

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

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In the Matter of the Application of	: :
	: Index No. 104597/2007
DEVELOP DON'T DESTROY	:
(BROOKLYN), INC., ET AL.,	:
	:
Petitioners/Plaintiffs-Appellants,	: :
	: <b>REPLY AFFIRMATION OF</b>
	: <b>STEPHEN L. KASS IN</b>
	: <b>SUPPORT OF CROSS-</b>
For a Judgment Pursuant to Article 78 of the	: <b>MOTION FOR A BRIEFING</b>
CPLR and Declaratory Judgment	: <b>SCHEDULE AND</b>
	: <b>PREFERENCE</b>
	:
-against-	:
	:
URBAN DEVELOPMENT CORPORATION	:
d/b/a EMPIRE STATE DEVELOPMENT	:
CORPORATION, ET AL.,	:
	:
Respondents/Defendants-Respondents.	: :
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STEPHEN L. KASS, an attorney duly authorized to practice law before the  
 Courts of this State, affirms the following under penalty of perjury pursuant to CPLR §  
 2106:

1. I am a member of the law firm of Carter Ledyard & Milburn LLP,  
 counsel for respondent Metropolitan Transportation Authority (“MTA”). I make this  
 affirmation, on personal knowledge and on the basis of conversations with MTA and  
 Long Island Rail Road (“LIRR”) personnel and review of MTA and LIRR files in  
 further support of the cross-motion of Respondent-Defendant-Respondent Urban State  
 Development Corporation d/b/a Empire State Development Corporation (“ESDC”) for a  
 briefing schedule and preference in the argument of this appeal.

2. MTA concurs with and supports the reasons set forth by ESDC in the Reply Affirmation of Philip E. Karmel in Support of the Cross-Motion for a Briefing Schedule and Preference (“Karmel Affirmation”).

3. MTA, as well as the transit-riding public in general, has a strong interest in an expeditious resolution of this appeal.

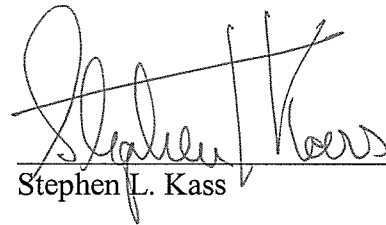
4. As set forth in greater detail in my initial affirmation dated January 25, 2008 (“Initial Kass Affirmation”) and in the Affidavit of Richard Oakley, sworn to January 25, 2008 (“Oakley Affidavit”), work has been underway since February 2007 to construct a temporary rail yard (“Temporary Yard”) to replace the existing, substandard Vanderbilt Rail Yard. Completion of the Temporary Yard is a necessary first step toward construction of the permanent new yard (“New Yard”) that is among the project’s major public benefits. However, the New Yard cannot be constructed until after the MTA and the project sponsor, Forest City Ratner Companies, have closed on the transfer of certain property rights with respect to the existing Vanderbilt Yard. As a practical matter, that closing is likely to be delayed during the pendency of this appeal, even if all other conditions to the transfer have been satisfied.

5. Moreover, as the Court no doubt is aware, MTA and LIRR are involved in the planning or construction of a number of major capital improvements throughout the LIRR system, including rehabilitation of the Atlantic Avenue Viaduct and modernizing track and signals in the Jamaica Station complex. As set forth in the Initial Kass Affirmation and in the Oakley Affidavit, as a result of the existing track outages due to construction of the Temporary Yard, LIRR must relocate five trains per day that would

normally be stored in the Vanderbilt Yard. If completion of the Temporary Yard and the New Yard is delayed, there will be a continuing need to move trains throughout the LIRR system, complicating and possibly delaying the completion of these other important infrastructure improvements.

6. Accordingly, MTA respectfully requests that the cross-motion be granted and that this appeal be scheduled for argument as expeditiously as possible.

Dated: February 5, 2008



Stephen L. Kass

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