

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

In The Matter of the Application of
LANDMARK WEST!, et al.,

Petitioners,

For a Judgment pursuant to Article 78 of the Civil Practice
Law and Rules

- against -

AMANDA M. BURDEN, Chair of the New York City
Planning Commission, et al.,

Respondents.

**AFFIDAVIT OF
NEAL SMITH**

Assigned to: Hon.
Walter B. Tolub

Index No. 03/119036

IAS Part 15

STATE OF NEW YORK)
) : SS:
COUNTY OF NEW YORK)

NEAL SMITH being duly sworn, deposes and says:

1. I am currently employed as a Vice President, Real Estate Development at the New York City Economic Development Corporation ("EDC"), a not-for-profit public benefit corporation established to encourage the economic growth of the City of New York ("City") and to benefit the public interest. I have worked at EDC since 1996 in Real Estate Development, initially as a Project Manager, then as a Senior Project Manager and since 2001 as a Vice President. I make this affidavit based upon my personal knowledge, the books and records of EDC, conversations with current and former staff of EDC, City agencies and others.

2. My general responsibilities as a Vice President, Real Estate Development at EDC include analyzing City-owned properties for disposition and economic development potential, evaluating proposals for development and/or redevelopment of City-owned properties, designating entities for developing particular sites, negotiating terms for contracts of sale and/or

long-term leases for development and/or redevelopment, presenting proposed development and/or redevelopment projects for review and support by local community and borough boards, and coordinating approvals of development projects by various City agencies and others.

3. I have worked on the proposed redevelopment of the 2 Columbus Circle site since 1999, following EDC's issuance of a Request for Proposals ("RFP") and evaluation of responding proposals. I have participated in EDC's designation of the Museum of Arts and Design ("Museum") to purchase and renovate the existing building at 2 Columbus Circle for use as a cultural institution, negotiation of terms regarding the proposed sale of the site, coordination of various City agencies to advance the proposed land sale to the Museum through the City's Uniform Land Use Review Procedure ("ULURP"), and presentation of the proposed Museum project at 2 Columbus Circle to Community Board 5 on two occasions.

4. I have been informed that individuals and groups opposed to the disposition of the building to the Museum have commenced an Article 78 proceeding. I submit this affidavit in support of the City Respondents' verified answer to the petition.

A. City Ownership of the Building at 2 Columbus Circle

5. Upon information and belief, in 1980 Gulf & Western Industries, Inc. ("G & W") donated fee title to the building at 2 Columbus Circle to the City of New York, though it preserved a reverter interest conditioned on the building being used for visitors' services and cultural affairs. Upon information and belief, in 1994, both the New York City Department of Cultural Affairs and the New York City Convention and Visitors Bureau moved their headquarters to 2 Columbus Circle. Upon information and belief, in 1996 EDC acquired the reverter interest from Viacom (successor by name change to Paramount Communications Foundation, successor by name change to G & W). The City's Department of Cultural Affairs

remained at the site until 1998. Since then, the building has sat vacant, even as the rest of Columbus Circle has undergone significant redevelopment.

B. The 2 Columbus Circle Project

6. In March 2000, EDC issued a Request for Proposals (“RFP”) for the sale and redevelopment of the building at 2 Columbus Circle. The RFP is annexed to this affidavit as Exhibit A.¹ The RFP stated that acceptable proposals could either reuse the existing building or include construction of a new building, subject to certain design guidelines, the Zoning Resolution of the City of New York and any other regulations affecting the site. The RFP also stated that the project had to be compatible with the community while maximizing economic benefits to the city, and it should relate to elements and features of the surrounding area in order to help “unify” Columbus Circle.

7. On June 14, 2002, EDC conditionally designated a proposal submitted by the Museum (hereafter, the “Project”). The Project will allow the Museum to move from its current location at 40 West 53rd Street, where there is only enough room to host temporary exhibitions, and expand its offerings to the public. The building at 2 Columbus Circle will enable the Museum to, among other things, display its permanent collection, open an accessory restaurant, and develop a Center for the Study of Contemporary Craft. Final designs for the building are now being completed.

C. The City’s Environmental Review of the 2 Columbus Circle Project

8. With regard to the sale of 2 Columbus Circle to the Museum, the property will be sold to EDC, who will then sell the property to the Museum. Under New York City

¹ Each of the exhibits referred to here are found in the accompanying “Volume of Exhibits.”

Charter Section 197(c)(10), the City must complete the ULURP process prior to the disposition of a City-owned parcel of land. Environmental review under the City Environmental Quality Review ("CEQR") is a part of the ULURP application process.

D. ULURP

9. I attended several public meetings and public hearings during the ULURP review process, where the general public, including petitioners and others, were encouraged to speak out for or against the Project. Contrary to petitioners' claims, there has been ample opportunity for a public dialogue on the 2 Columbus Circle project.

10. For instance, Community Board 5 held a meeting of its Land Use and Zoning Committee on April 3, 2003. At that meeting, the architect Brad Cloepfil and other representatives of the Museum, among others, presented the Museum's plans and renderings for comment. Members of the Committee questioned the architect and Museum representatives in a dialogue about the 2 Columbus Circle project and the Museum's design. At the conclusion of the meeting, the Committee voted to recommend that Community Board 5 pass a resolution recommending approval of the Project.

11. Community Board 5 then held a public hearing on May 8, 2003. At that meeting, 19 people, including some petitioners and other representatives of petitioner organizations, spoke out against the Project. Two people spoke in favor of the project. At the conclusion of the hearing Community Board 5 adopted a resolution recommending approval of the disposition of 2 Columbus Circle by the City to the Museum. See Manhattan Community Board 5 Letter dated May 9, 2003, included as part of Exhibit F.

12. I also attended a meeting on the ULURP application held by respondent New York City Planning Commission ("CPC") on June 18, 2003. At the hearing, there were seven speakers in favor of the Project, and 24 in opposition. Again, individual petitioners and

representatives of petitioner associations raised their concerns about the Project, including its proposed changes to a building they consider to be architecturally significant. See CPC Decision pp. 3-5, included as part of Exhibit F. On July 2, 2003 CPC issued and adopted a resolution pursuant to Section 197-c of the New York City Charter approving the disposition. See CPC Decision p. 6, Exhibit F

E. Final Disposition of 2 Columbus Circle

13. In addition to ULURP approval, pursuant to § 384(b) of the New York City Charter the disposition of the building by the City to the Museum requires the approval of the Manhattan Borough Board. A public hearing must be held before the Borough Board can vote on whether or not to approve disposition of 2 Columbus Circle. We expect to present the 2 Columbus Circle Project to the Manhattan Borough Board in March 2004.

14. In addition, the disposition requires the approval of the EDC Board of Directors. We expect to present the 2 Columbus Circle Project to the EDC Board in May 2004.

15. It is anticipated that the Museum would open in fall of 2006.

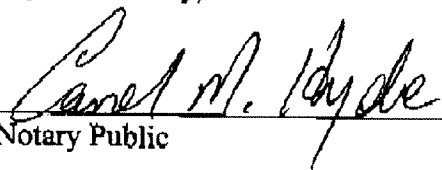
F. The Project's Benefits

16. In EDC's view, the City's sale of 2 Columbus Circle to the Museum for redevelopment, thereby doubling its current exhibition and educational space, will promote the expansion of a significant, valuable cultural institution, and increase revenues from local hotels, restaurants and business establishments, all of which enrich the City's tax base.

Dated: New York, New York
February 3, 2004


NEAL SMITH

Sworn to before me this 3rd
day of February, 2004.


Notary Public

CAROL M. HYDE
Notary Public, State of New York
No. 4977270
Qualified in Queens County
Commission Expires Jan. 28, 2007