



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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JEAN-DANIEL NOLAND
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District Manager

July 24, 2008

Matthew Shafit, Esq.
Deputy Commissioner/General Counsel
Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038

Re: Clinton Cure for Harassment – the Cure Exemption in ZR Section 96-110(b) (2) (ii)

Dear Mr. Shafit:

At the July 9, 2008 meeting of Community Board 4's Clinton/Hell's Kitchen Land Use committee, a joint presentation was made by Clinton Housing Development Co. (CHDC) and West 44th Hotel LLC (an affiliate of Tishman Realty LP) for an affordable housing development at 307 West 43rd Street that has been exempted by HPD under Section 96-110(b)(2)(ii) from the requirements of the Clinton Cure for Harassment. This project presents the first Cure Exemption granted in the history of the Special Clinton Zoning District. We have, therefore, considered the application of the Cure Exemption in greater detail. The circumstances of the 43rd Street project are clearly unique and the benefit to the community in terms of increased square footage of permanent affordable housing is clear. For the future, however, we are concerned that the exemption process and the minimum community benefit requirements should be clearly laid out.

One lot on the project site, 300 West 44th Street, the Globe Hotel, was subject to the Clinton Cure for Harassment. The regulatory agreement for that lot, originally executed several years ago, provided for 2,344 square feet of permanently affordable housing to be located in a then-planned residential tower. In compliance with sections 96-110 and 23-95(e) of the Zoning Resolution, the Lower Income Housing Plan, which was the basis for the regulatory agreement, was reviewed and approved by Community Board 4 in March 2002.

In 2007, the proposed project was acquired by Tishman for development as a hotel, necessitating a change in the regulatory agreement to create a new location for the affordable housing. However, in December 2005, long after the approval of the Lower Income Housing Plan but prior to the construction of the proposed project, the Cure Requirement in the zoning resolution was amended requiring that the square footage of Cure Housing be the greater of: 28% of the square footage of the cure requirement lot

(the previous requirement), or 20% of the entire development site. If the developer were to seek approval for a new Lower Income Housing Plan at this site, it would be subject to the more stringent 20% of the square footage requirement for the entire development site.

We understand that HPD exercised its right to exempt the property from the Cure Requirement under section 96-110 (b)(2)(ii) and approved a revised plan that included 10,500 s.f. of permanently affordable housing to be located at 307 West 43rd Street. This particular project clearly presents a unique situation -- where the zoning resolution was significantly changed after the original Lower Income Housing Plan was approved but before construction commenced, and such change would have significantly impacted the feasibility of the proposed project. The revised project also benefits the community by increasing the square footage of permanent affordable housing to more than 4 times that contained in the plan originally approved.

However, the Board was concerned to realize that such an exemption could be approved by HPD without any prior presentation or notification to the Community Board, which pursuant to Section 96-110 and 23-95(e) plays a formal role in the approval process. It is only because the proposed Inclusionary Housing Administering Agent of the Lower Income Housing is a longtime community based organization which voluntarily presented the modified proposal to the Board, that the Board was even aware of the proposed Cure Exemption. (The modified proposal was presented to us in detail twice – at the November 27, 2007 meeting of the Clinton/Hell's Kitchen Land Use Committee and in July 2008 in connection with the proposed authorization by DCP of the transfer of Theater Development Rights.)

In further examining Section 96-110, we are concerned that the Exemption process and the minimum community benefit requirements should be clearly laid out. We would like to engage in further discussions with HPD about either procedure or amendments to the text which preserves the board's right to comment on any Exemption application. Further we request that the granting of such Exemption be limited to cases in which the benefit provides a greater amount of square footage of permanent affordable housing to the community. We are therefore requesting a meeting to discuss: 1) the Cure Exemption application, notification and approval process and 2) conditions that must be minimally met for a Cure Exemption to be considered.

We value our long term relationship with HPD and our ability to work together to resolve such issues. We are confident that we can reach an agreement that strengthens the Clinton Special Zoning District and increases the permanent affordable housing stock in Community District 4.

Sincerely,



Jean-Daniel Noland
Chair



Anna Hayes Levin, Chair
Clinton/Hell's Kitchen Land Use Committee