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

In the Matter of

DEVELOP DON'T DESTROY BROOKLYN;
DANIEL GOLDSTEIN; Index No.
ATLANTIC AVENUE BETTERMENT ASSOCIATION;
FORT GREENE ASSOCIATION; RJI No.
BOERUM HILL ASSOCIATION;
FIFTH AVENUE COMMITTEE;
EAST PACIFIC BLOCK ASSOCIATION;
PROSPECT HEIGHTS ACTION COALITION
by its President PATTI HAGAN;
PRATT AREA COMMUNITY COUNCIL;
SOCIETY FOR CLINTON HILL;
DEAN STREET BLOCK ASSOCIATION (4th to 5th Ave.)
by its President JUDY SACKOFF;
PROSPECT HEIGHTS NEIGHBORHOOD
DEVELOPMENT COUNCIL; ELISELLE ANDERSON
DAVID SHEETS, KEN DIAMONDSTONE; and
PACIFIC CARLTON DEVELOPMENT CORP.

Petitioners - Plaintiffs

For a Judgment Pursuant to Article 78 of the CPLR and
Declaratory Judgment

- against -

EMPIRE STATE DEVELOPMENT CORPORATION and
FOREST CITY RATNER COMPANIES

Respondents - Defendants

MEMORANDUM OF LAW

Petitioners/Plaintiffs by their attorneys Young, Sommer, Ward, Ritzenberg, Baker & Moore, LLC submit this Memorandum of Law in support of the Petition and Complaint seeking the annulment of the December 15, 2005 "Emergency Declaration" by the Empire State Development Corporation (ESDC). That declaration grants permission to Forest City Ratner

Companies (FCRC) to demolish multiple buildings in the footprint of the proposed Atlantic Yards Arena and Redevelopment Project (Atlantic Yards) on the basis that they present an imminent threat to public health and safety and thus are exempt from SEQRA. This proceeding also seeks the disqualification of David Paget, Esq. and Sive, Paget & Riesel, P.C. from serving as special counsel to ESDC for the review of the Atlantic Yards Project as presenting a conflict of interest due to Mr. Paget's continuing representation of FCRC on other projects and his prior representation of FCRC on the Atlantic Yards Project. The Petition/Complaint also seeks a preliminary injunction on the demolition of the buildings pending completion of the SEQRA process for Atlantic Yards or a factual determination after an independent investigation that the buildings do present an imminent threat to public health and safety.

STATEMENT OF FACTS

The facts are set forth in the Petition and the Affirmation of Jeffrey S. Baker and the Affidavit of Jay Butler, P.E. The relevant facts will be summarized here.

The Atlantic Yards Arena and Redevelopment Project (Atlantic Yards) is an enormous redevelopment plan spanning 22 acres. Only 8 of those acres are comprised of the MTA's Vanderbilt Yards. The project area covers all or parts of 8 city blocks includes an arena, 16 high rise towers, and is comprised of 9 million square feet of residential, office and commercial space located in approximately 16 high-rise towers. Included therein is the approximately 850, 000 gross square foot arena accommodating up to 20,500 persons, 7,300 residential units, 4,000 parking spaces and a 180 room hotel. The project area is roughly bounded by Flatbush and Fourth Avenues to the west, Vanderbilt Avenue to the east, Atlantic Avenue to the north, and Dean Street to the south.

Since its announcement in late 2003, the Atlantic Yards Project has generated significant

controversy both for the scale of the project and its impact on surrounding areas and for the prospect of the use of eminent domain to force property owners and tenants out of their homes and businesses to allow a private developer to construct its proposed project. ESDC has taken over the review and approval authority for the project pursuant to the Urban Development Corporation Act, Mckinney's Unconsolidated Laws Chapter 24, Secs. 6251 et seq. Under that law, the ESDC has the authority to override local laws including the New York City Zoning laws to approve a project far larger than would otherwise be permitted. Moreover, ESDC pre-empts the local permitting authority so the normal New York City land use review process (ULURP) does not apply.

The Atlantic Yards Project is currently undergoing review under the State Environmental Quality Review Act (SEQRA) ECL Sec. 8-0101 et. seq. ESDC is acting as Lead Agency for that review. ESDC has held a public hearing and received comments on a Draft Scoping Document for the Environmental Impact Statement that will be prepared for the project. Eventually, ESDC will issue a Final Scoping Document which will outline the contents and scope of the EIS.

In November 2005, FCRC commissioned LZA Technology to inspect some of the buildings it owns or controls in the project footprint. On November 7, 2005, LZA submitted a report entitled "Summary Report of the Existing Structural Condition Surveys" (LZA Report). It concluded that the properties located at 608-620 Atlantic Avenue, 461 Dean Street, 463 Dean Street, 585-601 Dean Street and 620 Pacific Street are in imminent danger of collapse or present a risk of falling masonry or otherwise present an imminent threat to public safety and require immediate demolition.

Sometime thereafter, presumably in early December, 2005, FCRC met with ESDC and

provided a copy of the LZA Report and requested ESDC's concurrence that the demolition of the buildings could proceed without running afoul of SEQRA. In a memo dated December 15, 2005, ESDC issued an "Emergency Declaration" finding that there was a threat of imminent harm and that the demolition constituted an emergency and thus a Type II Action under SEQRA which allows it to proceed without further SEQRA compliance. In making that determination ESDC did not consult with an engineer to either review the report or inspect the buildings.

After initially agreeing to allow access to the buildings to some of the Petitioners, FCRC later revoked that permission and refused to grant access to Petitioners and their independent engineer, Jay Butler. Mr. Butler reviewed the LZA report and did an external inspection of the buildings and based upon that limited access concluded that the buildings were not in imminent threat of collapse and that reasonable measures could be taken to stabilize the buildings. A final determination requires an internal inspection of the buildings.

Throughout this process, ESDC has been advised by its special outside counsel, Mr. Paget. As noted above, Mr. Paget currently represents FCRC on other projects and has represented FCRC on the Atlantic Yards Project. At some point, which is not clear, he began representing ESDC for its review of the Project. It appears that the only person outside of the agency that ESDC consulted with respect to FCRC's request to demolish the buildings was Mr. Paget.

ARGUMENT

POINT I

ESDC HAS VIOLATED ITS OBLIGATIONS

UNDER SEQRA BY ISSUEING AN EMERGENCY DECLARATION WITHOUT TAKING A HARD LOOK

As the Lead Agency under SEQRA, ESDC had an obligation to carefully consider the environmental consequences of its actions. SEQRA requires that physical changes to a project site not occur before the SEQRA process is completed. There are exceptions in cases of an emergency, but those are limited and the Lead Agency has an obligation to take a "hard look" at the issue before acting, including getting an independent assessment of the extent of the emergency.

It is, by now, axiomatic that a governmental agency must act a steward of the environment when it is contemplating its actions and in its review under SEQRA, it must take a "hard look" at the action before making a decision. See, Environmental Conservation Law, Secs. 8-0101 et. seq.; Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d 400; 503 N.Y.S.2d 298 (1986).

The SEQRA regulations make it clear that an agency or an applicant may not commence physical changes related to the action until the SEQRA process is completed.

> No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR. A project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been complied with. The only exception to this is provided under paragraphs 617.5(c)(18), (21) and (28) of this Part.

6 NYCRR § 617.3(a)

In addition to the exception noted below, certain actions which may otherwise be subject to SEQRA are exempt as either being too small, too routine or as may be applicable in this case, constitute an emergency. 6 NYCRR § 617.5(c)(33) of the SEQRA regulations provides:

> emergency actions that are immediately necessary on a limited and temporary basis 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. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part.

Demolition of buildings is not an unheard of circumstance in the context of an on-going project review and at least one court has interpreted the above provision in that context. Historic Albany Found. v. Breslin, 282 A.D. 2d 981 (3rd Dept. 2001); appeal after remand 296 A.D. 2d 813 (3rd Dept. 2002). There the court noted that demolition is an extreme remedy and absent a factual basis indicating that it is 'reasonably necessary' or 'practable under the circumstances,' it will not be allowed to go forward as the preferred remedy. Breslin, 282 A.D. 2d at 986. When there is a question of fact as to what type of emergency action is necessary to abate the dangerous condition, the court must hold a remittal hearing to make a factual determination as to what type of emergency action is reasonably necessary under the circumstances. Historic Albany Found. v. Breslin, 296 A.D. 2d 813, 814 (3rd Dept. 2002).

In Historic Albany Found. v. Breslin, the Historic Albany Foundation commenced an action against the County of Albany seeking to enjoin the County from demolishing a historic building. The appellate division agreed with the lower court's determination that the instability of the building constituted an emergency action exempt from the provisions of SEQRA, however the Appellate Division disagreed with the lower court's determination that this emergency necessarily warranted demolition. At the remittal hearing, the court considered the opinion of defendant's expert, who testified that the entire building should be demolished; plaintiff's expert, who testified that the facade could be stabilized; and the testimony of a

manager of a restoration company, which demonstrated that many of the defendants' assumptions pertaining to the cost of stabilization were inflated. The court found the proof presented by the plaintiffs persuasive and concluded that stabilizing the facade was the "appropriate emergency action practicable under the circumstances." Breslin, 296 A.D. 2d at 815.

The need for an independent assessment is critical to a determination that an emergency exists to warrant demolition. The court in Breslin pointed out the need for that assessment. In another case, not involving SEQRA, but applying the requirements the City of Albany Historic Preservation Ordinance, the court upheld a demolition order because rather than relying upon the owner's representation, the City conducted an independent assessment of the building. See In re Historic Albany Found., Inc. v. Burton Fisher, 209 A.D. 2d 135 (3rd Dept. 1995) (finding that the Building Commissioner had a rational basis for ordering demolition where he considered the expert opinions of: the petitioner's engineer, the respondent's architect, and the opinion of an independent structural engineer).

As noted above ESDC has not undertaken any independent assessment and FCRC has refused access to Develop Don't Destroy Brooklyn's expert. There has not been any assessment of whether there are less drastic measures to preserve the buildings short of demolition and there has not been any assessment that FCRC has any culpability for the condition of the buildings that it allowed to deteriorate during its ownership. Particularly since ESDC has not inquired as to the previous LZA reports, it is impossible to know what the prior conditions were, whether there has been a change and whether FCRC ignored LZA's warnings that measures should have been taken to secure and stabilize the buildings.

In light of the lack of an independent assessment, the Court must enjoin the demolition of the buildings and hold a hearing as to their actual condition and alternative means of securing the structures and protecting public health and safety.

POINT II

ESDC'S REPRESENTATION BY AN ATTORNEY WHO ALSO REPRESENTS THE APPLICANT PRESENTS A CLEAR CONFLICT OF INTEREST

ESDC as a reviewing and approving agency with extraordinary powers maintains its obligations as public trust. The public has a right to expect that the process will be conducted in an honest and ethical manner without the appearance of favoritism, bias or a conflict of interest. Where in the review of a complex and controversial project, the public has right to expect that ESDC is receiving unbiased legal opinions and not from an attorney who represents the applicant. With Mr. Paget representing both ESDC and FCRC, there is at a minimum an appearance of a conflict of interest and he must be disqualified from representing ESDC.

A. Officers and Employees of the Government Must Discharge Their Duties Solely in the Public Interest

Because of ESDC's extraordinary power and the vast scope of this project scope and its impact on so many existing residents, there is a compelling basis to ensure that the ESDC must act in a fair and impartial manner in its deliberations on whether to accept this project proposal. It is essential that the ESDC be counseled and advised by an impartial attorney, not tainted by the appearance of a potential or actual conflict of interest, so that the public can be assured that all decisions made on this project are not in any manner affected, or even potentially affected, by any personal, financial, or professional interest of the attorney advising them.

Impartiality, or the appearance of impartiality, may be difficult if not impossible to achieve when the attorney representing the ESDC, a state agency in this matter, previously represented the applicant, FCRC , in the very same transaction and continues to represent FCRC on other matters.

Questions of whether conflicts of interest exist require a case-by-case evaluation and determination of the relevant facts. Although the mere fact of employment or financial interest does not mandate per se disqualification, it is an important factor in determining whether disqualification is appropriate. In re Parker v. Town of Gardiner Planning Bd., 184 A.D. 2d 937 (3rd Dept. 1992) (finding that a significant financial interest would impair the judgment of a public official); leave to appeal denied by 80 N.Y.2d 761. In determining whether a disqualifying conflict exists, particularly where, as in this case, a substantial conflict, or the appearance of such a conflict, is inevitable, the attorney in question should err on the side of caution and should not act as counsel to the ESDC. For the state agency to retain the attorney who served as counsel to the Applicant on the very same project presents, at a minimum, the appearance of a conflict and jeopardizes the integrity of the process. The public assumes that ESDC will objectively review the project and rely upon objective legal advice, not from counsel employed by the applicant. See id.

1. Public Officers Law

The Public Officers Law provides relevant guidance. Pursuant to §74 of the Public Officers Law, no officer or employee of a state agency should have any interest which is in "substantial conflict" with the discharge of his duties in the public interest. The Ethics Commission found that it was a violation of the Public Officers Law for an employee of the Office of Mental Retardation and Developmental Disabilities (hereinafter "OMRDD"), who had

been designated as a policy-maker of the agency, to serve as a member of the board of directors of a not-for-profit agency licensed by OMRDD. N.Y. Adv. Op. 90-25 (N.Y. St. Eth. Com.). A member of the New York State __[1] Board may not vote in his board capacity on applications from members of two private organizations which employ him and the individual should not consult with any other member of the Board as to the merits of the applications. N.Y. Adv. Op. 93-16 (N.Y. St. Eth. Com.).

In N.Y. Adv. Op. 90-25, the Ethics Commission pointed to the fact that the not-for-profit organization was licensed by OMRDD and was required to obtain an operating certificate from OMRDD before beginning any programs. The opinion stated that "[i]t is not necessary that an actual conflict be present before a violation of §74 can occur. Rather, §74 ... prohibits acts that, by their nature, may lead to a conclusion that an appearance of such a conflict of interest could occur." Id. The Commission believed that the presence of the employee on the Board could raise suspicions among the public that the organization received preferential treatment because of the employee's position at OMRDD.

In N.Y. Adv. Op. 93-16, the Commission determined that the individual would have at least an indirect financial interest in the applications submitted to the Board, which might reasonably tend to conflict with his discharging his official duties in violation of Public Officers Law §74. The Commission reasoned that it was foreseeable that the public might suspect that this individual was favorably disposed toward the two organizations which employed him and therefore it found that the employee should recuse himself from voting as a member of the Board upon applications of members of the two organizations and should not consult with any other Board members as to the merits of such applications.

[1]Note: the name of the Board at issue was not revealed in the opinion.

2. General Municipal Law

Various provisions of the General Municipal Law which prohibit municipal officers or employees from engaging in acts that would constitute a conflict of interest, are also instructive in this case. In an Attorney General Opinion, it was determined that, although a Village Design Review Board member need not resign from his position if the architectural firm of which he was a member infrequently accepted projects over which the board had jurisdiction, it was appropriate that he should recuse himself from the review of such projects. 2002 N.Y. Op. Atty. Gen. (Inf.) 1024 (N.Y.A.G) (reasoning that public officials must perform their duties solely in the public interest and must avoid any circumstances in which their ability to make impartial decisions based solely in the public interest are compromised); see also 1992 N.Y. Op. Atty. Gen. (Inf.) 1064 (N.Y.A.G.) (holding that a Town Board member employed by a firm that frequently applies for subdivision approvals before the Board should recuse himself from deliberations where he cannot make an impartial decision). The Chairman of a Town Planning Board who was also an employee of a real estate agency seeking subdivision approval before the Board had a conflict of interest when the Board was designated lead agency under SEQRA, and there was concern as to whether the Chairman could impartially take a hard look at the proposed project. 1986 N.Y. Op. Atty. Gen. (Inf.) 112 (N.Y.A.G.) (holding that the Chairman was disqualified from taking part in the consideration of such application).

It is not necessary that a specific provision of the General Municipal Law be violated in order to find a conflict of interest. Rather, government officers must avoid circumstances which compromise their ability to make impartial decisions. Opns. St. Comp., 1990 No. 90-28 (holding that certain actions of public officials must be vacated even when they do not violate the literal provisions of the General Municipal Law, when they are inconsistent with public policy, or

suggest self-interest, partiality, etc.). When an attorney, as an independent contractor, acts as counsel to a Planning Board, he may not represent clients for compensation in front of that board. 1990 N.Y. Op. Atty. Gen. (Inf.) 1060 (N.Y.A.G.). Even though the actions of an attorney, who acts as an independent contractor to a public body, does not necessarily violate the General Municipal Law, the relationships would constitute a common law conflict of interest. Id.

Although it is impossible to precisely pinpoint the criteria used to determine whether a conflict exists, there may be a conflict of interest even if no law or rule is violated. Op. St. Comp., 1982 No. 82-285 (holding that a Village Board member was disallowed from voting on a project proposed by a client of his law firm). In this case, such a situation exists. The relationship of the attorney with the applicant raises serious questions of impartiality and the appearance of impropriety that arises from such a relationship results in significantly diminished credibility to the process in the review of this extraordinary development proposal.

The attorney at issue can be considered as an independent contractor, similar to the individual in 1993 N.Y. Op. Atty. Gen. (Inf.) 1060. Therefore, it is unlikely that his status as a non-governmental employee would render him exempt from the requirements of the General Municipal Law. The attorney for the ESDC in this case, like the employee in the 1993 N.Y. Op., should be similarly disqualified from participating in the decision-making process involving the project proposal of FCRC because there is potential for a personal or professional interest which may lead to partiality.

The case law on this issue does not require that he be disallowed from representing the ESDC on other legal issues, however he should be disallowed from counseling them on

transactions with FCRC, his former client on the same matter and a continuing client on other matters.

B. The New York State Code of Professional Responsibility Prevents an Attorney From Accepting Employment if His or Her Professional Judgment May be Affected by the Lawyer's Own Interests.

DR 5-101 states that a lawyer shall not accept employment if her or his exercise of professional judgment will be or reasonably may be affected by the lawyer's own interests unless the lawyer believes that the representation of the client will not be affected by the lawyer's own interest and the client consents after full disclosure of the lawyer's interest(s).[2]

There is no longer a per se ban on a government entity consenting to an attorney's potential conflict of interest. N.Y. Eth. Op. 629 (N.Y. St. Bar Assn. Comm. Prof. Eth.) (holding that while allowing government entities to consent to a potential conflict may open the door to potential governmental corruption, the Disciplinary Rules provide protection against such corruption). A lawyer may accept consent from a public entity provided that (1) the obviousness test of DR 5-105 (c)[3] can be satisfied, (2) the lawyer is reasonably certain that the government

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[2]Note that there other provisions in the Code which also suggest that this representation may be improper:

- Canon 9 indicates that a lawyer should avoid "even the appearance of professional impropriety."
- EC 9-1 states that "[a] lawyer should promote public confidence in our system and in the legal profession."
- EC 9-2 states that "[w]hen explicit ethical guidance does not exist, a lawyer should determine prospective conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession."
- EC 9-4 states that "any statement or suggestion by a lawyer that the lawyer can or would attempt to circumvent those [impartial] procedures is detrimental to the legal system and tends to undermine public confidence in it."

[3]DR 5-105 (c) states that "a lawyer may represent multiple clients if a disinterested lawyer would believe that the lawyer can competently represent the interest of each and if each consents to the representation after full disclosure of the implications of the simultaneous representation and the advantages and risks involved."

entity is legally authorized to waive the conflict, and (3) the process by which the consent is granted is sufficient to preclude any reasonable public perception that the consent was provided in a manner inconsistent with the public trust. N.Y. Eth. Op. 631 (N.Y. St. Bar Assn Comm. Prof. Eth.).

In N.Y. Eth. Op. 631, the Committee held that a lawyer may ethically represent a County Resource Recovery Agency, which is a public benefit corporation, and also act as an agent for a title insurance company that has undertaken title insurance work in connection with proposed projects by the agency. The Committee emphasized the importance of the third prong of the test, which requires the preclusion of any public perception that the consent was provided in a manner inconsistent with the public trust. The Committee stated that there must be a "rigorous analysis of the particular facts confronted by the lawyer and a keen awareness of the heightened concern a lawyer representing a governmental body must have for the avoidance of any appearance of impropriety."

When there is an allegation of impropriety prior to a case being decided on the merits, courts are to resolve doubts in favor of disqualification. In re Hof, 102 A.D. 2d 591, 596-97 (2nd Dept. 1984) (holding that the allegations of a conflict of interest in an administration proceeding were sufficient to warrant disqualification); Narel Apparel Ltd., Inc. v. American Utex Int'l, 92 A.D. 2d 913 (2nd Dept. 1983) (holding that the fact that the plaintiff's attorney had been in a position to learn confidential information concerning the defendant's witnesses would afford the plaintiff an unfair advantage).

Therefore since the courts are directed to resolve disqualification issues in favor of disqualification if the conflict is not entirely clear, the court should resolve any uncertainties in

favor of disqualification. The third prong of the governmental consent test requires the attorney representing the government agency to avoid even the appearance of impropriety.

Given the extraordinary magnitude and scope of the proposed development, and the number of individuals this project will affect if it is approved, there is no question that there exists, at a minimum, the appearance of impropriety when the attorney at issue has represented both the applicant and the reviewing government agency. Petitioners representing a large cross-section of the community were outraged to learn about the dual representation and feel that the process has already been compromised. The integrity of this process has already been tainted.

In order to ensure the public trust in an already controversial development project, one that raises environmental and constitutional issues, and one that will be the subject of litigation, the public must be insured that an impartial attorney be appointed to counsel the government body making such a decision. The Court must order the disqualification of Mr. Paget and Sive, Paget & Riesel as ESDC's counsel.

POINT III

PETITIONERS HAVE SATISFIED THE ELEMENTS FOR GRANTING A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION PENDING THE OUTCOME OF THEIR PETITION TO THIS COURT

In order to be entitled to a temporary restraining order, Petitioners must show that immediate and irreparable injury, loss or damage will result unless the Respondents are restrained from demolishing the buildings before a hearing can be had on the motion for a preliminary injunction. CPLR § 6313(a). A preliminary injunction is appropriate where the moving party shows (1) a likelihood of success on the merits; (2) the prospect of irreparable injury if the injunction is not granted; and (3) the balance of equities is in the moving parties' favor. See McGrath v. Town Bd. Of the Town of North Greenbush, 254 A.D. 2d 614, 616 (3rd

Dept. 1998) *lv. to app. denied*, 93 N.Y. 2d 803 (1999). As demonstrated below, Appellants have met their burden.

1. Because the Respondents have not received an independent analysis of the stability of the buildings they seek to demolish, Petitioners should prevail on the merits of their Petition.

As noted above in Point I, the ESDC has an obligation to undertake an independent assessment of the claimed threats presented by the buildings. See In re Historic Albany Found., Inc. v. Burton Fisher, 209 A.D. 2d 135 (3rd Dept. 1995). In the present matter, ESDC issued a determination that the demolishing of the buildings was permissible, absent an independent review. This determination was illegal, arbitrary and capricious, as an independent review should have been conducted. The ESDC failed to consider whether there were reasonable means to stabilize the buildings and protect the public short of demolition.

2. **The Petitioners will be Irreparably Injured if an Injunction is not Issued.**

If the court does not stay the demolition of the properties, demolition will result in irreparable harm to the petitioners and the residents of Brooklyn. Such demolition would result in a permanent change in the landscape and the environment of Brooklyn. The petitioners are concerned that the proposed Atlantic Yards Project will adversely impact the environment and character of the community by creating development that is out of scale with the area, that the project will produce adverse traffic impacts and cause an increase in air pollution.

The petitioners believe that commencing demolition of the buildings in the footprint of the project will lead to public perception that the project has been or will be approved and that the public review process is a sham and biased. Further, FCRC seeks to obtain a tactical advantage by implementing intimidation techniques by demolishing the buildings and presenting

the impression that this project is moving forward in order to encourage owners in the area to agree to sell their properties to FCRC. Once these properties are demolished they can never be brought back, thereby leading to permanent injury to those residents who will be forced from their homes in order to facilitate demolition. Such an extreme remedy should not be taken so lightly and could have devastating permanent effects.

3. The Equities Weigh in Favor of the Petitioners

Given the irreparable injury that will result if this illegal demolition is permitted to go forward, the balance of equities weigh in the Petitioners' favor. Any additional delay in staying demolition will not prejudice the Respondents. The Petitioners simply request that there be an independent evaluation of the stability of the buildings prior to the demolition. Such an evaluation may take place at any time without any further delay. In any event, the minimal prejudice that may result from a delay is minor compared to the irreparable injury that will result if the Court decides the Petitioners' motion for an injunction. As noted above, if the Court does not grant an injunction and the Respondents move forward with the demolition, there is a risk that the landscape, the environment, and the community of Brooklyn will be forever changed, thus rendering Petitioners' petition moot.

CONCLUSION

For the foregoing reasons, the Court should grant the requested relief and grant such other and further relief as this Court deems just and proper.

Dated: January 17, 2006

YOUNG, SOMMER, WARD,
RITZENBERG, BAKER &
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