Queens Resident United v City of New York
2021 NY Slip Op 31334(U)
April 22, 2021
Supreme Court, New York County
Docket Number: 151782/2020
Judge: Eileen A. Rakower

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

PRESENT: Hon. EILEEN A. RAKOWER **PART 6**
Justice

QUEENS RESIDENT UNITED, a neighborhood Association, by and through its president, JOSEPH FARLADO, and COMMUNITY PRESERVATION COALITION, a neighborhood association, by and through its President, DOMINICK PISTONE,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules,

- against-

CITY OF NEW YORK,

Respondent.

INDEX NO. 151782/2020
MOTION DATE
MOTION SEQ. NO. 1
MOTION CAL. NO.

DECISION AND ORDER

The following papers, numbered 1 to _____ were read on this motion for/to

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answer — Affidavits — Exhibits _____	
Replying Affidavits	

Cross-Motion: Yes x No

Petitioners Queens Resident United, a neighborhood Association, by and through its president, Joseph Farlado, and Community Preservation Coalition, a neighborhood association, by and through its President, Dominick Pistone (collectively, "Petitioners") bring this action pursuant to Article 78 of the New York Civil Practice Laws and Rules ("Article 78"), seeking an Order:

> a. Reversing, annulling, or otherwise setting aside Respondent's approvals of land-use plans for a city-wide "Borough Based Jail System" ("BBJS"), purportedly enacted so as to effectuate the closing of the penitentiary on Rikers Island ("Rikers"); and in particular, of a facility to be constructed in Queens County, New York, as part of the BBJS plan ("the Queens Jail Site"); those approvals being:

i. City Environmental Quality Review ("CEQR") No. 18DOC001Y;

ii. Uniform Land Use Review Procedure ("ULURP") Nos.: C 190333 PSY, N 190334 ZRY, C 190117 MMQ, and C 190342 ZSQ; and

iii. Resolutions No. 1122, 1118, 1130, and 1129, which the City Council approved on October 17, 2019, and which then became final no earlier than October 22, 2019, after the Mayor of Respondent City declined further action thereon pursuant to Charter §197-d.

Respondent City of New York ("Respondent" or the "City") opposes the motion.

Legal Standards

Article 78 proceedings exist for the relief of parties personally aggrieved by governmental action." *Dunne v. Harnett*, 399 NYS 2d 562, 563 [Sup Ct, NY County 1977]. Judicial review is limited to questions expressly identified by CPLR 7803. *Featherstone v. Franco*, 95 NY2d 550, 554 [2000]. One such question is "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed." *See* CPLR 7803 [3]. "[I]t is settled that in a proceeding seeking judicial review of administrative action, the court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision or whether it is arbitrary and capricious." *Flacke v. Onondaga Landfill Systems, Inc.*, 69 NY2d 355, 363 [1987]. "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts." *Testwell, Inc. v. New York City Dept. of Bldgs*., 80 AD3d 266, 276 [1st Dept 2010].

CEQR/ SEQRA Standard

A. Parties' Contentions

Petitioners argue that the "CEQR process was substantively and procedurally flawed." Petitioners assert that the EAS plan suffered from major flaws, "namely, a lack of rigor in its projections regarding the detainee population." Petitioners argue that "these numbers supposedly both require and enable the entire BBJS project, the unreliability of these projections renders the entire project suspect." Petitioners argue that the EAS forms do not discuss "the closure of Rikers itself what physical and programmatic conditions compel the closure of Rikers; whether they apply to the entire complex, or only to certain buildings, and in what degrees; how and when the closure is to happen, whether all at once, or in stages; what mechanisms might there be for shifting detainees and facilities from Rikers to the Queens Jail Site; and, most importantly, whether the 'objectives' of the project sponsor might best be served by alternative sites, designs, scales, uses, or types of action." Petitioners assert that "it cannot be said that the goal of the project, i.e., the closure of Rikers, has itself even been considered, much less the alternatives to closing Rikers -- other than erecting a jail of the indicated size, at the indicated location in Queens." Petitioners argue that "[w]ithout a thorough survey of the physical plant of Rikers, and a detailed enumeration of the ways in which it is inadequate, it is impossible to fully and credibly study the Queens Jail Site and the rest of BBJS as an alternative to Rikers, as the City was obliged to do under CEQR." Petitioners assert that the EAS has "failed to analyze whether it was feasible to renovate/rehabilitate the Rikers jail complex, apparently instead relying on the presumptive 'moral imperative' that it should be shuttered."

Furthermore, Petitioners assert that "BBJS did not receive the 'hard look' required by SEQRA/CEQR court precedent, and the 'reasoned elaboration' for the determination is lacking." Petitioners argue that "[t]he methodology for assessing traffic was flawed and incomplete." Petitioners contend that "[t]he DEIS studied traffic at off-peak hours, thus underestimating traffic congestion in a chronically traffic congested area (encompassing the arterial street of Queens Boulevard and the junction of the Grand Central Parkway, Union Turnpike, Jackie Robinson Parkway and Van Wyck Expressway; i.e. the 'Kew Gardens Interchange'); and, incredibly, found that the Queens Jail Site did not impact residential neighborhood of Kew Gardens, where the Jail would be located and where there are several apartment complexes immediately front-facing across the street (including, notably, the Silver Towers co-operative where Petitioner Faraldo resides) and one-and two family pre-

war homes flush against those; or the bordering neighborhood of Briarwood, where numerous low-rise apartment buildings and a shelter for homeless families flank and will be towered over by the jail; or the bordering neighborhood of Forest Hills, with its multitude of apartment buildings and small businesses." Petitioners further argue that "there no was mention of the ongoing Kew Gardens Interchange Project, a massive and complex New York State Department of Transportation road construction project in its 10th year, and still years from completion, that is ongoing immediately adjacent to where the Queens Jail would be built." Petitioners argue that "most disturbingly, it was related that notice for public meetings had not been properly given, and that the City's representatives had been dismissive at the meetings, representing that the project generally was *fait accompli*, and input was limited to 'what color would we like the drapes.'"

In opposition, Respondent argues that its SEQRA review complied with applicable law and was rational. Respondent asserts that Petitioners' argument that the environmental review was improper because the City had developed the borough-based jails plan before the environmental review process started is without merit. Respondent contends that "before any environmental review can be conducted, the project sponsor must have a plan in the first place." Respondent argues that it "provided ample opportunity for the public to review and comment on the proposed project at each stage of the environmental review, including: four public meetings and a written comment period on the draft Scope of Work, see Ex. 91(A), FSOW at 18 (Mar. 22, 2019), and a public hearing and written comment period on the DEIS, see Ex. 94, Notice of Public Hearing on the DEIS for the BBJS, City Record (June 19, 2019)." Respondent asserts that it "provided ample opportunity for public review and responded to public concerns, even adjusting its plans to reflect commenters' feedback."

Moreover, Respondent asserts that it took a "hard look" at the potential for significant adverse impacts required by SEQRA/CEQR. Respondent argues that "the only question before the court is whether the City "identified the relevant areas of environmental concern" arising from the BBJS project, "took a 'hard look' at them, and made a 'reasoned elaboration' of the basis for its determination." Respondent asserts that it appropriately considered alternatives. Respondent argues that it is "not required to expressly consider any particular project alternative, or any particular number of alternatives." Respondent argues that:

> the FEIS thoroughly analyzed two alternatives: the "No Action" alternative without the project, and an alternative with no unmitigated significant adverse impacts. The FEIS

> included a comparative assessment between the proposed project and both alternatives, and demonstrated why neither alternative would meet the project's goals and objectives. *Id.* This is consistent with the SEQRA rules, which state that the agency should evaluate alternatives "that are feasible, considering the objectives and capabilities of the project sponsor." 6 N.Y.C.R.R. § 617.9(b)(5)(v). Thus, where the City's objective is to close the Rikers Island jails and end the isolation of people in detention far from their support systems and communities, SEQRA does not require the City to consider alternatives that would not meet this objective.

Respondent argues that the "proposed Queens site met all four of the City's site selection criteria for the project." Respondent contends that "[o]ne of these criteria was immediate proximity to the borough's courthouse, limiting the City's search to the small parcel of land comprising the Queens civic center, bounded on three sides by major roadways."

Respondent asserts that it "appropriately considered the potential for construction impacts." Respondent argues that Petitioners' argument "that the FEIS is flawed because it excluded discussion of potential cumulative impacts from ongoing construction of a separate infrastructure project, the Kew Gardens Interchange Project, presently being completed near the site of the approved Queens jail facility" also has no merit. Respondent asserts that the Kew Gardens Interchange Project "is expected to be substantially complete before the proposed project commences construction and would not have the potential for cumulative impacts." Respondent therefore asserts that "DOC properly excluded discussion of that separate infrastructure project from analysis in the BBJS environmental review." Respondent argues that it "appropriately considered the potential for traffic impacts." Respondent asserts that "[i]n coordination with the City's expert transportation agency—the New York City Department of Transportation—DOC prepared an extensive transportation analysis in accordance with the accepted methodologies outlined in the CEQR Technical Manual." Respondent argues that "DOC evaluated traffic conditions during peak hours for the project—hours when traffic associated with the jail is expected to be highest because it coincides with DOC uniformed staff shift change." Respondent contends that "DOC found that the project would result in traffic impacts at four intersections, id., and identified mitigation measures that addressed those impacts."

Respondent contends that it "appropriately considered jail population estimates." Respondent asserts that "[t]he jail population estimates relied upon in the FEIS were reasonably based on trends in crime as well as both City and state policy initiatives to decarcerate… and provided a sufficient basis for review of the project's potential environmental impacts pursuant to SEQRA/CEQR." Respondent argues that Petitioners' claim "that the estimated populations of people in detention utilized in the FEIS are 'unreliable assumptions' that 'cast the whole project into question'" is without merit. Respondent asserts that it "has been able to maintain ongoing reduction in jail populations for many consecutive years due in part to necessary policy and cultural changes, and further policy and cultural changes are needed to aid in the continuation of this trend."

B. Law

"SEQRA's fundamental policy is to inject environmental considerations directly into governmental decision making". *Zutt v. State*, 99 AD3d 85, 100 [2d Dept 2012]. "Since SEQRA contains no provision regarding judicial review, courts apply the standard governing proceedings pursuant to CPLR article 78 for the review of administrative determinations." *Id.* "The relevant question before the court is whether the agency identified the relevant areas of environmental concern, took a hard look at them, and made a reasoned elaboration of the basis for its determination". *Id.* "While the judicial review must be genuine, 'the agency's substantive obligations under SEQRA must be viewed in light of a rule of reason' and the degree of detail with which each environmental factor must be discussed will necessarily vary and depend on the nature of the action under consideration." *Gernatt Asphalt Prod., Inc. v. Town of Sardinia*, 87 NY2d 668, 688 [1996]. "While judicial review must be meaningful, the courts may not substitute their judgment for that of the agency for it is not their role to weigh the desirability of any action or [to] choose among alternatives." *Akpan v. Koch*, 75 NY2d 561, 570 [1990] (citation omitted).

6 NYCRR §617.9(b)(5)(v) states in relevant part:

> (5) The format of the draft EIS may be flexible; however, all draft EISs must include the following elements:
>
> ***

> (v) a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The range of alternatives must include the no action alternative. The no action alternative discussion should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed action…

C. Discussion

The record reflects that Respondent identified the relevant areas of environmental concerns, took the requisite "hard look" at those concerns and provided a "reasoned elaboration" for the basis of their determination. The record shows that Respondent did consider the environmental impact the Project would have on the surrounding area of the Queens Jail Site.

Here, Respondent shows that it assessed the potential significant adverse impacts on the surrounding area of the Queens Jail Site. Respondent determined that it properly excluded discussion of the Kew Gardens Interchange Project because it is expected to be complete before construction begins on the Queens Jail Site. In regards to traffic impacts, DOC evaluated traffic conditions during peak hours for the project—hours when traffic associated with the jail is expected to be highest because it coincides with DOC uniformed staff shift change. "DOC explained that staff shift changes are the greatest contributors to transportation demand, and thus, analyzing the typical rush-hour period would capture significantly fewer project-generated trips." Additionally, "DOC found that the project would result in traffic impacts at four intersections, and identified mitigation measures that addressed those impacts."

Moreover, 6 NYCRR §617.9(b)(5)(v) requires that the agency must have included a "no action alternative" as an alternative in the draft FEIS. However, Respondent is not required to have alternatives if they are not "reasonable." The FEIS thoroughly analyzed two alternatives: the "No Action" alternative without the

project, and an alternative with no unmitigated significant adverse impacts. Respondent included a comparative assessment between the proposed project and both alternatives and demonstrated why neither alternative would meet the project's goals and objectives. The motivating goal of the project is the closure of the jail on Rikers Island; therefore, it was not reasonable for Respondent to consider additional alternatives to the closure of Rikers. In choosing the Queens Jail Site, Respondent prioritized four criteria:

> • City-owned land. The City sought land already in its portfolio that would allow for swift development, to ensure that Rikers Island is closed expeditiously.
>
> • Sufficient Size. The City sought lots large enough to fit an equitable distribution of the City's projected jail population across four boroughs, with space to provide a humane, safe, and supportive environment.
>
> • Access to Transit. The City focused on sites with convenient access to public transit, to facilitate visits by loved ones, lawyers, and service providers.
>
> • Proximity to courts. The City sought sites in close proximity to courthouses to reduce delays in cases and the time people stay in jail.

Respondent chose the Queens site because it met all four of Respondent's site selection criteria for the project.

Ultimately, the analysis determined that the location of the Queens Jail Site will be located at 126-02 82nd Avenue (Block 9653, Lot 1, Block 9657, Lot 1), the site of the Queens Detention Center. All of these considerations and the analysis were presented to the public for review and comment at each stage of the environmental review, "including: four public meetings and a written comment period on the draft Scope of Work, see Ex. 91(A), FSOW at 18 (Mar. 22, 2019), and a public hearing and written comment period on the DEIS, see Ex. 94, Notice of Public Hearing on the DEIS for the BBJS, City Record (June 19, 2019)." Based on community review, the proposed Queens jail was reduced from approximately 1.1 million square feet to 929,100 square feet, and from 1,510 beds to 886, and the reduction in size resulted in a corresponding height reduction from an initially proposed 310-foot-tall building to a jail of up to 195 feet. The court concludes that

the agencies involved took the necessary "hard look" provided a "reasoned elaboration" for their final determination and provided the necessary alternatives. Therefore, Respondent's CEQR/ SEQRA review was not arbitrary or capricious.

ULURP Standard

A. Parties' Contentions

Petitioners assert that the "CEQR plan's reliance on the design-build method is irrational." Petitioners contend that "[d]esign-build involves contracting with a single entity to provide both design services (architectural or engineering) and construction services on the same project." Petitioners assert that "although informed members of the public had grave concerns about the untested nature and lack of rigor of design-build, CPC decided that the method could be approved for the construction of borough-based jails."

Petitioners contend that "[o]nce a ULURP item has been certified by CPC, it moves from the appropriate community board, to the president of the affected borough, and then to the City Council. The community board and borough president may hold hearings and issue reports, which are not binding on the City Council. Charter §197-c." Petitioners asserts that "DOC filed these ULURP applications with CPC and committed them to the above process on March 22, 2019" and doing so "DOC had already bypassed other processes mandated by the City Charter." Petitioners argue that "[n]o alternative site was ever proposed or identified, in contravention to Charter §203-204 and the Fair Share rules." Petitioners assert that when the "Borough President Katz was able to submit her statutorily enabled response, the site selection had already taken place and her input was already to be disregarded as worthless."

Additionally, Petitioners argue that "the Negative Declaration for the Main ULURP that was ultimately approved by the City Council, Exhibit A, at p. 53, there appeared a brief note that City-owned land that would allow for swift development of the new jails." Petitioners contend that "[t]he Main ULURP was referred for consideration to Queens Community Board ('CB') 9, where the Queens Jail Site lies." Petitioners further contend that "CB 8 also asked to review it, due to the proximity of that board's territory (in particular, the neighborhood of Briarwood) to the Queens Jail Site." Petitioners argue that "CB 9 and CB 8 both reviewed the Main

ULURP, heard testimony, and invited written submissions" and both community boards "overwhelmingly disapproved the application." Petitioner assert that "[r]esidents of the area surrounding the Queens Jail Site raised concerns about several issues."

In opposition, Respondent argues that a single ULURP review of the four borough-based jail sites was lawful and rational. Respondent asserts that "[b]oth the City Charter and the regulations governing ULURP contemplate and condone multi-borough ULURP reviews." Respondent contends that "both the Charter and rules require applications to be referred to 'each affected borough President' for review, and the Charter grants 'each affected borough president' the right to attend meetings concerning an application. Charter § 127-c(b),(d); 62 R.C.N.Y. § 2-02(a)(2), (3)." Respondent argues that its "consolidated ULURP review was eminently reasonable here." Respondent asserts that "a single, multi-borough ULURP review made sense as only the approval of all four jail sites would enable the City to achieve its driving goal: the closure of Rikers Island." Respondent argues that "[t]he City Planning Commission ['CPC'] recognized this, explaining that simultaneous consideration was 'both appropriate and necessary to meet the goal of closing the jails on Rikers Island.'" Respondent further argues that the "simultaneous consideration of the multi-borough site selection was sensible as it facilitated the timely closure of Rikers Island, on the City's planned ten-year timeframe." Respondent asserts that the "simultaneous consideration of the multi-borough site selection also enabled the City's use of design-build procurement, a more efficient and cost-effective project procurement method approved by the New York State legislature in the New York City Rikers Island Jail Complex Replacement Act." Respondent contends that the "Act expired two years from enactment, the City had a strict deadline to implement design-build for this project."

Respondent argues that its "use of the design-build procurement method fully complied with applicable law and was reasonable." Respondent asserts that "[n]either SEQRA nor ULURP require the review of final design documents, and in fact projects are routinely reviewed under both regimes based on conceptual designs or anticipated designs." Respondent contends that "[t]he ULURP approval set maximum building envelopes, maximum bulk and density, loading locations, entrance locations, parking volumes, and other land-use features, and the allocation of space between the major project elements, including jails, community facilities, and retail." Respondent argues that Petitioners' claim "that the ULURP review was somehow invalid because the [CPC] included design suggestions for the future" is incorrect. Respondent asserts that "[t]he Commission's report [which Petitioners incorrectly describe as a 'negative declaration'] explained that the Commission was

modifying certain aspects of the project in order to meet important urban and project-specific design principles, such as by requiring setbacks from 126th and 132nd Streets." Respondent argues that "environmental review does not depend upon fine design details, but upon conservative estimates."

Additionally, Respondent asserts that Petitioners' claim "that the ULURP process was invalid due to a purported lack of community input" has no merit. Respondent contends that the City's Neighborhood Advisory Committees ("NACs") "were convened to provide an additional avenue for interested parties to engage with the City on project planning; they did not replace the extensive public review and comment process which the City conducted pursuant to SEQRA/CEQR and ULURP." Moreover, Respondent argues that "[t]he City Charter requires ULURP approval for 'site selection for capital projects,' City Charter § 197-c (a)(5), but does not require that site selection applications include 'presentation of alternative scenarios' as Petitioners claim." Respondent asserts that "ULURP does not mandate that site selection applications include alternative sites for consideration, it was entirely proper for the City to put forth a ULURP application for the proposed sites for review."

B. Law

"ULURP creates a complex procedural process for the approval by the City or a City agency of 'changes approvals, contracts, consents, permits or authorization thereof, respecting the use, development or improvement of real property subject to city regulation' in twelve specified circumstances." *Neighbors United Below Canal v. Deblasio*, 2020 N.Y. Slip Op. 33095[U], 30-31 [N.Y. Sup Ct, New York County 2020], *revd*, 2021 N.Y. Slip Op. 01947 [1st Dept Mar. 30, 2021] (citing *Matter of Neighborhood in the Nineties v. City of New York*, 24 Misc 3d 1239[A], 2009 NY Slip Op 51812[U], *11 [Sup Ct, N.Y. County, Aug. 13, 2009]). Where a "site selection for capital projects" is made by a City agency or City-owned property is involved ULURP is triggered. (*see* New York City Charter § 197-c[a][5], [10]).

"ULURP requires that, upon the filing of proposals for land-use activity of specified types with the DCP, the proposal must be forwarded to the appropriate Community Board (*see* New York City Charter § 197-c[c])." *Id.* at 31. "The Community Board is authorized to hold hearings, prepare plans for the improvement and development of its district and cooperate with and advise city agencies and officials (*see* New York City Charter § 2800[d])." *Id.*

Once the Community Board receives the land use proposal, it has 60 days to conduct a public hearing and submit its written recommendations to the CPC. Thereafter, CPC has 60 days to decide on the proposal, and if it modifies or disapproves a Community Board recommendation, "shall be accompanied by a written explanation of its reason for such action" (New York City Charter § 197-c[e]). CPC's decision is submitted to the City Council for final action (*see* New York City Charter § 197-d[b][1]; 62 RCNY 2-02[a][5], [b][5]).

C. Discussion

A single ULURP review of the four borough-based jail sites was lawful and rational. Respondent reasonably deemed the that the multi-borough review should be consolidated. Respondent determined that "a single, multi-borough ULURP review made sense as only the approval of all four jail sites would enable the City to achieve its driving goal: the closure of Rikers Island." Respondent made clear that if not all four sites were approved, it would be unable to close Rikers Island, and thus, "the borough-based jails project would not have achieved its animating goal." The CPC explained that a consolidated review was "both appropriate and necessary to meet the goal of closing the jails on Rikers Island." Additionally, as a result of the consolidation, Respondent was able to use design-build, which was approved by the New York State legislature in the New York City Rikers Island Jail Complex Replacement Act. 2018 Laws of New York Ch. 59, Pt. KKK. The Act expired two years from enactment. Respondent determined that design-build was "a more efficient and cost-effective project procurement method." Furthermore, Respondent's use of the design-build procurement method fully complied with applicable law and was reasonable. The ULURP approval set maximum building envelopes, maximum bulk and density, loading locations, entrance locations, parking volumes, and other land-use features, and the allocation of space between the major project elements, including jails, community facilities, and retail.

Moreover, Respondent did not violate ULURP because the CPC included design suggestions for the future. The CPC's report stated that the CPC would adjust certain aspects of the project in order to meet important urban and project-specific design principles, such as by requiring setbacks from 126th and 132nd Streets. The CPC "explained the importance of avoiding overly prescriptive requirements that would deprive the design-build team of the flexibility to create well-articulated structures with appropriately varied heights or setbacks within the building

envelopes." The Court agrees with Respondent's assertion that "environmental review does not depend upon fine design details, but upon conservative estimates." As mentioned above, the agencies involved took the necessary "hard look" provided a "reasoned elaboration" for their final determination.

Thus, Respondent's ULURP review complied with applicable law and was rational in all respects.

Fair Share Review Standard

A. Law

"Section 203 of the New York City Charter required the City Planning Commission to adopt rules establishing criteria for the location, expansion, reduction, or closing of City Facilities." *Ocean Hill Residents Ass'n v. City of New York*, 33 Misc 3d 1230(A) [Kings County, Sup Ct 2011].

The Preface to the Fair Share Rules states:

> These criteria are intended to guide the siting of city facilities, as provided by Section 203 of the City Charter. The fair distribution of city facilities will depend on balancing a number of factors, such as community needs for services, efficient and cost effective delivery of those services, effects on community stability and revitalization, and broad geographic distribution of facilities. Furthermore, these factors can be weighed more effectively, and siting decisions can be accepted more readily, when communities have been meaningfully informed and consulted early in the siting process. The intent of these guidelines is to improve, not to obstruct, the process of siting facilities.
>
> Under the provisions of Section 204 of the Charter, the Mayor will prepare an annual Statement of Needs in accordance with these criteria. The Statement of Needs will provide early notice of facility proposals to Borough

> Presidents, Community Boards, and the public at large. It will be accompanied by a map and text indicating the location and current use of all city properties and of state and federal facilities, as designated by the Charter. This will allow the public and city agencies to assess the existing distribution of facilities and analyze factors of compatibility and concentration. Section 204 also provides procedures for public review and comment on the Statement of Needs, permits Borough Presidents to propose locations for city facilities, and requires city agencies to consider the statements that ensue from that review. Those provisions, together with these criteria, should provide a more open and systematic process for the consideration of facility sites.
>
> The criteria will have several applications in the Section 204 proceedings. The Mayor and city agencies will use them in formulating plans for facilities. Community Boards will refer to them in commenting on the Statement of Needs, and Borough Presidents will employ them in recommending specific sites for facilities. The City Planning Commission will consider them in acting on site selection and acquisition proposals subject to the Uniform Land Use Review Procedure (ULURP) and in the review of city office sites pursuant to Section 195 of the Charter. Sponsoring agencies will also observe them in actions that do not proceed through ULURP such as city contracts, facility reductions, and closings. Although recognizing that non-city agencies are not subject to these criteria, the Commission encourages all such agencies to consider the factors identified in these criteria when they are siting facilities in this city.

"The Fair Share Criteria are not regulations which dictate procedures for agencies; rather, they are criteria which 'are intended to guide the siting of city facilities.'" *Community Planning Bd. No. 4 (Manhattan) v. Homes For the Homeless*, 158 Misc 2d 184, 191 [New York County, Sup Ct 1993]. "Some deviation from the Criteria guidelines, therefore, is anticipated and implicitly allowed." *Id.* "Conceivably a flagrant disregard of the Criteria could give rise to a cause of action." *Id.* at 192.

B. Discussion

The Court has determined that Respondent's Fair Share Statement met the applicable legal requirements. The Statement details the project's goals and the four planned facilities. Each of the applicable Fair Share criteria is stated in the Statement and an analysis is done for each of the proposed facilities. The Statement describes with charts and maps, the concentration, locations, and types of various City and non-City facilities located within a half-mile radius of the proposed sites and the distribution and capacity of existing correctional facilities in the City. Additionally, the Statement discusses Respondent's criteria for the new borough-based jails, including the importance of proximity to the courthouses and the deadline to close Rikers Island, and deadline to use design-build procurement as per applicable New York State legislation. On this record, with all of the aforementioned considerations explored in connection with the proposal of this site, the Court concludes there is no violation of the City Charter or Fair Share Rules.

Wherefore it is hereby,

ORDERED that the Petition is denied and the Clerk is directed to enter judgment dismissing the action accordingly.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: April 22, 2021

ENTER: _____ J.S.C.

HON. EILEEN A. RAKOWER

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION