

NORMAN SIEGEL  
Attorney At Law  
260 Madison Avenue—18<sup>th</sup> Floor  
New York, NY 10016  
(212) 532-7586

September 9, 2008

**VIA FACSIMILE**

John Consolaro  
Carter Ledyard & Milburn LLP  
2 Wall Street  
New York, NY 10005

Re: Request that record remain open until  
release of requested records and resolution  
of pending litigation.

Dear Mr. Consolaro:

As you are aware, last week the Empire State Development Corporation ("ESDC") held hearings on the Columbia University Educational Mixed Use Land Use Improvement and Civic Expansion Plan. Following the hearings on September 2<sup>nd</sup> and 4<sup>th</sup>, the ESDC is accepting written comments until October 10, 2008, at which point the record is set to close. We are writing on behalf of Tuck-It-Away Associates LP ("TIA") to request that the ESDC suspend the closing of the record until Tuck-It-Away has had the opportunity to receive and review records, currently in the possession of ESDC and the New York City Department of City Planning, to which TIA is legally entitled and which may be relevant to issues, facts and objections raised by TIA. The inclusion of these records may be necessary for the protection of TIA's rights under the Eminent Domain Procedure Law Sec. 207.

These records include:

1. ESDC's response to Tuck-It-Away's request under the Freedom of Information Law ("FOIL") of June 20, 2008 the delivery of which we have still not received.
2. Records which the New York State Supreme Court Appellate Division, First Department has found ESDC must release to Tuck-It-Away and the West Harlem Business Group, but that ESDC is currently retaining under an automatic stay pending decision on its motion for re-argument or permission to appeal.
3. Records in dispute in *Tuck-It-Away v. Empire State Development II*, Docket No. 07/114035, related to Tuck-It-Away's FOIL request of March 30, 2007.
4. Records in dispute in *Tuck-It-Away v. New York City Department of City Planning*, Docket No. 07/111652, related to Tuck-It-Away's FOIL request to the NYC DCP of November 15, 2006.

Page 2

In the case of the latter three judicial proceedings, Tuck-It-Away asks that the record remain open until final resolution of these disputes. If the ESDC closes the record on October 10, 2008, and determines to condemn TIA's property based upon that limited record, we believe ESDC will have violated both its own procedural requirements and TIA's constitutional due process right to be heard.

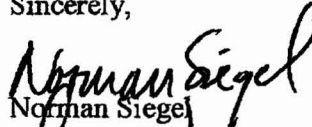
Under the EDPL, Section 204, "any person in attendance shall be given a reasonable opportunity to present an oral or written statement and to submit other documents concerning the proposed public project."

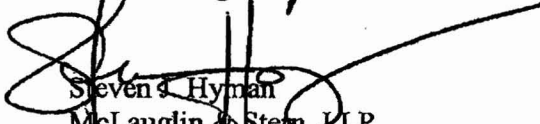
To close the record while at the same time withholding records to which TIA has a legal right would violate TIA's right to be heard since TIA would only be afforded the right to voice objection but denied the right to introduce supporting evidence that would make such objection legally effective. We believe this falls short of the "reasonable opportunity" required by EDPL Section 204. We also believe this falls short of standards of due process under both the United States and New York Constitutions.

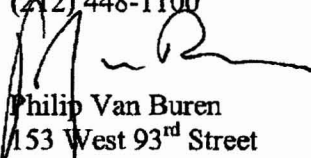
We furthermore would consider, and believe a court would also find, that the withholding of information while running out the clock on the record constitutes an act of bad faith on the part of the ESDC which would taint its determinations in relation to this project.

We therefore urge the ESDC to act within its discretion in order to allow for full public participation and to ensure that the ESDC has reached a reasoned and unbiased determination regarding condemnation by suspending the closure of the record until these issues have been resolved.

Sincerely,

  
Norman Siegel

  
Steven S. Hyman  
McLaughlin & Stern, LLP  
260 Madison Avenue  
New York, NY 10016  
(212) 448-1100

  
Philip Van Buren  
153 West 93<sup>rd</sup> Street  
New York, NY 10025  
(646) 387-8999