SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **IAS MOTION 37EFM**

Justice

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INDEX NO. 452302/2018

THE COUNCIL OF THE CITY OF NEW YORK, and MANHATTAN BOROUGH PRESIDENT GALE A. BREWER,

Petitioners,

MOTION DATE 12/07/2018, 12/07/2018, 03/25/2019

MOTION SEQ. NO. 001, 002, 004

- v -

THE DEPARTMENT OF CITY PLANNING OF THE CITY OF NEW YORK, NEW YORK CITY PLANNING COMMISSION, NEW YORK CITY DEPARTMENT OF BUILDINGS, THE CITY OF NEW YORK, and MARISA LAGO,

Respondents,

- and -

DECISION + ORDER

TWO BRIDGES ASSOCIATES, LP, LEI SUB LLC, and CHERRY STREET OWNER, LLC,

Intervenor-Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 29, 30, 31, 76, 77, 78, 79, 82, 209, 210, 211, 212

were read on this motion for INJUNCTION.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 2, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 186, 187

were read on this motion for CPLR ARTICLE 78 RELIEF.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208

were read on this motion for DISMISSAL/SUMMARY JUDGMENT.

Upon the foregoing documents, petitioners are hereby granted CPLR Article 78 relief, injunctive relief, and summary judgment, and respondents' cross-motion to dismiss is denied.

PREAMBLE

"Many New Yorkers applauded the development tornado roaring up Broadway. But there were others in Gotham who found the proliferation of skyscrapers appalling. Their distaste and dismay were rooted in the strikingly different vision they had in their heads of what New York ought to look like in the coming [20th] century, a vision in which skyscrapers were about as welcome as the Snake in the Garden. These New Yorkers dreamed of a horizontal, not a vertical, city, a metropolis of monumental (but low-rise) buildings of classic design, a cityscape of spacious open plazas linked together by grand and leafy boulevards. They wanted *not* a scattershot, profit-driven chaotic, and ugly city but one that was orderly, civic-minded, planned, and beautiful." Mike Wallace, Greater Gotham, A History of New York City from 1898 to 1919, Oxford University Press, 2017, at 163.

Plus ça change, plus c'est la même chose [The more things change, the more they stay the same].[1]

ACTION AND SPECIAL PROCEEDING

In this hybrid CPLR 3001 action and CPLR Article 78 special proceeding the New York City Council and the Manhattan Borough President claim that the New York City Planning Commission and the New York City Department of City Planning ran afoul of the law when they approved the building of four tall residential towers on the Lower East Side.

THE LOWER EAST SIDE

New York's legendary Lower East Side, roughly the area bounded by Houston Street to the north, Canal Street to the south, the FDR Drive to the east, and Bowery (it does not have a surname) to the west, has long been an immigrant gateway and working-class neighborhood. Its denizens have constituted a virtual Who's Who of America in such varied domains such as comedy, commerce, criminality, music, politics, and sports, including Joseph and Lyman Bloomingdale (founders of the eponymous luxury department store chain); George Burns (born "Nathan Birnbaum"); James Cagney; Jimmy Durante; Lady Gaga (born "Stefani Joanne Angelina Germanotta"); John Garfield (born Jacob Julius Garfinkle); Ben Gazzara (born Biagio Anthony Gazzarra); George Gershwin (born "Jacob Bruskin Gershowitz"); Samuel Gompers; Rocky Graziano (born "Thomas Rocco Barbella"); Edgar Yipsel ("Yip") Harburg (born Isidore Hochberg); Jacob Javits; Fiorello La Guardia; Meyer Lansky (born "Meier Suchowlański"); Henry Lehman (born "Hayum Lehmann"); Lucky Luciano (born "Salvatore Lucania"); Sidney Lumet; Joseph Mankiewicz; Groucho (born "Julius"), Chico (born "Leonard") and Harpo (born Adolph, later changed to "Arthur") Marx; Jackie Mason (born "Yacov Moshe Maza"); Walter

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[1] See also, Joseph Berger, *'It's Like Watching New York Melt': As Towers Rise, an Old Neighborhood Fades*, NY Times, July 29, 2019 ("A dozen glass towers with prices or rents as lavish as their amenities have opened in the past five years or are nearing completion in a neighborhood once celebrated for its homespun immigrant Middle and Eastern European character. Some of the buildings soar to 50 and 60 floors, far higher than the 20- or 30-story high-rises that residents are accustomed to"). https://www.nytimes.com/2019/07/29/nyregion/yorkville-tall-buildings-nyc.html?smid=nytcore-ios-share

Matthau (born "Walter John Matthow"); Samuel Joel ("Zero") Mostel; Charlie ("Yardbird") Parker; Lou Reed; Edward G. Robinson ("born Emanuel Goldenberg"); Walter Theodore ("Sonny") Rollins; Benjamin ("Bugsy") Siegel; Sheldon Silver; Johnny Thunders (born John Anthony Genzale); and Luther Vandross.[2]

THE PARTIES

Petitioner the Council of the City of New York ("the City Council") was established pursuant to authority granted by Article IX of the New York State Constitution (1963). Section 21 of the Charter of the City of New York ("the City Charter") states as follows:

> There shall be a council which shall be the legislative body of the city. In addition to the other powers vested in it by this charter and other law, the council shall be vested with the legislative power of the city. Any enumeration of powers in this charter shall not be held to limit the legislative power of the council, except as specifically provided in this charter.

Pursuant to the City Charter § 29(a)(2), the City Council "shall review on a regular and continuous basis the activities of the agencies of the city, including their service goals … ."

Petitioner Manhattan Borough President Gale A. Brewer has been the Manhattan Borough President since 2014. Pursuant to the City Charter § 82(9), Borough Presidents shall:

> Establish and maintain a planning office for the borough to assist the borough president in planning for the growth, improvement and development of the borough; reviewing and making recommendations regarding applications and proposals for the use, development or improvement of land located within the borough; preparing environmental analyses required by law; providing technical assistance to the community boards within the borough; and performing such other planning functions as are assigned to the borough president by this charter or other law.

Respondent New York City Planning Commission ("the Planning Commission") is a mayoral agency whose purview is planning for the beneficial use of land. Respondent Department of City Planning of the City of New York ("the Planning Department") provides staff and assistance to the Planning Commission. Respondent Marisa Lago is the Chairperson of the Planning Commission and Director of the Planning Department.[3] New York City ("NYC") Mayor, Bill de Blasio, appointed her to this position in 2017. Respondent New York City

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[2] Respondents will probably be quick to agree that the Lower East Side is a cauldron of re-invention.

[3] As their interests seem identical, this opinion will lump the Planning Commission and the Planning Department together as "the Planning Commission."

Department of Buildings ("the DOB") enforces NYC's building codes and zoning regulations and issues building permits and licenses. Respondent NYC is a municipal corporation organized and existing under the laws of the State of New York; it is indisputably the greatest city in the world — a global capital of art, commerce, culture, diplomacy, education, entertainment, fashion, finance, journalism, law, politics, publishing, sports, technology, and tourism.

Intervenor-Respondents Two Bridges Associates, LP; LE1 Sub LLC; and Cherry Street Owner, LLC ("the Property Owners") own real property on the Lower East Side and seek to erect tall, mostly residential buildings on their respective parcels.

THE LAW

The CPLR

CPLR 3001 empowers the New York State Supreme Court to "render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy, whether or not further relief is or could be claimed."

CPLR 6301 empowers the Supreme Court to grant a preliminary injunction if the movant demonstrates "a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor." Nobu Next Door LLC v Fine Arts Hous. Inc., 4 NY3d 839, 840 (2005).

CPLR 7803(3) empowers the Supreme Court to overturn an administrative determination that "was affected by an error of law or was arbitrary and capricious or an abuse of discretion."

The Zoning Resolution

New York City's Zoning Resolution ("ZR") was enacted on December 15, 1961; it is still in effect. "The Zoning Resolution provides a definite set of rules intended to guide development and inform property owners and the public about the range of possible development outcomes on every zoning lot in New York City." (New York State Courts Electronic Filing System ["NYSCEF"] Doc. No. 83, The City Respondents' Answer ¶ 92.)

> The proper function of zoning, although often misunderstood, is simple and clear-cut. Zoning regulations … control two things – first, the use of land and buildings, and second, the size and shape of buildings and their location in relation to each other and to lot lines.
>
> Use regulations allocate to each major type of activity land which is sufficient and appropriate for that purpose …
>
> Bulk regulations set a maximum limit on the intensity of development, thereby limiting congestion in living conditions and in pedestrian and vehicular traffic in each area. Moreover, within each level of density, such regulations place certain limitations on the shape and location of buildings, to protect light, air, and – in residential areas – privacy and open space. By these controls

> zoning regulations protect the desirable character of development in each area, real estate values, and the municipal tax base, and provide a framework for city agencies in predicting the need for various city services. In brief, zoning regulations in the long run determine the future city.

(NYSCEF Doc. No. 195, Plan for Rezoning the City of New York, A Report Submitted to the City Planning Commission by Harrison, Ballard & Allen, October 1950, at 1.)

The Planning Commission has discretion to issue special permits to condition, waive, or modify the ZR's regulation (bulk, use, and/or parking) of a given site. See generally ZR §§ 74-00, et seq. To grant a special permit, the Planning Commission must make the set of findings listed in the ZR for that particular type of special permit. The Planning Commission may elaborate on particular factors it deems essential to the granting of a special permit. In order to minimize a permit's adverse effects, the Planning Commission may also prescribe conditions, safeguards, and/or other restrictions.

ZR §§ 11-22 states that "[w]henever any provision of this Resolution and any other provisions of law, whether set forth in this Resolution or in any other law, ordinance or resolution of any kind, impose overlapping or contradictory regulations over the use of land … that provision which is more restrictive or imposes higher standards or requirements shall govern."

Chapter 8 of the ZR enacted special regulations that apply to every Large-Scale Residential Development ("LSRD"). Section 78-01 of the ZR, states, in pertinent part:

> [T]he regulations of this Chapter [8 - Special Regulations Applying to Large-Scale Residential Developments] are designed to allow greater flexibility for the purpose of securing better site planning for development of vacant land and to provide incentives toward that end while safeguarding the present or future use and development of surrounding areas and, specifically, to achieve more efficient use of increasingly scarce land within the framework of the overall bulk controls, to enable open space in large-scale residential developments to be arranged in such a way as best to serve active and passive recreation needs of the residents, to protect and preserve scenic assets and natural features such as trees, streams and topographic features, to foster a more stable community by providing for a population of balanced family sizes, to encourage harmonious designs incorporating a variety of building types and variations in the siting of buildings, and thus to promote and protect public health, safety and general welfare.

The City Charter's Uniform Land Use Review Procedure Provisions

Chapter 8 of the City Charter is entitled "City Planning" (the City Charter has a total of 76 Chapters). Within Chapter 8 is: § 197-c entitled "Uniform Land Use Review Procedure"

("ULURP"); § 197-d entitled "Council Review"; and § 201 entitled "Applications for Zoning Changes and Special Permits."

The City Charter § 197-c(a) provides, as here relevant, as follows:

> [A]pplications ... for changes, approvals, contracts, consents, permits or authorization thereof, respecting the use, development or improvement of real property subject to city regulation shall be reviewed pursuant to a uniform review procedure in the following categories: ... (4) Special permits within the jurisdiction of the city planning commission under the zoning resolution, pursuant to sections two hundred and two hundred one.

Section 197-d(c) ("final action") gives the City Council the power "to approve, approve with modifications, or disapprove" decisions of the Planning Commission (after which the Mayor has five days to register any disapproval).

Section 201(b) provides:

> Applications for special permits within the jurisdiction of the city planning commission under the zoning resolution may be filed by any person or agency. All such applications for the issuance of special permits shall be subject to review and approval pursuant to section one hundred ninety-seven-c and section one hundred ninety-seven-d.

Thus, land use changes requiring a special permit are subject to ULURP, including a final say by the City Council.

In this Court's view, in the grand scheme of things, the salient features of ULURP are input by a panoply of different sources (community boards; borough presidents; the Planning Commission; the City Council; the Mayor; and ultimate veto power by the executive [the Planning Commission] and the legislative [the City Council] branches of city government).

> ULURP was enacted in 1975, "in response to a perceived need for informed local community involvement in land use planning, for adequate technical and professional review of land use decisions and for final decision-making by a politically accountable body, the City's Board of Estimate." (2 Morris, New York Practice Guide: Real Estate § 20.04, at 20-47.) In its final report, the Charter Revision Commission indicated that prior to the 1989 revision of the Charter, the Board of Estimate had "final authority over land use decisions" and the Council "had no role in the land use review process" (Final Report of NY City Charter Rev Commn--Jan. 1989-Nov. 1989, at 7, 19, respectively). It noted that "[t]he basic change made by the 1989 charter amendments was to

> substitute the Council for the Board as the final decision maker in land use," and that "because racial and language minority groups will enjoy greater representation on the Council than they have had on the Board, they will be able to exert more influence if there is conflict with the mayor on a land use matter" (*id.*, at 20-21).

Quoted in, Council of the City of New York v Giuliani, 172 Misc 2d 893, 901 (Herbert A. Posner, J.), aff'd as modified, 231 AD2d 178 (1997), aff'd 93 NY2d 60 (1999).

In a short but powerful decision, Liska v City Council of the City of New York, 134 AD3d 461 (1st Dept 2015), the Court upheld a decision of the Hon. Joan Lobis, that dismissed a petition challenging the City Council's disapproval of a special zoning permit that the Planning Commission had granted:

> [T]he City Council's determination disapproving the City Planning Commission's (CPC) grant of a special permit to petitioners has a rational basis and is not arbitrary and capricious. Having reserved to itself the power to grant or deny a special permit, without enunciating standards for the exercise of its discretion the Council is not bound by the specific permit standards of New York City Zoning Resolution § 74-902, which circumscribes the CPC's review, but has broader review powers. It may consider policy issues. The Council properly denied petitioners' application upon consideration of matters related to the public welfare, including concerns about the over-saturation of similar buildings in the area, ... and the precedent that approval of the permit would set for overbuilding first and requesting permission after the fact.

Id. at 462 (citations omitted).

See also, Orth-O-Vision, Inc. v City of New York, 101 Misc 2d 987, 998 (Sup Ct, NY County 1979):

> [I]n the effectuation of the spirit and purpose of the law as set forth in the legislative findings and in light of the background as to the desired role for the local community boards, it would be an effective end run around these salutory safeguards mandating community participation [i.e., ULURP] if the present contract were permitted to be implemented without employing the procedure embodied in these charter amendments for community involvement.

As amicus curiae, the Municipal Art Society states:

> ULURP is the statutory framework for a joint public-private consideration of major land-use changes in the city. On a

> governmental level, it balances [the Planning Commission]'s experience and perspective with those of the City Council and Borough President. On a private level, it engages citizens early in the process and, through the City Council's authority to override the [Planning] Commission's decision, provides them with the leverage they need to ensure that the project respects both the letter and the spirit of the zoning laws.

(NYSCEF Doc. No. 76, Amicus Brief of the Municipal Art Society of New York, at 2.)

The Municipal Art Society further asserts that:

> ULURP provides a balance between the authority of the Mayor and his agencies, on the one hand, and the authority of the City Council on the other - a body closer to the ground, composed of people with a knowledge of their neighborhoods. This balance - a municipal "separation of powers" - is no less central to local land-use regulation than the balance between the President and Congress is to federal income tax legislation. The [Planning] Commission's decision [infra] upsets that basic equilibrium.

Id. at 4.

FACTUAL BACKGROUND

The "Two Bridges" neighborhood is so-called because of its proximity to the Brooklyn (opened 1883) and Manhattan (opened 1909) Bridges. In 1961, the Planning Commission designated the area bounded by Cherry, Montgomery, and South Streets and Pike Slip as the Two Bridges Urban Renewal Area ("Two Bridges URA"). (NYSCEF Doc. No. 8, City Planning Commission meeting minutes, June 28, 1961.) For those unfamiliar with this terrain, it is approximately five city blocks running just east of the Manhattan Bridge and north of the East River (which at that point is running more east-west than north-south). Put another way, it lies between the Manhattan and Williamsburg (opened 1903) Bridges, but much closer to the former.

On May 11, 1967, the Planning Commission designated the area bounded by Cherry, Montgomery, and South Streets and Market Slip, the latter of which is slightly west of Pike Slip, and just the other side of the Manhattan Bridge, as comprising the Two Bridges Urban Renewal Plan ("Two Bridges URP"). On June 9, 1967, the New York City Board of Estimate ("the BOE"), precursor to the City Council, approved the Two Bridges URP. The Two Bridges URP expired in 2007 by its own terms, after a 40-year life. (NYSCEF Doc. No. 9, City Planning Commission meeting minutes, May 11, 1967.)

In February 1972, the New York City Housing and Development Administration, precursor to the New York City Department of Housing Preservation and Development ("HPD"), submitted an LSRD plan[4] for the Two Bridges neighborhood:

> The intention of the Large Scale [Residential Development] Plan is to provide the best possible housing environment in terms of the analysis of the actual site and future development plans of the City. The proposed development of the sites, which emerged after discussions with community groups and potential sponsors, remove all the existing substandard and blighting structures [and] replac[e] them with a comprehensive and coordinated project of needed residential and community facilities, as well as commercial and related uses. The proposed redevelopment is consistent with and complementary to other developments within the neighborhood. The [LSRD] has been divided into 5 parcels: Parcel 8 is to be developed as a Public Park, Parcels 4 and 7 with [l]ow-income housing, and Parcels 5 and 6 with moderate[-] income housing.

(NYSCEF Doc. No. 196, Application for LSRD dated February 7, 1972, at third [unnumbered] page.)

In 1994, HPD submitted another LSRD plan for the Two Bridges neighborhood. In that application, HPD declared that "[t]he parcels have been planned as a unit to derive the maximum benefit from the available open space and views with a minimum adverse effect on the surrounding property." (NYSCEF Doc. No. 58, Application for LSRD dated August 8, 1994, at second [unnumbered] page.)

On or about May 17, 1972, the Planning Commission and the BOE approved an "Application for Large-Scale Residential Development Within Two Bridges Urban Renewal Area on Property Bounded by Pike Slip, Cherry Street, Montgomery Street and South Street, Manhattan" ("Two Bridges LSRD"). (NYSCEF Doc No. 10, Special Permit dated May 17, 1972.) A "special permit" and "special permit authorizations" were issued pursuant to Article VII, Chapter 8 of the ZR, at the request of the Housing and Development Administration. Id. The gist of the Two Bridges LSRD is to allow certain flexibility in what are otherwise inflexible ZR rules governing the location of rooms within buildings, the location of buildings within the Two Bridges LSRD, and height and setback requirements along Clinton Street[5] (which runs north-south through the

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[4] According to the Municipal Art Society, "[t]here are LSRDs throughout the city… [s]ince 2010, 19 of these have undergone ULURP review for modifications of one kind or another." See, Mayor's Office of Environmental Coordination, CEQR Access Portal (wwwl.nyc.gov/site/oec/environmentalquality-review/ceqr-access.page); (NYSCEF Doc. No. 76, Amicus Brief of the Municipal Art Society of New York, at 3.)

[5] Named after George Clinton, a general in the Revolutionary War and the first Governor of New York, not Bill or Hillary.

Two Bridges LSRD) and South Street. "The premises shall be developed in size and arrangement as stated in the application and as indicated on the plans filed with this application." (NYSCEF Doc. No. 206, Special Permit Authorization dated May 17, 1972, Condition One.) The Two Bridges LSRD is comprised of six parcels – 4A, 4B, 5, 6A, 6B, and 7 – totaling 371,154 square feet.

On February 9, 1977, pursuant to an HPD request, the Planning Commission approved two "special permits" revising how land could be used in the Two Bridges LSRD. (NYSCEF Doc. No. 60, Special Permit Authorization dated February 9, 1977.) The process was performed subject to ULURP. The Planning Commission noted as follows,

> c. The above location will not unduly increase the bulk of buildings, density of population, or intensity of use in any block, to the detriment of the occupants of buildings in the block or nearby blocks; and d. The above location will not affect adversely any other zoning lots outside the development, by restricting access to light and air or by creating traffic congestion.

Id. at pg. 3.

On January 18, 1995, the Planning Commission approved an application by HPD to modify the Two Bridges LSRD to allow for "(1) the grant of a special permit pursuant to Section 78-312(f) of the Zoning Resolution to allow the modification of the minimum spacing requirements as set forth in Section 23-71; and (2) for the grant of an authorization pursuant to Section 78-311(e) of the Zoning Resolution to allow the location of buildings without regard for the height and setback regulations [that] would otherwise apply along portions of [certain] streets." (NYSCEF Doc. No. 11, at 1.) The purpose was "to facilitate the development of a 21-story mixed[-use] building and a one-story commercial building on" Site 4B, consisting of 198 residential units. Id. "[T]he proposed modifications … allow for a reduced height in the building [which] should translate well into [its] surrounding[s] of 16-story to 26-story [sic, actually 27-story] residential structures and not adversely effect [sic] adjacent properties." Id. at 5. The application for the special permit "was duly referred to Community Board 3, Manhattan, and the Borough President in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules." Id. at 4. According to the report, "[t]he above resolution … , duly adopted by the City Planning Commission … is filed with the Office of the Speaker, City Council and the Manhattan Borough President, … in accordance with the requirements of [ULURP]." Id. at 9.

On March 7, 1995, the City Council approved the Planning Commission's approval in a "Resolution approving the decision of the City Planning Commission on ULURP No. C 950078 ZSM (L.U. No. 351), a special permit to allow the modification of the minimum spacing requirements as set forth in Section 23-71 of the Zoning Resolution." (NYCSEF Doc. No. 59, City Council Resolution No. 888.) Several of the "Whereas" clauses add some context:

> WHEREAS, the application is related to ULURP application numbers C 950077 HUM an amendment to the Two Bridges Urban Renewal Plan and C 950079 HAM, a disposition of property; …

> WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d(b)(3) of the City Charter;
>
> WHEREAS, the Council held a public hearing on March 1, 1995, on the Decision and Application;
>
> WHEREAS, the Council has considered the relevant environmental issues and the negative declaration, issued on July 28, 1994 (CEQR No. 94HPDO19M); and
>
> WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application.

Id. According to respondents, since 1972 the Two Bridges LSRD has been modified at least six times without ULURP review (apparently in or about 1973, 1977, 1982, 1985, 1986, and 1995). Also, according to respondents:

> In the course of the development of the Two Bridges URA, the City sought to take advantage of the flexibility afforded by authorizations and special permits under the LSRD regulations. The existing buildings on each of the six original parcels of the Two Bridges LSRD were thus developed pursuant to a series of land use approvals granted by [the Planning Commission] pursuant to Zoning Resolution Section 78-311 (Authorizations) or Section 78-312 (Special Permits) over a 23- year period, between 1972 and 1995. The Two Bridges LSRD was developed on a parcel-by-parcel basis, with development on each parcel approved separately from development elsewhere in the Two Bridges LSRD. There is no single special permit or authorization that governs the Two Bridges LSRD as a whole.

(NYSCEF Doc. No. 114, Affidavit of Wesley O'Brien ¶ 44.)

In 2016, the Property Owners submitted pre-application materials to the Planning Commission for what they characterized as "minor" modifications to the Two Bridges LSRD permit ("the Proposed Project"). (NYSCEF Doc. No. 13, Land Use Review Application.) The Property Owners sought permission to construct three buildings with four towers: a stand-alone 80-story tower; a 70-story tower and 63-story tower sharing a base; and a stand-alone 63-story tower. The Proposed Project would add approximately 2.5 million square feet of new space and 2,775 new dwelling units (to the existing 1,168 units) in the Two Bridges LSRD. The particulars (with some slight discrepancies in the parties' papers) are as follows:

Site 4 (4A/4B) (247 Cherry Street M 180507 (C) ZSM); a 1,008 foot, 80-story tower; 501,518 square feet of space; 660 standard dwelling units plus 10 senior citizen units relocated from an

existing building. (NYSCEF Doc. No. 48.) This site is bounded by Cherry (north) and South (south) Streets and Rutgers (east) and Pike (west) Slips.

Site 5 (260 South Street, M 180505 (A) ZSM); a 798-foot, 70-story (east) tower and a 748-foot 63 story (west) tower; 1,244,960 square feet of space; 1,350 dwelling units, on a shared podium. (NYSCEF Doc. No. 49.) This site is bounded by Cherry (north), Clinton (east), and South (south) Streets and Rutgers (west) Slip.

Site 6A (259 Clinton Street M 180506 (B) ZSM); a 730-foot, 63-story tower; 590,993 square feet of space; 765 dwelling units. (NYSCEF Doc. No. 50.) This site is bounded by Cherry (north), Clinton (east), and South (south) Streets and Rutgers (west) Slip.

(Note that the quantities [height in stories and feet, floor space in square feet, number of apartments] are not completely consistent in the parties' papers. However, the parties seem generally to agree that the tallest current building is 27 stories, and the tallest proposed building is 80 stories, i.e., 53 stories taller.)

In a letter dated June 22, 2016, petitioner Manhattan Borough President Gale A. Brewer, City Council Members Margaret Chin and Rosie Mendez, State Senator Daniel Squadron, Assemblywoman Alice Cancel, and Congresswoman Nydia Velazquez, urged then-Department of City Planning director Carl Weisbrod to initiate ULURP for the Proposed Project. "[T]he proposed addition of the new buildings to the site plan would dramatically affect the balance struck by [the Planning Commission] and the City Council in the grant of the original LSRD approvals. The scale of this change requires us to re-evaluate the findings." (NYSCEF Doc. No. 16, June 22, 2016 letter.)

In his August 11, 2016 response, Weisbrod acknowledged that the Proposed Project is "significant when each proposed [structure] is considered individually, and that the potential impacts to the surrounding neighborhood require unique consideration when the three proposed [structures] are assessed cumulatively." However, he concluded that the Proposed Project is a "minor" modification:

> The determination of whether a modification to a prior special permit is "major" or "minor" is based on whether the proposed modification would require new waivers or zoning actions or increase the extent of any previously granted waivers. The criteria governing this determination are those codified in Section 2-[06](g)(5)(ii) of the ULURP Rules … Here, because the proposed modifications will not require any new waivers or zoning actions or increase the extent of previously granted waivers, the modifications will be treated as "minor."

(NYSCEF Doc. No. 17, August 11, 2016 letter.)

In a letter dated March 27, 2017, entitled "Positive Declaration," the Planning Commission determined that the Property Owners would have to submit a Draft Environmental Impact

Statement ("the proposed action may have a significant effect on the quality of the environment … and … an environmental impact statement will be required"). (NYSCEF Doc. No. 202, Positive Declaration dated March 27, 2017, at 6.) The Environmental Impact Statement ("EIS") had to be produced pursuant to the City Environmental Quality Review Act, promulgated in 1977, pursuant to the State Environmental Quality Review Act, promulgated in 1975, and pursuant to the National Environmental Policy Act, promulgated in 1970. Id.

On May 25, 2017, petitioner Brewer testified before the Planning Commission at length, noting as follows: "I still find [the Planning Commission's] determination to interpret these applications as minor modifications disheartening. Determining them to be major modifications, which I still believe should be the case, would have subjected them to the appropriate level of scrutiny and triggered a Uniform Land Use Review Process, one of our city's most venerable systems of ensuring equity in an ever-changing city."

In a letter dated September 12, 2017 to the Urban Justice Center, Anita Laremont, General Counsel of the Department of City Planning, wrote that the Proposed Project constituted "minor modifications to the previously approved special permit." (NYSCEF Doc. No. 199, September 12, 2017 letter.)

On or about June 18, 2018, one of the Property Owners, Two Bridges Associates LP, asked the Planning Commission for a "minor modification" of the Two Bridges LSRD. The "minor modification" would be a new 70-story building at 260 South Street. (NYSCEF Doc. No. 62, Land Use Review Application.)

On June 22, 2018, the Property Owners applied to the Planning Commission to "modify" and "update" the Two Bridges LSRD site plan. (NYSCEF Doc No. 83 ¶¶ 33, 132, 135, 137.)

On November 23, 2018, the Planning Commission, which was the "lead agency" on the "Two Bridges LSRD Final Environmental Impact Statement" ("the FEIS") "accepted" it. (NYSCEF Doc. No. 51, Two Bridges LSRD FEIS.) The FEIS runs to over 800 pages (this Court has not counted them, but see NYSCEF Doc. No. 81, the Property Owner's Answer ¶ 54).

In a letter dated November 30, 2018, petitioner Brewer and City Council Member Chin wrote to the Planning Commission as follows: "a project cannot both trigger significant adverse impacts across a variety of categories and still be 'minor.' That is not a legal or planning framework that makes any sense to our constituents or us." (NYSCEF Doc. No. 67, November 30, 2018 letter.)

In a December 3, 2018 email to respondent Lago, City Council Speaker Corey Johnson asked the Planning Commission to disapprove the Proposed Project or to delay a vote thereon. "Processing the application as a 'minor modification' is not in the best interest of the neighborhood, nor is it supported under the law, as it inappropriately circumvents the statutory roles of the Community Board, the Borough President and the City Council in the City's land use process." (NYSCEF Doc. No. 22, December 3, 2018 email.)

In a letter dated December 5, 2018, and apparently written just prior to the Planning Commission's approval, respondent Lago wrote to petitioner Brewer and other elected officials

as follows: "after exhaustive review [the Planning Commission] has determined that this development is a minor modification of an existing large-scale residential development (LSRD). As such, there is no legal basis to require that the minor modification be subject to the Uniform Land Use Review Procedure (ULURP)." (NYSCEF Doc. No. 69, December 5, 2018 letter.)

On December 5, 2018, the Planning Commission acknowledged that the FEIS, (NYSCEF Doc. No. 51, Two Bridges LSRD FEIS), identified possible significant adverse impacts on the public elementary school population ("could result in a significant adverse impact on public elementary schools in Community School District [1]);" on publicly funded child care facilities ("the proposed projects could result in a significant adverse impact on child care facilities"); on open space ("reductions in the total, active, and passive open space ratios in the study area, resulting in significant adverse open space impacts based on the quantitative analysis of indirect effects"); on shadows ("[t]wo sunlight-sensitive resources would experience significant adverse shadows impacts: the Cherry Clinton Playground and the Lillian D. Wald Playground"); on traffic ("[t]he proposed projects would result in potential significant adverse traffic impacts at multiple locations in the traffic study area"); on transit ("[t]he proposed projects are expected to result in significant adverse subway stairway impacts"); and pedestrians ("[t]he proposed projects would result in significant adverse pedestrian impacts"). These "adverse impacts" could be mitigated in whole or in part (for example, by the construction of new subway stairways). (NYSCEF Doc. No. 24 at 4-6, 10-11.)

On December 5, 2018, by a vote of ten "for" and three "against," the Planning Commission approved the Proposed Project, (NYSCEF Doc. No. 24, at 24; Doc. No. 25, at 24; Doc. No. 26, at 24), with certain conditions (not relevant hereto) (NYSCEF Doc. No. 24, at 24-25). Ultimately, the Planning Commission deemed the Proposed Project to be a "minor modification." Id. at 17. The operative language is as follows:

> The application (M 180505(A) ZSM) submitted by the applicants for the grant of a modification to the previously approved LSRD (CP21885) that would facilitate development of an approximately 1,105,319 square feet of mixed residential-community facility floor area with 16,362 square feet of community facility space, the enlargement of an existing ground-floor retail space by approximately 5,319 square feet, and a new public open space of approximately 33,550 square feet located at 260 South Street (Block 247, Lots 1 and 5), in a C6-4 Zoning District, Borough of Manhattan, Community District 3, is approved.

Id. at 24. This approval followed the obligatory "Whereas…" clauses, including the two following ones:

> WHEREAS, the applicant's request for a modification to the previously approved LSRD … is subject to the Commission's determination that the findings made for previously granted authorizations and special permits within the LSRD remain valid;

> WHEREAS, the Commission believes that the findings made for previously granted authorizations and special permits within the LSRD remain valid; …

Id. at 20. The Two Bridges LSRD still exists, and the site plan, which the City Council approved, is still a component of it. The area is zoned C6-4, which does not limit the height of buildings. The Proposed Project is not as-of-right, because it will change the site plan.

The tallest building in the world, the Burj Khalifa in Dubai, United Arab Emirates, is 163 stories, 2,717 feet high; the Empire State Building is 102 stories, 1,454 feet high. The Proposed Project, if each tower was stacked one upon another, would be 276 stories, approximately 3,100 feet high.

As of May of 2019, the Property Owners had incurred over $18 million in pre-construction costs, and they continue to incur approximately $375,000 a month in carrying costs.

PETITIONERS' CAUSES OF ACTION

Petitioners' first cause of action, pursuant to CPLR 3001, asks this Court to declare that the Planning Commission's approval of the Proposed Project is ultra vires, and therefore null and void, because the Planning Commission approved the Proposed Project without subjecting it to ULURP, thereby attempting to usurp the authority of the Borough President and the City Council. Petitioners' second cause of action, pursuant to CPLR Article 78, asks this Court to find that respondents' approval of the Proposed Project, without ULURP, was arbitrary and capricious, an abuse of discretion, and incorrect as a matter of law. Petitioners' third cause of action, also pursuant to CPLR 3001, asks this Court to declare that respondents violated the New York City Administrative Procedure Act by using 62 RCNY § 2-06(g)(5)(ii) to determine that the Proposed Project was a "minor," rather than a "major," modification of the Two Bridges LSRD.

PETITIONERS' REQUESTS FOR RELIEF

Petitioners ask this Court for a judgment annulling and vacating the Planning Commission's December 5, 2018 approval of the Proposed Project; enjoining the Planning Commission from sending the DOB approval letters for the Proposed Project; declaring that the Planning Commission's decision that the Proposed Project did not require ULURP was illegal; declaring that the Proposed Project must undergo ULURP; enjoining the DOB from issuing building permits for the Proposed Project; and enjoining any construction work in furtherance of the Proposed Project.

THE PROPERTY OWNER'S MOTION

The Property Owners have moved, pursuant to CPLR 3211, to dismiss the petition, or in the alternative, pursuant to CPLR 3212, for summary judgment in its favor.

DISCUSSION

The Basis for the Planning Commission's Decision

> [A] bedrock principle of administrative law [is] that a "court, in dealing with a determination . . . which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency." If the reasons an agency relies on do not reasonably support its determination, the administrative order must be overturned and it cannot be affirmed on an alternative ground that would have been adequate if cited by the agency.

National Fuel Gas Distrib. Corp. v Public Serv. Commn., 16 NY3d 360, 368 (2011) (citations omitted); see also, Matter of Healy v Town of Hempstead Bd. of Appeals, 61 Misc 3d 408, 413 (Sup Ct, Nassau County 2018) ("[t]he grounds for the administrative decision must be contained within the determination reviewed so that the court can discern the rationale for the administrative action taken and undertake intelligent appellate review thereof"). Respondents correctly note that the final determinations at issue in this proceeding are the December 5, 2018 Planning Commission resolutions, (NYSCEF Doc. Nos. 24-26), none of which expressly refer to 62 RCNY § 2-06(g)(5)(ii). Petitioners fire back with Weisbrod's letter (which cites to and attaches 62 RCNY § 2-06(g)(5)(ii)), as well as two or three references by the Planning Commission to the subject provision, including one on its website. (NYSCEF Doc. No. 17, August 11, 2016 letter.)

The approvals do not mention the irrelevant provision. What went on in the heads of the Planning Commission members on December 5, 2018 we will never know. This Court believes that a fair reading of the approvals is that they were based on the facts that the Property Owners were not requesting a zoning change, were not requesting a new special permit, and were not expressly requesting that the Planning Commission modify an existing special permit. To find that the Planning Commission failed to make its rationale clear, or that it relied on an irrelevant provision, would mean requiring the Planning Commission to re-evaluate the Proposed Project, which would not be in anyone's interest. In any event, this Court finds herein that the Planning Commission simply erred in approving the Proposed Project without requiring ULURP review, rendering moot the question of whether the Planning Commission reached the correct conclusion for the wrong reason.

Before leaving this topic entirely, the Court notes that in their attempt to distance themselves from 62 RCNY § 2-06(g)(5)(ii), respondents argue that their frequent use of the term "minor" does not refer to that provision at all, but, rather, is shorthand slang for an application that does not require a special permit (and, thus, ULURP). Be that as it may, classifying the Proposed Project (276 total stories, 3,100 total feet high, 2.5 million square feet, 2,775 new dwelling units) as a "minor" modification to the Two Bridges LSRD is somewhat Orwellian (and/or reminiscent of the story about the emperor's new clothes). Requiring a 21-story structure to undergo ULURP, but not requiring an 80-story (and 70-story, and 63-story, and 63-story) structure to undergo ULURP, would be the height of irony (pun intended).

The Validity of the Planning Commission's Decision

Respondents are correct that requiring ULURP for land-use actions that the City Charter § 197-c(a) does not enumerate would improperly broaden the scope of ULURP. New York City Council v City of New York, 4 AD3d 85, 98-99 (1st Dep't 2004); Mauldin v New York City Transit Auth., 64 AD2d 114, 117 (2d Dep't 1978) ("Although we agree that the provisions of 197-c of the charter should be liberally construed, the applicability of that section is necessarily limited to the 11 [now 12] paragraphs of subdivision a thereof. It is insufficient to refer to the general introductory language of the section without also specifying which of the paragraphs of subdivision a is applicable.")

The Nub

The question that this case presents is whether the Proposed Project must undergo ULURP. The Property Owners are not seeking a zoning variance. They are not seeking to amend a prior special permit. They are not seeking a new special permit. Petitioners claim that although the Property Owners are not seeking a new special permit, they do, in fact, need one. This Court agrees.

Creation Confers Control

In 1972 the City legislative body (then the BOE; now the City Council) created the Two Bridges LSRD, and that body has nurtured it along ever since then. In 1977, the BOE, and again in 1995, the City Council, oversaw within it much smaller projects than the gargantuan one the Property Owners are now proposing.

As petitioners argue, ULURP "review would have ensured that the addition of the proposed developments to the previously approved LSRD special permit site plan did not alter prior findings and decisions of [the Planning Commission] and [the City] Council about the land and community within this LSRD."

> It cannot be disputed that, had these four towers and their disproportionate height, floor space, and units as compared to the rest of the neighborhood been included in the applications at the time the special permit governing the Two Bridges LSRD was adopted, their presence would have materially impacted how the applications were viewed and evaluated. The special permit cannot be unilaterally and irrevocably altered by [the Planning Commission] without the City Council's oversight and review and input of the Borough President and local community board.

(NYSCEF Doc. No. 46, Amended Petition ¶¶ 60, 66.)

A special permit is not required here solely because the Proposed Project is huge. And not every change to an LSRD requires a special permit. But a huge change to an LSRD that was created, and subsequently modified, pursuant to special permits, needs a new special permit. Simply put, if a special permit is necessary to create an LSRD, a special permit is necessary to transmogrify it.

That the special permit for a 27-story building did not expressly state that an 80-story building would not be allowed is beside the point. The City Council created the Two Bridges LSRD by approving special permits. The Proposed Project would effectively rewrite those special permits, which obviously did not provide for four towers between 63- and 80-stories high.

The approvals at issue here, in their very first sentences, indicate that they are "a modification to the previously approved LSRD." (NYSCEF Doc. Nos. 24-26.) The City Council previously approved the LSDR, in 1972. When the City Council approved the prior special permits, it allowed low-to-medium-rise buildings. The Property Owners were forced to apply to the Planning Commission because the existing LSRD site plan, derived from the special permits, does not allow the Proposed Project. Site plans are at the holistic hearts of neighborhoods. You cannot create a new site plan without a new special permit, at least not in a legislatively created LSRD.

Petitioners argue that the Two Bridges LSRD has been and must be developed "as a unit." Respondents see ad hoc development. The Two Bridges LSRD foundational document supports the former view:

> The proposed development of the sites [envisions] a comprehensive and coordinated project of needed residential and community facilities, as well as commercial and related uses. The proposed redevelopment is consistent with and complementary to other developments within the neighborhood. The parcels have been planned as a unit to derive the maximum benefit from the available open space and views with a minimum adverse effect on the surrounding property.

(NYSCEF Doc. No. 58, August 8, 1994 Application for LSRD in Two Bridges Urban Renewal Area, second (unnumbered) page.)

The City Council is entitled to evaluate whether the Proposed Project conforms to the lofty goals that the City Council previously approved.

Checks and Balances

As the current struggles in our nation's capital highlight, American governments rely on a system of checks and balances between the executive, legislative, and judicial branches. The City Council, even aside from having created the Two Bridges LSRD, as the City's legislative branch of government, should have a say in whether such a vast intrusion should be allowed into it. ULURP is not a draconian penalty; it is a process that gives a seat at the table to Community Boards, borough presidents, the Planning Commission, the City Council, and the Mayor (in short, all interested parties, either directly or by representation).

The 62 RCNY Section 2-06(g)(5)(ii) Analogy

Although 62 RCNY § 2-06(g)(5)(ii) is not directly relevant here, it informs by way of analogy. It sets forth the following criteria for the Planning Commission to consider when determining

whether a modification to a pending ULURP application is so significant that a whole new ULURP application is required:

> (A) increases the height, bulk, envelope or floor area of any building or buildings, decreases open space, or alters conditions or major elements of a site plan in actions (such as a zoning special permit) which require the approval or limitation of these elements; (B) increases the lot size or geographic area to be covered by the action; (C) makes necessary additional waivers, permits, approvals, authorizations or certifications under sections of the Zoning Resolution, or other laws or regulations not previously acted upon in the application; or (D) adds new regulations or deletes or reduces existing regulations or zoning restrictions that were not part of the subject matter of the earlier hearings at the community board or Commission.

As noted, this provision does not apply here, but it is nonetheless instructive. The first criterion for the Planning Commission to consider in determining whether a change to a ULURP application requires a new ULURP is whether the change "increases the height … of any building or buildings." The question the instant proceeding poses is whether ULURP is required, not whether a ULURP application needs to begin anew. But the criteria highlight that height is gravely important in land-use decision-making.

In Matter of Windsor Owners Corp v City Council, 23 Misc 3d 490, 502 (Sup Ct, NY County 2009) (James A, Yates, J.), the Court held that a new ULURP was not required because the "modifications reduced the project's size and scale and did not fall within any of the categories in 62 RCNY § 2–06(g)(5)(ii)." To the same effect is Glick v Harvey, 121 AD3d 498, 500 (1st Dept 2014), aff'd on other grounds, 25 NY3d 1175 (2015), holding "there was no need to restart the ULURP process to review modifications reducing the project's size and scale."

In sum, if 62 RCNY § 2-06(g)(5)(ii) sheds any light here, it shines it on ULURP review. Arguably, if an ongoing ULURP must be scrapped in favor of a new ULURP when a land-use proposal is modified in a major way – and the Proposed Project is nothing if not major – then a major modification to an LSRD in repose, which has already undergone ULURP, a fortiori, should undergo a new ULURP review.

The Concession Analogy

Another analogy that is instructive here, as petitioners persuasively posit (NYSCEF Doc. No. 46, Amended Petition ¶¶ 113-118), is to the City Charter § 374(b), which governs when a "concession," essentially a license for private use of public property, is to be considered "major," and thus subject to ULURP, or "minor," and thus not subject to ULRURP. That section provides that a concession is "major" if it "has significant land use impacts and implications, as determined by [the Planning Commission]" or if the law requires an EIS. Here, the Planning Commission required an EIS, and an FEIS was approved. Indeed, the Planning Commission's own rule, § 7-02, defines a concession to be "major" if it includes a new building of over 20,000 square feet on non-park land, less than 1% of the floor area of the Proposed Project.

Respondents argue that "concessions involve the private use of City-owned land (most typically inalienable property impressed with the public trust doctrine, such as parkland or City streets), whereas Property Owners' parcels are privately owned." (NYSCEF Doc. No. 82, the Property Owners Memorandum of Law at fn. 9.) True, the Property Owners' Proposed Project would occur on private property. But this Court fails to see why the public-private distinction should matter for significant environmental, land-use decisions.

The Impact of the Environmental Impact Statement

The Positive Declaration requiring an EIS did not automatically trigger ULURP. However, that the Planning Commission determined one to be necessary, and the numerous negative impacts it anticipates (to local schools, child care, open space, sunlight, traffic, transit, and pedestrians) militates in favor of input by the City's most representative local political bodies.

INJUNCTIVE RELIEF

For the foregoing reason, petitioners have succeeded on the merits. "A governmental entity's serious substantive and procedural violations of applicable laws are in and of themselves sufficient to establish a likelihood of success on the merits." Lee v New York City Dep't of Hous. Pres. & Dev., 162 Misc 2d 901, 909 (Sup Ct, NY County 1994) (Carol H. Arber, J).

The irreparable harm here is two-fold. First, a community will be drastically altered without having had its proper say. Second, and arguably more important, allowing this project to proceed without the City Council's imprimatur would distort the City's carefully crafted system of checks and balances. Under ULURP, the City Council's mandatory role is not merely to advise, but to grant or deny final approval (with the Mayor). Without ULURP, the City's legislature is cut out of the picture entirely.

Furthermore, courts have not hesitated to find that evading a required ULURP irreparably harms a community and balances the equities in favor of ULURP's proponents.

In Connor v Cuomo, 161 Misc 2d 889, 897 (Sup Ct, Kings County 1994), "various State and local legislators as well as community associations and individual area residents" challenged the transfer of city-owned land in Brooklyn for eventual use as "a 56-single-room-occupancy community residence." The Hon. Herbert Kramer issued a preliminary injunction halting the project because the transfer had not been subject to ULURP.

> The court finds that petitioners have sufficiently satisfied the requirements for a preliminary injunction *(see, Grant Co. v Srogi,* 52 NY2d 496, 517). Since the City failed to comply with the requirements of ULURP, petitioners have demonstrated a likelihood of success on the merits. A balancing of the equities also favors petitioners. Respondents may not utilize the condemnation process as a mechanism to avoid compliance with local laws, i.e., ULURP, and to bypass any meaningful formal community review. Petitioners have also demonstrated that they will be irreparably harmed if the preliminary injunction is not granted. Where the community's role is limited to

> recommendation, it is essential that it be empowered to make its recommendations at the very beginning of the land use review process before an action is implemented.

In Stop BHOD v City of New York, 22 Misc 3d 1136(A) (Sup Ct, Kings County 2009), "a group of community organizations, elected officials, and residents of neighborhoods in or near Downtown Brooklyn" sued the City to prevent the re-opening and expansion of the Brooklyn House of Detention. In ruling on petitioners' motion for a preliminary injunction, the Hon. Sylvia O. Hinds-Radix "split the baby," denying the motion as to the re-opening but granting the motion as to the expansion:

> "[I]rreparable injury means a continuing harm resulting in substantial prejudice caused by the acts sought to be restrained if permitted to continue" during the pendency of the proceeding.
>
> Where … a regulatory regime is implemented to ensure community involvement in government decision-making or to protect the public from potential harm, the government's failure to follow the law, in itself, constitutes irreparable harm to the community. Government officials must conduct legally mandated reviews and solicit community input as an integral part of the decision-making process in the land use context. These legally mandated obligations are each designed to protect the community and to allow them input and participation on important land use decisions by the City.
>
> In the case at bar, absent a preliminary injunction, petitioners will be irreparably harmed by the commencement of expansion of the BHOD without the City respondents conducting the legally mandated reviews which are designed to protect the community and to allow community participation and review in significant land use actions. Since [the City has] made significant plans for a contractor and are intending to proceed with the expansion of the BHOD then the petitioners have demonstrated irreparable harm. Petitioners should not be deprived of the opportunity for input and to make recommendations on the BHOD expansion project at the very beginning of the review process.
>
> A preliminary injunction is therefore necessary as to the expansion in order to preserve the status quo, during the pendency of this action, since to do otherwise would thwart the very purposes of the legally mandated reviews. The City respondents argue that there can be no irreparable harm to petitioners because there has been ongoing dialogue with petitioners and the DOC through correspondence and meetings over the course of several years. [T]here were discussions on the possible reopening of the facility.

> However, correspondences and meetings that have taken place are, by no means, a substitute for the legally mandated formal review procedures of … ULURP with respect to the City respondents' expansion of this facility.

Id., 13-14 (citations omitted).

Issues Not Addressed

The Court has considered many other issues, including those arising out of the City Administrative Procedure Act, the deed restrictions, the HealthCare Chaplaincy application, petitioners' attempt to amend the City Charter § 197-c, etc., but need not, and does not address them.

Development in New York City

This Court does not oppose, in knee-jerk fashion, or as a matter of politics, policy or personal predilection (which would be improper influences anyway), development in general or big buildings in particular. Indeed, in Churches United for Fair Housing, Inc. v Bill de Blasio, 2018 NY Slip Op 31826(U), 2018 WL 3646976 (Sup Ct, NY County), issued exactly one year ago, in another significant land-use decision, this court paved the way for construction, in South Williamsburg, Brooklyn, of eight mixed-use buildings, containing 1,146 residential apartments, housing an estimated 4,072 people (representing a 5.4% population increase within the surrounding half-mile), along with approximately 63,000 square feet of commercial space. This Court noted then, and still believes now, that "The City needs more housing … a lot more." Having found no legal impediment to that proposed project, this Court said that it would "not stand in its way one more day." That project had passed ULURP.

CONCLUSION

For the reasons set forth herein, petitioners are hereby granted CPLR Article 78 relief, injunctive relief, and summary judgment, and respondents' cross-motion to dismiss is denied. The December 5, 2018 approval by the Department of City Planning of the City of New York and the New York City Planning Commission of the proposal to develop further the Two Bridges Large Scale Residential Development area (the "Proposed Project") is hereby vacated; said respondents are hereby enjoined from sending the New York City Department of Buildings ("DOB") approval letters for the Proposed Project; it is hereby ordered that the Proposed Project must undergo the New York City Uniform Land Use Review Process ("ULURP"); DOB is hereby enjoined from issuing building permits for the Proposed Project and respondents are enjoined from performing any construction work on the Proposed Project prior to completion of ULURP.

Arthur F. Engoron

7/31/2019
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE