

A. The Atlantic Yards Arena and Redevelopment Project

2. The Project, technically, is a proposal by two affiliates of FCRC for the construction of a major mixed-use development in the Atlantic Yards Terminal area of Brooklyn. It would include a new arena, commercial office space, a hotel, retail and community facilities, and up to approximately 7,300 new residential units. The Project also would entail the relocation of the storage and maintenance facilities at and, improvement of, and platforming over the Long Island Railroad's Vanderbilt Yards and the clearing of surrounding blocks in anticipation of redevelopment. The Project's site encompasses approximately 22 acres, of which approximately eight acres are owned by the MTA.

3. It is anticipated that the Project will proceed under the auspices of the Empire State Development Corporation ("ESDC") and will require the approval and adoption of what is known as a "General Project Plan" by ESDC. A General Project Plan is the formal vehicle by which the ESDC acts to facilitate certain sorts of development projects in New York State. The GPP is anticipated to call for and its adoption would allow for an override of provisions of the New York City Zoning Resolution and allow the use of eminent domain for the acquisition of properties within the Project to facilitate the Project.

4. The adoption and approval of a General Project Plan by ESDC is a discretionary action that triggers an obligation on the part of the ESDC to conduct an environmental review under the New York State Environmental Quality Review Act ("SEQRA"). ESDC may not finally adopt and approve the General Project Plan unless it completes the SEQRA process. ESDC commenced the formal portions of this environmental review by: (a) declaring itself the "lead agency" for SEQRA review, (b) issuing a formal statement – known as a "Positive Declaration" – setting forth its determination that the environmental impacts that reasonably can

be anticipated are sufficient to require the preparation of an Environmental Impact Statement (“EIS”) for the Project, and (c) conducting a public process known as “scoping” by which the outline or scope of the EIS is determined. To facilitate scoping, ESDC issued a “Draft Scope” on September 16, 2005, and conducted a six-hour long public scoping meeting on October 18, 2005. The ESDC’s Positive Declaration and Draft Scope are being submitted as FCRC Exhibits S and T, respectively.

5. The next steps in the environmental review process are the completion of a final scoping document and the preparation and completion of a Draft Environmental Impact Statement (“DEIS”). Once the DEIS has been completed, ESDC -- and only ESDC -- will decide whether the DEIS is complete, after which ESDC will conduct one or more public hearings on the Project. These public hearings are an opportunity for members of the public, including petitioners, to comment on the DEIS and present their views as to whether the DEIS is adequate in its examination of potential environmental impacts and its proposals for mitigation of any significant adverse impacts. The DEIS for the Project has not yet been completed, and the extent to which it discloses or fails to disclose potential impacts cannot be determined or adjudicated at this time.

6. Following the hearings on the DEIS, ESDC will be required to prepare a Final EIS. It may not approve the proposed General Project Plan unless and until the Final EIS has been prepared and ESDC’s Board of Directors makes formal findings required pursuant to SEQRA including certifying that the requirements of the statute and its implementing regulations have been complied with, determining that the Final EIS had disclosed all significant adverse environmental impacts, and finding that significant adverse environmental impacts have been

mitigated to the maximum extent practicable consistent with social, economic, and other essential considerations.

B. The Proposed Demolition of the Buildings

7. I am advised that the five buildings at issue in this litigation – 608-620 Atlantic Avenue, 461 Dean Street, 463 Dean Street, 585-601 Dean Street and 620 Pacific Street – are all owned by or under contract to be purchased by FCRC affiliates. Reports by LZA Technology (“LZA”), a consulting engineering firm engaged by FCRC, indicate that they all “pose an immediate threat to the preservation of life, health and property,” and should be demolished. The demolition of these buildings is not contingent upon approval of the Project by ESDC. If the Project is not approved, FCRC will be entitled to develop the parcels on which the buildings are situated in some other way that conforms with the City’s Zoning Resolution, and would be entitled to demolish those buildings regardless of their condition, subject to FCRC’s compliance with applicable City requirements pertaining to demolition of existing buildings.

8. My involvement with the potential demolition of the buildings at issue began in the spring of 2005. At that time, FCRC was concerned that the buildings were dangerous and deteriorating, and that they would continue to deteriorate and posed an increasing danger to the public as well as a potential source of legal violations and exposure to liabilities to third-parties. FCRC had engaged LZA to survey the buildings to assess how dangerous they were. At about the same time, there began a series of discussions as to whether FCRC could demolish the buildings without the prior approval of ESDC. It was my view that, because the issuance of a demolition permit by the New York City Department of Buildings is not a discretionary action and is therefore not subject to SEQRA review, FCRC had the right to demolish the buildings without the need for any review or approval by ESDC. David Paget and Rachel Shatz, the

Director of Environmental Review for ESDC, voiced concern with my view. Mr. Paget expressed concern was that Section 617.3(a) of the SEQRA regulations may preclude FCRC from demolishing the buildings without prior approval. That section states, in pertinent part, that “A project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been complied with.” There were numerous discussions between Mr. Paget and me as to the appropriate way to proceed. They occurred on a regular basis at scheduled Project meetings and in periodic telephone conversations. In my experience, such discussions about proper procedures under SEQRA are typical of discussions between a project sponsor and a lead agency during the planning of a project.

9. During these discussions, Mr. Paget expressed the view that, if there was a basis upon which it could be determined that the demolition of the buildings could properly be considered a “Type II action” under the applicable SEQRA regulations, the demolition could properly proceed prior to completion of the EIS. It was agreed, after several discussions, that if the buildings did indeed pose a danger to the public, ESDC could determine that their demolition met the criteria of 6 NYCRR § 617.5(c)(33), which exempts from SEQRA review “emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources.” FCRC decided that it would submit materials to ESDC for its determination that there was an emergency that required demolition of the buildings.

10. Based on the initial reports prepared by LZA on separate buildings I concluded that the buildings covered by the reports should be demolished by FCRC. Daniel Chorost, as associate at Sive Paget & Riesel working with Mr. Paget, took issue with the conclusion for one

of the buildings. (465 Dean Street) and expressed the view that further documentation was required for another.

11. Efforts toward demolition halted in the late spring of 2005 due to the fact that, at that time, the Metropolitan Transportation Authority decided to ask for competitive bids for the Vanderbilt Yards. Because of the ongoing public bidding process, there was a moratorium on any FCRC communications with the MTA and ESDC regarding the Project. The moratorium lasted until September 14, 2005, when the MTA's Board of Directors determined that FCRC was the successful bidder for the opportunity to redevelop the yards.

12. Later that month, ESDC declared itself the lead agency for the Project's SEQRA review and issued its Positive Declaration and its Draft Scope. On October 18, 2005, ESDC conducted a six-hour public scoping meeting.

13. At around the same time, FCRC asked LZA to update the surveys that it had prepared during the spring. LZA re-inspected the buildings and prepared an extensive report, in the form of a Power Point presentation.

14. On November 2, 2005, FCRC, ESDC, the MTA and their respective counsel held a lengthy meeting at the offices of Sive, Paget & Riesel, P.C. Rachel Shatz of ESDC attended the meeting with other ESDC officials, as well as Mr. Paget and Mr. Chorost. Two attorneys attended for the MTA – an in-house lawyer, Anthony Semancik, and Stephen L. Kass of the law firm of Carter, Ledyard & Milburn LLP. Several FCRC representatives also attended. At this meeting, James W. Feuerborn, Jr., P.E., of LZA made an extensive oral presentation, which included 72 Power Point slides describing the results of LZA's surveys and containing numerous photographs depicting the condition of these buildings. A copy of his presentation is FCRC

Exhibit J. After the presentation, several people, including Ms. Shatz and Messrs. Paget, Chorost and Kass, posed numerous questions, to which Mr. Feuerborn responded.

15. To the best of my recollection, Mr. Feuerborn's presentation and the subsequent discussion took at least 90 minutes and possibly as much as two hours. At the conclusion of the discussion, it was agreed Mr. Feuerborn's presentation was very persuasive. It also was agreed that LZA should prepare a single comprehensive report showing up-to-date findings, and FCRC should deliver a copy of the report to Rachel Shatz, who would review the report along with other members of the ESCC staff and, if appropriate, make the emergency declaration.

16. LZA prepared a new report, which was dated November 7, 2005, and delivered to Ms. Shatz by FCRC a day or two later. ESDC made its declaration of emergency on December 15, 2005.

17. The foregoing demonstrates that, contrary to petitioners' claims, (a) ESDC based its determination on an extensive record of expert engineering analysis, and (b) Mr. Paget's role with respect to this issue was to urge a mere limited right of action on the part of FCRC and a more expansive role. ESDC's, based on SEQRA in the decision to demolish the buildings.


Melanie Meyers

Sworn to before me this
8th day of February, 2006.



CATHERINE A. GARBATO
Notary Public, State of New York
No. 01GA4735091
Qualified in Nassau County
My Commission Expires June 30, 2007