

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,

**AFFIRMATION OF HALEY
STEIN**

For a Judgment Pursuant to CPLR Article 78 and an Action

-against-

INDEX NOS.
08-117242
08- 603828

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

(Lobis, J.)

Defendants-Respondents.

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HALEY STEIN, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true, under the penalties of perjury, pursuant to Civil Practice Law and Rules section 2106:

1. I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for Defendants-Respondents the City of New York, City Council of the City of New York, City Planning Commission of the City of New York (“CPC”), City of New York Department of Housing Preservation and Development (“HPD”), New York City Economic Development Corporation (“NYCEDC”), and the

Department of Sanitation of the City of New York (“DSNY”) (together, “Respondents” or “City Respondents”). I am fully familiar with the facts and circumstances of this action and with the facts set forth in this affirmation.

2. I submit this affirmation in support of City Respondents’ Answer to the Verified Petition and Motion to Dismiss the Verified Complaint pursuant to the Civil Practice Law and Rules Sections 2212, 3211(a)(2), (7), (10) and 3212 on the grounds that this Court lacks subject matter jurisdiction over some of the claims, it fails to state a cause of action, and Plaintiffs failed to join necessary parties. In addition, Petitioners improperly asserted claims in the Complaint that can only be raised in an Article 78 Proceeding.

3. In this affirmation, I explain several elements of the urban renewal requirements and process. I also clarify the requisite next steps in the process for acquiring and disposing of the property constituting the Project Site.

4. Petitioners allege, among other things, that the process for approval of the Fifteenth Amendment to the Harlem-East Harlem Urban Renewal Plan (“Plan”) and designation of the Harlem-East Harlem Urban Renewal Area (“Area”) was defective. Specifically, Petitioners allege that (i) their properties are not blighted, and (ii) the City failed to make any formal finding that the acquisition of Petitioners’ properties was “necessary” for the purpose of effectuating the Plan. Pet. at ¶¶ 121, 123.

5. Both of these claims are without merit as it is well settled that municipalities may acquire properties that are not themselves blighted, but which are within a properly designated urban renewal area, including, where necessary, through the use of eminent domain. Secondly, Petitioners are incorrect in alleging that a formal finding of “necessity” is required to

implement an urban renewal plan. There is no such requirement in the Urban Renewal Law. City Respondents met all legal requirements in approving the Plan.

A. Not All Properties Need To Be Blighted To Be Designated in an Urban Renewal Plan.

6. Petitioners' claim that their properties were improperly included in the Plan because they were not, individually, "blighted" is plainly contradicted by well established law.

7. The U.S. Supreme Court's decision in *Berman v. Parker*, 348 U.S. 26, 34-35 (1954) settles this issue. The opinion established that not all the properties contained within a designated renewal area need be deemed blighted, and that municipalities are authorized to take clearly non-blighted properties under urban renewal laws. *Id.* See also *Kelo v. City of New London*, 545 U.S. 469 (2005); and *Kaskel v. Impellitteri*, 306 N.Y. 73, 78 (1953) ("clearing and redevelopment will be of an entire area, not of a separate parcel, and, surely, such statutes would not be very useful if limited to areas where every single building is substandard").

8. Regardless, in this case, City Respondents acted appropriately in designating Petitioners' properties as part of the Plan. HPD and its consultants conducted a Blight Study, completed on January 16, 2008, documenting the blighted conditions in the area as a whole, as well as analysis of each individual Block and Lot comprising the East 125th Street Project Site. R. at Ex. 2, 11. The Study, which HPD submitted to the City Council in connection with its consideration of the Plan approval and designation as an urban renewal area, found, among other things, that 42% of the Project Site was vacant space, and that the Site contained vacant, abandoned, substandard buildings in poor or critical condition characterized by physical deterioration. *Id.* at 4, 11.

9. Based on this information, it was entirely appropriate, and legal, for Petitioners' properties to be included in the Plan Area, even if one or more individual parcels were not individually deemed "blighted."

B. City Respondents Met All Legal Requirements in Designating Petitioners' Property as Part of the Plan and the Urban Renewal Law Does Not Require a Finding That All Parcels Are "Necessary" to Effectuate the Plan.

10. Nothing in the Urban Renewal Law requires a formal finding, in connection with the designation of an urban renewal area, that the acquisition of all of the properties comprising the area is "necessary" to effectuate the applicable urban renewal plan. As explained below, City Respondents met all obligations under the Urban Renewal Law for the approval of the Plan.

11. The Urban Renewal Law states that, after holding a public hearing, the City Council¹ must designate the urban renewal area and find that it is "appropriate for urban renewal." General Municipal Law §§ 502(9), 504. Here, as required by the Urban Renewal Law, the City Council held a public hearing, designated the Area, and found that the Area is appropriate for urban renewal. City Council Resolution No. 1652, dated October 7, 2008, R. at Ex. 26 (attached to this Affirmation as Ex. B).²

¹ The statute specifies that certain actions must be taken and certain findings must be made by the "governing body." GML § 504. In New York City, the City Council acts as the governing body with respect to land use issues and the Mayor acts as the governing body with respect to business issues. General Municipal Law § 502(1), City Charter § 197-d. The designation of an urban renewal area and the approval of an urban renewal plan are both land use determinations with respect to which the Council acts as the governing body. General Municipal Law §§ 504, 505, City Charter § 197-c, 197-d. The disposition of City-owned property is a business issue with respect to which the Mayor acts as the governing body. General Municipal Law § 507, City Charter § 384(a) (also subject to ULURP 197-c(10)).

² As noted below, two documents that are part of the Record herein were not available as of the time the Record was printed and thus are attached to this Affirmation.

12. HPD also met the Urban Renewal Law's requirement to prepare an urban renewal plan for the redevelopment of the urban renewal area.³ Such a plan must include a statement of proposed (i) land uses, (ii) land acquisition, demolition, and removal of structures, (iii) acquisition of air rights and concomitant easements or other rights of user necessary for the use and development of such air rights, (iv) methods or techniques of urban renewal, (v) public, semi-public, private or community facilities or utilities, (vi) new codes and ordinances and amendments to existing codes and ordinances necessary to implement the Plan, (vii) program for code enforcement, (viii) time schedule for implementation, and (ix) any additional information and documentation that HPD deems appropriate. General Municipal Law § 502(7). Here, HPD prepared the Plan, which meets such requirements. R. at Ex. 10.

13. HPD also met all public hearing requirements of ULURP review. *See* the Affidavit of Carolee Fink for a description of the Project's ULURP review. The City Charter requires that any urban renewal plan be reviewed pursuant to ULURP, which entails review by the Community Board, Borough President, City Planning Commission, City Council, and Mayor.⁴ City Charter § 197-c(a)(8). Nothing in ULURP requires a formal finding by any of these parties that the acquisition of each property comprising the urban renewal area is necessary for the purpose of effectuating the urban renewal plan.

³ Petitioners' allegation that HPD's involvement with the Project constituted "fraud" is without merit. Pet. ¶¶ 202, 203. The Urban Renewal Law does not address the designation of a "lead agency" but specifies that certain actions are to be taken by the local urban renewal agency. General Municipal Law § 502(5). In New York City, HPD is the local urban renewal agency. City Charter § 1802(6)(e).

⁴ Plaintiffs devote considerable attention to the actions of the Community Board and Borough President in the ULURP process. However, the Community Board and Borough President play a purely advisory role in the process, and their respective actions are not binding upon the City Planning Commission, City Council, or Mayor. Charter 197-c(e) and (f)

C. Overview of Urban Renewal Law and Process

14. The Urban Renewal Law requires the City Planning Commission to hold a public hearing, find that the urban renewal plan complies with the Urban Renewal Law's requirements and the urban renewal area is appropriate for urban renewal. GML § 505(2). CPC must also submit a report to the City Council either approving⁵ or disapproving the urban renewal plan. *Id.* Here, the City Planning Commission held a public hearing, certified that the Plan complies with the Urban Renewal Law's requirements and certified that the Area is appropriate for urban renewal, and submitted a report to the City Council recommending approval of the Plan. The CPC granted unqualified approval of the plan pursuant to Article 15 of the GML. R. at Ex. 15, at 42.

15. The City Council must also hold a public hearing and approve the urban renewal plan. General Municipal Law § 505(3). Upon approving the urban renewal plan, the City Council must make the following five findings by resolution:

- (1) The urban renewal area is a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area and tends to impair or arrest the sound growth and development of the municipality;
- (2) The financial aid to be provided to the municipality is necessary to enable the project to be undertaken in accordance with the urban renewal plan;
- (3) The urban renewal plan affords maximum opportunity to private enterprise, consistent with the sound needs of the community as a whole, for the undertaking of an urban renewal program;
- (4) The urban renewal plan conforms to a comprehensive community plan for the development of the municipality as a whole; and
- (5) There is a feasible method for the relocation of families and individuals displaced from the Area into decent, safe and sanitary dwellings.

⁵ The City Council's approval of an urban renewal plan may contain recommendations for modifications. GML § 505(2), Charter 197-d.

General Municipal Law § 505(4).

16. Here, the City Council held a public hearing, approved the Plan, and made the five required findings listed above. R. at Ex. 26, Council Resolution 1650 at 3-4.

17. Finally, under ULURP, the City Council must file its action on an urban renewal plan with the Mayor. The action of the City Council then becomes final unless the Mayor vetoes it within five days after receiving it. City Charter § 197-d. Here, City Council filed its approval with the Mayor on October 8, 2008, who did not veto such action. R. at Ex. 29.

18. The Urban Renewal Law requires that the Mayor approve or disapprove an urban renewal plan following approval by the City Council. General Municipal Law § 505(5). Here, the Mayor approved the Plan following approval by the City Council. See. R. at Ex. 29.

D. Eminent Domain Procedure Law and Disposition of the Property Constituting the Project Site

19. Petitioners also raise a litany of claims in regards to condemnation and disposition of properties within the Project Site. These claims are premature, as the condemnation process has not yet begun, nor has HPD yet conveyed property to NYCEDC.

20. Currently, of the twenty-seven lots comprising the Project Site, twelve are currently owned by HPD, four are owned by NYCEDC, and eleven are owned by non-City entities, including the lots owned by Petitioners and one owned by the Metropolitan Transit Authority.

21. In order to move forward with the Project, the City will acquire the remaining lots owned by non-City entities. Condemnation under the Eminent Domain Procedure Law (“EDPL”), described briefly below, will be used if necessary.

22. HPD will then transfer all lots it owns within the Project Site to NYCEDC pursuant to one of several lawful processes available to it. As Petitioners note, the City may

dispose of property to a local development corporation pursuant to Section 383(b)(4) of the City Charter. Pet. at ¶ 153. HPD may also convey urban renewal property, such as the property at issue here, for redevelopment in accordance with the applicable urban renewal plan pursuant to Section 507 of the General Municipal Law. Similarly, General Municipal Law § 695 authorizes HPD to convey UDAAP property for redevelopment in accordance with a UDAAP project, such as the East 125th Street Project. HPD thus has a variety of mechanisms available for the disposition to NYCEDC, and has yet to select a disposition process for the property at issue here.

23. Once NYCEDC owns all of the lots comprising the Project Site, it will convey the property to the developer pursuant to a contract of sale to be approved by its Board of Directors.

24. With respect to the condemnation process, in brief, Article 2 of the Eminent Domain Procedure Law establishes a process in which a “condemnor,” (an entity vested with the power of eminent domain, EDPL § 103(D)) must, prior to instituting condemnation proceedings, conduct a pre-acquisition public hearing to “inform the public about and to review the public use to be served by a proposed project.” EDPL § 201. Following the hearing, which must be conducted on the record, EDPL § 203, the condemnor must publish a synopsis of its determination and findings, specifying, among other things, the public use, benefit, or purpose to be served by the proposed project. EDPL § 204. Section 207 of the Eminent Domain Procedure Law provides for judicial review of a condemnor’s determination and findings made pursuant to EDPL Section 204 by the Appellate Division of the Supreme Court in the county where the proposed facility is located. EDPL § 207(A).

25. In this case, no public hearing has yet been noticed or held, let alone have determinations or findings been made, pursuant to EDPL Article 2.

26. For these reasons, any claims concerning the EDPL condemnation process or the process by which HPD will dispose of properties to NYCEDC are premature.

E. Miscellaneous Documents

27. Attached as Exhibit A is a true and correct copy of Judge Figueroa's decision in the case *Voices of the Everyday People (VOTE), et al., v. New York City, et al.* in New York County Supreme Court, issued on November 20, 2008, Index Number 106025/08.

28. Attached as Exhibit B is a true and correct copy of City Council Resolution No. 1652, dated October 7, 2008 that should be part of Record Exhibit 26 (City Council Resolutions).

29. Attached as Exhibit C is a true and correct copy of "Community Board 11 Resolution Regarding the East 126th Street Development ULURP." Like the previous exhibit, this should be included in Record Exhibit 12 (Recommendations and Resolution of Community Board 11 (May 28, 2008) and recommendations of Borough President (July 2, 2008)).

30. Attached as Exhibit D is a true and correct copy of Plaintiffs' Verified Compliant, filed December 26, 2008.

Dated: New York, New York
March 30, 2009

HALEY STEIN