

Foxes Guard the Henhouse at the Department of City Planning (DCP)

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Part 1

Communities Cannot Get a Fair Ruling when a Regulatory Agency is Captured by the Industry it is Supposed to Regulate. The Department of City Planning is a Case in Point

In 1976, sociologist Harvey Molotch wrote a famous essay describing an “Urban Growth Machine” made of a coalition of large property owners, developers, realtors, industry-dependent elites and politicians whose economic and political interests aligned to push for insatiable real estate development dubbed “growth.”¹ Many years later, Rutgers economist Jason Barr studied high-rise development in Manhattan and described a “Skyscraper Industrial Complex” composed of real estate developers, real estate advisors and financiers, construction unions, architects, construction and engineering firms whose economic self-interests aligned to demand never-ending and unregulated high-rise construction.² Most people would just think of this as constellation of interests as the “real estate industrial complex” and include within think-tanks (Furman, Van Allen, Center for an Urban Future), blogs (Yimby, Curbed) and newspapers (Crain’s, The Real Deal) when they are heavily dependent on real estate advertising or real estate philanthropic donations.

These forces have crystalized in New York City in the most powerful special interest lobby New York has ever known, the Real Estate Board of New York (REBNY) whose Board of Governors is dominated by spectacularly wealthy oligarchic families, some of which have become feudal dynasties with thousands of tenants paying rent to them. It is a situation not seen since the medieval period.³ REBNY’s financial and lobbying power is a matter of common knowledge among good government groups.⁴

Such unprecedented industry power is only a problem and a matter of public interest when an industry comes to control the government institutions that are supposed be regulating it on behalf of the broader public good. The Department of City Planning is a

¹ https://www.jstor.org/stable/2777096?read-now=1&seq=21#page_scan_tab_contents

² <http://buildingtheskyline.org/>

³ <https://www.bisnow.com/new-york/news/state-of-market/from-rockefeller-to-trump-a-history-lesson-about-nycs-oldest-real-estate-families-48606#0>

⁴ <https://www.politico.com/states/new-york/albany/story/2015/04/rebny-members-gave-a-tenth-of-all-ny-campaign-money-021345>

case in point. There, the Foxes clearly guard the henhouse. Communities can no longer get a fair hearing. Any critique of a rezoning or request to modify a development scheme coming from anyone outside the Real Estate Industrial Complex is patronizingly and arrogantly dismissed as “Nimbyism.”⁵ The situation is acute: hearings at the DCP have become a kind of Kangaroo Court in which Commissioners politely listen to communities, but then privately dismisses them as nuisances and later proceeds directly to vote along the lines indicated by the testimony of REBNY or its surrogates.

The fundamental problem is that a rigged game has been set up. DCP has been captured by the Real Estate Industrial Complex. To be specific, of the 13 members of the Commission who control the Department of City Planning:

- One is a real estate investor and substantial donor to the Mayor and runs a \$75 million “opportunity fund” for Brooklyn (Douek)
- One is a former lobbyist for the real estate industry (Cappelli)
- Five are real estate developers of various types, ranging from an employee of Bluestone Group to CEOs of Development Corporations to the head of the Fifth Avenue Committee (de la Uz, Knuckles, Eaddy, Knight, and Marín)
- The current Chair’s professional history is that of running the notorious corporate subsidy-granting Empire State Development Corporation (ESDC), a real estate development entity for the state. ESCD has seriously abused eminent domain to the detriment of black and low-income communities. One academic notes that the Empire State Development Corporation acts as “Robin Hood in reverse, taking from the poor to give to the rich” (Lago)
- Only one has a degree in urban planning, but alas, runs a consulting firm advising city agencies and developers how to “optimize” their retail tenant mix so that it fits the owner’s “goals” (Ortiz).
- At least two have serious conflicts of interest with the current rezoning project on the table at Gowanus (Bluestone and Fifth Avenue Committee). At least one had a clear conflict of interest with the East Harlem rezoning (Knuckles).
- One has long been a cheerleader for the Hudson Yards project (Levin) and whose spouse is a partner at the law firm of David and Polk which advises developers such as Extell - the key player in the Hudson Yards project (as well advising many other major real estate players in NY.)
- One is CEO of the real estate controlled BID, the Grand Central Partnership, whose board of directors reads like the Who’s Who of the Board of Governors of the Real Estate Board of New York and who has pushed for multiple upzonings in Midtown (Cerullo).

Detailed profiles of each Commissioner (with footnotes and citations) follow in the last section of this essay. But the conclusion is twofold. First, is it any wonder that these Commissioners, the majority of whom represent the real estate industrial complex, mistake upzoning, real estate profit-making and high-rise projects for actual urban

planning? Second, we call on the City Charter Commission to adopt as major priority the task of correcting this situation in the Charter itself.

Part 2:

How to Modify the City Charter to Minimize ‘Fox Guarding the Henhouse’ Appointments to City Agencies Dealing with Land Use

Editing the City Charter to repair the situation is a simple exercise. Here are some suggestions might just as easily apply to the Economic Development Corporation (which could use some actual economists on it) and the Landmarks Commission.

Chapter 8: Department of City Planning, Section 192 a)

A short paragraph should be inserted after the phrase “no member shall serve any other city office” such as:

No appointee to the City Planning Commission, Chair or otherwise, may have employment in or own shares in a real estate development company, a real estate investment fund, or consulting firm that advises real estate clients, nor may they hold a management position at development corporation or business improvement district, nor may they have had employment as a lobbyist for the real estate industry. No person employed at or having ownership in a firm that does regular and frequent business with the city may be appointed. Neither may appointees be people who are routinely employed as legal, financial, strategic planning, or public relations advisors to real estate industry clients. Nor may appointees be immediate family members to such persons in the abovementioned categories. A majority of those appointed must have degrees in urban planning.

Chapter 27: Board of Standards and Appeals, Section 659 b)

Insert the following phrase:

No appointee to the BSA, Chair or otherwise, may have employment as a real estate developer, real estate investor, professional lobbyist of any kind, or be senior staff of a development corporation or business improvement district. Nor may they have previous professional experience as a lobbyist for the real estate industry. No person employed at or having ownership in a firm doing regular and frequent business with the city in real estate development may be appointed. Neither may appointees be people employed as legal, financial, strategic planning, or public relations advisors to real estate industry clients. Nor may appointees be immediate family members of such persons in the abovementioned categories. A majority of those appointed must have degrees in architecture or engineering.

Chapter 68: Conflicts of Interest

Insert the Following Phrase to Section 2604 A):

a) no public servant shall have an interest in or be employed in a senior position in a firm, corporation, or nonprofit which such public servant knows is engaged in business dealings with the agency served by the public servant. [Then delete the exception for community boards.]

Chapter 70: City Government in the Community

Section 2800. Insert the following phrase.

No voting member of a community board may be a paid professional lobbyist for any industry, or be members of the executive management group or founder of a union or political club, or be in an immediate family member of such individuals in the aforementioned categories.

Part 3:

Profiles of the Real Estate Industrial Complex at DCP

Mariso Lago, Chair of the DCP. One of her claims to competence for serving as Chair is her experience as CEO of the Empire State Development Corporation. Part of the stated mission of the Empire State Development Corporation (ESDC) is to support economies through “real estate development” across New York State.⁶ The current Chair is Howard Zemsky, a real estate developer who owns the Larkin Development Group. ESDC mostly organizes public subsidies for big developer-run projects (such as the Amazon project. It also issues public bonds to pay for them and awards contracts to developers. Current NYC “signature” and “large-scale” projects include the redevelopment of Penn Station and of the Javits Convention Center. ESDC specializes in creating interlocking boards of subsidiaries to carry out its work. It is famous for the abuse of eminent domain to impose its vision. It used those powers for the disastrous Atlantic Yards Project that demolished a swathe of Brooklyn as well as the Columbia Manhattanville Project that destroyed an immense stretch of West Harlem for Columbia University’s new glass-filled campus. One of ESDC’s subsidiaries was also responsible for building luxury housing in Brooklyn Bridge Park - even when it became clear that housing was not needed to subsidize the park. One of the ESDC’s subsidiaries still manages a portfolio of 20,200 housing units in New York City. ESDC bonds were used to build a network of 32 adult prisons to accommodate people arrested under the

⁶ See that mission statement online at: <https://esd.ny.gov/about-us>

Rockefeller drug laws.⁷ “Good Jobs First” a national good government group, accuses the ESDC of “awarding lavish subsidies with little accountability.”⁸ An Institute for Justice report by Dr. Dick Carpenter found that ESDC’s “eminent domain abuse disproportionately targets those who are less well off and less educated” and acts as “Robin Hood in reverse, taking from the poor to give to the rich.”⁹ The Brooklyn Bridge Park redevelopment was particularly ridden with conflicts of interests and scandal during Ms. Lago’s tenure at the Empire State Development Corporation¹⁰. The architect of one of the governor’s biggest deals at the ESDC was found guilty of bid rigging.¹¹ E.J. McMahon, Director of the watchdog group ‘Empire Center’ has fretted over misplaced priorities at the ESDC with the comment: “What roads could you build, what bridges could you build with the money you are spending on factories [then handed over] for private corporations?” Gotham Gazette describes ECDC-supported entities as “scandal-plagued.”¹² Ms. Lago has publicly supported a high-rise, glassy, Dubai-on-the-Hudson vision for New York City in a video interview with the real estate press, calling it a ‘win-win-win’¹³. She mentions that the only real strategy DCP has it to define areas to “take more density” and in the same interview she expresses to be one with REBNY’s desire to do away with the State FAR cap on height and bulk. She has no training in urban planning.

Kenneth Knuckles, Vice Chair of the Commission. He has been on the Commission since 2002 and has no training in urban planning. He was the longtime CEO of the Upper Manhattan Empowerment Zone Development Corporation (known as UMEZ) and only retired from there at the age of 70 in April of 2018. UMEZ is a real estate development organization that does a few other small business support activities under the heading of “economic development.” Substantial funding for UMEZ comes from New York City, meaning UMEZ has an internal incentive not to bite the City hand that feeds it. Under Mr. Knuckles, UMEZ provided \$87 million in loans to real estate development projects and was the key player setting up the controversial East River Plaza that benefited big developers (specifically, Ratner, Blumenfeld, and Canyon Capital Advisors). That plaza is a vertical mall for big box stores and features a bizarre \$64 million parking lot¹⁴ that as of 2012 was nearly empty, with less than 5% used of the

⁷ King, Ryan S.; Mauer, Marc; Huling, Tracy (February 2003). *"Big Prisons, Small Towns: Prison Economics in Rural America"* (PDF). *The Sentencing Project*. Archived from *the original* (pdf) on 2010-07-10.

⁸ See this page at their website: <https://www.goodjobsfirst.org/states/new-york>

⁹ <https://ij.org/report/empire-state-eminent-domain/>

¹⁰ <https://ny.curbed.com/2016/6/3/11836206/brooklyn-bridge-park-pier-6-financial-dispute>

¹¹ <https://www.wshu.org/post/critics-say-problems-cuomos-economic-development-programs-go-beyond-corruption#stream/0>

¹² <http://www.gothamgazette.com/state/7732-state-backed-scandal-plagued-entities-seek-new-chapter>

¹³ <https://www.youtube.com/watch?v=w22JBLwXY3Q>

¹⁴ <https://www.nytimes.com/2009/10/21/realestate/commercial/21plaza.html>

spaces actually in use¹⁵. A senior accountant who worked at UMEZ wrote about his experience there on Glassdoor, saying “the only successes I saw while I was there were in funding large corporations to develop areas in Harlem.”¹⁶ Mr. Knuckles is quoted in Crain’s thus: “I would like to say we created the environment that was conducive to stores like Whole Foods [now owned by Amazon] coming to Harlem.”¹⁷ The role of Whole Foods in the “whitification” of Harlem was called out in 2016 in Michael Henry Adams’s moving opinion column in the Times, “The End of Black Harlem”¹⁸ in which Adams wrote: “Whole Foods might as well be Fortnum and Mason... To us our Harlem is being remade, upgraded, and transformed, just for them, for wealthier white people.”

Joseph Douek, Commissioner. He is Chair and CEO of an investment and hedge fund called Viceroy Equities which is “betting big on Brooklyn with a \$75 million Opportunity Zone fund”. Recall that opportunity zone investors will pay zero capital gains taxes if their real estate investments are held for ten years. Opportunity zones are pure subsidies to real estate investors.¹⁹ He has no training in urban planning. Opportunity zones in Brooklyn overlap with proposed upzonings.

Alfred Cerullo, Commissioner. Mr. Cerullo is the President and CEO of the Grand Central Partnership, a big real estate Business Improvement District (BID). That BID was a key force in driving the recent upzoning for the Vanderbilt Corridor and Midtown East, as both upzonings directly benefited board members of the Partnership such as SL Green. Of course, the Board of Directors of the Grand Central Partnership also reads like a *Who’s Who* of the Real Estate Board of New York, with REBNY’s CEO John Banks literally serving as the official secretary of the BID. Mr. Cerullo is a Republican and former actor with a law degree, but no training in urban planning.

Richard Eaddy, Commissioner. Mr. Eaddy’s work prior to government service was with ET Partners, a real estate development and consulting firm. He had previously been Chief Financial Officer of the real estate company “L & M Equity Participants” the precursor of L& M Development partners, a firm which brags on its website that it has “over \$7 billion in development, construction, and investment.” He was also development manager at the real estate company Olympia and York. His master’s degree is in real estate development. He has no training in urban planning. It is safe to consider Mr. Eaddy to be a member of the real estate development community.

¹⁵ <https://nyc.streetsblog.org/2012/04/20/east-river-plaza-parking-still-really-really-empty-new-research-shows/>

¹⁶ <https://www.indeed.com/cmp/Upper-Manhattan-Empowerment-Zone/reviews>

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https://www.crainsnewyork.com/article/20180420/REAL_ESTATE/180429985/kenneth-knuckles-stepping-down-as-head-of-upper-manhattan-empowerment-zone

¹⁸ <https://www.nytimes.com/2016/05/29/opinion/sunday/the-end-of-black-harlem.html>

¹⁹ <https://therealdeal.com/2018/10/30/this-firm-is-launching-a-75m-opportunity-zone-fund-focused-on-brooklyn/>

Allen Cappelli, Commissioner. A lawyer without training in urban planning who appears to be a professional board member, although according to the New York Times he was once a lobbyist for the real estate industry.²⁰ He is a former member of the board of the MTA where he served for 8 years overlapping with John Banks, current president of the Real Estate Board of New York (Cappelli was appointed to the MTA in 2008, while Banks was already on it while Banks continued to be on the MTA with Cappelli until 2015). As a resident of Staten Island, Cappelli “was the only [MTA] member of the board to vote against increasing tolls and fares.”²¹ Note that the New York Times has called the MTA “one of the most unwieldy bureaucracies in the state” with an infamous amount of “bloat.”²² After leaving the MTA, De Blasio put him on the Civil Service Commission for three days a week of work at \$412 a day.

Hope Knight, Commissioner is President and CEO of a private entity known as the “Greater Jamaica Development Corporation” whose mission is to “plan, promote, coordinate and advance responsible development” and is specifically responsible for glassy towers in the Jamaica neighborhood known as “The Crossing” and the “Hilton Garden Inn” and is now actively promoting to builders property lots containing 99,000 and 84,000 square feet respectively. The Chair of the Board of the corporation is Peter Kulka, CEO of KJL Management Corporation, a real estate property management company in Queens.²³ The Corporation’s job of cheerleading new development includes the breathless phrase on their website “Jamaica makes new development happen! \$3.7 billion worth!”²⁴ Ms. Knight’s prior work had been on the Upper Manhattan Empowerment Zones” from 2003-2015, (an entity described under the paragraph for Commissioner Knuckles.) Ms. Knight does not have a degree in urban planning but instead an MBA from University of Chicago and considerable prior experience in banking with Morgan Stanley.

Anna Hayes Levin, Commissioner. Her degree is in law, not urban planning. She served for many of the Empire State Development Corporations subsidiaries such as those for the redevelopment of Hudson Yards and the Javits Center. For example, she was “alternative director” of the Hudson Yards Development Corporation. She had been chair of the Land Use Committee of CB4 during the tumultuous and controversial approvals for the Hudson Yards project between 2001 and 2009. At the time, she was also on the Javits Community Advisory Committee and on the Penn Station Community Advisory Committee, all ESDC projects. Ms. Levin is married to a senior counsel and long-time partner at the law firm of Davis Polk, a firm which claims (in their words) to be ‘at the center of the real estate marketplace.’ Their clients include major real estate

²⁰ <https://www.nytimes.com/2008/08/20/nyregion/20mta.html>

²¹ https://www.silive.com/news/2015/06/transit_advocates_disappointed.html

²² <https://www.wnyc.org/story/mta-board/>

²³ <https://start.cortera.com/company/research/k7n7jxn2r/kjl-property-management-corp/>

²⁴

players in NYC including SL Green, Slate, Naftali, Related, RXR, and Extell.²⁵ Their website specifically states that the firm advised Related on the Hudson Yards deal.

Orlando Marin, Commissioner. He is currently employed by the Bluestone Organization, which is “a private developer” and which describes itself on its website as “a real estate development company.” Bluestone’s website says it is developing projects with the ‘Fifth Avenue Committee’ (a real estate development corporation whose Chair is also on the Commission). Mr. Marin also once worked at the Empire State Development Corporation. He has a BA in architecture and a diploma in ‘Real Estate’ as well as a Master’s in public administration. He lives in the Longwood area of the Bronx, an area that Crain’s describes as a place where investors “clamor to rezone.” Bluestone’s website describes its investments in areas where upzonings have been or are now on the agenda, including Bushwick, Jamaica, Gowanus, Crown Heights and Rockaway. Some of these are in partnership with developers such as the Fifth Avenue Committee, Hudson Properties, and Jonathan Rose.

Larisa Ortiz, Commissioner. Ms. Ortiz does have a degree in urban planning, but her principal job is working as a consultant (Larisa Ortiz Associates) to real estate developers and government agencies. She specializes in how to optimize their retail rents. Many of her clients are either large shopping center developers and New York City agencies and BIDs. She markets herself as (from her website) a “commercial district advisor.” Her firm’s mission includes to “develop market-based strategies for the redevelopment of urban places.” One of her clients is the New York City Economic Development Corporation where she advised them on the miserable “Fulton-Nassau Crossroads” program for retail in Lower Manhattan and the similarly controversial retail destruction of the Essex Street Market.

Michelle de la Uz is a Commissioner and Executive Director of the “Fifth Avenue Committee” which is unequivocally a real estate development firm, notwithstanding its status as a “community development corporation.” It’s website claims real estate assets of over \$100 million and has buildings in the works that will cost more than \$400 million. The committee does specialize in “affordable” housing, a term whose definition is obviously contested throughout the city and Uz does have a record of voting against rezonings that she thinks do not have deep enough levels of affordability, but she does not question the high rise or skyscraper character of De Blasio’s policies. She does not have a degree in urban planning. The Fifth Avenue Committee was instrumental in the demolition of the Brooklyn Public Library in Sunset Park. They received a no-bid contract to take on that particular development project. The village of Sunset Park hotly contested the arrangement, pointing out that the Fifth Avenue Committee had given heavily to De Blasio’s non-profit “Campaign For One New York.”²⁶ Her organization in 2017 got \$2.945 million in revenue from “government grants” and spends over \$5 million

²⁵ <https://www.davispolk.com/practices/corporate/real-estate>

²⁶ <https://patch.com/new-york/sunset-park/sunset-park-library-redevelopment-opponents-cry-backroom-deal>

for salaries, nearly all of its total revenue. Part of its revenue comes from \$385,000 in rents from the buildings it owns. The Fifth Avenue Committee founded the “Gowanus Neighborhood Coalition for Justice” to advocate for certain groups during the planning for the Gowanus upzoning, a group that has pushed in favor of the rezoning.²⁷ De la Uz wrote an op-ed in the Daily News in 2018 advocating for a spot rezoning for the community-contested project at 80 Flatbush Street in Brooklyn that favored a single developer, saying ‘we need to build bigger’ and says resistance to developers is just “a regressive reality that must change”²⁸ echoing the unproven fantasy REBNY p.r. line that not building skyscrapers might “impact job growth.” She then fantasizes in the op-ed that the 80 Flatbush project was going to happen “without public subsidies” which indicates a weak grasp of reality. Last, her organization partnered with another developer, Hudson Properties, to advocate for building a child care center next to the spot on the Gowanus canal that emits coal tar fumes that are so toxic that even the Environmental Protection Agency is concerned.

Rad Rampershad, Commissioner. Mr. Rampershad is an architect, not an urban planner. He is resident of the low-rise, heavily downzoned neighborhood of Richmond Hill, Queens, where Gary Barnett the CEO of Extell also lives. He is a Senior Project Manager at the Gerald Caliendo architecture firm in Briarwood, Queens. His firm designed the glassy high rise “Four Points by Sheraton” in Long Island City and the similarly massive glass tower known as the “Z Hotel” in Hunters Point north of Long Island City. Architects like this are courtiers and dependents to the real estate industry.

David Burney, Commissioner. Mr. Burney does have a degree in urban planning and is director of the Urban Placemaking and Management program at Pratt Institute School of Architecture, all of which definitely makes him not a real estate developer and not a deep part part of the “Growth Machine.” He was Director of Design and Capital Improvement for NYCHA for 13 years under Bloomberg, a worrisome aspect of his professional life: as we all know there has not been adequate capital improvement in NYCHA for many, many years during the Bloomberg era. Mr. Burney was also one of the architects who did the massively over-scaled 29-storied Zeckendorf Towers in the Grammercy neighborhood while he was at the firm of Davis, Brody, & Associates.²⁹

Carl Weisbrod, former Chair of the Commission. He is a senior advisor at HRA, a consulting firm that advises real estate developers and government agencies on big redevelopment schemes. Industry broadsheet *The Real Deal* credits Weisbrod for turning Times Square into the tourist zoo that it has become while he was in a “series of

²⁷ See the audit and 990 forms for Fifth Avenue Committee that Propublica has kindly made available:

<https://projects.propublica.org/nonprofits/organizations/112475743>

²⁸ <https://www.nydailynews.com/opinion/ny-oped-for-housing-answers-look-up-20180809-story.html>

²⁹ https://en.wikipedia.org/wiki/David_J._Burney

government positions.”³⁰ He was - for example - president of the Economic Development Corporation for some of that period, during which time he used “eminent domain aggressively to help the city take-over much of the land in the 42nd Street area.” While at HRA he led the rezoning of Hudson Square on behalf of the real estate division of Trinity Church. That rezoning is resulting in the subsequent demolition of many a historic property in that area. He is a lawyer, but has no degree in urban planning. He was for many years head of the Alliance for Downtown, a big real estate BID (developer Bill Rudin was one of the founders) that dominates much of the politics of Lower Manhattan. As head of City Planning, he pushed through De Blasio’s upzonings, over the opposition of 90% of the community boards in the city. In that position, he also green-lighted the massive Extell tower in the Two Bridges area of Manhattan, claiming that the developer’s requests amounted to a “minor modification” of the permit he granted, thus allowing the developer to avoid going through ULURP. The Manhattan Borough President has sued the city over Weisbrod’s decision. Weisbrod has since become Chair of the Trust for Governor’s Island which is overseeing a major plan to allow developers to have their way with the island. *Cityland* describes Weisbrod at the time of his appointment as having a “continuity of a pro-growth outlook” (with “growth” referring to real estate development.)³¹ When he was appointed to City Planning, *Cityland* also noted that “his commitments to curtail the limbo of the pre-certification process, loosen the shrink-wrapping nature of some building envelope control will be welcome news for developers.” *Cityland* concluded with obvious satisfaction that he would get those things done for the developer community.

³⁰ <https://therealdeal.com/new-research/topics/people/carl-weisbrod/>

³¹ <https://www.citylandnyc.org/joe-rose-former-city-planning-chairman-on-weisbrod-citylaw-breakfast-discussion/>