

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

In the Matter of the Application of

LOWER EAST SIDE ORGANIZED
NEIGHBORS, CHINESE STAFF &
WORKERS' ASSOCIATION, YOUTH
AGAINST DISPLACEMENT, NATIONAL
MOBILIZATION AGAINST SWEATSHOPS,
CLARA AMATLEON, ELVIA FERNANDEZ,
ANTONIO QUEY LIN, DAVID NIEVES, AND
AUDREY WARD

Petitioners,

For Judgment Pursuant to Article 78 and §§ 3001
and 6301 Of the Civil Practice Law and Rules

~ against ~

THE NEW YORK CITY PLANNING
COMMISSION, THE DEPARTMENT OF CITY
PLANNING OF THE CITY OF NEW YORK,
THE CITY OF NEW YORK, MARISA LAGO,
Director Department of City Planning and Chair
of City Planning Commission, and THE NEW
YORK CITY DEPARTMENT OF BUILDINGS

Respondents

Index No. _____

PETITION

INTRODUCTION

Petitioners/Plaintiffs Lower East Side Organized Neighbors (“**LESON**”), The Chinese Staff & Workers’ Association (“**CSWA**”), Youth Against Displacement (“**YAD**”), National Mobilization Against Sweatshops (“**NMASS**”), Clara Amatleon, Elvia Fernandez, Antonio Quey Lin, David Nieves, and Audrey Ward (hereinafter “**Petitioners/Plaintiffs**”), for their verified Petition Complaint, pursuant to Article 78 of the Civil Practice Law and Rules (“**CPLR**”), and CPLR § 3001 against Respondents/Defendants the New York City Planning Commission (“**CPC**”), Department of City Planning of the City of New York (“**DCP**”), the City of New York

("City"), Marisa Lago, Director of DCP and Chair of CPC ("Lago"), and the New York City Department of Buildings ("DOB") (hereinafter "Respondents/ Defendants") allege in this hybrid Article 78 and plenary action as follows:

PRELIMINARY STATEMENT

1. This is a related case to *The Council of the City of New York, Manhattan Borough President Gale A. Brewer v. The Department of City Planning of the City of New York, New York City Planning Commission*, Index NO. 452302/2018 filed by the New York City Council ("City Council").

2. Both lawsuits concern the Respondents' illegal approval of three modifications to the 1972 Two Bridges Large Scale Residential Development ("**Two Bridges LSRD**") permit¹:

- 247 Cherry Street, Site 4 (Parcel 4A/Parcel 4B; M 180507 ZSM) - approving a single tower 1,008 feet in height, 80-stories, 501,518 square feet, and 660 dwelling units plus 10 senior units relocated from an existing building;
- 260 South Street, Site 5 (Parcel 5; M 180505 ZSM) - approving two towers of 798 feet/69 stories and 748 feet/62 stories, 1,244,960 square feet, and 1,350 dwelling units;
- 259 Clinton Street, Site 6A (Parcel 6A; M 180506, ZSM, NI80498 ZCM) - approving a single tower 730 feet in height, 63 stories, 672,266 square feet, and 765 dwelling units.

3. The City Council is arguing that they have been illegally prevented from fulfilling their obligations under the New York City Charter. Their suit concludes by asserting that the

¹ See CPC commission reports approving the proposed modifications, attached to the declaration of Kenneth Kimerling (hereinafter "Kimerling Decl.") as Exhibits 1, 2, and 3 respectively.

CPC's approval is unlawful and must be nullified, as the Project should have gone through the ULURP process.

4. Petitioners file as a related matter. Petitioners herein also assert that the aforementioned CPC approval is unlawful and must be nullified, but for different reasons than those articulated by the City Council.

5. First, approval for the tower on Parcel 4A/4B must be nullified as illegal on two grounds. One, the CPC's approval violated New York City Administrative Code § 3-119² and New York City Executive Order No. 17³ when it removed a deed restriction on Parcel 4A/4B. This deed restriction stated that the property is to be used "in perpetuity" only as housing for "elderly and handicapped persons of low income, as defined in federal law."⁴ Here, the contested approval is for a luxury tower, and was granted without complying with the Code section and Executive Order identified above. Further, the CPC's approval violates new DCP⁵ and DOB policy changes⁶ involving inter-building voids.

² Administrative Code, Title 3 Elected Officials, Chapter 1 Mayor, Subchapter 1, Section § 3-119(a)-(c)

³ New York City Executive Order No. 17, Public Notice of Requests to Remove or Modify Deed Restrictions, (31 Mar. 2016), https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2016/eo_17.pdf.

⁴ See Indenture between the City of New York and Two Bridges Senior Housing Development Fund, Inc., dated July 29th, 1986 and Agreement between the City of New York and Two Bridges Senior Housing Development Fund Company, Inc., dated July 26, 1986, at 27 (incorporating into the deed a covenant running with the land in perpetuity requiring that that all grantees, successors or assigns of land will use land only for housing the elderly and disabled persons of low-income), attached to the Kimerling Decl. as Exhibits 4.

⁵ See 19DCP110Y: Residential Tower Mechanical Voids Text Amendment, Environmental Assessment Statement, NEW YORK DEPARTMENT OF CITY PLANNING, (25 Jan. 2019), <https://www1.nyc.gov/assets/planning/download/pdf/applicants/env-review/eas/19dcp110y-eas.pdf>, attached to the Kimerling Decl. as Exhibits 5.

⁶ See Caroline Spivack, *City to pull permits for Extell's Upper West Side skyscraper*, CURBED NY (17 Jan. 2019), <https://ny.curbed.com/2019/1/17/18186606/city-to-pull-permits-for-extell-upper-west-side-skyscraper-50-west-66th-street>.

6. Additionally, the proposed modifications to all three developments violate the Zoning Resolution (“**ZR**”) that controls LSRDs. Pursuant to ZR § 78-043, the CPC is required to make findings to justify the modification. Since the CPC did not make those findings, the approval must be nullified and findings based on substantial evidence or data should be ordered. These findings must be consistent with the concerns reflected in ZR § 78-313.

7. The Respondents violated the City Environmental Quality Review Process (“**CEQR**”) through their disregard for adverse impacts noted in the FEIS, especially in regards to impacts on gentrification and displacement.

8. Petitioners ultimately seek an order that the Respondents’ approval is unlawful, and must be nullified and returned to the CPC in relevant part for additional findings. Alternatively, Petitioners seek a declaratory judgment that the approval was unlawful. Petitioners seek these remedies based on the following arguments:

PARTIES

9. Petitioners the Lower East Side Organized Neighbors (“**LESON**”) is an organization made up of concerned residents of the Lower East Side and its surrounding areas. These residents have joined together to challenge projects, policies, and other issues which they believe adversely impact the current and future preservation of their community.

10. Petitioners the Chinese Staff & Workers’ Association (“**CSWA**”) is a nonprofit, nonpartisan workers' rights center based in New York City, with its primary office in the Lower East Side. CSWA principally assists workers in restaurants, the garment industry, and construction industries; however it is active among workers in a variety of professions. Many of its over 1,300 worker members reside in, or work in, the Lower East Side and have long been

part of anti-displacement and anti-gentrification fights in the Chinatown, Two Bridges neighborhood.

11. Petitioners Youth Against Displacement (“**YAD**”) is an organization of activists helping young people in New York City organize to fight displacement. YAD is active in both Chinatown and the Lower East Side, and deeply concerned about zoning policies and development projects which lack community involvement and encourage gentrification that is adverse or careless toward the interests of long-time residents.

12. Petitioners National Mobilization Against Sweatshops (“**NMASS**”) is a multi-trade, multi-ethnic center where working people unite across industry, race, nationality and gender to fight for changes in workplaces, communities, and lives. They are based in the Lower East Side, and active in issues involving displacement and gentrification.

13. Petitioner Clara Amateleon resides on the same block as the proposed mega-towers, and is a long-time member of the Two Bridges community. Besides being a community member, she is also an active member in neighborhood advocacy organization National Mobilization Against Sweatshops.

14. Petitioner Elvia Fernandez lives one block from where the Clinton Street Towers will be built, and is a long-time resident of the Two Bridges community. Besides being a community member, she is also an active member of neighborhood advocacy organization National Mobilization Against Sweatshops. On October 17, 2018, she spoke out against the Two Bridges LSRD at the CPC Hearing.

15. Petitioner Antonio ‘Tony’ Quey Lin resides on the same block as the proposed mega-towers, and is a long-time resident of the Two Bridges community. Besides being a community member, he is also an active member of neighborhood advocacy groups Lower East

Side Organized Neighbors and National Mobilization Against Sweatshops. On October 17, 2018, he spoke out against the Two Bridges LSRD at the CPC Hearing.

16. Petitioner David Nieves lives near the site of the proposed mega-towers. He is a long-time member of the Two Bridges community, and an active member of neighborhood advocacy groups Lower East Side Organized Neighbors and National Mobilization Against Sweatshops.

17. Petitioner Audrey Ward lives less than a block away from the proposed towers. She is a long-time member of the Two Bridges community, and a member of neighborhood advocacy group National Mobilization Against Sweatshops.

18. Respondent CPC is an agency of the City responsible for planning relating to the orderly growth and development of the City, including adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, culture, comfort, convenience, health and welfare of its population. The Commission meets regularly to hold hearings and vote on applications concerning the use, development and improvement of real property subject to City regulation, including an assessment of their environmental impacts. In the present case, they approved the proposed modifications to the Two Bridges LSRD.

19. Respondent DCP is an agency of the City responsible for land use and environmental review, preparing plans and policies, and in the context of this case, provided staff assistance to CPC.

20. Respondent Marisa Lago is the Director of the New York City Department of City Planning and Chair of the City Planning Commission and has served in these positions since March 2017. She was appointed by New York City Mayor Bill de Blasio in January of 2017. The

Commissioner is sued herein in her official capacity and, upon information and belief, acted in such capacity at all times relevant hereto.

21. Respondent Department Of Buildings (“DOB”) is an agency of the City that, among other things, enforces the city's building codes and zoning regulations, and issues building permits and licenses.

22. Respondent City of New York is a municipal corporation organized and existing under the laws of the State of New York.

JURISDICTION AND VENUE

23. This Court has jurisdiction pursuant to C.P.L.R. § 3001.

24. This Court also has jurisdiction pursuant to C.P.L.R. § 7801-7806, to review actions by bodies or officers who have failed to perform a duty enjoined upon them by law and who have made a determination in violation of lawful procedure.

25. Venue is properly in New York County pursuant to N.Y. C.P.L.R. § 8504(3) & § 506(b), because claims are asserted against a City agency and officer for actions taken in New York County and because the agency's and officer's principal offices are in New York County.

FACTUAL BACKGROUND

A. Brief History of Two Bridges Neighborhood

26. To understand why these towers are unlawful, one must first understand how their development fits in with the history of the Two Bridges neighborhood.

27. Historically, the Lower East Side, Chinatown, and Two Bridges have been working-class neighborhoods of immigrants. Until recently, it was the norm for multi-generational families to live together in low-lying, tenement houses throughout the area.

28. Residents and workers in New York’s Lower East Side and Chinatown have fought against luxury development since the 1980s. However, due in part to the decline of the neighborhood’s garment industry in the 1990s, increasing real estate speculation, and relaxed rent regulation, the neighborhood has become less hospitable for new immigrants. As the City continues to change, long-time residents have struggled to continue living in these neighborhoods.

29. Beyond affordability, poor infrastructure in existing buildings stands in stark contrast to new, luxury high-rises that are beginning to crop up throughout the area. Many apartments have already had cracks develop as a result of nearby construction projects. These projects have additionally caused problems with airshafts, limited light, generated excessive noise, and forced residents to breathe in dangerous pollution. This last point is especially significant, as many residents have breathing problems created or exacerbated by environmental issues in the aftermath of the terrorist attacks on September 11, 2001.

30. Even against a background of displacement and gentrification, however, Petitioners assert that this Project presents the greatest challenge ever faced by residents who wish to keep Chinatown and the Lower East Side affordable. Simply put—they are afraid that the Two Bridges LSRD spells the end of affordability for the neighborhood.

B. A History and Timeline of This Project

31. This Project began because the City of New York is authorized by the Urban Renewal Law to acquire sites in an Urban Renewal Area (“URA”) for redevelopment in accordance with an Urban Renewal Plan (“URP”).⁷

⁷ N.Y. Gen. Mun. Law § 502.

32. In January 1961, the aforementioned Two Bridges neighborhood was designated as an Urban Renewal Area ("**Two Bridges URA**"). This area is located in Manhattan's Lower East Side and bounded by the Manhattan Bridge and the Brooklyn Bridge. The primary focus of the URA was to create middle-income housing, improve affordability, and increase diversity in and around the Two Bridges neighborhood.

33. Development in the Two Bridges URA was governed by the Two Bridges Urban Renewal Plan ("**Two Bridges URP**").⁸

34. In May of 1972, the Two Bridges LSRD was approved by the CPC and the Board of Estimate, and was last amended on August 23, 2013. The Two Bridges LSRD includes six Parcels (Sites 4A, 4B, 5, 6A, 6B, and 7) and contains a total lot area of 371,154 square feet. Since 1961, the LSRD has been zoned as C6-4. The underlying zoning regulations permit a "Maximum Floor Area" ("**FAR**") of 12.

35. The 1972 Two Bridges LSRD development plans kept the project in line with nearby residential stock, consisting mostly of low, tenement-style housing and NYCHA developments like the LaGuardia Houses (16 stories) and the Rutgers Houses (20 stories). It did this by:

- Only including 1,357 authorized dwellings and a total of 1.6 million square feet, with a built residential FAR of 4.33;
- Making the tallest building included in the Two Bridges LSRD only 27 stories, with other residential buildings in the Two Bridges LSRD standing at 26, 21, 19, 10, and 3 stories; and

⁸ See Two Bridges Fourth Amended Urban Renewal Plan, dated July 1994, at 19. Annexed to the City Council filing as Exhibit I.

- Making the maximum building height authorized in the Two Bridges LSRD 240 feet.

36. The URA for the Two Bridges LSRD expired in 2007. Although the URA expired in 2007, the LSRD Site Plan remains in effect.

37. In 2016, JDS Development Group, Two Bridges Associates, LP, and Starrett Development (collectively, “**the developers**”), submitted pre-application materials to DCP for modifications to the 1972 Two Bridges LSRD permit.

38. These applications sought to create four towers (one of the buildings has two towers with a shared base) that would soar above the surrounding, low-lying neighborhood.⁹ As stated earlier, they include:

- 247 Cherry Street, Site 4 (Parcel 4A/Parcel 4B) - a single tower 1,008 feet in height, 80-stories, 501,518 square feet, and 660 dwelling units plus 10 senior units relocated from an existing building;
- 260 South Street, Site 5 (Parcel 5) - two towers of 798 feet/69 stories and 748 feet/62 stories, 1,244,960 square feet, and 1,350 dwelling units;
- 259 Clinton Street, Site 6A (Parcel 6A) - 730 feet in height, 63-stories, 672,266 square feet, and 765 dwelling units.

39. The CPC decided that this was a “minor modification” which did not need to go through the UULRP process.

40. In response to these applications, the City Council sent a letter on June 22, 2016, stating that the proposed developments "will necessarily have a significant impact upon the surrounding areas, will fundamentally change the LSRD site plan by occupying open spaces, and

⁹ See Exhibits 1, 2, and 3, attached to the Kimerling Decl.

will irrevocably change the relationships of the existing buildings to one another."¹⁰ The City Council requested UULRUP review.

41. On August 11, 2016, Carl Weisbrod, then Director of DCP, declined to take the project through UULRUP and responded to the City Council's June letter.¹¹ In his letter, he nevertheless ordered an Environmental Impact Statement ("EIS") for the Project under CEQR, stating:

"We are requiring the completion of an Environmental Impact Statement (EIS) in conjunction with these applications, and are pleased that the applicants have agreed to a coordinated review of the proposals."

42. The Draft Environmental Impact Statement ("DEIS") was released near the end of June 2018. This document led to a lot of community outcry, and resulted in a hearing for the project being pushed to October 17, 2018. Among other things, the community wanted a later hearing in order to take time and consider the many, significant adverse findings made by the DEIS.

43. On October 17, 2018, a public hearing on the DEIS and the developers' application for modification to build their towers was conducted. The hearing was well attended, and public testimony lasted for nearly seven hours. All but four speakers spoke against the towers.¹²

¹⁰ Letter from Council Members Margaret Chin and Rosie Mendez, Manhattan Borough President Gale A. Brewer, State Senator Daniel Squadron, State Assemblywoman Alice Cancel, and Congresswoman Nydia Velazquez, to Carl Weisbrod, Director of City Planning, dated June 22, 2016, Annexed to the City Council Filing as Exhibit N.

¹¹ See Letter from CPC Director Carl Weisbrod, dated August 11, 2016, Annexed to the City Council Filing as Exhibit O.

¹² See Warekar, T. Locals Denounce Two Bridges Towers at City Planning Hearing, CURBED NY (17 Oct. 2018), <https://ny.curbed.com/2018/10/17/17989442/lower-east-side-skyscrapers-public-opposition>.

44. Despite community and City Council opposition—including by some of our Petitioners, who stood with other residents, activists, and community groups in speaking out against the towers—the CPC set a date to vote on modifications to the 1972 Two Bridges LSRD.

45. On October 29, 2018 the Petitioners made a timely submission to the CPC, opposing the modifications and urging the CPC to deny the developers’ proposal.¹³

46. On November 23, 2018, the New York City Department of City Planning, on behalf of the City Planning Commission as lead agency, issued a Final Environmental Impact Statement (“EIS”).¹⁴

47. Per the EIS, the proposed modifications will cause adverse impacts, including: loss of sunlight to at least 34 locations in the Two Bridges Community; loss of existing open space without offering new open space to address the demand expected from the approximately 6,000 new residents; traffic increase; loss of parking spaces among others;¹⁵ What it did not identify as an adverse impact was the gentrification effects that the four new towers will cause for the low-income residents and the generally low-rise fabric of the surrounding Two Bridges neighborhood.

48. On December 5, 2018, the CPC approved the construction of these buildings, and the modifications to the Two Bridges Project, ignoring many repeated, passionate objections. In issuing the approval, the New York City Department of City Planning (“DCP”) and CPC took

¹³ See Critique of the Two Bridges Large Scale Residential Development On Grounds of Failure to Comply with NYC Zoning Resolutions and Inadequate Assessment of Adverse Impacts in Draft Environmental Impact Statement “Two Bridges Large Scale Residential Development Area Project” CEQR No. 17DCP148M, Exhibit 6, attached to the Kimerling Decl

¹⁴ See e.g. Two Bridges Projects EIS, <https://www1.nyc.gov/assets/planning/download/pdf/applicants/env-review/two-bridges/00-feis.pdf?r=1>.

¹⁵ See e.g. Two Bridges Projects EIS at S-3; see also Figures S-9, 1-18 and S-8.

the position that the construction constitutes a "minor modification" to the original, four decades old permit for the Two Bridges Project.¹⁶

49. Three Commissioners voted against approval of the modifications.

Commissioners Levin and de la Uz explained that the CPC's actions did not conform with the Zoning Resolution. Commissioner Rampershad, who also voted against the proposal, observed that there was insufficient time to properly digest all the materials and their implications.¹⁷

50. The approval of these changes is extraordinary in light of the history of past approvals, and demonstrates a clear break from the kind of considerations made in prior decisions for this site.

C. Prior Modification Approvals Respected the Purpose of LSRDs. The Current Modification Approval Shows A Huge Difference From Past Approvals and Does Not Respect the Purpose of LSRDs.

51. Since the inception of the Two Bridges LSRD, developers have sometimes requested modifications. These prior modifications respected the purpose of LSRDs, whereas the current modification does not.

52. In the prior modifications to the 1972 LSRD plan over time the language used in these precedential approvals for changes to the Two Bridges URA and LSRD clearly demonstrated the CPC's intent to preserve the neighborhood scale.¹⁸

¹⁶ See CPC's commission reports approving the proposed modifications, Exhibit 7, 8, and 9 attached to the Kimerling Decl.

¹⁷ *Id.*

¹⁸ CPC21885 (June 15, 1973; CPC approval is subject to the same conditions enumerated in the May 15, 1972 approval); C760143ZLM (February 9, 1977 CPC approval includes this condition: "The premises shall be developed in size and arrangement substantially as proposed and as indicated on plans filed with the application"); N830316ZAM (December 8, 1982 CPC approval includes this condition: "The premises shall be developed in size and arrangement substantially as proposed and as indicated on the plans filed with the application");

53. When considering applications for LSRD modifications in the past, the CPC has considered whether the modifications were consistent with the purposes of the ZR. For example, the CPC has prominently considered such factors as whether the proposed project will "unduly increase" any of "the bulk of buildings," "the density of the population," or the "intensity of use in any block," or if it will "[restrict][] access to light and air" or "create traffic congestion" "to the detriment of" the occupants of the Two Bridges neighborhood.¹⁹ The CPC has also considered whether "the authorized location of buildings will permit better site planning and will thus benefit both the residents of the Two Bridges Urban Renewal Area and the city as a whole."²⁰

54. These earlier modifications were based upon an understanding that the LSRD Sites were being fully built out in accordance with the LSRD Site Plan to effectuate the URP.

55. In 1975, the Public Housing and Development Administration, a precursor to the Department of Housing Preservation and Development, slightly altered the number of units and stories in a building that had been previously approved due to a change in the modular system to be used for construction.²¹ Even then, before the change was allowed, the Commission had to

N850737ZAM (August 28, 1985 CPC approval includes this condition: "The premises shall be developed in size and arrangement substantially as proposed and as indicated on the plans filed with the application"); N860727ZAM (March 17, 1986 CPC approval includes this condition: "The premises shall be developed in size and arrangement substantially as proposed and as indicated on the plans filed with the application"); C950078ZSM (January 18, 1995 CPC approval includes this condition: "The property that is the subject of this application (C950078ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by The Edelman Partnership/Architect, filed with this application and incorporated in this resolution: Drawing No. A-4, Zoning Data 9/20/94 and Drawing No. A-6, Site Plan, Site Sections 8/31/94").

¹⁹ See CPC Report C760143ZLM, dated February 9, 1977.

²⁰ *Id.*

²¹ See Letter from Roger Starr, Administrator, Housing and Development Administration, to John E. Zuccotti, Chairman, City Planning Commission, February 3, 1975, [enclosed, Exhibit B](#); Letter from Peter D. Joseph, Deputy Commissioner, Housing and Development Administration,

determine that it would not to be “a substantial modification of the plans previously approved.”²² No such determination has been made here, nor could it be given the drastic nature of the proposed changes and the new, private, applicants seeking them.

56. The intent to preserve neighborhood scale was evident in a 1995 modification²³ to the Two Bridges LSRD, where members of the CPC cited neighborhood cohesion as a reason for approval. Looking at the application for a 21-story, mixed income residence with 197 rental units, one superintendent's unit, community facilities, and commercial spaces, the CPC stated that:

*"The Commission finds that the proposed modifications also allow for a reduced height in the building, by approximately four floors. At 21 stories, the building should translate well into the prevailing surrounding context of 16-story to 26-story residential structures and not adversely effect (sic) adjacent properties."*²⁴

57. In 1999, a “minor modification” was granted in the Washington Square Southeast LSRD to allow New York University to modify the design of the play area in open space atop the Cole Fieldhouse recreation center to better serve residents of the LSRD. Similarly, the controlling LSRD had survived the 1994 expiration of the Washington Square Southeast URA first established in 1954.²⁵

58. When the Health Care Chaplaincy was being reviewed in 2013, the CPC made sure that the project was “consistent with the overall development goals of the LSRD and would

to City Planning Commission, January 29, 1975, enclosed Exhibit C. [WHAT ARE THESE EXHIBITS}

²² See Letter from Roger Starr, Administrator, Housing and Development Administration, to John E. Zuccotti, Chairman, City Planning Commission, February 3, 1975, enclosed, Exhibit B; Letter from Peter D. Joseph, Deputy Commissioner, Housing and Development Administration, to City Planning Commission, January 29, 1975, enclosed Exhibit C .

²³ See CPC Report C950078 ZSM, dated January 18, 1995.

²⁴ *Id.*

²⁵ N 980578

not negatively impact the findings made by the Commission in prior approvals for the LSRD.”²⁶

This project consisted of a single 17 story building, with a mere 183,700 zoning square feet and only an increase to the built FAR by 1.23. In support of the project, the HCC tried to sway the CPC to approve its project by arguing that:

“(t)he proposed development would not unduly increase the bulk of the LSRD or surrounding area; the total floor area of Parcel 5 following the addition of the New Building would be only 57% of the potential floor area under permitted current zoning. In addition, the proposed project would not adversely affect any other zoning lots outside the New Building Site by restricting access to light and air, by adversely affecting air quality or by creating traffic congestion. Therefore, the prior findings will be unaffected by the addition of the proposed project.”²⁷

59. The current proposed modifications differ wildly from the types of modifications that were previously approved for this site.

60. These applications paint the picture of a development that is drastically different from the original 1972 plan for the site.

61. The proposals ask for changes that are far larger than any that have ever been made for this site, and they were approved.

62. If sustained, the applications would cause one of the buildings to increase from approximately 27 stories to over 80 stories. This is an increase of fifty-three stories to a building that was already the tallest currently standing building in Two Bridges. Further, they will add over 2.5 million estimated gross square feet of space and triple the density of the neighborhood by adding almost 3,000 new units.²⁸

²⁶ HealthCare Chaplaincy Application, City Environmental Quality Review ENVIRONMENTAL ASSESSMENT STATEMENT https://www1.nyc.gov/assets/planning/download/pdf/applicants/env-review/eas/12dcp157m_eas.pdf

²⁷ *Id.*

²⁸ See Two Bridges Final Environmental Impact Statement at S-14, <https://www1.nyc.gov/assets/planning/download/pdf/applicants/env-review/two-bridges/00-feis.pdf?r=1>.

63. Additionally, the skyscraper proposed for Parcel 4A/4B would loom over the neighboring HUD-sponsored affordable senior housing and senior center, which would lose 10 units of senior housing (units that currently house 19 residents) to accommodate the new structure's support beams. While the proposal indicates a commitment to "relocate" these units, the effect of relocation is that seniors in these units will need to move at least once, and possibly twice (once out of their unit into temporary accommodations, and once more into replacement units).

64. The new development on Site 4 blatantly ignores an existing deed restriction requiring the property to be used "in perpetuity" only as housing for "elderly and handicapped persons of low income, as defined in federal law."²⁹ This means that this proposed project not only fails to abide by the requirements of this deed to house low-income elderly and disabled tenants—it actually eliminates 10 such units so that the deed-restricted land can be used for a largely luxury high-rise.

65. This approval differs so drastically from past approvals that it violates the purpose of LSRDs, found in ZR 78-01.

66. ZR 78-01 states that LSRDs are designed to be developed in such a way that facilitates community health, welfare, and a harmonious living environment for residents. ZR § 78-01. Specifically, this section of the ZR states that the general purpose of LSRDs is:

“. . .to allow greater flexibility for the purpose of securing better site planning for development of vacant land and to provide incentives toward that end while safeguarding the present or future use and development of surrounding areas and, specifically, to achieve more efficient use of increasingly scarce land within the framework of the overall bulk controls, to enable open space in large-scale residential developments to be arranged in such a way as best to serve active and passive recreation needs of the residents, to protect and preserve scenic assets and natural features such as trees, streams and topographic features, to foster a more stable community by providing for a

²⁹ See Exhibit 4, attached to the Kimerling Decl.

population of balanced family sizes, to encourage harmonious designs incorporating a variety of building types and variations in the siting of buildings, and thus to promote and protect public health, safety and general welfare.”

67. The scale of these four towers, and the permanent negative impacts they will cause on air, sunlight, subway congestion, and population density, as well as loss of open space, as shown in the Environmental Impact Statement (EIS) prepared pursuant CEQR are at a minimum an enormous changes to the Two Bridges LSRD.

68. These towers are a catalyst for cumulative environmental damage to the broader Lower East Side and Chinatown neighborhoods. The EIS issued for this multiple tower construction project confirmed that traffic congestion would occur, that air and light for LSRD residents and adjacent properties would be improperly restricted, and that other adverse effects would occur in violation of the general purpose set out in ZR 78-01. Adverse impacts on light would stretch well beyond the Two Bridges neighborhood as far as Park Row to the west, East Houston Street to the north, and Sands Street in Brooklyn’s DUMBO, as shown in the shadow renderings exhibited in the EIS, Chapter 6. Numerous publicly accessible open spaces and historic resources with sunlight-sensitive features would be impacted by these developments in the Lower East Side, the East Village, and north Brooklyn. Yet all these impacts and others were glossed over by the CPC in making its determinations in this matter.

69. This project has “unmitigatable” significant adverse impacts. Both the DCP and CPC were on notice as of the completion of the Draft Environmental Impact Statement that this action was a major modification by virtue of the significant impacts on neighborhood assets and capacities the LSRD is in place to protect, such as light, uncontested streets, open space and quiet. The EIS also identified significant adverse impacts with respect to publicly-funded

childcare facilities, open space, shadows, traffic, transit, and pedestrians, and noise during the construction period.³⁰

70. These towers will cause harm to residents' health and wellbeing, and potential damage to structures adjacent the towers as had occurred during the construction of One Manhattan Square. These outcomes of the proposed development are inconsistent with the purpose of LSRDs. The total floor area of parcels for Site 4A/4B, Site 5, and Site 6 following the addition of the new buildings would be built to maximum floor area. The increase in bulk can be expected to damage adjacent buildings. The plaintiffs Clara Amateleon and Tony Quey Lin, and numerous other residents who reside at 82 Rutgers Slip, have reported sloping floors and damaged mailboxes during the construction of One Manhattan Square, which was only one tower. Clara Amateleon's wall and kitchen cabinets have been splitting since the construction of One Manhattan Square. These projects given their scale would introduce detrimental building bulk expected to be similarly, if not more harmful to the homes of residents.

71. There is danger that the project will disrupt other buildings as it settles, leading to infrastructure damages and safety risks for current residents. This has already happened in the area, with the One Manhattan Square building recently causing cracks in adjacent residences³¹. Additional damage to neighborhood infrastructure and the environment can be expected to occur as a result of these projects. During numerous times throughout the digging of One Manhattan Square's foundation in 2015, streets around the site were flooded and the roadway and sidewalks buckled. ConEd claimed that One Manhattan Square almost caused a major steam pipe explosion

³⁰ M180505(A) ZSM, Calendar No. 8, December 5, 2018

³¹ See <https://ny.curbed.com/2016/2/25/11112698/extell-one-manhattan-square-construction-halted/>; See also https://www.google.com/search?ei=eGbGW4HrO6Ln_QbxwLyy&q=extel+settle+crack+Lower+East+side+fire&oq=extel+settle+crack+Lower+East+side+fire&gs_l=psy-ab.3...12374.13405..13569...0.0..0.87.449.6.....0....1..gws-wiz.....0i71.KOWSbyhIuvI.

during the early stages of construction. The utility company filed a lawsuit against the developer in Manhattan Supreme Court, citing a repair cost of \$4 million. The suit said Extell—the developer of One Manhattan Square—was warned by its own engineers that its excavation work for the 800-unit tower was dangerously close to ConEd’s underground network of steam pipes and the digging caused two joints to leak, flooding the neighborhood.³²

72. Adverse impacts on air quality will harm the health of seniors and vulnerable persons in the Two Bridges neighborhood. During the construction of One Manhattan Square, the plaintiffs in this lawsuit, and their kin and parents, including Tony Quey Lin, Elvia Fernandez, and David Nieves’ son—experienced a resurgence of severe respiratory symptoms caused by the 9/11 attacks on the World Trade Center. These symptoms included hemoptysis: coughing up blood, back pain in the lung area, breathing trouble, exacerbation of COPD, and asthma—well-documented and serious side effect of living in a construction zone. This multi-generational impact on the respiratory health of Two Bridges residents is indicative of the adverse impacts on respiratory health that would be brought on by the air pollution from construction

73. The Respondents are representative of the typical resident of the Two Bridges neighborhood; it can be predicted that the general population of the area would be similarly impacted.

IV. THE ACTIONS OF RESPONDENTS SHOULD BE NULLIFIED

I. The Proposed Changes to 4A/4B Violate A Deed Restriction.

74. The approval for the tower on Parcel 4A/4B must be nullified as illegal on two grounds. One, the CPC’s approval violated New York City Administrative Code § 3-119 and

³² <http://www.thelodownny.com/leslog/2017/04/con-ed-sues-extell-over-steam-pipe-breach-in-two-bridges-area.html>

New York City Executive Order No. 17 when it ignored a deed restriction on Parcel 4A/4B. This deed restriction stated that the property must be used "in perpetuity" only as housing for "elderly and handicapped persons of low income, as defined in federal law."³³ Here, the contested approval is for a luxury tower.

75. The proposed project not only fails to abide by the deed's requirements to house elderly and disabled low-income residents—it actually eliminates 10 such units so that the deed-restricted land can be used to build a largely luxury high-rise.

76. New York City Administrative Code Section § 3-119(a)-(c)³⁴ specifically requires the Department of Housing Preservation and Development to receive the approval of the Mayor or Deputy Mayor before any such restrictive deed can be modified. This did not happen here. Since New York City Administrative Code § 3 states that Respondents “shall not modify or remove any deed restriction without the approval of the mayor pursuant to this section,” the approval must be nullified. New York City Administrative Code § 3.

77. Similarly, New York City Executive Order No. 17 requires publication, written notice to the Borough President, local Council Member, and Community Board, and that a public hearing be held within the Community District in which the subject property is located. It also requires that the agency make a determination that removing such restriction “is in the best interest of the City.” New York City Executive Order No. 17. This did not happen here.

78. The developers and City Planning Respondents here paid no heed to the restrictive deed. No approval was obtained, no publication was made, no notice was provided and no hearing was held. Thus New York City Administrative Code § 3-119 and New York City Executive Order No. 17 have been violated, and the approval for Parcel 4A/4B must be nullified.

³³ See Exhibit 4, attached to the Kimerling Decl.

³⁴ Administrative Code, Title 3 Elected Officials, *supra* note 2.

II. The CPC's Approval of Modifications to Parcel 4A/4B Violates Respondent DCP's Proposed Amendments, DOB Precedent Involving Inter-building Voids.

79. An inter-building void is a space in a building that may be nominally used for mechanicals or egress but which is largely empty space, devoid of residential, commercial or community facility floor area. Currently, the DCP, DOB and the Fire Department of the City of New York's ("FDNY") have serious concerns about this building method. They have proposed and acted on polices to fight these voids.

80. The Project's proposed Site 4 has a large inter-building void at the base that allows its towers to rise over a neighboring building. The building proposed on site 4A/4B will measure 1,008 feet to the top of the mechanicals. This height includes 15 floors of mechanical spaces and voids that add 324 feet to the building height which do not count against zoning floor area.

81. On January 25, 2019 the Respondent DCP proposed an amendment³⁵ to New York's Zoning Code that would make those voids count toward a building's overall allowable size. This amendment is based on the theory that the voids are ostensibly used to store mechanical equipment, but are often occupying space that's much larger than necessary. It states:

The New York City Department of City Planning (DCP) proposes a zoning text amendment pursuant to Zoning Resolution (ZR) Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) and related sections, to modify floor area regulations for residential tower developments located within non-contextual R9 and R10 Residence Districts, their equivalent Commercial Districts, as well as Special Purpose Districts that rely on underlying floor area and height and setback regulations or that are primarily residential in character. The proposed zoning text amendment (the "Proposed Action") would count mechanical floors in such buildings as zoning floor area when they are taller than 25 feet in height or when they are located within 75 feet in height of each other. Currently, mechanical space does not count towards zoning floor area of a building as permitted by zoning. The Proposed Action is intended to discourage the use

³⁵ See Exhibit 5, attached to the Kimerling Decl.

of excessive mechanical floors to artificially increase building height by limiting the height and frequency of such spaces incorporated into a building's design.

82. The building at 4A/4B is clearly the type of building contemplated by this proposed amendment. It allots nearly 1/3 of the building's height to mechanical spaces. This is extraordinary and introduces bulk to the neighborhood that provides only impacts and no benefits. Under this new amendment counting inter-building void space as part of the FAR analysis, the tower on Parcel 4A/4B would exceed its FAR allotments. This violates both the ZR and the purpose of LSRD density provisions.

83. The CPC has shown its approval for the DCP's proposed amendment regarding inter-building voids. Commissioner Levin stated that: "I'm pleased to see this rule moving forward, I know it's been a topic on many people's mind for some time, . . . There just seems to be something odd about a manipulation of the zoning resolution in a way that allows people to monetize the sky, which really belongs to all of us."³⁶ This makes it likely that Commissioners would reject Parcel 4A/4B in light of these new DCP policies.

84. Beyond the DCP, the DOB is also calling this "supertall" building style into question. In a blow to developers, the DOB sent an "intention to revoke" letter regarding the permit for a 775-foot condominium tower at 50 West 66th Street on the Upper West Side. The letter cited the inter-building void as both a design abnormality and a safety concern, stating:

*"DOB determined **that the 160-foot void proposed for this building is not customarily found in residential buildings, and so is contrary to the Zoning Resolution.** In addition, we have raised objections, which the developer has not addressed, that occupants of the*

³⁶ Amy Plitt & Caroline Spivak, *City aims to close zoning loophole that boosts building heights*, CURBED NY (28 Jan. 2019), <https://ny.curbed.com/2019/1/28/18200415/new-york-buildings-construction-mchnical-void>.

*building may not be able to get from one emergency stairway to the other, as is required, within the proposed void."*³⁷ [emphasis added]

85. Finally, FDNY is concerned in particular about this building style's potential to hinder the efforts of firefighters. On May 3, 2018, the FDNY's Bureau of Operations cited both general and specific operational and safety concerns regarding a 150-foot inter-building void.³⁸

86. The proposed inter-building void on Parcel 4A/4B of the Two Bridges LSRD is much larger—over twice as large, in fact—than the one at 62nd Street Periscope Tower that caused the FDNY to express concern,³⁹ or the site at 50 West 66th Street that led the DOB to send the “intention to revoke” letter.

87. Until these concerns are studied and addressed, and a new FAR analysis is done for all towers—but especially the tower containing an inter-building void is conducted—approval of Parcel 4A/4B must be seen as imposing a great health and safety risk on both future tower dwellers and neighboring Lower East Side residents.

88. The CPC must be overturned in its approval of the requested modifications to this Parcel. Alternatively, the Court must stay proceeding to let the CPC reconsider their approval in light of the proposed policy on voids.

III. The CPC Did Not Make Required Findings under ZR § 78-043

89. There is no dispute that developers are requesting huge modifications to the Two Bridges LSRD.

³⁷ Elizabeth Kim, *City Threatens To Revoke Permit For Controversial Upper West Side Tower*, GOTHAMIST (18 Jan. 2019), http://gothamist.com/2019/01/18/uws_tower_west_66th_extell.php

³⁸ For more on the FDNY's concern and the community's response, see the Zoning Complaint at https://www.landmarkwest.org/wp-content/uploads/2018/09/Challenge_36w66th_final-1-17.pdf.

³⁹ *Id.*

90. However, the CPC failed to make mandatory, preliminary findings before approving modifications to the Two Bridges LSRD. Pursuant to ZR § 78-043:

*“The requirements for findings as set forth in this Chapter shall constitute a condition precedent to the grant of any such modification by special permit **or OTHERWISE**. The decision or determination of the City Planning Commission shall set forth each required finding in each grant of modifications for a large-scale residential development. Each finding shall be supported by substantial evidence or data considered by the Commission in reaching its final decision.”* [emphasis added].⁴⁰

91. The CPC’s interpretation of the Zoning Resolutions is not consistent with fundamental principles of statutory interpretation. ZR § 78-043 requires that findings be “supported by substantial evidence or data” as a “condition precedent” to approving the modifications requested here. The CPC appears to have erroneously believed that findings are only required when a special permit or authorization is granted relying on ZR § 78-313. This reading is inconsistent in the context of ZR § 78, as it renders void the language of ZR § 78-043 which requires findings for modifications for special permits “or otherwise”

92. Just as specific findings required for other modifications based on requests for special permits, ZR § 78-043 requires similar findings in similar modifications as those found here.

93. ZR § 78-043 covers scenarios where any modifications are being sought, whether through the use of special permits “or otherwise.” By failing to give effect to the phrase “or otherwise,” the CPC mistakenly narrowed its own power and violated the principle “that the Legislature did not deliberately place in the statute a phrase intended to serve no purpose, but must read each word and give to it a distinct and consistent meaning.” McKinney's Cons Laws of NY, Book 1, Statutes §§ 97, 98(a).

⁴⁰ ZR § 78-043.

94. Fundamental principles of statutory interpretation make this mistake clear, as a “statute such as a zoning ordinance must be 'construed as a whole, reading all of its parts together,'" *Matter of Saratoga County Economic Opportunity Council, Inc. v. Village of Ballston Spa Zoning Bd. of Appeals*, 977 NYS2d 419 (3d Dept. 2013); *see also Matter of New York County Lawyers' Assn. v Bloomberg*, 955 N.Y.S.2d 835 (2012) (A statute “must be construed as a whole, and its various sections must be considered together and with reference to each other”)(*quoting People v Mobil Oil Corp.*, 422 N.Y.S.2d 33 (1979)); *Matter of Shannon*, 34 N.E.3d 351 (2015). Interpretation of one provision of a statute thus "cannot be divorced from its statutory context." *In re Avella v. City of New York*, 2017 N.Y. Slip. Op. 04383, at *7 (2017). Each word is important, and a court should "harmonize[] [all parts of a statute]... and [give] effect and meaning ... to the entire statute and every part and word thereof" (*id.* at § 98; *see also Friedman v. Connecticut Gen. Life Ins. Co.*, 9 N.Y.3d 287 (2007).

95. Further, it is “well settled that a zoning ordinance must be interpreted to give effect to all of its provisions, and an interpretation that nullifies any provision of [a zoning] ordinance is irrational and unreasonable." *Matter of McLiesh v Town of Western*, 891 N.Y.S.2d 825 (4th Dept 2009). As such, a statutory construction “which renders one part meaningless should be avoided." *Rocovich v Consolidated Edison Co.*, 577 N.Y.S.2d 219 (1991). When even a single word is rendered meaningless, the reading should not be followed, as courts “may not give meaning to a statute that renders language superfluous.” *Kimmel v State*, 80 N.E.3d 370 (2017), *quoting Majewski v Broadalbin-Perth Cent. School Dist.*, 673 N.Y.S.2d 966 (1998).

97. The CPC’s approval must be nullified and the CPC must be ordered to make additional findings under ZR § 78-043. These should follow the guidance of ZR § 78-313, as it

speaks to many of the same type of bulk issues and neighborhood considerations that the FEIS for the Two Bridges LSRD was concerned about. In relevant part, it states:

ZR § 78-313 Findings

As a condition precedent to the granting of authorizations under the provisions of Section 78-311 (Authorizations by the City Planning Commission) or a special permit under the provisions of Section 78-312 (Special permits by the City Planning Commission), the Commission shall make the following findings:

- (a) that such modifications will aid in achieving the general purposes and intent of this Chapter as set forth in Section 78-01 (General Purposes);*
- (b) that such distribution of floor area, dwelling units, rooming units, open spaces, locations of buildings, or location of primary business entrances, show windows or signs will permit better site planning and will thus benefit both the residents of the large-scale residential development and the City as a whole; . . .*
- (d) that such distribution or location will not affect adversely any other zoning lots outside the large-scale residential development by restricting access to light and air or by creating traffic congestion;*
- (g) the modification of height and setback will not impair the essential character of the surrounding area and will not have adverse effects upon the access to light, air and privacy of adjacent properties.*

96. Therefore there should be similar findings to those required pursuant to ZR § 78-313 (a), which says that modifications must aid in achieving the general purposes and intent of the LSRD which including bulk planning. Here, the CPC should address whether the modifications will best serve the needs of area residents because they will lead to development that will have permanent adverse effects in the project area. This will require substantial findings as there are none here.

97. Therefore there should be similar findings to those required pursuant to **pursuant to ZR § 78-313 (b)**, which says that the distribution of floor area and dwelling units must benefit residents of the LSRD and must not unduly increase the bulk of buildings, density of population,

or intensity of use to the detriment of residents in that block or nearby blocks. Here, the CPC must address the Project's unmitigated adverse impacts on socioeconomic conditions, health and safety, neighborhood character, open space, education, shadows, transportation, and policy compliance. This will require substantial findings as there are none here.

98. Therefore there should be similar findings to those required **pursuant to ZR § 78-313 (d)**, which says that the distribution and location of floor area must not adversely affect access to light and air outside the LSRD or create traffic congestion. Here, the CPC must address the way that shadows, open space, and traffic issues found in the FEIS would significantly limit light and air in the neighborhood and cause both major road congestion and strained public transportation options. This will require substantial findings as there are none here.

99. Therefore there should be similar findings to those required **pursuant to ZR § 78-313 (g)**, which says that the modification of height and setback must not impair the essential character of the surrounding area and must not have adverse effects upon access to light, air and privacy of adjacent properties. Here, the CPC must address the Project's effect on density and exceptional break from the scale of the rest of the neighborhood, especially in relation to height added inter-building voids, which was not previously considered.

100. The CPC approved the modifications, noting how massive these changes are. They expressed that they understood how difficult it is for the community to grasp how entirely new towers could be built—and hundreds of feet could be added—without additional findings or review processes.

101. The “yes” votes were begrudging, and the Commissioners who voted “yes” expressed frustration at the ZR. They stated that they felt they didn't have the power to consider

the impact of the modifications or require additional findings, because they believed they were bound by the law to vote in favor of approval.

102. Despite serious concerns from both Commissioners who voted against the proposal and Commissioners who reluctantly voted in favor of the approval,⁴¹ CPC approved modifications without additional findings.

103. This approval should not stand. These massive changes are exceptional, and the fact that the CPC does not see the modifications as needing additional special permits or authorizations does not mean that they must approve such an out-of-scale, controversial, proposal. The Commissioners misinterpreted their own power, and in doing so failed to comply with the Zoning Resolutions. Commissioners who voted to reluctantly approve these modifications were not “tied by law,” they made a mistake of statutory interpretation.

IV. The CPC Violated CEQR in Approving the EIS

104. CEQR requires a finding a impact on the Socioeconomic Conditions. The CPC took a a rose colored glasses look at the problem of gentrification that is being accelerated by the introduction of these four luxury condo towers in Two Bridges. The CPC found no indirect residential displacement.⁴²

105. There is no dispute that the nearby neighborhoods are undergoing gentrification, both Chinatown and the Lower Eastside. As the EIS stated:

However, the study area overall [a half mile radius], including areas closer to the project sites, are expected to see demographic change in the future without the projects, as market-rate units planned for the area will bring higher-income residents. Recent and planned developments include 815 market-rate condominiums at One

⁴¹ Sadeef Ali Kully, *Planning Commission OKs Two Bridges Development Plan*, CITYLIMITS (5 Dec. 2018), <https://citylimits.org/2018/12/05/planning-commission-oks-two-bridges-development-plan/>.

⁴² See EIS Socioeconomic Condition Section, attached to the Kimerling Decl as Exhibit 10.

Manhattan Square, located adjacent to Site 4; 50 Clinton Street, a 37-unit condominium building; 50 Norfolk Street, a 488-unit mixed-use building; 136 Baxter Street, an 11-unit luxury condominium building; and 123 Baxter Street, a 23-unit boutique, full-service condominium building.⁴³

106. The CEQR Technical Manual states, in pertinent part:

322.1 Indirect Residential Displacement. The objective of the indirect residential displacement analysis is to determine whether the proposed project may either introduce a trend or accelerate a trend of changing socioeconomic conditions that may potentially displace a vulnerable population to the extent that the socioeconomic character of the neighborhood would change.⁴⁴

If the detailed assessment identifies a vulnerable population potentially subject to indirect displacement that exceeds 5 percent of the study area population--or relevant sub-areas, if the vulnerable population is located within the subarea identified--the project may result in a significant change in the socioeconomic character of the study area, and a potential significant adverse impact may occur.⁴⁵

107. The introduction of 2,775 units of housing, including 694 units of affordable housing will “accelerate the trend of changing conditions.” Only 59% of the Two Bridges tenants are in NYCHA housing or long-term rent-stabilized housing. The remaining tenants will be faced with landlords anxious to move them out to get tenants who are willing to pay market-rates. As anyone who has lived in New York City knows, landlords lead the way to gentrification by finding ways to increase rent in neighborhoods undergoing change. It’s happening all around Two Bridges and the new towers will exacerbate and accelerate the rate of change.

108. What the CPC failed to do was take an honest look at what is happening and admit that their buildings would accelerate change, a change that will effect more the 5% of the population of Two Bridges.

⁴³ EIS at Chapter 27. Page 32.

⁴⁴ CEQR Technical Manual at 322.1, https://www1.nyc.gov/assets/oec/technical-manual/2014_ceqr_technical_manual_rev_04_27_2016.pdf.

⁴⁵ *Id.* at 332.1.

109. The inclusion of some units of affordable housing, given that this includes families making more than their Two Bridges neighbors, will not act in any way to slow down the gentrification of the neighborhood. Thus it is clear that the CPC's failure to find impact here was arbitrary and capricious and violated CEQR.

FIRST CAUSE OF ACTION

(Declaratory Judgment)

110. Petioners repeat and reallege the preceding paragraphs as though fully set forth herein and seek the following declaratory judgments.

111. Declaratory Judgment that 4A/4B approval is in violation of the restrictions on the property deed and is unlawful.

112. Declaratory Judgment that Respondents violated the DOB regulations in approving the project on site 4A/4B which included a large building void.

113. Declaratory Judgment that Respondents violated the Zoning Resolutions by failing to make required findings under ZR § 78-043 in regard to all three developments.

SECOND CAUSE OF ACTION

(Art. 78)

114. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

115. Respondent CPC violated ZR § 78-043.

116. Wherefore, the CPC's approval of the three projects must be annulled and vacated.

117. And wherefore, Respondent CPC should be enjoined to make findings consistent with ZR § 78-043 and ZR § 78-313(a)(b)(d) and (g).

THIRD CAUSE OF ACTION

(Article 78; CEQR)

139. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

140. Based on the facts and for the reasons heretofore alleged, the Respondents violated CEQR and acted arbitrarily capriciously and in violation of law by failing to find impact in regard to Socioeconomic Conditions, indirect residential displacement.

141. Wherefore, Respondents are enjoined to correct their findings in regard to Socioeconomic Conditions.

REQUEST FOR RELIEF

WHEREFORE, Petitioners respectfully request this Court issue a judgment pursuant to Article 78 and issue declaratory judgments pursuant to CPLR § 6301:

- A. Annuling and vacating CPC's December 5, 2018 decision to approve the modifications to the existing Two Bridges Large Scale Residential Development;
- B. Nullifying the approval of the tower on Parcel 4A/4B as illegal in violation of the property deed;
- C. Annuling and vacating CPC's approval of the EIS;
- D. Enjoining Respondents to make findings under ZR § 78-043 that are similar to those found in ZR § 78-313 on the zoning issues discussed herein;

- E. Enjoining Respondents DCP from sending to Respondents DOB approval letters related to the modifications to the existing Two Bridges Large Scale Residential Development;
- F. Declaring CPC's decision was illegal and made outside the scope of its authority pursuant to ZR § 78-043;
- G. Declaring CPC's approval of the modification in regard to the development on parcel 4A/4B which violated DOB's regulations pertaining to inter-building voids;
- H. Declaring that the Respondents violated CEQR;
- I. Enjoining the DOB from issuing the building permits that would facilitate the development of the proposed buildings in connection with the modifications approved by the CPC on December 5, 2018;
- J. Granting Judgment to Petitioners on each of their claims; and,
- K. Awarding Petitioners such other and further relief that this Court deems just and proper.

Dated: March 31, 2019

By: 

Kenneth Kimerling
Attorney for Petitioners
Asian American Legal Defense and Education Fund
99 Hudson Street, Floor 12
New York, NY 10013
212-966-5932
kkimerling@aaldef.org

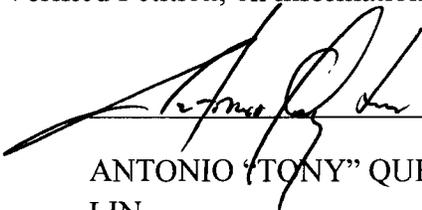
VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.:

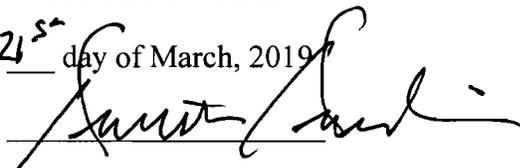
ANTONIO "TONY" QUEY LIN, being duly sworn desposes and states:

I am one of the Petitioners. I am familiar with the factual allegations about conditions faced by Two Bridges residents, as well as the conditions surrounding the contested development project. I know them to be true. In regards to the allegations particular to the other Petitioners—both organizational and individual—based on my knowledge of them, I believe them to be true. In regards to allegations based on documents attached to the Verified Petition, on information and belief, I believe them to be true.


ANTONIO "TONY" QUEY
LIN

Sworn before me this

21st day of March, 2019



Notary Public

Kenneth Kimerling
Notary Public State of New York
No. 02K17263745
Qualified in New York County
Commission Expires Feb. 28, 2023