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July 25, 2005

Hon. Peter S. Kalikow
Chairman
Metropolitan Transportation Authority
347 Madison Avenue
New York, NY 10017

Dear Mr. Kalikow:

I am counsel for Develop Don't Destroy (Brooklyn), Inc. ("DDDB"), a not-for-profit corporation formed, inter alia, to protect the property rights of individuals and businesses threatened with condemnation to make way for Forest City Ratner Companies' ("FCRC"'s) proposed development of the Vanderbilt Rail Yards (the "Yards") and adjacent area. I understand that DDDB and 44 other, interested organizations sent you a letter dated July 15, 2005, detailing their concerns about the disposition of the development rights to the Yards. I wish to bring to your attention another issue that the Board of the Metropolitan Transportation Authority ("MTA") would be wise to consider when reviewing FCRC's bid for the Yards.

FCRC's plan for the Yards contemplates the use of eminent domain to take property from individuals and businesses in the adjacent footprint area in the event that the company is unable to negotiate the private purchase of such property under the threat of condemnation. At present, DDDB members include certain property owners who have no intention of selling to FCRC and are committed to challenging FCRC's proposed use of eminent domain in a court of law. Over the past two years, FCRC has indicated that it would either argue that the area is blighted or that an economic benefit would accrue to the city from its development in order to justify its invocation of eminent domain. As counsel for DDDB, I wish to make it clear to the MTA that both proposed theories would meet vigorous opposition in court.

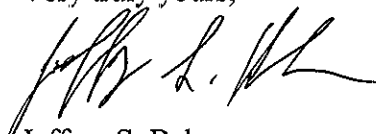
First, FCRC would be hard-pressed in designating a thriving, mixed-use neighborhood in Prospect Heights, Brooklyn as blighted, particularly in light of the rapidly escalating property

values in that and the adjacent neighborhoods. And although the U.S. Supreme Court recently held in *Kelo v. City of New London* that an "economic benefit" constitutes a valid "public use" under the Constitution, the situation in New London is clearly distinguishable from FCRC's plans for Prospect Heights. In *Kelo*: (1) the state declared in 1990 that the entire city of New London was "distressed;" (2) the city entertained six alternate proposals; and (3) the city had not chosen the developer for the project at the time the city council approved the plan. In contrast, city and state agencies have played a minimal role, at best, in deciding what is the most appropriate development for the Yards. In fact, instead of a government initiated economic development program, this is a purely private initiative and FCRC has treated the use of eminent domain to acquire land adjacent to the Yards as a foregone conclusion that will be effectuated by applicable city and state agencies in the future. Thus, the genesis for this project is squarely in conflict with the Supreme Court's decision in *Kelo*, where Justice Kennedy in his concurring opinion wrote: "transfers intended to confer benefits on particular, favored private entities, and with only incidental or pretextual public benefits, are forbidden" by the Constitution. Accordingly, as FCRC will be the prime beneficiary of any use of eminent domain, the "economic benefit" argument will be susceptible to challenge in a court of law.

The pace of MTA's consideration of the bids will also raise significant concerns regarding the validity of any claimed "public purpose". MTA has been in discussions exclusively with FCRC for a long time and issued a letter of agreement in February 2005. The ostensible public bidding process was very truncated, amounting to little over a month and requiring a level of detail in the bid that made it impossible for other interested parties to compete with FCRC's head start. Finally we have been informed that even at this morning's meeting of the MTA Real Estate Committee, the members had not been provided copies of the competing bids. If MTA were to rush to a decision at Wednesday's meeting, it would seem obvious that there had not been an opportunity for a fair consideration of the bids or the development of a plan that warranted the use of eminent domain.

As FCRC's bid is contingent on the use of eminent domain, it is imperative that the MTA is aware of the significant challenges the company could face if it pursues its current plans. Therefore, I respectfully urge that you consider the ramifications to the MTA of accepting any bid which is contingent upon such a questionable use of the power of eminent domain and that the MTA Board carefully consider all bids before moving forward.

Very truly yours,



Jeffrey S. Baker

cc:

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