

February 10, 2017

Richard F. Ziegler
Partner
Tel +1 212 891 1680
RZiegler@jenner.com

VIA HAND DELIVERY

Hon. Lucy Billings
Justice, Supreme Court of the State of New York
New York County
71 Thomas Street, Room 203
New York, New York 10013

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

Dear Justice Billings:

I write on behalf of petitioner the Brooklyn Heights Association (“BHA”) in the above-referenced Article 78 proceeding to alert the Court to new data released last month by the New York City Department of Finance (“DOF”) that bear directly on the First Cause of Action in the BHA’s Amended Petition (“Petition”). Oral argument in this matter is scheduled for March 6, 2017.

The BHA’s first claim asserts that Respondent Brooklyn Bridge Park Corporation (“BBPC”) misled its Board of Directors by grossly underestimating anticipated future tax revenue from the developed parcels within Brooklyn Bridge Park (“the Park”), leading the Board to approve new real estate development including a 30-story luxury condominium tower on the remaining undeveloped parcel at Pier 6 in direct contravention of BBPC’s legal obligation to limit future real estate development only to the extent necessary to fund the maintenance and operation of the park. (Petition, ¶¶ 240-254). In addition to the supporting materials the BHA has already submitted to the Court, the DOF’s just-released actual market valuations and assessments for the recently-completed properties at the Park corroborate the central factual allegations in the First Cause of Action.

The DOF’s initial release of its 2017/18 valuations was anticipated at paragraph 12 of the Petition, which pleaded that “actual DOF valuations will become available starting in January 2017, only 7 months from now.” (Indeed, the Petition alleges that BBPC’s choice to take final action in June, 2016 on the basis of controversial revenue estimates rather than await DOF’s 2017 valuations was among the reasons BBPC’s decision is irrational.) The new DOF valuations, which in the ordinary course will become final in May, 2017, are about 30% higher than the values assumed in BBPC management’s financial model for all existing BBPC real

estate developments in the aggregate. The just-announced DOF valuations are far closer to the total value estimated by the community's independent's expert appraiser, Max Rosin, than they are to BBPC management's estimate on which its Board relied.¹ Yet BBPC management repeatedly told the Board that the analysis of independent appraiser Max Rosin was "demonstrably false" and should be disregarded. (Petition ¶¶ 13, 220, 227).

To provide one graphic illustration of the contrast between DOF's new valuations and BBPC management's estimates: Pierhouse, the super-expensive new condo development at Pier 1 that BBPC estimated would be valued at only \$147 per square foot² – even though DOF's average valuation in the neighborhood was \$207 and Pierhouse at Pier 1 is manifestly above-average in view of its breathtaking views, amenities and record-breaking selling prices (Petition, ¶¶ 10, 198, 203) – was just valued by the DOF at \$230 per square foot. The DOF's actual valuation is therefore nearly 60% higher than BBPC's estimate. This exposes the unreliability of Respondents' positions, including those sworn to by BBPC's David Lowin in his Supplemental Opposition Affidavit at ¶ 29 ("Petitioner's repeated claim that BBP underestimated the Pier 1 development's revenues by 'more than 40%' (Pet. Reply Br., at 37), or by \$102 million, is simply incorrect and misleading, and should be discounted.")

Significantly, the new DOF valuations lead in turn to projections of annual PILOT revenues that are more than \$300 million higher than the amount reflected in the financial model that BBPC management and its Board relied upon. The new PILOT revenue calculation is even higher (by more than \$60 million) than the amount stated in the financial analysis that BHA supplied in its reply papers in the Reply Affirmation of Ms. Qiao, the *pro bono* financial expert from FTI, the global consulting firm (*see* Pet. Reply Br. at 31-36; Qiao Reply Aff. at ¶ 14). The new DOF data shows that the analysis reflected in Petitioner's reply papers is conservative.

As noted, the Court has set argument in this matter for March 6 at the request of all parties, for whom a prompt ruling is important. To preserve that date, the BHA has chosen to alert the Court to the new DOF data and its consequences in this letter, rather than by moving for leave to file a Supplemental Petition pursuant to C.P.L.R. § 3025, in the view that the Court can

¹ BBPC management estimated the total DOF market value of the Park's existing real estate developments at about \$289 million in fiscal year 2018 in its financial model, but the DOF has now valued those properties at about \$376 million, or 30% higher; in contrast, independent appraiser Max Rosin had estimated the total value at \$426 million, or only 13% above the DOF's amount (17% above DOF's figure, if, for comparability, Rosin's figure is inflated one year using the BBPC's 3% inflation assumption). Wolf Aff., Ex. 46 at 30 ("Rosin Report") (\$426 million is the sum of the assessment values of Pier 1, John Street, Empire Stores, and One Brooklyn Bridge Park).

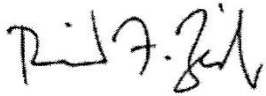
² The BBPC estimated that the Pierhouse condominiums would have a DOF market value of \$134 per square foot in fiscal year 2016 (Wolf Aff., Ex. 20 at 6 ("BBPC Financial Model Presentation of June 7, 2016")), or \$143 per square foot in fiscal year 2018 (after applying the BBPC's 3% annual inflation assumption). This figure increased slightly to \$147 per square foot once the assumed 100 parking spots were included.

February 10, 2017

Page 3

take judicial notice of the data, which is available on the DOF website.³ If the Court would like, the BHA would be pleased to submit a supplemental affirmation of FTI expert Ms. Qiao to attest to the reliability of the various dollar amounts recited in this letter that reflect the just-published DOF data.

Respectfully submitted,



Richard F. Ziegler
Counsel for Petitioner Brooklyn Heights Association

CC: Susan Amron, Esq., counsel to Respondent Brooklyn Bridge Park Corporation
David Paget, Esq., counsel to Respondents Empire State Development and Brooklyn
Bridge Park Development Corporation
Richard Leland, Esq., counsel to Interested Party Respondents

³ See, e.g., *Your Property Valuation* (2017), <http://nycprop.nyc.gov/nycproperty/nynav/jsp/selectbbl.jsp> (selecting “Brooklyn,” and searching by property address or block/lot numbers).