

YOUNG, SOMMER ... LLC

Young, Sommer, Ward, Ritzenberg, Baker & Moore, LLC

JEFFREY S. BAKER
DAVID C. BRENNAN
MICHAEL J. MOORE
J. MICHAEL NAUGHTON
KENNETH S. RITZENBERG
DEAN S. SOMMER
DOUGLAS H. WARD
KEVIN M. YOUNG

JOSEPH F. CASTIGLIONE
KRISTIN M. LAVIOLETTE
JAMES A. MUSCATO, II
ROBERT A. PANASCI

COUNSELORS AT LAW

ALL WRITTEN CORRESPONDENCE TO
EXECUTIVE WOODS, FIVE PALISADES DRIVE, ALBANY, NY 12205
Phone: 518-438-9907 • Fax: 518-438-9914

Saratoga Office:
468 Broadway, Saratoga Springs, NY 12866
Phone: 518-580-0163

www.youngsommer.com

OF COUNSEL
MICHAEL E. CUSACK
SONYA K. DEL PERAL
ELIZABETH M. MORSS
KRISTIN CARTER ROWE
LAWRENCE R. SCHILLINGER
DAVID R. WOOLEY

PARALEGALS
GREGORY D. FAULKNER
PENELOPE D. HENRY

ENERGY POLICY ANALYST
VALERIE B. STRAUSS

WRITER'S TELEPHONE EXTENSION: 227
JBAKER@YOUNGSOMMER.COM

Via Fax 212-803-3775 and Regular Mail

August 28, 2006

Ms. Anita W. Laremont
Senior Vice President - General Counsel
Empire State Development Corporation
633 Third Avenue
New York, NY 10017

Re: Atlantic Yards "Community Forum"

Dear Ms. Laremont:

We represent Develop Don't Destroy-Brooklyn, (DDDB) a community organization reviewing and commenting upon the Draft Environmental Impact Statement, General Project Plan and related documents associated with the above-referenced Atlantic Yards Project. We are writing to point out an error in ESDC's recent announcement of an additional "Community Forum" and to seek a clarification with respect to that notice.

DDDB and many other groups, public officials and individuals have requested an extension of the comment period for the DEIS. These groups have also protested ESDC's scheduling of a "Community Forum" for September 12th as that is also the state-wide primary election day. While we remain mystified at ESDC's refusal to extend the comment period on the DEIS and GPP, we are pleased that ESDC has agreed to schedule an additional "Community Forum" for September 18th. However, in its announcement of the new date, ESDC continues to provide that written comments are due by the close of business on September 22nd. That date is less than 10 days after the Community Forum and thus violates the public comment provisions under SEQRA.

In its announcement, a copy of which is attached hereto, ESDC makes clear that the "Community Forum" will have been scheduled by ESDC, a court reporter will take a stenographic transcript, all comments at the Community Forum will be given the same consideration as comments received at the Public Hearing, the comments will be considered by ESDC prior to making a final decision and will be part of the public record.

As you know, the SEQRA regulations require that the lead agency receive public comments on an DEIS for “no less than 10 calendar days following a public hearing at which the environmental impacts of the proposed action are considered”. 6 NYCRR § 617.9(a)(4)(iii). Clearly that regulation applies to ESDC’s “Community Forums”. We are not aware of any factual or legal distinction between the “public hearing” held on August 23rd and the “community forums” to be held on September 12th and 18th. At both the “hearing” and the “forum” comments are being taken on the DEIS, a transcript is being made and all of the comments are being considered. Furthermore, ESDC’s “Basic Protocol for the Community Forums” notes that persons who signed up to speak at the public hearing but were not given an opportunity to speak, will be given priority at the community forums and that persons, including public officials, who already spoke at the public hearing will not be permitted to speak at the forum. Clearly, the “forums” are nothing more than a continuation of the public hearing. Changing the name of the event does not alter its essential nature. Since the forums are functionally identical to the hearing, the forums must be deemed a continuation of the public hearing and thus comments must be accepted for 10 calendar days following the last public hearing/forum.

Therefore we request that you confirm and publish a new notice recognizing that written comments will be accepted until 5:30 PM on September 28, 2006.

Finally we would like clarification on who the “independent Community Forum officer” is that is referenced in the Basic Protocol. Is this person an employee of ESDC and if not, how is that person chosen, what is his or affiliation and what function does that person serve?

Thank you for your attention to these issues.

Very truly yours,

/s/

Jeffrey S. Baker