

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of the Application of :

FRIENDS AND RESIDENTS OF GREATER :
GOWANUS, VOICE OF GOWANUS, LINDA :
MARIANO, MARLENE DONNELLY, ANN :
KATHRIN KELLY, and MARGARET :
MAUGENEST, :

Petitioners, :

For Judgment Pursuant to Articles 63 and 78 of the :
Civil Practice Law and Rules, :

- against - :

CITY OF NEW YORK, THE NEW YORK CITY :
DEPARTMENT OF CITY PLANNING, :
and MARISA LAGO, in her capacity as Director :
of the Department of City Planning, :

Respondents, :

- and - :

CITY PLANNING COMMISSION, :

Nominal Respondent. :

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Index No.:

VERIFIED PETITION

Petitioners Friends and Residents of Greater Gowanus (“FROGG”), Voice of Gowanus (“VOG”), Linda Mariano, Marlene Donnelly, Ann Kathrin Kelly, and Margaret Maugenest (together, “Petitioners” or the “Coalition”), as and for their Article 78 Verified Petition, by and through their attorneys, Hiller, PC, allege and aver as follows:

PRELIMINARY STATEMENT

1. By this Article 78 Proceeding, the Coalition seeks to compel respondents The New

York City Department of Planning (“DCP”), Marisa Lago, as Director of DCP and the City of New York (the “City”) (together “Respondents”) to perform the duties enjoined upon them by law, otherwise comply with the law, and respect the constitutional due process rights of the Coalition’s members during the City-mandated public land-use approval process known as Uniform Land-Use Review Procedure (“ULURP”) for Respondents’ proposed massive rezoning project in the Gowanus area of Brooklyn (“Massive Rezoning Project”).

2. As discussed herein, ULURP is a multi-step, multi-governmental agency approval process outlined in the New York City Charter that requires public review of major land-use proposals in the City. Respondents plan to “certify” their application under ULURP for the Massive Rezoning Project (“Application”) on January 19, 2021, which would formally begin the public review process, despite that various pre-conditions for certification under the law have not been satisfied, and despite public health restrictions resulting from the ongoing COVID-19 pandemic will cause Respondents to violate the law during the ULURP process.

3. Through the Massive Rezoning Project, Respondents are proposing the largest rezoning plan in the City’s recent history. The Massive Rezoning Project would encompass 80 blocks in Brooklyn, covering two different community board districts, and affecting over 187 acres (8.1 million square feet), consisting of both land and water.

4. Aside from its sheer size, the location of the Massive Rezoning Project would surround the Gowanus Canal, designated a “Superfund” site by the U.S. Environmental Protection Agency (“EPA”), and one of the most toxic sites in the United States (“Gowanus Toxic Site”). The national and local effort to clean up the Gowanus Toxic Site has only just begun and is nowhere near completion. It will likely take a decade for dredging of the Gowanus Canal to be completed. Much

of the area is also considered a flood zone, which means that it is likely to be overwhelmed with flooding in the event of another hurricane or storm, such as Superstorm Sandy in 2012.

5. Nevertheless, Respondents propose converting the area, which currently is zoned for predominantly industrial and commercial uses, into a combination of residential zoning, commercial space, community facility space, open space and newly mapped parkland. In particular, Respondents propose adding 8,200 residential dwelling units around the Gowanus Toxic Site, which is estimated to increase the population of the area by about 1100%.

6. Unfortunately, the proposed rezoning would likely lead to the elimination of manufacturing zones, which would result in businesses moving out of the area and the ensuing loss of many jobs.

7. DCP readily admits that the Massive Rezoning Project is subject to major scrutiny under both ULURP, and under the State Environmental Quality Review Act (“SEQRA”) and City Environmental Quality Review (“CEQR”), due to the potentially significant adverse impacts it would have with respect to nearly every environmental review category.

8. The foregoing briefly summarizes how large-scale this Massive Rezoning Project would be, and how deep of an impact it will have on the lives of the people of the community, including Coalition members. To be clear, however, this Article 78 Proceeding (“Proceeding”) is not about the merits of the Project. That debate is for another day.

9. Rather, this Proceeding is about the myriad violations of law being committed, or are about to be committed, by Respondents at the very beginning of the ULURP process. If not corrected at this juncture, the entire ULURP process for this proposal, regardless of the arguments for or against the Massive Rezoning Project, will be tainted with illegality.

10. Notably, the Massive Rezoning Project is not one sought by private entities. Rather, this is a public rezoning Project spanning an entire neighborhood in Brooklyn; the entity listed as the applicant applying for ULURP approval is DCP itself. Thus, DCP is responsible for overseeing many aspects of its own ULURP Application, including the certification process which begins public review of the Project.¹

11. Respondents have been pushing the Massive Rezoning Project for years, dating back to the Bloomberg years, despite that the Gowanus Toxic Site has not been remediated. Nevertheless, Respondents have chosen this moment, during the height of the COVID-19 crisis, to propel the Massive Rezoning Project into the ULURP process. Yet, Respondents have not explained to the public the urgency of proceeding with such a large-scale and impactful public rezoning and development project at this time, and why Respondents cannot wait at least until the current COVID-19 pandemic has abated to resume their proposal. It is apparent that Respondents are attempting to rush their own Application through the ULURP process now, and exploiting the situation created by the pandemic, ostensibly to limit the anticipated opposition and objections by community members to this controversial and far-reaching proposal that they have thus far been unable to accomplish, despite years of trying.

12. It bears emphasis that presently the City is in an unprecedented crisis with respect to the COVID-19 pandemic. As of this filing, the current positivity rate is an average of 8.08% over the last 4 weeks. In the last week alone, there have been 31,345 confirmed cases, 1,916

¹While certain developers have been contracted by Respondents as partners on the Massive Rezoning Project (“Developers”), there is no private applicant seeking public approval on this project.

hospitalizations, and 341 confirmed deaths; and the death rate is increasing.² Even though a vaccine now exists, it obviously has not been an instant panacea; and the roll-out in the City and New York State has been extremely slow and disorganized.³

13. Rather than show restraint and respect for community members dealing with the ongoing pandemic crisis, Respondents have announced that they will begin the public review process for their ULURP Application by seeking certification on January 19, 2021. Once certification occurs, the ULURP “clock” begins to run, which means that, among other things, several public hearings must be held within certain limited periods of time (“Public Hearing Requirement”).

14. Immediately after ULURP certification, the affected community boards (and there are two on this Application) each have sixty (60) days to notify the public, hold a public hearing, and submit their recommendations to the Brooklyn Borough President, the Brooklyn Borough Board and the City Planning Commission (“CPC”).⁴ By law, such public hearings must be held at a “convenient place of public assembly,” either in the affected community districts or elsewhere in Brooklyn.

15. After community board review, the Brooklyn Borough President and Borough Board then have thirty (30) days to review the application and submit their recommendations to the CPC. During this time, the Brooklyn Borough Board may also hold a public hearing on the application, which would be required to be held “at a place of public assembly” within Brooklyn.

²See <https://www1.nyc.gov/site/doh/covid/covid-19-data.page>, last visited January 13, 2021.

³See <https://www.nytimes.com/2021/01/11/world/more-new-yorkers-start-receiving-the-covid-19-vaccine.html>.

⁴The Brooklyn Borough Board consists of the Borough President, the Council Members for each district in Brooklyn, and the chairpersons of Brooklyn’s 18 community boards. See <https://www.brooklyn-usa.org/borough-board/>, last visited January 13, 2021.

16. The CPC must then conduct its review of the Application and hold another public hearing within sixty (60) days before approving, disapproving or modifying the application. After CPC review, the City Council has 50 days to review the application and hold another public hearing.

17. Here, if DCP were to certify the ULURP Application on January 19, 2021, the community board public hearings must be held before the end of March – well before the public health risks of the pandemic will be eliminated. Aware of this problem, Respondents have announced that all public hearings on all ULURP applications City-wide, including the instant Application, will only be held remotely for the foreseeable future. This means that, instead of in-person hearings, they will be held virtually only, through on-line computer platforms such as Zoom. Not one member of the public will be permitted to physically enter a room before a public body reviewing the ULURP Application and present in-person advocacy either for or against the Massive Rezoning Project.

18. However, pandemic or not, Respondents have no discretion to convert ULURP public hearings into “virtual” hearings. Hearings that are completely “virtual” cannot be held at any place of public assembly, let alone at any geographic place in the community. Virtual hearings are simply no substitute for in-person public hearings. The Coalition and other members of the community have a clear right to in-person public hearings on the ULURP Application, but Respondents are depriving them of such a right. Especially on a massive project that threatens to have such a tremendous impact on the community, Respondents are refusing to give the public an adequate opportunity to be heard and to participate in the public review process mandated by the City Charter and City Rules. This violates the entire purpose for which ULURP was enacted in the first place – to ensure public participation in significant land-use decisions by the City. While some areas of civic engagement may be conducted virtually during a pandemic, ULURP is not one of them. This is enshrined in New York

City law.⁵

19. Unfortunately, Respondents' unlawful conduct is not limited to depriving the public of properly held public hearings. Prior to certification of the Application, DCP is required by law to complete a series of additional ministerial, non-discretionary tasks to provide transparency about the Application to members of the public.

20. One such requirement is that DCP must forward and give notice of its ULURP Application materials ("Application Materials," further defined below) to the affected community boards, Borough President and Borough Board within five (5) days after filing its Application ("Application Notice Requirement"). Despite that DCP filed its Application on November 20, 2020, nearly two months ago, upon information and belief, DCP has failed to comply with the straightforward Application Notice Requirement. As a result, the Coalition members, who reside in the community board districts, never received the Application Materials.

21. In addition, at least thirty (30) days prior to certification, DCP must complete the ministerial task of providing notice of the impending certification and sufficient information about the Massive Rezoning Project to the affected community boards, Borough President and Borough Board ("30-Day Pre-Certification Notice Requirement"). Despite that DCP has made clear that the Massive Rezoning Project will be certified on January 19, 2021, DCP has failed to provide such Notice and has not complied with the 30-Day Pre-Certification Notice Requirement.

⁵This is not to suggest any insensitivity to the importance of making accommodations during the COVID-19 pandemic. But the point is that the City, without enacting legislation authorizing changes in ULURP procedure, is, by administrative fiat, *unnecessarily* undertaking a Massive Rezoning Project during a period when members of the public are confronting an historic inability to interpose objections to it. This is especially troublesome from a constitutional perspective with respect to those members of the public who, as discussed below, seek to raise objections to the proposed rezoning, but lack the means (or have limited means) to access the Internet and other technology necessary to participate remotely.

22. Lastly, within five (5) days of fulfilling the 30-Day Pre-Certification Notice Requirement, DCP must also complete the simple, ministerial task of publishing such Notice on DCP's website ("Publication Requirement"). Ostensibly because no Notice was transmitted in the first place, DCP has failed to publish the 30-Day Pre-Certification Notice on its website, in violation of the Publication Requirement.

23. As shown below, because Respondents have violated, or are about to violate, the Public Hearing Requirement, Application Notice Requirement, 30-Day Pre-Certification Notice Requirement, and Publication Requirement, the Coalition is entitled to writs of mandamus, compelling Respondents to comply with the law. Additionally, the Coalition is entitled to declaratory relief, as well as injunctive relief, enjoining Respondents from proceeding with the ULURP Application in violation of the law and infringing upon the Coalition members' constitutional rights to due process.

PARTIES

Petitioners

24. Petitioner Friends and Residents of Greater Gowanus ("FROGG") is, and at all relevant times has been, a grassroots community coalition and a not-for-profit organization operating and existing under the laws of the State of New York, with a headquarters located at 393 President Street, Brooklyn, New York.

25. Petitioner Linda Mariano ("Linda") is, and at all relevant times has been, a citizen and resident of the State of New York in the County of Kings with a residence in the Gowanus neighborhood of Brooklyn, where the proposed rezoning would occur.

26. Petitioner Marlene Donnelly ("Marlene") is, and at all relevant times has been, a citizen and resident of the State of New York in the County of Kings with a residence in the Gowanus

neighborhood of Brooklyn, where the proposed rezoning would occur.

27. Petitioner Margaret Maugenest (“Margaret”) is, and at all relevant times has been, a citizen and resident of the State of New York in the County of Kings with a residence in the Gowanus neighborhood of Brooklyn, where the proposed rezoning would occur.

28. Linda, Marlene and Margaret are members of FROGG.

29. Petitioner Voice of Gowanus (“VOG”) is, and at all relevant times has been, a grassroots community coalition and unincorporated association located in the Gowanus neighborhood of Brooklyn, New York.

30. FROGG is affiliated with VOG.

31. Petitioner Ann Kathrin Kelly (“Katia”) is, and at all relevant times has been, a citizen and resident of the State of New York in the County of Kings.

32. Linda, Marlene, Margaret, and Katia are members of VOG.

Respondents

33. Respondent Department of City Planning (“DCP”) is, and at all relevant times has been, New York City’s primary land-use agency, with a principal location at 120 Broadway, New York, New York.

34. DCP is supposed to “serve as technical support to the City Planning Commission in its annual review of approximately 450 land-use applications, and ensure that processes, reviews and approvals are efficient, consistent, and user-friendly.”⁶

35. Respondent Marisa Lago is the Director of DCP (“Director Lago”).

36. Respondent City of New York (the “City”) is a municipal corporation under General

⁶<https://www1.nyc.gov/site/planning/about/department.page>.

Construction Law §66(2). It is the governmental body charged with oversight responsibility for public affairs and public lands within the City's five boroughs.

Nominal Respondent

37. Respondent City Planning Commission ("CPC") is, and since 1936 has been, a commission under the City Charter, and is responsible for the conduct of planning relating to the orderly growth and development of the City, including adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, culture, comfort, convenience, health and welfare of its population.⁷

38. In addition to being the DCP Director, respondent Lago is also the Chair of the CPC.

UNIFORM LAND-USE REVIEW PROCEDURE (ULURP)

39. ULURP, as set forth in §§197-c and 197-d of the City Charter and in §§2-01 – 2-07 of the Rules of the City of New York ("R.C.N.Y." or "City Rules"), is a standardized framework by which the public reviews land use planning and policy decisions in New York City.⁸

40. ULURP was enacted in 1975 for the purposes of ensuring "community input on significant land use decisions regarding public land."⁹ ULURP was also intended to provide "adequate technical and professional review of land use decisions," "final decision making by a politically accountable body," and the use of a uniform and simplified public review process that "works effectively and fairly for all participants."¹⁰ As reflected by the City Charter itself, ULURP

⁷<https://www1.nyc.gov/site/planning/about/commission.page>.

⁸City Charter §§197-c, 197-d; 62 R.C.N.Y. §§2-01 – 2-07.

⁹*Dist. 4 Presidents' Council v. Franchise & Concession Review Comm. of City of New York*, 18 Misc.3d 1123(A) (Sup. Ct. N.Y. Co. Jan. 30, 2008).

¹⁰3-20 N.Y. Practice Guide: Real Estate §20.04.

provides that “applications by any person or agency for changes, approvals, contracts, consents, permits or authorization thereof, respecting the use, development or improvement of real property subject to city regulation shall be reviewed pursuant to a uniform review procedure.”¹¹

41. Under §197-c(a) of the City Charter, strict compliance with the ULURP review process is required for certain types of land use actions, including, *inter alia*, “[c]hanges in the city map” or “[d]esignations of zoning districts under the zoning resolution, including conversion from one land use to another land use,” or a “[s]ale, lease (other than the lease of office space), exchange, or other disposition of the real property of the city.”¹²

42. Once ULURP is triggered, a multi-step, multi-agency procedure (involving different branches of City government) must take place, including review by: (i) DCP; (ii) the affected community boards; (iii) the affected Borough President or Borough Board; (iv) the CPC; and (v) the City Council.¹³

43. The actions of the CPC and the City Council are subject to mayoral veto, which, in turn, is subject to a veto override by a two-thirds vote of the City Council.¹⁴

44. In summary, ULURP is designed to invite public participation in significant land-use decisions, and to ensure that multiple, coordinate agencies and departments are afforded the opportunity to analyze and consider, *inter alia*, the extent to which such decisions will affect the City’s neighborhoods and communities.

¹¹City Charter §197-c(a).

¹²*Id.* §197-c(a)(1),(3),(10).

¹³*See id.* §§197-c(b)-(m), 197-d; *see also* 62 R.C.N.Y. §§2-01-2-07.

¹⁴*See* City Charter §197-d(e).

CLAIM FACTS

The Massive Rezoning Project

45. The Gowanus Canal in Brooklyn, upon information and belief, is one of the most polluted waterways in the United States.

46. In 2010, the EPA designated the Gowanus Toxic Site as a “Superfund” site because of its imminent threat to community health.¹⁵

47. For years, the City has been making efforts to develop the Gowanus neighborhood of Brooklyn.¹⁶

48. In or about March 2019, DCP filed an Environmental Assessment Statement (“EAS”) as part of the CEQR process for the Massive Rezoning Project, referred to therein as the Gowanus Neighborhood Plan (EAS, Ex. 1).

49. DCP is the applicant and lead agency for the Massive Rezoning Project on behalf of the City.

50. Respondents do not dispute that the Massive Rezoning Project is subject to the ULURP process.

51. DCP has described the proposed Massive Rezoning Project as “a series of land use actions – including zoning map amendments, zoning text amendments, City map amendments, and the establishment of a Large-Scale General Development” (EAS at 1, Ex. 1).

52. The Massive Rezoning Project would affect over 187 acres (8.1 million square feet) within Brooklyn, including approximately 181 acres of land, and 5.7 acres of waterways (the “Project

¹⁵See EAS at A-9, B-6, Ex. 1.

¹⁶See EAS at A-5, A-6, Ex. 1.

Area”) (EAS at 10, Ex. 1).

53. The Project Area encompasses an approximately 80-block area of the Gowanus neighborhood of Brooklyn (EAS at A-21, Ex. 1).

54. The Project Area is generally bounded by Bond, Hoyt, and Smith Streets to the west, 3rd and 4th Avenues to the east, Huntington, 3rd, 7th, and 15th Streets to the south, and Warren, Baltic, and Pacific Streets to the north (EAS at A-21, Ex. 1).

55. The Project Area encompasses and affects portions of Brooklyn Community District 2 (“CB2”) and Brooklyn Community District 6 (“CB6”) (EAS at 10).

56. Currently, the Gowanus neighborhood is predominately zoned for industrial and commercial uses, which does not allow residential uses as-of-right (EAS at 27); the Massive Rezoning Project is expected to result in a net increase of approximately 8,200 residential dwelling units; 696,000 square feet (“sf”) of commercial space; 251,000 sf of community facility space; and 6.4 acres of new open space, including over an acre of newly mapped parkland at the Gowanus Toxic Site (EAS at 3).

57. DCP anticipates that, a result of the Massive Rezoning Project, the population of the Project Area would increase by 17,985, to a total population of 19,733 (EAS at 4).

58. The Massive Rezoning Project includes zoning changes to allow medium to higher density development along 3rd and 4th Avenues, Union and 3rd Streets, and along the Gowanus Canal and around Thomas Greene Playground (EAS at 28).¹⁷

¹⁷The Massive Rezoning Project would replace all or portions of existing R6, R6B, R8A, C8-2, M1-1, M1-2, M2-1, and M3-1 zoning districts with R6A, R6B, M1-4/R6A, M1-4/R6B, M1-4/R7A, M1-4/R7-2, M1-4/R7X, M1-4, and C4-4D zoning districts (EAS at A-3). The Massive Rezoning Project would also eliminate existing C2-4 overlays along 4th Avenue within the Project Area, which would be replaced with the C4-4D district within the Special Gowanus Mixed-Use District (“Special District”) (*Id.*).

59. The Massive Rezoning Project includes proposed amendments to the text of New York City's Zoning Resolution ("ZR") to establish the Special District within the Project Area, create a Gowanus Waterfront Access Plan for waterfront blocks within the Project Area, and to amend Appendix F of the ZR to apply the Mandatory Inclusionary Housing ("MIH") program to proposed R6A, M1-4/R6A, M1-4/R6B, M1-4/R7A, M1-4/R7-2, M1-4/R7X, and C4-4D zoning districts to require a share of new housing to be permanently affordable where significant new housing capacity would be created (EAS at A-3, Ex. 1).

60. The Massive Rezoning Project includes proposed amendments to the City Map to, *inter alia*, map and de-map portions of streets and parkland in the Project Area (EAS at A-22, Ex. 1).

61. The Massive Rezoning Project would make it difficult for businesses to remain in the area, would result in the elimination of manufacturing zones, and the loss of jobs (EAS at 5-6, Ex. 1).

62. The Massive Rezoning Project would have "potentially significant" adverse impacts for approximately 20 different impact categories, including, for example, Land Use, Zoning, and Public Policy, Socioeconomic Conditions, Natural Resources, Hazardous Materials, and Public Health (EAS at 22, Ex. 1).

63. Because of the potential significant impact on the environment, the Massive Rezoning Project requires an Environmental Impact Statement ("EIS") (EAS at 22).

64. The EPA recently expressed concern to DCP and Director Lago about the Massive Rezoning Project because of the ongoing clean-up of the Gowanus Toxic Site (EPA Letter, Ex. 2).

65. On top of all of this, the Project Area is located in a Class A FEMA Flood Zone,

which means that the area is likely to be overwhelmed with flooding in the event of a hurricane or storm, such as Superstorm Sandy in 2012.¹⁸

66. The Massive Rezoning Project, if it were to come to fruition, could have significant adverse impacts on the lives, health, livelihood and neighborhoods of the citizens of the City, and particularly those living in or near the Gowanus neighborhood of Brooklyn.

Lack of Transparency and Pre-Certification Notice

67. Applicants seeking ULURP approval are required under the City Charter to file with DCP: (i) their ULURP applications; (ii) any amendments thereto; (iii) written information for purposes of determining whether an EIS will be required by law; and (iv) documents or records intended to define or substantially redefine the overall scope of issues to be addressed in any draft EIS required by law (together, “Application Materials”).¹⁹

68. Upon the filing of any such application, DCP is then required to forward the Application Materials “within five days to each affected borough president, community board or borough board.”²⁰

69. DCP filed its ULURP Application for the Massive Rezoning Project on or about November 20, 2020 (Ex. 3).

70. Upon information and belief, DCP did not timely forward the Application Materials to CB2, CB6, the Brooklyn Borough president, or the Brooklyn Borough Board within five days of filing its Application (Affidavit of Glenn Kelly (“Kelly Aff.”) ¶2).

¹⁸See EAS at B-11, Ex. 1.

¹⁹City Charter §197-c(b).

²⁰*Id.*

71. Upon information and belief, DCP has failed to forward the Application Materials to CB2 or CB6 the Brooklyn Borough president, or the Brooklyn Borough Board at all.

72. In addition to the Application Notice Requirement, DCP is also responsible for certifying that applications “are complete and ready to proceed through [ULURP].”²¹

73. At least thirty days before certification, DCP is required to provide the 30-Day Pre-Certification Notice to the affected borough boards, borough president and community boards, including: “the project location, the purpose of the proposed actions, and a description of the proposed actions” (“Pre-Certification Notice Information”).²²

74. DCP is also required to publish the 30-Day Pre-Certification Notice on DCP’s website within five days after sending such Notice (“Publication Requirement”).²³

75. DCP has not provided the 30-Day Pre-Certification Notice to CB2, CB6, the Brooklyn Borough President or the Brooklyn Borough Board.

76. DCP has not provided the 30-Day Pre-Certification Notice to CB2.

77. DCP has not provided the 30-Day Pre-Certification Notice to CB6

78. DCP has not provided the 30-Day Pre-Certification Notice to the Brooklyn Borough President.

79. DCP has not provided the 30-Day Pre-Certification Notice to the Brooklyn Borough Board

80. DCP has not published on its website a copy of the requisite pre-certification notice

²¹*Id.* §197-c(a).

²²*Id.* §197-c(c).

²³*Id.*

to CB2, CB6, the Brooklyn Borough President, or the Brooklyn Borough regarding the ULURP Application.

81. On or about January 8, 2021, the Coalition sent a letter to DCP stating that DCP did not comply with the 30-Day Pre-Certification Notice Requirement (January Demand Letter, Ex. 4).

82. The Coalition demanded that DCP provide the proper 30-Day Pre-Certification Notice and postpone the certification date of January 19, 2021 in order to comply with the 30-Day Pre-Certification Notice Requirement (*Id.*).

83. The Coalition also informed DCP that the Publication Requirement had also not been fulfilled (*Id.*).

84. In response to the January Demand Letter, DCP stated in an email dated January 11, 2021, that the 30-Day Pre-Certification Notice was supposedly provided through a prior email on December 18, 2020 (DCP January 11 Email, Ex. 5). However, DCP did not provide the Coalition with a copy of its December 18, 2020 email nor did DCP state that such email was ever published on DCP's website.

85. The Coalition then demanded that DCP provide a copy of the December 18 email, and informed DCP that no such email was published on DCP's website (Email Exchange, Ex 6).

86. The next day, DCP responded again without providing a copy of the December 18 email (Email Exchange, Ex. 6).

87. DCP claimed that its December 18 email was published on DCP's website but did not state when it was published, and did not provide evidence of such publication (Email Exchange, Ex. 6).

88. In response, the Coalition once again demanded a copy of the December 18 email, and

evidence of publication of such email on DCP's website (Email Exchange, Ex. 6).²⁴

89. Notwithstanding DCP's repeated refusals to provide the Coalition with its December 18 email, the Coalition obtained a copy of an email by DCP dated December 18, 2020, purporting to be the 30-Day Pre-Certification Notice, but which was deficient in many respects ("Deficient Email," Ex. 7).

90. The Deficient Email states that the Massive Rezoning Project "shall certify no sooner than January 19, 2021" (Ex. 7).

91. The Deficient Email does not include the Pre-Certification Notice Information, such as the location of the Massive Rezoning Project, the purpose of the proposed actions with respect to the Massive Rezoning Project, or a description of such proposed actions.

92. Upon information and belief, the Deficient Email was not sent to the Brooklyn Borough Board.

93. The Deficient Email is utterly insufficient to put any recipient on notice of the substance of the ULURP Application for the Massive Rezoning Project.

94. Rather than including any details about the Massive Rezoning Project, DCP states in the Deficient Email that information is available at a deficient website link entitled "Land Use Participant portal and Zap Search" ("Deficient Link") (Deficient Email, Ex. 7).

95. The Deficient Link does not direct a recipient of the Deficient Email to a site which provides sufficient information about the Massive Rezoning Project (Deficient Link, Ex. 8).

²⁴Two board members of CB6 also requested that DCP provide the 30-Day Pre-Certification Notice, as they had not received it (CB6 Members' Letter to DCP, Ex. 4; Kelly Aff. ¶3). As with its response to the Coalition, DCP contended in their response to the CB6 members that their December 18, 2020 email supposedly constitutes such Notice (DCP Response to CB6, Ex. 5; Kelly Aff. ¶4).

96. The Deficient Link instead directs recipients of the Deficient Email to a page on the DCP's Land-Use Portal ("Portal") which does not contain any information about the Massive Rezoning Project (Deficient Link, Ex. 8).

97. In order to find any details about the Massive Rezoning Project, after clicking on the Deficient Link, recipients of the Deficient Email must navigate the Portal and enter certain information about the Massive Rezoning Project.

98. However, the page on the Portal regarding the Massive Rezoning Project does not provide the specific Pre-Certification Notice Information as required by the City Charter (Project Portal Page, Ex. 3).

99. Rather than provide the 30-Day Pre-Certification Notice, DCP asks readers of its Deficient Email to conduct several, confusing steps, none of which provides readers with the Pre-Certification Notice Information.

100. Even if the Deficient Email were to constitute a legally-compliant 30-Day Pre-Certification Notice (which it does not), DCP has not published the Deficient Email on the DCP website.

The Unlawful Virtual ULURP Plan for the Massive Rezoning Project

101. The City Charter provides that "each affected community board shall, not later than sixty days after receipt of an application that has been certified pursuant to [§197-c(c)], (a) notify the public of the application in a manner specified by the [CPC]...and (b)...conduct a public hearing thereon and prepare and submit a written recommendation directly to the [CPC] and to the affected

borough president....”²⁵

102. “A community board public hearing shall be held at a convenient place of public assembly chosen by the board and located within its community district. If in the community board’s judgment there is no suitable and convenient place within the community district, *the hearing shall be held at a centrally located place of public assembly within the borough.*”²⁶

103. “The public may attend all meetings of a community board or its committee at which an application for an action...is to be considered or acted upon in a preliminary or final manner.”²⁷

104. The affected Borough Board “may conduct a public hearing on an application,” which “shall be held at a convenient place of public assembly chosen by the board and located within the borough.”²⁸

105. After review by the affected borough president or borough board, the application shall be reviewed by the CPC, which must “conduct a public hearing on all applications that are subject to review by the [CPC] pursuant to this section.”²⁹

106. When the COVID-19 pandemic struck New York in or about March 2020, the City paused all ULURP applications.

107. Notwithstanding that the COVID-19 pandemic was, and still remains, ongoing, the

²⁵*Id.* §197-c(e)(1). *See also* 62 R.C.N.Y. §§2-03(a)(1). In certain limited instances authorized by the City Charter, not applicable herein, the community board may submit a written waiver of the right to conduct a public hearing. City Charter §197-c(e)(1)(b).

²⁶62 R.C.N.Y. §2-03(d) (emphasis added).

²⁷*Id.* §2-03(e).

²⁸62 R.C.N.Y. §2-05(a),(c).

²⁹City Charter §197-c(h).

City announced over the summer that it would soon restart ULURP applications.

108. In July 2020, Mayor Bill de Blasio announced that public review of applications under ULURP would be conducted remotely (“Mayor’s July Announcement,” Ex. 9). City Council did not enact legislation authorizing the Mayor to change ULURP procedures.

109. The Mayor’s July Announcement stated that the City would ensure that the City’s 59 community boards would be “ready to host remote public meetings as soon as the ULURP clock restarts.” *Id.* at 2.

110. To this end, the Mayor’s Office announced that “the Administration has secured video conferencing licenses for community boards. The [DCP] will be working with the [community] boards to assist with training needs.” *Id.*

111. In August 2020, using the same language as the July Announcement, DCP and CPC reiterated in a press release that the ULURP public review process would be conducted remotely, and that all of the City’s community boards must be “ready to host remote public meetings as soon as the ULURP clock restarts” (“DCP August Announcement,” Ex. 10).

112. The DCP August Announcement states that, due to the COVID-19 pandemic, “CPC meetings will be held remotely for the foreseeable future” (DCP August Announcement, Ex. 10).

113. However, neither the City Charter nor the City Rules provide for the public review process under ULURP to be conducted remotely.

114. The City permitted the ULURP process to resume City-wide on or about September 14, 2020 (DCP August Announcement, Ex. 10).

115. Soon after the City announced that it was restarting ULURP, DCP moved forward with its own ULURP Application.

116. When ULURP resumed in September 2020, the City Council Member for the District that includes the Project Area in Gowanus and a representative of the Developers, publicly stated that “the community must have a real voice in the next steps of the Gowanus planning process.”³⁰

117. These individuals also admitted that:

Social distancing guidelines will make it more difficult for effective and inclusive community involvement in the ULURP process. If comments and testimony are expected to be made online, access to technology must be made available, particularly for public housing residents. And we should consider new approaches, including open-air conversation as weather allows.³¹

118. However, access to technology has not been made available to all members of the public, including public housing residents (Stroman Aff. ¶5; Bisi Aff. ¶8, Donnelly Aff. ¶4-5).

119. In addition, upon information and belief, DCP has not considered approaches other than virtual, on-line meetings and hearings, such as meetings outside.

120. DCP has stated that it will certify the ULURP application for the Massive Rezoning Project on January 19, 2021 (January 11, 2021 Letter, Ex. 4; DCP Website, Ex. 11).

121. If the Massive Rezoning Project were to be certified on January 19, 2021, as DCP has announced it will be, CB2 and CB6 would be required under the law to hold public hearings and submit their recommendations to the Brooklyn Borough President, Brooklyn Borough Board and CPC within approximately 60 days thereafter.

122. Without any basis in law, DCP, upon information and belief, plans to conduct all public hearings on the ULURP Application remotely, through virtual or on-line meetings on computer

³⁰See <https://citylimits.org/2020/09/21/opinion-how-the-gowanus-rezoning-could-push-nyc-forward-on-racial-equity/>, last visited January 13, 2021.

³¹*Id.*

applications or platforms such as Zoom or Webex (“Unlawful Virtual ULURP Plan”).

123. DCP has publicly indicated that it will not present its ULURP Application at any in-person public hearings.

124. DCP states on its website relating to the Massive Rezoning Project that “[d]uring the COVID-19 crisis, DCP is holding meetings by phone and online,” and that “DCP will also be attending community meetings remotely” (DCP Website, Ex. 11).

125. DCP’s representative has publicly stated that it is DCP’s position that DCP supposedly would be in compliance with its charter by conducting virtual public hearings for the ULURP Application during the COVID-19 pandemic.

126. The Unlawful Virtual ULURP Plan would not allow for any ULURP public hearings to take place at a convenient place of public assembly or any place that is centrally located within the borough.

127. The Unlawful Virtual ULURP Plan would not provide members of the public any opportunity to present in-person testimony or advocacy expressing their views on the Massive Rezoning Project (Vogel Aff. ¶¶8-9; Stroman Aff. ¶6; Mariano Aff. ¶¶3-5; Donnelly Aff. ¶¶2, 4-9; Bisi Aff. ¶7; Almeida Aff. ¶¶4-6; Buxbaum Aff. ¶3).

128. Many Coalition members and other members of the public do not have access to computers, devices, or other technology to participate in a virtual hearing relating to the Massive Rezoning Project (*See* Stroman Aff. ¶5; Vogel Aff. ¶8(a)).

129. Members of the public who do not have access to participate in a virtual hearing include residents of public housing (*See* Stroman Aff., ¶5).

130. Coalition and other community members who would have access to a virtual ULURP

public hearing would not receive the opportunity to have the same level of participation in the public process as they would have at an in-person public hearing (Stroman Aff. ¶6; Bisi Aff. ¶6; Mariano Aff. ¶4; Donnelly Aff. ¶¶6, 7; Almeida Aff. ¶¶5-6; Vogel Aff. ¶8).

131. Coalition and other community members who participate in a virtual ULURP public hearing are likely to be subject to technological difficulties, connectivity issues and glitches which would prevent them from hearing presentations or others' testimony, and from providing their own testimony that can be heard by other participants (Vogel Aff. ¶8(b); Stroman Aff. ¶5; Mariano Aff. ¶5; Donnelly Aff. ¶¶4-5; Bisi Aff. ¶¶5-6; Buxbaum Aff. ¶3).

132. Coalition and other community members who have visual problems or other medical conditions will not be able to effectively participate in a virtual ULURP public hearing (Mariano Aff. ¶3).

133. Upon information and belief, during a virtual ULURP public hearing, the names and number of participants would not be disclosed.

134. During a virtual ULURP public hearing, members of the public may not be able to ascertain which elected public officials or representatives from their offices are participating.

135. When given the opportunity to speak at a virtual ULURP public hearing, participants would, at best, be shown in small boxes on a screen rather than seen in person.

136. Participants of a virtual ULURP public hearing would not be able to see other participants' facial expressions and body language.

137. Under the Unlawful Virtual ULURP Plan, Coalition and other community members would be deprived of the opportunity to physically attend public hearings alongside like-minded attendees and show solidarity in support of a certain position with respect to the Massive Rezoning

Project (Donnelly Aff. ¶¶6-7; Vogel Aff. ¶8(d); Almeida Aff. ¶6; Bisi Aff. ¶4).

138. Under the Unlawful Virtual ULURP Plan, Coalition and other community members would be deprived of the opportunity to caucus with like-minded attendees and coordinate their collective in-person advocacy (Bisi Aff. ¶4; Donnelly Aff. ¶¶6-7; Vogel Aff. ¶8(d); Almeida Aff. ¶6).

139. Under the Unlawful Virtual ULURP Plan, Coalition and other community members would not be able to bring signs or other visual expressions of their views to a public hearing where they could convey their opposition to the Massive Rezoning Project (Vogel Aff. ¶8(d); Almeida Aff. ¶6; Donnelly Aff. ¶¶6-7).

140. Under the Unlawful Virtual ULURP Plan, Coalition and other community members would not be able to express their views and opinions on the Massive Rezoning Project on their clothing, such as, for example, with the use of t-shirts and buttons (Vogel Aff. ¶8(d); Almeida Aff. ¶6; Donnelly Aff. ¶¶6-7).

141. Under the Unlawful Virtual ULURP Plan, participants would not be able to applaud or cheer to express their support for statements made by others at a virtual ULURP public hearing.

142. Under the Unlawful Virtual ULURP Plan, the public body hosting the virtual ULURP public hearing would be able to mute and cut off testimony of members of the public in attendance at any time.

143. Under the Unlawful Virtual ULURP Plan, Coalition and other community members would not be able to effectively use illustrative aids, demonstratives or poster boards when stating facts or data, or expressing views and opinions.

144. On or about August 4, 2020, the Coalition sent a letter to respondent Director Lago, urging DCP not to proceed with its Unlawful Virtual ULURP Plan (“August Demand Letter,” Ex.

12; Vogel Aff.).

145. The Coalition stated in its August Demand Letter that virtual ULURP public hearings would unfairly undercut the procedural rights of community members in the Gowanus neighborhood and any other neighborhood facing a rezoning, and would prevent them from holding their elected and appointed officials accountable (Ex. 12).

146. The Coalition further stated in its August Demand Letter:

The virtual hearings and practices recently rushed into use by other City agencies indicate that, especially in the context of ULURP for an entire neighborhood, attendees' collective power would be severely diluted through the use of an online platform. Equitable access to technological devices and high-speed internet is simply presumed by the City but a resourced plan has not been offered or executed to ensure access for all community members. Structurally diluting a community's ability to hold power accountable during the current COVID-19 crisis, when the future of our entire neighborhood and its interconnected communities is at stake, is unacceptable. It does not conform to the letter or the spirit of what ULURP requires; even if more individuals could theoretically participate in "virtual" hearings, community power to confront politicians collectively in a room is blunted by an internet-only process.

(Ex. 12) (emphasis added).

147. The Coalition then further pleaded with DCP in the August Demand Letter not to proceed with its Unlawful Virtual ULURP Plan:

We urge you in the strongest possible terms to abandon plans for this illegitimate and illegal "virtual" ULURP process that will effectively deprive our community members of their due process rights.

(Ex. 12) (emphasis added).

148. Neither Director Lago or anyone at DCP responded to the August Demand Letter.

149. In addition to the August Demand Letter, Coalition members have repeatedly

demanded during online meetings with DCP representatives that DCP not proceed with its Unlawful Virtual ULURP Plan.

150. DCP has not created a plan that ensures access to all Coalition members and other members of the community at the ULURP public hearings for the Massive Rezoning Project.

151. As of this filing, the City still has not published the EIS, a document which would explain in detail all of the significant adverse impacts of the Massive Rezoning Project on approximately 20 impact categories.

FIRST CLAIM

The Coalition is Entitled to a Writ of Mandamus Compelling Respondents to Comply with the 30-Day Pre-Certification Notice and Publication Requirements of the City Charter

152. The Coalition realleges and reasserts each and every allegation set forth in the preceding ¶¶1 through 151, inclusive, as if set forth fully herein.

153. CPLR 7801 provides that relief for mandamus shall be obtained in a proceeding against a body or officer under Article 78.

154. CPLR 7803 provides that questions that may be raised in an Article 78 proceeding include:

1. whether the body or officer failed to perform a duty enjoined upon it by law; or
2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or
3. whether a determination was made in violation of lawful procedure, was affected by error of law or was arbitrary and capricious, including abuse of discretion as to the measure or mode of penalty or discipline imposed.

155. The reviewing Court in an Article 78 proceeding “exercises a genuine judicial function

and does not simply confirm a determination because it was rendered by an administrative agency.”³²

In fact, courts regularly annul agency determinations which (i) are not supported by substantial evidence, (ii) are arbitrary and capricious, and/or (iii) are otherwise unlawful.³³

156. Not only is judicial review “mandated when the agency has acted illegally, unconstitutionally, or in excess of its jurisdiction,”³⁴ but also an Article 78 petition must be *granted* when an agency has “failed to perform a duty enjoined upon it by law,” when it has made a determination “in violation of lawful procedure,” or when its actions are “affected by an error of law or [are] arbitrary and capricious or an abuse of discretion.”³⁵

157. “A proceeding pursuant to CPLR article 78 is the proper vehicle by which to compel

³²300 *Gramatan Ave. Assocs. v. State Division of Human Rights*, 45 N.Y.2d 176, 181 (1978) (internal citations omitted); *Concord Village Owners, Inc. v. City of New York Comm'n. on Human Rights*, 199 A.D.2d 388, 389 (2d Dep’t. 1993) (citing *New York City Trans. Auth. v. State Div. of Human Rights*, 181 A.D.2d 891, 894 (2d Dep’t. 1992) and *Sierra v. McGuire*, 91 A.D.2d 179, 182 (1st Dep’t.), *rev’d. on other grounds*, 60 N.Y.2d 720 (1983)); also see *Milonas v. Rosa*, 217 A.D.2d 825, 828 (3d Dep’t. 1995); *SoHo Community Council v. New York State Liquor Auth.*, 173 Misc. 2d 632, 661 N.Y.S.2d 694 (Sup. Ct. N.Y. Co. 1997).

³³See, e.g., *Byrne v. Board of Standards and Appeals*, 5 A.D.3d 261, 774 N.Y.S.2d 493, 498 (1st Dep’t. 2004); *Mohr v. Edwards*, 305 A.D.2d 414, 415 (2d Dep’t. 2003); *Sexton v. Zoning Bd. of Appeals*, 300 A.D.2d 494, 497 (2d Dep’t. 2002); *Ferruggia v. Zoning Bd. of Appeals*, 233 A.D.2d 505, 507 (2d Dep’t. 1996); *Matter of Miltope Corp. v. Zoning Bd. of Appeals*, 184 A.D.2d 565, 566 (2d Dep’t.), *lv. denied* 80 N.Y.2d 760 (1992); *Cortese v. Avis Rent A Car Sys., Inc.*, 167 A.D.2d 940, 940-41 (4th Dep’t. 1990).

³⁴*New York City Dept. of Envtl. Prot. v. New York City Civil Service Comm’n.*, 78 N.Y.2d 318, 323 (1991).

³⁵CPLR §7803(1), (3); see *Ray v. City of New York*, 2020 WL 863986 (Sup. Ct. N.Y. Co. 2020); *Brittain v. Village of Liverpool*, 172 Misc. 2d 201, 212 (Sup. Ct. Onondaga Co.), *app. dismissed*, 248 A.D.2d 1031 (4th Dep’t. 1998) (“[w]hile respondents contend the Liverpool Police Department was not *de jure* abolished, a contention bordering on the metaphysical given the facts described, there is no doubt in the opinion of the court that it was intentionally ‘abolished’ *de facto* in avoidance and abrogation of the statutory authority...”).

officials to perform a mandatory duty.”³⁶

158. “Mandamus lies to compel the performance of a purely ministerial act where there is a clear legal right to the relief sought.”³⁷

159. Pursuant to the 30-Day Pre-Certification Requirement, the City Charter requires that DCP provide:

each affected borough board, borough president and community board...at least thirty days before certification, a pre-certification notice containing information specified by the [CPC], which shall include the project location, the purpose of the proposed actions, and a description of the proposed actions, sufficient to put such borough board, borough president and community board on notice of the substance of the application.³⁸

160. The 30-Day Pre-Certification Notice Requirement is a specified ministerial act required by law to be performed by DCP and does not require any exercise of discretion by DCP or any other governmental body or officer.

161. DCP does not dispute that it is required by law to provide the 30-day Pre-Certification Notice. *See* January 11 Letter, Ex. 4.

162. The Coalition has a clear right to DCP’s compliance with the 30-day Pre-Certification Notice Requirement with respect to the ULURP Application.

163. Pursuant to the Publication Requirement, the City Charter further requires DCP to:

³⁶*Davis v New York City Dept. of Fin.*, 2020 WL 6041332 (Sup Ct. Kings Co. 2020) (*citing Matter of Bonanno v. Town Bd, of Town of Babylon*, 148 A.D.2d 532 (2d Dep’t. 1989); *see also Samuelsen v. New York City Transit Auth.*, 33 Misc.3d 1211(A) (Sup. Ct. N.Y. Co. 2011) (*citing Levy v. Davis*, 302 A.D.2d 309 (1st Dep’t. 2003) (“A writ of mandamus under Article 78 is appropriate to require performance of a specified ministerial act that is required by law to be performed.”)).

³⁷*Klostermann v Cuomo*, 61 N.Y.2d 525, 539 (1984).

³⁸City Charter §197-c(c).

publish such [30-Day Pre-Certification Notice] on [DCP's] website within five days of the transmission of such notice to the affected borough board, borough president and community board.³⁹

164. The Publication Requirement is also a specified ministerial act required by law to be performed by DCP and does not require any exercise of discretion by DCP or any other governmental body or officer.

165. DCP does not dispute that it is required by law to comply with the Publication Requirement. *See* Email Exchange, Ex. 6.

166. The Coalition has a clear right to DCP's compliance with the Publication Requirement with respect to the ULURP Application.

167. Respondents have made clear in multiple instances, and in multiple fora, that they will certify the ULURP application for the Massive Rezoning Project on January 19, 2021 (January 11 Letter, Ex. 4; DCP Website, Ex. 11; Deficient Email, Ex. 7).

168. Respondents have not provided the legally-required 30-day Pre-Certification Notice of the Massive Rezoning Project to CB2, CB6, the Brooklyn Borough President or the Brooklyn Borough Board.

169. The Deficient Email does not comply with the 30-day Pre-Certification Notice Requirement of the City Charter.

170. The Deficient Email does not include the legally-required Pre-Certification Notice Information about the Massive Rezoning Project as required by the City Charter.

171. The Deficient Link in the Deficient Email does not contain the legally-required Pre-Certification Notice Information about the Massive Rezoning Project as required by the City Charter

³⁹*Id.*

(Ex. 8).

172. Respondents have not published any purported 30-day Pre-Certification Notice on DCP's website.

173. Respondents have never published the Deficient Email on the DCP website.

174. The Coalition was not provided with the right to view the Deficient Email on DCP's website within five (5) days after it was supposedly transmitted by DCP.

175. The Coalition was not provided with the right to view any purported 30-day Pre-Certification Notice on DCP's website within five (5) days after it was supposedly transmitted by DCP.

176. The Coalition, which is comprised of residents within or close proximity to the proposed Project Area and the affected community board districts, and who would be directly impacted by the Massive Rezoning Project, has a substantial interest in their community boards receiving the 30-day Pre-Certification Notice for the Massive Rezoning Project.

177. If DCP were to certify the ULURP Application for the Massive Rezoning Project, as it has repeatedly stated it will do on January 19, 2021, CB2 and CB6 would each have approximately 60 days thereafter to: (i) notify the public, which includes the Coalition, about the certified ULURP application; (ii) conduct a public hearing; and (iii) prepare and submit a written recommendation directly to the CPC and to the Brooklyn Borough President and Brooklyn Borough Board.⁴⁰

178. Due to the short time-frame under ULURP, the Coalition needs proper notice and information about the Massive Rezoning Project in order to prepare for the public hearings.

179. As the certification of the ULURP Application is imminent, but DCP has not complied

⁴⁰City Charter §197-c(e); 62 R.C.N.Y. §2-03(a)(1).

with either the 30-day Pre-Certification Notice Requirement or the Publication Requirement, Respondents are about to violate §197-c(c) of the City Charter.

180. DCP has failed to perform its duty under the law to provide the 30-day Pre-Certification Notice as enjoined upon it by the City Charter.

181. DCP has failed to perform its duty under the law to publish the 30-day Pre-Certification Notice as enjoined upon it by the City Charter.

182. DCP is about to proceed in excess of its jurisdiction by certifying the ULURP Application for the Massive Rezoning Project on January 19, 2021 without providing or publishing the 30-day Pre-Certification Notice.

183. To remediate Respondents' errors of law and violations of lawful procedure, the Coalition is entitled to mandamus relief, and an order and judgment, directing Respondents to: (i) provide the 30-day Pre-Certification Notice in accordance with the provisions of the City Charter; (ii) publish the 30-day Pre-Certification Notice on DCP's website within five days thereafter, in accordance with the provisions of the City Charter; and (iii) modify the anticipated certification date of the ULURP Application in accordance with the provisions of the City Charter.

184. By reason of the foregoing, the Coalition is entitled to, and hereby respectfully requests, a writ of mandamus as set forth in the Order to Show Cause.

185. The Coalition has no remedy at law.

SECOND CLAIM

The Coalition is Entitled to a Writ of Mandamus Compelling Respondents to Comply with the Application Notice Requirement of the City Charter

186. The Coalition realleges and reasserts each and every allegation set forth in the preceding ¶¶1 through 185, inclusive, as if set forth fully herein.

187. Pursuant to the City Charter, ULURP applicants are required to file the Application Materials with DCP.⁴¹

188. Under the Application Notice Requirement, DCP is required to then forward the Application Materials “within five days to each affected borough president, community board or borough board.”⁴²

189. The Application Notice Requirement is a specified ministerial act required by law to be performed by DCP and does not require any exercise of discretion by DCP or any other governmental body or officer.

190. The Coalition has a clear right to DCP’s compliance with the Application Notice Requirement of the City Charter with respect to the Massive Rezoning Project.

191. The purpose of the Application Notice Requirement is to provide the affected community boards and borough president or borough board adequate opportunity to review an ULURP application prior to certification.

192. The affected community boards, borough president, and borough board require as much time as possible to review ULURP applications before certification, because once it is certified, these bodies have a limited opportunity to review the applications and submit their recommendations to the CPC.

193. DCP, as an applicant, filed the Gowanus ULURP Application with DPC (itself) on or about November 2020.

194. Upon information and belief, DCP did not forward the Application Materials to each

⁴¹City Charter §197-c(b).

⁴²*Id.*

affected borough president, community board or borough board within five days of filings its Application, as required by the City Charter. *See Kelly Aff.*

195. Upon information and belief, DCP is in violation of the Application Notice Requirement of the City Charter.

196. The Coalition has a substantial interest in ensuring that CB2, CB6 and the Brooklyn Borough Board receives the Application Materials for the ULURP Application prior to certification.

197. As set forth *supra*, once DCP certifies the ULURP Application, CB2 and CB6 will each have a limited period of time under the City Charter to, *inter alia*, notify the public, including the Coalition, and then conduct a public hearing and prepare and submit a written recommendation directly to the CPC and to the Brooklyn Borough President and Brooklyn Borough Board.

198. Without timely receipt of the Application Materials, CB2 and CB6 would be hamstrung in their ability to properly serve the Coalition and their community districts, and carry out their duties under the City Charter, thereby depriving members of the public of the benefits of community board representation during the ULURP process on this critically-important Re-Zoning Application.

199. DCP has failed to perform its duty under the law to forward the Application Materials to CB2, CB6 and the Brooklyn Borough Board as enjoined upon it by the City Charter.

200. To remediate Respondents' errors of law and violations of lawful procedure in failing to comply with the Application Notice Requirement of the City Charter, the Coalition is entitled to mandamus relief, and an order and judgment, directing Respondents to: (i) comply with the Application Notice Requirement and (ii) modify its certification date for the ULURP Application as necessary in accordance with the provisions of the City Charter.

201. By reason of the foregoing, the Coalition is entitled to, and hereby respectfully requests, a writ of mandamus as set forth in the Order to Show Cause.

202. The Coalition has no remedy at law.

THIRD CLAIM

The Coalition is Entitled to a Writ of Mandamus Compelling Respondents to Comply with the Public Hearing Requirement of the City Charter and City Rules

203. The Coalition realleges and reasserts each and every allegation set forth in the preceding ¶¶1 through 202, inclusive, as if set forth fully herein.

204. Pursuant to the Public Hearing Requirement, the City Charter requires that:

each affected community board shall, not later than sixty days after receipt of an application that has been certified pursuant to [§197-c(c)], (a) notify the public of the application in a manner specified by the [CPC]...and (b)...conduct a public hearing thereon and prepare and submit a written recommendation directly to the [CPC] and to the affected borough president....⁴³

205. Under the City Rules:

A community board public hearing shall be held at a convenient place of public assembly chosen by the board and located within its community district. If in the community board's judgment there is no suitable and convenient place within the community district, the hearing shall be held at a centrally located place of public assembly within the borough.⁴⁴

206. The City Rules also provides that “[t]he public may attend all meetings of a community board or its committee at which an application for an action...is to be considered or acted upon in a preliminary or final manner.”⁴⁵

⁴³*Id.* §197-c(e)(1). *See also* 62 R.C.N.Y. §§2-03(a)(1).

⁴⁴62 R.C.N.Y. §2-03(d).

⁴⁵*Id.* §2-03(e).

207. As set forth above, the City Charter and City Rules mandate the Public Hearing Requirement, by which DCP must conduct in-person public hearings at which the public may attend.

208. The Public Hearing Requirement to hold in-person public hearings is a specified ministerial act required by law to be performed by DCP and does not allow the exercise of discretion by DCP or any other governmental body or officer.

209. Respondents have made clear that public review of the ULURP Application will not be conducted through in-person hearings (DCP Website, Ex. 11; DCP August Announcement, Ex. 10).

210. DCP has made clear that it will not comply with the Public Hearing Requirement.

211. Instead, DCP has put forth the Unlawful Virtual ULURP Plan.

212. The Unlawful Virtual ULURP Plan does not comply with the City Charter or the City Rules.

213. With the effectuation of the Unlawful Virtual ULURP Plan, the community board public hearings and any Borough Board public hearings for the ULURP Application would not be held in a “place of public assembly.”

214. With the effectuation of the Unlawful Virtual ULURP Plan, the community board public hearings and any Borough Board public hearings for the ULURP Application would not be held at a physical location within the affected community districts of CB2 or CB6, or in the affected borough of Brooklyn.

215. The Unlawful Virtual ULURP Plan would not afford members of the Coalition the opportunity to adequately engage in public review of the Massive Rezoning Project, as required by the City Charter and City Rules.

216. The Coalition has a clear right to DCP's compliance with the Public Hearing Requirement with respect to the Massive Rezoning Project.

217. Upon the imminent certification of the ULURP Application, DCP is about to violate Public Hearing Requirement and improperly conduct the ULURP process.

218. To remediate Respondents' imminent violation of the law, the Coalition is entitled to mandamus relief, and an order and judgment, directing Respondents, upon certification of the ULURP Application, to: (i) comply with the Public Hearing Requirement; and (ii) present the ULURP Application through in-person public hearings at physical locations as required by the City Charter and City Rules.

219. By reason of the foregoing, the Coalition is entitled to, and hereby respectfully requests, a writ of mandamus as set forth in the Order to Show Cause.

220. The Coalition has no remedy at law.

FOURTH CLAIM

The Coalition is Entitled to a Judgment Declaring that Respondents' Unlawful Virtual ULURP Plan Violates the City Charter and City Rules

221. The Coalition realleges and reasserts each and every allegation set forth in the preceding ¶¶1 through 220, inclusive, as if set forth fully herein.

222. By announcing their Unlawful Virtual ULURP Plan, Respondents made clear that they would not hold any in-person public hearings on the ULURP Application.

223. The Unlawful Virtual ULURP Plan would not permit CB2 and CB6 to hold public hearings on the ULURP Application at a convenient place of public assembly in their community districts or in the Borough of Brooklyn at which the Coalition and other members of the community may attend.

224. The Unlawful Virtual ULURP Plan would deprive the Coalition and other members of the community of their right to fully participate and be heard in the public review process of the ULURP Application.

225. The Unlawful Virtual ULURP Plan would go into effect once the ULURP Application is certified, as Respondents have announced it will be on January 19, 2021.

226. If the ULURP Application were to be certified on or about January 19, 2021, the City Charter requires that a public hearing be held approximately sixty (60) days thereafter.

227. Respondents contend that the City Charter and City Rules permit them to hold public hearings on ULURP Applications through online-only virtual hearings held on computers and other technological devices (*See Exs. 9, 10, 11*).

228. Because Respondents contend that the Unlawful Virtual ULURP Plan is a violation of the law, and since Respondents are proceeding based upon this theory, a justiciable controversy exists between the Coalition and Respondents as to whether the Unlawful Virtual ULURP Plan is a violation of the City Charter and/or City Rules.

229. By reason of the foregoing, the Coalition is entitled to, and hereby respectfully requests, a judgment declaring that the Unlawful Virtual ULURP Plan violates the City Charter and/or City Rules.

230. The Coalition has no adequate remedy at law.

FIFTH CLAIM

Respondents' Failures to Comply with Notice and Public Hearing Requirements Violate Petitioners' Due Process Rights

231. The Coalition realleges and reasserts each and every allegation set forth in the preceding ¶¶1 through 230, inclusive, as if set forth fully herein.

232. The Fourteenth Amendment to the Constitution of the United States requires that no person shall be "deprived of ... property without due process of law." U.S. Const. amend. XIV(1).

233. Due process requires, at a minimum, notice and an opportunity to be heard.

234. Notice requires, at a minimum, that the recipient be apprised in such a manner that is reasonably calculated to inform the recipient of the pendency of a hearing or such other proceeding at which property rights and entitlements may be affected.

235. Our democratic form of government is founded upon the right of each citizen's voice to be heard. This is essential to the legal validity of, and maintenance of public confidence in, administrative agencies.

236. Respondents' violations of the 30-Day Pre-Certification Notice Requirement, Publication Requirement and Public Hearing Requirement constitute arbitrary and capricious conduct, violations of lawful procedure and are violations of the Constitution of the United States of America.

237. Respondents' failure to provide the 30-Day Pre-Certification Notice Requirement violates the due process rights of the Coalition's members.

238. Respondents' failure to publish the 30-Day Pre-Certification Notice on DCP's website violates the due process rights of the Coalition's members.

239. Respondents' failure to comply with the Public Hearing Requirement violates the due process rights of the Coalition's members.

240. The Coalition's members would be irreparably harmed by Respondents' violations of their due process rights.

241. By reason of the foregoing, the Coalition is entitled to, and respectfully requests injunctive relief, enjoining any actions by Respondents in furtherance of the ULURP Application.

242. The Coalition has no adequate remedy at law.

SIXTH CLAIM

Respondents' Failure to Comply with the Public Hearing Requirement Violates the First Amendment to the U.S. Constitution

243. The Coalition realleges and reasserts each and every allegation set forth in the preceding ¶¶1 through 241, inclusive, as if set forth fully herein.

244. The First Amendment to the Constitution of the United States protects freedom of speech. U.S. Const. amend. I.

245. Public hearings are expressions of our First Amendment rights to freedom of speech.

246. Respondents' failure to comply with the Public Hearing Requirement violates the First Amendment rights of the Coalition's members.

247. The Coalition's members would be irreparably harmed by Respondents' violations of their First Amendment rights to freedom of speech.

248. By reason of the foregoing, the Coalition is entitled to, and respectfully requests injunctive relief, enjoining any actions by Respondents in furtherance of the ULURP Application.

249. The Coalition has no adequate remedy at law

SEVENTH CLAIM

The Coalition is Entitled to Injunctive Relief

250. The Coalition realleges and reasserts each and every allegation set forth in the preceding ¶¶1 through 250, inclusive, as if set forth fully herein.

251. Upon the grant of relief set forth in the First, Second, Third, Fourth and Fifth Claims herein, the Coalition would be entitled to an order and judgment, enjoining Respondents from proceeding with the ULURP Application.

252. To the extent that Respondents may attempt to proceed, during the pendency of this Proceeding, with the ULURP Application, including certification, the Coalition is entitled to a temporary restraining order (“TRO”) and preliminary injunction, based upon a substantial likelihood of success on the merits, threatened irreparable harm, and a balance of equities weighing in Petitioners’ favor.

253. By reason of the foregoing, the Coalition is entitled to an order, enjoining Respondents from proceeding with the ULURP Application, including, but not limited to, certification, and, to the extent that a TRO and preliminary injunction become necessary to preserve the *status quo* pending judgment in this Proceeding, the Coalition is entitled to such relief as well.

254. The Coalition has no remedy at law.

WHEREFORE, for the reasons stated, the Coalition is entitled to an order and judgment, over and against Respondents, awarding the following relief:

(a) as to the First Claim, a writ of mandamus, directing Respondents to: (i) provide a proper and legally-compliant 30-day Pre-Certification Notice in accordance with the provisions of the City Charter; (ii) publish a proper and legally-compliant 30-day Pre-Certification Notice on DCP’s website within five days thereafter, in accordance with the provisions of the City Charter; and (iii) modify the anticipated certification date of the ULURP Application in accordance with the provisions of the City Charter.

(b) as to the Second Claim, a writ of mandamus, directing Respondents to: (i) comply with the Application Notice Requirement of the City Charter and (ii) modify its certification date for the ULURP Application as necessary in accordance with the provisions of the City Charter;

(c) as to the Third Claim, a writ of mandamus, directing Respondents, upon certification of

the ULURP Application, upon certification of the ULURP Application, to: (i) comply with the Public Hearing Requirement of the City Charter and City Rules; and (ii) present the ULURP Application through in-person public hearings at physical locations as required by the City Charter and City Rules.

(d) as to the Fourth Claim, a judgment declaring that the Unlawful Virtual ULURP Plan violates the City Charter and/or City Rules;

(e) as to the Fifth Claim, injunctive relief, enjoining any actions by Respondents in furtherance of the ULURP Application that violate the constitutional due process rights of the Coalition’s members;

(f) as to the Sixth Claim, injunctive relief, enjoining any actions by Respondents in furtherance of the ULURP Application that violate the constitutional First Amendment rights of the Coalition’s members; and

(f) as to the Seventh Claim, enjoining Respondents from proceeding with the ULURP Application, including, but not limited to, certification, and a TRO and preliminary injunction as necessary to preserve the *status quo* pending judgment in this Proceeding;

all together with costs, disbursements, legal fees and any and all other and further relief in favor of the Coalition that this Court deems just and proper.

Dated: New York, New York
January 15, 2021

Respectfully submitted,

HILLER, PC
Attorneys for Petitioners
641 Lexington Avenue, 29th Floor
New York, New York 10022
(212) 319-4000

By: /s/ Jason E. Zakai
Jason E. Zakai

VERIFICATION

State of New York)
) ss.:
County of Kings)

ANN KATHRIN KELLY, being duly sworn deposes and says:

I am a Petitioner in the within proceeding. I have reviewed the contents of the Petitioners' Verified Article 78 Petition, dated January 15, 2021. The allegations contained therein are true to my own knowledge except as to those matters alleged upon information and belief and/or contained in public records, and, as to those matters, I believe the information to be true.


Ann Kathrin Kelly

Sworn to me on this
15th day of January, 2021


Notary Public

PAUL KAMPFER
Notary Public, State of New York
No. 02KA6142705
Qualified in Westchester County
Commission Expires March 20, 2022

* Notarized pursuant to Executive Order 202.7