

**ANTI-DISCRIMINATION CENTER, INC.**

“ONE COMMUNITY, NO EXCLUSION”

May 1, 2018

Hon. Katharine H. Parker  
United States Magistrate Judge  
500 Pearl Street, Room 750  
New York, New York 10007

Re: Letter-motion re discovery: compelling responses to interrogatories  
Winfield et al. v. City of New York, 15-CV-5236 (LTS) (KHP)

Your Honor:

Plaintiffs are in receipt of defendant’s objections to plaintiffs first set of interrogatories. For 8 of 13 interrogatories, defendant proposes to provide no answer at all. Attached as Exhibit 1 are the interrogatories with defendant’s objections (“Objections”). Attached as Exhibit 2 are the definitions and instructions sections of plaintiffs’ interrogatories. Because of the extent of the objections and the need for context, plaintiffs are obliged here to exceed the normal three-page limit on letter-motions, and respectfully request that the Court accept this letter-motion as filed. As the Court anticipated, this letter-motion is being made before we have received defendant’s answers to any interrogatories in aid of resolving these issues at the May 7 court conference and in advance of the May 10 deposition of current HPD Commissioner Torres-Springer.

Interrogatories 1 and 2

Defendant’s central justification for the disparate impact its outsider-restriction policy (“ORP”) causes<sup>1</sup> is that City Council Members (“CMs”) would not support land-use measures needed to facilitate affordable housing developments, nor applications for affordable housing developments, if the ORP were limited or eliminated. But it is not enough for defendant to *articulate* the justification, defendant must *prove* that the ORP as it exists is “necessary” to achieve one or more substantial, legitimate, nondiscriminatory interests of defendant, and, in doing so, a “legally sufficient” justification “*must be supported by evidence and may not be hypothetical or speculative.*” 24 C.F.R. §§ 100.500(b)(1)(i), (b)(2), and (c)(2) (2013) (emphasis added).

To say that the ORP is *necessary* to overcome CM opposition to affordable housing development is precisely to say that, *without* the ORP, CM opposition would *not* be overcome and that the CM or CMs in question would vote against the development (or the land-use measures needed to facilitate it). It is worth pausing on this point. A world where the ORP were not available would be one where turning down otherwise meritorious affordable housing projects would

---

<sup>1</sup> At her April 10, 2018 deposition, former HPD Commissioner Vicki Been was asked whether, in a circumstance where her only policy concern was “reducing racial segregation to the maximum extent you can,” she would retain a 50 percent community preference. “I don’t think so,” she responded. *See* Excerpts of the transcript of the April 10, 2018 deposition of Vicki Been (“Been II”) annexed hereto as Exhibit 3, at 113:9-22.

achieve nothing legitimate for CMs or their constituents. And witness after witness has confirmed that there are a variety of other “carrots” that CMs routinely seek in connection with efforts to gain their support for affordable housing.<sup>2</sup> Getting some of *those* carrots would be the things that the CM would see as actually achievable.

Nevertheless, it remains defendant’s position that the ORP is *necessary* to achieve CM support. As such, identifying the CMs for whom defendant believes “the narrowing or elimination of the outsider-restriction policy would be a ‘but for’ cause of voting against one or more land-use measures or developments” (Interrogatory No. 1), and the basis or bases of defendant’s belief (Interrogatory No. 2), is essential to determining whether there is any substance to the justification.

Defendant complains that the interrogatories present a “hypothetical that is impossible to answer.” Objections, at 4 and 5. There is no basis in the rules for such an objection.. In any event, the *justification itself* is avowedly about *what will happen in the future absent the ORP in its current form*. Defendant’s complaint, therefore, is really an acknowledgment that defendant cannot make out its justification with evidence. Indeed, in questioning of former Commissioner Been back in August 2017, she did not know, in the circumstance where the ORP were eliminated, whether “any council members would reject the necessary actions to permit any affordable housing in their districts[.]”<sup>3</sup> She also admitted, when asked whether the beneficial effects she ascribed to the ORP would not have occurred “but for” the ORP, that “I don’t have an alternate . . . universe where I have tested out the community preference versus . . . not having a community preference on actual disputes,”<sup>4</sup> and further conceded that “I don’t have any way of assessing ‘but for.’”<sup>5</sup>

Notwithstanding Ms. Been’s admissions, defendant has continued to pursue its justification, and plaintiffs cannot risk being blindsided by assertions that there *is* some factual basis to believe that CMs would just automatically vote against affordable housing development in the absence of the ORP as it currently exists. In fact, Ms. Been more recently testified in April that she came to believe that, in a world where the ORP gave preference for less than 50 percent of the units, there are now, suddenly, CMs who *would* just turn down affordable housing development, “independent,” as the question put it, “of the other merits that the proposal or project had . . . .” She specifically identified former Council Speaker Mark-Viverito, former CM Rosie Mendez, and current CMs Van Bramer, Rodriguez, and Espinal.<sup>6</sup> Ms. Been testified that there were not any other CMs in that category that she could think of or remember, but she also said that

---

<sup>2</sup> See, e.g., Excerpt of the July 27, 2017 deposition of Carl Weisbrod, former Director of City Planning, annexed hereto as Exhibit 4, at 226:22-231:12 (delineating an array of “carrots” other than ORP that the City has used to try to gain support for efforts to facilitate affordable housing development).

<sup>3</sup> See Excerpts of the transcript of the August 2, 2017 deposition of Vicki Been (“Been I”), annexed hereto as Exhibit 5, at 290:6-291:7.

<sup>4</sup> *Id.* at 74:4-17.

<sup>5</sup> *Id.* at 75:3-10.

<sup>6</sup> See Been II, at 27:8-30:19.

“I can’t give you a list of everyone because I just – I can’t remember all the conversations.”<sup>7</sup>

As illustrated by Ms. Been’s response, individual deponents are not necessarily able to provide all the information that the defendant as an entity has access to. The purpose of discovery is to make sure that the parties’ cards are put on the table, and not to have surprise evidence. Defendant has now had these interrogatories for six weeks, and thus has had the opportunity to speak to whomever of its personnel it needed to.

Having the answers will, *inter alia*, allow plaintiffs to pose targeted questions on this area in the depositions of Maria Torres-Springer (the current HPD Commissioner) and Jordan Press (the former HPD Director of Legislative Affairs and Federal Policy).<sup>8</sup>

---

<sup>7</sup> See Been II, at 27:25–28:4.

<sup>8</sup> The “which CMs and why” issues, addressed by Interrogatories 1 and 2, are also important for plaintiffs’ intentional discrimination claim, particularly when viewed in light of recent deposition testimony. Plaintiffs argue that defendant has an overarching policy of accommodating resistance to neighborhood racial change, a policy that defendant has tried to hide. Under questioning at his March 16, 2018 deposition, however, Matthew Murphy (“Murphy Deposition”), defendant’s Deputy Commissioner for Policy and Strategy at HPD, did confirm that, in today’s New York, there are people both in white neighborhoods and in neighborhoods dominated by other racial groups where racial change or the prospect of racial changes makes them feel uncomfortable. The Deputy Commissioner, after noting that he “can’t speak for every resident,” admitted that “I think it’s likely and I think people correlate that change [neighborhood racial change] to development, new housing development. *So as a result they oppose housing development, especially Affordable Housing Development.*” See Excerpts of the transcript of the March 16, 2018 deposition of Matthew Murphy, annexed hereto as Exhibit 6, at 215:3-20 (emphasis added). Of particular interest with regards to Interrogatories 1 and 2, when he was asked as a follow-up about whether there is anything politically sensitive about broaching the idea of desegregating neighborhoods that are currently segregated by race or ethnicity, Mr. Murphy went on to acknowledge there was, and specified a relevant consequence: “I believe so, yes, *especially voting against Affordable Housing Projects.*” *Id.* at 215:21-216:5 (emphasis added).

In other words, defendant has known that the resistance to affordable housing development that it seeks to overcome with the ORP – including resistance manifested as or resulting in *voting against affordable housing projects*, precisely the issues addressed by these interrogatories – is linked to resistance to neighborhood racial change.

With answers to Interrogatories 1 and 2, the specifics of defendant’s justification will cease to be a moving target. Plaintiffs will be able to examine the basis for predicted opposition for each CM identified and also have the opportunity to develop evidence that any proffered reasons for predicting such automatic opposition to affordable housing in the absence of the ORP other than those linked to concerns about neighborhood racial change are purely pretextual – to wit, they are designed to hide defendant’s knowledge that such identified CMs (to the extent they do exist) would be acting with the intention to accommodate their constituents’ fears of racial change. (Plaintiffs’ have a head start on the pretext front with Deputy Mayor Glen’s acknowledgment that voting down affordable housing because of the absence of the ORP would neither be in the City’s interest nor in the interest of the CM’s own constituents. See Excerpt of the transcript of the Nov. 3, 2017 deposition of Alicia Glen (“Glen Deposition”), defendant’s Deputy Mayor for Housing and Economic Development, annexed hereto as Exhibit 7, at 133:21-134:14.)

The Court's decision as to discovery from high-ranking officials does not determine the appropriateness of these interrogatories. Plaintiffs explicitly noted in the definition section of their interrogatories that these interrogatories were "intended to seek defendant's answers based on information known to and by officers and employees of defendant's executive branch."<sup>9</sup>

It is defendant's own justification, rather than the kind of information that plaintiffs seek, that is unusual (if not unique). It is routine for a municipal defendant to have *validated* a challenged policy before using it (and for a plaintiff in such a case to inquire as to what steps had been taken to validate it). Here, the proposition of the defendant is not "the people who pass this test will make better firefighters or police sergeants than those who do not pass," but rather "if we reduce or eliminate the ORP, the Council will not pass the measures needed for affordable housing development." The fact that this defendant – in its own objections – is saying that proving this proposition is difficult does not and cannot excuse defendant from producing evidence necessary for a factfinder to assess whether the proposition is valid or not.

#### Interrogatory No. 5

This interrogatory seeks to have defendant identify any CM that communicated with then-Mayor Bloomberg concerning the ORP *during that portion of calendar year 2002* prior to the time that the ORP percentage was raised to 50 percent from 30 percent (making defendant's objection that plaintiffs were asking about an "unspecified time period," Objections, at 8, a *non-sequitur*).<sup>10</sup> This is a targeted inquiry that hones in on who was influencing the decision to go from 30 percent to 50 percent, and why.

The inquiry is especially important because there is no paper trail for this period: we have no electronic discovery for any custodian in the time frame (neither from the Ms. Perine, nor from any other custodian). Ms. Perine testified that she spoke with then- Deputy Mayor Daniel Doctoroff on the issue, and made the decision with his approval,<sup>11</sup> but Mr. Doctoroff was not one of the individuals permitted to be a Stage 1 custodian.

Clearly there was some CM intervention at the time; according to a contemporaneous news article, CM Bill Perkins "said he persuaded HPD to raise the community preference requirement from 30 percent to 50 percent for all new housing development projects . . . ."<sup>12</sup> (It bears mentioning in light of his professed role in the increase, that Deputy Mayor Glen – not referencing

---

<sup>9</sup> See Exhibit 2, at 2, Definition No. 3.

<sup>10</sup> As defendant knows, the press release announcing the increase of the percentage from 30 percent to 50 percent was issued on Sept. 4, 2002. See Excerpts of transcript of Oct. 26, 2017 deposition of Jerilyn Perine ("Perine Deposition"), the HPD Commissioner at the time, annexed hereto as Exhibit 8, at 169:10-170:12. The period in question is the approximately eight months from the beginning of 2002 up until Sept. 4, 2002.

<sup>11</sup> See *id.*, at 174:6-14, 186:4-11.

<sup>12</sup> See J. Zamgba Browne, *Brokering deal for affordable housing uptown*, Amsterdam News, Aug. 29, 2002, at 1, annexed as Exhibit 9.

any particular time period, thought of CM Perkins as someone who had “scream[ed] about” thinking that Harlem is becoming too white.)<sup>13</sup>

Ms. Perine would not have necessarily known of any conversations that CMs may have had with Mayor Bloomberg, nor of conversations that Mayor Bloomberg, in turn, may have had with Deputy Mayor Doctoroff.

Finally, an increase in the ORP percentage for reasons connected to concerns about racial change would have been entirely consistent with the lack of care about residential segregation evinced during the Mayoral administrations that Ms. Perine served (Mayors Giuliani and Bloomberg). She testified that, when she was HPD Commissioner, she had “no idea” whether ending residential segregation was a goal of New York City, and that neither Mayor Giuliani, Mayor Bloomberg, Bob Harding (the Deputy Mayor to whom Ms. Perine reported during the Giuliani administration), nor Dan Doctoroff (the Deputy Mayor to whom Ms. Perine reported during the Bloomberg administration) told her that it was a goal of defendant to end residential racial segregation.<sup>14</sup> Ms. Perine admitted that she was unaware of *anything* that was done during her tenure as HPD Commissioner to tackle residential segregation.<sup>15</sup>

The interrogatory is a modest request to fill in the gaps in the evidentiary picture.

#### Interrogatories Nos. 8 and 9

These interrogatories relate to the version of the New York State 421-a program that was enacted in 2017. The program was dubbed by the Governor “Affordable New York,” and will be referred to here as the “new 421-a.” The previous version of 421-a, in place through 2015 (“old 421-a”) had a provision that provided for community preference “[u]nless preempted by federal regulations.”<sup>16</sup> One of the defenses that defendant has articulated is that it was applying old 421-a, and not its own ORP, to lotteries to which plaintiffs had applied. New 421-a, by contrast, does not have a community preference provision.

Having noticed that there were some 2018 lottery advertisements that did not specify community preference, plaintiffs asked Mr. Murphy about the new 421-a, a program with which he confirmed his familiarity.. Mr. Murphy stated that it was his understanding that the community preference was not being applied under new 421-a and that the reason was that he believed that doing so was “not a requirement of state law,” adding in response to an inquiry as to whether

---

<sup>13</sup> See Glen Deposition, at 59:10-16.

<sup>14</sup> See Perine Deposition, at 73:17-74:10. See also *id.*, at 280:7-14 (“Q. When you were commissioner of HPD, did you understand that there was any link whatsoever between segregated housing patterns and segregated elementary school patterns? A: I can’t say that it was really something that I ever focused on, no.”).

<sup>15</sup> *Id.* at 74:11-76:14.

<sup>16</sup> See expired [N.Y. Real Prop. Tax Law § 421a\(7\)\(d\)\(iii\)](#).

applying community preference under new 421-a was “prohibited by state law” that he believed that it was.<sup>17</sup>

Plaintiffs then asked Ms. Been about this testimony at her recent deposition, and she said that it was not her understanding that the new 421-a prohibits or does not permit Community Preference.

This is a continuing violation case. Plaintiffs are entitled to know what defendant’s policy is now in respect to the application of community preference. Interrogatory 8 simply seeks to clarify what subsets of new 421-a developments, if any, as to which defendant believes it is permissible to apply the outsider-restriction policy, and what subsets, if any, defendant believes it is not permissible to do so.

“Permissible” is intended to mean “not barred by law, regulation, or other legal impediment.” Defendant’s assertion is that a term with a “legal connotation” is thus a request that is objectionable as one calling for a legal analysis and a legal conclusion, Objections, at 10, blithely ignores the relevant provision of the Federal Rules.

In fact, “[a]n interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact *or the application of law to fact . . .*” [Fed. R. Civ. P. 33\(a\)\(2\)](#). *See also Fed. Prac. and Proc. Civ. § 2167* (3d ed.) (citing the 1970 Advisory Committee comment and explaining that the only kind of interrogatory that calls for a “legal conclusion” that is objectionable is one of “pure law”; that is, one that extends to “legal issues unrelated to the facts of the case”).

Here, the interrogatories serve the purposes of both learning the limits, if any, that defendant will be drawing on the application of community preference, and also the purpose of understanding if there are any circumstances where defendant is *voluntarily* not applying community preference.

Interrogatory 9 seeks to find out defendant’s reasons for not applying community preference in some cases (if that, as appears to be the case, is what is going on). The rationales for *not* applying community preference will allow plaintiffs to assess the plausibility and consistency of defendant’s rationales *for applying* community preference in other circumstances.

As with Interrogatory 8, the objection about legal conclusion, Objections, at 11, is misplaced, *see Fed. R. Civ. P. 33(a)(2)*; here, all that is being asked is why, in some circumstances where defendant could apply community preference, it is not doing so.

---

<sup>17</sup> *See* Murphy Deposition, at 9:2-20.

Interrogatory No. 12

This interrogatory relates to the version of 421-a that existed before any community preference language came into that statute. As such, it is at the heart of defendant's claim that it was not applying its own preference in 421-a buildings, but rather applying the state preference.<sup>18</sup> Plaintiffs specifically selected the period from 2003 to 2005 because it was the period directly before there started to be community preference provisions in 421-a. This is another circumstance where defendant wants to have the benefit of a justification or defense, but does not want to allow plaintiffs the opportunity to reach evidence that tests the justification or defense.

As 421-a developments need to be monitored, and tax abatements granted under 421-a last for a long period of time, it is not unreasonable to expect that defendant has available the records (or lists) to specify the 421-a developments where preference was and was not applied.

Interrogatory No. 13

Maintaining records of the AFFH analysis *and of the actions taken* to overcome the effects of any impediments to fair housing choice is a federal regulatory requirement.<sup>19</sup> Identifying the custodians of such records and the locations where the records are kept is a very basic question. Unfortunately, and contrary to defendant's assertion, defendant's Consolidated Plan Coordinator Charles Sorrentino's testimony made clear the question was one that he was not able to answer.<sup>20</sup>

The existence and contents of these records is extremely important as part of plaintiffs *Arlington* analysis. Defendant, not surprisingly, takes the position that its policy and practice in general is to obey the dictates of federal regulation. To the extent that AFFH regulations (from which preference provisions are not excepted) have not been followed, either in record maintenance or in substance, that is *Arlington* circumstantial evidence of an intentional violation (along with disparate impact). And, if the records were to show that defendant took AFFH seriously outside the context of outsider-restriction, but not in the context of outsider-restriction, that, too, would constitute the same type of *Arlington* evidence. One cannot determine whether something is an exception to the rule if one is not able to learn what the rule is.

---

<sup>18</sup> Plaintiffs' view is that defendant's position is not legally cognizable in the face of the preemption provisions of the Fair Housing Act and the impermissibility of defendant carrying out even a state policy that is illegal under federal law, but the defense has not been dropped.

<sup>19</sup> *See, e.g.*, required Consolidated Plan certifications, including the 2014 AFFH certification, marked as Ex. 19 at the Apr. 28, 2017 deposition of Charles Sorrentino, Consolidated Plan Coordinator at the Planning Department, and annexed hereto as Exhibit 10.

<sup>20</sup> *See* Excerpt of the transcript of Apr. 28, 2017 deposition of Charles Sorrentino, annexed hereto as Exhibit 11, at 45:10-48:15 (acknowledging the regulatory requirement to maintain records of the actions taken; stating that the analysis of impediments task was "basically for the other agencies," like HPD and the Commission on Human Rights; stating that "I cannot speak for what has been maintained or retained by other agencies since they do their sections of their analysis"; and being unable to state whether there is a place where all the records that relate to AFFH analysis and AFFH actions reside).

Defendant's attempt to limit interrogatories to certain agencies

As a practical matter, the improper limitations boil down to the following. First, it appears from Objections, at 2-3, ¶ 7, that defendant is purporting to limit its reliance on information from the Office of the Mayor to a single question involving one of the instances where Mayor de Blasio inserted himself into the case by offering his legal view of the case (*see* Interrogatory 6).<sup>21</sup> In fact, back in the early part of what was going to be Stage 1 of this case, it was resolved that the Office of the Mayor was one of the parts of City government from which general discovery would be allowed. These interrogatories reasonably relate to what officials in the Office of the Mayor may have knowledge of.

Second, it appears from Objections, at 2-3, ¶¶ 5-7, that defendant is seeking to exclude HDC (*see* reference to entities that are legally distinct from defendant “even if controlled in principal part” by defendant, Objections, at 2, ¶ 5). Defendant takes this position even though HPD and HDC have joint marketing guidelines; even though discovery has been had of HDC (though defendant had originally objected); even though the HPD Commissioner is Chair of HDC; even though HDC-administered lotteries are an undisputed part of this case; even though the information possessed by HDC is effectively in the control of defendant; and even though it is reasonable to believe that HDC may have information regarding each and all of the interrogatories, with the possible exceptions of Interrogatories 5, 6, and 13 (as to which plaintiffs are prepared to agree that information need not be sought from HDC).

Third, relating to the interrogatories dealing with various iterations of 421-a (Interrogatories 7-12), it may be the case that defendant's Department of Finance, which deals with tax issues, has relevant information. Defendant does not have to put out an inquiry to every City agency, but it is reasonable to have it inquire of such agencies whose roles bear on 421-a.

\* \* \*

For the reasons stated above, defendant should be compelled to answer Interrogatories 1, 2, 5, 8, 9, 12, and 13, and defendant's attempt to limit information to agencies and entities as objected to above should be disallowed.

Respectfully submitted,

*Craig Gurian*

Craig Gurian  
Attorney for Plaintiffs

---

<sup>21</sup> There have been other instances. *Cf. United States v. City of New York*, 2009 WL 2423307, at \*2-3 (S.D.N.Y. Aug. 5, 2009) (emphasis added) (permitting the deposition of then- Mayor Bloomberg in a case challenging the disparate impact of firefighter tests and pointing out that his statement that the tests were job-related meant that he should be deposed because it “raise[d] the question of the basis for the Mayor's belief”).

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

----- x

JANELL WINFIELD, TRACEY STEWART,  
and SHAUNA NOEL,

Plaintiffs,

-against-

THE CITY OF NEW YORK,

Defendant.

----- x

**DEFENDANT’S RESPONSES  
AND OBJECTIONS TO  
PLAINTIFFS’ FIRST SET OF  
INTERROGATORIES**

15 CV 5236 (LTS) (KHP)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 33.3 of the Local Civil Rules for the Southern and Eastern Districts of New York, the City of New York (the “City”), responds and objects to Plaintiffs’ First Set of Interrogatories as follows:

**GENERAL STATEMENT**

1. By responding to any interrogatory, Defendant does not concede the materiality of the subject to which it refers. Defendant’s responses are made expressly subject to, and without waiving or intending to waive, any questions, or objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence or for any other purpose, of any of the information produced, or of the subject matter thereof, in any proceeding including the trial of this action or any subsequent proceeding.

2. Inadvertent production of any information which is privileged, was prepared in anticipation of litigation, or is otherwise immune from discovery, shall not constitute a waiver of any privilege or of another ground for objecting to discovery with respect to that information, or its subject matter, or of Defendant’s right to object to the use of any such information during any proceeding in this litigation or otherwise.

3. Defendant is continuing to search for information responsive to Plaintiffs' Interrogatories, as noted below, and will provide answers on or before May 3, 2018 as directed by the Court. Furthermore, Defendant reserves the right to supplement its response to each interrogatory with additional information, if and when such information becomes available to Defendant's counsel. Defendant also reserves the right to object to the future disclosure of any such information.

### **GENERAL OBJECTIONS**

4. Defendant objects to these Interrogatories to the extent that they demand information which is privileged.

5. Defendant objects to the Plaintiffs' definition of "defendant" (Ps' First Interrogatories at ¶ 3) to the extent it purports to include entities controlled in principal part by the City. The only defendant in the action is the City of New York. Entities that are legally distinct from the City of New York, even if controlled in principal part by the City, are not part of the City of New York and therefore are not defendants in this action, and will not be treated as such for the purposes of these Interrogatories.

6. Defendant objects in the entirety to any request for information or production from entities not represented by the Corporation Counsel of the City of New York.

7. Defendant objects to these Interrogatories to the extent they seek information from the City Council or City Councilmembers, Borough Presidents, Community Boards or Community Board members, or any City of New York agency or department other than the New York City Department of Housing Preservation and Development ("HPD"), Department of City Planning ("DCP"), and the Mayor's Office (to the extent any question is explicitly asking about Mayor De Blasio), as information from such individuals and entities is disproportionate to the needs of the case and overly burdensome on the municipal defendant.

The policy being challenged in the action was implemented by HPD and has been maintained and administered by HPD, except in those instances in which it is administered by HDC (which is a separate legal entity and therefore not part of the City of New York). The burden and expense to the City of searching for potentially responsive information from agencies other than HPD, DCP, and the Mayor's Office (to the extent any question is explicitly asking about Mayor De Blasio) outweighs any likely benefit to Plaintiffs. Thus, Defendant will only be searching and gathering responses in response to the Interrogatories from the agencies indicated above and all responses to the Interrogatories should be understood in that manner.

8. Defendant objects to the Plaintiffs' definition of "City's outsider-restriction policy" (P's First Interrogatories at ¶ 1) as it is vague and ambiguous and to the extent it includes the City's administration of a preference mandated by state law or pursuant to the policy of another entity. Thus, Defendant defines the term "City's outsider-restriction policy" or Community Preference Policy ("CP Policy") for the purposes of these responses as the City's policy to provide eligible applicants residing in the community district in which a qualifying affordable housing development is located with priority for up to 50% of the affordable units subject to the housing lottery in such development.<sup>1</sup> A qualifying affordable housing development includes those created with the use of discretionary City subsidy or HDC financing and/or certain zoning programs, and does not include a preference provided as mandated by RPTL section 421-a.

9. Defendant objects to these Interrogatories as being in excess of the number of written interrogatories permissible under Federal Rule 33(a)(1). When counting all of the discrete subparts, there are well over 25 written interrogatories.

---

<sup>1</sup> In limited circumstances, the community preference will be applied to more than one community districts; such as when the qualifying affordable housing development is on the border between multiple community districts.

**INTERROGATORIES**

**INTERROGATORY NO. 1:**

Identify each CM, if any, that defendant believes would vote against one or more land-use measure needed to facilitate the construction of a housing development that would become a Covered Development, or otherwise vote against the development of one or more housing developments that would become Covered Developments, if the Outsider-Restriction Policy as it currently exists were narrowed in applicability (that is, reduced from 50 percent of the Lottery Units to a smaller percentage, reduced in terms of the community districts where the policy is applicable, limited only to what defendant considers long-term residents of a community district, limited only to those whom defendant considers at-risk of displacement) or eliminated; but whom defendant believes would otherwise vote in favor of the aforementioned land-use measures or developments. In other words, this interrogatory is asking for the identification of each CM, if any, for whom defendant believes the narrowing or elimination of the outsider-restriction policy would be a “but for” cause of voting against one or more land-use measures or developments as described above.

**OBJECTION AND RESPONSE TO INTERROGATORY NO. 1:**

Defendant objects to this question as it is beyond the scope of permissible interrogatories set forth in Local Civil Rule 33.3 for the Southern District; the information sought is not limited to a name of a witness and this method of discovery is not more practical than a deposition. Defendant objects to this request as overly broad, ambiguous, and susceptible to multiple and varying interpretations and constructions. The question is a hypothetical that is impossible to answer because it fails to understand the complexities of projects and is unrealistic in that it is disjointed from the practicalities of the decision making process. Furthermore, Defendant has previously objected and prevailed on the issue of quashing discovery from Council Members. The Court’s Order (ECF 189) governs with regard to this issue at this time. Plaintiffs cannot circumvent this decision and try to obtain the same information through different means.

To the extent Plaintiffs are asking what decision makers of the CP Policy believe, Plaintiffs have deposed Deputy Mayor Glen and have deposed or will be deposing the majority of former and current HPD Commissioners since September 2000 who have been involved in the

decision making process on the CP Policy<sup>2</sup> and Plaintiffs can ask this question to them directly. For instance, Plaintiffs asked this question of former HPD Commissioner Vicki Been at her deposition on April 10, 2018 and could have asked the other former Commissioners as well. If Plaintiffs failed to ask this question to the former HPD Commissioners already deposed, the fact that they have now realized this omission is not a basis for an interrogatory.

**INTERROGATORY NO. 2:**

For each CM identified in response to Interrogatory No. 1, specify each and all of the bases for defendant's belief, and, for each such basis, specify the date, substance, and context of each statement or communication (*e.g.*, in-person meeting with Commissioner Been, telephone call with Commissioner Torres-Springer, email to Mayor de Blasio, news report published by The New York Times, speech delivered at a committee hearing of the City Council, remarks made at a community board meeting, testimony given to a meeting of the City Planning Commission) made by the CM, if any, that contributed to the defendant's belief.

**OBJECTION AND RESPONSE TO INTERROGATORY NO. 2:**

Defendant objects to this question as it is beyond the scope of permissible interrogatories set forth in Local Civil Rule 33.3 for the Southern District; the information sought is not limited to a name of a witness and this method of discovery is not more practical than a deposition.

As this question is referring back to Interrogatory No. 1, which Defendant has objected to, those same objections are reiterated here. Defendant objects to this request as overly broad, ambiguous, and susceptible to multiple and varying interpretations and constructions. The question is a hypothetical that is impossible to answer because it fails to understand the complexities of projects and is unrealistic in that it is disjointed from the practicalities of the decision making process. Furthermore, Defendant has previously objected and prevailed on the issue of quashing discovery from Council Members. The Court's Order (ECF 189) governs with

---

<sup>2</sup> Plaintiffs' decision not to depose two former HPD Commissioners – Ruthann Visnauskas and Mathew M. Wambua – was their own.

regard to this issue at this time. Plaintiffs cannot now circumvent this decision and try to obtain the same information through different means.

To the extent Plaintiffs are asking what decision makers of the CP Policy believe, Plaintiffs have deposed Deputy Mayor Glen and have deposed or will be deposing the majority of former and current HPD Commissioners since September 2000 who have been involved in the decision making process on the CP Policy and can ask this question to them directly. If Plaintiffs failed to ask this question to the former HPD Commissioners already deposed, the fact that they have now realized this omission is not a basis for an interrogatory.

**INTERROGATORY NO. 3:**

Identify each CM, if any, who has requested, demanded or otherwise sought an increase of the Outsider-Restriction Policy to include more than 50 percent of lottery units, specifying: (a) the substantive particulars of the request (including the covered development that was the subject of the request and the extent of expansion of the policy sought by the CM); (b) when, by what means (*e.g.*, in-person meeting or telephone), and to whom the request was made; and (c) whether the request was granted or denied.

**OBJECTION AND RESPONSE TO INTERROGATORY NO. 3:**

Defendant objects to this question as it is beyond the scope of permissible interrogatories set forth in Local Civil Rule 33.3 for the Southern District; the information sought is not limited to a name of a witness and the current method of discovery is not more practical than a deposition or document production. Defendant further objects to this request as overly broad, overly burdensome, ambiguous, and susceptible to multiple and varying interpretations and constructions. Defendant also objects to the extent this question is asking for information from entities beyond those listed in paragraph 7 of the General Objections above.

Plaintiffs have asked variations of this question at depositions and can continue to do so to seek the answer to this question. Plaintiffs may also review document productions from Defendant for this same information.

Notwithstanding the foregoing and subject to the general objections as well as the objections stated above, to the extent information is available beyond any of Defendant's prior document productions, Defendant is seeking an answer for this interrogatory and will supplement its response on or before May 3, 2018.

**INTERROGATORY NO. 4:**

For those requests identified in Interrogatory No. 3 in which the request was rebuffed or denied, specify each one in which the CM subsequently voted in favor the land-use measure needed to facilitate the construction of the relevant development, or otherwise voted in favor of the relevant development.

**OBJECTION AND RESPONSE TO INTERROGATORY NO. 4:**

Defendant objects to this request as it is beyond the scope of permissible interrogatories set forth in Local Civil Rule 33.3 for the Southern District; the information sought is not limited to a name of a witness and the current method of discovery is not more practical than a deposition. Defendant further objects to this request as overly broad and susceptible to multiple and varying interpretations and constructions. The question fails to understand the complexities of projects and is unrealistic in that it is disjointed from the practicalities of the decision making process. Nonetheless, once Defendant provides its answer to Interrogatory No. 3, Plaintiffs may look up the voting record of Council Members as it is publicly accessible information.

**INTERROGATORY NO. 5:**

Identify any CM who communicated directly with Mayor Bloomberg concerning the Outsider-Restriction Policy during calendar year 2002 prior to the increase of the policy from 30

percent to 50 percent of lottery units. For each such CM: (a) specify the date(s), the method (*e.g.*, in-person meeting, telephone call, email, etc.), and the substance of the communication; and (b) identify any person other than Mayor Bloomberg and the CM who was present for, was copied on, or otherwise participated in, the communication; and

**OBJECTION AND RESPONSE TO INTERROGATORY NO. 5:**

Defendant objects to this question on the grounds that it is overly broad, ambiguous, duplicative, not relevant, and susceptible to multiple and varying interpretations and constructions. Defendant further objects to this question as overly burdensome and disproportionate to the needs of the case as it is seeking information created, maintained, or reviewed by Defendant during an unspecified time period sixteen years ago. Moreover, the question lacks a factual foundation to support such a search. Plaintiff's assumption that Mayor Bloomberg was involved in the decision making process when the CP Policy was increased from 30 percent to 50 percent of lottery units is without basis. In fact, former HPD Commissioner Perine, at her deposition on October 26, 2017, testified that she was the decision maker in 2002 who decided to increase the CP Policy from 30 percent to 50 percent of lottery units. (Perine Deposition, 174: 23-25; 175: 2-10). She further testified that she had no conversations with Mayor Bloomberg about the increase in the CP Policy and he was not involved in the decision-making process. (Perine Deposition 174: 6-22).

**INTERROGATORY NO. 6:**

Specify the basis or bases of Mayor de Blasio's April 18, 2016 statement that, "The law says that when we create affordable housing, we have the right to split it 50 percent for people from the surrounding community – 50 percent city-wide lottery open to all – to community members, and people in any other part of the five boroughs?" (*See* <http://www1.nyc.gov/office-of-the-mayor/news/366-16/transcript-mayor-de-blasio-appears-nbc-s-ask-mayor>.)

**OBJECTION AND RESPONSE TO INTERROGATORY NO. 6:**

Defendant objects to this question as the quoted text within the question is not accurate. The Mayor did not end his statement with a question mark as the interrogatory indicates.

Notwithstanding the foregoing and subject to the general objections as well as the objections stated above, Defendant is seeking an answer for this interrogatory and will supplement its response on or before May 3, 2018.

**INTERROGATORY NO. 7:**

Describe any guidance, direction, advice, opinion, or other communication received by defendant from any official or employee of New York State or any New York State agency concerning the permissibility of applying the Outsider-Restriction Policy with respect to Covered Developments that: (a) are “eligible multiple dwellings” pursuant to RPTL § 421-a(16)(a)(xxviii)<sup>3</sup>; (b) elect to receive the benefits of new RPTL § 421-a(16) pursuant to RPTL § 421-a(16)(r); (c) are “extended affordability properties” pursuant to new RPTL § 421-a(17)(x); or (d) otherwise do not fall under RPTL 421-a(7)(d)(iii) as it existed under the version of RPTL 421-a in effect in 2015.

**OBJECTION AND RESPONSE TO INTERROGATORY NO. 7:**

Defendant objects to this question as it is beyond the scope of permissible interrogatories set forth in Local Civil Rule 33.3 for the Southern District; the information sought is not limited to a name of a witness and the current method of discovery is not more practical than document production. Defendant also objects to this question to the extent it is seeking legal conclusions or legal analysis on the application of the cited law. Furthermore, Defendant objects to the extent this question is asking for information from entities beyond those listed in paragraph 7 of the General Objections above.

---

<sup>3</sup> Pursuant to the version of RPTL § 421-a enacted in 2017 (the “Affordable New York” program, or “new RPTL 421-a”).

Notwithstanding the foregoing and subject to the general objections as well as the objections stated above, Defendant is seeking an answer for this interrogatory and will supplement its response on or before May 3, 2018.

**INTERROGATORY NO. 8:**

Specify the subsets of Covered Developments specified in Interrogatory No. 7, if any, as to which defendant believes it is permissible to apply the Outsider-Restriction Policy, and the subsets, if any, as to which defendant believes it is not permissible to apply the Outsider-Restriction Policy

**OBJECTION AND RESPONSE TO INTERROGATORY NO. 8:**

Defendant objects to the question on the grounds that it is overly broad, ambiguous, and susceptible to multiple and varying interpretations and constructions. Additionally, Defendant objects to the fact that Plaintiffs have not defined the term “permissible” and without a definition, the term is vague, ambiguous and overly broad. For the purpose of this response, Defendant interprets the term “permissible” to have a legal connotation and therefore objects to this request as it calls for legal analysis and a legal conclusion.

**INTERROGATORY NO. 9:**

For any Covered Development of a type specified in Interrogatory No. 7 where defendant believes it is permissible to apply the Outsider-Restriction Policy but where defendant is not doing so, explain each and all of defendant’s reasons for not doing so.

**OBJECTION AND RESPONSE TO INTERROGATORY NO. 9:**

Defendant objects to this question on the grounds that it is overly broad, ambiguous, and susceptible to multiple and varying interpretations and constructions. Additionally, Defendant objects to the fact that Plaintiffs have not defined the term “permissible” and without a definition, the term is vague, ambiguous and overly broad. For the purpose of this response,

Defendant interprets “permissible” to have a legal connotation and therefore objects to this request as it calls for legal analysis and a legal conclusion.

**INTERROGATORY NO. 10:**

Under what circumstances can a Covered Development specified in Interrogatory No. 7 qualify for tax abatement under new 421-a but not be a participant in *any* of the following: (a) defendant’s voluntary inclusionary housing program; (b) defendant’s mandatory inclusionary housing program; (c) any other program, policy, regulation, or law of defendant that requires the provision of affordable housing; or (d) any other program, policy, regulation, or law of defendant that provides subsidy or other benefit (including tax benefits other than new 421-a) to promote the development of affordable housing.

**OBJECTION AND RESPONSE TO INTERROGATORY NO. 10:**

Defendant objects to this question as it is beyond the scope of permissible interrogatories set forth in Local Civil Rule 33.3 for the Southern District; the information sought is not limited to a name of a witness and the current method of discovery is not the more practical than a deposition. This information could have been ascertained during the deposition of HPD’s Assistant Commissioner of Policy and Operations, Margaret Brown, on January 18, 2018. The fact that Plaintiffs failed to ask these questions during that deposition and have now realized their omission is not a basis for an interrogatory.

Defendant further objects to the fact that Plaintiffs have not defined the term “affordable housing” because without a definition, the term is vague, ambiguous and overly broad. For the purpose of any answer Defendant’s provide, “affordable housing” and “affordable housing development” will be defined as projects creating or preserving housing units for income-eligible households that receive a discretionary City subsidy or HDC financing and/or are developed pursuant to certain zoning programs, or are subject to the HPD and HDC Marketing Guidelines. Projects developed with a RPTL section 421-a tax exemption are also considered “affordable housing” for the purpose of this response. Defendant’s use of these terms in its response, and

understanding of these terms for purposes of producing an answer to this interrogatory is based upon the definition provided herein.

Notwithstanding the foregoing and subject to the general objections as well as the objections stated above, Defendant is seeking an answer for this interrogatory and will supplement its response on or before May 3, 2018.

**INTERROGATORY NO. 11:**

For each Covered Development that was first advertised on Housing Connect in 2018 that has not indicated in the advertisement a preference for community district residents, explain why the Outsider-Restriction Policy is, apparently, not being applied.

**OBJECTION AND RESPONSE TO INTERROGATORY NO. 11:**

Defendant objects to this question as it is beyond the scope of permissible interrogatories set forth in Local Civil Rule 33.3 for the Southern District; the information sought is not limited to a name of a witness and the current method of discovery is not the more practical than a deposition.

Notwithstanding the foregoing and subject to the general objections as well as the objections stated above, Defendant is seeking an answer for this interrogatory and will supplement its response on or before May 3, 2018.

**INTERROGATORY NO. 12:**

For the Covered Developments first advertised to the public in the period from 2003 to 2005 and that received RPTL § 421-a benefits, specify which of them applied the Outsider-Restriction Policy and which did not, and, in each case, explain the basis or bases for applying or for not applying the policy.

**OBJECTION AND RESPONSE TO INTERROGATORY NO. 12:**

Defendant objects to this question as it is overly burdensome and disproportionate to the needs of the case to the extent it requests information created, maintained, or reviewed by



*Attorneys for Defendant*

To: Craig Gurian  
Roger Maldonado  
Anti-Discrimination Center, Inc.  
1745 Broadway, 17th Floor  
New York, New York 10019  
(212) 537-5824

Mariann Wang  
Heather Gregorio  
Cuti Hecker Wang LLP  
305 Broadway, Suite 607  
New York, New York 10007  
(212) 620-2603

*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

JANELL WINFIELD, TRACEY STEWART,  
and SHAUNA NOEL,

Plaintiffs,

15 CV 5236 (LTS) (KHP)

- against -

CITY OF NEW YORK,

Defendant.

-----X

**PLAINTIFFS' FIRST INTERROGATORIES**

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 33.3 of the Local Rules of the United States District Court for the Southern District of New York (the "Local Rules") and Rule 33 of the Federal Rules of Civil Procedure, Plaintiffs JANELL WINFIELD, TRACEY STEWART, AND SHAUNA NOEL ("Plaintiffs") hereby request that Defendant CITY OF NEW YORK answer under oath, within thirty days of the service of this request, the interrogatories contained herein.

**DEFINITIONS**

The Uniform Definitions set forth in Local Rule 26.3 shall be used to interpret these interrogatories and are hereby incorporated by reference. In addition, as used in these interrogatories:

1. The term "Outsider-Restriction Policy" is intended to mean the policy by which the City of New York applies, requires a developer to apply, or otherwise administers a

preference in housing developments subject to the marketing rules, guidelines, or handbook of HPD and HDC in effect at the time of the development's marketing ("Covered Developments") whereby, of the housing units in the covered developments that are intended to be allocated by lottery ("Lottery Units"), priority for 50 percent of them is given to residents of the community district in which the covered development is located (or, in some cases, is given to residents of a broader "community district preference area" comprising the community district in which the covered development is located as well as a limited number of nearby community districts). The use of this term is intended to apply even if it is defendant's position that it was or is simply administering the policy on behalf of New York State or any other entity, including but not limited to administration, at any time from 2002 to the present, of any iteration of New York's Real Property Tax Law ("RPTL") 421-a program of abatement of the payment of property taxes on a covered development that would otherwise be due to defendant.

2. The term "CM" refers to a Member of the New York City Council.

3. Without limiting plaintiffs' definition of "defendant" as used or as may be used by plaintiffs elsewhere in this action, these particular interrogatories are intended to seek defendant's answers based on information known to and by officers and employees of defendant's executive branch.

### **INSTRUCTIONS**

1. In answering the following interrogatories, you shall furnish all information that is available to you, including information or materials in the possession, custody, or control of you, your attorneys, investigators, experts, representatives, contractors, employees, or other agents.

2. If, in answering the following, you are unable to answer fully, after exercising due diligence to obtain the information to do so, you shall answer said interrogatory to the fullest extent possible, specifying your inability to answer the remainder, describing the efforts taken by you to obtain the information to fully answer said interrogatory, and stating whatever information or knowledge you have concerning the unanswered portion thereof.

3. If, in answering the following interrogatories, you state in whole or in part that “I do not know” or “unknown” or otherwise indicate any similar lack of knowledge, you shall state in detail all efforts made to obtain the information requested, the nature of any continuing efforts in that regard, and by whom any such efforts were and are being made.

4. If, in answering these interrogatories you claim any ambiguity in interpreting either the request or a definition instruction applicable thereto, such claim shall not be utilized by you as a basis for refusing to respond; rather, you shall set forth in a part of your response to such a request the language deemed to be ambiguous and the interpretation chosen or used in responding to the request.

5. Respond separately and completely to each interrogatory or subdivision thereof, setting forth the question in full followed by each answer.

6. Questions regarding the interpretation of this request should be resolved in favor of the broadest possible construction.

7. These interrogatories are to be considered as continuing and each Defendant is requested to provide, by way of supplementary responses hereto, such additional information as it or any persons acting on its behalf may hereafter obtain that will augment, clarify, or otherwise modify the responses now given to this request. Such supplementary responses are to be filed and served upon Plaintiffs’ counsel as soon as practicable after receipt of such information.

Unless otherwise specified, these requests cover the period from January 1, 2014 to the present.

**INTERROGATORIES**

1. Identify each CM, if any, that defendant believes would vote against one or more land-use measure needed to facilitate the construction of a housing development that would become a Covered Development, or otherwise vote against the development of one or more housing developments that would become Covered Developments, if the Outsider-Restriction Policy as it currently exists were narrowed in applicability (that is, reduced from 50 percent of the Lottery Units to a smaller percentage, reduced in terms of the community districts where the policy is applicable, limited only to what defendant considers long-term residents of a community district, limited only to those who defendant considers at-risk of displacement) or eliminated; but who defendant believes would otherwise vote in favor of the aforementioned land-use measures or developments. In other words, this interrogatory is asking for the identification of each CM, if any, for whom defendant believes the narrowing or elimination of the outsider-restriction policy would be a “but for” cause of voting against one or more land-use measures or developments as described above.

2. For each CM identified in response to Interrogatory No. 1, specify each and all of the bases for defendant’s belief, and, for each such basis, specify the date, substance, and context of each statement or communication (*e.g.*, in-person meeting with Commissioner Been, telephone call with Commissioner Torres-Springer, email to Mayor de Blasio, news report published by The New York Times, speech delivered at a committee hearing of the City Council, remarks made at a community board meeting, testimony given to a meeting of the City Planning Commission) made by the CM, if any, that contributed to the defendant’s belief.

3. Identify each CM, if any, who has requested, demanded or otherwise sought an increase of the Outsider-Restriction Policy to include more than 50 percent of lottery units,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

JANELL WINFIELD, TRACEY STEWART

and SHAUNA NOEL,

Plaintiffs,

-against-

Civil Action No.:

15-CV-5236 (LTS) (KHP)

CITY OF NEW YORK,

Defendant.

-----x

April 10, 2018

9:20 a.m.

VIDEOTAPED DEPOSITION of VICKI BEEN, held  
at the law offices of the Anti-Discrimination  
Center, located at 1745 Broadway, New York, New  
York 10019, before Anthony Giarro, a Registered  
Professional Reporter and a Notary Public of the  
State of New York.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VICKI BEEN

MS. SADOK: Objection.

A I'm sorry. I'm having trouble parsing the question because I think you're asking me two things.

Q Let's try it again.

A Okay.

Q We're talking about a circumstance where you ultimately walk away with the belief, I believe, that Council Member X, if the Community Preference were less than 50 percent, is just going to automatically turn down Affordable Housing projects, land use actions needed to facilitate Affordable Housing.

So that's what we're winding up with. And I'm asking you about the cases where you had one or more specific reasons to form that belief about a specific council member.

MS. SADOK: Objection.

A Yes.

Q Who?

A So, for example, I can't

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VICKI BEEN

give you a list of everyone because I just -- I can't remember all the conversations.

Q May we start it this way?

A Uh-huh.

Q I understand what you're saying about not being able to give a comprehensive list.

I just want to make sure we're talking about the same thing so we don't have to track back. This is a list of people who you came to believe in that less than 50 percent circumstance would just turn things down, independent of the other merits that the proposal or project had; is that right?

A Mm-hmm.

Q So please list without explanation as to why. But please list the council members who should be on that list.

MS. SADOK: Objection.

A So in my view, Melissa Mark-Viverito. So Speaker Mark Viverito.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VICKI BEEN

I think, for example, Rosie Mendez. I think Jimmy Van Bramer. I think -- I can't remember his name. I'm sorry. Ydanis Rodriguez.

Q Anybody else?

A Not that I can think of, not that I can remember.

Q I'm sorry. I didn't hear the last --

A Not that I can remember.

Q Council Member Torres?

MS. SADOK: Objection.

A Richie Torres?

Q Yes.

A I don't recall any discussions that would have led me to believe one way or the other.

Q Council Member Espinal?

MS. SADOK: Objection.

A Yes. I think -- I recall a discussion with Council Member Espinal that led -- that would have led me to believe that.

Q Wasn't Council Member

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VICKI BEEN

Espinal a council member who effectively wanted more than 50 percent Community Preference in connection with these New York rezoning?

MS. SADOK: Objection.

A I'm sorry. I am wrong. I was thinking --

Q Take your time.

A No. I need my math with the council member's math to the districts. And I put that out of my head. Espinal wanted more than 50 percent, that is correct, in connection with the East New York. But he voted for it without going above 50 percent. So if we had gone below 50 percent, would he have voted for the East New York rezoning? I don't think so.

Q But he was ultimately prepared to even going forward, even though his desire for more than 50 percent was not satisfied?

A He did go forward, yes.

Q I'm not going to go through

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VICKI BEEN

premises?

MS. SADOK: Objection.

A I think so. So you're assuming that my only concern is reducing racial segregation. So I don't have a concern about displacement. I don't have a concern about fear of displacement.

Q I'm not trying to disguise anything. Your only concern is reducing racial segregation to the maximum extent you can.

Would you retain a 50 percent Community Preference?

MS. SADOK: Objection.

A I don't think so. But I'd want to be sure that I had gone through all the analysis which I haven't done here today. But I don't think so if it were serving none of those purposes. And my only concern was reducing racial segregation.

Q This next document may be a little confusing. So it's going to take a couple of minutes. Ms. Sadok may have

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF \_\_\_\_\_ )  
 ) : ss  
COUNTY OF \_\_\_\_\_ )

I, VICKI BEEN, the witness  
herein, having read the foregoing  
testimony of the pages of this deposition,  
do hereby certify it to be a true and  
correct transcript, subject to the  
corrections, if any, shown on the attached  
page.

\_\_\_\_\_  
VICKI BEEN

Sworn and subscribed to before me,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

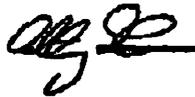
\_\_\_\_\_  
Notary Public

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T I O N

I, ANTHONY GIARRO, a Shorthand Reporter and a Notary Public, do hereby certify that the foregoing witness, VICKI BEEN, was duly sworn on the date indicated, and that the foregoing, to the best of my ability, is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.



ANTHONY GIARRO

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
JANELL WINFIELD, TRACEY STEWART  
and SHAUNA NOEL,

Plaintiffs,

-against-

CITY OF NEW YORK,

Defendant.

Civil Action No.:  
15-CV-5236 (LTS)(KHP)

-----x

VIDEOTAPED DEPOSITION OF

CARL WEISBROD

New York, New York

July 27, 2017

9:06 a.m.

Reported by:  
THERESA TRAMONDO, AOS, CLR  
JOB NO. 51315

1 Weisbrod

2 because I didn't have that discussion  
3 with every council member I spoke to, and  
4 I can only say that no council member I  
5 spoke to said to me that there isn't a  
6 need for more affordable housing in the  
7 City.

8 Q. Is there any council member  
9 that you are aware of who does not  
10 understand the need for more affordable  
11 housing throughout the City?

12 A. Not that I know of.

13 Q. It's common, as I think you've  
14 said before -- well, you certainly said  
15 it before, I think you may have also said  
16 it today -- that land use issues are  
17 contentious, yes?

18 A. Yes.

19 Q. It's not startling to you that  
20 a land use issue would be contentious?

21 A. No.

22 Q. And you said a couple of times  
23 there are just a few tools that can be  
24 used as carrots. Carrots was not your  
25 word, but to try to entice support.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Weisbrod

There are quite a few, aren't there?

MR. VIDAL: Objection.

A. There are some. I mean, I don't know. You say "quite a few." I would say a few, but there are some.

Q. Agreeing to provide community amenities is one, yes?

A. Yes. I would rephrase that to say public investments that communities need is one.

Q. There is a pretty wide range of public investments, yes?

A. There is a wide range, and that's why I differentiate between mere amenities and public investments that communities need, yes.

Q. Well, what are the public investments that communities need that have been offered in the context of seeking to get local support?

A. Well, I gave a list, for example, before of the kinds of investments that the public agreed to make in East New York, which are

1 Weisbrod

2 considerable, school, youth center,  
3 enhanced parks, street scape  
4 improvements, an improvement to the East  
5 New York industrial park and the like.

6 Q. Recreational facilities can be  
7 offered to be improved?

8 A. Conceivably in East New York  
9 one of the improvements that I'm  
10 particularly proud of was taking a former  
11 police building and funding its  
12 rehabilitation into a youth center on a  
13 borderline between two gang turfs and  
14 that the police will actually run that,  
15 which is, I think, something that the  
16 community really wanted to see.

17 And it's helpful in terms to  
18 address a -- still an unacceptably high  
19 crime rate in East New York.

20 Q. What do you -- how do you  
21 distinguish between these things and  
22 community amenities?

23 A. Well, I think communities  
24 frequently want a whole host of things  
25 that go beyond immediate and urgent need

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Weisbrod

that for one reason or another the City would be reluctant to fund because they're more in the nature of an amenity than a public investment --

Q. Can you give me just an example of that?

A. It would depend -- it would depend on the circumstances. I couldn't give you an example because what would be an example of a, quote, amenity in one community might well be a necessity in another.

Q. I understand that, but what's one that -- give me an example of one that might be an amenity in one neighborhood, but a real need in another neighborhood?

A. Conceivably a school. A school -- neighborhoods always want new schools, and that's understandable. Every neighborhood wants new schools, but it's far more urgent and important in neighborhoods that have pressing population needs where you can

1 Weisbrod

2 demonstrate that youth -- a young  
3 population that's going to need that  
4 school in a certain period of time as  
5 there isn't a capacity or upcoming  
6 capacity; whereas, in another  
7 community which -- I mean, every  
8 community wants a school, but it may not  
9 be needed in some communities, and it's  
10 hard to say a school is an amenity, but  
11 in overseeing --

12 Q. I understand the way you mean  
13 that.

14 Adding transportation  
15 infrastructure might be a carrot for a  
16 community, yes?

17 A. Certainly conceivably, but  
18 transportation infrastructure, depends  
19 what kind of transportation  
20 infrastructure it is, can be extremely  
21 costly and maybe not possible for the  
22 City to do because as we well know the  
23 City does not control the Metropolitan  
24 Transportation Authority.

25 Q. But there are some new ferries

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Weisbrod

that the administration has put forward,  
yes?

A. The City has put together a  
ferry service.

Q. Is another possible carrot  
pledges to hire locally in terms of  
construction that is going to be done?

MR. VIDAL: Objection.

A. There is a -- some local  
hiring plan. Honestly, I'm not familiar  
with the details of it.

Q. Has the administration, at  
least through the time you left it,  
generally been successful in yielding  
support for affordable housing projects?

A. What do you mean by  
"yielding"? Getting? What do you mean  
by "yielding support"?

Q. Getting support, getting  
projects it wanted done through.

A. It's been hard. It's been  
hard. We've had, when I was there, some  
successes and some continue to be  
struggles. Yes, it's a difficult issue.

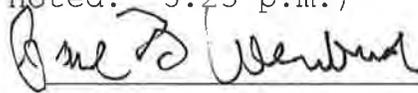
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Weisbrod

A. Thank you.

THE VIDEOGRAPHER: Here ends  
video recording number 2. This  
concludes the video recorded  
deposition of Carl Weisbrod taken  
by the plaintiffs on Thursday, July  
27, 2017. The time is 1722. We  
are going off the record.

(Time noted: 5:23 p.m.)



CARL WEISBROD

Subscribed and sworn to before me  
this 15 day of September, 2017.

  
Notary Public

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

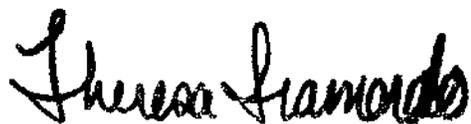
STATE OF NEW YORK )  
: ss.  
COUNTY OF NEW YORK )

I, THERESA TRAMONDO, a Notary Public within and for the State of New York, do hereby certify:

That Carl Weisbrod, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of July, 2017.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
JANELL WINFIELD, TRACEY STEWART  
and SHAUNA NOEL,

Plaintiffs,

-against-

CITY OF NEW YORK,

Defendant.

Civil Action No.:  
15-CV-5236 (LTS) (KHP)

-----x

DEPOSITION OF  
VICKI BEEN  
New York, New York  
August 2, 2017  
8:58 a.m.

Reported by:  
JUDITH CASTORE, CLR  
Job No.51317

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEEN

be -- that the community preference helps assuage the opposition, yes.

Q That wasn't my question. You described a series of beneficial effects. And I asked you: But for community preference, those actions, whether it's increase supply or a rezoning, but for community preference those would not occur?

MS. SADOK: Objection.

A I don't know what you mean by "but for"Defendant's. I don't have an alternate to universe where I have tested out the community preference versus the -- not having a community preference on actual disputes.

Q So you're saying that in your view community preference has an influence but you can't say whether it's a decisive influence?

A I'm not sure what you mean. What do you mean by "but for"?

MS. SADOK: Objection.

A It's the primary? I'm having

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEEN

trouble figuring out what you mean.

Q If community preference were not in place, the housing would not be built or if community preference were in place the zoning change would not be made.

MS. SADOK: Objection.

A I don't have any way of assessing "but for".

Q Now, the city was making an argument about displacement and community preference even before it knew just how much secondary displacement was occurring, right?

MS. SADOK: Objection.

A I'm sorry. I don't understand the question.

Q The city put out an argument that community preference helps prevent displacement. And then subsequent to that went out looking for evidence that that was the case, right?

MS. SADOK: Objection.

A No.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEEN

that the challenge to community preference has been defeated?

MS. SADOK: Objection.

A No.

Q I want you to imagine for a moment a world in which community preference has been disallowed by the court. I know that's not your desired outcome but just imagine that for a moment.

Under those circumstances, do you know for a fact if any council members would reject the necessary actions to permit any affordable housing in their districts?

MS. SADOK: Objection.

A I don't know for a fact what council members would do in that hypothetical.

Q What about the hypothetical in which the city, in the absence of court action, said that it was getting rid of community preference? Do you know for a fact if any council members

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEEN

would reject the necessary actions to permit any affordable housing in their districts?

MS. SADOK: Objection.

A I don't know for a fact what would happen in a hypothetical.

Q If the city were not permitted to use community preference, then I believe that the choice for a council member would be affordable housing without community preference or no affordable housing. Does that make sense?

MS. SADOK: Objection.

A Depends. It depends on the issue. The issue could be a rezoning; it could be a tax extension; could be any number of things. So it depends on the context.

Q I'm not sure I understand. If we're talking about the actions needed to permit or facilitate the construction of affordable housing, whether it's zoning or any -- whether

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF NEW YORK )

) :ss

COUNTY OF NEW YORK )

I, VICKI BEEN, the witness  
herein, having read the foregoing  
testimony of the pages of this deposition,  
do hereby certify it to be a true and  
correct transcript, subject to the  
corrections, if any, shown on the attached  
page.



VICKI BEEN

Sworn and subscribed to before me,  
this 18th day of September, 2017.



Notary Public

KRISTIN E SILBERMAN  
NOTARY PUBLIC STATE OF NEW YORK  
NEW YORK COUNTY  
LIC. #01SI6137116  
COMM. EXP. Feb. 22, 2018



## ERRATA

I wish to make the following changes, for the following reasons:

PAGE LINE

242 12 CHANGE: "aiming" to "a main"

REASON: deponent stated "a main" but reporter transcribed incorrectly

291 18 CHANGE: "extension" to "exemption"

REASON: deponent stated exemption but reporter transcribed incorrectly

292 15-16 CHANGE: "would get" to "would not get"

REASON: deponent stated "not" and statement would not make sense without "not"



WITNESS' SIGNATURE



DATE



KRISTIN E SILBERMAN  
NOTARY PUBLIC STATE OF NEW YORK  
NEW YORK COUNTY  
LIC. #01516137118  
COMM. EXP. Feb. 22, 2018

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
JANELL WINFIELD, TRACEY STEWART  
and SHAUNA NOEL,

Plaintiffs,

-against-

CITY OF NEW YORK,

Defendant.

Civil Action No.:  
15-CV-5236 (LTS)(KHP)

-----x

VIDEOTAPED DEPOSITION OF  
MATTHEW PETER MURPHY

New York, New York

March 16, 2018

9:28 a.m.

Reported by:  
JUDITH CASTORE, CLR  
Job No. 53970

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MURPHY

Q Are you familiar with the new version of the Real Property Tax Law 421a Affordable New York?

A Yes.

Q For buildings that are constructed under those new provisions, is the Community Preference or what the plaintiffs call the outsider restriction policy being applied?

A It's my understanding that it's not being applied, but I don't work in marketing.

Q To your knowledge, why is it not being applied?

A To my knowledge it's not a requirement of the state law.

Q Is it prohibited by state law?

A I believe so, yes.

Q Under what circumstances would a building under new 421a have a preference applied?

MS. SADOK: Objection.

A I believe that if it's

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MURPHY

out of that neighborhood.

Q So there is resistance to that kind of Affirmatively Furthering Fair Housing effort?

A I think there's -- from my interpretation there's resistance to new multi-family housing. There are rezonings, upzonings, even those which require permanent Affordable Housing.

Q And anything that you've learned either from your time at HPD or at HDC that tells you that there is opposition to the neighborhood racial or ethnic change?

MS. SADOK: Objection.

A Yes, I have heard that.

Q In what context or contexts?

A I've heard it in the context of rezoning, specifically the eastern New York rezoning.

Q What was said?

A I recall a local politician saying that the rezoning wasn't for the people there. There was a very active

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MURPHY

political group at the time, and I think they're still active, called Real Affordability For All producing materials saying that the rezoning was for whiter wealthier households.

Q Who was the politician?

A I don't recall. I believe it was the assemblyman of -- one of the assemblymen that represents East New York.

Q And have you heard other expressions of opposition to neighborhood racial or ethnic change?

A I've heard opposition to new housing development, which I think people correlate with racial change because new housing supply and even Affordable Housing supply feel like -- people feel like it's not for them.

I've heard it in the context of Sunset Park and a low income housing tax credit development to be built there. And I believe also in Sunnyside, Queens.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MURPHY

But there's a lot of controversy over rezoning for multi-family development and especially over low income housing development.

Q Do you understand that there is any opposition to neighborhood racial or ethnic change in white neighborhoods?

MS. SADOK: Objection.

A I can't speak to every resident's opinion in white neighborhoods. Historically I think there has been, yes.

Q I'm not asking about every resident. I'm asking about the presence of a phenomenon resistance to neighborhood racial or ethnic change.

You're sitting in a position where I think you've described your role as one where it's important for you to know about whether that kind of opposition exists.

Is your position one where it's important to know whether that

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MURPHY

opposition exists?

MS. SADOK: Objection.

A I believe so, yes.

Q And what do you know about the scope of that opposition in different parts of the city?

A I believe there are likely to be pockets of the city in white neighborhood -- where there's a majority of white population where some residents are probably opposed to racial change. It's been shown over history and it's been -- and there are people that have a lot of different perspectives on racial change. And some people unfortunately don't -- not every single person, I don't think, in a white neighborhood necessarily supports it.

But I also don't know that it's only exclusive to white neighborhoods. I think change makes people feel somewhat uncomfortable and somewhat unconnected to the

1 MURPHY

2 neighborhood they feel like they know.

3 Q So I just want to make sure  
4 we're talking about current day. I  
5 appreciate the history lesson, but in  
6 today's New York there are people --  
7 not everybody, but there are people  
8 both in white neighborhoods and in  
9 neighborhoods dominated by other racial  
10 groups that -- where racial change or  
11 the prospect of racial change makes  
12 them feel uncomfortable; is that right?

13 MS. SADOK: Objection.

14 A Again, I can't speak for  
15 every resident. I think it's likely  
16 and I think people correlate that  
17 change to development, new housing  
18 development. So as a result they  
19 oppose housing development, especially  
20 Affordable Housing development.

21 Q Is there anything politically  
22 sensitive about broaching the idea of  
23 desegregating neighborhoods that are  
24 currently segregated by race or  
25 ethnicity?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MURPHY

MS. SADOK: Objection.

A I believe so, yes, especially voting against Affordable Housing projects.

MR. GURIAN: Could you read back both my question and the answer, please.

(Whereupon, the record was read.)

Q I would like you to take a look at -- actually, before you do that, sorry.

You're familiar with the one, O-N-E, Flushing Development in Queens?

A I'm vaguely familiar with it, yes.

Q That was a project where the idea was to split Community Preference among three community districts?

A Okay.

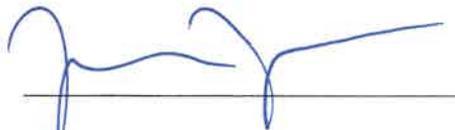
MR. GURIAN: Would you show the witness what's been marked 97, please?

Q Do you recognize that as an

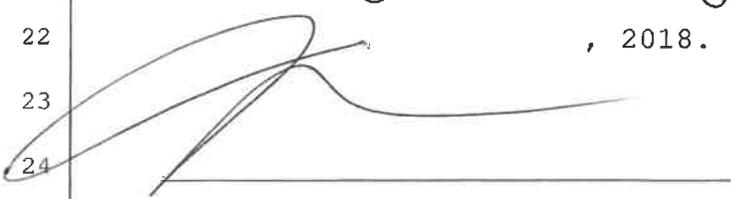
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF New York )  
 ) :ss  
COUNTY OF New York )

I, MATTHEW PETER MURPHY, the  
witness herein, having read the foregoing  
testimony of the pages of this deposition,  
do hereby certify it to be a true and  
correct transcript, subject to the  
corrections, if any, shown on the attached  
page.

  
MATTHEW PETER MURPHY

Sworn and subscribed to before  
me, this 18th day of April  
, 2018.



Notary Public

MARIA SHUK MON CHEUNG  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02CH6284433  
Qualified in Kings County  
My Commission Expires June 17, 2021



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
JANELL WINFIELD, TRACEY STEWART  
and SHAUNA NOEL,

Plaintiffs,

-against-

CITY OF NEW YORK,

Defendant.

Civil Action No.:  
15-CV-5236 (LTS)(KHP)

-----x

VIDEOTAPED

DEPOSITION OF ALICIA GLEN

New York, New York

November 3, 2017

9:26 a.m.

Reported by:  
JUDITH CASTORE, CLR  
Job No. 52429

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

GLEN

expressing any concerns that --  
neighborhoods becoming too white?

MS. SADOK: Objection.

A Am I aware of who thinking  
that?

Q Anyone.

A Anyone?

Q Yeah.

A Sure. I mean, I have a  
friend who thinks that Harlem is  
becoming too white.

Q Anybody else?

A I have heard Councilman  
Perkins screaming about that kind of  
thing.

Q Anybody else?

A I can't think any of  
anybody -- I mean, I don't know what  
you mean by that. Anybody else?

Q Yeah. Well, let's --

A I don't know how to answer  
the question. I mean...

Q The way to -- the way I think  
to answer the question is you search

1 GLEN

2 exactly when it was instituted. It is  
3 sort of fundamental to how city council  
4 people try to address the displacement  
5 issues and the issues of change that  
6 people feel in their neighborhood, and  
7 that they believe they are elected by  
8 the people in their district, and being  
9 able to say that you have -- that half  
10 of the units in this new building are  
11 going to be reserved for people from  
12 the neighborhood and half are going to  
13 go for people outside of the  
14 neighborhood, the insider/outsider  
15 thing, I think is pretty fundamental to  
16 the way they operate. And if that were  
17 not part of the equation anymore, I  
18 believe that many, many, many more  
19 projects would be turned down, and that  
20 would be a tragedy.

21 Q So in this scenario that you  
22 are imagining, would the actions of the  
23 council members, the council members  
24 saying no affordable housing, would  
25 those actions be in the interest of the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

GLEN

city?

MS. SADOK: Objection.

A No, that would not be in the interest of the city to turn down affordable housing projects.

Q Would it be in the interest of their own constituents in scenario?

MS. SADOK: Objection.

A Well, to be consistent, I would say no. Because it's in the interest of the city to build more affordable housing, and their constituents are part of the city.

Q Even in the current world of -- of community preference being in effect, their constituents, who don't get apartments, realize, we'll call perhaps, collateral benefits from there being affordable housing development, right?

MS. SADOK: Objection.

A What's the question? If you don't get an apartment, do you still feel like there are collateral





UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
JANELL WINFIELD, TRACEY STEWART  
and SHAUNA NOEL,

Plaintiffs,

-against-

CITY OF NEW YORK,

Defendant.

Civil Action No.:  
15-CV-5236 (LTS)(KHP)

-----x

DEPOSITION OF JERILYN PERINE

New York, New York

October 26, 2017

9:15 a.m.

Reported by:  
JUDITH CASTORE, CLR  
Job No. 52427

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERINE

Q Who did you report to?

A When I was commissioner?

Q Yes.

A When I was commissioner in the Giuliani administration, I reported -- I always reported to the deputy mayor for whatever their title would be, economic development or economic development and housing. People had different titles.

Q That would be Mr. Coles?

A No. It was -- it was Bob Harding in the Giuliani administration. And then it was Dan Doctoroff in the Bloomberg administration.

Q As far as you knew, at any point when you were commissioner, was it a goal of New York City to end residential segregation?

A I have no idea if that was a goal of New York City.

Q Did either Mayor Bloomberg or Mayor Giuliani tell you that it was a goal of New York City to end

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERINE

residential segregation?

A No.

Q Did either of the deputy mayors that you referred to, either Mr. Harding or Mr. Doctoroff, tell you that it was the goal of New York City to end racial segregation?

MR. VIDAL: Objection.

A No.

Q Are you aware of anything that was done during your tenure as commissioner of HPD to tackle residential segregation?

MR. VIDAL: Objection.

A Our obligation wasn't to enforce laws. I mean, our laws that we focused on were the things we had obligations to enforce which was the housing maintenance code and the multiple dwelling law.

So our jurisdiction was around the conditions that people were living in, making sure they had heat and hot water, making sure -- lead

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERINE

paint was a big issue. So that was on the enforcement side. That's what we did.

We had code inspectors who had that responsibility to look at the physical -- it was about the physical conditions of housing.

Q So "no" is the answer to my question?

MR. VIDAL: Objection.

A Well, that was my answer.

MR. GURIAN: Read back the question.

(Whereupon, the record was read.)

A And I think I gave my answer, if you would like to read it back.

Q No. What you gave was an explanation of what you were focused on.

I asked you and I'm asking you again whether you are aware of anything that was done to tackle residential segregation during your

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERINE

tenure? I think the answer is yes or no.

MR. VIDAL: Objection. Asked and answered.

A And actually --

MR. VIDAL: You may proceed.

A I think I said, No, we were focused on enforcement activity around the housing maintenance code and multiple dwelling law and the physical conditions in buildings, dealing with heat and hot water and issues like that.

Q Thank you.

Were you familiar with the concept of "not in my backyard" or NIMBY during your tenure as commissioner?

A Of course.

Q As far as you knew, and, again, I'm limiting this question to your tenure as commissioner, as far as you knew, were any of those NIMBY concerns motivated in whole or in part

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERINE

A Yes.

Q And when did that effort start?

A I don't remember exactly. I mean, it got done in 2002 so I'm not exactly sure when it started.

MR. GURIAN: I think we're up to 47.

(Press release by the New York City Department of Housing Preservation and Development, dated 9/4/02, was marked Plaintiff's Exhibit 47, for identification, as of this date.)

Q You have reviewed this document before today?

A Oh, yes. This is the press release. Yes.

Q This is the press release announcing the --

A Yeah.

Q -- change from 30 to percent 50 percent in the preference?

A Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERINE

Q And was this press release essentially contemporaneous when the decision was made to increase from 30 to 50 percent?

A Well, I mean, the decision must have been made before we issued a press release, obviously. But, yeah, it would be.

Q But it wasn't --

A Close. It would have been close, yeah.

Q Do you see that last sentence of the first paragraph starting "the increase"?

A Yes.

Q Could you read that out load?

A It says, "The increase in Community Preference will provide greater housing opportunities for long-time residents of New York City neighborhoods where HPD has made a significant investment in housing."

Q Was that sentence intended to convey the reason that HPD was making

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERINE

deem fit.

A I think that is what my answer was. I just said it instead of you. But, yes, that was --

Q Okay. So who participated in the decision to go from 30 percent to 50 percent?

A Well, I am not going to recall every person. There was lots of discussions, different parts of the agency, different community organizations, certainly discussions with my boss who was Dan Doctoroff.

Q Any discussions with Mayor Bloomberg?

A No, not about this.

Q Did Mr. Doctoroff ever convey to you anything that Mayor Bloomberg had to say on the subject of Community Preference?

A No.

Q Who ultimately -- what person or persons ultimately signed off on the change from 30 to 50 percent?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERINE

MR. GURIAN: Strike the question.

Q When you were -- there came a point when you were thinking about the change?

A Yes.

Q And then there came a point where you made the change with the approval of Deputy Mayor Doctoroff?

A Yes, um-hum.

Q About how long was that period from first consideration to decision?

A I have no idea. I mean, I could not possibly remember that. I'm sorry.

Q That's fine. Let me see if we could narrow it down a little bit.

Just recalling that the Bloomberg administration started at the beginning 2002 you had a million issues on your plate, and the decision was made by early September. Does that help you in terms of --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERINE

they may also be very likely able to just send their kids not to the local public school but rather to some private school that would be far less diverse.

Q When you were commissioner of HPD, did you understand that there was any link whatsoever between segregated housing patterns and segregated elementary school patterns?

A I can't say that it was really something that I ever focused on, no.

Q In terms of racial politics in New York City in the last 15 years including when you were commissioner?

A Which is older than 15 years. I mean, long time ago that I was commissioner.

Q No. I think you were commissioner at the beginning of 2004, right?

A Very beginning, yeah. Just say --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF New York )  
 ) :ss  
COUNTY OF New York )

I, JERILYN PERINE, the witness  
herein, having read the foregoing  
testimony of the pages of this deposition,  
do hereby certify it to be a true and  
correct transcript, subject to the  
corrections, if any, shown on the attached  
page.

  
JERILYN PERINE

Sworn and subscribed to before  
me, this 13<sup>th</sup> day of  
December, 2017.

  
Notary Public

**LOUISE LIPPIN**  
Notary Public, State of New York  
Registration #02L14992429  
Qualified in Kings County  
Commission Expires 2/24/18



Document 1 of 1

## Brokering deal for affordable housing uptown

**Author:** J. Zamgba Browne

[ProQuest document link](#)

**Abstract (Abstract):** Councilman Bill Perkins (D-Harlem) has brokered an accord with officials at the city's Department of Housing Preservation and Development (HPD) to make housing opportunities more affordable to Harlem residents.

Perkins charged that for too long, HPD has been "disposing of these properties for development, only to yield apartments that are far too expensive for residents to rent or own."

**Links:** [Check Columbia Libraries for fulltext](#)

**Full text:** Councilman Bill Perkins (D-Harlem) has brokered an accord with officials at the city's Department of Housing Preservation and Development (HPD) to make housing opportunities more affordable to Harlem residents.

Initially, he was able to gain the support of his colleagues on the Planning and Disposition Subcommittee to disapprove the project because of rents he believed were unaffordable to his constituents.

Under the project, Perkins explained that HPD would dispose of a city-owned property to a private developer to build 41 units of rental housing on West 112th Street.

Perkins charged that for too long, HPD has been "disposing of these properties for development, only to yield apartments that are far too expensive for residents to rent or own."

The councilman reported that following heated discussions and negotiations at a Council's Land Use Committee hearing, the project was ultimately approved with a number of conditions. He did not elaborate.

"Hopefully, now, we can start to reverse that trend and provide neighborhoods with the kind of housing opportunity that makes sense for them." Perkins declared.

Specifically, Perkins said he persuaded HPD to raise the community preference requirement from 30 percent to 50 percent for all new housing development projects, thereby increasing access for residents who already live in the area.

He said this increase reflects a change in an 18-year-old policy begun under the Koch administration. In addition, the councilman said he convinced HPD and the selected developer to lower the rent by some \$125 per month for a two-bedroom unit.

Perkins finally initiated the beginnings of a task force to work jointly with HPD to further address the lack of affordable housing in the community.

**Subject:** Housing; Law;

**Ethnicity:** African American/Caribbean/African

**Publication title:** New York Amsterdam News

**Pages:** 4

**Publication year:** 2002

**Publication date:** Aug 29, 2002

**Year:** 2002

**Publisher:** New York Amsterdam News

**Place of publication:** New York, N.Y.

**Country of publication:** United States

**Publication subject:** African American/Caribbean/African, Ethnic Interests

**ISSN:** 00287121

**Source type:** Newspapers

**Language of publication:** English

**Document type:** News

**Accession number:** SFLNSNYAN1002N2LS099000009

**ProQuest document ID:** 390111697

**Document URL:**

<http://ezproxy.cul.columbia.edu/login?url=http://search.proquest.com/docview/390111697?accountid=10226>

**Copyright:** Copyright New York Amsterdam News Aug 29, 2002

**Last updated:** 2013-04-16

**Database:** ProQuest Central,Black Newspapers,Ethnic NewsWatch

---

**Contact ProQuest**

Copyright © 2015 ProQuest LLC. All rights reserved. - [Terms and Conditions](#)

## M. Certifications

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

**Affirmatively Further Fair Housing** -- The jurisdiction will affirmatively further fair housing, which means it has completed an analysis of impediments to fair housing choice within the jurisdiction, is taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintains records reflecting that analysis and actions in this regard.

**Anti-displacement and Relocation Plan** -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential anti-displacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

**Drug Free Workplace** -- It will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employees about -
  - (a) The dangers of drug abuse in the workplace;
  - (b) The grantee's policy of maintaining a drug-free workplace;
  - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will -
  - (a) Abide by the terms of the statement; and
  - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted --



- (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.

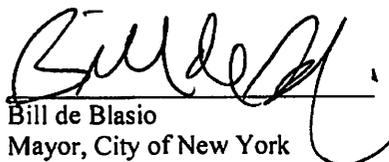
**Anti-Lobbying** -- To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**Authority of Jurisdiction** -- The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

**Consistency with plan** -- The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

**Section 3** -- It will comply with section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

  
Bill de Blasio  
Mayor, City of New York

8/15/14  
Date

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
JANELL WINFIELD, TRACEY STEWART  
and SHAUNA NOEL,

Plaintiffs,

-against-

CITY OF NEW YORK,

Defendant.

Civil Action No.:  
15-CV-5236 (LTS)(KHP)

-----x

DEPOSITION OF CHARLES SORRENTINO

New York, New York

April 28, 2017

9:40 a.m.

Reported by:  
JUDITH CASTORE, CLR  
Job No. 50142

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SORRENTINO

A I need clarity and one thing you said outside "the agency," meaning the department of -- I didn't -- I couldn't -- this is what I'm unsure of. Are you saying outside the department of city planning? I heard -- I wasn't too sure if you said "the agency" or "agency."

Q Right. Remember a moment ago you said that you got information from other agencies?

A Yes.

Q You also get information from city planning itself, correct?

A Yes.

Q So what were the other agencies that you got information from?

A Okay. You want me to list them?

Q Yes.

A Okay. So to the best of my recollection, it is the Department of Housing Preservation and Development; the New York City Housing Authority;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SORRENTINO

the Mayor's Office for People with Disabilities; the Mayor's office, no -- strike that.

The Department for the Aging; the Mayor's Office for Immigrant Affairs; and the City Commission on Human Rights. I believe that is the -- may be the complete list. I can't remember if I am missing one or two.

Q So when agency information comes in to you, let's say from HPD, do you review it for anything?

A I review it to see if they have provided materials on the sections that were requested to be provided on. And to be reviewed if it's a section where it may be multiple agency for, I will call it internal consistency.

Q Any other element of review?

A No.

Q Are you familiar with the process of how potential impediments to fair housing are identified?

A No. My -- my job is not to

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SORRENTINO

identify the impediments per se. That is basically for the other agencies.

Q That is part of the city's affirmatively furthering fair housing obligation, correct, to identify impediments to fair housing choice?

A Yes.

Q Is another aspect of the city's obligation in relation to AFFH to analyze potential impediments to fair housing choice?

A Repeat the whole question again please.

MR. GURIAN: Read it back.

(Whereupon, the record was read.)

A I believe so.

Q And am I right that another element of the AFFH obligation is to maintain records; is that correct?

A Yes.

Q Maintain records of what?

A I believe the actions taken.

Q Is it not the case that it's

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SORRENTINO

also required for the records of the analysis to be maintained?

A I cannot speak for what has been maintained or retained by other agencies since they do their sections of their analysis.

Q So there is no place -- there -- there is no place where all the records that relate to AFFH analysis and AFFH actions reside?

MS. SADOK: Objection.

A You are asking for clarity, you are asking if there is a central? That, I do not know.

Q What do you do with the records that you have acquired or generated in connection with AFFH activities?

A The department you mean that I -- I personally receive?

Q That you or people working with you in your con plan coordinator role generate or receive?

A We retain them for the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF New York )

) : ss

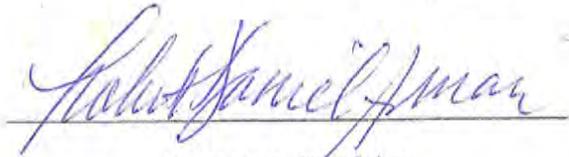
COUNTY OF New York )

I, CHARLES SORRENTINO, the  
witness herein, having read the foregoing  
testimony of the pages of this deposition,  
do hereby certify it to be a true and  
correct transcript, subject to the  
corrections, if any, shown on the attached  
pages.



CHARLES SORRENTINO

Sworn and subscribed to before  
me, this 22<sup>nd</sup> day of  
June, 2017.



Notary Public

**ROBERT DANIEL ARNAU**  
Notary Public, State of New York  
Registration #01AR6259773  
Qualified in Bronx County 20  
Commission Expires April 16, 20

