

Jobs, Housing and Urban Development in Brooklyn: The Atlantic Yards Controversy

by Lee Zimmerman

In an interview in the previous issue of the *Regional Labor Review*, ACORN CEO Bertha Lewis addresses ACORN's relationship to Atlantic Yards (AY), a massive 22-acre high-rise real estate project that developer Forest City Ratner (FCR) proposes to build in Prospect Heights, a low-rise neighborhood in Brooklyn. Both her narrative and the explanatory endnote, briefly introducing the project, present extremely problematic accounts—perpetuating those that have more or less dominated the public sphere. In this, they occlude the degree to which Atlantic Yards represents: an egregious violation of democratic process; the obliteration of vibrant communities through colossally-scaled and instant gentrification; and (continuing the radical redistribution of wealth upward that has accelerated in recent decades) a massive transfer of public wealth to a giant developer far in excess of any putative benefits. Some of these benefits include affordable housing and jobs. Given how seriously housing and jobs were needed even before the recent economic decline has exacerbated the problem, the rhetoric of “we’re getting housing and jobs so AY is a good deal” has remained powerful, especially when mobilized by an accomplished leader like Berta Lewis, speaking for a group that has done so much for disenfranchised communities.

Such rhetoric, though, evades the point. The question isn't simply “will AY provide some jobs and affordable housing?” but rather “how much benefit, especially housing and jobs, will AY provide relative to the costs—the opportunity costs, of course (the housing that won't get built, the jobs that won't get created, the more appropriately scaled development that won't get built on the site, and the public services that won't get delivered, with the direct and indirect public subsidies that would go to AY), but also the costs to the environment and infrastructure, to public and fiscal health and security, to the urban fabric of Brooklyn neighborhoods, to the fight against the abusive use of eminent domain, and to the democratic process. That is, while Lewis acknowledges that FCR sought a Community Benefits Agreement to provide “political cover” (19), her narrative fails to account for why that cover is needed. In an effort to suggest what is being “covered” by narratives like Lewis's, I'd like first to tease out the narrative implicit in her remarks and in the supplemental “informational” endnote, and then to sketch a counternarrative about Atlantic Yards.¹

Lewis begins by defining Atlantic Yards as “an example of what's going on across the country in urban environments, inner-ring suburbs” (18), and this initial characterization of the project as an “example”—as an

undifferentiated member of a category—is maintained throughout the interview. Although she calls the project “sexy, sexy, sexy,” she stresses that “Atlantic Yards is the same as any other development” (19). The only difference she acknowledges (sexiness aside) is that, unlike other developers in Brooklyn, Forest City Ratner was willing to talk to ACORN seriously about affordable housing, acknowledging and drawing on ACORN’s expertise in responding to its concerns. As one result of the failure to engage the project in its unprecedented specificity, Lewis presents herself as never having considered whether she ought to support it; accepting FCR’s imperial claim that resistance is futile, she defines the question not as “is this project worth our support and if not how can we use our significant and well-earned reputation to help resist it and encourage a more beneficial project at the rail yards?” but rather (in her words) as “in the majority of instances, being unable to stop [such a project], how do you in fact affect it?” (18).ⁱⁱ But, as I’ll try to show, characterizing AY as “the same as any other development” drastically frames out the many aspects of the project that have prompted such serious opposition to it—precisely those aspects for which Lewis later concedes she has provided “political cover.”

That AY isn’t analogous to other projects, at least in terms of scale and density, is hinted at in the informational note that, appearing at the end of the interview, would seem to provide some context for Lewis’s narrative: “The Atlantic Avenue Rail Yards in downtown Brooklyn is the site of a \$1.2 billion residential and commercial center proposed by developer Bruce Ratner. In a legally binding Community Benefits Agreement with ACORN and other local organizations, Ratner pledged to reserve half of the 4,500 apartments for low- and moderate-income residents” (22). In the guise of “information,” however, this note mostly accepts Lewis’s radical framing out of crucial elements of the proposal, especially those that have provoked some of the fiercest opposition to it. Most puzzlingly, like Lewis in the interview itself, it makes no mention of what has been the most visible (to some presumably “sexy”) aspect of the project and the most controversial: the proposal to build, before all but a minimum amount of housing, the most expensive basketball arena in history.ⁱⁱⁱ Calling the “site” of the project “the Atlantic Avenue Rail Yards,” moreover, frames out the fact that the rail yards occupy only 40% of a 22-acre proposed footprint, the rest of which are residences, successful businesses and city streets that, at the time of the proposal, could become part of the site only through the (hotly contested) use of eminent domain by New York State. And characterizing that footprint as in “downtown Brooklyn” fancifully relocates it there from the significantly residential neighborhood where it actually is, Prospect Heights – a recently designated Landmarks Preservation District^{iv} – and what it borders, the landmarked neighborhoods of Park Slope and Fort Greene. (For that matter, the site isn’t the “Atlantic Avenue Rail Yards”: “Atlantic Yards” is the name of the commercial project itself, a portion of which would be situated over the Vanderbilt Rail Yards.) Finally, like Lewis’s account, this one suppresses the fact that AY, by some counts, would receive close to 2 billion dollars in direct and indirect public subsidies and government backed financing (*NY Post* 4/14/2008). .

The history of the Atlantic Yards Project is dauntingly complex. The best source of information is probably Norman Odor’s Atlantic Yards Report (www.atlanticyardsreport.com), but, for those unfamiliar with accounts other than Lewis’s and most of those in the mainstream media, I’ll try to call attention here to some of

the major strands.^v Forest City Ratner’s Atlantic Yards Project was publically announced in December 2003. It was an absurdly outscaled project: 16 skyscrapers and a basketball arena. Indeed, it called for high-rise residential construction in low-rise Prospect Heights that, according to Ron Shiffman, “would constitute the densest residential community in the United States and, perhaps, Europe, with the exception of some of the suburbs of Paris” (dddb.net/php/reading/shiffman.php).^{vi} It proposed to build on the 9 acres of the Vanderbilt Rail Yards, at the corner of Atlantic Avenue and Flatbush Avenue, but also on 13 acres in some neighboring blocks (including public streets), the buildings on which FCR proposed to acquire through eminent domain.

It wasn’t until two years later—well after the Mayor and Governor had thrown their support behind FCR’s plan—that the MTA actually issued a Request for Proposals to develop the yards, or at least went through the motions of doing so. Although the time allowed for responding to the RFP was unusually short (42 days), another developer, Extell Development Company, did submit a proposal, offering \$150 million for the rail yard development rights, as opposed to Ratner’s \$50 million. Extell proposed to develop the 9-acre rail yards only—without the taking and destruction of adjacent blocks, without any use of eminent domain—and in this and other ways (concerning scale and transparency of process) it was to a significant extent consistent with the UNITY Plan (unityplan.org), a set of guidelines for the development of the rail yards that had been developed by a coalition of local community groups.^{vii} With no public discussion, the MTA awarded the rights to FCR, despite its having bid 100 million less than Extell; it later “renegotiated” the price to 100 million (still the lower figure, and less than half of the independently appraised value of \$214.5 million). In June of this year, in response to Ratner’s self-described but unrevealed financial difficulties, the MTA “renegotiated” again, agreeing to accept only \$20 million now, the other \$80 million over 22 years, at a generously low 6.5% interest rate (this was just after the MTA had been given a bailout of over \$2 billion by the State Legislature, and was about to raise fares) and settle for a smaller rebuilt rail yard than was originally agreed upon, 7 tracks instead of 9, which would actually *reduce* the yard’s current capacity. FCR had originally agreed to build a new, “state-of-the-art” rail yard, but that’s no longer the case.

The lead government agency in reviewing the Atlantic Yards proposal was the Empire State Development Corporation (ESDC), a state Authority whose members are appointed by the governor (who at the time was George Pataki, Bruce Ratner’s law school mate^{viii}). Thus, the project bypassed all city processes entirely, especially the City Planning Commission and the City Council, silencing all the local and democratically elected voices that would have been involved if the approval process had, as is common, gone through the city’s Uniform Land Use Review Procedure (ULURP). The state takeover also meant a complete zoning override of *all* city zoning regulations, including heights, density and uses. On the state level, no legislative hearing was held on Atlantic Yards until May 2009. The power to approve the project’s financing rested in only 3 elected officials – the Governor, and the Leaders of the Senate and Assembly (Pataki, Bruno, Silver) – who, after a discussion of 15 minutes, approved it in December 2006. Thus, the largest project

proposed in Brooklyn's history and the largest by a single developer in the City's history, depending upon at least hundreds of millions in public subsidies and the State's powerful eminent domain tool, *never* faced a legislative vote on the City or State level.

Atlantic Yards has received massive public subsidies (direct and indirect). Although estimates vary, the NY Post has put the total as \$2 billion (April 14th, 2008); at the least, in the view of Norman Oder, writer of the comprehensive blog Atlantic Yards Report, there has been "hundreds of millions in tax breaks" in addition to the direct subsidies (which Ratner puts at \$305 million). (*Atlantic Yards Report*, 7/02/2009). There has been no public cost/benefit analysis of the project as whole, though the New York City Independent Budget Office recently reported that "over a 30-year period, the arena would cost the city nearly \$40 million more in spending under current budget plans than it will generate in tax revenues"—would, that is, generate a financial *loss* for the city—in addition to \$181 in opportunity costs (www.ibo.nyc.ny.us/iboreports/AtlanticYards091009.pdf).

Not only has there been no such analysis, but because of Ratner's failure to fulfill the original plan, a Revised Project Plan has replaced it, which hasn't been made public, making any real cost benefit analysis impossible. Based on Ratner's statements, the new Phase I of the project consists only of the arena (heavily subsidized by the public but, again, producing a negative fiscal impact) and a single other building, providing only 200 affordable residential units, not many more than the project would displace. (Originally, the proposed arena was designed by Frank Gehry, whose cachet was a key element in selling the whole project to the public, but, in a bait-and-switch, Ratner dropped Gehry; the new proposed arena is said to cost about \$750 million, a savings from \$950 million, the latest figure for the Gehry arena, though still more than the \$637 million officially approved by the state in December 2006.). Most of the affordable housing is planned for Phase 2, for which there is no deadline (and no proposed timeline for construction) and, if it were ever to get built, would take "decades" (as recent president ESDC CEO Marisa Lago put it).

The affordability of the "affordable housing," moreover, stretches that term to the breaking point. Although the number of such units has been something of a moving target, the approved plan was for 6,430 overall units, 2,250 of which were labeled "affordable." According to Ratner's own figures, none of these would be affordable to families with yearly incomes less than \$21,270 (at the time of the proposal 24% of those living within a ¾ mile radius of the project footprint had incomes less than that figure, and some of those would be displaced by the project, helping produce instant gentrification); 40% of the "affordable" units would be for those with incomes between \$71,000 and \$113,000.^{ix} (\$71,000 is almost twice the 2007 area median income, or AMI, of \$41,304 for a Brooklyn family, and the AMI keeps rising)^x None of the units would be guaranteed: in the original proposal they depend on more public subsidies and Ratner's raising private financing, and there is no timeline for construction.^{xi} Of course, whatever the secret Revised Project Plan calls for, it will involve even far less "affordable" housing, with equally dubious prospects that it ever gets built. In any case, as of this writing, there is no publicly available information about how many "affordable" units Ratner now even

proposes to build within each income band. Based on some strands of information, though, it seems likely that nearly 40% of the “affordable” units would fetch rents *at or above market rate*.^{xii} Moreover, the ESDC’s environmental study acknowledges estimates that the project as approved would put 2,920 households at risk of indirect displacement.^{xiii} If such displacement did occur, Atlantic Yards – even built out as approved – would result in a *net loss of “affordable” housing*.

Several so-called “community groups,” chief among them ACORN, negotiated an agreement with FCR whereby, in exchange for their publically supporting the project, it would provide affordable housing, job training, and jobs for local residents. For Lewis, this apparently outweighs everything else. But, as Columbia professor of urban planning Lance Freeman points out, opponents of the project argue that this Community Benefits Agreement “doesn’t provide enough affordable housing” (as the above discussion suggests), that “the agreement is not legally enforceable,” and that “the community organizations are on the developer’s payroll” (<http://www.planetizen.com/node/24335>) (ACORN, for instance, is very significantly financially involved with and indebted to Ratner^{xiv}, as is BUILD, the other major CBA signatory). More fundamentally, they resist the notion that the signatories, even if they do represent some disenfranchised people, are representative of the whole “community” (especially given the signers financial ties to Ratner). Freeman stresses this point: “The point is there is no mechanism to insure that the ‘community’ in a CBA is representative of the community. If the signatories to the CBA were simply viewed as another interest group, that might be ok. But the CBA is being presented as illustrative of the development’s community input. Public officials are posing for pictures with the developer and signatories to the CBA, giving the impression that the community had significant input into the planning of Atlantic Yards.” Of course, the community has had no such input. Indeed, the entire process has been structured to avoid it, evading the very process by which New York City precisely provides for democratic community participation in development: the Uniform Land Use Review Procedure. CBAs “cannot be viewed as a substitute for a true planning process that includes community input,” Freeman concludes: when they are viewed this way, they “legitmat[e] the very process they are supposed to counteract, planning and development that disenfranchises.”

Even those who see some value in the use of CBAs in some cases have sharply critiqued this one. When Bettina Damiani, Project Director of Good Jobs New York and an expert on CBAs, testified to the NY City Council in 2005 she strongly criticized AY’s severe lack of a transparent public process, the problematic use and widespread underestimation of public subsidies to spur development on “such a desirable site,” and, especially, the CBA : “it is important to draw the Council’s attention to several major differences between CBAs as they have been used in other parts of the country and the series of negotiations that FCRC is calling a CBA. Perhaps the most striking is that elsewhere CBAs are negotiated by one broad coalition of groups that would otherwise oppose a project, a coalition that includes labor and community organizations representing a variety of interests. The coalition hammers out its points of unity in advance and then each member holds out on settling on its particular issue until the issues of the other members are addressed. This way, the bargaining

power of each group is used for the benefit of the coalition as a whole. In the [AY] case, several groups, all of which have publicly supported the project already, have each engaged in what seem to be separate negotiations on particular issues.” Such a process, she concludes, can “devolve into a mere publicity tool for developers of controversial projects.” (www.goodjobsny.org/testimony_bay_5_05.htm)

FCR has a deadline of the end of this year to issue tax-exempt bonds, without which the project may well die for lack of sufficient funding (despite the massive public subsidies already provided, including the recently “renegotiated” agreement with the MTA, a form of public subsidy). Its ability to do so depends on the overall financial viability of the project, which itself is impacted by the presence of two ongoing lawsuits; one, challenging various aspects of the Environmental Impact Statement presented and approved by the ESDC, and the other challenging its decision to use eminent domain, the appeal of which NY State’s highest court—the Court of Appeals—has agreed to hear, on October 14th. (Both lawsuits are organized and funded by Develop Don’t Destroy Brooklyn, a coalition of community groups opposed to the project.) In the meantime, on September 17th the ESDC Board approved a heavily revised version of the AY project—despite the fact that no detailed new plan or renderings have been made public. (What is clear, however, is that the original plan has been drastically altered, prompting many in the community to argue that the ESDC is legally required to produce a new Environmental Impact Statement; the failure to do that, DDDDB has indicated, will be a key element in a likely suit challenging the legality of the ESDC’s approval of the new plan.) At the required public hearing the ESDC held on July 29th and 30th (where no Board members attended), during the period designated for written public comment ending August 31, and at the September 17th meeting, members of the public who wished to offer comment on the plan were—as if in a Kafka novel—compelled to do so in its absence.^{xv}

Despite this opaqueness (characteristic of the non-transparent process that has marked the project from the beginning), one thing does seem clear. Everyone thinks there should be some sort of development over the rail yards themselves that would provide much needed and truly affordable housing. Those who oppose Ratner’s proposal – whatever it now is – don’t think such needed development should be conditioned on the building of a publicly subsidized arena (again, the dominant aspect of phase I) that requires the abusive use of eminent domain in a thriving neighborhood, that the city Independent Budget Office has determined would produce a negative financial impact, and that does not address the real and pressing needs of ACORN’s disenfranchised constituents.

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NOTES

- ⁱ Another analysis of Lewis's problematic representation appears in the blog *The Atlantic Yards Report*, the July 7th 2009 entry (AtlanticYardsReport.com)
- ⁱⁱ ACORN's reputation, of course, has recently gone into at least temporary decline, in light of the right-wing sting operation that filmed ACORN workers appearing to advise a couple posing as a prostitute and a pimp about how to get a mortgage for a house they claimed to want for a brothel and to house several underage women from El Salvador who, they said, would be working there.
- ⁱⁱⁱ atlanticyardsreport.blogspot.com/2008/03/ratner-admits-major-ay-delays-rising.html
- ^{iv} That much of the footprint is contiguous with the new Landmark District – and that many appropriately scaled new projects (including million dollar condos) have over the past few years been developed both in the footprint and in surrounding areas—belies the ESDC's position that the area is "blighted" and thus should be subjected to eminent domain. At the moment, there are indeed many empty lots in the footprint, giving a blighted appearance, but these were created by Ratner after the commitment to eminent domain (by demolishing many of the unblighted properties he had bought in the footprint, some of them, like Ward's Bakery, of significant historical and architectural interest).
- ^v The *New York Times* has been especially inattentive to this major story. In this light, it is significant that the Times' business partner in the recent development of its new building is Forest City Ratner.
- ^{vi} "Ron Shiffman is a professor at the Graduate Center for Planning and the Environment at the Pratt Institute, director emeritus of the Pratt Institute Center for Community and Environmental Development, and from 1990-96 a commissioner on the New York City Planning Commission."
<http://dddb.net/php/reading/shiffman.php>
- ^{vii} http://www.brooklynpaper.com/stories/28/28/28_28nets2.html
- ^{viii} http://www.brooklynpaper.com/stories/27/4/27_04nets6.html
- ^{ix} The data in this paragraph is cited from Ratner's chart, at: photos1.blogger.com/blogger/3667/1536/1600/AYaffhoubands.jpg
- ^x quickfacts.census.gov/qfd/states/36/36047.html
- ^{xi} Again, since they were first announced, these numbers have been a moving target, part of a very complex story summarized by Norman Odor, at atlanticyardsreport.blogspot.com/2006/07/housing-switch-more-affordable-units.html
- ^{xii} <http://atlanticyardsreport.blogspot.com/2009/07/would-40-of-ay-affordable-units-be.html>
- ^{xiii} nylovesbiz.com/pdf/AtlanticYards/FEIS/Volume1/04_Socio/04_Socio.pdf (chapter 4, page 3)
- ^{xiv} Norman Odor's blog *AtlanticYardsReport.com* has a fuller account of this financial relationship in the Friday, April 10, 2009 posting. He refers there to Forest City Ratner "bailing out" ACORN with a "1.5 million loan/grant."
- ^{xv} With the minor exception that some renderings and design information was available about the arena, though that comprises only 8% of the project's proposed square footage.