



May 5, 2021

**VIA E-MAIL (KLEVINE@NYCOURTS.GOV)
AND NYSCEF**

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Hon. Katherine Levine, J.S.C.
Supreme Court of the State of New York,
County of Kings, Part 25
360 Adams Street
Courtroom Room Number: 461
Brooklyn, NY 11201

**Re: *Friends and Residents of Greater Gowanus et al. v. City of New York et al.*,
Index No. 501178/2021 (Sup. Ct. Kings)**

Dear Justice Levine:

We represent the GROW Intervenors/Respondents. The Court should disregard the letter filed by counsel for Petitioners on May 5, 2021 because it is of no legal consequence.

Petitioners' letter is yet another misguided attempt to delay the Gowanus Neighborhood Plan ULURP public hearing. Neither the Governor's nor the Mayor's statements reference public meetings, and the relevant executive orders suspending the Open Meetings Law and in-person hearings pursuant to ULURP remain in effect.¹ There have been no public statements by the Governor or the Mayor concerning public hearings or public meetings.

Instead of following the executive orders and the best judgment of City and State health officials, Petitioners provide their own lay pronouncements on public health policy. Petitioners' opinion is irrelevant and potentially dangerous. Petitioners cannot substitute their judgment for that of the Mayor and the Governor with regards to the ongoing public health crisis. Every decision to take a step towards re-opening is determined based on the circumstances of the activity. The CDC continues to recommend avoiding large in-person indoor gatherings and continues to require adherence to public safety measures including sufficient room for social distancing.²

Further, it is not the Court's role to second-guess the decisions made by elected public officials advised by health and public policy experts. See *Grasmere Fit, Inc. v. de Blasio*, No. 151523/2020, 2020 N.Y. Slip. Op. 34366(U), 2020 WL 8011975, at *11 (Sup. Ct. Richmond Cty. Nov. 17, 2020) (quoting *S. Bay United Pentecostal Church v. Newsom*, 140 S.Ct. 1613, 1613-14 (Mem.) (2020) ("It is not the role of the courts to second-guess the Mayor's executive decision or

¹ Executive Order No. 202.105 (April 28, 2021) (extending suspension of Open Meetings Law for another 30 days); Emergency Executive Order No. 198 (May 2, 2021) (extending suspension of in-person ULURP proceedings for another five days).

² Centers for Disease Control and Prevention, Guidance for Organizing Large Events and Gatherings (Updated April 27, 2021), available at https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html#anchor_1619540969756.

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take ‘a piecemeal approach and scrutinize individual aspects of a rule designed to protect public health or otherwise create an exception for particular individuals impacted by it.’”). The Court should decline Petitioners’ invitation to compel City officials to hold large in-person indoor public hearings, particularly where the City is actively working on a hybrid approach to accommodate Petitioners’ concerns and allow for greater access.

Consideration of the Gowanus Neighborhood Plan has already been delayed many months by this action, which has created great uncertainty among affected community members and disrupted government processes. In the name of seeking greater democratic access, Petitioners are—again—seeking to delay public consideration of the rezoning by asking the Court to question the public health measures taken by elected officials. Now that the application has been certified, the Community Boards have 60 days to hold their public hearing. To further delay public consideration of the proposed rezoning for an indefinite time when the City and public health officials have determined it is safe to fully reopen and to hold large in-person indoor gatherings would be unjustified and contrary to current public health guidance. Petitioners’ letter to the Court should be disregarded and the Court should continue with its plan to order a hybrid Zoom – outdoor hearing to be conducted by the Community Boards.

Respectfully,

COZEN O'CONNOR

/s/ Kenneth Fisher

By: Kenneth K. Fisher

cc: All Counsel (*Via NYSCEF and Email*)