SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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In the Matter of DEVELOP DON'T DESTROY BROOKLYN, et al.

Petitioners - Plaintiffs, Index No. 100686/06

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

-against-

EMPIRE STATE DEVELOPMENT CORPORATION and FOREST CITY RATNER COMPANIES

Respondents-Defendants.
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MEMORANDUM OF LAW IN SUPPORT OF INTERVENTION, PRELIMINARY INJUNCTION, AND ARTICLE 78 PETITION

Respectfully Submitted,

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PRELIMINARY STATEMENT

This proceeding seeks to annul a Declaration of Emergency issued by the Empire State Development Corporation (ESDC) on December 15, 2005. The Declaration would permit Forest City Ratner Companies (FCRC) to demolish twelve (12) buildings in the footprint of the proposed Atlantic Yards Arena and Redevelopment Project before the Project has gone through the environmental review process required by the State Environmental Quality Review Act (SEQRA). It also seeks to disqualify David Paget as special counsel to the ESDC on the grounds of conflict.

The instant motion seeks leave to intervene the tenants of 479 Dean St. as Petitioners in this proceeding. The proposed intervenors are all long-term, low-income residents of this rent stabilized building that is used for Single Room Occupancy. 479 Dean St. is within the Atlantic Yards Arena and Redevelopment Project's footprint and is only doors away from two of the buildings facing demolition. See Map depicting proposed intervenors' relationship to demolition sites annexed to Moving Papers as Exhibit A.

The proposed intervenors oppose the Atlantic Yards Project because they fear displacement and because they feel it will make it impossible for them to continue to reside in their neighborhood. Further, they oppose the proposed demolitions because of the immediate and irreversible effect it will have on their immediate surroundings and because it is permitting FCRC to make an end run around the environmental review process which is supposed to take into account the concerns of community residents like themselves.

REGULATORY FRAMEWORK

Any action undertaken by the State, involving state funding, state decision-making, or state approval, is subject to SEQRA review. See 6 N.Y.C.R.R. § 617.2. When reviewing an action subject to SEQRA review, state agencies must:

> act and choose alternatives which, consistent with social, economic other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects ...

E.C.L. § 8-109(1).

In furtherance of the above-stated goals any agency (or applicant) must prepare an environmental impact statement (EIS) "on any action they propose or approve which may have a significant effect on the environment." E.C.L. § 8-109(2).

"Environment" is broadly defined to include "[t]he physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character." E.C.L. § 8-105(6).

If it is determined that an action is likely to have a significant effect on the environment, it is denominated a "Type I Action" and will likely require the preparation of an Environmental Impact Statement (EIS). 6 N.Y.C.R.R. §617.4. An action will require the preparation of an EIS if it includes the potential for at least one significant adverse environmental impact. 6 N.Y.C.R.R. § 617.7(a)(1).

Where an EIS is required, the lead agency must determine the scope of the EIS in a manner that includes an opportunity for public participation. 6 N.Y.C.R.R. § 617.8(e). Generally, that is done in the context of a scoping hearing. Following the scoping hearing, the

lead agency provides all interested parties with a scope for the EIS. 6 N.Y.C.R.R. § 617.8(f).

The scope details (a) potential significant adverse impacts that have already been identified in the pre-scoping process; (b) the extent and quality of the information that must be provided by the EIS preparer to address each impact; (c) potential mitigation measures; and (d) alternatives to be considered. 6 N.Y.C.R.R. § 617.8(f).

Once a draft EIS is submitted, the lead agency decides whether to accept the draft, or to request additional information and a revised draft. Once accepted, the EIS is subject to a period of public comment. In actions that have generated significant public interest, public comment is typically solicited at a public hearing. E.C.L. § 8-109(5); 6 N.Y.C.R.R. § 617.9.

The lead agency has forty-five (45) days after the close of a public hearing to prepare and file a final EIS. The EIS must set forth:

> (a) a description of the proposed action and its environmental setting; (b) the environmental impact of the proposed action including short-term and long-term effects; (c) any adverse environmental effects which cannot be avoided should the proposal be implemented; (d) alternatives to the proposed action; (e) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented; (f) mitigation measures proposed to minimize the environmental impact; (g) the growth-inducing aspects of the proposed action; (h) effects of the proposed action on the use and conservation of energy resources ....

NY CLS ECL § 8-109(2).

The EIS must be completed "prior to acting on the proposal which is the subject of the EIS." NYS ECL § 8-109(6). Accordingly, "a project sponsor may not commence any physical alteration related to an action until the provisions of SEQRA have been complied with." 6 N.Y.C.R.R. § 617.3(a). Demolition is specifically included in the definition of "Physical

alteration." 6 N.Y.C.R.R. § 617.2(ab).

The following actions are, however, exempt 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, 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 N.Y.C.R.R. § 617.5(c)(33).

STATEMENT OF FACTS

The Atlantic Yards Arena and Redevelopment Project

Forest City Ratner, through the Atlantic Yards Development Company, LLC, and the Brooklyn Arena, LLC, proposes to change the face of downtown Brooklyn by developing a twenty-two (22) acre parcel of land adjacent to the Atlantic Terminal Mall. The proposal includes the construction of an arena for the Nets basketball team, more than 7,000 residential units, office space, retail outlets, a hotel, and parking facilities. See "Combined Notice of Proposed Lead Agency Designation, Public Scoping and Intent to Prepare a Draft Environmental Impact Statement," annexed to Moving Papers as Exhibit B.

The action has been determined to be a "Type I" action under the SEQRA regulations requiring the preparation of an environmental impact statement. The Empire State Development Corporation has been designated to serve as the lead agency to oversee the environmental review process. Id.

A public scoping hearing was held on October 18, 2005 to elicit public comments on the

extent and nature of the environmental review that would be conducted under the SEQRA regulations. ESDC has not released its "Final Scoping Document," which would determine the scope of review. FCRC is therefore less than a third of the way through the SEQRA process.

The Proposed Demolition

Upon information and belief, in or around the first week of December, 2005, representatives of FCRC met with members of the ESDC and presented a report prepared, at FCRC's request, by LZA Technology. According to the report, the engineers visited the buildings that were the subject of the report on three occasions, first in May 2004, then in November 2004, and lastly on November 1, 2005. See LZA Report, annexed to Moving Papers as Exhibit C, at p.36. The report recommends the demolition of twelve (12) buildings on the grounds that they are in danger of collapse.[1]

A summary of the specific findings follows:

Address	**Findings**
608 Atlantic Ave	Was not visited (p. 37).
610 Atlantic Ave.	Was not visited (p.37).
612 Atlantic Ave.	Was not visited (p.37).

[1]The Declaration of Emergency identifies five (5) addresses, based on a review of the Department of Buildings' information and the information on file with the Department of Finance, and a review of the LZA report, it appears as though there are twelve (12) buildings at the following addresses: 1) 608 Atlantic Ave; 2) 610 Atlantic Ave.; 3) 612 Atlantic Ave; 4) 614 Atlantic Ave.; 5) 616 Atlantic Ave., 6) 618 Atlantic Ave.; 7) 620 Atlantic Ave.; 8) 620 Pacific St., 9) 461 Dean St.; 10 & 11) 463 Dean St. (2 buildings); and 12) 585-601 Dean St..

614 Atlantic Ave.	First floor flooring in poor condition; first and second floor joists appear water logged; first and second floor plaster ceilings and wood lathes have fallen off in numerous locations. (p.36).
616 Atlantic Ave.	First floor flooring in poor condition; first and second floor joists appear water logged; first and second floor plaster ceilings and wood lathes have fallen off in numerous locations. (p.36).
618 Atlantic Ave.	Roof of the rear one-story portion of building has collapsed; resulting water infiltration has damaged surrounding flooring; stairs rotted; ½ to 1 inch gap between girder and column supporting first floor. (p.36).
620 Atlantic Ave.	Floor appears to be significantly damaged; first and second floor timber joists appear damaged by exposure to the elements; southern portion of east masonry bearing wall has numerous loose masonry units. (p.35).
620 Pacific St.	Significant portions of the first floor slab have collapsed and remaining slab is cracked; interior is in a state of disrepair from water damage and exposure to the elements; the roof membrane is deteriorated and there are holes in the roof. (p.42).
461 Dean St.	Columns and posts supporting first floor in poor condition; floors are sagging; door and window frames out of plumb; second through fourth floor joists in northern end of building appeared rotted in numerous locations; roof's timber joists are water logged. (p.37).
463 Dean St. (2 buildings)	**Four Story Building:** Floors sagging; door and window frames out of plumb; first floor timber joists in poor condition; second through fourth floor joists in northern end of building appeared rotted in numerous locations; roof's timber joists are water logged; chimney in poor condition. (p.38). **Three Story Building:** Portion of south masonry wall collapsed; interior in disrepair from exposure to the elements; floor deteriorated; roof framing sagging. (p.38)

585- 601 Dean St.	Roof girders throughout water damaged and in poor condition throughout; third floor's timber joists appear to be in poor condition; evidence of water infiltration on eastern portion of second floor. (p.40)

The report is utterly devoid of any quantitative measurements or the results of any probes that might substantiate the engineer's conclusions. In fact, the report explicitly states: "the evaluation was visual in nature, neither probes nor laboratory testing were performed." And, "the investigations were performed without the aid of design information such as dimensions." Id. at p.33. Thus, for example, where the report states that a portion of a roof has collapsed, it does not state the size of the damaged area. The result is that the extent of the damage cannot be determined from the face of the report.

Further, the report does not address what measures might be taken to render the buildings safe short of demolition. Throughout the report there is mention of "exposure to the elements" as the chief cause of structural damage. Yet, the report does not describe whether protecting the structures from water infiltration would obviate the need to raze the structures.

Despite these obvious deficiencies, the LZA report commissioned by FCRC became the sole basis for ESDC's "Declaration of Emergency" permitting the demolition of twelve (12) properties within the proposed development site prior to the completion of the SEQRA process. See, "Declaration of Emergency" annexed to Moving Papers as Exhibit D.

The "Declaration of Emergency" states as the basis for the determination the "LZA Report and discussions with ESDC's Staff and ESDC's counsel." Id. It indicates that no independent review of the allegations contained in the developer's report was ever conducted. In short, the agency simply "rubber-stamped" the developer's request to start work on the Atlantic

Yards Project prior to the completion of environmental review.

The agency should have conducted an independent investigation and not relied exclusively on a report commissioned by the developer. Had the agency even perused publicly available records pertaining to the buildings, it would have discovered that the two New York City agencies empowered to order the demolition of unsafe structures, the Department of Buildings and the Department of Housing Preservation and Development, have inspected at least four of the buildings since 9/04 and at no point thought it necessary to order their demolition on the grounds that they were unsafe or in imminent danger of collapse.[2]

For example, the Department of Buildings (DoB) visited 608 Atlantic Ave. in 9/04 and issued a violation for improper signage, see Exhibit E; in 1/05 DoB visited 463 Dean St. and 585 Dean St. and issued a boiler violation, see Exhibit E; and in 7/05 the Department of Housing Preservation and Development visited 463 Dean St. and, upon information and belief, issued no immediately hazardous (code `C') violations. See Exhibit F.

Given the lack of any independent assessment performed to verify the accuracy of the LZA report's recommendations, the LZA report's obvious facial deficiencies, and the agency's failure to even consider any less intrusive option, the agency's Declaration of Emergency should be annulled.

The Proposed Intervenors

The proposed intervenors are all low-income residents of 479 Dean St., a rent-stabilized

[2]The Department of Buildings records obtained from their publicly accessible web site are annexed to our Moving Papers as Exhibit E. The Department of Housing Preservation and development records obtained from their publicly accessible web site are annexed to our Moving Papers as Exhibit F. A table summarizing the violations is annexed to the Moving Papers as Exhibit G.

building within the footprint of the proposed Atlantic Yards Arena and Redevelopment Project and only a half a block from three of the buildings slotted for demolition. Most of the residents rent a single room at a low weekly rate and are only able to remain in the neighborhood because of their low rents. The majority of the tenants have resided at 479 Dean St. for ten years. See Barrera Aff. at ¶1; Rodriguez Aff. at ¶1; and Gomes Aff. at ¶1.

All of the proposed intervenors oppose the Atlantic Yards Project because they fear displacement and because they feel it will make it impossible for them to continue to reside in their neighborhood. Further, they oppose the proposed demolitions because of the immediate and irreversible effect it will have on their immediate surroundings and because the demolition will permit FCRC to make an end run around the environmental review process which is supposed to take into account the concerns of community residents like themselves. See Barrera Aff.at ¶¶2-7; Rodriguez Aff. at ¶¶2-7; Gomes Aff. at ¶¶2-7; and Najmi Aff. at ¶2-7.

ARGUMENT

POINT I: THE MOVANTS SHOULD BE PERMITTED TO INTERVENE IN THIS PROCEEDING PURSUANT TO C.P.L.R. § 7802.

Section 7802(d) of the C.P.L.R. grants the Court broad authority to permit interested persons to intervene in Article 78 proceedings. The Court's power to permit intervention in Article 78 proceedings is broader than that authorized by Sections 1012 or 1013 of the C.P.L.R. Elinor Homes Co. v. St. Lawrence, 113 A.D.2d 25, 494 N.Y.S.2d 889, 892 (2d Dep't 1985). Applications to intervene should be liberally granted where "the substantial rights of the

applicant may be affected by the determination in a pending action or proceeding." Eberlin v. Herman, 18 A.D.2d 1068, 239 N.Y.S.2d 569 (1st Dep't 1963).

In litigation brought under SEQRA, interested parties are those for whom the challenged action would have a harmful effect that is in some way different from the public at large, and whose interests lie within the zone of interests to be protected by the statute. Glen Head — Glenwood Landing Civic Council v Town of Oyster Bay, 88 A.D.2d 484, 490, 453 N.Y.S.2d 732 (2d Dep't 1982). For example, in Steele v. Town of Salem, 200 A.D.2d 870, 606 N.Y.S.2d 810 (3d Dep't 1994), the Appellate Division recognized that a resident living in the immediate vicinity of a project who alleged that his view would be altered by the challenged action, was an interested party under SEQRA.

The proposed intervenors stand to be directly affected by the ESDC's arbitrary actions in this case. Most immediately, if the demolition is permitted to proceed, their neighborhood will be permanently and negatively altered. Further, they are the very parties that the SEQRA process was designed to protect: the residents of the area where the development will occur. As such, they have a direct interest in ensuring that they, and all other interested parties, have the opportunity to comment on the proposed development before demolition or construction begins. Because both neighborhood character and the ability to comment on proposed developed are squarely within the zone of interests protected by SEQRA, the proposed intervenors are interested parties who should be permitted to intervene pursuant to C.P.L.R. § 7802(d).

POINT II: THE EMPIRE STATE DEVELOPMENT CORPORATION'S DECLARATION OF EMERGENCY SHOULD BE ANNULLED.

In order to meet the emergency exception to SEQRA's review requirements, the proposed action must be "immediately necessary on a limited and temporary basis" and "performed to cause the least change or disturbance, practicable under the circumstances, to the environment." 6 N.Y.C.R.R. § 617.5(c)(33). Where an action is occasioned by an emergency circumstance but the remedy sought is not "limited and temporary" it will not meet the exception. East 13th St. Cmty. Ass'n v. N.Y. Urban Dev. Corp., 189 A.D.2d 352, 365; 595 N.Y.S.2d 961, 969 (1st Dep't 1993), aff'd on other grounds, 84 N.Y.2d 287, 641 N.E.2d 1368, 617 N.Y.S.2d 706 (1994).

In East 13th St. Cmty. Ass'n, the Appellate Division found that though the construction of a low-income housing project might fill an immediate need, Respondents could not bypass SEQRA on the grounds that it was an emergency action because the "construction of a 14 story housing project can hardly be said to fall into the category of an action taken on a "limited and temporary basis."

In Marcy Psychiatric Ctr. v. Coughlin, 60 N.Y.2d 14, 453 N.E.2d 1085, 466 N.Y.S.2d 668 (1983) the State planned to convert the unused portion of a State mental institution into a correctional facility. The work was to progress in two phases. The first phase involved the housing of 300 inmates at the facility and the second phase involved the transfer of an additional 900 inmates. The State proposed to comply with SEQRA but sought to begin rehabilitation of the buildings prior to the completion of the SEQRA process. The Court noted the "critical shortage of correctional facilities in the State" and permitted the building preparation to go forward, noting that

> no action will be taken irrevocably referable to the conversion of the buildings for correctional uses. Neither will any prison inmates be transferred to the facility ....Thus the only actions at issue ... are limited to steps immediately necessary to cope with the emergency and therefore permissible under the regulation." Id. at 21.

Similarly, in Spring-Gar Cmty. Civ. Ass'n v. Homes for the Homeless, 149 A.D.2d 581, 540 N.Y.S.2d 543 (2nd Dep't 1989), the Court found that by-passing SEQRA was permissible because there was a demonstrated urgent need to house the homeless and the proposed measure was "limited and temporary." And, in Silver v. Koch, 137 A.D.2d 467, 525 N.Y.S.2d 186 (App. Div. 1st Dep't 1988), app. den'd, 73 N.Y.2d 702, 533 N.E.2d 673, 536 N.Y.S.2d 743 (1988) the temporary mooring of prison barge was found to be an emergency action exempt from SEQRA requirements because of its temporary nature.

There is nothing "limited and temporary"about the permanent destruction of property. Demolition is not a stopgap measure to be employed on a limited basis to prevent a potential harm. When faced with a request to demolish these twelve (12) structures, the ESDC was bound to take a "hard look" at any available evidence to determine whether there was a less permanent and less intrusive means to address the potential harm. But, there was no inquiry into whether buildings exposed to the environment could be protected, thereby protecting them from further harm; there was no inquiry into whether stopgap measure (such as shoring up the foundations) could be employed to render the buildings safe until there is a decision on the project.

In Historic Albany Found. v. Breslin, 282 A.D.2d 981, 724 N.Y.S.2d 113 (3rd Dep't 2001), the owner of a historic building sought its demolition on the grounds that the premises were unsafe and were in danger of imminent collapse. He argued that the action was exempt from environmental review as an emergency action. The trial court agreed. The Appellate

Division reversed, holding that, while all parties agreed that the building was in danger of collapse, the Defendant-owner had not shown that demolition was an action calculated to "cause the least change or disturbance [] practicable under the circumstances." Id. at 986. In a later case, the Appellate Division found that stabilizing the facade, as opposed to demolishing the building, was the appropriate agency action. Historic Albany Found. v. Breslin, 296 A.D.2d 813, 745 N.Y.S.2d 331 (3rd Dep't 2002).

When a SEQRA challenge is brought, the court must "review the record to determine whether the agency identified the relevant areas of environmental concern, took a `hard look'at them, and made a `reasoned elaboration' of the basis for its determination." Jackson v. N.Y. Urban Dev. Corp., 67 N.Y.2d 400, 416; 494 N.E.2d 429, 503 N.Y.S.2d 298, 304 (1986). In Jackson, the Court noted that this standard of review is not a departure from the standard typically applied in Article 78 proceedings, but is an element of the inquiry into whether the agency's decision was in "violation of lawful procedure, was effected by an error of law or was arbitrary and capricious or an abuse of discretion." Id. See also, Coal. for Future of Stony Brook Vill. v. Reilly, 299 A.D.2d 481, 483; 750 N.Y.S.2d 126, 128 (2nd Dep't 2002).

It is evident that a "hard look" was absent here, as the agency failed to seek an independent analysis of the integrity of the buildings that FCRC is seeking to demolish. Not only did they fail to seek an independent analysis, but they apparently failed to make a cursory review of existing publicly available information. Had they looked at readily available records from New York City's Department of Buildings and Department of Housing Preservation and Development, they would have found that at least four (4) of the twelve (12) buildings slotted for demolition were inspected by those agencies since 9/04 and neither agency saw fit to order the

buildings demolished or even sealed. Most stunningly, one of the residential buildings, 463 Dean St., was inspected in 7/05 and no immediately hazardous conditions were found. At the very least, ESDC should have commissioned an independent analysis that included quantitative assessments of the life of the structures, and considered less intrusive alternatives.

The ESDC utterly failed to consider any alternative to the drastic and irremediable remedy of demolition. As the emergency exemption to SEQRA requires that the proposed action be both necessary and designed to minimize environmental harm, the Respondent agency was required to look at less intrusive alternatives. It appears from the engineers report that was submitted by FCR in support of its application, that the bulk of the physical deterioration in the buildings was the result of exposure to the elements.... However, there is no discussion of how such exposure could be minimized, of whether deteriorated areas could be sealed, or whether the structures could be shored up so that they remained safe until the SEQRA process can be completed. It is evident that ESDC failed to give a "hard look" to FCRC's request for an emergency declaration and that declaration should be annulled.

POINT III: SIVE, PAGET & RIESEL SHOULD BE DISQUALIFIED AS SPECIAL COUNSEL TO THE EMPIRE STATE DEVELOPMENT CORPORATION ON THE GROUNDS OF CONFLICT OF INTEREST.

The lead agency in the SEQRA review process is charged with: a) determining the scope of the EIS that will be required; b) the nature and extent of the information that will be requested; c) mitigation measures to be considered and addressed; and d) alternatives to the proposed project that should be considered. 6 N.Y.C.R.R. § 617.9. It is those factors, as determined by the

lead agency, against which the acceptability of the final EIS is to be judged. To have an employee of the project applicant involved, or even apparently involved, in making those determinations is inappropriate and the firm of Sive, Paget & Reisel should be disqualified as special counsel to the ESDC. Their very involvement undermines the integrity of the SEQRA process in the eyes of the public.

In issues of public concern, "the test to be applied is not whether there is a conflict, but whether there might be." And, where it is a public official who is acting, "it is a policy of the law to keep the official so far from temptation as to ensure his unselfish devotion to the public interest." Tuxedo Conservation and Taxpayer's Ass'n v. Town Bd. of Tuxedo, 69 A.D.2d 320, 418 N.Y.S.2d 638 (2nd Dep't 1979)(annulling the vote of a town board where a member had a financial interest in the outcome); see also, N.Y. Atty. Gen'l (Inf.) Op., 2002-9 ("a public official must avoid circumstances that compromise his or her ability to make impartial decisions solely in the public interest.").

POINT IV: A PRELIMINARY INJUNCTION SHOULD ISSUE STAYING DEMOLITION.

The Petitioners seek an injunction to prevent the demolition of twelve (12) buildings in their immediate neighborhood. The buildings are part of a project that is currently undergoing the public review process required by SEQRA. If that project is permitted to proceed, they will lose their long-term homes and will likely be forced to move from their neighborhoods. SEQRA prevents developers from commencing any work on a project undergoing review until the review is completed. ESDC's cursory review and approval of FCRC's request for a Declaration of

Emergency, thwarts the review process and, furthermore will have direct and irrevocable impact on Petitioner's neighborhood. This type of harm is precisely the type of harm that SEQRA was enacted to prevent and Respondent's should be enjoined from proceeding with the demolition.

To obtain a preliminary injunction Petitioners must show that they have a likelihood of prevailing in this proceeding, that they will be irreparably harmed if the stay is not granted, and that the balance of the equities favors a stay. See, W.T. Grant Co. v. Srogi, 52 N.Y.2d 496, 438 N.Y.S.2d 761 (1981).

In order to justify injunctive relief, the Petitioners need not establish a certainty of success on her claim, but need only make a prima facie showing of their likelihood of success. McLaughlin, Piven, Vogel Inc. v. W.J. Nolan & Co., 114 A.D.2d 165, 498 N.Y.S.2d 146 (2nd Dep't 1986); Tucker v. Toia, 54 A.D.2d 322, 388 N.Y.S.2d 475 (4th Dep't 1976). Petitioners have shown that ESDC acted capriciously when it failed to give a "hard look" to FCRC's request for a Declaration of Emergency. They not only failed to seek any outside confirmation of FCRC's engineer's report, they failed to look at publicly available records, and they failed to follow the mandates of SEQRA by considering alternatives to demolition that were limited, temporary and designed to have the least possible negative impact on the environment.

The harm to Petitioners will be irreparable if a stay is not granted. Once the buildings are demolished they will never be replaced, and their neighborhood's character will be forever altered. While change is inevitable, there is a legislatively mandated process to ensure that changes to neighborhood character are not done on a piecemeal basis, that alternatives are considered, that potential negative impacts are mitigated, and that community residents have an opportunity to comment. It is that process that is being by-passed in this case, and, as long-term

community residents, Petitioners have an interest in ensuring that it is not thwarted.

The demolition itself represents an immediate and irreparable harm to the proposed intervenors. If the demolition is permitted to proceed, they will essentially be living in a construction site, surrounded by vacant lots. They will suffer the immediate effects of the demolition including noise, dust and debris, all of which will negatively impact their quality of life. Further, there could be real and lasting environmental and health effects as, upon information and belief, at least one of the buildings contains a significant amount of asbestos.

A balance of the equities favors Petitioners. If a stay is granted, the proposed demolition will be stayed for the record to be fully developed. By contrast, if a stay is not granted, FCRC will be permitted to commence work on the Atlantic Yards Project before the Project is reviewed. Petitioners will be living amidst vacant lots, a constant reminder that a legislative process meant to protect their interests failed.

CONCLUSION

Forest City Ratner Companies is attempting to commence work on the Atlantic Yards Arena and Redevelopment Project before the completion of environmental review. The Empire State Development Corporation has done nothing to safeguard the public against this abuse. And, while an agency's decision-making is often treated with deference, "the discretion of those comprising the agencies of the City of New York and of those titans of industry, who alter the face of our City landscape and foster change in the name of progress, is not unfettered." Lee v. Chin, 1 Misc.3d 901A, 781 N.Y.S.2d 625 (S. Ct. NY County 2003). The agency's Declaration of Emergency should be annulled.

Respectfully Submitted,

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