

EXHIBIT C

TO

AFFIRMATION OF KATE FLETCHER IN SUPPORT OF
VERIFIED PETITION

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

PRESENT: James Solomon

PART 55

Index Number : 104415/2008
TUCK-IT-AWAY ASSOCIATES, LP
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE 8/1/08
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED
1-6
7-19
20-25

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~ petition is decided
in accordance with the aforesaid memorandum
decision, order and judgment.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).

Dated: 9/24/08

J.S.
JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X
TUCK-IT-AWAY ASSOCIATES, LP, TUCK-IT-AWAY,
INC., TUCK-IT-AWAY BRIDGEPORT, INC., TUCK-
IT-AWAY AT 133RD STREET, INC., and TUCK-IT-
AWAY AT 135TH STREET, INC.,

Petitioners,

Index No. 104415/08

-against-

DECISION, ORDER and
JUDGMENT

CITY OF NEW YORK, CITY OF NEW YORK
PLANNING COMMISSION, CITY OF NEW YORK CITY
COUNCIL, MICHAEL R. BLOOMBERG in his
capacity as MAYOR OF THE CITY OF NEW YORK,
NEW YORK CITY COMMUNITY BOARD 9, and
COLUMBIA UNIVERSITY,

Respondent(s)

UNFILED JUDGMENT
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appear in person at the Judgment Clerk's Desk (Room
141B).

JANE S. SOLOMON, J.:

Petitioners are owners of storage facilities in the
Manhattanville section (Community Board 9) of New York, New York.
Petitioners challenge the process by which the City of New York
(hereinafter, the City of New York, the City of New York Planning
Commission [the lead agency], the City of New York City Council,
and Michael R. Bloomberg in His Capacity as Mayor of the City of
New York, will be collectively referred to as "the City")
approved a "Manhattanville in West Harlem Rezoning and Academic
Mixed-Use Development" plan (the Plan). The Plan, among other
features, calls for the expansion of the campus of Columbia
University and the construction of a Central Below-Grade Service

Area (a "Bathtub"). As of November 2007, the City issued a negative declaration of adverse environmental impact.

Petitioners object to that negative declaration contained in the Final Environmental Impact Statement (FEIS) issued in compliance with the State Environmental Quality Review Act (SEQRA) and the City Environmental Quality Review (CEQR) promulgated thereunder. SEQRA and CEQR "require lead agencies to consider both the short- and long-term and primary and secondary effects of a proposed action in determining whether the action may have a significant effect on the environment" Chinese Staff and Workers Assn v City of New York, 68 NY2d 359, 361 (1986).

Petitioners maintain that the FEIS failed to take, as required (Matter of Riverkeeper v Planning Bd. of Town of Southeast, 9 NY3d 219 [2007]), a "hard look" at the potential environmental impacts of the Bathtub (first cause of action). In addition, Petitioners claim that the City: (i) improperly segmented its review of the Plan by deferring full analysis of the impact of the Bathtub (second cause of action); (ii) failed to adequately consider an alternative proposal put forward by Community Board 9 and to comply with the publication procedures of SEQRA (third cause of action); and (iv) failed to publish notice of completion and notice of hearing on the draft EIS for the Plan in the State Environmental Notice Bulletin (fourth cause

of action).

The standard of judicial review for challenges involving substantive compliance with SEQRA guidelines is limited. Although literal compliance with SEQRA's procedural requirements is compulsory (see Williamsburg Around the Bridge Block Assn. v Giuliani, 223 AD2d 64 [1st Dept 1996]; Glen Head-Glenwood Landing Civic Council v Town of Oyster Bay, 88 AD2d 484, 490-491 [2nd Dept 1982]; Matter of Rye Town/King Civic Assn. v Town of Rye, 82 AD2d 474, 480-481 [2nd Dept], appeals dismissed 55 NY2d 747 [1981]), local "lead agencies" are to be given latitude with SEQRA's substantive requirements (see Aldrich v Pattison, 107 AD2d 258 [2nd Dept 1985]). See generally Horn v International Bus. Machs. Corp., 110 AD2d 87 (2nd Dept 1985), lv denied 67 NY2d 601 (1986).

As a result, in reviewing the City's FEIS, CPLR article 78 is applicable. Thus, this court may only annul a FEIS determination on a substantive basis if it is not rational, if it is arbitrary and capricious, or if it is unsupported by substantial evidence. Akpan v Koch, 75 NY2d 561, 570 (1990); Town of Hempstead v Flacke, 82 AD2d 183, 187 (2nd Dept 1981); see also Matter of Pell v Board of Educ. Of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County, 34 NY2d 222 (1974); CPLR 7803.

Notice Requirements (Fourth Cause of Action)

As the procedural requirements of SEQRA are mandatory, strict compliance with the notice requirements under 6 NYCRR 617.12 (c) (1) is a threshold matter. However, contrary to the implications of the petition, that section refers only to notice to the Environmental Notice Bulletin (ENB), and not to publication in the ENB.

The only publication requirement arises under 6 NYCRR 617.12 (c) (2), which mandates publication of a notice of hearing in a newspaper of general circulation. It is uncontested that Respondents satisfied this requirement with publication of a notice of hearing in the New York Daily News on September 17, 2007. As such, the request to annul the FEIS based upon non-compliance with publication requirements is denied.

Failure to Take "Hard Look" (First Cause of Action)

The main complaint of Petitioners is that the City, in the FEIS, failed to take a "hard look" at a number of potential environmental impacts of the Bathtub aspect of the Plan. See Riverkeeper, 9 NY3d at 228. More specifically, Petitioners are concerned that the City did not properly consider soil removal traffic, sub-soil stabilization, flooding and storm surge protection, earthquake protection, release of bio-hazardous material, and cost-lowering alternatives proposed by Community

Board 9.

The appropriate degree of detail that should be contained in the FEIS for each of these areas of concern is somewhat subjective, and will vary with the circumstances and nature of the item under consideration. Webster Assoc. v Town of Webster, 59 NY2d 220, 228 (1983); Matter of Rusciano & Son Corp. v Kiernan, 300 AD2d 590 (2nd Dept 2002), lv denied 99 NY2d 510 (2003); Horn, 110 AD2d at 94; Matter of Town of Dryden v Tompkins County Bd. of Representatives, 157 AD2d 316 (3rd Dept 1990), affd 78 NY2d 331 (1991). Moreover, not every conceivable environmental impact, mitigating measure, or alternative is necessarily grist for the mill. Matter of Neville v Koch, 79 NY2d 416, 425 (1992); Rusciano, 300 AD2d at 591-592; see also 6 NYCRR 617.7 (c) (1) (FEIS to address "impacts that may be reasonably expected to result from the proposed action").

Here, the court is satisfied that the City had a hard enough look (Riverkeeper, 9 NY3d at 228) at the environmental impacts identified by the Petitioners, and gave due consideration to pertinent environmental factors (Akpan v Koch, 75 NY2d 561, 571 [1990]). See e.g. FEIS, at 12-2 to 12-3, 12-10, 21-29, 21-31 to 21-57, and 21-61 (soil conditions, removal, and traffic considerations); 11-12, 11-22, 11-27, 11-33, 11-35, 14-2 to 14-3, 14-5 to 14-6, 21-13 (flooding, stormwater management, and storm surge impacts); 11-14 to 11-17, 11-23, 11-28, 11-33, 11-35, and

21-13 (earthquake potential); and 1-37 to 1-38, 14-10 to 14-11, 14-15, 22-22, 22-23 to 22-33 (hazardous chemical considerations).

Moreover, the court is satisfied, given the comprehensive treatment of the Plan and the Bathtub, that the FEIS determination is not irrational, arbitrary and capricious, or entirely unsupported by substantial evidence. Akpan, 75 NY2d at 570. The City took a "hard look" at the environmental impacts.

Improper Segmentation (Second Cause of Action)

Petitioners maintain that the City engaged in unlawful segmentation of the environmental review by deferring review of some engineering and other issues related to the construction and maintenance of the Bathtub until an indeterminate date.

Under SEQRA, "segmentation" refers to the "division of the environmental review of an action such that various activities or stages are addressed ... as though they were independent, unrelated activities, needing individual determinations of significance." 6 NYCRR § 617.2 (ag).

Here, there is no indication that the Bathtub aspect of the Plan was treated as unrelated to the Plan, or improperly segmented. Particularly, the FEIS determined, with regard to the Bathtub, that "[s]ufficient studies have been conducted to confirm that design elements can address potential flooding conditions." That the FEIS goes on to suggest that

"probabilistic risk-based analysis" will also be performed in the future does not constitute improper segmentation, especially as probabilities change over time. The part of the petition that seeks to annul the FEIS due to improper segmentation is denied.

Failure to Consider Alternatives (Third Cause of Action)

Petitioners contend that the City did not adequately consider an alternative to the Plan proposed by Community Board 9 (the 197-a Plan). This contention is without merit. Chapter 24 of the FEIS specifically addresses the 197-a Plan (see FEIS at 24-77 to 24-121).

Moreover, the argument advanced by Petitioners, that the 197-a Plan was rejected "without any real analysis of the serious and substantial impact from the Bathtub," is specious. The City was entitled to reject the 197-a Plan for any rational reason, with or without regard to the Bathtub. The City rejected the 197-a Plan, among other reasons, because it would: (i) not fulfill Columbia's long-term needs for space; (ii) reduce the amount of ground-floor retail space, and eliminate plans for a square and a grove; (iii) reduce the functionality of the Academic Mixed-Use Development due to the lack of a central loading facility; and (iv) reduce the amount of open space available to the public. See FEIS, at 24-76 to 24-77)

It cannot be said that the rejection of the 197-a Plan was

wholly irrational, arbitrary and capricious, or entirely unsupported by substantial evidence. Akpan, 75 NY2d at 570.

Conclusion

It is not within the purview of this court to weigh whether Petitioners' views on aspects of the FEIS are better than those of the City. Nor is it the function of this court to accept or reject contentions that there are better alternatives. Honest individuals are bound to disagree on such matters. However, that Petitioners disagree with the findings of the City is not a basis to invalidate the FEIS. Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400 (1986); Matter of Coalition Against Lincoln W. v Weinshall, 21 AD3d 215, 222 (1st Dept), lv denied 5 NY3d 715 (2005).

Rather, the role of this court is to verify that the City identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination. Matter of Jackson, 67 NY2d at 417; Coalition Against Lincoln West, 21 AD3d at 222. This court is so satisfied, and the FEIS determination, which is entitled to great deference (see Town of Hempstead, 82 AD2d at 187-188), will not be disturbed upon this record.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed. This constitutes the decision and judgment of the court.

Dated: September 24, 2008

ENTER:



J.S.C.

JANE S. SOLOMON

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1415).