

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of

NEIGHBORS UNITED BELOW CANAL, JAN LEE,
DOWNTOWN COMMUNITY TELEVISION CENTER,
EDWARD J. CUCCIA, BETTY LEE, and AMERICAN
INDIAN COMMUNITY HOUSE,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules

- against -

MAYOR BILL DEBLASIO, THE CITY OF NEW YORK,
NEW YORK CITY PLANNING COMMISSION,
MARISA LAGO, NEW YORK CITY DEPARTMENT OF
CITY PLANNING, NEW YORK CITY DEPARTMENT
OF CORRECTION, CYNTHIA BRANN, NEW YORK
CITY MAYOR'S OFFICE OF CRIMINAL JUSTICE,
ELIZABETH GLAZER, NEW YORK CITY
DEPARTMENT OF CITYWIDE ADMINISTRATIVE
SERVICES, LISETTE CAMILO, and NEW YORK CITY
COUNCIL,

Respondents.
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**AFFIRMATION OF SUSAN
AMRON**

Index No. 100250/2020

(Kelley, J.)

SUSAN AMRON, an attorney admitted to practice before the Courts of the State of New York, affirms the following pursuant to § 2106 of the CPLR of the State of New York and under the penalties of perjury.

1. I am the General Counsel of the New York City (the "City") Department of City Planning ("DCP"), and have served in this position since January 2019. Before coming to DCP, I was the chief of the Environmental Law Division at the New York City Law Department.

2. As General Counsel, I am responsible for, among other things, providing legal advice to agency staff, and helping to coordinate DCP's review of applications for zoning text and map

amendments, and for special permits pursuant to the City's Uniform Land Use Review Procedure ("ULURP"). I also provide counsel to, and help coordinate work performed by DCP's Environmental Assessment and Review Division in its review of projects under the New York State Environmental Quality Review Act ("SEQRA") and its City counter-part, the City Environmental Quality Review Procedure ("CEQR"). I am fully familiar with the ULURP and SEQRA/CEQR processes and the ULURP application submitted in connection with the City's Borough-based Jail Project.

3. This affidavit is based on personal knowledge, my examination of DCP's records, and publicly released City documents.

4. Contrary to Petitioners' claims, the ULURP review of the Borough-based Jail Project fully complied with all applicable legal requirements.

A. The Uniform Land Use Review Procedure for the Borough-Based Jail Project

5. As fully discussed in the accompanying Affidavit of Dana Kaplan ("Kaplan Aff."), the zoning actions and other land use components of the proposed Borough-Based Jail System ("BBJS") were subject to review and approval under ULURP and related procedures, as set forth in sections 197-c, 197-d, and 200 of the New York City Charter. Kaplan Aff., Section IV.

6. ULURP establishes a procedural framework for the public review of certain discretionary land use actions, within mandatory statutory timeframes, by affected Community Boards, affected Borough Presidents, the City Planning Commission ("the Commission" or "CPC"), and the City Council. Under ULURP, each reviewing entity in sequence solicits public input on proposed land use actions, including through public hearings and written comments, and makes recommendations or determinations on those actions. The Commission's determination is detailed in one or more reports on each application that explains the project, summarizes the recommendations from the affected Community Boards and Borough

Presidents and comments and testimony from the public, explains the Commission's considerations, and lays out the Commission's findings. Each ULURP-reviewing entity must complete its review, including soliciting public input and issuing a recommendation or determination, within strict time periods specified in the City Charter. In this way, ULURP ensures predictability, efficiency, and regularity in the land use review process.

7. Actions subject to ULURP include zoning map changes, amendments to the City Map, site selection for City facilities, and disposition and acquisition of real property by the City. ULURP may apply to projects proposed by a private applicant (such as a developer seeking a rezoning to facilitate new construction), or to projects proposed by one or more government agencies, as in the case of the BBJs. The agencies here included the City Department of Correction ("DOC"), the Mayor's Office of Criminal Justice ("MOCJ"), the City Department of Housing Preservation and Development, and the City Department of Citywide Administrative Services.

B. Petitioners' ULURP claims have no merit.

8. Petitioners allege that the ULURP review of the BBJs was inadequate in three ways. None of these claims has merit.

i. A single ULURP review was lawful and appropriate.

9. First, Petitioners claim that the site selection for the proposed Manhattan jail required its own separate ULURP review rather than being considered as part of a single review for all four sites in the BBJs. This is not correct.

10. The City Charter says only that site selections are subject to ULURP and does not otherwise limit their scope or require that they address only one site. So, contrary to Petitioners' claims, there is nothing in section 197-c of the Charter that bars the single ULURP review that occurred here.

11. DCP's rules for ULURP applications also do not support Petitioners' argument that a single review is not allowed under ULURP. Again, nothing in the regulations, codified at 62 RCNY Chapter 2, restricts the scope of applications. To the contrary, the regulations require that a ULURP application be referred to affected "Borough President(s)" and "*each* affected borough president," 62 RCNY § 2-02(a)(2)–(3) (emphasis added), indicating that actions undergoing a single ULURP review can be located in more than one borough.

12. The word "uniform" in ULURP refers to the fact that the process laid out in the Charter is uniform, regardless of the subject matter of the application or the locations of the proposed actions. These processes, such as DCP certification, community board and Borough President notice and review, public input, and mandatory timeframes for acting, must be observed in all applications. "Uniform" does not, as Petitioners imply, mean that ULURP must always be conducted in exactly the same manner, in every particular. Petitioners are wrong to suggest that the City lacks discretion to conduct a single ULURP review for a multi-borough initiative if it has a rational reason to do so. The ULURP Charter provisions apply to very different types of public and private projects, from site selections by City agencies, to City Map changes, to designation of zoning districts, and DCP allows applicants to structure their projects in ways that are effective and efficient for the specific project as long as they comply with DCP's requirements. Allowing a single site selection application to include multiple sites is one such instance, as in the BBS application and those discussed below.

13. Petitioners' second argument, that this single review of a multi-borough project was unprecedented, and thus unreasonable, is also incorrect for two reasons. First, the City has in fact conducted single reviews of multi-borough projects in the past. And second, use of a single review was fully reasonable here, where the BBS is a single project with interdependent parts,

designed to be implemented across four boroughs on a uniform timeline, and where all of the projects must proceed in concert to facilitate the closure of the jails on Rikers Island.

14. Petitioners ignore multiple examples of single ULURP applications for actions occurring in multiple boroughs and therefore reviewed by multiple Borough Presidents, including the following.

15. In 2019, DCP certified as complete a single ULURP application proposing to change the zoning rules for Special Natural Resource areas in both Staten Island and the Bronx.¹ Similarly, in 2001, DCP certified a single ULURP application to establish the Special Downtown Brooklyn District, extend the Special Midtown District in Manhattan, and establish a new zoning district surrounding Madison Square Park in Manhattan.²

16. Petitioners ignore contrary examples by artificially limiting their review to a single, artificially narrowed category of ULURP actions: “non-transportation land action[s] involving a multi-borough project with individual site selection.” Petitioners’ Memorandum of Law at 45. However, there is no different set of rules for site selections that would prohibit DCP from certifying, or the Commission from approving, an application with sites in multiple boroughs. Rather, the procedural rules that apply to site selections are the *uniform rules* – the same rules as those that apply to re-zonings and other ULURP actions. Therefore, DCP’s and the

¹ See Bronx and Staten Island Special Natural Resource Districts, CPC Report C 190403 ZMX (Sept. 25, 2019), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/190403.pdf>. This application was later amended to remove the Staten Island provisions for unrelated reasons, *id.* at 21, but the application was certified to include both boroughs.

² See Downtown Brooklyn, Lexington Avenue, CPC Report C 010199 ZMY (June 13, 2001), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/010199.pdf>. The application was later amended to remove the Madison Square Park area provisions, and the remainder was approved by the Commission. *Id.* at 31–35.

Commission’s longstanding discretion to certify and approve differently configured applications for re-zonings applies equally to site selections.

17. In any event, DCP has also exercised its discretion to certify single applications for projects involving site selections across multiple boroughs. In 2008, the Randall’s Island Connector, a pedestrian bridge connecting Manhattan to the Bronx, was subject to a single ULURP review, although the project involved sites in both Manhattan and the Bronx.³ Petitioners avoid this example by arbitrarily excluding transportation projects from their review—though no ULURP rule applies differently to transportation projects than to any other project. As discussed above, the Charter’s ULURP provisions are *uniform*, and do not apply in fundamentally different ways to different types of projects. In the absence of any language distinguishing transportation-related projects from other types of projects, the Charter cannot be construed to *allow* a site selection application to cover sites in multiple boroughs for transportation projects, but to *forbid* a site selection application from covering sites in multiple boroughs for other types of projects.

18. Petitioners acknowledge that in 2003, the City approved a multi-borough ULURP—a disposition ULURP approval authorizing the City to lease space in both the Staten Island and Manhattan terminals of the Staten Island Ferry to a single concessionaire for management of the retail facilities and public areas.⁴ Petitioners attempt to distinguish this example as one in

³ See, Randall’s Island Connector, CPC Report C 080533 PCY (Dec. 17, 2008) <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/080533.pdf>.

⁴ See Whitehall and St. George Ferry Terminal Disposition, CPC Report C 030186 PPY (Apr. 2, 2003), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/030186.pdf>. Petitioners’ mischaracterization of this project as a “transportation project that invariably require[s] consideration of two boroughs at once,” Pet. Mem. Of Law at 13, is simply incorrect. The project did not involve any of the transportation functions of the ferry terminals, and there was Continued...

which the retail operations in the terminals were “integrally connected.” Petitioners Memorandum of Law at 45. Thus, Petitioners assert that the Charter and ULURP rules allow for multi-borough applications only for “integrally connected” projects—a limitation that appears nowhere in statute or rule. Regardless, even if this limitation existed, Petitioners fail to acknowledge that the City’s goal of closing the Rikers Island jails would not be possible without the approval of all four sites, and that the jails are thus also “integrally connected,” in that all four are necessary to allow the City’s existing outdated jails to close.

19. Petitioners further argue that the City should have undertaken separate ULURP reviews of the different borough sites because the City has undertaken separate ULURP reviews for different borough sites in other projects in the past. This argument is also wrong. Neither approach is either required or prohibited by the City Charter or the ULURP rules, and either approach may be appropriate in a given circumstance. Here, as fully discussed in the Kaplan Affidavit, the City established a policy of closing the jails on Rikers Island, by a ten-year deadline, to address concerns about conditions at those jails and the effect of isolating people in detention away from their support systems, attorneys, and courts. Kaplan Aff., Sections I and II. Closing the jails on Rikers Island would have been impossible without the approval of, and ability to proceed with, all four borough-based jail sites. Neither DCP nor the Commission was required to ignore the integrated and interdependent nature of the project, or the extent to which closing the jails on Rikers Island depends upon approval of all four borough-based jails, in

no operational reason that the concessions could not have been leased to different operators. But DCP reasonably certified a single ULURP review for both leases, as they were elements of a multi-borough initiative to develop ferry concessions. Petitioners are also mistaken that this disposition was a site selection, though as discussed above, site selections are subject to the same procedures as dispositions.

determining that a single ULURP review was appropriate. To the contrary, the Commission specifically considered the question of whether it was appropriate to review the four jails in a single application and concluded that it was “both appropriate and necessary to meet the goal of closing the jails on Rikers Island.” Ex. 41, Borough-Based Jail System, Commission Report C 190333 PSY at 52 (“Lead Commission Report”) (Sept. 3, 2019).

20. Petitioners attempt to analogize the ULURP review of the BBS to the ULURP review for the City’s Water Tunnel No. 3, in which separate reviews were conducted for various phases of that project. This comparison fails. Water Tunnel No. 3 is a multi-decade, multi-phased project that began in the 1970s and remains ongoing. Unlike the jail sites, the specific Water Tunnel No. 3 sites were not identified or selected simultaneously, but over a course of decades.⁵ The City made a reasonable determination to proceed with site selections, and for some sites acquisitions, as each site was identified and construction work in that area was closer to proceeding. Moreover, a single ULURP review for that project would have been unnecessarily complicated, and practically infeasible given that the project proceeded in phases over decades.

21. The Water Tunnel ULURP reviews cited by Petitioners also serve to demonstrate that even when applications share many attributes, DCP has not required that they all be organized in the same way. For example, DCP certified separate ULURP applications for Water Tunnel shafts 25B and 26B in Manhattan’s Community Board 4, which involved the simultaneous

⁵ See, e.g., Water Tunnel No. 3, Stage 2, Shaft 20b, CPC Report C 890442 PSK (June 7, 1989), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/890442.pdf>; Water Tunnel No. 3, Shaft 30b, CPC Report 960333 (Aug. 21, 1996), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/960333.pdf>; Water Tunnel No. 3, Stage 2, Shaft 30b, CPC Report C 040135 PCM (Apr. 14, 2004), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/040135.pdf>.

acquisition of two small parcels less than a mile apart.⁶ In contrast, when the Department of General Services undertook an acquisition of multiple parcels in Staten Island for preservation as open space, also involving the simultaneous acquisition of multiple sites scattered through a single Community Board, DCP certified a single ULURP application to authorize the acquisition of all four sites.⁷ Both approaches were reasonable under circumstances that were unique to each project, as ULURP does not require or preclude either approach.

ii. Use of Design-Build was lawful and appropriate.

22. Petitioners also assert that the BBS ULURP review was inadequate because the City and the public were not presented with “set designs” for the borough-based jails as a result of the City’s decision to use a design-build process to construct the jails. Petitioners’ Memorandum of Law at 15, 47. Petitioners are incorrect. There is no requirement under ULURP that a final project design be submitted or considered in the course of review. The Charter’s ULURP provisions address zoning and land use, not detailed design, and a ULURP application may be certified once it includes information “fully sufficient to address all issues of jurisdiction and substance which are required to be addressed for the category of action as defined in the Charter, statutes, Zoning Resolution, Administrative Code or other law or regulation.” *See* 62 RCNY § 2-02(a)(5)(iii). The conceptual site plans submitted with the ULURP application met that standard.

⁶ *See* Water Shaft 25B, CPC Report C 930159 PCM (Nov. 17, 1993), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/930159.pdf>; Water Shaft 26B, CPC Report 930058 PCM (Nov. 17, 1993), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/930159.pdf>.

⁷ South Richmond Special District Designated Open Space Site Selection and Acquisition of 5 Lots, CPC Report C 830988 (Nov. 23, 1983), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/830988.pdf>.

23. As authorized by the State Legislature, the BBS is the first City project to undergo a ULURP review that will use a design-build construction process, allowing the City to combine the design and construction stages in a single contract rather than undertake two separate bid and approval processes, one for design and a second for construction after design is completed.⁸ While combining the design and build processes results in significant cost and time savings, a final design will not be prepared until after the environmental and land use review processes are complete and the design-build contract is awarded.

24. However, while design-build may be new to ULURP, the lack of final design plans during ULURP review is not unusual. For many projects, precise details regarding design plans are resolved post-ULURP, when the project sponsor seeks building permits or, where applicable, seeks review by the Public Design Commission. Indeed, while applicants sometimes provide designs in various stages of completion to the Commission, and while the Commission considers such information at its discretion, nothing in the Charter or ULURP rules requires that final design plans be presented to the Commission. ULURP approvals rarely include final designs; the typical project is submitted for Commission review at the schematic level of design, or about 30%. ULURP approvals may provide for altered bulk, density, height, and land use without specific design details. For example, when the City proposed to redevelop the former East 126th Street Bus Depot into mixed-use affordable housing, a community facility,

⁸ The New York State Legislature expressly authorized the use of design-build for this project in the New York City Rikers Island Jail Complex Replacement Act. 2018 Laws of New York Ch. 59, Pt. KKK. That law also required that projects commence within two years of enactment, providing a separate and independent deadline for the City to conclude its approvals. *Id.* § 14. Design-build has since been further authorized for more widespread use, and will likely become more frequent for City projects in coming years. New York City Public Works Investment Act, 2019 Laws of New York, Ch. 749.

and the Harlem African Burial Ground memorial, the ULURP process ended before selection of a site developer, much less final design of the project.⁹ Similarly, the Seward Park Mixed-Use Development Project, an approximately 1.65-million-square-foot, mixed-use, mixed-income development on nine City-owned sites in Manhattan, was approved by the Commission before a developer was chosen or designs were available.¹⁰

25. For the BBJs, the Commission considered design in two senses. First, the Commission placed express constraints on building bulk and street level form by modifying the building envelope and street level design requirements. The application as certified proposed maximum permissible building envelopes, essentially rectangular limits within which each jail as ultimately designed could be built. The building envelopes were intended to provide the design-build team with maximum flexibility on the scale, shape and design of the building to accommodate programmatic and other needs. However, the Commission noted that certain design principles were an important part of its consideration, and endorsed three specific principles: the buildings should establish a civic presence, complement the surrounding neighborhoods, and create visual interest. Ex. 42, Lead Commission Report at 60–61. Applying these principles, the Commission modified the BBJs plans to require setbacks and ground floor recesses. *Id.* In Manhattan, the Commission, agreeing with community commenters that White Street should “become a lively, community-focused, pedestrian-only

⁹ East 126th Street Bus Depot Memorial Project, CPC Report C 170278 PPM (July 26, 2017), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/170278.pdf>.

¹⁰ Seward Park Mixed Use Development Project, CPC Report C 120228 ZSM (August 22, 2012), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/120228.pdf>; *see also, e.g.*, Downtown Far Rockaway Development Plan, CPC Report C 170243 (A) ZMQ (July 10, 2017), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/170243a.pdf> (rezoning a 23-block portion of downtown Far Rockaway without specific developers or building designs).

thoroughfare,” required that the new White Street arcade be a minimum of 55 feet tall and 35 feet wide. *Id.* at 70. The Commission also reduced the maximum density of the site to a floor area ratio of 12.57, and imposed a minimum 10-foot setback on Centre Street, and a 15-foot setback on Baxter Street above a height of 85 feet. *Id.* at 72.

26. Second, the Commission recognized the importance of avoiding overly prescriptive requirements that would deprive the design-build team of the flexibility to create well-articulated structures with appropriately varied heights or setbacks within the building envelopes. The Commission expressed its view that such flexibility could avoid “boxy, unarticulated structures” and result in “superior design and is appropriate for these major civic facilities.” *Id.* at 62. To that end, the Commission declined to reduce the maximum heights of the buildings, but recognized that more detailed design would be an ongoing process, guided in part by the post-ULURP community engagement spelled out by MOCJ in its letters to the Commission. *Id.*; Exs. 34, 36, and 37, Letters dated August 9, 12, and 23, 2019 from Elizabeth Glazer, et al. to Commission Chair Marisa Lago.

27. Petitioners claim that the post-ULURP review of the BBS is improper because these opportunities for additional review and input from Manhattan Community Board 1 and the Commission will occur during design, after ULURP has concluded. Petitioners claim this extra design information should have been required during the ULURP review. As explained above, neither the Charter nor DCP’s ULURP rules require that detailed designs be presented during every ULURP review. By providing for periodic post-ULURP presentations to the public and Commission on each jail’s design, the City is providing additional opportunities for input that go beyond ULURP’s requirements. The fact that this design engagement process was

welcomed by the Commission does not mean that it was required or that the ULURP process was in some fashion deficient.

28. Furthermore, this post-ULURP engagement process was not a condition of the Commission's approval of the project.¹¹ Rather, the Commission expressed its agreement with the City's choice to voluntarily provide additional opportunities for input and review to both the Commission and to the public. *See* Ex. 42, Lead Commission Report at 75-79. Thus, the additional engagement process was not established by the Commission to resolve a supposed deficiency in the application before it, because the Commission did not require it, but simply recognized its value. And unlike the Commission's ULURP authority, the Commission's role in the post-ULURP design presentations will be advisory, as confirmed by Commission Chair Lago at the Commission review session to discuss the post-ULURP engagement process.¹²

¹¹ The City Planning Commission retains the authority under the Zoning Resolution to condition its approvals for special permits on various commitments, including those relating to design. New York City Zoning Resolution § 74-21. The Commission has, on occasion, used this authority to require applicants to comply with a post-ULURP design review process. *See, e.g.*, Seward Park Mixed Use Development Project, CPC Report C 120228 ZSM (August 22, 2012), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/120228.pdf>. For other applications approved without designs, the Commission has not required post-ULURP review. *See, e.g.*, E. 125th Street Development Rezoning, CPC Report C 080336 HUM (August 27, 2008), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/080332.pdf>. Petitioners are mistaken that the Commission required post-ULURP process here—the post-ULURP engagement plan was proposed by the City, voluntary, and supplements the Commission's land use review.

¹² City Planning Commission Review Session at 2:50:15–30 (August 26th, 2019), <https://youtu.be/rfCDCZmcqQM?t=10205>.

C. CONCLUSION

29. In sum, the review of the New York Borough-Based Jail System complied with the requirements of ULURP and was lawful and rational.

Dated: New York, New York
June 1, 2020



SUSAN AMRON