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FOR THE RECORD

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Subcommittee on Zoning and Franchises
New York City Council
New York, NY

Re: **La Hermosa (Applications No. C 190434 ZMM; N 190433 ZRM; C 190435 ZSM; N 190436 ZSM)**

Dear Subcommittee Members:

I ask this subcommittee to vote on these applications in the NEGATIVE.

First of all, it is unheard of that any official body would vote in favor of a project without an attached developer. That is the main reason why Community Board 10, I and others (Borough President of Manhattan) have rejected this project.

We shouldn't have to rack our brains to think of issues which would cause a developer to not commit to this project as La Hermosa has promised it would do. There are unknown factors that may not be practical or might even legally restrain a developer from doing what Hermosa said it is willing to do.

I can give this committee a few logical reasons why without a developer in the picture this project rings uncertainty: 1) The whole realistic financial outlook is missing; 2) deficient environmental impact study; 3) overcrowding; 4) potential negative impacts on Transportation, local schools, and parks.

Then there is the law itself. Ten years ago maybe this project as promised would have been legal. Now as promised it violates the law. And not just any law, but a supreme law of the land.

The ***Fannie Lou Hamer, Rosa Parks and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006***. (The Voting Rights Act of 1965 as amended in 2006)

The ***FLHRPCSKVRARAA*** law was enacted by the 109th United States Congress and 43rd President of the United States. It is a supreme law of the land. The temporary provisions in the Voting Rights Act of 1965 (i.e., Section 5) were again extended in 2006, this time up to 2035. Moreover, greater protections in Section 5 were given to protected groups, i.e., the African American population. In particular Section 5, as amended, states that any standard, practice or procedure with respect to voting, denies or abridges the right to vote if its purpose or ***its effect will be*** the diminishment of the ability of any U.S. citizens on account of race or color, or in

contravention of certain guarantees, ***to elect their preferred candidates of choice***. Emphasis added.

In fact, Section 5 was challenged in 2012 and upheld by the SCOTUS in the matter of ***Shelby County vs. Eric Holder***. (2013)

What this amounts to is that these massive rezoning applications for Harlem development in the ULURP pipeline that offer 25% *"affordable"* housing and 75 % open market units are threatening the plurality of Central Harlem, which is African American.[1] We have demonstrated throughout time that our preferred candidate of choice is African American. And given the choice which under Section 5 we have, Congress has wisely figured out, we will continue voting for an African American, likely Democrat, to represent us in City Council and our state legislative districts.

Relevant Background Facts

Community Board 10 which is where the La Hermosa project will be constructed, makes up a large part of City Council District 9 and its plurality is African American, giving Council District 9 also a plurality African American.[2]

Community Board 10's citizen voting age plurality is also African American.

The African American population in the United States is a protected group under the Voting Rights Act of 1965.

African Americans living in Community Board 10 (Central Harlem) and Council District 9 have enjoyed a plurality African American for over one hundred years and political power for the last four score years.

The community at large, expert opinions and other evidence have alleged or demonstrated that such rezoning, along with other mass rezonings in Harlem, *past and present*, could affect the African American population's plurality status in District 9 in such a way that within 5 years Harlem will not be a plurality African American.

The city's zoning standards and developers' practices have created a dangerous precedent for the African American population in Harlem. Continuing to go unchecked it will accelerate the termination of the African American population's plurality status. That's why a line is now being drawn in the sand. And we stand on the ***FLHRPCSK*** law.

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[1] The affordable units that are offered require an income of approximately 48K per year. Not only is this income out of the range of most Harlem residents, the units in that 25% are mostly studios, with some 1 bedrooms. Very few 2 bedrooms are offered. This type of development discourages the production or increase of Black families.

[2] Manhattan Community Board 10 2014 District Needs Statement - "African Americans make up approximately 63% of Community Board 10's population, followed by Hispanic at 22%, White at 10% and Asian at 2%." However, upon information and belief the Black population in District 9 has shrunk to 53% as of 2018.

Such concern is realistic because historically **open market** apartments are occupied mostly by non-African Americans, as historically African Americans have a higher unemployment rate due to discriminatory systems that have long been in place and African Americans historically have faced and still do unequal employment practices.

Voting Rights Act (Section 5) Protection in Harlem Precedent

Back in 2007 Community Board 10 responded to the City's 125th Street Rezoning plan in its Resolution Disapproving of the 125th Street Rezoning which included the ground that its plurality and political power would be threatened by such rezoning, thereby making such zoning in part a violation of the Voting Rights Act of 1965, as amended in 2006.

City council heeded to Community Board 10's concern in that regard and within the 125th Street Special District's area for the highest residential density, such development is discouraged by certain mechanisms that have been put in place under local law.

In fact, City Council District 9 residents successfully fought to strengthen the African American's plurality status in District 9 (as well as Community Board 10) when the City brought forth its City Council Redistricting plan in 2012-2013, making such plurality (59% then) greater by 8%.

Purpose

The Act's purpose in part is to guarantee the right of protected groups (i.e., African American) to be able to cast meaningful votes [Section 2].

Congress has found that the reasons for such concerns by the African American group (supra) are justified.

Whereas Congress has declared in part through such Act that any practice or procedure that affects voting that has the purpose of or will have the effect of diminishing or diluting the ability of any citizens in a protected class (i.e., African American) to elect their preferred candidates of choice denies or abridges such group's right to vote [Section 5].

The African American population in CB 10 and Council District 9 is sufficiently large and geographically compact to constitute a majority in a single – member district; such group is politically cohesive; and the majority votes sufficiently as a bloc.[3]

Therefore, because of the above, African Americans living in CB 10, Council District 9, Senate District 30, Assembly District 70, enjoy African American representation in government, which

[3] I would hope that I can forgo the arduous task of going through all the Supreme Court cases that support the implications being made in these two paragraphs.

is by their choice and they have demonstrated that they want to continue voting for people from their group.

Affordable Housing

The city's standard, law or rule for affordable housing can no longer apply in Central Harlem. Just like there are laws that let you vend in one part of the city but make it unlawful to vend in another part, the MIH/IH is no longer legal in Harlem under the Supreme Law of the land.

Maybe it could have been 20 years ago, maybe even 10. However, it is not legal for Central Harlem now. An example would be this: 50 years ago the use of asbestos was legal. Now it's not. A non-marital child under the inheritance laws of New York can prove paternity kinship largely with a post DNA test result in his/her favor. However, if a decedent died in 2009 a non-marital child would need to show clear and convincing evidence and that the decedent openly and notoriously acknowledged the child during his lifetime.

So laws are set up in different ways to do different things. The Fannie Lou Hamer, et al, law is designed to protect a protected group's right to a meaningful vote. That can only be determined by the Black population in Central Harlem. Thus we have declared it by our voting history.

MIH's flaw

It has been historically demonstrated that even when developing as of right, the likelihood that developers who build on a scale such as the La Hermosa plan without a rezoning approval will apply for the federal Low-Income Housing Tax Credit (LIHTC) because the tax credits are more attractive than tax deductions, as the credits provide a dollar-for-dollar reduction in a taxpayer's federal income tax, whereas a tax deduction only provides a reduction in taxable income.

For any developer to qualify[4] it agrees to one of the following:

- **At least 20% or more of the residential units in the development are both rent restricted and occupied by individuals whose income is 50% or less than the area median gross income.**
- At least 40% or more of the residential units in the development are both rent restricted and occupied by individuals whose income is 60% or less than the area median gross income.
- **At least 40% or more of the residential units in the development are both rent restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The average of the imputed income limitations shall not exceed 60% of the area median gross income.**

Typically, the project owner will agree to a higher percentage of low income usage than these minimums, up to 100%. There are no limits on the rents that can be charged to tenants who are

[4] The first step in the process is for a project owner to submit an application to a state authority, which will consider the application competitively. The application will include estimates of the expected cost of the project and a commitment to comply with one of the conditions (supra), known as "set-asides." HUD

not low income but live in the same project. However, the rule says, "60% or less" contemplating that the owner/developer will seek some sort of tax abatement or free "something" from the local government, thus the rule does not prevent the developer/owner from offering a lower percentage of the AMI.

The La Hermosa group has not presented an income targeted housing plan that is more attractive than 60% of the AMI, which is something that they will most likely do even without a rezoning approval. *Supra.*

However, this is a project for a rezoning. La Hermosa has requested a zoning that will give it greater bulk and density with other benefits. Also, La Hermosa will more than likely apply for the city's J51 Tax Credit program and for a set term not pay any city property taxes, without having to offer the low-income units to families earning less than 60% of the AMI. Again this will put a tax burden on Harlem's smaller property home owners.

This is what you call double dipping. Notwithstanding the double dip, La Hermosa's letter to Council member Bill Perkins, dated November 27, 2019, talks about an affordable housing fund it is willing to commit to that will help sustain housing already built. But again our concern is this: Is that housing stock within the income targeted range that benefits low income families that we're talking about, i.e., 20-29K for a family of three? Perhaps it is housing that has an African American minority.

When you add everything up, left unchecked, we are allowing housing, new and old, through a systematic standard, practice and procedure which its effect will diminish the ability of Harlem's plurality African American population to elect their preferred candidates of choice within several years. We cannot allow this standard, practice or procedure any longer.

Further Risk Factors

Furthermore, it has been historically demonstrated that major developments that consist of mainly open market units increase property taxes on smaller property owners in the catchment areas where such developments are situated. And the area of the La Hermosa cite is surrounded by many properties owned by senior African Americans with limited income, thereby putting such properties at risk of higher property taxes, which ultimately will force these tenants out of Harlem.

Income Targeted Housing solution

Community Board 10 followed the Harlem Platform Committee's recommendation for an Income Targeted Housing model, in its decision disapproving the 125th Street Rezoning with Conditions back in 2007.

What Income Targeted Housing does is allows the creation of housing that addresses the relevant income bands in the district where the development is going to go up on a priority basis.

So if there are 100 people in your district in need of housing and 80% are low income earning between 15-29K a year, with or without a family of three, and the 20% are families earning 130-200K a year, with or without a family of three, we don't want/need 80% of housing that caters to someone or families earning 130-200K a year, and the 20% of housing only geared to families not even making 15-29K a year but instead earning 43-90K a year. That is truly gentrification at its top form, which is a condition created by unlawful government means. It pushes those low income tenants out and brings in wealthier tenants. This so happens to coincide with Black people being the ones pushed out and whites or non-Black people being the ones brought in.

Well this has been happening in Harlem for some time now and it is time to stop.

However, there are people in government who have heard our plea. Assembly member Inez Dickens has been pushing for Income Targeted Housing. Public Advocate Jumaane Williams is asking for Income Targeted Housing. Former HPD Commissioner Shaun Donovan tried to push for it before he went to HUD. Even the [Victoria Theater Project] which is a towering 26 story building on W, 125th Street – a project under the control of the Empire State Development Corp - has honored the spirit of the Voting Rights Act of 1965, as amended in 2006, and the 125th Street Special District, whereby it has a 100 feet set back and its housing model is targeted at 50/30/20, which housing income bands are Open, Moderate and Low, respectively. The Urban League development will also be utilizing an Income Targeted Housing model.

This is a fair attempt at respecting and adhering to the Fannie Lou Hamer, et al, law. La Hermosa will not be harmed by a decision of **"NO"** on its project. However, any harm that could occur doesn't rise above a supreme law of the land, especially since the project came well after such law was enacted. Furthermore the ULURP procedure, the traditional standard and practice (precedent) of how things are done when it comes to housing development do not supersede a supreme law of the land.

Conclusion

It is with the utmost sincerity that I request this subcommittee to follow the advice of CB 10, the MBP and others to vote against the applications before it and advise La Hermosa to get a developer first and follow a housing model that will not violate the Voting Rights Act of 1965, as amended in 2006.

Very truly yours,

Julius Tajiddin

Harlem Advocate/Community Leader

Cc: Rafael Escano

Bill Perkins (City Council)

Lisa Downing (Community Board 10 Land Use Chair)

Athena Moore (Borough President of Manhattan Gale Brewer