

HELL'S KITCHEN NEIGHBORHOOD
ASSOCIATION, DANA TURNER, DANIEL
GUTMAN, META BRUNZEMA, CHRISTINE
BERTHET, and VERA LIGHTSTONE,

VS.

Defendants.

05 Civ. 4806 (SHS)

WHEREAS, the Hell’s Kitchen Neighborhood Association (“HKNA”), Dana Turner, Gutman, Meta Brunzema, Christine Berthet, and Vera Lightstone (collectively, “HKNA Defendants”) commenced this proceeding against Michael R. Bloomberg and the City of New York, the New York City Council, and Amanda Burden and the New York City Planning Commission (“CPC”) (collectively, “the City”); Peter Kalikow and the Metropolitan Transportation Authority (collectively, “MTA”); and Denise M. Sheehan and the New York State Department of Environmental Conservation (“DEC”) (collectively, “Defendants”) alleging

that City Defendants violated the Clean Air Act (“CAA”) and the New York State Implementation Plan for Carbon Monoxide and Ozone (“SIP”) by the adoption of the “Special Hudson Yards District Amendments” to the New York City Zoning Resolution (“Zoning Resolution”) which altered parking requirements in the Hudson Yards Rezoning Area, as defined below;

WHEREAS, Plaintiffs and Defendant DEC have agreed to a voluntary dismissal of all claims against Defendant DEC, with prejudice, pursuant to FRCP Rule 41(a).

WHEREAS, the Parties desire to resolve the issues raised in this proceeding without further litigation pursuant to the terms and conditions set forth below; and

WHEREAS, Defendants have denied the truth of the allegations set forth in the Second Amended Complaint as well as any and all liability arising out of Plaintiffs’ allegations;

WHEREAS, no party herein is an infant or incompetent for whom a committee has been appointed;

IT IS HEREBY STIPULATED AND AGREED, by and between the respective Parties herein, that this matter is settled in accordance with the terms and conditions set forth below:

1. Definitions as used in this Stipulation:

- a) Hard Cap: The limit on the number of off-street parking spaces that may be constructed in the Hudson Yards Area, which will be maintained by ensuring that the sum of the Reservoir Surplus and the Hudson Yards Development Parking Supply will not exceed 6,084 spaces at any time after the effective date of this stipulation;

- b) Hudson Yards Rezoning: The January 19, 2005 amendments to the New York City Zoning Resolution that, among other things, changed the zoning designations of the Hudson Yards Area to allow for residential, commercial and mixed-use development;
- c) Hudson Yards Area: The Area generally bounded by West 43rd Street on the north, Twelfth Avenue on the west, West 29th and West 30th Streets on the south, and Seventh and Eighth Avenues on the east, in the borough of Manhattan, and more particularly described in the Hudson Yards Rezoning. The Hudson Yards Area is comprised of the Special Hudson Yards District, the 42nd Street Perimeter Area of the Special Clinton District, and Area P2 of the Special Garment Center District as these are delineated in the New York City Zoning Resolution as of the effective date of this Stipulation, as depicted in Exhibit A hereto;
- d) Hudson Yards Development Parking Demand: The 6,084 accessory or public off-street parking spaces that are necessary to serve new development in the Hudson Yards area subsequent to the Hudson Yards Rezoning, which does not include the off-street parking necessary to serve the Reservoir Parking Demand;
- e) Hudson Yards Development Parking Supply: The aggregate amount of accessory or public off-street parking in the Hudson Yards Area: (i) that has been constructed, pursuant to the Hudson Yards Rezoning, and satisfies the ratios of paragraph 7.c.i., as specified in paragraph 7.e below; (ii) that has been constructed, pursuant to a special permit approved subsequent to the Hudson Yards Rezoning, as specified in paragraph 7.f below; (iii) for which permits are issued, to satisfy, in whole or in part, the Hudson Yards Development Parking

Demand pursuant to paragraph 7.c.i. below, at any point in time after the effective date of the zoning text amendment that implements the terms of this stipulation; or (iv) for which permits are issued, to satisfy, in whole or in part, the Hudson Yards Development Parking Demand pursuant to the proposed text amendment governing off-street parking for the Eastern Rail Yard as specified in paragraph 7.d below;

- f) Public Parking: Off-Street parking that is open to the public during the business day for hourly, daily or other time-defined rental of parking spaces, for which a fee is charged;
- g) Reservoir Deficit: The (positive) amount by which the Reservoir Surplus is less than zero;
- h) Reservoir Parking Demand: The number of Public Parking Spaces in the Hudson Yards Area that, for purposes of this stipulation, are deemed necessary to meet all demand for parking within such area in the year 2025 and thereafter, other than the Hudson Yards Development Parking Demand.
- i) Reservoir Parking Supply: The amount of Public Parking in the Hudson Yards Area, defined as the amount established by the methodology in paragraphs 7.h and 7.i below. The Reservoir Parking Supply and the Hudson Yards Development Parking Supply are mutually exclusive;
- j) Reservoir Surplus: The amount by which the Reservoir Parking Supply exceeds the Reservoir Parking Demand. The initial Reservoir Surplus shall be 3,600 parking spaces as of the effective date of this Stipulation, and shall be modified thereafter throughout the life of this Stipulation by the methodology in Paragraphs

7.e and 7.i. below. The Reservoir Surplus may be a positive number or a negative number.

2. All claims set forth in the above-entitled action against Defendant MTA are dismissed with prejudice and without costs to any party as against another.

3. All claims set forth in the above-entitled action against City Defendants shall be placed on the suspense calendar until such time as a zoning text amendment to the New York City Zoning Resolution that is consistent with the terms outlined below is enacted, as described in paragraph 10 below. The Department of City Planning will exercise all reasonable efforts to refer the text amendment for public review under the City Charter §200 process necessary for a text amendment within six months after the effective date of this stipulation, and will furnish a draft of its proposed zoning text amendment to Plaintiffs' counsel within a reasonable period, but not less than fourteen days, prior to such referral. Upon the enactment of such a zoning text amendment, all claims against City Defendants in the above-entitled action shall be dismissed with prejudice and without costs to any party as against another. If the CPC or City Council, for whatever reason, do not refer the text amendment for public review within eight months or adopt the text amendment within twelve months of the effective date of this stipulation, this action may be reinstated to the active calendar, with both plaintiffs and the City Defendants reserving all rights and all defenses available to them as of the date hereof.

4. Plaintiffs will not, directly or indirectly, challenge, or assist any other individuals in challenging, in this or any other forum, the future adoption by the City Defendants of parking regulations for Subarea A1 of the Hudson Yards Special District known as the "Eastern Rail Yard," so long as those parking regulations do not permit more than 1,000 parking spaces on the Eastern Rail Yard site, as specified in the zoning text amendment currently under review.

5. The City will not proceed with the design or development of the 950-space below-grade public parking garage authorized in connection with the Hudson Yards Rezoning (ULURP #C 040502 PCM).

6. The purpose of the Hard Cap described in paragraph 7.b. below is to limit the number of off-street parking spaces in the Hudson Yards Area to the number necessary to meet the Reservoir Parking Demand and the Hudson Yards Development Parking Demand, as defined above.

7. The New York City Department of City Planning, in accordance with all legal requirements, shall propose and seek enactment of a text amendment of the Zoning Resolution by the CPC and the New York City Council consistent with the following terms:

a) Restrictions on Parking:

i) there will be no requirement to construct off-street parking in the Hudson Yards Area;

ii) all off-street parking spaces constructed in the Hudson Yards Area must be located on the same zoning lot as the floor area to which they are accessory;

iii) parking spaces constructed accessory to residential uses in the Hudson Yards Area may not be made available for public use;

iv) parking spaces accessory to commercial uses may be made available for public use.

b) Hard Cap Limitation on the Number of Parking Spaces in the Hudson Yards Area:

i) To maintain the Hard Cap, building permits to construct off-street parking facilities in the Hudson Yards Area may only be issued in the event that the sum

of the Reservoir Surplus, the number of parking spaces in the application for the building permit, and the Hudson Yards Development Parking Supply is equal to or less than 6,084;

ii) Building permits to construct off-street parking will lapse after two years if substantial construction has not been completed, provided that off-street parking spaces allowed pursuant to City Planning Commission special permits shall be subject to the lapse provisions of Section 11-42 of the Zoning Resolution.

c) As-of-right off-street parking allowed in the Hudson Yards Area will be calculated as follows:

i) When the Reservoir Surplus is greater than zero: All parking permitted under this subparagraph will be required to obtain a City Planning Chair certification that the sum of the Reservoir Surplus, the number of parking spaces in the application for the building permit, and the Hudson Yards Development Parking Supply is less than or equal to 6,084;

A) Residential Development: The number of parking spaces that does not exceed the sum of (x) 0.08 times the number of dwelling units qualifying as affordable housing under Inclusionary Housing provisions, and (y) 0.30 times the number of all other dwelling units;

B) Commercial Development¹: The number of parking spaces that does not exceed 0.16 spaces per 1,000 square feet of floor area;

¹ Commercial Development is defined as Use Group 6B offices as identified in Section 32-15 of the Zoning Resolution.

C) Hotel: The number of parking spaces that does not exceed the lesser of the amount permitted by Article I, Chapter 3 of the Zoning Resolution, or 0.16 spaces per 1,000 square feet of floor area; and

D) Other Commercial Uses and Community Facility Development: No permitted off-street parking;

ii) Where the Reservoir Surplus is negative, permitted as-of-right off-street parking spaces will be calculated as described below. All additional parking provided pursuant to this paragraph 7.c.ii shall be subject to an additional City Planning Chair certification, to ensure that the total of such additional parking does not exceed the amount of the then existing Reservoir Deficit;

A) Residential Development: No change from paragraph 7.c.i.A above;

B) Commercial Development: The number of parking spaces that does not exceed 1.33 times 0.16 spaces per 1,000 square feet of floor area, provided that the additional spaces above 0.16 spaces per 1,000 square feet of floor area do not exceed the Reservoir Deficit;

C) Hotel: The amount permitted by Article I, Chapter 3 of the Zoning Resolution, provided that any additional spaces above 0.16 spaces per 1,000 square feet of floor area do not exceed the Reservoir Deficit; and

D) Other Commercial Uses and Community Facility Development: No permitted off-street parking;

d) The provisions in paragraphs 7.a.iv and 7.c will not apply to Subarea A1 of the Special Hudson Yards District, known as the Eastern Rail Yard, which is subject to its own zoning text amendment (currently in the process of public review under

Sections 200/201 of the City Charter). However, the 1,000 off-street parking spaces that may be constructed on that site under the proposed Eastern Rail Yard text amendment would be counted toward the Hudson Yards Development Parking Supply;

e) The provisions of paragraph 7.a and 7.c will not apply for any site for which permits have been issued and construction has commenced, in accordance with the existing Hudson Yards parking regulations, prior to the effective date of the zoning text amendment described herein, if it is legally vested pursuant to the Zoning Resolution. Off-street parking on such sites will be counted toward the Hudson Yards Development Parking Supply to the extent such parking complies with the rates set forth under paragraph 7.c.i, and will increase the amount of the Reservoir Surplus to the extent such parking exceeds the rates set forth under paragraph 7.c.i;²

f) The provisions of paragraph 7.c will not apply to development of Public Parking spaces within the Hudson Yards Area pursuant to a Special Permit granted after January 19, 2005 and prior to the effective date of this stipulation, that allows for additional parking beyond the amounts set forth in paragraph 7.c. However, such parking permitted by a Special Permit will be counted toward the Hudson Yards Development Parking Supply.

g) Special Permits to exceed the ratios set forth in Paragraph 7.c:

² These sites include Hudson Yards FGEIS Projected Sites 11, 17, 23, and 35. However, all off-street parking on Hudson Yards FGEIS Projected Site 35 will count toward the Hudson Yards Development Parking Supply. Projected Sites are shown in Appendix B hereto.

i) The proposed zoning text amendment will have the following provisions regarding City Planning Commission special permits to exceed the ratios set forth in Paragraph 7.c:

A) Where there is a Reservoir Surplus, there can be no increase in the number of off-street parking spaces above the levels permitted by the ratios presented in paragraph 7.c above, by special permit or otherwise;

B) Where there is a Reservoir Deficit:

(1) No accessory parking facility for residences is eligible to increase its capacity above permitted ratios or convert to Public Parking, by special permit or otherwise;

(2) An accessory parking facility for commercial uses may apply for a special permit to increase capacity pursuant to Zoning Resolution Section 13-561 in an amount greater than the 33% increase permitted as-of-right under paragraph 7.c.ii (with such additional spaces available for public use), up to an amount equal to the then existing Reservoir Deficit;

C) The authorizations to permit off-street parking in existing buildings or lots pursuant to Sections 13-551 or 13-552 of the Zoning Resolution shall not apply to the Hudson Yards Area, nor shall new public parking lots as defined in the Zoning Resolution be permitted in the Hudson Yards Area;

D) Section 74-52 of the Zoning Resolution shall apply only to renewals of special permits granted prior to the effective date of the proposed zoning text amendment, provided there is no increase in capacity;

h) Establishment of the initial Hudson Yards Development Parking Supply, Reservoir Parking Supply, and initial Reservoir Surplus:

i) *A. Survey* -- Within four weeks of the effective date of this settlement, the Department of City Planning will complete a survey by canvassing the Hudson Yards Area to verify the number of lawful Public Parking facilities in such area. The results of this survey will be provided to plaintiffs' counsel once completed and shall be posted on the Department of City Planning web site no later than the referral for public review of a text amendment. The posting will include, without limitation, property name and address; building type (residential or commercial); category (Reservoir Parking Supply or Hudson Yards Development Parking Supply); DCA license number and licensed capacity, if any; and building block and lot. The survey shall also identify any block and lot where construction of a new building is underway. Plaintiffs may accompany the Department of City Planning on that survey. The purpose of the survey shall be to establish the location of all lawful Public Parking facilities in the Hudson Yards Area that are in active use, and to aid in the identification of lots in construction.

B. Study -- Concurrently with the survey, the Department of City Planning will study the online Building Information System database to identify all lots in the Hudson Yards Area for which a building permit including parking has been issued at the time of the survey, but for which a certificate of occupancy has not been issued. For such lots, the City will provide the building permit number, the number of parking spaces, residential units and/or the amount of commercial square footage being built. The results of this study will be provided to Plaintiffs'

counsel once completed and such information will also be included in the website posting described in this paragraph.

For each facility identified through the survey or study, the Department will review, as applicable, (i) the license issued to that facility by the Department of Consumer Affairs to determine the licensed capacity of such facility, or (ii) the building permit issued by the Department of Buildings, or the special permit issued by the Department of City Planning, to determine the status and permitted capacity of such facility;

ii) Utilizing the results of the foregoing, the initial Hudson Yards Development Parking Supply will be as provided in 7.e and 7.f above. The facilities in active use identified in the survey not subject to the provision of 7.e and 7.f above will constitute the Reservoir Parking Supply.

iii) The initial Reservoir Surplus will be 3,600.

i) Updating the Hudson Yards Development Parking Supply and the Reservoir Surplus:

Upon referral for public review of the zoning text amendment, DCP will update the calculation of the Hudson Yards Development Parking Supply and the Reservoir Surplus to account for any changes that have occurred during the period after the initial survey and study, and shall thereafter keep track of, and make public on its website, a continually updated calculation of changes in the Hudson Yards Development Parking Supply and the Reservoir Surplus to verify that the sum of the two remains less than or equal to the Hard Cap. Following adoption of the text

amendment, the website posting will be updated at least every thirty days to reflect all relevant changes as follows:

1) Reservoir Surplus

A) Any parking permitted pursuant to paragraph 7.e above, beyond the ratios permitted in paragraph 7.c above, will increase the Reservoir Surplus, provided that the Reservoir Surplus shall be decreased to the extent that such parking is not in fact provided by reason of failure to construct the associated development, or issuance of a temporary or permanent certificate of occupancy showing a smaller number of spaces than permitted;

B) Any Public Parking facility that is counted in the survey pursuant to paragraph 7.h.i above as part of the Reservoir Parking Supply, and is reduced in capacity or ceases to operate subsequently, will decrease the size of the Reservoir Surplus to the extent of such reduction in capacity or cessation of operation, and any such facility that is lawfully increased in capacity through issuance of a variance by the Board of Standards and Appeals, a change in the DCA license, or any other official action, will increase the size of the Reservoir Surplus to the extent of such increase in capacity;

C) Any off-street parking that is allowed under paragraphs 7.c.i or 7.d above, but for which, in whole or in part, no certification is sought as provided in 7.c.i. or, in the case of the Eastern Rail Yard, is not provided, as reflected in the issuance of a permit or temporary or permanent certificate of occupancy or

DCA license showing no off-street parking spaces, or a smaller number of spaces than allowed, will decrease the size of the Reservoir Surplus;³

D) Any off-street parking that is provided in newly constructed commercial or hotel buildings in excess of the ratios set forth in paragraph 7.c.i, pursuant to paragraph 7.c.ii or 7.g.i.B.2 above will be counted towards the Reservoir Surplus, to the extent that the number of spaces permitted or built exceeds the ratios in paragraph 7.c.i.;

E) Any parking that is counted as increasing the Reservoir Surplus in accordance with this paragraph 7.i.1., and is subsequently discontinued or demolished, shall decrease the Reservoir Surplus;

2) Hudson Yards Development Parking Supply:

The Hudson Yards Development Parking Supply will be increased by: (i) any off-street parking for which a permit has been issued under paragraphs 7.c.i; (ii) any off-street parking for which a permit has been issued under 7.c.ii or 7.g.i.B.2 to the extent such parking complies with the rates set forth under paragraph 7.c.i; and (iii) any off-street parking for which a permit has been issued under 7.d, provided that any such off-street parking that is not actually provided, as reflected in the temporary or permanent certificate of occupancy or DCA license showing a smaller number of spaces than permitted, will decrease the size of the Hudson Yards Development Parking Supply. Any parking that is counted as increasing the Hudson Yards Development Parking Supply in

³ However, no off-street parking is expected on four sites impacted by below-grade infrastructure (Hudson Yards FGEIS Projected Sites 2, 4, 6 and 31) and not more than 200 spaces are expected on an additional site partly impacted by below-grade infrastructure (Hudson Yards FGEIS Projected Sites 32 and 33, which have been acquired by the same owner and are expected to be developed together). A deficit of parking provided below the permitted ratios on Sites 2, 4, 6 and 31 will not decrease the size of the "Reservoir Surplus". On Sites 32/33 combined, a deficit of parking below the permitted levels will decrease the size of the "reservoir surplus" only to the extent that the number of spaces provided is less than 200. Projected Sites are shown in Appendix B hereto.

accordance with this paragraph 7.i.2, and is subsequently discontinued or demolished, shall decrease the Hudson Yards Development Parking Supply.

3) Site Specific Variations:

Any off-street parking for which a permit has been issued, pursuant to a variance granted by the Board of Standards and Appeals, a license granted by DCA, or any other official action, permitting a greater number of spaces than allowed under paragraph 7.c.i, will increase the size of the Hudson Yards Development Parking Supply to the extent such parking complies with the rates set forth under paragraph 7.c.i, and will increase the size of either the Hudson Yards Development Parking Supply or the Reservoir Surplus, depending on the basis of such determination, to the extent of such increase in capacity beyond the rates set forth under paragraph 7.c.1. Any such off-street parking that is not actually provided, as reflected in the temporary or permanent certificate of occupancy or DCA license showing a smaller number of spaces than permitted, will decrease the size of either the Hudson Yards Development Parking Supply or the Reservoir Surplus, as applicable

Reservation of Rights

8. Nothing contained herein shall be deemed to be an admission of the truth of any of the allegations contained in the complaint or an admission of liability. Nothing contained herein shall be deemed to be an admission by any of the Defendants they have in any manner or way violated Plaintiffs' rights or the rights of any other person or entity as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, the City of New York, or any other rules, regulations or bylaws of any other agency,

department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except to enforce its terms;

9. Until such time as a zoning text amendment consistent with the terms of this agreement is enacted, the existing zoning for Hudson Yards shall remain in effect. At the time of enactment, the calculation of the Reservoir Surplus and the Hudson Yards Development Parking Supply shall be adjusted in a manner consistent with paragraph 7.i.


10. The parties recognize that the above discussion does not recite the precise language of the proposed zoning text amendment. It is understood that a proposed zoning text amendment reflecting the elements above may be modified by the CPC and/or the City Council based on testimony and comments received during the public review process. Any proposed zoning text amendment will be deemed to comply with this agreement, and be consistent with the elements recited above, if it provides assurance that the Hard Cap limitation on the number of parking spaces in the Hudson Yards Area set forth in paragraph 7.b is maintained, and there are no modifications to the initial surplus of 3,600 spaces other than in accordance with this stipulation. If CPC or the City Council propose to modify the ratios set forth in paragraph 7.c above prior to the adoption of the text amendment described herein, the City will provide a detailed explanation of that proposed modification to plaintiffs, including a demonstration that the proposed modification will not affect the Hard Cap limitation on the number of parking spaces in the Hudson Yards Area set forth in paragraph 7.b. Plaintiffs will not, directly or indirectly, oppose, or assist any other individuals in opposing, in this or any other forum, including the public review process under City Charter §200, the future adoption by the City Defendants of a zoning text amendment that is consistent with the terms of this stipulation as described in this paragraph.

11. This stipulation contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time not any written agreement entered into prior to the execution of this stipulation regarding the subject matter of this proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

12. The Effective Date of this stipulation will be the date it is so ordered by the Court.

Dated: New York, New York
March 5, 2009

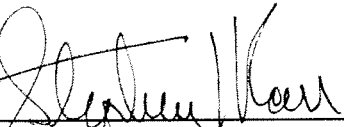
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So ordered:

U.S.D.J.