

Memorandum

From: Dr. Richard Lipsky

To: Selected Media

Subject: BJ's Warehouse Club Rejected in the Bronx

Date: 2/16/05

BJ's Warehouse Club Goes Down to Defeat

Executive Summary

In an outcome that few would have predicted, the application to build a BJ's Warehouse Club on Brush Avenue in the Bronx was sent to a resounding 13-0 defeat by the City Council's Land Use Committee last Thursday. The negative vote was seen by many veteran observers of the land use review process as unprecedented, since BJ's had seen its application approved by the local area community board, the Bronx Borough President and the City Planning Commission before it went down to defeat at the Council. In addition, the BJ's project had been strongly supported by Councilmember Madeline Provenzano who represents the community directly impacted.

What the defeat of BJ's signals, however, is the greater degree of oversight and scrutiny that all box store applications, particularly the ones from Wal-Mart that are expected shortly, will receive when they are sent to the City Council for disposition. It was the announcement that Wal-Mart was setting its sights on New York City that generated a higher level of interest and concern in

the BJ's project, since the company's business model and average footprint are built on the Wal-Mart example.

The failure of the City Planning Commission to require a thorough review of the BJ's impact was seen by project opponents as setting an unacceptably low standard as well as an unacceptable precedent for the anticipated Wal-Mart applications. Their belief was that box stores represent a significantly new economic phenomenon that requires intense scrutiny and, perhaps also, even higher barriers to entry than those that are now customary in the current land use process.

In addition, the City Council, perhaps as a harbinger of things to come, had serious issues with the labor policies that both BJ's and Wal-Mart practice. A great many council members felt that these abysmal labor records should also be factored in when a land use application is submitted. The prevalent belief was that an application for a zoning permit was a request for special dispensation from municipal government and, as such, was not only purely discretionary but also should be reviewed with the overall quality of these applicants in mind.

Implications for Public Policy

The BJ's vote is a clear indication that any attempt by the Wal-Mart to navigate the land use process will not be an easy one. Clearly, the City Council appears ready to raise the bar when it comes to box stores whose labor policies it sees as abhorrent.

In addition, the defeat of BJ's signals that an invigorated labor/business coalition is going to provide significant opposition to any of the anti-union box stores that seek to locate in New York City. It also seems likely that, with the imminent entry of Wal-Mart, box store development is likely to become a prominent political issue in the upcoming mayoral election.

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For the past two years the Related Companies have been attempting to gain permission to build a 130,000 sq. ft. warehouse club on Brush Avenue in the Bronx. In early reports on the development in the local Bronx newspaper it was assumed that the project would encounter nothing but smooth sailing. As the Bronx Times observed on April 24, 2003, “A variance will be needed to permit a box store on the site. However, according to community leaders and elected officials, neither obstacle poses a threat to the store’s development.”

On the contrary, almost two years since this sanguine observation was written, the BJ’s proposed development has gone down to an unexpectedly dramatic defeat as the City Council has overwhelmingly rejected its application for special permit. How did a project, launched with an air of confident invulnerability, end in such abysmal failure?

Mistakes at City Planning

When a project is in need of a special permit, and any food store in a manufacturing zone that is bigger than 10,000 sq. ft. needs one, it must go through a pre-certification phase at the Department of City Planning (DCP). Typically, this means a review of the potential environmental impacts of the project and an evaluation as to the kind of impact analysis that is required of the developer. If the impact is gauged to be significant, than a full environmental impact statement is needed. The EIS, as it is called, will include a thorough analysis of the socioeconomic impacts of a project and also its effect on neighborhood character.

When the DCP took a look at the BJ’s preliminary plans it somehow decided that the 130,000 sq. ft. store didn’t require a full EIS since it didn’t reach the threshold for such a comprehensive review. Elsewhere (see attached), we have underscored the lack of justification involved in the Department’s due diligence in this non-decision. Suffice it to say that the BJ’s should have been required to undergo the most rigorous form of review since it was precisely the kind of new economic activity (there is no such box store in the Bronx) that will be likely to alter

existing economic patterns. BJ's would be the largest food store in the Bronx with sales volumes that dwarf Pathmark, the next largest supermarket in the borough.

The failure to require a comprehensive review left the developer and the city open to legitimate criticism related to the project's potential impact on existing retail activity and neighborhood economies. This failure was particularly important because of the retail renaissance in many of the contiguous Bronx neighborhoods that has been spurred by Hispanic immigrant supermarket owners. These entrepreneurs were to become significant opponents of the development.

Review Process Tainted

When the project was certified at the DCP on August 9, 2004, it was sent to local Community Planning Board #10 for the first phase of review in the ULURP process. At the time, project opponents, a coalition of business and labor led by the Neighborhood Retail Alliance, the United Food and Commercial Workers and the Retail, Wholesale and Department Store Union, requested an opportunity to make a full presentation to the local board. The coalition had hired a traffic consultant and had a number of important issues that couldn't adequately be presented in the normal 3 minute public hearing format.

Initially, this request was granted but, while awaiting a scheduled appearance, opponents were shocked when informed that the board would instead ignore the request and proceed directly to its public hearing. Keep in mind that the Related Companies had been courting this board, without rebuttal, for over a year and the local board members were going into a public hearing having been given an exclusively pro-development education.

When opponents expressed outrage at the board's failure to grant a fair due process for the opposition to the development there were told that, since the vote would be laid over, they would be allowed to hire their own hall and invite board members and other community representatives to a

rebuttal presentation. On Wednesday, September 27, 2004, however, Board #10 held its public hearing and, contrary to representations and normal precedent regarding controversial projects voted in favor of the project. The traffic consultant hired by project opponents, a well-respected and highly compensated expert with a great deal of knowledge of the local community, was granted exactly 3 minutes to present a complex set of facts.

The sense that this development was being given an extraordinary freedom from a full and fair review grew when the project was sent to the Bronx Borough President for his evaluation. Unlike the community board, Mr. Carrion graciously met with opponents and afforded them an opportunity to make their case. He related that his own concerns involved the economic impact that the project could have on the Hispanic store owners who had invested in the borough when chain stores had fled to greener suburban pastures.

In response, the Neighborhood Retail Alliance undertook a full economic impact analysis of the project and, pursuant to this investigation, issued a thirty page report that raised the likelihood of multiple store closings if BJ's opened at Brush Avenue. Certainly, if the Borough President's concern was economic impact than, absent any data from the developer, we felt that he was sure to weigh in with skepticism about the project's benefits.

Unfortunately he didn't say a word and, instead, quietly assented to the project without comment pro or con. By now we were beginning to believe strongly that the nature of the review for this project was being strongly influenced by who the developer was. This suspicion was given credibility when the *New York Times* published a long exposé about the relationship between the Relate Companies, its CEO Steve Ross and Deputy Mayor Dan Doctoroff (Charlie Bagli, "For City Official and Developer, Close Ties Mean Close Scrutiny," 11-19-04).

Given the fact that the Related Companies were initially handed the rights to develop a 1 million sq. ft. "Yankee Village" complex at the site of the Bronx Terminal Market, and given the fact that the project would, as one of the largest and most significant in Bronx history, certainly

burnish the borough president's image, it appears likely that his support of BJ's, no matter how tepid, was related to a need to cultivate the goodwill of the Related Companies.

Outrage at the City Planning Commission

Even with this suspicion nothing prepared opponents for what happened at the next step in the ULURP process. Prior to the BJ's public hearing at the Planning Commission on November 17, 2004, opponents were informed by staff to come to Reade Street at around eleven, since a number of items preceded the BJ's matter on the Commission agenda. When opponents arrived at that hour, with workers, small business representatives and consultants in tow, they were told that the BJ's hearing had been held at ten o'clock and closed at ten thirty.

The chair of the Commission, socialite Amanda Burden who works with a nominal \$1 a year salary, adamantly refused to reopen the hearing despite pleas from opponents to be heard. In the absence of any legitimate opposition the only inquiries of the developer from commission members dealt with the color of the store roof and the number of trees in the parking lot.

While it still remains unclear why opponents had been misinformed about the time of the public hearing, none of us has any doubts that if Related had been tardy the decision to reopen the hearing would have been made instantly. Ironically, the arbitrary and callous actions of the Commission chair gave opponents of the project increased political support. More and more it began to appear that the fix was in ("It's a Big Box Can of Worms," Frank Lombardi, Daily News, 12-8-04).

City Council Takes a Long Look

The opponents of BJ's had a number of compelling reasons to be both angry and frustrated with the review process. It appeared to them that every effort was being made to thwart a comprehensive, fair and open evaluation of the box store development. At the same time, it was extremely discouraging that the project had been supported at every level of review. The opponents

knew that no development project with the support of the local council member and the Borough President had ever been turned down by the City Council. As the project was forwarded to the Council, things were looking quite bleak.

Yet somehow, a project that appeared to be a fait accompli went down to an unprecedented and ignominious defeat in a unanimous vote of the City Council's Land Use Committee. The reasons for the defeat can be attributed to the following factors:

1) Union opposition

The work of the United Food and Commercial Workers and the Retail, Wholesale and Department Store Union gave the opposition the support of thousands of supermarket workers. These unions, rebuffed in their attempts to organize BJ's' other New York City stores, felt that it was important to teach the company a lesson and set their sights on the Bronx project.

In addition, the media furor over the interest of Wal-Mart in coming into New York helped mobilize a larger labor opposition that saw BJ's, a company modeled after Wal-Mart example, as a test case for developing a coalition to oppose the world's largest, and non-union, retailer;

2) Independent Supermarkets

The fact that BJ's project would threaten 23 independent supermarkets, predominately owned by Hispanic entrepreneurs, played a key role in garnering the opposition of Councilwoman Annabel Palma since most of the stores are in her district. She was extremely cognizant of the fact that these stores had come into her neighborhoods and had helped revive the local economies, at a time when all the chain stores were abandoning communities all over the city;

3) **Failure to Review**

The decision by City Planning to not require a full environmental and economic impact study played an important part in generating opposition to the BJ's project. The fact that the store, 130,000 sq. ft. was described by Planning as too small to trigger such a review, a judgment that is ludicrous on its face, helped to underscore the fact that the entire process lacked appropriate due diligence;

4) **Weakness of the traffic analysis**

Opponents used Brian Ketcham who thoroughly critiqued the developer's rather sketchy traffic report. The major flaws cited were the failure to analyze the closing of the Unionport Bridge and the total lack of analysis of extra traffic on area expressways;

5) **Intervention of Wal-Mart issue**

Wal-Mart's stated desire to open stores in New York City galvanized labor opposition and generated a serious level of attention to BJ's which was successfully depicted by opponents as a Wal-Mart clone. The decision of City Planning to not require a full impact study was put into sharp relief since BJ's and Wal-Mart have the same store footprint. In essence, the planners were setting a precedent to have Wal-Mart avoid the most thorough review;

6) **Determination of the opposition**

The BJ's/Related team were simply outworked by a determined coalition of opponents. There is a sense that the developer, perhaps because of his favored nation status with the administration, simply got too cocky. Unlike the IKEA development, the BJ's project moved into the City Council without any local consultants or lobbyists and numerous members of the Land Use Committee commented at a hearing that it was the first time they had even seen the BJ's/Related team.