



COMMUNITY DEVELOPMENT PROJECT

**Testimony of Paula Z. Segal
Before the New York City Council Committee on Public Housing
Regarding NYCHA Development and Privatization**

October 30, 2018

Thank you for the opportunity to testify today. My name is Paula Segal; I am a senior staff attorney at the Community Development Project (CDP), a non-profit legal services organization that works with grassroots and community-based groups in New York City to dismantle racial, economic and social oppression. My practice, Equitable Neighborhoods, works with directly impacted communities to respond to City planning processes and private developers, helping to 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 are gravely concerned about NYCHA’s privatization initiatives, and my testimony will focus on infill efforts in particular.

We work directly with residents at Wyckoff Gardens, LaGuardia Houses, and Cooper Park Houses – three of the four sites where NYCHA and HPD have publicized an intention to allow private developers to construct half-market rate and half below-market housing. At this time, we are aware of four 50/50 projects¹ and thirteen 100% affordable ones² in the pipeline, although the method NYCHA has used to announce which sites are targeted for infill is outside mandatory annual planning process and extremely difficult to keep track of. We have been collecting

¹ **Holmes Towers (Kallos), Wyckoff Gardens (Levin), LaGuardia Houses (Chin), and Cooper Park Houses (Reynoso).**

² **Ingersoll Houses (Cumbo), Van Dyke Houses (Ampry-Samuel), Mill Brook Houses (Ayala), Sumner Houses (Cornegy), Twin Parks West (Torres), Betances V (Ayala), Betances VI (Ayala), Morrisania (Gibson), Sotomayor (Diaz), Bushwick II (Espinal), Baruch Houses (Rivera), Dyckman Houses (Rodriguez).**

announcements and other relevant documents at NYCommons.org since NYCHA has failed to publish its infill plans coherently and seek resident input as required by federal law.³

This is just the beginning. In its Next Generation plan, NYCHA announced plans to lease its land to private developers so they can build 30-40 50% market rate buildings, and an additional 50-60 fully affordable buildings on NYCHA land across the City.⁴

It is not clear how NYCHA is making decisions about which program will be used at which campus. This obfuscation violates the spirit, and maybe even the letter, of the regulations which 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.”⁵

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.”⁶ In addition, NYCHA has to certify to the federal Housing and Urban Development agency 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.”⁷ NYCHA has done no such thing.

³ 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 a few months later* in September 2015. A Request for Proposals for these sites was issued in June 2016, and only subsequently, in July 2016, 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. 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.” Residents did not have a chance to give NYCHA feedback at a public hearing about any of these proposals before NYCHA submitted plans to HUD.

⁴ NYC Housing Preservation and Development will provide financing for the affordable components of these projects.

⁵ 24 C.F.R. § 964.100 (emphasis added).

⁶ 24 CFR § 970.7(a)(5) and § 970.17.

⁷ 24 CFR § 970.17(d).

Residents are concerned about the health impacts of construction, especially in environmental justice communities where what is buried beneath the earth is rumored to cause cancer and worse; they worry about their own old buildings not being able to withstand the impacts and crumbling. They grieve for lost playgrounds, air, light and places for the elderly and those with limited mobility to park cars they rely on for daily needs. NYCHA has not created any forum for these concerns to be voiced and addressed, as required by both State and Federal Environmental Review laws. Instead, it has told residents, that developers, once chosen would be required to do the analysis. It is clear that at that point in the process, no “meaningful consideration” of the impacts and alternatives can happen.⁸ NYCHA seems to be intentionally waiting until it is too late to turn back to initiate any impact review.

Financial benefits to NYCHA or the specific campuses are restricted by the program design: in the Requests for Proposals for infill at Wyckoff, La Guardia, Holmes, NYCHA 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 accepted⁹ – 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.

Where infill projects are moving forward, there is no system in place to ensure that funds earmarked for impacted NYCHA campuses are received by, and expended at, these campuses. As a result of resident advocacy, NYCHA has committed that half of revenues from planned 50/50 infill projects will remain at the impacted campuses. But residents are concerned that these

⁸ As required by the National Environmental Policy Act. Similarly, State law requires an agency to initiate environmental review “[a]s early as possible in an agency's formulation of an action it proposes to undertake.” 6 CRR-NY 617.6 (a)(1).

⁹ 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.

funds may either be mismanaged, or used to justify other funding cuts to their campuses, resulting in no net gain for residents burdened by infill development. NYCHA should be required to fully account for funds generated by infill projects, including by disclosing how these funds will supplement, rather than replacing, funds already earmarked for impacted NYCHA developments.

The City Council can make changes to how NYCHA property is treated under City law that will make a difference for our clients and residents across NYCHA's portfolio and give elected advocates control of a program balanced on the backs of the City's most vulnerable. Specifically, it can **change the City Charter so that NYCHA dispositions are subject to public review under the Uniform Land Use Review Process (ULURP)** .

Imperfect though it is, the ULURP process creates transparency around proposed projects and allows for open discussion of concerns and potential solutions before projects move forward. But while the disposition of City-owned land must go through this review process, NYCHA land has not yet been included in the list of properties for which the public has oversight. Section 197-c(a) of the Charter currently enumerates 11 specific categories of actions that require ULURP. The Council can,¹⁰ and should add the disposition of Public Housing Authority land in the City to this

¹⁰ The City of New York is free to subject the Public Housing Authority to such oversight under New York State law: NYCHA is a municipal housing authority organized as a public corporation under New York's Public Housing Law. NY CLS Pub. Hous. § 3(2) (2012). Public Housing Law § 155 specifically states that all public housing "projects shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable in the municipality in which the project is situated." NY CLS Pub. Hous. § 3(2) (2012). This is in contrast to other entities - such as the Empire State Development Corporation - that are created via the State Urban Development Corporation Act and intentionally exempt from following local land use laws. *See Waybro Corp. v. Board of Estimate*, 67 N.Y.2d 349, 355 (1986) ("Despite its salutary and important purpose and the fact that the City Charter has its origin in State statute, ULURP's provisions will not apply if the Legislature so intends"); *East Thirteenth St. Community Ass'n v. New York State Urban Dev. Corp.*, 189 A.D.2d 352, 361 (1st Dep't 1993)(describing the Urban Development Corporation Act land use regulation override).

list by encouraging the City Charter Review Commission it initiated to place this proposed change on the November 2019 ballot.¹¹

Without ULURP for disposition, the ULURP process only applies to some campuses that require zoning changes to permit construction of new buildings. Even where the project does not fit within current zoning but NYCHA has reason to believe that a Council Member opposes the project, it can seek a mayoral zoning override to avoid ULURP and the City Council vote. This is what is happening now at Holmes Towers in Council Member Kallos' district. If all disposition of NYCHA land was subject to ULURP by law, this back door approach would not be possible and NYCHA would not be able to dispose of land for any project – even one with a mayoral zoning override - without council approval. As it is now, only residents on the few campuses where a new building would not comply with current zoning and the mayor has not offered to use an override, have an opportunity to voice their concerns within the ULURP process, and only the Council Members representing this rarified set have the power to vote projects down if they decide that the proposals do not meet the community's needs.

We have also been supporting organizing partners who work with residents on campuses NYCHA has chosen for the Rental Assistance Demonstration (RAD) program and are concerned that NYCHA had not made clear how ground leases for campuses in that program will deal with the unused development rights that so many campuses have - will developers getting ground leases for the buildings via RAD get the development rights as well?¹² Will they have the power to do their own infill development of private buildings on NYCHA campuses? Nothing in the publicly available materials answers this question.

¹¹ Without the Charter Commission, the Council can add to the list of matters that require ULURP review via local law only after the City Planning Commission has formally proposed requiring such review. *See* Section 197-c(a)(12).

¹² Well over 8,000,000 (8 million) sq feet of residential development rights are found on the campuses that NYCHA has included in its Section 8 conversion of city and state funded campuses and in the RAD pipeline. For comparison, the massive curved apartment building on the other side of Police Plaza from City Hall, Chatham Green, contains just over *half a million* (500,000) residential square feet. Development rights would allow for more than 10 buildings that size to be added directly to privatized campuses.

Without Council intervention, NYCHA residents are a population that has been ignored and overburdened for generations that is again being asked to bear the brunt of the City's planning initiatives.

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