

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

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In the Matter of the Application of

**VERIFIED ANSWER AND
AFFIRMATIVE DEFENSES
OF RESPONDENTS**

BRONX COUNCIL FOR ENVIRONMENTAL
QUALITY; and CHAUNCY YOUNG,

Petitioners, Index No.: 100240/2018

-against-

THE CITY OF NEW YORK; NEW YORK CITY
COUNCIL; NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION; NEW YORK CITY
DEPARTMENT OF SMALL BUSINESS SERVICES;
NEW YORK CITY DEPARTMENT OF PARKS AND
RECREATION; and MITCHELL J. SILVER, as
Commissioner of the New York City Department of Parks
and Recreation,

Respondents.

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The City of New York, the New York City Council, the New York City
Economic Development Corporation, the New York City Department of Small Business
Services, the New York City Department of Parks and Recreation, and Mitchell J. Silver, as
Commissioner of the New York City Department of Parks and Recreation (collectively,
“Respondents”), by and for their Answer to the Amended Verified Petition (“Petition”),
respectfully alleges as follows:

1. Deny the allegations set forth in Paragraph 1, except admit that Petitioners
purport to proceed as set forth within.
2. Deny the allegations set forth in Paragraph 2, except admit that
Petitioners purport to proceed as set forth within.

3. Deny the allegations set forth in Paragraph 3, except admit that Petitioners purport to proceed as set forth within.

4. Deny the allegations set forth in Paragraph 4, except deny knowledge or information sufficient to form a belief as to the truth of the allegations related to the members, activities, and legal status of the Bronx Council for Environmental Quality (“BCEQ”).

5. Deny the allegations set forth in Paragraph 5, except deny knowledge or information sufficient to form a belief as to the truth of the allegations related to the individual and organization referenced in Paragraph 5.

6. Admit that the City of New York is a municipality in the State of New York, and that Pier 5 was in the jurisdiction of the New York City Department of Parks and Recreation from 2006 to 2017. Deny the remainder of the allegations set forth in Paragraph 6.

7. Admit that the New York City Department of Parks and Recreation is an agency of New York City, and its principal office is located at 830 Fifth Avenue, New York, NY 10065. Deny the remainder of the allegations set forth in Paragraph 7, and respectfully refer the Court to the New York City Charter for a full statement of the powers and duties of the New York City Department of Parks and Recreation.

8. Admit that Mitchell J. Silver is the Commissioner of the New York City Department of Parks and Recreation. Deny the remainder of the allegations set forth in Paragraph 8, and respectfully refer the Court to the New York City Charter for a full statement of the powers and duties of the New York City Parks Department’s Commissioner.

9. Admit that the New York City Economic Development Corporation is a not-for profit corporation registered in the State of New York with its principal office at 110

William Street, New York, NY 10038. Deny the remainder of the allegations set forth in Paragraph 9.

10. Admit that the New York City Department of Small Business Services is an agency of the City of New York with its principal office at 110 William Street, New York NY 10038. Deny the remainder of the allegations set forth in Paragraph 10.

11. Admit that the New York City Council is the legislative body of the City of New York with its principal place of business at 250 Broadway, New York, New York 10007, and that the City Council approved applications under the Uniform Land Use Review Procedure (“ULURP”) for a multiuse development on Pier 5 on October 17, 2017. Deny the remainder of the allegations set forth in Paragraph 11.

12. Paragraph 12 contains statements of law to which no response is required.

13. Paragraph 13 contains statements of law to which no response is required.

14. Deny the allegations set forth in Paragraph 14, except admit that the land at issue is known as Pier 5.

15. Deny the allegations set forth in Paragraph 15 and respectfully refer the Court to the Final Generic Environmental Impact Statement (“FGEIS”) for the Lower Concourse North site for a discussion of floodplains at the Pier 5 site.¹

16. Deny the allegations set forth in Paragraph 16.

17. Deny the allegations set forth in Paragraph 17.

18. Deny the allegations set forth in Paragraph 18.

¹ The FGEIS is available on the Mayor’s Office of Environmental Coordination’s CEQR Access web platform, at <https://a002-ceqraccess.nyc.gov/ceqr/>.

19. Deny the allegations set forth in Paragraph 19, and refer to the Affidavit of Colleen Alderson, sworn to April 27, 2018 (“Alderson Affidavit”), for an accurate description of the location of Pier 5.

20. Deny the allegations in Paragraph 20, and respectfully refer the Court to City Exhibits G, H, and I for documentation pertaining to the federal approval of parkland conversion pursuant to the Land and Water Conservation Act of 1965 for the Yankee Stadium Redevelopment project.²

21. Deny the allegations in Paragraph 21, except admit that federal approval for parkland conversion for the Yankee Stadium Redevelopment Project was necessary because Land and Water Conservation Fund Act of 1965 funding had been used to fund a portion of Macombs Dam Park, and respectfully refer the Court to the Alderson Affidavit and to City Exhibits G, H, and I, for documentation pertaining to the federal approval of parkland conversion pursuant to the Land and Water Conservation Act of 1965 for the Yankee Stadium Redevelopment project.

22. Deny the allegations set forth in Paragraph 22, and respectfully refer the Court to the Yankee Stadium Redevelopment Project FEIS, an excerpt of which is attached as City Exhibit G, for its text and import.

23. Deny the allegations set forth in Paragraph 23, and respectfully refer the Court to the Alderson Affidavit, and the FEIS for the Gateway Center at the Bronx Terminal Market, Chapter 5, attached as City Exhibit J, for an accurate account of the circumstances surrounding the additional open space development to the south of the Yankee Stadium replacement parcels.

² All City Exhibits are attached to the Affirmation of Amy McCamphill, sworn to on April 27, 2018.

24. Deny the allegations set forth in Paragraph 24.

25. Deny the allegations set forth in Paragraph 25.

26. Deny the allegations set forth in Paragraph 26, and respectfully refer the Court to the exhibits cited therein for a full statement of their text and import.

27. Deny the allegations set forth in Paragraph 27, except admit that the Pier 5 area has been enclosed in a gated fence, has been marked with signage from the New York City Department of Parks and Recreation, and that the New York City Department of Parks and Recreation controlled access to Pier 5.

28. Deny the allegations set forth in Paragraph 28.

29. Deny the allegations set forth in Paragraph 29.

30. Deny the allegations set forth in Paragraph 30.

31. Deny the allegations set forth in Paragraph 31, and respectfully refer the Court to the exhibits cited therein for a full statement of their text and import, except deny knowledge or information sufficient to form a belief as to the accuracy of the allegations regarding the activities of Petitioners and the Harlem River Working Group.

32. Deny the allegations set forth in Paragraph 32.

33. Admit that the New York City Department of Parks and Recreation granted a permit to Petitioner BCEQ to conduct a stormwater runoff study on Pier 5; deny knowledge or information sufficient to form a belief as to the funding of the project and the statement by UrbanWater; and otherwise deny the remainder of the allegations set forth in Paragraph 33.

34. Deny the allegations set forth in Paragraph 34, and respectfully refer the Court to the exhibit cited therein for a full statement of its text and import.

35. Deny the allegations set forth in Paragraph 35.

36. Deny the allegations set forth in Paragraph 36, except admit that on July 13, 2016 Respondent New York City Economic Development Corporation and New York City Department of Housing, Preservation and Development released a Request for Expressions of Interest for long-term lease and redevelopment of an approximately 158,000 square foot site along the Harlem River in the Bronx, known as Lower Concourse North.

37. Deny the allegations in Paragraph 37, except admit that Bronx Point project has been approved by the New York City Planning Commission and New York City Council; admit that the project is being developed by L+M Development Partners and Type A Projects; and admit that the project will include up to 1,045 units of affordable housing, a hip-hop museum, community facility use, and retail space, in two buildings, to be completed in two phases on Pier 5.

38. Deny the allegations set forth in Paragraph 38.

39. Deny the allegations set forth in Paragraph 39, and affirmatively state that Pier 5 is not parkland.

40. Deny the allegations set forth in Paragraph 40, and affirmatively state that Pier 5 is not parkland.

41. Deny the allegations set forth in Paragraph 41, and affirmatively state that Pier 5 is not parkland.

42. Deny the allegations set forth in Paragraph 42.

43. Deny the allegations set forth in Paragraph 43.

44. Deny the allegations set forth in Paragraph 44.

45. Deny the allegations set forth in Paragraph 45, and respectfully refer the Court to the Affirmation of Kate Van Tassel, sworn to April 27, 2018, and the documentation pertaining to the Uniform Land Use Review Procedure (“ULURP”), referenced therein (City Exhibits V, W and X), for their text and import.

46. The first sentence of Paragraph 46 contains statements of law to which no response is required. Deny the remainder of the allegations set forth in Paragraph 46, and respectfully refer the Court to the Affirmation of Kate Van Tassel, sworn to April 27, 2018, and the documentation pertaining to the ULURP, referenced therein (City Exhibits V, W and X), for their text and import.

47. Deny the allegations set forth in Paragraph 47.

48. Deny the allegations set forth in Paragraph 48, except deny knowledge and information sufficient to form a belief as to where Petitioners’ members live.

49. Deny the allegations set forth in Paragraph 49, except admit that Petitioners purport to proceed as set forth within.

First Cause of Action

50. Repeat and re-allege, as if set forth fully herein, the responses to Paragraphs 1 to 49.

51. Paragraph 51 contains statements of law to which no response is required.

52. Paragraph 52 contains statements of law to which no response is required.

53. Deny the allegations set forth in Paragraph 53.

54. Deny the allegations set forth in Paragraph 54.

55. Deny the allegations set forth in Paragraph 55.

56. Deny the allegations set forth in Paragraph 56.

57. Deny the allegations set forth in Paragraph 57.

58. Paragraph 58 contains statements of law to which no response is required.

59. Deny the allegations set forth in Paragraph 59, except admit that Petitioners purport to proceed as set forth therein.

Second Cause of Action

60. Repeat and re-allege, as if set forth fully herein, the responses to Paragraphs 1 to 59.

61. Paragraph 61 contains statements of law to which no response is required.

62. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 62.

63. Admit the first sentence of Paragraph 63. The second sentence of Paragraph 63 sets forth a statement of law to which no response is required. Deny the remainder of the allegations set forth in Paragraph 63.

64. Deny the allegations set forth in Paragraph 64.

65. Deny the allegations set forth in Paragraph 65, except admit that Petitioners purport to proceed as set forth therein.

Third Cause of Action

66. Repeat and re-allege, as if set forth fully herein, the responses to Paragraphs 1 to 65.

67. Paragraph 67 contains statements of law to which no response is required.

68. Deny the allegations set forth in Paragraph 68, and respectfully refer the Court to the United States Department of Interior's § 6 (f) approval, attached as City Exhibit I,

for a demarcation of the parkland subject to the Land and Water Conservation Fund Act's conversion requirements.

69. Deny the allegations set forth in Paragraph 69.

70. Deny the allegations set forth in Paragraph 70.

71. Deny the allegations set forth in Paragraph 71, and affirmatively state that Pier 5 is not parkland.

72. Deny the allegations set forth in Paragraph 72.

73. Deny the allegations set forth in Paragraph 73.

74. Deny the allegations set forth in Paragraph 74, except admit that Petitioners purport to proceed as set forth therein.

75. Paragraph 75 contains statements of law to which no response is required.

76. State that the paragraph of the Petition entitled "WHEREFORE" contains a prayer for relief to which no response is required.

77. Deny all allegations in the Petition to which Respondents have not specifically responded.

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

78. For a complete and accurate statement of material facts, Respondents respectfully refer the Court to the accompanying Affidavit of Colleen Alderson, sworn to on April 27, 2018; Affidavit of Kate Van Tassel, sworn to on April 27, 2018; and Affirmation of Amy McCamphill, dated April 27, 2018, and accompanying exhibits.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE
RESPONDENTS RESPECTFULLY ALLEGE:**

79. The Petition fails to state a cause of action.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE
RESPONDENTS RESPECTFULLY ALLEGE:**

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

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE
RESPONDENTS RESPECTFULLY ALLEGE:**

81. Petitioners are not entitled to injunctive relief.

WHEREFORE,

For the reasons set forth above, and in the accompanying Affidavits of Colleen Alderson and Kate Van Tassel; the Affirmation of Amy McCamphill, and accompanying exhibits; Respondents' Memorandum of Law in Opposition to the Petition, dated April 27, 2018, and all pleadings and proceedings herein, Respondents respectfully request that the Court deny the Petition and dismiss the proceedings in their entirety with such other relief as the Court deems just and proper.

Dated: New York, New York
 April 27, 2018

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Respondents
100 Church Street, Room 6-144
New York, New York 10007
(212) 356-2317

By: /s/ Amy McCamphill
 AMY MCCAMPHILL
 Assistant Corporation Counsel

WILLIAM PLACHE,
of Counsel

VERIFICATION

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

I am an Assistant Corporation Counsel for the New York City Law Department, Office of the Corporation Counsel. I make this verification pursuant to 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 of books and records of the New York City Departments of Parks and Recreation, the New York City Economic Development Corporation, the New York City Department of City Planning, and the documents referred to in the Answer and the Amended Verified Petition, and my discussions with employees of the City of New York and employees of the New York City Economic Development Corporation.

Dated: New York, New York
 April 27, 2018

/s/ Amy McCamphill
AMY MCCAMPHILL