

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of
DEVELOP DON'T DESTROY BROOKLYN; et al.,
Petitioners - Plaintiffs,
For a Judgment Pursuant to Article 78 for the CPLR
and Declaratory Judgment
-against-
URBAN DEVELOPMENT CORPORATION d/b/a
EMPIRE STATE DEVELOPMENT
CORPORATION; et al.,
Respondents - Defendants.

AFFIDAVIT OF DANIEL E. GOLDSTEIN

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

Daniel E. Goldstein, being duly sworn, deposes and says:

1. I am a resident within the footprint of Forest City Ratner Companies' (FCRC) planned "Atlantic Yards" Project, residing at 636 Pacific Street in a condominium apartment. My home would be taken by the State of New York by eminent domain and transferred to FCRC pending current litigation in federal court in which I am a plaintiff.

2. This affidavit is in support of Petitioners' motion for a Preliminary Injunction and their claim that the ESDC violated procedures of the UDC Act.

3. The Final Environmental Impact Statement (FEIS) never considered the impact of demolition, excavation, drilling and construction on residents and businesses *within* the confines of the Project Site. All of the impacts which were considered regarding such construction related activity—vibrations, safety, noise and air pollution, compromised structures —will be completely different and certainly far worse for residents *in the midst* of that activity, yet they were not considered. Because of this unanticipated situation, Project work should be enjoined pending the outcome of this litigation.

4. The FEIS only contemplated a Project Site that had been cleared of residents and businesses. But there are currently approximately 400 residents living within the boundaries of the Atlantic Yards Project Site, as well as four operating businesses including a very active neighborhood bar, according to personal knowledge, legal documents, and news reports. These residents and businesses are spread throughout the project site.

5. Just last week, on April 26th, when 200-feet of the Ward Bakery Building parapet collapsed, falling five stories to the street, the adjacent long-term residence for homeless families had to be evacuated. According to newspaper reports (*New York Times* article “Parapet Falls From Building to Be Demolished for Atlantic Yards” www.nytimes.com/2007/04/27/nyregion/27atlantic.html) and the owner of that property, there are 94 families and a total of 350 individuals residing in that facility at 768 Pacific Street. In the “Phase 1” portion of the project site there are approximately 18 residents in 473 Dean Street; one resident in 479 Dean Street; approximately ten residents in 481 Dean Street; four residents in 624 Pacific Street; two residents in 636 Pacific Street, and

two residents in 24 Sixth Avenue. These “Phase 1” residents total at least 37 residents. In the “Phase 2” portion of the project site there are one resident at 495 Dean Street; two residents at 493 Dean Street; ten residents in 812 Pacific Street; an unknown number of residents in 810 Pacific Street, and the 350 residents in the homeless residential facility at 768 Pacific Street. These “Phase 2” residents total *at least* 363 residents.

6. The court should know that these individuals and businesses still reside and operate in the footprint because they are legally entitled to do so – their homes and their properties have not been legally taken through eminent domain, and their rights have not been sold to the developer, Forest City Ratner Companies. Their continued occupancy of the footprint and the impacts of the project on them during demolition and the initial (and possibly even later) phases of construction should certainly have been considered, but were not.

7. The health and safety risks, as well as risk of structural damage to occupied residences and businesses, are too great to allow the project work to go forward while the never contemplated situation continues. Living in the midst of preliminary work and demolitions is a daily struggle for my fiancée and I, as well as all of our neighbors; and we are all concerned about our own health and safety, as well as quality of life, particularly after the dangerous collapse that occurred just two blocks away last week. Such hazardous work with residents on the Project Site was *never* contemplated by the FEIS. The Project should be enjoined until this court can decide on the case.

8. With regard to the violation by the Empire State Development Corporation (“ESDC”) of the public’s procedural rights regarding the comment period on this massive development, I attended the August 23rd, 2006 public hearing on the Draft

Environmental Impact Statement (DEIS) for the Project. Six hours into the hearing I had a chance to deliver my 3-minute oral testimony and did so. I also attended the September 18th, 2006 public hearing on the DEIS, and listened to the oral testimony of other speakers. I did *not* attend the September 12th public hearing as it was primary election day in New York and I was deeply involved with volunteer work on a State Assembly campaign. It was an insult to the political process, and an insult to any notion of “good government”, for the ESDC to schedule a public hearing on a major issue such as this one on election day.

9. Because of my intimate knowledge of the Project Site, its history and the development trends within and around it, I was uniquely qualified to comment on the Blight Study of the project site commissioned by the ESDC. I researched, prepared and wrote Develop Don't Destroy Brooklyn's (“DDDB”) comments to the Blight Study (AR 19122-19314), with only minor help from one other person, less qualified to provide the kind of comment necessary. ESDC released its Blight Study on July 18th, 2006. The Blight Study, including exhibits, is 354 pages long, and included lot by lot descriptions of all of the lots on blocks 927, 1118, 1119, 1120, 1121, 1127, 1129 and a portion of 1128.

10. The Blight Study is the very foundation upon which the designation by the ESDC of the project as a “Land Use Improvement Project” is predicated and is also the foundation for the ESDC's claim of right to use the extreme power of eminent domain.

11. Commenting on this lengthy and detailed document was a massive undertaking, which I approached with great seriousness and diligence, as my experience living in the Project “Footprint” convinced me that the State's description of my neighborhood was biased and therefore irrational.

12. Despite having to deal with a family emergency in the month of August 2006, which required me to be in California and took me away from this time-consuming task of commenting on the Blight Study, I did manage to submit 191 pages of comment on the ESDC's Blight Study.

13. I submitted my written comment at the ESDC office in Manhattan at 5:00 pm on September 29th, one-half hour before the deadline. And that was after leaving the print shop with the document and sprinting to the subway and sprinting to the ESDC offices. But my comments were incomplete and I knew that when submitting them. The comments were nowhere near as complete as what I had set out to do.

14. The 18 more days that should have remained for written submission—based on the SEQRA regulations allowing for 30 days for written comment after the public hearing (the public hearing ended on September 18th, 2006)—was a crucial amount of time that would have allowed me to much more thoroughly comment on the Blight Study. And I believe that that more thorough comment would have made an even more convincing argument that the ESDC's Blight Study was biased and irrational.


15. In particular, I would have photographed every single lot on the Project Site and commented in great detail on each property, and compared and contrasted my findings to the ESDC's Study. Barely any of those pictures had been taken and the lot-by-lot comparisons that I did manage to write were not nearly as comprehensive as I set out to do. With six characteristics of blight as the foundation of the ESDC's Blight Study, the time needed to mine that data and verify it for accuracy would have been greatly aided by having 18 more days. Moreover, the amount of discovery necessary to mine the data and descriptions within the document was warranted by the length, depth and importance of

the Blight Study; and 18 more days would have allowed me that time. There were many departures from reality and inaccuracies that I was only able to find after the September 29 written comment deadline passed.

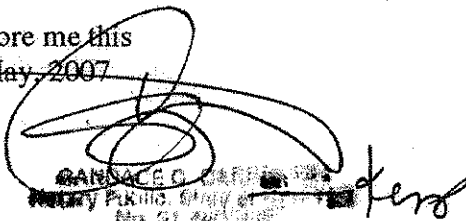
16. Eighteen more days also would have allowed me to document, photographically, the difference in sidewalk maintenance between sidewalks falling under MTA responsibility (and negligence) and sidewalks falling under the responsibility of the private owners.

17. Eighteen more days would also have allowed me to research and write about other similar areas of Brooklyn that have not been determined to be blighted and other areas of Brooklyn that have been determined to be blighted and compared data of each with the Project Site. It would have allowed me to research data regarding building code violations around the City as well as so-called "Underutilization" rates around the City. All of this further and deeper research and documentation would have provided for more exacting and powerful comment as necessitated by the Blight Study.

18. As is apparent from the foregoing, my ability to comprehensively comment on a key part of the record, the Blight Study, was severely curtailed by the abbreviated, and Statute violating, written comment period. The eighteen more days that were required by the Statute would have made a substantial difference in the overall quality, thoroughness, and comprehensiveness of my research, documentation and comments on the ESDC's Blight Study.


Daniel E. Goldstein

Sworn to before me this
2 day of May, 2007


GANDACE C. [unclear]
Notary Public, State of New York
Qualified to Perform [unclear]
Commission Expires [unclear]
6/10/07