

AMAZON HQ2 & THE NIMBY MOVEMENT:
AN OPPORTUNITY TO INCORPORATE
DELIBERATIVE DEMOCRACY INTO NEW
YORK'S LAND USE SYSTEM

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I. INTRODUCTION

New York City is home to about 8.4 million people, with about 27 percent of the population residing in the borough of Queens.¹ Within Queens is Long Island City—a place where “entrepreneurs start out and established companies expand.”² An industrial city in the 1700s and 1800s, former factories and industrial plants in Long Island City have been replaced with high-rise corporate buildings, hotels, and apartment buildings.³ Long Island City is an attractive option both for large New York-based companies looking to pay lower rent, and for their employees that commute from Manhattan.⁴

However, Long Island City has seen far larger growth in residential apartments than in commercial space since the completion of One Court Square in 1990, a 53-story commercial building that is home to Citibank.⁵ When Amazon announced its plans to build a second headquarters (“HQ2”) in 2017, New York Governor Andrew Cuomo and New York City Mayor Bill de Blasio thought this presented the perfect opportunity to turn Long Island City into a hub for tech companies.⁶ However, when Amazon announced that HQ2 would be coming to Long Island City, the plans were not met with the enthusiasm shared by Cuomo and de Blasio.⁷ The uproar from New York City residents would cause Amazon to back out of the deal by February 2019.⁸

This Note explores why the HQ2 deal in Long Island City was unsuccessful, as well as the failure of both the proponents and opponents of the deal to engage in civil discourse and negotiation. The HQ2 deal

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¹ *Population – Current and Projected Populations*, NYC PLANNING, <https://www1.nyc.gov/site/planning/planning-level/nyc-population/current-future-populations.page>.

² Lisa L. Colangelo, *Long Island City’s History One of Innovation, Expansion*, AM NEW YORK (Nov. 15, 2018), <https://www.amny.com/news/long-island-city-history-amazon-1-23421960/>.

³ *Id.*

⁴ Taking the subway from Hunter’s Point in Long Island City to Grand Central takes about four minutes. *Id.*

⁵ One Court Square is also known as the Citigroup Building, and as of 2019 is the tallest building in Queens. Steve Cuzzo, *Citi Consolidation Opens a Million Square Feet*, N.Y. POST (July 23, 2018), <https://nypost.com/2018/07/23/citi-consolidation-opens-a-million-square-feet/>.

⁶ Lydia DePillis & Ivory Sherman, *Amazon’s Extraordinary 25-Year Evolution*, CNN, (July 5, 2019), <https://www.cnn.com/interactive/2018/10/business/amazon-history-timeline/index.html>.

⁷ *Amazon Selects New York City and Northern Virginia for New Headquarters*, ABOUT AMAZON (Nov. 13, 2018), <https://blog.aboutamazon.com/company-news/amazon-selects-new-york-city-and-northern-virginia-for-new-headquarters?tag=curbed-20>; see also Amy Plitt, *Amazon HQ2 and NYC: A Timeline of the Botched Deal*, CURBED NY (Feb. 18, 2019, 10:46 AM), <https://ny.curbed.com/2019/2/18/18226681/amazon-hq2-new-york-city-timeline>.

⁸ DePillis & Sherman, *supra* note 6.

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presented opportunities for economic growth not only for Long Island City, but for New York City as a whole. These advantages were overshadowed by Not In My Backyard (“NIMBY”) movement sentiments, which arise when a group opposes the locating of something considered undesirable in their neighborhood.⁹ Moreover, the HQ2 deal fell apart when its proponents, including the Cuomo administration, failed to effectively respond to the backlash, and instead further alienated potential allies to find a solution to satisfy both sides. This Note proposes that by reading deliberative democratic methods of problem solving into statutes, New York City’s land use review systems would seek to encourage opposing sides in a land dispute to understand each side’s preferences, in turn developing projects that reflect the values of a municipality’s population.

II. BACKGROUND

A. Amazon

David Shaw, founder of the Wall Street firm D. E. Shaw & Co. (“DESCO”), viewed his company as a “versatile technology laboratory full of innovators and talented engineers who could apply computer science to a variety of problems,” rather than as a traditional hedge fund.¹⁰ In the 1990s, DESCO employees adopted new technologies, and utilized tools such as e-mail, and one of the first Web browsers, Mosaic.¹¹ DESCO was also one of the first Wall Street firms to register its URL.¹² In 1994, Shaw put Princeton University graduate Jeff Bezos in charge of brainstorming other opportunities that the Internet could offer the firm.¹³ Together, Shaw and Bezos came up with “the everything store”—an Internet company that sold every type of product to all parts of the world.¹⁴

Bezos knew that no company could start out by selling everything.¹⁵ He looked into specific product categories as starting points, and eventually decided that selling books was the best option.¹⁶ Books are pure commodities, and because there were two primary book distributors at the time, a new retailer in the space would not have to approach the thousands

⁹ Peter D. Kinder, *Not in My Backyard Phenomenon*, BRITANNICA ENCYCLOPEDIA (2019), <https://www.britannica.com/topic/Not-in-My-Backyard-Phenomenon/additional-info#history>.

¹⁰ BRAD STONE, *THE EVERYTHING STORE: JEFF BEZOS AND THE AGE OF AMAZON* 20 (2013).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 16.

¹⁵ *Id.* at 22.

¹⁶ *Id.*

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of existing publishers individually.¹⁷ For Bezos, the most important factor was the three million book titles in print worldwide—a number much more feasible for a distribution center to hold than for a book superstore like Barnes & Noble or Borders.¹⁸ In a high traffic retail area, a lease could cost retail stores seven dollars per square foot, while a distribution center under Bezos’s model could cost 30 cents per square foot.¹⁹ The savings from foregoing a brick and mortar store would be enormous, while still providing customers with an exhaustive selection.

Bezos realized that if he wanted significant equity in this new venture, he could not pursue it inside DESCO.²⁰ Bezos also recognized the enormous risks of walking away from his lucrative job, Wall Street bonus, and Upper West Side apartment.²¹ However, when he thought about not participating in the “revolutionizing event” that was the Internet, “it was incredibly easy to make the decision.”²² Bezos originally set his sights on California as the headquarters for his new company, but learned of a 1992 U.S. Supreme Court decision that held that merchants did not have to collect sales tax in states where they did not have physical operations.²³ Therefore, mail-order businesses avoided incorporating in populous states like California.²⁴ States with smaller populations would generate fewer customers, translating to a smaller amount of sales tax collected from customers.²⁵ Bezos saw this opportunity in the state of Washington, and picked Seattle as the new home for his company because of its reputation as a technology hub.²⁶ Bezos and his wife Mackenzie packed up their apartment and left New York City for Seattle, Washington in the summer of 1994.²⁷

Amazon.com, Inc. began as “Cadabra, Inc.,” an online bookstore, on July 5, 1994 in Bezos’s Seattle garage.²⁸ His home was extremely ill-equipped for this venture—the servers the company used required so much

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Justin Bariso, *20 Years Ago, Jeff Bezos Gave an Interview Detailing Amazon’s Killer Strategy—and It’s Absolutely Brilliant*, INC. (May 22, 2019), <https://www.inc.com/justin-bariso/20-years-ago-jeff-bezos-gave-an-interview-detailing-amazons-killer-strategy-and-its-absolutely-brilliant.html>.

²⁰ STONE, *supra* note 10, at 22.

²¹ *Id.* at 23.

²² Jeff Bezos, speech to Commonwealth Club of California (July 27, 1998) in BRAD STONE, *THE EVERYTHING STORE: JEFF BEZOS AND THE AGE OF AMAZON* 23 (2013).

²³ STONE, *supra* note 10, at 24; *see also* Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

²⁴ STONE, *supra* note 10, at 24.

²⁵ *Id.* at 28.

²⁶ *Id.* at 27.

²⁷ *Id.* at 24.

²⁸ DePillis & Sherman, *supra* note 6; *see also* STONE, *supra* note 10 at 27.

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power that certain electronics, such as hair dryers and vacuums, could not be used in the house without blowing a fuse.²⁹ Amazon.com went live about one year later, on July 16, 1995.³⁰ The first week after the launch, Amazon took in \$12,000 in orders and \$14,000 the following week, exceeding Bezos' expectations.³¹ Bezos and his early employees had humble beginnings: they worked on desks made out of doors from Home Depot, and packed books and shipped them themselves.³² On June 11, 1998, Amazon expanded its offerings to CDs and DVDs.³³ These new product categories emulated the "exhaustive selection" of books on the site by offering 125,000 music titles—far more than the average retail music store.³⁴

In the coming years, Amazon would expand into product categories that its earliest investors could not have dreamed of. By 2010, just sixteen years after its founding, Amazon had amassed 5,000 employees in Seattle.³⁵ By 2018, Amazon's immense growth led the tech giant to occupy 8.1 million square feet of the city, spanning forty-four buildings that housed 45,000 employees.³⁶ As of July 2018, Amazon accounted for nearly half of online retail in the United States.³⁷

On September 7, 2017, Amazon announced plans to build a second headquarters, called HQ2, and that it would accept proposals from U.S. cities interested in housing the 50,000-employee campus.³⁸ Governor Cuomo infamously told reporters that he would change his name to "Amazon Cuomo if that's what it takes" to get HQ2 in New York City.³⁹ In November 2017, the Wall Street Journal reported that New York City was

²⁹ Avery Hartmans, *15 Fascinating Facts You Probably Didn't Know About Amazon*, BUS. INSIDER (June 17, 2019, 2:50 PM), <https://www.businessinsider.com/jeff-bezos-amazon-history-facts-2017-4>.

³⁰ STONE, *supra* note 10 at 33.

³¹ *Id.* at 34.

³² DePillis & Sherman, *supra* note 6.

³³ *Id.*

³⁴ *Id.*

³⁵ Kaitlin Newman, *The Amazon Effect: The Good, the Bad, and the Ugly—Straight from Seattle*, WASH. BUS. J., (June 20, 2018, 6:00 AM), <https://www.bizjournals.com/washington/news/2018/07/20/the-amazon-effect-the-good-the-bad-and-the-ugly.html>.

³⁶ *Id.*

³⁷ DePillis & Sherman, *supra* note 6.

³⁸ Plitt, *supra* note 7.

³⁹ Kate Taylor, *New York's governor jokes he'll change his name to 'Amazon Cuomo' to win the HQ2 bid hours before a report that New York City will be home to one of the company's new headquarters*, BUS. INSIDER (Nov. 5, 2018, 9:10 PM), <https://www.businessinsider.com/new-york-governor-jokes-amazon-cuomo-name-change-hq2-2018-11>.

one of the final contenders for the project.⁴⁰ Amazon was focused on a large site owned by Plaxall, Inc., and two large adjacent sites owned by the city, all located in Long Island City, Queens.⁴¹

B. Anable Basin and Plaxall

Plaxall, a plastics manufacturing group, has been located in Long Island City and the area surrounding Anable Basin, a 1,000-foot artificial inlet, since 1950.⁴² In 2017, Plaxall announced its plans to seek to rezone the area to allow a 5.8 million square foot mixed-use development.⁴³ Plaxall released a draft of its proposal for the site when it was gearing up for the city's review process, the Uniform Land Use Review Procedure ("ULURP").⁴⁴ ULURP, "a standardized procedure whereby applications affecting the land use of the city are publicly reviewed," is outlined in Section 197-c of the New York City Charter.⁴⁵

Section 197-c(a) lists the uses, developments, or improvements of real property that are subject to ULURP.⁴⁶ Plaxall wanted to "conver[t] from one land use to another land use," thus, its proposal fell under the umbrella of ULURP.⁴⁷ The rezoning would allow the area to accommodate 5,000 condominiums and rental units, 335,000 square feet of creative production and light manufacturing space, shops, and day care providers.⁴⁸ A 700-seat public school would be built outside of the proposed rezoned area.⁴⁹ Plaxall's plans also included a 70-story apartment building, which would

⁴⁰ Laura Stevens, Scott Calvert & Tawnell D. Hobbs, *Amazon in Late-Stage Talks With Cities Including Crystal City, Va., Dallas, New York City for HQ2*, WALL ST. J. (Nov. 4, 2018, 2:24 PM), <https://www.wsj.com/articles/amazon-in-late-stage-talks-with-cities-including-crystal-city-va-dallas-new-york-city-for-hq2-1541359441>.

⁴¹ Daniel Geiger, *Cuomo likely to steer Amazon project around City Council*, CRAIN'S N.Y. BUS. (Nov. 9, 2018), <https://www.crainsnewyork.com/real-estate/cuomo-likely-steer-amazon-project-around-city-council>.

⁴² C. J. Hughes, *A 700-Foot Tower Is Proposed for Queens*, N.Y. TIMES (Nov. 14, 2017), https://www.nytimes.com/2017/11/14/nyregion/tower-development-long-island-city-queens.html?_r=0; Zoe Rosenberg, *Proposed Long Island City rezoning would bring 5,000 apartments to Anable Basin*, CURBED NY (Nov. 14, 2017, 4:45 PM), <https://ny.curbed.com/2017/11/14/16652104/long-island-city-anable-basin-rezoning-affordable-housing>.

⁴³ Rosenberg, *supra* note 42.

⁴⁴ Geiger, *supra* note 41.

⁴⁵ New York City, N.Y., Charter § 197-c (2019); *ULURP Explained*, CITY LIMITS, <https://citylimits.org/zonein/ulurp-explained/> (last visited Dec. 26, 2020).

⁴⁶ New York City, N.Y., Charter § 197-c(a).

⁴⁷ New York City, N.Y., Charter § 197-c(a)(3).

⁴⁸ Geiger, *supra* note 41; Hughes, *supra* note 42.

⁴⁹ Geiger, *supra* note 41.

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have been taller than any existing building in all the boroughs outside Manhattan.⁵⁰

Throughout the rezoning application process, Plaxall dedicated a portion of its website to answering questions about its plans.⁵¹ The company said that it aimed to “minimize commercial tenant displacement through its leasing strategy,” but its plans may force it to “temporarily relocate tenants throughout the development period, which will play out over a series of phases from 2020 to 2034.”⁵² However, the rezoning would not lead to any residential displacement.⁵³ ULURP involves interaction between the Department of City Planning (“DCP”), the Community Board, the Borough President and Borough Board, and City Planning Commission (“CPC”).⁵⁴ Plaxall’s efforts to engage Long Island City residents in the process, before ULURP even began, reflected its understanding of the Long Island City community. In order to proceed with its desired rezoning, Plaxall engaged in deliberative democratic methods to get community members on board.

III. LEGAL PROCESSES

A. Deliberative Democratic Theory

In order to analyze the rezoning process in New York City, it is imperative to distinguish between certain models of planning, which give the public opportunities to provide meaningful input regarding how the government spends its money.⁵⁵ The deliberative democratic theory “suggests that the public can improve democracy by questioning and participating in governance, ensuring that government is run by the public’s standards.”⁵⁶ Deliberative democratic theory turns toward accountability and discussion, and centers on talk-centric rather than voting-centric views.⁵⁷ Focusing on discussion places emphasis on the processes of opinion and will-formation that precede voting, focusing on public articulation, explanation, and justification of proposed public policies.⁵⁸

⁵⁰ Hughes, *supra* note 42.

⁵¹ Geiger, *supra* note 41.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ New York City, N.Y., Charter § 197-c (2019).

⁵⁵ Patricia E. Salkin & Charles Gottlieb, *Engaging Deliberative Democracy at the Grassroots: Prioritizing the Effects of the Fiscal Crisis in New York at the Local Government Level*, 39 *FORDHAM URB. L. J.* 727, 756 (2012).

⁵⁶ *Id.*

⁵⁷ Simone Chambers, *Deliberative Democratic Theory*, 6 *ANN. REV. POL. SCI.* 307, 308 (2003).

⁵⁸ *Id.*

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Deliberative democracy is not an alternative to representative democracy, but rather an expansion of it.⁵⁹ The movement emerged in response to failings in representative democracy and pressure from citizens for more public participation in the policy-making process.⁶⁰ Deliberative democracy encourages more public deliberation, dialogue and shared decision-making between the government and the public, rather than mere debate.⁶¹ Participants in deliberation and dialogue engage in order to better understand other viewpoints, and then pinpoint areas of confusion, with the aim of landing on common ground.⁶² Debate, on the other hand, encourages identification of an opponent's arguments in order to formulate strong counterarguments with the goal of having one viewpoint prevail.⁶³ When citizens fail to deliberate, they learn less, disrespect more, and pursue self-interested goals.⁶⁴

Scholars have identified three methods of deliberative democracy: distributed deliberation, decentralized deliberation, and iterated deliberation.⁶⁵ Through distributed deliberation, different aspects of the "deliberative task" are assigned to different institutions, and each institution is held to different standards.⁶⁶ For example, a party caucus is held to high standards of openness and honesty, while parliamentary debates are expected to conduct reasonable arguments.⁶⁷ Distributed deliberation emphasizes that not all institutions are equally effective at the different aspects of deliberation, and encourages different branches of government to focus on their strengths.⁶⁸

The second approach to deliberative democracy is decentralized deliberation.⁶⁹ This method avoids the difficulty of organizing dispersed functions in the distributed deliberation system by dividing the deliberators

⁵⁹ *Id.*

⁶⁰ Lisa Blomgren Bingham, *Collaborative Governance: Emerging Practices and the Incomplete Legal Framework for Public and Stakeholder Voice*, 2009 J. DISP. RESOL. 269, 277 (2009); see generally JOHN F. FORESTER, *THE DELIBERATIVE PRACTITIONER: ENCOURAGING PARTICIPATORY PLANNING PROCESSES* (1999); see generally JOHN GASTIL, *POLITICAL COMMUNICATION AND DELIBERATION* (2008).

⁶¹ Bingham, *supra* note 60.

⁶² *Id.* at 278; see also Salkin and Gottlieb, *supra* note 55, at 758.

⁶³ *Id.*

⁶⁴ Dennis F. Thompson, *Deliberative Democratic Theory and Empirical Political Science*, 11 ANN. REV. POL. SCI. 497, 511 (2008).

⁶⁵ *Id.*; Salkin and Gottlieb, *supra* note 55, at 758.

⁶⁶ Thompson, *supra* note 64, at 514.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

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rather than the deliberation itself.⁷⁰ For example, in the Porto Alegre Participatory Budget in Brazil, citizens from each of the sixteen districts of the city assemble annually to determine the budget priorities on a range of policies.⁷¹ The preferences generated in these sessions are then accumulated into a single city budget.⁷² While this process increases participation from the public and produces genuine deliberation about various issues, the deliberation tends to focus on local goods and needs rather than the greater good.⁷³

The third method of deliberative democracy—iterated deliberation—alleviates the problem of integration found in decentralized deliberation.⁷⁴ Through iterated deliberation, a political body proposes a policy to a deliberative body, which then returns a revised version of the policy to the original body.⁷⁵ The original body can modify this revised policy and return it back to the deliberative body for approval or modifications.⁷⁶ This back and forth process may happen several times and expand to include other institutions until all bodies can agree on the outcome of the policy.⁷⁷ An example of iterated deliberation is Oregon’s process for setting health care priorities in the early 1990s.⁷⁸ Oregon’s Health Services Commission prioritized specific conditions and treatments, and after this list was evaluated, it consulted with several citizen bodies and other institutions.⁷⁹ Both the commission, and then the legislature, considered a revised list.⁸⁰ Although the final list did not satisfy everyone’s preferences, it was better than the earlier proposals because of the deliberative standards that were incorporated.⁸¹

B. Unified Land Use Review Procedure (“ULURP”)

The primary authority to approve the development of land in the United States is delegated to local governments, who must do so pursuant to

⁷⁰ *Id.*

⁷¹ *Id.*; see also Gianpaolo Baiocchi, *Participation, Activism, and Politics: The Porto Alegre Experiment and Deliberative Democratic Theory*, 29 POL. SOC. 43 (2001).

⁷² Thompson, *supra* note 64, at 514.

⁷³ *Id.*

⁷⁴ *Id.* at 515.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

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detailed procedures.⁸² There are over 35,000 local government entities in the United States, and while each land use system has different requirements, they all generally follow four basic stages: the board accepts an application, the board deliberates, the board solicits public comment, and then the board makes a decision.⁸³ Parties to a land use conflict believe that they must follow their jurisdiction's land use system, however, this legal scheme should not preclude other methods of conflict resolution.⁸⁴

The ULURP process's collaborative aspects make it extremely time consuming.⁸⁵ In the first step of the process, the entity applying for a real property change through ULURP files multiple documents with the New York City DCP: applications for the proposed changes; amendments, if applicable, to the applications made prior to approval; written information to determine whether an environmental impact statement⁸⁶ will be required by law; and documents or records "intended to define or substantially redefine the overall scope of issues to be addressed in any draft environmental impact statement required by law."⁸⁷ The DCP then forwards the application and documents to the relevant community board, borough president, and CPC within five days.⁸⁸ The materials are also forwarded to the borough board if the project affects more than one community board.⁸⁹

The DCP is also responsible for certifying that applications are complete and ready to proceed through ULURP.⁹⁰ If an application has not been certified within six months after filing, either the applicant or borough president may appeal to the CPC for certification.⁹¹ Within sixty days of receiving an appeal, the CPC either certifies the application or requests

⁸² Sean F. Nolon, *The Lawyer as Process Advocate: Encouraging Collaborative Approaches to Controversial Development Decision*, 27 PACE. ENVTL. L. REV. 103, 106-7 (2009/2010).

⁸³ *Id.* at 110; see also Craig Anthony Arnold, *The Structure of the Land Use Regulatory System in the United States*, 22 J. LAND USE & ENVTL. L. 441, 495 n.227 (2007) ("The local planning mechanism is usually comprised of... a planning board or commission which is comprised of elected laypeople serving for a specified term").

⁸⁴ Salkin and Gottlieb, *supra* note 55, at 767; see also Nolon, *supra* note 82, at 113.

⁸⁵ New York City, N.Y., Charter § 197-c (2019).

⁸⁶ Environmental impact statements must be prepared if a proposed major federal action will significantly affect the quality of the environment, and require an extremely detailed and rigorous process. See *National Environmental Policy Act Review Process*, EPA, <https://www.epa.gov/nepa/national-environmental-policy-act-review-process#EIS> (last visited Dec. 26, 2020).

⁸⁷ New York City, N.Y., Charter § 197-c(b) (2019).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* § 197-c(c).

⁹¹ *Id.*

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additional information necessary to complete the application.⁹² If the borough president appealed, the application may be certified by the affirmative vote of five CPC members.⁹³ A meeting involving a city agency and applicant may be convened to define or redefine the overall scope of issues to be addressed in the environmental impact statement (§ 197-c(b) part 4), and each affected borough president receives notice of the meeting and sends one representative to attend.⁹⁴

After the community board receives notice that an application has been certified pursuant to the ULURP procedure, it must do two things within sixty days.⁹⁵ First, the community board must notify the public of the application in accordance with guidelines, minimum standards, and procedural requirements set by the CPC.⁹⁶ Second, the community board must either conduct a public hearing and submit a written recommendation directly to the CPC and to the affected borough president, or, alternatively, submit a waiver of the right to conduct a public hearing and submit the written recommendations to the CPC and the affected borough president.⁹⁷ The community board must submit a copy of its recommendation or waiver to the affected borough board within sixty days.⁹⁸ The borough board may hold a public hearing on the application and any such recommendations no later than thirty days after the community board files the recommendation with them.⁹⁹ The borough board may then submit any recommendations or waiver thereof to the CPC.¹⁰⁰

No later than sixty days after expiration of time allowed for the filing of a recommendation or waiver with the CPC, the CPC will approve, approve with modifications, or deny the application.¹⁰¹ The approval or approval with modifications requires the affirmative vote of at least seven members.¹⁰² However, approval or approval with modifications of applications under the following subsections need the affirmative vote of nine members: 197-c(a)(5) – site selection for capital projects; 197-c(a)(10) – sale, lease, exchange, or other disposition of real property of the city, including the sale or lease of land under water; and 197-c(a)(11) –

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* § 197-c(d).

⁹⁵ *Id.* § 197-c(e).

⁹⁶ *Id.* §§ 197-c(e), (i).

⁹⁷ *Id.* § 197-c(e).

⁹⁸ *Id.* § 197-c(f).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* § 197-c(h).

¹⁰² *Id.*

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acquisition by the city of real property, including acquisition by purchase, condemnation, exchange or lease and including the acquisition of land under water.¹⁰³ Finally, the CPC will file approvals and approvals with modifications with the City Council.¹⁰⁴ All of the steps described are followed by more public hearings and final votes by the City Council and the Mayor.¹⁰⁵

C. General Project Plans

Because ULURP is extremely collaborative, it typically takes six to eight months.¹⁰⁶ Zoning changes in particular are often contentious, and the Cuomo administration sought to bypass the collaborative process of ULURP by utilizing a general project plan (“GPP”).¹⁰⁷ On November 13, 2018, Amazon announced that HQ2 would be divided between Long Island City and Crystal City in Arlington, Virginia.¹⁰⁸ Plaxall’s parcel would be directly south of the planned headquarters and would be rezoned for the project, and the specific land would not form part of Amazon’s offices.¹⁰⁹ During a City Council oversight hearing on December 12, 2018, Speaker Corey Johnson criticized the decision to utilize a GPP.¹¹⁰ The block’s commercial space allowance would increase to about four times more than what was currently allowed under zoning.¹¹¹ Council Member Jimmy Van Bramer stated that Plaxall would “gain a public benefit and make serious money... [y]ou should agree to put that back into ULURP at the minimum.”¹¹² However, the city had no plans to run the HQ2 plan back through the collaborative process.¹¹³

¹⁰³ *Id.* §§ 197-c(a), (h).

¹⁰⁴ *Uniform Land Use Review Procedure (ULURP)*, NYC PLANNING, <https://www1.nyc.gov/site/planning/applicants/applicant-portal/step5-ulurp-process.page> (last visited Dec. 26, 2020).

¹⁰⁵ Keith Williams, *Breaking Down the City’s Rezoning Process*, N.Y. TIMES (Mar. 15, 2018), <https://www.nytimes.com/2018/03/15/nyregion/breaking-down-the-citys-rezoning-process.html>.

¹⁰⁶ *Id.*

¹⁰⁷ Nathaly Pesantez, *Questions Raised Over Plaxall Site in State-Run Amazon Plan*, LIC POST (Dec. 18, 2018), <https://licpost.com/questions-raised-over-plaxall-site-not-part-of-amazon-campus-in-state-run-rezoning-plan>.

¹⁰⁸ ABOUT AMAZON, *supra* note 7.

¹⁰⁹ Pesantez, *supra* note 107.

¹¹⁰ Nathaly Pesantez, *City Council Rips Into Amazon in First Oversight Hearing, Questions Public and Private Gains*, LIC POST (Dec. 12, 2018), <https://licpost.com/city-council-rips-into-amazon-in-first-oversight-hearing-questions-public-and-private-gains>.

¹¹¹ Pesantez, *supra* note 107.

¹¹² *Id.*

¹¹³ Geiger, *supra* note 41.

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When the Empire State Development Corporation (“ESDC”), the “umbrella organization for New York’s two principal economic development financing entities,”¹¹⁴ utilizes a GPP, it essentially circumvents local laws.¹¹⁵ The ESDC includes the Urban Development Corporation (“UDC”), and the Jobs Development Authority (“JDA”).¹¹⁶ The UDC was created in 1968 through the New York State Urban Development Corporation Act (“the Act”).¹¹⁷ In the wake of Martin Luther King’s assassination and the ensuing riots, the Act’s primary purposes were to build low-income housing and improve inner city conditions in order to attract private investment.¹¹⁸ The New York State Legislature’s findings of substantial and persistent unemployment in urban areas of New York, and its effects on individuals and families, resulted in the Act.¹¹⁹ Existing commercial facilities in urban areas were obsolete and did not have sufficient mass transportation facilities and public services, and the New York State Legislature recognized that technological advances and modern facilities in competing states would cause serious injury to New York’s economy.¹²⁰

The UDC was created to alleviate these problems, and effectuate New York’s policy to “promote a vigorous and growing economy, to prevent economic stagnation and to encourage the creation of new job opportunities,” as well as “retain existing industries and attract new industries through the acquisition, construction, reconstruction and rehabilitation of . . . commercial facilities, and to develop sites for new industrial and commercial building.”¹²¹ The UDC became the most powerful urban renewal agency in the United States, with its ability to use eminent domain,¹²² override local laws, and issue tax exempt bonds.¹²³ The

¹¹⁴ *Empire State Development Corporate Information*, EMPIRE STATE DEVELOPMENT, <https://esd.ny.gov/about-us/corporate-info> (last visited Feb. 1, 2021).

¹¹⁵ Rebecca C. Lewis, *The New York City Council Didn’t Mind Being Cut Out Before*, CITY & STATE NY (Nov. 15, 2018), <https://www.cityandstateny.com/articles/politics/news-politics/new-york-state-bypassed-city-council-amazon.html>.

¹¹⁶ Amy Lavine & Norman Oder, *Urban Redevelopment Policy, Judicial Deference to Unaccountable Agencies, and Reality in Brooklyn’s Atlantic Yards Project*, 42 URB. LAW. 287, at note 5 (2010); Lewis, *supra* note 115.

¹¹⁷ *Id.*

¹¹⁸ *Id.*; see also Norman Oder, *A Scolding from Norman Siegel About the History of the Urban Development Corporation, Founded after Martin Luther King’s Assassination*, ATLANTIC YARDS/PACIFIC PARK REPORT (Jan. 18, 2010), <https://atlanticyardsreport.blogspot.com/2010/01/scolding-from-norman-siegel-about.html>.

¹¹⁹ N.Y. UNCONSOL. LAW, ch. 252 § 2 (Consol. 2019).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Eminent domain is “the right of the government to take property from a private owner or public use by virtue of the superior dominion of its sovereignty over all lands within its jurisdiction.” *Eminent*

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UDC launched \$1.25 billion of housing construction.¹²⁴ However, by the early 1970s, it became evident that public housing alone was not profitable enough to support the UDC.¹²⁵ The agency then began to focus on commercial and industrial projects.¹²⁶

Section 16 of the New York State Urban Development Corporation Act (“Section 16”), entitled “Cooperation with municipalities,” is the tool Governor Cuomo planned to use to evade ULURP and instead utilize a GPP.¹²⁷ While the opponents of HQ2 argued that the proposed deal was made behind closed doors, Governor Cuomo’s decision to pursue a GPP was within his discretion and within the purposes of the Act.¹²⁸ There is no set of rules for how a GPP gets approved, and it “exist[s] at the opposite end of the spectrum from ULURP applications.”¹²⁹ While ULURP applications are transparent, participatory, and involve local government and community input, John Kaehny, Executive Director of Reinvent Albany,¹³⁰ described GPPs as “opaque.”¹³¹

GPPs lack the involvement between the government and local community that is ingrained in ULURP. Section 16 states that the UDC and “community advisory committees . . . shall work closely, consult and cooperate with local elected officials and community leaders at the earliest practicable time,” and the UDC “shall give primary consideration to local needs and desires and shall foster local initiative and participation in connection with the planning and development of its projects.”¹³² Additionally, Section 16 outlines the notification process of the GPP in

domain, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/eminent%20domain#legalDictionary> (last visited Dec. 21, 2020).

¹²³ ALEXANDER GARVIN, *THE AMERICAN CITY: WHAT WORKS, WHAT DOESN'T* 357 (Carey Sullivan ed., 2002).

¹²⁴ Joseph P. Fried, *Goodbye, Slum Razing: Hello, Grand Hyatt*, N.Y. TIMES (July 15, 1979), <https://www.nytimes.com/1979/07/15/archives/goodbye-slum-razing-hello-grand-hyatt.html?auth=linked-google1tap>.

¹²⁵ *Id.*; see generally NEW YORK STATE MORELAND ACT COMMISSION, *RESTORING CREDIT AND CONFIDENCE* (1976).

¹²⁶ *Id.*

¹²⁷ Geiger, *supra* note 41; see also N.Y. UNCONSOL. LAW, ch. 252 § 16 (Consol. 2019).

¹²⁸ N.Y. UNCONSOL. LAW, ch. 252 § 2.

¹²⁹ Lewis, *supra* note 115.

¹³⁰ Reinvent Albany is a non-profit organization that advocates for transparent and accountable New York State government, and increased transparency in New York City. *Organizational Information*, REINVENT ALBANY, <https://reinventalbany.org/about/organization-information/> (last visited Dec. 26, 2020); see also *Mission*, REINVENT ALBANY, <https://reinventalbany.org/about/> (last visited Dec. 26, 2020).

¹³¹ Lewis, *supra* note 115.

¹³² N.Y. UNCONSOL. LAW, ch. 252 § 16.

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sections (2) and (3).¹³³ The plan must be filed with the office of the clerk of the municipality in which the project is located, and can be furnished to any other person upon request.¹³⁴ In any city with a population of one million or more, the UDC must provide the community board where the project will be located “a notice that such plan will be filed upon its adoption by the corporation and that digests thereof will be available, which notice shall also state that a public hearing will be held to consider the plan at a specified time and place on a date not less than ten days after such publication.”¹³⁵ After the hearing, if the CEO of the UDC submits a written finding that no “substantive negative testimony or comment has been received at such public hearing,” the GPP will be effective.¹³⁶ Conversely, if any substantive negative testimony or comment is received at the public hearing, the UDC “may, after due consideration of such testimony and comment, affirm, modify or withdraw the plan.”¹³⁷

The UDC must also provide an opportunity for written comments and municipality response thirty days after the public hearing.¹³⁸ The municipality, by majority vote of its planning board or commission, may recommend approval, disapproval or modification of the plan, which must be submitted in writing to the UDC.¹³⁹ The UDC may affirm, modify or withdraw the plan; however, if the municipality recommended disapproval or modification, the UDC may only affirm the plan by a vote of two-thirds therein, then of office.¹⁴⁰

D. The Downfalls of ULURP and GPPs

While the requirements for GPPs stand in stark contrast to the requirements of ULURP, both processes have their downfalls when viewed through the lens of deliberative democracy.¹⁴¹ ULURP is “by no means a perfect process,” but it does provide a formal role for local elected officials, and allows more opportunities for meaningful public input than GPPs.¹⁴² ULURP is a collaborative decision-making process, but its downfall lies in

¹³³ *Id.* § 16(2)-(3).

¹³⁴ *Id.* § 16(2)(a)-(b).

¹³⁵ *Id.* § 16(2)(b)(iii).

¹³⁶ *Id.* § 16(2)(d).

¹³⁷ *Id.*

¹³⁸ *Id.* § 16(3)(b).

¹³⁹ *Id.* § 16(3)(c).

¹⁴⁰ *Id.* § 16(3)(d).

¹⁴¹ *See generally* New York City, N.Y., Charter § 197-c (2019).

¹⁴² Lavine & Oder, *supra* note 116; *see also* *Community Based-Planning*, NYC DEPARTMENT OF CITY PLANNING, <https://www1.nyc.gov/site/planning/community/community-based-planning.page?tab=2> (last visited Dec. 31, 2020).

its public notice and comment periods.¹⁴³ As explained by Professor Sheila Foster, public notice and comment periods like that of section 197c-(e) do not actually require that the CPC deliberate over the recommendations from the Borough Board in any meaningful way.¹⁴⁴ Rather, the statute simply requires the CPC to approve, disapprove, or approve the application with modifications.¹⁴⁵ While the statute sets the minimum for affirmative votes, this still does not take into account any meaningful consideration of the public's input.¹⁴⁶ ULURP does require additional public hearings with New Yorkers and votes from the City Council and mayor after the CPC files approvals and approvals with modifications with the City Council.¹⁴⁷ However, these public hearings are a poor forum for reaching a common ground because of their adversarial nature.¹⁴⁸ It is also important to note that, in the specific instance of the failure of the HQ2 deal, once Amazon selected New York as one of twenty finalists, it required city officials to sign non-disclosure agreements, which barred them from revealing anything to the public about next steps.¹⁴⁹

GPPs avoid the City Council approval that ULURP requires and do not give lawmakers the chance to vote on the plan, “since the state is routing it through an economic development agency controlled by the governor.”¹⁵⁰ Although section 16(3)(d) does require a vote of two-thirds of the UDC in order to overrule a recommendation of modification or disapproval from a municipality, it seems highly unlikely that the UDC would fail to have the necessary votes. The UDC was enacted to promote economic growth and decrease unemployment, and therefore it is unlikely to strike down a plan that it created to accomplish these goals.

IV. BACKLASH

Council Member Jimmy Van Bramer told business magazine *Crain's* that the HQ2 deal was “the most top-down approach to a project I have seen

¹⁴³ Salkin & Gottlieb, *supra* note 55, at 768.

¹⁴⁴ *Id.*; see also New York City, N.Y., Charter § 197-c(e) (2019).

¹⁴⁵ New York City, N.Y., Charter § 197-c(h).

¹⁴⁶ *Id.* §§ 197-c(a), (h).

¹⁴⁷ *Uniform Land Use Review Procedure (ULURP)*, NYC Planning, <https://www1.nyc.gov/site/planning/applicants/applicant-portal/step5-ulurp-process.page>.

¹⁴⁸ Salkin and Gottlieb, *supra* note 55, at 768.

¹⁴⁹ Martin Austermuhle, *Amazon Insists on Silence from Twenty HQ2 Finalists*, WAMU: AMERICAN UNIVERSITY RADIO (Jan. 30, 2018), <https://wamu.org/story/18/01/30/amazon-insists-silence-twenty-hq2-finalists/>.

¹⁵⁰ Erin Durkin, *New York City to Amazon: Drop Dead*, THE GUARDIAN (Nov. 14, 2018, 10:18 AM), <https://www.theguardian.com/technology/2018/nov/14/amazon-hq2-new-york-protest-queens-long-island-city>.

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so far, with no community involvement. This is the governor and the mayor and Jeff Bezos sitting in a room together.”¹⁵¹ Van Bramer had been a supporter of HQ2 in New York City, signing a letter in the months before the announcement that urged Amazon to do so.¹⁵² Many New Yorkers opposed the tax incentives that the city planned to give Amazon—about \$3 billion in subsidies was offered to the tech-giant.¹⁵³ Many were critical of this aspect of the deal, as the company had the money to build HQ2 without any government funding.¹⁵⁴ The lack of community participation in the deal also sparked outrage.¹⁵⁵ Once the City Council was cut out of the negotiation process, the protests from both sides—proponents and opponents of the deal—ensued.¹⁵⁶

A. Gentrification and New York City

The opposition to HQ2 reflected the attitudes of the Not In My Backyard (“NIMBY”) movement. NIMBY sentiments occur when local citizens view potential developments negatively, regardless of their character, as gentrifying forces that will drive up rents.¹⁵⁷ Gentrification is “the process of repairing and rebuilding homes and businesses in a deteriorating area (such as an urban neighborhood) accompanied by an influx of middle-class or affluent people and that often results in the displacement of earlier, usually poorer residents.”¹⁵⁸ Gentrification is also characterized by changes in the racial and ethnic makeup of a neighborhood’s residents, as well as changes in housing and commercial businesses.¹⁵⁹ While development can be beneficial to low-income neighborhoods, it may also have inequitable effects and lead to

¹⁵¹ Geiger, *supra* note 41.

¹⁵² Lewis, *supra* note 115.

¹⁵³ Sam Raskin, *Amazon’s HQ2 deal with New York, explained*, CURBED NY (Feb. 14, 2019, 12:12 PM), <https://ny.curbed.com/2018/11/16/18098589/amazon-hq2-nyc-queens-long-island-city-explained>.

¹⁵⁴ *Id.*

¹⁵⁵ Lewis, *supra* note 115.

¹⁵⁶ Plitt, *supra* note 7.

¹⁵⁷ Roger K. Lewis, *Not in Your Back Yard? Think Twice Before you Demonize all Change.*, WASH. POST (Nov. 18, 2016), https://www.washingtonpost.com/realestate/not-in-your-back-yard-think-twice-before-you-demonize-all-change/2016/11/17/e6e3fa0e-a5d0-11e6-8042-f4d111e862d1_story.html?noredirect=on; see also Robert Mascali, *NIMBYs are killing New York’s Future*, N.Y. DAILY NEWS (Oct. 16, 2017, 5:00 AM), <https://www.nydailynews.com/opinion/nimbys-killing-new-york-future-article-1.3561275>.

¹⁵⁸ *Gentrification*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/gentrification> (last visited Dec. 28, 2020).

¹⁵⁹ NYC HEALTH, LONG ISLAND CITY AND ASTORIA – COMMUNITY HEALTH PROFILES 2018, at 7 (2018), <https://www1.nyc.gov/assets/doh/downloads/pdf/data/2018chp-qn1.pdf>.

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displacement of long-time residents and businesses.¹⁶⁰ Skepticism and resistance arise when citizens believe that proposed changes threaten private property interests, community character, environmental quality, and a sense of personal security and well-being.¹⁶¹

The fears of NIMBY supporters in New York City are not unfounded. Between 1990 and 2016, seventy-one of the 314 super-gentrified¹⁶² neighborhoods in the New York metropolitan area transitioned from low-income areas to areas where the median household income was \$140,000—greater than 200 percent of the regional median in 2016.¹⁶³ Additionally, a 2019 study published by the University of California, Berkeley and New York University’s Center for Urban Science and Progress analyzed regional data on housing, income and other demographics to understand the areas where gentrification and displacement are happening, as well as where it will occur in the future.¹⁶⁴ In 2016, over one-third of low-income households—totaling over 1.1 million households—in the New York metropolitan area lived in low-income neighborhoods at risk of, or already experiencing, displacement and gentrification pressures.¹⁶⁵ The study found that high-income neighborhoods lost almost twice as many low-income households than more inexpensive neighborhoods.¹⁶⁶ These statistics demonstrate that gentrification is not just a problem for the urban core of New York City, but will most likely spread to areas such as Long Island City.

As part of the study, the universities created a map labeling areas based on gentrification levels: Long Island City ranges from “stable exclusion” to “advanced gentrification.”¹⁶⁷ In a “stable exclusion” area, there was moderate to high-income tract in 2016.¹⁶⁸ In an “advanced

¹⁶⁰ *Id.*

¹⁶¹ Lewis, *supra* note 157.

¹⁶² The term “super-gentrified” describes a process that “includes a significant change in social class composition and evidence of social replacement (rather than displacement) with a significant transformation in community relations.” Tim Butler & Loretta Lees, *Super-Gentrification in Barnsbury, London: Globalization and Gentrifying Global Elites at the Neighbourhood Level*, 31 *TRANSACTIONS OF THE INST. OF BRITISH GEOGRAPHERS* 467, 469 (2006).

¹⁶³ Public Affairs, UC Berkeley, *New York City Gentrification Creating Urban ‘Islands of Exclusion,’ Study Finds*, *BERKELEY NEWS* (Apr. 10, 2019), <https://news.berkeley.edu/2019/04/10/new-york-city-gentrification-creating-urban-islands-of-exclusion-study-finds/>.

¹⁶⁴ *Mapping Displacement and Gentrification in the New York Metropolitan Area*, *URBAN DISPLACEMENT PROJECT* (Apr. 19, 2019), <https://www.urbandisplacement.org/maps/ny> [hereinafter *Mapping Displacement*].

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

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gentrification” area, the difference in the percentage of college-educated citizens is greater than that in the regional median, and the percent change in real median household income is greater than that in the regional median as well.¹⁶⁹ Construction data revealed that a total of 12,533 new apartments in forty-one buildings were constructed in Long Island City between 2010 and 2016, far more than that in any other neighborhood in the United States in recent history.¹⁷⁰

HQ2 protestors feared that Amazon coming to Long Island City would only exacerbate this pattern of gentrification. At the first anti-HQ2 protest on November 14, 2018, Jonathan Westin, head of New York Communities for Change, stated that while “[t]oday is a great day to be a real-estate broker in Long Island City,” it was also “a horrible day to be a tenant struggling to make rent.”¹⁷¹ Jorge Centeno, whose father owns a café near Anable Basin, said that although Amazon’s presence would have been good for business, it would have also raised rents for locals who would be pushed out of the area.¹⁷² Shawn Dixon, a Long Island City business owner, attended the first anti-HQ2 protest in November 2018 with a sign that encouraged Amazon to support local businesses.¹⁷³ However, Dixon acknowledged that Amazon’s decision to come to New York shed light on the rapidly rising rents for residential and retail renters.¹⁷⁴

Long Island City is also home to the Queensbridge Houses, the largest public housing development in the country.¹⁷⁵ About 60 percent of the 6,000 residents use the Supplemental Nutrition Assistance Program; the median household income for a family of four is \$15,843.¹⁷⁶ At a press conference on November 1, 2018, Mayor Bill de Blasio suggested that placing one of the biggest companies in the world next to the biggest public housing development in the United States would create extraordinary

¹⁶⁹ *Id.*

¹⁷⁰ Downtown Los Angeles, the city with the second-largest number of new apartments, had about 5,000 less than Long Island City. See Nadia Balint, *U.S. Neighborhoods that Got the Most Apartments After the Recession*, RENT CAFÉ (May 26, 2017), <https://www.rentcafe.com/blog/rental-market/real-estate-news/top-20-neighborhoods-with-most-apartments-post-recession/>.

¹⁷¹ Durkin, *supra* note 150.

¹⁷² Gaby Del Valle, *Amazon Scrapped its New York City Plans. Some Residents are Elated—Others are Disappointed*, VOX (Feb. 15, 2019, 5:40 PM), <https://www.vox.com/the-goods/2019/2/15/18226825/amazon-hq2-long-island-city-new-york-reactions>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Gaby Del Valle, *New Yorkers Condemn Bezos at an Anti-Amazon HQ2 Rally in Queens*, VOX (Nov. 15, 2018, 10:40 AM), <https://www.vox.com/the-goods/2018/11/15/18096181/long-island-city-amazon-hq2-protest>.

¹⁷⁶ *Id.*

synergy.¹⁷⁷ Amazon's Memorandum of Understanding included an agreement to host "semi-annual" events at Queensbridge Houses, including job fairs, resume workshops, and training programs that would target non-traditional demographics.¹⁷⁸ At a rally just a few days before Amazon pulled out of the HQ2 deal, April Simpson, president of the Queensbridge Houses Tenant Association, expressed her support for the deal.¹⁷⁹ Another Queensbridge Houses resident stated that the deal "would've been good for people that need jobs—if they would've given us jobs."¹⁸⁰ Unfortunately, HQ2's potential to bring about jobs for local residents was overshadowed by the opposition to the deal, and was not emphasized enough by the deal's proponents.

B. Amazon Backs Out

The "backlash to the backlash" began on November 19, 2018, when Governor Cuomo published an op-ed on his official website.¹⁸¹ Cuomo laid out the benefits Amazon would bring to New York City, and cited to past deals the city had made with large corporations that led to profitable outcomes.¹⁸² Cuomo did not hesitate to point out the weaknesses in many of his critics' arguments, which arguably incited more heated opposition from HQ2's protesters.¹⁸³ On December 13, 2018, the New York City Council held the first of two hearings, which consisted of a panel of representatives from Amazon and the New York City Economic Development Corporation ("NYCEDC").¹⁸⁴ Opponents arrived with a banner that read "NO TO AMAZON," and the hearing turned into a venting session rather than an opportunity for debate that would lead to any sort of solution.¹⁸⁵ Councilmembers Johnson and Van Bramer grilled the panel about their avoidance of ULURP, and pointed out that the new Community

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Del Valle, *supra* note 172.

¹⁸⁰ *Id.*

¹⁸¹ Plitt, *supra* note 7.

¹⁸² Andrew Cuomo, Opinion, *Op-Ed from Governor Andrew M. Cuomo*, NY.GOV (Nov. 19, 2018), <https://www.governor.ny.gov/news/op-ed-governor-andrew-m-cuomo>.

¹⁸³ *Id.*

¹⁸⁴ Dave Colon, *At First City Council First Hearing Over Amazon HQ2, Venting but Few Answers*, CURBED NY (Dec. 13, 2018, 10:38 AM), <https://ny.curbed.com/2018/12/13/18139200/amazon-hq2-new-york-city-council-hearing>.

¹⁸⁵ *Id.*

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Advisory Committee, created by Governor Cuomo and Mayor de Blasio one day prior, had no real legal authority.¹⁸⁶

On February 14, 2019, Amazon withdrew its offer to build HQ2 in Long Island City.¹⁸⁷ David Lichtenstein, founder of real estate company the Lightstone Group, called Amazon's decision to back out the "worst day for NYC since 9/11."¹⁸⁸ Lichtenstein's statement, though an exaggeration, was also backed by Mayor de Blasio's sentiments. Mayor de Blasio had expressed that Amazon operating in Long Island City would have been "a giant step on our path to building an economy in New York City that leaves no one behind," grounded in what the company had done for the city of Seattle.¹⁸⁹

C. Lost Opportunity

Studies have shown the spinoff job implication in Seattle to be over 50,000, totaling around 100,000 jobs that are at Amazon or closely related to Amazon.¹⁹⁰ The Downtown Seattle Association calculated about 2,000 new businesses (many of them restaurants) in South Lake, an area of Seattle that used to be parking lots and warehouses.¹⁹¹ In 2017 alone, Amazon itself accounted for 330,000 nights at Seattle hotels, averaging about \$200 per night.¹⁹² Also in 2017, Amazon offered local nonprofit Mary's Place half of one of its new office buildings to use as a shelter for homeless families, as well as money and real estate to nonprofit FareStart, which provides food service training to individuals struggling with homelessness, poverty or addiction.¹⁹³

¹⁸⁶ The Community Advisory Committee would solicit community input and share information about HQ2, and be composed of both community and citywide stakeholders that were elected by local officials. See Ameena Walker, *NYC Will Get Community Advisory Committee to Guide Amazon HQ2 in Long Island City*, CURBED NY (Dec. 11, 2018, 2:04 PM), <https://ny.curbed.com/2018/12/11/18136323/amazon-hq2-long-island-city-community-advisory-committee>. See also Dave Colon, *Opponents of Amazon's "unconscionable" HQ2 deal rally in Queens*, CURBED NY (Nov. 14, 2018), <https://ny.curbed.com/2018/11/14/18095799/amazon-hq2-long-island-city-rally-critics>.

¹⁸⁷ DePillis & Sherman, *supra* note 6.

¹⁸⁸ Del Valle, *supra* note 175.

¹⁸⁹ Press Release, Amazon, Amazon Selects New York City and Northern Virginia for New Headquarters (Nov. 13, 2018, 9:50 AM) (<https://press.aboutamazon.com/news-releases/news-release-details/amazon-selects-new-york-city-and-northern-virginia-new>).

¹⁹⁰ Newman, *supra* note 35.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Hallie Golden, *Amazon Is Building a Homeless Shelter in Seattle*, CITY LAB (Oct. 29, 2019, 7:00 AM), <https://www.bloomberg.com/news/articles/2019-10-29/amazon-is-building-a-homeless-shelter-in-seattle>.

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According to a report published by the New York City Health Department, data collected for Long Island City and Astoria reflected that 18 percent of residents live in poverty.¹⁹⁴ HQ2 would have brought at least 25,000 new jobs to New York City, including positions for unionized construction and service workers.¹⁹⁵ Although developers tend to overestimate job creation projections and downplay the reality of “retained jobs”—jobs transferred to the new site from another part of the city or state—the statistics from Seattle show the potential benefits Amazon’s presence in a city can bring to the local job market.¹⁹⁶ New York City needed a distributed set of job centers to help reduce crowds on subway trains and traffic in midtown Manhattan.¹⁹⁷ The campus would have drawn reverse-commuters to Long Island City, a rare opportunity to add jobs and passengers to subway trains that are typically below capacity at rush hour.¹⁹⁸ Additionally, Amazon in Long Island City could have drawn other corporate tenants to the area without the incentive of multibillion dollar subsidy packages.¹⁹⁹

As evidenced by the development that had been going on in Long Island City long before Amazon was in talks to build its second campus there, the NIMBY movement that pushed Amazon to rescind its offer has further prolonged inevitable.²⁰⁰ HQ2 opponents focused on the harms that Amazon would bring to the area, rather than the job opportunities Amazon could have provided to residents. There are tradeoffs associated with every development project, especially in areas that are in the midst of transformation. The subsidies that New York offered Amazon, as well as Governor Cuomo’s decision to go through a less traditional, more “opaque” development process, do not outweigh the advantages of Amazon operating in the Long Island City.

; Dennis Green, *Amazon’s latest charitable donation could be a message to HQ2 candidate cities*, BUS. INSIDER (Oct. 15, 2018, 10:27 AM), <https://www.businessinsider.com/amazon-donation-to-seattle-schools-hq2-implications-2018-10>.

¹⁹⁴ NYC HEALTH, *supra* note 159, at 7.

¹⁹⁵ Bill de Blasio, Opinion, *Bill de Blasio: The Path Amazon Rejected*, N.Y. TIMES (Feb. 16, 2019), <https://www.nytimes.com/2019/02/16/opinion/amazon-new-york-bill-de-blasio.html?smtyp=cur&smid=tw-nytimes>.

¹⁹⁶ *Id.*; see also Newman, *supra* note 35.

¹⁹⁷ Josh Barro, *Here’s Why New York Is Resorting to Paying Amazon \$3 Billion for What Google Will Do for Free*, N.Y. MAG (Nov. 13, 2018), <http://nymag.com/intelligencer/2018/11/why-new-york-is-paying-amazon-usd3-billion.html>.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ See generally *Mapping Displacement*, *supra* note 164; Public Affairs, UC Berkeley, *supra* note 163; Balint, *supra* note 170.

V. RECOMMENDATIONS

Amazon's decision to back out of Long Island City can be traced back to many different factors, including both its supporters and opponents. Looking specifically at HQ2's supporters, running the plan through the ULURP process would have quieted some of the opposition.²⁰¹ Additionally, the Cuomo administration could have been more transparent about the decision-making by releasing specific details of the HQ2 plan that was approved. Opponents of HQ2 could have proposed their preferred changes rather than advocating for a complete shutdown of the plan.

Still, there is no evidence that HQ2 would have become a reality in Long Island City even if it had gone through ULURP. The downfalls of ULURP still ring true, and the lack of deliberative democratic methods in the planning process serves as a serious detriment.²⁰² Several case studies in the land use and environmental law sphere illustrate how collaborative approaches can help the locality, residents and developers reach common ground.²⁰³ In one study, a developer acquired land that was previously used for a nursing home.²⁰⁴ The developer wanted to use the land for affordable housing for senior citizens, but also knew that the property could be zoned to fit about twenty lots for single-family homes.²⁰⁵ The developer engaged with the twenty-four adjacent neighbors to let them know the development choices.²⁰⁶ Six meetings were held over the course of three months between the developer and the residents.²⁰⁷ The developer showed the residents a plan for just senior housing, as well as a plan that incorporated both senior housing and single family homes.²⁰⁸ He indicated that his preference was for the land to be used completely for senior housing, but told the residents that the ultimate decision was theirs, as long as they supported the project through the entirety of the planning process.²⁰⁹ Ultimately, the residents voted for the land to be used for single-family homes; the developer was satisfied with the outcome because without the meaningful discussions with the residents, the project would not have proceeded at all.²¹⁰ In another case

²⁰¹ Many HQ2 protestors felt that the plan accepted by Amazon was made behind closed doors and lacked critical input from the public. *See* Geiger, *supra* note 41.

²⁰² *See* discussion *supra* Part III.D.

²⁰³ Nolon, *supra* note 82, at 114.

²⁰⁴ *Id.* at 115.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 116.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.* at 116.

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study, a developer wanted a parcel of land zoned for commercial use to be rezoned for senior housing.²¹¹ The developer formed a consensus committee to meet with local officials.²¹² Over one hundred meetings were held before the developer eventually obtained approval.²¹³ In both case studies, openness and honesty were essential elements in meetings, as well as the use of informal meetings without mediators for citizens to voice opinions and concerns.²¹⁴ The developers gained the residents' trust, and went through the mandated land use process without a problem.²¹⁵

Using these case studies as guidelines, one of the ways to improve ULURP would be to mandate the establishment of advisory groups in the instance where the CPC disapproves a recommendation by a Borough Board, thus facilitating the discussion of private and public interests.²¹⁶ Advisory groups inform public agencies about community preferences, while simultaneously promoting approval of the government's decisions.²¹⁷ They are made up of those who have the greatest interest in the outcome of the land dispute, including representatives from federal, state and local government agencies, local businesses, and property owners in the affected area.²¹⁸ A successful advisory group depends on it meeting three criteria.²¹⁹ First, the advisory group should be diverse: if not all stakeholder interests are represented in the group, true public input will not be achieved.²²⁰ Second, because the group should engage in deliberation, information is another essential component for success: if stakeholders are fully educated about the land use issue they are confronting, they will not overcome previous assumptions to reach a common ground.²²¹ Through deliberation, the group must identify areas of disagreement and formulate alternative resolutions, rather than debate and defend their opposing views.²²² Lastly,

²¹¹ *Id.* at 121.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.* at 115-24.

²¹⁵ *Id.*

²¹⁶ Salkin & Gottlieb, *supra* note 55, at 768 (advisory groups can bring together public and private interests); *see also* Sheila R. Foster, *Environmental Justice in an Era of Devolved Collaboration*, 26 HARV. ENVTL. L. REV. 459, 477 (2002) (community advisory committees bring together public and private interests); *see generally* New York City, N.Y., Charter § 197-c(h) (2019).

²¹⁷ Salkin & Gottlieb, *supra* note 55, at 769.

²¹⁸ *Id.*

²¹⁹ *See generally id.* at 768-70.

²²⁰ *Id.* at 769.

²²¹ *Id.*

²²² *Id.*

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the advisory group should be transparent to promote a feeling of trust with the public.²²³

Another way to improve ULURP would be the implementation of online dialogue.²²⁴ This method utilizes the Internet for soliciting public participation on matters of public policy.²²⁵ It helps the government better understand its citizens, and is more informal than many other processes.²²⁶ An advantage of online dialoging is that a large portion of the public can participate; however, this method does not take into account the reality that some populations may have less access to the Internet than others.²²⁷ Minority groups and low-income individuals, whose input may be the most essential, may be disadvantaged by this strategy.²²⁸ Nevertheless, implementing a strategy that places emphasis on dialogue, conversation and debate will only improve the overall process.

VI. CONCLUSION

HQ2 presented enormous economic opportunity for New York City. Amazon could have brought a plethora of jobs to the area, both internally through direct employment and externally through job spinoff implications.²²⁹ Although gentrification presents the potential of forcing out longtime residents, members of the NIMBY movement should have advocated for jobs within the company for local residents as part of the deal, rather than rejecting the project from the start.

However, the blame is not completely one-sided: HQ2's supporters share blame in the deal's failure. Governor Cuomo and Mayor de Blasio knew that HQ2 would be met with opposition, which prompted them to choose a GPP over the ULURP process.²³⁰ However, they should have gone through the ULURP process and supplemented it with deliberative democratic methods, including advisory groups and online dialoging.²³¹ The New York state government needs to have faith that the public will give input that will benefit the municipality as a whole, and the public needs to have faith that the government will advocate for projects that benefit society. When Jeff Bezos started Amazon in 1994, he abandoned

²²³ *Id.*

²²⁴ *Id.* at 773.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.* at 775.

²²⁸ *Id.*

²²⁹ de Blasio, *supra* note 195.

²³⁰ Pesantez, *supra* note 107.

²³¹ See Salkin & Gottlieb, *supra* note 55, at 769-73.

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the business model that society accepted as the only way to make money.²³² The distribution center-based model that he created has become the basis of thousands of businesses. Although Long Island City may have been built on the backs of small-business owners, the economic and job growth that HQ2 could have brought to the area cannot be ignored. Technological developments in retail bring inevitable changes to the job market, economy, and society as a whole, and adapting to these changes rather than resisting them will benefit New Yorkers in the long run.²³³

²³² STONE, *supra* note 10, at 23.

²³³ As of the date of publication of this Note, HQ2 is being built in Arlington, VA. Heather Graf, *It's been exactly 2 years since Amazon announced HQ2 would be built in Arlington*, WJLA (Nov. 13, 2020), <https://wjla.com/news/local/its-been-exactly-2-years-since-amazon-announced-hq2-would-be-built-in-arlington>.