



CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD FOUR

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JEFFREY LEFRANCOIS
Chair

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District Manager

May 26, 2022

Dan Garodnick
Chair
City Planning Commission
120 Broadway
NY, NY 10007

re: Theatre Subdistrict Fund, Evaluation of publicly owned, controlled or managed
Transfer of Development Rights (TDR's)

Dear Chair Garodnick,

At the May 23, 2022 meeting of the Executive Committee of Manhattan Community Board 4 (MCB4), the committee voted unanimously to support an increase in the contribution rate from \$17.65/sf to \$24.65/sf to the Theater Subdistrict Fund as part of any Theatre Transfer Development Rights (TTDR) transfer transaction in the Theater Sub-District of the Special Midtown District (SMD).¹ However, the MCB4 notes, with such a modest increase, over a 12-year period, the proposed increase does not adequately capture an appropriate percentage of those transactions for public benefit in the Theater Subdistrict.

MCB4 also wants to reinforce its position regarding the under evaluation of publicly owned, controlled or managed Transfer of Development Rights (TDR's) across our district. Publicly controlled TDR's should not be undervalued but bring the most public benefit for improvements for MCD4 and the City of New York.

Theatre TDR's & Theatre Subdistrict Fund--Background

In 1998, the Midtown Special District text was amended to establish a mechanism for NYC landmark listed theaters to transfer their available development rights throughout a transfer area from West 41st to West 56th Streets, between Sixth and the east side of Eighth Avenues. The west side of Eighth Avenue from West 42nd to West 45th Streets was also included, but the TDR transfer was only after an Inclusionary Housing was provided. The TDR's could only be transferred in exchange for retaining, preserving and maintaining a legitimate theater

¹ This letter will be ratified at the regularly scheduled Full Board meeting on June 1st, 2022

use, and for a contribution to a newly created Theater Subdistrict Fund. This action provided more opportunities for theaters to transfer development rights while strengthening requirements for the continuation of legitimate theater use. The Theatre Subdistrict Fund was also created in the 1998 text amendment “to develop new audiences, promote the production of new theater work.”

Theatre Subdistrict Fund—Contribution Valuation Method

The current valuation methodology formulation for contribution the Theatre Subdistrict Fund is determined by assessed value of property in the Theater Subdistrict and allocated by square foot by each TDR transaction. The MSD text contains language to revalue the contribution rate on a regular basis. However, the contribution rate has not been revalued since 2011. To address that issue, in 2016, DCP proposed a text amendment to conform the contribution rate to the methodology set forth in the then new Midtown East Rezoning. Specifically, requiring a value capture of 20% of the TDR sale to accrue to public benefit. In the Theatre Subdistrict that 20% would have been paid to the Theatre Subdistrict Fund “to develop new audiences, promote the production of new theater work.” However, CPC after passing that amendment in 2016 then withdrew the text application in 2017 after pressure from the Broadway Theater owners.

With no action having been taken on the contribution rate since 2016, now DCP began an internal action under the City Administrative Procedure Act (CAPA) to update the contribution rate based upon current 2021 real estate assessment value in the Theatre Subdistrict.

The current proposed contribution rate to the Theater Subdistrict Fund is to increase from \$17.60/sf to \$24.65/sf. DCP should certainly raise the cost immediately, and if this is the only level that can be attained at this time, then it should be approved expeditiously.

Continued Under-Evaluation of Publicly Controlled, Owned or Managed TDR’s

This matter with undervaluing Theatre Subdistrict Fund contribution rate mirrors the actions of various City and State agencies in regard to TDR valuations.

The evaluation of TDR’s is weighted to the benefit of the real estate development community not to the public benefit to our community. The City or State agencies, when selling or approving the sale of TDR’s to a private entity, does not seek market value. For example:

- *West Chelsea Affordable Housing Fund (WCAHF)*
In 2017 in the Special West Chelsea District, after 90% of Highline TDR’s sold, the alternate TDR mechanism in the zoning was a contribution to the West Chelsea Affordable Housing Fund (WCAHF). Initially DCP proposed to peg the TDR rate at \$500/sf, even though Highline Development Rights were then trading for between \$800 to \$1,000/sf. After study and information provided by MCB4 to DCP, the proposed rate was increased to \$625/sf which results in a significantly larger contribution to WCAHF.
- *Hudson River Park TDR’s*
In the rezoning of Block 675 (West 29th to West 28th Streets, Eleventh to Twelfth Avenues), initially Hudson River Park Trust (HRPT) proposed to peg the TDR rate at

\$300/sf, even though other sales in the vicinity had been at \$500/sf. MCB4 argued for an increase to \$425/sf to provide more capital to HRPT.

- *Hudson Yards District Improvement Bonus*
The Hudson Yards District Improvement Bonus (HY DIB) rate was originally set at an artificially low price of \$100/sf to incentivize development. In 2022, it will rise to \$174, at a time when development in Hudson Yards no longer needs any city incentive. TDR's in the market in Hudson Yards are currently trading between \$500 to \$600/sf. Bella Abzug Park has only built four out of six planned park blocks. Increased TDR rate could provide capital funds to construct the remaining park.
- *Penn Station Complex Redevelopment*
MCB4 has also been trying to ascertain the valuation for TDR's the State will use at the Penn Station Complex. If the price is set at market rate, then more funds would be available for the reconstruction of Penn Station making it less dependent on increased density on those eight blocks surrounding the station. A lower valuation requires higher density to reach the necessary budget for renovations.

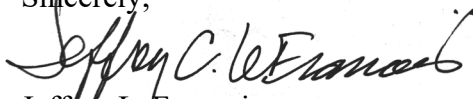
Conclusion

Regarding the current Theatre Subdistrict Fund contribution rate, DCP should consider:

- Base assessed valuation of 2019 (pre-Covid) as a base year. The current assessment reflects a one-time variation in assessed values, not representative of the past 11 years.
- In 2022, DCP should take up the approved, then withdrawn, Zoning Text Amendment to Theatre Subdistrict to value capture of 20% of the TDR sale to accrue to public benefit, namely to the Theatre Subdistrict Fund

Consideration should be made to revise the formulas, zoning text and strategies to secure such fees based on appraised valuation, market rates and actual TDR transaction sales. The Theater Sub-District CAPA action is an opportunity to raise substantial funds for the performing arts community as well as the district as a whole by re-thinking the approach to the value of transferring development rights.

Sincerely,



Jeffrey LeFrancois

Chair

Manhattan Community Board 4

cc: Hon. Eric Adams, Mayor
Hon. Mark Levine, Manhattan Borough President
Hon. Erik Bottcher, City Council
Manhattan Community Board 5