



NEW YORK STATE SENATOR

Bill Perkins

MTA's Proposed Bailout of Developer Forest City Ratner at Atlantic Yards

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As Chairperson of the NY State Senate's Committee on Corporations, Authorities and Commissions I have had the opportunity to review the public record; engage in private briefings with ESDC staff and other legislators; meet advocates pro and con; and also to Chair a public hearing regarding the Atlantic Yards project. It is clear that this project no longer resembles the project that was originally approved. It will not and cannot provide anywhere near the level of public benefits that were originally claimed. As things stand, the developer has managed only to exacerbate blight, at great expense to taxpayers.

Much of the controversy surrounding Atlantic Yards has been aggravated by a chronic lack of honesty, transparency, and accountability. This proceeding today is an example.

Last week I submitted a letter to Helena Williams, MTA's Acting ED and CEO. It was a very simple, direct, clear, concise letter. In the letter I asked some very fair, basic, logical questions and asked for a written response. I had the opportunity to listen to Ms. Williams' testimony at the hearing and she struck me as an intelligent and poised individual. With all due respect, I am certain that Ms. Williams understood the basic concepts, what it was that was being

asked in the letter. If not, I am certain that the MTA has ample staff, certainly in the General Counsel's office who could have assisted Ms. Williams to understand and to draft an appropriate response. I did receive correspondence from Ms. Williams. But I cannot call her letter a response, as it was, in fact, unresponsive. Ms. Williams, on behalf of the MTA, refused to answer, address, or even acknowledge the very basic, fundamental questions that I asked in that letter. Those questions, verbatim, are as follows:

- 1) Why is MTA renegotiating terms with FCR rather than demanding performance or rescinding the agreement and re-issuing the RFP in order to determine whether there are other interested parties?
- 2) In renegotiating the terms, did MTA consider that most of the alleged public benefits it considered in 2005 have since substantially diminished or vanished altogether?
- 3) Has the MTA contracted an independent appraiser to appraise the Vanderbilt Yards to determine their current Fair Market Value? If not, why not? What is the current Fair Market Value of the Vanderbilt Yards?
- 4) Given that the new agreement will be substantially and materially different from the original, making it a new agreement, does not the Public Authorities Accountability Act of 2005 now apply and impose a fiduciary duty on MTA board members and require that the sale of property for fair market value be supported by an independent appraisal? If not, why not?
- 5) What are FCR's obligations to the MTA if the deal closes but the developer does not proceed with the project?

That is it. Those were the simple, easy questions that Ms. Williams refused to answer, the questions that the MTA simply cannot bring itself to answer in a forthright way. So this in

turn gives rise to other questions:

What is the big deal? Why not, if the MTA is conducting itself in an aboveboard way, if it is placing the needs of the public at the top of its agenda here, why not answer those questions? What is the MTA hiding? After all, can there be an innocent explanation for refusing to answer such fundamental questions? When you ask a child, "Who took the cookies from the cookie jar?" and they look away, change the subject, pretend they didn't hear, speak in generalities, or answer some other, phantom question, what do you conclude?

This is why the public does not trust government: because of actions like those contemplated by this Board here today; because of non-responsive double-talk like what is evidenced by the MTA's letter. I am not opposed to development. I favor jobs, affordable housing, elimination of blight, creation of business and leisure opportunities, beautification, the building of civic pride. I even like basketball. And I do not resent developers. I respect and appreciate developers who deliver genuine public benefits in exchange for public consideration. I wish them all the success in the world.

What I do not like, what I am opposed to, is sweetheart deals, and bait and switch schemes, and the raiding of the public trust for private gain. Especially when it is done without robust engagement of the public and local community. A toothless CBA that does not run with the land or the deal is not a substitute for genuine public input.

There have been many calls put out for MTA to reconsider its actions here, to proceed carefully, to make every diligent effort to ascertain that this is the best deal possible. The only justification for proceeding with this deal right now offered at Monday's meeting? The developer needs it now so that he does not lose his tax exempt bond benefit. How is this the public's concern? It is already a matter of fact that the arena will be a money-loser for the public. Why should we the people throw good money after bad? MTA's fiduciary duty is to

the public, not to Forest City Ratner. Have Board members been briefed on possible liability for breach of fiduciary duties?

I urge the members of this Board to reject the pressure, wherever it is coming from, to act hastily and rubber stamp this arrangement. Take your responsibilities seriously. Look out for the public. Ask the tough questions. If you were the one true owner of this parcel, is this the deal that you would make? You wouldn't put up a 'for sale' sign? Or get an independent appraisal?

If there is anything beneficial to the public to be rescued from this deal, it will begin with you all finally taking a stand in favor of honesty, transparency and accountability. Do not rush to approve this deal. If at the end of the day, after a fair, rational, and sober process it is determined that this is the very best that the MTA can do, then so be it. Right now there is no way for any of us to have that confidence. Chickens come home to roost. Poor stewardship of the public trust always has negative consequences. So please...be careful. Thank you.