

WESTVIEW TASKFORCE Inc.

P.O. Box 289 • Roosevelt Island • New York 10044

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July 6, 2009

Mr. Richmond McCurnin, Assistant Commissioner
NYS Division Of Housing And Community Renewal
25 Beaver Street
New York, NY 10004

Re: Westview UDC-068
Budget Rent Determination
Final Comments

Dear Rich;

Westview TaskForce Inc. (WTI) represents 361 Middle Income families residing at the Westview building on Roosevelt Island, NYC. We hereby submit our comments related to the Budget Rent Determination (BRD) commenced by DHCR early in 2008. In a separate submission, our attorney, Chad Marlow, Esq., provides his comments along with our Accountants, Marc B. Freedman CPA., updated projections and analysis. Please consider Mr. Marlow's letter to DHCR dated Aug 28, 2008 also part of our submission.

First, we'd like to thank you and Commissioner VanAmerongen for your patience and consideration in reviewing the problems and hardships facing tenants this difficult time.

As you can recall, in April of 2008 Westview Owners were allowed to serve tenants with a petition for 88% rent increase. **Thirty (30) families fled the building immediately out of sheer fear and panic.** During a Hearing in August it was uncovered that Owners Petition was nothing but a cynical power play aimed at forcing tenants to agree on terms related to Owners new plan to leave Mitchell-Lama. Thus, DHCR decided to defer rent determination.

Owners subsequently admitted that their 88% rent increase petition was excessive and stated that in fact "only" a 12%-16% adjustment was needed for two reasons:

- (a) Owners bank conditioned future loans related to ML dissolution on a rent increase of 12-16%.
- (b) Such rent adjustment was necessary to fund major repairs/upgrades.

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Owners contention that rents should be increased so that Owners will be qualified for certain loans is inconsistent with ML laws. Owners second claim that tenants are responsible for the building inefficiencies, waste and general condition, is false and misleading. In fact the exact opposite is true. Over the past years Owners turned Westview into the most wasteful, inefficient and mismanaged building in the entire ML program, while tenants multiple suggestions for improvements were grossly ignored by Owners and DHCR.

Just a few examples:

The Elevator Fiasco. A sum of \$752,000 was allocated in 2003 via rent increase to replace 4 defective elevators, but work was never done and elevators now are even more defective. Owners claim they can use earmarked monies as they please and refuse to account for the missing funds. In August 2008 DHCR was asked to investigate.

The Roof Calamity. A \$400,000 bid mysteriously became a \$800,000 job funded by rent increase. Instead of the mandatory 15 year NYC Roofing Warranty, contract provided only one year. On 3/21/2001 WTI asked DHCR to investigate and wrote: "this is unacceptable and a sure recipe for calamity". But matter was ignored. It turned out that work was poorly performed and costly repairs were needed almost every year. A Building Condition Report dated 10/8/2007 concluded: "This roof is in need of major restoration work and must be replaced now". New roofs should last at least 20 years. Westview Owners paid double (using tenants monies) to install a defective roof without warranty which now needs to be replaced again.

The Façade Blunder . In 2006/2007 Owners retained contractor for major Façade/Roof repairs. A \$425,000 bid quickly became a \$757,000 job. **As it turned out same contractor was caught cheating at 2 other buildings on Roosevelt Island by DHCR investigators** (Apparently old Caulking was coated over instead of being removed). Contractor was forced to redo and/or payments were withheld. It is not clear why this contractor was retained by Westview Owners, how work was performed, and why cost almost doubled. Owners and Management refused to respond to WTI inquiries.

Energy Inefficiency – The Sub-Metering Snafu. Both in 2001 and 2003, during the BRD process, WTI proposed improving Westview's electrical efficiency by sub-metering its apartments and upgrading its electrical fixtures. WTI retained Energy Conservation Consultant who demonstrated that a simple one time investment of about \$230,000 would result in a 40% savings, or close to \$600,000 per year. And both times, not only did the Owners refuse to implement such recommendations, but DHCR also approved rent increases to cover Westview's inefficient operations. According to Federal Government Statistics, between 2004 and 2008 electricity rates in the region have increased by 28% yet Westview Electricity expenses have skyrocketed by over 50%. Waste is everywhere. Public areas heaters are working in the Summer and lights are left on during day time. Current monthly energy cost is about \$462 per apartment, about 30% of rent. Worse yet. At the height of the energy crisis in the Summer of 2008, Owners acknowledged for the first time the urgent need for sub-metering yet have done absolutely nothing about it despite availability of over \$1.1M which they invested with Merrill Lynch. Instead, Owners focused on BRD and Mitchell Lama dissolution.

As you can also recall, in 2006 WTI reached an Post-ML Preservation Agreement (LOI) with all Westview Owners which we believed preserved tenants homes and future including full funding of the \$23M needed for building rehabilitation. Agreement was endorsed by DHCR but Ground Lease was not extended. Last year we were informed that DHCR had decided to re-open the door for a **new Preservation Plan**.

In October 2008 we were presented for the first time with a draft Preservation Plan which owners claimed had been approved by DHCR. However, such draft did not include any commitment from Owners in terms of dollars to fund

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building rehab. On Nov 18 2008 Owners bundled Preservation Plan and BRD process together in a document presented to DHCR. Again, such plan included absolutely no dollar commitment from Owners towards building rehab. Instead, Owners put a demand on DHCR to add millions and millions \$\$\$ to budget and that Commissioner should sign a rent increase order to fund such demand. We finally convinced Owners to contribute towards building rehab out of their buyout proceeds but discussions were very difficult and the amount they agreed to was grossly insufficient.

Indeed, Owners do not have any incentive to fund building rehabilitation out of their vast buyout proceeds as long as they think they can fund rehab thru the BRD process, permanent rent hikes, and wholesale displacement of tenants. Contrary to Owners representations, we do not believe DHCR ever approved Owners Preservation Plan. We suspect Owners merely attempt to manipulate both the Preservation process and BRD process at the same time to maximize their profits. **DHCR cannot let this happen.**

Owners present Application that rents be increased to fund inefficiencies caused by Owners themselves is unconscionable. About 150 tenants are below AMI. Many other tenants are unemployed. Many are on fixed incomes. DHCR Audit Report dated May/6/2009 disclosed that 51 tenants were 60 days or more late on their rents. Management advised that 23 tenants are in eviction proceeding. Thirty families were already constructively evicted last Summer as a result of Owners frivolous Petition. The cumulative effect of Owners recklessness and the Recession has been devastating.

The projections analysis of our accountant, Marc B. Freedman CPA for budget year July 1 2009 thru June 30, 2010 shows a positive cash flow, a small surplus, and \$250,000 allocated for Capital Expenditures.

Additionally, building has \$1.1M in reserves held at Merrill Lynch. In the event DHCR wishes to budget additional CapEx funds thru June 30, 2010, a portion of the \$1.1M could be used consistent with DHCR practices.

Considering the foregoing, Mr. Marlow's legal brief, Mr. Freedman Financial Projections, and Mr. Marlow's 8/28/2008 Brief, we ask that DHCR wind down this BRD process. There is presently absolutely no need for any rent adjustment. There is absolutely no urgency to rush to any wrong decisions. We ask that DHCR instruct Owners in no uncertain terms to fully fund \$23M from Preservation Plan for building rehabilitation. We also ask that WTI will be allowed to participate in any decision making concerning Capital Expenditures and building efficiencies.

Thank you, again, for your patience throughout this process. Your cooperation in allowing recipients of this submission to comment would be greatly appreciated.

Sincerely

Opher Pail
Co-Chair

Johan Marfey
Co-Chair

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CC:

Hon. Debra VanAmerongen, Commissioner, DHCR

Jessica Lappin, NYC Council Member

Micah Kellner, NYS Assembly Member

Jose Serrano, NYS Senate

Carolyn Maloney, US Congress

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