

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

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DEVELOP DON'T DESTROY BROOKLYN, et al., :

Index No. 100686/06

Petitioners – Respondents-Cross-Appellants, :

- against - :

EMPIRE STATE DEVELOPMENT CORPORATION, :

Respondent -Appellant-Cross-Respondent, :

-and- :

FOREST CITY RATNER COMPANIES, :

Respondent. :

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**MEMORANDUM OF LAW IN OPPOSITION  
TO APPLICATION OF PROPOSED AMICI  
FOR LEAVE TO FILE AMICUS CURIAE BRIEFS**

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MEAGHER & FLOM LLP  
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New York, New York 10036  
(212) 735-3000

*Attorneys for Empire State  
Development Corporation*

*Of Counsel:*

Douglas M. Kraus  
Angela G. Garcia

Respondent-Appellant-Cross-Respondent Empire State Development Corporation ("ESDC") submits this memorandum of law in opposition to the applications of Coalition of Brooklyn Neighborhoods ("CBN") and New York City Councilwoman Letitia James, New York Senator Velmanette Montgomery and U.S. Representative Major R. Owens (the "Elected Officials") for leave to file amicus curiae briefs in this appeal.

### **ARGUMENT**

#### **This Court Should Deny the Applications of CBN and the Elected Officials to Appear as Amici Curiae**

"The function of an amicus curiae is to aid, assist, and advise the court, but the office cannot be subverted to the use of a litigant in the case." 3B C.J.S. Amicus Curiae § 12. In deciding whether to grant leave to file an amicus brief, a court will consider: (i) whether the proposed amicus has a special interest in the case that is not represented competently or at all by the parties in the case; (ii) whether the proffered information is timely and useful; and (iii) whether the amicus is partial to a particular outcome in the case. *Id.* § 4. CBN and the Elected Officials fail to satisfy any of these factors.

CBN describes itself as a coalition of 28 community groups that have voiced concerns with "the cumulative effects" of the Atlantic Yards project, but asserts that it "does not take a position, for or against, the proposed

Project." (Affidavit of James Vogel, dated March 9, 2006, ¶¶ 1, 4) However, CBN fails to disclose that at least 11 of the 12 community group petitioners in this case are members of that coalition. See

[http://www.cbrooklynneighborhoods.homestead.com/CBN\\_info.html](http://www.cbrooklynneighborhoods.homestead.com/CBN_info.html) (Ex. A hereto);

[http://www.nolandgrab.org/docs/CBn%20\\_9%20outreach%20material.pdf](http://www.nolandgrab.org/docs/CBn%20_9%20outreach%20material.pdf) (Ex.

B hereto).<sup>1</sup> CBN further fails to advise the Court that Daniel Goldstein, one of the four individual petitioners here and the head of lead petitioner Develop

Don't Destroy Brooklyn, is a member of CBN's steering committee. See Jess

Wisloski, Civic Leaders Join to Fight Ratner, available at

[http://www.brooklynpapers.com/html/issues/\\_vol28/28\\_26/28\\_26nets6.html](http://www.brooklynpapers.com/html/issues/_vol28/28_26/28_26nets6.html)

(Ex. C hereto).

It is thus clear that, far from being an independent entity with no "position, for or against" the Atlantic Yards project, CBN is in fact the alter ego of petitioners here and shares petitioners' interest in the outcome of this case. Leaving aside CBN's lack of candor in failing to fully disclose its true identity and interest in this case, its obvious partiality, standing alone, warrants denial of its application to file an amicus curiae brief. See People v. Reason, 44 A.D.2d

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<sup>1</sup> Although the name of petitioner Prospect Heights Action Coalition does not appear on the list of member organizations on CBN's website, it appears on the stationery of CBN. (Ex. B)

533, 533, 353 N.Y.S.2d 449, 451 (1st Dep't 1974) ("a partisan Amicus curiae is a contradiction in terms"), aff'd 37 N.Y.2d 351, 372 N.Y.S.2d 614 (1975).

Moreover, because CBN and petitioners are clearly aligned in interest, it necessarily follows that CBN's views are already well represented by petitioners. Indeed, CBN's arguments are virtually identical to those already made by petitioners and add no new perspectives to the issues before the Court. For this reason as well, ESDC respectfully submits that CBN's application for leave to appear amicus curiae should be denied. See Franklin v. Krause, 83 Misc. 2d 42, 46, 371 N.Y.S.2d 757, 761 (Sup. Ct. Nassau County 1975) (denying five citizens leave to intervene as amicus curiae because parties were "represented by able counsel and the issues have already been presented in careful detail"); Rourke v. New York State Dep't of Corr. Servs., 159 Misc. 2d 324, 327, 603 N.Y.S.2d 647, 649 (Sup. Ct. Albany County 1993) (denying N.Y. Civil Liberties Union leave to appear as amicus "inasmuch as petitioner's contentions have been fully and ably presented" by other parties), aff'd 201 A.D.2d 179, 615 N.Y.S.2d 470 (3rd Dep't 1994).

As with CBN, the Elected Officials can hardly be said to be impartial or disinterested in the outcome of this case; as they admit in their brief, they represent constituents who they contend "are overwhelmingly opposed to the [Atlantic Yards] Project." (Brief of Proposed Amici James, Montgomery,

and Owens, at 2) Also, Councilwoman James herself has been vocal in her opposition to the Atlantic Yards project. See Tom Callan, Tish: Scrap Skyscraper Site from Downtown Plan, available at [http://www.brooklynpapers.com/html/issues/\\_vol27/27\\_12/27\\_12nets2.html](http://www.brooklynpapers.com/html/issues/_vol27/27_12/27_12nets2.html) (noting that Ms. James has "vocally opposed" the Atlantic Yards project) (Ex. D hereto). Cf. Rochdale Village Inc. v. Harris, 172 Misc. 2d 758, 762, 659 N.Y.S.2d 416, 419 (Civ. Ct. Queens County 1997) (denying amicus curiae status to District Attorney who was "partisan, and indeed adversarial").

And like CBN, the Elected Officials' arguments substantially mirror those already made by petitioners. Accordingly, they offer no unique or unrepresented perspective on the issues before the Court in this appeal, and their application to file an amicus brief should therefore be denied as well. See 212 East 68th Street Corp. v. City Rent Agency, 34 N.Y.2d 552, 553, 354 N.Y.S.2d 109, 109 (1974) (denying leave to file amicus brief because there was no showing that appellants were "not capable of a full and adequate presentation . . . or that amici curiae briefs would otherwise be of special assistance the Court").

Finally, the applications of CBN and the Elected Officials to appear as amici in this appeal should be denied for the further reason that they are untimely. The scheduling order entered by the Court in this expedited

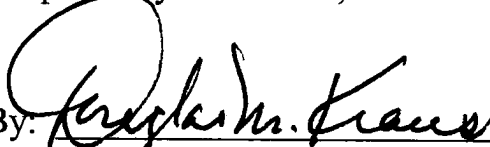
appeal provided for petitioners to file their opposition to ESDC's appeal of Mr. Paget's disqualification on February 28, 2006 and for ESDC to file its reply on March 7. Petitioners are not entitled to file a further reply on the disqualification issue. However, by waiting until March 10 to file their applications for leave to file amicus briefs -- which are devoted solely to the issue of Mr. Paget's disqualification -- CBN and the Elected Officials, who are plainly partial to petitioners on this issue, have effectively given petitioners a sur-reply on the disqualification issue, to which they would not otherwise be entitled. This is improper and prejudicial to ESDC.

### **CONCLUSION**

For all the foregoing reasons, this Court should deny the applications of CBN and the Elected Officials for leave to file amicus briefs.

Dated: March 17, 2006  
New York, New York

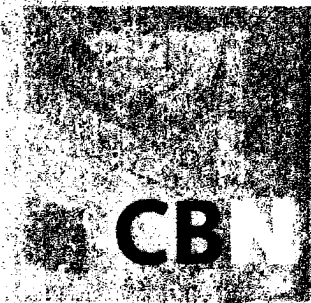
Respectfully Submitted,

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*Attorneys for Empire State  
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# **EXHIBIT A**



# COUNCIL OF BROOKLYN NEIGHBORHOODS

201 Dekalb Avenue

Brooklyn, NY 11205

718-408-

3219 [cbrooklynneighborhoods@hotmail.com](mailto:cbrooklynneighborhoods@hotmail.com)

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CBN Info

The Project

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RFP ?s



The Council of Brooklyn Neighborhoods grew out of a series of discussions Brooklyn Boro President Marty Markowitz held in the Spring of 2004 with members of a number of community groups to better understand their concerns regarding the proposed development of the Brooklyn Atlantic/ Vanderbilt Yards.

During these discussions it became clear to all concerned that a development of this scope would require the participation of as many sectors of the community as possible. The Council of Brooklyn Neighborhoods is composed of community groups, business groups and churches in Community Board Districts 2, 3, 6, and 8. We are currently concentrating solely on ensuring an effective community participation in th Environmental Review process.

We hold General Membership meetings on the 1st Tuesday of every month at the time and place listed on our Calendar. A Steering Committee selected by the general membership by regularly scheduled vote meets twice a month.

If you would like to be notified of our events and outreach programs, please send a letter to the address listed above or send an email request to: [cbrooklynneighborhoods@hotmail.com](mailto:cbrooklynneighborhoods@hotmail.com).

## Member Organizations

The following organizations are full members of the Council of Brooklyn Neighborhoods. We also work with a number of other Brooklyn organizations and individuals. We are happy to work with any Brooklyn group and hope you will consider [joining us!](#)

- 1700 Dean Street Block Association
- Atlantic Avenue Betterment Assoc.
- Bed- Stuy Family Health Center
- Black Veterans for Social Justice
- Boerum Hill Association
- Brooklyn Vision Foundation, Inc.
- Carlton-Willoughby Block Association
- Central State Block Association
- Clinton Hill Apartment Owners Corp.
- Clinton Hill Society
- Develop Don't Destroy Brooklyn
- East Pacific Street Block Association
- Fifth Avenue Committee
- First Street Block Association
- Fort Greene Association
- Gowanus Canal CDC
- Pacific 400 Block Association
- Park Slope Civic Council, Inc.
- Park Slope Fifth Avenue Merchants Association
- Park Slope Neighbors
- Pratt Area Community Council
- South Portland Block Association
- Prospect Heights Neighborhood Development Council



**Support the  
Hurricane Katrina  
Relief Effort**

## Administrative Information

# **EXHIBIT B**



## **COUNCIL OF BROOKLYN NEIGHBORHOODS**

201 Dekalb Avenue Brooklyn, NY 11205 718-408-3219  
email: CBrooklynNeighborhoods@hotmail.com  
www.CBrooklynNeighborhoods.homestead.com

Formed with the participation of:

Atlantic Avenue Betterment Association

Boerum Hill Association

Boerum Hill For Organic Development

Brooklyn Bears Community Garden

Brooklyn Vision Foundation Inc.

Cambridge Place Action Coalition

Clermont/Greene Ave Block Association

Dean Street Block Association

Develop Don't Destroy - Brooklyn

East Pacific Block Association

Fans For Fair Play

Fifth Avenue Committee

Fort Greene Association

New York Preservation Alliance

North Flatbush Business Improvement District

Park Slope Greens

Park Slope Neighbors

Pratt Area Community Council

Prospect Heights Action Coalition

Prospect Heights Neighborhood Development Council

Sierra Club - Atlantic Chapter

South Portland Avenue Block Association

Warren Street St. Marks Community Garden

(list in formation)

**Fellow Involved Brooklyn Residents,**

The Council of Brooklyn Neighborhoods [CBN] invites you to join us in preparing for the community review of the Environmental Impact Statement for the Atlantic/Vanderbilt rail yards.

CBN is a coalition of recognized diverse community groups active in Community Boards 2, 3, 6 and 8, that are concerned with the cumulative effects of development proposed in their area of Brooklyn. Of particular focus is the development of the Atlantic/Vanderbilt rail yards.

Once a proposal is chosen, there will be a Draft Environmental Impact Statement submitted to a designated State agency which the community will have the opportunity to critique. This critique will be our most important input into the planning process.

At this time, we are extending an invitation to all community groups including block and merchant associations, churches and community organizations active in CBs 2, 3, 6, and 8 to join us in this effort. Membership will entail agreeing to the mission and structure of the Council and paying nominal dues of \$50 per member organization for administrative and operating costs.

The Council of Brooklyn Neighborhoods expects the developer of the Atlantic Yards that wins the bid, whoever that may be, to engage the community through a transparent and fair EIS process, and the community has been organizing itself to ensure that is done.

**We invite you to send a representative(s) to a General Meeting on Tuesday, August 9th at 7pm at the Lafayette Avenue Presbyterian Church, 85 S. Oxford Street (corner of Lafayette). The featured speaker will be Tom Angotti, Professor of Urban Affairs & Planning at Hunter College who will help explain the EIS process.**

If you have any questions please call 718-408-3219, email CBrooklynNeighborhoods@hotmail.com, or send your inquiries to CBN, 201 Dekalb Avenue, Brooklyn, NY 11205.

Very truly yours,

**Paul Palazzo**  
Co-Chair

# **EXHIBIT C**



# Civic leaders join to fight Ratner

By Jess Wisloski  
*The Brooklyn Papers*

Read more  
on  
**Bruce  
Ratner's  
Atlantic  
Yards  
project**

Claiming that their elected officials have not represented their concerns, a broad-based group of activist, neighborhood, block and civic associations have come together to represent their own concerns about the Atlantic Yards project.

Incorporating leaders of the Boerum Hill Association, Atlantic Avenue Betterment Association, Atlantic Avenue Local Development Corporation, Park Slope Neighbors, Fort Greene Association, Prospect Heights Neighborhood Development Council and Develop-Don't Destroy Brooklyn, the newly formed Council of Brooklyn Neighborhoods (CBN) is in the early stages of identifying the concerns of the communities neighboring the project as it moves through procedures specified in the State Environmental Quality Review Act (SEQRA).

The CBN came to be after civic leaders and others who had been outwardly critical of developer Bruce Ratner's proposal were barred from closed-door meetings called by Borough President Marty Markowitz to discuss the Atlantic Yards project.

An aide to Markowitz said at the time that the meetings — held Sept. 29 and March 4 — favored “neutral” organizations.

Daniel Goldstein, who lives in the footprint of the proposed development and is a member of Develop-Don't Destroy Brooklyn (DDDB), was one of those barred from the meetings, for being, as he called it, “a

figurehead of the opposition.”

He is now one of several leaders steering the agenda of CBN in creating an outline of the community’s concerns with respect to the Atlantic Yards environmental review.

“DDDB wanted representation in any sort of [Environmental Impact Statement] group that would be forming,” Goldstein explained. “The majority of those groups that had been invited [to Borough Hall] started meeting regularly and made demands on Borough Hall that any stakeholder groups interested had to be present at these meetings.”

The coalition now includes members of 14 groups, he said, and they’re all doing their best to prepare for the EIS.

“We haven’t really gotten much help from Borough Hall to date,” Goldstein added.

But it was Markowitz’s own idea that brought the CBN together, said Greg Atkins, the borough president’s chief of staff.

“Marty held those meetings to bring in community leaders to develop a process,” Atkins said. “One of things [that came out of the meetings] is that the communities which were coalescing, a lot of these people started meeting on their own, which we saw as a positive outcome of these groups.”

Although Markowitz turned down the CBN’s request that he hire an expert to represent the community during the EIS proceedings, Atkins said Markowitz supported the idea in principle.

“The stakeholder group really wants to have this community-based planner to articulate concerns of the community in the EIS process, and to translate EIS stuff to the community. They’re working out all that stuff,” Atkins said.

“They asked our elected officials [for the funds],” he said. “I have no idea how successful they’ll be.”

“We don’t have money to give out like that,” Atkins added.

CBN member Bill Batson, who sits on Community Board 8, said the new group needs the help of an urban planner to prepare their scoping draft.

“People really can’t have an even playing field with a major developer without technical assistance,” he said. “We needed technical assistance and we were very fortunate to have the pro-bono services of Community Consulting Services.”

That company, run in part by Brian Ketcham, a Brooklyn Heights-based urban planner, said his input helps codify the concerns of the community.

“Unless this community wants to go through the same thing they went through with the city in the Downtown Brooklyn Plan, they have to have their own process, their own financing and their own commitment to see that this is real,” said Ketcham.

Gib Veconi, president of the Prospect Heights Neighborhood Development Council, had Ketcham explain the EIS process at a special meeting of his group on June 16.

Veconi is also working with CBN.

“What we’re doing, we don’t consider it to be proprietary or anything like that,” he said. “We’re just trying to get a start as quickly as possible to get these things identified.”

Sue Wolfe, president of the Boerum Hill Association, said that although Markowitz was to be credited with bringing the groups together, they came together more over a common desire.

“We’re working together because we feel we’ll have more power that way,” she said.

“There have been meetings with [Markowitz], but separately we have also been meeting, and the group has grown, because we felt that we did

have many concern that were not the borough president's concerns," she said. "It's the immediate surrounding area, and still growing. We want to be inclusive; we do not want to leave anybody out"

So far, the CBN has only devised a statement of conditions and they're working on a mission statement and a statement of principals.

"It's taken a long time," Wolfe said. "There's a lot of work going on behind the scenes."

Added Veconi, "Coalitions take some time to come together, but it's productive, and it is broad-based."

Other efforts by the community and elected officials include EIS scoping sessions by Community Boards 2, 6 and 8, all of which will be home to parts of the project, and the Brooklyn Borough Board, which includes the Brooklyn delegation of the City Council and the chairs of all 18 community boards borough-wide.

Drafts of the community boards' environmental concerns have been prepared among all three. CB2's draft was four pages long, CB6 prepared a 12-page outline, and CB8, with the help of a dedicated committee specifically formed to address the project, produced a 40-page document.

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# **EXHIBIT D**



## Tish: Scrap skyscraper site from Downtown Plan



Councilwoman Letitia James testifies at Wednesday's public hearing.

The Brooklyn Papers / Tom Callan

**By Jotham Sederstrom**  
*The Brooklyn Papers*

City Councilwoman Letitia James is calling on the city to remove from its massive rezoning plan for Downtown Brooklyn a small plot of land that is also a key element in developer Bruce Ratner's Atlantic Yards arena and office tower plan.

The site, on the corner of Flatbush and Atlantic avenues, is the only parcel of land included in both plans, and it is where Ratner would build the tallest of his Frank Gehry-designed office skyscrapers. That has raised the ire of James, other elected officials and opponents of the arena plan who believe that the two plans should either be looked at as one or as completely separate.

James made her statements at Wednesday's public hearing on the Downtown Brooklyn Plan before the City Planning Commission.

"It should be completely stricken from the record," James said at the March 24 hearing at the New York City College of Technology.

The item in question, No. 19 in the massive Uniform Land Use Review Procedure (ULURP) application for the Downtown Plan, is a submission

by the Department of Housing and Preservation and Development that seeks to “facilitate residential development on Site 6A and development of a public library and other community facility use with below-grade parking on Site 20.”

James said she only wants mention of site 6A, a triangular plot on the corner of Flatbush and Atlantic avenues, to be stricken. She said she supports development of the public arts library and what was announced this week as a \$22 million, 299-seat, Frank Gehry-designed theater, both of which would be built near Ashland Place and Lafayette Avenue.

She had originally called for both the Atlantic Yards and the Downtown plans to be considered as one, citing that both developments would affect traffic downtown and in surrounding neighborhoods. The Department of City Planning issued an amended environmental impact statement this month, which studied the traffic impacts of the Downtown Plan assuming the building of Ratner’s arena and office and residential tower complex but it came too late for review by the community board and borough president.

The first-term councilwoman, who represents Fort Greene and Prospect Heights, said she supports most of the Downtown Plan, but has criticized portions of it that would condemn seven acres of land, including 130 residential units and 100 businesses.

In contrast, she has vocally opposed the Ratner Atlantic Yards plan, which would span 28 acres and include a 17,000-seat basketball arena, and 13 commercial and residential towers. A key element of that plan is also the condemnation of property by the state.

“The Williamsburgh Savings Bank, to me, is the edge of Downtown Brooklyn, that’s where those towers should end, and where the downtown residential community begins,” said James. “That’s why I oppose the [Atlantic Yards] plan entirely. It would overwhelm the residents here.”

Asked about the councilwoman’s suggestion to sever all links between the two plans, Greg Atkins, chief of staff for Borough President Marty Markowitz, said his boss does not support such a recommendation.

“I understand the councilwoman’s concerns to split the two plans up,” said Atkins, who gave testimony at the public hearing. “But since the ULURP was really meant for the public library and the arena project was going to be done for a state agency, the two projects are essentially separated and unrelated.”

But Downtown and Brooklyn Heights Councilman David Yassky, who also spoke at the public hearing, told The Brooklyn Papers on Friday that he supports evaluating the plans separately.

“My position is that the Downtown Brooklyn Development Plan should be, and is, absolutely separate from the arena plan,” said Yassky.

“Anything that’s in the Downtown Brooklyn land use action that relates to the arena development should be taken out and kept separate because they’re two very different proposals and need to be evaluated separately.”

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