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No. 125  
In the Matter of Parminder Kaur,  
et al.,

Respondents,

v.

New York State Urban Development  
Corporation, &c.,  
Appellant.

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In the Matter of Tuck-It-Away,  
Inc., et al.,

Respondents,

v.

New York State Urban Development  
Corporation, &c.,  
Appellant.

John R. Casolaro, for appellant.

Norman H. Siegel, for respondents Tuck-It-Away, Inc. et  
al.

Institute for Justice; Columbia University; East Harlem  
Alliance of Responsible Merchants; City of New York; Bill  
Perkins; Ben Totushek, amici curiae.

CIPARICK, J.:

In this appeal, we are called upon to determine whether  
respondent's exercise of its power of eminent domain to acquire  
petitioners' property for the development of a new Columbia  
University campus was supported by a sufficient public use,  
benefit or purpose (see New York Const art I, § 7 [a]; Eminent

Domain Procedure Law 207 [C] [4]). We answer this question in the affirmative and conclude, pursuant to our recent holding in Matter of Goldstein v New York State Urban Dev. Corp. (13 NY3d 511 [2009]), that the Empire State Development Corporation's ("ESDC") findings of blight and determination that the condemnation of petitioners' property qualified as a "land use improvement project" were rationally based and entitled to deference. We also conclude that the alternative finding of "civic purpose," likewise, had a rational basis.

I.

Petitioners in this proceeding are the owners of different commercial establishments located in the West Harlem neighborhood of Manhattan. Petitioners Parminder Kaur and Amanjit Kaur own a gasoline service station located on West 125th Street. Petitioners Tuck-It-Away, Inc., Tuck-It-Away Bridgeport, Inc., Tuck-It-Away at 133rd Street, Inc., and Tuck-It-Away Associates, L.P. (collectively "TIA") own storage facilities located on Broadway and on West 131st and West 125th Streets. Petitioner P.G. Singh Enterprises, LLP also owns a gasoline service station located on West 125th Street.

On December 8, 2008, respondent ESDC issued a determination pursuant to EDPL 204, concluding that it should use its power of condemnation to purchase 17 acres of privately owned property, including petitioners', in connection with the Columbia University Educational Mixed Use Development Land Use Improvement

and Civic Project (the "Project"). Located in the Manhattanville section of West Harlem, the Project site will extend from the south side of West 125th Street to the north side of West 133rd Street and will be bounded by Broadway and Old Broadway on the east and 12th Avenue on the west. The majority of the buildings located within the proposed Project site are commercial and it is undisputed that petitioners' property is among the property that ESDC is seeking to acquire.<sup>1</sup>

The Project contemplates the construction of a new urban campus that would consist of 16 new state-of-the-art buildings, the adaptive reuse of an existing building and a multi-level below-grade support space. Approximating 6.8 million gross square feet in size, the Project provides for the creation of about two acres of publicly accessible open space, a retail market along 12th Avenue and widened, tree-lined sidewalks. The new buildings will house, among other things, teaching facilities, academic research centers, graduate student and faculty housing as well as an area devoted to services for the local community. Columbia University, a not-for-profit educational corporation, will exclusively underwrite the cost of this Project and not seek financial assistance from the

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<sup>1</sup> There are seven residential buildings located within the Project site. According to ESDC, it "will not exercise its eminent domain power to acquire these seven buildings at any time while they remain occupied by residential occupants."

government.<sup>2</sup>

The origins of the Project trace back to 2001 when Columbia first approached the New York City Economic Development Corporation ("EDC") to redevelop the West Harlem area. Following Columbia's interest in revitalizing the neighborhood and expanding its campus, EDC commenced a general economic study of the neighborhood. It issued its report, the West Harlem Master Plan (the "Plan"), in August 2002, which outlined a series of strategies for the economic development of the region that would encompass three stages.<sup>3</sup> To effectuate these stated goals, the Plan envisioned changes in zoning that would foster job growth, shopping opportunities and the general enlivening of street life. Significantly, the Plan recognized that "[n]eighboring institutions such as Columbia's Morningside Heights campus, the main campus of City College, and the Columbia Presbyterian Medical Center can be key catalysts in the economic development of West Harlem. Not only can these institutions provide the day-to-day presence that will enliven the area as a regional attraction, they can also act as partners in job creation."

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<sup>2</sup> In 2007, Columbia estimated the cost of the Project at \$6.28 billion.

<sup>3</sup> The Plan's proposal provided for the development of West Harlem's waterfront (stage 1), improvements to both the streetscape and the public transportation system including increased access to the neighborhood (stage 2) and neighborhood economic development with the articulated goal of creating new jobs (stage 3).

In 2003, EDC hired Urbitran Associates ("Urbitran"), an engineering, architecture and planning firm, to conduct a separate study, examining the neighborhood conditions of West Harlem. Urbitran documented and photographed the area of the Project site as well as the surrounding area and focused its analysis on four major criteria: (1) signs of deterioration, (2) substandard or unsanitary conditions, (3) adequacy of infrastructure and (4) indications of the impairment of sound growth in the surrounding community. The study, issued by EDC in August 2004, determined that the conditions in the study area merited a designation of blight. Specifically, the study revealed that several of the buildings throughout West Harlem were dilapidated.<sup>4</sup> Urbitran also concluded that numerous buildings evidenced poor exterior conditions and structural degradation. According to this study, two of the blocks with the highest number of deficient buildings and lots are within the Project site.

Meanwhile, as Urbitran performed its neighborhood conditions study of West Harlem, Columbia began to purchase property located within the Project site.<sup>5</sup> ESDC met with

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<sup>4</sup> Dilapidated was defined by Urbitran as "significant evidence of aesthetic degradation (usually a combination of broken windows, peeling paint, and façade damage, among other things)."

<sup>5</sup> By October 2003, Columbia owned 51% of the properties in the Project area.

Columbia and EDC for the first time in March 2004 to discuss the proposed condemnation of petitioners' land. As the talks between ESDC, EDC and Columbia ensued, Columbia hired the environmental planning and consulting firm Allee King Rosen & Fleming ("AKRF") to assist Columbia in seeking the necessary agency approval for the Project as well as to prepare the required environmental impact statement ("EIS"). On July 30, 2004, ESDC and Columbia entered into an agreement, which provided that Columbia would pay ESDC's costs associated with the Project.

In September 2006, notwithstanding the results of the Urbitran study, ESDC retained AKRF to perform a neighborhood conditions report of the Project site on its behalf. ESDC chose AKRF, in part, because it was already familiar with the Project site. Moreover, ESDC had worked with AKRF before on other studies in connection with other condemnation proceedings.<sup>6</sup> In turn, AKRF hired Thornton Tomasetti, an engineering firm, to inspect and evaluate the physical conditions of the structures within the Project site.

AKRF photographed and conducted detailed inspections of each of the individual lots in the Project site. It documented structural conditions, vacancy rates, site utilization, property ownership, and crime data. For each building on the Project

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<sup>6</sup> Most recently, in determining that the area in downtown Brooklyn, known as the Atlantic Yards, was blighted, ESDC relied upon an AKRF neighborhood conditions study (see Matter of Goldstein, 13 NY3d at 518).

site, it also documented the physical and structural conditions, health and safety concerns, building code violations, underutilization, and environmental hazards. AKRF said it selected these factors "because they are generally accepted indicators of disinvestment in a neighborhood. The widespread presence of one or more of these factors can also demonstrate the need for revitalization and redevelopment of an area." Based on these factors, on November 1, 2007, AKRF issued its Manhattanville Neighborhood Conditions Study. This study concluded that the Project site was "substantially unsafe, unsanitary, substandard, and deteriorated" or, in short, blighted.

As ESDC prepared to issue its "blight study" of the Project site, Columbia moved towards obtaining the necessary agency approval to realize its expansion plan. Indeed, the public process for this Project was extensive and formally began when the New York City Planning Commission ("CPC") first considered whether to authorize the rezoning of about 35 acres of West Harlem, including the 17 acre Project site. The rezoning of this area, recommended in EDC's West Harlem Master Plan, triggered a thorough review according to New York City's Urban Land Use Review Procedure ("ULURP").

Consequently, on November 16, 2007, CPC, pursuant to the New York State Environmental Quality Review Act ("SEQRA") and the City Environmental Quality Review Act ("CEQRA") issued a

notice of completion for the Project's final EIS ("FEIS"). The FEIS evaluated nine different plans for the Project site. Since none of the other plans provided for publicly accessible open spaces and community facilities, CPC determined that the proposed alternatives were less beneficial to the public than the rezoning based on Columbia's proposal.

Ten days after it issued the notice of completion, CPC released its findings on the FEIS. In its findings, CPC noted that Columbia "is of significant importance to the City and State as a center of educational excellence and a source of economic growth, and the Academic Mixed Use Development Plan is intended to fulfill these public purposes." Thus, CPC approved the rezoning that would allow Columbia to construct "a new urban campus" that will be "integrated with the urban grid, with all streets remaining open to the public . . . and a new open space network open to University-affiliated personnel and the general public alike." CPC further recognized that the proposed Project may require the use of eminent domain, which, if necessary, "would serve a public purpose insofar as it would allow for realization of the public benefits of the Columbia proposal." Following CPC's approval of the rezoning in West Harlem, the City Council held a public hearing on this matter and on December 19, 2007, it approved the 35 acre rezoning of West Harlem.

Meanwhile, certain business groups located within the Project site, including petitioner TIA, requested documents

related to the Project on several occasions pursuant to the Freedom of Information Law ("FOIL"). In response, ESDC turned over about 8,000 pages of documents to petitioners. Petitioner TIA and the other business groups, however, believing that they were entitled to other documents not disclosed by ESDC, filed separate CPLR article 78 petitions.

Supreme Court, after an extensive in camera review of the documents in dispute, granted the applications of petitioner TIA and the other business groups and ordered, in relevant part, the release of certain documents in ESDC's possession, including documents related to its July 2004 agreement with Columbia as well as its correspondence with AKRF. ESDC appealed the order of Supreme Court to the Appellate Division. On July 15, 2008, the Appellate Division affirmed the portion of Supreme Court's order requiring the disclosure of documents related to ESDC's agreement with Columbia as well as its communication with AKRF (see Matter of Tuck-It-Away Assoc., L.P. v Empire State Dev. Corp., 54 AD3d 154, 162 [1st Dept 2008]). In its ruling, the court called into question AKRF's "tangled relationships" with both ESDC and Columbia (Matter of Tuck-It-Away Assoc., L.P., 54 AD3d at 166). Following the order of the Appellate Division, ESDC disclosed its correspondence with AKRF, but otherwise appealed the order of the Appellate Division to this Court.

It is important to note that the appeal brought before us late last year concerned the disclosure of just five documents

(see Matter of West Harlem Business Group v Empire State Dev. Corp., 13 NY3d 882, 884 [2009]). ESDC argued to us and the courts below that the July 2004 paperwork related to its agreement with Columbia was exempt from disclosure under Public Officers Law § 87 (2) (c) because disclosure "would impair present or imminent contract awards or collective bargaining negotiations." We concluded, however, that ESDC failed to meet its burden under FOIL of establishing that those documents were exempt from disclosure because it did not articulate a particularized reason for denying disclosure. Accordingly, we affirmed the order of the Appellate Division.

Because the courts below raised concerns about the propriety of ESDC's choice to hire AKRF to conduct a neighborhood conditions study of West Harlem, ESDC retained a second engineering and environmental consultant, Earth Tech, to separately assess the conditions of the Project site and issue an independent report. Earth Tech, which had no prior affiliation with Columbia, was specifically instructed not to provide any services to Columbia while it worked for ESDC.

Charged with the task of performing yet another "blight study" of the area, Earth Tech engineers independently photographed, inspected and assessed each of the lots on the Project site. In May 2008, Earth Tech issued its Manhattanville Neighborhood Conditions Study. In the study, Earth Tech noted certain variables including current land uses, structural

conditions, health and safety issues, utilization rates, environmental contamination, building code violations and crime statistics. Earth Tech determined that since 1961, there was a dearth of new construction in the area, finding a "long-standing lack of investor interest in the neighborhood." Earth Tech also enumerated the extensive building code violations in the area and the chronic problems that the buildings had with water infiltration.

Earth Tech also found that many of the buildings in the Project site had deteriorated façades and that several of the buildings had been sealed by the New York City Fire Department because of unsafe conditions. It also discovered widespread vermin on the streets and graffiti on the walls of the buildings and other structures. With respect to the four parcels owned by petitioner TIA, Earth Tech determined that these parcels, taken together, had more than three times the average number of building violations as the parcels acquired by Columbia over the previous several years.<sup>7</sup> In sum, Earth Tech concluded that the neighborhood conditions created "a blighted and discouraging impact on the surrounding community."

With the "blight studies" of both AKRF and Earth Tech in hand and with the knowledge that the City Council had approved

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<sup>7</sup> In one example, Earth Tech found that petitioner TIA unlawfully used its building located at 3300 Broadway as a parking garage in violation of zoning laws and its certificate of occupancy. As a result, in 2008, the building had to be evacuated in order to avoid imminent collapse.

the Project site for rezoning, on July 17, 2008, ESDC adopted a General Project Plan ("GPP") that would enable Columbia to move forward with its plan to build an urban campus in West Harlem. Pursuant to EDPL 201 and 202, ESDC solicited public comment on the GPP, holding a duly noticed hearing on September 2 and 4, 2008. This hearing, which lasted over 13 hours, was attended by 98 members of the community, including petitioners and their counsel. The purpose of the hearing was to provide those interested with the opportunity to comment on the GPP and the public purpose of the Project. At the hearing, ESDC distributed copies of its adopted GPP as well as copies of the FEIS, and the AKRF and Earth Tech neighborhood conditions reports. These documents, made available to the public by ESDC in July 2008, along with the record of the two-day hearing, remained open for public inspection until October 30, 2008, the close of the comment period.

Petitioners, with access to all 8,000 or so documents that comprised the administrative record in this case (and turned over pursuant to FOIL requests), responded to the GPP adopted by ESDC. Indeed, petitioners submitted two legal memoranda and thousands of pages of materials in opposition to the Project during the comment period. ESDC, in turn, prepared a comprehensive 75-page document entitled "Response to Comments," which thoroughly addressed the concerns raised by petitioners and others.

Taking into consideration the questions raised by the petitioners during the hearing and their substantial written submissions that followed, on December 18, 2008, ESDC adopted a modified GPP and authorized the issuance of its findings and determination. ESDC sponsored the Project both as a "land use improvement project" pursuant to the New York State Urban Development Corporation Act ("UDC Act") (McKinney's Uncons Laws of NY § 6253 [6] [c]) and as a "civic project" pursuant to a different subdivision of the same Act (Uncons Laws § 6253 [6] [d]).

In so sponsoring this Project, ESDC specified the public uses, benefits and purposes of the Project pursuant to its obligations under EDPL 204 (B) (1). It found, for example, that the Project would address the city and statewide "need for educational, community, recreational, cultural and other civic facilities" and would enable New York City and the State to maintain their positions as "global center[s] for higher education and academic research." ESDC further determined that Manhattanville "suffer[ed] from long-term poor maintenance, lack of development and disinvestment" and the Project would help curb the "current bleak conditions [that] are and have been inhibiting growth and preventing the site's integration into the surrounding community."

In eliminating the blighted conditions plaguing the area of the Project site, ESDC noted that the Project would

create 14,000 jobs during the construction of the new campus as well as 6,000 permanent jobs following the Project's completion. ESDC found that the Project would generate substantial revenue, estimating that "tax revenue derived from construction expenditures and total personal income during this period" at \$122 million for the State and \$87 million for New York City.

Moreover, ESDC indicated that another purpose of the Project was the creation of much needed public space. Specifically, it found that the Project site would create "approximately 94,000 square feet of accessible open space and maintained as such in perpetuity that will be punctuated by trees, open vistas, paths, landscaping and street furniture and an additional well-lit 28,000 square feet of space of widened sidewalks that will invite east-west pedestrian traffic."

In addition to the open space created, ESDC highlighted that the Project made provision for infrastructure improvements -- most notably to the 125th Street subway station -- as well as substantial financial commitment by Columbia to the maintenance of West Harlem Piers Park. ESDC further acknowledged that Columbia would open its facilities -- including its libraries and computer centers -- to students attending a new public school that Columbia is supplying the land to rent-free for 49 years. Columbia would also open its new swimming facilities to the public.

Nonetheless, on February 20, 2009, petitioners

challenged ESDC's findings and determination in the Appellate Division pursuant to EDPL 207. A plurality of that court concluded that "ESDC's determination that the project has a public use, benefit or purpose is wholly unsupported by record and precedent" (72 AD3d 1, 9 [1st Dept 2009]). One Justice, concurring in the result, opined that petitioners' "procedural due process and statutory rights were violated by ESDC's refusal to keep the record open until the conclusion of the FOIL litigation initiated by [petitioner] Tuck-It-Away" (id. at 28).

Two Justices of the court dissented. They concluded that "ESDC's finding that the project will serve a public purpose by providing, among other things, needed educational facilities in the area in which it is to be located is neither irrational nor baseless" and was entitled to deference (id. at 33). The dissenting Justices also rejected the argument that petitioners were denied procedural due process (id. at 35).

Respondent appealed as of right, pursuant to CPLR 5601 (a) and (b), and we now reverse.

II.

Petitioners' main argument on this appeal is that the Project approved by ESDC is unconstitutional because the condemnation is not for the purpose of putting properties to "public use" within the meaning of article I, § 7 (a) of the NY Constitution, which, provides that "[p]rivate property shall not be taken for public use without just compensation." First,

petitioners vociferously contend that ESDC's blight findings were made in bad faith and the Project only serves the private interests of Columbia. ESDC counters that the duly approved Project qualifies as a "land use improvement project" within the meaning of the UDC Act and that the Appellate Division plurality erred as a matter of law when it conducted a de novo review of the administrative record and concluded that the Project site was not blighted. We agree with ESDC.

"[I]t is indisputable that the removal of urban blight is a proper, and, indeed, constitutionally sanctioned, predicate for the exercise of the power of eminent domain. It has been deemed a 'public use' within the meaning of the State's taking clause at least since Matter of New York City Housing Authority v Muller (270 NY 333 [1936]) and is expressly recognized by the Constitution as a ground for condemnation" (Matter of Goldstein, 13 NY3d at 524).<sup>8</sup>

In Matter of Goldstein, we reaffirmed the longstanding doctrine that the role of the Judiciary is limited in reviewing findings of blight in eminent domain proceedings (see id. at 526). Because the determinations of blight and public purpose are the province of the Legislature, and are entitled to deference by the Judiciary, we stated that:

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<sup>8</sup> Article XVIII, § 1 of the NY Constitution authorizes the Legislature to "provide in such manner, by such means and upon such terms and conditions at it may prescribe . . . for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas."

"Whether a matter should be the subject of a public undertaking -- whether its pursuit will serve a public purpose or use -- is ordinarily the province of the Legislature, not the Judiciary, and the actual specification of the uses identified by the Legislature as public has been largely left to quasi-legislative administrative agencies. It is only where there is no room for reasonable difference of opinion as to whether an area is blighted, that judges may substitute their views as to the adequacy with which the public purpose of blight removal has been made out for that of the legislatively designated agencies"

(id. [emphasis added]). Indeed, we observed that "[t]he Constitution accords government broad power to take and clear substandard and insanitary areas for redevelopment. In so doing, it commensurately deprives the Judiciary of grounds to interfere with the exercise" (id. at 527). These principles are based on a consistent body of law that goes back over 50 years (see e.g., Yonkers Community Dev. Agency v Morris, 37 NY2d 478, 484 [1975] ["extensive authority to make the initial determination that an area qualifies for renewal as 'blighted' has been vested in the agencies and municipalities; courts may review their findings only on a limited basis"]; see also Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400, 425 [1986]; Kaskel v Impellitteri, 306 NY 73, 78 [1953], cert denied 347 US 934 [1954]). Thus, a court may only substitute its own judgment for that of the legislative body authorizing the project when such judgment is irrational or baseless (see Matter of Goldstein, 13 NY3d at 527).

Applying this standard of review, as we must, we now look to the relevant statute. The UDC Act provides that, in the case of land use improvement projects, ESDC must find:

"(1) That the area in which the project is to be located is a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area and tends to impair or arrest the sound growth and development of the municipality;

(2) That the project consists of a plan or undertaking for the clearance, replanning, reconstruction and rehabilitation of such area and for recreational and other facilities incidental or appurtenant thereto;

(3) That the plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole"

(Uncons Laws § 6260 [c]). The term "substandard or insanitary area" is defined as "a slum, blighted, deteriorated or deteriorating area, or an area which has a blighting influence on the surrounding area" (Uncons Laws § 6253 [12]). Here, the two reports prepared by ESDC consultants -- consisting of a voluminous compilation of documents and photographs of property conditions -- arrive at the conclusion that the area of the Project site is blighted. Just as in Matter of Goldstein, "all that is at issue is a reasonable difference of opinion as to whether the area in question is in fact substandard and insanitary," which is "not a sufficient predicate . . . to supplant [ESDC's] determination" (13 NY3d at 528).

Thus, given our precedent, the de novo review of the

record undertaken by the plurality of the Appellate Division was improper. On the "record upon which the ESDC determination was based and by which we are bound" (id. at 517, citing Matter of Levine v New York State Liq. Auth., 23 NY2d 863, 864 [1969]), it cannot be said that ESDC's finding of blight was irrational or baseless. Indeed, ESDC considered a wide range of factors including the physical, economic, engineering and environmental conditions at the Project site. Its decision was not based on any one of these factors, but on the Project site conditions as a whole. Accordingly, since there is record support -- "extensively documented photographically and otherwise on a lot-by-lot basis" (id. at 526) -- for ESDC's determination that the Project site was blighted, the Appellate Division plurality erred when it substituted its view for that of the legislatively designated agency.

III.

Despite the objective data utilized by ESDC in its finding of blight, petitioners conclusorily assert that ESDC acted in "bad faith" and with pretext when it arrived at its determination (see generally Matter of Jackson, 67 NY2d at 425; Kaskel, 306 at 79). Petitioners and the plurality at the Appellate Division particularly take umbrage at ESDC's decision to hire AKRF to conduct a neighborhood conditions study because Columbia had previously engaged AKRF to prepare its EIS. Here, the record does not support petitioners' contention that the

study conducted by AKRF was compromised simply because it separately prepared an EIS on behalf of Columbia.

Moreover, ESDC -- as a measure of caution and in response to criticism of its choice to retain AKRF -- hired a second consulting firm, Earth Tech, to conduct review of the Project site. This company arrived at conclusions similar to AKRF's. Contrary to petitioners' assertions, Earth Tech did not merely review and rubber stamp AKRF's study, but conducted its own independent research and gathered separate data and photographs of the area before arriving at its own conclusions. Further, unlike AKRF, Earth Tech had never previously been affiliated with or employed by Columbia. Simply put, petitioners' argument that ESDC acted in "bad faith" or pretextually is unsubstantiated by the record.

#### IV.

In addition to attacking the neighborhood blight studies and ESDC's determination based on those studies, petitioners also challenge the constitutionality of the statutory term "substandard or insanitary area" (see Uncons Laws §§ 6253 [12] and 6260 [c] [1]). They argue that we should find this term void for vagueness. This contention is likewise unpersuasive.

It has long been settled that "civil as well as penal statutes can be tested for vagueness under the due process clause" (Montgomery v Daniels, 38 NY2d 41, 58 [1975], citing Giaccio v Pennsylvania, 382 US 399, 402 [1966]). Due process

requires that a statute be sufficiently definite "so that individuals of ordinary intelligence are not forced to guess at the meaning of statutory terms" (Foss v City of Rochester, 65 NY2d 247, 253 [1985]; see also People v Stuart, 100 NY2d 412, 420 [2003]). In the context of eminent domain cases, we have held that, to guard against discriminatory application of the law, it is not necessary that "the degree of deterioration or precise percentage of obsolescence or mathematical measurement of other factors be arrived at with precision" (Yonkers Community Dev. Agency, 37 NY2d at 484).

Indeed, in Yonkers Community Dev. Agency, we recognized that "[m]any factors and interrelationships of factors may be significant" for a blight finding and:

"may include such diverse matters as irregularity of the plots, inadequacy of the streets, diversity of land ownership making assemblage of property difficult, incompatibility of the existing mixture of residential and industrial property, overcrowding, the incidence of crime, the lack of sanitation, the drain an area makes on municipal services, fire hazards, traffic congestion, and pollution"

(id. at 483). Not only has this Court, but the Supreme Court has consistently held that blight is an elastic concept that does not call for an inflexible, one-size-fits-all definition (see Berman v Parker, 348 US 26, 33-34 [1954]). Rather, blight or "substandard or insanitary areas," as we held in Matter of Goldstein and Yonkers Community Dev. Agency, must be viewed on a case-by-case basis. Accordingly, because the UDC Act provides

adequate meaning to the term "substandard or insanitary area," we reject petitioners' argument that the statute is unconstitutionally vague on its face.

V.

On appeal to the Appellate Division, petitioners argued that there were no findings of blight in the Project site prior to Columbia's acquisition of property there. Despite the objective data in the record to the contrary, the Appellate Division plurality agreed stating that there was "no evidence whatsoever that Manhattanville was blighted prior to Columbia gaining control over the vast majority of property therein" (72 AD3d at 16). This argument is unsupported by the record.

In determining that Columbia created the blighted conditions in West Harlem, the plurality of the Appellate Division disregarded the Urbitran blight study commenced in 2003. That study, made at EDC's request and not ESDC's, was based on a survey of the Project site and surrounding neighborhood at a time when Columbia was only beginning to purchase property in the area. Indeed, the Urbitran study unequivocally concluded that there was "ample evidence of deterioration of the building stock in the study area" and that "substandard and unsanitary conditions were detected in the area." Moreover, Earth Tech found that, since 1961, the neighborhood has suffered from a long-standing lack of investment interest. Thus, since there is record support that the Project site was blighted before Columbia

began to acquire property in the area, the issue is beyond our further review.

VI.

We also conclude that ESDC properly qualified this Project, in the alternative, as a "civic project" within the meaning of the UDC Act. Of course, ESDC is statutorily empowered to exercise eminent domain in furtherance of a civic project regardless of whether a project site suffers from blight. A civic project is defined as "[a] project or that portion of a multi-purpose project designed and intended for the purpose of providing facilities for educational, cultural, recreational, community, municipal, public service or other civic purposes" (Uncons Laws § 6253 [6] [d] [emphasis added]). Moreover, under Section 6260 (d) of the UDC Act, ESDC is "empowered to undertake the acquisition, construction, reconstruction, rehabilitation or improvement of a [civic] project" if it finds:

"(1) That there exists in the area in which the project is to be located, a need for the educational, cultural, recreational, community, municipal, public service or other civic facility to be included in the project;

(2) That the project shall consist of a building or buildings or other facilities which are suitable for educational, cultural, recreational, community, municipal, public service or other civic purposes"

(Uncons Laws § 6260 [d] [emphasis added]).

The plurality at the Appellate Division held that the expansion of a private university does not qualify as a "civic

purpose." This conclusion does not have statutory support. Indeed, there is nothing in the statutory language limiting a proposed educational project to public educational institutions. In fact, the UDC Act encourages participation in projects by private entities (see Uncons Laws § 6252 ["it is further declared to be the policy of the state to promote . . . sound growth and development of our municipalities . . . through . . . redevelopment . . . of [blighted] areas [and] . . . the undertaking of public and private improvement programs related thereto, including the provision of educational, recreational and cultural facilities, and the encouragement of participation in these programs by private enterprise"] [emphasis added]; see also Uncons Laws § 6260 [d] [3]). Thus, there is no reason to depart from the plain meaning of the word "education" by limiting the term to public institutions.

Moreover, consonant with the policy articulated in the UDC Act, ESDC has a history of participation in civic projects involving private entities. The most recent example of a civic project is the Atlantic Yards project, which authorized a private entity to construct and operate an arena for the Nets professional basketball franchise (see Matter of Develop Don't Destroy (Brooklyn) v Urban Dev. Corp., 59 AD3d 312 [1st Dept 2009], lv denied 13 NY3d 713 [2009]). The petitioners in that case argued that the project did not qualify as a "civic project" because the arena would be used by a professional basketball team

and operated by a private profit-making entity. In rejecting that argument, the Appellate Division explained, "that a sports arena, even one privately operated for profit, may serve a public purpose" (id. at 325). Looking to the plain language of the UDC Act (see Uncons Laws § 6260 [d]), the court observed that "the proposed arena will serve a public purpose by providing a needed recreational venue in the area of the project" (id.).

The proposed Project here is at least as compelling in its civic dimension as the private development in Matter of Develop Don't Destroy (Brooklyn). Unlike the Nets basketball franchise, Columbia University, though private, operates as a non-profit educational corporation. Thus, the concern that a private enterprise will be profiting through eminent domain is not present. Rather, the purpose of the Project is unquestionably to promote education and academic research while providing public benefits to the local community. Indeed, the advancement of higher education is the quintessential example of a "civic purpose" (see Cornell Univ. v Bagnardi, 68 NY2d 583, 593 [1986] [recognizing that schools, both public and private, "serve the public's welfare and morals"]). It is fundamental that education and the expansion of knowledge are pivotal government interests. The indisputably public purpose of education is particularly vital for New York City and the State to maintain their respective statuses as global centers of higher education and academic research. To that end, the Project plan includes

the construction of facilities dedicated to research and the expansion of laboratories, libraries and student housing.

In addition to these new educational facilities, the Project will bestow numerous other significant civic benefits to the public. For example, the Project calls for the development of approximately two acres of gate-less, publicly accessible park-like and landscaped space as well as an open-air market zone along 12th Avenue. Other civic benefits include upgrades in transit infrastructure and a financial commitment to the West Harlem Piers Park. Moreover, this Project is projected to stimulate job growth in the local area. In addition to hiring 14,000 people for construction at the Project site, Columbia estimates that it will accommodate 6,000 permanent employees once the Project site is completed. In sum, there can be no doubt that the Project approved by ESDC -- which provides for the expansion of Columbia's educational facilities and countless public benefits to the surrounding neighborhood, including cultural, recreational and job development benefits -- qualifies as a "civic project" under the UDC Act.<sup>9</sup>

VII.

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<sup>9</sup> Since the constitutionality of the UDC Act pertaining to "civic projects" is not challenged by petitioners, we respectfully disagree with our concurring colleague that it should be addressed here. Moreover, we do not believe that anything in our opinion could reasonably be construed to mean that "private tennis camps or karate schools" or "private casinos or adult video stores" would qualify as a "civic project" within the meaning of the UDC Act(see concurring op., at 3).

Petitioners finally contend that they were denied procedural due process when ESDC both failed to turn over certain documents during the administrative process pursuant to their FOIL request and closed the record prior to completion of the FOIL litigation. Because ESDC did not withhold any documents that formed part of the administrative record and because petitioners are not entitled to discovery under article two of the EDPL, we, too, reject this argument as lacking merit.<sup>10</sup>

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<sup>10</sup>The procedural due process protections contained within the EDPL include the right to a public hearing and adequate notice of that hearing. With respect to notice, EDPL § 202 (A) provides in relevant part:

"Where a public hearing is required by this article the condemnor shall give notice to the public of the purpose, time and location of its hearing setting forth the proposed location of the public project including any proposed alternate locations, at least ten but no more than thirty days prior to such public hearing by causing such notice to be published in at least five successive issues of an official daily newspaper if there is one designated in the locality where the project will be situated and in at least five successive issues of a daily newspaper of general circulation in such locality. If the official newspaper is one of general circulation in such locality, publication therein as specified shall be deemed sufficient compliance."

The scope of the public hearing required under the EDPL is addressed in § 203 of the statute. It states, in pertinent part:

"At the public hearing the condemnor shall outline the purpose, proposed location or

It is well settled that procedural due process in the context of an agency determination requires that the agency provide an opportunity to be heard in a meaningful manner at a meaningful time (see Mathews v Eldrige, 424 US 319, 333 [1976]). In this case, petitioners had an opportunity to comment on the proposed Project in a meaningful manner -- both orally and through written submissions -- and at a meaningful time -- well before ESDC issued its findings and determination to acquire petitioners' property by eminent domain.

It should be emphasized that prior to the ESDC determination, respondents had unfettered access to over 8,000 pages of documents including, most significantly, the GPP (as initially adopted by ESDC), the FEIS, and the AKRF and Earth Tech neighborhood conditions studies. All of these documents were available to the public during the comment period pursuant to EDPL § 203. Indeed, petitioners' substantial opportunity to be heard is reflected in their extensive written submissions after

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alternate locations of the public project and any other information it considers pertinent, including maps and property descriptions of the property to be acquired and adjacent parcels. Thereafter, 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. A record of the hearing shall be kept, including written statements submitted" (emphasis added).

the completion of the two-day public hearing. As a result, ESDC prepared 75 pages of detailed responses to petitioners' comments and duly considered their submissions before rendering its final findings and determination (see Vil. Auto Body Works, Inc. v Incorporated Vil. of Westbury, 90 AD2d 502, 503 [2d Dept 1982] [where a party has an opportunity to raise claims at a public hearing, there is no denial of procedural or substantive due process]).

It is true that, in the separate FOIL proceedings that were litigated during and after this administrative process, we ultimately ruled in favor of petitioner TIA and ordered ESDC to turn over five additional documents related to ESDC's July 2004 agreement with Columbia (see Matter of West Harlem Bus. Group, 13 NY3d at 886). However, even if petitioners were legally entitled to the documents under FOIL at the time of the public hearing, a FOIL violation does not establish a due process violation. Indeed, the due process protections embodied in the EDPL do not even allow for discovery.<sup>11</sup> Rather, in enacting the EDPL, the Legislature clearly evinced an intent for expeditious review of agency determinations, not a trial-like hearing process, by placing, for example, original jurisdiction of these proceedings in the Appellate Division and setting a short statute of

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<sup>11</sup> See supra note ten.

limitations (see Matter of Jackson, 67 NY2d at 424).<sup>12</sup>

To establish that a FOIL violation rose to the level of a due process violation, petitioners "must show that the withholding of the [documents] caused [them] prejudice" (Adams v United States, 673 F Supp 1249, 1260 [SDNY 1987]). Here, petitioners have not met their burden, neither explaining how they were deprived of a meaningful opportunity to be heard during the administrative process nor demonstrating the materiality of the records sought through FOIL.

Moreover, "petitioners fail to explain why they failed to bring a motion to vacate the automatic stay" pursuant to CPLR 5519 (c) following the Appellate Division order in their favor

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<sup>12</sup> Prior to enactment of the EDPL, a Commission established to evaluate our State's eminent domain law and procedures recognized the balance between judicial review and the "deleterious effects of prolonged litigation" (Matter of Goldstein, 13 NY3d at 534 [Read, J. concurring]). The Commission specifically noted:

"Nor should the construction of public projects be brought to a standstill, as the need for public projects in an advanced urban society is essential. In addition to the problem of a legal blockage of project, is the fact that the resort to the courts for a review of project's possible adverse effects results in a lengthy period of delay before ultimate disposition"

(id., quoting State Commission on Eminent Domain, 1971 Report of the State Commission on Eminent Domain, February 1, 1972, at 16 [1971 Report]).

that granted their FOIL requests (72 AD3d at 35 [Tom, J. dissenting])). Indeed, the dissenting Justices at the Appellate Division below recognized that:

"A CPLR 5519 (c) application would have afforded the Court with the opportunity to assess whether petitioners could demonstrate the likelihood of success on the merits . . . and that such documents were material to ESDC's determination and, thus, essential to affording petitioners procedural due process"

(id.). We thus reject petitioners' assertion that they were denied procedural due process.

In sum, we give deference to the findings and determination of the ESDC that the Project qualifies as both a land use improvement project and as a civic project serving a public purpose under the UDC Act. We further conclude that petitioners were not deprived of procedural due process.

Accordingly, the order of the Appellate Division should be reversed, with costs, and the petitions should be dismissed.

Matter of Kaur, et al. v New York State Urban Development Corporation, &c.

Matter of Tuck-It-Away, Inc., et al. v New York State Urban Development Corporation, &c.

SMITH, J. (concurring):

I concur in the result on constraint of Matter of Goldstein v New York State Urban Dev. Corp. (13 NY3d 511 [2009]).

The finding of "blight" in this case seems to me strained and pretextual, but it is no more so than the comparable finding in Goldstein. Accepting Goldstein as I must, I agree in substance with all but section VI of the majority opinion.

Section VI is unnecessary to the result we reach. Once we have decided that the removal of urban blight provides a sufficient constitutional basis for the taking, and that the project is a "land use improvement project" within the meaning of the UDC Act, there is no reason to consider UDC's alternative argument that the taking may also be justified as one for a "civic project." The majority gratuitously decides to reach this question -- and then confuses matters by addressing only the statutory, not the constitutional, aspect of ESDC's alternative argument.

The "civic project" issue would be significant in this case only if we rejected the idea that blight removal justifies the taking. But if we did reject the blight rationale, we would have to consider whether this taking can be characterized as being for "public use" on some other ground -- an issue the majority does not discuss. Rather, the majority discusses the statutory definition of "civic project" in a vacuum, as though there were no possible constitutional limitation on the breadth of that term. When we interpret a statute, we should at least consider whether the interpretation we adopt raises constitutional problems.

The statutory definition of "civic project" is "[a] project or that portion of a multi-purpose project designed and intended for the purpose of providing facilities for educational, cultural, recreational, community, municipal, public service or other civic purposes" (Unconsolidated Laws § 6253 [6] [d]). The majority seems to read this definition as broadly as its literal language permits. It implies that any public or private activity that can fairly be called educational -- or, by implication, cultural or recreational and so forth -- will qualify a project as "civic." Surely this approach will, in some imaginable cases, cause the statute to be unconstitutional as applied: would anyone seriously suggest, for example, that private tennis camps or karate schools ("educational" uses), or private casinos or adult video stores ("recreational" uses), qualify as "public" uses in the constitutional sense?

It is clear to me that attention to constitutional constraints would require a narrower reading of the term "civic project" than the one the majority adopts. Since the majority pays no attention to those constraints, I do not join section VI of its opinion.

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Order reversed, with costs, and petitions dismissed. Opinion by Judge Ciparick. Chief Judge Lippman and Judges Graffeo, Read, Pigott and Jones concur. Judge Smith concurs in result in an opinion.

Decided June 24, 2010