



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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JEAN-DANIEL NOLAND
Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

November 7, 2008

Hon. Amanda M. Burden, AICP
Chair
City Planning Commission
22 Reade Street
New York, New York 10007

**Re: Application to Transfer Unused Development Rights
From 304 West 47th Street to 303 West 46th Street, LLC
ULURP No. C090072PPM**

Dear Director Burden:

At its regular monthly meeting on November 5, 2008, Manhattan Community Board No. 4 held a duly noticed public hearing on the application referenced above (the "Application"). The following comments and resolution, recommending conditional disapproval of the application, were approved by a roll call vote of 39 in favor, 1 opposed, 0 abstentions and 0 present but not eligible to vote.

The Application, submitted by the Department of Citywide Administrative Services (hereinafter "DCAS"), contemplates the disposition of approximately 14,250 square feet of unused development rights ("Development Rights") to 303 West 46th Street, LLC, thereby creating a negative easement on the premises known as 304 West 47th Street (Block 1037, Lot 37, aka the Puerto Rican Traveling Theater building). Additionally, the applicant seeks to remove the restrictive covenant that limits the use of the unused development rights to community facility use.

If the Development Rights were to be used in a project with positive land use, social and economic impacts for the community, CB4 would support this transfer, since it would result in approximately \$3 million in sale proceeds for the City, and would support preservation of the historic building at 304 West 47th Street, constructed in 1886 as a firehouse¹.

However, this Application does not exist within a vacuum. The disposition of the Development Rights from 304 West 47th Street to 303 West 46th Street, LLC is only one facet of a larger development project proposed by Tribeach Holdings (the "Project") that

¹ On January 15, 2008 the Landmarks Preservation Commission calendared this building for future hearing for designation as a landmark. No further action has been taken. The Application states that the building "was recently approved as a New York City individual landmark"; this is incorrect.

encompasses 5 building lots and the transfer of development rights from 3 adjacent lots, that will ultimately extend almost the full length of the 8th Avenue frontage between 46th – 47th Street (hereinafter “Site”). The development plan for the entire Site includes four separate buildings, including two independently operated hotels and two residential buildings developed under the Inclusionary Housing Program. The inclusionary buildings will generate an inclusionary bonus for the hotels and will satisfy the “cure” requirements of the Special Clinton District zoning regulations. Two Lower Income Housing Plan applications have been filed with the Department of Housing Preservation and development in connection with the project. In letters to HPD dated October 7, 2008, we have recommended approval of the plan for 307-311 West 46th Street, and disapproval of the application for 301 West 46th Street (because it does not comply with the two-bedroom requirement of ZR Section 96-105(a), and the housing program is limited to teens emerging from the foster care system rather than the general population inclusionary housing is meant to serve, among other reasons.)

While the Application is limited in scope to the disposition of the Development Rights and removal of the community facility use restriction, it will facilitate a project with long-term social, land use, and economic impacts within the Special Clinton District that must be considered contemporaneously with this Application. Accordingly, CB4 has serious concerns regarding tenancy issues, loss of community space, and potential capital improvement opportunities that may be lost as a result of the contemplated disposition.

Specifically, CB4 has the following concerns regarding this Application, including the Project in which the Development Rights will be used:

1. The developer has indicated that at this time, one tenant remains in occupancy in the building within the Site at 301 West 46th Street. HPD and DCP must verify, prior to taking any action to facilitate the Project, that tenancy and relocation issues have been resolved, as required by ZR Section 96-24.
2. The building at 301 West 46th Street has a documented history of severe tenant harassment, and a certificate of no harassment was formally denied by HPD on May 21, 2007. Subsequently, a stop-work order was issued by the Department of Buildings on March 4, 2008, and photos of conditions inside the building on March 6, 2008 appear to show demolition activities in this occupied building. HPD and DCP must verify, prior to taking any action to facilitate the Project, that no additional tenant harassment has occurred as a result of the Application.
3. It is by no means clear that the project proposed by Tribeach Holdings will proceed. The land use proposal is convoluted, the credit markets have collapsed and the demand for new hotels has evaporated. Market reports suggest to us that Tribeach is now simply assembling the Site and all necessary approvals for sale to a new developer. The City should not participate in enhancing the value of a development site for future sale. The Development Rights should be considered for transfer only when the many problems associated with the project have been resolved, and a concrete development proposal is ready to proceed.

4. The Project's inclusionary housing must comply with CB4's Inclusionary Housing Policy. In particular, the inclusionary housing must be open to all income-qualified households. It must not be restricted by age or special need.
5. The restrictive covenant currently requires that the Development Rights be used for a community facility use; rather than strip the community of this valuable resource, this covenant must run with the disposition of the Development Rights, for the term remaining on the covenant.
6. We understand that the building at 304 West 47th Street continues to be in need of basic capital improvements. The proceeds of the sale of the Development Rights must be used to fund those repairs.

In general, CB4 agrees that the Development Rights can and should be used for an appropriate project at the Site. However, for the reasons outlined above we cannot support transfer of the Development Rights as currently proposed.

Now, therefore, be it resolved that CB4 recommends disapproval of the Application unless the conditions set forth in 1 to 6 above are met.

Sincerely,



Jean-Daniel Noland
Chair



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

cc:

Calendar Information Office, City Planning Commission, Room 2E
DCP – Erika Sellke
MBPO – Anthony Borelli, Mike Kent
City Council Land Use Division – Danielle DeCerbo
EDC – Marilyn Lee, Judith Barr, James Harris
Tribeach Holdings c/o Seiden & Schein – Elise Kessler
Cozen O'Conner - Peter Geis
NYC Council Speaker Christine Quinn
Manhattan Borough President Scott Stringer
NYC Council Member Gale Brewer
Congressman Jerold Nadler
NYS Senator Thomas Duane
NYS Assemblyman Richard Gottfried