Addendum on the MOU Between FCRC, NYC, ESDC and NYCEDC

On March 4, 2005, Mayor Michael R. Bloomberg and Governor George E. Pataki announced the signing of a Memorandum of Understanding (MOU) between Forest City Ratner Companies (FCRC), New York City, Empire State Development Corporation (ESDC) and New York City Economic Development Corporation (NYCEDC) for the development of the Brooklyn Arena/Mixed Use Development Project.

The MOU provides some new information on public costs and subsidies and provides some more details on process; however, the discussion on community benefits is weak and language on housing and jobs is non-committal. Key community concerns such as traffic, public education, public safety and security are not addressed.

The following highlights additional information contained in the MOU.

Project Costs & Subsidies

- FCRC will develop a "Financing & Operating Plan," including a 30-year pro-forma, which should enable a comprehensive analysis of subsidies and fiscal impacts.
- The MOU contemplates or requests additional and deeper subsidies beyond what we catalogued:
  - The City would provide land it owns (Block 1118 Lot 6, Block 1127 Lot 33, and the streetbeds) for just $1. FCRC will eventually lease this site, on which the Arena building will be constructed, for $1, from a non-profit local development corporation that will be controlled by the City, ESDC and NYCEDC. The LDC will issue tax-exempt bonds to finance the cost of constructing the Arena. If the LDC issues taxable bonds, FCRC will pay rent equal to debt service on those bonds. The project would be exempt from real estate taxes for 99 years. Instead it would make a payment in lieu of taxes (PILOT) to ESDC.
  - Use of PILOT:
    - The PILOT would be used first to pay the debt service on the bonds FCRC uses to build the project, so it will be many years (if at all) before the project provides any revenue to the public. (This method of financing, though common, is problematic. LDCs such as the one being proposed here are insulated from public scrutiny and often lead to unaccountability in the use of public tax dollars.)
    - Beyond the debt service, an additional 10% of the PILOT could be used for maintenance and repair of the Arena – thus using what should be public tax dollars for ongoing maintenance.
    - Any residual amount of the pilot goes to ESDC, not the City. As a result, there will be – at least for many years – no property tax revenue to pay for all of the additional public needs articulated in our report (improving local schools, traffic calming, increased security, police, and fire coverage, etc.).
  - Sales tax exemption for construction materials and Arena fixtures (e.g., the scoreboard).

- The MOU contemplates that FCRC would be able to secure discretionary energy cost savings programs, and tax credits under New York State's new brownfields program (if the remediation costs go beyond $10 million).

- The City contribution of $100 million can be used by FCRC for eminent domain or acquisition of private property.

Project Benefits & Impacts

- The MOU does not include a discussion of community benefits that in any way matches the press accounts surrounding the community benefits agreement, nor does it mention the CBA.
- The MOU does not include a specific commitment on affordable housing, only that "it is the intention of the parties to work together to ensure that a reasonable number of units will be developed as affordable."
- On jobs, the MOU says "the Public Parties and FCRC are dedicated to furthering the participation of minority and women-owned businesses and the hiring of minorities, women and local residents with respect to the Project and agree to establish a mutually acceptable program to facilitate that goal." No specific commitment is made.
- The MOU does commit FCRC to a minimum of 6 acres of green public open spaces.
- From the drawings and discussion in the appendices of the MOU, it does appear that the orientation of the ground floor retail spaces, public access, and open space could provide for neighborhood-serving retail and meaningful street interactions with the existing community.

Process

- The MOU is non-binding.
- FCRC and the City, ESDC and NYCEDC agree to cooperate with respect to public disclosure of the terms and conditions of the MOU or any information exchanged between the parties in relation to the MOU.
- Things to come:
  - Revised development plan
  - Financing & operating plan
  - Management agreements with non-residential tenants
  - Design guidelines

Agreement with the MTA

The MTA appears to have driven a much harder bargain than the City or ESDC.

- Sale, lease and other transactions of MTA property would be based on fair market value (taking into account any PILOT and subsidies, but not mentioning the provision of affordable housing or jobs, which is some reason for concern on our part).
- FCRC must pay for any additional costs the MTA incurs from the need to move its operations to a new yard – development of the yard, increased operating or insurance costs, and impact fees.