

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

----- x Index No.
TUCK-IT-AWAY ASSOCIATES, LP, TUCK-IT-AWAY, : Dated Filed:
INC., TUCK-IT-AWAY BRIDGEPORT, INC., TUCK-IT- :
AWAY AT 133RD STREET, INC. and TUCK-IT-AWAY :
AT 135TH STREET, INC :
:

NOTICE OF PETITION

Petitioners, :

-against- :

Justice Assigned:
Hon.

CITY OF NEW YORK, CITY OF NEW YORK:
PLANNING COMMISSION, CITY OF NEW YORK:
CITY COUNCIL, MICHAEL R. BLOOMBERG in his:
capacity as MAYOR OF THE CITY OF NEW YORK, :
NEW YORK CITY COMMUNITY BOARD NUMBER 9: :
and COLUMBIA UNIVERSITY, :

Respondents.

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PLEASE TAKE NOTICE, that upon the annexed Verified Petition, verified on the 25th day of March, 2008, the affidavit of Ronald Shiffman sworn to on the 24th day of March, 2008, the affirmation of Steven M. Silverberg, Esq. dated the 25th day of March, 2008 and the supporting Memorandum of Law, and all of the proceedings heretofore had herein, the Petitioners shall move before the Assigned Justice at the Courthouse located at 60 Centre Street, Room 130, New York, New York, on April 29, 2008, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard for Judgment, pursuant to provisions of the Environmental Conservation Law, its implementing regulations (SEQRA), the New York City Environmental Quality Review Rules of Procedure (CEQR), New York City Executive Order No. 91 of 1977, as amended, New York City Uniform Land Use Review Process (ULURP) and Article 78 of the CPLR:


- (a) reversing, annulling and setting aside, to the extent requested in the Verified Petition, the SEQRA/CEQR Reports, Findings Statements and Resolutions of the CITY OF NEW YORK PLANNING COMMISSION (CPC) dated November 26, 2007 with regard to Application of Columbia University pursuant to Section 201 of the New York City Charter (Calendar No. 1, Matter C070495 ZMM), the Application of Columbia University pursuant to Sections 197-c and 201 of the New York City Charter (Calendar No. 2 Matter N 070496 ZRM) and the Application of Community Board 9 of consideration under the rules for processing plans pursuant to Section 197-a of the New York City Charter (Calendar No. 3 Matter N060047 NPM) , as ratified, approved and restated by the CITY OF NEW YORK CITY COUNCIL (Council) on December 19, 2007 in Resolutions 1201, 1202 and 1200 respectively, and annulling any approvals or permits granted based upon such portions of the Reports, Findings Statements and/or Resolutions (collectively "Resolutions") as are reversed, annulled and set aside by this Court, on the grounds that said Resolutions were arbitrary, capricious, an abuse of discretion, in error of law, made in excess of the jurisdiction of the respective Respondents, and made in violation of lawful procedure; and
- (b) together with such other and further relief as this Court may deem just and proper.

Dated: White Plains, New York
March 25, 2008

Yours, etc.

Silverberg Zalantis LLP

By:



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

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TUCK-IT-AWAY AT 133RD STREET, INC. and :
TUCK-IT-AWAY AT 135TH STREET, INC., :
 :
 : **VERIFIED PETITION**
 :
Petitioners, :
 :
 :
-against- :
 :
 :
CITY OF NEW YORK, CITY OF NEW YORK: :
PLANNING COMMISSION, CITY OF NEW YORK: :
CITY COUNCIL, MICHAEL R. BLOOMBERG in his: :
capacity as MAYOR OF THE CITY OF NEW YORK,; Justice Assigned:
NEW YORK CITY COMMUNITY BOARD NUMBER 9: Hon.
and COLUMBIA UNIVERSITY, :
 :
 :
Respondents. :
----- X

The petitioners TUCK-IT-AWAY ASSOCIATES, LP, TUCK-IT-AWAY, INC.,
TUCK-IT-AWAY BRIDGEPORT, INC., TUCK-IT-AWAY AT 133RD STREET, INC.
and TUCK-IT-AWAY AT 135TH STREET, INC. (individually and/or collectively
"Petitioners"), by their attorneys Silverberg Zalantis LLP as and for their Verified
Petition allege as follows:

The Parties

1) At all times relevant hereto, the petitioner TUCK-IT-AWAY
ASSOCIATES, LP is the lessee, pursuant to individual long term, triple net leases of
properties known as 655 West 125 Street, 614 West 131 Street, 3300 Broadway, 3320
Broadway and 3261 Broadway, all located in the borough of Manhattan, City of New
York and State of New York.

2) At all times relevant hereto, the petitioner Tuck-It-Away, Inc is the owner of 3261 Broadway and 614 West 131st; petitioner Tuck-It-Away Bridgeport, Inc. is the owner of 655 West 125th Street; petitioner Tuck-It-Away at 133rd Street, Inc; is the owner of 3300 Broadway and petitioner Tuck-It-Away at 135th Street, Inc. is the owner of 3320 Broadway (all hereinafter collectively referred to as “the Tuck Properties”).

3) At all times relevant hereto, the Tuck Properties are all located in the Borough of Manhattan, City of New York, State of New York; are all located within the area or neighborhood of Manhattan known as Manhattanville; are all within the geographic area covered by Respondent, New York City Community Board 9 and are all in or adjacent to the geographic area affected by the actions challenged herein.

4) At all times relevant hereto, the City of New York (“City”) is a municipal corporation duly established pursuant to the laws of the State of New York.

5) At all times relevant hereto, Michael R Bloomberg is the Mayor of the City of New York (“Mayor”) and is the chief executive officer of the City.

6) At all times relevant hereto the City of New York Planning Commission (“CPC”) is a commission of the City duly established by the New York City Charter (“Charter”) having certain enumerated duties and in accordance with its duties under the Charter, acted as the “lead agency” under SEQRA and CEQR and approved certain actions, which are the subject of this proceeding.

7) At all times relevant hereto the City of New York City Council (“Council”) is the legislature of the City and took certain actions which are the subject of this action.

8) At all times relevant hereto Community Board No. 9 Manhattan ("CB9") is a community board established pursuant to the Charter which was the sponsor of a certain plan pursuant to section 197-a of the Charter ("197-a Plan") and is named in this action solely for notice purposes. Petitioners do not seek any relief from CB9.

9) At all times relevant hereto Columbia University ("Columbia") is the owner of certain property located in the borough of Manhattan, and the applicant and sponsor of a certain proposal submitted to the CPC and Council pursuant to section 197-c of the Charter ("CU Plan") which *inter alia* sought certain amendments or changes to the City's Zoning Resolution and zoning map pursuant to ULURP and sought to develop a portion of the upper west side of Manhattan known as Manhattanville, located within the jurisdiction of CB9.

Nature of the Action

10) This proceeding is brought to challenge certain actions of the CPC and Council to the extent they would permit the construction of a Central Below-Grade Service Area (known as the Bathtub) below a development proposed by Columbia for approximately 17-acres of land located in the area within CB9's jurisdiction.

11) It is Petitioner's contention that the CPC and Council failed to carry out their duties as required by law to fully evaluate the potential serious environmental impacts of the Columbia proposal.

The 197-a Plan

12) The Charter section 197-a has a provision for community boards to submit plans for “the development, growth and improvement of . . . community districts.”

13) In accordance with Charter section 197-a, CB9 over a period of approximately ten (10) years developed a plan for the entire 964-acres of land comprising Community District 9 (“Community District 9”).

14) CB9 developed its plan, its 197-a Plan, with the assistance of professional consultants, including city planners from the Pratt Institute of Technology.

15) The 197-a Plan looked at the make-up of Community District 9, including ethnic diversity, historic buildings, manufacturing, jobs and land use and presented a proposal for the long-term development of the entire 964-acres of Community District 9.

16) The 197-a Plan is a comprehensive plan for the development of the entire Community District 9 seeking to maintain the ethnic diversity, housing stock and job base for the inhabitants of Community District 9 while providing a plan for future growth and development of Community District 9.

17) In accordance with the provisions of the Charter, the 197-a Plan was submitted to the CPC for review and consideration.

The CU Plan

18) Columbia owns or otherwise controls certain property to the west of Broadway between 125 Street and 132 Street and to the east of Broadway between 131 Street and 134 Street comprising about 11 acres of land.

19) Columbia submitted its plan, the CU Plan, pursuant to section 197-c of the Charter for zoning resolution and zoning map changes for an area of approximately 35-acres within Community District 9.

20) While the CU Plan encompasses 35 acres (of the total 964-acres in Community District 9) only about 17-acres of the area was proposed for actual use by Columbia and of that 17-acres only about 65% or 11-acres was owned or controlled by Columbia.

21) The CU Plan was inconsistent in several respects with the 197-a Plan.

The SEQRA/CEQR Process

22) Pursuant to the Charter, the CPC is “lead agency” for both the CU Plan and 197-a Plan under the State Environmental Quality Review Act (SEQRA) as implemented by the SEQRA regulations, the City of New York Environmental Quality Review Rules of Procedure implementing regulations known as CEQR and Executive Order No. 91 of 1977.

23) The CPC made a determination to look at both the 197-a Plan and the CU Plan in tandem rather than as one action.

24) SEQRA requires that a lead agency take what is called a “hard look” at a series of environmental issues prior to funding or approving an action.

25) In addition to the CU Plan and the 197-a Plan, there were four applications by Petitioners for rezoning of its five properties that were pending at the same time.

26) On June 18, 2007 the CPC, as lead agency, issued a Negative Declaration on the 197-a Plan.

27) A Negative Declaration means that no further environmental review is required as there were no identified potential substantial adverse environmental impacts that require mitigation.

28) Once an application receives a Negative Declaration the lead agency may proceed with approving or funding such an application, as the SEQRA/CEQR process is completed for that project.

29) Thereafter, the CB9 modified the 197-a Plan by providing an alternative which responded to the concerns raised by Columbia and would have allowed Columbia to develop substantially more space than under the original 197-a Plan, but such modifications were ultimately rejected and further modified by the CPC and Council.

30) With respect to the CU Plan, the CPC, as lead agency issued a Positive Declaration on October 3, 2005 requiring preparation of a draft environmental impact statement ("DEIS").

31) On April 25, 2007, public scoping of the DEIS was completed.

32) On June 15, 2007, the CPC deemed the DEIS complete.

33) On October 3, 2007, a hearing on the DEIS was held.

34) Upon information and belief, the Notice of Completion and Notice of Public Hearing for the DEIS were not properly noticed in accordance with the SEQRA/CEQR requirements.

35) At the very least, the CPC failed to file the Notice of Completion and Notice of Public Hearing on the DEIS in the State Environmental Notice Bulletin.

36) On November 16, 2007, the CPC found the FEIS to be complete.

37) On November 26, 2007, the CPC adopted a report, findings and resolutions on the CU Plan, which were designated Calendar No. 2 Matter N070496ZRM (annexed as **Exhibit "A"**) and Calendar No. 1, Matter C070495ZMM (annexed as **Exhibit "B"**) (hereinafter referred to collectively as the "CU Resolutions").

38) On November 26, 2007, the CPC adopted a report, findings and resolutions among other things modifying the 197-a Plan to the extent the CPC found the 197-a Plan to be inconsistent with the CU Plan (Calendar No. 3 Matter N060047NPM annexed as **Exhibit "C"**) (hereinafter referred to as the "197-a Resolution").

39) Thereafter, on December 19, 2007, the Council adopted resolutions ratifying and approving the action endorsed in the CU Resolutions (Council Resolutions 1201 and 1202 annexed as **Exhibit "D"**) and in the 197-a Resolution (Council resolution 1200, annexed as **Exhibit "E"**).

40) It is the three CPC resolutions (Exhibits "A", "B" and "C") and the three Council resolutions (Exhibits "D" and "E") which are the subject of this action.

Objections to the SEORA/CEQR Process

41) The environmental review process requires that the CPC not only engage the public in the process but listen to the public input and consider that input in reaching a decision.

42) In reviewing the CU Plan, the CPC failed to adequately review all potential significant impacts of the proposal.

43) Key elements of the CU Plan were accepted without critical review and in the end, the CPC and the Council, which approved and ratified the actions of the CPC, failed to take the required “hard look” at critical environmental impacts.

44) All zoning is required to be adopted in a manner that is consistent with comprehensive planning.

45) The 197-a Plan covers all 964 acres of Community District 9.

46) The CU Plan covers 35 acres of Community District 9 and Columbia proposes to build on and under 17-acres of Community District 9.

47) Ultimately the reports, findings and resolutions of the CPC and Council (Exhibits A through E) approved much of the 197-a Plan but essentially rejected any portion of the 197-a Plan that was viewed by the CPC as inconsistent with the CU Plan for Columbia’s development.

48) The justification by the CPC and ultimately the Council was that portions of the 197-a Plan did not permit integration of Columbia into the “neighborhood fabric.”

49) However it was precisely aspects of the CU Plan (that were viewed by CPC as inconsistent with the 197-a Plan) that CB9 rejected as CB9 viewed them as being inconsistent with maintaining a neighborhood fabric.

50) The dispute between CB9 on the one hand and the CPC and Columbia on the other hand is not a mere disagreement among parties or even experts, because there were serious flaws in the environmental review process which resulted in the CPC (and the Council) failing to take a hard look at several significant impacts of the CU Plan.

51) Scenarios and alternatives based on the 197-a Plan and other development scenarios proposed by the CPC Commissioners themselves were developed with the Department of City Planning (“DCP”) staff.

52) Upon information and belief, despite repeated requests to be included and despite the fact that the CB9 was the sponsor of the 197-a Plan, CB9 and/or its technical representatives never participated in the discussions concerning how these alternatives were interpreted, designed and evaluated by Columbia and DCP.

53) As a result, alternatives to the 197-a Plan proposed by CB9 were rejected by Columbia without being fully and fairly explored by the CPC.

54) Instead, Columbia’s arguments or opinions were presented to and accepted by the CPC as fact without a full and complete analysis.

55) This view of the process is supported by the dissent of CPC Commissioner Phillips who stated : “[i]t is unfortunate that in the CPC review of the Department’s modifications, where there is usually open discussion of other recommendations for changes to the CU plan were greatly truncated by unnecessary and unproductive outbursts. These acts of personal positioning and rudeness meant that Commissioner’s questions and ideas were not discussed for possible input to the modifications of the plan we must vote on today.” (Page 128 of Exhibit “A”).

56) Upon information and belief, the assessments by Columbia of the CB9 alternatives and other alternatives put forth by the CPC were often distorted and misleading and developed to solely promote Columbia’s proposals. For example:

- a. Columbia under-estimated the amounts of academic and research space that could be built upon under alternatives proposed.

- b. Columbia downplayed the beneficial environmental implications of the alternatives proposed by the 197-a Plan [e.g., less trucking, less excavation, dispersal of traffic, fewer street closing, etc].
- c. Columbia vastly exaggerated and/or concocted negatives about the proposed alternatives. [e.g., increased number of curb cuts, moving unsightly service functions from below grade to above grade].

57) Despite the fact that the CPC stated that the CU Plan and 197-a Plan were to be considered in tandem, upon information and belief, CB9 was not provided a forum or a mechanism to correct these distortions except to comment on them after such information was presented to the CPC.

58) The review process was carried out with Columbia specifying what it needed in terms of future development over a 30-year period and that set of assumptions was never questioned by CPC

59) CB9's 197-a Plan alternative was always measured against those unchallenged sets of assumptions established by Columbia, rather than the CPC establishing the assumptions and requiring Columbia to respond.

60) The report and resolution of the CPC (Exhibit "A") repeats many times that the 197-a Plan cannot be approved because it is not consistent with the CU Plan without ever critically analyzing the assumption put forth by Columbia.

61) The CPC acknowledged that both the CU Plan and the 197-a Plan recognized that Columbia needed to grow, but "how that growth and expansion should take place" (Exhibit "A" page 44) is the issue.

62) But the CPC continually deferred to Columbia's view of issues rather than directing action by stating in its resolution (Exhibit "A"), for example:

- a. [t]he University further stated its view that the 12th Avenue area will be a destination area suitable for housing, but it was open to further discussion of this issue. (*emphasis added*, p. 36).
- b. [t]he University is supportive of the concept of ground floor retail on west 125 Street and will work with the community to determine what kind of retail would be appropriate (p. 37).
- c. Columbia University's goal in subdistrict A of the Special District is to implement a long-range plan to develop an integrated university area (p. 48)

63) The CPC stated that the 197-a Plan “does not set forth a comprehensive plan that would integrate Columbia’s long-term growth into the urban fabric in a manner consistent with City objectives”.

64) Yet, Columbia’s proposal constitutes a traditional clearance approach and is not integrated into the existing urban fabric but removes the neighborhood and the people to “create” a new mono-use urban fabric, a university campus with supporting uses.

65) The central flaw in the CU Plan, with many potentially serious adverse environmental impacts on the borough of Manhattan, is the proposal to create what is called the Central Below-Grade Service Area, which has been called the “Bathtub.”

66) As described in the Findings and Resolution of the CPC (Exhibit “A”), the Bathtub will cover approximately 17-acres below ground north of West 125th Street and west of Broadway to the Hudson River. It will be over 100 feet deep in places and contain a multitude of uses including service and storage for biohazard laboratories,

power generating facilities, parking facilities, central heating and cooling for the entire complex and potentially the site for the relocation of the MTA bus garage.

67) While the Bathtub is proposed to service only Columbia, a number of the properties below which the Bathtub would stretch are owned by parties other than Columbia as only 11 acres or 65% of the land area is owned or otherwise controlled by Columbia.

68) However, the CPC made the inclusion of the zoning regulations that would support and implement the Bathtub the centerpiece of the decision making process.

69) Yet, CPC did not fully consider the potential environmental impacts of the Bathtub.

70) Instead the CPC provided that the engineering issues raised during the environmental review process would be resolved at some later unspecified date (see Exhibit "A" page 52).

71) Thus the CPC left unresolved, how the Bathtub would be engineered, the cost of the Bathtub, whether it is economically feasible, whether the Bathtub would be engineered in a manner that would adequately protect it and the surrounding neighborhood from earthquakes and storm surges and how the estimated 98,000 truck loads of soil that would have to be removed from the site would impact the surrounding area.

72) As stated by the CB9 chair in its November 14, 2007 memorandum (attached as **Exhibit "F"**, p. 1) which was issued two days before the CPC accepted the FEIS as complete:

the Community Board is concerned about both the process of constructing the "bath tub" and the ongoing environmental issues and safety issues associated with the "bath tub" once it is operational. The two memos in response tell us that there are engineering solutions to the community's concerns but neither the engineering consultants that authored those memos nor Columbia University consultants outline in any detail what those solutions are, what the impacts of carrying out those approaches might be or what the costs are that are associated with those engineering solutions."

73) Upon information and belief, it is the same two memoranda referred to in the above quote which formed the basis of the findings of the CPC (Exhibit "A").

74) The CPC and Council engaged in illegal segmentation by deferring to some unspecified date obtaining answers to these and other questions which have potential serious and substantial environmental impacts.

75) As further stated by the CB9 chair in the November 14, 2007 memorandum (Exhibit "F"):

the EIS for the Columbia University expansion was not referred to either the NYC or NYS office of emergency management since both entities have designated the area in which the bath tub is to be built as environmentally sensitive-NYC has it listed as a potential evacuation zone and the NYS has it located in a **hurricane surge zone**. (*Emphasis added*).

76) Stating that it is not policy to make such a referral is not an adequate answer in view of the scientific facts of storm surge potential submitted to the CPC (see Exhibit "G" report from CB 9, beginning at page 22, submitted on August 6, 2007 to the CPC).

77) The statistical information provided to the CPC during the environmental review process demonstrated that in any hurricane hitting New York City in a trajectory

west of the City above the lowest possible category 1 storm there would be a storm surge into this area.

78) While the environmental review discussed flooding in general, it ignored the issue of storm surge, and the FEIS and Resolution of the CPC deferred until some indeterminate time in the future engineering the actual manner of digging, supporting and safeguarding the Bathtub.

79) The Bathtub is proposed to be over 100 feet deep in places and that among its uses will be for the location of service and storage facilities for biohazard laboratories. Further, two Columbia University power plants with centralized heating and cooling for the entire complex are proposed to be below ground and an MTA bus terminal may be moved below ground in the approved proposal.

80) Taken with the potential storm surge, which was ignored, the fact that an earthquake fault line goes through a portion of the property and that the area is bounded by the Hudson River which must also be contained, the summary conclusion by the CPC that an engineering solution can be developed ignored these environmental issues in violation of SEQRA and CEQR.

81) As part of its environmental review, the CPC and the Council should have addressed all of these issue before taking action rather than moving forward, approving the CU Plan and the rezoning (which supports the CU plan) and deferring until later how these serious engineering issues would be addressed.

82) The information necessary to evaluate the environmental and economic impacts of the yet to be developed Bathtub proposal was not available to the CPC and Council to be used in making an informed decision about the proposed rezoning action.

83) One of the potentially most serious issues left unaddressed is what will happen if even a category 2 or 3 storm, much less a category 4 storm like Katrina, hits west of Manhattan?

84) With the measurable rise of sea level around Manhattan over the last 100 years and the recorded increasing frequency of serious storms the likelihood of such a storm hitting the area is upon information and belief also increasing.

85) New York State has recognized this potential by designating the area in question as a hurricane surge zone.

86) One of the many issues left unaddressed is what would happen if a storm surge flooded the underground biohazard areas or even the two power plants?

87) As outlined in the supporting affidavit sworn to on March 24, 2008 from Ronald Shiffman FAICP ("Shiffman Affidavit"), reputable professionals (e.g., based on data published by the research staff of NASA's Goddard Institute of Space Study, GISS, and by Klaus Jacob, Special Research Scientist at Columbia's own Lamont Doherty Earth Observatory delineating storm surge extent and elevations) are of the opinion that one of the results of such storm surge scenarios could very well be water contaminated with hazardous and/or toxic material from the biohazard laboratory service area, biohazard storage facilities and/or the power plants not only filling up and contaminating the Bathtub, but also washing into Harlem neighborhoods and/or into the Hudson River.

88) The FEIS did not address these potentially catastrophic scenarios.

89) Further while consideration of potential terrorism is not specifically required for environmental review, when a proposal is made to store biohazards in an area which also maintains underground parking and truck access, a hard look should be

taken in advance of approval of how a potential catastrophic event will be managed, irrespective of the source of that event.

90) Eliminating the Bathtub eliminates substantial potential environmental impacts without eliminating the ability of Columbia to develop the properties it owns or to acquire other property in the future.

91) CB9's proposed alternative, which was rejected by the CPC in its resolution Exhibit "C" and the Council in its resolution Exhibit "E" to build interconnected, below-grade facilities, as was done at Rockefeller Center, is, upon information and belief, a viable and safer alternative to the construction of the Bathtub.

92) Rather than fully analyzing this proposal, the CPC and Council failed to take a hard look at this alternative, instead accepting the general statement by the Columbia and City engineers that an engineering solution to the Bathtub is possible and it would be worked out sometime in the future.

93) CB9 in its submissions to the CPC pointed out that Columbia never said the Bathtub, as proposed, is necessary, only that it is preferred.

94) Therefore, there is nothing substantive in the record to demonstrate that without the Bathtub Columbia could not expand for the next 20 years.

95) Further the need for Columbia's expansion at the rate of 200,000 square feet a year, which served as the sacred cow of the CPC's analysis, is based on historical data supplied by Columbia and the assumption by CPC that such expansion shall continue at the same pace for the next 30 years.

96) There is nothing empirical to prove this will occur.

97) The entire approval of the Columbia plan is based upon an unproven assumption that it will require another six million square feet over the next thirty years.

98) In order to accommodate that assumption the CPC and Council will allow Columbia to clear out an entire neighborhood to make room for Columbia's possible expansion.

99) Upon information and belief, the academic and research space that could be developed under 197-a Plan's revised scenarios was far greater than described in Columbia's analysis submitted to the CPC, the number of curb cuts Columbia deemed necessary were inflated and the environmental benefits of the CB9 approach were never adequately evaluated.

100) Finally, in addition to the potential serious environmental impacts of the proposal, any environmental review must look at the socio-economic effects of a proposal.

101) As already noted the CU Plan is in effect a proposal for clearance of a substantial area in order to accommodate the single user, Columbia.

102) Rather than integrating Columbia into the "neighborhood fabric" the CU Plan creates its own tapestry of academic and related uses eliminating the neighborhood in order to construct the Bathtub.

103) The Community Board 9 plan rejected by the CPC (Exhibit "C") and the Council (Exhibit "E") allows substantial development by Columbia over a projected period of as much as 20 years without having the same environmental, social and economic impacts as the approved plan.

104) The Reports, Findings Statements and Resolutions challenged herein (Exhibits "A" through "E") to the extent same approve the construction of the Bathtub and reject the alternative to the Bathtub presented by CB9 should be reversed, annulled and set aside by this Court, on the grounds that said determinations were arbitrary, capricious, an abuse of discretion, in error of law, made in excess of the jurisdiction of the respective Respondents, and made in violation of lawful procedure.

105) This proceeding has been commenced within four months of the date on which all of the challenged actions became final.

AS AND FOR A FIRST CAUSE OF ACTION:
(FAILURE TO TAKE A HARD LOOK)

106) Petitioners repeat and reallege each and every allegation contained in paragraphs 1 through 105 as if set forth herein in full.

107) The CPC and Council, by approving and ratifying the CPC's action, failed to take a "hard look" at Columbia's proposed development of the Bathtub.

108) The CPC and Council failed to require that Columbia provide engineering data on the manner of constructing and maintaining the Bathtub.

109) As a result of such failure the CPC and Council rendered their decisions, which are the subject of this action, with insufficient information to address all of the potentially significant environmental impacts that may result from the approved actions including:

- a. potential construction impacts including up to 98,000 truck loads of soil to be removed from the Bathtub;
- b. stabilizing sub-soils to construct the Bathtub;

- c. constructing the Bathtub in a manner that will prevent inundation from the Hudson River;
- d. constructing the Bathtub in a manner that will protect it from storm surges;
- e. constructing the Bathtub in a manner that will protect it from earthquakes resulting from the fault line running through the Bathtub;
- f. protecting the surrounding community from the release of bio-hazardous material or other toxic or hazardous material in the event of a failure of the Bathtub for any reason;
- g. whether the cost of constructing the Bathtub in a safe manner that will protect the facilities and the surrounding neighborhood from potential catastrophic failure due to storm, surge, earthquake or other foreseeable event will be feasible.

110) The actions of the CPC in failing to address engineering and related issues with a reasonable level of detail and the Council's approval and ratification of that defective review constitutes a failure to take a hard look at potential significant environmental impacts of the proposed Bathtub in violation of the laws, rules, regulations and executive order made and provided for environmental review prior to approving or funding the actions contemplated by the challenged approvals.

111) As a result of the deficiencies in the environmental review this Court should grant judgment in favor of the Petitioners reversing, annulling and setting aside those portions of Reports, Findings Statements and Resolutions of the CPC and Council challenged herein (Exhibits "A" through "E") to the extent same approve the construction of the Bathtub and reject the alternative to the Bathtub presented by CB9

AS AND FOR A SECOND CAUSE OF ACTION:
(IMPROPER SEGMENTATION)

112) Petitioners repeat and reallege each and every allegation contained in paragraphs 1 through 111 as if set forth herein in full.

113) The CPC and the Council, by approving and ratifying the CPC's action, engaged in unlawful segmentation of the environmental review by deferring until an indeterminate date review of engineering and other issues which relate to the construction and maintenance of the Bathtub and the manner of mitigating potential significant adverse effects from the construction of the Bathtub and/or its failure once constructed.

114) As a result of the deficiencies in the environmental review this Court should grant judgment in favor of the Petitioners reversing, annulling and setting aside those portions of Reports, Findings Statements and Resolutions of the CPC and Council challenged herein (Exhibits "A" through "E") to the extent same approve the construction of the Bathtub and reject the alternative to the Bathtub presented by CB9.

AS AND FOR A THIRD CAUSE OF ACTION:
(FAILURE TO ADEQUATELY CONSIDER ALTERNATIVES)

115) Petitioners repeat and reallege each and every allegation contained in paragraphs 1 through 114 as if set forth herein in full.

116) The CPC and Council failed to fully and adequately consider all of the reasonable alternatives before issuing the challenged Resolutions (Exhibits "A" through "E").

117) Having conducted a review of the CB9 proposal to have individual interconnected basements rather than the proposed Bathtub only in the light of unfounded assumptions about the Bathtub, the CPC and the Council, by approving and ratifying the CPC's action, failed to take a hard look at all the environmental impacts of the Bathtub and failed to complete a thorough review of the reasonable alternatives to the Bathtub before issuing the resolutions (Exhibits "A" through "E").

118) As a result of the deficiencies in the environmental review this Court should grant judgment in favor of the Petitioners reversing, annulling and setting aside those portions of Reports, Findings Statements and Resolutions of the CPC and Council challenged herein (Exhibits "A" through "E") to the extent same approve the construction of the Bathtub and reject the alternative to the Bathtub presented by CB9.

AS AND FOR A FOURTH CAUSE OF ACTION
(FAILURE TO MEET PROCEDURAL REQUIREMENTS)

119) Petitioners repeat and reallege each and every allegation contained in paragraphs 1 through 118 as if set forth herein in full.

120) The CPC failed to comply with all required procedures for environmental review of the CU Plan.

121) Among other potential failings the CPC failed to publish the notice of completion and notice of hearing on the DEIS for the CU Plan in the State Environmental Notice Bulletin ("ENB") in violation of Title 62, Chapter 5, section 6-10 (a) (2) (iv) of the CEQR rules and 6 NYCRR Part 617.12 (c) (1).

122) As a result, the actions complained of herein were defective.

123) In view of the fact that the 197-a Plan had been determined to be without environmental significance and a Negative Declaration had been issued by the CPC with respect to the 197-a Plan no such notice requirements were necessary for the 197-a Plan.

124) As a result of the deficiencies in the environmental review this Court should grant judgment in favor of the Petitioners reversing, annulling and setting aside those portions of Reports, Findings Statements and Resolutions of the CPC and Council challenged herein (Exhibits "A" through "E") to the extent same approve the construction of the Bathtub and reject the alternative to the Bathtub presented by CB9.

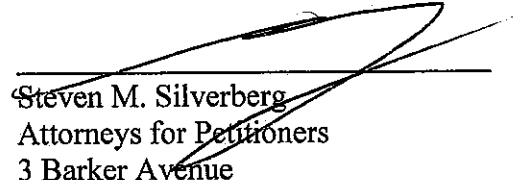
WHEREFORE it is respectfully requested that judgment be granted to the Petitioners and against the Respondents, on the four causes of action, reversing, annulling and setting aside those portions of Reports, Findings Statements and Resolutions of the CPC and Council challenged herein (Exhibits "A" through "E") to the extent same approve the construction of the Bathtub and reject the alternative to the Bathtub presented by CB9, along with such other and further relief as this Court may deem just and proper.

Dated: White Plains, New York
March 25, 2008

Yours, etc.

SILVERBERG ZALANTIS LLP

By: _____


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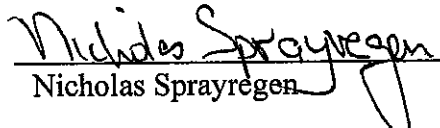
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STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)


Nicholas Sprayregen, being duly sworn, deposes and says:

I am the president of the general partner, Tuck-It-Away Associates, Ltd., of the Petitioner herein Tuck-It-Away Associates, LP, I have read the annexed Verified Petition, know the contents thereof and the same are true to my knowledge, except as to the matters therein stated to be on information and belief, and as to such matters I believe the same to be true based upon my review of the records of Petitioner, Tuck-It-Away Associates, LP.



Nicholas Sprayregen

Sworn to before me this
25th day of March, 2008



NOTARY PUBLIC

Hanna A. Hanna
Notary Public, State of New York
Registration #01HA6037972
Qualified In Queens County
My Commission Expires March 6, 2010

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

TUCK-IT-AWAY ASSOCIATES, LP, TUCK-IT-AWAY, INC., TUCK-IT-AWAY BRIDGEPORT, INC.,
TUCK-IT-AWAY AT 133RD STREET, INC. and TUCK-IT-AWAY AT 135TH STREET, INC.,

Petitioners,

-against-

CITY OF NEW YORK, CITY OF NEW YORK PLANNING COMMISSION, CITY OF NEW YORK
CITY COUNCIL, MICHAEL R. BLOOMBERG in his capacity as MAYOR OF THE CITY OF NEW
YORK, NEW YORK CITY COMMUNITY BOARD NUMBER 9 and COLUMBIA UNIVERSITY,

Respondents.

NOTICE OF PETITION AND VERIFIED PETITION

SILVERBERG ZALANTIS LLP

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