



Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**REPORT ON LEGISLATION BY THE
HOUSING AND URBAN DEVELOPMENT COMMITTEE**

**A.6964
S.4641**

**M. of A. Wright
Sen. Hoylman**

AN ACT to require 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.

THIS BILL IS APPROVED

The Housing and Urban Development Committee of the New York City Bar Association (the Committee) addresses legal and policy issues related to the urban environment with a particular emphasis on affordable housing preservation and development. This report is submitted by the Committee in support of A.6964/S.4641, a new law which would require the New York City Housing Authority ("NYCHA") to follow New York City's Uniform Land Use Review Procedure ("ULURP"), a statutory process designed to ensure public participation in city planning decisions, when conveying any city-owned land or buildings.

CONTEXTUAL BACKGROUND

NYCHA presently possesses valuable development rights associated with its public housing projects, which may be used to raise funds and benefit residents if carefully allocated. Most of NYCHA's housing projects were designed in the 1950s and follow what is known as a "tower-in-the-park" format: high-rise buildings with small horizontal footprints, often located on "superblocks" comprised of multiple combined city blocks. In 1961, New York City adopted a new zoning plan that regulated residential building density based on the ratio of a building's horizontal footprint to the size of its underlying plot of land. Because most of NYCHA's high-rise housing projects have relatively small footprints and large proportions of open space, this zoning scheme (which still prevails today) allows for substantial further construction on or adjacent to those plots.

Most of these development rights are still unused. Spread among its housing projects in Manhattan alone, NYCHA controls approximately 30.5 million square feet of unused development rights.¹ These development rights are potentially worth hundreds of millions of dollars, which NYCHA badly needs for capital repairs and operation costs. NYCHA presently

¹ Manhattan Borough President Scott M. Stringer, "Land Rich, Pocket Poor: Making the Most of New York City Housing Authority's (NYCHA) Unused Development Rights" 1 (August 2008).

has over \$6 billion dollars in unmet capital needs, and has for several years been unable to adequately maintain or staff its existing housing.²

In late 2012 NYCHA announced its intent to enter into long-term leases with private developers to use some of these development rights for new residential construction. On August 16, 2013 NYCHA released a Land Lease Initiative Request For Expressions of Interest (“RFEI”) with a submission due date of November 18, 2013. The RFEI includes eight NYCHA developments with 10,620 apartments – Baruch, Campos Plaza, Carver, Douglass, LaGuardia, Meltzer Tower, Smith, and Washington Houses. Only developers that respond to the RFEI will be permitted to respond to a subsequent RFP. An applicant to the RFEI could be designated as a developer as a result of an “exceptional response” to the RFEI.³

NYCHA’s current proposal in its RFEI requires a retail component at seven of the eight NYCHA developments. Leasing land to commercial developers has the potential to raise significant funds for NYCHA,⁴ but the process of obtaining the necessary zoning variances would trigger mandatory public review (see below).

LACK OF PUBLIC PARTICIPATION

Under certain circumstances, New York City local law ensures the public an opportunity to review and comment on re-zoning and other development plans. Section 197-c of the New York City Charter, the Uniform Land Use Review Procedure (“ULURP”) generally requires city agencies to undertake a rigorous public review process before conveying any city-owned land or buildings, whether through sale, lease, exchange, or other disposition.⁵ ULURP dates back to 1975 and requires agencies to prepare detailed development applications, hold public hearings, and receive approval from the local community board, borough president, and city planning commission before conveying city property. Because NYCHA is a public authority and not a city agency,⁶ NYCHA’s land is not considered “real property of the city,” and so its infill

² NYCHA Chairman John B. Rhea, Testimony Before New York City Housing Authority Real Property Use Assembly Committee on Housing (March 15, 2013), *available at* <http://www.nyc.gov/html/nycha/downloads/pdf/nycha-land-lease-testimony-3-15-13.pdf> (last visited March 17, 2014).

³ See New York City Housing Authority Land Lease Initiative RFEI, p. 4.

⁴ For example, commercial rents in East Harlem (where the Carver and Washington Houses, two housing projects included in NYCHA’s infill development plan, are located) have risen from about \$50 to \$100 per square foot since 2010. Julie Satow, “Developers Are Making Bets on a Rising East Harlem,” THE NEW YORK TIMES (March 19, 2013), *available at* <http://www.nytimes.com/2013/03/20/realestate/commercial/developers-are-making-bets-on-a-rising-east-harlem.html> (last visited March 17, 2014).

⁵ See N.Y. Code § 197-c.

⁶ See Pub. Housing L. §§ 37-1(o), 402; *see also* *Rivera v. City of New York*, 90 A.D.3d 735, 736 (2d Dep’t 2011); *Grullion v. City of New York*, 297 A.D.2d 261 (1st Dep’t 2002); *Seif v. City of New York*, 218 A.D.2d 595 (1st Dep’t 1995) (NYCHA-owned property is not City-owned).

development plan's long-term leasing in of itself appears to fall outside of the scope of ULURP review.⁷

However, a zoning variance or waiver of local/state regulations could trigger a ULURP review, but it is not certain whether the creation of retail space as part of NYCHA's infill development plan will require such a variance or waiver.

Public review of NYCHA's infill development plan would instead be governed by Section 18 of the U.S. Housing Act of 1937, which would impose only the vague requirement that NYCHA "consult" with tenants prior to land conveyance.⁸ NYCHA has henceforth exerted limited efforts to meet with tenants in housing projects potentially affected.⁹ The RFEI affirms that both the HUD Section 18 Disposition Process and ULURP (*if* ULURP is triggered by the ground floor development plans) will require consultation with affected tenants and the community. Per the RFEI, presentations and discussions with elected officials and community boards will also be required. In fact, HUD encourages "planning activities, analysis, or consultations" in advance of seeking HUD approval, citing improvement in the quality of plans "when an entire community gets involved in the planning process."¹⁰

THE LEGISLATION

A.6964/S.4641 was designed with NYCHA's current infill development plan in mind, and would make NYCHA subject to ULURP for any sale, lease, exchange, or other disposition of city-owned property.

ANALYSIS

Without a mandatory review process such as ULURP, the public will not have a guaranteed opportunity to participate meaningfully in NYCHA's infill development plan. The U.S. Housing Act's "consultation" clause fails to impose any specific obligations on NYCHA, and so is effectively toothless, unenforceable, or both. ULURP, in contrast, is an established process whose requirements are well-known to city agencies.

A fair and meaningful review process is critical to maintaining transparency and responsiveness to New Yorkers' concerns. The tenants of NYCHA's housing projects in particular have significant interests tied to infill development plans, including: 1) availability of accessible, open, recreational and/or community facility space; 2) composition and design of new residential developments, including the reservation of units for low- or middle-income tenants

⁷ See N.Y. Code § 197-c(a)(10).

⁸ See 42 U.S.C. § 1437p(b)(2). See also New York City Housing Authority Land Lease Initiative RFEI, pp. 17-21.

⁹ NYCHA, "Resident Meetings," available at <http://www.nyc.gov/html/nycha/html/preserving/leasing-land-resident-meetings.shtml#mar2013>. See also Mayor Michael M. Bloomberg, Letter to Gigi Lee, Chair, Community Board 3 (March 20, 2013), available at http://www.nyc.gov/html/mancb3/downloads/cb3docs/Mayor%20Bloomberg_Response%20to%20Infill%20Program%20Letter_3.19.13.pdf, (describing NYCHA's planned public consultation process) (last visited March 17, 2014).

¹⁰ See New York City Housing Authority Land Lease Initiative RFEI, p. 25.

and/or tenants with special needs; 3) effects on demand for, and availability of, commercial space; and 4) increased burdens on transportation, infrastructure, and public services.

Without significant public review NYCHA is at greater risk of approving development proposals that fail to address fully the concerns and needs of both NYCHA and its tenants and other citizens, and may also miss opportunities to incorporate innovative ideas and suggestions from the community.

RECOMMENDATION

Increased utilization of NYCHA's unused development rights could represent a potent tool for easing NYCHA's fiscal problems while expanding access to housing. But such development should not come at the expense of NYCHA's present tenants and neighboring community members. The proposed legislation would require NYCHA to undergo ULURP review across the board for the infill development plan, which would provide a structured and consistent process for NYCHA to hear, discuss, and meaningfully address those concerns, as well as take into account community needs such as the proposed impact on transportation, infrastructure, and public services. The result would be increased accountability, fairness, and a more mutually agreeable development plan in exchange for only brief procedural delay.¹¹ For these reasons, the Committee supports the bill and urges its enactment.

March 2014

¹¹ ULURP review of a complete application can take up to 215 days, but can be much shorter depending on the time the Borough President and City Council take to approve an application. *See* N.Y. Code § 197-c(a)(12); "Uniform Land Use Review Procedure Time-Line," available at <http://www.nyc.gov/html/dcp/pdf/luproc/lur.pdf> (last visited March 17, 2014)..