

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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In the Matter of

DEVELOP DON'T DESTROY BROOKLYN;
DANIEL GOLDSTEIN; ATLANTIC AVENUE
BETTERMENT ASSOCIATION; FORT GREENE
ASSOCIATION; 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.,

Sup. Ct. N.Y. Co.
Index No. 100686/06

Petitioners - Respondents - Appellants

- against -

EMPIRE STATE DEVELOPMENT CORPORATION

Respondent - Appellant
and

FOREST CITY RATNER COMPANIES,

Respondent.

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AFFIDAVIT OF JAMES VOGEL IN SUPPORT OF APPLICATION

STATE OF NEW YORK)

ss.:

COUNTY OF KINGS)

JAMES VOGEL, being duly sworn, deposes and says:

1. I am the Secretary and a member of the Steering Committee of the Council of Brooklyn Neighborhoods “CBN”), a coalition of 28 recognized, diverse community groups active in Community Boards 2, 3, 6, and 8, all of whom are concerned with the cumulative effects of development proposed in their area of Brooklyn, and many of whose individual members are stakeholders within the impact study area of the publicly subsidized, mixed-use redevelopment plan proposed by Forest City Ratner Companies (“FCRC”) known as the Atlantic Yards Arena and Redevelopment Project (the “Project”).

1. I respectfully submit the within affidavit in support of CBN’s instant motion to present its views to this Court as *amicus curiae* and respectfully request that the attached brief be accepted in support of Petitioners-Respondents’ argument in opposition to the appeal by the Empire State Development Corporation (“ESDC”) of Justice Edmead’s February 14, 2006 Order disqualifying David Paget, Esq., from acting as attorney for ESDC in its environmental review of the Project. CBN also requests that this court permit the addition to the Record on Appeal of the letter from the ESDC to local politicians which illustrates one of the ways in which Mr. Paget’s conflict of interest has demonstrated itself.

2. CBN was formed in 2005, its members recognizing that a cohesive strategy would best ensure that the public’s concerns would be fully addressed by the ESDC in its environmental review of the proposed Project.

3. CBN does not take a position, for or against, the proposed Project. To the contrary, CBN endeavors to ensure that the SEQRA review process which will be conducted by the ESDC is transparent, comprehensive, incorporates meaningful methodologies and assumptions, fully discloses all impacts, considers reasonable alternatives, and effectively addresses all potential negative impacts. Thus, CBN's mission is to provide a guarantee to members of the affected communities that they will be meaningfully engaged throughout the EIS process.

5. As more fully explained in the accompanying brief, Mr. Paget's retention creates an impermissible conflict of interest and compromises ESDC's ability to ensure an open process that involves interested agencies and the public.

6. . The ESDC is the state's designated lead agency entrusted with the obligation of identifying and mitigating wherever possible the negative impacts resulting from the FCRC's plan. The continued participation of Mr. Paget and his firm will have a profound impact upon how the ESDC will protect the public in its appointed role as the only guardian of the public interest.

7. . Accordingly, CBN believes that, given its mission, filing the within Brief is not only warranted, but is imperative to insure that the public's interests, and not that of the developer, will be adequately represented by the ESDC in its environmental review of this project.

8. In submitting this brief, CBN also believes that it is able to illuminate the instances of the perceived and actual conflict of interest with regard to Mr. Paget's

representation. To that end, Amicus also asks that the Court permit the addition to the Record of a letter received by several local politicians from the ESDC denying their request for funding for CBN to retain technical experts in order that CBN, on behalf of the affected communities, can engage meaningfully in the environmental review process. (The letter, dated October 31, 2005, but not received by the politicians until in or about early December, 2005, is annexed hereto as Exhibit A.)

9. As the court can see, the ESDC refused the request for funding claiming that, because Sive Paget is an “independent firm retained by ESDC and taking direction from ESDC staff, . . . the review process will be unbiased.” In that the ESDC’s decision not to fund community participation in the environmental review, which would have had to be billed back to the developer, occurred during Mr. Paget’s watch, it is another example of the clear conflict between his role as attorney for both FCRC and ESDC which requires his disqualification.

10.. Accordingly, given the significance of the ESDC decision set forth in the said letter, CBN respectfully requests that it be added to the Record and considered by this court in rendering its determination.

WHEREFORE, the movant respectfully requests that it permitted to file the accompanying brief, and that the attached letter be deemed a part of the Record on Appeal, and for such other and further relief as to this Court seems just and proper.

James Vogel

Sworn to before me this
9th day of March, 2006.

Notary Public