400 new low- and middle-income housing units to replace 800 dilapidated units, removal of the blighting Fort Greene Meat Market, a 14-acre (57,000 m²) site for the City University's new Baruch College, two new parks and community facilities such as day-care centers."¹ However, only the planned demolition occurred as the City's fiscal crisis of the 1970s weighed down. In 1986, the Board of Estimate approved a new plan for commercial space, parking and residential units. This plan, too, fell victim to an economic downturn and was not executed. In fact, the area cleared in the early 1970s remained barren until FCRC constructed the Atlantic Center mall in the 1990s, a gap of more than twenty years.

The outcome of the "planner's blight" introduced with the demolition of the Atlantic Terminal area was to extend deteriorating conditions south into the area now part of the Atlantic Yards footprint. Manufacturing businesses closed, and investment in residential buildings lagged, creating the justification for the finding of blight that allowed Atlantic Yards to condemn property through the use of eminent domain.

The West Side Urban Renewal Area was designated after a failed attempt at urban renewal by Robert Moses resulted in the Manhattantown area on Central Park West between 97th and 100th Streets being turned over to a private developer, who instead of completing the project, sat on the existing buildings and milked them. However, even after Mayor Robert Wagner fired Manhattantown, Inc. and put the City Planning Commission in charge of the West Side Urban Renewal Area, redevelopment took fifteen years longer than expected. By that time, neighborhood demographics had changed so significantly that the population most in need of its planned affordable housing benefits had largely been displaced. A proposal for development of site thirty in the West Side Urban Renewal area which was designed to have low and moderate-income housing became a major source of conflict since the new residents were no longer committed to the agreement forged with the residents of the community at the time that the plan was initiated.

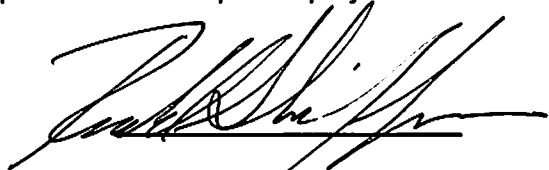
The example of the Seward Park Urban Renewal Area on the Lower East Side illustrates not only the risk of stalled development, but also that environmental studies are not evergreen, and need to be updated once development is ready to proceed. SPURA was cleared of hundreds of homes and businesses in the 1960s, but development lagged and five blocks of SPURA remain surface parking lots to this day. Although a plan to develop market rate and affordable housing at SPURA was recently passed by Community Board 3, it is understood by all of the parties, including the City of New York, that a full-scale EIS will now be prepared, even though the only zoning change contemplated at this time is to allow retail on two of the sites; and the plan is otherwise expected to be compliant with current zoning and thus as-of-right.

Yogi Berra once said, "In theory, there is no difference between theory and practice. In practice, there is." But ESDC's reliance upon the impacts analyzed in the ten-year EIS when it claims no greater impact will be experienced by increasing the build date by fifteen years is not supported by either theory or practice. CEQR guidelines dictate the agency has a responsibility to the

¹ "Renewal Raises Brooklyn Hopes", *New York Times*, June 24, 1968.

public and to the communities surrounding the Atlantic Yards project to candidly assess the impacts of its proposed project over its expected duration. Before extending the build year to accommodate a single-source developer, the ESDC must consider possible alternatives that would allow the project to be built within the time frame originally proposed. If a twenty-five year build out is proposed, an analysis of an interim build year should be conducted, with appropriate mitigations for impacts from partial completion identified.

Finally, one would note that, in the very limited context of review offered by SEQRA, public review and comment both during the initial the scoping session when issues and topics to be addressed are identified, and on presentation of the draft findings of an environmental impact statement are the only opportunities local residents, businesses, Community Boards and elected officials have to weigh in on the planned development. ESDC's circumvention of even this minimal level of public engagement by its approval of the 2009 MGPP without an SEIS sets an extremely negative precedent for future State-sponsored development projects.



Ronald Shiffman

Sworn to before me this

12 day of February, 2011



Notary Public

MARINA OVTCHINNIKOVA
Notary Public, State of New York
No. 01076077003
Qualified in Kings County
Commission Expires July 1, 2014