

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 REPLY TO OPPOSITION OF
EMPIRE STATE DEVELOPMENT CORPORATION TO
APPLICATION OF COUNCIL OF BROOKLYN NEIGHBORHOODS**

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”) I respectfully submit the within affidavit in brief reply to the Memorandum of Law of the respondent Empire State Development Corporation (“ESDC”) submitted in opposition to CBN’s instant motion to present its views to this Court as *amicus curiae*.

2. By its Memorandum, the ESDC argues that CBN’s *amicus* brief should not be accepted by this court because CBN is simply the alter ego of petitioner. In support of this contention, the ESDC points out that 11 out of the 12 petitioners in the instant action are also members of CBN, and alleges, without any affidavit from anyone who might know the actual facts, that Daniel Goldstein, spokesperson for plaintiff Develop Don’t Destroy Brooklyn, Inc. is a member of CBN’s Steering Committee.

3. CBN is a separate legal entity, with a mission statement separate and distinct from that of any of its member organizations. Its mission statement is as follows, in its entirety:

The Council of Brooklyn Neighborhoods shall undertake to ensure:

1. That the environmental review process that takes place related to any development on the Yards, whether conducted under the State Environmental Quality Review Act (SEQRA) or City Environmental Quality Review Act (CEQRA), is transparent, comprehensive, incorporates meaningful methodologies and assumptions, fully discloses all impacts, and effectively addresses all potential negative impacts;
2. That the Environmental Impact Study (EIS) thoroughly explores all proposals to develop the Yards;
3. That the community is effectively engaged throughout the environmental review process, and the community obtains the financial resources, access to information and technical assistance to oversee and participate in the same.

4. CBN was formed a year ago as a result of initial meetings held by Borough President Marty Markowitz to determine the course of the environmental review of the proposed

development of the Vanderbilt Railyards by Forest City Ratner Companies (“FCRC”). Members of CBN’s founding organizations adopted a Mission Statement, developed a Structure Document, and then sent invitations to over 400 community organizations and groups throughout Community Boards 2, 3, 6 and 8 to join in our effort to guaranty community involvement in the environmental review of .the project proposed for the railyards. The invitation was clear – all organizations were welcome, whether they supported or opposed the project, or held beliefs anywhere in between. (The ESDC attached our invitation letter to its Memorandum of Law as Exhibit B.)

5. Therefore, while CBN’s member organizations may hold a position on the proposed development , CBN is attempting to provide a community voice in the environmental review process. CBN as an organization has but one purpose and one goal – to insure that the community is able to participate significantly and meaningfully in the environmental review process of any proposed project over the Vanderbilt (Atlantic) Railyards. CBN’s role in the process has been recognized and supported by not only the 28 organizations which are its members, but by many elected politicians who have publicly called for funds for CBN to retain experts to review the Draft Environmental Impact Statement, when it is released.

6. In order to accomplish its goal of guarantying that the public’s involvement is meaningful, it is essential that CBN take whatever steps are necessary to protect the integrity of the process which is the sole focus of our mission. ESDC is correct that CBN does share an interest with the petitioners herein; however, the interest that it shares is the public interest in fairness and transparency of the environmental process, something that ESDC is mandated to effectuate. Unfortunately, its actions first, in retaining FCRC’s counsel, and now, in opposing the request of CBN and the community’s elected officials to provide their particular viewpoints on

the issues before this court, seem designed to prevent the fairness and transparency ESDC is charged with providing. Clearly, CBN's type of "shared interest" is not an "alter ego" interest of the sort that prompts courts to rule against the acceptance of considering briefs submitted by *amici*.

7. Moreover, not only is CBN not an alternate ego of the petitioners, but CBN considered whether or not to become petitioners in the proceeding below, and decided against it, in large part because of the public perception it could have created that CBN, as an organization, opposes the project. However, once ESDC filed its appeal of a decision in which the lower court held that the involvement of Mr. Paget 'has such a severe crippling appearance of impropriety on a project of such great magnitude', CBN's membership felt it was bound by its mission to participate in defending the lower court's finding in order to protect the integrity of the process in which it is CBN's mission to participate. The membership again called a vote, and this time, the membership determined, without dissent, to ask permission of this court to file an *amicus* brief.

7. As for the claim of the ESDC that Daniel Goldstein, who is spokesperson (not head) of Develop Don't Destroy Brooklyn, Inc., is also a member of the Steering Committee of CBN, that statement is simply erroneous, and a complete misreading of the Brooklyn Papers article which states that Mr. Goldstein is "one of several leaders steering the agenda of CBN in creating an outline of the community's concerns with respect to the Atlantic Yards environmental review". (emphasis added) As recording secretary of CBN, I can attest that Mr. Goldstein is not now, nor has he ever been, a CBN steering committee member. However, it is interesting to note that, even in the article quoted by the ESDC, CBN's goal is not to oppose the project, but rather to articulate the community's concerns in the environmental review process.

8. For this court's information, the Steering Committee members are nominated by and voted on by the General Membership, which is comprised of representatives of our 28 member organizations. Steering Committee members represent the interests of the membership at large, rather than any particular organization with which they are affiliated. Although all member organizations have the opportunity to nominate one of their members to the nine-seat Steering Committee in elections that are held semi-annually, no organization has a right to a seat on the Steering Committee, and no member organization can have more than one seat on the Steering Committee at any given time.

9. In other words, CBN has taken every measure available to it to guaranty that its actions are beyond reproach, and cannot be seen as suspect in any way. It is troubling that the ESDC, charged with protection of the public process, views our organization as "opposing" the proposed project, simply because we demand integrity and openness in that process. Standing by good government principles should not be seen as objecting to development of our community.

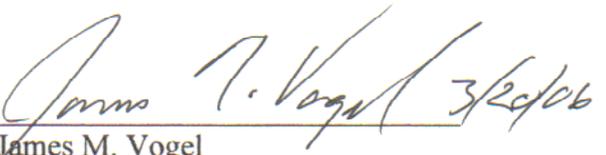
10. On behalf of CBN, your affiant respectfully submits that CBN's perspective is of value to the court as CBN has acted and continues to act as the officially sanctioned representatives of the affected communities during the environmental review process, as required by SEQRA. The perceived conflict of interest, then, is not speculative and does not have to be imputed to a fictional member of the public -- CBN, as representatives of the public, appreciates the conflict of interest and is therefore interested in the outcome of the case.

11. CBN's *amicus* brief notifies the court of a very practical view of the instant conflict of interest. The solicitation letter attached to ESDC's memorandum actually establishes how CBN does not take a position one way or the other and seeks to participate in the EIS process

of CBN with regard to Mr. Paget's conflict of interest is demonstrated by the letter from ESDC's Chairman Charles Gargano denying assistance to the community for the environmental review, which is attached to CBN's moving papers. That some of the petitioners are members of CBN is not a grounds for this court to refuse the brief, as CBN is democratic and seeks to represent a multitude of viewpoints on the positive and negative aspects of the project.

WHEREFORE, your affiant respectfully requests that CBN's within motion be granted in its entirety, and for such other and further relief as to this Court seems just and proper.

Signature:
Print Name:
Address:
Phone:


James M. Vogel
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Sworn to before me this
20th day of March, 2006.

Notary Public