



Jo Anne Simon  
NYS Democratic Committeewoman & District Leader  
52<sup>nd</sup> Assembly District  
356 Fulton Street, 3<sup>rd</sup> Flr. Brooklyn, NY 11201  
Phone: 718 852-3528 Fax: 718 875-5728  
joanne@joannesimon.com

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August 25, 2006

Hon. Charles A. Gargano  
Chairman and Commissioner  
Empire State Development  
633 Third Avenue  
New York, NY 10017

Dear Mr. Gargano:

I write to lodge a formal complaint in connection with the August 23, 2006 public hearing held by Empire State Development (ESD) on the Draft Environmental Impact Statement (DEIS), General Project Plan (GPP) and condemnation of properties to be taken by eminent domain for the Atlantic Yards development.

First, I note that ESD's obligation under the State Environmental Quality Review Act (SEQRA) is to conduct a fair and impartial public hearing on the impacts disclosed by the required DEIS. Under the law, the public has both a right and a duty to comment on the impacts disclosed, as well as any claimed non-disclosures and/or misrepresentations.

Instead, ESD permitted the developer's associates (labor unions and ACORN) to admit scores, if not hundreds of their members ahead of those who had been waiting for hours to enter the building. For example, Ms. Shirley MacRae, chair of Community Board 2 was denied entry in deference to union members, even though as a public official, she should have been granted advance access.<sup>1</sup> She was treated rudely and disrespectfully. Apparently, as she was dressed professionally and not in a brightly colored tee shirt, she was suspect.

The effect of this practice was an overwhelming and disruptive presence of project supporters who came to express their support, not to comment on the DEIS—the purpose of the hearing. "Testimony" of young children was taken. Cute, perhaps, but also self-serving, and a waste of the public's precious hearing time.<sup>2</sup>

I'm sure you agree that our environmental laws require public comment for very important reasons — our lives, our health and those of future generations depend on environmental disclosure and comment. Environmental pollutants exacerbate, if not cause, respiratory and pulmonary disorders, learning and attention deficits. Those most likely to be adversely affected are overwhelmingly poor people of color. This hearing treated the environmental process as an inconsequential hoop to sail through and be done with.

I also complain about the conduct of the hearing officer, Edward Kramer, Esq. While generally patient and respectful of witnesses, Mr. Kramer had a heavy hand on the time clock for those who were testifying about environmental impacts, allowing project supporters to preach and scold well beyond the 3 minute limit. At key points, when it was painfully obvious that a speaker had gone overtime, I held up three fingers—a trick I learned

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<sup>1</sup> The same would hold, of course, for the chairs of Community Boards 6 and 8.

<sup>2</sup> Had so-called "opponents" brought their children to drain time away from supporters, it would have been equally inappropriate.

from ACORN—to indicate that time had lapsed. Each time he saw me, he looked down at his desk, feigning unawareness. Had such testimony been remotely on topic, I might be less offended, although it still would have been unfair. Mr. Kramer’s job could not have been easy—he took but one break—but his job was to conduct a full and fair hearing, not to give one side advantages. After 7 hours of testimony, no one testifying in support of the project ever mentioned the DEIS, much less commented on its content. Everyone who addressed the topic was given short shrift at every turn. This is not democracy.

Every person testifying at the Aug 23<sup>rd</sup> hearing supported affordable housing and jobs. Those who testified on point however, supported the creation of affordable housing and jobs in a healthy and safe manner, something the GPP (as acknowledged by ESD), does not provide.

Neither the rights of the citizenry, nor the contours of ESD’s legal obligations are defined by ESD or it’s contract hearing officer. They are defined by the law’s embodiment of traditional notions of justice and—dare I say it?—fair play. On August 23<sup>rd</sup>, ESD conducted a biased, theatrical display in lieu thereof. It must now act quickly to rectify this shameful situation.

I look forward to your prompt reply.

Very truly yours,

Jo Anne Simon<sup>3</sup>

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<sup>3</sup> In addition to being State Committeewoman for the 52<sup>nd</sup> AD, I also chair the Boerum Hill Association’s Atlantic Yards Task Force.