



COMMUNITY DEVELOPMENT PROJECT

Testimony of Adrien A. Weibgen on the Draft PHA Agency Plan for Fiscal Year 2019: NextGeneration Neighborhoods Infill Program

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My name is Adrien Weibgen; I am a staff attorney in the Equitable Neighborhoods practice of the Community Development Project (CDP). CDP works with local coalitions to foster responsible, equitable development and help make sure that people of color, immigrants, and other low-income residents who have built our city are not pushed out in the name of “progress.” We work together with our clients to ensure that residents in historically under-resourced areas have stable housing they can afford, places where they can connect and organize, jobs to make a good living, and other opportunities that allow people to thrive.

CDP has been working with residents at Wyckoff Gardens, LaGuardia Houses, and Cooper Park Houses – three of the sites where NYCHA intends to construct half-market rate and half below-market housing under the NextGen Neighborhoods program. We and are clients have serious concerns about NYCHA’s plans, which NYCHA is advancing without the type of resident participation that federal law requires.

Inadequate Resident Consultation

Federal regulations give resident associations the right to “actively participate through a working partnership with [NYCHA] to advise and assist in *all aspects* of public housing operations”¹ (emphasis added). But to date, NYCHA has completely excluded resident associations from several critical decisions related to the NextGen Neighborhoods program:

- The affordability mixes that are available in the program. With no input from residents, NYCHA has decided to offer two types of infill development: fully affordable buildings, and half-affordable, half market-rate buildings. But residents should have the opportunity to consider and decide among a wider range of alternatives. For instance, some residents have called for all new affordable apartments to be made affordable at rent levels accessible to current NYCHA residents. Others might want the option of considering fully market-rate developments, *if* the revenue from such developments is sufficient to fully address repair needs at their campus. But these options have never been put on the table for residents to discuss and decide.
- Which campuses will be subject to new infill development. NYCHA has announced new sites for development under NextGen Neighborhoods in several ways. In some cases, NYCHA has failed to include a proposed project in a Draft Annual Plan, only adding it at

¹ 24 C.F.R. § 964.100.

the Final Plan stage or later through a Significant Amendment – a process that removes residents’ only consistent, meaningful opportunity to publicly weigh in on NYCHA’s decisions.² In other cases, NYCHA has announced its intentions and begun to shape its Request for Proposals long before the hearing on the Draft Annual Plan, again denying residents a real chance to weigh in before the plans have advanced significantly.³

- Whether a specific campus will get 100% affordable housing, or half-affordable, half-market rate housing. In all instances, residents have been completely excluded from this decision. Instead, NYCHA has “announced” which type of infill will take place where, never once asking residents which they might prefer and why.

Because NYCHA has excluded residents from these critical initial decisions, many residents feel that NYCHA’s “community engagement” strategies have been so limited as to lack any real purpose. For instance, residents have had no opportunity to say they do not want an infill development at all, or that they would prefer a 100% affordable building where a half-luxury building is proposed. Even where NYCHA solicits resident input, it frequently ignores it. For example, at Holmes Towers, NYCHA approved plans for a new tower to be built atop what is currently a playground, over the objection of many community residents. Worse yet, on some campuses such as Baruch Houses, NYCHA has made critical decisions such as these without even meeting with elected resident leadership or the wider community.

Inadequate Benefit to NYCHA Residents

Under federal regulations, NYCHA, as a public housing authority, may “demolish or dispose” of public housing property only if it establishes that keeping the property as is “is not in the best interests of the residents.”⁴ Specifically, NYCHA has to certify to HUD that the undeveloped land “exceeds the needs of the development,” or that leasing it away is “incidental to, or does not interfere with, continued operation of the remaining portion of the development.”⁵

NYCHA has claimed that the NextGen Neighborhoods program is in residents’ “best interests” because it will help generate much-needed revenue for NYCHA. This argument is flawed in several ways. First, almost none of the housing that NYCHA and HPD plans to construct on NYCHA property will be available to current NYCHA residents, so they will not concretely benefit from the new housing created. Second, the financial return to NYCHA for the NextGen

² For example, NYCHA failed to include proposed 50/50 projects at Wyckoff Gardens and Holmes Towers in the Draft Annual Plan for Fiscal Year 2016 NYCHA released in June 2015, announcing selection of these sites for NextGen Neighborhoods only via a press release in September 2015. A Request for Proposals for infill development at these sites was issued in June 2016, and in July, NYCHA submitted to HUD a Final Significant Amendment to the Annual Plan for Fiscal Year 2016 that included disposition of parcels of land at Holmes Towers and Wyckoff Gardens.

³ For instance, NYCHA announced proposed 50/50 development at Cooper Park Houses in Brooklyn via a press release issued in October 2, 2017. But the disposition of Cooper Park Houses was not described in the Final FY 2018 Annual PHA Plan submitted by NYCHA to HUD just a few days later, on October 18, 2017. Instead, NYCHA’s Final FY 2018 Annual Plan stated that 2 additional NextGen Neighborhood sites, including Cooper Park Houses, had been “announced” – a decision made without input from any residents.

⁴ 24 CFR § 970.7(a)(5) and § 970.17.

⁵ 24 CFR § 970.17(d).

Neighborhoods construction will be minimal, since nearly all of the housing NYCHA and HPD have planned is affordable housing that is not intended to, and will not, generate any financial return to NYCHA. Apartments that do not financially benefit current NYCHA residents, while creating significant environmental and quality of life impacts for those residents, cannot reasonably be construed as being in their “best interests.” Although the goal of affordable housing construction is a laudable one, it is certainly worth wondering whether NYCHA residents – a population that has been ignored and overburdened for generations – should again have to bear the brunt of the City’s planning initiatives. Third, if NYCHA’s goal is to generate revenue to support existing buildings, it has failed miserably. NYCHA has failed to set a floor on the price of the 99-year ground leases it is offering to developers in hot markets such as the Lower East Side, i.e. the *minimum price* it requires from developers to move forward with a project at all. As a result, developers have offered – and NYCHA has accepted – payments that are both far beneath what NYCHA could demand, and far below what is needed to address *existing* capital repair needs at impacted NYCHA campuses, much less future needs. For instance, at Holmes Towers, NYCHA accepted \$25M for a 99-year lease, of which Holmes will receive only half – not nearly enough to address capital repair needs estimated at \$40M as of 2011. At Wyckoff Gardens, NYCHA accepted \$37M for a 99-year lease, of which Wyckoff Gardens will receive only half – again, not nearly enough to address capital repair needs estimated at \$43M as of 2011. NYCHA has also failed to clarify if it plans to require developers to make any ongoing payments to help sustain the impacted campuses over the course of the 99-year lease, casting even more doubt on the financial benefits impacted projects will derive from the NextGen Neighborhoods program.

Failure to Meet NYCHA’s Mission

NYCHA’s mission is to “increase opportunities for low- and moderate-income New Yorkers by providing safe, affordable housing and facilitating access to social and community services.”⁶ Under federal regulations, NYCHA, as a public housing authority, is required to regularly report to HUD on its “mission for serving the needs of low-income, very low-income and extremely low-income families in the PHA’s jurisdiction” and the “goals and objectives that enable [NYCHA] to serve the needs of [such] families...”⁷⁸

NYCHA’s proposed 50/50 projects fail to meet NYCHA’s mandate as a public housing authority in several key ways. First, the affordable housing in these projects will not be public housing. It will not be affordable to many current NYCHA families, and nor will NYCHA residents of impacted campuses receive any specific preference for newly-available apartments. Thus, the affordable apartments will not serve NYCHA residents *directly*. Second, the affordable housing in these projects will in no way serve to bolster NYCHA’s finances and thus will provide no *indirect* benefit to the impacted NYCHA campuses. Instead, the affordable component of these projects is designed to, and does, only serve the goal of generating additional below-market

⁶ “About NYCHA.” Available at <http://www1.nyc.gov/site/nycha/about/about-nycha.page> (last accessed May 22, 2018).

⁷ 24 C.F.R. § 903.6.

⁸ Federal regulations define low-income, very low-income, and extremely low-income families as those with incomes less than or equal to 80% of the Area Median Income, with some limited exceptions. *See* 24 C.F.R. § 5.603.

apartments. Although this goal is a worthy one, it fails to advance NYCHA's specific mission or to serve current NYCHA residents, whose needs have been given short shrift in policymaking for far too long.

Recommendations

At present, NYCHA's NextGen Neighborhoods program is failing to meet the requirements of federal law, and failing to meet the needs of residents. The Community Development Project stands with its clients and urges NYCHA to:

1. **Directly involve NYCHA residents in selecting which campuses will be targeted for development, and which program will be used at each development** (fully affordable, half-affordable, half-market, or a new option of residents' choosing). We believe that NYCHA residents should have an opportunity to vote YES or NO on each new development on their own campuses.
2. **Offer residents meaningful information about the universe of possibilities** so that they can choose the program and affordability mix – *if any* – that best fits their campus's needs.
3. **Increase the financial benefit to impacted NYCHA campuses** by:
 - a) Setting a price "floor" – the minimum amount required to proceed – that more accurately reflects the value of a 99-year lease in the "hot" markets where 50/50 projects are being proposed. At minimum, this should be sufficient to address current capital repair needs at each impacted campus.
 - b) Requiring developers to make annual revenue contributions to support future capital needs at the impacted developments.
 - c) Ensuring that a greater share of the financial benefit from each project is directed toward the impacted campus, as residents of these campuses will bear the full cost of the new developments.
4. **Meaningfully consider proposed infill projects in the context of other neighborhood conditions**, including:
 - a) Ongoing impacts from Superstorm Sandy, and environmental hazards more generally
 - b) Other active construction proposals in the neighborhood
5. **Create transparent, enforceable, and meaningful opportunities for resident oversight and decision-making in the implementation of NextGen Neighborhoods projects**, including by:
 - a) Establishing separate accounts with an independent auditing system to ensure that all funds earmarked for impacted NYCHA campuses are received by, and expended at, these campuses;
 - b) Creating a clear structure through which NYCHA residents can weigh in on expenditure of funds received through these projects.

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