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The Main Street WIRE

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State Supreme Court Rules Against Resident Groups on Southtown, Says RIOC Acted Properly

Justice Harold Tompkins of the State Supreme Court, after the Court session on May 17 in which he heard from attorneys representing the six parties in the petitions on which he has now reached a decision.

by Dick Lutz

The State Supreme Court has ruled in favor of the Roosevelt Island Operating Corporation (RIOC) in residents' cases challenging Southtown.

The ruling is virtually certain to be appealed.

Justice Harold Tompkins ruled that Roosevelt Islanders for Responsible Southtown Development (RIRSD) filed its case late, missing a four-month window allowed for challenges to the RIOC resolution granting "final designation" to the developers and approving their plan. RIRSD's challenge was filed January 24, four months and two days after the clock started ticking September 22, 1999, with passage of the RIOC resolution.

RIRSD attorneys dispute the validity of Tompkins' ruling on the timeliness of their filing. January 22, the four-month anniversary of the RIOC resolution, fell on a Saturday. The group's petition was filed Monday, January 24.

[Under State law, the four-month period of opportunity for challenging a September 22 action would ordinarily expire on January 22 (not January 21). Another provision says that when the statute of limitations ends on a "Saturday, Sunday, or public holiday" it is extended to "the next succeeding business day."]

Chira's Case

Tompkins granted the Alternative Southtown Design Committee (ASDC) "standing" in the case, but ruled against the group, headed by attorney Robert Chira, on each of its substantive points. In addition, the judge "joined" RIOC, the developers, and the City Department of Environmental Protection into Chira's suit, without those parties requesting it.

Environmental Review

Both RIRSD and Chira had contended that the Hudson/Related plan for Southtown differed so much from the 1990 Ramati plan that a fresh review of the project's environmental effects should have been done.

But Justice Tompkins ruled that RIOC had satisfied the requirements of SEQRA, the State Environmental Quality Review Act. He characterized Chira's challenge as a "policy dispute camouflaged as a procedural challenge," summarizing its argument this way: "Distilled to its essence, Alternative's argument is that RIOC could not have come to its determination if it had done sufficient analysis and review." He concluded, "Since RIOC has performed the requisite analysis required under SEQRA, the policy dispute is all that remains."

Tompkins found that RIOC's consideration of environmental matters was adequate, saying, "The resolution of the RIOC Board is based upon its determination that, as elaborated in the 1999 environmental assessment, that the negative effects were contemplated by and addressed in the 1990 FEIS [Final Environmental Impact Statement]." After listing all the items considered in the 1990 study, he wrote, "...the court cannot say that RIOC did not take a hard look at the relevant factors and produce a reasoned elaboration of the basis for the decision..."

General Development Plan

The Court agreed with RIOC's contention that the six-acre Blackwell Park called for in the General Development Plan (GDP), was reduced by over-building of Rivercross and Eastwood onto parkland. The petitioners had argued that a 1990 decision of the City's Board of Estimate to leave language in the GDP requiring a six-acre park meant that the park "separating Northtown and Southtown" could not be reduced to a smaller size, as the Hudson/Related plan would do.

Without reviewing the RIRSD claims on the GDP matter (because he concluded their petition was not timely), Tompkins wrote that "the Court must review the claim of violation of the GDP solely for whether Alternative [ASDC] has shown that the determination is arbitrary or capricious. No change as a result of the Related/Hudson plan is contemplated to Blackwell Park. Any encroachment already exists as a result of prior overbuilding. The determination that an open buffer area between Northtown and Southtown will exist, although not in the precise current manner, also cannot be set by the Court. The Court cannot find the determination to be either arbitrary of capricious."

"The petition must therefore be dismissed in its entirety," Tompkins concludes.

In a footnote, Tompkins deals with the question of resident influence over development of Roosevelt Island: "There is an underlying issue of concern to the residents of Roosevelt Island concerning RIOC and their lack of participation in their own governance. Former members of the RIOC Board have prominent positions in Alternative and RIRSD. However, the enabling statute places the appointing authority of the Board with the Governor of New York State and the Mayor of New York City with advise and consent of the Senate... While residence on Roosevelt Island is required for at least three of the seven public members of the Board, there is a potential for concerns regarding self governance since the Board is an appointive body. However, since this is the structure set forth in the enabling statute, such concerns must be left for review to the political arena."

RIOC President Robert Ryan, when informed by *The WIRE* of the Court's decision early Wednesday afternoon, said, "From the start, RIOC believed that both cases were frivolous. We moved forward and fought the fight in support of our fiduciary responsibility to the citizens of this Island and the citizens of New York State. Obviously, the court agreed with us and we're going to move forwad with breaking ground on Southtown."

Appeals Likely

An appeal of the judge's ruling is all but certain, and, on Wednesday, attorneys for residents were already looking at possible grounds.

The decision appears to confuse the identities of two parties to the cases, at one point calling RIRSD an "intervenor." Actually, it was the Residents Assocation (RIRA) that petitioned to be admitted as an intervenor in the cases.

RIRSD, having been ruled out of the case by virtue of its filing papers on Monday, January 24 instead of Saturday, January 22, is likely to appeal the ruling on that point. The lead attorney for RIRSD commented, on Wednesday: "I'm studying the decision. With respect to the Court's decision on the statute of limitations issue, the Court is clearly wrong, and this issue was not even raised by any of the defendants, because they presumably realized that the suit was filed on time."

Ward continued, "It appeared to me that the court was confused about which parties it was addressing in its decision, and that may have been the basis for its error."

He added, "With respect to the rest of the decision, the Court, because it dismissed this case on statute of limitations grounds, did not really substantively address the core objections that my clients raised. This can all be brought out on appeal."

Asked about the possibility of an appeal of his case, Chira declined comment, for now, on that and on all other matters in the case.

The resident petitioners have 30 days to file notice of intent to appeal. In a statement issued today, the steering committee of RIRSD indicated that it does plan to carry the case forward:

"Although we had hoped to prevail early-on in the litigation process, we are encouraged that no decision was made on RIRSD's arguments. This preserves all our arguments for appeal.

"We knew at the outset that an Article 78 Challenge would be complex and arduous. We were and are prepared to go to the next round in litigation.

"The current decision contains errors that provide us with a solid foundation on which to enter an appeal. For example, the decision fails to recognize that our case was presented in a timely fashion; the decision fails to recognize that RIRSD is the petitioner, not the intervener in the case (in fact, the ruling never even recognized RIRA and their appeal for intervention); contrary to the Judge's footnote by which he based a portion of his decision, no former members of the RIOC Board have positions in RIRSD or on the Alternative Design Committee; etc.

"We remain confident, especially in light of all the errors made in this judgment, that our case will prevail when heard on appeal."

When contacted by *The WIRE*, RIRA President Patrick Stewart had not yet had an opportunity to read the decision, and had no comment.

RIOC Renting Out Grills, Stirring Christianson Ire

RIOC sold all the tickets it had for Southpoint fireworks on the Fourth of July in a successful repetition of the annual event that has drawn capacity crowds for most of its five years.

But it also sold out on grills at the soccer field north of Westview, stirring the ire of RIRA Vice President Joan Christianson, who fired off a letter protesting the rentals to Stephen Hicks of the State Department of Housing and Community Renewal (***Letters***, page 2).

Asked about the matter, RIOC President Robert H. Ryan told *The WIRE* that the policy of renting the grills has been in place for at least four years. "Permits are issued for a specific purpose," Ryan said, "so that people can plan ahead and be sure that they know they have barbecue pits, soccer fields, baseball fields, or whatever it may be, available to them.

"It's a basic concept of business management, so that if somebody puts down the money you know they are going to use the facility and won't keep other people from using by not showing up."

Ryan added, "For anybody to complain about it, I find it totally outrageous."

Big Sound Ervin Simpson conducted The Ray Abrams Big Band Tuesday in a Fourth of July concert sponsored by *The Main Street WIRE* and produced by Robin Russell of River Music, which has presented concerts for seven years on Roosevelt Island. Financial support was provided by Roosevelt Island Housing Management and the Roosevelt Island Historical Society, with in-kind support from the Roosevelt Island Operating Corporation, the Island's Roman Catholic Parish, Costco, and the Roosevelt Island Youth Program. Roosevelt Island is awash in music this summer, with RIOC presenting a series of Wednesday evening concerts on the pier near the subway station, and Trellis presenting jazz groups Friday and Saturday nights.

Pages of Thought and Opinion

Letters

If Ever...

If ever there were reason for various contending resident groups to start working together despite their differences, today's decision by State Supreme Court Justice Harold Tompkins provides it.

When Roosevelt Islanders for Responsible Southtown Development set off on its legal course, its action was taken independent of that of the Alternative Southtown Design Committee, headed by attorney Robert Chira, who had been working on a case for some time.

It was also independent of the Roosevelt Island Residents Association, which had opted not to act, but later changed its mind and sought to be recognized as an "intervenor" in the cases, primarily so that its view of the General Development Plan (GDP) could be pressed in court. RIRA's legal action fund committee and its attorneys had concluded that, whatever the doubts about the RIRSD and Chira suits, it had an interest in securing a judicial ruling that RIOC and developers would have to abide by the GDP. The Hudson/Related plan didn't provide for the six-acre park called for in the GDP, so it seemed an appropriate issue.

But there are other issues, as well. There is that "wall" that could isolate the existing community from the new one, questions of population demographics, the potential transient nature of residents of the first building (in particular), and more. But above all, there is the question of the primacy of the GDP as the Island's founding and controlling document.

In disunity, residents have found weakness and discord.

In unity, there is the potential for a consolidated effort and, with a little luck, a chance to prevail in an appeal to a higher Court.

A Great Fourth

Well over 400 residents came out for the big band concert that River Music staged yesterday under the sponsorship of *The WIRE* and Housing Management, with help from the Historical Society, RIOC, the Roman Catholic Parish, Pepsi, Costco, and several friends from *The Main Street Theatre*.

So many entities worked together, in fact, that the concert could be considered one of the products of the kind of unity that Roosevelt Island so badly needs just now.

The concert was its own fully adequate reason for being, as the Ray Abrams Big Band lifted the non-existent figurative roof off Good Shepherd Plaza, but residents also dug deep into their pockets to provide a bit of support.

It didn't make money for *The WIRE*, as had been the frail hope, but the losses were minor, and that bodes well for a repeat next Fourth of July. So, a...

Thank You

...is in order to all those who helped, who are too many to be named and mostly too modest to care. Enough to say that on this Island, one finds a strong and super-dedicated corps of volunteers and contributors who make all things possible.

Mr. Stephen Hicks, Executive Deputy Commissioner
Division of Community Housing and Renewal
25 Beaver Street
New York, New York 10004

Dear Mr. Hicks:

It is July 4, Independence Day in our great country, but not on Roosevelt Island. A family that has resided on this island for over 20 years invited my family to a Fourth of July barbecue. We gratefully accepted and began planning our day. This was several weeks ago. For as long as I have lived here and the several occasions that I have used the grills, the policy has been first come, first served.

Something has changed!

Several of the young men in the family went down to the grills at the soccer field in the middle of the night to make sure we would get the grills we wanted. They stayed and started setting up for our get-together. Sometime during the night a girl came and said her mother had *paid* to reserve the grills for their family's use. Sometime later a security guard came and said the same thing. The boys called me (waking me up). I was outraged and told them to stay put.

I went down to the area in question. There are signs that say the area is for your convenience and to please clean up. Nothing about reserving the field or paying for a permit. I now have heard that RIOC charges $25 per hour for their use. Since when and how dare they do this without posting notices or informing the community?

I again feel like the colonist fighting the unlawful King George. Bad enough we must pay to see the fireworks from the end of the Island, but now we are denied the American tradition of gathering and cooking food outdoors. Rob Ryan, you are as bad for this Island as I believed Jerry Blue was. The only difference is that you smile, he did not. You act as if you are going to do something good for this community, you have not. The Island looks terrible! Deterioration and weeds are everywhere. Nothing has changed. Now is the added insult of renting our grills to the highest bidder.

Unfortunately, city dwellers do not have the luxury of a backyard. I can remember as a child, my parents taking us early to the beach or cookout areas so that we could *get a good spot*, this is what city dwellers do. *This is what Roosevelt Islanders do.* The fact that today is the Fourth of July should not make a difference. This is what we did today. It is now 7:30 a.m. on the Fourth of July. I will finish this letter when I know the outcome of this unfortunate incident.

My son just called me (9:52 a.m.). He said that Security backed them up in this matter. A woman,my son did not know had a permit for the grills. She id $150 to use them today. How outrageous! Security backed up our right to have the grills and the area involved, they told the woman that permits are *not* given for the grills. The family that originated this event for us today thought ahead and took claim to a grill and area in Octagon Park. They graciously moved our party down to Octagon and called me to tell me this.

I went down to ask the woman if I could have a copy of the permit she was issued. Lo and behold, I know her and am furious that any resident would be charged $150 for the use of the grills. This lady was so upset she spoke of canceling her party. I hope she does not.

America, Liberty, Freedom – what beautiful words. It is too bad that RIOC and the Pataki administration have no concept of these words in regard to Roosevelt Island and its citizens.

What should be a beautiful day for all Americans has turned into a not so great day for some Roosevelt Island residents.

Rob Ryan, shame on you.

Joan T. Christianson

To the Editor:

Sadly, Nina Lublin in her May 27 letter and Dorothy Dusce in her June 10 letter describe accurately the poor products Gristede's provides to us.

Islanders who shop in Manhattan and Queens escape, but I, because I do not shop off-Island, have found the M&D Deli to be a welcome haven. They seem to have everything and the staff is pleasant and helpful. Jack, the manager who comes in after 11:30 a.m., is gracious and knowledgeable.

I was surprised to learn that many Manhattan Park residents, who live directly across from Gristede's, call M&D for deliveries.

Frances Salten

The WIRE

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Full Text of Justice Harold Tompkins Ruling in Resident Petitions Against RIOC's September 22 Resolution Approving Southtown

HAROLD TOMPKINS, JUSTICE:

Roosevelt Island Operating Corporation's determination that no supplemental environmental impact statement is required in connection with the proposed 19.3 acre development of the Southtown portion of Roosevelt Island is the matter before this Court. It arises in the context of a challenge by an association of certain Roosevelt Island residents, Alternative Southtown Design Committee (Alternative) to a September 22, 1999 resolution of the Board of Directors of the Roosevelt Island Operating Corporation (RIOC) [See footnote 1]. This petition contends that RIOC's determination violated the State Environmental Quality Review Act, Environmental Conservation Law section 8-0101 et seq. (SEQRA) as well as the General Development Plan (GDP) for Roosevelt Island. Alternative has also moved to compel additional specificity in RIOC's answer. Another group of Roosevelt Island residents, Roosevelt Islanders for Responsible Southtown Development (RIRSD) has sought to intervene in this matter for the purpose of challenging the purported violation of SEQRA and the GDP by RIOC.

The Court heard oral argument on these two applications on May 17, 2000, permitted additional papers to be submitted by May 24, 2000 and has reviewed all the extensive papers submitted. All the motions are consolidated for disposition and decided as noted below.

PROCEDURAL BACKGROUND

On December 23, 1969, the City of new York, which owns Roosevelt Island, entered into a ninety-nine (99) year lease with the New York State Urban Development Corporation for development of the Island as outlined in the GDP. The Urban Development Corporation carried out development of Northtown Phase I, the tramway and other projects. In 1984, the Roosevelt Island Operating Corporation Act, McKinney Unconsolidated Laws, sections 6385 et seq. established RIOC as a public benefit corporation and transferred the U.D.C.'s authority to it. RIOC developed Northtown Phase II.

It then turned to the development of Southtown. Extensive revision to the GDP were proposed to the Board of Estimate including reduction in the amount of office space from two hundred thousand (200,000) square feet to twenty thousand (20,000) square feet, elimination of the Town Center on Southtown, elimination of a shopping arcade, swimming pool, library, school and other changes. These were adopted by the Board of Estimate. A proposed reduction in the size of Blackwell Park was not adopted. The Board of Estimate reduced the maximum height permitted for the Southtown Towers to approximately twenty-seven (27) stories. RIOC also went through the SEQRA process and ultimately adopted a Final Environmental Impact Statement (FEIS) in May 1990 for the site plan also known as the Ramati Plan. Apparently due to poor economic conditions, no bidders responded to the Requests for Proposals and the project languished until 1996.

In 1996, a Request for Qualifications was issued by RIOC that lead to the selection of Related Companies and Hudson Companies as joint developers subject to approval of the final site plan. Related/Hudson proposed a modified plan with the same number of units (1,956), the same bulk, height and square footage. RIOC directed Related/Hudson to submit an environmental assessment to compare their plan with the 1990 Ramati Plan with respect to potential environmental impact. RIOC directed the same firm that prepared the 1990 FEIS be used to prepare the 1999 environmental assessment. In April 1999, the environmental assessment was issued concluding that potential environment impact was comparable or less than that of the 1990 Ramati Plan and that there would be no new or substantially greater significant adverse impacts. RIOC also sought review by counsel of the impact of this environmental assessment as to whether it would be necessary to prepare a supplemental environmental impact statement (SEIS). On September 22, 1999, the RIOC Board reviewed the 1999 environmental assessment, and adopted a resolution finding that the modifications would not change the Project nor had the conditions changed so as to create a significant environmental impact not previously addressed in the 1990 SEIS and that therefore no SEIS was required. The revised Southtown Plan was adopted and the President was authorized to negotiate with a formal sublease and plan. On January 20, 2000, Alternative commenced this petition to set aside the September 22, 1999 RIOC Board resolution. RIRSD filed its petition on January 24, 2000. Apparently conceding the lateness of its filing, RIRSD sought leave to intervene by motion on April 10, 2000, more than four (4) months after the RIOC Board's resolution.

An amended petition by Alternative was filed on February 4, 2000. RIOC answered the petition on March 24, 2000, stating in substance that it had acted properly. On April 4, 2000, Alternative moved for additional specificity in RIOC's answering papers. The parties agreed to adjourn the proceedings by written stipulation until May 17, 2000. On May 17, 2000, the Court heard oral argument on the applications.

There are several secondary issues that the Court will address prior to the dispositive matters. These are primarily of a technical nature. RIOC asserts that Alternative lacks standing to bring this proceeding. However, its chair has verified the petition and under New York's expansive reading of standing to bring a SEQRA challenge, see Matter of Mobil Oil Corp. v. Syracuse Industrial Development Agency, 76 NY2d 428, 433 (1990), Alternative has standing sufficient to raise this challenge.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK IAS PART 7

ALTERNATIVE SOUTHTOWN DESIGN COMMITTEE

Petitioner,

For a Judgment Pursuant to Article 78 of The Civil Practice

- against - Index No. 101128/00

ROOSEVELT ISLAND OPERATING CORPORATION,

Respondent.

ROOSEVELT ISLANDERS FOR RESPONSIBLE SOUTHTOWN DEVELOPMENT, by its President STEPHEN MARCUS, LEE EDELMAN, LINDA HEIMER, NURIT MARCUS, STEPHEN MARCUS, JOYCE MINCHEFF and MARGARET SMITH,

Petitioners,

- against - Index No. 101327/00

ROOSEVELT ISLAND OPERATING CORPORATION, CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE RELATED COMPANIES, L.P., and THE HUDSON COMPANIES INCORPORATED,

Respondents.

HAROLD TOMPKINS, JUSTICE:

Roosevelt Island Operating Corporation's determination that no supplemental environmental impact statement is required in connection with the proposed 19.3 acre

Cover page of Justice Harold Tompkins' decision in resident petitions against RIOC's September approval of Southtown, as faxed to *The WIRE* Wednesday morning. It is published here exactly as received, except for deletion of one procedural footnote..

The contention that RIOC's resolution lacked validity based upon a purported inadequate number of board members is conclusively rebutted by the affidavits of Kenneth Leitner, the Board's Secretary. These affidavits established that on September 22, 1999, there were six (6) members of the Board, a majority of whom approved the resolution. The Board has also established the D.E.P. reimbursement for repair of damage to the seawall will not be used for the development of Southtown. The Court also finds that joinder of Related Company and Hudson Companies was not necessary since they do not yet have a completed contract. However, the Court joins Related, Hudson, and the City of New York to the Alternative petition as additional parties since they have all submitted papers on the underlying issues. Alternative's motion for additional specificity in the answer is denied. RIOC's answer raised the relevant facts sufficiently for Alternative to submit a reply.

The final technical issue concerns the timeliness of RIRSD's intervention. It is undisputed that RIRSD failed to meet the four (4) month statute of limitations set forth in CPLR 217. The Court is cognizant of the significant community support for RIRSD as evinced by the petition annexed to its sur-reply papers. However, RIRSD filed its petition on January 24, 2000, and sought intervention on April 10, 2000, both beyond the statutory limit and without any legitimate explanation for the delay. The substantive objections as to the SEQRA and GDP issues have been raised by Alternative. The Court therefore must deny intervention by RIRSD and dismiss its petition as untimely, see Dreves v. New York Power Authority, 131 AD 2d 182 (3rd Dept. 1987).

SEQRA AND THE REQUIRED REVIEW

The purpose of SEQRA is to incorporate the consideration of environmental factors into the relevant decision making process, see Jackson v. New York State Urban Development Corp., 67 NY2d 400, 414-415 (1986); H.O.M.E.S. v New York State Urban Development Corporation, 69 AD2d 222, (4th Dept 1979). The mechanism through which this is done is the Environment Impact Statement (EIS). After initial preparation of a draft EIS, solicitation of commentary, public hearings culminates in issuance of a final EIS, see Jackson, supra. The procedures set forth in SEQRA are to enable the environmental impact to be weighed along with social, economic and other relevant factors, see WEOK Broadcasting v Planning Board of the Town of Lloyd, 79 NY2d 373 (1992). Part of the SEQRA procedures require not only identification and evaluation but also mitigation or amelioration of the adverse environmental effects, see Jackson, supra at 415; Williamsburg Around the Bridge Block Assn. v Giuliani, 223 AD2d 64, 70 (1st Dept. 1996). However, in reviewing the agency's determination, the Court's role is limited. The Court may not weigh the underlying merits or any lack of merit of the project, see Jackson, supra at 416; Akpan v Koch, 75 NY2d 561, 570 (1990). Rather, the Court's role is to ensure that the agency identified the relevant areas of environmental concern, took a "hard look" at them and presented a "reasoned elaboration" for its determination, see Akpan, supra at 570-571; Har Enterprises v. Town of Brookhaven, 74 NY2d 524 (1989).

The review to determine whether the agency took the required hard look and has presented a reasoned elaboration is governed by the traditional arbitrary and capricious standard applied to judicial review of agency action, see H.O.M.E.S., supra at 234; Har Enterprises, supra at 530.

In the context of this matter, the Court must review RIOC's September 22, 1999 resolution that a supplemental EIS was not required. The resolution determined that there were no significant new adverse environmental impacts not addressed in the 1990 FEIS. The 1999 environmental assessment examined the proposed project and compared it with the 1990 plan. The 1999 environment assessment considered and compared land use, population, housing, visual character, shadows, traffic, parking, urban design, air quality, noise, transit and pedestrian issues, municipal services, community resources, infrastructure, contaminated materials and coastal zone management. The analysis of the visual impact on Blackwell House, views of the Queensboro Bridge, the visual character of Roosevelt Island, scenic views of the East River, and in particular, the impact of shadows that would be caused by the new buildings and the height changes of the buildings are the subject of Alternatives challenge. The resolution of the RIOC Board is based upon its determination that, as elaborated in the 1999 environmental assessment, that the negative effects were contemplated by and addressed in the 1990 FEIS. It concluded the reduced impacts presented by the 1999 Related/Hudson Plan were within the scope of the 1990 Ramati Plan and were therefore already taken in account.

Petitioner's analysis of the environmental effects differs. It contends that the effects are more severe, that they have not been accorded sufficient weight and the review was cursory. Behind these procedural objections is the substantive disagreements with the merits of the project. This substantive disagreement in essence seeks to require a particular result, see Jackson, supra; Residents for a More Beautiful Port Washington, Inc. v Town of North Hempstead, 149 AD2d 266 (2nd Dept. 1989). Alternative contends that the impact of visual character and shadows have not been properly considered. The fact that RIOC came to a different conclusion does not mean that it did not properly evaluate these environmental impacts. The evidence submitted by RIOC, Related and Hudson indicate the visual impact issues raised by Alternative was considered in the 1999 environmental assessment and relied upon by RIOC in the September 22, 1999 resolution. It is true that greater consideration and more extensive analysis could have been done. There can always be additional analysis and review. At some point, in order to take action, an agency must decide the review performed is sufficient and must come to a decision. Similarly, the assertion that the delays in the project by themselves warrant a SEIS is without foundation since mere passage rarely warrants an order updating the information, Jackson, supra at 425; Lazard Realty v. New York State Urban Development Corp, 142 Misc 2d 463 (Sup Ct N.Y. Cty. 1989) Distilled to its essence, Alternative's argument is that RIOC could not have come to its determination if it had done sufficient analysis and review. This is a policy dispute camouflaged as a procedural challenge. Since RIOC has performed the requisite analysis required under SEQRA, the policy dispute is all that remains.

Based upon the appropriate standard of review, as noted above, in which the Court may not judge the wisdom of the plan, the Court cannot say that RIOC did not take a hard look at the relevant factors and produce a reasoned elaboration of the basis for the decision, see Har Enterprises, supra at 529. Since petitioner Alternative has not made such a showing, the challenge based upon SEQRA must be dismissed, Residents, supra; Main Seneca Corp v. Erie County Industrial Development Agency, 125 AD2d 930 (4th Dept. 1986).

Similarly, the Court must review the claim of violation of the GDP solely for whether Alternative has shown that the determination is arbitrary or capricious. No change as a result of the Related/Hudson plan is contemplated to Blackwell Park. Any encroachment already exists as a result of prior overbuilding. The determination that an open buffer area between Northtown and Southtown will exist, although not in the precise current manner, also cannot be set by the Court. The Court cannot find the determination to be either arbitrary or capricious.

The petition must therefore be dismissed in its entirety. [See footnote 2.]

This decision constitutes the order and judgment of the Court.

Dated: July 5, 2000
s/Harold Tompkins
J.S.C.

FOOTNOTES

1. There is an underlying issue of concern to the residents of Roosevelt Island concerning RIOC and their lack of participation in their own governance. Former members of the RIOC Board have prominent positions in Alternative and RIRSD. However, the enabling statute places the appointing authority of the Board with the Governor of New York State and the Mayor of New York City with advise and consent of the Senate, Unconsolidated Laws, section 6387. While residence on Roosevelt Island is required for at least three of the seven public members of the Board, there is a potential for concerns regarding self governance since the Board is an appointive body. However, since this is the structure set forth in the enabling statute, such concerns must be left for review to the political arena..

2. Since the same reasoning applies to the RIRSD petition, the Court would dismiss it on the same basis, if it had been timely filed.

Thank you!

The WIRE thanks readers who attended the Fourth of July River Music big band concert in Good Shepherd Plaza and contributed to it and to ***The WIRE***.