

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, I.A.S. PART 2

In the Matter of the Application of DIEGO BEEKMAN  
MUTUAL HOUSING ASSOCIATION DEVELOPMENT  
FUND CORPORATION and WALTER NASH,  
Petitioners,

Index No. 260402-2019E

**JUDGMENT/ORDER**

For a Judgment Pursuant to Article 78 of the New York  
Practice Law and Rules

-against-

**Present:**  
**HON. ELIZABETH A. TAYLOR**

THE CITY OF NEW YORK, NEW YORK CITY  
DEPARTMENT OF CITY PLANNING, NEW YORK  
CITY PLANNING COMMISSION, NEW YORK CITY  
DEPARTMENT OF CORRECTION, NEW YORK  
CITY DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT and NEW YORK CITY COUNCIL,  
Respondents.

The following papers numbered 1 to \_\_\_ read on this motion, \_\_\_\_\_

No	On Calendar of	PAPERS NUMBERED
	Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	1-2
	Answering Affidavit and Exhibits-----	3-4
	Replying Affidavit and Exhibits-----	5
	Affidavit-----	
	Pleadings -- Exhibit-----	
	Stipulation -- Referee's Report --Minutes-----	
	Filed papers-----	

Upon the foregoing papers and due deliberation thereof, the Judgment/Order on this motion is as follows:

Motion pursuant to CPLR §408 for an order granting petitioners leave to serve document requests on respondents The City of New York and Department of City Planning, is denied.

Petitioners are requesting "leave to serve four (4) targeted document requests on the City addressing certain core allegations in this Article 78 proceeding." Petitioners seek documents regarding the City's consideration of alternative sites in the Bronx as well as the City's projections of future detainee population in the Bronx, which impacted

the sites that were considered. It is undisputed that on July 2, 2019, petitioners served requests to the Mayor's Office (OOM) and Department of City Planning (DCP) pursuant to the New York Freedom of Information Law (FOIL). In opposition, petitioners received a response to the FOIL requests. Petitioners allege that numerous items are redacted and that the City selectively included very limited information in the administrative records to justify the site selection that was, in truth, chosen because the City deemed it most expedient to place the jail in a poor and politically vulnerable neighborhood.

Petitioners seek documents concerning:

1) the consideration by the City of sites in the Bronx other than the NYPD Tow Pound site as the location for a jail as part of the Borough-Based Jail System; 2) the City's criteria that jails be located on City-owned land; 3) the City's projection of future detainee population Citywide and by Borough for purposes of the Borough-Based Jail System; and 4) the allegations in the amended petition that the City planned, but ultimately did not, include reductions in the capacity and/or height of the proposed Bronx Jail in its submission to the City Planning Commission in the Summer of 1999.

Petitioners argue that "[p]roximity to the Courthouse is a key site selection criterion, as evidenced by the Report of the Lippman Commission, which recommended that jails be 'as close to the courthouse as is practically possible,' the City's own stated criteria, and the City's selection of sites in Manhattan, Brooklyn, and Queens in close proximity to the courthouses."

In opposition, the City maintains, among other things, that: 1) any complaints petitioners may have about their FOIL requests must be resolved through the FOIL process, not this Article 78 proceeding, and petitioners have not demonstrated or

alleged that they have exhausted their administrative remedies through the FOIL process; 2) discovery is not necessary because the “voluminous administrative record” provides the basis for “the City’s choice not to proceed with the Petitioners’ favored jail site;” and 3) the instant motion is untimely pursuant to CPLR 406 and 408 as petitioners made this instant motion returnable approximately four months after their Article 78 proceeding was made returnable. In reply, petitioners respond that: 1) CPLR 406 is not a basis for dismissal of the motion, especially where respondents are withholding several documents which will undoubtedly shed light on the City’s true decision making process; and 2) the self-serving publically available record, and last-minute and heavily-redacted FOIL responses do not speak to the true basis of the City’s determination and site consideration for the proposed Bronx location, including alternative sites.

“The doctrine of exhaustion of administrative remedies requires ‘litigants to address their complaints initially to administrative tribunals, rather than to the courts, and \* \* \* to exhaust all possibilities of obtaining relief through administrative channels before appealing to the courts’” (citation omitted) (*Young Men’s Christian Ass’n v Rochester Pure Waters Dist.*, 37 NY2d 371, 375 [1975]). Based upon the motion, petitioners filed FOIL requests for the documents they are requesting in this proceeding (see *Taylor v New York City Police Dept. FOIL Unit*, 25 AD3d 347 [1st Dept 2006] [Petition was properly dismissed for failure to exhaust administrative remedies]). As respondents correctly indicate, petitioners have not demonstrated nor do they allege that they have exhausted their remedies for the information through the FOIL process.

Accordingly, as the information petitioners are seeking here, *to wit*, documents regarding the basis of the City's consideration in selecting the NYPD Tow Pound location for the jail site, the motion must be is denied. Therefore, this court does not address the sufficiency of respondents' other objections.

The foregoing shall constitute the judgment and order of this court.

Dated: MAR 26 2021

  
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J.S.C.

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- Motion is denied
  - Petition is still active