

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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COQUIS SALES APPLIANCES, LLC, WINDOW KING, LLC, FRANCESCO, INC, CAPTAINS OF MORRIS PARK, LLC, MORRIS PARK COMMUNITY ASSOCIATION, and MARK GJONAJ, in his Official Capacity as Council Member of the 13<sup>th</sup> Council District, New York City Council,

Petitioners,

-against-

MAYOR WILLIAM DEBLASIO, in his Official Capacity as Mayor of the City of New York, POLLY TROTTEBERG, In her Official Capacity as Commissioner, New York City Department of Transportation, and NIVARDO LOPEZ, In his Official Capacity as Bronx Borough Commissioner, New York City Department of Transportation,

Respondents.

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Petitioners COQUIS SALES APPLIANCES, LLC, WINDOW KING, LLC, FRANCESCO, INC, CAPTAINS OF MORRIS PARK, LLC, MORRIS PARK COMMUNITY ASSOCIATION, and MARK GJONAJ, in his Official Capacity as Council Member of the 13<sup>th</sup> Council District, New York City Council, (collectively, "Petitioners") by their attorney, JOHN L. PARKER, hereby alleges:

1. This proceeding is brought pursuant to Article 78 of New York's CIVIL PRACTICE LAW & RULES (CPLR) and for Declaratory Judgment (CPLR § 3000 *et seq*). This

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action seeks a preliminary injunction and temporary relief pursuant to CPLR §§ 6301, 6311, and 6313.

2. This action has been brought in the County of Bronx, in the Judicial District where substantially all of the material events occurred or will occur, pursuant to CPLR § 506(b).

## **PARTIES**

3. Petitioner COQUI SALES APPLIANCE, LLC, by manager Kelvin Nuñez, operates an appliance sales business on 933 Morris Park Avenue, Bronx, New York, routinely receives and delivers a number of sometime heavy and bulky appliances to the community, including refrigerators, ovens, ranges, air conditioners, washer machines and dryers, and other large appliances.

4. Petitioner WINDOW KING LLC by Nick Ferraro its owner, operates a window business showroom and warehouse on 1075 Morris Park Avenue, Bronx, New York that routinely receives a delivery of some 100 plus windows to his store on Monday of each week, the delivery takes between 4 – 5 hours because of the need to protect the window from breaking, and is done by hand delivery from the delivery truck temporarily parked on Morris Park Avenue to his storefront, which would be impossible under the proposed Vision Zero plan.

5. Petitioners FRANCESCO, INC, which operates Morris Park Bake Shop by its manager, Giovanni Albano, operate at 1007 Morris Park Avenue, Bronx, New York that is located on the one block and the same side of the street that is designated as a truck loading zone for all of Morris Park Avenue business, and will have its business severely impacted by the loss

of parking for customers during the busy breakfast hours because such parking will be prohibited to accommodate truck deliver.

6. Petitioner CAPTAINS OF MORRIS PARK, LLC, which operates Captain's Pizza and Restaurant, by its owner Giovanni Albano that operates a successful restaurant that relies upon numerous deliveries of food and foodstuffs and will be harmed and injured by the location of only one truck loading zone for all of Morris Park Avenue businesses.

7. Petitioner MORRIS PARK COMMUNITY ASSOCIATION, by its President Al D' Angelo is a non-profit organization that consists of approximately 1,000 members and address complaints and concerns of residents such as traffic and pedestrian safety and other issues.

8. Petitioner MARK GNONAJ, in his Official Capacity as Council Member for the 13<sup>th</sup> Council District, New York City Council is a resident of Bronx County, represents the residents and business owners on an along Morris Park Avenue, and hold the public office as a member of the New York City Council.

9. That, upon information and belief, at all times hereinafter mentioned, Respondent MAYOR WILLIAM DEBLASIO, was the Mayor of the City of New York that directed the creation and implementation, by the agencies of the City of New York, the Vision Zero Initiative that is the basis for proposed plan for Morris Park Avenue.

10. That, upon information and belief, at all times hereinafter mentioned, Respondent POLLY TROTTENBERG, in her Official Capacity as Commissioner, New York City Department of Transportation holds public office as the Commissioner of the New York City Department of Transportation.

11. That, upon information and belief, at all times hereinafter mentioned, Respondent NIVARDO LOPEZ, in his Official Capacity as Bronx Borough Commissioner, New York City Department of Transportation holds public office as the Bronx Borough Commissioner, New York City Department of Transportation.

### **STATEMENT OF FACTS**

12. Respondent LOPEZ informed Petitioner GJONAJ on April 15, 2019 that “NYCDOT has scheduled the implementation of the Morris Park Avenue Safety Improvement Project, from Adams Street and Newport Ave, to begin during the week of April 28th.” See Emergency Affidavit of Petitioner MARK GJONAJ.

13. On or about 2014, Respondent MAYOR DEBLASIO and executive agencies of New York City government and specifically, Respondent NEW YORK CITY DEPARTMENT OF TRANSPORTATION began to develop a plan to address traffic and pedestrian safety issues on city roadways that came to be known as the Vision Zero Initiative. See Affirmation of John L. Parker in support of the Memorandum of Law in support of the Verified Petition, sworn to April 26, 2019, (“Parker Aff.”) at Exhibit A.

14. On or around January 2018, Respondents released a document entitled “Morris Park Avenue, Presentation to Bronx Community Board 11, January 8, 2018.” See Exhibit B, Parker Aff.

15. On or around February 2018, Respondents' conducted a public meeting where Respondent LOPEZ presented the Vision Zero Initiative proposal for Morris Park Avenue, Bronx, New York.
16. On or around January 2018, Respondents released a document entitled "Morris Park Avenue, Presentation to Bronx Community Board 11, January 8, 2018." See Parker Aff. at Exhibit B.
17. Upon information and belief, Respondents' January 2018 proposed plan for Morris Park Avenue extended between Adams Street and Newport Avenue and had 2 truck loading zones that each extended for 30 feet and they were only dedicated for half of a business day use each day; these two zones are expected serve the over one hundred businesses located there.
18. Upon information and belief, Respondents' January 2018 proposal offered to reason, rationale, or explanation for the approximately 1.5 mile Morris Park Avenue corridor plan that had only 2 30 foot truck loading zones.
19. Upon information and belief, local residents, business, and elected officials presented specific objections to Respondent proposed Morris Park Avenue traffic dieting plan at a January 2018 public meeting held in the Bronx.
20. On or around February 2018, Respondents released a document entitled "Morris Park Avenue Corridor Safety Improvements, presentation to Community Board 11 Transportation Committee, February 5, 2018." See Parker Aff. at Exhibit C.

21. On information and belief, Respondents' February 2018 proposal for Morris Park Avenue made no substantive changes to the plans for the corridor – providing for only two truck loading zones for the approximately 1.5 mile corridor.

22. Upon information and belief, on or around February 2018, Respondents NYCDOT and LOPEZ held a community meeting to present to the public their the proposed Vision Zero Initiative for Morris Park Avenue.

23. Respondents' documents in support of the Morris Park Avenue proposals in January and February 2018 indicated that they conducted 111 business visits and that 88 surveys were completed but Petitioners were not involved in any of these efforts; Petitioners have no recollection of these visits or surveys.

24. Upon information and belief, members of the public and Petitioners participated in a public petition process in the Morris Park Avenue community seeking signatures for those in opposition to Respondents' proposed Vision Zero Initiative for Morris Park Avenue for the purpose of communicating the request to drop the plan to Respondent MAYOR DEBLASIO and to communicate to Respondent's their grave and serious concerns about the proposal, collecting about 1,000 signatures.

25. On or around October 2018, Petitioners became aware of Respondents' change to the Morris Park Avenue proposal – there was no explanation offered for the amount of time that passed between the changing proposals or for the reasons or rationale for only including two truck loading zones for the entire community.

26. On or about October 2018, Respondents revised proposal for Morris Park Avenue reduced the length of the corridor by cutting it in half – it now only extended between Bronxdale Avenue and Newport Avenue but the plan kept the two 30 foot truck loading zones.

27. Upon information and belief, Respondents provided no reason, rationale, or explanation regarding why they dramatically reduced the length of the Morris Park Avenue corridor covered by the Vision Zero Initiative.

28. Upon information and belief, Respondents developed and issued a new Vision Zero Initiative proposal for Morris Park Avenue that was dated Spring 2019.

29. Upon information and belief, Respondents' Spring 2019 proposal for Morris Park Avenue substantially changed, again – changing the length of the corridor back to Adams Street to Newport Avenue, approximately 1.5 miles, and eliminated one of the truck loading zones, leaving only the 30 foot corridor between Colden Avenue to Paulding Avenue that would only be dedicated for such use for morning hours.

30. Upon information and belief, Respondents provided no reason, rationale, or explanation regarding why they again dramatically changed the length of the Morris Park Avenue corridor covered by the Vision Zero Initiative back to the approximately 1.5 mile length or why they eliminated one of the truck loading zones.

31. Upon information and belief, some petitioners business will be more severely impacted and any other, and one such business may be forced to close because of Respondents' proposed change to the traffic pattern on Morris Park Avenue.

32. Upon information and belief, Respondents' decision to implement their proposed plan became final when they communicated on April 15, 2019 that Morris Park Avenue Traffic Safety Improvement Project would begin or not around April 28, 2019

### **LEGAL ARGUMENT**

33. Petitioners hereby incorporate by reference all previous allegations.

34. This Article 78 and Declaratory Judgment hybrid action seeks review of Respondents' illegal and unauthorized conduct regarding implementing their quasi-administrative Vision Zero Initiative for Morris Park Avenue, as well as preliminary injunctive and temporary relief seeking to stop such implementation until judgment is rendered by the Court.

35. Pursuant to CPLR §§ 7803(2) and (3), questions that can be raised in an Article 78 proceeding include "whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction," or "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious on an abuse of discretion."

36. Pursuant to CPLR § 3000, the Court may grant relief declaring challenged actions as illegal or unlawful and thus, voiding such actions.

37. Petitioners are local residents and owners and operators of businesses on Morris Park Avenue that are uniquely impacted and irreparably harmed by Respondents' Morris Park Avenue Safety Improvement Project.



38. Petitioners include a duly elected City Council Member whose work includes proposed local laws that address traffic and public safety issues and whose legislative prerogative as a Councilmember is impacted by Respondents' implementing their Vision Zero Initiative without express legislative direction or authorization in city law and regulation.

39. Upon information and belief, Respondents' Vision Zero Initiative is solely Respondents' own administrative creation, or quasi-administrative because it was not authorized by legislative authorization or direction.

40. Upon Information and belief, Respondents' Vision Zero Initiative, is based upon information and data about traffic safety to inform decisionmaking, but is not based upon regulatory, administrative, or local law authorization or guidance regarding the process and procedures to develop and implement the initiative.

41. Upon information, the public is informed about the Vision Zero Initiative based upon public meetings and periodic publishing of documents on the internet about the Initiative and the priority basis for such implementation.

42. Upon information and belief, the proposed plan for Morris Park Avenue will demolish the current traffic patterns permanently and replace them, with the generic "traffic diet" proposal presented to the public in Spring 2019.

43. Upon information and belief, Respondents' Morris Park Avenue plan does not follow, is not justified by, and does not meet Respondents' requirements for implementation of a Vision Zero Initiative because traffic and pedestrian safety data updated between 2012 and 2016 resulted in a "delisting" as a priority this traffic corridor – the primary reason such plans are implemented.

44. Upon information and belief, Respondents provided no reason that they were advancing a Vision Zero Initiative Plan for Morris Park Avenue even though the update crash indicated that it was no longer a priority corridor requiring action.

45. Upon information and belief, Respondents' did not provide the reasons, rationale, or full explanation for the Vision Zero Initiative plan for Morris Park Avenue dated January, February, and then dramatically changed in October 2018.

46. Upon information and belief, Respondents did not address or respond to Petitioner and members of the public comments and suggestions for changes to the plans for Morris Park Avenue.

47. Upon information and belief, no reason or rationale was provided for Respondents cutting of the Morris Park Avenue plan corridor in half in October 2018 and then returning it to the longer original corridor length in the Spring 2019 proposed plan.

48. Upon information and belief, Respondents provide no reason or rationale why the reduced the truck load zone areas to only one in the Spring 2019 proposed plan.

49. Upon information and belief, Respondents' departure from the criteria and requirements of the Vision Zero Initiative – the quasi-administrative program solely created by them - to implement that Morris Park Avenue Safety Improvement Project is without reason, a rationale basis, and is arbitrary and capricious and thus illegal and unlawful

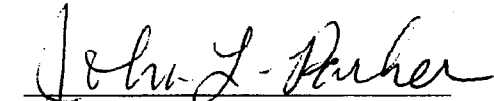
50. Upon information and belief, Respondents' and intend to continue acting in an arbitrary and capricious manner in implementing transportation policy in the City of New York under the Vision Zero Initiative as it relates to Morris Park Avenue contrary to practices of its quasi-administrative program.

51. Petitioners have no means to enjoin Respondents' unlawful activities without resort to the Courts' intercession.

**WHEREFORE**, Petitioners respectfully demand judgment: 1) restraining Respondents from implementing any Vision Zero Initiative or related program on Morris Park Avenue, Bronx, New York, such as the Morris Park Avenue Safety Improvement Project; 2) restraining Respondents' or any other party, including third party contractors, from performing any activity on or around Morris Park Avenue, Bronx, New York making any change to such roadway corridor to implement any Vision Zero Initiative or Program, such as the Morris Park Avenue Safety Improvement Project; 3) restraining Respondents or any other party from implementing any Vision Zero Initiative or related program for Morris Park Avenue, such as the Morris Park Avenue Safety Improvement Project until due consideration, study, and minimization to the maximum extent practicable of environmental, community, traffic, and pedestrian impacts of any planned additions to such roadway corridor (in addition to any proposed implementation of Vision Zero) including impacts associated with the Metro North project proposal for construction of Morris Park Avenue train station, and the MTA Bus Plan study being conducted for Morris Park Avenue; 4) enjoining constructing or altering, or causing to be constructed or altered any roadway striping, signage, traffic flow, or traffic signalization other than such any roadway striping, signage, traffic flow, or traffic signalization that was in place prior to the scheduled start date of the Morris Park Avenue Safety Improvement Project of April 28, 2019; and 5) granting such other and further relief as this Court may deem just and proper, including costs, fees and attorneys fees.

Dated: South Salem, New York  
April 26, 2019

Yours, etc.,

A handwritten signature in cursive script that reads "John L. Parker". The signature is written in black ink and is positioned above a horizontal line.

By: John L. Parker  
Attorneys for Plaintiff  
292 City Island Avenue  
Bronx, N.Y. 10464  
parkerjl@icloud.com  
ph: 718-829-0222  
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VERIFICATION

STATE OF NEW YORK            }  
  }ss.:  
COUNTY OF BRONX            }

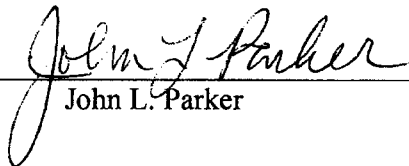
JOHN L. PARKER, being duly sworn, deposes and says:

I am the attorney for Petitioners, COQUIS SALES APPLIANCES, LLC, WINDOW KING, LLC, FRANCESCO, INC, CAPTAINS OF MORRIS PARK, LLC, MORRIS PARK COMMUNITY ASSOCIATION, and MARK GJONAJ, in his Official Capacity as Council Member of the 13<sup>th</sup> Council District, New York City Council, (collectively, "Petitioners") in this Article 78 and Declaratory Judgment proceeding.

I have read the foregoing petition and the same is true to my own knowledge, except as to those matters stated herein to be alleged on information and belief, and as to those matters, I believe them to be true based on my review of pertinent documents and conversations with persons with personal knowledge.

This verification is made by me rather than Petitioners because of the time of signing, at least one of the Petitioners acquainted with the facts was outside the County of Westchester where I maintain an office.

Dated:            April 26, 2019  
                      South Salem, New York

  
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John L. Parker



# NYSCEF - Bronx County Supreme Court

## Confirmation Notice



This is an automated response for Supreme Court cases. The NYSCEF site has received your electronically filed documents for the following case.

**Index Number NOT assigned**

**Coquis Sales Appliances, LLC et al v. William DeBlasio et al**

**Assigned Judge: None Recorded**

**Documents Received on 04/26/2019 11:15 PM**

| <b>Doc #</b> | <b>Document Type</b>  | <b>Motion #</b> |
|--------------|---|-----------------|
| 1            | PETITION<br>Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e)                         |                 |
| 2            | ORDER TO SHOW CAUSE ( PROPOSED )<br>Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e) |                 |
| 3            | AFFIDAVIT<br>Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e)                        |                 |
| 4            | AFFIDAVIT<br>Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e)                        |                 |
| 5            | AFFIDAVIT<br>Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e)                        |                 |
| 6            | RJI -RE: ORDER TO SHOW CAUSE<br>Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e)     |                 |
| 7            | ADDENDUM - GENERAL (840A)<br>Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e)        |                 |

### Filing User

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South Salem, NY 10590**

### E-mail Notifications

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Hon. Luis M. Diaz, Bronx County Clerk

Phone: 718-590-8122 (fax) Website: <http://www.bronxcountyclerkinfo.com/law>

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# NYSCEF - Bronx County Supreme Court Confirmation Notice

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Index Number NOT assigned

Coquis Sales Appliances, LLC et al v. William DeBlasio et al

Assigned Judge: None Recorded

PARKER, JOHN LOUIS - parkerjlp@gmail.com

**NOTE: If submitting a working copy of this filing to the court, you must include as a notification page firmly affixed thereto a copy of this Confirmation Notice.**

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Hon. Luis M. Diaz, Bronx County Clerk

Phone: 718-590-8122 (fax) Website: <http://www.bronxcountyclerkinfo.com/law>

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