

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

In the Matter of

VELMANETTE MONTGOMERY, JAMES F.
BRENNAN, JOAN L. MILLMAN, LETITIA JAMES,
NEW YORK PUBLIC INTEREST RESEARCH
GROUP/STRAPHANGERS CAMPAIGN, and
DEVELOP DON'T DESTROY (BROOKLYN), INC.,

Petitioners,

For a Judgment Pursuant to Article 78

-against-

METROPOLITAN TRANSPORTATION AUTHORITY
and FOREST CITY RATNER COMPANIES, LLC,

Respondents.

Index No.

VERIFIED PETITION

Petitioners Velmanette Montgomery, James F. Brennan, Joan L. Millman, Letitia James, New York Public Interest Group Straphangers Campaign, and Develop Don't Destroy (Brooklyn), Inc., by their undersigned attorneys, allege as follows:

Introduction

1. By this petition made pursuant to Article 78 of the New York Civil Practice Law and Rules, petitioners seek annulment of respondent Metropolitan Transportation Authority's (hereinafter "MTA") decision to sell the airspace and related property interests of the Vanderbilt Rail Yard located in the Prospect Heights neighborhood of Brooklyn, New York (the "Vanderbilt Yard" or "Yard"), to respondent Forest City Ratner Companies, LLC ("FCR"), on the ground that MTA's decision violated the New York Public Authorities Law as amended by the Public Authorities Accountability Act of 2005 ("PAAA").

2. By resolution dated June 24, 2009, the Board of MTA decided to sell the rights to the Vanderbilt Yard, last appraised in 2005 at a value of \$214.5 million, to FCR for only \$100

million, \$80 million of which would in effect be financed by MTA over 22 years at a 6.5 percent rate of interest, along with “improvements” to the rail yard itself which would leave the rail facilities with less capacity than they have now. In so doing, MTA failed to obtain any appraisal of the current value of the Yard, failed to consider the Yard’s value at all, and refused to entertain any competing proposal for the Yard.

3. The Public Authorities Law as amended by the PAAA forbids MTA from selling the Vanderbilt Yard unless the Yard’s fair value is determined by an independent appraiser and included in the transaction record, and requires MTA to look for and entertain competing offers for the Yard. Therefore, the MTA’s Board resolution approving the sale of the Vanderbilt Yard to FCR was illegal, and must be annulled.

The Parties

4. Petitioner Velmanette Montgomery is a New York State Senator representing residents of the 18th Senate District, which includes the Vanderbilt Yard and surrounding communities in Brooklyn, including Fort Greene, Boerum Hill, and portions of Prospect Heights, Park Slope, and Clinton Hill. Senator Montgomery’s constituents use and depend upon MTA’s mass transit system and facilities, and, by reason of their proximity to the Vanderbilt Yard, are directly affected by MTA’s disposal of the Yard for development. Senator Montgomery supported and voted in favor of the PAAA.

5. Petitioner James F. Brennan is a New York State Assemblymember representing residents of the 44th Assembly District, which includes Brooklyn communities and areas near and/or in close proximity to the Vanderbilt Yards, including portions of Park Slope, Windsor Terrace, Kensington, Prospect Park South, and Ditmas Park, and is a member of the Assembly Committee on Corporations, Authorities and Commissions, which oversees MTA. Assemblymember Brennan’s constituents use and depend upon MTA’s mass transit system and

facilities, and by reason of their proximity to the Vanderbilt Yard, are directly affected by MTA's disposal of the Yard for development. Assemblymember Brennan supported and voted in favor of the PAAA.

6. Petitioner Joan L. Millman is a New York State Assemblymember representing residents of the 52nd Assembly District, which includes Brooklyn communities and areas near and/or in close proximity to the Vanderbilt Yards, including portions of Prospect Heights, Park Slope, Boerum Hill, Carroll Gardens, Dumbo, and Vinegar Hill, and is a member of the Assembly Committee on Corporations, Authorities and Commissions, which oversees MTA. Assemblymember Millman's constituents use and depend upon MTA's mass transit system and facilities, and by reason of their proximity to the Vanderbilt Yard, are directly affected by MTA's disposal of the Yard for development. Assemblymember Millman supported and voted in favor of the PAAA.

7. Petitioner Letitia James is a New York City Councilmember representing residents of City Council District 35, which includes the Vanderbilt Yard and the adjacent Brooklyn communities of Prospect Heights, Fort Greene, and Clinton Hill. Councilmember James's constituents use and depend upon MTA's mass transit system and facilities, and by reason of their proximity to the Vanderbilt Yard, are directly affected by MTA's disposal of the Yard for development.

8. Petitioner New York Public Interest Research Group/Straphangers Campaign ("Straphangers") is a project of the New York Public Interest Research Group, Inc. ("NYPIRG"), which is a New York State not-for-profit corporation, with its address at 9 Murray Street, 3rd Floor, New York, New York. NYPIRG is well known for working in coalition with community groups toward these goals and has a specific interest in the Project's plan for the mitigation of its mass transit impacts. NYPIRG was formed in 1973 as a non-partisan group established to effect

policy reforms while training students and other New Yorkers to be advocates for the public interest, is well known for working in coalition with community groups toward these goals, and has a specific interest in the Project's plan for the mitigation of its mass transit impacts.

9. Straphangers, which NYPIRG has run since 1979, is a project for decent, safe, and affordable transit, and advocates for transparency in MTA's decision-making processes so as to maximize the benefit to the MTA, and, thereby, to NYPIRG's members and the public-transit-using public as a whole. Straphangers has a specific interest in ensuring, in light of MTA's recent fare increases and service cuts intended to cover its budget shortfalls, that MTA obtains the maximum value for its disposal of the Vanderbilt Yard.

10. Petitioner Develop Don't Destroy (Brooklyn), Inc. ("DDDB") is a New York State not-for-profit corporation with its principal mailing address located at 121 Fifth Avenue, PMB # 150, Brooklyn, New York. Since 2004, DDDB had led a broad-based community coalition which advocates for greater transparency, government accountability, and community involvement in the development of the Vanderbilt Yard and surrounding areas. DDDB's mission includes advocating for accountability on the part of MTA to the public in its disposal of the Vanderbilt Yard, so as to maximize the benefit to the MTA, and, thereby, to the public-transit-using public as a whole, and to ensure that the Yard is redeveloped for the benefit of the residents and communities of Brooklyn. DDDB has thousands of members living in the Project footprint and adjacent neighborhoods who are directly affected by MTA's disposal of the Yard for development and who use and depend upon MTA's mass transit system and facilities.

11. DDDB, Senator Montgomery, and Councilmember James are sponsors of a community-based development plan for the Vanderbilt Yard known as the Unity Plan which would provide substantial public and economic benefits. DDDB wished to bid against FCR for

the Vanderbilt Yard and to develop it in accordance with the Unity Plan, but was denied that opportunity by MTA.

12. Respondent MTA is a public benefit corporation created by Section 1263 of the Public Authorities Law, with its principal place of business located at 347 Madison Avenue, New York, New York. MTA operates North America's largest mass transportation network, including the New York City subway system and the Long Island Rail Road ("LIRR"), and owns the Vanderbilt Yard.

13. Respondent FCR is a New York limited liability company with its principal place of business at 1 Metrotech Center North, Brooklyn, New York, and is engaged in the business of real estate development. Upon information and belief, FCR is a wholly owned subsidiary of Forest City Enterprises, Inc. ("Forest City Enterprises"), which is a publicly traded real estate development company.

Venue

14. This proceeding is properly venued in New York County as that is the county in which MTA maintains its principal offices and the county in which the primary determination to be annulled was made.

Background

15. The Vanderbilt Yard is a working, open-pit rail yard used by the LIRR, comprising approximately eight and one half acres in the Prospect Heights neighborhood of Brooklyn. The Yard is located near the intersection of two of Brooklyn's major thoroughfares, Atlantic and Flatbush Avenues, and is adjacent to the LIRR Flatbush Avenue terminal station and the Atlantic Avenue-Pacific Street subway station. The Yard is bordered to the north by Atlantic Avenue, to the south by Pacific Street, to the east by Vanderbilt Avenue, and to the west by Fifth Avenue.

16. The Vanderbilt Yard lies squarely in Brooklyn's desirable "Brownstone Belt", which includes the surrounding neighborhoods of Prospect Heights, Fort Greene, Clinton Hill, Boerum Hill, and Park Slope, all of which experienced rapidly increasing property values and gentrification in the years leading up to the recent economic downturn and continue to be sought-after neighborhoods. In the 1990s, on the blocks directly across Atlantic Avenue to the north of the Yard, FCR developed a successful shopping area anchored by the Atlantic Center and Atlantic Terminal malls. Beginning in the late 1990s and early 2000s, the blocks to the south of the Yard underwent a substantial residential housing boom, including nearly 200 new luxury apartments and lofts in three residential redevelopments of former commercial buildings located on Pacific Street directly facing the Yard. In addition, the world-renowned Brooklyn Academy of Music lies two blocks to the northwest of the Yard.

17. Thus, as the surrounding areas were redeveloped and increased in value, the MTA-owned, open-pit Vanderbilt Yard was increasingly viewed as an anomalous eyesore and, as the last large tract of open space in an extremely desirable section of Brooklyn, an increasingly valuable parcel of land ripe for redevelopment.

18. In or around 2002 and 2003, FCR and its principal, Bruce Ratner, conceived of and proposed a publicly subsidized, mixed-use redevelopment project eventually known as the Atlantic Yards Arena and Redevelopment Project (the "Project"), which would cover approximately 22 acres of private and publicly owned land in Prospect Heights, including the Vanderbilt Yard.

19. As set forth in a General Project Plan issued in 2006 by non-party Empire State Development Corporation ("ESDC"), the Project included a professional basketball arena designed by star architect Frank Gehry, and 16 high-rise buildings. The Project was to contain 6,430 residential apartments, 2,250 of which would be affordable to low and moderate-income

families; 583,000 square feet of retail and commercial space; a 180-room hotel; and eight acres of publicly available open space designed by noted landscape architect Laurie Olin, all to be completed in two phases over a projected ten-year timeline.

20. FCR gained early support for the Project from the administration of then-Governor George Pataki, and, in or around 2004, ESDC, which is a public benefit corporation created by the New York State Urban Development Corporation Act (“UDCA”), began overseeing and promoting the Project. ESDC’s involvement enabled the use of the State’s condemnation power to take privately owned and City-owned property for the Project and to override local zoning regulations, and ESDC designated itself the “lead agency” for purposes of the environmental review of the Project pursuant to the New York State Environmental Quality Review Act (“SEQRA”).

21. Although ESDC, various State and City officials, and others touted the Project as an economic boon providing substantial public benefits, a number of locally elected representatives, community organizations, and others expressed concerns that the Project’s huge size and scale would overwhelm the adjacent neighborhoods, and that its proposed public benefits would be outweighed by its negative impacts and costs. Further, many opposed the planned exercise of the State’s condemnation powers to displace local residents and businesses for the Project.

22. Therefore, in or around 2004, various elected officials, community organizations and residents, and other interested organizations and individuals – including petitioners Senator Montgomery, Councilmember James, and DDDDB – convened a community charrette with local architects and urban planning specialists to develop an alternative development plan for the Vanderbilt Yard. The resulting development plan, known as the Unity Plan, envisioned a lower-density development to be constructed entirely over the Yard and adjacent publicly owned

property, which would provide substantial numbers of affordable housing units and other public benefits without displacing existing residents and businesses. In 2007 and 2008, additional workshops and sessions were held to develop the Unity Plan as a viable development alternative to FCR's Project.

**MTA's Request for Proposals
for the Vanderbilt Yard in 2005**

23. In 2004, upon information and belief, MTA made an informal agreement to convey the Vanderbilt Yard to FCR, and, in February 2005, MTA and FCR entered into a formal, written agreement to convey the Yard to FCR.

24. The February 2005 agreement between MTA and FCR was made around the same time as a Memorandum of Understanding between FCR, ESDC, and New York City which established the terms and parameters of the Project, and provided for \$200 million in direct public subsidies of the Project by the City and State, and many hundreds of millions more in indirect subsidies through, among other things, tax abatements, payments in lieu of taxes (commonly known by the acronym "PILOTs"), and transfer of valuable property in the Project site from the State to FCR for nominal cost.

25. Around three months later, MTA belatedly issued a Request for Proposals dated May 24, 2005 ("RFP") to assess the interest of other parties in developing the Yard, with detailed response requirements and a 43-day application deadline.

26. In connection with the RFP, MTA obtained an independent appraisal which valued the Vanderbilt Yard, as of July 21, 2005, at \$214.5 million.

27. The independent appraisal took into account the fact that a developer would have to relocate railroad tracks and construct a platform in order to proceed with development, and deducted the estimated costs thereof in order to reach the estimated \$214.5 million market value.

Without deducting the estimated costs of track relocation and platform construction, the independent appraisal valued the Vanderbilt Yard at \$271,284,250.

28. FCR, which had been working on the Project since at least 2003, submitted a bid of \$50 million for the Vanderbilt Yard.

29. Despite the 43-day application deadline set by the RFP, another developer, Extell Development Company (“Extell”), bid \$150 million for the Vanderbilt Yard, and proposed a somewhat lower-density development based in substantial part on the Unity Plan and the Unity Plan’s principles. Extell was and remains a well respected developer with a successful record of developing real estate projects in New York City.

30. Extell’s proposed development would have been limited to the Vanderbilt Yard and other publicly owned properties, would have provided the same proportion of new housing units affordable to low and middle-income families as the proposed Project, would have relied on substantially less public subsidies than would the proposed Project, would not have required the forced relocation of residents and business though the use of eminent domain, and would have enjoyed broad community-based support.

31. Both FCR and Extell proposed, in addition to their respective cash payments, to construct improvements to the Vanderbilt Yard’s rail facilities, and to construct the infrastructure necessary to support the platform on which their proposed developments would be built.

32. Nevertheless, MTA rejected Extell’s bid outright, and chose to negotiate exclusively with FCR to improve its bid, as a result of which FCR increased its cash payment for the Vanderbilt Yard to \$100 million.

33. At the end of the exclusive negotiations between MTA and FCR, MTA publicly estimated the total value of FCR’s bid for the Vanderbilt Yard as \$379.4 million, including the \$100 million cash payment, the estimated value of the improvements which FCR would make to

the Yard and subway station, and contingent benefits such as sales tax revenues MTA expected to gain from the Project.

34. By resolution dated September 14, 2005, the Board of MTA formally selected FCR's bid over Extell's.

35. In December 2006, MTA and ESDC issued their "findings" as required under SEQRA in order to permit the "final approvals" required for the Project to proceed.

36. Nevertheless, the Project did not go forward as planned, and, as a result, MTA never entered into a final contract with FCR for the transfer of property rights to the Vanderbilt Yard, and the disposition of the Yard to FCR which the MTA Board approved in September 2005 never took place.

**The Public Authorities
Accountability Act of 2005**

37. On January 16, 2006, just a few months after MTA approved the sale of the Vanderbilt Yard to FCR, the Public Authorities Accountability Act of 2005 ("PAAA") became New York State law.

38. The PAAA amended the Public Authorities Law ("PAL") to incorporate a set of model governance procedures intended to improve oversight, accountability, and transparency at New York State's public authorities. Among other things, and as relevant here, the PAAA imposed new requirements governing how public authorities such as MTA could dispose of property.

39. In particular, the PAAA codified the requirement that where a public authority seeks to dispose of real property of a unique nature that cannot easily be valued in the market, such as the Vanderbilt Yard, the public authority must first obtain an independent appraisal of the property, and must include the appraisal in the record of the transaction:

. . . no disposition of real property, any interest in real property, or any other property which because of its unique nature is not subject to fair market pricing shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction.

PAL § 2987(3).

40. The PAAA also requires that a public authority dispose of property pursuant to a public bidding process and for no less than the property's fair market value, except in certain, specified circumstances. *See* PAL § 2987(3), (6)(a).

41. In particular, as relevant here, a public authority may dispose of property for less than the property's fair market value provided the disposition of the public authority property is intended to provide legitimate public benefits. In that case, the public authority is not required to have a public bidding process, but must still seek competitive offers for the property to the extent feasible:

Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to paragraphs a and b of this subdivision but subject to obtaining such competition as is feasible under the circumstances, if . . .

(v) the disposal is for an amount less than the fair market value of the property, the terms of such disposal are obtained by public auction or negotiation, the disposal of the property is intended to further the public health, safety or welfare or an economic development interest of the state or a political subdivision (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits), the purpose and the terms of such disposal are documented in writing and approved by resolution of the board of the public authority;

PAL § 2897(6)(c)(v) (emphasis added).

42. As alleged below, on June 24, 2009, when MTA undertook for the second time to dispose of the Vanderbilt Yard, it violated the express requirements of the PAAA.

**MTA's June 24, 2009 Decision
to Dispose of the Vanderbilt Yard**

43. After the ESDC and other State agencies issued their “final approvals” of the Project in December 2006, the Project stalled, due in large part to the worsening financial and economic climate and real estate market, which made it difficult to obtain financing for large real estate development projects.

44. In particular, by October 2008, Standard & Poor's had lowered the corporate credit rating of FCR's parent, Forest City Enterprises, and its rating on senior unsecured notes, into junk, or non-investment grade, status, and in July 2009, Moody's likewise reduced Forest City Enterprises' rating to junk grade status.

45. As a result, the Project underwent dramatic, substantial changes, which sufficiently altered the Project so as to require ESDC to issue a new Modified General Project Plan dated June 23, 2009.

46. Among other changes to the Project, only one of the three residential high-rises that were to be built in the Project's first phase and were to include hundreds of promised low-income and affordable housing units was actually scheduled for construction; an office building touted as an engine for job creation was put on indefinite hold; and the construction of the Project's second phase, which was to include thousands more low-income and affordable housing units and several acres of publicly accessible open space, was postponed indefinitely. FCR replaced architect Frank Gehry as the designer of the professional basketball arena, touted by ESDC as the “centerpiece of the Project”, and replaced his design with a less expensive one by a different architectural firm. Approximately seven acres of the Project site would be turned into surface parking for an indefinite period of time until economic and market conditions warrant completion of the Project.

47. Upon information and belief, in or around 2008 and/or early 2009, FCR informed MTA that it was no longer willing to acquire the Vanderbilt Yard pursuant to the transaction which MTA had approved in September 2005, and demanded that MTA negotiate a new transaction.

48. MTA capitulated to FCR's demand and negotiated a disposition of the Vanderbilt Yard to FCR on terms significantly more favorable to FCR than were approved by MTA's Board in September 2005.

49. Specifically, and in particular, instead of paying \$100 million in cash at closing for the Vanderbilt Yard, under the new terms FCR would pay MTA \$20 million in cash at closing for the portion of the property on which the arena would be built, and would pay the equivalent of \$80 million net present value as of January 1, 2010, calculated at a discount rate of 6.5 percent per year, for the rest of the property in installment payments spread out over approximately 22 years.

50. In effect, MTA agreed to finance 80 percent of FCR's purchase of the Yard at a generous 6.5 percent interest rate, while Forest City Enterprises had a junk bond rating.

51. Moreover, the transaction was structured so that FCR could, in effect, stop making payments to MTA, keep the portion of the Vanderbilt Yard on which the arena would be built, and abandon the rest of the Project, with minimal penalty.

52. In addition, FCR withdrew its original offer to build new LIRR rail facilities with nine tracks and capacity for 76 rail cars, and agreed instead to build facilities with seven tracks and capacity for only 56 rail cars – a significant reduction from the Vanderbilt Yard's current storage capacity of 72 rail cars.

53. On June 22, 2009, MTA's Finance Committee met and issued a Staff Summary of the newly negotiated transaction, just two days before MTA's Board was to meet to discuss the transaction and decide whether or not to approve it.

54. When an MTA Board member questioned why the Board was being given less than 48 hours to vote on the transaction, MTA's Chief Financial Officer, Gary Dellaverson, responded that the Board needed to approve the transaction quickly because FCR needed to meet a December 31, 2009 deadline in order to market arena construction bonds as a tax-exempt issuance.

55. When an MTA Board member asked Mr. Dellaverson what would happen if Extell once again offered to pay MTA more for the Vanderbilt Yard at closing than FCR offered, as it had in 2005, Mr. Dellaverson responded that "it would be interesting. I don't – we would obviously disclose that to the Board. I don't know what we would do", but did not explain why MTA did not solicit a new proposal from Extell.

56. Mr. Dellaverson also commented that "this is not, as you know, a great market to be out there transacting large-scale development parcels", and stated that "I wish that economy [in 2005] was true today, because we'd be in better shape in lots of ways", but did not explain why MTA had not obtained an independent appraisal to determine the Vanderbilt Yard's market value in 2009, as it was required to do under the PAAA.

57. When an MTA Board member asked Mr. Dellaverson what Forest City Enterprises' bond rating was, he responded that he knew it had one, but did not know what it was.

58. On June 24, 2009, at an open meeting attended by petitioners Assemblymember Brennan and Councilmember James, and by representatives of petitioners Senator Montgomery,

Straphangers Campaign, and DDDB, MTA's Board issued a resolution approving the newly negotiated transaction to dispose of the Vanderbilt Yard to FCR.

59. MTA adopted the position that it was permitted to negotiate exclusively with FCR to sell the Vanderbilt Yard, without a public bidding process, under PAL § 2897(6)(c)(v), because the disposal of the property was intended to further the public health, safety or welfare or an economic development interest of the state or political subdivision, and the purpose and the terms of such disposal were documented in writing and approved by the MTA Board in its June 24, 2009 resolution.

60. Nevertheless, upon information and belief, MTA did not conduct any actual analysis of the public benefits to be gained by the sale of the Vanderbilt Yard to FCR, nor did MTA acknowledge the substantial changes made to the Project since MTA had previously approved a sale of the Yard to FCR in 2005 and corresponding diminishment of the Project's anticipated public benefits.

61. Indeed, the MTA Board's June 24, 2009 resolution merely recited, in rote fashion, the same "significant public uses and purpose" of the Project that it had recited in 2005, such as "the construction of thousands of rental housing units for low-, moderate- and middle-income New Yorkers", "the erection of commercial office space to promote future economic growth and new jobs", "publicly accessible open space that links together the surrounding neighborhoods", "community facility spaces, programmed in coordination with local community groups, including a health care center and an intergenerational facility, offering child care as well as youth and senior center services", and "sustainability and green design", even though all or substantial portions of all of those benefits had already been either eliminated from the Project or put on indefinite hold.

62. Further, MTA did not obtain any independent appraisal of the Vanderbilt Yard before negotiating the new transaction with FCR, even though the Public Authorities Law required it to do so regardless of whether the disposal of the property was intended to further public purposes or goals.

63. The most recent appraisal of the Vanderbilt Yard from 2005 was outdated, as the MTA Finance Committee's Staff Summary implicitly acknowledged by stating that since 2005, "as a result of the economic downturn, financial and credit markets have tightened considerably and the Brooklyn real estate market has markedly deteriorated."

64. In fact, the Staff Summary dated June 22, 2009, did not even reference the outdated appraised value of the Vanderbilt Yard as determined on July 21, 2005, or any other estimated value of the Yard.

65. Similarly, the MTA Board's June 24, 2009 resolution approving the disposal of the Vanderbilt Yard to FCR did not reference any appraised or estimated value of the Yard.

66. Upon information and belief, the amount of the fair market value of the Vanderbilt Yard was not discussed, considered, or mentioned at any point during the Board's June 24, 2009 meeting, and was not included anywhere in the record of the transaction.

67. Further, MTA did not solicit or offer to entertain any competing offer from any other person or entity for the Vanderbilt Yard, even though the Public Authorities Law required it to dispose of the Yard "subject to obtaining such competition as is feasible under the circumstances".

68. In particular, upon information and belief, even though Extell had previously submitted a proposal to purchase and develop the Vanderbilt Yard for substantially greater cash value than offered by FCR, MTA did not ask Extell for, or provide Extell any opportunity to submit, a competing proposal for the Yard, even though MTA had plenty of time to do so.

69. Upon information and belief, MTA never obtained any opinion from legal counsel advising it that its disposition of the Vanderbilt Yard to FCR pursuant to the Board's June 24, 2009 resolution was lawful.

DDDB's Unity Plan Proposal

70. At the June 24, 2009 meeting, although MTA did not provide any formal opportunity for anyone other than FCR to submit a proposal for developing the Vanderbilt Yard, a representative of petitioner DDDB attempted to advise the Board of its competing offer to purchase the Yard and proposal to develop the Yard in accordance with the Unity Plan.

71. DDDB's Unity Plan proposal was, and is, a viable, bona fide proposal for developing the Vanderbilt Yard, which would provide substantially greater value to MTA than would FCR's proposal as approved by MTA's Board on June 24, 2009.

72. DDDB proposed to pay MTA \$120 million for the Vanderbilt Yard over a timeframe of approximately 12 years, as opposed to FCR's proposal to purchase the Yard for \$100 million payable over approximately 22 years.

73. Further, DDDB's Unity Plan proposal would provide substantially greater net public and economic benefits than would FCR's Project.

74. Nevertheless, MTA's Board refused to give DDDB the opportunity to submit a formal bid and proposal for the Vanderbilt Yard, refused to accept, entertain, or consider DDDB's Unity Plan proposal, refused to allow DDDB's representative time beyond the three minutes allotted to each public speaker at the meeting to explain the Unity Plan proposal, and refused to permit DDDB to make any other proposal for the Yard.

CAUSE OF ACTION
(For Violation of Public Authorities Law as Amended
by the Public Authorities Accountability Act of 2005)

75. Petitioners repeat and reallege the paragraphs 1 through 70 hereof as if set forth fully and at length herein.

76. MTA is a public authority under the Public Authorities Law and is subject to the provisions thereof, as amended by the PAAA, governing the disposal of public authority property.

77. The June 24, 2009 resolution, by which the Board of MTA approved the sale of property rights to the Vanderbilt Yard to FCR, constituted a disposal of public authority property under the Public Authorities Law.

78. Pursuant to Section 2897(3) of the Public Authorities Law, MTA was prohibited from disposing of the Vanderbilt Yard unless it obtained an independent appraisal of the Yard and included the appraisal in the record of the transaction.

79. Pursuant to Section 2987(6)(c) of the Public Authorities Law, to the extent MTA was permitted to dispose of the Vanderbilt Yard for less than estimated fair market value and/or without publicly advertising for bids, MTA was required to dispose of the Yard only “subject to obtaining such competition as is feasible under the circumstances”.

80. MTA failed to obtain a valid independent appraisal of the Vanderbilt Yard prior to its disposal of the Yard on June 24, 2009.

81. MTA failed to include any appraisal or estimated fair market value of the Vanderbilt Yard in the record of the transaction which its Board approved on June 24, 2009.

82. MTA failed to obtain, and, further, refused to accept, consider, or entertain, any competing bid or offer for the Vanderbilt Yard in connection with its disposal of the Yard to FCR on June 24, 2009, even though it was eminently feasible for MTA to do so.

83. In particular, MTA failed and refused to consider or entertain petitioner DDDDB's Unity Plan proposal for the Vanderbilt Yard.

84. By reason of the foregoing, MTA's disposal of the Vanderbilt Yard on June 24, 2009, violated the Public Authorities Law as amended by the PAAA.

85. Therefore, the June 24, 2009 resolution by which the Board of MTA approved the disposition of the Vanderbilt Yard to FCR was unlawful, and must be annulled and vacated.

WHEREFORE, Petitioners demand judgment of this Court annulling and vacating the June 24, 2009 resolution of the Board of MTA, and the disposition of the Vanderbilt Yard to FCR; awarding Petitioners the costs and disbursements of this action; and granting such other and further relief that the Court deems just and proper.

Dated: October 13, 2009

BARTON BARTON & PLOTKIN LLP

By: _____
Randall L. Rasey

420 Lexington Avenue, 18th Floor
New York, NY 10170
(212) 687-6262
rrasey@bartonesq.com
ccolligan@bartonesq.com

**YOUNG, SOMMER, WARD, RITZENBERG,
BAKER & MOORE, LLC**

By: Jeffrey S. Baker
Executive Woods
Five Palisades Drive
Albany, New York 12205
(518) 438-9907
jbaker@youngsommer.com

Attorneys for Petitioners

VERIFICATION

ERIC RESCHKE, being, duly sworn, avers as follows:

I am the president of petitioner Develop Don't Destroy (Brooklyn), Inc., in this proceeding. I have reviewed the foregoing Petition and know its contents, which are true to my own knowledge gained by virtue of my position as president of the aforesaid petitioner, except as to matters therein stated upon information and belief, and as to those matters I believe them to be true.

Eric Reschke

Sworn to before me on this
___ day of October, 2009

Notary Public