

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

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EAST HARLEM ALLIANCE OF RESPONSIBLE  
MERCHANTS, UPTOWN HOLDINGS LLC, HERON  
REAL ESTATE CORP., YORY, LLC, and HEE NAM  
BAE,

Plaintiffs-Petitioners,

**AFFIDAVIT OF CAROLEE  
FINK**

For a Judgment Pursuant to CPLR Article 78 and an Action

-against-

INDEX NOS.

CITY OF NEW YORK, CITY COUNCIL OF THE CITY  
OF NEW YORK, CITY PLANNING COMMISSION OF  
THE CITY OF NEW YORK, CITY OF NEW YORK  
DEPARTMENT OF HOUSING PRESERVATION AND  
DEVELOPMENT, NEW YORK CITY ECONOMIC  
DEVELOPMENT CORP., and DEPARTMENT OF  
SANITATION OF THE CITY OF NEW YORK,

08-117242

08-603829

(J. Lobis)

Defendants-Respondents.

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STATE OF NEW YORK     )

) ss

COUNTY OF NEW YORK    )

**CAROLEE FINK**, being duly sworn, deposes and says:

1. I am a Senior Project Manager in the Transaction Services Group of New York City Economic Development Corporation (“NYCEDC”). I have held this position since January 2008. Prior to holding this position, I was a Project Manager for a year, and beginning in 2006, I was an Analyst in the Group. I have a Bachelor of Science degree with a major in business management from the University of Rhode Island and a Master of Science in Real Estate degree from New York University.

2. NYCEDC is a not-for-profit corporation that serves as a vehicle for promoting economic growth and development throughout the five boroughs of New York City (“City”). Among other things, NYCEDC staff provides real estate development resources. The Transaction Services Group catalyzes economic growth by encouraging and facilitating development and utilizing real estate to generate the maximum benefit for the City and its residents. In my capacity as Senior Project Manager, I manage a portfolio of real estate development projects, including issuing Requests for Proposals (“RFPs”) and selecting developers, negotiating with developers, and coordinating with various City agencies in connection with these projects as they move through the various City approval processes.

3. I have been the project manager and served as the NYCEDC main point of contact for the East 125<sup>th</sup> Street Development Project (“East 125<sup>th</sup> Street Project” or “Project”) since October 2006. I am familiar with the facts and circumstances surrounding Petitioners’ claims as a result of my involvement in the Project, including my participation in the drafting of the RFP and review of proposals submitted in response. I make this affidavit based upon my personal knowledge, books and records of NYCEDC, and conversations with current NYCEDC staff and other City employees.

4. I submit this affidavit in support of Defendants’-Respondents’ (hereinafter “City Respondents”) Motion to Dismiss the Complaint, and in support of NYCEDC’s and City Respondents’ collective Answer to the Petition.

**Petitioners’ Claims**

5. Plaintiffs-Petitioners (hereinafter “Petitioners”) allege that City Respondents conspired to illegally and improperly circumvent their legal obligations in obtaining approval for the 15<sup>th</sup> Amendment to the Harlem East Harlem Urban Renewal Plan (“Plan” or “Amended

Plan”), which facilitated the East 125<sup>th</sup> Street Project (the “Project”). The Amended Plan allows the City, among other things, to acquire and dispose of property within the East 125<sup>th</sup> Street Project Site (the “Project Site”) for urban redevelopment.

6. Petitioners’ allegations include claims that NYCEDC and the New York City Department of Housing Preservation (“HPD”) violated the Uniform Land Use and Review Plan (“ULURP”), NYC Charter § 197-c, requirements by delaying the selection of a developer until after the City Council approved the Project (Pet. ¶¶ 64, 65; 154-170) and that because the proposed residential occupancy of the East 125<sup>th</sup> Street Project includes middle- and moderate-income, as well as low-income housing, it should not have been approved within an Empire Zone, where businesses are eligible for certain State subsidies. Petitioners also include claims regarding the acquisition or disposition of their property under the New York Eminent Domain Procedure Law (“EDPL”), which authorizes the condemnation of properties for an established public purpose.

7. None of these allegations, or Petitioners’ other allegations, has merit. The claims in the Complaint/Petition amount to nothing more than baseless innuendo and conspiracy theories. As set forth below, the land use review process for the Project was lawful in every respect and included all public participation and notifications required under ULURP, SEQRA/CEQR, and all other applicable laws. Moreover, Petitioners’ EDPL claims are premature, as, at this time, the City has not initiated any proceedings under the EDPL. When those processes do occur, both the acquisition and the disposition processes allow ample opportunity for public comment and responses.

## **The East 125<sup>th</sup> Street Project**

8. In New York State, Article 15 of the General Municipal Law (“GML”), also known as the Urban Renewal Law, was enacted with the express purpose of facilitating the redevelopment and rehabilitation of blighted or deteriorated areas designated as “Urban Renewal Areas.” GML § 501. The Project Area, in this case, is part of an urban renewal area initially established under this law in 1968, known as the Harlem East Harlem Urban Renewal Plan (“the Plan”).

9. The purpose of the Plan was and remains to redevelop the approximately 150 blocks that make up the Urban Renewal Area in a comprehensive manner by removing blight and maximizing appropriate land use. The Plan has been amended fifteen times, including the amendment challenged in this litigation, to enable the implementation of various economic development projects in Harlem and East Harlem.

10. The Project Site is comprised of approximately 5.5 acres within an area generally bounded by East 125th and East 127th Streets, and Second and Third Avenues in Manhattan. The Project Site also includes the southeast corner of Third Avenue and East 125th Street, and abuts the Special 125th Corridor District.

11. The Project Site is considered as three distinct parcels, corresponding to City blocks. R. at Ex. 10.

12. Parcel A, also known as Block 1791, is bounded north and south by 127<sup>th</sup> and 126<sup>th</sup> Streets respectively; and east and west by Second and Third Avenues respectively. This parcel includes, among other lots, Lot 34, owned by Petitioner Yory, LLC, which was not included in the Harlem East Harlem Urban Renewal Plan until the Fifteenth Amendment to that Plan.

13. Parcel B, or Block 1790, is bounded north and south by 126<sup>th</sup> and 125<sup>th</sup> Streets respectively; and east and west by Second and Third Avenues respectively. Parcel B includes, among other lots, Lot 8, owned by Petitioner Uptown Holdings, LLC; Lot 24, owned by Petitioner Heron Real Estate Corp.; Lots 28, 44<sup>1</sup>, and 46, owned by Petitioner Hee Nam Bae; and Lots 1, 101, 5, and 20, which are owned by private entities which are not parties to this litigation. Until the Fifteenth Amendment to the Harlem East Harlem Urban Renewal Plan, Block 1790, Lots 8 and 46 were not included in the Plan.

14. Parcel C, designated as Block 1789, is the lot on the southeast corner of Third Avenue and East 125<sup>th</sup> Street and consists of vacant land owned by the City.

### **History of the East 125<sup>th</sup> Street Project Proposal**

15. The Project Area has been the subject of proposed long-term, multi-phase urban renewal efforts over the past forty years. Opportunities to implement these renewal efforts have increased in recent years, as Manhattan's 125<sup>th</sup> Street has experienced renewed commercial development and private investment, typified by the Harlem USA retail complex, Harlem Center, and the recent 125<sup>th</sup> Street Corridor Rezoning.

16. The last major renewal plan for the Project Site prior to the current Project was known as "Uptown New York" and was proposed in 2002 by NYCEDC, in conjunction with HPD. Like the East 125<sup>th</sup> Street Project, Uptown New York was intended to encourage revitalization of the Project Area. However, the Uptown New York proposal was flawed in many respects and, eventually, was abandoned. Most significantly, Uptown New York was developed without much community input and, as result, was subject of widespread community opposition because it not address many of the community's needs, such as affordable housing.

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<sup>1</sup> Contrary to Petitioners' allegations (Pet. ¶ 76), Block 1790, Lot 44 is included in the Project Area. *See* Affidavit of Edwin Marshall.

Furthermore, it was a much larger project than the East 125<sup>th</sup> Street Project, and included nearly three million square feet in total, including approximately 700,000 square feet of commercial/retail floor area and approximately 1,500 units of mixed income housing, with massive high rise buildings. Uptown New York was abandoned in 2005 before environmental review was completed.

### **The Community Task Force and the RFP**

17. In January 2006, Community Board 11 (“CB11”) created a community-based task force to address the community’s major concerns and preferences for the Site.

18. The “Community Task Force” was comprised of representatives from CB11, the offices of Manhattan Borough President Scott M. Stringer and Council Member Melissa Mark-Viverito and other representatives of local community organizations.

19. The Community Task Force met bi-weekly with the City team, which included representatives from the Deputy Mayor’s office, the Department of City Planning (“DCP”), NYCEDC, and HPD, over a ten month period to establish consensus on development goals. The Task Force was charged with establishing a series of guidelines for a new project that incorporated community needs in regards to affordable housing, local participation, open space, community space, building height, and public amenities. These guidelines were directly incorporated into the RFP for the Project, which was issued when NYCEDC and the City reached a consensus on the guidelines with the Task Force. The RFP was issued by NYCEDC in October 2006. R. at Ex. 28.

20. The RFP described an approximately 1.7 million square foot development, which included, among other uses, space for residential, retail, commercial office, community facility, and not-for-profit performing/media arts uses. R. at Ex. 28, at 2.

21. As previously stated, the RFP incorporated requirements devised by the Community Task Force. The RFP required the Project to comply with a number of urban design and open space guidelines regarding building form, scale, bulk distribution, public amenities, and ground floor uses. R. at Ex. 28. Regarding affordable housing, based on community input, the RFP called for proposals to include a minimum of 700 and a maximum of 1,000 units of housing. The RFP stated that preference would be given to proposals that most closely met the following affordability goals: 30% of total units designated for low-income, 35% for moderate income, and 35% for middle income households. R. at Ex. 28, at 9. The proposed housing would be split between homeownership and rental units, with Community District 11 residents given preferential consideration for a minimum of 50 percent of these units. *Id.*

22. Additionally, any proposal was required to include a minimum of 50,000 square feet of retail space for local businesses, 30,000 square feet of cultural space, 2,500 square feet of public open space on Parcel A, and a minimum of 10,000 square feet of public open space on Parcel B, with direct access from East 125<sup>th</sup> Street and East 126<sup>th</sup> Street. R. at Ex. 28, at 7, 8.

23. The RFP also limited maximum building height and only allowed specified acceptable uses for ground floor spaces. For an improved pedestrian experience consistent with neighboring areas, high levels of glazing and transparency were required for retail establishments. R. at Ex. 28, at 7, 8.

### **Public Approval Process**

24. Since the Project required certain actions by the City, it was required to undergo a number of public review processes, including review under the City's Uniform Land Use Review Procedure ("ULURP"), Sections 197-c and 197-d of the New York City Charter, and environmental review under the New York State Environmental Quality Review Act

(“SEQRA”), 6 NYCRR Part 617, and its City counterpart, the City Environmental Quality Review (“CEQR”), 62 RCNY Chapter 5 and Mayoral Executive Order No. 91 of 1977. The accompanying Affidavit of Rachel Belsky provides a complete description of the Project’s environmental review under SEQRA/CEQR.

25. The actions requiring public review under ULURP included: (1) an amendment to the Harlem-East Harlem Urban Renewal Plan (Application No. C 080332 HUM); (2) the designation of an Urban Development Area and Project and disposition of city-owned property (C 080331 HAM); (3) amendment to the Zoning Map of the City of New York (the “Zoning Map”) to modify the existing zoning in the Project Site (C 080333 ZMM); and (4) additional property designations for the Amended Urban Renewal Area (N 090083 HGM). NYCEDC submitted applications for these actions on March 17, 2008 to DCP and the City Planning Commission (“CPC” and, with DCP, collectively, “City Planning”) to begin the ULURP process.

26. The City sought to amend the Harlem East Harlem Urban Renewal Plan to include certain parcels of land within the Project Site that were not yet part of the Urban Renewal Area, because these parcels are required for a comprehensive and uniform redevelopment of the Site. The City also amended the Harlem East Harlem Urban Renewal Plan to define the building form and bulk regulations for the Project, consistent with the guidelines established by the City and the Community Task Force.

27. HPD also sought approval for the disposition of the Project Site to NYCEDC, which in turn would grant the property to the developer for implementation of the Plan.

28. These applications additionally sought a change in zoning from R7-2, C4-4 and M1-2, to C6-3, which allows for all of the uses proposed for the East 125<sup>th</sup> Street Project.



29. City Charter § 197-c(e), (g) and Title 62 of the Rules of the City of New York (“RCNY”) §§ 2-03, 2-04 require that once an application is certified as complete by City Planning, it is sent to the affected Community Boards for review and recommendation. Here, City Planning certified all of the applications as complete on March 24, 2008, at which time they were referred to Community Board 11 (“CB 11”) and the Manhattan Borough President.

30. In accordance with ULURP, CB 11 reviewed the applications and, on May 20, 2008, it conducted a public hearing to consider testimony on the Proposed Actions. The Community Board voted on May 28, 2008 to adopt a resolution recommending disapproval of the applications. The vote was 30 in favor, 0 opposed, and 0 abstaining. R. at Ex. 12.

31. On July 2, 2008, Manhattan Borough President Scott Stringer issued his report recommending conditional disapproval of the applications as well. R. at Ex. 12.

32. My understanding is that the CB11 and Borough President recommended disapproval because NYCEDC had not designated a developer for the Project at that point. The designation of a developer prior to completion of the ULURP process is not required, but it would have been preferred by the Community Board and Borough President.

33. CPC must consider the Community Board’s and Borough President’s recommendations, but their role in the ULURP process is advisory. With respect to land use issues, a community board may “[e]xercise the initial review of applications and proposals . . . including the conduct of a public hearing and the preparation and submission to the city planning commission of a written recommendation.” City Charter §§ 197-c(e), (g), 2800(d)(17); 62 RCNY §§ 2-03, 2-04. However, these recommendations are strictly advisory.

34. CPC published notice of a public hearing in the City Record consecutively from July 14, 2008 to July 18, 2008, for July 23, 2008. R. at 13. At the July 23, 2008 public hearing,

eight speakers spoke in favor of the Project, including the City Councilmember from the 8<sup>th</sup> District and a representative from Local 32BJ service workers union. Four speakers spoke in opposition, including a representative from the Borough President's office and CB11, and two property owners, Daemon Bae (who I understand to be Petitioner Hee Nam Bae's son), and Gary Spindler, whose property would be affected by the proposed project.<sup>2</sup> R. at 15.

35. After considering public comments and deliberating on the applications, on August 27, 2008, CPC issued four separate Reports granting its approval of the applications. R. at Exs. 15-18.

36. Pursuant to City Charter § 197-d, CPC filed the Reports with the City Council. On September 16, 2008, the Subcommittee on Planning Concessions held a public meeting, which was noticed in the City Record. R. at Exs. 20-21. and the City Council Land Use Committee held a public meeting on October 7, 2008. The Subcommittee issued a joint report with the City Council Land Use Committee on October 7, 2008 recommending Council approval. R. at Ex. 25.

37. The full City Council gave approval to all four actions at its Council Meeting on October 7, 2008 and issued a resolution approving each of the actions (Resolution Numbers 1649, 1650, 1651, and 1648). R. at Ex.26.

### **The Project Site: Current Ownership and Intended Disposition**

38. At the time the RFP was issued, the City, NYCEDC and the Metropolitan Transportation Authority ("MTA") controlled 81% of the land and a total of sixteen of the twenty-seven lots comprising the Project Site. The City currently owns twelve of the twenty-

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<sup>2</sup> The public hearing on the DEIS was held on July 23, 2008 in conjunction with the Applications in accordance with CEQR. *See* 62 RCNY § 6-10(3)-(4). The CEQR review process for the Project is discussed in more detail in the accompanying Affidavit of Rachel Belsky.

seven lots, NYCEDC owns four, the MTA owns one, and private owners, including Petitioners in this proceeding, control ten.

39. As with all urban renewal plans under GML Article 15, successful completion of the Project Site will require acquisition by the City of the outstanding parcels, which includes properties owned by Petitioners. As noted in the RFP, the City is authorized to acquire, by condemnation if necessary, all non-City-owned property in the Urban Renewal Area, as amended pursuant to the Amended Plan. Although negotiation is always the City's preferred method for acquiring privately-owned parcels, the Community Task Force, as well as the private parcel owners have been informed from the outset that eminent domain was a possibility. NYCEDC made this clear throughout the process before the CPC and at community meetings.

#### **Designation of Developer**

40. The planning process for this Project was the subject of unprecedented community input and involvement. I understand that members of the community were frustrated that this involvement did not extend to the ability to negotiate with the developer during the land use review process. Contrary to Petitioners' contentions, however, the City complied with all legal requirements, including those for public hearings and reviews by the Borough President and Community Board, and is not obligated to designate a developer prior to completion of the regulatory approvals for an amendment to an Urban Renewal Plan.

41. After publishing the RFP in October 2006, NYCEDC received a number of submissions by the final date for proposals, January 12, 2007. After review, NYCEDC identified three of these submissions as serious contenders for the Project.

42. The RFP for this Project envisioned designation of a developer by September 2007. R. at Ex. 28, at 20. However, midway through 2007, in consultation with Deputy Mayor

Doctoroff, NYCEDC and HPD decided that waiting longer before designating a developer in order to foster competition among the three potential development teams would result in a better proposal.

43. While this approach, which resulted in the postponement of designating the developer for the Project until after ULURP was complete, is not conventional, it is completely consistent with the City Charter and all applicable laws and procedures, including the Urban Renewal Law. *See* the accompanying Affirmation of Haley Stein for a discussion of compliance with requirements under the Urban Renewal Law. Contrary to Petitioners' allegations, NYCEDC's and City's decision not to designate a developer prior to completing ULURP is not unlawful and does not constitute "illegal concealment of process." Pet. ¶ 172.

44. After the environmental and land reviews were complete, NYCEDC awarded the project to East Harlem M/E/C LLC, a team of six developers. City Hall publicly announced the developer on October 7, 2008, the day of the City Council vote.

45. Despite Petitioners' claims, Pet. ¶ 103, the Carey Group is not a "member" of the development team that was selected, rather it is a consultant retained by members of the development team.

46. NYCEDC and the City's selection of developer was not based on improper financial or personal considerations, as alleged by Petitioners, but rather, was based upon its assessment of which proposal would best further the interests of the City and its residents. Among other factors, the development team was chosen for its willingness to take risks and bring a significant amount of resources to the project, qualities that were particularly important to the City as the economy and credit market started to falter. Thus far, the designated development team has invested approximately three million dollars in the Project.

47. East Harlem M/E/C LLC, consists of Archstone-Smith, General Growth Properties, the Richman Group, Monadnock Construction, and local development partners Hope Community and El Barrio's Operation Fightback.

48. The members of this team collectively bring diverse skills and capabilities to the Project. General Growth Properties owns, develops, operates and/or manages retail facilities in 44 states that total approximately 200 million square feet and feature more than 24,000 stores. Archstone-Smith develops, invests and operates apartments and mixed-use projects in New York City, Baltimore-Washington Corridor and California. As of June 30, 2008, the company owned or had an ownership position in 418 communities, representing approximately 70,000 units, including units under construction. The Richman Group and its affiliates is a leading syndicator of low-income housing tax credits and developed more than 10,000 luxury and affordable residential housing units. Monadnock has extensive experience in the construction and rehabilitation of institutional, commercial, and multi-family residential buildings in New York City. Hope Community is an East Harlem community housing corporation that has managed and developed more than 1,400 units of affordable housing and owns and manages 37 commercial retail storefronts. Operation Fightback is a non-profit community development organization that has developed, marketed and managed approximately \$60 million in multi-family rental housing for the East Harlem community.

49. Although New York is experiencing challenging market conditions, the development team remains committed to the Project. Based on my extensive and ongoing discussions with the team, I believe the team has no intention of withdrawing from the Project. The potential insolvency of one entity does not in any way affect the solvency or commitment of the others or of the team that has been assembled. By awarding the Project to a team of

developers, the City and NYCEDC has ensured that the Project will go forward even if one entity withdraws due to financial difficulties.

50. At this time, NYCEDC is actively negotiating the contract of sale with the development team. EDPL proceedings have not yet begun.

### **Empire Zones**

51. The 125<sup>th</sup> Street Project area is also part of a State Empire Zone. Petitioners allege that the existence of the Empire Zone prohibits the City's approval of an urban renewal project. Pet. at ¶ 114. This claim is not true.

52. Under the New York State Empire Zone Program, businesses located within an Empire Zone and certified Empire Zone are eligible for tax credits, utility discounts, and low interest rate loans. The goal of this program is to encourage economic development, business investment, and job creation—to receive benefits, a business need only reside within the boundaries of an Empire Zone.

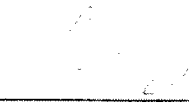
53. To take advantage of the State aid and subsidies associated with an Empire Zone, a business “which owns or operates a facility in an empire zone, or which plans to do so” must apply for “joint certification,” and the application must be approved by, among other entities, the New York State Commissioner of Economic Development, and the New York State Commissioner of Labor. *See* GML §§ 963(a), 969(w).

54. The process for determining whether a business in an Empire Zone is eligible for State subsidies requires approval from two State agencies, the Departments of Economic Development and Labor, which are not parties to this proceeding. GML § 963(a).

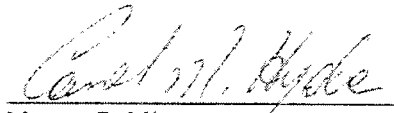
**Conclusion**

55. As shown above, contrary to Petitioners' allegations, the City legally and properly approved the Amended Plan and the related rezoning and other actions in connection with the East 125<sup>th</sup> Street Project.

56. The East 125<sup>th</sup> Street Project will bolster new development activity and promote economic development and local job creation, increase private investment, and improve the quality of life for East Harlem residents. The Project will facilitate the replacement of vacant and underutilized land with affordable housing and other mixed uses. The East 125<sup>th</sup> Street Project represents a comprehensive and balanced plan to guide the future development of the Project Site.

  
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CAROLEE FINK

Sworn to before me  
this 27<sup>th</sup> day of March, 2009.

  
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Notary Public

CAROL M. HYDE  
Notary Public, State of New York  
No. 47210  
Qualified to Perform Notary  
Commission Expires on Jan 2011