



**STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL**

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF ECONOMIC JUSTICE  
REAL ESTATE FINANCE BUREAU

Writer's Direct Info:  
(212) 416-8111  
Laurel.Kean@ag.ny.gov

**VIA ELECTRONIC MAIL**

October 27, 2015

David B. Hirschhorn  
138 Goodhill Road  
Weston, Connecticut 06883

Re: Westview House  
595-625 Main Street  
New York, New York 10044  
File No. C15-0002

Dear Mr. Hirschhorn:

The subject offering plan, related exhibits and supporting documentation submitted by you on April 28, 2015, pursuant to 13 NYCRR §18 is rejected for filing. Attached to this letter is a list of material deficiencies in the submission.

If blacklined revisions curing the noted deficiencies are not submitted within 30 days of the date of this letter, the Department of Law will not consider any further submissions on the proposed offering plans unless new deposits on the filing fee are submitted. An extension of time may be requested. **Please note the numbers of the corresponding deficiency comments in the margins of the blackline.**

The issuance of this deficiency letter shall not be construed to be a waiver of or limitation on the Attorney General's authority to take enforcement action for violation of Article 23-A of the General Business Law or other applicable provisions of law.

Very truly yours,

/s/

Laurel S. Kean  
Assistant Attorney General

Cc: John Stellar, Esq. (HCR)  
Perry Mintz, Esq. (Counsel to Westview TaskForce Inc.)

Deficiency Comments  
Westview House  
C15-0002  
Reviewed by: Laurel S. Kean, AAG  
Date: 10/27/2013

---

**General**

1. For the reviewer, please state the Sponsor's schedule for requesting a no-action letter and filing the condominium declaration.
2. Update all numbers that have changed since initial submission.
3. Items 5 and 7 – 16 in Part II must be submitted in final form.
4. Provide a status update on negotiations with RIOC on the Ground Lease Modification Agreement and the Retail Sublease.
5. Provide a status update on negotiations with EDC on the TEP.
6. Provide an update on the status of the Affordability Plan, along with a blackline of any changes made since initial submission.
7. For the reviewer, explain why there are vacancies at the property if it is still in the Mitchell-Lama program. The reviewer's understanding is that there are long waiting lists for these units.
8. For the reviewer, clarify if current tenants will be given the opportunity to switch apartments depending on their needs (family size, disability, etc.).
9. Incorporate all changes in Part I into Part II.
10. Comply with all engineering comments.
11. Comply with all paralegal comments.

**Table of Contents**

12. Schedule B should be the co-op budget, Schedule B-1 should be the condo budget, and Schedule B-2 should be the projected apartment electric costs.

**PART I**

**Definitions**

13. Bona Fide Mitchell Lama Tenant.
  - a. For the reviewer please explain what work "of the Affordability Plan Effective Date" is doing in the first sentence.
  - b. For the reviewer please confirm that HCR has signed-off on this definition.

- c. In the final sentence, clarify that the default must be of the type warranting termination of the lease.
14. GBL. Replace “GBL” with “‘GBL’ or ‘the Martin Act’” and delete “, also referred to as the Martin Act.
15. Offeree. In clause (a) clarify whether a Purchaser in default remains an offeree even if the Sponsor has not terminated the Purchase Agreement.
16. Permitted Mortgagee. Confirm for the reviewer that “Oritani Finance Corporation” is the formal name of the potential lender.
17. Shareholder. Replace “Shareholder” with “‘Shareholder’ or ‘Tenant-Shareholder’” and delete the second sentence.
18. Unsold Cooperative Apartment. Explain “any other arrangement.”

### **Special Risks**

19. SR#1.
  - a. Remove the language about Island House.
  - b. Include evidence of interest from lender.
20. SR#3. Remove the language about Island House.
21. SR#5. For the reviewer explain why a no-action letter would not be required in order to file a condominium declaration.
22. SR#6.
  - a. The fifth sentence in (a) should be in all caps and bold, as should the second sentence in (b).
  - b. (d). Confirm that ESD has signed off on the TEP.
  - c. (h). Confirm that RIOC has signed off on the Ground Lease.
23. SR#7. Until the Affordability Plan has been signed-off on, the Red Herring should be explicit about the fact that it is in draft form in each reference. Insert “Proposed” before “Affordability Plan” in line one.
24. SR#12.
  - a. Replace “is” with “will be” after “A substitute SCRIE and DRIE program...”
  - b. Clarify for the reviewer that if a Tenant-Shareholder meets the eligibility requirements for SCRIE/DRIE after the Affordability Plan Effective Date no substitute SCRIE/DRIE will be provided.
25. SR#13. State when electric submetering will occur. Include a section in Part II with information about NYS Public Service Commission and any other applicable rules, regulations and requirements to permit electric submetering and reflect compliance with the same.

26. SR#15. Clarify that if the purchaser has deposits in the escrow bank those deposits will factor into the FDIC insurance limit. Include a reference to the New York Mortgage coalition: <http://nymc.org>.
27. SR#16. Clarify for the reviewer that no financing contingency will be available for purchasers of “affordable” units.
28. SR#25. Prior to the first closing the entire building will be insured by the sponsor, and after the first closing the entire building will be insured by the condominium. A person in possession who is not an owner cannot insure the unit since he or she has no ownership interest, and the unit cannot be doubly insured. Thus the risk of loss cannot, as a practical matter, be passed on to a person in possession. It would be acceptable to state that a person who takes possession prior to closing assumes the risk of losses not covered by insurance.
29. SR#26.
  - a. In the fourth to final sentence, limit the \$1000 fee to the Initial Sponsor Control Period.
  - b. Penultimate sentence. Clarify that this lack of “obligation” is subject to the Affordability Plan.
30. SR#34. In the third to last sentence, replace “sell” with a reference to the fact that the Plan can go effective with merely 15% of the apartments subject to purchase agreements.
31. SR#35. Confirm that HCR has accepted the \$1,500 fee for the “affordable” units.
32. SR#41. Provide that the prohibition against cancellation without 30 days’ notice is commercially reasonably available.
33. SR#43. The final sentence is unacceptable. Either delete or include a blank for an actual date on which Sponsor does not have knowledge. Sponsor cannot claim to not have knowledge at the time of an event that has yet to occur.
34. SR#46. State that the requirement described here is in addition to the monies required by the reserve fund law.
35. SR#49. For the reviewer, does Part II already contain all available records and materials pertaining to lead paint?
36. SR#50. State that the Cooperative and the Condominium are entitled to rights under the Plan.
37. SR#51. Please clarify whether this is intended to cover a period of time beyond the Initial Sponsor Control Period.
38. SR#54. Clarify that the prices quoted in the schedules are reasonable as of x date.
39. SR#56. State when Sponsor will provide carbon monoxide detectors.
40. SR#59. Add reference to the portion of the Proprietary Lease that includes this restriction.

41. SR#60. As submetering has yet to occur, the Plan should not read as though it has already occurred. Make this change globally as necessary.
42. SR#62. Please check for readability.
43. Final paragraph. Delete “all” in the penultimate sentence.

## **Introduction**

### **Features of Co-operative Ownership**

44. P7, #7, ¶3. Please provide an attorney opinion letter stating that allocating the cost of the superintendent’s unit does not violate GBL § 501(c).
45. P8, ¶1. Clarify that officers and not all directors of the Apartment Corporation will be members of the Board of Managers of the Condominium.
46. P8, penultimate paragraph. Replace “even” with “event” in the penultimate line.
47. P9, ¶1. Check the first sentence for readability.
48. P9, ¶2, sentence 3. Clarify whether it will be the Cooperative Board or the Condominium Board that will be responsible for maintaining casualty and liability insurance for the Cooperative Common Elements. Cite the relevant portion of the Bylaws.
49. P10, #8(a), ¶1, line 2. Explain what work “as of the Affordability Plan Effective Date” is doing here.

### **Offering of Cooperative Apartments for Sale**

50. ¶1.
  - a. Replace “Owner’s” with “Owners.”
  - b. State that the project is in compliance with the Certificate of Occupancy.

## **Summary of Affordability Plan and Proposed WV Ground Lease**

### **Material Terms of Affordability Plan**

51. P20, ¶2. Provide an example of “Affordable Resale Restrictions”
52. P25, ¶(h). Counsel for the Westview Taskforce, Inc. raises a question regarding keeping the line of credit below \$3,000,000 for mortgage tax benefit purposes. Please respond.
53. P27, ¶(ii). Please clarify whether Sponsor’s failure to pay the RIOC transfer fee will constitute a default under the ground lease thus implicating the Apartment Corporation.

## **Schedule A: Purchase Price and Share Allocation**

54. Submit a revised Schedule A (assuming that numbers, etc. have changed).

55. For the reviewer, explain the discrepancy between the Aggregate BFMLT Insider Price in the Affordability Plan (\$101,113,982) with the price on the cover of the Plan and in Schedule A (\$107,668,749).

**Notes to Schedule A**

56. FN#2. Elsewhere the Plan states that the Property is in Mitchell-Lama while here the reference is in the past. These references should be consistent throughout the Plan.

**Schedule B-1: Projected Budget for First Year of Condominium Operation**

57. Please check the amount in the insurance line and compare with the associated footnote.

**Notes to Schedule B-1**

58. FN#5.

- a. For the reviewer please explain the discrepancy between this number and the number in the 2013 financial statement.
- b. Has Island House agreed? What are the implications for the Apartment Corporation if Island House defaults on payment?

59. FN#6. Explain for the reviewer why the estimate is \$50,00 less than in the 2013 financial statement.

**Schedule B-2: Projected Budget for First Year of Cooperative Operation**

60. To the “\*” add “and Schedule B-3.”

61. For the reviewer explain the discrepancy between the budget in the Affordability Plan and the budget in the Offering Plan.

**Notes to Schedule B-2**

62. For the reviewer, explain the difference between the Condominium labor costs (largely borne by the Apartment Corporation, it seems) and the Apartment Corporation labor costs.

63. FN#7. The reference to a possible reduction of staffing should not be made if the budget does not reflect same.

64. FN#8. Here the allocation to the common area is 33.7% while the allocation to the apartments in section 3.1.4 of the Proprietary Lease is 83.5%. For the reviewer, please explain the discrepancy.

65. FN#16. Clarify whether base maintenance charges include TEP.

### **Accountant's Certified Statements of Operation**

66. Please include for year-end 2014.

### **Rights of Existing Tenants**

67. State explicitly that notwithstanding anything to the contrary, nothing contained in the Offering Plan shall in any way limit the rights of the existing tenants or obligations of the Sponsor under and pursuant to the Affordability Plan.

### **Closing Costs and Adjustments**

68. In Section (b)(i) clarify that the net effect for tenant purchasers is that they do not have to pay the transfer tax.

### **Effective Date**

69. State that Sponsor's right to abandon the Plan is subject to the Affordability Plan and the Westview Ground Lease.

### **Summary of Contract of Sale or Exchange**

70. Section (M) should only apply to consents by Sponsor of record.

### **Attorney's Income Tax Opinion**

71. Provide a copy of the referenced tax ruling. State whether a similar tax ruling will be forthcoming on Westview. If not, state why.

### **Reserve Fund**

72. P136, #3. Confirm for the reviewer that DHCR has signed-off on this language.

### **Management Agreement**

73. Confirm for the reviewer that RY Management remains the management company for Westview Houses. Update the Plan accordingly if required.

## **PART II**

### **Purchase Agreement**

74. Section 6.
- a. Clarify that purchasers have no obligations prior to their individual closings.

b. Correct reference to “IH Ground Lease.

75. Section 39. Include a clause stating that pets currently residing in the dwelling units can remain.

**Proposed Condominium Bylaws**

76. Section 2.5. In the third sentence, the reference to this Section 2.7 should be corrected to 2.5.

77. Section 4.9. This should reflect that the Residential Unit will designate 6 members of the Board.

**Proposed Proprietary Lease**

78. Section 4.8.3. Clarify that pets already residing at Westview Houses may remain.

**Escrow Agreement**

79. Please review the model escrow documents: <http://www.ag.ny.gov/real-estate-finance-bureau/forms>.

**Letter Pursuant to Section 339-i**

80. Please provide a 339-i letter from someone other than a principal of the Sponsor.