

but will not necessarily be reflected in the record of the proceedings before the agencies that have been sued in this litigation.

2. I am the senior FCRC executive with over-all responsibility for the Project. I have been employed in private-sector real estate development for more than 15 years, including, for the last twelve years, by FCRC. For 13 years prior to that, I was employed in the public sector, working mostly on economic development projects for the City of New York. My last position in municipal government was President of the New York City Public Development Corporation, a local development corporation now known as the New York City Economic Development Corporation.

A. Community Support for the Project

3. Although petitioners are opposed to the Project, there are many, many supporters of the Project, including several elected officials as well as community leaders. As part of FCRC's opposition to the petition in Develop Don't Destroy Brooklyn v. Empire State Development Corp., 31 A.D.3d 144 (1st Dep't 2006), lv. to app. denied, 8 N.Y.3d 802 (2007), FCRC submitted to the Court a series of affidavits from just a few of the Project's supporters.¹

4. Among the Project's supporters is Brooklyn Borough President, Marty Markowitz. A copy of his affidavit is attached hereto as Exhibit A. Attached to Borough President Markowitz's affidavit are letters from twelve other elected officials who support the Project, including U.S. Senator Charles Schumer and other members of the Legislature and the City Council. Attached hereto as Exhibits B through F are copies of affidavits from other Project supporters – Edolphus Towns, a Member of the United States Congress, from the 10th District of

¹ In that litigation, the Project's opponents, including the lead petitioner in this case and six other petitioners, commenced a proceeding to challenge ESDC's emergency determination to demolish five unsafe buildings and enjoin the buildings' demolition, but the courts sustained ESDC's determination and allowed the buildings to be demolished.

New York, which is in Brooklyn and abuts the Project site; former State Assemblyman Roger L. Green, then representing the 57th Assembly District in Brooklyn; former State Senator Carl Andrews, then representing the 20th Senatorial District in Brooklyn; Bertha Lewis, Executive Director of the New York Association of Community Organizations for Reform Now (“ACORN”), and Reverend Herbert Daughtry, pastor of the House of the Lord Church in Brooklyn and the Chairperson of the Downtown Brooklyn Neighborhood Alliance. ACORN and the Downtown Brooklyn Neighborhood Alliance are parties to the Community Benefits Agreement described below.

B. The Community Benefits Agreement

5. The Project sponsors have entered into an extensive Community Benefits Agreement with a broad coalition of Brooklyn community groups and community action organizations (Exhibit G).² This Agreement is historic, because it is the first such agreement ever entered into by the developer of a major New York City project. We believe that it may set a standard for future projects in the City.

6. By the Community Benefits Agreement, the Project’s sponsors have bound themselves to carefully articulated and detailed commitments to the local communities, which are intended to address in a very serious manner the problems of unemployment and underemployment, lack of affordable housing and other serious issues that have plagued communities within Brooklyn. As one example, not only does the Agreement commit the Project’s sponsors to assuring that a percentage of the construction contracts for the Project will be awarded to minority- or women-owned businesses, but it also obligates the sponsors to

² In addition to Rev. Dr. Herbert Daughtry and Bertha Lewis, the leaders of these Brooklyn community organizations at the time of the Agreement included Rev. Walter J. Morris, Rudy Richardson, Freddie Hamilton, James Caldwell, Delia Hunley-Adossa and Charlene Nimmons.

establish, in consultation with the other parties to the Agreement, programs to hire residents of the surrounding communities who are members of minorities, women or people of low or moderate-income, and to train them for permanent employment (§ IV(A)).³

7. The Community Benefits Agreement also requires that priority for employment opportunities be given to residents of public housing and low-income residents of the neighboring communities (§ IV(A)(3)). In addition, the Agreement obligates the Project's sponsors to make new residential rental units at the Project "affordable to low- and moderate-income families" in accordance with a program established with ACORN, a well-known community and housing activist group that is a signatory to the Agreement (§ IV(B)). It also commits the Project's sponsors to "provide all residential tenants currently renting and legally occupying a legal residential dwelling unit as their primary residence within the Project site," and who are in good standing under their leases and have resided in their current residence for at least one year as of the date of the Agreement (June 27, 2005), with "reasonably comparable living space in a new unit within the Project, at their then current rent," plus interim housing at no greater cost than their current rent, plus the payment of brokerage commissions and reasonable relocation costs (§ VI(D)(1)).

8. These commitments are only a handful of those contained in the Agreement, but all of the Agreement's commitments have teeth in the form of substantial legally enforceable penalties for a failure by FCRC to fulfill its obligations.

³ The first contracts that have been awarded include more than \$2.6 million of contracts awarded to minority- and women-owned firms. For example, the work at the Vanderbilt Yard is being managed by The McKissack Group, which is the nation's oldest minority-owned professional design and construction firm. In addition, four of the five demolition contractors to which FCRC has awarded contracts for the demolition work are minority-owned.

C. The Bids to the MTA

9. Petitioners assert that the Metropolitan Transportation Authority (the “MTA”) awarded the rights to FCRC to redevelop the Vanderbilt Yard without adequately considering a competing bid from Extell Development Company (“Extell”) (Pet. ¶¶ 161-170). They claim that FCRC’s bid was inferior to Extell’s competing bid, because Extell offered the MTA \$150 million, while FCRC offered \$100 million (Pet. ¶¶ 164, 169). Examination of FCRC’s actual bid – as opposed to the petition’s characterization of it – exposes petitioners’ contention as completely unfounded. A copy of FCRC’s bid is annexed hereto as Exhibit H.

10. While petitioners are correct that FCRC’s bid contained an offer of \$100 million in cash while Extell’s bid offered the MTA \$150 million in cash, the petition fails to advise the Court that FCRC’s bid also offered to (1) build a new Vanderbilt Yard for the MTA at an estimated cost to FCRC of \$182 million, (2) conduct environmental remediation and clean-up of the MTA’s property at an estimated cost to FCRC of \$20 million, (3) compensate MTA for increased operating costs that had an estimated present value of \$25,400,000, (4) construct additional mass transit improvements relating to the nearby subway station at an estimated cost to FCRC of \$29,000,000, and (5) share with the MTA sales tax revenues from the project that had an estimated present value of \$23,000,000 (see Ex. H, at p. 2.1). FCRC’s bid thus reasonably could be valued at \$379.4 million dollars.

D. The Build Year

11. Petitioners also assert that respondents intentionally understated the expected build-out for the Project by at least five years in order to artificially minimize the Project’s adverse environmental impacts (Pet. ¶ 287-291, 405(a)). This assertion is false.

12. Respondents primarily base their theory on a statement made by Charles Ratner, the CEO of Forest City Enterprises, Inc., a publicly held company that is an investor in the Project. The environmental impact analysis for the Project was based on the assumption that Phase I of the Project will be completed in 2010, and that Phase II will be completed in 2016. It was reported in a March 6, 2007 webcast, however, that Mr. Ratner had said that the Project would take 15 years to build. In relying on this statement, which was made after the determinations here at issue and is not part of the record, petitioners deliberately ignore – and fail to apprise the Court – of a clarification made by Mr. Ratner two days later. On March 8, 2007, Mr. Ratner clarified his prior statement regarding the Atlantic Yards development timetable at the Citigroup 2007 Global Property CEO Conference. At that time, he said the following

When I referred to the project taking 15 years to build, I was referring to the total time, from the idea or conception of the development to completion of the final building. The actual construction of Atlantic Yards will take 10 years, and, as we have announced, preliminary work on the site has begun.

When I was discussing the arena, I was referring to the arena block which includes the Barclays Center as well as four surrounding buildings, including the iconic Ms. Brooklyn. We expect the office and residential buildings to come on line beginning in 2010. We remain committed to our goal of opening the arena in time for the 2009-2010 NBA basketball season.

See <http://ir.forestcity.net/phoenix.zhtml?p=irol-eventDetails&c=88464&eventID=1492668>. In short, when Mr. Ratner referred to a 15-year schedule for the Project's completion, he was referring to the time it would take to complete the Project from its first conception, not from its final approval by the responsible public officials.⁴

⁴ Petitioners also rely on a statement attributed to Laurie Olin, the landscape architect for the Project, that the Project would probably take 20 years to build (Pet. ¶ 289). FCRC is not aware of the content of this statement, but Mr. Olin is not privy to the relevant information regarding construction of the Project and does not have authority to speak on behalf of FCRC.

13. As the record will demonstrate, the build year for the Project that was used in the environmental impact analysis was premised upon a comprehensive and extremely detailed analysis of the construction timetable by Turner Construction Company, a preeminent construction management company (see FEIS, Chapter 17, "Construction Impacts").

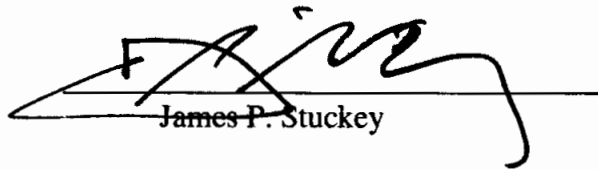
E. Rental for Arena Usage

14. In support of their claim that the arena that is an important component of the Project is not a "civic project" within the meaning of the Urban Development Corporation Act, petitioners assert that the rentals to be charged by FCRC for use of the arena will not be affordable to civic groups (Pet. Mem. p. 33), citing an analysis by ESDC's accountants that projects the cost of renting the arena for a single event to be \$100,000 (Baker Aff. Ex. 34, p.11).

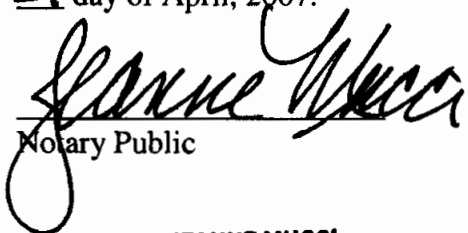
15. This number, which was provided to ESDC by FCRC, actually represents an average rental. The arena will be available to community groups and schools at different rates depending on the purpose of the event and the need of the group. However, the actual rentals have not yet been determined. It would be premature to say exactly how much community groups will be charged to use the arena, but, some groups will be charged only the cost to operate the arena (i.e., costs required for lighting, HVAC, security, etc.), which is likely to be substantially less than \$100,000, while other community groups will be charged less than cost. On the other hand, if a group expects to make a profit from its use of the arena or is using the arena for a corporate event or meeting, it is reasonable to assume that the group will be charged at least cost. I understand that comparable arenas such as Madison Square Garden and Continental Airlines Arena have similar rental structures.

D. Conclusion

16. For the foregoing reasons and those set forth in the accompanying memorandum of law as well as the papers submitted by the other respondents-defendants, the petition should be denied, and FCRC's cross-motion for summary judgment should be granted.


James P. Stuckey

Sworn to before me this
24th day of April, 2007.


Notary Public

JEANNE MUCCI
Notary Public, State of New York
No. 30-4834577
Qualified in Nassau County
Commission Expires March 30, 2011