

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

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**In the Matter of the Application of**

**NEW YORK PUBLIC INTEREST RESEARCH  
GROUP/STRAPHANGERS CAMPAIGN, INC.,  
GENE RUSSIANOFF, COMMONC CAUSE, INC.,  
RACHEL LEON, TRI-STATE TRANSPORTATION  
CAMPAIGN, INC., JON ORCUTT, LOCAL 100  
OF THE TRANSIT WORKERS UNION a/k/a  
TWU LOCAL 100, ROGER TOUSSAINT, et al.,  
on their own behalf and on behalf of all straphangers  
and taxpayers in the City and State of New York  
similarly aggrieved,**

**Index No. 105292/05**

**IAS Part 49 (Cahn, J.)**

**AFFIDAVIT OF ED WATT**

**Petitioners,**

**For an order pursuant to Article 78 of the CPLR,**

**-against-**

**NEW YORK METROPOLITAN TRANSPORTATION  
AUTHORITY, PETER S. KALIKOW, in his capacity  
as Chair/Commissioner of the Metropolitan  
Transportation Authority,**

**Respondents.**

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

ED WATT, being duly sworn, deposes and says:

1.     I am Secretary/Treasurer of Petitioner Local 100, Transport Workers Union of Greater New York ("Local 100") and submit this affidavit in support of the petition in this proceeding. I have been Secretary/Treasurer of Local 100 since January 2001.

2. I am also a non-voting member of the Board of Respondent Metropolitan Transportation Authority (“MTA”), serving as the labor representative to the Board.

3. Based upon my own general understanding of how the MTA normally operates – which I have developed as a non-voting member of the MTA Board, as Secretary/Treasurer of Local 100 for over four years, and as an employee of the New York City Transit Authority (“TA”) for more twenty-four years – it is my belief that the process that was followed by the MTA with respect to its disposition of the development rights over the West Side Long Island Rail Road Rail Yards (also known as the John D. Caemmerer West Side Yard and hereinafter referred to as the “Rail Yards”) is inconsistent with the usual practice and procedures for this type of transaction in at least several material ways, which I will briefly describe below.

**The Winning Proposal Was Selected Only Ten Days After Proposals Were Submitted**

4. First of all, the MTA Board voted to award the development rights for the Rail Yards site to Jets Development LLC (“Jets”) only ten days after proposals were submitted. (Proposals were due on March 21, 2005. (See, MTA’s Request for Proposals (“RFP”) at page 13, annexed hereto as Exhibit A.) The winning proposal was selected at the MTA Board meeting held on March 31, 2005, *i.e.*, ten days later.) This is an unusually short period of time for the MTA to complete such a complex task.

5. Real estate transactions at the MTA, including its subsidiary authorities, such as the TA and Long Island Rail Road, are managed by the MTA’s Real Estate Department. According to the MTA’s own website, it normally takes the Real Estate Department sixty to ninety days to evaluate proposals involving even the most simple of real estate transactions, such

as the leasing of MTA property for use as small, retail store space or newsstands. (A copy of the relevant web page is annexed hereto as Exhibit B.) These lease transactions are much less complex than the sale of development rights at the Rail Yards site, so it is unfathomable to me how proposals for the Rail Yards development could be properly evaluated in only ten days. The fact that the MTA's professional real estate staff was unable to issue a recommendation regarding the Rail Yards proposals prior to the time the MTA Board voted to accept the Jets' proposal (*see*, ¶¶ 6-7, *infra*) suggests that it was not possible to conduct a thorough, rational evaluation of the proposals within this ten day period.

#### **The MTA Board Acted Without A Staff Recommendation**

6. A second way in which the Rail Yards disposition process seems aberrational to me lies in the fact that when the MTA Board voted to approve the Jets' proposal, it did so without a staff recommendation to accept the Jets' proposal being before it. Normally, when the MTA Board votes on a proposed disposition of real property, the question before it is whether to accept or reject a specific transaction recommended by the MTA Real Estate Department. Examples of two recent staff recommendations are annexed hereto as Exhibits C and D. These recommendations, once approved by the MTA's Planning and Real Estate Committee, are placed on the MTA Board's agenda.

7. In the case of the Rail Yards disposition, the MTA Board voted to accept the Jets' proposal even though the MTA Real Estate Department did not recommend that it do so. (A copy of the Real Estate Department's evaluation of the proposals, known as a "Staff Summary", is annexed hereto as Exhibit E.) Instead, the Real Estate Department's report to the Board (1)

recommended that the MTA reject the proposal of TransGas Energy, LLC, (2) observed that Madison Square Garden L.P. (“MSG”) was offering substantially more money than the Jets were offering, and (3) concluded by asking for “direction from the MTA Board on how to proceed with regard to the Jets and MSG proposals.” (Ex. E at 3.) As can be seen in Exhibits C and D, when the MTA Board votes to sell MTA property, it normally votes up or down on a specific recommendation from the Real Estate Department. For reasons that I do not believe have been properly explained, in the Rail Yards case, the MTA Board voted to accept the Jets’ proposal despite the fact that the real estate professionals on its staff had not recommended that this transaction be approved. I do not believe this to be consistent with normal practice.

#### **Price Appears To Have Been Irrelevant**

8. A third way in which the Rail Yards transaction appears to have deviated from normal MTA practice lies in the fact that the MTA Board voted to accept the Jets’ proposal without any apparent concern for the relatively low price the Jets were offering to pay. According to the MTA’s Staff Summary (Ex. E), the Jets proposed to pay \$250 million over a four-year period, or \$210 million up front, while MSG proposed paying \$400 million up front. In addition, the MTA’s own appraiser valued the site at \$923,400,000 and concluded that the “highest and best use of the subject site is its development with mixed-use buildings containing residential use on the upper floors and retail use on the ground floor.” (Excerpts of the MTA’s appraisal are annexed hereto as Exhibit F (the quoted passage is at p. 7); *see also*, Petition, ¶ 35.) The MTA Board’s apparent lack of concern for obtaining the highest possible price for the property and its failure to consider the property’s fair market value when approving the sale to

the Jets is inconsistent with the MTA's normal approach to selling property. (*Compare*, for example, the emphasis on the fact that the transaction recommended for approval in Ex. C involves the sale of property at a "sales price that is twenty percent higher than" the property's appraised value. *Compare*, also, the emphasis placed in Ex. D on the fact that the proposal being recommended for approval by the MTA Board is the one containing the highest price.)

**Twenty-Seven Days Is An Unusually Short Deadline For The Submission of Proposals.**

9. A fourth way that the Rail Yards disposition appears to have deviated materially from normal MTA practice is the extremely short period of time that was permitted for interested developers to respond to the RFP. The RFP was issued on February 22, 2005; proposals were due on March 21, 2005, *i.e.*, twenty-seven days later. (*See*, Ex. A.) For example, the MTA's proposed sale of the former New York Coliseum site at Columbus Circle, in 1985, is sufficiently comparable to be worth mentioning. In that case, developers were given ninety days to submit proposals, or more than three times as long as was allowed in the case of the Rail Yards. (A copy of an unpublished decision in a case concerning the sale of the Coliseum site is annexed hereto as Exhibit G. The court in that case rejected the plaintiff's argument that ninety days was an unreasonably short period of time in which to submit proposals.)

**Other Procedural Irregularities May Have Occurred**

10. Counsel advises me that MSG has alleged, in its lawsuit regarding the Rail Yards disposition, that the MTA did not share pertinent information equally with all bidders and that it applied evaluation criteria that were not mentioned in the RFP. If these allegations are true, they

provide additional examples of how the MTA departed from its normal practices and procedures in this case. As evidenced by Ex. D, for example, the MTA has, in the past, recognized that it has an obligation to share information equally with all proposers and is also obligated to afford proposers the opportunity to revise their proposals if the MTA decides to apply different selection criteria than those contained in the request for proposals.

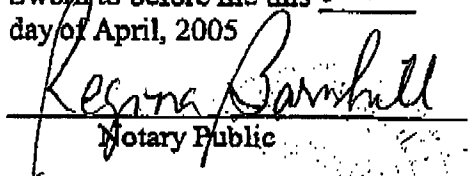
**The Rail Yards Disposition Should Be Re-Bid**

11. As a non-voting member of the MTA Board, I understand that MTA Board members have a fiduciary obligation to act in the best interests of the MTA and that the MTA's sole mission is to provide public transportation facilities, infrastructure and services. When selling its assets, the MTA has an obligation to seek the highest possible price, in order to maximize the amount of money available to it for public transportation purposes. The proposed sale of the Rail Yards site to the Jets for less money than could be obtained from other bidders is inconsistent with the MTA Board members' fiduciary duties and is also inconsistent with the MTA's statutory obligation to provide New Yorkers with the best transit system possible. The property should be re-bid under a fair, competitive process, so that the MTA can obtain fair market value for the site.



Ed Watt

Sworn to before me this 29<sup>th</sup>  
day of April, 2005

  
Notary Public

**REGINA BARNHILL**  
**NOTARY PUBLIC, STATE OF NEW YORK**  
**NO. 01BA8047384**  
**QUALIFIED IN NEW YORK COUNTY**  
**COMMISSION EXPIRES AUGUST 28, 2006**