

**“Sidestepping 24 Million Gallons of Missing Dung. Ruth and Donald’s Artful Deal”** By Wayne Barrett (With special reporting by Denise Kiernan) Village Voice. April 11, 1995.

“As part of an apparent effort to reposition herself as a reliable advocate of supposedly “reasonable” development, Manhattan Borough President Ruth Messinger **has suppressed** her top environmental staffs recent technical findings on Donald Trump's 5700-unit Riverside South project, **drastically altered a key element of her own prior public posture, and ignored violations**; albeit minor ones, of a memorandum of understanding (MOU) with Trump that she negotiated and signed herself, the Voice has learned.

Celebrated for better than two decades as an icon of independent and straight-talking public service, Messinger's need for a more pro-business mayoral message has left her with so muddled a position on the city's February decision to certify Trump's project for sewage hookup to the frequently over-capacity North River Water Pollution Control Plant that she literally could not answer Voice questions about it. While this is an uncharacteristic pose for her on any issue, it is especially peculiar because the hookup involves a unique certification process she herself secured as a Trump concession in the 1992 MOU that led to her crucial endorsement of the project. It is also ironic because she was the first public official to focus on sewage as the single most delicate test of this city's largest and most controversial development, prompted, no doubt, by the concerns of her neighbors from her old westside city council district that the city's infrastructure could not support such a vast new development.

Asked in a Voice interview last week if she believed two Giuliani aides, Planning Commission Chairman Joe Rose and Environmental Commissioner Marilyn Gelber, should have signed a February 3 letter certifying that North River can handle Riverside South's additional sewage flow, Messinger three times ducked it with stock speeches about her continuing questions" and "process problems" with the certification before finally conceding: "I can't answer it yes or no. I looked at a lot of different evidence and there was no conclusive evidence for it or against it." Her engineering staff, like virtually every elected and community board official on the westside, opposed the certification, as did the Natural Resources Defense Council (NRDC), an environmental group that was a member of the civic consortium planning the project until 1993 and has long advised Messinger on aspects of it. The Coalition for a Livable West Side and other groups have already filed a notice in court to challenge the city's sewage flow monitoring that led to the permit.

In what critics view as one sign of her coziness with Trump's civic group partners on the project, Messinger recently named Parks Council executive director and Riverside South Planning Council board member Linda Davidoff to manage her anticipated 1997 mayoral run. A vigorous champion of the project whose

organizational support of it has become shrouded in multiple alleged conflicts of interest, Davidoff was listed on lobbying forms as pressing Messinger's office twice in late 1994 about the sewage certification, even while she was preparing to assume her new campaign job.

In sharp contrast, Messinger's counsel MarIa Simpson was at the same time withholding the final paycheck of the office's departing chief borough engineer, Richard Herschlag, whose reports offered a detailed rationale for rejecting the certification, until she could meet with him and warn him that it would be a charter violation if he ever did any consulting work for a citizens organization that opposes the project.

Herschlag, a 32-year-old Princeton grad named by Messinger to head her small engineering staff four years ago and the author of a ballyhooed 1994 report for the borough president on the North River plant, became a public critic of the Riverside South hookup in July. He told the Westsider that the city was doing "a rush job" to approve the permit and that "it doesn't seem fair to add more waste" when North River's stench problem-long a cause of protest in the Harlem community that borders the 137th Street plant had yet to be fully "addressed."

After attending an October meeting of an oversight committee set up by the Giuliani administration to examine the Riverside South sewage issue, Herschlag was reprimanded by Simpson for "the tone" of a brief memo he wrote deriding "the red carpet treatment" Trump's project was getting on the sewage issue. Herschlag stopped going to the committee meetings after Simpson dismissed the Giuliani review process as "window dressing," yet said he was "behaving like a three-year-old" in his attempts to challenge it. He was replaced at subsequent sessions by an environmental policy analyst who is still with Messinger, Tim Forker. While three city council members, a state senator, and others wrote letters protesting the Giuliani process before it released its draft consultant report, Messinger did not, quietly sitting it out.

Forker and Herschlag nonetheless wound up writing an 11-page memo for circulation within the highest ranks of the office on December 8, concluding that the city should "deny sewage connection certification at this time." Their memo was a vigorous rebuttal of the draft conclusions reached two days earlier by the engineering consultant retained by the Giuliani oversight committee, O'Brien & Gere (O&G). and a warning that "historical trends seem likely to continue, putting the plant over its capacity for periods of several months at a time." It "would be prudent," the two contended, "to postpone authorizing' a Trump hookup "until the situation is more fully understood."

Focusing on O&G's inability to explain a sudden drop of 24 MGD (million gallons a day) of sewage flow coming into the North River plant--**a mysterious decline**

**that occurred within the space of a two-hour period last April Fool's Day-** Forker and Herschlag ridiculed the administration's attempts to lay claim to a permanent reduction in the plant's flow by crediting city water conservation efforts. "More time, perhaps on the order of several years," they concluded, "is needed both to continue phasing in the various conservation measures and to make a fair assessment of their long-term impact in relation to North River."

Making a detailed argument that the city was underestimating the added flow that will come with Riverside South by as much as a million gallons a day, as well as underestimating the sewage associated with other projects planned for the catchment area, Messinger's two top technical advisers said that this "future development could negate much or all of the projected flow reduction from conservation measures, or even lead to a net increase in flow." Under "present flow conditions," they said, "there are probably enough violations to question the plant's ability to consistently meet effluent quality standards."

Though Messinger's office made several other internal memos public in response to a Voice freedom of information request, it never provided a copy of the December 8 memo, or acknowledged its existence, even after several Voice questions about releasing any other memos done in the same time period. When we obtained it elsewhere, the office said their failure to provide it was inadvertent.

The day after the Forker/Herschlag memo was circulated, Davidoff attended a December 9 session with Messinger on the certification issue. The meeting was hurriedly arranged after a Davidoff call on November 29 to Messinger aide Libby Moroff, who noted on an office lobbying form that Davidoff had contacted her "re North River." Davidoff says that she and others from the nonprofit but Trump-funded Riverside South organization, including \$125,000-a-year president Richard Kahan and paid lobbyist Michele deMilly, "wanted Ruth to say 'OK-hook up to North River.'" But, said Davidoff, "if she didn't come out with that, then at least not to go against hookup to the plant."

While there is no indication that Davidoff or any of the other project advocates knew about the Forker memo, Moroff recalls that Davidoff told her that she'd "heard that Ruth was not inclined to agree with the certification and thought that the Riverside South group should have one more chance to talk to her." In a public letter sent to the eight-member oversight committee three days after the Davidoff meeting, Messinger raised questions about the O&G findings but steered clear of any explicit statement on the then pending hookup permit. While limiting her concerns about the city's explanation for the missing 24 MGDs to the rather muted declaration that it "does not establish much of a comfort level," Messinger's letter omitted all of the hard data developed by her staff on Riverside South's increased potential flow and the city's hyped conservation record.

Forcefully restating her support for the project and declaring that "with the time constraints", caused by the administration's "overly rapid process" a more substantive analysis was "not feasible," Messinger implicitly acquiesced on the hookup, dumping the duty to accommodate the project's sewage on future city actions. "On behalf of the affected residents and business interests here," she said, "I will continue to hold the City responsible for building and maintaining the necessary infrastructure so that all of us may share both in a healthful environment and sound economic growth.

Not only did Messinger's conclusions stop far short of her own technical staffs, she also rejected the nine-page findings of an NRDC consultant that were relayed to her by her allies at the environmental group. 'We strongly recommend that significant additional analysis is required before any accurate assessment can be made as to the ability of the Riverside South development or any other development hooking up to North River at this time.' an NRDC letter dated the same day as Messinger's declared. She insisted during a Voice interview, however, that her December 12 letter was unaffected by the Davidoff et al. meeting, noting that she'd agreed to the session only "to tell them what we were going to do" and that her statement was actually drafted before they met.

A classmate of Messinger's at Radcliffe in the early '60s, Davidoff, who left the parks Council last month to become the \$75,000-a-year director of Friends of Ruth Messinger acknowledged that she was already planning to come aboard at the time of the December lobbying. She said she and Messinger had had "long conversations" about it "over months, if not years," adding that she has been fundraising as a volunteer for another Messinger committee for some time. "I'm sure that people involved with Riverside South were among the people we asked to support Ruth for mayor," she said. "I'm also sure you will see people involved with the project and feminist issues, in environmental issues, all kinds of issues participating in the Messinger effort, Kahan and others associated with the project have donated \$6450 to her campaign committees since she was elected borough president in 1989, a modest sum during a period when she did little active fundraising.

When Davidoff stepped down from the Parks Council in March, her deputy, Marcia Reiss, whose husband, Charles, works for the Trump Organization, became the council's acting director. Formerly a \$105,000-a-year consultant to the Riverside South group, Charles Reiss's longstanding tie to the project is one of several possible conflicts that has cast a cloud over the organization's ongoing willingness to push it, even when it comes to issues unrelated to the 21-acre park that Trump has proposed to anchor it. Parks Council president Gerald Rosenberg is a partner in Rosenman & Cohn, the law firm that steered the project through city approval processes for Trump and still represents him on it, and two council directors,

landscape architect Thomas Baisley and lawyer Ed Wallace, have been retained to work either on the project or other Trump developments.

Davidoff dismissed this intertwine, noting that all but Rosenberg's dual roles occurred "after the council endorsed the project" in 1991, adding that Rosenberg "was not present at early discussions with Riverside South before the endorsement." (Rosenberg, however, says he believes he "voted for it.") Her own recent lobbying on the sewage permit (she declined to estimate the number of other times she'd spoken to Messinger's office about the legions of discrete governmental decisions affecting the project made since 1991) is the best evidence of how continuous questions of conflict are when it comes to the exercise of a civic organization's independent judgment on a complex development like this one. Reiss, who indicated that anyone associated with the council who worked on the project 'did so with its full knowledge and support," declined to say how much Trump might've contributed to it in recent years, though Davidoff recalled that he bought \$10,000 in tickets to its fundraising dinner.

Neither the Parks Council nor Messinger registered any complaint when the Trump project failed to meet two deadlines that required him to either build a 1.5. acre temporary park on the site by July 1994 or file reports with the parks department every six months explaining why he hadn't. Even though the reporting requirement originated with the Trump/Messinger MOU, Simpson was unaware of the missed filing deadlines until the Voice informed her. At the time of the agreement, Messinger hailed the temporary park as a major Trump concession, but she quietly agreed to a one-year extension last spring and said nothing when even her amended reporting deadline was missed last month.

While work on the Miller Highway overhead may well have prevented the opening of the park in 1994, Messinger's lax enforcement of the only deadlines thus far reached under the terms of her settlement with Trump is an indicator of the determined "cooperative" tenor of their relationship. It is also a measure of Parks Council's less than vigilant oversight, though Marcia Reiss insists that the organization's "totally satisfied" with "Trump's handling of the park," and expects it to be ready this summer. (Charles Reiss is in charge of it for Trump.)

Beyond the council's apparent conflicts, another member of the Riverside South consortium and participant in the December 9 lobbying session was Municipal Arts Society President Kent Barwick, whose prior dealings with the developer have also raised eyebrows. Barwick allowed Trump to quietly pay the \$50,000 in legal fees that the organization incurred a few years earlier to push the landmarking of a building opposite Trump Tower, The developer and the city's leading preservation group wound up financially aligned because Trump wanted to block commercial competition for his atrium of shops at Trump Tower and MS wanted to stop a 44-story high-rise on Fifth Avenue. Kahan and an architect for the project are MAS

trustees, and Trump, according to Barwick, periodically purchases \$10,000 tables at the society's annual event. What neither Barwick nor Davidoff seemed to understand is that by forming their extraordinary private/civic partnership with Trump and jointly advancing so massive a development, they took on the added, continuing burden of seeing to it that their organizations had no financial ties to it that could be seen as compromising their independence.

Ed Wallace, the former Westside councilman who is a close friend and backer of Messinger's, has filed as a lobbyist for Trump Management since the beginning of 1994, indicating on several filings that he anticipated lobbying, as well as did lobby, Messinger on Riverside South. Wallace and Messinger concede that he got to know Trump when he acted as "an unofficial adviser" during her protracted Riverside South negotiations with the developer in 1992, and that she "may have introduced" him to Trump. Wallace insists that he never has lobbied her, though she recalls one "esoteric" suggestion about the project that he made to her. While he reports only \$359 in fees and expenses for this lobbying on city forms, the Los Angeles affiliate of his law firm, Phillips, Nizer, did obtain more profitable LA. business from Trump through him. Wallace says he filed for lobbying Messinger because he hoped to, based on a conversation with Trump; but "it has not come to pass yet. He said his firm did not receive "a significant part" of the fees paid for the LA. work.

While none of this intrigue rises to the tolerated levels of blatant conflict that ordinarily characterizes city influence peddling, Messinger's indifference to it makes even more questionable her office's determined effort to bar Herschlag from working for the anti-Riverside South coalition, which recently retained him to do a water metering study for \$5000. Simpson contacted the city's Conflict of Interest Board for an informal opinion on Herschlag's possible violation, and, when he "failed to appear for an exit interview" in early December, she held his paycheck and left warning messages on his answering machine. On the hairsplitting edge of an almost invisible legal difference, Simpson says she told him he could do private work related to North River, which he wrote a published report about for Messinger, but could not on Riverside South, because he'd "investigated" it for the office (without ever participating in a public report on it) and was thus "barred for life" from any private gain.

Messinger's defense includes an attack on Herschlag-who she says lacks "appropriate professional judgment" and is now making unfounded accusations that "smack of sour grapes-and a claim that the Forker/Herschlag memo is one of the peculiar features of her own up-front management style. She says she's the decision-making beneficiary of "serious staff debate" because she encourages in-house memos from a variety of participants who are "not likely to agree," and that it was in this spirit that the Riverside South memo was written.

However, there was no internal memo countering Forker and Herschlag's conclusions, precisely because they were the only two staff members qualified to make a North River assessment. The fact is that since Herschlag demonstrated in his dealings with the Voice over the past few weeks a sometimes sketchy memory about our own contacts, we are reporting only events corroborated by documents or other sources. But he does not fit the profile of a disgruntled former employee since he did not come to the Voice, but was located by us almost accidentally, and decided, after many conversations, to come forward with his full story.

As imaginative as Messinger's policy mind often is, she could not figure out a way to oppose the sewage certification without, as she put it in a Voice interview, "pulling the rug out from underneath the project." She has concluded that it is the city's obligation to provide whatever infrastructure improvements are required for a project it wants, even if this new philosophy of hers turns on its head the planning premise that a city cannot approve a project until it's sure it has the infrastructure to support it. In her determination to stick with the project without blinking, she clearly believed that she could not insist on a certification hiatus without squandering all the pro-development chips she'd meticulously accumulated after almost three years of support for this downsized, yet still gargantuan, development. She was obviously afraid of being perceived as inconsistent by the insiders and developer donors who make mayors if she wavered on even a perfectly legitimate, and perhaps quite resolvable, question about the project's environmental consequences.

Instead, her abdication on the permit has pitted her against all her own prior statements on sewage capacity (see "Messenger' Metamorphosis"). And it is becoming apparent that she has tried for years to hide from any accountable role in the clearance process she helped create, never even asking for an appointee on the sewage oversight committee though the former deputy mayor whose 1992 letter required it, Barbara Fife, would surely have given her one of the four community appointments to the eight-member body. With more key decisions still around the bend on this project, she has so far demonstrated an appetite for acquiescence few who know her would have anticipated."

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## **MESSINGER'S METAMORPHOSES**

1. "Neither I Nor a host of experts and advocates share the opinion that we can simply add 1.3 million gallons a day (MGD) of flow to North River without affecting the facility. Moreover, I have had conversations with members of the City Planning Commission, a host of council members, City Hall representatives, and other key players in putting this project together, and none of them believe that this project will be approved unless there is substantial, reliable, and certain commitment to mitigate the anticipated sewage flows ..."

-Letter to Environmental Commissioner Al Appleton on Riverside South, **August**

**13, 1992**

2. "IN ANY EVENT, I believe there is no justification for relying on North River's theoretical capacity to absorb additional volume .... I want us not to plan hookups until the plant's problems are solved and water conservation has begun to show significant results." -Testimony before the City Planning Commission on Riverside South, **September 9, 1992**

3. "WITH RESPECT to the Riverside South project, I argued that until the severe odor and operational problems of the North River plant are actually solved, and the City's water conservation strategies and operational reforms begin to show effective results, that we must prevent large-scale developments from making unmitigated hookups to this plant. The agreement reached with Riverside South provides for no sewer hookups until capacity is identified and the odor problem is cleared up." -Department of Environmental Protection hearing on North River consent order, **September 23, 1992**

4. 'WE ALL KNOW that the North River plant has an abysmal history in terms of odor, exceedences of its permit discharge levels, community impact and other issues.... the Department of Environmental Protection is trying to sneak an increase in capacity at North River through the back door. Most would say that a great deal of work is needed just to get the facility operating properly at its current permitted 170 MGD.'" -Letter to DEP commissioner Appleton on North River contract, **April 5, 1993**

5. "MANHATTAN BOROUGH PRESIDENT Ruth Messinger says a study prepared by consultants for a committee evaluating the capacity of the North River treatment plant ... was found wanting. Messinger said that given the plant's long history of troublesome odor problems, better answers are needed." -**Press release, January 4, 1995**

6. "YOUR ARTICLE, misrepresented my position on the city's possible approval of the Trump development's tie-in to the North River Sewage Treatment Plant. To clarify, I have not called on the city to disapprove the Riverside South hookup... my concerns should not be interpreted as a sign that I oppose any specific development that has been approved through the public review process." - Letter to Manhattan Spirit disputing a story listing Messinger among the officials who urged the city to disapprove the hookup, **February 16, 1995**