

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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In the Matter of the Application of

THE BRONX COUNCIL FOR ENVIRONMENTAL
QUALITY (BCEQ), IRA CHARLES LEVENBERG, both
individually and in his official capacity as BCEQ President,
THE FORT INDEPENDENCE PARK NEIGHBORHOOD
ASSOCIATION (FIPNA), PHILIP MCDONNELL, both
individually and in his official capacity as FIPNA
President, ASSEMBLY MEMBER JEFFREY
DINOWITZ, both individually and in his official capacity,
COUNCIL MEMBER G. OLIVER KOPPELL, both
individually and in his official capacity, MARIO
BENITEZ, ANTHONY PEREZ CASSINO, FRANCIS A.
CHAPMAN, MICHAEL GARY, FATHER RICHARD
GORMAN, SONIA LAPPIN, DAMIAN MCSHANE,
MORRIS PALEVSKY, SAUL SCHEINBACKH, LYNN
SCHWARZ, and CAROLYN SMITH,

Petitioners/Plaintiffs,

-against-

THE NEW YORK CITY DEPARTMENT OF
ENVIRONMENTAL PROTECTION (DEP), THE NEW
YORK CITY DEPARTMENT OF BUILDINGS, THE
CITY OF NEW YORK, and MICHAEL S.
BLOOMBERG, individually and in his official capacity as
Mayor of the City of New York,

Respondents/Defendants.

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**VERIFIED ANSWER AND
OBJECTIONS IN POINT OF
LAW**

Index No.: 260287/08

IAS Part 8 (Stinson, J.)

Respondents, The New York City Department of Environmental Protection
("DEP"), The New York City Department of Buildings, The City of New York, and Mayor
Michael Bloomberg, (collectively "Respondents" or "the City"), by their attorney, MICHAEL A.

CARDOZO, Corporation Counsel of the City of New York, as and for their Answer and Objections in Point of Law, respectfully allege as follows:

1. Section 7804(d) of the New York Civil Practice Law and Rules specifies the pleadings permitted in a special proceeding under Article 78. It provides, "There shall be a verified petition, which may be accompanied by affidavits or other written proof. Where there is an adverse party there shall be a verified answer, which must state pertinent and material facts showing the grounds of the respondent's action complained of. There shall be a reply to a counterclaim denominated as such and there shall be a reply to new matter in the answer or where the accuracy of proceedings annexed to the answer is disputed. The court may permit such other pleadings as are authorized in an action upon such terms as it may specify."
2. The papers submitted by Petitioners do not include a single Verified Petition, accompanied by affidavits or other written proof. Rather, Petitioners have submitted (as their Exhibit A) 15 separate and non-identical papers, each captioned "Verified Petition and Affidavit in Support," which are signed by the 15 individual petitioners. Because Petitioners failed to submit a single Verified Petition, their pleading is defective and no answer is required to each of the allegations contained in the 15 separate affidavits.
3. In general, Respondents deny the allegations set forth in the Petitioners' various affidavits and respectfully refer the Court to Respondents' affidavits and their accompanying exhibits for a full and accurate statement of the pertinent and material facts of this proceeding.

**AND AS FOR A STATEMENT OF
PERTINENT AND MATERIAL FACTS,
RESPONDENTS RESPECTFULLY ALLEGE:**

4. For a complete statement of pertinent and material facts, Respondents respectfully refer the court to the Affidavit of Gary Heath, sworn to on August 28, 2008; and the Affidavit of Marshall A. Kaminer, P.E., sworn to on August 29, 2008.

FOR A FIRST DEFENSE:

5. Petitioners have submitted a defective pleading.

FOR A SECOND DEFENSE:

6. Petitioners' claims fail to state a cause of action.

FOR A THIRD DEFENSE:

7. Petitioners' claims with respect to DEP's environmental review of the limited excavation work associated with the construction of two treated water riser shafts and the footprint of the meter chamber ("Shaft Meter Chamber" or "SMC") are moot.

FOR A FOURTH DEFENSE:

8. Petitioners' claims with respect to DEP's environmental review of other work at the Jerome Park Reservoir site, including the work consolidating the shafts at the Harris Park Annex site, are not ripe for review.

FOR A FIFTH DEFENSE:

9. Petitioners' claims with respect to the need for a building permit for the Croton Water Treatment Plant or any shafts being constructed in connection with the Croton Water Treatment Plant in the vicinity of Jerome Park Reservoir are barred by the statute of limitations.

FOR A SIXTH DEFENSE:

10. Petitioners' claims are barred by the doctrine of laches.

FOR A SEVENTH DEFENSE:

11. Respondents' actions were in all respects legal, proper, reasonable, and in conformity with all applicable laws and regulations, and were neither arbitrary nor capricious.

WHEREFORE, Respondents respectfully request that the petition be denied in its entirety and the relief sought therein be denied in all respects, with costs and disbursements.

Dated: New York, New York
August 29, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Respondents
100 Church Street, Room 6-133
New York, New York 10007
(212) 788-0771

By:


CARRIE NOTEBOOM
Assistant Corporation Counsel

TO: Ezra Glaser
Attorney for Petitioners

VERIFICATION

CARRIE NOTEBOOM, an attorney admitted to practice law in the State of New York affirms under penalty of perjury:

I am Assistant Corporation Counsel for the New York City Law Department, Office of the Corporation Counsel. I make this verification pursuant the Civil Practice Law and Rules Section 3020(d) on the grounds that I am acquainted with the facts of this proceeding.

I have read the foregoing Answer and assert on information and belief that the contents thereof are true. The sources of my information and belief are my personal knowledge, my review books and records of the Department of Environmental Protection and the Department of Buildings, my review of documents referred to the Answer and the petitioners' Order to Show Cause papers, and my discussions with employees of the City of New York.

Dated: New York, New York
 August 29, 2008



CARRIE NOTEBOOM