Public Good Financing at Penn Station: Are We Victims of Stockholm Syndrome?

Lynn Ellsworth, PhD[1]

Chair, Humanscale NYC

Co-coordinator, Empire Station Coalition (www.pennforall.org)

Lynnellworth0@gmail.com

June 22, 2022

There are three financial problems in the Penn project.

The first: there is disagreement over the transit vision about what is possible and disagreement over the linked financial plan. Amtrak and the MTA say the only option is to demolish a city block on 30th Street, put new tracks there underground and then let Vornado put skyscrapers on top of it all. Rethink begs to differ. They propose a less destructive plan at possibly lower cost to expand track capacity that combines through-running with a unified regional transit system. Tristate Transportation Campaign proposes a third version of through-running. The regional unified transit network keeps coming up and is tantalizing because with it, regional GDP would rise in an equitable way, lifting all boats for the many, instead of concentrating wealth in midtown in the hands of a single property owner. When GDP is rising, Government can issue normal bonds without fear.

Another disagreement: ESD argues the only financial option is for the public to subsidize Vornado's speculative, 20-year build out of new Class A towers and then negotiate payments from Vornado - after demolishing historic assets, evicting people, and destroying thousands of small business jobs. But there are other ways to pay for a better Penn station, be Penn underground or a new one built above-ground. I'm talking about normal bond issues under a public authority or via voter -approved bonds, reshuffling budget items (like not spending $8 billion on new jails), using new revenue sources listed in the IBO's annual reports, using general revenues, or pooling the new federal money allocated in the Infrastructure Act.

The second problem: there are too many red flags in how ESD has managed this project and dismissed analysis of alternatives. By design, there is too little public oversight or control over what ESD does, even though an Institute for Justice study concluded that ESD has been using eminent domain as Robin Hood in Reverse, taking from the poor and giving to the rich[2]. There are valid concerns about undue influence from Vornado, one of three property owners who collectively own 75% of Manhattan commercial property, most of it in midtown.[3] There have been gag-orders for the CACWAG and faulty logic and outright lies in the EIS. The world in which ESD was born has changed, yet ESD can still declare any neighborhood blighted even if it is obviously not, hand it over to Big Real Estate, impose bad projects, and put the public in debt,

[1] I'm an economist and Chair of Humanscale NYC, a nonprofit. I share the work with Sam Turvey of coordinating the Empire Station Coalition which is composed of 15 civic and neighborhood organizations.

[2] (Carpenter and Ross 2015)

[3] (Schram 2019)

all without voter or legislator approval. This problem might be addressed through the creation of a commission to recommend changes to ESD's powers and oversight structure.

The third problem is about how New York version of Stockholm Syndrome also prevents us from considering alternatives that don't benefit big real estate. Given that 30% of the City's revenue come from property taxes, we feel hostage to Big Real Estate's claim that public goods must come through air-rights or eminent domain giveaways to Big Real Estate in the hopes of finding more property tax revenue.

By accepting such a reductive idea of economic development, Government makes itself hostage to the luxury city model, which requires replacement of low-income and middle-class people and small businesses with richer people and businesses who can pay ever-rising property taxes. Government becomes a real estate speculator, just like Vornado. This eliminates discussion about how to do equitable economic development and puts a straitjacket on creative public policy-making.

I urge our politicians to find a way to referee these disagreements with independent experts who are not prey to Stockholm Syndrome and who don't have a dog in the fight. Although I advocate comparative cost benefit analysis as a way forward instead of assertions of virtue, I have a warning about its use. A weakness of cost-benefit is that there are things for which no price can be calculated even though we know their value to society is high. They need listing in a cost-benefit but only our elected officials can weigh them in a political decision. For example, consider how the Penn area is a reservoir of Class B and C office space, providing a home to small businesses who could never pay Class A Rents. They are the heart of the New York's uniqueness and the true engine of job growth. Their worth in a democracy cannot be reduced to the total of their property taxes. Other examples of things of great value without a price: the rights of residents to have a secure place in the world instead of being evicted; the existence of great historic buildings that connect our children to our history, or the presence of Franciscan Friars operating social services in a historic church. To be sure, Vornado and ESC can give everyone money and tell them to scram, but is that a city we want to live in? Thank you.

Carpenter, Dick, and John K. Ross is research associate at the Institute for Justice. 2015. "Robin Hood in Reverse." *City Journal*, December. https://www.city-journal.org/html/robin-hood-reverse-10676.html.

Schram, Lauren Elkies. 2019. "The Guys Who've Got the Biggest Portfolios in New York." *Commercial Observer*, April 23, 2019, sec. More. https://commercialobserver.com/2019/04/power-landlords-the-guys-whove-got-the-biggest-portfolios-in-new-york/.

Draft
Do not quote without permission

What's Wrong with Vornado Realty Trust's Proposed Penn Project?

Lynn Ellsworth, Ph.D.

Co-coordinator, Empire Station Coalition
Chair, Alliance for a Human-scale City
www.humanscale.nyc
lynnellsworth@outlook.com

January 19, 2022

Table of Contents

Background

"We are the largest owner in the Penn District, with over 9 million square feet. The Penn District's time has come, the district is being validated by neighboring Hudson Yards and Manhattan West. ***Day and night, the Penn District is teeming with activity****. Our assets sit literally on top of Penn Station, the region's major transportation hub, adjacent to Macy's and Madison Square Garden...The Penn District is our moonshot, the highest growth opportunity in our portfolio….over time our Penn District Campus* ***will almost certainly command premium pricing****…..we will provide our tenants with* ***an unparalleled amenity package*** *(of over 200,000 square feet****)….In normal times, Penn Station is teeming with traffic and our retail does really well here****….As part of the deal here* ***we will gain long-term control*** *of an additional 22,000 square feet of retail on the south side, so we will now have all the retail along both sides of the heavily trafficked Long Island Railroad concourse. And* ***we have all the retail*** *in the adjacent Moynihan Train Hall and Farley…."*

- Vornado's 2020 *Chairman's Letter to Shareholders*, bolds mine (Roth 2020)

"It has been a plan that the city has had for many years to try to really create Midtown as a ***river-to-river central business district*** *and this [Empire Station Complex] is kind of the last piece in that puzzle"*

- ESD spokesperson Holly Leicht at CB4 Community Forum

The Empire State Development Corporation (ESD) and Vornado Realty Trust seek to speculate in the luxury office market by building ten glass towers around Penn Station. These towers will be considerably taller than current zoning allows. They will create a contiguous skyscraper neighborhood to the unfinished Hudson Yards project to the east. Vornado is the largest property owner in the project area and has invested in the area for over twenty years. Vornado has refrained from building out its properties under the current generous zoning, waiting instead to see if they can get extra buildable space out of the state for this project. The project constitutes a speculative bet on the future value of high-rent "Class A" office space.

The project also seeks to seize property from non-Vornado owners via eminent domain and to demolish nine blocks of the masonry, historic city so that Vornado can execute its plan. Perplexingly, the DEIS notes that the majority of buildings that the ESD wants to demolish are in good or fair condition. The ESD has recently added an insignificant amount of affordable housing to make the project sound more palatable. Unfortunately, there will be a large net loss of affordable housing[1] and despite recent tweaks by Governor Hochul's team, the major purpose has not changed: state subsidy of luxury office towers in Midtown Manhattan as if spending taxpayer resources this way constitutes "revitalization" or "economic development." In the words of the good government think tank *Reinvent Albany*, this project is "a massive public subsidy in disguise to Vornado" (NYSenate 2022).

Former Governor Cuomo initiated the project with Vornado as the main client. It is not clear what effect Vornado's $384,000 in campaign donations had on Cuomo's support for the project (Velasquez 2021). Current Governor Hochul, also a recipient of over $200,000 in Vornado cash, also supports the project - with minor changes that do not change its essential character.

- ESD describes the project in this document here.
- The Draft Environmental Impact Study (DEIS) and its appendices can be found here.
- The "Neighborhood Conditions Study" used to claim "blight" is found here.
- Community Board #5's negative resolution opposing the project can be found here.
- The minor revisions to the project that the ESD proposes are found here.
- The law governing the Empire State Development Corporation is called the UDC Act. It is here.
- Steven Roth, the CEO of Vornado, has a letter to his shareholders here.

What's Wrong with the Project?

An Outline of the Major Problems

1. The concept of the project and the choice of project site violate the UDC's enabling legislation, known as the UDC Act. These points are expanded at length below.

2. The DEIS fails to consider the need for Class B and C office space in the city, nor does it provide any data on that sector of the office market. Class B and C office space is a vital part of our city's entrepreneurial infrastructure. The Penn neighborhood is full of such space (ex: the many music studios on 30th Street who moved there after demolition of Music Row on West 48th Street). Instead, we are served up an economic development concept rooted in the discredited "luxury city" model of Dan Doctoroff. In this case the ambition is to replace the entire area - "river to river" – with class A office towers.[2] Nowhere is there consideration of an economic development strategy based on adaptive

[1] The Post Office reports 2173 residential units in the project area, most of which would be demolished. Only 152 "affordable" units would be built and Vornado claims only 400 families will be evicted via eminent domain. However you count, it is a net loss of affordable housing.

[2] "The" river to river" business district ambition was cited by Holly Leicht, spokesperson for the EDC in a public forum, see the video here. There is a vast economics and planning literature that has uncovered the many social costs, negative externalities, and economic development failures of the luxury city concept. See for example Julian Brash's book of 2011, Bloomberg's New York: Class and Governance in the Luxury City (University of Georgia Press).

reuse of perfectly useful pre-war buildings[3] or to support entrepreneurs, start-ups, small businesses, and a working-class population more generally. In this way, the project utterly fails to develop an *equitable* economic development plan, preferring instead the tired paradigm of channeling public subsidies, assets, and wealth to the country's third largest real estate investment trust.

3. The data and arguments that used to portray the Penn Station neighborhood as "blighted" rely on misleading, cherry-picked data as well as circular reasoning. Moreover, some of the so-called "blight" conditions have been self-created through Vornado warehousing of its properties.

4. ESD fails to consider the alternative hypothesis that the cause of the problems of the area have nothing to do with the presence of "old" buildings but are instead created by the toxic border vacuum conditions that the anti-urban post-1964 buildings on top of Penn Station impose on the entire area. See the following section for an expansion of this point.

5. Most of the public realm improvements used to pitch the project have already been put into place and are not in the project scope or cannot be done by Vornado or the ESD, but by New York City's Department of Transportation. To avoid the perception of deceiving the public, the data on the public benefits of this project should be clarified and provided with much greater precision and not conflated with future improvements to Penn Station which do not require this project to happen and are not part of this project.

6. The negative externalities and social costs to this project are massive yet are wrongly portrayed as trivial. That must be rectified with professional economic analysis - from economists who grasp the measurement issues. Such analysis is entirely lacking in the DEIS. These problems are expanded in the next section of this document, but they include:
    a. Undercounted data on the scale of residential and small business displacement, a net loss of housing, and the dramatic loss of small business employment - at least 10,000 small business jobs to be lost if this project goes forward.
    b. Incorrect data on the scale and scope of intended demolition of historic properties, of which 15 are of national significance according to the National Trust for Historic Preservation. Many buildings of significance are simply left out of the DEIS. Moreover, the DEIS omits any credible economic analysis of the intergenerational value such properties create for the city. It also fails to explore the possibility of an economic development strategy based on rehabilitation and adaptive reuse. How is that acceptable professional practice?
    c. The DEIS portrays the immense shadow impacts on the public realm as trivial, even irrelevant. There are no economic analyses of these impacts, or any discussion of wind tunnel effects. The documents also omit the obvious:

[3] The DEIS finds that most of the buildings in the project area are in good or fair condition.

shadowing and wind effects will negate the public realm improvements Vornado claims it will make to the sidewalks and streets of the immediate vicinity.

d. Also ignored and uncounted is the cumulative environmental impact of this project when similar, nearby projects in the works are taken into consideration. These other, uncounted, unanalyzed projects include the unfinished parts of Hudson Yards, Manhattan West, the Hudson Square, the proposed Macy's Tower, multiple projects in the pipeline for Chelsea and other parts of Community Board 5, and city proposals for the Javits Center and Port Authority Bus Terminal. This violates federal standards for impact analysis.

7. The ESD fails to analyze the financial risks of this project to the taxpayers. There are two parts to a relevant risk analysis that ESD should provide. The public is told in one of the documents that Vornado will give vague, unspecified annual payments to ESD in lieu of taxes. Those payments will be based on unknown rents Vornado might receive once the sixteen-year build-out is complete. ESD will issue bonds based on that vague income stream. The vagueness and lack of precision constitutes immense risk. Will they be junk bonds? What contortions will ESD have to go through to avoid issuing junk bonds? What is the probability that Vornado is wrong about likely rents it might obtain?

   Second, the ESD and Vornado fail to analyze office market scenarios based on the possibility that working from home may be a permanent feature of office life. The MTA already projects a massive reduction in the future of the number of people using the subways because of this trend (Gold et al. 2022). Why is there no analysis of this trend on the possible long-term finances of this immense project?

8. Three alternative economic development scenarios are given unacceptable short shrift. There is no credible economic analysis of the three most talked about alternatives by accredited economists who know how to value non-market commodities and public goods. This must be rectified. The alternatives are:

   a. **Scenario 1:** Leave the zoning envelope for the area unchanged, let the free-market build infill on an incremental basis for the sites that are substantially underbuilt, rezone ground floor retail to encourage the proliferation of Mom-and-Pop independent retail, use regulation to discourage unsightly signage (if that is indeed a legitimate concern), and let the Penn neighborhood's historic and smaller buildings serve as a much-needed reservoir of Class B and C office space for entrepreneurs, start-ups, and the small business sector. In this scenario, the ESD is free to use its powers of eminent domain to take the Hotel Pennsylvania and use half of its 2200 rooms for supported single-room occupancy housing for seniors, students, low-income working women, and homeless. The now-gentrified Sloane House YMCA used to function that way before it became a condo. This would be a more legitimate use of eminent domain than what is now proposed.
   b. **Scenario 2:** Move Madison Square Garden, rebuild an above-ground train station without the Penn South demolition scenario, and retrofit the tracks for

through-running trains so Penn Station can serve as the core of a regional unified network for transit. This scenario would serve the transit-starved, commuters and the working class. It would lower transport costs and commuting times for everyone, big business, and small business alike. This scenario would clearly allow for normal bond issuance based on rising regional GDP in the tri-state area. There is ample economic research on that so it is not a contested idea. This scenario would create equitable economic prosperity instead of attempting to funnel wealth to one of three oligopolistic players in Manhattan's commercial office market.

c. **Scenario 3:** A combination of the above would perhaps be the ideal solution.

9. ESD is unlawfully segmenting separate projects (ex: Gateway, the contested idea of Penn South, the concourse improvements, track improvements, above-ground public realm improvements, and handover of FAR to Vornado for a new Hudson Yards) to avoid invoking the National Environmental Protection Act. Yet it still tries to sell benefits of project B (ex: public realm improvements) as the benefits of project A (subsidizing Vornado skyscrapers). The current project under consideration has nothing to do with Penn Station improvements. This kind of segmentation makes analysis of the whole impossible.

Expanded Review of Selected Problems in the Project and DEIS

This section expands on several of the problems that were summarized in the preceding section.

The concept of the project and the choice of project site violate the UDC Act.

Section two of the enabling legislation for the ESD charges the agency with finding urban areas that are economically suffering, that lack public transportation, that have no capital investment and are abandoned, and where there is widespread poverty. The Act specifically mentions the need for the ESD to choose areas where there is "substantial unemployment" and where the buildings are "obsolete, abandoned, inefficient, dilapidated and without adequate mass transportation facilities." The ESD is further required "to develop rental housing that is affordable to persons of low income." Furthermore, the law tells the ESD to seek out urban places where there is "unavailability of private capital" (See the UDC Act, section 2). The Act is clearly at pains to describe desolate and abandoned areas where private sector activity is either absent or failing in a large-scale way with negative consequences for the public good.

Yet Vornado Tells Shareholders the Penn Neighborhood is Thriving, Profitable, and Central

None of the above legal descriptors characterizes the Penn neighborhood. The area is literally on top of a massive public transportation network in the middle of the densest county in the entire country. The CEO of Vornado has even bragged to his shareholders that the area is not abandoned or desolate, but in fact prospering. He wrote:

> **"Day and night, the Penn District is teeming with activity**. Our assets sit literally on top of Penn Station, the region's major transportation hub, adjacent to Macy's and Madison Square Garden" (Steven Roth, 2020 Letter to Shareholders")

Throughout Vornado's 2020 shareholder letter, Roth continues to describe the Penn neighborhood as full of vitality, repeating that it is "teeming with traffic and our retail does really well there," telling shareholders that it has "the highest growth opportunity in our portfolio." He also informs shareholders that Penn area retail owned by Vornado has long been profitable, as was the Hotel Pennsylvania before Vornado shut it down and warehoused it. The hotel industry is cyclical, he explains, which means it has very high profit years followed by down years, but that overall, the hotel "has been a good taxpayer" for Vornado (See Letter to Shareholders).

Perversely, the ESD bases the project in a discredited hyper-gentrification strategy that does not support or provide opportunities to working class people, low-income people, entrepreneurs, start-ups, or small businesses - all of whom currently thrive in the area. Instead, it seeks to rid the neighborhood of this class of people and the commerce they use. Since when is the ESD directed by law to serve large corporations and the high-wage gentry class employed at Facebook headquarters instead of working-class and low-income residents of the city and the small businesses that support them?

The Economic Development Concept is Based on Fallacies and Flawed Reasoning Inconsistent with the Act

Example 1: A Perpetual Cycle of Demolition and Rebuilding ≠ Economic Development

It is circular reasoning to claim that if an area does not show evidence of constant demolition and rebuilding with an infinite and perpetual growth of Class A office space, that it is therefore "stagnant" (in the words used on page 60 in the Neighborhood Conditions Study). Who says that Class A office space is the ultimate, apex outcome for cities? As urbanists have long pointed out, successful cities thrive on great diversity of all kinds of office space, buildings, industries, residents, and incomes (Jane Jacobs 1992; Sorkin 1994; Sassen 2001). Urbanists have long understood that urban success is destroyed when monocultures of any kind become dominant. Yet the logic of the ESD's Neighborhood Conditions Study strongly implies that if city planning agencies and market forces combined have not yet demolished a neighborhood and replaced it all with taller buildings, then the ESD should come in and use state power to force that result and impose that demolition "river to river" in the words of an ESD spokesperson in a public hearing with Community Board 4. By what legitimate theory of economic growth is that the case? If we apply that reasoning to the rest of the city, all of Manhattan would be demolished and rebuilt every ten years. While that may be an outcome that the real estate industry would love (see the radio interview with one of the industry's favorite keynote speakers, Edward Glaeser (Jenkins

2015)), it is not an acceptable or even legitimate economic development strategy for the Empire State Development Corporation and it is contrary to the intent of the enabling legislation.

Example 2: "Old" Is Not the Same Thing As "Obsolete"

In similarly misleading and circular reasoning, the "age of buildings" and the condition of being "old" is rhetorically equated in the project documents with the words "obsolete" or "outmoded". This is utter nonsense. The White House is over 200 years old. Should it be demolished? Is it outmoded? Can it not be patched up and painted and given better plumbing from time to time? Across the world, adaptive reuse of old buildings is a time-honored urban revitalization strategy. The "low ceilings" that Vornado complains about in the EIS with reference to the Hotel Pennsylvania are a very respectable 10- feet, typical of many wealthy neighborhoods throughout the city. Yet 10-foot ceilings are cited as a reason they must demolish the building. This is absurd. Loft and warehouse buildings throughout the Village, SoHo, and Tribeca are among the most expensive in the city and they do not have central air conditioning nor do they all have high ceilings.

Examples of adaptive reuse of "old" buildings also abound in NYC and around the world, such as the well-known case of Google who settled into a pre-war building in nearby Chelsea. Another example is the case of WeWork. It has invested billions in transforming old loft buildings throughout the city into expensive co-working space. The conclusion: just because a powerful corporate entity wants to build speculative glass towers, that should not mean that the ESD must share in the laughable pretense that "old" is the same thing as "obsolete" and that profitable tenants do not seek out old buildings. Finally, the law does not direct the ESD to find places with "old" buildings, if it did, half the state would be demolished.

Example 3: ESD is Supposed to Serve Low Income People Whose Presence is Considered Blight

The project documents suggest discriminatory intent toward people who are not of the gentry class. The ESD complains on page 62 of the Neighborhood Conditions Study that the project area "has the highest proportion of local workforce earning less than $40,000 annually, at 52%." The report goes on to inform readers that a high percentage of higher-salaried workers can be found in the Grand Central or World Trade Center area. The logical implication is that the presence of lower income workers now constitutes "blight" conditions. Where are such workers expected to go? Are working class people to just leave the city and be replaced with Facebook headquarter employees? Recall that Vornado now rents to Facebook in the Farley Post Office and brags frequently of this fact to its shareholders. Is this not an example of classist and thinking on the part of ESD and its client, Vornado? Note that less than 4% of Facebook's employees are Black (https://www.statista.com/statistics/311847/facebook-employee-ethnicity-us/).

Vornado's CEO also tells his shareholders that he plans hundreds of thousands of square feet of private amenities within his buildings for his high-end tenants. This follows a fashionable trend among developers to create in their high-rises a new kind of anti-urban, gated community within each building. The idea is to create interior "amenities" so that high-salaried people won't have to leave their building to eat, go bowling, taste fine wines, see a movie, play golf, enjoy an art collection, or walk their dog. Since when is this kind of planned hyper-gentrification and Big Real Estate speculative game a legitimate strategy for a public agency like the ESD?

There is No Lack of Private Sector Capital

The project area has already received massive private sector investment, contrary to the legislative criteria cited above in the UDC Act. Why does the ESD project document fail to point out that private sector investment in the area has been abundant? Some of the omissions are:

- Less than four years ago, the residents of the high-rise former garment factory loft building at 251 West 30st Street just invested nearly $4 million in renovations.
- The owners of Madison Square Garden did a billion-dollar renovation that was completed in 2014 and widely documented in the newspapers of the period.
- *The Commercial Observer* reports that in 2019, a down year for the economy, the city received $26 billion in private sector investment money into the real estate sector alone. This amount - and often much more – enters the city every year looking for speculative real estate investment opportunities. How is there a shortage of real estate capital anywhere in New York City?
- The reality – much talked about in the real estate press – is that Manhattan is so flooded with real estate capital that the city is literally eating itself alive. Hudson Yards, one of the most capital-intensive projects in the city is not even finished and may itself be oversupplying Class A office space. It is well established that Hudson Yards filled what space it has by cannibalizing most of its tenants from East Midtown.
- Vornado itself, the country's third largest publicly traded real estate investment trust, has speculatively purchased properties in the area for over twenty years and even hired architect Richard Cameron to redesign the Hotel Pennsylvania to become five separate upscale boutique hotels, a project it needlessly chucked in favor a speculative office tower on the site.
- Vornado is even now selling speculative shares of the proposed Penn Project to investors with a high appetite for risk (see 2021 Letter to Shareholders of Vornado). Vornado gloats in its letter shareholders that it has a monopolistic lock on the area that is about to receive billions in public investment for infrastructure.

The Project Entrenches a Near-Monopoly, which is Not the Intent of the Act

The intent of the law is clearly to create economic development that is widely equitable and with substantial and visible benefits to unemployed and low-income people. The law does not direct the ESD to use the power of the state to entrench monopolistic positions of large corporations. Yet that is what is happening in this project. Vornado is among three companies (Vornado, SL Green, and Brookfield) who collectively own 75% of all commercial real estate in Manhattan (Hall 2018). By any measure, that is an indicator of a dangerous oligopoly. Vornado dominates local property ownership in the project area through long-term speculative investments.

Moreover, Vornado already has a near-monopoly lock on local retail in the project area. Vornado's CEO specifically gloats of these facts in the quotation above.

Nowhere in the UDC Act is the purpose of state power to entrench quasi-monopoly, especially at the expense of and displacement of an underserved small business sector and a working-class population.

The DEIS fails to consider the need for Class B and C office space in the city or provide data on that sector of the office market.

The EIS and the ESD provides no data on Class B and C office space nor any kind of analysis of it. Yet Class B and C office space are a vital part of our city's entrepreneurial infrastructure: they are the buildings where job-generating start-ups, entrepreneurs, and small businesses house themselves. Such office space is what characterizes the historic neighborhood to the east, south, and north of Penn Station. Such infrastructure should provide the core of any economic development strategy.

Class B and C office space is cheaper than Class A space and that is a good thing. It is often provided by the older buildings the project prefers to demolish. Unfortunately, even though the small business and entrepreneurial start-up sectors provides a large chunk of the job growth in our country, developers do not generally build Class B and C space for them, preferring to chase after high-income, high-wealth tenants for new Class A construction, as indicated in Vornado's shareholder letter cited at the header. This is a classic case of market failure and the ESD should not be contributing to it.

The project is spun out of a false premise: that pre-war old buildings are the cause, not the cure of the area's problems. Vornado is also self-creating "blight" conditions.

The project concept is built on the notion that the presence of historic, "old" buildings is the cause of the problem because they are "too small" and that the cure is to replace them with ten new glass office towers. Yet what exactly is the problem in the neighborhood? To be sure, it is not gentrified, but it is nonetheless teeming with activity and plenty of affordable Class B and C office space for all kinds of small businesses. To be sure, the area also has many national chains catering to a working-class population and to commuters. These have storefronts and signs that the gentry class considers unsightly (Hooters, Dunkin Donuts, K-Mart, Duane Reade). The neighborhood also has an alarming presence of homeless people.

Yet the presence of "old" and "too small" buildings did not cause these problems. The cause is the post-1964 "modernized" parts of the area. These elements have combined to create a dystopic urban experience - what Jane Jacobs described as "border vacuums" in Chapter 14 of her famous book (Jacobs 1992). Border vacuums are places people try to get away from or pass through as fast as possible on their way to somewhere else – not places people care to linger.

The border vacuum quality of the Penn area has four underlying causes:

1. The 1964 decision to demolish Penn Station and place it *underground* forced commuters into an unsalvageable, below-the-street rat's nest rather than into the *above-ground* public realm of streets and sidewalks. This is contrary to all intelligent ideas about urbanism - which is about getting people on the street to enjoy urban life. This cannot be rectified by decorating and landscaping a plaza.
2. MSG's use as a sports and concert arena naturally creates an underused urban space during the frequent times when events are not taking place.
3. MSG and the post-1964 buildings on top of the station and in the lots to the north are famously so ugly and hostile to the human interface that people seek to flee the area as fast as possible. Consider what architecture critic Paul Goldberger said of the mess on top of Penn Station: "*a graceless, sloppy, cheap entertainment and office complex that would be an insult to an empty site in the middle of nowhere. For this, there is no excuse."* (Goldberger 1979). Recladding them, as Vornado is doing, cannot change this judgment and is a form of denial about the true nature of the problem.
4. Vornado is creating its own blight by emptying buildings and warehousing them, while awaiting government welfare in the form of a rezoning. This is self-induced harm that does not require the remedy of corporate welfare in the form of a bigger zoning envelope.

A walk through the neighborhood also shows that it is the pre-war masonry buildings that are providing the neighborhood with the vitality that Vornado notes in its letter to shareholders. This is particularly true for the many Irish bars whose storefronts warm up and enliven even the ugliest of street walls. The real problem is that these "old" buildings and their small-scale retail tenants must struggle against the toxic border vacuum forces that are created by Vornado's warehousing, the underground character of Penn Station, and the post-1964 building on top of the station.

The obvious solution is to replicate and expand the success of these buildings and businesses in the face of such forces, not demolish them. Another and even better solution is to remove the causes of the border vacuum: move MSG and put Penn Station above-ground on its old footprint! Yet this possibility is ignored and not analyzed, a major omission in the DEIS.

The data and arguments used to portray the Penn Station neighborhood as "blighted" are misleading. They use "cherry-picked" data and rely on circular arguments that make no sense.

Example 1: ESD carves out 56 tax lots from the neighborhood for analysis in isolation from the surrounding neighborhood in which the lots are deeply embedded economically, culturally, and socially from an urban planning perspective. That means they have left out Hudson Yards in the study of economic conditions, even though Hudson Yards is literally contiguous to the project area to the west. Hudson Yards is not used as a comparison group for any data point at all. In a similar way, the successful shopping district across the street from the project site, the area that goes east along 34th Street from 6th Avenue is also left out of the comparative analysis. Why?

Example 2: In a biased comparison of the project area with that of East Midtown, ESD gives no coherent reason to leave out of its analysis the 4 million square feet of Class A office space recently created at One Vanderbilt and under construction at 270 Park Ave (where JP Morgan is building a supertall tower). By such omissions, the ESD creates the impression that it is avoiding the conclusion that Class A office space is massively oversupplied in the city.

Example 3: In the neighborhood conditions study, the ESD uses nearby garment district census tracts to complain about a fall in employment in the area. To the ESD, this implies "blight". The garment industry has traditionally occupied immense masonry buildings to the north, south, and east of the area. The imposed rezoning of the garment district a few years back was hotly contested. Although the rezoning dealt a blow to industry it did not actually succeed in eliminating the garment trade. Is that a reason for the ESD to further marginalize and erode existing entrepreneurial use of the area, a use that is not dying a natural death and may even naturally revive again due to supply chain disruptions during Covid?

Example 4: ESD complains that not every single one of the tax lots in the project area is fully built out to the full zoning envelope under the current zoning. The agency complains particularly about three lots that are profitable parking lots and four that are small buildings of 3 stories known as "taxpayers." Some of these small lots are owned by Vornado. As an example of cherry-picking and selective misinterpretation of the data, note that the ESD neglects to point out that 17 of the tax lots in question are *massively overbuilt* relative to their FAR allotment (among them the Hotels Pennsylvania and Stewart) and that five of them fill their allotment completely: that's 40% of the lots in question. Most guilty of that non-offense turns out to be Madison Square Garden itself which "fails" to use 2.3 million square feet of its allotment of FAR (Neighborhood Conditions Study Appendix 1).

But why is the choice of property owners not to pack their full zoning envelope to every square inch considered a negative indicator and not a positive indicator (Giordano 1988)? Vornado has the resources to build out any of its own properties that are underbuilt in the current zoning, but it prefers to not do that and instead does nothing but speculate in hopes of a government handout of additional FAR in this project. Moreover, zoning and planning theory nowhere state that planners intend property owners to completely fill their FAR allotment out to the inch. The condition of being underbuilt relative to the city government-granted allocation of FAR is not a clear sign of poverty, disinvestment, or lack of entrepreneurial activity: it can also imply dangerous speculative warehousing or that the current zoning is more than adequate for current use and may even be pointlessly over-allocated. The argument ESD is using is thus not merely circular and confused, but also misleading.

Example 5: In a similar rhetorical strategy, the ESD calls out six buildings for having a "non-conforming" use – that is, they are residential in character with affordable housing units that are regulated by the Loft Law. Yet such use is exactly what is desirable by the public purpose of ESD! A reader of these documents can only assume that by tossing around the negative vocabulary of "non-conforming", the ESD hopes to create a misleading sense of "blight" that does not actually exist.

Example 6: The chapter called *The Visual Assessment of Building and Site Conditions* within the *Neighborhood Conditions Study* is particularly filled with cherry-picking. Most of the buildings are found to be good or fair condition. Old, outdated photos of 251 West 30th are used to characterize the building as dilapidated, when in fact that building underwent a multi-million-dollar renovation just a couple of years ago. The actual, present-day pristine condition of the building is ignored. Buildings in that study are called out for everything from having a cracked sidewalk nearby to the existence of a dead rat in the street in front of this or that building or for the presence of trash on the street. These "facts" are presented with alarmist close-up photos of an actual dead rat, the offending trash, and the various close-up shots of cracks, all intended to create a selective image of blight when the reality is that the neighborhood is no more cracked, windblown, or rat-infested than most of Manhattan between the Battery and 125th street, including the wealthiest zip codes. These data points do not in any way constitute an intelligible or logical argument for "blight."

Example 7: In a similarly selective and biased presentation, the use of open building code violations is used to claim blight, but the fact of the matter is the average number of violations in the Penn area is no different from any other area of the city, and most violations are utterly trivial in nature.

Example 8: Property owners throughout the project area have found they cannot rent retail space because of rumors or demolition. Vornado has been warehousing its properties and emptying them, such with the Hotel Pennsylvania, thus creating the blight conditions it wants to rectify.

The negative externalities and social costs to this project are massive in both a theoretical and empirical sense, yet are underplayed, undervalued, and undercounted.

Example 1: The project sites are filled with undercounted viable small businesses and residents. The Post Office reports that there are 3,667 business addresses in its delivery routes in the project area and 2,371 residential addresses (see attached building census of the project sites). This Post Office count is much larger than Vornado' erroneous claim in the DEIS of an unspecified number of affected small businesses and only 400 households in the project area. Why is the ESD undercounting the effect of this project on residents and small businesses in the area?

Example 2: The EIS presents incorrect and misleading data on the scale of demolition of historic properties of national significance. There is no analysis of the intergenerational value such properties create for the city. The most well-known examples of historic buildings whose demolition is imminent are the Hotel Pennsylvania, the Hotel Stewart, the Church of St. John the

Baptist and its parish house, the Gimbel's skybridge, the old Penn Station powerhouse, and great garment loft buildings such as at 251 West 30th St.. Other affected buildings that are ignored in the EIS include buildings of national significance, all of them eligible for listing on the National Register. In the words of the National Trust for Historic Preservation, these include:

- FDNY Hook and Ladder 24, Engine 1, 142 West 31st Street - meets Criterion A in the area of government by reflecting the response of the City of New York to provide fire protection in Midtown Manhattan. Also meets Criterion C in the area of architecture as a largely intact expression of early twentieth century civic design.
- 224 West 30th Street – meets Criterion A for its historical association with New York's fur and garment industry. It is also significant under Criterion C as a highly intact representative example of commercial/industrial loft design by the firm Sugarman, Hess & Berger.
- 236 West 30th Street - meets Criterion A for its historical association with New York's fur and garment industry. It is also significant under Criterion C as a highly intact representative example of commercial/industrial loft design by the prolific New York City firm of Blum and Blum.
- Fire Patrol No. 3 Building, 240 West 30th Street – meets Criterion C as a distinctive example of Flemish Revival institutional architecture in Manhattan. The building may also possess significance under Criterion A in the area of government and social history for its role in the history of firefighting in New York City.
- Hotel Irvin, 308 West 30th Street – significant under Criterion A in the area of social history, subcategory, Women's History, as a representative example of an early twentieth century purpose-built residence hotel for businesswomen of moderate income.

Conclusion

This project is a state assisted land-grab to benefit one of the largest real estate investment trusts in the country. It is totally unnecessary because the goal of an improved or above-ground Penn Station can easily be achieved without it. It is anchored in a discredited "luxury city" model of economic development that has no economic theory behind it beyond Ronald Reagan's trickle-down ideas. Moreover, the ESD is imposing on New Yorkers an unwanted vision of a "river to river" business district in midtown that fails to serve low-income and working class New Yorkers, small-businesses, or start-ups and merely pretends that more speculative class towers in the style of Dubai and Shanghai is somehow good for the city when there is no evidence whatsoever for that proposition or that such a vision constitutes economic growth, let alone equitable economic growth.

References

Giordano, Margaret. 1988. “Over-Stuffing the Envelope: The Problems with Creative Transfer of Development Rights.” *Fordham Urban Law Journal* 16 (1): 43.

Gold, Michael, Ana Ley, James Thomas, and Benjamin Norman. 2022. “Here’s Where Subway Riders Have Returned. And Where They Haven’t.” *The New York Times*, January 17, 2022, sec. New York. https://www.nytimes.com/2022/01/17/nyregion/nyc-subway-ridership.html.

Goldberger, Paul. 1979. *The City Observed, New York: A Guide to the Architecture of Manhattan*. New York: Vintage.

Hall, Miriam. 2018. “Here Comes Canada: Brookfield Says It’s The New No. 1 Office Owner In NYC.” *Bisnow*, December 5, 2018. https://www.bisnow.com/new-york/news/commercial-real-estate/brookfield-is-now-nycs-largest-commercial-property-owner-95663.

Jacobs, Jane. 1992. *The Death and Life of Great American Cities*. New York: Vintage Books.

Jane Jacobs. 1992. *The Death and Life of Great American Cities*. Vintage Books.

Jenkins, Simon. 2015. “What Are Cities Doing so Right – and so Wrong? Edward Glaeser Talks to Simon Jenkins.” *The Guardian*, May 21, 2015, sec. Cities. https://www.theguardian.com/cities/2015/may/21/what-are-cities-doing-so-right-and-so-wrong-the-experts-go-head-to-head.

NYSenate. 2022. *Economic Development - Subsidies and Tax Incentives*. https://www.youtube.com/watch?v=C0VEz8t0kiA.

Roth, Steven. 2020. “2020 Chairman’s Letter: Vornado Realty Trust.” 2020. http://books.vno.com/books/qybn/#p=1.

Sassen, Saskia. 2001. *The Global City: New York, London, Tokyo*. Princeton; Oxford: Princeton University.

Sorkin, Michael. 1994. *Exquisite Corpse: Writing on Buildings*. London; New York: Verso.

Velasquez, Josefa. 2021. “Embattled Cuomo Pushes Skyline-Altering Penn Station Real Estate Plan as Critics Mobilize.” *The City*, April 1, 2021. https://www.thecity.nyc/manhattan/2021/4/1/22363306/cuomo-penn-station-real-estate.