

YOUNG, SOMMER ... LLC

JEFFREY S. BAKER
DAVID C. BRENNAN
MICHAEL J. MOORE
J. MICHAEL NAUGHTON
KENNETH S. RITZENBERG
DEAN S. SOMMER
DOUGLAS H. WARD
KEVIN M. YOUNG

JOSEPH F. CASTIGLIONE
JAMES A. MUSCATO II
ROBERT A. PANASCI
KRISTIN M. PRATT

YOUNG, SOMMER, WARD, RITZENBERG, BAKER & MOORE, LLC

COUNSELORS AT LAW

ALL WRITTEN CORRESPONDENCE TO
EXECUTIVE WOODS, FIVE PALISADES DRIVE, ALBANY, NY 12205
PHONE: 518-438-9907 • FAX: 518-438-9914

SARATOGA OFFICE:
468 BROADWAY, SARATOGA SPRINGS, NY 12866
PHONE: 518-580-0163

WWW.YOUNGSOMMER.COM

OF COUNSEL
MICHAEL E. CUSACK
SONYA K. DEL PERAL
ELIZABETH M. MORSS
KRISTIN CARTER ROWE
LAWRENCE R. SCHILLINGER

PARALEGALS
GREGORY D. FAULKNER
PENELOPE D. HENRY

ENERGY POLICY ANALYST
VALERIE B. STRAUSS

WRITER'S TELEPHONE EXTENSION: 227
JBAKER@YOUNGSOMMER.COM

Via Fax (212) 803-3775 and Regular Mail

December 8, 2006

Hon Charles Gargano, Chairman
Empire State Development Corporation
633 Third Avenue
New York NY 10017

Members of the Board of Directors
Empire State Development Corporation
633 Third Avenue
New York NY 10017

Re: Atlantic Yards

Dear Sirs and Madam:

We are writing on behalf of Develop Don't Destroy Brooklyn (DDDB) to provide very brief comments on the FEIS for the Atlantic Yards project. On December 8, 2006 you are going to be asked by ESDC staff to adopt findings under the State Environmental Quality Review Act (SEQRA) and the Urban Development Corporation Act (UDCA) to approve and begin the implementation the project. As set forth below, it is clear that the FEIS for the project is fatally flawed and does not provide the ESDC Board with sufficient basis upon which to make the legal findings that are required to approve the project. You should decline to move forward with the project and direct staff to undertake a Supplemental EIS to cure the myriad deficiencies in the current document.

As you are most probably aware, under SEQRA you are charged with considering the environmental impacts of ESDC actions and assuring that your final decision chooses from the available alternatives the one that avoids, minimizes or mitigates the adverse environmental impacts to the maximum extent practicable, consistent with social, economic and other essential

considerations. In the process of meeting that requirement, you must take a "hard look" at the relevant areas of concern and produce reasoned elaboration of the determination.

The FEIS fails to meet that standard. ESDC staff rushed to complete the FEIS which was accepted by the Board on November 15th. Thereafter, staff realized that in their rush to completion they omitted numerous comments and then rushed again to reissue the FEIS. However, that speed did not alleviate the overall sloppiness inherent in the FEIS. The FEIS is rife with errors and omissions. Most strikingly, although there were numerous substantive comments on the DEIS, in many cases the response to those comments is nothing more than a reiteration of the language in the DEIS. The failure to consider and respond to those comments is not only illegal, but insulting and demonstrates that the result of ESDC's consideration of the project is a foregone conclusion.

Set forth below are selected examples of the errors in the FEIS. This is not an exhaustive list, nor are they the primary deficiencies. Given the extremely short time frame in which to review the FEIS, a thorough review is impossible. These examples are indicative of the problems inherent in the FEIS.

Open Space

Many comments noted the dearth of open space, particularly publicly accessible open space and the fact that the space provided is less than the City goal of 2.5 acres per 1,000 residents and is less than is being provided in Battery Park City. The FEIS responds that the project provides 1.7 acres per 1,000 residents. (FEIS p. 24-169) However the math is wrong. Per the FEIS, there will be approximately 13,503 residents based on the assumption of 2.1 persons per unit. That results in a ratio of 0.59 acres per 1000 residents – far less than the 1.7 acres represented in the FEIS. This fundamental mathematical error is indicative of the carelessness of the FEIS and should put the Board on notice that there has not been sufficient analysis to warrant approval of the project.

Traffic and Police and Fire Response Times

The project's impact on traffic has been a major concern, where a road network already at capacity will have to bear the burden of at least 20,000 additional vehicles. Besides ignoring the comments about how the DEIS understated traffic impacts and took too narrow a look, the FEIS also ignores the concerns expressed about response times for emergency vehicles. Faced with gridlock conditions, the FEIS simply states that emergency vehicles will not be hampered because police, fire and ambulance vehicles "are not bound by standard traffic controls" when responding to emergencies. (FEIS 24-143). Apparently when faced with gridlock, the traffic magically parts to make way for the vehicles without delay – a miracle of modern physics that has not been witnessed in other gridlock events.

Terrorism Threats and Security Issues

The FEIS takes the bizarre position that the threat of terrorism need not be considered in the planning of the project or in the FEIS.

To quote from the FEIS (p. 24-538), the only response to numerous serious public concerns regarding terrorism and security is as follows:

"Emergency scenarios such as a large-scale terrorist attack similar to the World Trade Center attack, a biological or chemical attack, or a bomb are not considered a reasonable worst-case scenario and are therefore outside the scope of the EIS."

There is no support for such a head in the sand approach to an obvious threat. Placing a 20,000-seat arena over a major transit hub, adjacent to a major traffic intersection, surrounded by glass-walled towers presents an obvious invitation to terrorists. Nevertheless, the FEIS claims no responsibility to consider that potential and to design accordingly to minimize the impacts such a threat poses or the costs incurred by related planning, insurance, and emergency issues. While ESDC staff may disregard the responsibility to consider the threat, we hope that the ESDC Board is not so narrow-minded.

Blight

A substantial number of detailed comments were submitted detailing the errors in the DEIS and the Blight Study, including a 191 page response from my client DDDB. In particular it was noted that there are no blighting conditions on blocks 1127, 1128 and 1129. Comments noted that any conditions in the area are a result of either neglect by MTA or vacancies created by FCR. Comments also noted that in the entire history of the Atlantic Terminal Urban Renewal Area (ATURA), despite numerous opportunities, the City of New York never claimed the project site—and in particular the blocks to be condemned—as blighted. All of those comments were completely ignored and the FEIS simply reiterates the statements made in the DEIS. While the FEIS makes the claim that the blocks south of Pacific Street are blighted, saying so does not make it true and the Board should not ratify a decision that is contradicted by hard facts.

The Blight Study characterizes the project site as crime-ridden, claiming that instances of crime in the project site are greater than surrounding precincts. As shown in my clients response the crime statistics are misrepresented and skewed to such an extent that the reality is crime is *lower* in the project site than surrounding areas. The FEIS completely ignored this critical point. Another hard fact the Board should be wary of ratifying.

Coney Island Alternative

DDDB's comments noted that the DEIS misrepresented the feasibility of Coney Island as a location for the arena. The DEIS claimed there was no room for an arena. DDDB

demonstrated that at least two locations were suitable. The FEIS tried to correct the error by acknowledging that there were suitable sites but then in only a few paragraphs argued why it was not preferable to the chosen site. There continues to be no sound argument as to why the arena needs be part of a mixed-use development. ESDC cannot ignore an obvious alternative in a DEIS and then pretend to consider it in the FEIS without subjecting it to a full alternative analysis subject to public review. ESDC has ignored the long-standing goal of the Brooklyn political leaders to bring a major league franchise to Coney Island, a desire that has continued to be expressed.

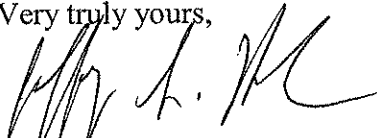
Violations of the UDC Act

DDDB and others noted that ESDC has violated Sec. 16 of the UDC Act by failing to hold the comment period open until October 18th, 30 days after the last public hearing on September 18th. The FEIS while acknowledging the legal obligation of Sec. 16, continues the absurd contention that the public hearing was on August 23rd and the September 18th event was a "community forum". The fact remains that the "community forums" were completely indistinguishable from the public hearing. ESDC cannot try and hide behind a change in name to avoid its legal obligation. The minimum time frames in the applicable laws providing for public review are often insufficient to consider enormous projects. At the least ESDC must comply with the minimum legal requirements. Instead ESDC shortened the mandatory minimum comment period by nearly 3 weeks.

DDDB also noted that the project does not meet the legal definitions of a civic project or a land use improvement project. Those comments are not recognized or responded to in the FEIS. These are fundamental questions that go to the public need, purpose and authority of ESDC to undertake the action and override local land use controls. The lack of response is a striking admission that ESDC is operating beyond its authority.

The foregoing is just a small sampling of the omissions and tone of the FEIS which demonstrate that ESDC's SEQRA compliance falls below the legal standard. There are numerous other issues. It is our hope that the ESDC Board, rather than acting as a lame duck administrative body determined to rush through an approval in its waning days, exercises the independent judgment with which it is entrusted and requires reconsideration of this ill-conceived document

Very truly yours,



Jeffrey S. Baker