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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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SSD 6

In the Matter of Uptown Holdings,  
LLC, et al.,

Appellants,

v.

City of New York, et al.,  
Respondents.

Decided February 17, 2011:

Appeal dismissed without costs, by the Court sua  
sponte, upon the ground that no substantial  
constitutional question is directly involved.  
Chief Judge Lippman and Judges Ciparick, Graffeo,  
Read, Smith, Pigott and Jones concur, Judge Smith  
in an opinion.

SMITH, J. (concurring):

I agree that no substantial constitutional issue is  
presented, because, as the concurring opinion in the Appellate  
Division points out, this case is controlled by Matter of  
Goldstein v New York State Urban Dev. Corp. (13 NY3d 511 [2009])

and Matter of Kaur v New York State Urban Dev. Corp. (15 NY3d 235 [2010]). I think it necessary to point out, however, that our dismissal of this appeal does not imply endorsement of the Appellate Division majority opinion, which may be read to suggest that Kelo v New London (545 US 469 [2005]) should be followed by New York courts interpreting the New York Constitution (see Goldstein, 13 NY3d at 546 [Smith, J., dissenting] ["The good news from today's decision is that our Court has not followed the lead of the United States Supreme Court in rendering the 'public use' restriction on the Eminent Domain Clause virtually meaningless."])