

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X

DEVELOP DON'T DESTROY BROOKLYN, et	:	Index No. 100686/06
al.,	:	
	:	
Petitioners - Plaintiffs	:	IAS Part 35
	:	
- against -	:	Justice Edmead
	:	
EMPIRE STATE DEVELOPMENT	:	
CORPORATION and	:	
FOREST CITY RATNER COMPANIES,	:	
	:	
Respondents - Defendants	:	
	:	

----- X

AFFIDAVIT OF RACHEL SHATZ

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

RACHEL SHATZ, having been duly sworn, deposes and says:

1. I am the Director of Planning and Environmental Review for respondent Empire State Development Corporation (the "ESDC"). I make this affidavit in opposition to petitioners' request for a preliminary injunction enjoining the demolition of five vacant buildings within the footprint of the proposed Atlantic Yards Arena and Redevelopment Project ("Atlantic Yards") in Brooklyn, and in support of the ESDC's motion to dismiss the petition.

2. The five buildings in question are identified in a Declaration of Emergency issued by the ESDC on December 15, 2005 (the "Declaration"), a copy of which is annexed as Exhibit B to the Petition filed in this action. Unless otherwise

indicated herein, I have personal knowledge of the facts relating to the decision to issue the Declaration.

Background

3. I hold a bachelor's degree in anthropology from Connecticut College and a master's degree in urban planning from Hunter College. I have more than twenty years' professional experience in the field of urban planning, development and environmental review.

4. From 1985 until 1993, I was employed by the New York City Department of City Planning as an environmental reviewer, in which capacity I conducted environmental reviews of city-initiated rezoning and development projects. In May 1993, I joined the ESDC as its Senior Planner, and was later promoted to my current position, which I have held for more than ten years.

5. In my position as Director of Planning and Environmental Review, I am responsible for overseeing all aspects of the environmental review undertaken in connection with every project in which the ESDC is involved. I have performed this function in connection with the proposed Atlantic Yards project, and have supervised and been actively engaged in all aspects of the environmental review of that project since the signing of the Memoranda of Understanding relating to the project in February, 2005 and our preparation to announce our intent to be lead agency.

SEORA Review of the Proposed Atlantic Yards Project

6. On September 16, 2005, the ESDC issued a "Combined Notice of Proposed Lead Agency Designation, Public Scoping and Intent to Prepare a Draft Environmental Impact Statement" (the "Combined Notice") for the proposed Atlantic

Yards project. A copy of this document is annexed hereto as Exhibit A. Among other things, this notice advised the public and other potentially concerned agencies that the ESDC had determined that the proposed Atlantic Yards project was a "Type I" action within the meaning of the State Environmental Quality Review Act ("SEQRA") regulations, and that it would be acting as the Lead Agency in connection with the environmental review of the project. As Lead Agency, the ESDC is responsible for insuring compliance with SEQRA and the regulations promulgated thereunder.

7. The Combined Notice also notified the public that a public hearing would be held on October 18, 2005 to obtain comments on a forty-one page Draft Scope of Analysis for an Environmental Impact Statement (the "Draft Scoping Document") which was disseminated to the public together with the Combined Notice. This hearing was held as scheduled, and approximately 500 persons attended. After considering the public comments, the ESDC will revise its Draft Scoping Document and issue a Final Scope of Analysis for an Environmental Impact Statement (the "Final Scoping Document"), which will determine the issues, and the methodologies for analyzing those issues, that will be addressed in the Environmental Impact Statement (the "EIS") that eventually is prepared in connection with the proposed project.

8. It is not possible at this time to predict exactly when the Final Scoping Document will be issued, but I presently expect this will occur within the next 30 days. It is important to emphasize, however, that approval of the Final Scoping Document is simply a preliminary event -- and a rather early one, at that -- in what ultimately will be a detailed and exhaustive analysis of the potential environmental impacts of the proposed Atlantic Yards project. Of course, before any final EIS is

actually accepted by the ESDC, a draft EIS will be prepared and made available to the public, and a public hearing will be held at which all interested parties will have an opportunity to comment on the draft. The final EIS will answer or otherwise address all of the comments on the draft EIS that are submitted by the public.

The Decision to Issue the December 15, 2005 Declaration

9. In the summer of 2005, representatives of Forest City advised ESDC that they believed that a number of the buildings within the "footprint" of the proposed Atlantic Yards project were in very poor condition and potentially posed a serious risk of harm to public health and safety. Indeed, although Forest City's engineers had not yet completed their investigation of the buildings, Forest City expressed the view that the buildings were in such poor condition that there could be a serious risk that they could collapse.

10. Ordinarily, property owners in New York City are entitled to demolish buildings on their property "as of right," for any reason or for no reason at all. However, the SEQRA Rules and Regulations promulgated by the New York State Department of Environmental Conservation provide that, with only very limited exceptions, "[a] project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been complied with." 6 NYCRR § 617.3(a). One of the exceptions provided by the SEQRA Rules and Regulations applies to so-called "Type II" actions enumerated in 6 NYCRR § 617.5(c), one of which is for "emergency actions that are immediately necessary . . . for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance,

practicable under the circumstances, to the environment." 6 NYCRR § 617.5(c)(33).

Accordingly, we advised Forest City that, because the buildings were located on the proposed Atlantic Yards project site and the SEQRA process had already begun, Forest City would have to obtain the ESDC's approval -- by demonstrating that a Type II emergency exception was warranted -- before any of the buildings could be taken down.

11. On November 2, 2005, Forest City and its engineering consultant LZA Technology ("LZA") made an extensive presentation to (among others) me, ESDC's EIS consultant AKRF, ESDC's outside environmental counsel Sive Paget & Riesel, and counsel for the Metropolitan Transportation Authority, an involved agency with a strong interest in any actions taking place on or around its rail yard on the project site. This presentation concerned six buildings that LZA believed constituted an immediate threat to public health and safety and should be taken down. The presentation included detailed photographs of each of the subject buildings, a question-and-answer session and commentary and explanations by LZA engineers as to why they believe that the buildings posed an imminent danger. A copy of the visual materials presented by LZA is attached hereto as Exhibit B.

12. In my experience, LZA enjoys a well deserved reputation as one of the best engineering firms in the City of New York, if not the country. During the question-and-answer period that followed the LZA presentation, an LZA engineer stated that he believed that no responsible engineer could conclude that the buildings in question should not be taken down.

13. At the conclusion of the LZA presentation, I requested that Forest City submit a report documenting the physical condition of the buildings and the reasons

it believed that demolition of the buildings was warranted. On November 8, 2005, I received a letter from Robert Sanna, Forest City's head of construction, enclosing a report prepared by LZA covering five of the six buildings addressed at the November 2 meeting (622 Pacific Street was included in the presentation made at the November 2 meeting, but was not addressed in the report) and reiterating Forest City's recommendation that the buildings be taken down immediately "to avoid injury or damage to property or persons." A copy of Mr. Sanna's letter and the LZA report are annexed hereto as Exhibit C.

14. After reviewing the LZA report and consulting with other senior officials at the ESDC and our outside environmental counsel Sive Paget, I determined that an "emergency" existed within the meaning of 6 NYCRR § 617.5(c)(33) with respect to the five buildings identified in the LZA report, and that immediate action was warranted "for the protection [and] preservation of life, health [and] property" as contemplated by that section. Accordingly, I issued the Declaration on December 15, 2005, authorizing the demolition of these five structures.

15. I took this action for the following reasons. First, having previously toured the project site, I and our Senior Planner Ms. Soo Kang, were aware that the project site contained a number of vacant, boarded-up, and deteriorated buildings that did not have landmark designation or other historical significance. In my experience and the experience of others at the ESDC, vacant and deteriorated buildings often present a potential risk of harm to public health and safety, because they have been known to collapse suddenly and without warning. For example, in May 2005, the entire side of a neglected and vacant building in the Fort Greene section of Brooklyn, not unlike the buildings that are the subject of the December 15, 2005 Declaration, collapsed suddenly

and landed on a neighboring bodega, crushing a woman to death and injuring six other persons including a New York City firefighter. (See D. Kahn and J. Burdi, "Killer Collapse in B'klyn; Wall of Vacant Building Falls onto Bodega, Leaving a Woman Dead and Several Others Injured," Newsday, May 3, 2005, page A-7) Significantly, when Forest City advised us that it wished to take down the subject buildings, its representatives explicitly referenced the Fort Greene collapse, stating that they did not want to have a recurrence of that tragic incident. It should also be noted that the risk of such a collapse is heightened during the winter months, due to added stresses on such buildings caused by accumulations of snow and ice, and the degradation that can be caused by the expansion, contraction and shifting that can be caused by freezing and thawing.

16. In addition to the risk of sudden collapse, such buildings can be dangerous because they often attract children or teenagers looking for a place to play or gather, and/or homeless persons seeking shelter. Such persons are especially likely to enter the buildings in inclement weather, particularly during the winter months. Such persons may themselves be injured by loose or falling debris, and/or weakened floors that may give way under their weight. Also, such persons have been known to start fires, either as acts of vandalism or simply to keep warm, and these fires can spread out of control, endangering the individuals who started them as well as persons in neighboring buildings and firefighters and other emergency personnel who may be summoned to the site to deal with the emergency.

17. In addition to my awareness of the above-described risks posed by vacant and dilapidated buildings, the Forest City/LZA presentation on November 2, 2005,

and LZA's follow-up report presented on November 8, 2005, strongly confirmed our concerns about the possible threat to public health and safety presented by these buildings. Specifically, the presentation and report contain graphic visual evidence of unsafe and potentially catastrophic conditions within these structures such as cracked bearing walls, deteriorated roofs and flooring, and degraded floor joists and timbers. Coupled with our prior knowledge and experience concerning buildings such as these, the presentation and report left no doubt in my mind that these buildings presented an imminent risk to public health and safety, and persuaded me that the situation rose to the level of an emergency that warranted prompt remedial action.

18. As indicated above, before issuing the Declaration on December 15, 2005, I discussed Forest City's request for permission to take down these buildings with other senior personnel at the ESDC, including Soo Kang, our Senior Planner, Anita Laremont, ESDC's Senior Vice President and General Counsel, Steven Matlin, the Project Attorney for the proposed Atlantic Yards project, Anne Hulka, Senior Vice President/Real Estate, and Eileen Mildenberger, Chief Operating Officer. Each of them agreed that it was appropriate to issue the Declaration. In addition, I consulted with the lawyers at Sive Paget, ESDC's outside environmental counsel for this project, who concurred in my conclusion that the potential threat to public health and safety presented by these buildings constituted an emergency within the meaning of 6 NYCRR § 617.5(c)(33). I therefore issued the Declaration authorizing the demolition of the buildings as a "Type II" emergency action that was not subject to SEQRA review.

19. It should be noted that the issuance of the Declaration in this case was not unprecedented. In connection with the ESDC's review of the East River Plaza

Project in 1998, we acted pursuant to 6 NYCRR § 617.5(c)(33) to authorize the demolition of the Washburn Wire Factory, a vacant and deteriorated building. Like the buildings involved in the present case, we concluded that it presented a potential threat to public health and safety, and we therefore authorized its demolition, as we did here.

Additional Factors Relating to the
Demolition of the Subject Buildings

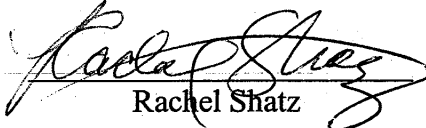
20. While not strictly relevant to the issue of the threat posed by these buildings to public health and safety, there are two other considerations that I believe are worthy of note in this case. First, none of the buildings covered in the December 15, 2005 Declaration is a landmark or has ever been asserted to have any historical value or significance. Second, I understand that petitioners in this action have suggested that it is possible that, instead of demolishing these buildings, they could be stabilized or shored up in some fashion to prevent their collapse. While such action may be appropriate where there is some reason to preserve a building or a portion thereof (for example, saving a façade of a building having historic significance), there is no reason to do so here, and to require such a step would in fact be pointless and wasteful, since these buildings are virtually certain to be demolished regardless of whether or not the proposed Atlantic Yards project is eventually approved. Obviously, if the project is approved, the buildings will be torn down to make way for the new development. But if the project is not approved, Forest City has clearly expressed its desire to demolish these buildings, which is an action that a property owner in New York City is entitled to take as of right, for any reason or for no reason at all.

21. Finally, I understand that the petitioners have suggested that there may be persons living in the vicinity of the buildings listed in the Declaration who could

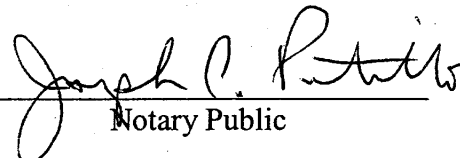
be impacted adversely by their proposed demolition. While we at the ESDC are not aware of any potential adverse impacts from the proposed demolition, Forest City will not be permitted to take down the buildings until they have first obtained a demolition permit from the New York City Department of Buildings (the "DOB"). The DOB will not issue that permit until Forest City has filed an approved demolition plan with the DOB that addresses the potential impact of the demolition, if any, on persons in the vicinity of the buildings and the manner in which Forest City proposes to alleviate such impact.

Conclusion

22. For the reasons set forth above, I respectfully submit that the issuance of the December 15, 2005 Declaration was not irrational, arbitrary or capricious, but rather was in all respects reasonable and appropriate, and that petitioners' request for a preliminary injunction enjoining the demolition of the buildings identified therein should be denied.


Rachel Shatz

Subscribed and sworn to
before me this 8th day of
February, 2006


Notary Public

JOSEPH C. PETILLO
Notary Public, State of New York
No. 31-4834610
Qualified in New York County
Commission Expires Jan. 31, 2010