



New York State Senate
Committee on Corporations, Authorities, and Commissions
2nd Avenue Subway Hearing Report
November 30, 2010
Bill Perkins, Chair



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I. *Introduction*

This is a report by the New York State Senate Committee on Corporations, Authorities, and Commissions chaired by Senator Bill Perkins. It is an overview of the public hearing on the 2nd Avenue construction project, held on November 30, 2010. The hearing was presided over by Committee Chair, Senator Bill Perkins and Committee member Senator Daniel Squadron as well as Senator Liz Krueger and Senator Jose M. Serrano.

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|---------------------------------|--------------------------------------|
| Senator Bill Perkins (Chairman) | 30 th Senatorial District |
| Senator Daniel Squadron | 25 th Senatorial District |
| Senator Liz Krueger | 26 th Senatorial District |
| Senator Jose M. Serrano | 28 th Senatorial District |

II. *Committee Jurisdiction/Corporations, Authorities and Commissions*

The Committee’s oversight jurisdiction includes authorities, which are entities with corporate characteristics that serve functions such as building and operating infrastructure, airports, roads, bridges, schools, and transportation systems.

III. *Purpose and Scope of Hearing*

In 2007, the Metropolitan Transit Authority (MTA) broke ground and renewed construction on the 2nd Avenue Subway with an expected completion date for the construction set for 2013 and a projected cost of \$4.45 billion. The MTA has pushed back the date initially to 2014, then to 2015 and now projects completion for sometime in the year 2016. However, it was recently reported that the Federal Transportation Administration (FTA) projects that construction will not be completed until 2018 and will cost \$4.98 billion instead of \$4.45 billion as projected by the MTA. It has been reported that the FTA attributes the delays to the MTA’s failure to fill key management positions and let necessary contracts.

In addition to questions surrounding delays and cost, there are reports that the construction has taken a tremendous toll on the community located along the current construction route. There are reports that construction has severely blocked access and reduced foot traffic resulting in revenue loss and in some instances closure of local businesses. Residents have reported unexpected utility and water losses, and compromised structural stability of their homes. There are also complaints of poor signage with regard to street crossings and closures and a general lack of update information on the progress of the construction project.

In light of these issues and the current economic climate, this Committee held this hearing to obtain answers to questions regarding the delays, progress and completion of the project. Further, Chairman Perkins wanted to address transparency and mitigation strategies employed by the MTA. Overall it was the Chairman's goal to have a dialogue between all parties involved to openly discuss what needs to be done to accomplish the construction in a timely and cost-efficient manner, while minimizing the harm to the impacted community.

IV. *History/Background of the 2nd Avenue Subway*

The original plan for the 2nd Avenue Subway was proposed in 1920 with the goal of expanding mass transit access to east side residents and all commuters. The initial budget for the subway was \$86 million and was to be financed by the City. The plan for the subway has since undergone multiple design alterations, challenges and increases in cost over the years. Progress on the subway has been started and then stalled several times before, twice due to financial crisis.

During its long history, some construction was started in the 1950s and again in the 1970s. The State and then the Federal government contributed funding for the project. In 2007, the MTA renewed its endeavors to build the 2nd Avenue Subway. The cost of the project is to be split between the MTA and the Federal Transportation Administration (FTA) pursuant to a Full Funding Grant Agreement with the MTA providing roughly 30 percent and the FTA providing the remaining 70 percent.

Under the current design for the subway, a two line track is to be constructed along Second Avenue from 125th Street to Hanover Street in the Financial District. The project is to be completed in four phases and the MTA is currently constructing phase I. The subway will reportedly increase service on the Q train, include connections to West Midtown, Lower Manhattan and Brooklyn and will create 16 new disabled user accessible stations that comply with the American with Disabilities Act. According to the MTA, once phase I is completed there will be three new stations along 2nd Avenue at 96th, 86th, and 72nd Streets and new entrances to the existing Lexington Ave/63rd Street station and Third Avenue.

The construction of the subway is expected to expand access to mass transit and increase property value along its route and currently has created jobs and contracts. However, there have been numerous reports that the construction has harmed local business owners in terms of revenue, residents in terms of sanitation, utility and structural stability issues.



Chairman Bill Perkins

V. *Chairman Perkins' Opening Remarks*

Chairman Perkins began the hearing with a brief overview of the history of the Second Avenue Subway and its current status, specifically focusing on the fact that previous attempts to construct the subway had been stalled by financial crisis in the past. The Chairman expressed concern over the apparent discrepancy over the duration and cost of the construction of the subway. Given the subway's history with financial crisis and the current economic climate the Chairman stressed that it is "imperative to examine and discuss the project's feasibility and all of its implications."

The Chairman acknowledged that there is a need for the subway, as the City's Lexington Avenue line is the most overcrowded subway line in the country and the construction of the subway is expected to reduce some of that congestion. He also addressed the benefits of the construction of the subway. He discussed the 2010 Status report issued by Congresswoman Maloney which stated that the construction of the subway had created 16,000 construction jobs. The Chairman stated that these new employees "are providing additional local revenue for the city by paying taxes and likely contributing to the local economy by patronizing local businesses." In addition to jobs, the Chairman also

recognized that the completion of the project is expected to result in an overall increase in revenue for local business along the Subway's route.

The Chairman noted that in spite of any current or future benefits of the subway, it has also had a definite negative impact on pedestrians, residents and business owners alike. He explained that these negative implications go beyond the typical issues that go along with construction such as noise, dirt, dust and debris. The Chairman cited reports of 'a considerable' increase of rodents and incidents of "rodents infesting homes businesses and cars.' He discussed the complaints of inadequate street signage regarding street crossing and closings, and poor visibility of traffic lights. The Chairman mentioned problems with unexpected loss of utilities and water as well as compromised structural stability of buildings along the construction's path. He discussed how the construction has greatly reduced parking and sidewalks, and seriously blocked access to local businesses. He further explained how these businesses have lost sidewalk cafes, pedestrian traffic and signage and as a result many restaurants, shops, and merchants have reported revenues losses between 25-75 percent and some businesses have closed permanently.

The Chairman also discussed the importance of looking to what other cities have done to mitigate the negative implications of their large scale construction projects. He advised of a Portland authority who partnered with a private, non-profit to provide low-interest loans and consulting services to businesses who could establish that their business had been impacted by the construction. The same Portland authority also developed a marketing campaign which involved mailing coupons and advertisements to the residents in the construction impacted community and in surrounding areas. He also discussed a shuttle bus program in Seattle, and rat abatement strategies employed in Boston.

Chairman Perkins concluded his opening remarks by reiterating that the construction of the subway is needed and will be beneficial but factors such as the current economic climate, the delays and negative impacts on the community should not be ignored.

To view Chairman Perkin' Opening Remarks in its entirety please see attached Appendix I.

VI. *List of Witnesses*

The following parties were in attendance and provided testimony during the hearing:

Metropolitan Transit Authority:

The Metropolitan Transit Authority (MTA) as represented by

- ❖ Jay H. Walder, Chairman and Chief Executive Officer, MTA
- ❖ Dr. Michael Horodniceanu, President, MTA Capital Construction Company
- ❖ Michael Garner, Chief Diversity Officer, MTA

Elected Officials

- ❖ Minna Elias, Chief of Staff, Congresswoman Maloney
- ❖ David Kimball Stanley on behalf of Daniel Garodnick, NYC Councilmember
- ❖ Stephen Corson on behalf of Manhattan Borough President, Scott Stringer

The Public

- ❖ Norman Seigel, Attorney for Second Avenue Business Association (SABA)
- ❖ Giuseppe “Joe” Pecora, President, Second Avenue Business Association (SABA)
- ❖ Mallory Spain, Board Member, East 86th Street Association
- ❖ Tae Shin, Eve’s Nail and Spa/ Eve’s Food Court

- ❖ Rita Popper, President, Knickerbocker Plaza Tenants Association
- ❖ Ayal Murad, Business Owner, Boutique
- ❖ Marcelo Ronchini, Business Owner, Nina’s Argentinean Pizzeria
- ❖ Francisco Quijada, F.R. Quijada, Inc

- ❖ Jill Lovatt, Community Resident
- ❖ Gilbert Sabater, Community Resident
- ❖ Lee Anne Wong, Business Owner, New French Fusion
- ❖ Alisa Coleman, Board President and Resident of East 72nd Street
- ❖ Hunter Armstrong, Executive Director, CIVITAS (union of citizens dedicated to improving neighborhood quality of life in the Upper East Side and East Harlem)



From left to right: Business owner Tae Shin, Attorney for SABA Norman Seigel, and President of SABA Giuseppe “Joe” Pecora.

VII. *Executive Summary*

The hearing began with opening remarks from Committee Chair, Senator Bill Perkins. During the hearing testimony was provided by the MTA, Elected Officials, local business and community associations, business owners and residents. The opening remarks were followed by a panel consisting of MTA representatives Jay Walder, Chairman and Chief Executive Officer, Dr. Michael Horodniceanu, President of MTA Capital Construction Company, and Michael Garner, Chief Diversity Officer. The MTA panel was followed by a panel consisting of representatives for Congresswoman Carolyn Maloney, Minna Elias, and Councilman Daniel Garodnick, David Kimball Stanley. This panel was followed by one of Norman Siegel, Giuseppe “Joe” Pecora, Tae Shin, and Mallory Spain. The next panel included Rita Popper, Stephen Corson on behalf of Manhattan Borough President Scott Stringer, Ayal Murad, Marcelo Ronchini, and Francisco Quijada. The final panel was comprised of Gilbert Sabater, Alisa Coleman, Hunter Armstrong, Jill Lovatt, and Lee Anne Wong.



From left to right: Dr. Michael Horodniceanu, President of MTA’s Capital Construction Company, Jay Walder, Chairman and Chief Executive Officer, MTA, Michael Garner, Chief Diversity Officer, MTA

MTA

The MTA, represented by Chairman and Chief Executive Officer of the MTA, Jay Walder, President of MTA Capital Construction Company, Dr. Michael Horodniceanu, and MTA Chief Diversity Officer, Michael Garner, provided testimony first. Mr. Walder explained that Dr. Horodniceanu’s job as president of Capital Construction Company is to manage the day to day aspects of all of the MTA’s current projects. Mr. Walder informed that the MTA is currently in the process of constructing multiple large scale projects including the 2nd Avenue Subway. He explained that all of the MTA’s current projects are geared toward reshaping life in the city “to help the city be a competitive, dominant city in the world market”.

Mr. Walder described the MTA’s current endeavors as “extraordinarily challenging and complex” the scale of which is “bigger than anything the MTA has attempted before.” He further spoke to the value that the construction of the 2nd Avenue Subway will give to the surrounding community as well as the city as a whole. Specifically, Mr. Walder stated

that the construction of the subway will result in increased property values along its route and provide access for people who previously lived far from the subway.

Significantly, the MTA representatives testified that the 2016 completion date is for the first phase of construction only and that the remaining three phases have not been designed or funded. When asked by Senator Squadron if there was an expected date for the completion of all four phases, Jay Walder informed that they would not be able to give an expected completion date for the entire project now or anytime in the foreseeable future.

The MTA also spoke to the recent implementation of the “Good Neighbor Initiative” geared toward better mitigating the impacts of construction on the surrounding community. It was explained that the main thrust of the “Good Neighbor Initiative” was to make the construction site more aesthetically appealing by taking steps that included: widening sidewalks, cleaning up construction sites and properly storing equipment that is not currently in use. Dr. Horodniceanu also discussed his efforts to directly address the community by personally visiting the site and speaking to the impacted business owners. To this end, Senator Serrano pointed out the two pieces of legislation that he sponsored to aid business impacted by the construction by way of a grant program and/or tax abatement. However it was unclear whether the MTA would be in support of such legislation.

It should be noted that after providing testimony and answering follow-up questions, Dr. Horodniceanu advised that he would stay for the rest of the hearing, but was later unable to remain. As a result, every business owner, resident and community group who presented subsequent testimony expressed outrage and disappointment that the testifying representatives from the MTA did not remain for the duration of the hearing. *Note: Other staffers from the MTA did in fact remain at the hearing.*

Consequently, much of the testimony that followed the MTA panel provided harsh criticism of the mitigation strategies currently used by the MTA. However, along with the criticism many offered suggestions as to other mitigation strategies that could and should be implemented.



From left to right: David Kimball Stanley, Representative for Councilman Daniel Garodnick and Minna Elias, Chief of Staff for Congresswoman Carolyn Maloney.

Elected Officials

Representatives for Congresswoman Maloney, Councilman Garodnick, and Manhattan Borough Manhattan Borough President, Scott Stringer read the submitted testimony for their respective principals into the hearing record.

Congresswoman Maloney’s representative, Minna Elias, spoke to the Congresswoman’s report on the status of the 2nd Avenue Subway. (*Note: This report can be found on the Congresswoman’s website.*) In her testimony, Ms. Elias spoke to the current economic benefit of the project explaining that the construction “is generating \$842 million in wages and producing \$2.87 billion economic activity.” She also acknowledged the “real and severe” impact of the project on local businesses and the need for timely completion of the project.

Ms. Elias explained that many other states and countries anticipate that businesses will be hard hit by construction and set aside funds accordingly. She asserted that the State's failure to approach construction projects in a similar manner makes it crucial that the MTA does everything in its power to complete the construction in as timely a manner as possible.

Councilman Garodnick's representative, David Kimball Stanley, stated that the impact of noise, dirt and debris from construction, improper storage of construction equipment has impacted everyone who resides, owns a business or simply walks through the construction route. He spoke to the difficulty faced by elderly and disabled residents traversing the "choppy pathways" caused by the construction. He discussed how as a result of underground excavation associated with the construction some residents have been forced from their homes.

Mr. Stanley informed that due to construction 30 businesses have permanently closed while many others are on the brink of closure. He suggested that MTA's "Good Neighbor Initiative" is not yet a proven entity and may be a case of too little too late. He stressed the need for State action in the form of legislation to enable businesses to survive the construction and reap some of the projected benefits of the completed subway.

Manhattan Borough President, Scott Stringer's representative Stephen Corson focused on the MTA's issues with cost overruns and timeline delays. He explained that the Borough President Stringer received the MTA Inspector General's preliminary estimates of a review of the MTA's management of its current Capital Construction Program (Program). Specifically he outlined some of the Program's missteps that lead to cost overruns and delays in their current projects.

Mr. Corson informed that the Borough President Stringer's office has taken on two initiatives to aid the 2nd Avenue business owners. He explained these initiatives included contacting Con Edison regarding a proposal to temporarily reduce the electricity demand charges for business owners. Mr. Corson advised that the Borough President has also begun planning a community meeting to discuss the MTA's new "Good Neighbor Initiative".



From left to right: Stephen Corson, Representative for Manhattan Borough President Scott Stringer, Marcelo Ronchini, Business Owner, Ayal Murad, Business Owner, Rita Popper President of Knickerbocker Plaza Tenants Assoc., Francisco Quijada, Business Owner

Members of the Public

The remaining three panels consisted of members of the public including business owners, residents and community groups. All members of the remaining panels expressed anger that the MTA had taken so long to implement the “Good Neighbor Initiative”, as the negative impacts have been ongoing since 2007. All members of the public stated that MTA could and should be doing more to mitigate the negative implications of the construction.

Many of the business owners stated that they felt misled by the MTA regarding what to expect from the construction of the subway and what actually occurred. Particularly, they did not expect the numerous delays, lack of transparency and information and the poor upkeep and maintenance of the construction site. Mallory Spain, East 86th Street Association, is quoted as saying that the merchants “were not prepared for the noise, dust, rodents, barricades, and explosions associated with the construction” nor did they have any “idea the extent to which the construction would drive their customers away”.

All of the business owners detailed the financial hardships that their businesses have suffered since construction began in 2007. Some stated that they had taken second and third mortgages on their homes and are fearful of losing their business and/or home or having to file for bankruptcy. Many of the business owners stated that the only way to save their business is through monetary relief, such as tax abatement or a financial assistance program for impacted businesses.

Moreover, the business owners urged that the MTA and New York City (City) do more to attract shoppers to the impacted area, suggesting including color photos of the obstructed storefronts on signs posted in the construction area and a general more creative approach in this regard. It was stated that more transparency would be beneficial in terms of keeping the impacted community informed on what has been accomplished and what more needs to be done. Business owner, Joe Pecora suggested tours of the excavation site, delayed video footage or photos that depict the construction's progression. Norman Siegel, attorney for the Second Avenue Business Association advised that if action is not taken to better mitigate the impact of construction the business owners will have no choice but to file suit to obtain financial relief.

To view all submitted testimonies in their entirety please see attached Appendix II.

VIII. *Committee Findings and Recommendations*

The Committee's Findings and Recommendations are as follows:

- Only Phase I of the construction of the 2nd Avenue subway is projected to cost \$4.45 billion and will be completed by the 2016.
- The MTA is not unable to anticipate when a design plan will be in place for the remaining phases of the construction of the 2nd Avenue Subway nor will they be able to project a timeframe for the completion of the phases in the foreseeable future.
- While the MTA acknowledges the harsh negative impacts of the construction, it has yet to implement mitigation strategies in a manner satisfactory to the impacted community.
- The witnesses who provided testimony offered valid suggestions regarding mitigation strategies that the MTA should consider.
- The Legislature could provide additional relief to the impacted business community by enacting the two pieces of legislation sponsored by Senator Serrano, Senate Bill No. 8154-A creating a grant program and Senate Bill No. 1393 creating a real property tax abatement for impacted business owners.

To view the status, text, and sponsors memos for these bills please see Appendix III.

- There were still multiple questions for the MTA that went unanswered because the MTA representatives were unable to remain for the duration of the hearing. To that end, Senator Perkins sent a follow-up letter to Jay Walder, Chairman and Chief Executive Officer of the MTA asking the following questions:
 - Have you considered implementing business aid programs similar to those done in conjunction with construction projects in lower Manhattan?
 - What is being done to ensure that disabled pedestrians are able to walk the Second Avenue corridor?
 - Do you support the two pieces of legislation put forth by Senator Serrano regarding a tax abatement for landlords and a grant program for impacted businesses?
 - Is there any additional information you can forward on the ‘good neighbor’ initiative?
 - Would you be willing to give local business owners a periodic walk through of the progress being made underground, or provide photos or video footage of same?

To view letter in its entirety please see Appendix IV.

- That further discussion and consideration of the second avenue subway project progression, management and impacts is required. The Committee therefore finds that additional hearings on the matter are necessary.

IX. Conclusion

Chairman Perkins acknowledges both the long and short term economic benefits presented by the construction of the 2nd Avenue Subway. The subway’s construction has already resulted in the creation of jobs and the letting of valuable contracts. Upon its completion the subway will increase property values of the real estate along its route, will reduce congestion and expand mass transit access. However, Chairman Perkins urges the MTA, the City and State government to recognize unintended consequences of the construction.

As of this hearing, 30 businesses along the current construction route have closed permanently and there are still five more years of construction before phase I is completed. Considering the number of businesses that have closed in the past three years of construction one has to wonder how many businesses will remain after five more years. Thus, it is crucial that the MTA, the City and State of New York act in concert to protect the local businesses along 2nd Avenue during the rest of the construction.

The Chairman understands that the State of New York is currently in a fiscal crisis. Nevertheless, local businesses are vital to the City and State's economy and allowing these local businesses to fail will only further aggravate the economic crisis. The Chairman is hopeful that this report will encourage the MTA, as well as the City and State of New York to act to assist the impacted 2nd Avenue businesses through the remaining years of construction.