

*DDDB et. al. v. ESDC et. al*  
**Lawsuit Seeks to Annul Final Environmental Impact Statement and  
Approval of Forest City Ratner’s “Atlantic Yards” Project**  
For a Judgment Pursuant to Article 78 of the CPLR and Declaratory Judgment

The environmental review process was not meant to be a bilateral negotiation between a developer and lead agency but, rather, an open process that also involves other interested agencies and the public.  
*Merson v. McNally*, 90 N.Y.2d 742, 753, 655 N.Y.S.2d 605, 611 (1997).

**Relief sought by Petitioners:**

- Annulment of the ESDC, MTA, and PACB determinations to approve the Project.
- Declaration that a privately leased and operated sports arena does not meet the definition of a *civic project* under the UDC Act.
- Enjoining Respondents (ESDC, MTA, PACB, Forest City Ratner) from proceeding in any manner with any demolition, construction, disposition of public property or commitment and expenditure of public funds until there is a reconsideration of the Project in compliance with SEQRA and the UDC Act.

**A Summary of the 11 Causes of Action Filed by Petitioners:**

➤ **1<sup>ST</sup> CAUSE OF ACTION** (Against the Public Authorities Control Board, PACB)

**Failure to Make Findings**

**The PACB Violated the State Environmental Quality Review Act (SEQRA) by Approving the Project Without Considering its Environmental Impacts and Did Not Adopt SEQRA Findings**

➤ **2<sup>ND</sup> CAUSE OF ACTION** (Against ESDC)

**Violation of UDC Act’s Procedural Requirements**

**Empire State Development Corporation (ESDC) Violated the Important Procedural Elements of the Urban Development Corporation Act (UDC) Rendering Its Determinations Null and Void:**

- ESDC did not provide the minimum public comment period required by the UDC Act
- ESDC failed to meaningfully consult with the Citizen Advisory Committee.
- ESDC did not provide meaningful community participation in the environmental review thus disenfranchising the affected public.

➤ **3<sup>RD</sup> CAUSE OF ACTION**

**The Court Should Make a Declaratory Judgment that a Sports Facility for a Professional Sports Team Leased to a Private Entity Is Not a “Civic Project” Under the UDC Act:**

- A privately leased, for-profit sports arena, such as Forest City Ratner’s (FCR) arena, is not a project that the ESDC may lawfully undertake within its enabling legislation; the court should affirm this.

➤ **4<sup>TH</sup> CAUSE OF ACTION** (Against ESDC)

**ESDC Was Without Sufficient Basis to Determine the Area is Blighted; That Determination Should be Annulled**

- **The blight determination supporting the finding that the Project qualifies as a “land use improvement project” under the UDC Act is arbitrary and capricious, not supported by substantial evidence, an abuse of discretion and must be annulled.**
- ESDC ignored extensive, detailed public comments refuting the blight study;
- ESDC manipulated and twisted crime statistics to overstate crime rates in the project site;

- ESDC failed to demonstrate a blighting effect from the rail yards on the blocks to its south;
- The City of New York *never* considered these southern blocks “blighted” over the 40 year life of the Atlantic Terminal Urban Renewal Area (ATURA), an Area they lay *outside of*;
- The project’s boundaries were not determined by blight, but by where FCR wanted the project.

#### ➤5<sup>TH</sup> CAUSE OF ACTION (Against ESDC)

##### **Failure to Consider Threat of Terrorist Attack**

##### **ESDC Violated SEQRA by Failing to Consider the Potential Security Issues and Impacts From a Terrorist Attack**

- **ESDC’s head in the sand approach violates SEQRA and endangers the health and welfare of all New Yorkers. The FEIS must be rejected and the subsequent determinations annulled for such a blatant error.**
- With a glass-walled arena with 225 publicly scheduled events per year, surrounded by glass skyscrapers, over a major transportation hub, directly adjacent to Brooklyn’s busiest traffic intersection, Atlantic Yards has a unique design, use, location and density requiring a security/terrorism study. ESDC purposefully and inexplicably ignored one of the paramount issues facing New York City since 2001—the threat of terrorism and the need to incorporate security measures into the design of major developments;
- Despite constant demands that ESDC demonstrate that it has considered the issue, the FEIS and SEQRA findings are virtually silent on that point and;
- ESDC has taken the bizarre position that the threat of a terrorist attack does not qualify as a reasonable worst-case scenario warranting examination in an EIS;
- That position runs contrary to statements by public officials, recent case law and common sense.
- The obvious need to consider the potential for terrorist attacks is supported in the affidavit of Norman Groner, PhD. ([www.dddb.net/FEIS/affidavits/SecurityAff\\_Groner.pdf](http://www.dddb.net/FEIS/affidavits/SecurityAff_Groner.pdf)). Professor Groner, a recognized expert on security planning, notes that there is no question that Atlantic Yards would present an attractive target for terrorists and there are basic issues that must be considered in the review of the project, including location and design details to reduce the risk of an attack and mitigate the impacts should one occur.
- Recent, new case law confirms that such a review should have been undertaken for Atlantic Yards

#### ➤6<sup>TH</sup> CAUSE OF ACTION (Against ESDC)

##### **Failure to Prepare Supplemental EIS**

##### **ESDC Failed to Properly Identify and Consider Relevant Issues in the DEIS and Could Not Cure that Failure Through a cursory Consideration in the FEIS. Newly discovered information must be considered in a Supplemental Environmental Impact Statement (SEIS) to allow the public to comment. This includes:**

- ESDC’s belated recognition that Coney Island could be an alternative location for the arena;
- ESDC conducted a study of the impact of wind without including it in the FEIS.
- In both instances, the FEIS addressed important new information upon which the public had no opportunity to comment.

#### ➤7<sup>TH</sup> CAUSE OF ACTION (Against ESDC)

##### **Failure to Take a Hard Look**

##### **MTA and ESDC Each Failed to Take the Required “Hard Look” at the Environmental Impacts of the Atlantic Yards Project, Including:**

- Intentionally understating the expected Project build-out time by at least five years in order to artificially minimize the adverse impacts associated with the construction of the mammoth Project;
- Misrepresenting the impact of the proposed Project on the character of the surrounding neighborhood by using inappropriate comparisons and failing to disclose relevant information;
- Falsely stating the amount of open space created by the Project and qualifying inaccessible areas as open space;

- Relying on flawed analyses of traffic and mass transit that omit material facts, rely on false assumptions, and rigidly apply CEQR methodology to result in an outcome favoring the Project;
- Failing to adequately consider the public costs associated with the Project in connection with the increased demands on community services resulting from the addition of thousands of new residents to the area;
- Failing to consider the impact of increased traffic on emergency vehicles;
- Understating the impact of shadows created by the Project on open spaces and community gardens;
- Understating the impact of wind and construction-related air pollution on the quality of life in the immediate surrounding area;
- Accepting excessive noise levels without exploring alternatives that would minimize their impact.

#### ➤ **8<sup>TH</sup> CAUSE OF ACTION (Against ESDC)**

##### **Failure to Consider Reasonable Alternatives**

##### **ESDC Failed to Adequately Consider Alternatives, Including the “No Action” Option, the Extell Plan, Coney Island as a Site for the Arena, and a Development Limited to the Rail Yards.**

- ESDC rejected each alternative without adequate consideration, without a factual basis, and, in the case of the Coney Island alternative, without the necessary public comments.
- To the extent the FEIS does analyze alternatives, the analysis is flawed and intended to result in the pre-determined approval of the Project.

#### ➤ **9<sup>TH</sup> CAUSE OF ACTION (Against ESDC)**

##### **Failure to Adequately Respond to Public Comments**

##### **FEIS Fails to Adequately Address Substantive Comments Submitted by Affected Members of the Public With Respect to the DEIS, Rendering SEQRA Findings and Determinations Null and Void**

#### ➤ **10<sup>TH</sup> CAUSE OF ACTION (Against ESDC)**

##### **Violation of SEQRA’s Procedural Requirements**

##### **ESDC Violated Many of SEQRA’s Procedural Safeguards by:**

- Failing to promptly give notice that it was acting as the lead agency;
- Failing to engage the public and other agencies in the environmental review process at the earliest possible time;
- Delaying issuance of the Final Scope.

##### **And ESDC Abused Its Discretion, by:**

- Scheduling hearings at times to discourage public participation;
- Failing to provide a meaningful public hearing by allowing the stacking of the hearing facility;
- Giving the public only the absolute minimum time periods required by regulation to review and comment upon documents of enormous length, complexity, and significance for the largest single-source development proposed in the history of New York;
- Rushing the completion of the FEIS to ensure Project approval prior to December 31, 2006.
- Failing to adequately consider the public comments

##### **At a minimum, the proceeding should be remanded for an extension of the public comment period and the filing of a SEIS.**

#### ➤ **11<sup>TH</sup> CAUSE OF ACTION (Against the MTA)**

##### **The MTA Failed to Fulfill Its Obligations Under SEQRA, Including:**

- Failing to advise the ESDC of the alternative proposal for development of the Vanderbilt Yards;
- Failing to make its own, written SEQRA findings;
- Failing to take the requisite “hard look” at the Project’s adverse environmental impacts.