



THE CITY OF NEW YORK  
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June 30, 2011

By Hand

Hon. Bert A. Bunyan  
New York State Supreme Court  
360 Adams Street, Room 1126  
Brooklyn, New York 11201

Re: Seniors for Safety v. NYC Dep't of Transportation, No. 5210/2011

Dear Justice Bunyan:

This office represents the respondents (collectively "DOT") in the above-captioned Article 78 proceeding, returnable on July 20, 2011. I write to strongly oppose petitioners' June 27, 2011 letter application that seeks, yet again, to adjourn this summary proceeding, this time to September 7, 2011. Petitioners seek this adjournment for essentially the same reason they sought to adjourn last week's return date before Your Honor, namely, the legally irrelevant reason that petitioners have, yet again, an outstanding Freedom of Information Law ("FOIL") request. Petitioners' attempt to make an end run around the general discovery prohibition in summary proceedings such as here should be rejected, and it is respectfully requested that on July 20, 2011 Your Honor hear argument on the dispositive issues in this proceeding, the statute of limitations and, if necessary, the merits.<sup>1</sup>

Petitioners' request for an adjournment purportedly stems from an article published on June 27, 2011 in the New York Times, "'Pilot' Label Lets Mayor's Projects Skip City Review," and they mistakenly assert that this article has some bearing on the statute of limitations issue in this proceeding. The article discusses generally the use of pilot projects by various City agencies. Significantly, the article makes no mention of the Prospect Park West Traffic Calming Project ("PPW Project") that is the subject of the instant dispute. That the

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<sup>1</sup> While petitioners also have an outstanding motion for leave to conduct discovery pursuant CPLR 408, that motion should not be considered until Your Honor has reviewed the amended petition and DOT's responsive papers and determined whether there is a material issue that warrants discovery.

article does not do so is hardly surprising, given that DOT never considered or described the PPW Project as a pilot or trial project. Indeed, a description of various DOT projects specifically notes those that were considered pilot and trial projects, such as the Brooklyn Bridge Access project. See DOT Ex. L, at 5 (In June 2008 “DOT carried out a six month trial of new traffic patterns at the intersection of ...” (emphasis added)).<sup>2</sup> In stark contrast, the description of the PPW Project in the same document does not state that it was a pilot or trial project. Id. at 9.

Based on this article, on June 27<sup>th</sup> petitioners submitted a new round of FOIL requests to DOT, as well as to Council Member Brad Lander. Petitioner’s new FOIL requests are an inadequate basis to adjourn this summary proceeding; indeed, such summary proceedings are intended to be resolved quickly. See, e.g., Rockwell v. Morris, 12 A.D.2d 272, 272 (1<sup>st</sup> Dep’t 1961) (“the very spirit and purpose of proceedings under article 78 [is] to provide a summary remedy”). Specifically, petitioners’ FOIL requests are separate and legally distinct from petitioners’ claims relating to the PPW Project; while litigants such as petitioners may seek records pursuant to FOIL, their right to do so is as a member of the public, and is not enhanced because they are a litigant. And while petitioners may submit their FOIL requests, the Court of Appeals nevertheless recognizes that “FOIL may be used during litigation for improper purposes, such as harassment and delay.” M. Farbman & Sons, Inc. v. NYC Health & Hosp. Corp., 62 N.Y.2d 75, 82 (1984). Here petitioners are attempting to use these legally unrelated FOIL requests as an attempt to delay the resolution of this summary proceeding; their request for an adjournment should be rejected, and this summary proceeding should be heard by Your Honor on July 20, 2011.

Respectfully submitted,



Mark W. Muschenheim  
Assistant Corporation Counsel

cc: Jim Walden, Esq.  
(By E-mail)

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<sup>2</sup> DOT Exhibit L is attached to the previously filed DOT Verified Answer.