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August 26, 2004

BY FAX (212) 669-4305 and Regular Mail

Denise A. Outram, Esq.
General Counsel
The City of New York
Office of the President
Borough of Manhattan
Municipal Division
1 Centre Street
New York, NY 10007

Re: Manhattan Borough Board Meeting
August 24, 2004 (the "Meeting")

Dear Ms. Outram:

Thank you for your August 23, 2004 letter. However, it raises more questions than it answers, as I shall address ad seriatim:

1. The Manhattan Borough Board meets and regularly conducts business on a monthly basis, including the months of July and August, as required by Section 85 of the New York City Charter.

Response: Section 85 (b)(3) of the City Charter requires that the Board "meet at least once a month, but does not require that any matter be scheduled during the summer.

2. On July 28, 2004, a request in writing was received from Community Board Five Chair David Diamond, asking that the item involving the same of 2 Columbus Circle be scheduled for a vote by the Borough Board on August 19, 2004. As you are aware, CB5 passed its own resolution as far back as May of 2003 in full support of the 2 Columbus Circle disposition. Boards 4 and 7 have also supported this project.

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Response: Please send me a copy of Mr. Diamond's letter. I presume that you are not claiming that the Community Board Chair can set the agenda for the Borough Board.

According to the Borough President's website, the Chair of Community Board Five is Kyle Merker, not David Diamond.

Moreover, 2 Columbus Circle is at the northern boundary of what otherwise is considered to be the Midtown Community Board, extending south to 14th Street.

3. A request by your client, Landmark West that the 2 Columbus Circle item be considered at a later date, was previously made, and after due consideration, was denied, particularly in view of the fact that the question of landmarking is not within the jurisdiction of the Manhattan Borough Board.

Response: Landmark West! did not ask that the Borough Board landmark 2 Columbus Circle.

Rather, when the Mayor seeks to sell City property in a secret deal, without competitive bidding or public hearings, by transferring the property through the Economic Development Corporation, Section 384(b)(4) of the City Charter gives the Borough Board an absolute veto, which permits it to conduct a broad inquiry into the propriety of the transaction.

As stated by the Borough President on her website:

"Many decisions about what gets built when and where pass through my office. I review all major public and private land use proposal sin the borough – from new office towers to the size and location of daycare centers. I have the opportunity to recommend approval, rejection or change of such projects, and to guide my recommendations through the City Planning Commission and Council. I also work with Community Boards and other local residents in developing new plans and zoning proposals for their neighborhoods."

By rubber-stamping the secret deals made by Mayor Bloomberg and Deputy Mayor Doctoroff, the Borough President abdicated these important responsibilities.

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4. Notice of the August 24th meeting date was emailed to all Borough Board members and District Managers on Monday, August 9, 2004. A second reminder of the meeting date was sent on August 13, 2004.

Response: Nowhere in the City Charter provisions relating to the Borough Boards is there a provision for e-mail notice to members of the "meeting date". To the contrary, Section 85(b)(10) of the Charter requires that each borough board:

"Give notice of all its public meetings and hearings, and make such meetings and hearings available for broadcasting and cablecasting;"

Moreover, as I pointed out, but you have ignored, the Open Meetings Law, Section 104(1) of the Public Officers Law, states:

"Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting."

Since you state that notice was sent to the Borough Board members on August 9, 2004, obviously this provision governs.

You have failed to demonstrate compliance with either provision.

5. Public Notice was posted in the City Record on August 19, 20, 23 and 24th. On August 18, 2004, the Daily News ran a story entitled 'Lollipop Licked' which specifically mentioned that the Manhattan Borough Board would be meeting tomorrow on this very issue.

Response: Neither the City Record notice, nor the story in the Daily News satisfied the aforementioned legal requirements. Moreover, as you acknowledge the August 18, 2004 Daily news stated that the Borough Board would meet "tomorrow", i.e. August 19, 2004, not August 24, 2004.

6. As you are probably aware, the issue of 2 Columbus Circle is not a new one, but has been discussed over two Mayoral administrations and three Landmark Commission Chairs. The issue has been heard and debated throughout the community on numerous occasions, as well as at the New York City Council.

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Response: There has never been a public hearing at the Landmark Preservation Commission or any formal consideration of landmarking this building.

7. Section 85(1) of the New York City Charter requires that each borough board shall: "give notice of all it public meetings and hearings. ...".

Response: Disingenuously, you have failed to reproduce the entire provision (see Response 4, above). Shame on you.

If there ever is to be confidence in City government, secret deals, like this, must cease.

As stated by the Legislature in Section 100 of the Public Officers Law:

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it.

Finally, your letter reminds me most of the oft-quoted line from Shakespear's Hamlet: "the lady doth protest to much, me thinks."

It is too bad that you would rather expend your efforts to cover up private deals than to comply with your legal and ethical obligations.

Very truly yours,



David Rosenberg

DR:lju

cc: Landmark West!