

June 27, 2011

BY HAND

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

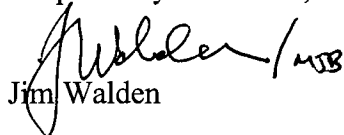
Re: *Seniors for Safety and Neighbors for Better Bike Lanes v. New York City Department of Transportation and Janette Sadik-Khan, Commissioner of Transportation, Index No. 5210/2011*

Dear Justice Bunyan:

I write on behalf of Petitioners Seniors for Safety and Neighbors for Better Bike Lanes (collectively, "Petitioners") to bring an article from today's *New York Times*, entitled "'Pilot' Label Lets Mayor's Projects Skip City Review," to the Court's attention. The article, a copy of which is attached, highlights precisely the issue we raised at the hearing on June 22: namely, that the City frequently presents new programs and initiatives as "pilots" or "trials" in order to avoid compliance with required legal processes and public reviews and to blunt potential criticism of the projects – only to make the programs permanent without any further review. Indeed, the article specifically notes that Respondents, "[t]he Transportation Department and its commissioner, Janette Sadik-Khan, have begun more than a dozen trial programs in recent years, like allowing pop-up sidewalk cafes or painting bike lanes green."

This is precisely the issue we raised during our June 22 conference with the Court: although the experimental bicycle lane on Prospect Park West (the "EBL") was initially presented to the public as a "trial," the City now seeks to bar Petitioners' claims under the statute of limitations by arguing that the EBL was nevertheless intended to be permanent. We have previously outlined for the Court the evidence we have uncovered thus far showing that Respondents here consistently led the public to believe that the EBL was a trial project. We have also recently submitted new Freedom of Information ("FOIL") requests specifically seeking documents reflecting Respondents' discussion of the EBL as a "trial" project. However, given the delays by Respondents (as well as proposed Amicus Brad Lander) in responding to our previous FOIL requests, we believe it is unlikely that we will receive a response before the scheduled July 20, 2011 conference. We therefore request that the July 20 conference be adjourned to the September 7, 2011 date previously calendared by the Court, to afford us additional time to receive a response to our FOIL requests, which would potentially eliminate the need for Petitioners to continue to seek expedited discovery on this issue.

Respectfully submitted,



Jim Walden

Encl.

cc: Mark W. Muschenheim, Esq. (by email)



June 26, 2011

'Pilot' Label Lets Mayor's Projects Skip City Review

By DAVID W. CHEN and MICHAEL M. GRYNBAUM

It has never been easy for a mayor to get things done in New York City, where every government proposal must navigate a thicket of community groups, policy boards, and empowered neighborhood gadflies who can blackball a project in a blink.

So the Bloomberg administration has taken a tack that could be called "do it first, answer questions later." And the key to the strategy is to start small, and to use the word "pilot."

Dozens of marquee administration projects, as broad as transforming the city streetscape with pedestrian plazas and bright green bike lanes or using new ways to train principals and encourage school attendance, have started as so-called pilot programs, ostensible experiments that are often exempt from the usual forms of city review.

The pilot has emerged as the mayor's signature policy weapon. Admirers see an innovative way around red tape. Critics see a blunt tool that undermines democracy by minimizing the public's role in scrutinizing the ideas of government.

"If they announce the program as permanent, and with all the pizzazz and hoopla, they're going to get strong negative reactions," said Norman Siegel, the civil liberties lawyer and a frequent Bloomberg critic. A good-faith pilot, Mr. Siegel said, can allay critics' fears.

"It's masterful," he said.

Once a pilot is in place, there generally is no requirement for review in, say, a public hearing or a City Council committee, even if the pilot is expanded. Indeed, some pilots are expanded but never pronounced permanent, suggesting that they are still in the experimental stages.

It is difficult to quantify how many pilots, trial programs and experiments have been begun by the administration, but city officials, academics and lobbyists agree that Mr. Bloomberg has been much more aggressive in initiating pilot programs than previous mayors.

"The administration has employed the pilot more effectively than any predecessor," said

Kathryn S. Wylde, chief executive of the Partnership for New York City, a business group.

Certain city panels, like the Design Commission, do not review projects that have been labeled pilots. And the mayor's reliance on private funds for some of the pilots means he can throw the weight of government behind a project without the accountability that comes with the use of taxpayers' money.

Stu Loeser, Mr. Bloomberg's press secretary, disputed the contention that the administration bypassed rules or brushed aside the public. "In a city as large as New York, not everything can or should be implemented citywide from the outset," Mr. Loeser said. "Pilots let us collect and use data to evaluate innovative programs or brand-new initiatives before investing major resources in ideas that may not prove to be effective." He added, "This is the way to get things done quickly."

Mr. Loeser noted, "We've also used data and pilots to decide what not to scale up." He cited a one-year pilot of a taxi share program that was intended to allow passengers to pay a discounted flat fare along specific routes. "Many of the locations did not work," Mr. Loeser said, "so they were discontinued."

The Transportation Department and its commissioner, Janette Sadik-Khan, have begun more than a dozen trial programs in recent years, like allowing pop-up sidewalk cafes or painting bike lanes green.

"You have to experiment, try things out," Ms. Sadik-Khan said last year at Occidental College. "If it doesn't work, O.K., you move on and try something else."

The most prominent pilots were pedestrian plazas built in Times and Herald Squares in 2009. The city pledged to monitor the plazas before deciding whether to make them permanent. But the most significant change, closing several blocks of Broadway to vehicular traffic, was made with minimal involvement by the Design Commission.

George Haikalis, a community board member, recalled that city representatives assured skeptics that the plazas could be ripped out if they did not meet goals. "A pilot eased the pain of those who were less supportive," he said.

In the end, the plazas failed to speed traffic as much as the administration had hoped, but the city made the program permanent, citing fewer accidents involving pedestrians and more foot traffic for businesses.

Generally, said Tim Tompkins, president of the Times Square Alliance and a proponent of the plazas, pilots allow the public to experience a program before committing to it.

“Some people may love it, or some people might hate it, but we won’t know until we give it a go,” he said. A pilot, he added, “doesn’t mean that these things aren’t ultimately subject to the will of the people.”

Still, some pilots seem to have been expanded despite outside groups’ misgivings. The city started a 10-school education pilot last year called the Innovation Zone, which emphasizes online learning; it is set to expand to hundreds more schools, at a cost of nearly \$100 million. But a recent report from the University of Washington warned that the project risked “pushback from parents about the idea of having their children participate in unproven programs.”

Private money was also used for dozens of anti-poverty pilots, including Opportunity NYC, which gives poor families cash to encourage good behavior and self-sufficiency. Linda I. Gibbs, a deputy mayor, said in 2007 that the city used private funds “to protect it a little bit from the criticism that we knew would come with the initiative.”

Academics and advocates for the poor have called the results disappointing — but that has not deterred the administration. The city recently received a \$5.7 million grant from the Corporation for National and Community Service to expand the program.

The administration gets better marks for its New Business Acceleration pilot program from one frequent critic, John C. Liu, the city comptroller. Begun in March 2010, the program has helped 300 new restaurants open two months earlier than normal, on average, because building, fire and health inspectors are assembled in one place. By year’s end, the city plans to expand that concept to retail stores.

Pilots are by no means a new approach in New York.

Gale A. Brewer, a City Council member who has worked in city politics for three decades, once wanted to install information kiosks in front of City Hall to help guide visitors. The building and its grounds, however, were designated landmarks, so any new structure would require extensive review. She labeled the kiosks temporary to avoid further vetting.

“I knew I was being disingenuous,” Ms. Brewer said. “They were there for at least three or four years.” She added, “The way things get done in New York City is figuring out a way to get around the rules.”