

Supreme Court of the State of New York  
County of Kings

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Index#

**In the Matter of the Application of**

Peter Abbate, Kenny Guan, Bao Zhi Liu, Vincent Lu  
Qinwen Lu, Paul Mak, Grace Mo, Kam Fon Mui, Tsang  
Sun Mui

PETITION

*Petitioners*

*-against-*

The City of New York, The New York City Department of  
Transportation and Henry Gutman as Commissioner of the  
New York City Department of Transportation

*Respondents*

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The petitioners herein aver as follows:

**I. Preliminary Statement**

This is an Article 78 proceeding requesting this court to compel respondents the City of New York, the New York City Department of Transportation, and Henry Gutman as Commissioner of the New York City Department of Transportation:

- 1) to comply with NYC Administrative Code §§19-101.2 and 19-187 relative to compulsory notifications and/or presentations to be made by DOT in regard to a major transportation project, including the addition of bike lanes, scheduled for commencement of construction in Community Districts 7,10 and 12 in Brooklyn (hereinafter CB7, CB10 and CB12) in August of this year (hereinafter the project), and

2) to prohibit and enjoin the respondents, and each of them, from commencing construction of the project in any manner and in any location whatsoever, including, without limitation, any demolition, digging or other preparation work of any kind whatsoever, until the respondents have fully complied with the statutory sections set forth above and to prohibit and enjoin the respondents from proceeding with said project and until such compliance is complete and

3) to prohibit and enjoin respondents from using the term “Community Advisory Board” in connection with its outreach efforts relative to the project and

4) to preliminarily enjoin the respondents, and each of them, from proceeding with the construction of the project during the pendency of this action and until the final determination and issuance of a final judgment or order of this court on the action.

*Second:* In this petition petitioners will demonstrate that DOT is ignoring legally mandated outreach to the communities involved and substituting its own “outreach” effort using a bogus and legally unauthorized “Community Advisory Board”, combined with a narrowly focused outreach effort by personnel trained by DOT to create the illusion of community input while, intentionally, or unintentionally, manipulating the results of the outreach to fit DOT’s desired outcome.

**II. Statement of Facts**

*Third:* Each petitioner is a resident of either CB7, CB10 or CB12, with an interest in the well being, safety and appropriate development of the Community District in which they either live or work. All have a vested interest in their Community District as residents who use the local streets and ways in the District including, without limitation, Seventh and Eighth Avenues between 39<sup>th</sup> Street and 67<sup>th</sup> Street. As a matter of full disclosure the undersigned attorney is a citizen of Community District 10 and a member of Community Board 10.

*Fourth:* Pursuant to Chapter 70 §2800(d) of the City Charter, the basic law of the City of New York, and despite much disinformation, the fifty nine Community Boards of the City of New York are agencies of the City of New York with the obligations and powers as set forth in the City charter. Consisting of 50 members appointed by the district City Council Members or the Borough President, each with close connections to the Community District , the Community Boards are vested with 21 enumerated powers and/or obligations all related to that Board’s Community District. Among these are the obligations to

(17) Exercise the initial review of applications and proposals of public agencies and private entities for the use development or improvement of land located in the community district including the conduct of a public hearing and the preparation and submission to the city planning commission of a written recommendation and

(18) Assist agencies in the preparation of service statements of agency objectives, priorities, programs and projected activities within the community district and review such statements

(19) Evaluate the quality and quantity of services provided by agencies within the community district;

\* \* \* \* \*

(21) Conduct substantial public outreach...

*Fifth:* Pursuant to §2800(e) of the City Charter, other City agencies, including the DOT have legal

obligations to the Community Boards as follows:

Each [City] agency shall furnish promptly to each community Board on request any information or assistance necessary for the Board's work.

*Sixth* : Community Boards are important. In a City of approximately 10,000,000 people it is difficult to hear the voices of the people who best know their own community - the residents . Community Boards address that deficiency by giving local citizens a vehicle to interact with their local government, to express their thoughts, constructive criticisms or even their cynicism.

*Seventh*: Even at that, each Community Board has a population roughly between 125,000 and 200,000, That may not seem large to a New Yorker, but, for reference, the population of New York State's second largest city, Buffalo, is about 250,000. Syracuse has 141,000 residents. Albany has a population of 93,000, Yonkers 196,000. Hartford, Connecticut, 122,000. Those are fairly large cities. In those cities the citizens have direct connection to their City government. But in New York that connection is remote. Community Boards are an important feature to reduce that alienation. To bypass the Community Board process, in addition to being illegal, is a breach of trust with the citizens of this City that only serves to feed the cynicism of the populus. Nevertheless, it appears that the DOT has attempted to do that.

*Eighth: Community Board 7's Experience on the Project*

On June 3, 2021 the District Manager of Community Board 7 (CB7), Jeremy Laufer, wrote to **respondent**  
DOT Commissioner Henry Gutman insisting

“....that DOT completely halt plans for major changes to 7<sup>th</sup> and 8<sup>th</sup> Avenues in Brooklyn and suspend all unprecedented and arbitrary ‘community engagement’ processes outside

of the three relevant Community Boards until such time that you can work with our agencies to give our communities an appropriate time to review and make recommendations, per the New York City Charter. We have found DOT's actions confounding and incongruous for previous and future projects presented to the community and it appears that DOT is tailoring its community engagement specifically to reach [the] conclusion that DOT desires."

A copy of District Manager Laufer's letter to Commissioner Gutman is annexed to Mr. Laufer's affidavit in support annexed hereto and made a part hereof as Exhibit 1. The letter speaks eloquently for itself.

*Ninth: Community Board 10's Experience on the Project*

In early November 2020, a representative of the New York City Department of Transportation called CB 10 District Manager, Josephine Beckmann, requesting a meeting with the Traffic and Transportation Committee of Community Board 10 (CB10) to inform the committee of a nascent proposal, allegedly for safety improvements along the heavily congested Seventh and Eighth Avenue corridors in Brooklyn, running between 39<sup>th</sup> Street and 67<sup>th</sup> Street. This corridor includes portions of Community Districts 7, 10 and 12. Each Avenue currently runs two ways. Seventh Avenue has two-way bike lanes and Eighth Avenue is on the route for the B70 bus.

*Tenth* : The proposal was to change the said avenues to a "one way pair" with 7<sup>th</sup> Avenue going south from 39<sup>th</sup> Street to 67<sup>th</sup> Street (28 streets) and 8<sup>th</sup> Avenue going north from 66<sup>th</sup> Street to 39<sup>th</sup> Street(27 streets). It also proposes adding protected bike lane on both avenues.

*Eleventh:* The CB 10 Traffic and Transportation Committee (T&T) met on November 19, 2020 in relation to the project to hear an update from Leroy Branch, a representative from DOT. The minutes of that Committee meeting are annexed hereto as Exhibit 2. Those minutes convey that the DOT presenter, Leroy Branch indicated that a “Street Ambassador” program would be utilized for the project for public outreach.

*Twelfth :* According to its website, upon information and belief, the Street Ambassadors are an arm of the DOT who supposedly target high-volume community locations to get the public’s feedback and provide them with information of DOT plans and proposals. They only work “one on one” with people and business owners whom they specifically target. They do not hold public hearings open to all. The “ambassadors” fill out forms based on questions they ask, rather than solicit extemporaneous criticism, compliments or suggestions of the person interviewed. And it is all but impossible to gauge the accuracy of the answers and comments. The Street Ambassadors are paid by and controlled by the DOT and the literature they distribute is produced by the DOT.

*Thirteenth:* At the meeting with the CB10 T&T Committee Mr. Branch did not explain who hired these “ambassadors” or from whence they would come and how they would interact with the relevant affected Community Boards or the affected NYC Council Members or what their message would cover or say.

*Fourteenth:* At the T&T meeting, the committee expressed the need for joint consultation with CB7 and CB12 and the need for interagency feedback.

*Fifteenth:* The minutes of the T&T meeting indicate that there were many concerns expressed by the committee. The CB10 T&T Committee then conveyed this information to the full Board.

*Sixteenth:* On April 26, 2021 Mr. Branch called DM Josephine Beckmann of CB10 (BK) advising that DOT was completing its proposal. He asked Ms. Beckmann to reach out to CB7 and CB12 on how to proceed.

*Seventeenth:* Ms. Beckmann called Mr. Branch on May 3 and advised him that the three Boards desired a joint meeting with DOT followed by three individual meetings - one with each Board - to review the actual plans, and most importantly, *to host a convenient separate public hearing for the residents of each Community District to express their suggestions and objections.*

*Eighteenth:* To her surprise, Mr. Branch then advised that, *because DOT wanted this plan implemented by August, 2021, DOT was going to create its own public review process, thus bypassing the legally mandatory Community Board process and the Community Board public hearing* to be discussed in detail below.

*Nineteenth:* DOT did just that. On May 14, 2021 Mr. Branch emailed District Manager Beckmann requesting her

“...participation as a Community Advisory Board (CAB) member for DOT’s Vision Zero Safety Improvements in Sunset Park on 7<sup>th</sup> and 8<sup>th</sup> Avenues between 39<sup>th</sup> Street and 66<sup>th</sup> Streets”. (Exhibit 3)

Mr. Branch said “As a Community Board, your participation is critical as we look to implement improvements in the near future”. Mr. Branch “requested her participation ... as [DOT looks] to

implement improvements in the near future. Please join us on Wednesday, May 26 via ZOOM.” In short, the DOT had chosen to by-pass the legally mandated Community Board process in favor of one the DOT created on the fly.

*Twentieth:* To be clear, Ms. Beckmann is NOT “a Community Board” as stated in Mr. Branch’s letter. Her job, as District Manager, which she does exceedingly well, is to protect CB10, not to cooperate with a rogue DOT seeking to undermine the very purpose of the city agency for whom Ms. Beckmann works - Community Board 10 (Brooklyn). Ms. Beckmann cannot speak “for” CB10 on any particular subject until the entire Board meets in quorum and actually votes to take a position.

*Twenty First:* Until that moment District Manager Beckmann had never heard of a Community Advisory Board (CAB). (Exhibit 4). That very name appears intended to foster confusion in the public as between a New York City Community Board, and an ersatz “Community Advisory Board” created by the DOT and masquerading as a Community Board. There was no explanation how the CAB members joined or were chosen or who actually appointed them, if anyone. In short this “CAB” appeared to be a public relations arm of the DOT, not an independent agency like a statutory New York City Community Board looking out for the benefit of the people of the district districts affected by the project.

*Twenty Second:* The meeting of the illegitimate, so-called, Community Advisory Board went forward on May 2 without the participation of CB7.



*Twenty Third:* A second meeting of the illegitimate “Community Advisory Board” went forward on June 7, 2021. At that time a “Project Proposal” was distributed. (Exhibit 5). Notably, the project was still a proposal, not a finalized plan .

*Twenty Fourth:* Since that June 7 meeting there has been no outreach from the DOT or the bogus Citizens Advisory Committee to any of the affected Community Boards. DOT did hold a “Public Hearing” , on June 14 at which, amazingly, if not surprisingly, the public was not allowed to speak. (Exs 1,4)

*Twenty Fifth:* Mr. Branch did not and has not offered to present the plan to Community Board 10 nor has any other representative of DOT. As noted above Mr. Branch has already indicated that DOT has determined to do their own public outreach and bypass the Community Board process. (Ex.4)

*Twenty Sixth:* Most importantly, DOT has indicated 1) it will put shovels in the ground to start the construction on this matter in August (Affidavit of Beckmann, exhibit 4 ) and 2) neither CB7 nor CB10 has received notice of the project by email. (Exs 1 and 4).

### III. Applicable Law

*Twenty Seventh:* Both Seventh and Eighth Avenues are currently two way streets. Only Seventh Avenue has bike lanes, currently non-protected.

*Twenty Eighth:* NYC Administrative Code Section 19-101.2 (a)(2) defines a “major” transportation project as follows:

Major transportation project shall mean any project that, after construction will alter four or more consecutive blocks , or 1000 consecutive feet of street, whichever is less, involving a major realignment of the roadway, including either removal of a vehicular lane(s) or full time removal of a parking lane(s) or addition of a vehicular travel lane(s).

Pursuant to §§19-101.2( c) through (h)

c. Prior to the implementation of a major transportation project, the department shall forward notice of such project, including a description of such project, to affected council member(s) and community board(s) by electronic mail.

d. Within ten business days after receipt of such notice: (i) the affected council member(s) may submit recommendations and/or comments on such notice to the department; and (ii) the affected community board(s) may either submit recommendations and/or comments on such notice to the department and/or request a presentation of the major transportation project plan by the department, which shall be made to the community board within thirty days of such community board's request.

e. Each presentation shall include, at a minimum, the project limits, a description, and a justification of such plan, and a map showing the streets affected by such plan and, within three days of such presentation, shall be forwarded to the affected council member(s).

f. The department shall consider recommendations and/or comments, if any, made under the provisions of subdivision d of this section and/or within seven days of the presentation to the community board, from the affected council member(s) and affected community board(s), and may incorporate changes, where appropriate, into the plan.

g. The department may implement its plan fourteen or more days after it sends an amended plan or notice that it will proceed with its original plan to the affected council member(s) and

h. Nothing in this section shall be construed to prohibit the department from providing notice of its major transportation projects on its website and to the affected council members and community boards and other interested parties by other means in addition to those specified in this section.

*Twenty Ninth:* In addition to the requirements of §19-101.2, §19-187 of the Administrative Code, concerning the construction or removal of bicycle lanes provides as follows:

b. 1. Except as provided below, at least ninety days before the construction or the removal of a bicycle lane is to begin, the department shall notify each affected council member and community board via electronic mail of the proposed plans for the bicycle lane within the affected community district and shall offer to make a presentation at a public hearing held by such affected community board.

2. If the affected community board accepts the offer made pursuant to paragraph one of this subdivision and holds such hearing within forty-five days of the department sending the notice required under paragraph one of this subdivision, the department shall make a presentation of the proposed plans at such public hearing to receive input on such plans and shall not construct or remove such bicycle lane until forty-five days after such public hearing.

3. When notice is given under paragraph one of this subdivision between June 20 and August 6, the period for a public hearing under paragraph two of this subdivision shall conclude on September 20; provided that the department may construct or remove such bicycle lane at the conclusion of the ninety day notice period provided in paragraph one of this subdivision or ten days following such hearing, whichever is later.

c. The department shall consider comments from such public hearings and may incorporate changes, where appropriate, into its bicycle lane plan or cancel plans for construction or removal of such bicycle lane where it determines such bicycle lane would be inappropriate.

#### IV. Argument

A. NYC Administrative Code §19-101.2 Requires That DOT Follow the Statutory Outreach Process for a Major Transportation Project Prior to Implementation. Because DOT Did Not Comply With That Mandate, the Project May Not Proceed.

*Thirtieth:* The Project in controversy is a Major Transportation Project as defined by NYC

Administrative Code Section 19-101.2 (a)(2) because its construction will alter four or more consecutive blocks, and/or more than 1000 consecutive feet of street involving a major realignment of the roadway, including either removal of vehicular lane(s) or full time removal of a parking lane or lanes or addition

of a vehicular travel lane or lanes.

*Thirty First* : The project runs for 28 blocks on Seventh Avenue and 28 blocks on Eighth Avenue for a total of 56 blocks and will affect lane alignment because it turns one lane on each avenue in the opposite direction and then adds a protected bike lane. Since a Major Transportation Project is legally defined as four blocks of major roadway realignment, this project is like *fourteen and one half* major transportation projects hitting this densely populated, traffic and pedestrian congested, combined business and residential community all at once. By anyone's measure it will be a congested and dangerous transportation nightmare for cars, trucks, buses, cyclists and pedestrians alike.

*Thirty Second*: Without any doubt whatsoever, this project is subject to the mandated public outreach specified in NYC Administrative Code §19-101.2 (a)(2).

*Thirty Third*: In addition, because the project will add protected bike lanes, it must be scrutinized pursuant to Administrative Code §19-187, which mandates specific review protocols before each of the affected Community Boards.

*Thirty Fourth*: At the very least the people and businesses of the affected districts have a right to expect their voices to be heard through the legal processes set by the law, and not by a paid posse of youngsters, potentially skewing personal interviews to impress their superiors by obtaining the results desired by DOT to accomplish its ends.

*Thirty Fifth:* In making that statement, your petitioners do not intend to malign either the Street Ambassadors or those good people who were selectively chosen by DOT to sit on the illegitimate “Community Advisory Board”. Indeed any form of public outreach is welcome. But the DOT cannot simply choose to stop there and abandon the public outreach process demanded by the law in favor of its own skewed concept of public outreach that, intentionally or not, merely “create[s] an illusion of public engagement”, in the words of DM Laufer of CB7. (Exhibit 1)

*Thirty Sixth:* The law is clear and it is mandatory. Again, NYC Administrative Code §19-101.2 provides

*Prior to the implementation of a major transportation project, the department shall forward notice of such project, including a description of such project, to affected council member(s) and community board(s) by electronic mail.* (Emphasis added).

That e-mail notice is crucial. It is the event that triggers the outreach process including the presentations, public hearing, discussions and advices that together constitute the outreach process to properly inform DOT of the sentiment, critiques and suggestions of the public and the affected Community Boards.

*Thirty Seventh:* In the case at hand DOT, to this day, has not complied with its first obligation under the preamble to NYC Administrative Code §19-101.2. It never sent the required “... *notice of such project, including a description of such project*” to the affected Community Board(s) by *electronic mail*, as prescribed by the statute. Because the statute mandates that the notice be sent “Prior to implementation” of the project, construction of the project cannot go forward until the notice is given and until the events and obligations triggered by the required notice have been completed in accordance with the statute.

***Thirty Eighth:*** The affected Community Boards herein intend to comply with their mission of giving voice to the residents and businesses in their districts pursuant to NYC Administrative Code §19-101.2 despite the apparent efforts of DOT to thwart that worthy mission.

**B. NYC Administrative Code §19-187 Requires That DOT Follow the Outreach Process as Set Forth Therein, But DOT Has Not Followed That Process**

***Thirty Ninth:*** NYC Administrative Code §19-187(b) is even more stringent in its outreach requirements than is §19-101.2. Section 187(b) relates to “Community Board Hearings on the Construction or Removal of Bicycle Lanes. It provides in section b.1.:

*Except as provided below, at least ninety days before the construction or the removal of a bicycle lane is to begin, the department shall notify each affected council member and community board via electronic mail of the proposed plans for the bicycle lane within the affected community district and shall offer to make a presentation at a public hearing held by such affected community board . [Emphasis added].*

***Fortieth:*** If the Community Board accepts the invitation, the Community Board must hold the hearing and host the DOT presentation within 45 days of the date of the invitation, after which DOT must wait another 45 days before it conducts construction. See NYC Administrative Code § 187(b)(2)

***Forty First:*** The project in controversy is covered by this section because bike lanes are being removed on Seventh Avenue, and bike lanes are being constructed on Eighth Avenue.

***Forty Second:*** Like the notice required under §19-101.2, the mandatory notice must be sent by e-mail to the affected Community Boards. They have not yet been sent, so the project cannot even start until

Ninety days after it is sent, i.e., late September, 2021.

*Forty Third:* Again, the affected Community Boards herein intend to comply with their mission of giving voice to the residents and businesses under §19-187 in their districts despite the apparent efforts of DOT to thwart that worthy mission.

WHEREFORE the petition should be granted and a judgment issued by the court:

- 1) permanently enjoining the respondents, and each of them from commencing construction of the project as defined herein in any manner and in any location whatsoever, including, without limitation, any demolition, digging or other preparation work of any kind whatsoever, until the respondents have fully complied with the statutory sections set forth above and prohibiting and restraining the respondents from proceeding with said project until such compliance is complete and
- 2) prohibiting and restraining the defendants, and each of them, from using the term "Community Advisory Board" in connection with its outreach efforts relative to the project and
- 3) preliminarily enjoining the defendants herein, and each of them, from proceeding with the construction of the project during the pendency of this action and until the final determination and issuance of a final judgment of this court.

Dated : June 25, 2021

  
ATTORNEY FOR PETITIONERS

Supreme Court of the State of New York  
County of Kings

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**In the Matter of the Application of**

Peter Abate, Kenny Guan, Bao Zhi Liu, Vincent Lu,  
Qinwen Lu, Paul Mak, Grace Mo, Kam Fon Mui, Tsang Sun Mui

*Petitioners*

Index #

**Verification of Petition**

*-against-*

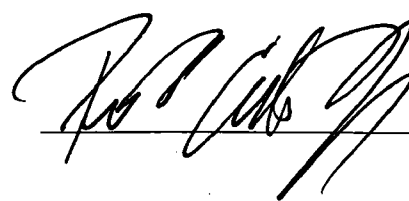
The City of New York, The New York City Department of  
Transportation and Henry Gutman as Commissioner of the  
New York City Department of Transportation

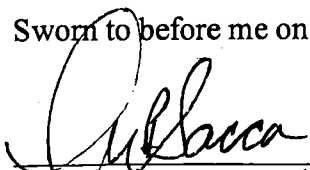
*Respondents*

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State of New York            )  
  ) ss  
County of Kings            )

Peter Abbate, petitioner herein, swears that I have read the petition in this  
action dated June 25, 2021 and it is true to my knowledge except to those matters stated upon  
information and belief and as to those matters, I believe them to be true.

  
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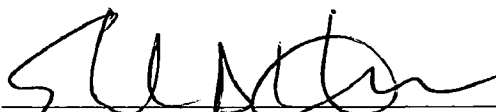
Sworn to before me on 6-25-2021  
  
\_\_\_\_\_  
Notary Public

**Irene P. Sacco**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02SA6399476  
Qualified in Kings County  
Commission Expires October 21, 2023



Certification of Word Count

Stephen A. Harrison, an attorney admitted to practice in the State of New York, certifies, pursuant to Uniform Civil Rule 202.8-b, that the annexed PETITION contains 3992 words, as determined by the word processing system used to prepare said document.



Stephen A. Harrison  
Attorney for PETITIONERS

Date: 7/6/21