



NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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*For Immediate Release*

## FEDERAL APPEALS COURT UPHOLDS ATLANTIC YARDS PROJECT

**DEVELOPMENT PLAN WILL REVITALIZE DOWNTOWN BROOKLYN  
AND CREATE JOBS, RETAIL SPACE, AFFORDABLE HOUSING,  
IMPROVED MASS TRANSIT, OPEN PUBLIC SPACES AND AN ARENA FOR THE NETS**

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New York, Feb. 1, 2008 – The Second Circuit Court of Appeals today affirmed the dismissal of a lawsuit challenging the Atlantic Yards Arena and Redevelopment Project as involving an unconstitutional exercise of “*eminent domain*” powers (the taking of private property for a public use).

The lawsuit, brought by property owners in the Atlantic Yards Project area (and brought against New York City and various City officials; the New York State Empire State Development Corp.; Forest City Ratner Corp., the Project developer; and former Governor George Pataki), asserted that the proposed use of eminent domain violated the Fifth Amendment of the U.S. Constitution, because the Atlantic Yards Project would not serve a public use.

Corporation Counsel Michael A. Cardozo of the New York City Law Department noted, “We are pleased with the Second Circuit’s decision, which affirmed the dismissal of a lawsuit challenging the Atlantic Yards Arena and Redevelopment Project. The Court accurately held that the ‘power of eminent domain is a fundamental and necessary attribute of sovereignty.’ Preserving the power of eminent domain is essential to ensuring the continued revitalization and growth of the neighborhoods in our great City. The City looks forward to the development of new housing, retail, open space, as well as extensive improvements to downtown Brooklyn’s mass transit facilities.”

Although the Fifth Amendment allows governments to take private property for a public use, the plaintiffs asserted that any public benefit from the Atlantic Yards Project was a “mere pretext” and that the true purpose of the project was to benefit a private developer. The lawsuit also challenged the project as violating their constitutional rights to equal protection and procedural due process.

In a far-reaching opinion on governmental powers of eminent domain authored by Judge Robert A. Katzmann, the Court started by noting that although not without limits, “power of eminent domain is a fundamental and necessary attribute of sovereignty.” The Court confirmed that the decision to exercise eminent domain is for the Legislature, and that courts should defer to legislative determinations as to whether a public need justifies the use of eminent domain, reviewing only whether the use of eminent domain is rationally related to a public benefit.

After reviewing the plaintiffs’ complaint, the Court concluded that the project unquestionably rationally served several acknowledged public uses, including redressing blighted conditions, creating affordable housing, constructing a publicly owned sports arena, creating public open space, and improving mass transit. In light of this, the Court explicitly rejected the plaintiffs’ claim that the public purposes were a mere pretext to confer a

benefit on the developer, saying that it "defies both logic and experience." Finally, the Court upheld the trial court's dismissal of plaintiffs' due process and equal protection claims.

As designed, the Atlantic Yards project will cover 22 acres in downtown Brooklyn over and around the Metropolitan Transit Authority's (MTA's) Vanderbilt Yards and will include a sports arena that will be home to the New Jersey Nets basketball team, thousands of new housing units, new retail and office space, eight acres of publicly accessible open space, and extensive improvements to neighborhood mass transit facilities. Much of the project area lies within the Atlantic Terminal Urban Renewal Area, an area New York City first designated for urban renewal in 1968.

The Law Department's lead attorneys included Jane Gordon and Edward F.X. Hart of the Appeals Division; Susan Amron of the Environmental Law Division; and Lisa Bova-Hiatt of the Tax & Bankruptcy Litigation Division

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