

Political Profiteering:

How Forest City Enterprises Makes Private Profits at the Expense of America's Taxpayers



CAUSE
of ACTION

Advocates for Government Accountability



Staff Investigative Report
Political Profiteering
*How Forest City Enterprises Makes Private Profits at the
Expense of America's Taxpayers*

PART II OF III:
The Ratner Way: Lobby, Profit, and Bilk

About Cause of Action

Mission

Cause of Action is a nonprofit, nonpartisan government accountability organization that fights to protect economic opportunity when federal regulations, spending, and cronyism threaten it. Our mission is to expose the ways our government is playing politics in its use of taxpayer dollars, in its decision-making on behalf of individual Americans, and how it seeks to burden the economic opportunities that employ us and make our lives better. Cause of Action seeks to prevent the federal government from politicizing agencies, rules, and spending by bringing transparency to the federal grant and rule-making processes. Cause of Action's representation of organizations and individuals helps to educate the public about government overreach, waste, and cronyism.

Investigative Function

Cause of Action uses investigative tools to attack federal government waste, fraud, and mismanagement as well as overreach in the form of arbitrary and burdensome regulations. Cause of Action employs "sunshine advocacy" tools to achieve its goals, including document and information requests, lawsuits, ethics complaints, and requests for investigation. Through its use of advocacy and investigatory tools, Cause of Action promotes transparency, integrity, and accountability in government. Cause of Action's investigations help expose the ways our government is mismanaging federal funds and educate the public on how government can be made more accountable. Rigorous oversight can prevent taxpayer dollars from being wasted on improper activities.

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I. Executive Summary

“Without government development incentives, most of [Forest City Enterprises’] development projects ‘would not be economically viable.’”

- The New York Post, August 6, 2013

Forest City Enterprises (FCE) is a \$10.6 billion real-estate development company that profits from public subsidies at the expense of taxpayers, job seekers, and those seeking affordable housing. Without delivering the jobs and affordable housing it forecasts, FCE takes advantage of communities where it builds large-scale, mixed-use projects, creating a pattern of broken promises. This is the second report in a three-part series detailing how FCE makes private profits at the expense of America’s taxpayers. As part of Cause of Action’s (CoA’s) ongoing investigations into crony companies that use politics for profit, we found that local residents have been victimized by FCE’s real estate projects in Brooklyn, N.Y.; Albuquerque, N.M.; and New Rochelle, N.Y.

FCE’s pattern promises local governments that its development projects will generate plentiful jobs, housing, economic development, and tax revenues. Concomitantly, FCE employs a well-funded public relations campaign, a team of politically-connected lobbyists, and campaign contributions to local politicians in order to acquire subsidies, tax breaks, and property through eminent domain. However, once FCE receives public financial support, it often renegotiates or delays implementation of the benefits that it had previously promised. In short, it lobbies, profits, and then bilks the taxpayers by breaching its promise to the community.

CoA’s investigation revealed that FCE promised to create more than **70,000 permanent jobs** and **3,750 affordable housing units** in Brooklyn and Albuquerque, but that it has actually produced only **3,000 permanent jobs** and **built no affordable housing units**. Meanwhile, FCE pocketed \$277.2 million in subsidies from those communities after contributing \$310,450 to local political candidates and spending over \$8.6 million on lobbyists. Sadly, these are not isolated incidents, but endemic of an intentional method by which FCE does business. This pattern is poised to continue in the proposed project in New Rochelle.

Profits over Promises

FCE promised in 2004 that its 22-acre Atlantic Yards project in Brooklyn would generate 10,000 permanent jobs and 2,250 units of affordable housing. In return, the company received \$270 million in direct subsidies in order to construct a new sports arena, the Barclays Center, and to bring the New Jersey Nets there to play. FCE purchased land for the project at less than half-price and received other land after the government seized it by eminent domain. To date, the Barclay’s Center has been completed, but only 1,900 part time jobs have been created and the affordable housing remains unfinished.

Backtracking on Promises

For the Mesa del Sol project in Albuquerque -- a 12,900-acre mixed use community -- FCE promised to create 30,000 economic base jobs, 30,000 service sector jobs, and 1,200 units of affordable housing over a 50-year period. After FCE provided \$220,000 in cash and in-kind contributions to candidates for state office in New Mexico -- including \$150,000 to Governor Richardson's gubernatorial campaign and the use of one of the company's corporate jets for three campaign trips in 2006 -- FCE received commitments of up to \$630 million over 25 years through a new state subsidy. But by May 2013, FCE announced the sale of its stake in Mesa del Sol, citing its need to focus on "core markets." As of May 2013, FCE has received \$7.2 million in subsidies, but only 2,000 jobs have been created and the construction of affordable housing will be delayed for at least six years.

FCE's Next Victim of Political Profiteering

The next victim of FCE's political profiteering appears to be the city of New Rochelle, where FCE has proposed a waterfront redevelopment project known as "Echo Bay." FCE's Residential Group (FCRG) has promised to add 285 luxury apartments, 25,000 feet of retail space, and a five-acre park, which FCRG estimates will generate \$49 million in revenue and \$307 million in economic benefits, including 211 construction jobs, 59 retail and residential management jobs, and 1,000 indirect jobs over a period of 20 years. The project would also provide FCRG with at least \$20 million in tax abatements between 2016 and 2035 through a proposal that includes twenty years of Payments in Lieu of Taxes (PILOT). Echo Bay fits the pattern that CoA exposed with FCE's past projects. Specifically, FCRG scaled back the scope of its original proposal, which offered 150,000 square feet of retail and 600 luxury apartments. Additionally, FCE's consultants for the project gave \$17,000 in campaign contributions to Mayor Noam Bramson, who is a staunch defender of the project.

What follows in this report is a portrait of FCE's pattern of exploitation and broken promises, documented through news reports, campaign contribution reports, lobbyist filings, litigation, and government documents obtained through Freedom of Information Act (FOIA) requests. CoA filed seven FOIA requests to attempt to uncover how FCE works with government agencies and city councils behind the scenes, but found a lack of adequate record keeping and uncooperative responses. CoA's first report exposed how FCE used \$23 million in political spending over the past ten years to obtain \$2.6 billion in government subsidies and financial benefits. In its final report, CoA will show how FCE has enriched itself through bribery and political graft, colluded with the government to take advantage of the EB-5 investor program, and benefited from eminent domain abuse.

II. Findings

- ***Finding:*** Despite receiving \$270 million in subsidies for the Atlantic Yards project and a commitment of \$630 million over 25 years for its Mesa del Sol project, FCE has failed to deliver the public benefits promised in exchange for taxpayers' financial support.

Atlantic Yards Project: Brooklyn, New York

- ***Finding:*** Forest City Ratner (FCR) promised to create 10,000 permanent jobs and 2,250 units of affordable housing in exchange for \$270 million in direct taxpayer money to build its sports arena and land provided to it through eminent domain. To date, none of the affordable housing has been built and only 2,000 permanent jobs have been created—1,900 of which are part-time jobs.
- ***Finding:*** FCR drafted a Community Benefits Agreement (CBA) in 2005 in order to gather local support for the Atlantic Yards project, but the promised benefits have not been provided. FCR has not provided an Independent Compliance Monitor to oversee enforcement of the agreement.

Mesa del Sol Project: Albuquerque, New Mexico

- ***Finding:*** FCE employed lobbyists and provided \$150,000 in campaign contributions and use of its corporate jet to then-Governor Bill Richardson in order to push through a bill creating a new subsidy for real estate development in 2006. In 2007, FCE received commitments from the City of Albuquerque and the State of New Mexico for up to \$130 million and \$500 million in subsidies, respectively, over 25 years.
- ***Finding:*** FCE promised to create 60,000 jobs over a 50-year period and 1,200 units of affordable housing in exchange for the commitment of \$630 million in subsidies. However, by the time FCE sold its stake in the project in May 2013, only 2,000 jobs had been created and the original affordable housing agreement had been renegotiated to delay construction by at least six-and-a-half years.

Echo Bay Project: New Rochelle, New York

- ***Finding:*** FCE's Residential Group (FCRG) has promised the City of New Rochelle that its Echo Bay project will create about 59 permanent jobs and increase local tax revenue. However, FCRG seeks \$20 million in tax abatements from 2016 to 2035 despite the fact that residents have been facing property tax increases and cuts in public services for years.

- **Finding:** FCE executives in Cleveland gave New Rochelle Mayor Noam Bramson \$5,000 in campaign contributions in August 2007 after FCE was selected as the developer for the Echo Bay project in December 2006. Mayor Bramson has received \$17,500 in campaign contributions from FCRG's consultants since December 2012.

III. Profits over Promises

- **Finding:** Despite receiving \$270 million in subsidies for the Atlantic Yards project and a commitment of \$630 million over 25 years for its Mesa del Sol project, FCE has failed to deliver the public benefits promised in exchange for taxpayers' financial support.

Cause of Action's interest in FCE stems from its Atlantic Yards project in Brooklyn, which exemplifies the company's cronyism and unfulfilled promises of public benefits. As part of our nearly two-year investigation, CoA analyzed news reports, campaign contribution reports, lobbyist filings, legal cases, and government documents obtained through Freedom of Information Act requests. We found that the Atlantic Yards project was not an isolated incident, but just one example of a wider pattern of abuse: FCE promises to improve communities in order to attract taxpayer support, but it then reneges on those promises after it receives public money. While this report focuses on FCE's largest and most controversial projects in the past ten years, there are other projects that fit FCE's business model of political profiteering. The first report examined FCE's projects in the District of Columbia and the subsequent report will discuss projects in Yonkers, New York and the abuse of eminent domain for projects in New York City and California.¹

One failed FCE project on the West Coast shows the negative effect that FCE can have on communities. In 2004, FCE entered into an agreement with Fresno, California to acquire and develop a six-block area that the city considered "blighted" despite the presence of thriving small businesses. ABC 30 in Fresno described the much-delayed project in 2008:

Forest City Enterprises burst onto the Fresno scene with grand promises of revitalizing the city's lackluster downtown with retail stores and housing. That was four years ago and there has yet to be a single shovel break ground. Tuesday Forest City asked the Fresno City Council for a six month extension to work out its plan. It would be their third extension, which prevents the city from talking with other developers.²

¹ CoA attempted to further investigate projects in DC, New York, and Dallas, Texas that were approved in 2006 by sending public records requests. We were told that no records were responsive to our request to the City of Dallas and only a few, largely unhelpful records were received from DC and New York. The focus of this report is on New York and Albuquerque because of their geographic size, scope of the promised benefits, and cost of the projects to taxpayers.

² KFSN-TV, *More Forest City Delays*, ABC 30 (Dec. 16, 2008), <http://abclocal.go.com/kfsn/story?section=news/local&id=6559127> (last visited Oct. 1, 2013).

The project area was to be taken by use of eminent domain. One small business under threat of eviction had been operating in the area for 90 years, and the owner, Bruce Baskin, believed he was being punished for staying in the area during hard times. “When everyone moved north and fled downtown, we stayed here and stuck it out. Now all these big shots want to do something downtown, and they’re going to make us leave. Well, I don’t think that’s right,” Baskin told *The Fresno Bee* in 2007.³ When work on the project fell through in 2009 because Forest City West had not received enough taxpayer money, the area’s development had been frozen for nearly five years.⁴

IV. Bait and Switch in Brooklyn

- **Finding:** Forest City Ratner (FCR) promised to create 10,000 permanent jobs and 2,250 units of affordable housing in exchange for \$270 million in direct taxpayer money to build its sports arena, and land provided to it through eminent domain. To date, none of the affordable housing has been built and only 2,000 permanent jobs have been created with 1,900 of them part-time jobs at the arena.

“[Bruce Ratner’s]willingness to change plans—abandoning an expensive Frank Gehry design and building a smaller railyard—solidified his reputation for promising anything to get a deal, only to renegotiate relentlessly for more favorable terms.”

- *The New York Times*, September 26, 2012

FCE is most well-known, or infamous, for the \$4.9 billion Atlantic Yards project in Brooklyn, which is overseen by subsidiary Forest City Ratner (FCR) and FCR Chairman Bruce Ratner. The centerpiece of the 22-acre project is the Barclays Center, a sports arena where the Brooklyn Nets play. The project also includes sixteen buildings slated for mixed residential, office, and commercial use. To drum up support for Atlantic Yards, FCR initiated a public relations campaign in 2003 that focused on the public benefits it would provide: “Jobs, Housing, Hoops.”⁵ Specifically, FCR claimed that the Atlantic Yards would create 10,000 jobs and 2,250 units of affordable housing.⁶ However, as of October 2013, eight years after the project was first approved, none of the promised affordable housing has been built and only 2,000 permanent jobs⁷ have been created.⁸ Moreover, 95 percent of the jobs created (1,900) are part-time only.⁹

³ Matt Leedy, *Business owners don’t want to budge*, THE FRESNO BEE (Sept. 23, 2007), <http://www.fresnobee.com/2007/09/23/146145/business-owners-dont-want-to-budge.html>.

⁴ Gene Haagensohn, *Forest City Backs Out of Downtown Redevelopment Deal*, ABC LOCAL (Mar. 13, 2009), <http://abclocal.go.com/kfsn/story?section=news/business&id=6709189>.

⁵ John Brennan, *Hoops outranking Jobs, Housing at Atlantic Yards so far in Brooklyn*, NORTHJERSEY.COM (Aug. 27, 2012), <http://blog.northjersey.com/meadowlandsmatters/3439/hoops-outranking-jobs-housing-at-atlantic-yards-so-far-in-brooklyn/>.

⁶ Liz Robbins, *In Brooklyn, Bracing for Hurricane Barclays*, N.Y. TIMES (Sept. 21, 2012), <http://www.nytimes.com/2012/09/23/nyregion/with-barclays-center-arena-set-to-open-brooklyn-braces-for-the-storm.html?smid=tw-share&pagewanted=all>.

⁷ According to FCR, 841 workers on average were on site each day in the year before the arena opened. *Id.* Construction jobs are not considered permanent jobs.

The Barclays Center finally opened in September 2012, but more than “hoops” have been drained there—taxpayers’ wallets have, as well. To help build the Barclays Center, New York State gave \$100 million in direct subsidies to FCR, and New York City sank in more than \$170 million according to the New York City Independent Budget Office in 2009.¹⁰ In sum, the public investment in the Barclays Center has been calculated to be as much as \$305 million as of October 1, 2013.¹¹

Further, building the Barclays Center displaced “hundreds of people who already lived and worked there.”¹² In July 2006, the Empire State Development Corporation (ESDC), which was staffed by political appointees of Governor George Pataki, Ratner’s Columbia Law school friend, declared that some of the properties within the project area were “blighted.”¹³ The declaration allowed ESDC to use eminent domain to condemn the property and raze all the buildings that stood in the way of the Barclays Center.¹⁴ Local homeowners and businesses were shocked to learn that they were living in a blighted area, including an owner of a condominium that cost \$590,000 in 2003.¹⁵

New York City’s Independent Budget Office reported in 2009 that the stadium would be a \$40 million net loss for the city over a 30-year period.¹⁶ In its first year of operation, FCR estimated that the arena generated \$14 million in tax revenues, but a full analysis has not been released.¹⁷ Despite FCR’s tax revenue estimate, the arena is failing to meet projections of operating income, which FCR once estimated at \$76 million for the first year.¹⁸ The arena has generated only \$19 million after nine months of operation, which puts it on pace for only \$25 million for the year.¹⁹

Taxpayers were further victimized when New York City’s Metropolitan Transit Authority (MTA) selected FCR in 2005 to develop the Atlantic Yards site. FCR’s first bid for

⁸ *Id.*

⁹ *Id.*

¹⁰ DAVID BELKIN, ANA CHAMPENY, MICHAEL JACOBS, & GEORGE SWEETING, N.Y. CITY INDEP. BUDGET OFFICE FISCAL BRIEF, THE PROPOSED ARENA AT ATLANTIC YARDS: AN ANALYSIS OF CITY FISCAL GAINS AND LOSSES 4, (Sept. 2009), <http://www.ibo.nyc.ny.us/iboreports/AtlanticYards091009.pdf>.

¹¹ Phyllis Furman, *Barclays Center Scores: City says arena generated \$14 million in tax revenues in its first year*, N.Y. DAILY NEWS (Oct. 1, 2013) <http://www.nydailynews.com/new-york/barclays-center-scores-city-arena-generated-14-million-tax-revenues-year-article-1.1472100>.

¹² Nicholas Confessore, *Forced to Move, Some Find Greener Grass*, N.Y. TIMES (Apr. 10, 2006) <http://www.nytimes.com/2006/04/10/nyregion/10yards.html?pagewanted=1&ref=atlanticyardsbrooklyn>.

¹³ Damon W. Root, *The Great Basketball Swindle*, REASON FOUND.(July 11, 2011), <http://reason.org/news/show/the-great-basketball-swindle>.

¹⁴ *In re Develop Don’t Destroy (Brooklyn) v. Urban Dev. Corp.*, 874 N.Y.S.2d 414, 423 (2009); *Goldstein v. Pataki*, 516 F.3d 50, 59-60 (2d Cir. 2008).

¹⁵ Nicole Gelinias, *The Empire State and Eminent Domain*, WALL ST. J. (Nov. 13, 2009), <http://online.wsj.com/news/articles/SB10001424052748704576204574530161194721796>.

¹⁶ *Supra* note 9, at 1.

¹⁷ *Supra* note 10.

¹⁸ Eliot Brown, *Brooklyn Arena Is Glitzy, but Profits So Far Aren’t Golden*, WALL ST. J. (October 18, 2013), <http://online.wsj.com/news/articles/SB10001424052702304384104579143503249017682?cb=logged0.6674712367821485>.

¹⁹ *Id.*

the property, which had been appraised at \$214 million, was a mere \$50 million.²⁰ A competing company, Extell, submitted a bid for \$150 million.²¹ Before the MTA voted, FCR raised its bid to \$100 million, which the MTA approved by a 10-1 vote.²² Subsequently, in 2009, the MTA changed the terms of the purchase so that FCR was required to pay only \$20 million up front, with the remaining \$80 million to be paid over twenty-one years.²³ The *New York Daily News* declared it “a sweet new financial deal for the Atlantic Yards project.”²⁴

The Community Benefits Agreement: “You have Bruce Ratner’s word”

- ***Finding:*** FCR drafted a Community Benefits Agreement (CBA) in 2005 in order to gather local support for the Atlantic Yards project, but the promised benefits have not been provided. FCR has not provided an Independent Compliance Monitor to oversee enforcement of the agreement.

When the Atlantic Yards project was proposed, FCR faced significant opposition from members of the community where the project would be built.²⁵ In order to overcome this opposition, FCR offered a Community Benefits Agreement (CBA) in June 2005 that outlined a host of benefits for local residents and provided funding to many of the non-profit organizations that signed the agreement.²⁶ The express purpose of the CBA was to “maximize the benefits of the [Atlantic Yards] Project . . . to minority and women construction workers . . .”²⁷ To do so, the CBA offered “training, hiring and referral initiatives for pre-construction, construction and permanent jobs for Minority and women, Low Income and Moderate Income Individuals.”²⁸ How successful has the CBA been? In 2013, 20 minority construction workers who participated in the CBA program sued FCR for denial of wages under federal and New York State labor laws.²⁹ The plaintiffs allege that they never received job training or union memberships as FCR

²⁰ Bobby Cuza, *MTA Votes In Favor Of Ratner Arena Development*, NY1 (Sept. 14, 2005), http://www.nyl.com/content/top_stories/53518/mta-votes-in-favor-of-ratner-arena-development-plan.

²¹ *Id.*

²² *Id.*

²³ Larry McShane, *MTA signs off on sweet Atlantic Yards deal Bruce Ratner: Money down drops from \$100M to \$20M*, N.Y. DAILY NEWS (June 24, 2009), <http://www.nydailynews.com/news/mta-signs-sweet-atlantic-yards-deal-bruce-ratner-money-drops-100m-20m-article-1.374403>.

²⁴ *Id.*

²⁵ The Atlantic Yards project prompted the creation of a nonprofit corporation of over 50 businesses, churches and community groups in Brooklyn that opposed the project called Develop Don’t Destroy Brooklyn. See <http://www.developdontdestroy.org/php/opposition.php> (last visited Oct. 23, 2013). See also, Andy Newman, *Raucous Meeting on Atlantic Yards Plan Hints at Hardening Stances*, N.Y. TIMES (Aug. 24, 2006), http://www.nytimes.com/2006/08/24/nyregion/24yards.html?_r=0.

²⁶ Cmty. Benefits Agreement between Atlantic Yards Dev. Co. LLC, Brooklyn Arena LLC, et al 1-51 (June 27, 2005) [hereinafter Community Benefits Agreement], available at <http://www.beegreenow.org/images/Community%20Benefits%20Agreement.pdf>.

²⁷ *Id.* at 2.

²⁸ *Id.* at 11-12.

²⁹ Amended Complaint (and Demand for Jury Trial), ¶3, *Apple v. Atlantic Yards Dev. Co., LLC*, (E.D.N.Y. Apr. 11, 2013) No. 11-Civ.-5550 (JG)(JA) [hereinafter Amended Complaint]. Cause of Action was unable to discuss the case with the plaintiffs because the judge issued a “gag order” prohibiting the parties from discussing the case publicly while it is pending. Telephone Interview with Gary Stone, Attorney for Plaintiffs, S. Brooklyn Legal Servs. Ctr. (Sept. 11, 2013).

had promised, let alone construction jobs at the Barclays Center.³⁰ Their case is currently pending.³¹

The CBA was executed by Bruce Ratner on behalf of the “Atlantic Yards Development Co. LLC” on June 27, 2005,³² an entity which the construction workers’ suit alleges was unincorporated, and therefore did not legally exist until almost a year later.³³ The agreement was made between “the Developers” and eight organizations deemed to represent the interests of the Brooklyn community where the Atlantic Yards project was located.³⁴ However, six of the eight organizations purportedly bound by the CBA were established at the same time as the Atlantic Yards project and were funded by FCR.³⁵ Thus, the CBA was essentially an act of self-dealing.

One of the CBA signatories, the Association of Community Organizations for Reform Now (ACORN), actively opposed FCR’s initial project proposal. The Atlantic Yards project was originally designed to include 4,500 units of luxury housing, until ACORN, led by then-CEO Bertha Lewis, led sit-ins and marches demanding that the development plan reserve 2,250 units for affordable housing.³⁶ Unsurprisingly, Lewis became “a vocal and enthusiastic supporter of Ratner’s development” once Bruce Ratner gave ACORN a \$1 million loan, a \$500,000 grant, and selected Lewis to lead the community outreach and screening for the Atlantic Yards affordable housing plan.³⁷ According to Patti Hagan, a former operative for ACORN’s local political party, the Working Families Party, she “learned the hard way that ‘ACORN is a corrupt organization that had its silence bought by Ratner.’”³⁸

When the CBA was finalized, Bruce Ratner and New York City Mayor Michael Bloomberg held a press conference touting the agreement and the protections that it would provide to Brooklyn residents. Bruce Ratner announced at the press conference that “[the CBA] is legally binding. . . . It has in some cases economic penalties, it has mediation, as well as the ability of community groups to litigate and get an orderable injunction, and we hope to see the goals fulfilled, and if we don’t, litigation can be used.”³⁹ Mayor Bloomberg interrupted Ratner to assert, “I would add something else—even more importantly, you have Bruce Ratner’s word.”⁴⁰

However, neither the CBA nor Ratner’s word has proven to be trustworthy. The CBA required that an Independent Compliance Monitor be hired to ensure that the terms of the CBA

³⁰ Amended Complaint ¶¶ 104-147.

³¹ Query, Case no. 1:11-cv-5550, Public Access to Court Electronic Records (PACER), https://ecf.nyed.uscourts.gov/cgi-bin/iquery.pl?110122285249241-L_1_0-1 (last visited Oct. 17, 2013).

³² Community Benefits Agreement, *supra* note 11, at 1.

³³ Amended Complaint, *supra* note 14, ¶ 39.

³⁴ Community Benefits Agreement, *supra* note 11, at 1.

³⁵ Amended Complaint, *supra* note 14, ¶ 38.

³⁶ Chris Smith, *Mr. Ratner’s Neighborhood*, N.Y. MAG. (Aug. 6, 2006), <http://nymag.com/news/features/18862/index6.html> (last visited Sept. 23, 2009).

³⁷ Rich Calder, *Group can \$core on Atl. Yards*, N.Y. POST (Sept. 21, 2009), http://www.nypost.com/p/news/local/brooklyn/group_can_core_on_atl_yards_0LO3hZzLrmivrSJ9kV1kRJ (last visited Sept. 23, 2009).

³⁸ *Id.*

³⁹ Amended Complaint, *supra* note 14, ¶ 64.

⁴⁰ *Id.*

would be fulfilled.⁴¹ Yet in April 2013, eight years after the CBA was introduced, FCR admitted in court filings that it failed to appoint the Independent Compliance Monitor.⁴² Additionally, the Brooklyn construction workers' lawsuit alleges that the CBA's promises of construction jobs at Atlantic Yards and job training for minorities in Brooklyn were a sham.⁴³

The CBA requires that the FCR-funded nonprofit Brooklyn United for Innovative Local Development (BUILD) would conduct a job-training and hiring program called the Pre-Apprenticeship Training Program (PATP).⁴⁴ In July 2010, BUILD began recruiting people who lived in Brooklyn that had prior construction experience for the PATP by sending letters to those on BUILD's mailing list. The suit alleges that at the PATP orientation session, BUILD Chief Executive Officer James Caldwell assured the construction workers who agreed to participate that the PATP was "the opportunity of a lifetime," and promised that, at the end of the PATP, they would each get a job at the Atlantic Yards construction site.⁴⁵ The lawsuit also alleges that Caldwell called the PATP his "baby,"⁴⁶ and that he told the participants that they should "prepare to be millionaires" because they would receive memberships as skilled laborers in construction unions.⁴⁷ These memberships could include the laborers' union, carpenters' union and electricians' union, and would therefore make members eligible to receive union wages.⁴⁸ Jane Marshall, the Senior Vice President for Commercial and Residential Development of Forest City Ratner Companies,⁴⁹ also allegedly told the prospective participants that the Project would provide construction work for ten years.⁵⁰

For the experienced construction workers, who had been told they would be trained to work on construction of the Atlantic Yards, BUILD's PATP proved to be of little use. BUILD admitted in its court filings that the classroom portion of the training program provided only "basic lectures" about construction techniques and a "life skills" class.⁵¹ BUILD also admitted that its training materials consisted of handouts with information printed from web sites like Wikipedia, instead of textbooks.⁵² The latter portion of the program was to feature actual, hands-on training at a construction site. But BUILD admitted that by October 2010, it was unable to find a hands-on training site.⁵³ Instead of giving construction training at the Atlantic Yards site or another similar location, the participants allege that BUILD sent them to a residential house on Staten Island for their hands-on training. The company working at the site

⁴¹ Community Benefits Agreement at 9-10.

⁴² See FCR's Answer to Amended Complaint at 9 ¶ 46, *Apple v. Atlantic Yards Dev. Co., LLC* (E.D.N.Y. Apr. 24, 2013), No. 11-Civ.-5550(JG)(JA) [hereinafter *Forest City's Amended Answer*].

⁴³ Amended Complaint, *supra* note 25, ¶ 3.

⁴⁴ Answer to Amended Complaint ¶ 55, *Apple v. Atlantic Yards Dev. Co., LLC*, (E.D.N.Y. Apr. 11, 2013), No. 11 Civ. 5550(JG)(JA) [hereinafter *BUILD's Amended Answer*].

⁴⁵ Amended Complaint, *supra* note 14, ¶ 57.

⁴⁶ *Id.* ¶ 59.

⁴⁷ *Id.* ¶ 57.

⁴⁸ *Id.* ¶ 59.

⁴⁹ See *Forest City Commercial Group People*, FORESTCITY,

<http://www.forestcity.net/company/people/commercial/Pages/default.aspx> (last visited July 10, 2013).

⁵⁰ Amended Complaint, *supra* note 14, ¶ 60.

⁵¹ *Id.* Amended Complaint ¶ 67; *BUILD's Amended Answer*, *supra* note 28, ¶ 67.

⁵² Amended Complaint ¶ 67.

⁵³ Amended Complaint ¶ 77; *BUILD's Amended Answer*, *supra* note 28, ¶ 77.

was Orbin’s Big Green Machine, a construction company owned by Gausia Jones, one of BUILD’s employees.⁵⁴

Further, BUILD admitted that the participants were required to sign a waiver of liability before they began their “training” at the site.⁵⁵ Signing the waiver meant that the workers could not sue BUILD or Jones if they were injured on the job. This was a demanding requirement according to the workers because the work was particularly hazardous; the site consisted of a shifting house supported only with temporary braces and had cracks in the foundation walls.⁵⁶ PATP participants were also told that working at the Staten Island worksite was compulsory if they wished to complete the PATP and receive their union cards.⁵⁷ At the work site, Orbin’s Big Green Machine did not employ any other experienced workers to provide the hands-on training, so the PATP participants performed all of the debris removal and renovation.⁵⁸ The participants also claim that for the roughly two months that they spent at the worksite: (a) they were never paid for the work they performed, (b) they did not receive union cards, and (c) they did not receive construction training from the BUILD instructors.⁵⁹

Lastly, FCR has admitted that Mary Anne Gilmartin, then Executive Vice President of Commercial and Residential Development and now CEO at FCR, told PATP participants at the graduation ceremony that they were eligible for other pre-apprenticeships.⁶⁰ However, since graduating from the training program BUILD provided, none of the participants have been hired for construction jobs at the Atlantic Yards.⁶¹

V. The \$630 Million Broken Promise

Mesa del Sol Project: Albuquerque, New Mexico

- **Finding:** FCE employed lobbyists and provided \$150,000 in campaign contributions and use of its corporate jet to then-Governor Bill Richardson in order to push through a bill creating a new subsidy for real estate development in 2006. In 2007, FCE received commitments from the City of Albuquerque and the State of New Mexico for up to \$130 million and \$500 million in subsidies, respectively, over 25 years.
- **Finding:** FCE promised to create 60,000 jobs over a 50-year period, and 1,200 units of affordable housing, in exchange for the commitment of \$630 million in subsidies. However, by the time FCE sold its stake in the project in May

⁵⁴ Amended Complaint ¶ 77.

⁵⁵ *Id.* ¶ 78. In BUILD’s Amended Answer, it refers to the waiver of liability document as the “Off Site Hands On Agreement.” *Supra* note 28, ¶ 78.

⁵⁶ Amended Complaint ¶ 82.

⁵⁷ *Id.* ¶ 84.

⁵⁸ *Id.*

⁵⁹ *Id.* ¶ 85.

⁶⁰ *Id.* ¶ 87. In BUILD’s Amended Answer, it admits only that Mary Ann Gilmartin of FCRC spoke at the graduation. *Supra* note 37, ¶ 78.

⁶¹ Amended Complaint ¶ 88.

2013, only 2,000 jobs had been created and the original affordable housing agreement had been renegotiated to delay construction by at least six-and-a-half years.

FCE was selected by the New Mexico State Land Office in 2001 to construct a 12,900 acre project just south of Albuquerque, New Mexico that would consist of 37,500 homes and create almost 60,000 jobs over 25 years.⁶² Although FCE signed the lease for the land in 2002, it did not begin construction until after it created a way to access taxpayer money in 2006. The company used lobbyists and campaign contributions to create a new subsidy that allowed it to receive up to \$630 million from state and city taxpayers over 25 years. FCE's political maneuvering led to the passage of a subsidy bill in the New Mexico legislature in 2006. The legislation, House Bill 462, established tax increment development districts (TIDDs), which allow developers to use public money to pay for infrastructure, even though infrastructure costs are usually borne by developers.⁶³ Before passage of the TIDD financing bill, FCE had given \$220,000 in cash and in-kind contributions to candidates for state office in New Mexico, including \$150,000 to Governor Richardson's gubernatorial campaign.⁶⁴ FCE had also let Governor Richardson use a company corporate jet for three campaign trips with a total value of \$21,727 in 2006.⁶⁵ FCE employees subsequently gave a total of \$53,700 to Richardson's 2008 presidential campaign.⁶⁶

By the end of 2007, FCE had inked the largest TIDD deal in the country.⁶⁷ It included an agreement with the City of Albuquerque for up to \$130 million,⁶⁸ as well as an agreement with the State of New Mexico for up to \$500 million.⁶⁹ For fiscal years 2009 through 2012, the Mesa del Sol TIDD received \$7.2 million in general revenues.⁷⁰ Despite the public investment in the project, the public benefits promised by FCE have failed to materialize.

The New Mexico Finance Committee estimated that the \$500 million in TIDD bonds for Mesa del Sol would lower gross tax revenues for the state by \$8 million over a 50-year period.⁷¹

⁶² Dennis Domrzalski, Dan Mayfield, and Damon Scott, *An economy-sized challenge*, ALBUQUERQUE BUS. FIRST (Feb. 1, 2013) <http://www.bizjournals.com/albuquerque/print-edition/2013/02/01/an-economy-sized-challenge.html?page=all>.

⁶³ Randal O'Toole, *Crony Capitalism and Social Engineering: The Case Against Tax-Increment Financing*, 676 CATO INST. POLICY ANALYSIS 4 (May 18, 2011), available at <http://object.cato.org/sites/cato.org/files/pubs/pdf/PA676.pdf>.

⁶⁴ *Id.*

⁶⁵ Barry Massey, *Richardson Signs Bill Benefiting Donor*, ALBUQUERQUE J. (Apr. 10, 2007), <http://www.abqjournal.com/news/apbenefit04-10-07.htm>.

⁶⁶ *Top Contributors to Bill Richardson*, OPEN SECRETS, <http://www.opensecrets.org/pres08/contrib.php?cycle=2008&cid=N00024821>.

⁶⁷ POLSKY & ASSOCS., *New Mexico's Tax Increment Development Project: Mesa del Sol* (Apr. 9, 2012), <http://www.polskylaw.com/blog/?p=334>.

⁶⁸ Andrew Webb, *Council OKs Mesa del Sol Tax Shift*, ALBUQUERQUE J. (Jan. 11, 2007), <http://www.abqjournal.com/news/metro/528387metro01-11-07.htm>.

⁶⁹ N.M. LEGISLATIVE FIN. COMM., FISCAL IMPACT REPORT ON HB 1088 (Feb. 28, 2007) [hereinafter Fiscal Impact Report], available at <http://www.nmlegis.gov/Sessions/07%20Regular/firs/HB1088.pdf> (last visited Oct. 15, 2013).

⁷⁰ MOSS-ADAMS LLP, MESA DEL SOL TAX INCREMENT DEV. DIST. 1 FIN. STATEMENTS JUNE 30, 2012, 2011, & 2010, 6 (Dec. 14, 2012) [hereinafter Moss-Adams Report], available at http://www.saonm.org/media/audits/11000_Mesa_Del_Sol_TIDD_FY2012.pdf (last visited on Oct. 12, 2013).

⁷¹ Fiscal Impact Report, *supra* note 50.

The Committee's report stated that "the consequences of not enacting this bill" were only that "Mesa del Sol has reported on several occasions that this piece of the financing is crucial to their business plan."⁷² The Committee assumed that all of the economic activity in Mesa del Sol would be coming in from outside New Mexico, thereby creating a new stream of revenue for the state, as opposed to homeowners and businesses simply relocating within New Mexico.⁷³ The Committee also found that the development would be a net loss of \$17.2 million for state taxpayers between 2007 and 2031, if the project consisted of 90 percent new economic activity, and a loss of about \$100 million if it consisted of 75 percent new economic activity.⁷⁴

Estimates from FCE's own consultants for the \$130 million Albuquerque TIDD also showed a slim chance of creating revenue.⁷⁵ FCE paid \$100,000 to consultants who predicted that the project's chances of being cost neutral to the city were "thin" if FCE received 75 percent of gross sales and property taxes from the city.⁷⁶ Nevertheless, FCE officials boasted that the project would create \$641 million in new revenues for Albuquerque.⁷⁷ In response, the council settled on giving FCE's TIDD district sixty-seven percent of gross sales and property taxes.⁷⁸

Watchdog groups have criticized TIDDs for lacking oversight and enriching politically-connected developers. New Mexico Voices for Children outlined the risks of TIDDs in 2009:

The jobs promised by TIDD projects may not materialize or they may not last the entire 25 years. There are no penalties or other consequences if the projects using taxpayer money don't actually deliver on the promises. There are no requirements to make sure a TIDD meets its employment and development goals. There is also not enough transparency so that taxpayers can be assured that their money is being used wisely.⁷⁹

Subsidy watchdog group Good Jobs First gave the New Mexico TIDD program a score of zero out of 100 for transparency due to lack of information about the program's annual costs, recipient disclosure, job creation, and enforcement.⁸⁰ Further, the Mesa del Sol TIDD district failed to submit audits to New Mexico State Auditor's office for three years.⁸¹ Ultimately, the district had to submit audits for fiscal years 2010-12 on December 14, 2012. While some meeting agendas from the Mesa del Sol TIDD have been posted on the City of Albuquerque

⁷² *Id.*

⁷³ BILL JORDAN & ANNE STAUFFER, N.M. VOICES FOR CHILDREN TAX INCREMENT DEV. DIST. & STATE FINANCING (Oct. 2007), available at http://www.nmvoices.org/fpp_attachments/tidd_ppt_restep_10-07.pdf (last visited Sept. 5, 2013).

⁷⁴ *Id.*

⁷⁵ Andrew Webb, *Mesa del Sol Study Isn't Enough for Some*, ALBUQUERQUE J. (June 1, 2007), <http://www.abqjournal.com/news/metro/567608metro06-01-07.htm>.

⁷⁶ *Id.*

⁷⁷ Jason Trenke, *Mesa del Sol's TIDD clears first Roundhouse Hurdle*, ALBUQUERQUE BUS. FIRST (Jan. 28, 2007), <http://www.bizjournals.com/albuquerque/stories/2007/01/29/story4.html?page=all>.

⁷⁸ *Supra* note 74.

⁷⁹ N.M. VOICES FOR CHILDREN, TAX INCREMENT DEV. DIST. (TIDD) FREQUENTLY ASKED QUESTIONS (Feb. 2009), available at http://www.nmvoices.org/fpp_attachments/tidd_faqs_2009.pdf (last visited Oct. 8, 2013).

⁸⁰ *AccountableUSA—New Mexico*, GOOD JOBS FIRST, <http://www.goodjobsfirst.org/states/new-mexico>, (last visited Sept. 8, 2013).

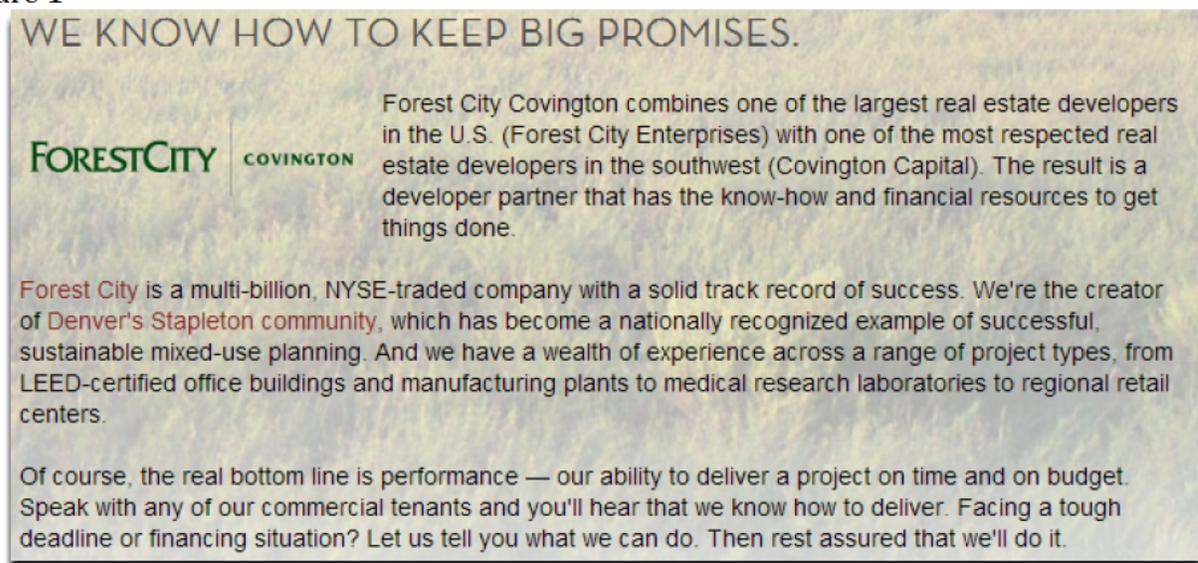
⁸¹ Moss-Adams Report, *supra* note 51, at 28.

website, no minutes can be found.⁸² The creation of the TIDD provided FCE with a guaranteed revenue stream, which could only change by a vote of property owners, and with no oversight over the spending of funds or enforceable penalties for failing to meet goals.⁸³

Grand Promises to Seal the Deal

How did FCE get a deal for a combined commitment of \$630 million tax dollars from New Mexico and the City of Albuquerque—the largest TIDD deal in the country at the time? Because FCE promised the community that it would create tens of thousands of jobs and represented that it had delivered on such promises in the past. The website for Mesa del Sol proclaimed that FCE “KNOWS HOW TO KEEP BIG PROMISES” (see Figure 1).⁸⁴ Mesa del Sol was marketed as a project that would create “30,000 new economic base jobs, or 400 per year, and 30,000 service sector jobs” over a 50-year period.⁸⁵ Those job numbers caught the attention of Senator Tom Udall, whose own website stated that the project would create 52,000 jobs and that it needed a \$3 million earmark for infrastructure.⁸⁶ Senator Udall received campaign donations of \$3,750 and \$3,000 in 2008 and 2010 from Forest City’s political action committee.⁸⁷

Figure 1



⁸² Meeting agendas show that minutes are kept, but could not be found in archives or by using the search function.

⁸³ Bob Hearn, *TIDDs Tax Increment Development Districts and TIF Tax Increment Funding: A Short Summary of What, Why, How, Where, Who*, QUALITY GROWTH ALLIANCE, <http://www.smartgrowthonlineaudio.org/np2009/134-c.pdf> (last visited Sept. 6, 2013).

⁸⁴ *About the Developer: WE KNOW HOW TO KEEP BIG PROMISES*, MESA DEL SOL, <http://mesadelsolnm.com/commercial/commercial-about-the-developer> (last visited Sept. 8, 2013).

⁸⁵ Dennis Domrzalski, *How we got here: the 30-year evolution of one of ABQ's most ambitious endeavors*,—ALBUQUERQUE BUS. FIRST (Feb. 1, 2013), <http://www.bizjournals.com/albuquerque/print-edition/2013/02/01/how-we-got-here-the-30-year-evolution.html>.

⁸⁶ *Appropriations Subcommittee on Transportation, Housing and Urban Development and Related Agencies*, U.S. SEN. TOM UDALL, http://www.tomudall.senate.gov/?p=funding_priority&id=911 (last visited July 11, 2013).

⁸⁷ *Forest City Enterprises Contributions to Federal Candidates*, OPEN SECRETS, <http://www.opensecrets.org/pacs/pacgot.php?cmte=C00123513&cycle=2010>.

Source: Mesa del Sol website: About the Developer

Mesa del Sol also was slated to include 1,200 units of affordable and workforce housing—twenty percent of the total number of units—after fierce negotiations between the Albuquerque City Council and FCE.⁸⁸ The deal also included a provision allowing only two-thirds of these units to be used as rental properties.⁸⁹ The affordable housing agreement between the City of Albuquerque and FCE was lauded by politicians and affordable housing advocates as a win for the city. Albuquerque Councilman Isaac Benton hailed the deal as “a big step forward in securing affordable housing for working families in this new, emerging community.”⁹⁰ An affordable housing advocate from the Albuquerque Affordable Housing Coalition proclaimed that it “should serve as a model for TIF (Tax Increment Financed) Districts nationwide.”⁹¹

However, five years later, the city council passed a resolution in December 2012 scrapping the original deal due to “the economic downturn” (see Figure 2).⁹² The resolution, which was sponsored by Councilman Benton, permitted FCE to delay the provision of affordable housing.⁹³ Specifically, in accordance with FCE’s amended housing plan, FCE is relieved of any obligation to provide affordable housing until two years after the 850th home is occupied.⁹⁴ The resolution also permitted FCR to rent all of the units instead of requiring one-third of them to be sold.⁹⁵

As of May 2013, only 50 of 200 developed residential lots were occupied.⁹⁶ The development is estimated to add only 100 residential lots each year.⁹⁷ At that pace of construction, it would take more than six years to reach 850 residential lots.

The outlook for new jobs is equally bleak. As of February 2013, Mesa del Sol had only attracted eight companies to Mesa del Sol and created only 2,000 jobs. Perhaps not surprisingly, FCE decided to sell its stake in Mesa del Sol in May 2013 in order to focus on “core markets,”⁹⁸ but not before pocketing \$7.2 million in guaranteed subsidies.⁹⁹

⁸⁸ Michael Gisick, *Affordable housing deal heads to Albuquerque City Council*, ALBUQUERQUE TRIBUNE (Aug. 4, 2007), <http://www.abqtrib.com/news/2007/aug/04/affordable-housing-deal-heads-albuquerque-city-cou/>.

⁸⁹ *Id.*

⁹⁰ *Plans for Affordable Housing at Mesa del Sol*, CITY OF ALBUQUERQUE, <http://www.cabq.gov/council/news/plans-for-affordable-housing-at-mesa-del-sol/>, (last visited Sept. 6, 2013).

⁹¹ *Id.*

⁹² Res. R-12-87 (Enactment No. R-2007-082) (City of Albuquerque Dec. 17, 2012), *available at* <http://cabq.legistar.com/LegislationDetail.aspx?ID=1263850&GUID=8D875045-3381-4291-B805-093B7AE7A5B3> (last visited Sept. 9, 2013).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Mesa del Sol Transfers to Local Partnership*, MESA DEL SOL (May 7, 2013), <http://mesadelsolnm.com/item/mesa-del-sol-transfers-to-local-partnership> (last visited Sept. 8, 2013).

⁹⁷ Alex Goldsmith, *Mesa del Sol Housing Heating Up*, KRQE 13 (Jan. 3, 2013), <http://www.krqe.com/news/local/central/mesa-del-sol-housing-revving-up>.

⁹⁸ Damon Scott & Dennis Domrzalsi, *Forest City lines up deal for Mesa del Sol stake*, ALBUQUERQUE BUS. FIRST (May 6, 2013), <http://www.bizjournals.com/albuquerque/blog/morning-edition/2013/05/forest-city-sets-deal-mesa-del-sol-stake.html?page=all>.

⁹⁹ *Supra* note 70.

VI. Forest City's Next Sweetheart Deal?

- **Finding:** FCE's Residential Group (FCRG) has promised the City of New Rochelle that its Echo Bay project will create about 59 permanent jobs and increase local tax revenue. However, FCRG seeks \$20 million in tax abatements from 2016 to 2035 despite the fact that residents have been facing property tax increases and cuts in public services for years.
- **Finding:** FCE executives in Cleveland gave New Rochelle Mayor Noam Bramson \$5,000 in campaign contributions in August 2007 after FCE was selected as the developer for the Echo Bay project in December 2006. Mayor Bramson has received \$17,500 in campaign contributions from FCRG's consultants since December 2012.

The latest target of FCE's political profiteering appears to be the 77,000 residents of the City of New Rochelle, New York, which lies on the Long Island Sound only a few miles north of New York City. There, FCE's Residential Group (FCRG) has proposed a waterfront redevelopment project, "Echo Bay," which would consist of 285 luxury apartments, 25,000 feet of retail space, and a five-acre park.¹⁰⁰ According to the FCRG, Echo Bay will generate \$49 million in revenue and \$307 million in economic benefits, including 211 construction jobs, 59 retail and residential management jobs, and 1,000 indirect jobs.¹⁰¹ The project would also provide FCRG with at least \$20 million in tax abatements between 2016 and 2035. FCRG has described Echo Bay as "a true public-private partnership intended to maximize public benefit."¹⁰² However, FCRG has already scaled back its original proposal that won a competitive bid in December 2006; it had originally offered 150,000 square feet of retail and 600 luxury apartments.¹⁰³ Further, the project may be a net loss for the city, and residents have recently been subjected to property tax increases¹⁰⁴ and cuts in emergency services.¹⁰⁵

According to the Final Environmental Impact Statement prepared by FCRG's planning consultants, FCRG's proposal includes twenty years of Payments in Lieu of Taxes (PILOT), which will greatly reduce its city tax bill.¹⁰⁶ If passed by the New Rochelle City Council, the

¹⁰⁰ *About Echo Bay*, ECHO BAY, <http://www.echobayny.com/about.html> (last visited Oct. 10, 2013).

¹⁰¹ *Id.*

¹⁰² *Echo Bay Frequently Asked Questions: How are the city of New Rochelle and other public entities supporting Echo Bay?*, ECHO BAY (archived from Mar. 6, 2012), <http://web.archive.org/web/20120306051814/http://www.echobayny.com/MediaCenter/faq.html> (last visited Sept. 9, 2013).

¹⁰³ *About Echo Bay*, ECHO BAY (archived from Mar. 6, 2012), <http://web.archive.org/web/20120306234909/http://www.echobayny.com/About/index.html> (last visited Sept. 9, 2013).

¹⁰⁴ Robert Cox, *New Rochelle City Council Passes 2013 Budget, \$153.5 MM With 6.99% Tax Increase*, TALK OF THE SOUND (Dec. 12, 2012), <http://www.newrochelletalk.com/content/new-rochelle-city-council-passes-2013-budget-1535-mm-699-tax-increase>.

¹⁰⁵ Mark Lungariello, *Echo Bay critics sound off*, WESTFAIR ONLINE (Aug. 15, 2013), <http://westfaironline.com/56978/echo-bay-critics-sound-off/>.

¹⁰⁶ CITY OF NEW ROCHELLE, NY, FINAL ENVIRONMENTAL IMPACT STATEMENT: INTRODUCTION 29 (June 25, 2013), available at <http://www.newrochelleny.com/DocumentCenter/View/3004> (last visited Sept. 12, 2013).

agreement would cut the taxes paid to the city by an average of \$1 million a year between 2016 and 2035.¹⁰⁷ United Citizens for a Better New Rochelle (UCBNR), a group created in response to the proposed development, has calculated that the city could lose \$2.7 million annually from the project.¹⁰⁸ When questioned about the financing for the project at a city meeting, New Rochelle Mayor and project supporter Noam Bramson said, “The numbers are what they are.”¹⁰⁹

Other “numbers” are equally plain. Mayor Bramson received \$5,000 in campaign donations from members of the Ratner family in August 2007(see Figure 4),¹¹⁰ eight months after he announced New Rochelle’s development deal with Forest City in 2006.¹¹¹

Figure 2

RATNER, BRIAN 50 PUBLIC SQUARE, SUITE 1600 CLEVELAND, OH 44413	1,000.00	21-AUG-07	BRAMSON FOR MAYOR	2007 32 Pre General	A	Mayor	N/A
RATNER, CHARLES 50 PUBLIC SQUARE, SUITE 1600 CLEVELAND, OH 44113	1,000.00	21-AUG-07	BRAMSON FOR MAYOR	2007 32 Pre General	A	Mayor	N/A
RATNER, JAMES 50 PUBLIC SQUARE, SUITE 1600 CLEVELAND, OH 44413	1,000.00	21-AUG-07	BRAMSON FOR MAYOR	2007 32 Pre General	A	Mayor	N/A
RATNER, RONALD 50 PUBLIC SQUARE, SUITE 1600 CLEVELAND, OH 44113	1,000.00	21-AUG-07	BRAMSON FOR MAYOR	2007 32 Pre General	A	Mayor	N/A
RATNER SALZBERG, DEBORAH 50 PUBLIC SQUARE, SUITE 1600 CLEVELAND, OH 44413	1,000.00	21-AUG-07	BRAMSON FOR MAYOR	2007 32 Pre General	A	Mayor	N/A

Bramson, who is currently running for Westchester County Executive, has received \$17,500 from companies working on FCRG’s Echo Bay project since December 2012.¹¹² Consultants for FCRG’s Echo Bay project coordinated a combined \$11,000 worth of donations on January

¹⁰⁷ *Id.*

¹⁰⁸ *Echo Bay, New Rochelle: Economic Overview & Key Questions*, ECHO BAY FACTS (June 2013), <http://echobayfacts.files.wordpress.com/2013/06/echobayqa.pdf> (last visited Sept. 12, 2013).

¹⁰⁹ Peggy Godfrey, *Despite Objections, Bramson Opposes a Referendum*, TALK OF THE SOUND (June 18, 2013), <http://www.newrochellestalk.com/content/despite-objections-bramson-opposes-referendum>.

¹¹⁰ *Aug. 2007 Campaign Financial Disclosure for Bramson for Mayor*, N.Y. STATE BD. OF ELECTIONS, http://www.elections.state.ny.us:8080/plsql_browser/CONTRIBUTORA_COUNTY?ID_in=C22653&date_From=08/20/07&date_to=08/28/07&AMOUNT_From=100&AMOUNT_to=5000&ZIP1=&ZIP2=&ORDERBY_IN=N&CATEGORY_IN=ALL (last visited July 11, 2013).

¹¹¹ *Supra* note 102, at III-3.

¹¹² *Campaign Financial Disclosure for Friends of Noam Bramson*, N.Y. STATE BD. OF ELECTIONS, <http://www.elections.state.ny.us> (last visited Sept. 11, 2013).

10, 2013 (see Figure 5).¹¹³ The New Rochelle City Council approved FCRG’s Draft Environmental Impact Statement (DEIS) by a 5-2 vote on February 14, 2013.¹¹⁴

Figure 3

Name	Date	Contribution	Relationship
Andrew Tung	1/10/2013	\$1,250	Planner and Site Engineer
Gerhard Schwalbe	1/10/2013	\$1,250	Planner and Site Engineer
KSQ Architects	1/10/2013	\$2,500	Architect
Tocci Building	1/10/2013	\$5,000	Construction Consultant
Roux Associates	1/10/2013	\$1,000	Environmental Resources Consultant
Del Bello	12/22/2012	\$1,500	Lobbyist and Legal Counsel
Del Bello	7/2/2013	\$5,000	Lobbyist and Legal Counsel
Total		\$17,500	

Mayor Bramson’s contributors included Echo Bay’s Planner and Site Engineers, Architects, Construction Consultant, and Environmental Resources Consultant. FCRG’s lobbyist and legal counsel, Del Bello, Donnellan, Weingarten, Wise, and Wiederkehr (Del Bello), gave Bramson a \$1,500 donation in December 2012 and another \$5,000 in July 2013. FCRG has paid Del Bello \$232,448 for lobbying in New Rochelle from 2007 to 2013.¹¹⁵

The political profiteering associated with the Echo Bay project has not gone unnoticed. *The Westchester Guardian* has opined that New Rochelle’s agreement with FCRG is “designed for the benefit of the developer and future tenants, [and] was given a virtual ‘pass’ by public officials elected to represent the interests of ordinary and presently resident New Rochelle citizens.”¹¹⁶ UCBNR summed up its opposition to the project as follows: “There is no problem with anyone—individual or enterprise—trying to turn a profit, but that doesn’t mean it needs [to] be at our expense.”¹¹⁷ New Rochelle resident John D’Alois, a board member of the Save our Armory Committee, which opposed FCRG’s original plan of tearing down a historic naval armory, explained his opposition to the project:

¹¹³ *Id.*

¹¹⁴ Robert Cox, *New Rochelle City Council Discussion of Echo Bay Environmental Impact Statement and Public School Overcrowding*, TALK OF THE SOUND (Feb. 14, 2013), <http://www.newrochelletalk.com/content/new-rochelle-city-council-discussion-echo-bay-environmental-impact-statement-and-public-scho>.

¹¹⁵ *Forest City Residential Group Lobbyist Filings 2007-2013*, N.Y. STATE JOINT COMM’N ON PUBLIC ETHICS, https://apps.jcope.ny.gov/lrr/Menu_reports_public.aspx (last visited Sept. 11, 2013).

¹¹⁶ Stephen Mayo, *The Echo Bay “Deal,” Given a Virtual “Pass,”* WESTCHESTER GUARDIAN (June 13, 2013), http://www.westchesterguardian.com/6_13_13/wg_6_13_fin.pdf.

¹¹⁷ Citizens for a Better New Rochelle, *Forest City mailers don’t tell the whole story*, ECHO BAY FACTS (Sept. 18, 2013), <http://echobayfacts.com/2013/09/18/forest-city-mailers-dont-tell-the-whole-story/> (last visited Sept. 27, 2013).

So, am I against development, of course not. Just as the developers are interested in their own bottom line, so too am I interested in what's best for MY city, not FC's city. In the end, we have a developer cozying up with a soon to be gone mayor who will be in a position to promote the developer on a much bigger scale leaving the taxpayer subsidizing the process. Am I happy with that? NO! Would I be comfortable with improving my city where everyone reaps a benefit, absolutely! Unfortunately, it appears political manipulation and self-serving interests will prevent this from ever becoming a reality.¹¹⁸

John Murtagh, a former city councilman in Yonkers, has warned anyone dealing with Forest City to “watch out for these guys because I just think they’re bad operators. They ride roughshod over communities. They quite frankly—legally or otherwise—buy off politicians. They game the system for their advantage.”¹¹⁹

VI. Conclusion

For FCE, promising to provide extensive public benefits for communities is merely a mechanism for acquiring taxpayer dollars and other government assistance. Taxpayers take on the risk of the development, often with financing commitments of 20 years or more, while FCE pads its bottom line and fails to deliver on its promises. In order to better protect taxpayer money, communities dealing with developers should ensure that they receive commitments in legally-binding agreements that require subsidies to be returned if developers fail to meet its obligations. Taxpayer money should be prudently invested in order to benefit the public at large, not to guarantee the profits of crony companies and wealthy real estate executives.

Businesses leveraging politics to profit is not limited to FCE. As CoA has uncovered with our investigations into the cronyism of GreenTech Automotive and the Department of Energy's loan guarantee program, political decision-making can cost taxpayers millions while failing to create value in return for taxpayer dollars. This lack of accountability for crony companies also negatively affects American companies that lack political connections. How can a competitive market operate when politically-favored businesses are given special treatment and taxpayer money? It is fundamentally unfair to the American people that cronyism is pervasive at all levels of government. Federal, state, and local governments should be working for all Americans, not just the politically powerful.

¹¹⁸ Email from John D'Alois to Cause of Action (Sept. 9, 2013) (on file with author).

¹¹⁹ Phil Reisman, *Caution if wise when dealing with Forest City*, LOHUD.COM (Apr. 18, 2012), <http://www.lohud.com/article/20120419/COLUMNIST08/304190037/Phil-Reisman-Caution-wise-when-dealing-Forest-City>.



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