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By Hand and NYSCEF

The Honorable Lucy Billings
Supreme Court of the State of New York
New York County
71 Thomas Street, Room 203
New York, New York 10013

Re: *Brooklyn Heights Association, Inc. v. Brooklyn Bridge Park Corporation*, Index No.: 155641/2016

Dear Justice Billings:

On behalf of Petitioner Brooklyn Heights Association ("BHA"), this letter responds to the letter to the Court submitted on behalf of all Respondents dated February 28, 2017 ("Respondents' Letter").

In addressing the new valuations of the real estate at Brooklyn Bridge Park released last month by the City's Department of Finance ("DOF"), Respondents' Letter does not dispute the key fact in the BHA's February 10 letter reporting that information: the new DOF valuations result in more than $300 million in additional revenue for the Park beyond the revenue forecasted by management of Brooklyn Bridge Park Corporation ("BBPC"). BBPC's Board relied upon management's forecast when the Board decided last June to let real estate developers build a huge luxury condo tower at Pier 6. Rather than disputing the new data, Respondents' Letter asserts the implausible position that this large amount of new revenue is irrelevant to the BHA's challenge, even though that challenge is premised in part on the Board's choice to act on unreliable forecasts when it knew that reliable DOF valuations would soon become available. (Am. Pet. ¶¶ 4, 12, 23, 36, 38, 236, 252, 307-09.)

As to the relevance issue, Respondents first contend that the increased PILOT revenue has "no bearing on the need for the Pier 6 development" because it will be paid over time while BBPC "needs approximately $95 million immediately" to pay for its new preventative maintenance program. (Respondents' Letter at 2.) This argument is untenable. Critically, the BBPC Board has not decided to abandon the long-term maintenance plan it has long embraced in favor of one that requires $95 million up-front. Instead, BBPC management has merely "recommended" this course of action, as Respondents' Letter admits. (Respondents' Letter at 2, referencing the "recommended course of maintenance"; Lowin Aff. ¶ 25.) It is undisputed that a $95 million expenditure would require the approval of the Board. (Wolf Aff., Ex. 52 at 3-4 (BBPC Amended and Restated By Laws, Article IV, Section 4.01(a) & (b), requiring Board approval for contracts over $100,000).)

In short, BBPC cannot defeat the relevance of the new revenue on the ground that it is not available immediately because it would be manifestly irrational for BBPC to permanently disfigure the Park by erecting a 30-story luxury condo tower for the purpose of obtaining the immediate funding required for a new form of maintenance program that the Board has never adopted. And even in a counter-factual world in which the Board had approved an immediate $95 million expenditure, its failure to engage in any meaningful consideration of whether it could fund that one-time large cash need by borrowing against its future PILOT revenues instead of authorizing a permanent and massive new project for private real estate developers would also warrant annulment of any such ill-considered decision. (Watts Aff. ¶ 8.)

Next, Respondents argue that the new DOF valuations are also "immaterial" because the DOF may change them, in part because the DOF's new valuations of the three brand new developments at John Street (condos) and at Pier 1 (condos and a luxury hotel) reflect that those projects are only 90% complete. (Respondents' Letter at 2). Apart from the common sense likelihood that the final DOF valuations will be even higher when the projects are 100% complete, Respondents' argument merely illustrates the irrationality of BBPC's decision last June to take final action on massive additional development when it acknowledges there is no urgency and the DOF's final valuations will be available soon.[1]

Respondents also take issue with the BHA's calculations that express the DOF's new valuations on a per-square foot basis, claiming the BHA has miscalculated them and speculating in a footnote (note 3) about how the BHA may have done so. But there is no error in the BHA's letter, which relied on DOF's own reported square footage amounts; to the contrary, Respondents' Letter inexplicably presents two different calculations of the per-square-foot value of the Pierhouse condos—$200, in note 3, and $178.43 elsewhere in the Letter. (Respondents' Letter at 2; attachment.)

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[1]Respondents also claim that the new DOF information is legally inadmissible, relying solely on five cases that are wholly inapposite—each of them merely applies the unexceptional proposition that a petitioner challenging a determination made at an adjudicative hearing cannot request the reviewing court to consider evidence that was not before the judicial hearing officer. None of the cases Respondents' Letter cites (at pages 1-2 and note 2) addresses the far different circumstances here, in which the BHA's challenge to the BBPC Board's quasi-legislative action was expressly premised in part on the Board's willingness to rely on its management's disputed forecasts and its refusal to defer its decision for the relatively short period necessary to obtain DOF's actual, reliable data. (Am. Pet. ¶¶ 4, 23, 36, 38, 252, 307-09.)

As a result, it is appropriate for the Court to take judicial notice of the new DOF valuations as corroboration for BHA's claim that the BBPC Board acted irrationally when it rejected the BHA's request to defer final action until reliable information could be obtained. *See generally Prometheus Realty Corp. v. N.Y. City Water Bd.*, Index No. 653003/2016, 2017 WL 628338, at *4 (1st Dep't Feb. 16, 2017) ("[T]he Water Board does not explain how its five year projections still have validity when they were made before the City announced its intention to forgo rent for the next five years.").

In any event, although per-square-foot amounts provide a common basis for comparison, PILOT revenues are based on the DOF's valuations of each property, not the per-square foot calculations that can be derived from such valuations. Respondents' apparent confusion about the right per-square-foot amounts, and their meritless challenge to the BHA's amounts, are therefore beside the point. What is important is that Respondents do not dispute that the DOF's new valuations in the aggregate for all the existing developments at the Park total $376 million (before dividing by the total square footage to determine the per-square foot values). As the BHA's February 10 letter explained, that undisputed new $376 million DOF valuation is 30% higher than the $289 million forecast in the BBPC financial model that the challenged BBPC Board's action relied upon. Respondents' Letter does not dispute that key fact.

We will be pleased to address these issues at the oral argument in this matter, which the Court recently rescheduled for March 22.

Respectfully submitted,

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Counsel for Petitioner Brooklyn Heights Association

CC: Counsel to Respondents and Interested Party Respondents