

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

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**AFFIDAVIT OF MARK N.
PAGE, JR. IN OPPOSITION
TO PETITIONER'S
REQUEST FOR A
TEMPORARY
RESTRAINING ORDER**

Petitioner,

-against-

Index No.:
IAS Part

Respondents.

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

MARK N. PAGE, JR., being duly sworn, states:

1. I am employed by the New York City Department of Environmental Protection ("DEP") as Director of the Office of Water Supply Infrastructure and Watershed Assessment within DEP's Bureau of Environmental Planning and Analysis. I have been with DEP since September 10, 2001. My responsibilities at DEP include undertaking environmental reviews, siting analysis, and environmental permit support for the Department's water supply infrastructure projects. This affidavit is based on my personal knowledge, review of City records, and conversations with City employees.

2. I submit this affidavit in opposition to petitioners' request for a temporary restraining order. Although the City did not have an opportunity to review petitioners' papers prior to the time this affidavit was drafted, it is my understanding that petitioners are seeking an

order that would enjoin DEP from (1) conducting any blasting at Jerome Park Reservoir, and from carting materials in or out of the Jerome Park Reservoir site in association with any blasting until DEP completes a supplemental environmental impact statement; and (2) conducting any blasting at the Jerome Park Reservoir site before obtaining a buildings permit from the Department of Buildings, unless and until it is adjudged by the Court that an buildings permit is not necessary.

3. As further explained below, both of these requests for temporary relief should be denied. First, DEP is still in the process of finalizing its environmental review analyzing certain project changes described below, including the possibility of shifting from hoe ramming to blasting for rock excavation activities at the Jerome Park Reservoir site. As DEP has not yet made a final determination regarding these changes, petitioners' request to enjoin blasting is premature. Second, the Department of Buildings has no jurisdiction over the Jerome Park Reservoir structures pursuant to Section 643(7) of the New York City Charter because the structures are appurtenant to an underground tunnel; thus, DOB has already determined that it cannot issue a buildings permit and there is no basis to enjoin DEP from relying on this instruction from DOB.

A. Project Background and Environmental Review

4. Petitioners' application for injunctive relief concerns work occurring in connection with construction of the City's Croton Water Treatment Plant in the Bronx, an enormous and complex project that is both integral to the future viability of the City's Croton water supply system and mandated under federal law and a federal consent decree with the United States Environmental Protection Agency and the New York State Department of Health. DEP began construction work on the Water Treatment Plant in 2004, and work has been ongoing since that date. Under the federal consent decree, which has been ordered by the United

States District Court for the Eastern District of New York, DEP is required to complete construction of the Plant and all related facilities necessary to its operation by May 1, 2011, and to commence operation of the Plant by October 31, 2011. Prior to construction, the project underwent a full environmental review under the State Environmental Quality Review Act ("SEQRA") and New York City Environmental Quality Review ("CEQR") procedures.

5. The City obtains its drinking water from three upstate water supply systems. DEP operates those water supplies for the City and is charged by the City Charter with responsibility for ensuring that City residents receive safe and healthy drinking water. The Croton system, located in Westchester and Putnam counties, is the oldest and smallest of the City's three water supply systems. On average, the Croton system provides ten percent of the City's daily water demand of approximately 1.1 billion gallons, but as needed, particularly during drought conditions, can provide up to thirty percent of the daily demand. When completed, the Croton Water Treatment Plant will provide filtration and disinfection of the Croton system water provided to New York City residents and will ensure that the water from the Croton system will be able to meet state and federal drinking water quality standards.

6. The work at the Jerome Park Reservoir site involves construction of new water distribution facilities and connections, including a new shaft and meter chamber connecting two new underground treated water tunnels that will carry water from the Treatment Plant to the water distribution system. This work is necessary for operation of the Croton Water Treatment Plant. Jerome Park Reservoir is located in the Bronx on a 110.5-acre site owned by the City and under the jurisdiction of DEP.

7. A Final Supplemental Environmental Impact Statement ("FSEIS") for the Croton Water Treatment Plant, including the work at the Jerome Park Reservoir site, was issued

in 2004. The 2004 FSEIS concluded that the construction of the water supply infrastructure (including shafts and valve and meter chambers) would not alter the existing water supply use and character of the Reservoir complex or adversely impact the character of the surrounding community. The construction assessed in the 2004 FSEIS resulted in a low volume of truck trips per hour and would thus not result in a significant impact to traffic in the project area. The noise levels predicted in the 2004 FSEIS during construction were assumed to be above applicable CEQR thresholds, but due to their short-term nature were considered to be temporary and not significant. The 2004 FSEIS for the Croton Water Treatment Plant did not assess the use of blasting to excavate the shaft and meter chamber at Jerome Park Reservoir. Rather, the FSEIS evaluated the potential impacts of a technique known as "hoe-ramming," a mechanical method for rock excavation which involves the mechanical breakup of the rock into smaller components that can then be removed. This method is common to many construction sites. A mechanical mechanism similar to a very large jack hammer is attached to an excavator to hammer through hard surfaces such as rock and concrete.

B. Reevaluation of Blasting and Further Environmental Review

8. Following completion of the FSEIS in 2004, DEP engaged in blasting at several of its construction projects at other sites in New York City, including at the site of the Water Treatment Plant at the Mosholu Golf Course in Van Cortlandt Park. Based on a successful record of blasting at the Mosholu site and at several sites in Manhattan for Water Tunnel No. 3, DEP reexamined the initial decision to use hoe ramming instead of blasting at the Jerome Park Reservoir Site. DEP directed, and asked its consultant engineers, Hazen & Sawyer/Metcalf & Eddy, to perform a comprehensive technical analysis of the difference in noise and vibration impacts between blasting and hoe-ramming. This analysis was then

Blasting -
Apples &
Oranges

reviewed by DEP's Engineering Review Board, a third-party engineering board that is called upon to review DEP's tunneling and geotechnical projects.

9. This comprehensive technical analysis was completed in late Spring of 2008. Thereafter, DEP began full consideration of blasting as a potential alternative to hoe-ramming for the shaft and meter chamber rock excavation at Jerome Park Reservoir. This consideration includes the additional environmental review which is currently underway.

Environ
Impact
Review
Current
underway

10. Pursuant to SEQRA and CEQR, a full Supplemental Environmental Impact Statement is required only when there are significant adverse environmental impacts not addressed or inadequately addressed during the environmental review process resulting from changes to the project, newly discovered information, or a change in circumstances. 6 N.Y.C.R.R. §617.9(a)(7). DEP is currently finalizing the environmental review analysis of the proposed project changes at the Jerome Park Reservoir site. To date, that analysis indicates that no new, undisclosed, significant adverse impacts are anticipated as a result of the proposed modifications to the shaft and meter chamber design or the possible change in rock excavation method from hoe-ramming to blasting. Thus, DEP believes that a Supplemental Environmental Impact Statement will not be required under either SEQRA or CEQR. However, DEP has not yet made a final determination.

Environ
Impact
Review
Process

11. DEP anticipates that it will issue a minor modification describing the proposed changes to the project in approximately two to three weeks. The minor modification will document the extensive analysis of the potential environmental impacts associated with the proposed project modifications at the Jerome Park Reservoir site. Based on the information reviewed to date, including the project specific analysis as well as DEP's extensive experience with blasting at other construction project locations in the City, it appears that blasting will have

less impact on surrounding schools and residents than hoe-ramming, the rock excavation method reviewed in the 2004 environmental review documents. Hoe-ramming generates constant noise, whereas the noise from blasting would be intermittent and, in this case, infrequent. In addition, excavation by blasting is anticipated to be of a shorter duration than excavation by hoe-ramming.

12. If DEP decides to proceed with blasting, the significant experience of the Fire Department, which oversees all controlled blasting citywide, will ensure that excavation at Jerome Park Reservoir is conducted in a controlled, safe manner, as it has been in Van Cortlandt Park and at locations within Manhattan. Additionally, DEP will also implement onsite measures to minimize dust, and is evaluating the potential trucking impacts associated with the proposed project changes as part of its environmental review

13. Upon completion of the environmental review, DEP will be in a position to make a final determination with respect to blasting. Until that time, however, petitioners' application for injunctive relief is premature.

C. No Building Permit Is Required

14. Petitioners' counsel also indicated that petitioners would be seeking an order enjoining DEP from conducting any blasting at the Jerome Park Reservoir site until it obtains a buildings permit from the City Department of Buildings ("DOB"). However, the DOB cannot issue a buildings permit for work on these structures because they are outside of DOB's jurisdiction.

15. This conclusion is consistent with the long-standing practice of both DOB and DEP regarding construction of underground tunnels and shafts for the City's drinking water supply. Both agencies have long recognized that DOB permits are not required for these structures. As indicated in the attached memo from DOB to Borough Superintendent Ernest Cocolicchio, dated November 15, 1989, under the New York City Charter DOB does not have

work, and all work associated with elevators. In addition, DOB will retain jurisdiction over any structure or work not permanently connected to the appurtenant structure, such as temporary trailers, stair towers and scaffolds.)

18. Any challenge to DOB's determination that the construction work at Jerome Park Reservoir does not require a buildings permit should have been directed to DOB, not DEP. Because DOB memorialized this determination in 1989, however, it is my understanding that the time for such a challenge is long past. In addition, construction has been on-going at the Jerome Park Reservoir site since 2004, and DEP withdrew its buildings permit applications for the Water Treatment Plant in 2006. Thus, I understand that the time for petitioners to challenge these decisions expired years ago.

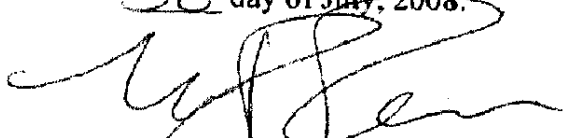
D. Conclusion

19. For the reasons set forth above, I respectfully request that the Court deny Petitioners' application for a temporary restraining order.



MARK N. PAGE, JR.

Sworn to before me this
30 day of July, 2008.



NOTARY PUBLIC

MARCELLA R. ECKELS
Notary Public, State of New York
No. 02EC6064658
Qualified in Kings County
Commission Expires Sept. 28, 2009



DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES
60 HUDSON STREET, NEW YORK, NY 10013

CHARLES M. SMITH, Jr., R.A., Commissioner

CORNELIUS F. DENNIS, P.E.
Deputy Commissioner
312-3120

MEMORANDUM

DATE: November 15, 1989
TO: Borough Superintendent Ernest Cocolicchio, P.E.
FROM: Deputy Commissioner Cornelius F. Dennis, P.E. *Cornelius F. Dennis*
SUBJECT: Department of Environmental Protection
NYC Water Tunnels
NYC Charter

The Jerome Avenue Pumping Station is located on the west side of Jerome Avenue and north of Van Cortlandt Avenue East and is shown on map 1d of the New York City Zoning Resolution as located in a CB-2 zone.

Section 643 of the New York City Charter provides for the jurisdiction of the Department of Buildings and states in part.

"the jurisdiction of the department, except for ... gas and electricity ... shall not extend to ... tunnels or ... storm drains appurtenant thereto."

Therefore the existing pumping station garage and shops all appurtenant to the NYC water tunnels located at the Jerome Avenue Pumping Station are not under the jurisdiction of this agency. A new one story building of about 7485 sq. ft. for use in the construction, operation and maintenance of the cities water tunnels, to be constructed on the same site, is also not under the jurisdiction of this department and need not be filed and may be constructed and occupied without a permit or certificate issued by this agency.

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IPB ASSOCIATES

PAGE 04

Section 1403 of the New York City Charter provides that the Commissioner of the Department of Environmental Protection has control of and is responsible for all functions relating to an adequate supply of water. Such agency is therefore empowered to enforce the applicable provisions of the New York City Building Code and such other codes as may be applicable to the construction contemplated.

Application 20014108 is to be marked withdrawn.

Enclosure: Letter dated 11/6/89 from D.B.P.

cc: Commissioner Smith
General Counsel Foy
Assistant Commissioner Berger
Executive Engineer Polsky
Borough Superintendents
File



Marshall A. Kammer, P.E.
Borough Commissioner

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THE CITY OF NEW YORK
DEPARTMENT OF BUILDINGS
www.nyc.gov/buildings

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New York, NY 10007

BROOK (2)
1032 ARTHUR AVENUE
BROOK, NY 10457

BROOKLYN (5)
210 JOHANNON STREET
BROOKLYN, NY 11201

QUEENS (4)
120-85 QUEENS BLVD.
QUEENS, NY 11424

STATEN ISLAND (6)
BORO HALL ST. GEORGE
STATEN ISLAND, NY 10301

DOB Application # 201049221	Examiner: Paul Ransom, P.E.	Date: 06/14/06
	Application Type: Alteration Type	Doc (#):
	Address / Location: 3701 Jerome Avenue	Block: 5900
	Zoning District: R6(Id)	Lot: 1

Examiner's Signature: *Paul Ransom*

To discuss and resolve these objections, please call 311 to schedule an appointment with the Plan Examiner listed above. You will need the application number and document number found at the top of this objection sheet. To make the best possible use of the plan examiner's and your time, please make sure you are prepared to discuss and resolve these objections before arriving for your scheduled plan examination appointment.

Obj. #	Doc #	Section of Code	Objections	Date Resolved	Comments
1.		Dept Memo 11/15/89	Application to be withdrawn as per Department Memorandum dated 11/15/1989 (see sketch attached to spindle).		
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THE CITY OF NEW YORK
DEPARTMENT OF BUILDINGS
 www.nyc.gov/buildings

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 280 BROADWAY 3RD FLOOR
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 BRONX, NY 10457

BROOKLYN (3)
 210 JORALEMON STREET
 BROOKLYN, NY 11201

QUEENS (4)
 129-35 QUEENS BLVD.
 QUEENS, NY 11424

STATEN ISLAND (5)
 BORO HALL- ST. GEORGE
 STATEN ISLAND, NY 10301

DOB Application # 201049212	Examiner: Paul Ransom, P.E.	Date: 06/14/06
	Application Type: Alteration Type	Doc (s):
	Address / Location: 3701 Jerome Avenue	Block: 5900
	Zoning District: R6(1d)	Lot: 1

Examiner's Signature: *Paul Ransom*

To discuss and resolve these objections, please call 311 to schedule an appointment with the Plan Examiner listed above. You will need the application number and document number found at the top of this objection sheet. To make the best possible use of the plan examiner's and your time, please make sure you are prepared to discuss and resolve these objections before arriving for your scheduled plan examination appointment.

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<p>SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF THE BRONX</p>	
<p>Petitioners,</p>	<p>Respondent.</p>
<p>- against -</p>	
<p>AFFIDAVIT OF MARK N. PAGE, JR. IN OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER</p>	
<p><i>MICHAEL A. CARDOZO</i> <i>Corporation Counsel of the City of New York</i> <i>Attorney for Plaintiff the City of New York</i> <i>100 Church Street</i> <i>New York, NY 10007</i></p>	
<p><i>Of Counsel: Carrie Noteboom</i> <i>Susan Amron</i> <i>Tel: (212) 788-0771</i> <i>LM No. 2008-027667</i></p>	
<p><i>Due and timely service is hereby admitted.</i></p>	
<p><i>New York, N.Y., 2007.</i></p>	
<p><i>..... Esq.</i></p>	
<p><i>Attorney for</i></p>	