



Michael G. Murphy
15th Floor
477 Madison Avenue
New York, NY 10022-5802
Direct: (212) 702-5436
Fax: (212) 702-5450
mmurphy@bdlaw.com

January 17, 2020

VIA NYSCEF & FEDERAL EXPRESS

Honorable Roy S. Mahon
Nassau County Supreme Court
100 Supreme Court Drive
Mineola, NY 11501
Attn: Part 3

Re: ***Incorporated Village of Floral Park, New York v. New York State Urban Development d/b/a Empire State Development Corporation, et al.***
Index No.: 612399/2019

Dear Justice Mahon,

We represent Petitioner-Plaintiff the Incorporated Village of Floral Park (“Village”) in the above-referenced Article 78 proceeding and declaratory judgment action. We write to submit the enclosed Supplemental Affirmation of Michael G. Murphy, dated January 15, 2020 (NYSCEF Docket No. 181), in support of the Village’s Article 78 Petition and Complaint (Motion Seq. 001).

While the Village’s Petition and Complaint was fully submitted on January 7, 2020, and is pending disposition by this Court, the Village is compelled to make this supplemental submission in light of documents recently produced by New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESD”) in response to the Village’s Freedom of Information Law (“FOIL”) Request.

The Village submitted its FOIL request to ESD on August 19, 2019 requesting documents in connection with the secret Master Plan for the development of Belmont Park that was circulated among state officials in November 2016. ESD continually deferred its production of documents pursuant to the FOIL request for nearly five months, conveniently requesting additional time to make its production each time the return date for the Village’s Petition and

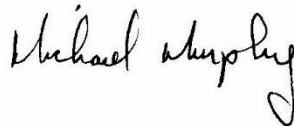
Hon. Roy S. Mahon
January 17, 2020
Page 2

Complaint was adjourned. ESD finally made its first production of documents responsive to the Village's FOIL request on January 10, 2020—three days after January 7 motion return date.¹

As set forth in the enclosed Supplemental Murphy Affirmation, the documents ESD produced relate directly to the Village's Ninth Cause of Action concerning the propriety of ESD and FOB's request for proposals process for the Project; and to the Village's State Environmental Quality Review Act claims, demonstrating that ESD was determined to approve the Project, regardless of its impacts. ESD could have easily produced these documents well in advance of the January 7 motion return date—yet failed to do so. In fact, ESD should have produced these documents in response to an earlier FOIL request the Village submitted to ESD in October 2018. The Village should not be precluded from submitting these documents in support of its motion, and the viability of its Ninth Cause of Action, where such documents were wrongfully withheld.

The Village respectfully requests the Court consider the Supplemental Murphy Affirmation in connection with the pending Article 78 Petition and Complaint. Thank you for your attention to this matter.

Sincerely,



Michael Murphy

cc: All Counsel of Record (by NYSCEF)

Enclosure

¹ In its transmission of these documents, ESD disclosed that it was withholding other documents that it claimed are exempt from disclosure under FOIL. These undisclosed documents are likely highly relevant to the Village's claims, highlighting the need for discovery in this case. The Village intends to appeal ESD's withholding of these documents pursuant to the procedures set forth in New York Public Officers Law.