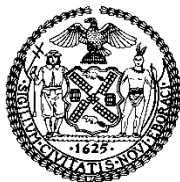


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THE COUNCIL
Briefing Paper of the Infrastructure Division
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COMMITTEE ON PUBLIC HOUSING
Hon. Rosie Mendez, Chair

May 17, 2013

Preconsidered Res. No. __, Resolution calling upon the New York State Legislature to enact the “NYCHA Real Property Public Review Act” requiring that any disposition of land or buildings by the New York City Housing Authority be subject to and comply with the provisions of New York City’s Uniform Land Use Review Procedure

PRECONSIDERED RES. NO. __ : By Council Members Mendez, the Speaker
(Council Member Quinn), Chin and Mark-Viverito

TITLE: Resolution calling upon the New York State Legislature to enact the “NYCHA Real Property Public Review Act” requiring that any disposition of land or buildings by the New York City Housing Authority be subject to and comply with the provisions of New York City’s Uniform Land Use Review Procedure.

Introduction

On May 17, 2013, the Committee on Public Housing (the “Committee”), chaired by Council Member Rosie Mendez, will consider a Preconsidered Resolution that calls upon the New York State Legislature to enact the “NYCHA Real Property Public Review Act” requiring that any disposition of land or buildings by the New York City Housing Authority (“NYCHA” or

the “Authority”) be subject to and comply with the provisions of New York City’s Uniform Land Use Review Procedure. The Committee expects to receive testimony from interested members of the public.

Background on NYCHA

NYCHA was created in 1934, three years before federal public housing.¹ NYCHA had two goals – (1) to provide low-cost housing for middle-class, working families temporarily unemployed because of the Depression and (2) to bolster the lagging economy by creating jobs for the building trades.² Later, NYCHA’s goal evolved into providing safe, decent housing for families with the lowest incomes.³

The first NYCHA development – “First Houses” – was built in 1935 and contained 123 public housing units.⁴ By 1942, NYCHA had 12 developments and 13,180 units.⁵ Today, NYCHA has 334 developments, 2,597 buildings, and 178,895 public housing units, making it the largest public housing authority in North America. NYCHA also administers Section 8 affordable housing vouchers for 94,400 apartments. All told, NYCHA serves a community of 629,345 people, roughly the population of Boston.⁶

NYCHA’s Plans to Lease Certain of its Properties⁷

¹ Peter Marcuse, “The Beginnings of Public Housing in New York,” *Journal of Urban History* 12(4) at 353-54 (1986).

² Marcuse, 353-54; J.A. Stoloff, “A Brief History of Public Housing,” *Paper presented at August 14 meeting of the American Sociological Association*, at 3 (2004).

³ Marcuse, 354; Stoloff, 1; *see also* Judith D. Feins, et al., “Revised Methods of Providing Federal Funds for Public Housing Agencies,” *US Department of Housing and Urban Development*, at 9 (1994).

⁴ Marcuse, 356.

⁵ Nicholas Dagen Bloom, “Public Housing That Worked: New York in the Twentieth Century,” *University of Pennsylvania Press*, at 43 (2008).

⁶ *See* NYCHA’s Fact Sheet available online at <http://www.nyc.gov/html/nycha/html/about/factsheet.shtml>.

⁷ For additional background information concerning NYCHA’s leasing plans, please refer to the Committee’s April 5th Briefing Paper, which is available online at legistar.council.nyc.gov.

In December 2011, NYCHA released its five-year strategic plan – *Plan NYCHA: A Roadmap for Preservation*, which included an “imperative” to “develop new mixed-use, mixed-income housing and resources.”⁸ According to that imperative, NYCHA would:

- “Create and implement a clear, long-term development strategy for the entire NYCHA portfolio, including all land and development assets that could potentially accommodate new housing”;
- “Conduct a comprehensive analysis of NYCHA land to determine the most beneficial uses”;
- “Create a long-term plan for maximizing the value of NYCHA’s assets, including the land, buildings, and development rights” and
- “Generate revenue to fund ongoing operations and capital improvements for existing public housing from ground leases, or partnership leases.”⁹

In September 2012, NYCHA’s chairman announced that the Authority had undertaken “a comprehensive review of NYCHA’s real estate footprint with a goal of offering NYCHA-owned sites for the development of market rate and affordable housing and, in some cases, commercial, retail, and community facilities.”¹⁰ The chairman said this review showed that NYCHA could “generate hundreds of millions of dollars” and create “thousands” of new market-rate apartments and “at least 1,000 permanently affordable apartments.”¹¹ The chairman also said that NYCHA would consult with stakeholders *before* selecting sites to lease: “After we’ve engaged our residents, elected officials, and other community leaders, we will finalize a list of sites and, early in the New Year, release a Request for Proposals seeking development at these locations.”¹²

⁸ NYCHA’s 2012 Five Year Capital Plan, *available online at* http://www.nyc.gov/html/nycha/downloads/pdf/Five_Year_Capital_Plan_2012-2016.pdf.

⁹ *Id.*

¹⁰ Speech of NYCHA Chairman John B. Rhea to Association for a Better New York on September 24, 2012 (“ABNY Speech”).

¹¹ *Id.*

¹² *Id.*

In January 2013, *without* having first engaged residents, elected officials, and other community leaders regarding site selection, NYCHA announced its plans to lease certain of its properties. Under the plan, NYCHA would lease 15 to 18 sites at 8 different Manhattan public housing developments to private developers who would then build market-rate housing along with a relatively small number (20%) of apartments affordable to lower-income families. The sites NYCHA plans to lease currently contain parking spaces, compactor yards, basketball or handball courts, a paved baseball field, an outdoor plaza, a landscaped area, and a community center.¹³

Throughout February and March 2013, NYCHA began presenting its plans for each development to residents and resident leaders. Following a State Assembly hearing in March and substantial pressure from elected officials, NYCHA agreed to post some details of its leasing plans online.

On April 5, 2013, this Committee held an oversight hearing to review NYCHA's leasing plans. At that hearing, the Committee received testimony from NYCHA representatives, NYCHA residents and resident organizations, and interested members of the public. Although NYCHA discussed aspects of its proposed leasing plans, many relevant details were not provided or subsequently addressed including how the Authority would incorporate comments and recommendations from stakeholders and members of the affected communities into these plans.

NYCHA's proposed leasing plans would eliminate community resources such as yards and other open spaces and would otherwise alter the fabric of NYCHA developments and the surrounding communities. Despite these concerns, NYCHA intends to release a request for proposals to prospective developers within the coming weeks without allowing relevant

¹³ NYCHA Land-Lease Plan and development presentations *available online at* <http://www.nyc.gov/html/nycha/html/preserving/leasing-land.shtml>.

community partners the opportunity to meaningfully shape its development process. NYCHA is also considering similar proposals for its other developments.

Federal Process for Disposing of Property Owned by a Public Housing Authority

Before a public housing authority can lease away its property, it must comply with the process set forth in Section 18 of the United States Housing Act of 1937 and the rules of the United States Department of Housing and Urban Development (HUD) (the “Section 18 process”). The Section 18 process requires that NYCHA apply to and receive approval from HUD prior to leasing its property. Among other things, NYCHA’s HUD application must show justification for the proposal; that NYCHA developed the leasing plans in consultation with the Resident Advisory Board, affected residents, and affected resident organizations; that NYCHA has included copies of written comments received; consultation with the Mayor; NYCHA board approval; and that the leasing plans are included in the Annual Plan disseminated to the public.¹⁴

Issues with the Section 18 Process

While the Section 18 process does require that NYCHA “consult” with public housing residents and resident associations, it does not specify what constitutes meaningful resident consultation nor does it expressly require consultation with other stakeholders, such as the City Council and other relevant community members. This shortcoming could be remedied by requiring NYCHA to comply with the City’s Uniform Land Use Review Procedure (“ULURP”) when it is considering disposing of its property.

ULURP

ULURP applies to certain “changes, approvals, contracts, consents, permits or authorization thereof, respecting the use, development or improvement of real property.”¹⁵

¹⁴ See generally 24 C.F.R. Part 970.

¹⁵ See, generally, Charter § 197-c.

Generally, applications for, city map changes; designation or changing of zoning districts; issuance of certain special permits; site selection for certain City capital projects, housing and urban renewal plans and projects done under city, state, or federal law; and the sale, lease, or other disposition of City-owned property or acquisition of property by the City are subject to ULURP.¹⁶ The steps of ULURP are as follows:

- **Initial receipt of application.** Upon receiving an application, the Department of City Planning (“DCP”) forwards the application and all supporting materials on to the affected Borough President, Community Board, and Borough Board (if the application involves more than one Community Board’s domain).¹⁷

- **Completeness review.** DCP then reviews the application for completeness and, if appropriate, certifies that the application is ready for review.¹⁸

- **Community Board review.** No later than 60 days after receipt of an application certified as complete, the affected Community Boards may hold a public hearing on such application and submit recommendations to the City Planning Commission (“CPC”) and the affected Borough President.¹⁹

- **Borough Board Review.** If the application involves more than one Community Board’s domain, then the affected Community Boards must also send their recommendations to the affected Borough Board.²⁰ Within 30 days of receipt, the Borough Board may also hold a public hearing and send recommendations to the CPC.²¹

¹⁶ *Id.*

¹⁷ Charter § 197-c(b).

¹⁸ Charter § 197-c(c).

¹⁹ Charter § 197-c(e). Under certain circumstances, the public hearing may be waived.

²⁰ Charter § 197-c(f).

²¹ *Id.*

- **Borough President Review.** Not later than 30 days after receiving recommendations from all affected Community Boards, the affected Borough President may submit recommendations to the CPC.²²

- **CPC Hearing and Approval/Rejection.** After the 30-day time period for the Borough President’s recommendations expires, the CPC has 60 days to hold a public hearing on the application and to “approve, approve with modifications, or disapprove the application.”²³

- **Council Hearing and Approval/Rejection.** After the CPC takes action, certain applications are then sent to the City Council for review.²⁴ The City Council has 50 days to act on an application.²⁵

NYCHA Real Property Public Review Act

The NYCHA Real Property Public Review Act was recently introduced in both houses of the State Legislature. The Act would provide that “notwithstanding any law, rule or regulation to the contrary, any disposition of land or buildings by the New York City Housing Authority shall be subject to and shall comply with the provisions of New York City’s Uniform Land Use Review Procedure in addition to the provisions of section 18 of the U.S. Housing Act of 1937.” This is intended to ensure that a broad array of community stakeholders, including the City Council, are given the opportunity to review and consider NYCHA proposals related to the disposition of its property prior to the implementation of such proposals.

Preconsidered Resolution No.

²² Charter § 197-c(g).

²³ Charter § 197-c(h).

²⁴ *See, generally*, Charter § 197-d.

²⁵ Charter § 197-d(c).

The Preconsidered Resolution would call on the State Legislature to enact the NYCHA Real Property Public Review Act.

Preconsidered Res. No.

Resolution calling upon the New York State Legislature to enact the “NYCHA Real Property Public Review Act” requiring that any disposition of land or buildings by the New York City Housing Authority be subject to and comply with the provisions of New York City’s Uniform Land Use Review Procedure.

By Council Members Mendez, the Speaker (Council Member Quinn), Chin and Mark-Viverito

Whereas, The New York City Housing Authority (“NYCHA”) is a public housing authority with 334 developments, 2,597 buildings, and 178,895 public housing units, making it the largest public housing provider in North America; and

Whereas, The majority of NYCHA’s housing stock is over fifty years old; and

Whereas, In 2006, a physical needs assessment conducted by NYCHA indicated that NYCHA must invest \$25 billion in capital funds over 15 years to keep its housing in a state of good repair, which includes making needed repairs and upgrades to brickwork, roofs, elevators, building systems and apartment interiors; and

Whereas, The bulk of NYCHA’s capital funds come from federal grants and these grants have declined substantially in recent years, falling from \$420 million annually in 2001 to \$270 million annually in 2012; and

Whereas, To generate revenue, NYCHA recently announced plans to lease property at certain of its housing developments to private developers who will build mostly market-rate housing units, along with some affordable housing units, upon that property; and

Whereas, Public housing authorities, such as NYCHA, must comply with the process set forth in Section 18 of the United States Housing Act of 1937 (“Section 18”) before selling, leasing or otherwise disposing of their property, which requires that disposition plans be reviewed and approved by the United States Department of Housing and Urban Development; and

Whereas, The Section 18 process requires, among other things, that NYCHA consult with residents and resident organizations regarding its plans to lease property; and

Whereas, The Section 18 process does not specify what constitutes meaningful resident consultation or expressly require consultation with other community stakeholders such as the City Council, Community Boards, Borough Boards and Borough Presidents regarding property leasing plans, and such consultation is crucial to ensuring that communities play an important role in shaping their own neighborhoods; and

Whereas, Certain land use changes, approvals, contracts, consents, permits or authorizations thereof, respecting the use, development or improvement of real property in the city are subject to the City's Uniform Land Use Review Procedure ("ULURP"), which ensures that such plans proceed in a transparent manner by requiring, among other things, that these plans be publicly heard by and subject to recommendations from relevant Community Boards, Borough Boards, Borough Presidents in addition to the City Council and by further requiring that such plans proceed upon the approval of the City Planning Commission and the City Council; and

Whereas, Unless certain land use changes would be necessary, NYCHA is not currently required to comply with ULURP before selling, leasing or otherwise disposing of its property; and

Whereas, NYCHA has not provided public housing residents and community stakeholders with an opportunity to shape or meaningfully impact NYCHA's recently announced property leasing plans; and

Whereas, NYCHA property is an invaluable public resource that should not be disposed of but through a transparent process giving due say to residents, the community and their

representatives, particularly where such property may ultimately be used for the development of primarily market-rate housing; and

Whereas, S. 4641/A. 6964, the “NYCHA Real Property Public Review Act,” which is currently under consideration by the New York State Legislature, would require that any disposition of NYCHA property be subject to ULURP; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to enact the “NYCHA Real Property Public Review Act” requiring that any disposition of land or buildings by the New York City Housing Authority be subject to and comply with the provisions of New York City’s Uniform Land Use Review Procedure.

EAA
LS# 4736/4740
5/10/2013