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May 5, 2021

Via NYSCEF and Email

Hon. Katherine A. Levine
Kings County Supreme Court, Civil Term
360 Adams Street, Courtroom 461
Brooklyn, New York 11201

Re: *Friends and Residents of Greater Gowanus et al. v. City of New York, et al.*
Index No. 501178/2021

Dear Justice Levine:

We represent Petitioners in the above-referenced proceeding. In light of recent and significant changes in circumstances, we respectfully request that the Court consider important new facts critical to the claims in the Petition and reconsider its Order dated April 19, 2021. Specifically, the Governor announced on Monday that most capacity restrictions related to the pandemic will be lifted by May 19, 2021 – *just two weeks from now* – as discussed further below. The Mayor has also announced that the City is “ready” to be open. The Mayor himself ordered 80,000 municipal employees to return to their offices full time on Monday after working remotely for over a year. These developments are so significant that the entire basis for Respondents’ defense in this Proceeding falls apart and plainly cannot be considered to have any merit (and we do not concede it even had merit in the first place).

On Monday, May 3, Governor Cuomo announced that New York and neighboring states will undergo “a significant easing of COVID-19 pandemic restrictions on the region’s businesses, venues and gatherings” (Gov. Cuomo Release, 5/3/2021, Ex. 1 annexed hereto) (emphasis added). The Governor stated that “significant progress” has been made, and that the “tide is turning against COVID-19 in New York” (*Id.*). Accordingly, by May 19, most capacity-related limitations will be lifted, “including retail, food services, gyms and fitness centers, amusement and family entertainment, hair salons, barber shops and other personal care services, among other settings” (*Id.*). Beginning May 10, the outdoor *social* gathering limit will increase from 200 to 500 people, and starting May 19, the indoor *social* gathering limit will increase from 100 to 250 people; these limits can be exceeded upon proof of full vaccination status or recent negative COVID-19 test result (*Id.*).

Similarly, the Mayor stated last week that “[w]e are ready for stores to open, for businesses to open, offices, theaters, full strength” (Transcript of Mayor’s MSNBC Interview, April 29, 2021, Ex. 2 annexed hereto) (emphasis added). Noting the extraordinary amount of vaccinations administered in the City, and that COVID-19 positivity rates and hospitalizations are down, the Mayor stated that “we are below most of the thresholds that we had set to show that this city could

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continue to come back strong” (*Id.*) (emphasis added). The Mayor has stated that the City would “fully reopen” by July 1, less than 60 days from now (*Id.*).

Respondents’ continued insistence on virtual public hearings is thus plainly inconsistent with the Mayor’s own stated policies. The Mayor cannot plausibly contend that it is too dangerous to hold in-person public hearings while sending his own employees back to the office. By June 3, 2021, the date Respondents proposed for a public hearing, the Governor’s new guidelines lifting the capacity limitations would be well into effect; we anticipate the Governor’s suspension of the Open Meetings Law would also be lifted by then. Further, the Mayor’s Executive Order purporting to suspend the in-person public hearing requirements under the City Charter and Rules would likely be lifted by then as well. *See* Petitioners’ Opp. to Motion to Dismiss, Dkt. No. 159 (arguing the Mayor’s Executive Order is irrational, not based upon data and pretextual).¹

Public hearings on massive, neighborhood-changing land-use proposals such as the Gowanus plan must be permitted to “reopen,” along with the rest of the City, with all applicable health protocols, such as social distancing and mask-wearing. The importance of in-person public hearings is not simply about the language of the City Charter and Rules; it is also about the right to freedom of speech and expression. It is about providing members of the affected community the opportunity to not only have their voices heard, but also to be able to look their public officials and neighbors in the eye when telling them how the proposed project would impact them and their livelihoods.

Because the Gowanus ULURP application was certified on April 19, 2021, the 60-day period for community board review is now well underway, yet there is no format in place that reflects the present circumstances, as described by the Governor and Mayor. We therefore respectfully request that the Court reinstate the TRO or grant a preliminary injunction to pause the ULURP “clock” for the public review period under the City Charter and Rules, while Petitioners’ claims are considered in light of the significant changes in circumstances. Public hearings on the Gowanus plan should not be permitted to be held absent a further ruling by the Court.

We would be willing to provide further briefing on this issue should the Court request it, and we are available for a hearing or conference should the Court deem either to be necessary.

Thank you for your consideration.

Respectfully submitted,

Jason E. Zakai

Jason E. Zakai

JEZ:me

c: Counsel for All Parties (via NYSCEF)

¹We do not concede any issue of law with respect to the Executive Orders relied upon by Respondents in this Proceeding.