

From: Petillo, Joseph
Sent: Thursday, September 14, 2006 12:36 PM
To: 'Kenneth Applebaum'
Cc: 'cwebb@bergerwebb.com'
Subject: RE: Atlantic Yards - Utility Interference

While I agree that it's premature to go to battle on this issue, what about some sort of letter (like we did with Mobil) that more formally advises Con Ed of the pending project (without overstating where we are in the process)? I think FCR was of the opinion that a letter from your office might be useful. Perhaps we could couple such a letter from B&W, with a request from the City of New York. As John Hunt states in his memo, the City, which currently owns the streets, could direct the utilities to move to make way for the project --- and Mr. Hunt concludes that Con Ed would have to do so. So perhaps we should look to our partner on this project, the City, to take the lead in directing utility relocation, etc. ESDC management wants us to help FCR here, to the extent that we can, without creating additional legal problems for the project. Your thoughts?

-----Original Message-----

From: Kenneth Applebaum [mailto:kapplebaum@bergerwebb.com]
Sent: Thursday, September 14, 2006 12:20 PM
To: Petillo, Joseph
Subject: FW: Atlantic Yards - Utility Interference

Joe, Charles asked that I forward this on to you. We believe it is premature for ESDC to get involved in this.

Ken

-----Original Message-----

From: Charles S. Webb
Sent: Thursday, September 14, 2006 12:08 PM
To: Kenneth Applebaum
Subject: FW: Atlantic Yards - Utility Interference

-----Original Message-----

From: Hunt, John [mailto:jhunt@fcrc.com]
Sent: Thursday, September 14, 2006 9:22 AM
To: Charles S. Webb
Cc: Bicknell, Kate; Zlotnick, Andy
Subject: Atlantic Yards - Utility Interference

Mr. Webb:

As we discussed this afternoon, the utilities' position that they do not have to move their facilities at their own cost is directly contradicted by the settled law on this subject.

In New York, the general rule is that utility companies must relocate their facilities at their own cost "whenever the public health, safety or convenience requires the change to be made". Matter of Consolidated Edison Co. of N.Y. v. Lindsay, 24 N.Y.2d 309, 316 (1969); New York Tel. Co. v. City of Binghamton, 18 N.Y.2d 152 (1966); New York City Tunnel Auth. V. Consolidated Edison Co. of N.Y., 295 N.Y. 467 (1946); Transit Comm. v. The Long Island Railroad Co., 253 N.Y. 345 (1930); Matter of Consolidated Edison Co. of N.Y. v. City of New York, 171 A.D.2d 865 (1991); see also, Matter of Diamond Asphalt Corp. v. Sander, 92 N.Y.2d 244 (1998). Since the utilities have received the franchise or privilege to locate their private, profit making facilities on public property from the people, and would otherwise have no right to locate their equipment in the streets, this privilege is "always subject to the police power of the State." Transit Comm., 253 N.Y. at 351. So, even though the utilities are authorized to locate their facilities on public property, they take the risk of their location and are bound to make such changes as the public convenience and security require, at their own cost. Id. (citing, e.g., Chicago Burlington & Quincy R.R. Co. v. Chicago, 166 U.S. 226; New Orleans Gas Light Co. v. Drainage Commission, 197 U.S. 453; Chicago

Burlington & Quincy R.R. Co. v. Drainage Commrs., 200 U.S. 561).

The only exception to this rule is if the "change is required in behalf of other public service corporations or in behalf of municipalities exercising a proprietary instead of a governmental function." Id. at 352. This is, however, a limited exception that applies only where the government is "going into business' for itself, as it does when it operates a bus line or subway system." New York Tel. Co., 18 N.Y.2d at 160. Urban renewal is unquestionably a governmental function, not a proprietary one, even if private interests will benefit. Id. at 161.

Atlantic Yards, if approved by ESDC, will be part of an urban renewal plan undertaken in the public's interest. It will not be, as Con Ed seems to argue, a private development project. Upon ESDC's direction to remove its facilities from the streets to make way for the project, the utilities will not have a choice but to move at their own costs. (Indeed, if the City of New York, which currently owns the streets, directed the utilities to move to make way for the project they would have to do so.) None of them has a good faith basis for refusing to comply with such a direction.

This, of course, does not mean that they will concede the issue. As you will see when you do additional research, Con Ed has a long history of fighting losing battles on this front. It is the losing party in nearly half of the reported decisions on utility interference, and there are more that are unreported. That it still denies responsibility to move its facilities at its own cost when asked to do so by a governmental entity is, I believe, bad faith conduct. I also think that any attorney who makes the argument Con Ed doesn't have to move at its own cost should be sanctioned (not that I think a court would do this, but in light of Con Ed's history and the clarity of the legal rule, it should).

If you have any questions, please feel free to call.

JOHN L. HUNT

Associate General Counsel
Forest City Ratner Companies
One MetroTech Center North
Brooklyn, New York 11201
Tel. 718.923.8433
Fax 718.923.8733
jhunt@fcrc.com

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From: Bicknell, Kate [KBicknell@frc.com]
Sent: Monday, September 11, 2006 2:01 PM
To: Matlin, Steven
Subject: Wednesday
Steven,

I'm confirming everyone's availability for Wednesday, but Jim just asked if you would be able to do 2:30 – 4:30pm (start 30 minutes later)?

Thank you,

Kate Bicknell
Project Manager, Commercial Development
Forest City Ratner Companies
1 MetroTech Center North, Brooklyn, NY 11201
(718) 923 - 5264 (phone)
(718) 923 - 8742 (fax)

Subject: FW: Wkly Business Mtgs: GPP& Other Issues regarding Atlantic Yards Project
Location: ESDC offices 633 Third Avenue-37th

Start: Wed 9/13/2006 2:30 PM
End: Wed 9/13/2006 4:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded
Hi Steve - Are you and Neil planning to attend?

-----Original Appointment-----

From: Marshall, Jane [mailto:JMarshall@frcr.com]
Sent: Monday, September 11, 2006 2:52 PM
To: Marshall, Jane; Stuckey, Jim; Berliner, David; Lefkowitz, Stephen; Bicknell, Kate; DeMarinis, Rebecca; Lester, James; Zlotnick, Andy; paulina.williams@ffhsj.com; Hulka, Ann; Matlin, Steven; nrock@empire.state.ny.us; Msuter@law.nyc.gov; lwasserm@law.nyc.gov; spinsky@nycedc.com; cpackard@nycedc.com; mpecori@nycedc.com; mtorres@cityhall.nyc.gov
Subject: Wkly Business Mtgs: GPP& Other Issues regarding Atlantic Yards Project
When: Wednesday, September 13, 2006 2:30 PM-4:30 PM (GMT-05:00) Eastern Time (US & Canada).
Where: ESDC offices 633 Third Avenue-37th

Anne Hulka
Steve Matlin
Neil Rock
Marion Suter
Len Wasserman
Seth Pinsky
Cori Packard
Matt Pecori
Howard Friedman
Maria Torres

Jim Stuckey
David Berliner
Stephen Lefkowitz
Jane Marshall
Kate Bicknell
Rebecca DeMarinis
Jim Lester (as needed)
Andy Zlotnick (as needed)
Paulina Williams

Re AY lester 90806 (2).txt

From: Lester, James [JLester@fcrc.com]
Sent: Friday, September 08, 2006 5:33 PM
To: Matlin, Steven
Cc: Millwater, Maryann
Subject: Re: AY

Ok. Great. I will send around a dial in number.

-----Original Message-----

From: Matlin, Steven <SMATLIN@empire.state.ny.us>
To: Lester, James
CC: Millwater, Maryann
Sent: Fri Sep 08 17:22:28 2006
Subject: RE: AY

Frances walton (our cfo) is only available to 3:30 or so. How about a conference call at 3pm - and we can follow up with a meeting if need be at some other time?

Steven Matlin
Senior Counsel
Empire State Development Corporation
633 Third Avenue
New York, New York 10017
(212) 803-3782

-----Original Message-----

From: Lester, James [mailto:JLester@fcrc.com]
Sent: Friday, September 08, 2006 4:13 PM
To: Matlin, Steven
Cc: Millwater, Maryann
Subject: RE: AY

Steve: would 3 pm still work for you on Monday? I think that we could make that work. We would only loose Goldman and they are not essential to the meeting. We were hoping to get this setup as soon as possible. Thanks, Jim L.

From: Matlin, Steven [mailto:SMATLIN@empire.state.ny.us]
Sent: Friday, September 08, 2006 2:24 PM
To: Lester, James
Subject: RE: AY

Jim, Monday is not going to work. I will talk to my cfo and get some more times to consider.

Regards,

Steven Matlin
Senior Counsel
Empire State Development Corporation

Re AY lester 90806 (2).txt

633 Third Avenue
New York, New York 10017
(212) 803-3782

-----Original Message-----

From: Lester, James [mailto:JLester@fcrc.com]
Sent: Thursday, September 07, 2006 6:42 PM
To: Matlin, Steven
Subject: RE: AY

Steve:

On our side we could all do Monday (September 11) at 1 pm. I know that 1 pm wasn't one of the times you gave, but is there any way to make it work? We are having a bit of trouble scheduling this.

Also, could you please let us know who would be attending from your side? We would have:

- Jim Stuckey, President of Atlantic Yards Development Company
- Andy Silberfein, EVP FCRC Finance
- Chris Clayton, SVP FCRC Finance
- Me
- Stephen Lefkowitz, Fried Frank
- Greg Carey, Goldman Sachs (Managing Director, Municipal Finance)

Also, would you mind giving us a sense of what you want to cover? It would help us prepare for the meeting.

Sincerely,

Jim Lester

From: Matlin, Steven [mailto:SMATLIN@empire.state.ny.us]
Sent: Thursday, September 07, 2006 2:55 PM
To: Lester, James
Subject: RE: AY

Re AY Lester 90806 (2).txt

Jim, we can do any of the following:

Friday between 2 and 4pm

Monday 10-12

Monday 3-5

We would want to meet at 633 Third Avenue. I'm guessing we would not need more than an hour.

Let me know if any of the above work.

Regards,

Steven Matlin
Senior Counsel
Empire State Development Corporation
633 Third Avenue
New York, New York 10017
(212) 803-3782

-----Original Message-----

From: Lester, James [mailto:JLester@fcrc.com]
Sent: Wednesday, September 06, 2006 7:47 PM
To: Matlin, Steven
Subject: RE: AY

Excellent. Just let me know and I will pull together the team. Thanks, Jim

James Lester
Vice President
Commercial Development
Forest City Ratner Companies
1 MetroTech Center North

Re AY Lester 90806 (2).txt

Brooklyn, NY 11201

Office: (718) 923-8569

Fax: (718) 923-8569

From: Matlin, Steven [mailto:SMATLIN@empire.state.ny.us]
Sent: Wednesday, September 06, 2006 4:35 PM
To: Lester, James
Subject: AY

Jim, I received your voice mail and agree that a "financing structure" meeting would be a good idea. I will check with my cfo and others and suggest some times for us to meet.

Regards,

Steven Matlin

Senior Counsel

Empire State Development Corporation

633 Third Avenue

New York, New York 10017

(212) 803-3782

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Re AY Lester 90806 (2).txt

Thank you.

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Re AY walton 9806.txt

From: Walton, Frances A.
Sent: Friday, September 08, 2006 5:05 PM
To: Matlin, Steven
Subject: Re: AY

If you want to. I now have 4 pm out of the office but could be there for 45 minutes or so.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

-----Original Message-----

From: Matlin, Steven <SMATLIN@empire.state.ny.us>
To: Walton, Frances A. <FWALTON@empire.state.ny.us>
Sent: Fri Sep 08 16:13:58 2006
Subject: FW: AY

what do you think?

Steven Matlin
Senior Counsel
Empire State Development Corporation
633 Third Avenue
New York, New York 10017
(212) 803-3782

-----Original Message-----

From: Lester, James [mailto:JLester@fcrc.com]
Sent: Friday, September 08, 2006 4:13 PM
To: Matlin, Steven
Cc: Millwater, Maryann
Subject: RE: AY

steve: would 3 pm still work for you on Monday? I think that we could make that work. We would only lose Goldman and they are not essential to the meeting. We were hoping to get this setup as soon as possible. Thanks, Jim L.

From: Matlin, Steven [mailto:SMATLIN@empire.state.ny.us]
Sent: Friday, September 08, 2006 2:24 PM
To: Lester, James
Subject: RE: AY

Jim, Monday is not going to work. I will talk to my cfo and get some more times to consider.

Regards,

Steven Matlin
Senior Counsel

Re AY walton 9806.txt

Empire State Development Corporation
633 Third Avenue
New York, New York 10017
(212) 803-3782

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To: Matlin, Steven
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Sincerely,

Jim Lester

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We would want to meet at 633 Third Avenue. I'm guessing we would not need more than an hour.

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To: Matlin, Steven
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Excellent. Just let me know and I will pull together the team. Thanks, Jim.

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Vice President
Commercial Development
Forest City Ratner Companies

Re AY walton 9806.txt

1 MetroTech Center North

Brooklyn, NY 11201

Office: (718) 923-8569

Fax: (718) 923-8569

From: Matlin, Steven [mailto:SMATLIN@empire.state.ny.us]
Sent: Wednesday, September 06, 2006 4:35 PM
To: Lester, James
Subject: AY

Jim, I received your voice mail and agree that a "financing structure" meeting would be a good idea. I will check with my cfo and others and suggest some times for us to meet.

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Monday 3-5

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New York, New York 10017

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To: Matlin, Steven
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James Lester
Vice President
Commercial Development
Forest City Ratner Companies
1 MetroTech Center North
Brooklyn, NY 11201
Office: (718) 923-8569
Fax: (718) 923-8569

From: Matlin, Steven [mailto:SMATLIN@empire.state.ny.us]
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Subject: AY

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Thank you.

From: Shatz, Rachel
Sent: Friday, September 08, 2006 4:07 PM
To: Hulka, Ann; Matlin, Steven
Cc: Mooney, Maria
Subject: FW: Sep. 12 Community Forum

-----Original Message-----

From: Kang, Soo
Sent: Friday, September 08, 2006 3:58 PM
To: Shatz, Rachel
Subject: FW: Sep. 12 Community Forum

Below is the NYPD contact info. Who from ESDC should make the contact?

-----Original Message-----

From: Joyce Baumgarten [mailto:JBaumgarten@getodemilly.com]
Sent: Friday, September 08, 2006 3:56 PM
To: Kang, Soo
Subject: RE: Sep. 12 Community Forum

All done. The contact for you at the NYPD is Deputy Inspector Phil Sferraza, Commanding Officer 84th Precinct, 718-875-6811 or Police Officer Freddie Mitchell at the same number. They are expecting to hear from you. Let me know if you need anything else. Have a nice weekend.

From: Kang, Soo [mailto:SKang@empire.state.ny.us]
Sent: Friday, September 08, 2006 3:07 PM
To: Joyce Baumgarten
Subject: RE: Sep. 12 Community Forum

Yes, that would be great. Thank you.

-----Original Message-----

From: Joyce Baumgarten [mailto:JBaumgarten@getodemilly.com]
Sent: Friday, September 08, 2006 3:05 PM
To: Kang, Soo
Subject: RE: Sep. 12 Community Forum

We'll take care of it. Do you want the same thing for the 18th also and at the same time?

From: Kang, Soo [mailto:SKang@empire.state.ny.us]
Sent: Friday, September 08, 2006 2:54 PM
To: Joyce Baumgarten
Subject: RE: Sep. 12 Community Forum

Great. We would like everything delivered at 3:30 so that we have it all set before the start of the forum. Thanks.

-----Original Message-----

From: Joyce Baumgarten [mailto:JBaumgarten@getodemilly.com]
Sent: Friday, September 08, 2006 2:50 PM
To: Kang, Soo
Subject: RE: Sep. 12 Community Forum

I will get you the name of the NYPD contact and e-mail it to you. As for the food, no problem there either. Do you want the food delivered at 3:30 or just the water and chips and the food at 7:00?

From: Kang, Soo [mailto:SKang@empire.state.ny.us]
Sent: Friday, September 08, 2006 2:38 PM
To: Joyce Baumgarten
Cc: Shatz, Rachel; JMarshall@frc.com
Subject: Sep. 12 Community Forum

Hi Joyce -

Do you have a contact person at NYPD that we can contact to notify them of the upcoming Community Forum?

Also, would you be able to arrange for us again the food & drinks? It worked out well last time. We'll need enough for 20 people again. Also, I'd appreciate it if you could arrange for extra water & chips for the people working at the front (~40 bottles of water, ~20 small bags of chips). Delivery by 3:30 pm would be great.

Thank you.

Soo

Soo Kang
 Senior Planner, Planning & Environmental Review
 Empire State Development Corporation
 633 Third Avenue
 New York, NY 10017
 Tel (212) 803-3253
 Fax (212) 803-3855
 skang@empire.state.ny.us

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From: Lester, James [JLester@frc.com]
Sent: Thursday, September 07, 2006 6:42 PM
To: Matlin, Steven
Subject: RE: AY
Steve:

On our side we could all do Monday (September 11) at 1 pm. I know that 1 pm wasn't one of the times you gave, but is there any way to make it work? We are having a bit of trouble scheduling this.

Also, could you please let us know who would be attending from your side? We would have:

- Jim Stuckey, President of Atlantic Yards Development Company
- Andy Silberfein, EVP FCRC Finance
- Chris Clayton, SVP FCRC Finance
- Me
- Stephen Lefkowitz, Fried Frank
- Greg Carey, Goldman Sachs (Managing Director, Municipal Finance)

Also, would you mind giving us a sense of what you want to cover? It would help us prepare for the meeting.

Sincerely,

Jim Lester

From: Matlin, Steven [mailto:SMATLIN@empire.state.ny.us]
Sent: Thursday, September 07, 2006 2:55 PM
To: Lester, James
Subject: RE: AY

Jim, we can do any of the following:

Friday between 2 and 4pm
Monday 10-12
Monday 3-5

We would want to meet at 633 Third Avenue. I'm guessing we would not need more than an hour.

Let me know if any of the above work.

Regards,

Steven Matlin
Senior Counsel
Empire State Development Corporation
633 Third Avenue
New York, New York 10017
(212) 803-3782

-----Original Message-----

From: Lester, James [mailto:JLester@frc.com]
Sent: Wednesday, September 06, 2006 7:47 PM
To: Matlin, Steven
Subject: RE: AY

Excellent. Just let me know and I will pull together the team. Thanks, Jim

James Lester
Vice President
Commercial Development
Forest City Ratner Companies
1 MetroTech Center North
Brooklyn, NY 11201
Office: (718) 923-8569
Fax: (718) 923-8569

From: Matlin, Steven [mailto:SMATLIN@empire.state.ny.us]
Sent: Wednesday, September 06, 2006 4:35 PM
To: Lester, James
Subject: AY

Jim, I received your voice mail and agree that a "financing structure" meeting would be a good idea. I will check with my cfo and others and suggest some times for us to meet.

Regards,

Steven Matlin

Senior Counsel

Empire State Development Corporation

633 Third Avenue

New York, New York 10017

(212) 803-3782

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From: Kang, Soo
Sent: Thursday, September 07, 2006 2:42 PM
To: 'Linh_Do@AKRF.com'; 'charles_benson@akrf.com'; 'Britt_Page@akrf.com';
'jkhealy@bryancave.com'; 'pekarmel@bryancave.com';
'margaret.barry@bryancave.com'; 'cchanner@mtahq.org'; 'kass@clm.com';
'strell@clm.com'; 'McCarroll@clm.com'; 'JMarshall@fcrc.com';
'rdemarinis@fcrc.com'; 'meyerme@ffhsj.com'; 'paulina.williams@friedfrank.com';
'hadasko@nycedc.com'; 'David Quart'; 'phabib@phaeng.com';
'sgewirtzman@phaeng.com'; 'swright@phaeng.com'
Cc: Shatz, Rachel; Matlin, Steven; Copen, Jessica; Hulka, Ann; Mooney, Maria;
Stephens, Regina; Corcoran, Frank; Fletcher, Andrew
Subject: Atlantic Yards Project Team Meeting - Monday, September 11, 36th Floor
Hello All –

Please be advised that on Monday, September 11th there will be a two-part project team meeting: (1) at 2:00 pm to review the procedures for the Community Forums and (2) at 3:00 pm to review the to-do's list and schedule. Only AKRF, Bryan Cave and ESDC staff need to attend the 2:00 pm meeting. The rest can join the meeting at 3:00 pm.

Please note that we will be meeting in the 36th FLOOR CONFERENCE ROOM at ESDC.

Thank you.

Soo

*Soo Kang
Senior Planner, Planning & Environmental Review
Empire State Development Corporation
633 Third Avenue
New York, NY 10017
Tel (212) 803-3253
Fax (212) 803-3855
skang@empire.state.ny.us*

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Page 1 of 1

<u>Name & Title</u>	<u>Company</u>	<u>Address</u>	<u>Phone</u>	<u>Fax</u>	<u>Email</u>
Ann Hulka Sr. VP, Real Estate	Empire State Development Corporation	633 Third Avenue 36 th Floor New York, NY 10017	212-803-3513	212-803-3515	ahulka@empire.state.ny.us
Joseph Chan VP, Real Estate	Empire State Development Corporation	633 Third Avenue 36 th Floor New York, NY 10017	212-803-3233	212-803-3235	jchan@empire.state.ny.us
Joseph Petillo Senior Counsel	Empire State Development Corporation	633 Third Avenue 37 th Floor New York, NY 10017	212-803-3791	212-803-3991	jpetillo@empire.state.ny.us
Steven J. Matlin Senior Counsel	Empire State Development Corporation	633 Third Avenue 37 th Floor New York, NY 10017	212-803-3782	212-803-3982	smatlin@empire.state.ny.us
James Stuckey Executive Vice President	Forest City Ratner Companies	1 MetroTech Center North Brooklyn, NY 11201	718-923-8482	718-923-8782	jstuckey@fcr.com
Jane M. Marshall Vice President	Forest City Ratner Companies	1 MetroTech Center North Brooklyn, NY 11201	718-923-8457	718-923-8757	jmarshall@fcr.com
David Berliner General Counsel	Forest City Ratner Companies	1 MetroTech Center North Brooklyn, NY 11201	718-923-8405	718-923-8705	dberliner@fcr.com
Andrew Zlotnick Sr. VP, Commercial Development	Forest City Ratner Companies	1 MetroTech Center North Brooklyn, NY 11201	718-923-8467	718-923-8774	azlotnick@fcr.com
Steve Lefkowitz Counsel	Freid Frank Harris Shriver & Jacobson LLP	One New York Plaza New York, NY 10004	212-859-8780	212-859-4000	lefkost@ffhsj.com
Charles Webb Partner	Berger Stern & Webb LLP	900 Third Avenue New York, NY 10022	212-319-1900	212-319-2017	cwebb@bswny.com
Kenneth Applebaum Counsel	Berger Stern & Webb LLP	900 Third Avenue New York, NY 10022	212-319-1900	212-319-2017	kapplebaum@bswny.com
Judith Katz Counsel	Berger Stern & Webb LLP	900 Third Avenue New York, NY 10022	212-319-1900	212-319-2017	katzj@bswny.com

Re AY 9706 (2).txt

From: Lester, James [JLester@fcrc.com]
Sent: Thursday, September 07, 2006 3:02 PM
To: Matlin, Steven
Subject: Re: AY

Steve:

I will look into it and get back to you. Who would be attending from your side?

Thanks, Jim

-----Original Message-----

From: Matlin, Steven <SMATLIN@empire.state.ny.us>
To: Lester, James
Sent: Thu Sep 07 14:55:17 2006
Subject: RE: AY

Jim, we can do any of the following:

Friday between 2 and 4pm

Monday 10-12

Monday 3-5

We would want to meet at 633 Third Avenue. I'm guessing we would not need more than an hour.

Let me know if any of the above work.

Regards,

Steven Matlin
Senior Counsel
Empire State Development Corporation
633 Third Avenue
New York, New York 10017
(212) 803-3782

-----Original Message-----

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Sent: Wednesday, September 06, 2006 7:47 PM
To: Matlin, Steven
Subject: RE: AY

Excellent. Just let me know and I will pull together the team. Thanks, Jim

Re AY 9706 (2).txt

James Lester
Vice President
Commercial Development
Forest City Ratner Companies
1 MetroTech Center North
Brooklyn, NY 11201
Office: (718) 923-8569
Fax: (718) 923-8569

From: Matlin, Steven [mailto:SMATLIN@empire.state.ny.us]
Sent: Wednesday, September 06, 2006 4:35 PM
To: Lester, James
Subject: AY

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Re AY 9706 (2).txt

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 Thank you.

From: Kang, Soo
Sent: Thursday, August 17, 2006 4:08 PM
To: 'Linh_Do@AKRF.com'; 'charles_benson@akrf.com'; 'Britt_Page@akrf.com';
'jkhealy@bryancave.com'; 'pekarmel@bryancave.com';
'margaret.barry@bryancave.com'; 'cchanner@mtahq.org'; 'kass@clm.com';
'strell@clm.com'; 'McCarroll@clm.com'; 'JMarshall@fcrc.com';
'rdemarinis@fcrc.com'; 'meyerme@ffhsj.com'; 'paulina.williams@friedfrank.com';
'hadasko@nycedc.com'; 'David Quart'; 'phabib@phaeng.com';
'sgewirtzman@phaeng.com'
Cc: Shatz, Rachel; Hulka, Ann; Matlin, Steven; Mooney, Maria
Subject: Atlantic Yards Meetings Confirmation - Mon., Aug. 21, 2pm and Tue., Aug. 22, 1pm
Hello all –

The project team meeting is confirmed for **Monday, August 21st at 2 pm** in the 37th floor conference room at ESDC. The meeting will be to prepare for the August 23rd Public Hearing.

The follow-up meeting on transit elasticity is also confirmed for **Tuesday, August 22nd at 1 pm** to be held in the 37th floor conference room at ESDC. Ethan – would appreciate it if you could forward the meeting confirmation and location info to the MTA/NYCT folks since I don't have all of their email addresses.

Thank you.

Soo

*Soo Kang
Senior Planner, Planning & Environmental Review
Empire State Development Corporation
633 Third Avenue
New York, NY 10017
Tel (212) 803-3253
Fax (212) 803-3855
skang@empire.state.ny.us*

From: Kang, Soo
Sent: Friday, August 25, 2006 11:55 AM
To: 'Joyce Baumgarten'
Cc: Shatz, Rachel; 'Marshall, Jane'; 'Linh_Do@AKRF.com'; Matlin, Steven; 'Robert Haynes'
Subject: RE: September 12th
 Hi Joyce -

Steve Matlin in the email below suggests having the 2nd Community Forum on September 18th at City Tech. Please reserve the Klitgord Auditorium for September 18th from 4:30 pm on. Thank you.

Soo

-----Original Message-----

From: Shatz, Rachel
Sent: Friday, August 25, 2006 11:46 AM
To: Kang, Soo
Cc: Matlin, Steven; 'Linh_Do@AKRF.com'
Subject: Fw: September 12th

Soo-

Please forward to Joyce and confirm with Steve the hours of the Forum so we can finalize the website posting.

Thanks

 Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Matlin, Steven <SMATLIN@empire.state.ny.us>
To: Shatz, Rachel <RShatz@empire.state.ny.us>
Sent: Fri Aug 25 11:29:19 2006
Subject: RE: September 12th

Let's do Cititech on the 18th. Our position is that this is not a SEQRA hearing – just a venue to provide comments – so we should be ok with the short time period between hearing and close of comment period.

Steven Matlin
 Senior Counsel
 Empire State Development Corporation
 633 Third Avenue
 New York, New York 10017
 (212) 803-3782

-----Original Message-----

From: Joyce Baumgarten [mailto:JBaumgarten@getodemilly.com]
Sent: Friday, August 25, 2006 11:07 AM
To: Shatz, Rachel
Cc: Marshall, Jane; Linh_Do@AKRF.com; Kang, Soo; Matlin, Steven; Robert Haynes
Subject: RE: September 12th

Just read your e-mail and we are checking the other venues but City Tech is available on Monday, September 18th from 4:30 on.

From: Shatz, Rachel [mailto:RShatz@empire.state.ny.us]
Sent: Thursday, August 24, 2006 5:43 PM
To: Joyce Baumgarten
Cc: Marshall, Jane; Linh_Do@AKRF.com; Kang, Soo; Matlin, Steven
Subject: RE: September 12th

Can you please check LIU and Brooklyn College for the 13th and 14th? If they are not available, please check City Tech for Monday, Sept. 18th. We need to have a venue pinned down by tomorrow (Friday).

thank you.

-----Original Message-----

From: Joyce Baumgarten [mailto:JBaumgarten@getodemilly.com]
Sent: Thursday, August 24, 2006 3:20 PM
To: Shatz, Rachel
Cc: Marshall, Jane; Linh_Do@AKRF.com
Subject: RE: September 12th

As far as other venues most of the facilities hold 300 to 500 people. The only other big auditorium is Brooklyn College (1000 seats) which is not in the neighborhood but located south of Prospect Park. LIU has a gym that holds 1900 people but the base rental \$3,100 because they charge to put down a flooring to protect the gym. City Tech room charge is \$1,525. There is the Marriot Hotel but that will be expensive too and I don't know how ESDC feels about renting a hotel ballroom for a hearing.

From: Shatz, Rachel [mailto:RShatz@empire.state.ny.us]
Sent: Thursday, August 24, 2006 12:33 PM
To: Joyce Baumgarten
Subject: Re: September 12th

Is there another auditorium in the neighborhood we can use?

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Joyce Baumgarten <JBaumgarten@getodentilly.com>
To: Shatz, Rachel <RShatz@empire.state.ny.us>; Linh_Do@AKRF.com <Linh_Do@AKRF.com>
CC: Marshall, Jane <JMarshall@frc.com>
Sent: Thu Aug 24 12:28:30 2006
Subject: RE: September 12th

Don't apologize, I've checked so many dates that I can't remember anymore but off the top of my head I think it was taken all day. But I'm double checking right now and will let you know as soon as I get a response.

From: Shatz, Rachel [mailto:RShatz@empire.state.ny.us]
Sent: Thursday, August 24, 2006 12:25 PM
To: Joyce Baumgarten; Linh_Do@AKRF.com
Cc: jmarshall@frc.com
Subject: Re: September 12th

Joyce-

I apologize if I've asked and you've answered this already - is the room available on September 13th?

Thanks

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Joyce Baumgarten <JBaumgarten@getodentilly.com>
To: Linh_Do@AKRF.com <Linh_Do@AKRF.com>
CC: Shatz, Rachel <RShatz@empire.state.ny.us>; Marshall, Jane <JMarshall@frc.com>
Sent: Thu Aug 24 12:21:39 2006
Subject: September 12th

Hi Linh: With regard to your question about the availability of the City Tech auditorium earlier in the day on September 12th, it is not available until the same time as yesterday's hearing - 3:30 for lobby set up and 4:30 for auditorium. Sorry.

Joyce Baumgarten
Geto & de Milly, Inc.
130 East 40th Street
New York, N.Y. 10016
212/686/4551

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Thank you.

From: Joyce Baumgarten [JBaumgarten@getodemilly.com]
Sent: Friday, August 25, 2006 12:01 PM
To: Kang, Soo
Cc: Shatz, Rachel; Marshall, Jane; Linh_Do@AKRF.com; Matlin, Steven; Robert Haynes
Subject: RE: September 12th

We will do that now. I will let you know when it is confirmed because the 18th was information I got on Wednesday and I want to make certain nothing has changed in the interim before you advertise. We have left messages at the other two locations but have not heard back from either. I assume I can cancel those inquiries as soon as City Tech confirms.

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Subject: Re: September 18th

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To: Joyce Baumgarten
Cc: Shatz, Rachel; Marshall, Jane; Linh_Do@AKRF.com; Matlin, Steven; Robert Haynes
Subject: RE: September 12th

Hi Joyce -

Steve Matlin in the email below suggests having the 2nd Community Forum on September 18th at City Tech. Please reserve the Klitgord Auditorium for September 18th from 4:30 pm on. Thank you.

Soo

-----Original Message-----

From: Shatz, Rachel
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To: Kang, Soo
Cc: Matlin, Steven; 'Linh_Do@AKRF.com'
Subject: Fw: September 12th

Soo-

Please forward to Joyce and confirm with Steve the hours of the Forum so we can finalize the website posting.

Thanks

 Sent from my BlackBerry Wireless Handheld

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From: Matlin, Steven <SMATLIN@empire.state.ny.us>
To: Shatz, Rachel <RShatz@empire.state.ny.us>
Sent: Fri Aug 25 11:29:19 2006
Subject: RE: September 12th

Let's do Cititech on the 18th. Our position is that this is not a SEQRA hearing -- just a venue to provide comments -- so we should be ok with the short time period between hearing and close of comment period.

Steven Matlin
 Senior Counsel
 Empire State Development Corporation
 633 Third Avenue
 New York, New York 10017
 (212) 803-3782

-----Original Message-----

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To: Shatz, Rachel
Cc: Marshall, Jane; Linh_Do@AKRF.com; Kang, Soo; Matlin, Steven; Robert Haynes
Subject: RE: September 12th

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Cc: Marshall, Jane; Linh_Do@AKRF.com; Kang, Soo; Matlin, Steven
Subject: RE: September 12th

Can you please check LIU and Brooklyn College for the 13th and 14th? If they are not available, please check City Tech for Monday, Sept. 18th. We need to have a

venue pinned down by tomorrow (Friday).

thank you.

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To: Joyce Baumgarten
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To: Shatz, Rachel <RShatz@empire.state.ny.us>; Linh_Do@AKRF.com <Linh_Do@AKRF.com>
CC: Marshall, Jane <JMarshall@fcr.com>
Sent: Thu Aug 24 12:28:30 2006
Subject: RE: September 12th

Don't apologize, I've checked so many dates that I can't remember anymore but off the top of my head I think it was taken all day. But I'm double checking right now and will let you know as soon as I get a response.

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Sent: Thursday, August 24, 2006 12:25 PM
To: Joyce Baumgarten; Linh_Do@AKRF.com
Cc: jmarshall@fcr.com
Subject: Re: September 12th

Joyce-

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Thanks

 Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Joyce Baumgarten <JBaumgarten@getodemilly.com>
To: Linh_Do@AKRF.com <Linh_Do@AKRF.com>
CC: Shatz, Rachel <RShatz@empire.state.ny.us>; Marshall, Jane <JMarshall@fcr.com>
Sent: Thu Aug 24 12:21:39 2006
Subject: September 12th

Hi Linh: With regard to your question about the availability of the City Tech auditorium earlier in the day on September 12th. It is not available until the same time as yesterday's hearing -- 3:30 for lobby set up and 4:30 for auditorium. Sorry.

Joyce Baumgarten
 Geto & de Milly, Inc.
 130 East 40th Street
 New York, N.Y. 10016
 212/686/4551

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Thank you.

Re September 12th3 (2).txt

From: Shatz, Rachel
Sent: Friday, August 25, 2006 12:06 PM
To: Kang, Soo
Cc: Matlin, Steven
Subject: Re: September 12th

Steve-

Did we want to consider starting earlier for the last forum?

Rachel

Sent from my BlackBerry wireless Handheld

-----Original Message-----

From: Kang, Soo <SKang@empire.state.ny.us>
To: 'Joyce Baumgarten' <JBaumgarten@getodemilly.com>
CC: Shatz, Rachel <RShatz@empire.state.ny.us>; 'Marshall, Jane'
<JMarshall@fcrc.com>; 'Linh_Do@AKRF.com' <Linh_Do@AKRF.com>; Matlin, Steven
<SMATLIN@empire.state.ny.us>; 'Robert Haynes' <rhaynes@getodemilly.com>
Sent: Fri Aug 25 11:54:56 2006
Subject: RE: September 12th

Hi Joyce -

Steve Matlin in the email below suggests having the 2nd Community Forum on September 18th at City Tech. Please reserve the Klitgord Auditorium for September 18th from 4:30 pm on. Thank you.

Soo

-----Original Message-----

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Cc: Matlin, Steven; 'Linh_Do@AKRF.com'
Subject: Fw: September 12th

Soo-

Please forward to Joyce and confirm with Steve the hours of the Forum so we can finalize the website posting.

Thanks

Sent from my BlackBerry wireless Handheld

Re September 12th3 (2).txt

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Sent from my BlackBerry wireless handheld

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Sent: Thu Aug 24 12:28:30 2006
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To: Joyce Baumgarten; Linh_Do@AKRF.com
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Thanks

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Re September 12th3 (2).txt

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RE September 18th (2).txt

From: Linh_Do@AKRF.com
Sent: Friday, August 25, 2006 3:02 PM
To: Joyce Baumgarten
Cc: Marshall, Jane; Stuckey, Jim; Shatz, Rachel; Kang, Soo; Matlin, Steven
Subject: RE: September 18th

We don't plan to do another presentation so no screen or projector are needed. Sound system will be needed and I think the same set up with respect to one microphoned podium and hearing officer mike on stage. I defer to ESDC on need for another City Tech security officer.

"Joyce
Baumgarten"
<JBaumgarten@geto
demilly.com>

08/25/2006 02:47
PM

"Kang, Soo"
<SKang@empire.state.ny.us>

To

cc

"Shatz, Rachel"
<RShatz@empire.state.ny.us>,
<Linh_Do@AKRF.com>, "Matlin,
Steven"
<SMATLIN@empire.state.ny.us>,
"Marshall, Jane"
<JMarshall@fcrc.com>, "Stuckey,
Jim" <JStuckey@fcrc.com>

Subject

RE: September 18th

City Tech just called and wants to know if you will need the screen and projector set-up for the 18th. I assume you will be using their sound system but I also should tell him now if you want a third security guard?

From: Joyce Baumgarten
Sent: Friday, August 25, 2006 2:25 PM
To: 'Kang, Soo'
Cc: Shatz, Rachel; Linh_Do@AKRF.com; Matlin, Steven; Marshall, Jane; 'Stuckey, Jim'
Subject: Re: September 18th

Hi Soo: City Tech is confirmed for September 18th from 4:30 to midnight. I asked them to send the contract to Ann Hulka. Let me know if you need anything else. Have a nice weekend.

From: Joyce Baumgarten
Sent: Friday, August 25, 2006 12:01 PM
To: 'Kang, Soo'
Cc: Shatz, Rachel; Marshall, Jane; Linh_Do@AKRF.com; Matlin, Steven; Robert Haynes
Subject: RE: September 12th

RE September 18th (2).txt

We will do that now. I will let you know when it is confirmed because the 18th was information I got on Wednesday and I want to make certain nothing has changed in the interim before you advertise. We have left messages at the other two locations but have not heard back from either. I assume I can cancel those inquiries as soon as City Tech confirms.

From: Kang, Soo [mailto:SKang@empire.state.ny.us]
Sent: Friday, August 25, 2006 11:55 AM
To: Joyce Baumgarten
Cc: Shatz, Rachel; Marshall, Jane; Linh_Do@AKRF.com; Matlin, Steven; Robert Haynes
Subject: RE: September 12th

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Page 2

RE September 18th (2).txt

Robert Haynes
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RE September 18th (2).txt
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Thank you.

From: Marshall, Jane [JMarshall@ferc.com]

Sent: Tuesday, August 22, 2006 7:21 PM

To: Linh_Do@AKRF.com; Shatz, Rachel; Matlin, Steven

Subject: hearing time/ citiTech

CitiTech President has said he has no problem if you need to remain in the building and run your hearing into the wee hours of the morning. He just does not want anything in the contract that conflicts with his arrangement with the surrounding community. So you have it if you want it/ need it. Jane.

RE CitiTech security2 (2).txt

From: Joyce Baumgarten [JBaumgarten@getodemilly.com]
Sent: Friday, August 18, 2006 12:24 PM
To: Marshall, Jane; Matlin, Steven
Subject: RE: CitiTech security

Importance: High

I spoke to CityTech this morning and they are sending an amended contract to Ann Hulka for the additional two guards.

-----Original Message-----

From: Marshall, Jane [mailto:JMarshall@fcrc.com]
Sent: Friday, August 18, 2006 9:39 AM
To: smatlin@empire.state.ny.us; Joyce Baumgarten
Subject: Re: CitiTech security

Great thanks steve! Joyce, please inform cititech.

-----Original Message-----

From: Matlin, Steven <SMATLIN@empire.state.ny.us>
To: Marshall, Jane
CC: Hulka, Ann <AHULKA@empire.state.ny.us>
Sent: Fri Aug 18 09:34:16 2006
Subject: RE: CitiTech security

Jim mentioned that you were going to reach out to Citi tech to arrange for additional security for the outside. Ann can confirm, as necessary, that we will amend the contract to pick up the additional cost. Hopefully an e-mail or phone call will do.

Steven Matlin
Senior Counsel
Empire State Development Corporation
633 Third Avenue
New York, New York 10017
(212) 803-3782

-----Original Message-----

From: Marshall, Jane [mailto:JMarshall@fcrc.com]
Sent: Thursday, August 17, 2006 6:27 PM
To: Matlin, Steven
Subject: CitiTech security

For line management per your discussion with jim. Are we supposed to tell cititech to amend their contract they already sent to you or should Ann Hulka (to whom I think they sent the contract?) I am confused about what I am supposed to do. Do you have a suggestion?

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RE CitiTech security2 (2).txt
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Thank you.

From: Zlotnick, Andy [AZlotnick@ferc.com]

Sent: Monday, July 31, 2006 3:13 PM

To: Matlin, Steven; Petillo, Joseph; Charles S. Webb; Kenneth Applebaum; Judith Katz;
nrock@skadden.com; dhorowit@skadden.com

Cc: Berliner, David; Elman, Susan; Stuckey, Jim; Marshall, Jane; DeMarinis, Rebecca; Marek, Kelly;
Braun, Jeffrey L.; Leland, Richard G.; Folb, Kerri; stephen.lefkowitz@ffhsj.com;
melanie.meyers@friedfrank.com

Subject: Atlantic Yards Legal Notice

Steve, attached for your records are the final proofs of the Legal Notice published in the local Brooklyn papers and the publication dates. We have requested certifications of publication and I will circulate them when I receive them. Can you please send me the certifications of publication from the NY Post and City Record when you receive them? Thanks much.

From: Robert Haynes [mailto:rhaynes@getodemilly.com]

Sent: Monday, July 31, 2006 2:55 PM

To: Joyce Baumgarten; Zlotnick, Andy

Subject: RE: Atlantic Yards Legal Notice

Mr. Zlotnick,

Attached are the final proofs for the following publications, and the dates which the notice ran:

Brooklyn Daily Eagle - July 25th

Brooklyn Daily Challenge - July 25th

Courier-Life - Week of July 31st

The notice also ran in the Brooklyn edition of the *New York Daily News*; they were unable to provide a final proof prior to publication, and I am currently awaiting tear sheets of the notice. If you are interested, I can provide one for you when I receive them.

Please let us know if we can help you with anything else.

Thanks very much,

Robert Haynes
Geto & de Milly, Inc.
130 E 40th St, 16th Floor
New York, NY 10016-1726
212-686-4551

From: Charles_Benson@akrf.com

Sent: Monday, August 07, 2006 7:07 PM

To: meyerme@ffhsj.com; paulina.williams@friedfrank.com; jmarshall@fcrf.com; rdemarinis@fcrf.com; Shatz, Rachel; Kang, Soo; hadasko@nycedc.com; dquart@nycedc.com; strell@clm.com; mccarroll@clm.com; jkhealy@bryancave.com; margaret.barry@bryancave.com; pekarmel@bryancave.com

Cc: Linh_Do@AKRF.com; Britt_Page@akrf.com

Subject: CB 6 Public Hearing notes

CB6 Public Hearing

August 3, 2006

There were about 80 people in attendance, and only 26 people commented. Almost all of the commentators were residents in opposition. Aside from FCRC consultants that spoke, there were two speakers in support of the project – a union carpenter (Sean Campbell) and someone who associated himself with a group in support of the project (the speaker's name was Omar Wilkes and the group was called something like the Downtown Brooklyn Residents' Association).

Representatives from the following groups spoke in opposition: the Sierra Club (Ken Bayer), Council of Brooklyn Neighborhoods (Jim Vogel), and the Gowanus Community Stakeholders Group (Michael Carroll). Ronald Langletta from South Brooklyn Legal Services also spoke about their clients' opposition to three aspects of the relocation offer—1) the 3-year rent support is not adequate, considering the construction will take several years longer, 2) they aren't protected if FCRC pulls out and another developer steps in, and 3) they cannot publicly support the opposition.

There was at least one local paper represented (Brooklyn Papers, I think). Also, representatives from the offices of Joan Millman, Bill de Blasio, and Marty Markowitz were in attendance, but did not speak.

Most of the comments were ones that I had heard before (listed in order of repetition—most to least):

Community shut out of the process; not enough time to respond to the DEIS;
Traffic congestion;
Out of scale with surrounding area; will change character of the area;
Strain on infrastructure (energy and sewer – several people mentioned the impact of CSO's in the Gowanus Canal);
Air quality concerns with respect to increase in traffic; asthma rates;
Pedestrian and bicyclist safety will deteriorate with the additional traffic;
Overloading the subway station with people;
Blight and condemnation;
Existing public open spaces will be adversely affected as the project doesn't provide enough usable recreation space;
Construction noise and inconvenience;
Shadows;
Inappropriate use of public funds.

Following Margaret Barry's example, the following is a list of all of the speakers, their affiliations, and reference to primary issues and any comments that were outside the realm of the general.

Lee Anderson – resident in footprint

Inappropriate use of eminent domain; project should be scaled back; FCRC should tear down Atlantic Mall

Janet Zimmerman – resident

Project scale; area not blighted; traffic; community was not involved

Paul Heller – resident

ESDC didn't openly bid; not an appropriate use of public funds

Sean Campbell – union carpenter

Project will bring good jobs for minority workers

Irene Zimmerman – resident

Neighborhood will be negatively affected so that FCRC can profit

Ronald Langletta – South Brooklyn Legal Services

Representing 3 buildings in the footprint; spoke about their clients' opposition to three aspects of the relocation offer—1) the 3-year rent support is not adequate, considering the construction will take several years longer, 2) they aren't protected if FCRC pulls out and another developer steps in, and 3) they cannot publicly support the opposition.

Michael Carroll – Chairman, Gowanus Community Stakeholder Group

Traffic and transit impacts weren't accurately addressed in DEIS because the analysis underestimates the number of local people that will drive to the arena and retail (analysis assumes that most people will arrive at arena by public transit); pedestrian safety and public health (air pollution) concerns

Ira Smith – resident

Has a market study been completed for the housing: is there enough demand to fill these units? (Some new developments in downtown Brooklyn aren't fully occupied yet.)

Jim Vogel – Council of Brooklyn Neighborhoods

Transparency of project; financial projection analysis hasn't been released for public review yet; City excluded from the process; traffic, air quality, and sewage would be pushed to crisis levels and wouldn't be adequately mitigated

Sara Wenk – resident

Public open spaces will be adversely impacted; project-created open space won't provide enough recreational area to compensate

Jonathan Barkley – resident

Traffic; pollution; there should be a plan to improve pedestrian and bicyclist safety in area

Jonathan Cohen – resident

Strain on local infrastructure; out of scale; arena itself will be a blighting influence; mixing low and medium income housing with luxury doesn't work in high-rise building (better in mid-rise buildings)

Gloria Matera –

Need more time (at least 3 mos) to review and comment on DEIS; DEIS inflates number of jobs and affordable housing that will be provided; impacts will need to be considered along with BAM and other large planned developments nearby

Emily Sachs –

Project wasn't designed to provide affordable housing – it will actually reduce amount of affordable housing in overall area; out of scale; traffic

Lumi Raleigh –

Planning disaster - will create densest census tract in the country and infrastructure and traffic issues aren't being planned accordingly; Eminent domain issue is currently being decided in courts – project depends on this issue and so the opposition should not wane and CB should vote responsibly

Eric McClure – resident

Community/City shut out of process

Judy Frances – resident

Not enough open green space; Brooklyn Bridge Park-generated traffic should be included in analysis (as mass transit options not provided as part of that project); this project was not included in the Brooklyn Bridge Park EIS

Jim Stuckey – FCRC

Christine Rankin – resident

Transparency; traffic; infrastructure; shadows; project will divide community with its scale

Ken Bayer – Chair, NY Chapter of the Sierra Club

Infrastructure mitigation re: Gowanus Canal not adequate; air quality, traffic, and pedestrian safety; shadows on local parks and street trees; construction noise and other effects

Omar Wilkes – Downtown Brooklyn Residents' Association?

Project will provide youth centers and jobs for minorities; this community doesn't support the project because it has always turned its back on low-income minorities

Sam Schwartz – FCRC consultant

Sara Garowey – Brooklyn Bears Community Garden

No mitigation for air pollution; asthma; CSO's to Gowanus Canal; traffic; construction impacts

Pam Lippey – FCRC consultant

David Latham – resident

Community disenfranchised in process; out of scale

Natalie Burroughs – resident

Asthma related deaths and hospitalization in Brooklyn is highest in country; arena don't generate enough taxes to make it a fiscally-responsible investment

From: Hulka, Ann
Sent: Thursday, August 03, 2006 5:27 PM
To: Matlin, Steven
Subject: FW: \$1.5M from Atlantic Yards to ESDC

-----Original Message-----

From: Marshall, Jane [mailto:JMarshall@fcrc.com]
Sent: Thursday, August 03, 2006 5:12 PM
To: Hulka, Ann
Subject: FW: \$1.5M from Atlantic Yards to ESDC

Yea!

From: Russell, David
Sent: Thursday, August 03, 2006 5:08 PM
To: Marshall, Jane; DeMarinis, Rebecca
Subject: FW: \$1.5M from Atlantic Yards to ESDC

Looks like they made it today after all.

From: Miller, Kevin
Sent: Thursday, August 03, 2006 5:06 PM
To: 'Mooney, Maria'
Cc: Russell, David
Subject: \$1.5M from Atlantic Yards to ESDC

Maria,

The money was wired to ESDC today.

Thanks,

Kevin

Kevin Miller
Assistant Controller
Forest City Ratner Companies
1 MetroTech Center North
Brooklyn, NY 11201
(t) 718-923-5261 (f) 718-923-8872

From: Shatz, Rachel
Sent: Friday, September 15, 2006 12:17 PM
To: Hulka, Ann; Matlin, Steven; Petillo, Joseph
Cc: Mildenberger, Eileen; Copen, Jessica; Laremont, Anita
Subject: FW: Bklyn CB2: Atlantic Yards Position
FYI

-----Original Message-----

From: Hardy Adasko [mailto:HADasko@nycedc.com]
Sent: Friday, September 15, 2006 12:04 PM
To: Kang, Soo; Linh_Do@AKRF.com; charles_benson@akrf.com; Britt_Page@akrf.com; jkhealy@bryancave.com; pekarmel@bryancave.com; margaret.barry@bryancave.com; cchanner@mtahq.org; kass@clm.com; strell@clm.com; McCarroll@clm.com; JMarshall@frcr.com; rdemarinis@frcr.com; meyerme@ffhsj.com; paulina.williams@friedfrank.com; David Quart
Cc: Shatz, Rachel
Subject: Bklyn CB2: Atlantic Yards Position

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Thank you.

FW Brooklyn Downtown Star News Analysis with FriendlyCondemnations Like These .txt
From: Zlotnick, Andy [AZlotnick@fcrc.com]
Sent: Thursday, August 03, 2006 10:22 AM
To: Petillo, Joseph; Matlin, Steven; Charles S. Webb; Kenneth Applebaum;
Judith Katz
Subject: FW: Brooklyn Downtown Star: News Analysis: with
FriendlyCondemnations Like These...

Thought this might be of interest.... Mr. Locker has been saying this publicly for awhile now. The arguments seem extremely weak to us, but I thought you should see them nonetheless.

You may also have seen that Mr. Locker recently admitted to Norman Oder on his blog that he is being compensated on a contingency fee basis which probably tells us a lot about his motivation in putting forth these novel and eyebrow-raising legal theories.

News Analysis: with Friendly Condemnations Like These...
Brooklyn Downtown Star
By Norman Oder
Thursday, August 03, 2006

The eminent domain aspect of the Atlantic Yards controversy just got a little more interesting. It turns out that nearly all the properties on the 22-acre site would be subject to condemnation by the Empire State Development Corporation (ESDC), even though developer Forest City Ratner (FCR) says it owns or controls some 90 percent of the site. The reason? Most of the state's actions would be "friendly" condemnations, conducted with the assent of the properties' owner, FCR.

ESDC spokeswoman Jessica Copen explained: "when a development site is assembled by eminent domain, it is typical for the condemning authority to run any properties already owned by the developer through a 'friendly' condemnation, so as to clear any title defects that may have accumulated over the years."

While that is typical, there may be another reason. George Locker, a lawyer who represents 15 of the remaining 55 tenants in the project footprint, contends that the condemnations will allow Forest City Ratner to evict his clients, who live in buildings the developer purchased but are protected by rent-stabilized leases.

"This is about getting protected residential rental tenants out of buildings," he charged. "ESDC is condemning rent-stabilized leases, contrary to the MOU [Memorandum of Understanding], and in violation of the tenant's rights and benefits, and the landlord's obligations under rent-stabilization. All of this chicanery will be the subject of litigation." Locker acknowledged that the law was not settled. "To my knowledge, there is no reported case where eminent domain was used to remove rent-stabilized tenants when the developer was also the landlord," he said. "There are examples when eminent domain is used to pull out rent-stabilized or rent-controlled tenants from a landlord who's not the beneficiary of the condemnations."

While there is a process by which tenants in a rent-stabilized building can be moved if the building is demolished to construct another building, Locker said that the use of eminent domain would be faster for the owner, and incur fewer obligations.

What do the ESDC and FCR think of Locker's contention? It's hard to say, because neither returned our detailed requests for comment. The ESDC's new plans regarding eminent domain were announced but not fully confirmed on July 18, when the agency's board met and the General Project Plan and Draft Environmental Impact Statement were released. A memo to the board from Chairman Charles Gargano suggested two options, the developer would "either convey title to ESDC at no cost to the Corporation or that ESDC will, with the consent of Forest City, acquire title by condemnation."

FW Brooklyn Downtown Star News Analysis with Friendly Condemnations Like These .txt
Other documents, including an announcement issued a week later, confirmed that the state agency would acquire the developer's properties through "uncontested condemnation."

Attorney Locker pointed to a discrepancy between that policy and previous statements. A Memorandum of Understanding signed February 18, 2005, by the city, state agency, and developer stated that FCR "will convey or cause to be conveyed to ESDC the Controlled Properties for \$1 and will lease back or repurchase the properties for \$1." It did not mention uncontested condemnation.

Locker also cited a PowerPoint presentation to the New York City Council on May 26, 2005, in which the developer stated it had "substantially reduced the need for condemnation" by buying or purchasing a controlling interest in an increasing amount of property in the project footprint.

The use of eminent domain - the state's powers to condemn land - has been a hot-button issue nationally since the Supreme Court's controversial 2005 Kelo decision, which narrowly upheld the plan of the city of New London, Connecticut, to take private homes for redevelopment. There has been a backlash across the political spectrum; last month, the Ohio Supreme Court ruled unanimously against the efforts by the city of Norwood to use eminent domain for a private development. That case was decided under the state constitution, so the ruling would not have direct relevance in New York. Locker has previously tangled with Forest City Ratner on behalf of his clients. In June, tenants at 624 Pacific Street were rudely awakened at 6:15 a.m. when contractors began demolishing the adjacent 622 Pacific Street. They used a backhoe that sent vibrations through the wall of their building, 45 minutes before the official start of work.

The ESDC's Declaration of Emergency had quoted the developer as saying, "It will remove walls that abut the adjacent apartment building primarily with hand tools." Locker called the episode landlord "harassment," based in part on the reluctance of the residents of 624 Pacific to take a settlement - which he described as much less than the value of their leases - from the developer and agree to leave the building. The Department of Buildings issued three violations.

ESDC announced a relocation program for tenants that includes referrals to alternative housing, moving services and expenses, and a one-time payment of \$5,000 per household to help meet additional expenses and to encourage them to move as quickly as possible.

Locker scoffed at the announcement, saying that "even a competent broker can't find a \$600 rent-stabilized apartment in Brooklyn" and pointing out that more would be required under the rent stabilization law.

Forest City Ratner has also agreed that those who have lived in their residences for at least a year would get the right to return and rent a comparable unit in the Atlantic Yards complex at a comparable rent - seemingly a strong lure.

However, some renters have balked because they had been offered interim relocation assistance - the difference between their current rent-stabilized payment and the rent they would pay on the open market while the project was under construction - for only three years, and they weren't convinced that the project would be completed by then, if at all.

Another ownership dispute is pending. The ESDC's property map for the proposed project includes asterisks next to three properties around the corner of Pacific Street and Carlton Avenues: a six-story warehouse building and two adjacent parking lots. The map states that FCR has purchased the lease from the current leaseholder, but the property owner has objected. The leaseholder, developer Shaya Boymelgreen, and the property owner, Henry Weinstein, are in litigation.

From: Kenneth Applebaum [kapplebaum@bergerwebb.com]
Sent: Thursday, September 14, 2006 12:22 PM
To: Petillo, Joseph
Subject: FW: Con Ed Request for Repayment

Importance: High

-----Original Message-----

From: Charles S. Webb
Sent: Thursday, September 14, 2006 12:08 PM
To: Kenneth Applebaum
Subject: FW: Con Ed Request for Repayment
Importance: High

-----Original Message-----

From: Bicknell, Kate [mailto:KBicknell@fcrc.com]
Sent: Wednesday, September 13, 2006 1:49 PM
To: Zlotnick, Andy; Charles S. Webb; jpetillo@empire.state.ny.us
Cc: Hunt, John; Bonacuso, Thomas; Stuckey, Jim
Subject: Con Ed Request for Repayment
Importance: High

Charlie and Joe,

As discussed last night, attached is the letter we received from Con Ed requesting that FCRC pay for the relocation of their services. The other utilities - Verizon, Keyspan and Time Warner - have made similar statements verbally.

We have explained that the street will be condemned and overridden as part of the project, and that they must relocate at their own expense. However, they are putting their stake in the ground for the moment.

Finally, I have cc'd John Hunt from our office on this e-mail so that you may be in touch with him. John, Charlie is very interested in the case law on this subject. Would you please reach out to him to discuss and share the case law you have?

Thank you,

Kate Bicknell
Project Manager, Commercial Development
Forest City Ratner Companies
1 MetroTech Center North, Brooklyn, NY 11201
(718) 923 - 5264 (phone)
(718) 923 - 8742 (fax)

Matlin, Steven

From: Judith Katz [jkatz@bergerwebb.com]
Sent: Monday, July 24, 2006 12:00 PM
To: Petillo, Joseph; Matlin, Steven
Cc: Charles S. Webb; Kenneth Applebaum
Subject: RE: Atlantic Yards

Joe & Steve,

Here are our comments on the Tishman memo.

1. While the memo explains the need for block 1129 during the Phase 1 construction, it omits block 1128. It was our understanding that block 1128 is necessary for construction staging for the arena and the railyards.
2. p. 1, para. 3, last sentence. Isn't block 1129 (and block 1128 also) going to be used for interim open space after the phase 1 construction is completed and up until construction begins on these blocks?
3. Do we have a construction justification for Site 5?
4. p. 1, para. 4, last sentence. This sentence seems unnecessary and contradictory because the previous sentence rejects the scenario whereby block 1129 would not be needed in the first phase of construction. Also, this sentence supports the idea of a phased condemnation (i.e., condemning the property in two stages), and we don't want to do that.
5. p. 2, last para. While we agree with the concept that all the properties are required at the same time in part to "deliver revenue generating parcels as early as possible", can Tishman arrive at this conclusion?

Let me know if I can be of further help with this.

Judy

Judith Z. Katz
Berger & Webb, LLP | 1633 Broadway | New York, NY 10019 | (212) 319-1900 |
jkatz@bergerwebb.com <mailto:jkatz@bergerwebb.com>

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> -----Original Message-----
> From: Petillo, Joseph [mailto:JPETILLO@empire.state.ny.us]
> Sent: Friday, July 21, 2006 3:48 PM
> To: Charles S. Webb; Kenneth Applebaum; Judith Katz
> Subject: RE: Atlantic Yards
>
>
>
> Have you had an opportunity to review the draft Tishman memo that I
> circulated on July 11? While Tishman appears to reach the correct
> conclusion, I think there's lots of information and analysis that's
> missing. Tishman is waiting for ESDC's input before finalizing this
> memo. We would appreciate your critical comments.
>
>
>
> -----Original Message-----

Matlin, Steven

From: Lefkowitz, Stephen [lefkost@friedfrank.com]
Sent: Thursday, October 19, 2006 11:20 PM
To: nrock@skadden.com; Matlin, Steven
Cc: Jim Stuckey (E-mail); David Berliner (E-mail)
Subject: FW: IMPORTANT: Brooklyn

The summary is fine, with the one exception noted below concerning the MTA land.

-----Original Message-----

From: Lefkowitz, Stephen
Sent: Thursday, October 19, 2006 6:13 PM
To: 'Rock, Neil'; Lefkowitz, Stephen
Cc: Matlin, Steven; Nadborny, Adam[Lefkowitz, Stephen] k@skadden.com
Subject: RE: IMPORTANT: Brooklyn

Neil -- One question on the terms: We had asked that although the City is not funding MTA land, it be included in the formula. I think you have excluded it in par. 3(c). I don't see any reason why it should be excluded since we will have paid for it just like any other land. Could you please raise that at your meeting tomorrow. Otherwise, I am waiting for a few more sign-offs.

-----Original Message-----

From: Rock, Neil [mailto:NROCK@skadden.com]
Sent: Thursday, October 19, 2006 2:59 PM
To: Lefkowitz, Stephen
Cc: Matlin, Steven; Nadborny, Adam
Subject: IMPORTANT: Brooklyn

ESDC is having an internal meeting tomorrow morning at which I would like to try to get the funding arrangement approved. Please confirm my understanding that FCRC is willing to accept the following proposal:

1. State agrees to fund up to \$40,000,000 of infrastructure costs initially (the actual cap being set as the lesser of (a) actual infrastructure costs incurred, and (b) amount funded by City under 2. below);
2. City funds [\$40,000,000] for eligible land acquisition to ESDC, which ESDC funds to FCRC pursuant to a land purchase contract (with appropriate restrictive covenants placed on Land);
3. City and State each reimburse FCRC for land and infrastructure costs as follows:
 - (a) State funds only go to infrastructure;
 - (b) At no point will the amount funded by State, in the aggregate (including the initial funding) exceed the amount funded by City, in the aggregate (including the initial funding);
 - (c) Total of State and City contributions, in the aggregate (including the initial fundings) never exceed fifty percent of total qualifying land (excluding MTA) and infrastructure costs incurred, in the aggregate, by FCRC.

 To ensure compliance with Treasury Department regulations, we advise you that, unless otherwise expressly indicated, any federal tax advice contained in this message was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing

M E M O R A N D U M

October 10, 2006

To: Stephen Lefkowitz
From: Michael Schneider
File:
Re: Atlantic Yards – Arena Construction



Question Presented

1) Whether, under *N.Y. State Fin. Law § 137(1)*, a payment bond is required when nominal legal title, as well as tax and accounting ownership are vested in a public agency while the burdens and benefits of ownership remain with a private developer.

Brief Answer

1) No.

Statement of Facts

Empire State Development Corporation [“ESDC”], a public benefit corporation, will own the land on which the arena is to be constructed. That land will be leased to a local development corporation established by ESDC or the JDA, which will cause an arena to be built by a Forest City Ratner Company affiliate [“Forest City”]. When built, the local development corporation will sublease the arena to Forest City. For the initial term of the lease, Forest City will bear all the benefits and burdens of ownership; ESDC will retain ownership for tax and accounting purposes.

Discussion

Ordinarily, contractors and subcontractors may file mechanics' liens against an owner's property to ensure payment for materials and services rendered. *See N.Y. Lien Law § 4(1)*. However, for projects determined to be "public improvements," an alternative bond is required. *See State Fin. Law § 137(1)*. New York courts consider several factors in determining whether a project is a "public improvement" within the meaning of the statute. However, the key inquiry is which party bears the project's risks and benefits.

In *Davidson Pipe Supply Co., Inc. v. Wyoming County Industrial Development Agency*, 85 N.Y.2d 281 (2d 1995), the Court of Appeals considered this same issue. In *Davidson*, a privately owned company, Indeck, entered into an installment sale agreement with a public benefit corporation, WCIDA, to secure tax benefits in connection with the development of an energy cogeneration plant. *Id.* at 284. The plant was to be operated for steam and energy production, which would be sold to private companies. The project's risks and benefits were borne by Indeck. *Id.*

The court held that the project was not a "public improvement." *Id.* at 288. That WCIDA was a public benefit corporation was not the controlling factor. *Id.* at 286. Instead, the court relied on Indeck's use of the property. The court noted that Indeck was using the property to operate a business and would be responsible for the profits and losses. *Id.*

Our case is analogous to *Davidson*. Like *Davidson*, ESDC, a public benefit corporation, is the nominal landowner and will own the improvements for tax and accounting purposes, while the property will be developed and financed by a private

developer, Forest City. Forest City will lease the land and be responsible for paying the cost of the improvements. The facility will be used for operating a business, for which Forest City will bear the risk of loss. Therefore, our project is not a “public improvement” within the meaning of the statute.

In deciding *Davidson*, the Court cited and applied *Matter of Erie County Indus. Dev. Agency v. Roberts*, 94 A.D.2d 532, *affd on opn below* 63 N.Y.2d 810. *Davidson*, at 286. In *Erie County*, the Court emphasized the private character of the development agency’s business:

The conveyance of legal title to the agency with simultaneous lease back to the company is structured merely as a mechanism to facilitate financing and is not a genuine allocation of ownership in the agency. The economic benefits and burdens of ownership are reserved to the company and the agency serves only as a conduit for the tax benefits provided by such an arrangement . . . The agency’s role is strictly that of an intermediary to insure that private parties qualify for tax exemptions; it assumes no risk of loss and has no opportunity to gain.

Id.

Other New York courts have similarly interpreted section 137. Citing an appellate division case, the New York Supreme Court stated, “a ‘valid public improvement lien cannot be filed against the project if the commercial improvement is constructed by a private entity, rather than a State or public agency, on publicly owned real property.’”¹

In *Davidson*, the Court also considered legislative intent. In similar contexts, the Legislature previously defined “public improvement” to mean public facilities: courthouse, museum, monument and “other public structures . . . for the use of state or municipal employees and the public at large.” *Id* at 286-87. Similarly, the court rejected

¹ *Geller Electrical, Inc. v. Battery Park City Authority*, Nos. 104816/01, 600768/01, 2002 WL 1677667 (Sup. Ct. Jan. 3, 2002) (citing *Spring Sheet Metal & Roofing Company, Inc. v. County of Monroe Industrial Development Agency*, 226 A.D.2d 1064 (1996)).

the argument that mere ownership by a public benefit corporation triggers the alternative bond scheme provided in section 137(1). *Id.* at 287-89. Indeed, the court affirmed that the “statute’s application remains limited to ‘public improvements’ prosecuted by the public benefit corporation.” *Id.* at 288.

Our project does not fall within the class the Legislature considers to be “public improvements” because our project will be operated as a private business. Also, ESDC is only passively involved in the development and use of its property. Therefore, our project is not a “public improvement” and a payment bond is not required.

Effect of 2004 Amendment to Section 5 of the Lien Law

Effective November, 2004, Section 5 of the Lien Law was amended as follows:

Where no public fund has been established for the financing of a public improvement with estimated cost in excess of two hundred fifty thousand dollars, the chief financial officer of the public owner shall require the private entity for whom the public improvement is being made to post, or cause to be posted, a bond or other form of undertaking guaranteeing prompt payment of moneys due to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement.

Ch. 155, § 2, 2004 N.Y. Laws 568 (McKinney’s).

The legislative memorandum in support of the 2004 amendment [“the amendment”] provides that its purpose is to protect contractors and subcontractors “where no public fund has been established for the financing of a public improvement.” Memorandum in Support, Ch. 155, L. 2004, *reprinted in* 2004 McKinney’s Session Laws of New York 1695.

The amendment does not extend the reach of the statute as it still speaks only to “public improvements,” nor does it alter our conclusion. In *Davidson*, in

defining “public improvement,” the Court of Appeals focused on the property’s use, not its ownership. The Court affirmed that no “public improvement” exists where nominal ownership is vested in a public benefit corporation, while the benefits and burdens of ownership remain with a private entity. Similarly, the amendment deals only with “public improvements,” which are immune from mechanic’s liens. Applying the *Davidson* test, the arena is not a “public improvement;” therefore the amendment does not apply.

Further, the amendment addresses only those situations where no public fund has been established for the financing of a public improvement. Such a fund will be established for the arena. Bonds will be issued by a local development corporation established by the State, the proceeds of which will be held by a trustee, to be disbursed as construction proceeds. The establishment of this public fund protects contractors and subcontractors; therefore, even if deemed to be a public improvement, no bond should be required for the arena’s construction.

Matlin, Steven

From: Berliner, David [DBerliner@fcrc.com]
Sent: Thursday, September 28, 2006 5:39 PM
To: Matlin, Steven
Subject: FW: NS&E Significant Investors

Steve: attached is a list of direct and indirect owners of Nets Sports and Entertainment (the parent company of Brooklyn Arena, LLC) who have an interest of 5% or more. For Atlantic Yards Development Company, LLC, the only owners with greater than a 5% interest are: FCR Land, LLC and the Viola group. Of course, please call me with any questions. David

David Berliner
Executive Vice President and General Counsel
Forest-City Ratner Companies
tel. (718) 923-8405
fax (718) 923-8705
dberliner@fcrc.com

From: Madorsky, Benjamin
Sent: Thursday, September 28, 2006 4:21 PM
To: Berliner, David; Golub, Laurie
Subject: NS&E Significant Investors

David,

The attached chart details the holdings of those investors in NS&E with greater than a 5% stake (FCR Sports, Viola, Rabins, Lieberman).

Note that I've shown FCR Sports' indirect ownership as it looks after the transfer of BR Basketball's interests to Forest City Sports.

Ben

9/28/2006

Nets Sports & Entertainment, LLC

Significant Investors (those holding greater than 5%)

As of September 28, 2006

1 FCR Sports, LLC	20.7136%
FCR Sports, LLC (Class A)	20.6355%
Forest City Sports, LLC (100%)	
FC Basketball, Inc. (100%)	
Forest City Enterprises, Inc. (100%)	
FCR Sports, LLC (Class A through MDC Sports, LLC)	0.0781%
2 JMT Athletics, LLC	13.1372%
JMT Athletics, LLC (Class A)	5.1595%
The Michael Viola Benefit Trust (1/3)	
Teresa Viola (trustee)	
Susan King (trustee)	
Michael Viola (minor beneficiary)	
The John M. Viola Benefit Trust (1/3)	
Teresa Viola (trustee)	
Susan King (trustee)	
John Viola (beneficiary)	
The Travis Viola Benefit Trust (1/3)	
Teresa Viola (trustee)	
Susan King (trustee)	
Travis Viola (minor beneficiary)	
JMT Athletics, LLC (Series B-1)	7.1521%
(see structure above)	
JMT Athletics, LLC (Series B-2)	0.8256%
(see structure above)	
3 Arthur J. Rabin and Jason Rabin	8.2577%
Arthur J. Rabin	5.1624%
Arthur J. Rabin (Class A)	3.0953%
Arthur J. Rabin (Series B-1)	2.0671%
Jason Rabin (Class A)	3.0953%
4 50 Hoops, LLC (Gary Lieberman)	6.6079%
50 Hoops, LLC (Series B-1)	2.4805%
Gary Lieberman (100%)	
50 Hoops, LLC (Series B-2)	4.1274%
Gary Lieberman (100%)	