

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,

v.

METROPOLITAN TRANSPORTATION
AUTHORITY and FOREST CITY RATNER
COMPANIES LLC,

Respondents.

Index No. 09/114304

AFFIDAVIT OF H. DALE HEMMERDINGER

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

H. DALE HEMMERDINGER, being duly sworn, deposes and
says:

1. I am President of The Hemmerdinger Corporation, a
commercial and residential real estate ownership and development
company. From October 2007 until September 2009, I served as
Chairman of the Metropolitan Transportation Authority ("MTA").

2. I make this Affidavit to set forth for the Court facts concerning the MTA Board's consideration and adoption of the resolution at issue in this case. I understand that the background leading up to this resolution over a period of four years is set forth in the Affidavit of Helena Williams, President of the Long Island Rail Road ("LIRR"), an MTA subsidiary, and former interim Executive Director and Chief Executive Officer of MTA.

3. On June 24, 2009, the MTA Board held a regularly scheduled meeting, at which it considered a proposed resolution to authorize the Chairman or Executive Director of MTA to enter into certain transactions in connection with the Atlantic Yards Land Use Improvement and Civic Project (the "Atlantic Yards Project" or "the Project"), a major transit-oriented, mixed-use, mixed-income development project in downtown Brooklyn. See Certified Record ("Cert. Rec."), Ex. 23. The Atlantic Yards Project is outlined in a General Project Plan ("GPP") approved by the New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC") in 2006 and a modified GPP approved by ESDC on June 23, 2009, pursuant to the Urban Development Corporation Act. It involves the construction of a sports arena, residential buildings (including rental

housing units for low, moderate and middle income New Yorkers), commercial buildings and publicly accessible open space, all in close proximity to mass transportation facilities of MTA.

4. The Project depends, among other things, on MTA selling to the developer of the Project, Forest City Ratner Companies ("FCRC"), certain land and air rights to the Vanderbilt Rail Yard ("VD Yard"), over which much of the Project is to be built, on Blocks 1119, 1120 and 1121 in downtown Brooklyn. The Project also requires a tremendous amount of infrastructure work, including the construction of significant transportation improvements to the MTA system. FCRC must build a temporary rail yard to replace the existing VD Yard, thereby enabling construction activities to commence on the arena parcel (Block 1119). It is then required as part of the Project to construct a new permanent improved VD Yard on Blocks 1120 and 1121 (the "Upgraded Yard"), replacing the 100-year-old yard that LIRR has long used to store and clean its trains at the Atlantic Terminal. After that is complete, the developer must erect a platform over the Upgraded Yard to permit development of residential buildings and open space on top of the Upgraded Yard. The Project also requires an additional important improvement to MTA transportation facilities: a new subway entrance at

the intersection of Atlantic and Flatbush Avenues, for access to the Atlantic Avenue/Pacific Street subway station complex of New York City Transit ("NYCT"), an MTA affiliate. Thus, the resolution under consideration on June 24, 2009, provided for the disposition of certain property rights in the VD Yard to FCRC.

5. As at prior meetings concerning this Project, including the Board's Finance Committee meeting held on June 22, 2009, a number of public speakers supported the Project, and a number opposed it. Among those opposing the Project at the June 24, 2009, Board meeting was a representative of Develop Don't Destroy (Brooklyn), Inc. ("DDDB"), who for the first time introduced a so-called alternative Unity Plan to MTA.

6. MTA had issued a Request for Proposals ("RFP") with respect to development of the VD Yard in May 2005, but DDDB did not respond to that RFP, which had a July 6, 2005 deadline for submission of responses. Nor had DDDB sought to submit to MTA a proposal for development of the VD Yard at any point in the ensuing four years, including at the meeting of the MTA Finance Committee held two days before the Board meeting (on June 22, 2009), at which a DDDB representative had appeared.

7. Given these circumstances, it is obvious that DDDB's submission of this "offer" for the first time on June 24, 2009, at the very Board meeting at which MTA was to vote on authorization of a revision to a development proposal of FCRC that had been under consideration since July 2005, was a political stunt rather than a *bona fide* responsive offer from a responsible Proposer.

8. The RFP, which required an application fee of \$25,000, contained a number of detailed requirements for proposals, as well as criteria for selection, including quantity and certainty of financial return to the MTA; financial viability of the proposal; overall economic development benefit of the proposal; experience of the Proposer in the development, management, marketing and design of projects of a scale, complexity, and quality similar to that required by the RFP, and ability to implement its proposal; proposed timeframe for commencement and completion of the proposal; the Proposer's financial qualifications (including its proven ability to obtain financing for projects of similar size, experience with institutional lenders, and evidence of the willingness of such lenders to finance the proposed development); the amount of equity or personal risk the Proposer intends to assume; quality of the development program; the Proposer's

previous record of performance in business dealings with any municipal, state or federal agencies, including the MTA; ability of the Proposer and MTA to agree on the terms of the disposition contract; and the Proposer's commitment to ensure MTA/LIRR operating requirements with minimal impact to railroad operations. See Cert. Rec., Ex. 3.

9. Beyond the obvious facial defects of the Unity Plan, including the fact that it had not been submitted in a timely fashion in response to the RFP and had not been accompanied by the required \$25,000 application fee, it had numerous other patent shortcomings. Among these were that the Unity Plan did not contain any reasonable explanation of how the sponsor would actually obtain the purchase money that DDDDB claimed would be paid to MTA, nor how the proposed project would be either financed or built. Nor did it identify who would be responsible for the construction of the project or contain any indication that anyone involved in the plan could qualify as a responsible bidder under any applicable legal requirements. The Unity Plan failed to demonstrate the Proposer's financial qualifications in any reasonable way, cited no proven ability to obtain financing for projects of similar size or experience with institutional lenders, and evidenced no

willingness of such lenders, or relevant City and State governmental entities, to assist in financing the proposed development.

10. After the conclusion of the public remarks portion of the meeting, the Board considered the matters before it, with the benefit of a Staff Summary, an attachment thereto entitled "Major Atlantic Yard Transaction Points" and the proposed Resolution concerning the Project. See Cert. Rec., Ex. 22. These materials addressed, among other things, the evolution of the negotiations of the in-progress Project and the benefits it is expected to generate. The Board of Directors approved the resolution, authorizing the Chairman or Executive Director to negotiate and execute the necessary contracts to implement the Project and take the necessary actions to satisfy applicable legal or regulatory requirements in connection with the Project. See Cert. Rec., Ex. 24. The Board's authorization was made contingent upon ESDC's concluding its process for affirming the modified GPP in accordance with the UDC Act. See *id* at pg. 6.

11. In adopting the resolution, the Board considered the amount of the cash payment and the payment terms, which had been modified from the FCRC proposal that MTA had originally accepted in response to its 2005 RFP. Whereas the original proposal had provided for an up-

front cash payment of \$100 million, the proposal before the Board in 2009 provided for a payment of \$20 million upon closing (for Block 1119, the arena parcel), followed by payments totaling \$80 million in present value, discounted at 6.5 percent, *i.e.*, four annual payments of \$2 million and 15 annual payments of \$11,033,357 (for the MTA air rights over Blocks 1120 and 1121). See Cert. Rec., Ex. 22 at pg. 6. The Board also considered the unlikelihood of receiving a better offer, given the severe deterioration in the economy generally and the real estate market in particular since 2005.

12. The Board also took into consideration the “tremendous up front investment by the buyer to actually build the platform” over the VD Yard, which must be made before the developer can build the revenue generating portions of the proposal. (See Exhibit A hereto, a transcript of the Board’s deliberations, prepared by MTA’s counsel from the public video of the meeting, at pg. 4.) As one Board member noted, “[t]o get all of the elements lined up so that you can get a transaction of this kind to move forward is extraordinarily difficult and time consuming.” Ex. A at pg. 4.

13. The Board further considered the value MTA was receiving from the elements of FCRC’s proposal that supplemented the proposed

cash payments, including FCRC's obligation to construct a new permanent improved VD Yard over Blocks 1120 and 1121 (at an estimated cost of nearly \$150 million) and the requirement that FCRC construct a new subway entrance at Atlantic Avenue and Flatbush (anticipated to cost tens of millions of dollars). Taking into account these additional elements, including the modifications to the improved VD Yard as compared with the original 2005 proposal, the Board found that "the proposed terms offered by the Developer [are] advantageous to the MTA, price and other factors having been considered." See Cert. Rec., Ex. 24 at pg. 5. In that connection, the Board also considered the new payment terms in light of the ongoing difficulties in both the credit and real estate markets, and the Resolution explicitly recognizes that the "economic circumstances have affected the capacity of developers, including FCRC, to secure financing for large real estate development projects." *Id.* at pg. 3. Even the Board members who voted against the resolution acknowledged that "the economy has changed a lot in the four years since this plan was initially approved, and there may be some risk in pushing the developer back to the table." Ex. A at pg. 2.

14. The Board also discussed whether a new appraisal was warranted under the circumstances, in addition to the appraisal that

MTA had obtained in connection with the 2005 RFP, and concluded that it was not. As one Board member observed, “[t]he reality is, it is only worth what somebody is willing to provide.” Ex. A at pg. 3. I also pointed out that everyone should remember that “the real estate market is a whole lot weaker now than it was in 2005.” *Id* at pg. 8. The Board considered the matter and judged a new appraisal to be at best an unnecessary delay and, at worst, detrimental to MTA’s bargaining position because it was almost certain to result in a net estimated value below the prior appraisal. Not only was the real estate market significantly weaker than in July 2005, but a reasonable appraiser’s calculation of the costs of track relocation and platform construction would likely be far higher than those used in the July 2005 appraisal. Thus, the Board considered the 2005 appraisal sufficient, and the resolution explicitly found that an appraisal had been made of the property “and is included in the record of the transaction.” Cert. Rec., Ex. 24 at pg. 5.

15. The Board also found that MTA’s transit-oriented mission would be furthered by the disposition. See Cert. Rec., Ex. 24 at pg. 5. LIRR, and its riders, would benefit greatly from the upgraded train yard, the current yard being over 100 years old. NYCT, and its riders, would

benefit from the construction of a new subway access point, which would increase pedestrian safety in accessing the subway. Both improvements would directly serve the surrounding community, as well as the fans accessing the proposed arena. In speaking in favor of the transaction, one member stated that "I am now persuaded, the rail yard that we need and the transportation improvements that we desire to serve this arena" would be provided by the modified proposal. Ex. A at pg. 4.

16. The Board determined, in addition, that the transaction would yield significant economic dividends to the residents of Brooklyn and those of the State as a whole, particularly in the creation of new jobs and new revenue streams for the City and State. The Resolution reflects the Board's finding that "the disposal of the MTA Property is intended to advance the economic development interests of the City and State of New York" and "is expected to result in the creation and retention of substantial number of job opportunities and the creation or retention of substantial sources of revenues." Cert. Rec., Ex. 24 at pg. 5. I concluded my remarks by commenting that "in this economy, jobs and an arena in Brooklyn is a public good." Ex. A at pg. 8. Even a Board member who voted against the sale said that "the arena would

be a wonderful thing for downtown Brooklyn;” while another stated that “this would be a major, major benefit to Brooklyn and to all of the people of New York.” Ex. A at pgs. 1-2.

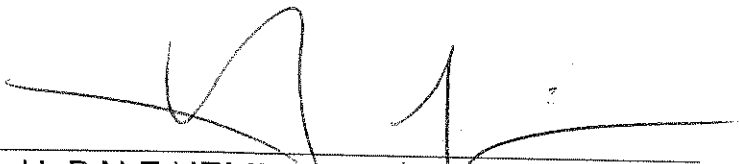
17. Furthermore, the Board considered the risk to which the project might expose the MTA. The Resolution states that proposed terms do not expose MTA to liability, and that if MTA is unable to successfully conclude the transaction with FCRC, MTA is free to negotiate with other developers or begin a new selection process. See Cert. Rec., Ex. 24 at pgs. 4-5. One Board member who spoke in favor of the resolution stated that the “transaction protects the Long Island Rail Road yards, there is a guarantee that the money would be there in order to maintain and to actually upgrade the rail yards that are there now.” Ex. A at pg. 2. He further stated his opinion that the transaction posed no risk to the MTA because “if, in fact, this other part in addition to the arena doesn’t actually exist, the MTA still owns the air rights. So, there is really a no lose situation here.” *Id.*

18. The Board also considered the fact that the MTA had been in negotiations with FCRC since 2005, and that FCRC was well on its way to completing the temporary train yard. The Resolution states that “FCR has constructed much of the temporary yard and plans to

complete the construction of the temporary yard by the end of December, 2009." Cert. Rec., Ex. 24 at pg. 3.

19. Finally, the Board consulted extensively with its staff, the public and its counsel in authorizing the transaction. Several Board members mentioned their discussions with MTA and LIRR staff in considering the proposal, including the Chairman. See Ex. A at pgs. 4, 6, 8.

20. In view of these considerations I was, and remain, firmly convinced that adoption of the resolution discussed in this Affidavit is in the best interests of MTA, the transit-riding public and the people of Brooklyn and New York City and State as a whole.



H. DALE HEMMERDINGER

Sworn to and subscribed before me
this 5th day of November 2009.



Notary Public

IRIS SHERER
Notary Public, State of New York
No. 015H5033569
Qualified in Bronx County
Commission Expires Sept. 26, 2010

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**Transcription of Video Recording of
MTA Board Deliberations**

June 24, 2009

Vice Chairman Saul

Okay, now the one everybody is waiting for.

The third action item requests Board authorization of the resolutions in the materials distributed to the Board which authorizes the Executive Director and Chairman to take the actions described in the staff's summary and resolution regarding a proposed transaction involving Forest City Ratner Companies with respect to Vanderbilt Yard. This matter was presented to the Finance Committee as information matter that is being presented to the Board today as an action item.

I must, Jim, I must recuse myself because of a conflict of interest on this item. Jim is going to move it on behalf of the Finance Committee.

Various

Move it. Move it. Second, please. Okay, discussion. Who would like to go first.

Chairman Hemmerdinger

No volunteers? Anybody have anything that they would like to say about this? I know we have somebody.

Mr. Pally

I'll start then, Chairman, unless somebody else wants to do so.

This project has been around for a long time unfortunately, it has gone through a number of machinations. Unfortunately today, it is back to us, in a, in a perception that this vote is for or against the Atlantic Yards Project. That is not true. At least not in my opinion, it is not true. I do not believe it is inconsistent to be in support of the project, as I am, and have been for many years, and yet to oppose a resolution before us, because I do not believe. The only issue, I believe the only issue facing me as a board member is whether or not I believe, in my subjective view, whether MTA is getting fair market value for its property. I did not believe that four years ago, which is why I voted no then, and I believe the same to be true today, which is why I am voting no today. Thank you Mr. Chairman.

Chairman Hemmerdinger

Allen.

Mr. Cappelli

Well, Mr. Chairman, I have actually given this a lot of thought over the last couple of days, and I wasn't really sure how I was going to vote until this morning, until after I've listened to some of the speakers, who have

testified here today. We've heard a lot of comments about the jobs that are created, and god knows they need it, and that the arena would be a wonderful thing for downtown Brooklyn and certainly no one can dispute the fact that this city is in great need of affordable housing. And the city and the state should be commended for their efforts to try to put together this project, and I am supportive of the concept of this plan. As Commissioner Paley has said, I don't think that it is inconsistent for us to vote against this proposal today; and be in support of the plan. Our jobs as fiduciary are to ensure that the MTA get its maximum value for this project, and at least as of this moment, I am not convinced that I have the information to make that judgment, that the maximum benefit is going to be secured. Additionally, I am very troubled by the idea that this state-of-the-art rail yard that we were going to be producing for the Long Island Rail Road needs which was a nine-track facility just several weeks ago that we were touting, is now sufficient with seven. I am troubled by that change in the plan. Once we build that out, we are locked into that forever, which will cost an enormous amount of money. Land is very valuable. I know that the economy has changed a lot in the four years since this plan was initially approved, and there may be some risk in pushing the developer back to the table, but, unfortunately, I think it is a risk that I would recommend that we take, and I intend to vote no.

Mr. Cecil

Going along with my two fellow commissioners, I find that it would be helpful if we had had an updated appraisal. I gather there was an appraisal in 2005 and there has not been an appraisal since, and once again we are living in a period of time in which we are all suffering economically and particularly in the real estate markets, even though this would be a major, major benefit to Brooklyn and to all of the people of New York, but I do think that there is a question in terms of what is today's current value, and I wonder if we tabled this situation how long it would take to get an updated appraisal. Thank you.

Chairman Hemmerdinger Who else would like to speak?

Jeff.

Mr. Kay

Sure.

We just have obviously a pretty long hearing and I think people have talked about this for some time and people have asked us; you know, we should consider the community, we should consider a whole bunch of items, but in reality, and I think Commissioner Pally said it best is, we really only have one or two responsibilities here and the first is to the riders and the transportation services; and I think my response to that is this: One of the things that the MTA and the MTA staff made pretty clear from the beginning is that this transaction should have absolutely no

impact on the riders whatsoever. I think that this transaction protects the Long Island Railroad yards, there is a guarantee that the money would be there in order to maintain and to actually upgrade the rail yards that are there now, I think it does that. I think the provision also provides additional transit improvements, it provides to the transit riders, and that there is no down side. I think that is the key. I think that is our ultimate responsibility.

The second issue of fiduciary responsibility is, did we get enough for our assets. You know, these rail yards have been there for a very long time. It wasn't, I think until recently, for probably either the market not being there or the MTA not thinking far enough of maximizing its assets which is to start thinking about decking over rail yards and start taking advantage of the property that we have. Over the last few years we have been talking about it and we have been moving forward, we have been moving forward on the far west side, and I hope today we can move forward on the Vanderbilt yards. I think there's two pieces here that makes sense to me. One is, what is the market bear? Are we getting what it is worth? The reality is it is only worth what somebody is willing to provide, and if people are willing to provide and come up with money to actually provide us, then that is what the market bears. An appraisal can, you know, be, we can redo an appraisal three times during three different business cycles, but there was an RFP process, there were things brought forward, the market is what the market is. I think this is actually a good win. I think there is some obviously not the full upfront \$100,000,000 that we were provided initially, but the market today would provide, and this deal provides us with enough fund of \$20,000,000 or \$28,000,000 over a short period of time; and then as the development goes forward, the full value of the \$100,000,000 and that comes in my opinion, in my understanding at no risk. Because if in fact, that this other part in addition to the arena doesn't actually exist, the MTA still owns the air rights. So, there is really a no lose situation here. If in fact that developer no longer exists, or flips the property, or decides not to build, it's ours. And we do have another shot at it; and if fifteen years from now or ten years from now the market would provide additional money, then we have that opportunity if in fact that developer fails. But there is no other market, no one else has comes forward with a credible proposal at this time and we should take advantage of that.

Finally, the last piece which I think we all need to look at, is whether it is legal. People have talked today a lot about public accountability and whether this is a legal transaction, I think it's pretty clear, I guess our legal department has advised us that this is a legal transaction and other than that, you know, I do respect obviously we want to work with the community and the neighbors and what is good for the economy. It is not actually in our purview. So my vote today is, through the lens, no different of Commissioner Pally or Commissioner Cappelli and Cecil, in that I am looking at those three things which is transportation, fiduciary

responsibility and legality; and frankly that is the role that we have here today. So I'll be voting in favor of this.

Chairman Hemmerdinger Mark.

Mr. Page

I would follow and agree with much of what Mr. Kay has just said. I think that, realizing value from rail yard properties that we own is something that we have learned over the last number of years. Much of which has been in a boom real estate cycle is extraordinarily difficult. When we talk about realizing value, because we require the rail yard function, we are actually not selling the, we don't have land to sell, we need, we need it to maintain the rail yard function. So, what we are selling is the space above it and to have an opportunity to actually realize value for the space above our land requires a tremendous up front investment by the buyer to actually build the platform which comes in up front expensive major investment before the buyer can then move on to building whatever they are going to build which would ultimately enable them to realize revenue to pay for all of this. I guess the other aspect of these yards, is they are large and you need a buyer who is going to somehow incorporate what you are offering into a large and elaborate development project. Large elaborate development projects in New York City are extraordinarily difficult to pull off in terms of the levels of government and public participation and legal issues to be dealt with. To get all of the elements lined up so that you can get a transaction of this kind to move forward is extraordinarily difficult and time consuming. We have arrived at a point where there is not perfect assurance that this project will in fact take place, but I think as outlined for us with the benefits that are available here to the MTA assuming it goes forward as currently described and defined in the documents we would enter into, in fact I think that this is as good a deal as it is going to be available to us for this property in the foreseeable future and that therefore it is something that we should be going ahead with, and I plan to vote for it.

Chairman Hemmerdinger Thank you Mark.

Doreen.

Ms. Frasca

Thank you Mr. Chairman.

I voiced my disappointment that this Board wasn't given more time to review this transaction and having voiced my disappointment about that, I spent about five hours yesterday getting my arms around this transaction and formulating questions that I felt I needed to ask before I could vote, and I know that I wasn't alone in that. A lot of my colleagues spent some quality time yesterday thinking about the issues that this transaction raises. This morning, Commissioner Blair and I spent a little more than

an hour and a half discussing questions with Helena and Jim and Gary and I believe that I received satisfactory answers to all the questions that I posed to them. And it was an interrogation. I was confident by the fact that both Helena and Connie Crawford have been very actively involved with the developer in setting out the specs that provide us with, I am now persuaded, the rail yard that we need and the transportation improvements that we desire to serve this arena and hopefully all of the developments which takes place along with it. Furthermore, I believe that we have built financial safeguards in the transaction that enable us to move against the developer if they do not perform as we expect. Thirty years of my career have been spent working on public/private transactions of this nature and I have always represented the public sector. I have never yet seen a perfect deal where both sides walk away completely delighted with all the terms and provisions. The question that we ask as fiduciary is, are we getting the elements of the transportation elements, because this is a transportation project for us, that we need and the financial safeguards that we require and I believe that we have.

Chairman Hemmerdinger Who else would like to speak?

Mr. Brown

I often bemoan, I am not a voting member, and once the fare increase and stuff, you know, I sit real low in my chair, and I'm really glad that I don't have to vote. In this particular circumstance though, I really wish that I could vote, and though I very much appreciated the patronizing lectures that the people gave us on fiduciary duty. I believe fiduciary duty is a door that swings both ways. I believe that you can violate your fiduciary duty. Correct me if I am wrong, I am not a lawyer either, I am a mechanic. But the, you can violate your fiduciary duty by voting no, just like violating your fiduciary and voting yes. You can kill a deal, and have no other deal follow in its wake. And, I have watched the staff up here turn somersaults for years on this project. I have watched all my neighbors in Brooklyn, tear themselves apart over this project. Being beaten to death by outrageous accusations of, which we heard again today, from many of the public speakers. Outrageous accusations of insider trading, and this and that. I'd like, just want to just go on the record as someone who would like to be pressured by the Governor and the Mayor on these things. So if any of you guys are friends with the Governor and the Mayor, ask them to pressure me, and they will get me as a mouthpiece on this board. Not a vote piece, but a mouthpiece. Thank you very much.

Chairman Hemmerdinger You're a hard act to follow Norman.

Who, else would like to go next?

Ira.

Mr. Greenburg

I'll go last. I also don't vote, and I am actually happy that I am not voting on this, because I don't feel I am up to speed. There is some service issues which I am concerned with, and it's the old yard and new yard both seem to have storage for short trains. So that's, I think that is an issue. The other issue is the kind of service and whether it was contemplated under the EIS for East Side Access. I'd love to see some of that and I that's the concerns that I have regarding this, regarding, well not just specifically this deal, but at least what we are getting out of this is the yard. Whether the yard is really sufficient and this commitment to shuttle service is something I don't know if anyone really thought it through, and I would like to speak it through a little more whether that's the best thing for the Long Island Rail Road riders and for the people of Brooklyn.

Chairman Hemmerdinger Susan? No.

Andrew.

Mr. Albert

Well, many of the speakers today, imbued us with being an economic development agency and we are really a transportation agency and that should be our paramount concern, you know. I am concerned that the yard is everything that the Long Island Railroad needs it to be. I am also concerned that several elected officials spoke today who were responsible for the "bailout" that we received in Albany, and I am very concerned that it looks like an agency that just got bailed out by the state legislature is now, not getting the very best deal it can get for the land that we own. So that remains a concern to me. I think today I am almost in agreement with Norman and Ira, I am sort of glad that I can't vote today, because this is a very, very difficult decision. As important as it is to bring this important project to Brooklyn, I am also a bit concerned that we are not doing all that we can to get as much as we can for the agency. And obviously, our financial predicament is not totally solved yet. So I am torn in that regard, but I will leave it to my fellow voting board members to iron that one out.

Thank you.

Mr. Blair

Having sat through the discussions this morning, with Commissioner Frasca, I will have to say that the presentation was quite persuasive. As stated by many members it is a difficult decision. The one thing that I would add to the mix after that discussion is what came across to me at least as the high level of skill and intense work on the part of staff including our interim director and Gary in managing a very difficult situation and bringing what they believe is equivalent value. Maybe in a different package, but nevertheless, value that is under the circumstances

about as real as you can get. And, so I would like to at least leave the board with the feeling that we have had excellent representation in the matter and I think that quite persuasively put forward for getting this deal done.

Chairman Hemmerdinger Anybody else?

Mr. Albert I just have a question. Maybe it is for Gary. In the naming of the proposed Atlantic-Pacific bus station. Do the naming rights solely go to the subway, or would the Long Island Railroad station in addition have that Barclay Venture Signage, and is it a free standing separate sign or is the station actually getting renamed, Atlantic-Pacific Barclays?

Mr. Dellaverson The agreement pertains simply to the subway aspect, not commuter rail aspect, in the event that there would be a down stream commuter rail, we would expect additional remuneration from the developer. The second question that you raised about the naming of the station, the station, again, even though it appears to be a single station, of course it is in essence two different stations and there is two different names, and, it will be the Atlantic/Barclays Arena and the Pacific Street Barclays Arena. So that is how it would be named. With respect to the transit improvements that will be underway and at the expense of the developer, they will be producing after consultation with us, and with our sign off, the physical signage associated with the transit improvement. The other signage will be done by us when we get to it, unless they wish it to be done more promptly, in which case it would be at their expense, to do it more promptly. Not that we won't do it promptly otherwise.

Mr. Albert The compensation for the additional naming is into perpetuity or is there an end to it?

Mr. Dellaverson It is a 20-year agreement, coterminous with the naming rights that Forest Ratner and Barclay Bank negotiated.

This is not an arrangement between MTA and Barclay's Bank. This is an arrangement between MTA and Forest City on behalf of the arena ownership. Thank you.

Mr. Page I'm sorry to do this in fragments, it is, as Mr. Blair just brought up, and again, I just like to repeat. That, you know, as a board, we have heard the latest iteration of the offer that we are asked to vote on quite recently, but that's because as an entity, the MTA has been doing its best to negotiate

the best terms for us at a staff level for a very long time on this transaction and very actively on our behalf, really right through last weekend. So that it is not as though it is just something that's being dropped in our laps suddenly to consider, it's actually the product of the best effort we've been able to do as an agency for this property and our situation in Brooklyn over an extended period of time. So that, you know, when questions of value and terms that might be available to us, are not just abstract questions, the proposal in front of us is the product of very active, hard fought negotiations over an extended period of time and this is the best that as an institution we've been able to bring before ourselves as a board to decide on. It is not a quick, easy sudden circumstance that we are faced with here. It is a major work product.

Chairman Hemmerdinger Anybody else?

Well, you have all been extraordinarily eloquent, I won't try to match your eloquence, I just want to point out two things: First off, you all may recall that we have been trying to make money off of naming rights for quite a while. This is the first time that we have been successful. I don't want anybody to miss that. It is a very important point. That was never part of the original discussions of with Ratner. It was something that came up on this deal.

I think it speaks to what Mark was talking about how hard the staff has worked to make this a better deal for the MTA and our customers. I do think that the staff has done a really excellent job in trying to make it as good as possible in light of the circumstances. I don't think anybody should not remember that the real estate market is a whole lot weaker now than it was in 2005.

I think the other thing that I want to say is as Chairperson is, that I got Helena and Connie. I got Helena to put back her hat on as only the head of the Long Island Railroad and Connie to assure me on behalf of all of us that this transportation solution is a good one and an adequate one. That we weren't giving up anything. That it really was value engineering, not us giving up anything and I think all of you know Connie and I think all of you know Helena and that is an awfully good insurance. I look them straight in the eye and I made them swear that that was true. And they did, and I believe them. I think an awful lot of work was done to get here, to make this possible. I've been in the real estate business a whole long time and I agree with Doreen, no deal is ever perfect, you get what you can, when you can; and I think in this economy, jobs and an arena in Brooklyn is a public good and I certainly am going to vote for it.

So unless there is any other discussion, I'd like to call a vote please.

All those in favor, Aye, raise their hands.

Jim, please get up and do the counting. Keep them up so that we are not.

These are all Aye now. Not Nays.

Keep them up, it is the only exercise that you are going to get all day.

Okay, all the Nays please. Got them?

And we've got one abstention. Andrew, abstaining.

The motion?

Mr. Henly

The motion carries.

Chairman Hemmerdinger Okay the motion carries.