

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

SHAUNA NOEL and EMMANUELLA SENAT,

Plaintiffs,

-against-

15-CV-5236 (LTS) (KHP)

CITY OF NEW YORK,

Defendant.

-----X

**DECLARATION OF CRAIG GURIAN
IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

CRAIG GURIAN declares, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am co-counsel for plaintiffs in this matter and I make this declaration in support of plaintiffs' motion for partial summary judgment.

2. An excerpt of the June 5, 2018 FRCP 30(b)(6) deposition of Victor Hernandez, jointly deposited with Thomas Boman, is annexed hereto as Exhibit 1.

3. Excerpts of defendant's Oct. 2, 2019 amended responses and objections to plaintiffs' requests to admit ("Def's RTA Responses") are annexed hereto as Exhibit 2.

4. Excerpts of defendant's July 20, 2018 answer to plaintiffs' second amended complaint ("Answer to SAC") are annexed hereto as Exhibit 3.

5. Excerpts of defendant's HPD/HDC July 2018 marketing handbook ("2018 Marketing Handbook"), marked as plaintiffs' Exhibit 205 at the Oct. 23, 2018 FRCP 30(b)(6) deposition of Emily Osgood, are annexed hereto as Exhibit 4.

6. Excerpts of the transcript of the Jan. 18, 2018 deposition of Margaret Brown

(“Brown”) are annexed hereto as Exhibit 5.

7. Excerpts of the transcript of the May 10, 2018 deposition of Maria Torres-Springer (“Torres-Springer”) are annexed hereto as Exhibit 6.

8. Excerpts of the transcript of the Mar. 16, 2018 deposition of Matthew Murphy (“Murphy”) as annexed hereto as Exhibit 7.

9. Excerpts of the transcript of the Aug. 2, 2017 deposition of Vicki Been (“Been I”) are annexed hereto as Exhibit 8.

10. Excerpts of the transcript of the Nov. 15, 2019 deposition of Dr. Bernard Siskin (“Siskin II”) are annexed hereto as Exhibit 9.

11. Excerpts of the transcript of the Aug. 26, 2019 deposition of Dr. Bernard Siskin (“Siskin I”) are annexed hereto as Exhibit 10.

12. Excerpts of the Dec. 13, 2019 amended opposition report of Dr. Bernard R. Siskin on behalf of defendant (“Siskin Opp”) are annexed hereto as Exhibit 11.

13. An excerpt of defendant’s Dec. 14, 2018 answers to plaintiffs’ Nov. 30, 2018 questions posed pursuant to stipulation (ECF 518, ¶ 15) is annexed hereto as Exhibit 12.

14. A copy of an electronic exhibit presented to Dr. Siskin at his Aug. 26, 2019, a hypothetical about disparate impact and local preference in the context of a “perfectly segregated city,” Siskin I, at 75:12-23, that was marked as plaintiffs’ Electronic Exhibit 327, is annexed hereto as Exhibit 13.

15. An excerpt of transcript of a radio broadcast, “Mayor de Blasio Appears Live on Inside City Hall”, Jan. 17, 2018, is annexed hereto as Exhibit 14.

16. Excerpts of the transcript of the Apr. 10, 2018 deposition of Vicki Been (“Been II”) are annexed hereto as Exhibit 15.

17. An excerpt of Oct. 2, 2015 declaration of Vicki Been in support of defendant's motion to dismiss, ECF 18 ("Been Decl."), is annexed hereto as Exhibit 16.

18. An excerpt of the transcript of the Oct. 26, 2017 deposition of Jerilyn Perine ("Perine") is annexed hereto as Exhibit 17.

19. Excerpts of the transcript of the July 27, 2017 deposition of Carl Weisbrod ("Weisbrod") are annexed hereto as Exhibit 18.

20. An excerpt of defendant's Jan. 7, 2019 letter replying to plaintiffs' data questions of Dec. 21, 2018 is annexed hereto as Exhibit 19.

21. An excerpt of the Feb. 13, 2019 report of Professor Edward Goetz on behalf of the defendant ("Goetz report"), marked as plaintiffs' Exhibit 308 at the Apr. 5, 2019 deposition of Professor Edward Goetz is annexed hereto as Exhibit 20.

22. Excerpts of the transcript of Apr. 5, 2019 deposition of Professor Goetz ("Goetz I") are annexed hereto as Exhibit 21.

23. Excerpts of the transcript of the July 31, 2019 deposition of Professor Goetz ("Goetz II") are annexed hereto as Exhibit 22.

24. Excerpts of the transcript of the Apr. 19, 2018 deposition of Purnima Kapur ("Kapur") are annexed hereto as Exhibit 23.

25. An excerpt of the transcript of the May 18, 2018 deposition of Elizabeth Gaumer ("Gaumer") is annexed hereto as Exhibit 24.

26. A copy of an email from Matthew Murphy to Sean Capperis, *circa* June 2016, marked as plaintiffs' Exhibit 32 at the Aug. 2, 2017 deposition of Vicki Been, is annexed hereto as Exhibit 25.

27. An exhibit containing: (a) a map of Brooklyn neighborhood tabulation areas; and

(b) a map of Brooklyn community districts, is annexed hereto as Exhibit 26.

28. Excerpts of the transcript of the Nov. 3, 2017 deposition of Alicia Glen (“Glen”) are annexed hereto as Exhibit 27.

29. An excerpt of the transcript of the Nov. 27, 2018 deposition of Joseph Salvo (“Salvo”) is annexed hereto as Exhibit 28.

30. An excerpt of the transcript of a Mar. 21, 2016 Mayor de Blasio radio appearance, “Mayor de Blasio Discusses Affordable Housing on Local NPR’s Morning Edition,” marked as plaintiffs’ Exhibit 59 at the Nov. 3, 2017 deposition of Alicia Glen, is annexed hereto as Exhibit 29.

31. An excerpt of the transcript of the April 4, 2019 press conference of Mayor de Blasio, “Mayor de Blasio Appoints Vicki Been as Deputy Mayor for Housing and Economic Development” (“April 4 press conf”) is annexed hereto as Exhibit 30.

32. A copy of “Cuomo signs landmark rent regulation reform bill,” a June 14, 2019 article by Kathryn Brenzel that was published in *The Real Deal*, is annexed hereto as Exhibit 31.

33. An excerpt of the transcript of the Nov. 14, 2017 deposition of Rafael Cestero (“Cestero”) is annexed hereto as Exhibit 32.

34. An excerpt of the transcript of the June 28, 2018 deposition of Jordan Press (“Press”) is annexed hereto as Exhibit 33.

35. Excerpts of the transcript of the June 14, 2018 deposition of David Quart (“Quart”) are annexed hereto as Exhibit 34.

36. An excerpt of the transcript of the Jan. 16, 2019 deposition of James Patchett (“Patchett”) is annexed hereto as Exhibit 35.

37. An excerpt of the transcript of May 11, 2016 remarks by Mayor de Blasio, “Mayor

de Blasio Delivers Remarks at NYSAFAH Housing for all Conference”, is annexed hereto as Exhibit 36.

38. An excerpt of the Feb. 2019 report of the N.Y.C. Department of Education School Diversity Advisory Group, “Making the Grade: The Path to Real Integration and Equity for NYC Public School Students,” is annexed hereto as Exhibit 37.

39. An excerpt of the transcript of a June 12, 2017 radio broadcast, “Mayor de Blasio Appears Live on Inside City Hall,” is annexed hereto as Exhibit 38.

40. An excerpt of the transcript of a May 11, 2018 radio broadcast, “Mayor de Blasio Appears Live on the Brian Lehrer Show,” is annexed hereto as Exhibit 39.

41. Excerpts of the March 8, 2016 Committee Report of the Governmental Affairs Division, N.Y.C. Council, that accompanied the legislation (Intro 814-A) that became NYC Local Law 35 of 2016 (“Local Law 35 of 2016 Committee Report”), is annexed hereto as Exhibit 40.

42. Excerpts of the 2005 NYC Local Civil Rights Restoration Act (the “Restoration Act”), are annexed hereto as Exhibit 41.

43. An excerpt of the Aug. 17, 2005 Committee Report accompanying the legislation (Intro 22-A) that became the Restoration Act, is annexed hereto as Exhibit 42.

Executed on March 6, 2020 in San Diego County, California.

Craig Gurian

Craig Gurian

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 JANELL WINFIELD, TRACEY
6 STEWART and SHAUNA NOEL,
7 Plaintiffs,
8 -against-

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

9 CITY OF NEW YORK,
10 Defendant.
11 -----x

12 DEPOSITION OF
13 THOMAS BOMAN and VICTOR HERNANDEZ
14 New York, New York
15 June 5, 2018
16 9:59 a.m.

17
18
19
20
21 Reported by:
22 JUDITH CASTORE, CLR
23
24
25

1 BOMAN/HERNANDEZ/CONFIDENTIALLY TO BE DETERMINED

2 Q And Response Number 7 in the
3 May 29th letter says, Access allows for
4 identification of multiple preferences
5 in the preference field. This rule
6 changed which allowed for layering of
7 preferences occurred in the spring of
8 2015.

9 So the first question I have
10 is in the use of the word allowed. Did
11 it allow for layering of preferences or
12 did it require layering of preferences?

13 A The policy as of 2015 was
14 that it's required.

15 Q And to which lotteries --
16 well, let me ask it this way: Was that
17 applicable to all lotteries s including
18 lotteries in progress or was it just
19 for some subset to begin or --

20 A It's usually.

21 MS. DALAL: Objection.

22 A Sorry.

23 It's usually moving forward
24 because the goal is always to treat
25 everyone equally. So we wouldn't apply

1 BOMAN/HERNANDEZ/CONFIDENTIALLY TO BE DETERMINED
2 a type of policy on a lottery that's
3 already started, you know, reviewing
4 files and treating one set of folks one
5 way and then now start treating another
6 set differently. So it would have been
7 for any new projects.

8 Q Any projects that had not --
9 where the developer had not --
10 developer agent had not started
11 reviewing applications in the spring of
12 2015?

13 A Yes.

14 Q Do you know the basis -- do
15 either of you know the basis for
16 identifying the start at spring of
17 2015?

18 A No.

19 THOMAS BOMAN: No.

20 MS. DALAL: I'm going to
21 object based on scope.

22 Are you asking why it was --

23 MS. SADOK: Implemented in --

24 MS. DALAL: Right. In spring
25 of 2015?

1 BOMAN/HERNANDEZ/CONFIDENTIALLY TO BE DETERMINED

2 MR. GURIAN: No. I take your
3 point on that, but really I'm just
4 trying to locate the date and
5 figure out how we can determine
6 it. Because in your previous
7 deposition testimony from last
8 time you had indicated that you
9 were almost sure it was October of
10 2016. So I just want to see if --

11 A October 16th is the reason
12 why I chose that date because October
13 16th is when the tenant selection
14 criteria went into effect. So I just
15 put them all together, but that's why I
16 said I was unsure but thought that was
17 the date. And when we went back we got
18 clarification that it was in May.

19 Q Is there any -- sorry, in May
20 of 2015?

21 A Yes.

22 Q Is there any written
23 documentation of that?

24 A I would need go back and
25 check, I'm not sure. It's probably in

1
2 STATE OF New York)
3) : ss
4 COUNTY OF New York)
5
6

7 I, VICTOR HERNANDEZ, the witness
8 herein, having read the foregoing
9 testimony of the pages of this deposition,
10 do hereby certify it to be a true and
11 correct transcript, subject to the
12 corrections, if any, shown on the attached
13 page.
14

15
16 
17 VICTOR HERNANDEZ
18
19

20 Sworn and subscribed to before me,
21 this 27th day of July, 2018.
22

23 
24 Notary Public
25

EDWIN LUGO
Notary Public, State of New York
No. 31-4926368
Qualified in Queens County
Signature Filed in New York County
Commission Expires April 4, 2022

Page 296

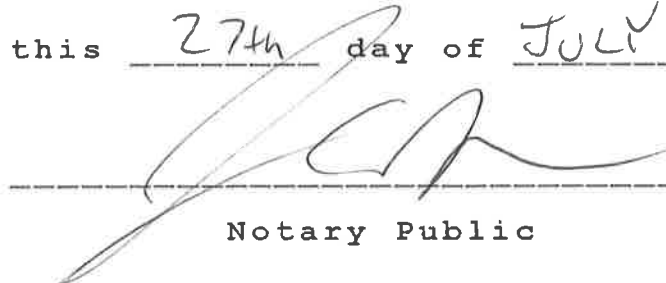
1
2 STATE OF New York ,
3) : ss
4 COUNTY OF New York ,
5
6

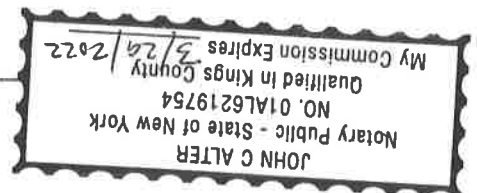
7 I, THOMAS BOMAN, the witness
8 herein, having read the foregoing
9 testimony of the pages of this deposition,
10 do hereby certify it to be a true and
11 correct transcript, subject to the
12 corrections, if any, shown on the attached
13 page.
14

15 

16 THOMAS BOMAN
17
18
19

20 Sworn and subscribed to before me,
21 this 27th day of JULY, 2018.
22

23 
24 Notary Public
25



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

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That THOMAS BOMAN AND VICTOR
HERNANDEZ, the witness whose deposition is
hereinbefore set forth, was duly sworn by
me and that this transcript of such
examination is a true record of the
testimony given by such 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 18th day of June, 2018.



JUDITH CASTORE

ERRATA

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

PAGE LINE

91 12 CHANGE: “don’t have like a” to “don’t have a”

REASON: Clarify intent of sentence.

91 16 CHANGE: “that for us” to “that information for us”

REASON: Clarify intent of sentence.

92 25 CHANGE: “out, if varies” to “out, it varies”

REASON: Incorrect transcription

96 8 CHANGE: “submitting you” to “submitting to you”

REASON: Clarify intent of sentence.

115 25 CHANGE: “any of that stuff” to “any applicant information”

REASON: Clarify intent of sentence.

116 16 CHANGE: “assigned them” to “assigned to them”

REASON: Clarify intent of sentence.

118 14 CHANGE: “They do certain parts.” to “They are only allowed to enter certain information to certain parts”

REASON: Clarify intent of sentence.

119 21 CHANGE: “tells us that that was” to “tells us that this was”

REASON: Clarify intent of sentence.

121 2-4 CHANGE: “decision that under the name we would name it all consistent as a 421-a homeless” to “decision that under the name we would enter it as 421-a homes to be consistent”

REASON: Clarify intent of sentence.

147 2 CHANGE: “a type of policy” to “a policy”

REASON: Clarify intent of sentence.

153 25 CHANGE: “Yes.” to “Yes. But if the marketing agent notes the disability units on Attachment U, HPD will let them move forward with both disability and community board applicants simultaneously.

REASON: Clarify the exception to the statement.

156 21-22 CHANGE: “which haven’t had many, I think, you know, other preferences, but” to “which haven’t had many other preferences, I think, but”

REASON: Clarify intent of sentence.

170 21 CHANGE: “submit a file to me and I need” to “submit a file to me, I need”

REASON: Clarify intent of sentence.

179 4 CHANGE: “when created the” to “when creating the”

REASON: Typographical error.

186 22 CHANGE: “supportive housing” to “special needs housing”

REASON: Deponent misspoke and to clarify intent of sentence.¹

¹ During the deposition when deponent stated that marketed units from the Division of Special Needs Housing at HPD do not get a community board preference, he was thinking specifically of Senior Affordable Rental Apartments (SARA) and misspoke. SARA units are one type of special needs housing and do not get a community board preference because they have federally funded Project-Based Vouchers and HUD does not allow for a geographical preference lower than at the county-level. Supportive housing is another type of special needs housing and does get community board preference.

186 24 CHANGE: "supportive housing" to "SARA"

REASON: Deponent misspoke and to clarify intent of sentence.

187 14 CHANGE: "supportive housing" to "special needs housing"

REASON: Deponent misspoke and to clarify intent of sentence.

187 19 CHANGE: "supportive housing" to "special needs housing"

REASON: Deponent misspoke and to clarify intent of sentence.

187 21 CHANGE: "use community board preference." to "use community board preference for SARA units, but do for supportive housing units."

REASON: Deponent misspoke and to clarify intent of sentence.

188 5-7 CHANGE: "the units that we're marketing from the supportive housing unit" to "the SARA units that we're marketing from the special needs housing division"

REASON: Deponent misspoke and to clarify intent of sentence.

247 9 CHANGE: "That's what this it shows" to "That's what this shows"

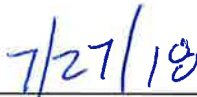
REASON: Incorrect transcription.

282 20 CHANGE: "consider this it as a extended" to "consider this as an extended"


REASON: Incorrect transcription.



WITNESS' SIGNATURE



DATE

 JUL 27, 2018 before
EDWIN LUGO, appeared Victor Hernandez
Notary Public, State of New York
No. 31-4926368
Qualified in Queens County
Signed the foregoing
Signature Filed in New York County
Commission Expires April 4, 2022

ERRATA

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

PAGE LINE

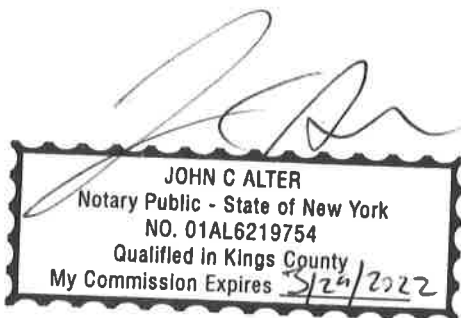
29 21-22 CHANGE: "would already be this table populates a drop down" to "would already be in this; the table populates a drop down"

REASON: Clarify intent of sentence



WITNESS' SIGNATURE

7/27/2018
DATE



7/27/2018

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
SHAUNA NOEL and EMMANUELLA SENAT,

Plaintiffs,

-against-

CITY OF NEW YORK,

Defendant.

**DEFENDANT'S AMENDED
RESPONSES AND
OBJECTIONS TO
PLAINTIFFS' REQUESTS
TO ADMIT**

15-CV-5236 (LTS) (KHP)

----- x
Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, defendant responds and objects to plaintiffs' Requests to Admit as follows:

GENERAL STATEMENT

1. By responding to any request, 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 documents or information produced, or of the subject matter thereof, in any proceeding including the trial of this action or any subsequent proceeding.

2. Defendant objects to these Requests to Admit to the extent that they demand information which is protected by the attorney-client or work-product privilege, or which constitute material prepared for litigation purposes.

explanation and/or qualifications and/or clarification in the City's responses. Notwithstanding this general objection, the City has also noted specific objections in its responses below.

9. These general responses and objections apply to all of the Requests for Admission, and are incorporated by reference into each and every response set forth below.

ADMISSIONS

ADMISSION NO. 1:

Admit that eligibility for community preference is open to all insiders and is not limited to insiders who:

- a. Have been long-term residents of the community preference area;
- b. Have had to persevere through years of difficult conditions;
- c. Are at risk of involuntary displacement from their household's existing residence; or
- d. Are at risk of involuntary displacement from their household's existing neighborhood.

OBJECTION AND RESPONSE TO ADMISSION NO. 1:

Defendant objects to this request insofar as the terms "long-term residents" and "risk of involuntary displacement" are undefined, vague and unclear. Subject to those objections, Defendant denies this request, and its subparts, except admits that the community preference policy is applicable to any applicant who resides in the community district(s) that is(are) subject to the community preference in a given lottery and is not limited to residents of the applicable community district(s) who: (1) have been long-term residents of the applicable community district(s); (2) have had to persevere through years of difficult conditions; (3) are at risk of involuntary displacement from their household's existing residence; or (4) are at risk of involuntary displacement from their household's existing neighborhood.

ADMISSION NO. 2:

Admit that defendant had not, at any time prior to any decision to initiate, expand, or continue the community preference policy, quantified the scope of involuntary displacement as either or both elements of that phenomenon may exist on a citywide, community-district-by-community-district, or neighborhood-by-neighborhood basis.

OBJECTION AND RESPONSE TO ADMISSION NO. 2:

Defendant objects to this request insofar as the terms “quantified” and “phenomenon” are undefined, vague and unclear. Defendant further objects to this request as it is a compound statement in that a “decision to initiate, expand, or continue the community preference policy” are each separate actions. Subject to those objections, to the extent “quantified” means “conducted a mathematical analysis,” Defendant admits this request.

ADMISSION NO. 3:

Admit that defendant, to this date, has not quantified the scope of involuntary displacement as either or both elements of that phenomenon may exist on a citywide, community-district-by-community-district, or neighborhood-by-neighborhood basis.

OBJECTION AND RESPONSE TO ADMISSION NO. 3:

Defendant objects to this request insofar as the terms “quantified” and “phenomenon” are vague and unclear. Defendant further objects to this request as it is a compound statement in that a “either or both elements” are separate issues. Subject to those objections, to the extent “quantified” means “conducted a mathematical analysis,” Defendant admits this request.

ADMISSION NO. 4:

Admit that defendant has not identified which or how many beneficiaries of community preference, if any, had been at risk of involuntary displacement from their existing apartment prior to being awarded an apartment in an affordable housing lottery.

OBJECTION AND RESPONSE TO ADMISSION NO. 4:

Defendant objects to this request insofar as the terms “identified” and “risk of involuntary displacement” are vague and unclear. Subject to those objections, in response to this request, Defendant admits that it did not specifically identify via name or tally, which or how many beneficiaries of community preference had been at risk of involuntary displacement from their existing apartment prior to being awarded an apartment in an affordable housing lottery.

ADMISSION NO. 5:

Admit that defendant has not identified which or how many beneficiaries of community preference, if any, had been at risk of involuntary displacement from their neighborhood prior to being awarded an apartment in an affordable housing lottery.

OBJECTION AND RESPONSE TO ADMISSION NO. 5:

Defendant objects to this request insofar as the terms “identified” and “risk of involuntary displacement” are vague and unclear. Subject to those objections, in response to this request, Defendant admits that it did not specifically identify via name or tally, which or how many beneficiaries of community preference had been at risk of involuntary displacement from their neighborhood prior to being awarded an apartment in an affordable housing lottery.

ADMISSION NO. 6:

Admit that the most common combination of lottery preferences and set-asides in the Housing Connect era has been and continues to be one in which the only preferences and set-asides are: (a) mobility-impairment set-aside (5 percent of units); (b) hearing- or visual-

impairment set-aside (2 percent of units); (c) community preference (50 percent of units); and (d) municipal-employee preference (5 percent of units).

OBJECTION AND RESPONSE TO ADMISSION NO. 6:

Defendant admits this request.

ADMISSION NO. 7:

This request to admit is posed in connection with the current joint HPD/HDC marketing guidelines and concerns such developments as follow the preferences and set-asides described in Request No. 6 (“standard developments”). This request to admit concerns outsiders who do not claim to be eligible for a disability set-aside unit (“outsider, non-disability households”).

- a. Admit that outsider, non-disability households for each standard development are supposed to have their applications considered by the developer subsequent to the consideration of enough insiders to satisfy the community preference.¹
- b. Admit that Request No. 7(a) is true regardless of whether some of the outsider, non-disability households who have applied are at risk of involuntary displacement.
- c. Admit that Request No. 7(a) is true regardless of whether some insider households not claiming eligibility for a disability set-aside unit who have applied are not at risk of involuntary displacement.

OBJECTION AND RESPONSE TO ADMISSION NO. 7:

Defendant denies subparts a, b and c of this request, except admits that developers are supposed to consider non-disability applicants who are not eligible for the community preference in that lottery after the community preference units are awarded for that lottery and

¹That is, enough insiders who the developer approves, subject to HPD/HDC review, sufficient to fulfill the minimum number of required community preference units, as that minimum number may have been partially waived.

that information regarding an applicant household's actual or perceived risk of involuntary displacement is not collected in the lottery process.

ADMISSION NO. 8:

Admit that, under the current community preference policy, an applicant household who had resided in the community preference area, but was in fact involuntarily displaced from the community preference area prior to the commencement of a lottery, is not eligible for community preference in that lottery. Note: this request to admit puts to the side and is not asking about "former site tenants" preference or the equivalent.

OBJECTION AND RESPONSE TO ADMISSION NO. 8:

Defendant denies this request, except admits that an applicant household who had resided in the community preference area, but was in fact involuntarily displaced from the community preference area prior to the commencement of a lottery, is not eligible for community preference in that lottery, unless that applicant resides in a New York City shelter, in which case that applicant may be eligible for a community preference based on either their current shelter address or their last known address prior to entering City shelter.

ADMISSION NO. 9:

Admit that, the scope, duration, and depth of "difficult conditions" vary considerably from community district to community district.

OBJECTION AND RESPONSE TO ADMISSION NO. 9:

Defendant objects to this request insofar as the term "considerably" is vague and unclear. Defendant further objects to this request as it is a compound statement in that the "scope, duration, and depth of 'difficult conditions'" are each separate qualifiers. Subject to those objections, defendant denies this request, except admits that there can be variation in the specifics of what is meant by "difficult conditions" depending on the community district.

OBJECTION AND RESPONSE TO ADMISSION NO. 12:

Defendant objects to this request insofar as the term “a household” is vague and unclear in the context of this request. Subject to this objection, Defendant states that the community preference policy inevitably prevents some households from being involuntarily displaced from their current residences and, at the same time, does not prevent some households from being involuntarily displaced from their current residences.

ADMISSION NO. 13:

This request to admit applies to defendant’s publicly articulated justifications for the community preference policy made prior to the commencement of this action.

- a. Admit that such justifications did not include the need to secure support for affordable housing development from Council Members (CMs).
- b. Admit that such justifications did not include the need to secure support for affordable housing development from the local community.

OBJECTION AND RESPONSE TO ADMISSION NO. 13:

Defendant objects to this request and subparts insofar as the term “publicly articulated” is vague and unclear. Defendant also objects to this request and subparts as vague and unclear and overly burdensome as the time period is not limited, and it is not possible for the City to know and or confirm every publicly articulated verbal or written statement made on the subject.

ADMISSION NO. 14:

Admit that neither preventing involuntary displacement nor reducing the fear of involuntary displacement were among the justifications for the community preference policy when it was first implemented citywide.

OBJECTION AND RESPONSE TO ADMISSION NO. 14:

Defendant denies knowledge or information to respond to this request as Defendant has been unable to locate records or individuals that were directly involved with the initial implementation of community preference policy over thirty years ago (in the late 1980s) to confirm the stated justifications for the policy at that time.

ADMISSION NO. 15:

Admit that CMs routinely support land-use decisions needed to facilitate affordable housing in their councilmanic districts, and routinely support individual affordable housing projects, and that such support is regularly given even in those cases where the CM had requested to expand the percentage of units in an affordable housing project subject to community preference beyond 50 percent and defendant's executive branch had rejected that request.

OBJECTION AND RESPONSE TO ADMISSION NO. 15:

Defendant objects to this request insofar as the terms "routinely" and "regularly" are vague and unclear. Subject to these objections, Defendant denies this request, except admits that some Council Members support land use actions that facilitate affordable housing in their districts and that some Council Members also ultimately support land use actions that facilitate affordable housing in their districts in instances where the Council Member's request that the community preference policy be applied to more than 50% of the affordable lottery units that would result from a land use action had been denied.

ADMISSION NO. 16:

Admit that defendant has modified its community preference policy in some respects during the course of the de Blasio administration (*e.g.*, implementing a practice of

“nesting” preferences, and making available for the referral of homeless New Yorkers some units normally subject to lottery in some buildings assisted by the now-superseded RPTL 421-a).

OBJECTION AND RESPONSE TO ADMISSION NO. 16:

Defendant denies this request, except admits that, during the de Blasio administration, the HPD Marketing Guidelines were modified so that all preferences (including the disability set-asides) were “nested” and the Marketing Guidelines were revised to explain the nesting procedure applicable to all lottery preferences.

ADMISSION NO. 17:

Admit that defendant maintained the percentage of units subject to community preference at 30 percent for approximately 15 years prior to raising the percentage to 50 percent in 2002.

OBJECTION AND RESPONSE TO ADMISSION NO. 17:

Defendant admits this request.

ADMISSION NO. 18:

Admit that defendant, in the course of making the decision to increase the percentage of units subject to community preference to 50 percent, did not poll or otherwise make broad inquiry of its legislative branch officials as to whether they would stop supporting land-use actions needed to facilitate the construction of affordable housing in their councilmanic districts (or a particular affordable housing development in their councilmanic districts) if the percentage were not raised from 30 percent.

- a. If the preceding request is not admitted, admit that there is no documentation of any such polling or other broad inquiry made of defendant’s legislative branch officials at that time.
- b. If both of the preceding components of this request are not admitted, admit that plaintiffs have not been provided with any such documentation.

OBJECTION AND RESPONSE TO ADMISSION NO. 22:

Defendant object to this request, and its subparts, because it exceeds the scope of requests permissible under Federal Rule of Civil Procedure 36(a)(1). This request seeks responses to hypothetical questions or admissions based upon hypothetical scenarios, and does not seek an admission to facts (past or present), the application of law to fact, opinions about either and thus is not properly the subject of a request to admit. Defendant further objects to this request because a response to a hypothetical question lacks probative value. Additionally, Defendant objects to this request and its subparts because, through them, Plaintiffs are improperly seeking to expand discovery and obtain new information by attempting to use this request and subparts as a substitute for interrogatories, requests for production, and/or depositions, as the Court has denied both discovery from and depositions of New York City Council Members in this case.

Defendant further objects to this request as it is a compound statement in that it references both affordable housing generally and particular housing developments, which are different issues. Defendant also objects to this request and subparts insofar as the term “land-use actions” is vague and unclear.

ADMISSION NO. 23:

Admit that when defendant’s legislative branch officials decide on whether to support or oppose land-use actions needed to facilitate affordable housing construction or to support or oppose a particular affordable housing development, those CMs consider multiple factors.

- a. Admit that one such factor that is common and prominent is how units are allocated between and among different levels of affordability (*e.g.*, what percentage of units are affordable at 40 percent AMI, 60 percent AMI, etc.).

- b. Admit that one such factor that is common and prominent is the extent to which the CM's councilmanic district will receive infrastructure or other community improvements or benefits.

OBJECTION AND RESPONSE TO ADMISSION NO. 23:

Defendant objects to this request and subparts insofar as the terms "land-use actions," "prominent," "common" and "benefits" are vague and unclear. Subject to those objections, Defendant denies this request, excepts admits that CMs consider multiple factors when deciding whether to vote to approve or disapprove land use actions needed to facilitate construction of affordable housing or whether to vote to approve or disapprove an application regarding a particular affordable housing development, and two of the factors that may be considered are the levels of affordability of the units and the extent to which needed infrastructure or community improvements or benefits will be provided.

ADMISSION NO. 24:

Admit that, to the extent that a "Councilmanic veto" exists in relation to land-use actions in a CM's councilmanic district – that is, the other members of the Council generally deferring to the CM whose district would be affected by the land-use action – such a tradition or practice is not required by law, regulation, or rule.

OBJECTION AND RESPONSE TO ADMISSION NO. 24:

Defendant objects to this request insofar as the term "land-use action" is vague and unclear. Subject to those objections, Defendant denies this request, excepts admits that there are no laws, regulations or rules that mandate how a Council Member must vote on a land-use action.

ADMISSION NO. 25:

Admit that the practice or tradition described in Request No. 24 has been criticized by one or more CMs.

OBJECTION AND RESPONSE TO ADMISSION NO. 30:

Defendant objects to this request insofar as the term “high” is vague and unclear. Subject to those objections, Defendant denies this request, but admits that the dissimilarity index for African Americans and Whites between census tracts and the City was 84 in 1990, 84 in 2000, and 82 in 2010, which is “high” according to HUD’s AFFH Guidebook.²

ADMISSION NO. 31:

Admit that, based on the dissimilarity index, New York City has been, from the commencement of the community preference policy and continuing to the present, characterized by a high level of residential segregation as between Latinos and whites.

OBJECTION AND RESPONSE TO ADMISSION NO. 31:

Defendant objects to this request insofar as the term “high” is vague and unclear. Subject to those objections, Defendant denies this request, but admits that the dissimilarity index for Hispanics and Whites between census tracts and the City was 67 in 1990, 67 in 2000, and 66 in 2010, which is “high” according to HUD’s AFFH Guidebook.³

ADMISSION NO. 32:

Admit that there are many community districts where the percentage of African Americans is substantially below the percentage of African Americans citywide.

OBJECTION AND RESPONSE TO ADMISSION NO. 32:

Defendant objects to this request insofar as the term “substantially” is vague and unclear. Subject to those objections, Defendant denies this request, but admits that in 31 out of 59 community districts the percentage of African-Americans is less than 80 percent of the percentage of African-Americans citywide according to the 2010 Decennial Census.

² HUD has since withdrawn the AFH.

³ HUD has since withdrawn the AFH.

period from 2002 to present, no affordable housing subject to a housing lottery was marketed to the public.

ADMISSION NO. 73:

Admit that African-Americans are overrepresented in census tracts of high poverty as defined by HUD (more than 40 percent of residents living in poverty) as compared with the overall percentage of New Yorkers who are African-American.

OBJECTION AND RESPONSE TO ADMISSION NO. 73:

Defendant admits this request.

ADMISSION NO. 74:

Admit that Latinos are overrepresented in census tracts of high poverty as defined by HUD (more than 40 percent of residents living in poverty) as compared with the overall percentage of New Yorkers who are Latino.

OBJECTION AND RESPONSE TO ADMISSION NO. 74:

Defendant admits this request.

ADMISSION NO. 75:

Admit that defendant claims that the percentage of African-American households who are moderately rent burdened is less than the percentage of white households who are moderately rent burdened.

OBJECTION AND RESPONSE TO ADMISSION NO. 75:

Defendant denies this request.

ADMISSION NO. 76:

Admit that defendant claims that the percentage of African-American households who are severely rent burdened is less than the percentage of white households who are severely rent burdened.

ADMISSION NO. 131:

Admit that defendant believes that the existence of ethnic enclaves is a demographic feature of the City that defendant highlights to attract visitors, new residents, and new business development.

OBJECTION AND RESPONSE TO ADMISSION NO. 131:

Defendant objects to this request insofar as the terms “highlights” and “ethnic enclaves” are vague and unclear. Subject to those objections, Defendant admits this request.

ADMISSION NO. 132:

Admit that, throughout New York City, there is fierce competition for available affordable housing.

OBJECTION AND RESPONSE TO ADMISSION NO. 132:

Defendant objects to this request insofar as the term “fierce” and “competition” are vague and unclear. Subject to those objections, Defendant denies this request, except admits that there is known competition for available affordable housing throughout New York City.

ADMISSION NO. 133:

Admit that, in the context of demand for affordable housing far exceeding the supply of affordable housing, any desire of some members of any racial or ethnic group to “self-segregate” is in conflict with the desire of New Yorkers who are not members of that racial or ethnic group to be able to secure housing in the same locations that the “self-segregators” are seeking to occupy or continue to occupy.

OBJECTION AND RESPONSE TO ADMISSION NO. 133:

Defendant objects to this request insofar as the terms “desire,” “self-segregate” and “secure housing” are vague and unclear. Defendant also objects to this request as it is a compound statement in that locations where a “self-segregator” is “seeking to occupy” housing

OBJECTION AND RESPONSE TO ADMISSION NO. 152:

Defendant denies this request, except admits that lottery applicants receive information on how to appeal a rejection or ineligibility determination as they are reached for processing and that determination is made.

ADMISSION NO. 153:

Admit that the only lottery applicant households permitted to update data that had been provided to Housing Connect, including data related to household income and household size, are those who either: (a) are contacted by the developer for application review and documentation; or (b) are contacted by the developer with a negative determination.

OBJECTION AND RESPONSE TO ADMISSION NO. 153:

Defendant admits this request.

ADMISSION NO. 154:

Admit that, in the intervening period between application and the developer's application review process, an applicant household may have a change in income that results in its going from under-income or over-income for a particular type of unit (per the information provided to Housing Connect) to being income-qualified for that type of unit (per the updated and accurate information at the time of review by or on behalf of the developer).

- a. Admit that such a household would not have the opportunity to update its information if it has not been contacted by the developer.

OBJECTION AND RESPONSE TO ADMISSION NO. 154:

Defendant admits this request and its subpart.

OBJECTION AND RESPONSE TO ADMISSION NO. 157:

Defendant denies this request, except admits that the waiting lists do not encompass all qualified applicants for whom the unit type or types that they have qualified for are not available.

ADMISSION NO. 158:

Admit that when a developer needs to turn to a waiting list, and leaving aside any requirement that may exist to prioritize homeless households, the developer is obliged to turn to the applicant household highest on the waiting list (placed on the waiting list earliest in time) that is qualified for the type of unit that has become available.

OBJECTION AND RESPONSE TO ADMISSION NO. 158:

Defendant denies this request, except admits that the developer is required to process applicants from the waiting list in log number order irrespective of the order in which they were initially processed and/or placed on the waitlist.

ADMISSION NO. 159:

Admit that 160 Madison Avenue, 200 East 39th Street, and 40 Riverside Boulevard are all buildings that have benefitted from defendant's voluntary inclusionary housing program.

- a. If the preceding request is not admitted, admit that defendant stated this to be the case in a 2015 submission to HUD (*see* Submission Version of 2015 "CAPER," at 49, <https://www1.nyc.gov/assets/planning/download/pdf/about/consolidated-plan/2015-conplan-apr-vol1.pdf?r=sub>).

OBJECTION AND RESPONSE TO ADMISSION NO. 159:

Defendant admits this request and subpart.

ADMISSION NO. 160:

Admit that defendant's community preference policy was applied to buildings benefitting from defendant's voluntary inclusionary housing program if initial lease-up had been conducted prior to the enactment of the RPTL 421-a provisions relating to community preference.

OBJECTION AND RESPONSE TO ADMISSION NO. 160:

Defendant admits this request.

ADMISSION NO. 161:

Admit that defendant's community preference policy has been and continues to be applied to buildings benefitting from defendant's voluntary inclusionary housing program where initial lease-up is conducted subsequent to the expiration of the RPTL 421-a provisions relating to community preference.

OBJECTION AND RESPONSE TO ADMISSION NO. 161:

Defendant admits this request.

ADMISSION NO. 162:

Admit that, concerning the 2007 amendments to RPTL 421-a, defendant did not memorialize any statement to the effect that, as a result of the amendments, community preference would be applied to affordable housing units that would not otherwise have been subject to community preference under defendant's previously existing policy.

- a. If the preceding request is not admitted, admit that defendant has not produced any evidence constituting such a memorialized statement.

OBJECTION AND RESPONSE TO ADMISSION NO. 162:

Defendant objects to this request and subpart as vague, unclear and overly burdensome insofar as it is unclear what Plaintiffs mean by "memorialize" and to the extent that means

ADMISSION NO. 179:

Admit that another accurate way to describe the operational goal of the community preference policy is to reduce the percentage of outsiders who are awarded lottery apartments as compared to the percentage of outsiders who would be awarded lottery apartments absent the policy.

OBJECTION AND RESPONSE TO ADMISSION NO. 179:

Defendant objects to this request insofar as the term “operational goal” is not defined, vague and unclear. Subject to those objections, Defendant denies this request.

ADMISSION NO. 180:

Admit that five of seven members of HDC’s governing body are either: (a) mayoral appointees; or (b) defendant’s commissioners who were appointed to their commissionerships by the mayor.

OBJECTION AND RESPONSE TO ADMISSION NO. 180:

Defendant admits this request.

ADMISSION NO. 181:

Admit that, as a practical and functional matter, a principal mission of HDC is to help achieve defendant’s housing policies and priorities.

OBJECTION AND RESPONSE TO ADMISSION NO. 181:

Defendant objects to this request insofar as the terms “practical matter,” “functional matter” and “principal” not defined, vague and unclear. Subject to those objections, Defendant denies this request

ADMISSION NO. 182:

Admit that all seven members of NYCHA’s board are appointed by the mayor.

OBJECTION AND RESPONSE TO ADMISSION NO. 182:

Defendant admits this request.

ADMISSION NO. 183:

Admit that, as a practical and functional matter, a principal mission of NYCHA is to help achieve defendant's housing policies and priorities.

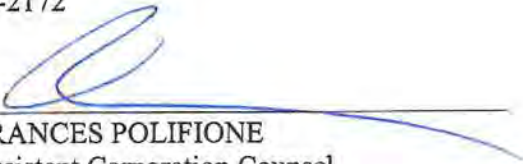
OBJECTION AND RESPONSE TO ADMISSION NO. 183:

Defendant objects to this request insofar as the terms "practical matter," "functional matter" and "principal" not defined, vague and unclear. Subject to those objections, Defendant denies this request

Dated: New York, New York
October 2, 2019

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANELL WINFIELD, TRACEY STEWART,
SHAUNA NOEL and EMMANUELLA SENAT,

Plaintiffs,

- against -

CITY OF NEW YORK,

Defendant.

**ANSWER TO
SECOND AMENDED
COMPLAINT**

15 CV 5236 (LTS)

Defendant the CITY OF NEW YORK, by its attorney, ZACHARY W. CARTER, Corporation Counsel of the City of New York, for its answer to the second amended complaint, respectfully alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the second amended complaint (“complaint”), except denies the allegations insofar as they allege or purport to allege that Defendant has acted or is acting contrary to the law or in violation of Plaintiffs’ rights.¹
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the complaint, except denies the allegations insofar as they allege or purport to allege that Defendant has acted or is acting contrary to the law or in violation of Plaintiffs’ rights.
3. Denies the allegations set forth in paragraph 3 of the complaint.

¹ Defendant is denying knowledge or information sufficient to form a belief here, and in other paragraphs, at least in part, because Plaintiffs fail to define segregation. Although Plaintiffs provide some definition of segregation in paragraph 101, this definition is vague in itself, and it is further unclear whether Plaintiffs intended to use such “definition” for the term segregation throughout the complaint, or just for that paragraph.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 of the complaint, except admits that Plaintiff Noel submitted applications for an affordable unit at 200 East 39th Street and 40 Riverside Boulevard, both in Manhattan, and was not invited to be screened for eligibility for units in any of these developments, and avers that Plaintiff Noel also submitted applications for an affordable unit in locations other than those listed above, and located outside of Manhattan.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of the complaint, except admits that Plaintiff Senat submitted applications for an affordable housing units at 118 Fulton Street and 29 Cliff Street (60 Fulton), 221 W. 29th Street, 38-46 West 33rd Street, 145 Madison Avenue, 200 East 39th Street, 335 East 27th Street, 40 Riverside Boulevard, 10 Freedom Place South, and 321 E. 60th Street, all in Manhattan and Ms. Senat was not invited to be screened for eligibility for units in any of these developments,⁴ and avers that Plaintiff Senat also submitted applications for an affordable unit in locations other than those listed above, and located outside of Manhattan.

12. Denies the allegations set forth in paragraph 16 of the complaint, except admits that the City of New York (“City”) is a municipal corporation duly incorporated and existing pursuant to the law of the State of New York, and avers that the City’s Department of Housing Preservation and Development (“HPD”) has formulated, proposed, and continues to administer the City’s community preference policy, except that the Housing Development Corporation (“HDC”) administers the City’s community preference policy for developments that receive HDC loans or subsidies.

⁴ Some of these developments have not completed lease-up so it is possible Ms. Senat will be invited to be screened for eligibility.

22. Denies the allegations set forth in paragraph 80 of the complaint, except admits that Plaintiffs purport to proceed as set forth therein, and except admits that the City provides a variety of forms of subsidy for the creation and preservation of affordable housing.

23. Denies the allegations set forth in paragraph 81 of the complaint, except admits that the City first began to apply a community preference policy in the 1980s.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 82 of the complaint, except denies the allegations insofar as they allege or purport to allege that Defendant has acted or is acting contrary to the law or in violation of Plaintiffs' rights.

25. Denies the allegations set forth in paragraphs 83 and 84 of the complaint, except admits that in 2002 the City's preference policy was modified such that the percentage of affordable units allocated in a lottery for eligible residents of the community district in which the affordable housing is developed increased from up to 30% to up to 50%.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 85 and 86 of the complaint, except denies the allegations insofar as they allege or purport to allege that Defendant has acted or is acting contrary to the law or in violation of Plaintiffs' rights, and avers that the 2002 increase from up to 30% to up to 50% of affordable units was, among other things, to provide greater housing opportunities for long-term residents of City neighborhoods where HPD made significant investment in housing, and continues to be used to prevent displacement of residents and to respond to the fear of displacement, which causes opposition to the development of affordable housing and land use actions that facilitate affordable housing.

27. Denies the allegations set forth in paragraph 87 of the complaint, except admits that the percentage of affordable units to which the City's community preference applies has not changed since it was increased to up to 50% in 2002, and avers that the community preference is occasionally shared by two or more community districts

28. Denies the allegations set forth in paragraph 88 of the complaint, except admits that when the City's community preference policy is administered, a lottery is used to select which applicants are screened for eligibility for affordable units.

29. Denies the allegations set forth in paragraph 89 of the complaint, except admits that preferences for certain affordable housing developments exist for eligible applicants that are City employees, and avers that units are set aside for applicants that have mobility impairments, and/or visual or auditory impairments.

30. Denies the allegations set forth in paragraph 90 of the complaint, except admits that the City's community preference policy currently provides that eligible applicants residing in the community district in which the affordable units are built have priority for up to 50% of the affordable units in a development, and avers that for projects in which the community preference units are not filled through the lottery, those units are made available to applicants that do not reside in the community district.

31. Denies the allegations set forth in paragraph 91 of the complaint.

32. Denies the allegations set forth in paragraphs 92 through 97, except admits that the length of time an applicant resides in the community district in which the affordable units are built or an applicant's housing conditions do not affect eligibility for the community preference provided under the City's community preference policy, and avers that the City's community preference policy is applied city-wide.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 98 of the complaint, except denies the allegations insofar as they allege or purport to allege that Defendant has acted or is acting contrary to the law or in violation of Plaintiffs' rights.

34. Denies the allegations set forth in paragraphs 99 through 103.

35. Denies the allegations set forth in paragraphs 104 through 106 of the complaint, except admits that the location of an applicant's residence has no bearing on whether an applicant is income eligible for an affordable unit.

36. Denies the allegations set forth in paragraphs 107 through 110 of the complaint.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 111 of the complaint.

38. Denies the allegations set forth in paragraphs 112 through 127 of the complaint.

39. Neither admits nor denies the allegations set forth in paragraphs 128 through 130 of the complaint as they constitute legal conclusions for which no response is required. However, in the event that a response is required, Defendant denies the allegations.

40. Denies the allegations set forth in paragraphs 131 of the complaint.

41. Denies the allegations set forth in paragraph 132 of the complaint, except admits that HPD is responsible for implementing and overseeing the City's community preference policy.

42. Denies the allegations set forth in paragraph 133 of the complaint, except admits that the City's community preference policy is designed, in part, to "provide greater

74. The City's adoption, maintenance, and implementation of the community preference policy is not in violation of 42 U.S.C. sections 3604(a) and 3604(b) or of New York City Administrative Code sections 8-107(17), 8-107(5)(a)(1)(a), and 8-107(5)(a)(1)(b). The City's community preference policy has not contributed to, nor caused, Plaintiffs to suffer a disparate impact based upon race, has not perpetuated segregation, nor does it constitute intentional discrimination against African-Americans or against any other racial or ethnic group.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

75. Plaintiffs do not have standing to challenge the City's community preference policy as they have not suffered a concrete, particularized injury that is traceable to the City's community preference policy. The community preference applied to the developments in which Plaintiffs sought affordable housing was implemented pursuant to the requirements New York State Real Property and Tax Law § 421-a, and not pursuant to the City's community preference policy. Therefore, Plaintiffs were not aggrieved by the City's community preference policy and lack standing to challenge same.⁶ Plaintiffs, who allege that they are African-American, also lack standing to challenge the City's community preference policy as perpetuating segregation of racial and ethnic groups other than African Americans, or of intentionally discriminating against or having a disparate impact upon any racial or ethnic group other than African-Americans. Consequently, the Court lacks subject matter jurisdiction.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

76. In the alternative, even if there is a disparate impact on African-Americans or Latinos or a perpetuation of segregation caused by the City's community preference policy, the

⁶ The Court denied a motion to dismiss on the grounds that Plaintiffs lack standing as they were not aggrieved by the City's community preference policy, but instead aggrieved by the state law

City's community preference policy is necessary to achieve a substantial, legitimate, nondiscriminatory governmental interest. Likewise, even if the City's community preference policy contributes to a disparate impact on African-Americans or Latinos, the City's community preference policy bears a significant relationship to a significant governmental interest.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

77. No cause of action exists under the New York City Human Rights Law for perpetuation of segregation. Therefore, the complaint fails to state a claim for relief for perpetuation of segregation under the New York City Human Rights Law.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

78. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations. To the extent Plaintiffs' claims arise prior to July 7, 2013, Plaintiffs' claims under the Fair Housing Act are barred by the statute of limitations. To the extent Plaintiffs' claims arise prior to July 7, 2012, Plaintiffs' claims under the New York City Human Rights Law are barred by the statute of limitations.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

79. In the alternative, to the extent that there is a finding that the City's community preference policy was motivated by intentional discrimination on the basis of race, the City also has a legitimate, non-discriminatory purpose for its community preference policy.

mandated preference policy. Defendant repeats this standing argument to preserve its ability to raise it again in a future motion or in an appeal.

Marketing Handbook

Policies and Procedures for Resident Selection and Occupancy

July 2018

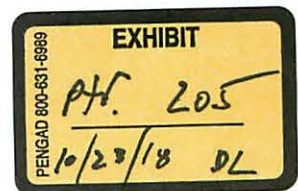


**NYC
Housing
Connect**

NYC
Department of
Housing Preservation
& Development

NYC **HDC**
NEW YORK CITY
HOUSING DEVELOPMENT
CORPORATION

Effective 07/01/2018



1. Introduction

1-1 What This Handbook Is

- A. This handbook (the "Marketing Handbook") contains the policies, procedures, and requirements for marketing and selection of residents for developments ("Projects") assisted by the New York City Department of Housing Preservation and Development ("HPD") and the New York City Housing Development Corporation ("HDC") (together, the "Agencies").
- B. Developers, owners, and sponsors of Projects ("Developers"), as well as other agents or entities responsible for the marketing and resident selection for Projects ("Marketing Agents") must comply with the Marketing Handbook's policies, procedures, and requirements. Marketing Agents may include in-house departments of the Developer, subsidiaries, or affiliates of the Developer, or third-party marketing, leasing, managing, monitoring, or administering agents. All Marketing Agents must meet certain qualifications and must be approved by the Agency prior to marketing, regardless of whether they are part of the Developer's organization or a third party.
- C. Compliance with the Marketing Handbook will be monitored by either HPD or HDC (whichever is applicable for a particular project is referred to herein as the "Agency"), depending on the project.
- D. The primary objective of the marketing, lease-up and sales effort is to ensure that the process is fair and provides equal opportunity to all applicants, regardless of race, color, religion, gender, sexual orientation, gender identity or expression, national origin, age, genetic information, disability, or veteran status. In addition, the process should affirmatively further fair housing by promoting racial, ethnic, income, and geographic diversity among residents and within the neighborhood, and by providing applicants with mobility, vision, or hearing disabilities that require accessible/adaptable units priority for those units.

1-2 What this Handbook Is Not

- A. The Marketing Handbook is not a comprehensive compliance manual. Developers and Marketing Agents must ensure that their employees are fully

Agency prior to the start of marketing. The rejection criteria must be applied fairly and equitably to all applicants.

2. No application will be found ineligible prior to entering the lottery. Every application received via Housing Connect and every paper application postmarked or date-stamped prior to the application deadline will be assigned a unique log number. Ineligibility notices, for reasons outlined below, must be processed and sent in order of log number.
3. *Multiple applications*
 - a. A “multiple application” is defined as the appearance of any single person across two or more applications for any given project, where the applications differ in the number or composition of household members present.
 - b. In the case that multiple applications are received for any single person, all applications for that applicant must be found ineligible.
4. *Duplicate applications*
 - a. A “duplicate application” is defined as the appearance of any single person across two or more applications for any given project, where the same household members are present and all other information is the same.
 - b. Upon receipt of duplicate applications, the Marketing Agent will not find the applicant ineligible, but will consider only the application with the highest log number (lowest chance of being selected).
5. Applicants to rental projects may not be found ineligible or be rejected solely on the basis that the applicant receives Section 8 assistance or other qualifying government rental subsidy.
6. **The Developer and the Developer’s family members, employees, agents, and employees of agents are prohibited from seeking or obtaining an affordable unit in the Project at any time, regardless of their position with the firm. This applies to the following parties:**
 - a. Any person holding an equity interest in the developer or any agent of the Developer;
 - b. Any director, officer, member or employee of the Developer or of any agent of the developer;
 - c. The spouse of any such person;
 - d. Any of their respective siblings, parents, grandparents, children, or grandchildren; or

- e. Their respective spouses.
- 7. Employees of HDC are prohibited from seeking a unit in any project in which HDC is involved.
- 8. Employees of HPD may not seek units in buildings that have been involved in HPD programs or projects in the last three years if the employee either (i) works in the division which administers such HPD program or project, (ii) works in the Marketing Unit, (iii) is or was involved in decisions concerning such HPD program or project, or (iv) seeks, obtains, or purchases the housing through a process that is different in any way from the process through which members of the general public seek, obtain, or purchase such housing. Any HPD employee who is selected in the lottery must consult with the agency's Office of Legal Affairs to determine whether the City Charter, HPD policies or orders, or any other law or rule prohibits such employee from leasing or purchasing the apartment or home. The employee will be required to submit a statement from HPD that receiving such unit does not violate any applicable law, rule, or policy.

✓ **The Marketing Plan must specify criteria to be used for resident selection and rejection.**

B. ORDER OF PROCESSING

1. The first applications that the Marketing Agent processes from the log and submits to the Agency for review must be those that meet the approved set-aside categories or preferences. For more information on processing of preferences, see Section 5-1, "Set-Asides and Preferences."
2. Set-aside and preference categories, when applicable, must be processed in the following order:
 - (1) People with disabilities (five percent mobility; two percent vision/hearing)
 - (2) Community Board residents
 - (3) New York City municipal employees (paid by the City of New York)
3. Applications containing content entered by the applicant in a language other than English must be translated before being processed. The Marketing Agent is responsible for arranging professional translation services.

4. When processing applicants for each set-aside and preference category, New York City residents must be processed before non-residents. If there are insufficient New York City residents to meet the set-aside or preference requirement, the Marketing Agent must then process non-residents to fulfill it. *Note: After initial lease-up or sales, the New York City resident preference no longer applies.*
5. After fulfilling the Community Board, municipal employee, and other preference categories if applicable, applicants in the general pool who reside in New York City must be processed before non-residents.
6. Only after all set-asides and preferences have been fulfilled may non-set-aside or non-preference applications be submitted to the Agency for review. This is to prevent non-set-aside or non-preference applicants from being processed for units that are intended for applicants eligible for set-asides or preferences. With Agency approval, the screening of non-set-aside or non-preference applicants may begin prior to achieving all set-asides or preferences.
7. If the Marketing Agent is unable to fulfill any set-aside or preference categories, it must contact the Agency for further instructions.
8. The Marketing Agent must offer units only to applicants who meet eligibility requirements, and only in numbered order from the lottery log (after first processing applicants for set-asides and preferences), for whom units of appropriate size are available.
9. When the applicant's household and income are verified at signing of the *Tenant Income Certification (Attachments L-1, 2, 3)* the Marketing Agent must make the applicant aware of all available unit types for which they are eligible and offer to the applicant the opportunity to select the unit type.
10. Applications should be processed for submission to the Agency in batches to prevent getting too far ahead in the lottery and potentially bypassing eligible applicants who are placed earlier on the log and appeal successfully within the two-week appeal timeframe. A general rule of thumb is to process applications in batches of 50, although the number may vary based on project specifics. Even within those batches, attention must be given to remaining available units based on bedroom sizes and (for mixed-income buildings) income levels to allow for such appeals. If the Marketing Agent has questions about appropriate batch size, it should consult the Agency.
11. If no unit of appropriate size is available to an eligible applicant when the applicant's log number is reached, the applicant's name will remain on the

- b. Of those rejected, number rejected because of:
 - i. Being over income;
 - ii. Being under income;
 - iii. Falling between the income ranges; if applicable;
 - iv. Credit reasons;
 - v. Criminal history;
 - vi. Housing court activity as further described in Section 5-6.D;
 - vii. Household composition;
 - viii. Failure to submit requested additional documentation;
 - ix. Submitting multiple applications;
 - x. Household being comprised of full-time student(s) and not meeting any of the exceptions (in applicable programs);
 - xi. Household size;
 - xii. No-shows (including the no-show dates); and
 - xiii. Any other rejection criteria used by the Marketing Agent.
 - c. Number terminated as per applicant's request (applicant withdrew/cancelled application);
 - d. Number placed on low priority list and specific reasons, e.g. living out of city.
5. The Marketing Agent must retain the lottery log and all associated applications (digitized or paper versions) as a record for no less than five years. The Marketing Agent is responsible for complying with the retention policies of all applicable programs, and maintaining applicants' private information in a secure and confidential manner.

D. APPEALS

1. Applicants have 10 business days from the sent date or postmark of the ineligibility or rejection notice to appeal in writing to the Marketing Agent. The applicant's place on the log is maintained while the appeal is under review.
2. Upon receipt of an appeal, the appeal and application must be reviewed by a supervisor, and this reviewer may not be the same person as the initial reviewer. Any questions during appeal review should be directed to the Agency.
3. If the Marketing Agent finds the application still to be ineligible after the appeal review, the appeal rejection notice must provide specific and detailed reason why an applicant cannot be approved, according to the template provided by the Agency. See *Appeal Rejection Notice*,

*Attachment H-7.***E. COMPLAINTS**

1. The appeal rejection notice will contain information for the applicant on how to contact the appropriate Agency (HPD or HDC) in the event that the applicant has a complaint. See *Attachment H-7*.
2. If the applicant's complaint concerns the rejection of their appeal, the applicant must submit their complaint to the Agency within five business days of the appeal rejection notice's postmark or sent date to initiate a review. Such a complaint must include a written explanation of why the applicant believes the appeal was rejected in error and documentation to support the explanation.
3. The Agency may require that the Marketing Agent hold a unit depending on the circumstances of the case and if units are available.

F. ELIGIBILITY APPOINTMENTS (FORMERLY "INTERVIEWS")

1. All applicant/prospective resident eligibility appointments, as well as lease signings, must be conducted within New York City limits (i.e., New York, Bronx, Kings, Queens, or Richmond Counties) and at a location that is accessible to applicants with disabilities.
2. All adult household members of the applicant household must attend the eligibility appointment. Temporarily absent household members may be excused from attending the eligibility appointment. Circumstances of temporarily absent household members may include:
 - a. Children away at college;
 - b. A household member who is in a hospital or rehabilitation facility for periods of limited or fixed duration;
 - c. A household member on active military duty.
3. If credit checks will be conducted, then the fees may not exceed those approved by the Agencies:
 - a. For units with income limits set at or below 80 percent AMI, credit check fees are not to exceed **\$25** for households with one or two adult members or **\$50** for households with three or more adult members.
 - b. For units with income limits set above 80 percent AMI, credit check fees are not to exceed **\$50** for households with one or two adult

B. COMMUNITY PREFERENCE

1. As instructed by the Agency prior to the marketing effort, the Marketing Agent may be required during initial lease-up or sales to give an occupancy preference for a percentage of the units to applicants who, at the time of application and processing, are residents of the Community District in which the building is located ("Community Preference Units"). Applicants with community resident status must meet all other eligibility requirements of the Agency and the Marketing Agent (e.g., income qualification, credit history) to qualify.
2. When the community preference is fully achieved, any remaining community applicants will be processed from the log in the same order as other applicants.
3. If after all applications have been processed the community preference cannot be filled from applicants in the log, the Marketing Agent must notify to the Agency indicating how much of the preference has been achieved. The notice must be accompanied by an updated lottery log that details the status of applicants on the log (i.e., if they were rejected the reason must be provided). It should include, but is not limited to, the information on the Statistical Report (See Statistical Report requirements, Section 4-4.C). After review, the Agency may waive the remainder of this preference and authorize the Marketing Agent to proceed with the remainder of the log sequentially.

C. MUNICIPAL EMPLOYEE PREFERENCE

1. The Marketing Agent must give an occupancy preference for five percent of the units (or one unit, whichever is greater) to municipal employees of the City of New York ("Municipal Employee Preference Units"). At least one household member must be a municipal employee for an applicant to be eligible for this preference. A general list of New York City agencies is available at nyc.gov for reference, but to be eligible for this preference, the applicant must be paid by the City of New York. (Note: HDC employees are not eligible for this preference. Employees of HPD are only eligible if they can provide a statement from HPD that receiving such unit does not violate any applicable law, rule, or policy.)
2. When processing applicants for the municipal employee preference, New York City residents must be processed before non-residents. If there are insufficient New York City residents to meet the municipal employee preference, the Marketing Agent may then process non-resident municipal employees of the City of New York.

D. RESIDENCY PREFERENCE FOR NEW YORK CITY RESIDENTS

After fulfilling the disability set-asides and Community Board, municipal employee, and any remaining preference requirements, applicants in the general pool who reside in New York City must be processed before non-residents.

E. ADDITIONAL SET-ASIDES AND PREFERENCES

There may be additional preferences and set-asides tied to certain government programs or funding sources. However, they are subject to the same resident selection criteria and application process and must be approved by the Agency.

✓ **The Marketing Plan and Project advertisement must reflect all set-asides and preferences.**

F. HOMELESS REFERRALS

1. The Agency may require that all or a portion of the Mobility Disability Set-Aside Units and Hearing/Vision Disability Set-Aside Units, the Community Preference Units, the Municipal Employee Preference Units and/or units associated with any other additional preference and set-aside then existing, be set aside as housing for households then residing in emergency shelter and referred by the City as long as such homeless applicants meet the requirements of the applicable preference or set aside and any other applicable program eligibility criteria. This requirement may apply to initial rentals and/or re-rentals.
2. The Agency may also amend these policies and procedures for individual Projects (for initial rentals or re-rentals from a waiting list) to authorize the owner to give a preference or set-aside for referrals of homeless persons from the Department of Homeless Services, provided that the homeless persons meet program eligibility criteria (i.e., have incomes at or below the maximum allowable income for eligibility).

G. REFERRALS

The Agency may refer to the Marketing Agent potential applicants who are being relocated or displaced due to a governmental action. The Marketing Agent, if directed by the Agency, must first offer units to these referrals. Their applications must be processed according to program selection criteria for eligibility and the Agency must complete its review before any referred applicant may be offered a lease. Referrals must be entered into a separate log by the Marketing Agent or a

units) is low-income.

d. Distribution of all affordable units must be approved by the Agency.

C. RENT LEVELS AND INCOME STANDARDS

1. Rents

The Developer must establish the rents in accordance with the Agency regulatory documents and programmatic requirements.

2. Maximum Income Levels

The Agency will provide tenant income eligibility levels as modified by household size.

3. Minimum Income Levels

- a. The Agency will provide minimum income eligibility levels based on 35 percent of the gross annual rent for the unit.
- b. The Developer may not establish minimum income levels for applicants with tenant-based Section 8 and other qualifying rental subsidies. Such applicants must be accepted provided they meet all other eligibility criteria outlined in the Marketing Plan. If questions arise, the Agency will advise the Developer on the use of minimum income limits for forms of rental subsidy other than Section 8.

4. For Low Income Housing Tax Credit Compliance

- a. Mixed-income projects participating in the Low Income Housing Tax Credit program must elect designation as either “deep rent skewed” or “non-deep rent skewed” when they are originally placed in service.
- b. *Deep Rent Skewed Properties.* Properties that are designated as deep rent skewed must meet the following:
 - i. At least 15 percent of all the low-income units occupied by tenants with incomes that are 40 percent AMI or less and rents are restricted.
 - ii. If a tenant’s income increases to over 170 percent of the then-current income limit for the unit occupied by such tenant, the unit may continue to be deemed a low-income unit provided the Marketing Agent rents the next available low-income unit at the property to a family with an income equal to or below 40 percent of AMI at a restricted rent. As long as one resident’s income is more than 170 percent of the income limit for the unit, the Marketing Agent must rent

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

DEPOSITION OF

MARGARET BROWN

New York, New York

January 18, 2018

9:20 a.m.

Reported by:
JUDITH CASTORE, CLR
Job No. 53130

1 BROWN

2 attention to that paragraph. I don't
3 want to ask you about the exhibit, but
4 I want to ask you about a particular
5 issue about the operation of the
6 lotteries in terms of insiders and
7 outsiders.

8 Is the policy such that all
9 the units at a particular income band
10 might be gone before any outsider has
11 had a chance to have her application
12 reviewed by the developer?

13 MR. VIDAL: Objection.

14 A So what you're referring to,
15 it sounds like, is in a mixed income
16 project say there's units at 50, 60 and
17 100 percent of AMI, is it possible that
18 by the time we have processed all
19 community preference applicants all the
20 50 percent AMI units would be gone,
21 would be allocated to community
22 preference applicants.

23 Q That's my question, yes.

24 A That is a possibility.

25 Q The next question, which is a

1 BROWN

2 similar question, does not depend on it
3 being mixed income, but it's about unit
4 size. So is it -- let's say for a
5 moment that it's a building that has
6 one, two and three bedroom apartments.
7 Is it possible, given the rules that
8 before the outsider, who has lottery
9 number one, gets a chance to be
10 reviewed, all the three bedroom units
11 would be gone taken by the insiders?

12 A Yes. It's possible that also
13 by unit size community preference
14 applicants could absorb a particular
15 unit size before we begin processing
16 non-community preference applicants.

17 Q This next question may be one
18 where you say, you know, not my
19 bailiwick.

20 Prior to the mandatory
21 inclusionary housing program there was
22 a voluntary exclusionary housing
23 program; is that right?

24 A That's correct.

25 Q So I'll ask you the next one.

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BROWN

frontier that we really wanted to
explore to have additional
opportunities to place homeless
households.

Q Hopefully you will be able to
clarify this next point because we have
gotten different answers on it.

There is the old 421A law
that originally expired, but then there
is a new 421A law as of this year.

A Um-hum.

Q Housing New Yorker?

A Affordable New York.

Q A different clever title.
Okay. Affordable New York.

So for Affordable New York
buildings, is this homeless preference
applicable or no?

A It is not.

Q Why not?

A So as I was saying, the idea
of incorporating a homeless requirement
in 421A hadn't really been explored
before.

1 BROWN

2 I was really not part of
3 exploring how can we get this done, but
4 the, I think primarily legal answer to
5 how can we get this done was to make it
6 a requirement of community preference
7 and -- which is what happened. There
8 is no community preference in the new
9 421A, and so we don't have that same
10 mechanism to impose this requirement on
11 developers.

12 Q Any other reason?

13 A Not to my knowledge.

14 Q Okay. Back to the marketing
15 handbook. This time Page 26, and that
16 deals with appeals, or at least Section
17 D deals with appeals.

18 A I'm sorry. Could you repeat
19 the section, the page? Appeals?

20 Q Yeah, 26.

21 A Yep.

22 Q I just want to confirm that
23 an applicant's right of appeal is
24 triggered by the termination of
25 ineligibility or rejection, correct?

1 BROWN

2 MR. VIDAL: I'm sorry. I
3 tuned out for a second. Could you
4 please repeat the question.

5 MR. GURIAN: As long as you
6 promise not to do that again.

7 Q An applicant's right to
8 appeal is triggered by a determination
9 of ineligibility or rejection, right?

10 MR. VIDAL: Correct. Oh,
11 sorry.

12 THE WITNESS: Well, he was
13 answering for me.

14 MR. VIDAL: I -- maybe I need
15 a break.

16 MR. GURIAN: I would
17 appreciate letting Ms. Brown
18 answer.

19 A Correct.

20 Q If your application is not
21 gotten to and so -- strike that.

22 There are a lot of people
23 whose applications are simply not
24 gotten to, correct?

25 A In terms of "gotten to", you

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BROWN

mean reached in processing -- in the
course of the tenant selection reached
in processing as the lottery log?

Q Yeah. They're not reviewed
or considered by the marketing agent?

MR. VIDAL: Objection.

Q I don't mean for any
mysterious reason. I mean because
tenant selection has been completed
before their lottery number comes up.

A That is correct.

Q Is that correct?

A Yes.

Q So if your application has
not been gotten to in the way I have
just described, you do not have a right
to appeal in that case, do you?

MR. VIDAL: Objection.

A If you are -- if your
application is not reached in
processing, no, there is not an
opportunity to appeal, per se.

Q I'm sorry. I didn't hear the
last -- there's not an opportunity to

STATE OF New York)

) :ss

COUNTY OF New York)

I, MARGARET BROWN, 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.



MARGARET BROWN

Sworn and subscribed to before me,
this 9th day of MARCH, 2018.



Notary Public

JOHN C ALTER
Notary Public - State of New York
NO. 01AL6219754
Qualified in Kings County
My Commission Expires 3/29/2018

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

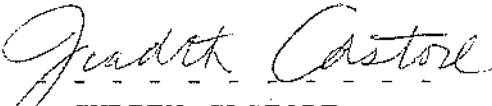
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That MARGARET BROWN, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that this
transcript of such examination is a true
record of the testimony given by such
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 January,
2018.


JUDITH CASTORE

ERRATA

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

PAGE LINE

14 13 CHANGE: “they” to “HPD Tech”

REASON: Clarify intent of sentence.

16 16 CHANGE: “Videographer” to “Mr. Vidal”

REASON: Belief that attorney for City, not the videographer, made the objection.

28 22 CHANGE: “is developers” to “is when developers”

REASON: Clarify intent of sentence.

29 4 CHANGE: “HPD, the marketing program” to “HPD’s marketing program”

REASON: Clarify intent of sentence.

33 17 CHANGE: “they” to “we’ll”

REASON: Incorrect transcription.

39 22 CHANGE: “marking” to “marketing”

REASON: Incorrect transcription.

59 4 CHANGE: “some were leaving” to “some were not leaving”

REASON: Incorrect transcription.

63 9 CHANGE: “to --” to “too--”

REASON: Incorrect transcription.

80 23 CHANGE: “recognize I don’t” to “recognize, I don’t”

REASON: Clarify intent of sentence.

83 17 CHANGE: “theme trust” to “theme or thrust”

REASON: Clarify intent of sentence.

91 9 CHANGE: “communities where we go” to “communities, where we go”

REASON: Clarify intent of sentence.

94 13 CHANGE: “conversation” to “conversations”

REASON: Incorrect transcription.

100 2 CHANGE: “Comps Department” to “Comms (Communications) Department”

REASON: Incorrect transcription and to clarify intent of sentence.

107 20 CHANGE: “that not on the operational side but” to “that, not on the operational side, but”

REASON: Clarify intent of sentence.

112 3 CHANGE: “particularly around developments” to “particularly around Development (The Office of Development)”

REASON: Incorrect transcription and to clarify intent of sentence.

122 2 CHANGE: “process accept” to “process or accept”

REASON: Incorrect transcription.

130 23 CHANGE: “this was other” to “this was, other”

REASON: Clarify intent of sentence.

137 2 CHANGE: “same like this” to “same, like, this”

REASON: Clarify intent of sentence.

146 10-11 CHANGE: “but they are not affordable housing developers, they’re market rate developers” to “but they are not affordable housing developers -- they’re market rate developers”
REASON: Clarify intent of sentence.

162 16 CHANGE: “any data knowledge” to “any data or knowledge”
REASON: Incorrect transcription.

176 15 CHANGE: “And do they qualify” to “And so if they qualify”
REASON: Incorrect transcription.

188 7, 9, 11, 22, 24 CHANGE: “our space” to “Our Space”
REASON: Incorrect transcription, proper name.

189 4 CHANGE: “our space” to “Our Space”
REASON: Incorrect transcription.

193 9 CHANGE: “a subsidy a tenant subsidy are the eligibility criteria” to “a subsidy – a tenant subsidy – are the eligibility criteria”
REASON: Clarify intent of sentence.

199 17-19 CHANGE: “is it possible that by the time we have processed all community preference applicants all the 50% AMI units would be gone” to “is it possible that, by the time we have processed all community preference applicants, all the 50% AMI units would be gone”
REASON: Clarify intent of sentence.

200 12-13 CHANGE: “possible that also by unit size community preference” to “possible that also, by unit size, community preference”
REASON: Clarify intent of sentence.

201 19 CHANGE: “exclusionary” to “inclusionary”
REASON: Incorrect transcription.

202 9 CHANGE: “marketing I know” to “marketing, I know”

REASON: Clarify intent of sentence.

203 11 CHANGE: “be a few” to “be in a few”

REASON: Incorrect transcription.

203 20-23 CHANGE: “this, you know, we don’t provide financing, we’re simply providing a tax exemption but it” to “this, (you know, we don’t provide financing, we’re simply providing a tax exemption) but it”

REASON: Clarify intent of sentence.

205 4-5 CHANGE: “answer to how can we get this done was to make” to “answer to “how can we get this done?” was to make”

REASON: Incorrect transcription; clarify intent of sentence.

212 10 CHANGE: “city counsel” to “City Council”

REASON: Incorrect transcription.

218 19 CHANGE: “have” to “has”

REASON: Incorrect transcription.

223 9-10 CHANGE: “we were in the current version of Housing Connect trying to get” to “we were, in the current version of Housing Connect, trying to get”

REASON: Clarify intent of sentence.

229 3 CHANGE: “meetings, relatively infrequently” to “meetings relatively infrequently”

REASON: Clarify intent of sentence.

229 7 CHANGE: “conversation I think between” to “conversation, I think, between”

REASON: Clarify intent of sentence.

233 16-17 CHANGE: “operations fight back” to “Operation Fight Back”

REASON: Incorrect transcription.

236 7 CHANGE: “were are” to “were/are”

REASON: Clarify intent of sentence.

249 21 CHANGE: “about this that” to “about this, that”

REASON: Clarify intent of sentence.

250 15 CHANGE: “advise me like does” to “advise me, like, does”

REASON: Clarify intent of sentence.

251 8 CHANGE: “today to” to “today. To”

REASON: Clarify intent of sentence.

257 4 CHANGE: “to pay that we” to “to pay, that we”

REASON: Clarify intent of sentence.

260 25 CHANGE: “people not financially” to “people who are not financially”

REASON: Clarify intent of sentence.

261 3 CHANGE: “immediate our extended family member” to “immediate or extended family members”

REASON: Incorrect transcription

261 10 CHANGE: “tie” to “ties”

REASON: Incorrect transcription

261 11 CHANGE: “in somebody else.” to “in somebody else?”

REASON: Incorrect transcription.

261 16 CHANGE: “in somebody else.” to “in somebody else?”

REASON: Incorrect transcription.

261 17 CHANGE: “somebody else’s” to “somebody elses”

REASON: Incorrect transcription.

261 18 CHANGE: “Wall” to “While”

REASON: Incorrect transcription.

265 10 CHANGE: “asked is can we” to “asked is, can we”

REASON: Clarify intent of sentence.

267 11 CHANGE: “would say” to “will say”

REASON: Incorrect transcription.

267 11-13 CHANGE: “that is where a project falls into multiple community boards the” to
“that is, where a project falls into multiple community boards, the”

REASON: Clarify intent of sentence.

267 22-23 CHANGE: “on this that” to “on this, that”

REASON: Clarify intent of sentence.

268 2 CHANGE: "tracked" to "tract"

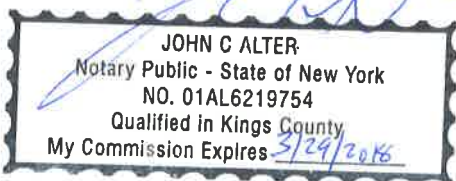
REASON: Incorrect transcription.

MSM DeBromm

WITNESS' SIGNATURE

3.9.2018

DATE



1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 JANELL WINFIELD, TRACEY
6 STEWART and SHAUNA NOEL,
7 Plaintiffs,
8 -against-

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

9 CITY OF NEW YORK,
10 Defendant.
11 -----x

12 VIDEOTAPED DEPOSITION OF
13 MARIA TORRES-SPRINGER
14 New York, New York
15 May 10, 2018
16 9:22 a.m.

17
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22 Reported by:
23 JUDITH CASTORE, CLR
24
25

1 TORRES-SPRINGER

2 A No.

3 Q Are you aware of any outreach
4 from others in the administration to
5 council members on that question, the
6 question of whether their support for
7 affordable housing development would be
8 affected, if at all, if the community
9 preference percentage would be scaled
10 back?

11 A I am not aware of any
12 outreach of that kind.

13 Q Have you asked any council
14 members to consider that maybe the city
15 needs to ratchet down the community
16 preference percentage?

17 A I have not posed that
18 question, no.

19 Q Have you posed a question
20 like that?

21 A No.

22 Q Are you aware of any outreach
23 from others in the administration to
24 council members on what I just posed,
25 asking council members to consider that

1 TORRES-SPRINGER

2 maybe the city needs to ratchet down
3 the community preference percentage?

4 A No, I am not aware.

5 Q And in terms of yourself not
6 asking council members to consider that
7 maybe the city needs to ratchet down
8 the community preference percentage,
9 why didn't you ask any of them to
10 consider that?

11 MS. SADOK: Objection.

12 A We -- I believed that the
13 policy that we have, the community
14 preference policy is an important one
15 to support our work to build affordable
16 housing and address displacement, and
17 so given that I believe that, it would
18 be -- I don't see how I could -- where
19 then I would ask that it be ratcheted
20 down.

21 Q Wouldn't one thing that you
22 would find out be what council members
23 would do in that ratcheted down
24 scenario if you asked them to consider
25 it?

1 TORRES-SPRINGER

2 A That's fair.

3 Q And what -- what their
4 perspective is on relevant issues, that
5 is issues that are -- might bear on
6 whether or not they give you support;
7 is that fair?

8 A That last part is a little
9 vague for me. Their perspective on
10 issues related to the project, yes.

11 Q Well, if, for example -- you
12 wouldn't only be interested if a
13 council member said the building
14 proposed to be built here is too tall,
15 you would want to know if in general
16 the council member dislikes tall
17 buildings, right?

18 MS. SADOK: Objection.

19 A No, not necessarily. That's
20 not how it works with particular
21 projects in my opinion.

22 Q Okay.

23 How does it work with
24 particular projects?

25 A There are from -- in my

1 TORRES-SPRINGER

2 experience or any particular project
3 it's an iterative process. There are
4 questions that the local council member
5 might have at the beginning of the
6 process. There are questions that come
7 up as the process moves through the
8 public approval process. And so his or
9 her questions or concerns might change
10 throughout. And we do the best that we
11 can to understand the concern as it
12 relates to that project because each
13 one is specific.

14 Q Okay. I think I understand
15 what you're saying, let me ask a couple
16 of things before I return to where I
17 was going.

18 In describing the existence
19 of an iterative process, is it fair to
20 say that it is quite frequently the
21 case that there are multiple issues
22 that a particular council member is
23 concerned about in relationship to a
24 project?

25 A Yes, usually there is more

1 TORRES-SPRINGER

2 than one.

3 Q And is it fair to say that
4 usually there's more than one ask
5 involved in a -- with a project,
6 including asks that are not directly
7 related to the project?

8 MS. SADOK: Objection.

9 A I don't know what you mean by
10 asks in -- in this context. If there
11 are changes that are sought to the
12 project and if that's one type of ask,
13 then yes, there are more than one, and
14 sometimes that evolves over the course
15 of the project.

16 Q Any other type of asks that
17 you're familiar with?

18 A There are services or
19 programs sometimes that may not be
20 located in the project that are also
21 raised as issues during the public
22 approval process.

23 Q Like desired investments in
24 the community that the council member
25 is asking for, right?

1 TORRES-SPRINGER

2 back.

3 There is a version of the
4 421A program that was passed in 2017
5 called Affordable New York, correct?

6 A Correct.

7 Q I'm going to call that the
8 new 421A.

9 Do you understand?

10 A Yes.

11 Q New 421A does not purport to
12 require community preference, does it?

13 MS. SADOK: Objection.

14 A It does -- it does not have
15 community preference language, that's
16 correct.

17 Q The new 421A does not
18 prohibit community preference; is that
19 correct?

20 MS. SADOK: Objection.

21 A What do you mean by that?
22 Legally prohibit otherwise?

23 Q Legally prohibit.

24 MS. SADOK: Objection.

25 A It doesn't have the language

1 TORRES-SPRINGER

2 first half of the sentence?

3 Q Let me do -- let me do the
4 whole thing that way I'll do the whole
5 thing and you'll -- you'll then tell me
6 what council members, if any, you would
7 believe would take the position whether
8 they used the precise words or not.

9 I'm going to deny my
10 constituents and other New York City
11 residents desperately needing
12 affordable housing because HPD is now
13 using a lottery system that gives all
14 New York City households an equal
15 chance to compete in each affordable
16 housing lottery they enter.

17 A So it is -- I would -- it's
18 asking me to speculate who I think
19 would -- would say those words, which
20 is difficult for me to do, but what I
21 can do is based on --

22 Q Well, I just have to
23 interrupt you for a minute because I
24 think I said three or four different
25 times that it wasn't which council

1 TORRES-SPRINGER

2 members, if any, would say those
3 precise words, but which council
4 members would act based on that view.

5 A Right. It is still difficult
6 for me to predict.

7 Q It's speculative?

8 A It's -- who would not even
9 utter those words, but who would
10 generally have that type of view. What
11 I can talk about are what I have in my
12 experience working with speaking to
13 different council members and how they
14 have valued community preference, know
15 for whom it would be a risk whether or
16 not they would vote in favor of a
17 project or the reverse, say that or say
18 that they would jeopardize affordable
19 housing even with the crisis.

20 Q So when you say that there is
21 a risk, does that mean you're saying
22 that you don't know whether they would
23 take the view that I articulated, but
24 you worry that they might take that
25 view?

1 TORRES-SPRINGER

2 to answer the previous set of
3 questions, because I know how much they
4 care about affordable housing for
5 residents in the community board, I
6 don't necessarily know what they
7 believe about all of the other issues
8 since I'm in housing, than the same
9 council members -- there would be a
10 risk for the same set of council
11 members.

12 Q Okay.

13 But in this particular
14 circumstance the reason I -- the reason
15 I did it this way was to let's you
16 know, like, the premise here is that
17 there's a particular development and a
18 particular council member, and that
19 particular council member has reached a
20 judgment based on everything other than
21 community preference. The benefits the
22 project brings, the burdens the project
23 brings, all of that. That council
24 member has reached the conclusion that
25 on balance the project is a good thing

1 TORRES-SPRINGER

2 for his or her community and for -- and
3 for his or her city. That's -- that's
4 what I've described to you. That's
5 what you need to assume for the purpose
6 of this.

7 And so what I'm asking you is
8 what council members, if any, who have
9 reached that conclusion, a positive
10 conclusion about the overall merits of
11 the project would then say, I'm going
12 to vote against it because there isn't
13 a community preference policy anymore?

14 A I understand the question.
15 It is a difficult hypothetical and I'm
16 trying very hard for me my to wrap my
17 head around it. Because my
18 conversations and interactions with
19 council members have primarily been
20 about housing and displacement and the
21 resident's opportunities. And so if --
22 and so I would say I don't know who
23 would have that, but if I had to answer
24 it would be based on the same criteria
25 I mentioned and it would be the same

1 TORRES-SPRINGER

2 list.

3 Q You don't know who in those
4 circumstances say I'm going to vote
5 against it because there isn't a
6 community preference policy anymore?

7 A I'd say more accurately I
8 can't answer -- I can't answer the
9 question.

10 Q It's too much a matter of
11 speculation?

12 A That's correct. But if -- if
13 I define it as based on what I
14 previously said, the same criteria as
15 the original group, then it would be
16 that same group.

17 Q Of that original -- of that
18 group, which is now going to get the
19 name of group of seven, blame that on
20 me, of that group of seven do you think
21 that there would be any who might take
22 this view; I strongly regret that there
23 is no more community preference policy,
24 but now I'm going to try to get what
25 other things I can for my constituents?

STATE OF New York)

) : ss ,

COUNTY OF New York)

I, MARIA TORRES-SPRINGER, 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.



MARIA TORRES-SPRINGER

Sworn and subscribed to before me,
this 13 day of June, 2018.



Notary Public

MICHAEL F. CHAU
NOTARY PUBLIC, State of New York
No. 01CH6072272
Qualified in Queens County
Commission Expires April 1, 2022

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

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That MARIA TORRES-SPRINGER, the
witness whose deposition is hereinbefore
set forth, was duly sworn by me and that
this transcript of such examination is a
true record of the testimony given by such
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 14th day of May, 2018.



JUDITH CASTORE

ERRATA

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

PAGE LINE

10 4 CHANGE: "would call" to "recall"

REASON: Deponent stated "recall" but reporter transcribed incorrectly.

24 13 CHANGE: "assistants" to "assistance"

REASON: Deponent stated "assistance" but reporter transcribed incorrectly.

49 16 CHANGE: "in" to "and"

REASON: Deponent stated "and" but reporter transcribed incorrectly.

57 18 CHANGE: "do to" to "to do to"

REASON: Deponent stated "to do" but reporter transcribed incorrectly.

62 14 CHANGE: "that they're meant" to "whether I meant"

REASON: Clarify intent of statement.

64 12 CHANGE: "whether I" to "whether -- I"

REASON: Clarify intent of statement.

69 8 CHANGE: "what we're discussing" to "what we were discussing"

REASON: Deponent stated "we were" but reporter transcribed incorrectly.

71 9 CHANGE: "exactly is" to "exactly it is"

REASON: Deponent stated "it is" but reporter transcribed incorrectly.

71 23-24 CHANGE: "based on part of" to "based in part on"

REASON: Deponent stated "based in part on" but reporter transcribed incorrectly.

79 2 CHANGE: "would want" to "would not want"

REASON: Deponent stated "would not want" but reporter transcribed incorrectly.

96 4 CHANGE: "it there" to "it as there"

REASON: Deponent stated "it as there" but reporter transcribed incorrectly.

100 19 CHANGE: "Cory" to "Corey"

REASON: Correct spelling of name.

130 6 CHANGE: "can" to "did"

REASON: Deponent stated "did you" but reporter transcribed incorrectly.

166 2 CHANGE: "incorrectly" to "correctly"

REASON: Deponent stated "correctly" but reporter transcribed incorrectly.

189 20 CHANGE: "have policy" to "have a policy"

REASON: Deponent stated "have a policy" but reporter transcribed incorrectly.

189 23 CHANGE: "its" to "it's"

REASON: Clarify intent of statement.

193 9 CHANGE: "are part" to "aren't part"

REASON: Deponent stated "aren't part" but reporter transcribed incorrectly.

193 9 CHANGE: "are mapped" to "aren't mapped"

REASON: Deponent stated "aren't mapped" but reporter transcribed incorrectly.

203 12 CHANGE: "with speaking" to "with and speaking"

REASON: Deponent stated "with and speaking" but reporter transcribed incorrectly.

205 21 CHANGE: "Donavon" to "Donovan"

REASON: Correct spelling of name.

208 19 CHANGE: "wast" to "want"

REASON: Deponent stated "want" but reporter transcribed incorrectly.

212 8 CHANGE: "than" to "that"

REASON: Deponent stated "that" but reporter transcribed incorrectly.

213 21 CHANGE: "resident's" to "residents"

REASON: Clarify intent of statement.

215 23 CHANGE: "sure I" to "sure that I"

REASON: Deponent stated "sure that I" but reporter transcribed incorrectly.

215 24 CHANGE: "they" to "that"

REASON: Deponent stated "that" but reporter transcribed incorrectly.

240 18 CHANGE: "that in the" to "that the"

REASON: Clarify intent of statement.

240 19 CHANGE: "is a" to "is"

REASON: Clarify intent of statement.

240 20 CHANGE: "to this that" to "to this in that"

REASON: Clarify intent of statement.

241 18 CHANGE: "affordable" to "unaffordable"

REASON: Deponent stated "unaffordable" reporter transcribed incorrectly.

242 20-21 CHANGE: a tool that is an important one will” to “a tool, that is an important one, will”

REASON: Clarify intent of statement.

248 24 CHANGE: “the times” to “that time”

REASON: Deponent stated “that time” but reporter transcribed incorrectly.

250 7-8 CHANGE: “I don’t -- it is as an impediment” to “I don’t -- if it is an impediment”

REASON: Clarify intent of statement.

253 15-16 CHANGE: “much so forgetting the scale, forgetting the metric to” to “much, so forgetting the scale, forgetting the metric, to”

REASON: Clarify intent of statement.

265 8 CHANGE: “--the that there is fear” to “--that there is fear”

REASON: Clarify intent of statement.


WITNESS' SIGNATURE

6/13/18
DATE

SUBSCRIBED AND SWORN TO BEFORE
ME THIS 13 DAY OF June, 2018


NOTARY PUBLIC

MICHAEL F. CHAU
NOTARY PUBLIC, State of New York
No. 01CH6072272
Qualified in Queens County
Commission Expires April 1, 2022

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

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

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 MURPHY

2 coupled with a local subsidy program
3 that a -- if it's paired with a local
4 subsidy program that the HPD marketing
5 guidelines would apply and the
6 Community Preference policy would
7 apply.

8 Q Is there, in fact, a subset
9 of new 421a buildings which are not
10 paired with any city subsidy program?

11 A I'm not completely familiar,
12 but I believe so, yes.

13 Q And is one of the city
14 housing programs called the
15 inclusionary housing program, something
16 like that?

17 MS. SADOK: Objection.

18 A The question is, is there a
19 city program called the inclusionary
20 housing program?

21 Q Yes.

22 A Well, not precisely. There's
23 a voluntary inclusionary housing
24 program and there's a mandatory
25 inclusionary housing program.

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MURPHY

as you define minimally racially
diverse?

A I'm -- there are probably
other areas, but I don't want to
conclude that without looking at the
statistics.

Q So there aren't any others
that you are comfortable putting in
that category, as you sit here today?

MS. SADOK: Objection.

Asked and answered.

A I believe the point is that
there are other -- there are areas in
the city which have less racial
diversity.

Q That's a point. It's not my
question, but I want to ask you about
something very specific which is
displacement from your apartment.

So do you understand that I'm
asking you about displacement from your
apartment? And I'm not asking you
about displacement from a neighborhood
or an area or anything else, just

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MURPHY

placement from your apartment.

Do you understand that?

A I understand that unit level
and the apartment level.

Q And how do you define
displacement or displaced?

A My own personal definition of
displacement is to be -- to have to
involuntarily move from your apartment
and not having the choice to stay.

Q I just want to make sure I
have that right.

Displaced meaning
involuntarily forced to move; is that
right?

A That's how I would define it,
but other people define it in different
ways.

Q In terms of your definition,
the Community Preference policy doesn't
stop you from actually being displaced
from your apartment, does it?

A No. The Community Preference
policy would only take place if you

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MURPHY

choose to move from your apartment or
would only be activated if you choose
to move from your apartment.

Q Lotteries are open to people
who are moving or looking to move both
for voluntary and involuntary reasons,
right?

MS. SADOK: Objection.

A I don't know the exact
reasons, but anybody can apply to the
lottery.

Q You know that lotteries are
not closed to people who are looking
for apartments because they're
involuntarily being forced out of their
apartments?

A Yes.

Q So just focusing again on
this problem, the problem of people who
are involuntarily forced from their
apartments. The Community Preference
policy does not protect them against
that, correct?

MS. SADOK: Objection.

1 MURPHY

2 A It's not designed to do that.
3 There are other HPD policies that do
4 that and state policies that do that.

5 Q And the community -- I
6 appreciate what you said about the
7 other policies, and we're going to get
8 to that.

9 I just want to also be clear
10 that the Community Preference policy
11 doesn't stop you -- it doesn't protect
12 you from the threat of being displaced
13 from your apartment?

14 MS. SADOK: Objection.

15 A What do you mean by "threat",
16 like a physical threat or harassment?

17 Q The prospect, the risk of
18 being displaced from your apartment.

19 MS. SADOK: Objection.

20 A The Community Preference
21 policy is designed to give residents of
22 a neighborhood an opportunity to stay
23 in that neighborhood when a new
24 Affordable Housing development is
25 built, and to be part of that growth.

1 MURPHY

2 to the ten year, it's subjective that
3 they would have the -- that they're not
4 a neighborhood resident in addition to
5 it being challenging to implement.

6 Q I understand the separate
7 implementation point. But just to use
8 a slightly different example.

9 There could be a relative
10 newcomer to the neighborhood, let's say
11 she's been in the neighborhood for two
12 years, but in those two years she's
13 completely thrown herself into
14 community activities, and is active in
15 different local organizations and oddly
16 goes to community board meetings and
17 that sort of thing.

18 So that would be somebody who
19 you would describe as deeply invested
20 in her neighborhood, right?

21 A Yes.

22 Q And there might be somebody
23 who had been there for 10 or 15 years
24 who possibly was not as invested in her
25 neighborhood, right?

1 MURPHY

2 A Yeah. People have all sorts
3 of characteristics.

4 Q So we're still at 100, and
5 85360. I need a little explanation on
6 this.

7 In the demographics racial
8 diversity area, I think you may have
9 been talking about this earlier. If a
10 jurisdiction is, say, majority white
11 and it defines the preference area as
12 the whole city, that's problematic
13 because it allows perpetuation of
14 segregation by excluding
15 neighborhood -- sorry, the neighboring
16 African American, Latino or Asian
17 communities, right? Is that --

18 A Yes. Mathematically, yes.

19 Q Is that the idea?

20 A Yes.

21 Q So let's take another
22 example.

23 If you have a majority white
24 cachement area that say a community
25 district, why is that not problematic

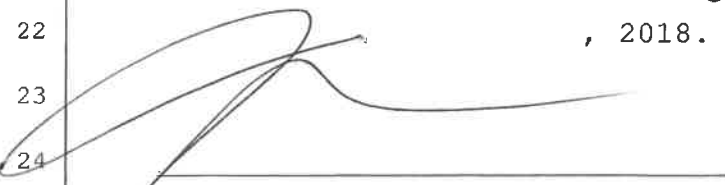
1
2 STATE OF New York)
3) :ss
4 COUNTY OF New York)
5
6

7 I, MATTHEW PETER MURPHY, the
8 witness herein, having read the foregoing
9 testimony of the pages of this deposition,
10 do hereby certify it to be a true and
11 correct transcript, subject to the
12 corrections, if any, shown on the attached
13 page.
14

15 
16 MATTHEW PETER MURPHY

17
18
19
20 Sworn and subscribed to before

21 me, this 18th day of April
22 , 2018.

23 
24 _____
25 Notary Public

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

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

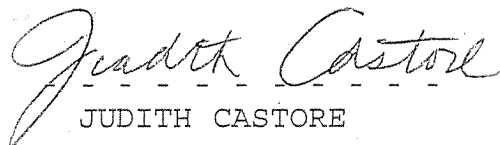
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That MATTHEW PETER MURPHY, the
witness whose deposition is hereinbefore
set forth, was duly sworn by me and that
this transcript of such examination is a
true record of the testimony given by such
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 19th day of March, 2018.


JUDITH CASTORE

ERRATA

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

PAGE LINE

38 2 CHANGE: "so there was a lot of kind" to "so there was a lot of kinds"

REASON: Incorrect transcription.

46 12-13 CHANGE: "it's part of the new Fair Housing Law is to have more information"
to "it's part of the new Fair Housing Law to have more information"

REASON: Incorrect transcription.

56 19-20 CHANGE: "Since I've been at the agency thinking" to "Since I've been at the
agency, thinking"

REASON: Clarify intent of sentence.

70 4 CHANGE: "I know that the intent of" to "I know what the intent of"

REASON: Incorrect transcription.

73 7 CHANGE: "law of the city" to "law is that the City"

REASON: Incorrect transcription.

75 7 CHANGE: "but that it depends on what" to "but that depends on what"

REASON: Incorrect transcription.

91 16 CHANGE: "group in reference -- this document" to "group in reference -- in
this document,"

REASON: Clarify intent of sentence.

120 12 CHANGE: “Preference policy should be. That’s” to “Preference policy should be that’s”

REASON: Incorrect transcription.

121 22 CHANGE: “Shawn” to “Sean”

REASON: Incorrect spelling of HPD employee name.

127 6 CHANGE: “built, it is necessary because of the” to “built, it is necessary, because of the”

REASON: Clarify intent of sentence.

135 2-3 CHANGE: “their reports with the city for initial” to “their reports with the City for initial”

REASON: Typographical error. Reference to City of New York should be capitalized.

154 9-10 CHANGE: “that was tricky territory to imply, but that that was the only way” to “that was tricky territory to imply that that was the only way”

REASON: Clarify intent of sentence

156 20 CHANGE: “income neighborhood or there are no” to “income neighborhood or there is no”

REASON: Incorrect transcription.

158 8 CHANGE: “income population as a income diverse” to “income population as an income diverse”

REASON: Incorrect transcription.

173 9-10 CHANGE: “that’s due to the -- that the Community Preference policy is” to “that’s due to the -- what the Community Preference policy is”

REASON: Clarify intent of sentence.

173 18 CHANGE: “rise in the tied” to “rise in the tide”

REASON: Incorrect transcription.

178 18 CHANGE: “they have the -- to say in the” to “they have the choice to stay in the”

REASON: Incorrect transcription.

186 19 CHANGE: “integrated neighbor” to “integrated neighborhood”

REASON: Incorrect transcription.

210 23-24 CHANGE: “They view it as, or they what I’ve heard interpret it is that is a” to “They view it as, or they, what I’ve heard, interpret it as that is a”

REASON: Incorrect transcription and to clarify intent of sentence.

211 20-21 CHANGE: “specifically the eastern New York rezoning” to “specifically the East New York rezoning”

REASON: Incorrect transcription.

225 22 CHANGE: “census tracks” to “census tracts”

REASON: Incorrect transcription.

235 19 CHANGE: “preference on a national level that” to “preference on a national level, that”

REASON: Clarify intent of sentence.

235 22 CHANGE: “when, why, where, and that would have” to “where, why, where, and that it would have”

REASON: Clarify intent of sentence.

262 10-11 CHANGE: “or jurisdiction were do that” to “or jurisdiction were to do that”

REASON: Clarify intent of sentence.

263 18 CHANGE: “should be exempt from Affirmatively” to “should be exempt from the Affirmatively”

REASON: Incorrect transcription.

270 2 CHANGE: “the balance and approach that allows” to “the balanced approach that allows”

REASON: Incorrect transcription.

271 7 CHANGE: “economic displacement to rising rents” to “economic displacement due to rising rents”

REASON: Clarify intent of sentence.

275 9 CHANGE: “includes a passed due” to “includes a past due”

REASON: Incorrect transcription.

312 5 CHANGE: “subsidize a housing in that area” to “subsidize housing in that area”

REASON: Clarify intent of sentence.

319 16 CHANGE: “conversations we have is about” to “conversations we have are about”

REASON: Incorrect transcription

320 14 CHANGE: “I believe what if I’ve” to “I believe what I’ve”

REASON: Incorrect transcription.

322 15 CHANGE: "Affirmatively Further Fair Housing by" to "Affirmatively Further Fair Housing, by"

REASON: Clarify intent of sentence.


WITNESS' SIGNATURE

4/18/18
DATE

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

DEPOSITION OF

VICKI BEEN

New York, New York

August 2, 2017

8:58 a.m.

Reported by:
JUDITH CASTORE, CLR
Job No.51317

1 BEEN

2 City residents.

3 Do you understand?

4 A Um-hum, yes.

5 Q As far as household income is
6 concerned, if we're talking about a
7 particular housing unit, any insider
8 household eligible for that unit would
9 have the same income within a very
10 tight band as any outsider eligible for
11 that same affordable unit, correct?

12 A Everyone who gets the housing
13 has to meet the income eligibility
14 requirements, yes.

15 Q So is that a "yes" to my
16 question?

17 A I'm sorry. Could you repeat
18 the question.

19 Q Yeah. As far as household
20 income, an insider household who is
21 eligible for a particular housing unit
22 would have the same income within a
23 very small band of an outsider that is
24 eligible for that very same unit?

25 A Okay. I'm -- I wouldn't

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BEEN

agree necessarily that it's a very small band. I agree that anyone who applies, whether they're eligible for the community preference or not, has to have -- has to fit within an income band.

Q How wide are the bands generally if you are talking about housing being made available to, say, households at 40 percent of area median income?

MS. SADOK: Objection.

A That depends upon the project; it depends upon the income band that's being served; and it's changed over time, so I can't give you a precise answer.

Q Give me your best sense of what is currently the most frequently the case within five or ten -- within 5 or \$7,000, a band of \$15,000?

A No. I would say, I mean, generally -- so, for example, at 60 percent AMI unit, it would be -- so

1 BEEN
2 outsider who is applying for that
3 lottery who has been a long-term
4 resident of the South Bronx, who's
5 lived through unfavorable conditions
6 for 20 years and is still living
7 through unfavorable conditions, so long
8 as there are enough eligible insiders
9 who have applied, the 50 percent of
10 units subject to community preference
11 are not available to that outsider for
12 initial rental, correct?

13 MS. SADOK: Objection.

14 A I'm sorry. You are going to
15 have to have that question again for
16 me.

17 Q What didn't you understand
18 about it?

19 A It was long and it had many
20 parts. I'm just trying to make sure
21 that I have it accurately.

22 Q Upper east side lottery,
23 applicant's been a long-term resident
24 of the South Bronx and he has lived
25 through unfavorable living conditions

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BEEN

for 20 years and is still living
through unfavorable living conditions.

A Okay.

Q In respect to the 50 percent
of units that are subject to community
preference on first renter, as long as
there are enough eligible insiders on
the Upper East Side who want those
apartments, those 50 percent of
apartments are not going to be
available to him?

A As long as there are enough
people who are eligible and who take
the apartments, yes.

Q Is that fair?

MS. SADOK: Objection.

A What do you mean by "fair"?

Q I will just mention this over
the course of the day. When I am using
a term, I am using it as you understand
it having worn your hat as commissioner
of HPD.

A So --

MS. SADOK: Objection. You

1 BEEN

2 fair? You know, in a world with no
3 administrative costs, in a world where
4 people couldn't game the system, in a
5 world where we had perfect information,
6 maybe you would have that kind of a
7 need basis. But that's not the world
8 that we live in, so I think it's as
9 fair as it can be.

10 Q So you're saying currently we
11 don't have a need-based system except
12 for the fact that income stands as the
13 proxy for need?

14 A Right.

15 MS. SADOK: Objection.

16 Q And one other thing. There
17 is a decision that the city makes about
18 limited resources, right, to prioritize
19 half of those apartments to people who
20 live in the community district
21 preference area?

22 A I'm sorry. Say that again.

23 MS. SADOK: Objection.

24 Q The city makes -- you have
25 said the city has limited resources,

1 BEEN

2 right?

3 A Right.

4 Q It's not going to be able to
5 meet the need of everyone for
6 affordable housing?

7 A Unfortunately not.

8 Q And sadly, despite the
9 extensive efforts of the current
10 administration, it's likely that there
11 is going to remain a big gap between
12 the need for affordable housing and
13 what is available, correct?

14 A Yes.

15 MS. SADOK: Objection.

16 Q And you said that the only
17 kind of need that's assessed is
18 financial need as evidenced by income,
19 and now also by an asset test?

20 MS. SADOK: Objection.

21 A There has always been an
22 asset test or, to my knowledge, as long
23 as I have known the city's practices,
24 there was an asset test. So it's not a
25 new thing.

1 BEEN

2 Q But income and assets, those
3 are the proxies that are used?

4 A Those are the eligibility
5 requirements, yes.

6 Q But the city's made another
7 decision to say that for half of the
8 units people who have been living in
9 the community district where preference
10 applies, for however long or short a
11 period, deserve those apartments more
12 than other New Yorkers who have the
13 same income and asset profile?

14 MS. SADOK: Objection.

15 A It's no -- there is no
16 equation of the community preference
17 with desert. It's not a question of
18 need. It's not a need-based
19 determination.

20 Q Is it a
21 who-deserves-the-apartments-more
22 question?

23 A No.

24 Q So as a matter of deserving,
25 you would say deserving of apartments,

1 BEEN

2 you would say that outsiders deserve
3 affordable housing as much as insiders
4 do?

5 MS. SADOK: Objection.

6 A We don't -- as I have said,
7 we don't have a system of desert. The
8 eligibility requirement is income
9 based. That's the determination of
10 need.

11 Q I understand that. But it
12 wasn't my question. My question was:

13 As your role as commissioner
14 of HPD, was it your view that insiders
15 deserved affordable housing more than
16 outsiders?

17 MS. SADOK: Objection.

18 A As I have said, I didn't make
19 desert-based determinations other than
20 income eligibility.

21 Q I wasn't asking about a
22 determination that you made. I was
23 asking you about if you believe that
24 insiders deserved affordable housing
25 more than outsiders?

1 BEEN

2 MS. SADOK: Objection. Asked
3 and answered. You can answer.

4 A I don't -- I'm sorry. I am
5 lost. Tell me again.

6 Q As HPD commissioner, did you
7 believe that insiders deserved
8 affordable housing more than outsiders?

9 MS. SADOK: Objection.

10 A No. I didn't think of that
11 as a question of desert. It's not the
12 justification -- the reason why we have
13 community preference is not about
14 desert.

15 Q Did you, as commissioner of
16 HPD -- all my questions are made in
17 that frame unless I otherwise describe
18 it to you.

19 Did you believe that insiders
20 deserve apartments in their community
21 districts more than outsiders deserve
22 those apartments?

23 MS. SADOK: Objection.

24 A I didn't think of it in terms
25 of desert.

1 BEEN

2 Q As you are sitting here
3 today, do you believe that insiders
4 deserve apartments in their community
5 districts more than outsiders deserve
6 those apartments?

7 MS. SADOK: Objection.

8 A I don't think you can make
9 those desert-based determinations.

10 Q This may seem an obvious one
11 but I will ask it anyway.

12 In terms of unfavorable
13 conditions that people may be
14 persevering through, conditions in
15 community districts and parts of
16 community districts change over time;
17 do they not?

18 A Thank goodness.

19 Q Thank goodness.

20 So -- and by and large, the
21 conditions in most neighborhood, not
22 all neighborhoods in New York but in
23 most neighborhoods in New York are
24 substantially better than they were 15
25 years ago; is that fair?

1 BEEN

2 ever taking the position it should be
3 expanded to more buildings which is
4 what I would interpret more to mean.

5 Q Was it your understanding of
6 the city's position that more needed be
7 done to control the rise in rents under
8 state regulation?

9 MS. SADOK: Objection.

10 A I can't answer that. I mean,
11 the city -- the city lobbied and took
12 positions on specific proposals about
13 rent regulation.

14 Q And you are not able to
15 characterize them for me in terms of
16 whether the city's approach was to try
17 to change the law to reduce the ability
18 of landlords in more circumstances to
19 raise rent?

20 MS. SADOK: Objection.

21 A The city took the position
22 that, for example, vacancy decontrol
23 should be limited. So that would have
24 limited the number of instances in
25 which rent could be increased.

1 BEEN

2 Q And if that restriction on
3 vacancy be controlled went into effect,
4 would that, to your knowledge, operate
5 to reduce displacement pressures?

6 MS. SADOK: Objection.

7 A I would assume that if there
8 was less ability of landlords to raise
9 rents through vacancy decontrol, that
10 they would have less incentive to try
11 to get tenants out, yes.

12 Q Did you discuss the vacancy
13 decontrol issue with the mayor?

14 MS. SADOK: Objection.

15 A Yes.

16 Q And what was the substance of
17 what he said to you?

18 A We discussed the suite of
19 proposals that were pending when rent
20 regulation came up for reauthorization,
21 which I believe was 2015 -- 2014, 2015.
22 So we discussed what the city's
23 position should be on each of those
24 proposals.

25 Q Did the discussion include

1 BEEN

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

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

11 MS. SADOK: Objection.

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

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

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

24 MS. SADOK: Objection.

25 A It's the primary? I'm having

1 BEEN

2 trouble figuring out what you mean.

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

8 MS. SADOK: Objection.

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

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

16 MS. SADOK: Objection.

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

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

24 MS. SADOK: Objection.

25 A No.

1 BEEN

2 it's different today.

3 I often talk about the
4 housing crisis when I was growing up in
5 the seventies and eighties which was a
6 crisis of disinvestment and shrinking
7 neighborhoods, and the discussion
8 around whether or not we should do
9 massive urban renewal and clearing out.
10 The issue there was less about
11 affordability and more about housing
12 stock in neighborhoods.

13 We sort of have the opposite
14 problem now which is that New York City
15 simply does not have enough housing.
16 And there is a growing disconnect
17 between rents and incomes. So that's
18 like a double whammy, right?

19 And then it continues with
20 the part that I had read to you. You
21 have all of these people like you and
22 my kids who can't live in the
23 neighborhoods they grew up in. Is that
24 so terrible? I am not so sure that it
25 is. My grandparents didn't live in the

1 BEEN

2 neighborhood they grew up in either.
3 Change isn't, per se, bad. The biggest
4 issue is not that you guys can't live
5 in the village anymore. It's that you
6 may not be able to live anywhere. So
7 that, to me, is a big differentiating
8 factor.

9 A Okay.

10 MS. SADOK: Objection.

11 A Tell me your question about
12 that again.

13 Q My question about that is
14 whether you agree with Deputy Mayor
15 Glen when she said the biggest issue is
16 not that you guys can't live in the
17 village anymore. It's that you may not
18 be able to live anywhere.

19 A I would agree that having
20 housing is -- period -- is more
21 important than where the housing may
22 be.

23 Q Where the city is siting or
24 facilitating the siting of affordable
25 housing and making complimentary

1 BEEN

2 MS. SADOK: Objection.

3 A I'm trying to remember. I
4 don't think that -- I might have been
5 asked about community preference in one
6 of the hearings. So that might have
7 made people more generally aware.
8 Otherwise, it may be but -- "I don't
9 know" is the right answer.

10 Q So unlike the presentation
11 that HPD made to council members and
12 staff about what -- how the lottery
13 system works, there wasn't a
14 council-wide communication that this
15 challenge exists?

16 MS. SADOK: Objection.

17 A Not from me. I can't speak to
18 what intergovernmental or the mayor may
19 have done. I don't know of any such
20 communication.

21 Q But you are not aware of
22 that?

23 A No.

24 Q So did you ever suggest to
25 any council member that the community

1 BEEN

2 preference should be eliminated or
3 reduced?

4 MS. SADOK: Objection.

5 A The community preference
6 policy?

7 Q That the community preference
8 policy should either be eliminated or
9 the percentage of apartments given over
10 to community preference reduced?

11 MS. SADOK: Objection.

12 A Not to my recollection.

13 Q Aware of anyone in the
14 administration who has done so?

15 MS. SADOK: Objection.

16 A Not to my recollection.

17 Q Did the city, as far as you
18 know, consider doing so?

19 MS. SADOK: Objection.

20 A I don't -- I don't recall. I
21 don't recall any such discussion.

22 Q Are you aware of any council
23 member saying to you or to anybody else
24 words to the effect of, No affordable
25 housing in my district until we're sure

1 BEEN

2 that the challenge to community
3 preference has been defeated?

4 MS. SADOK: Objection.

5 A No.

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

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

17 MS. SADOK: Objection.

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

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

1 BEEN

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

5 MS. SADOK: Objection.

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

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

15 MS. SADOK: Objection.

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

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

1 BEEN
2 from getting you back into your seat as
3 the commissioner of HPD, you have
4 proposed the project, already
5 identified it as a project that's in
6 the interest of the city. Regardless of
7 what particular members of the
8 council -- particular constituents of
9 the council member might think, is it
10 your judgment that the turndown would
11 or would not be in the interest of
12 residents of the council member's
13 district?

14 MS. SADOK: Objection.

15 A Okay. If I thought it was in
16 the interest of the city to have the
17 affordable housing and the council
18 member turned it down solely because
19 there was no community preference, I
20 would not think that that was in the
21 interest of the community.

22 Q You haven't asked council
23 members what they would do about future
24 affordable housing proposals in their
25 districts if the administration decided

1 BEEN

2 city's chosen policy that people
3 outside the community district,
4 outsiders as I described this morning,
5 are not eligible for 50 percent of the
6 units, correct?

7 MS. SADOK: Objection.

8 A No.

9 Q So is that incorrect for a
10 reason other than the fact that it's a
11 priority to given to insiders?

12 MS. SADOK: Objection.

13 A The community preference is a
14 preference for people -- for people
15 living in the community district in
16 which the housing is built.

17 Q So you have not -- HPD has
18 not gone around the city explaining
19 that as one New York all of us should
20 have access to all affordable housing
21 without preference being given to
22 members of the community district?

23 MS. SADOK: Objection.

24 A No. HPD has not gone around
25 to the -- around the city saying that

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BEEN

we should not have a community preference, no. We believe we should have a community preference. We believe we should have a community preference because for several reasons.

Q Okay. I am going to interrupt you because that wasn't my question. And this isn't a time for a lecture.

Let me ask you about the homeless preference that's -- at least in October was decided to be embedded in some buildings. Is it the case that that was only for 421a buildings?

A By the homeless preference, do you mean specifying that homeless could qualify for the community preference units? Is that what you mean?

Q Yes.

A Right. That determination is for 421a buildings only.

Q What's the new 421a called?

A Affordable New York?

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

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

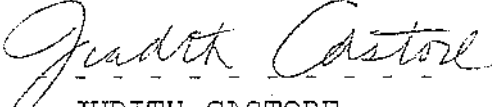
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That VICKI BEEN, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that this transcript
of such examination is a true record of
the testimony given by such 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 8th day of August, 2017.


JUDITH CASTORE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SHAUNA NOEL and EMMANUELA
SENAT,

Plaintiffs,
-against-

Civil Action No.:
15-CV-5236

CITY OF NEW YORK,

Defendant.

-----x
November 15, 2019
10:37 a.m.

VIDEOTAPED DEPOSITION of PROFESSOR BERNARD R.
SISKIN, taken by Plaintiffs, pursuant to Notice,
held at the offices of Veritext Legal Solutions,
1250 Broadway, New York, New York, before Judith
Castore, a Certified Livenote Reporter and Notary
Public of the State of New York.

1 SISKIN

2 that what you're saying?

3 A You're saying that there is a
4 preference and the preference creates a
5 preference. By definition, preference means
6 it's not a fair game for anybody because the
7 preference changes the odds for those people
8 to get a preference. Okay? The question
9 that you, then, ask is -- there is two
10 aspects that that preference can cause.

11 (Clarification by the
12 reporter.)

13 A One aspect is that the preference
14 winds up as a result of a protected class
15 disproportionately not getting selected.
16 That's what I would call disparate impact.

17 The other process may be that
18 they're, in fact, selected fairly; or,
19 in fact, maybe they're selected --
20 protected classes are overselected, but
21 where they get selected is different.
22 So this is the funneling question. And
23 that doesn't affect their ability to
24 get an apartment, but it does affect
25 the possibility of segregation. And

1 SISKIN

2 CP process is changing on whether you are
3 going to be likely. It's the relative impact
4 changes because you have changed the
5 population and the likelihood of selection.

6 Q You agree that there are different
7 degrees of partial closeout, correct?

8 MS. SADOK: Objection.

9 Q Do you know what I mean by that?

10 A Yeah, I assume you could be
11 eligible for three and be only eligible for
12 two or only one. That is possible.

13 Q Right. You could have two
14 people -- that's close. The way I would
15 describe it is you would have two people,
16 each of whom start out apparently eligible
17 for four eligibilities. One is closed out of
18 three of those. The other is closed out of
19 only one. They're both categorized as
20 partially closed out, but they have different
21 degrees of partial closeout. Right?

22 MS. SADOK: Objection.

23 A That's correct.

24 Q And when, during the lottery
25 process, is it more likely to have a greater

1 SISKIN

2 degree of partial closeouts?

3 A Later in the process.

4 Q And who is more likely to be
5 clustered near the end? CP applicants or NP,
6 no preference applicants?

7 A No preference applicants.

8 Q Dr. Siskin, how, if at all, did you
9 account in the regressions for differences in
10 how long it took for applicants to be
11 processed?

12 A That is adjusted for by the
13 variable -- whether it closed out, which is
14 affected by when you are going to -- it's
15 going to correlate with when you are reached
16 as to the point that it affects you.

17 I did test for --

18 Q You're saying that -- let me ask
19 you this question first.

20 Was there anything else that
21 you did to account for differences in
22 how long it took for applicants to be
23 processed?

24 A I looked at prop left as a factor
25 after I controlled for the ability, making

I, BERNARD R. SISKIN, certify I have read the transcript of my testimony taken under oath in my deposition on November 15, 2019; that the transcription is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.



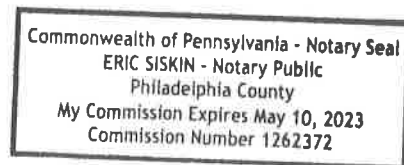
Bernard R. Siskin, Ph.D.

Sworn and subscribed to before me

this 19th day of December, 2019.



Notary Public



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

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That BERNARD R. SISKIN, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that this
transcript of such examination is a true
record of the testimony given by such
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 19th day of November,
2019.



JUDITH CASTORE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SHAUNA NOEL and EMMANUELA
SENAT,

Plaintiffs,
-against-

Civil Action No.:
15-CV-5236

CITY OF NEW YORK,

Defendant.

-----x
August 26, 2019
9:59 a.m.

VIDEOTAPED DEPOSITION of PROFESSOR BERNARD R.
SISKIN, taken by Plaintiffs, pursuant to Notice,
held at the offices of Veritext Legal Solutions,
1250 Broadway, New York, New York, before Judith
Castore, a Certified Livenote Reporter and Notary
Public of the State of New York.

1 SISKIN

2 the application of CP preference had a
3 very significant effect on awards,
4 didn't it?

5 MS. SADOK: Objection.

6 A Yes.

7 Q So in this scenario the
8 community preference policy was
9 reserving 50 percent of the units for a
10 little bit less than 4 percent of the
11 apparently eligible applicants, right?

12 MS. SADOK: Objection.

13 A That's correct.

14 Q So that's one policy. That's
15 the current policy. Another policy
16 which is -- might be good or bad
17 depending on your point of view, would
18 be to not have a community preference
19 policy.

20 Dr. Siskin, I really need
21 your full attention on this. If
22 there's a question I'm going to ask you
23 that's coming out of something I
24 will -- I will do it.

25 A Okay.

1 SISKIN

2 Q Two policies, the existing
3 policy 50 percent community preference,
4 another potential policy, no community
5 preference. You have the two?

6 A Correct.

7 Q I apologize. I may have made
8 an assumption since you've done this so
9 much. You have to vocalize your
10 answers both for the reporter and for
11 the videographer.

12 A I know.

13 Q What I want to ask you was:
14 Does the adoption of one or the other
15 policy change anything about an
16 applicant's own characteristics?

17 MS. SADOK: Objection.

18 Q I'm not asking you about --
19 I'm not asking you about processing,
20 I'm asking you about a household.

21 Does having existing policy
22 or this alternative policy, do either
23 of those change the applicant?

24 MS. SADOK: Objection.

25 A I don't understand. It's a

1 SISKIN

2 little broad.

3 Q Let me try.

4 A If you're talking about --

5 Q Let me be more specific then.

6 Does -- and I don't care
7 which direction you go from, from
8 current policy to the zero or from zero
9 to the current policy. Or even from
10 the policy which was 30 percent, up
11 until 2002 to the current policy.

12 In any direction, do any of
13 those changes change an applicant's
14 income?

15 A No.

16 Q Do any of those changes
17 change an applicant's household size?

18 MS. SADOK: Objection.

19 A No.

20 Q Actual eligibility as
21 compared with apparent eligibility?

22 A No.

23 MS. SADOK: Objection.

24 Q Race?

25 A No.

1 SISKIN

2 Q Where they live?

3 MS. SADOK: Objection.

4 A No.

5 Q Decision to have applied?

6 MS. SADOK: Objection.

7 A That I don't know.

8 Q What do you think might bear
9 on that?

10 MS. SADOK: Objection.

11 Q Strike that.

12 How might the different
13 policy change that, change something
14 about the applicant's decision-making
15 process?

16 MS. SADOK: Objection.

17 A Well, you don't know whether
18 or not the preference or the having a
19 preference or not having a preference
20 would for some people incentivize them
21 to apply or disincentivize them to
22 apply. It may not and it may, you'd
23 have to really look at data to figure
24 out whether it does.

25 Q It's hard to imagine though

1 SISKIN

2 Q I think -- I think on this
3 particular thing we probably have less
4 of a disagreement than on other things.

5 Here I just want to make sure
6 that you are agreeing with me, that
7 when the community preference policy
8 has an effect, that effect doesn't
9 disappear, it has a shaping effect. It
10 doesn't mean that other things don't
11 happen later, but it does have a
12 shaping effect?

13 MS. SADOK: Objection.

14 A I think -- let me restate it,
15 because I think we're in agreement.
16 I'm in agreement that to the extent
17 that the community preference policy
18 has an impact, it's going to have an
19 impact on the processes of whether
20 you're going to be considered or not.
21 Having the community preference doesn't
22 mean you're going to be considered, not
23 having the community preference doesn't
24 mean you're not going to be considered,
25 but it's going to shape who is

1 SISKIN

2 considered.

3 Q Well, it's going to -- I
4 mean, from the data that you looked at,
5 you know that a -- let's deal with
6 entrants. You know that a
7 significantly higher percentage of CP
8 entrants are reached by a developer.

9 That is, have their
10 application reviewed by a developer,
11 and get a determination letter, than
12 the percentage of non-CP people who
13 have that review and determination,
14 right?

15 MS. SADOK: Objection.

16 A The problem here is -- and I
17 don't think we're really in
18 disagreement, but it's just a little
19 technical problem.

20 When you talk about entrants,
21 which means including people or not,
22 apparently eligible or were not
23 eligible. Okay. And then you're
24 saying you're looking at the result of
25 who gets considered, gets an award.

1 SISKIN

2 Q That's not what I said.

3 A Had community preference.

4 Q That's not what I said.

5 A Then you have to restate your
6 question.

7 Q I will.

8 I think you know, so I want
9 you to confirm this or tell me
10 otherwise, that when you look at all of
11 the CP entrants there are, and see what
12 portion of them are reached by a
13 developer, and get a determination of
14 one kind or another that that
15 proportion is higher than the
16 proportion of non-CP entrants who are
17 reached by the developer?

18 MS. SADOK: Objection.

19 A I can't prove that. I
20 believe it's probably true, but I don't
21 have the data if it's actually reached.

22 Q Well, let's talk about
23 considered in the way you talk about
24 considered in your report. You know
25 that there's a significantly higher

1 SISKIN

2 percentage of apparently eligible
3 community preference applicants who are
4 considered than the percentage of
5 apparently eligible non-community
6 preference applicants, right?

7 A That's correct.

8 Q I did want to turn now to
9 Page 30 of your report. This is part
10 of where you're talking about stages.

11 And do you see there in Table
12 1 you identify stages?

13 A Yes.

14 Q How did you determine that
15 these are the stages of the lottery?

16 MS. SADOK: Objection.

17 A Well, as I explained in the
18 report, my understanding it has a
19 lot -- and it's not done precisely the
20 same in every case. Okay.

21 Q You're starting on a road
22 where I know that you're not answering
23 the question I asked, so I apologize
24 and I will try to frame it more
25 precisely.

1 SISKIN

2 First, I wanted to ask you if
3 you had spoken with your attorneys
4 during the break?

5 A Briefly, yes.

6 Q Was there testimony that you
7 wanted to change?

8 A We didn't discuss testimony.

9 Q Was there testimony that you
10 wanted to change?

11 A No.

12 Q So I'm showing you what I'm
13 marking as electronic Exhibit 327.

14 (SBE (plaintiffs'
15 hypothetical), was marked
16 Plaintiff's Exhibit 327, for
17 identification, as of this date.)

18 Q And what you will see here is
19 not New York City, but a perfectly
20 segregated city. There's an all white
21 borough, an all black borough, an all
22 Hispanic borough, and an Asian borough,
23 all Asian borough. And there are
24 lotteries for affordable housing units.
25 And it turns out that everything about

1 SISKIN

2 it is even. There's one type of --
3 there's one type of unit. There are
4 100 units available per lottery. You
5 see it in that Column A that there's an
6 equal number applying from each
7 borough. An equal number apparently
8 eligible. Everybody's equally likely
9 to follow through. And if they're
10 reached, it's 20 percent of those
11 reached.

12 And so what we've done
13 here -- and so here's the rule which is
14 stated right at the top. Instead of
15 proceeding in order of random number
16 sequencing, the lottery rule is that
17 applicants living in the borough of the
18 lottery development get priority in
19 being reviewed in their sequence order
20 by developers. Any apartments left
21 over after that allocation are
22 allocated, typo, and random number
23 sequence originally assigned.

24 So it's not a set aside it's
25 a priority, but it's 100 percent

1 SISKIN

2 priority. This particular city thinks
3 it's very important to give everybody
4 who wants to a chance to be in their
5 same borough.

6 And if you start looking at
7 the results of Columns L to O, you see
8 what happens in each of the lotteries.
9 In the aggregate, in the white borough
10 lotteries there are 300 whites who get
11 it. In the black borough lotteries,
12 there are 300 blacks who get it. And
13 the same thing is true in terms of the
14 apparently eligible reviewed. In the
15 white, it's only the white who are
16 reviewed and the black there is only
17 the black.

18 But when you get down to the
19 bottom line, it turns out that exactly
20 the same number of blacks, whites,
21 Hispanics and Asians get apartments,
22 overall, citywide the same percentage
23 have been reviewed.

24 Does this practice cause any
25 disparate impact?

1 SISKIN

2 MS. SADOK: Objection.

3 A You have to define a lot more
4 information to be able to answer that.

5 Q Well, everything -- I don't
6 think so. We may have to get into it a
7 little bit more.

8 Everybody is the same.
9 Everybody is equally qualified --

10 A That's not the question.

11 Q Okay.

12 A The question is: You
13 developed four boroughs, you developed
14 four units, are the units fungible? A
15 unit is a unit is a unit. They're
16 equally as good, equally as bad. Is
17 the -- that's the first question.

18 If that's the case, in that
19 scenario, this would not have a
20 disparate impact in terms of allocation
21 of units. It would have obviously a
22 very questionable allocation problem
23 which would go to the question of
24 perpetuating segregation. But it
25 wouldn't go to disparate impact.

1 SISKIN

2 Q Okay. So assuming for the
3 moment that the apartments were
4 fungible, and leaving aside
5 perpetuation of segregation, no
6 disparate impact, correct?

7 MS. SADOK: Objection.

8 Q Correct?

9 MS. SADOK: Objection.

10 A If this were four areas, and
11 these were equivalent units, and the
12 policy is consistent, then the relevant
13 question would be: Does this policy
14 have an impact making it most likely to
15 award apartments to blacks, whites,
16 Hispanics and Asians, the answer to
17 that is no. It's a question of
18 distribution, not a question of
19 assignment. And I think if they're all
20 equivalent, putting aside the question
21 of segregation, then under -- under my
22 understanding of disparate impact, it
23 would not have a disparate impact.

24 Q Okay.

25 Just to make sure you see

1 SISKIN

2 this. In Columns U to AB, you see what
3 happens without the priority policy.
4 Within each -- within the boroughs
5 there's equal distribution among the
6 groups, and then at the bottom line it
7 winds up to be exactly the same.

8 You saw that, right?

9 A Yeah, but that goes to the
10 question again which is the valid
11 question about the assignment. But
12 doesn't go to the question of disparate
13 impact in allocation of apartments if
14 they're fungible.

15 Q Let me ask you something else
16 about this. Let's say cases happen at
17 different moments in time, sometimes
18 the moments -- sometimes cases seem to
19 go along for a long, long time but --
20 so what I've shown you is one
21 particular moment. My hypothetical has
22 this particular moment. Everything is
23 in Egiports. I've already gone
24 through my correct spelling today so...

25 Now, let's say what happens

1 SISKIN

2 is there's a flurry of development,
3 like they're the same size, everything
4 else is the same. There's a flurry of
5 development only in the white borough.
6 There are six more developments.
7 They're all in the white borough, they
8 all work out the same way. And so now
9 at the bottom line instead of having
10 300, 300, 300, 300, you have 900, 300,
11 300, 300. That would be a disparate
12 impact from your point of view?

13 MS. SADOK: Objection.

14 A Yes.

15 Q But if the city kept on
16 building an equivalent number of
17 developments in the different boroughs,
18 it would maintain this separate but
19 equal scenario, yes?

20 MS. SADOK: Objection.

21 A That's correct.

22 Q Let's say there were a race
23 neutral rule that said you can only
24 move on to a block in which the
25 majority of residents are the same race

1 SISKIN

2 saying. I would go back, but I think
3 in running the logistic, if they were
4 moved into the -- they were left in the
5 considered group, okay, they should
6 actually be in the non-considered group
7 where they belong. Because the
8 logistic is saying that you were
9 eligible and would have gotten an
10 apartment but for the fact that you
11 weren't -- weren't approved, i.e.,
12 didn't follow through as you said.

13 The people that -- I'm pretty
14 sure the people that went through the
15 process who were eligible reached, but
16 there was no apartment for them, were
17 put into the non-considered group. So
18 they aren't in Table 2. They're
19 eliminated from Table 2 which is
20 appropriate.

21 Q I've been trying to figure
22 out something else. You would agree
23 that it's more likely to be closed out
24 if you're a no-preference or gen pop
25 person than if you're a community

1 SISKIN

2 preference person, right?

3 MS. SADOK: Objection.

4 A Yeah, I agree with that.

5 Q So here's something that to
6 some extent the sequencing causes a
7 result that disproportionately bears on
8 non-preference applicants as compared
9 to community preference applicants.

10 And yet the possibility of
11 them, of those fully closed out people,
12 having been yeses if they were earlier
13 in the process isn't in the model.
14 They've been removed from the model.
15 Haven't they been removed from the
16 model?

17 MS. SADOK: Objection.

18 A You're talking about Table 2
19 now.

20 Q Haven't they --

21 A Table 2 is studying a very
22 specific question. It says given you
23 were considered, okay, and would have
24 gotten an apartment, okay, but for,
25 you're either found ineligible or don't

A C K N O W L E D G E M E N T

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

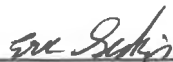
I, BERNARD R. SISKIN, certify, I have read
the transcript of my testimony taken under
oath in my deposition of August 26, 2019;
that the transcript is a true, complete
and correct record of what was asked,
answered and said during this deposition,
and that the answers on the record as
given by me are true and correct.



BERNARD R. SISKIN

Sworn and subscribed to before me

this 11th day of October, 2019.



Notary Public

Commonwealth of Pennsylvania - Notary Seal
ERIC SISKIN - Notary Public
Philadelphia County
My Commission Expires May 10, 2023
Commission Number 1262372

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

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That BERNARD R. SISKIN, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that this
transcript of such examination is a true
record of the testimony given by such
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 28th day of August, 2019.



JUDITH CASTORE

Errata -- Testimony of Bernard R. Siskin, dated August 26, 2019

Case: Noel and Senat v City of New York

Page	Line	Now reads	Should read	Reason for change
13	10	counsel telling me I can't	counsel telling me - I can't	clarity
18	13	I agree to what I said.	I agree with what I said.	Transcription error
24	18	Brian Nedieberger	Bryan Niederberger	spelling - needs global change
24	21	Nedieberger	Niederberger	spelling - needs global change
30	18	that's my	that's not my	misspoke
42	16	I don't know that's	I don't know. That's	Transcription error
49	7-13	Yes. You asked downstream, that's downstream. That downstream effect, okay,, may have a different -- switch the results that you would have gotten simply because of the community preference policy affecting who is considered.	Yes. You asked downstream. That is, downstream. That is a downstream effect which switches the results that you would have gotten simply because of the community preference policy affecting who is considered.	misspoke; clarity
61	12	apparently not	apparently	clarity
61	13	eligible, Okay.	eligible or not, Okay	clarity
61	14	group, the likelihood	group of those not apparently eligible, the likelihood	clarity
61	17-18	be affected by -- by the -- or not be affected as a	affect or not affect as a	clarity
61	19	or affected by	or affect it by	clarity
61	24	must hire people	must award people	misspoke; clarity
62	4	I didn't hire	I didn't mean hire	typo
65	16-17	gotten it. Okay. But you're apparently not eligible. You would	gotten it. If you're apparently not eligible, you would	misspoke; clarity
65	21	that appeal and if you are apparently	that appeal and if you are	misspoke; clarity
65	24	positive	benefit	clarity

Errata -- Testimony of Bernard R. Siskin, dated August 26, 2019

Case: Noel and Senat v City of New York

Page	Line	Now reads	Should read	Reason for change
83	12-15	No. That's not my definition. I mean that's -- it's a goal but that's not -- to put disparate impact is measuring or does.	No. I mean that not my understanding. It's a fine goal, but that is not the intent. It assumes the process is facially neutral and if it has a disparate impact it requires the practice causing it to be valid and that no equivalent alternative with less impact exists.	misspoke; clarity
90	19	hope	believe	misspoke; clarity
94	23	the plaintiffs believe	the plaintiffs believe, but not what	To clarify the intent of the sentence.
95	6	and practice	in practice	typo
107	9-15	looks at the asisgnment of, among others, blacks, whites, Asian, less likely or more likely to be given apartments based on the community preference policy. And as Dr. -- there are areas where there are plus areas, where they're minus, et cetera.	looks at the assignment of awards among the races: other, blacks, whites and Asians. Is a race less likely or more likely to be given apartments based on the community preference policy. And, as Dr. Beveridge states, there are areas where races are awarded more apartments and there are areas where those races are awarded fewer.	To clarify the intent of the sentence.
108	21	higher	hire	typo
144	13	In Table 2, rather, was after	In Table 2, rather. what we are studying was after	To clarify the intent of the sentence.
144	19-21	correlation, that certain characteristics have a likelihood that somebody who is eligible, apparently	correlation, that given certain characteristics that affect the likelihood that somebody who is apparently	To clarify the intent of the sentence.
146	2	the group? Okay. That is -- is	that group? Okay. That is the likelihood someone is	clarity
146	9-10	they're included	unless, in the simlation, no apartment for wihich they are eligible is available.	To clarify the intent of the sentence.
180	23	joint	join	typo
181	5	actual fills	actual files	typo

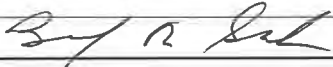
Errata -- Testimony of Bernard R. Siskin, dated August 26, 2019

Case: Noel and Senat v City of New York

Page	Line	Now reads	Should read	Reason for change
181	8	to you in you	to you in	misspoke; clarity
181	15	But the A using	But a suffix is used, I believe, then	To clarify the intent of the sentence.
191	18	effects	affects	typo
193	5	effect	affect	typo
193	6	effect	affect	typo
194	24	disagreement	argument	typo
194	25	Because you can't determine who.	Because you can't determine who was actually impacted by the practice at	clarity
199	24	policies	policy's	typo
200	5	to -- for blacks	too few blacks	typo
202	20	in terms at what	in terms of what	Transcription error
203	20-21	you're going to challenge it you can't do that, then you move it to the next	you're going to challenge that analysis that it can't be done accurately, then you move the analysis to the next	To clarify the intent of the sentence.
203	10	wind as	wind up as	Transcription error
208	21	How	What	misspoke
214	15-16	where you do not make it.	where you make it without it.	clarity
219	23	process	preference	misspoke
219	25	process	preference	misspoke
220	14	overprotected	a protected	typo
223	5	counts	accounts	typo
223	8-9	CP awards	awarded apartments through the CP policy	clarity
235	20	hired	awarded	misspoke
241	8	lease	least	typo
241	16-17	logistic model because the average it's to averaging	logistic model, but estimating the average effect	To clarify the intent of the sentence.
242	10-11	gets rid of combines some.	gets rid of or combines some variables.	clarity
243	23	catenation	concatenation	typo
251	16	catenation	concatenation	typo

Errata -- Testimony of Bernard R. Siskin, dated August 26, 2019

Case: Noel and Senat v City of New York

Page	Line	Now reads	Should read	Reason for change
254	21-24	I get -- apartment, I get an apartment. Okay? And if I bid -- if I don't get an apartment, I get an apartment	I get one apartment, I get an apartment. Okay? And if I don't get any apartment, I didn't get an apartment	To clarify the intent of the sentence.
255	13-14	Most people -- there are some people.	Most people would not	clarity
262	3	bias	biased	typo
262	22	MAGNA	MAGA	misspoke
265	9	your	you're	spelling error
270	4	early state	earliest date	clarity
282	9	six month	six mile	misspoke
286	4-5	which is preference	which is a preference	clarity
287	2-4	and, of course, getting the preference is -- has to be designed as with the outcome of getting it is.	and, of course, getting the preference, on average, is good. It is designed to be an advantage with respect to the outcome of getting an award.	To clarify the intent of the sentence.
288	12	in illustration	in the illustration	To clarify the intent of the sentence.
			10/14/19	
		Bernard R. Siskin	Date	
		Subscribed and Sworn to Before Me this _____ Day of _____, 2019		
		SEE Attached Certification		
		Notary Public	Commission Expires	

-----X

**SHAUNA NOEL and EMMANUELLA SENAT,
PLAINTIFFS,**

---- against ----

15-CV-5236 (LTS) (KHP)

CITY OF NEW YORK,

DEFENDANT.

-----X

EXPERT REPORT OF BERNARD R. SISKIN, Ph.D.

Originally filed JUNE 27, 2019

Amended Initially September 4, 2019

Amended December 13, 2019

When studying the applications and apparently eligible applications, his logic is that since the CP increases the likelihood of getting an award, it is a benefit. He thus studies which races are more likely to receive that benefit. For example, if 1,000 whites apply for projects in a majority white CD typology, and 500 of these are CP beneficiaries, then 50% of the white applicants are benefitted by the CP policy. If there are 10,000 Hispanic applications, of which 800 have a CP, although there are numerically more Hispanics than whites with a CP, only 8% of the Hispanics are advantaged by the CP policy. Thus, Dr. Beveridge would argue, within the majority white CD typology, white applications are disproportionately more likely to be CP beneficiaries, giving them a disproportionate advantage in competing for housing. Of course, by the same analysis, in a majority African American CD typology, African American applications are disproportionately more likely to be CP beneficiaries, giving them a disproportionate advantage in competing for affordable housing opportunities through a lottery.

Both of these alternative measures at the application/apparently eligible application stage indicate that the racial group with applications that are disproportionately CP beneficiaries within a majority CD typology will always be the majority race and will more likely be the plurality race within a plurality CD typology. While this conclusion is correct, it is essentially irrelevant to the question of what impact the CP policy has on applicants being considered (or being able to compete) for a unit. Having the CP status is not the same thing as benefiting from the CP status. For instance, an application can be a CP beneficiary and still have a log number that is too high for it to be considered. Conversely, an applications' log number can be low enough that the application would have been considered even if it was not a CP beneficiary application. See Appendix B hypotheticals.

TABLE 1
COUNTS AND PERCENTAGE OF APPLICATIONS
AT EACH STAGE OF THE AWARD PROCESS

	<u>Number of Apps</u>	<u>Percent of All Apps</u>	<u>Percent Passing</u>
<u>Stage 1</u>			
Apply	7,245,725	100.00%	
Found Apparently Eligible	3,118,966	43.05%	43.05%
<u>Stage 2</u>			
Considered	387,679	5.35%	12.43%
<u>Stage 3</u>			
Awarded	10,245	0.14%	2.64%

Amended December 12, 2019

Dr. Beveridge's analysis comparing the award rate of applications with and without the CP focuses on the overall impact of the three-stage Lottery Process (Stage 1 outcome of apparently eligible applications compared to Stage 3 outcome of awardees). However, the CP policy does not impact the probability of passing all three stages. It affects only the Stage 2 outcome, the Consideration Stage.

Dr. Beveridge makes an incorrect assumption that any difference in the average outcomes between an application with and without the community preference is due to the community preference policy. That is, he assumes that applications with and without the CP should be equally likely to pass Stages 1, 2 and 3, but for the CP policy, and the only reason applications with and without the CP are not awarded a unit at the same rate is because of the CP policy.

The data clearly shows that those residing within the community preference area (and hence benefiting from the CP) were significantly more likely to follow through and be found actually eligible and interested and be awarded a unit. This correlation between the likelihood of

The definition of majority and minority racial area here is not Dr. Beveridge's CD typology definition. Instead, for example, if we are measuring the African American-white Dissimilarity Index, the determination of the majority/minority races is based on the population of only whites and African Americans (the two races that are being measured for segregation) in the City and the relevant census tracts. In this example, a census tract is defined as majority white if the percentage of whites (among whites and African Americans) in the census tract is equal to or greater than the percentage of whites (among whites and African Americans) in the City; otherwise it is defined as majority African American. Using the 5-year ACS preceding the year the lottery closed, for each application I compute whether the project that was applied for is in a majority white or African American census tract, and whether the census tract from which the application came is majority white or African American.⁶⁴ This is done for all applications for the projects that are located in a single census tract and for which the application's address can be geocoded. This allows us to study 145 of the 168 projects and 5,983,820 or 94.3% of the 6,345,462 applications that were race identified.⁶⁵

If we assume an initial benchmark population, we can compute the actual numerical impact on the Dissimilarity Index of segregation. To do that, I assumed the population by race in the City to be that reported by households in the 2012-2016 ACS. The impact on the Dissimilarity Index can be computed for all pairs of the four races of interest.

Preliminarily, it is interesting to note that, if one were to choose the awards so as to minimize (or maximize) the Dissimilarity Index between African Americans and whites, it would result in decreasing (or increasing) the Dissimilarity Index by 0.0148. In other words,

⁶⁴ I repeat this assessment comparing each of the races to each other.

⁶⁵ See Appendix E, which identifies the projects.

Excerpts of Appendix C

satisfy both a mobility and hearing/vision placement. Atypical preferences like veterans' preference and Hurricane Sandy relief were implemented to the extent to which data was available within Housing Connect. NYCHA preferences were not implemented in the simulation due to a lack of information in Housing Connect, but they appear to be relatively few and should not have a meaningful impact on the analysis.

This process of implementing the preferences in order was performed for all lotteries, tracking the number of available units of each type, and filling the units until the lottery was completed. The lotteries were processed in lottery close date order and any applicant who was selected to receive a unit in any lottery was excluded from all subsequent lotteries within that simulation. The simulation was repeated one thousand times, each with new random ordering of applicants. Once the simulation was run with the CP Policy, it was repeated without the CP Policy.

An alternative variant of the lottery simulation was performed to measure the effects of households moving from their home census tract to the housing project census tract on the Dissimilarity Index. In order to perform this analysis, both the source and destination census tract were required. Because of this restriction, the simulation procedure was identical but was limited to applicants who could be precisely geocoded, and to the 145 lotteries which had either a single project address or had multiple addresses within the same census tract. The 145 projects are noted in Appendix E.

Determining Preference for Awarded Applicants

I relied upon the awarded applicants listing provided in Dr. Beveridge's report. Although that data contained preference data, it did not specify which preference was used to in the

Consideration Process (explained *supra*, Section IV.A of the report, and Appendix B). It is possible for an awardee to qualify for multiple preferences. For example, a mobility awardee might also live in the project community preference area. Although that award is eligible for community preference, they did not receive their unit as a result of the community preference. So, the existence of preference eligibility alone is insufficient to determine which preference resulted in the award.

To determine which awards were granted due to a NYCHA preference I manually reviewed the status reports.⁸ Within the 168 studied lotteries, there were 8 lotteries⁹ which had a NYCHA preference. The status sheets for each of the NYCHA lotteries were reviewed to determine which awardees were eligible for the NYCHA preference. The NYCHA preference was used to determine awardees who qualified as a result of NYCHA preference. However, we did not attempt to determine which type of NYCHA sub-preference¹⁰ the preference corresponded to.

In order to determine the qualifying preference, the award preferences were assigned to applicants in the same order the awards should have been selected. During the processing of preference order, we treated NYCHA awards as being processed first before other preferences.¹¹

⁸ This was previously included in Appendix H of my Sur-Reply report amended November 12, 2019.

⁹ Lotteries numbers 22, 108, 120, 141, 201, 206, 237 and 279 had advertisements specifying a NYCHA preference and had status sheet awardees with NYCHA preference.

¹⁰ There are multiple layers of NYCHA preferences. For instance, there is a preference for NYCHA applicants from certain buildings, the CB, the borough and waitlist.

¹¹ Initial NYCHA selection was confirmed in all other NYCHA lotteries, except for lottery 22, by confirming that the earliest unit confirmation date for the lottery was for a NYCHA unit. Based on confirmation dates Lottery 22 appears to have processed NYCHA after the disability awards. However, because none of the NYCHA awardees had any nested preferences nor did the NYCHA awards close out any unit type, there was no effect to the order of awards, and they were also processed first.

Exhibit 12 - excerpt of defendant's December 14, 2018 answers to plaintiffs' November 30, 2018 questions posed pursuant to stipulation (ECF 518, ¶ 15)

Plaintiffs' Question 13

This question, as well as Questions 14 and 15, concern information about lottery applicants and their households. It encompasses information gathered by the agencies (HPD and/or HDC) from applicants, whether or not provided to developers or their marketing agents, and whether directly from the applicant (as via applicant use of Housing Connect), or indirectly from the applicant (as when developers or their marketing agents provide information from paper applications to the Housing Connect system). It also encompasses information provided by a subset of applicants to developers or their marketing agents, or otherwise gathered by developers or their marketing agents in connection with those applicants' applications. It also encompasses information provided by developers or their marketing agents to the agencies about a subset of applicants about which the developers or their marketing agents are either seeking agency review or are responding to agency request. Collectively, all of the information referred to above will be referred to as "Applicant Information."

Other than self-reported household income, self-reported household size, and self-reported subsidy status, is there any other Applicant Information currently available to both parties that: (a) exists for and across all applicants to a lottery; and (b) allows for a determination of one or more elements of applicant eligibility? If so, what are those data?

Defendant's Answer to Question 13

"Applicant information" cannot be defined both as information existing for and across all applicants and also information provided by or for only a subset of applicants. Limiting the definition of "applicant information" to encompass only that information included in the first two sentences of the question, HPD answers as follows:

Other than self-reported household income, self-reported household size, and self-reported subsidy status, the other "applicant information" that a) exists for and across all applicants to a lottery; and b) allows for a determination of one or more elements of applicant eligibility, is self-reported relationship to applicant.

[continued on next page]

Plaintiffs' Question 14

Other than self-reported household income, self-reported household size, and self-reported subsidy status, is there any other Applicant Information currently available to the agencies but not to plaintiffs that: (a) exists for and across all applicants to a lottery; and (b) allows for a determination of one or more elements of applicant eligibility? If so, what are those data, is the City prepared to produce them, and, if so, when will the City produce them?

Defendant's Answer to Question 14

No. Please see answer to question 13 for clarification on available "applicant information."

Plaintiffs' Question 15

Other than self-reported household income, self-reported household size, and self-reported subsidy status, is there any other Applicant Information currently available to developers or their marketing agents but not to plaintiffs or to the City that: (a) exists for and across all applicants to a lottery; and (b) allows for a determination of one or more elements of applicant eligibility? If so, what are those data, is the City prepared to retrieve those data from the developers or marketing agents, and when will the City produce them?

Defendant's Answer to Question 15

No. Please see answer to question 13 for clarification on available "applicant information."

Ex 13 - Disparate Impact Hypothetical re Preference Policy (“SBE”), Electronic Ex 327 at Siskin 2019 08 26 Deposition

Hypothetical A - Instead of proceeding in order of random number sequencing, the lottery rule is that applicants living in borough of the lotteried development get priority in being reviewed (in their sequence order) by developers. Any apartments left over after that allocation are allocation in random number sequencing originally assigned.														Alternative processing: everyone processed in random sequence order as originally assigned											
Segregation City has four boroughs:	White borough developments	White, NH apps	Black NH apps	Hispanic apps	Asian NH apps	White, NH app. Elig.	Black NH app. Elig.	Hispanic app. Elig.	Asian NH app. Elig.	White, NH awards	Black, NH awards	Hispanic awards	Asian, NH awards	% White NH app elig. Reviewed	% Black NH app elig. Reviewed	% Hispanic app elig. Reviewed	% Asian app elig. Reviewed	White, NH awards	Black, NH awards	Hispanic awards	Asian, NH awards	% White NH app elig. Reviewed	% Black NH app elig. Reviewed	% Hispanic app elig. Reviewed	% Asian app elig. Reviewed
	White, NH apps	Black NH apps	Hispanic apps	Asian NH apps	White, NH app. Elig.	Black NH app. Elig.	Hispanic app. Elig.	Asian NH app. Elig.	White, NH awards	Black, NH awards	Hispanic awards	Asian, NH awards	% White NH app elig. Reviewed	% Black NH app elig. Reviewed	% Hispanic app elig. Reviewed	% Asian app elig. Reviewed	White, NH awards	Black, NH awards	Hispanic awards	Asian, NH awards	% White NH app elig. Reviewed	% Black NH app elig. Reviewed	% Hispanic app elig. Reviewed	% Asian app elig. Reviewed	
White borough - 100 percent NH White	1	1,000	1,000	1,000	1,000	500	500	500	500	100	0	0	0	100	0	0	0	25	25	25	25	25	25	25	25
Black borough - 100 percent NH Black	2	1,000	1,000	1,000	1,000	500	500	500	500	100	0	0	0	100	0	0	0	25	25	25	25	25	25	25	25
Hispanic borough- 100 percent Hispanic	3	1,000	1,000	1,000	1,000	500	500	500	500	100	0	0	0	100	0	0	0	25	25	25	25	25	25	25	25
Asian borough - 100 percent NH Asian																									
In each lottery, an equal number of applicants from each borough applies (1,000), an equal number from each borough are apparently eligible (500).	Sub-total in White NH borough developments	3,000	3,000	3,000	3,000	1,500	1,500	1,500	1,500	300	0	0	0	100	0	0	0	75	75	75	75	25	25	25	25
										100%	0%	0%	0%					25%	25%	25%	25%				
Only one unit type 2BRs at the same rent are available in each lottery. There are 100 units available per lottery	Black borough developments																								
	4	1,000	1,000	1,000	1,000	500	500	500	500	0	100	0	0	0	100	0	0	25	25	25	25	25	25	25	25
	5	1,000	1,000	1,000	1,000	500	500	500	500	0	100	0	0	0	100	0	0	25	25	25	25	25	25	25	25
	6	1,000	1,000	1,000	1,000	500	500	500	500	0	100	0	0	0	100	0	0	25	25	25	25	25	25	25	25
Applicants from each borough and apparent eligibility status are perfectly and evenly distributed throughout each lottery's random number sequencing.	Sub-total in Black NH borough developments	3,000	3,000	3,000	3,000	1,500	1,500	1,500	1,500	0	300	0	0	0	100	0	0	75	75	75	75	25	25	25	25
										0%	100%	0%	0%					25%	25%	25%	25%				
Finally, apparently eligible applicants from each borough are equally likely to follow through and be awarded an apartment IF THEY ARE REACHED (20 percent of those reached)	Hispanic borough developments																								
	7	1,000	1,000	1,000	1,000	500	500	500	500	0	0	100	0	0	0	100	0	25	25	25	25	25	25	25	25
	8	1,000	1,000	1,000	1,000	500	500	500	500	0	0	100	0	0	0	100	0	25	25	25	25	25	25	25	25
	9	1,000	1,000	1,000	1,000	500	500	500	500	0	0	100	0	0	0	100	0	25	25	25	25	25	25	25	25
	Sub-total in Hispanic borough developments	3,000	3,000	3,000	3,000	1,500	1,500	1,500	1,500	0	0	300	0	0	0	0	0	75	75	75	75	25	25	25	25
										0%	0%	100%	0%					25%	25%	25%	25%				
	Asian borough developments																								
	10	1,000	1,000	1,000	1,000	500	500	500	500	0	0	0	100	0	0	0	100	25	25	25	25	25	25	25	25
	11	1,000	1,000	1,000	1,000	500	500	500	500	0	0	0	100	0	0	0	100	25	25	25	25	25	25	25	25
	12	1,000	1,000	1,000	1,000	500	500	500	500	0	0	0	100	0	0	0	100	25	25	25	25	25	25	25	25
	Sub-total in Asian NH borough developmen	3,000	3,000	3,000	3,000	1,500	1,500	1,500	1,500	0	0	0	300	0	0	0	100	75	75	75	75	25	25	25	25
										0%	0%	0%	100%					25%	25%	25%	25%				
	CITYWIDE	12,000	12,000	12,000	12,000	6,000	6,000	6,000	6,000	300	300	300	300	25	25	25	25	300	300	300	300	25	25	25	25
										25%	25%	25%	25%					25%	25%	25%	25%				



MayorFirst LadyNewsOfficials

Transcript: Mayor de Blasio Appears Live on Inside City Hall

January 17, 2018

Errol Louis: Welcome back to Inside City Hall, my first guest this evening is usually here on Monday's but yesterday was a holiday. And he started the work week with a big housing announcement this morning. And so Mayor de Blasio joins us now live here in our studio to talk about that and much more. Welcome, very good to see you.

Mayor Bill de Blasio: Thank you.

Louis: Let's start with the good news. A record, you beat Ed Koch. I think in his final year he sort of came up with almost as many units as you did in the last year.

Mayor: Yeah, look, Ed Koch did something amazing when it came to affordable housing. And it's taken all this time since 1989 to break that record. But we did in 2017 – almost 25,000 affordable housing units that were financed and are soon going to be in the hands of New Yorkers.

Look, Errol, this is a big deal. And it fits with a series of things we're doing to try and transform this city. I've said my goal in the second term is to make us the safest big city in America. And that means making it a place that everyday people can live in. If you look at what's happening already, 88,000 apartments have been financed since day one of this administration. If you look at the number people already in the affordable housing that we have either created or preserved, it's over 163,000 New Yorkers in the last four years who have affordable housing. This is a big change in how we approach affordable housing. We're taking it to this new scale and we're going to keep it that way for years to come.

And when you add together with some other very big initiatives; Pre-K for All, 3-K. Obviously the efforts to make this the safest big city in America, Vision Zero. These big stretch goals are working. And I think part of the lesson here is, New York City aimed too low in some ways in the past. We are supposed to be the place that does big bold things. When we actually organize around the principle of these kind of really grand but crucially important goals, it gets the government and the whole city to come along and join in and help us go farther.

Louis: Forgive the oversimplification, but the fact that we're following the path that prior mayors have set us on. Where you used the capital budget in order to finance some of these things. In

years. But they pointed out that if you get preference in the housing lottery, if you happen to live in the community board, maybe you moved in 90 days before the unit was announced, before the lottery was announced. You get preference, compared to somebody on the other side of town, who might be just as poor or in the same economic streets.

Mayor: Look, that's a pretty rarefied example. The vast majority of people who are applying have been in their neighborhood a long time. And it's a 50-50 split, 50 percent go to anyone and everyone in the whole city, reflecting the total diversity of the city and that certainly has integrative impact. But we're also a city of neighborhoods, and if people have helped to build up their neighborhood, they've been a part of it for so long, and they want to stay in it and they're being priced out. I don't think it's a great solution to say we have no way to give you a chance to stay in your own neighborhood. I mean you know, your love of Crown Heights is quite evident and your history there.

Louis: I can't afford to leave.

Mayor: Well, that's, that's, God bless you, you that opportunity to stay. But I think the point is that folks who come from a neighborhood and want to stay in it have some rights in the equation too because they help to make these neighborhoods for what they are today. I think we can do both at once. And I really – look, I think you have to talk to the folks involved at the neighborhood level. The consent is that the government really matters here. When I talk to everyday New Yorkers they are so worried about being displaced entirely out of the city. And they certainly feel a particular passion for the neighborhood, which in many cases is generations long. And if I say to them, look, your neighborhood is no longer for you anymore, you've been priced out, sorry that's the way the world is, that makes no sense. It's my job to help give them an opportunity to stay in the place that they have been a part of. At the same time, of course we want a more intergraded society in every way. I think that 50-50 split speaks to both parts of the reality.

Louis: Okay, let's take a short break here. We're got more to talk about, including the governor's budget address today which has a lot of implications for the city. We'll be right back to talk about that and much more with Mayor de Blasio.

Louis: We are back Inside City Hall and I'm speaking with Mayor Bill de Blasio. Mr. Mayor, any initial reaction to Governor Cuomo's budget address today?

Mayor: Look, there's a lot that we have to go through. It's a classic the devil is in the details. But as I said at the time of the Governor's State of the State Address, I think the broad thrust of some of what he is saying – particularly on addressing the problems of the federal tax bill, I agreed with in terms of some of what he put into the budget address, I want to see exactly what he means.

I disagree on its face with some of the assumptions in his budget address when it comes to the MTA. The State of New York took \$456 million out of the MTA's budget. They need to put that money back. I still think the millionaires' tax is the best way to solve the long term problem of the MTA and the most just way to do it. So there is some evident disagreements up front. But we'll have more to say as we analyze it.

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 VICKI BEEN

2 member. I'm sorry.

3 Q It's my understanding from
4 previous witnesses, but correct me if I'm
5 wrong, that it was the city's policy to
6 say no --

7 A Right.

8 Q -- to requests for more than
9 50 percent?

10 A That is correct.

11 Q Is it the case that most of
12 the projects in that category, the
13 turndown requests for more than
14 50 percent category, were, nonetheless,
15 ultimately supported by the council
16 member?

17 MS. SADOK: Objection.

18 A In the instances that I can
19 recall, yes. They did ultimately support
20 it, yes. They pushed very forward. But
21 they ultimately supported it.

22 Q Another -- I'm asking you to
23 search your memory about council
24 members-- question, which council
25 members, if any, did you understand to be

1 VICKI BEEN

2 premises?

3 MS. SADOK: Objection.

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

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

13 Would you retain a
14 50 percent Community Preference?

15 MS. SADOK: Objection.

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

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

1 VICKI BEEN

2 Preference, the implications reducing the
3 Community Preference had for various
4 racial and ethnic groups and the
5 implications that it had for our -- the
6 goals for which we had established the
7 Community Preference.

8 Q The part that's been clear
9 today and back last August is the piece
10 about your goals. That part, I think I
11 understand. The part I'm asking about is
12 the other part, the changes -- I'm not
13 saying you did this in sequence but as
14 the Community Preference alternative went
15 lower and lower from 50 percent.

16 So wasn't a consideration
17 that there was less race-based impact as
18 the Community Preference was lowered?

19 MS. SADOK: Objection.

20 A That was a consideration.

21 Q But I think, if I understand
22 you correctly -- I'm just trying to state
23 it and you'll tell me -- that the reduced
24 racial impact was outweighed in HPD's
25 judgment by the fact that you felt the

1 VICKI BEEN

2 alternatives did not meet the other goals
3 that you described; correct?

4 A That is correct.

5 Q Just one other question on
6 this point or this topic which is kind of
7 the other end of the spectrum when I was
8 asking the most modest change, which we
9 translated into an example at 40 percent,
10 what was the most aggressive change that
11 you considered, like the most aggressive
12 would be as I'm using the term
13 "aggressive" getting rid of it
14 altogether; was that considered?

15 A Yes.

16 Q I think we could move on.
17 But I need a minute to gather where I am.

18 MR. GURIAN: I'm going to
19 ask that an Excel sheet that was
20 produced to be marked as Exhibit 110.

21 (The above-referred-to
22 document was marked as Plaintiffs'
23 Exhibit 110 for identification, as of
24 this date.)

25 Q So Mr. Maldonado is handing

1
2 STATE OF NEW YORK)
3) : ss
4 COUNTY OF NEW YORK)
5
6

7 I, VICKI BEEN, the witness
8 herein, having read the foregoing
9 testimony of the pages of this deposition,
10 do hereby certify it to be a true and
11 correct transcript, subject to the
12 corrections, if any, shown on the attached
13 page.
14

15 Vicki Been

16 VICKI BEEN
17
18
19

20 Sworn and subscribed to before me,
21 this 25th day of May, 2018.
22

23 Kristin E. Silberman

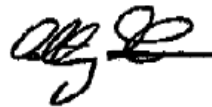
24 Notary Public
25

KRISTIN E. SILBERMAN
NOTARY PUBLIC STATE OF NEW YORK
NEW YORK COUNTY
LIC. #01916137116
COMM. EXP. 2/22/22

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

ERRATA

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

PAGE LINE

12 25 CHANGE: "texted" to "e-mailed"

REASON: The City has filed a Declaration by the deponent (ECF Document 362-1) to clarify misstatements by deponent regarding the existence of text messages which, upon subsequent reconsideration and recollection by deponent and explained in greater detail in the aforementioned Declaration, were actually e-mail communications and not text messages.

24 3 CHANGE: "present" to "prevent"

REASON: Deponent stated "prevent" but reporter transcribed incorrectly.

30 10-11 CHANGE: "math" to "map"

REASON: Deponent stated "map" but reporter transcribed incorrectly.

32 20 CHANGE: "forward" to "hard"

REASON: Deponent stated "hard" but reporter transcribed incorrectly.

48 23 CHANGE: "mentioning" to "mandatory"

REASON: Deponent stated "mandatory" but reporter transcribed incorrectly.

72 20-22 CHANGE: "whether -- to the best of my knowledge, I haven't looked at it recently. The new construction..." to "whether-- to the best of my knowledge, I haven't looked at it recently -- the new construction..."

REASON: Clarify intent of statement.

115 18 CHANGE: "there" to "their"

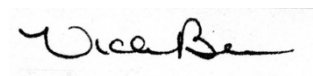
REASON: Clarify intent of statement.

117 20 CHANGE: "rooted" to "routed"

REASON: Deponent stated "routed" but reporter transcribed incorrectly.

231 7 CHANGE: "evaluate" to "evaluated"

REASON: Deponent stated "evaluated" to reflect past tense but reporter transcribed incorrectly.



WITNESS' SIGNATURE

May 25, 2018
DATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

-against-

CITY OF NEW YORK,

15 CV 5236 (LTS)(DCF)

Defendant.
----- x

**DECLARATION OF COMMISSIONER VICKI BEEN IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

VICKI BEEN, declares pursuant to 28 U.S.C. §1746, under penalty of perjury, as follows:

1. I am the Commissioner of the City of New York Department of Housing Preservation and Development ("HPD"), a position that I have held since February 2014. As Commissioner of HPD, I am responsible for leading the nation's largest municipal housing agency. This declaration is based upon my personal knowledge, conversations with employees of the City of New York, and my review of records maintained by the City of New York.

2. I submit this declaration in support of defendant's motion to dismiss the claims asserted in the plaintiffs' First Amended Complaint, and to provide an overview of HPD-sponsored affordable housing programs, tax incentive programs administered by HPD, and the New York State Real Property Tax Law ("RPTL") § 421-a Tax Exemption Program. I also submit this declaration to provide facts regarding the affordable housing lotteries at the developments located at 160 Madison Avenue, New York, New York; 200 East 39th Street, New York, New York; and 40 Riverside Boulevard, New York, New York (the "subject developments"), and plaintiffs' application status at said developments.

of loan programs, tax incentives, disposition of City-owned property, tax credits, and other subsidies and incentives. For example, the City's Voluntary Inclusionary Housing program is designed to preserve and promote affordable housing within neighborhoods where zoning has been modified to encourage new development. In applicable areas, a development may receive a density bonus (allowing the construction of additional market-rate floor area) in return for the new construction, substantial rehabilitation, or preservation of permanently affordable housing.

6. In addition, HPD finances programs such as the Supportive Housing Loan Program, which provides financing to not-for-profit organizations to develop supportive housing for homeless single adults, including people suffering from disabilities such as mental illness and AIDS. Supportive housing is affordable housing with on-site services to serve the needs of the most vulnerable New Yorkers. HPD's Senior Affordable Rental Apartments (SARA) Program supports the construction and renovation of affordable housing for low-income seniors, including a 30% set-aside for homeless seniors.

7. Both for-profit and not-for-profit developers can explore a wide range of opportunities to build or preserve affordable rental and homeownership units on publicly-owned or private sites throughout the City. Developers creating new City-subsidized affordable housing are required to follow HPD marketing and tenant selection procedures. The objectives of these procedures are to create housing opportunities for qualified applicants in a way that is fair, open, and accessible to all; to comply with fair housing and equal opportunity requirements; and to ensure that accessible units are made available to those with mobility, visual or hearing impairments.

8. In some buildings financed through subsidies or density bonuses from New York City, HPD gives eligible current residents of the community district in which a new

affordable housing development is located priority for 50% of the available affordable units (the “City Community Preference Policy”). The City Community Preference Policy is intended to ensure that local residents, many of whom have deep roots in the community and have persevered through years of unfavorable living conditions, are able to remain in their neighborhoods as those neighborhoods are revitalized. As City investment enables a neighborhood to stabilize and become a more desirable location, housing costs may increase to the point where long-term residents are displaced. This is a harsh and inequitable outcome for people who have endured years of unfavorable conditions, and who deserve a chance to participate in the renaissance of their neighborhoods. The City Community Preference Policy ensures that new affordable units will be offered to these residents. In addition, neighborhoods throughout the City and their elected representatives often resist approving land use actions required to allow greater density or site affordable housing because of concern about the other types of burdens that development may impose. They have legitimate concerns about potential negative effects of development both during construction (such as noise and danger) and afterward (as additional residents strain existing infrastructure, potentially leading to things like traffic congestion and school crowding). The City Community Preference Policy ensures that neighborhoods see that new growth and investments in affordable housing provide some benefits to local residents to offset those burdens. This makes it possible for the City to overcome that resistance and achieve its ambitious affordable housing goals despite neighborhoods’ understandable concerns about the difficulties that new construction and growth may pose.

9. If after thorough outreach, the developer is unable to reach the required percentage, it may seek a waiver from HPD with respect to the remaining units. Once the community preference goal is reached or waived, the remaining units are offered to all other

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

DEPOSITION OF JERILYN PERINE

New York, New York

October 26, 2017

9:15 a.m.

Reported by:
JUDITH CASTORE, CLR
Job No. 52427

1 PERINE

2 development on those sites would have
3 also triggered this preference.

4 Q Is it your testimony that
5 when you were commissioner you believed
6 that every single community district
7 was one where people persevered through
8 years of unfavorable living conditions?

9 MR. VIDAL: Objection.

10 A I wasn't working in every --
11 there's 59 community boards, we weren't
12 working in all of them. So I'm not
13 sure I can answer it by yes or no just
14 to say the areas where we were working
15 in at the time were largely places that
16 had gone through these kind of problems
17 in housing.

18 Q Let me ask the question --

19 A It's not -- it wasn't -- I
20 would not have said all 59 community
21 boards experienced exactly the same
22 thing. They didn't.

23 Q Well, you wouldn't have said
24 all 59 community districts experienced
25 years of unfavorable conditions, right?

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PERINE

MR. VIDAL: Objection.

A Right. I think I just said
that, but, yes.

Q So let me see if I
understand.

I think what you're saying,
and correct me if I am wrong, is from
your perspective as commissioner there
was this subset of New York City
community districts, not every
community district in the city, but a
subset of community districts in the
city where that descriptor years of
unfavorable conditions was true and
those were the kinds of community
districts you were thinking of when you
described why there was a Community
Preference Policy?

MR. VIDAL: Objection.

A I would not exactly say that.
I mean, I think, again, there is
displacement and there is this broader
issue of gentrification as well. So
for the most part, I would say at the

1 PERINE

2 been there for a long time too or they
3 could be living someplace still in poor
4 conditions. Just because the housing
5 stock is improved, it doesn't mean that
6 every building is perfect.

7 Q That person who moved in in
8 2010 would not be moving into a
9 neighborhood that, in general, was
10 characterized as having unfavorable
11 conditions, would he?

12 MR. VIDAL: Objection.

13 A Well, you're saying they're
14 moving into a neighborhood that doesn't
15 have those conditions. So, okay.

16 Q I'm saying that there are
17 neighborhoods that you already
18 described as revitalized in 2002. So
19 when it's revitalized, did that mean
20 that the unfavorable conditions had
21 abated?

22 A It means they improved.
23 Doesn't necessarily mean they're
24 completely gone. We don't live in some
25 perfect place. So, sure, lots of

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PERINE

things have improved, absolutely.

Q Substantially?

A In many --

MR. VIDAL: Objection.

A In many neighborhoods, yes.

Q In many neighborhoods that
you had focused on when you were
commissioner?

A Yes.

Q In terms of comparative need
for affordable housing, now I'm talking
individual household versus individual
household --

A Okay.

Q -- for a moment.

Would an outsider household
necessarily have any less need for
affordable housing than an insider
household?

A You are just talking
generally? Like, are you just talking
about housing demand? Is that what you
are asking me?


Q No. I am talking about need

1 STATE OF New York)


2) :ss

3 COUNTY OF New York)

4
5
6 I, JERILYN PERINE, the witness
7 herein, having read the foregoing
8 testimony of the pages of this deposition,
9 do hereby certify it to be a true and
10 correct transcript, subject to the
11 corrections, if any, shown on the attached
12 page.

13
14 
15 JERILYN PERINE

16
17
18
19 Sworn and subscribed to before
20 me, this 13th day of
21 December, 2017.

22
23 
24 Notary Public

25
LOUISE LIPPIN
Notary Public, State of New York
Registration #02L14992429
Qualified in Kings County
Commission Expires 2/24/18

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

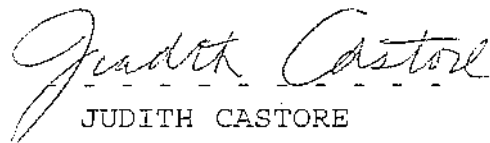
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That JERILYN PERINE, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that this
transcript of such examination is a true
record of the testimony given by such
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 9th day of November,
2017.


JUDITH CASTORE

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.

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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

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Weisbrod

of the City can have positive effects on the housing situation in another part of the City.

I want to give you an example of this proposition and tell me whether you agree.

If there are people on the upper westside who are rent burdened and there is housing that is built on the upper westside, that housing could help the affordability problem by housing people on the upper westside, by housing somebody who is currently ill-housed in the Bronx, and perhaps as well by reducing the expulsive pressure that is pushing into what's called a gentrifying neighborhood in Brooklyn. Does that make sense?

MR. VIDAL: Objection.

A. I think we face an affordable housing crisis, as I said, in every neighborhood in the City, almost every neighborhood in the City, and certainly every community board in the City. So to

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reasons going back and forth about why he
sometimes supported the project,
sometimes didn't support the project.

And I think there were many
things going on there, but it's my
judgment and my recollection that that
was a factor.

Q. It has been your experience
that council members in the process say a
variety of things to negotiate, correct?

A. Yes.

Q. The fact that they mention a
laundry list does not mean that they're
going to ultimately insist on all the
items on the laundry list, correct?

A. Correct.

Q. Now, the conversations about
community preference that you did have,
any of those with the Mayor?

A. Not that I recall.

Q. Deputy Mayor Glen?

A. Not that I recall.

Q. Vicki Been?

A. Probably came up in

1 Weisbrod

2 pressures, housing that is in their view
3 not up to habitable standards in many
4 cases, neighborhoods that are, because of
5 their transit connections, distant from
6 employment, neighborhoods that -- where
7 crime is still higher than it should be,
8 neighborhoods which don't have the degree
9 of retail services that communities want,
10 neighborhoods that suffer from poor
11 public investments and public services
12 that they don't believe are adequate.

13 I mean, that certainly exists,
14 but they exist in a context of "in those
15 neighborhoods." Even in those
16 neighborhoods we're seeing housing
17 pressures. That's the reality.

18 Q. Are there any neighborhoods in
19 New York City where it would not be
20 accurate to say that the residents are
21 persevering through difficult conditions?

22 A. Yes. Some neighborhoods are
23 doing fine, many neighborhoods in the
24 City, although even those neighborhoods
25 frequently believe they're persevering

1 Weisbrod

2 through difficult conditions.

3 Q. But in reality, the majority
4 of neighborhoods in the City are doing
5 pretty well, right?

6 MR. VIDAL: Objection.

7 A. I think the City is in a
8 general way doing well and many
9 neighborhoods are doing well, and for all
10 the reasons that I gave earlier. And I
11 don't dispute fact that there are
12 differentials between neighborhoods, that
13 there some neighborhoods that are better
14 than other neighborhoods in terms of
15 local conditions and other factors.

16 Q. I want to quantify it in a
17 broad sense. You'd say that a majority
18 of City neighborhoods are in pretty good
19 shape today?

20 MR. VIDAL: Objection.

21 A. I don't know how I would
22 quantify it. I would personally probably
23 say, yes, that a majority of City
24 neighborhoods are in pretty good shape
25 today. I think if you took a poll of the

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Weisbrod

neighborhoods in the City, that would not be the answer you would get, but I do agree that the City has really come a long way.

Q. I'm encouraged that you're moving in the direction of looking at doing surveys.

So let's take somebody who is living in one of the minority of neighborhoods where crime remains aberrationally high, not in historic terms, but in relationship to the rest of the City, where there is less healthcare that is available, that schools are performing poorly and where that person is seriously rent burdened.

As a matter of City policy, does the person in the neighborhood that is doing well, that has terrific schools, low crime and who is not rent burdened deserves the affordable housing that comes available more because it's in that person's community district?

MR. VIDAL: Objection.

1 Weisbrod

2 of that was due to community issues and
3 concerns.

4 Q. In your experience, does
5 expression of opposition from a council
6 member necessarily indicate where the
7 council member will ultimately wind up on
8 a project?

9 A. Not necessarily. Sometimes
10 yes, sometimes no.

11 Q. So a council member may, as
12 part of a negotiation, be saying this
13 project does not do A, B, C, D and E and
14 ultimately come around to supporting it
15 if some of the wish list is granted?

16 A. Sometimes.

17 Q. I don't remember if I asked
18 you this before, so if I have, I
19 apologize.

20 Any discussion that you've had
21 or you're aware of with a council member
22 or council members about eliminating
23 community preference?

24 A. No.

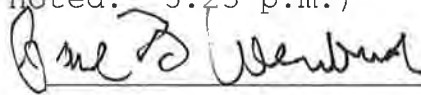
25 Q. We've just been talking about

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

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

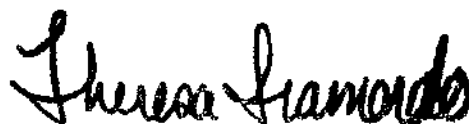
COUNTY OF NEW YORK)

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.



**Ex. 19 – Excerpt of defendant’s Jan. 7, 2019
letter replying to plaintiffs’ data questions of Dec. 21, 2018**

17. How are marketing agents supposed to handle applicants with self-reported subsidies whose self-reported income is below the minimum for the type of unit (size/rent) for which they otherwise appear from their Housing Connect information to be eligible?

See page 68 of 2018 Marketing Guidelines regarding minimum income levels. Marketing agents cannot treat applicant with self-reported subsidies as apparently ineligible due to being below income if there is a notation of a subsidy.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SHAUNA NOEL and EMMANUELLA SENAT,

Plaintiffs,

15 CV 5236 (LTS)(KHP)

- against -

CITY OF NEW YORK,

Defendant.

-----X

EXPERT REPORT OF EDWARD G. GOETZ



Qualifications

My name is Edward G. Goetz. I am professor of urban and regional planning at the Humphrey School of Public Affairs and director of the Center for Urban and Regional Affairs at the University of Minnesota, where I teach courses on urban planning, housing policy, and related subjects at the graduate level. I received my Ph.D. in political science from Northwestern University. I have written four books on low-income housing policy and published numerous peer-reviewed articles and book chapters on the subject. I have won awards for my research from my peers in the field of urban planning and urban affairs, and from within the University of Minnesota. My *curriculum vita* is attached as Appendix A to this report.

I have not served as an expert in any legal case in the past four years. My rate of compensation for this work is \$350 per hour. My fee is not dependent upon the outcome of the case.

Introduction

In 1988 the City of New York adopted a community preference policy designed to enhance the prospects of New York City residents to secure places in subsidized housing built in their neighborhoods. The policy is designed to mitigate the displacement of lower-income residents in New York City neighborhoods and in recognition that these residents are vulnerable to being displaced. Currently, in New York City, the crisis of housing affordability makes it extremely difficult for incumbent lower-income residents to continue to afford living in their communities. The community preference policy is equally responsive to displacement pressures that arise from housing abandonment or from large-scale investments. The policy is in fact relevant in strong or weak markets, and can help address displacement as a result of private actions, public policy, or natural events. The preference policy is one of many initiatives that the City has put in place to address the affordable housing crisis.

The City of New York, through its attorneys defending the City in *Noel et al. v. City of New York*, 15-CV-5236 has asked me to comment on the significance of the affordable housing crisis and of displacement as a public policy challenge, and the importance for local governments in general and New York City in particular, of having affordable housing and anti-displacement initiatives in place. Based on my personal research and the broader research on these topics, I find that a) the current housing crisis in American cities and in New York City in particular has meant a crisis of displacement for low-income families, b) despite debates among researchers, there is a consensus that displacement is occurring and that it is a problem that deserves public policy attention, c) the fear of displacement is widespread among lower-income households in New York City and other cities experiencing acute shortages of affordable housing, d) City officials, philanthropic organizations, and community based groups have recognized and mobilized to address affordable housing issues and displacement in cities across the country, e) research has documented that displacement and loss of home and community produce multiple and serious negative impacts for low-income people, f) the City of New York has created a multi-faceted affordable housing strategy that incorporates a variety of program

interventions to address the housing crisis, and g) the community preference policy is one element in that strategy that is unique in its approach to mitigating displacement among low-income households in New York City.

Concerns about the displacement of lower-income residents from neighborhoods undergoing housing price increases are real and they can be addressed by government action. It is my opinion that the community preference policy serves legitimate, non-discriminatory government interests, including preventing displacement and responding to the well-founded fear of displacement.

New York City and many of the nation's cities are in a crisis of affordable housing.

The City of New York is in the midst of a severe housing crisis. The housing crisis in New York City is manifest in an overall shortage of units, especially a shortage of units renting at the lower end of the market, an increasing lack of affordability as rents rise faster than incomes, an absolute loss of units renting for under \$1,000 per month, a decline in apartment rentals that have rent restrictions or regulations, and a high rate of displacement among residents.

The most recent findings from the New York City Housing and Vacancy Study (NYCHVS) show that the median asking rent for a vacant unit in New York City increased by 30 percent between 2014 and 2017, adjusted for inflation; incomes for renters rose by 13.7% over that time period.¹ Rising rents led to the disappearance of 87,721 apartments renting for less than \$1,000 (in constant 2017 dollars) in just three years between 2014 and 2017. According to the current income and rent guidelines for housing affordability published by the federal government, two-bedroom units must rent for \$1,045 or less to be affordable to "very low-income" households (households at 50% of the area median income).² Apartments renting for less than \$1,000, however, now make up less than one-quarter of all apartments in the city.³ Over this time period rising rents led to the loss of another 86,000 units that had rented for between \$1,000 and \$1,250, roughly the affordability level for a three-bedroom unit for very low-income households and roughly the median contract rent of rent-stabilized units in the city in 2017.⁴ The rise in rents for private, non-regulated units was nearly four times greater than increases for rent stabilized units.⁵

The American Housing Survey indicates that in 2012 there were roughly 1.1 million renter "rent-burdened" households in the City of New York (households paying more than 30% of

¹ New York City, Housing Preservation & Development. 2018. "Selected Initial Findings of the 2017 New York City Housing and Vacancy Survey." February 9. <https://www1.nyc.gov/assets/hpd/downloads/pdf/about/2017-hvs-initial-findings.pdf>, p. 5, and table 9, page 18.

² <https://www1.nyc.gov/site/hpd/renters/area-median-income.page>.

³ HPD, "Selected Initial Findings", page 23, table 14.

⁴ Affordability for a three-bedroom at 50% of AMI is \$1200 (see, <https://www1.nyc.gov/site/hpd/renters/area-median-income.page>), and the median contract rent for rent-stabilized units was \$1,269 in 2017 (see HPD, "Selected Initial Findings", page 5).

⁵ HPD, "Selected Initial Findings", page 21, table 12.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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SHAUNA NOEL and EMMANUELA SENAT,
Plaintiffs,
vs. 15-CV-5236
CITY OF NEW YORK,
Defendant.
-----x

VIDEOTAPE DEPOSITION OF EDWARD GOETZ
New York, New York
April 5, 2019
9:36 a.m.

Reported by:
ERICA L. RUGGIERI, RPR

1 GOETZ

2 from your current apartment a
3 completely different experience.

4 Q. Does it prevent, this is
5 the third time now, does it prevent
6 my displacement from my current
7 apartment?

8 A. It will not prevent you
9 voluntarily moving from your
10 depart- -- from your apartment into
11 the new unit that you get in the
12 neighborhood.

13 Q. Will it prevent me from
14 being involuntarily moved out of my
15 current apartment?

16 A. No.

17 Q. I'm sorry?

18 A. No. Sorry. No.

19 Q. So let's say that I'm
20 fearful that I'm going to be
21 displaced from my apartment. You
22 don't know anything else about me
23 other than what Ms. Sadok may have
24 told you. You don't know about what
25 my desires beyond my apartment might

1 GOETZ

2 unit, sorry.

3 Q. How does it reduce the
4 fear, I'm just repeating the
5 question, and we went through this
6 in the previous cycle, the specific
7 fear? We are going to -- we are
8 going to get to -- we are going to
9 get to the neighborhood -- we are
10 going to get to the neighborhood
11 issues, the collateral issues. We
12 are going to get to all that.
13 You'll have an opportunity to
14 articulate your position over and
15 over about that. But I want to
16 distinguish between these two
17 things.

18 So in terms of my fear that
19 I'm going to be displaced from my
20 apartment there's nothing that the
21 city can say about community
22 preference that -- that will assure
23 me that I won't be displaced from my
24 apartment, correct?

25 A. The community preference

1 GOETZ

2 policy doesn't operate in that way.
3 The city has other programs that --
4 that are designed to help you in,
5 when you are in a crisis situation
6 facing displacement.

7 Q. So let me ask you this
8 question. Is it involuntary
9 displacement from an apartment when
10 an adult child decides to leave the
11 family home and start her own
12 household?

13 A. That's typically not
14 understood as involuntary
15 displacement.

16 Q. Is it possible that some
17 portion of adult children in that
18 circumstance may wish to stay in
19 their current neighborhood and
20 others may wish to leave their
21 current neighborhood?

22 MS. SADOK: Objection.

23 A. That's a reasonable
24 assumption or hypothesis or
25 hypothetical.

1 GOETZ

2 represent, outsiders using a
3 shorthand for people applying for a
4 lottery who are outside the
5 community district preference area,
6 would what that percentage is have
7 any bearing on your view of the
8 appropriateness of a community
9 preference policy?

10 A. No, it would not.

11 Q. Okay. In terms of the --
12 these outsider applicants, did you
13 determine how many of them, what
14 percentage of them, rather, are at
15 risk of displacement?

16 MS. SADOK: Objection.

17 A. I did not do such an
18 analysis.

19 Q. Okay. Would -- would it
20 matter to you whether only 10
21 percent of those outsider applicants
22 were at risk of displacement or
23 90 percent of those applicants were
24 at risk of displacement in terms of
25 your view of the appropriateness of

1 GOETZ

2 Q. Including -- including the
3 choice to remain where they are?

4 A. Yes.

5 Q. So my question to you is
6 really what I'm going to ask you
7 about now, again. What's the most
8 direct and comprehensive way to
9 determine what choices individual
10 households are making in terms of
11 where they want to compete for
12 affordable housing available in
13 the -- in lotteries?

14 MS. SADOK: Objection.

15 A. It would be their express
16 preferences and what they -- what
17 they apply for.

18 Q. Could you tell -- isn't
19 what they apply for the expression
20 of their preferences?

21 MS. SADOK: Objection.

22 A. I thought that's what I
23 said.

24 Q. Okay. I just wanted to
25 clarify that. You write in the

1 GOETZ

2 and you know it in terms of what
3 you've done and learned about.

4 The policy is that -- and I'm
5 not putting any moral connotation on
6 this. I'm just talking about
7 operationally, the policy, unless it
8 does nothing, unless it's completely
9 ineffectual, reduces the percentage
10 of outsiders who get apartments,
11 right?

12 MS. SADOK: Objection.

13 A. Right. It if it were
14 operating in the way that it was
15 decided -- in the way that it was
16 designed it would have that affect.

17 Q. So talking about the way
18 that it was designed, the policy
19 reduces the chances of many families
20 who want to move to different
21 neighborhoods and could benefit from
22 the mobility, right? I mean there
23 are other things we can -- there are
24 other things we can discuss about
25 it, whether it's justified or not,

1 GOETZ

2 but that part is true, right?

3 MS. SADOK: Objection.

4 Q. If it's working as
5 designed.

6 A. Correct.

7 Q. I think the next few are
8 noncontroversial, but there have
9 been a lot of depositions in this
10 case and I have been proved wrong.

11 You are aware that politicians
12 do not always reflect their -- the
13 views of their constituents or even
14 the majority of their constituents,
15 is that a fair observation about the
16 political world as we inhabit it?

17 MS. SADOK: Objection.

18 A. That is a fair observation.

19 Q. And it would be pretty
20 difficult to -- for them, for any of
21 them to represent the view of all of
22 their constituents, right, because
23 there's a very big, and I think you
24 will agree, kind of bizarre
25 assumption in there that all of

1 GOETZ

2 views changed between then and now?

3 A. No.

4 Q. On the second page in the
5 middle, can you read me the sentence
6 that begins "Second"?

7 A. "Second, we flatter
8 ourselves and slide into paternalism
9 when we act on the idea that we know
10 best about where lower income people
11 of color should live."

12 Q. Do you believe that's true?

13 A. Yes.

14 Q. Let's take a household who
15 is only modestly rent burdened and
16 not in dire need of moving to a less
17 expensive apartment, okay?

18 A. Okay.

19 Q. Particularly, in view of
20 the caution about paternalism that
21 you just recited. Is it legitimate
22 for such a household to decide to
23 move to another neighborhood or
24 another part of the city because she
25 voluntary wants to lower her rent

1 GOETZ

2 truly anti or centrally
3 anti-displacement.

4 Q. Okay. We will -- we will
5 get back to that.

6 Still on page 21 of your
7 report. This is the top paragraph.
8 "The policy prevented displacement
9 prior to the crisis stage sparing
10 households the considerable anxiety
11 of fighting their displacement."

12 Do you see that? And it's
13 right in the --

14 A. Page 21?

15 Q. Page 21, the bottom of the
16 first paragraph, that is just before
17 the first full paragraph.

18 A. Okay. Right.

19 Q. You see that sparing the
20 considerable anxiety?

21 A. Correct.

22 Q. When in the anxiety,
23 displacement anxiety process does
24 the community preference
25 intervention occur?

1 GOETZ

2 MS. SADOK: Objection.

3 A. The point of that statement
4 was to differentiate the community
5 preference policy from some of the
6 tenant legal protection strategies
7 which tend to operate at the crisis
8 stage where the -- the resident is
9 actively fighting displacement.

10 The community preference
11 policy is anticipatory and is a tool
12 that can be utilized by residents
13 when they are in fear of
14 displacement and could be used in
15 anticipation of that.

16 Q. So you are talking about a
17 point where a household fears that
18 there can be displacement in the
19 future; is that right?

20 A. Not exclusively but yes.
21 It -- it operates there where the
22 other approaches don't.

23 Q. So what -- and is it -- is
24 it the existence of the policy that
25 spares them anxiety? What spares

1 GOETZ

2 them the anxiety?

3 MS. SADOK: Objection.

4 Q. What about the community
5 preference policy spares them the
6 anxiety?

7 A. The feeling that they have
8 a preference for -- for affordable
9 units that are being built in the
10 neighborhood so that they could have
11 access to those units. And then
12 were they to actually apply and
13 receive a unit through it, it
14 obviously spares the -- spares any
15 future anxiety.

16 Q. So from what you know, how
17 much comfort should -- should a
18 household worrying about
19 displacement take from the existence
20 of the community preference policy?
21 So if I could just illustrate what I
22 mean.

23 Should a household worried
24 that it's not going to be able to
25 stay in the neighborhood say, you

1 GOETZ

2 know, there's a community preference
3 policy, we really don't have to
4 worry?

5 MS. SADOK: Objection.

6 A. Is that the question?

7 Q. Um-hmm.

8 A. Okay. No, I think that's
9 an oversimplified explanation of the
10 process -- of the process. I think
11 the city -- the -- the family, the
12 household can take solace in a
13 number ways including get --

14 Q. Well --

15 A. -- getting a -- getting a
16 signal from the city that it is
17 serious about dealing with -- with
18 displacement. It can take solace
19 from knowing that it -- that it can
20 access this -- this preference.
21 And -- and as I said before, if they
22 actually receive a unit through the
23 process, there's obvious benefits
24 there as well. But I don't know how
25 you would quantify that in the way

1 GOETZ

2 that you had asked.

3 Q. Well, is there any way you
4 could quantify it?

5 A. Not with precision. You
6 could -- you could do a survey of --
7 of residents and ask a series of
8 questions about -- about their
9 knowledge of the preference and
10 about their concern.

11 You would have to perhaps --
12 so I mean that's a potential way
13 of -- of getting data on it. How
14 that would convert to a -- the
15 measure, comparative measure of --
16 of the impact of one policy over
17 another, would be -- would be a
18 difficult thing to do.

19 Q. That's -- that's -- that's
20 very helpful. So first of all, to
21 clarify, we meaning you, like you
22 don't have any data like that?

23 A. No, I don't.

24 Q. And you brought up an
25 important point. For -- I think.

1 GOETZ

2 For the policy to have an impact on
3 someone, someone would have to know
4 about it, right?

5 A. They would have to
6 understand that -- that the city has
7 this policy and that they may
8 benefit from it.

9 Q. Do you know what portion of
10 people worried about displacement in
11 any neighborhood or every
12 neighborhood know about the policy?

13 MS. SADOK: Objection.

14 A. I don't have that
15 information.

16 Q. Do you know what percentage
17 of people who are worried about
18 displacement are eligible for
19 lottery units that come available in
20 their community district?

21 MS. SADOK: Objection.

22 A. Do I know what percentage
23 of people who are?

24 Q. Worried about the prospect
25 of displacement are eligible for

1 GOETZ

2 lottery apartments that come
3 available in their community
4 district.

5 A. No. But given the fact
6 that concerns of displacement and
7 the risk of displacement tend to
8 increase with declining incomes, I
9 guess would be the -- it's --
10 it's -- it's -- that eligibility is
11 focused on -- on lower income
12 people.

13 Q. You mentioned that -- like
14 the signal of city's seriousness.
15 Could you just explain to me how
16 that spares anxiety? A person
17 doesn't know about the policy and
18 then learns about the policy and
19 understands that at some point in
20 the future there may be a housing
21 lottery for which they may be
22 eligible, which they may or may not
23 get. So they've learned -- they --
24 they have now learned this.

25 Could you explain to me how

1 GOETZ

2 they are spared anxiety?

3 MS. SADOK: Objection.

4 Q. About displacement, about
5 the prospect of displacement?

6 MS. SADOK: Objection.

7 A. So that would -- that would
8 be added to their other knowledge
9 about the degree to which the city
10 is -- is doing -- is taking other
11 steps to reduce displacement.
12 And -- and I think in a sort of
13 natural way, perhaps in a natural
14 way signal to them that because of
15 those steps they will have a -- a
16 greater chance of remaining in the
17 neighborhood.

18 Q. Is there something in terms
19 of the community preference signal
20 that spares them anxiety that you
21 haven't explained to me yet?

22 MS. SADOK: Objection.

23 A. I don't know offhand.

24 Q. Well, you don't know having
25 written a report asserting that it

1 GOETZ

2 spares households the considerable
3 anxiety of fighting their
4 displacement?

5 A. Well, I -- my -- my
6 sentence structure indicates that I
7 was talking about when the community
8 preference policy prevents
9 displacement prior to the stage,
10 that would spare them anxiety.

11 So it's -- it's both the act
12 of being -- of the displacement
13 being prevented, and I think that's
14 what I write about specifically in
15 this sentence.

16 Q. Okay. So -- but we
17 talked -- we talked about that
18 earlier, that you don't have any
19 information about how many people
20 who get community preference
21 apartments would have been displaced
22 in the absence of the policy, right?

23 A. But we know the degree of
24 risks given all these indicators
25 about -- that I also mentioned

1 GOETZ

2 earlier about percentage of income
3 data on rent and the number of
4 affordable units and changes in the
5 housing stock.

6 Q. You are talking about, I
7 think, hundreds of thousands of
8 households who are worried about
9 displace- -- the prospect of
10 displacement, right?

11 MS. SADOK: Objection.

12 A. Again, I don't -- I don't
13 know the degree of worry. I know
14 through these indirect or through
15 these measures the -- the risk.

16 Q. But there are a lot of
17 households who are worried about
18 displacement. I mean that's --

19 A. I think --

20 Q. -- what I understood your
21 report to be saying.

22 If someone were thinking about
23 being spared anxiety, either of
24 fighting in it -- or fighting a
25 displacement or spared of the

1 GOETZ

2 anxiety of worrying about
3 displacement, and were able to ask
4 the city like how much stock should
5 I place in the prospect of my being
6 able to get an apartment through
7 community preference, what should
8 they be told?

9 MS. SADOK: Objection.

10 A. That -- they should be told
11 that this is a process by which they
12 can receive preference in the
13 lottery for a unit in their
14 community.

15 Q. You think that it would be
16 appropriate for -- if the city were
17 to say, don't worry, you know, in
18 the next year or so you should be
19 able to get an apartment in your
20 neighborhood through community
21 preference?

22 MS. SADOK: Objection.

23 A. Do I think that would be
24 appropriate?

25 Q. Yeah.

1 GOETZ

2 A. I don't know on what basis
3 they would make a statement like
4 that because the -- the -- because
5 of the magnitude of the -- of the
6 need for the program and the
7 relative size of the number of new
8 units that are subject to the
9 community preference. I think the
10 demand is strong and stronger than
11 the supply and -- which is why the
12 policy is necessary.

13 Q. So to put it another way,
14 the city would be doing a disservice
15 to, would be misleading residents
16 worried about displacement if it
17 were to say don't worry, it's likely
18 in the next year or so you'll be
19 able to get a lottery apartment you
20 qualify for through the community
21 preference?

22 MS. SADOK: Objection.

23 A. I think that would be
24 exaggerating the -- I think that
25 the -- I think the city should say

1 GOETZ

2 essentially exactly what the program
3 does and that it enhances their
4 likelihood and -- and that's what it
5 does.

6 Q. So someone worried about
7 displacement should just be thinking
8 about it not in terms of I'm likely
9 to get an apartment, they shouldn't
10 be -- they shouldn't think about
11 the -- the program in an anxiety
12 reducing way as, oh, good, I'm
13 likely to get an apartment, they
14 should think about it in terms of I
15 feel better that the city is trying
16 to give people in my position an
17 edge?

18 MS. SADOK: Objection.

19 A. That -- that they have a
20 greater likelihood because of the
21 existence of this policy.

22 Q. But in a full disclosure
23 kind of way wouldn't it be a little,
24 I don't know if this is the
25 technical term, but like a little

1

GOETZ

2

sleazeball to kind of leave a

3

general -- just a general impression

4

of a greater likelihood than there

5

otherwise would be without the

6

caveat that the chances that

7

something will meet your needs in

8

the time frame you need it and

9

you'll be eligible for it and you'll

10

get it is not that great?

11

MS. SADOK: Objection.

12

A. I don't know that the city

13

does that one way or the other. I

14

think that the approach would be as

15

I have suggested, which is that

16

because of the community preference

17

you have an enhanced likelihood. We

18

are also working to protect your --

19

your rights vis-à-vis your

20

relationship with your landlord. We

21

are doing our best to preserve as

22

many affordable housing units in

23

the -- in the city as possible so

24

that in the course of normal flux in

25

the market there might be more

1 GOETZ

2 choice for you there as well.

3 Q. I think I understand you to
4 be saying that there's some
5 nonquantified incremental fear or
6 anxiety reduction that the existence
7 of the community preference policy
8 may provide to some people who know
9 about the policy?

10 A. To residents of -- of
11 community districts who want to
12 remain in -- in those districts.

13 Q. Yes. That was a yes? I
14 don't think that the reporter got
15 that. Is that correct?

16 A. Yes.

17 Q. Did I ask you the question
18 of how you distinguish between a
19 household who would not have been
20 displaced even if it had not gotten
21 a community preference apartment and
22 a household who would have been
23 displaced if it had not gotten a
24 community preference apartment?

25 A. Yes.

1
2 STATE OF NEW YORK)
3) : ss
4 COUNTY OF NEW YORK)
5

6 I, EDWARD GOETZ, the witness
7 herein, having read the foregoing
8 testimony of the pages of this
9 deposition, do hereby certify it to
10 be a true and correct transcript,
11 subject to the corrections, if any,
12 shown on the attached page.

13 
14 _____
15 EDWARD GOETZ
16
17
18

19 Sworn and subscribed to before me,
20 this 4th day of June,
21 2019.

22 Ave Maria Brennan
23 _____
24 Notary Public

25 AVE MARIA BRENNAN
NOTARY PUBLIC, State of New York
0182 No. 24-4527182
Qualified in Kings County
Certificate filed in New York County
Commission Expires July 31, 198... 2022

1
2 STATE OF NEW YORK)

3 ss.:

4 COUNTY OF NEW YORK)

5
6 I, ERICA L. RUGGIERI, RPR and
7 a Notary Public within and for the
8 State of New York, do hereby
9 certify:

10 That I reported the
11 proceedings in the within-entitled
12 matter, and that the within
13 transcript is a true record of such
14 proceedings.

15 I further certify that I am
16 not related by blood or marriage,
17 to any of the parties in this
18 matter and that I am in no way
19 interested in the outcome of this
20 matter.

21 IN WITNESS WHEREOF, I have
22 hereunto set my hand this 11th day
23 of April, 2019.

24 

25 ERICA L. RUGGIERI, RPR, CSR, CLR

ERRATA

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

PAGE LINE

42 23 CHANGE: remove "It". On line 24 add "A." and "It" before "could have"
REASON: transcription error. This is the witness responding.

44 23, 25 CHANGE: "Wiley" to "Wyly"
REASON: incorrect spelling

55 15 CHANGE: remove the word "than" between "that" and "then"
REASON: to clarify the intent of the sentence.

57 16 CHANGE: remove the word "priced"
REASON: to clarify the intent of the sentence.

60 14 CHANGE: change the word "is" to "are"
REASON: grammatical correction

61 3 CHANGE: "Wiley" to "Wyly"
REASON: incorrect spelling

64 13 CHANGE: "Wiley" to "Wyly"
REASON: incorrect spelling

69 11 CHANGE: "Wiley" to "Wyly"
REASON: incorrect spelling

82 23 CHANGE: "Wiley" to "Wyly"
REASON: incorrect spelling

83 15, 18 CHANGE: "Wiley" to "Wyly"
REASON: incorrect spelling

92 2 CHANGE: "Livery side" to "Lower East Side"
REASON: transcription error

112 9 CHANGE: add the word "in" in between "posed" and "the"
REASON: to clarify the intent of the sentence.

122 15 CHANGE: "express" to "expressed"
REASON: transcription error

165 6 CHANGE: remove the word "be"
REASON: to clarify the intent of the sentence.

165 21 CHANGE: add a dash ("---") in between "self" and "by definition"
REASON: to clarify the intent of the sentence.

169 25 CHANGE: "I" to "it"
REASON: to clarify the intent of the sentence.

193 2 CHANGE: the word "it" to "they"
REASON: grammatical correction

196 6 CHANGE: "topology" to "typology"
REASON: incorrect spelling

196 20 CHANGE: "there" to "they"
REASON: transcription error

198 2 CHANGE: "I think that" to "I don't think that"
REASON: to clarify the intent of the sentence.

200 12 CHANGE: "Best" to "Thus"
REASON: transcription error

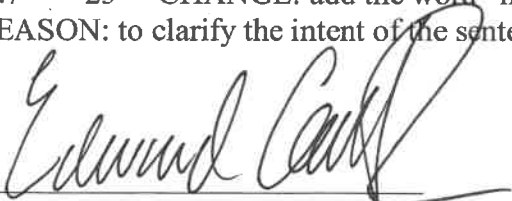
203 9 CHANGE: add "- -" between "constraining" and "or"

207 8 CHANGE: "topology" to "typology"
REASON: incorrect spelling

210 15 CHANGE: add the word "be" after "would"
REASON: to clarify the intent of sentence.

219 17 CHANGE: "topology" to "typology"
REASON: incorrect spelling

227 23 CHANGE: add the word "lies" after "policy"
REASON: to clarify the intent of the sentence.


EDWARD GOETZ

6-4-19
DATE

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 4th DAY OF June, 2019.


NOTARY PUBLIC

AVE MARIA BRENNAN
NOTARY PUBLIC, State of New York
0182 No. 24-4527182
Qualified in Kings County
Certificate filed in New York County
Commission Expires July 31, 198... 2022

COMMISSION EXPIRES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SHAUNA NOEL and EMMANUELA

SENAT,

Plaintiffs,

-against-

Civil Action No.:

15-CV-5236

CITY OF NEW YORK,

Defendant.

-----x

July 31, 2019

10:08 a.m.

VIDEOTAPED DEPOSITION of EDWARD GLENN GOETZ,
taken by Plaintiffs, pursuant to Notice, held at the
law offices of Cuti Hecker Wang, LLP, 305 Broadway,
New York, New York, before Judith Castore, a
Certified Livenote Reporter and Notary Public of the
State of New York.

1 GOETZ

2 Q At the very end before our
3 break you were talking about your
4 understanding generally even from other
5 jurisdictions that community preference
6 policies, I believe you said were
7 aimed, based on your understanding, at
8 preventing or addressing displacement,
9 correct?

10 A That's correct.

11 Q Is it your understanding that
12 the community preference policy does,
13 in fact, actually serve to prevent
14 displacement in New York City?

15 A It is my understanding that
16 every time a household benefits from
17 the community preference policy and
18 gains access to an affordable unit in
19 the community district, that they have
20 benefited from the program, yes.

21 Q But there is no data and you
22 have no basis for understanding whether
23 they actually would have been displaced
24 from the neighborhood but for that
25 benefit; isn't that correct?

1 GOETZ

2 MS. POLIFIONE: Objection.

3 A So, that is correct.

4 And I think that the policy
5 operates -- it would be very difficult
6 administratively to operate a program
7 and collect individual level data on
8 an -- and assess the relative risks of
9 displacement for each and every
10 household that applies.

11 And, so like many public
12 policies in a lot of different areas,
13 it relies really, sort of, on proxy
14 measures. And that includes -- and in
15 this case, I think the appropriate
16 proxies are built into the policy
17 itself which is that people of limited
18 means, people who are eligible for
19 affordable housing, are at risk of
20 displacement in this current housing
21 market in New York City.

22 Q Right.

23 And if I understood what you
24 just said, so the income level is, in
25 this instance, a proxy for identifying

1 GOETZ

2 Q On a slightly different
3 topic, to be clear, a community
4 district does contain multiple
5 neighborhoods; is that correct?

6 MS. POLIFIONE: Objection.

7 A Neighborhoods, yes, that's
8 correct.

9 Q And it's fair to say that
10 through the community preference policy
11 you may get placed in a building that
12 is inside your community district but
13 it may not be in your actual
14 neighborhood, right?

15 MS. POLIFIONE: Objection.

16 A It would be in your community
17 district.

18 Q And it could potentially be
19 actually quite far from your
20 neighborhood as opposed to a
21 development that might actually be
22 closer to you, but, technically, in
23 another community district; isn't that
24 correct?

25 A That is possible.

1 GOETZ

2 MS. POLIFIONE: Objection.

3 A It's going to be income
4 eligible households, right.

5 Q So you have some information
6 already about who is going to get the
7 benefit, right? It's going to only be
8 people who meet certain income
9 thresholds?

10 A That's correct.

11 Q Okay?

12 A Or who fit a disability
13 profile depending on, of course, unit
14 --

15 Q -- depending on the
16 preference or the unit, right. Okay.

17 Is it fair to say that you
18 would agree that rent burden is another
19 proxy for the risk of displacement?

20 A Yes. I think you could
21 interpret that as a proxy. Not a
22 perfect one, but no proxies are.

23 Q Do you have any basis to
24 believe or understand that applications
25 that come from insiders in an

A C K N O W L E D G E M E N T

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

I, EDWARD GLENN GOETZ, certify, I have read the transcript of my testimony taken under oath in my deposition of July 31, 2019; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

Edward Glenn Goetz

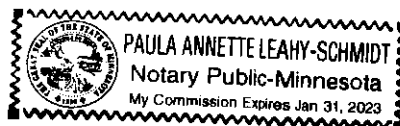
EDWARD GLENN GOETZ

Sworn and subscribed to before me

this 4th day of September, 2019

Paula Leahy Schmidt

Notary Public



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

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That EDWARD GLENN GOETZ, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that this
transcript of such examination is a true
record of the testimony given by such
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 12th day of August, 2019.



JUDITH CASTORE

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 JANELL WINFIELD, TRACEY
6 STEWART and SHAUNA NOEL,
7 Plaintiffs,
8 -against-

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

9 CITY OF NEW YORK,
10 Defendant.
11 -----x

12 VIDEOTAPED DEPOSITION OF
13 PURNIMA KAPUR
14 New York, New York
15 April 19, 2018
16 9:31 a.m.

17
18
19
20
21 Reported by:
22 JUDITH CASTORE, CLR
23
24
25

1 KAPUR

2 you have in respect to a specific
3 council member for saying that?

4 MS. SADOK: Objection.

5 A In the rezonings that the
6 city has adopted, we've heard those
7 concerns from the council members.

8 Q What concerns?

9 A About their community --
10 community's affordable needs being
11 addressed, and one of the ways is
12 through the community preference
13 process.

14 Q So to begin -- you can begin
15 anywhere you wish -- identify a council
16 member who you have specific reason to
17 believe that in a future world without
18 community preference that council
19 member would automatically turn down
20 land use or zoning changes needed for
21 affordable housing regardless of the
22 other merits of the land use proposal
23 or zoning change simply because there
24 was no longer community preference?

25 MS. SADOK: Objection.

1 KAPUR

2 A I couldn't speculate on that.

3 Q There is not -- there's not
4 one that would go beyond speculation?

5 A As I've said, my sense is
6 that all of them would be opposed to
7 that.

8 Q Okay.

9 But I'm asking for a specific
10 council member that you have a specific
11 reason to believe would act in the
12 future in the way I've described, so
13 I'll ask again for you to please begin
14 with identifying one?

15 A As I've said, I could not
16 speculate on that.

17 Q Former HPD Commissioner Been
18 says that former council speaker
19 Mark-Viverito falls into that category.

20 Do you agree?

21 MS. SADOK: Objection.

22 A It's possible.

23 Q What is your belief, does she
24 fall into that category?

25 MS. SADOK: Objection.

1 KAPUR

2 A It is very possible. The
3 East Harlem rezoning brought out people
4 from her community who were extremely
5 concerned about being displaced as new
6 development comes in and in the
7 affordable housing projects that are
8 underway wanting a share of those
9 projects.

10 Q And so you're not prepared to
11 say that if she were still in the
12 council that she would automatically
13 turn down a proposal regardless of its
14 merits because the absence of community
15 preference; is that correct?

16 MS. SADOK: Objection.

17 A That would be speculating. I
18 don't know whether she would or she
19 would not. That was not presented to
20 her in that way.

21 Q Ms. Been said that she has no
22 reason to believe that either the
23 current speaker Cory Johnson or council
24 member Torres would fall into that
25 category.

1 KAPUR

2 So I am not sure that I even
3 understand your question fully.

4 Q Do you understand either
5 primary or secondary displacement to
6 have anything to do with people being
7 forced to leave an area of their
8 city -- of the city against their will?

9 MS. SADOK: Objection.

10 A Displacement when it is not
11 an option is a displacement that is not
12 wanted by whatever means.

13 Q So --

14 A But may I continue?

15 Q Yes. Please.

16 A In a city like New York where
17 our population is constantly moving and
18 changing, it is -- where it is
19 difficult to discern is whether that
20 movement is voluntary or not.

21 Q So just to expand on your
22 point, if I may. You are able to tell
23 how much or approximately how much
24 population change there is in a
25 neighborhood or community district; is

1 KAPUR

2 that right?

3 A The higher the geography the
4 more predictable it is. When it comes
5 to a neighborhood level, it's very
6 difficult to make those kinds of --
7 sort of statistical determinations in
8 any meaningful way.

9 Q What about a Puma?

10 A I believe that's what they
11 look at, but I don't know if they look
12 at Pumas for specific changes in
13 population to the degree that we do on
14 a broader border wide basis.

15 Q So at some levels of
16 geography you're able to tell the
17 extent of population change; is that
18 correct?

19 A Correct.

20 Q But what, if I'm
21 understanding you correctly, is not
22 possible to do is to determine how much
23 of that change is displacement related;
24 is that right?

25 MS. SADOK: Objection.

1 KAPUR

2 A What we cannot discern is why
3 people have moved. So I don't know --
4 any movement from one area to the other
5 is a change in population. Whether
6 that is a voluntary change or not is
7 the question I think that you are
8 asking that I'm saying we cannot figure
9 out.

10 Q So I realize, and I think we
11 agree, that there is a world of reasons
12 that people might move right, yes?

13 A Yes.

14 Q To be closer to a new job?

15 A Right.

16 Q To be closer to one spouse's
17 or another's family?

18 A Right.

19 Q To be closer to your child's
20 school, correct?

21 A Yes.

22 Q So one subcategory of move is
23 a move that reflects displacement,
24 correct?

25 MS. SADOK: Objection.

1 KAPUR

2 A It could be. I mean, yes. A
3 lot of people move to places, as you've
4 said, for different reasons. But
5 ultimately it's their ability to be
6 able to afford to live in a place.

7 Q You're not suggesting that
8 zero people are displaced, that is have
9 involuntary moves?

10 A I'm not suggesting that at
11 all.

12 Q But what you are saying is
13 identifying how many people of those
14 who move are moving because of
15 displacement is what cannot be
16 discerned; is that correct?

17 MS. SADOK: Objection.

18 A What I'm saying is that
19 people may move because they're forced
20 to move for many reasons; a new job,
21 you know, being family imperatives,
22 schools, or their ability to be able to
23 afford the rent where they are.

24 Q Are you able to distinguish
25 between and among those types of moves?

1 KAPUR

2 A Nope.

3 Q Are you able to distinguish
4 between those types of moves on the one
5 hand and the type of move where someone
6 says, I think I'd just like to be
7 living in the new part of the city?

8 MS. SADOK: Objection.

9 A Not that I'm aware of.
10 I'm not a either -- you know,
11 a statistician or a population expert,
12 but --

13 Q But you are not aware of
14 documentation that specifies different
15 types of moves, including this
16 displacement subcategory from any other
17 source than DCP, are you, city or
18 non-city?

19 MS. SADOK: Objection.

20 A I don't believe I am. Other
21 than in the context of a projection in
22 an EIS, I am not.

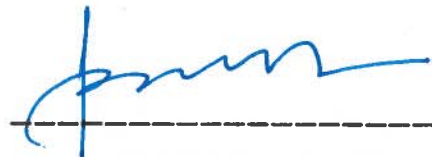
23 Q I understand.

24 Now, over the years -- now
25 we'll bring back in your Brooklyn

Page 274

1
2 STATE OF New York)
3) : ss
4 COUNTY OF New York)
5
6

7 I, PURNIMA KAPUR, the witness
8 herein, having read the foregoing
9 testimony of the pages of this deposition,
10 do hereby certify it to be a true and
11 correct transcript, subject to the
12 corrections, if any, shown on the attached
13 page.
14

15 
16

PURNIMA KAPUR

17
18
19
20 Sworn and subscribed to before me,
21 this 7th day of June, 2018.
22

23 
24

Notary Public

25

DOMINICK H. ANSWINI NOTARY PUBLIC, STATE OF NEW YORK Registration No. 02AN6289008 Qualified in New York County Commission Expires Sept. 16, 20 <u>21</u>
--

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

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That PURNIMA KAPUR, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that this transcript
of such examination is a true record of
the testimony given by such 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 30th day of April, 2018.



JUDITH CASTORE

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

-----x

JANELL WINFIELD, TRACEY
4 STEWART and SHAUNA NOEL,
5 Plaintiffs,

-against-

Civil Action No.:
15CV5236(LTS)(KHP)

7 CITY OF NEW YORK,
8 Defendant.

-----x

9
10
11 VIDEOTAPED DEPOSITION OF
12 ELYZABETH GAUMER
13 New York, New York
14 May 18, 2018
15 9:25 a.m.

16
17
18
19
20
21 Reported by:
JUDITH CASTORE, CLR

1 GAUMER

2 there's anybody in HPD who is -- now
3 I'll use another one of those phrases,
4 who's the point person on that, if
5 there is one?

6 A I don't know.

7 Q Is the term secondary
8 displacement familiar to you?

9 A I'm sorry, secondary?

10 Q Secondary displacement?

11 A No.

12 Q Is the term displacement
13 familiar to you?

14 A Generally.

15 Q To your knowledge, does HPD
16 have solid specific data on the extent
17 of displacement, if any, in New York
18 City?

19 MS. SADOK: Objection.

20 A So I'm not quite sure what we
21 mean by solid. I can say that I think
22 this is not unique to HPD. That we
23 have reliable data on certain
24 dimensions of the city's housing market
25 that we know are components of the

1 GAUMER

2 phenomenon typically called
3 displacement. There are other parts of
4 displacement or what is commonly
5 referred to as displacement, from my
6 knowledge, that are very challenging to
7 measure and, as such, there are very
8 limited data available.

9 Q Is -- that was a very long
10 mouthful that you gave in the first
11 part, but on the second part -- on the
12 second part people commonly refer to as
13 displacement, that limited data
14 difficult to measure, is -- do you
15 include in that how many people are
16 being displaced?

17 A I'm sorry, in the -- in what
18 I said is difficult to measure?

19 Q Difficult to measure and
20 having limited data?

21 A It is difficult to measure
22 the number, yes.

23 Q And are there limited data?

24 A There are limited data.

25 Q Let's say I'm fearful about

1
2 STATE OF New York)
3) : ss
4 COUNTY OF New York)
5
6

7 I, ELYZABETH GAUMER, the witness
8 herein, having read the foregoing
9 testimony of the pages of this deposition,
10 do hereby certify it to be a true and
11 correct transcript, subject to the
12 corrections, if any, shown on the attached
13 page.

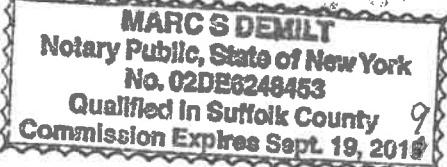
14
15 

16 ELYZABETH GAUMER
17
18
19

20 Sworn and subscribed to before me,
21 this 19th day of July, 2018.
22

23 

24 Notary Public
25



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

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That ELYZABETH GAUMER, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that this
transcript of such examination is a true
record of the testimony given by such
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 29th day of May, 2018.



JUDITH CASTORE

To: Capperis, Sean (HPD)
Subject: next steps on displacement policy

I'd like to put together in one place all of our work that's going on around displacement, and what else needs to be done. It's so scattered between working groups, our own team, etc. and I feel like we touch on a lot of pieces of it. Here's my attempt at a census of everything:

-
-
-

Active Working Groups

-
Community Preference working group

How it relates to displacement: We justify the policy because it prevents displacement. But we don't have good metrics to show that displacement is occurring. What I'd like to do is start building a "case" for anti-displacement policy. I think what we need to focus on is that market conditions are a recipe for displacement because we can't "prove" that displacement is occurring.

Possible measures to explore: Your rental building acquisition appreciation maps. MIH testimonies. City median rent growth as compared with median wage growth. Loss of rent stabilized units. Furman Center's work (we just point to that).

Certification of No Harassment working group

How it relates to displacement: The group exists to prevent harassment and develop policies to prevent displacement

Possible measures to explore: While the group exists to find anti-harassment

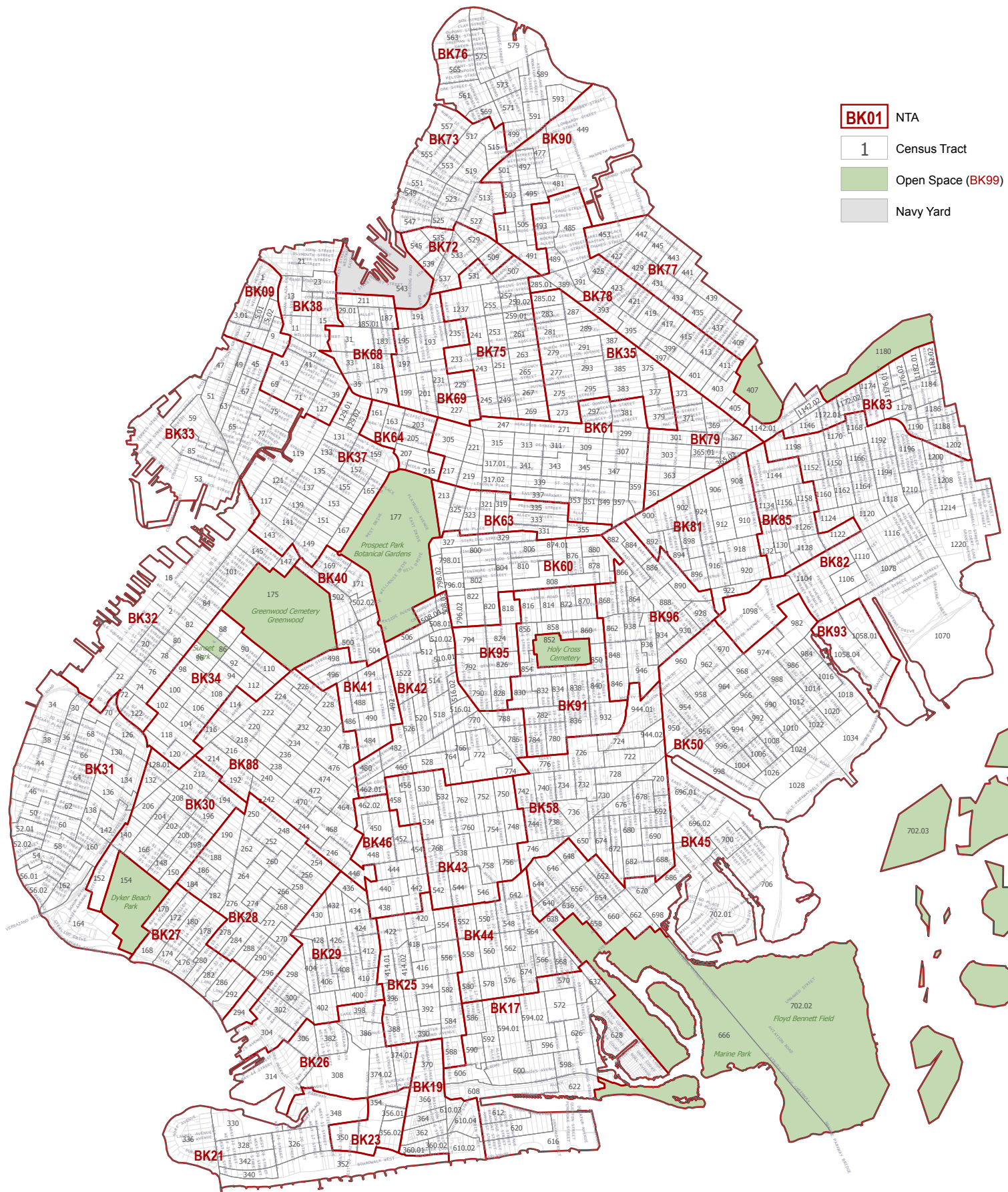
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Matthew Murphy
Department of Housing Preservation & Development
[Redacted - PII]

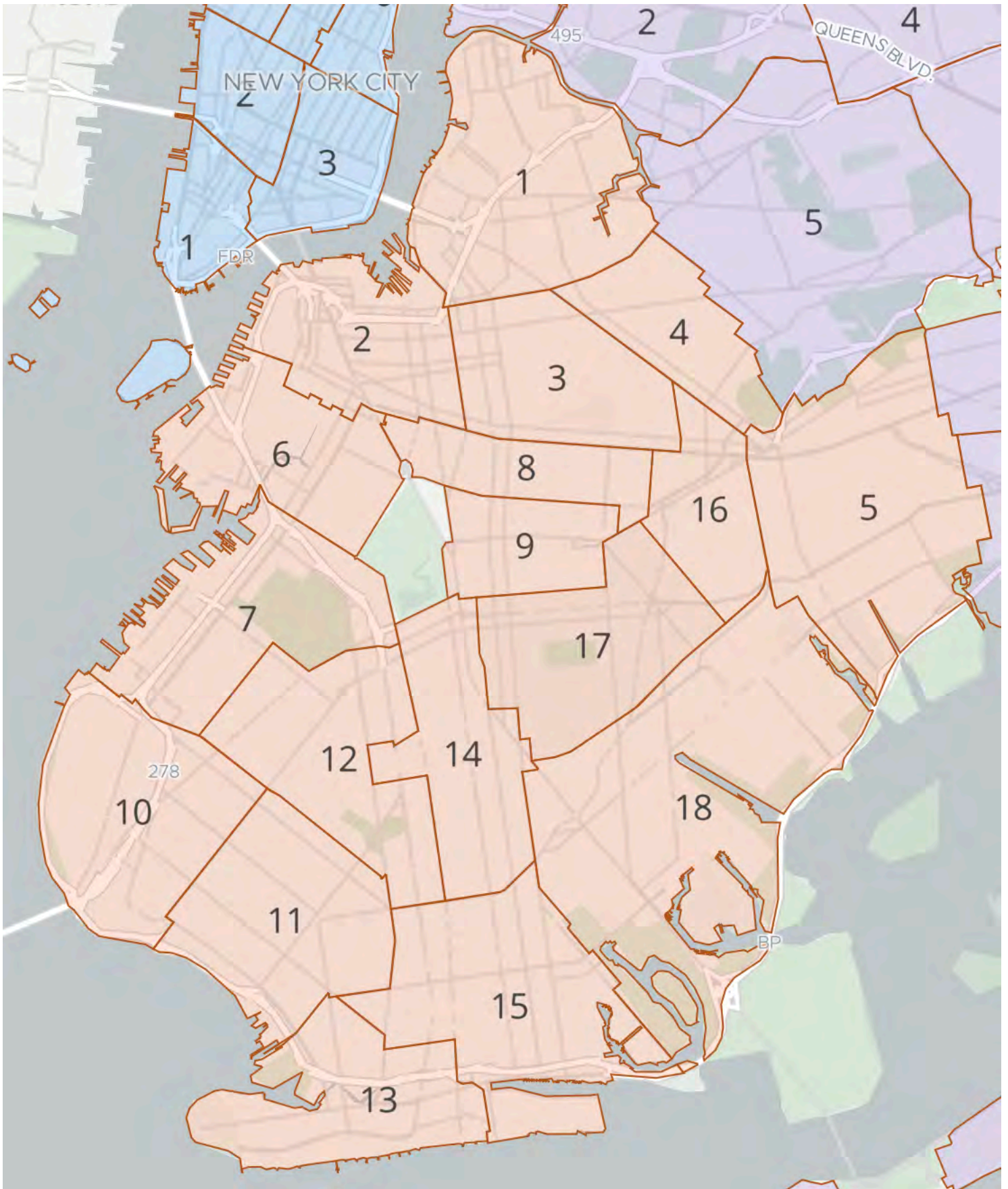
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Brooklyn 2010 Census Tracts by Neighborhood Tabulation Area*

Case 2:05-cv-06236-LTS-KHP Document 885-26 Filed 03/06/20 Page 1 of 2



* Neighborhood Tabulation Areas or NTAs, are aggregations of census tracts that are subsets of New York City's 55 Public Use Microdata Areas (PUMAs). Primarily due to these constraints, NTA boundaries and their associated names may not definitively represent neighborhoods.



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

VIDEOTAPED

DEPOSITION OF ALICIA GLEN

New York, New York

November 3, 2017

9:26 a.m.

Reported by:
JUDITH CASTORE, CLR
Job No. 52429

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GLEN

whether you are going to have
development that is helped to be shaped
by the city that has a mandatory
affordable component?

Have I captured kind of the
bottom line for the administration in
trying to rebut opposition --

MS. SADOK: Objection.

Q -- of development projects?

MS. SADOK: Objection.

A Yes.

Q Now, there is more than one
tool that the administration has to
deal with a particular council member's
opposition, right?

MS. SADOK: Objection.

A Well, as you pointed out
different, council members have
different issues. So it's not one size
fits all.

Q I understand that, but
your -- I hate to use this word, so I
apologize for it -- your tool kit --

A Yes.

1 GLEN

2 Q -- has a variety of items in
3 it that you can take out and try to not
4 to anything untoward, try to satisfy
5 some of the concerns of a council
6 member, right?

7 A Yes.

8 MS. SADOK: Objection.

9 A Sorry.

10 MS. SADOK: Objection.

11 A Yes.

12 Q So what are the principal
13 tools?

14 MS. SADOK: Objection.

15 A For what hypothetical?

16 Q No, no hypotheticals. For
17 when you have encountered council
18 member opposition.

19 You know, I understand that
20 you gave as an example earlier somebody
21 didn't like the color of the brick. So
22 we don't have to get down to the level
23 where the administration says, Okay,
24 we'll make it a darker red. But are
25 there significant things that the

1 GLEN

2 sewers. The council member --

3 A Yes, they do.

4 Q Well, do they --

5 A That's what the EIS is. Are
6 you familiar with EISs and the land use
7 process and the mitigation of
8 impacts --

9 Q I just want to be --

10 A -- and what SEQR requires?

11 Q I just want to be totally
12 clear that we're going -- about two
13 things: We're going to continue
14 with -- I will be asking the questions;
15 and, number two, I'm not asking you
16 about the EIS. I'm not asking you
17 about EIS.

18 I'm asking you, which I
19 didn't think was a matter of contention
20 in any way, that council members feel
21 that there are -- often feel that there
22 are a number of unmet needs in their
23 district, and they commonly bring those
24 to the negotiating table with the
25 administration, don't they?

1 GLEN

2 A Yes.

3 MS. SADOK: Objection.

4 Q And in the course of these
5 negotiations, it's very unusual for the
6 council member to get everything on his
7 or her laundry list; is that right?

8 MS. SADOK: Objection.

9 A Yes.

10 Q So I want you to imagine a
11 situation that's an unpleasant
12 situation from your point of you. But
13 I want you to imagine a situation where
14 this case has been resolved by a court
15 order that commits the city to an equal
16 access plan in its affordable housing
17 lotteries; that is, everybody, every
18 resident of the city, regardless of
19 where in the city he or she lives, gets
20 an equal chance for all apartments that
21 are not set aside for people with
22 disabilities or given by referral to
23 homeless New Yorkers or where there's a
24 preference for municipal workers.

25 Can you do that?

1 GLEN

2 city?

3 MS. SADOK: Objection.

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

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

9 MS. SADOK: Objection.

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

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

22 MS. SADOK: Objection.

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

1 GLEN

2 if the percentage were cut from
3 50 percent to 30 percent?

4 MS. SADOK: Objection.

5 A Yes.

6 Q We have a better
7 understanding of what you mean by
8 "tragedy."

9 So let's say that came to
10 pass, the no community preference, and
11 they're trying to get a project through
12 that requires the district's council
13 member to be on board.

14 And the council member is the
15 sort of most critical person outside of
16 the administration, right, when you are
17 trying to get approval?

18 MS. SADOK: Objection.

19 Q The area's council member?

20 A Well, it's under ULURP. Yes.

21 (Clarification by the
22 reporter.)

23 A Yes. You need the council to
24 approve the action.

25 Q So the council -- like the

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GLEN

gentrification. Yes, he certainly says that a lot.

Q Well, I was asking you about the Bloomberg Administration, and if you look at 59, you see, in the first statement -- this is from -- this is one from the city, the city's website -- you see the mayor's first statement: And over the last 15, 20 years.

Could you just read the next few sentences of what the mayor said?

A And over the last particular 15, 20 years, gentrification has had just a rampant impact and it's changed the nature of the city. But guess what? The city government didn't respond. There was no policy. There wasn't even a serious discussion in the city.

Q Thank you.

So is that statement that you read consistent with what you understand the mayor's view of the

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GLEN

predecessor administration's policy to
be?

MS. SADOK: Objection.

A I believe the mayor feels
pretty strongly that the Bloomberg
Administration didn't have policies
that were focused on maintaining
affordability and keeping people in
their houses, and, as you know, he ran
on a platform of growing inequality and
that he wanted to change that arch.
And I think he disagrees with a lot of
the Bloomberg era policies. That's
pretty straightforward.

Q I think so. And he ran on a
policy that there was growing
inequality and that he sought to reduce
that inequality, right?

A I think that's a fair
characterization of the basic theme of
his campaign.

Q Okay. Now, in concrete
terms, the current administration is
taking many anti-displacement steps

1 GLEN

2 that its predecessor had not taken. Is
3 that true?

4 A I believe we have added a
5 significant number of programs and
6 dollars to a variety of different
7 strategies to prevent displacement,
8 like funding legal services, having an
9 anti-harassment task force with the
10 Attorney General, with a more
11 aggressive policy to identify buildings
12 that are coming out of Section 8 and
13 other federal programs and working with
14 landlords to keep those buildings in
15 affordable housing regimens.

16 Yes, I believe we have been
17 more aggressive and have been
18 implementing the mayor's agenda.
19 That's what we're here to do.

20 Q Is part of that now providing
21 incentives to owners of buildings at
22 risk of leaving rent regulated status?

23 A We have a couple of programs
24 where we work with private owners.
25 Some of them may have been in

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GLEN

between neighborhoods. My sense is that people in New York City generally tend to move, like, once; because nobody likes to move. Because it's the worst. Moving really sucks.

Q Okay. As a policy matter, as deputy mayor, you often have constrained choices, but if you had to pick, are you more concerned if a city resident is no longer able to live in the city at all or no longer able to live in a particular neighborhood?

A I never really thought about that.

Well, it's my job to keep people happy and living in New York. So I guess I would say my primary goal is I'm the deputy mayor of the City of New York, so I want New Yorkers to love New York and stay in New York. I certainly don't want anybody moving to, like, Boston.

Q So as between the two, keeping people in the city is more

1 GLEN

2 A Yes.

3 Q And you say, a little further
4 down on the page at the end of your
5 next answer, I think it's already a
6 value statement to assume that it's bad
7 if people move into other neighborhoods
8 these are further away because that
9 just runs afoul of the history of the
10 world.

11 That's your view, correct,
12 that the person who is moving out of
13 Manhattan to another part of New York
14 City should not be viewed negatively?

15 A Correct.

16 Q Should not be viewed as a
17 interloper?

18 MS. SADOK: Objection.

19 A Yeah, I think that's fair.

20 Q Could that person become
21 highly invested in and contribute to
22 her new neighborhood in Queens?

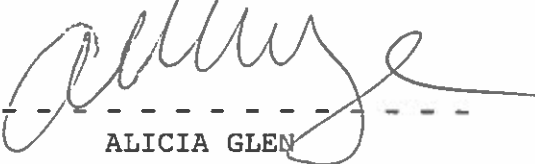
23 MS. SADOK: Objection.

24 A Sure. Any individual person
25 could be, and I'm sure there are many

A C K N O W L E D G E M E N T

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

I, ALICIA GLEN, certify, I have read the transcript of my testimony taken under oath in my deposition of November 3, 2017; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.



ALICIA GLEN

Sworn and subscribed to before me
this 11 day of December 2017.


Notary Public

KATHERINE P. COCKLIN
NOTARY PUBLIC-STATE OF NEW YORK
No. 02CO6328584
Qualified In New York County
My Commission Expires August 03, 2017

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

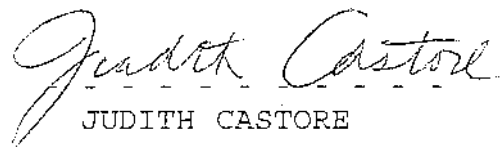
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That ALICIA GLEN, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that this transcript
of such examination is a true record of
the testimony given by such 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 8th day of November,
2017.


JUDITH CASTORE

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 JANELL WINFIELD, TRACEY
6 STEWART and SHAUNA NOEL,
7 Plaintiffs,
8 -against-

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

9 CITY OF NEW YORK,
10 Defendant.
11 -----x

12 DEPOSITION OF
13 JOSEPH SALVO
14 New York, New York
15 November 27, 2018
16 10:47 a.m.

17
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21 Reported by:
22 JUDITH CASTORE, CLR
23
24
25

1 SALVO

2 contacts with the community and also I
3 can't distinguish generations in the
4 data, but I can look at age structure,
5 we see younger people going into
6 Bensonhurst and spreading out in
7 different parts of Brooklyn. So over
8 time it is very common for that first
9 group to give rise to further migration
10 to other parts of the city and in some
11 cases to other parts of the metro area.

12 Q Right. That's -- that's
13 interesting but not the answer to the
14 question that I asked.

15 A You asked me what happens.

16 Q I asked you what happens when
17 an enclave group is not ready to move
18 out but others are ready to move in.
19 Isn't -- isn't that a formula for
20 resistance to change for conflict?

21 MS. DALAL: Objection.

22 A One of the points I make in
23 virtually every presentation I give is
24 that the ebb and flow of people at the
25 community level is very high judging

1 SALVO

2 from the data that I have.

3 There are very few
4 communities in the city where what
5 you're saying would be true. People
6 are constantly in flux.

7 Q So there's nothing
8 historically unusual about people
9 moving in and out of neighborhoods for
10 varied sets of reasons, correct?

11 A That is correct, yes.

12 MR. GURIAN: I think what it
13 would be useful to do is for us to
14 take a break, I can gather
15 together the balance of things I
16 want to refer to and then we can
17 finish up if that's okay.

18 VIDEOGRAPHER: We're off the
19 record at 5:11 p.m. This marks
20 the end of Media 4. We have five
21 hours elapsed on the record.

22 (Whereupon, a brief recess
23 was taken.)

24 VIDEOGRAPHER: We are back on
25 the record at 5:22 p.m. This

1
2 STATE OF NEW YORK)
3) : ss
4 COUNTY OF NEW YORK)
5
6

7 I, JOSEPH SALVO, the witness
8 herein, having read the foregoing
9 testimony of the pages of this deposition,
10 do hereby certify it to be a true and
11 correct transcript, subject to the
12 corrections, if any, shown on the attached
13 page.
14

15 Joseph Salvo
16 JOSEPH SALVO
17
18
19

20 Sworn and subscribed to before me,
21 this 18th day of January, ~~2018~~.
22 2019

23 Dominick Answini

24 Notary Public
25

DOMINICK H. ANSWINI NOTARY PUBLIC, STATE OF NEW YORK Registration No. 02AN8289008 Qualified in New York County Commission Expires Sept. 16, 20 <u>21</u>
--

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

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That JOSEPH SALVO, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that this transcript
of such examination is a true record of
the testimony given by such 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 6th day of December,
2018.



JUDITH CASTORE



OverviewNewsMayor's BioOfficials

Plaintiffs
59
11/2/17a

Transcript: Mayor de Blasio Discusses Affordable Housing on Local NPR's Morning Edition

March 21, 2016

Dave Mattingly: You're listening to Morning Edition on WNYC. The city is poised to take a major step forward on the de Blasio administration's affordable housing plan with a full Council vote slated for tomorrow. The mayor sat down one-on-one with WNYC's City Hall and politics reporter Brigid Bergin on Friday at the Brooklyn Public Library to talk about what this moment means for the city, its changing neighborhoods, and his legacy.

Mayor Bill de Blasio: You know 20 years ago or 30 years ago, there were affordable options and we didn't even think about the question of whether there was someplace, somewhere to live in this city. And over the last particularly 15, 20 years, gentrification has had just a rampant impact and it's changed the nature of the city. But guess what? The city government didn't respond. There was no policy. There wasn't even a serious discussion in this city. And this is a mistake, I think, and probably it was partly because of the dynamics around the Bloomberg administration. I think there was a lack of public debate. Our plan mandates the creation of affordable housing. It's what so powerful about it. It literally says wherever we do a rezoning, whether it's for a whole neighborhood or whether it's for an individual building, we require the creation of affordable housing in the process. That's literally guaranteeing that everyday New Yorkers can remain in that neighborhood.

Brigid Bergin: Many poor and working class folks, particularly black and brown, have told WNYC that they feel betrayed by a real estate market that's sort of heartless, and has just made huge swaths of the city unaffordable. You're sensitive to those constituencies. What would you say to them?

Mayor: I think their concerns are accurate and right. I think those frustrations are real and well-founded. Free markets don't take care of human needs in a consistent way. They just don't. This is why government is here. But government has to be aggressive and when we have to intervene, we can't hesitate. But on top of that we're strengthening and protecting public housing. That's another 400,000 people and we're going to make sure it's never privatized. We're reaching over two million New Yorkers who live in rent stabilized apartments. And we're reaching thousands and thousands of New Yorkers who have been threatened with eviction, many times illegally. We're now providing free legal services for them. All they have to do is call 3-1-1, and if they are threatened with illegal

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The Official Website of the City of New York



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MayorFirst LadyNewsOfficials

Transcript: Mayor de Blasio Appoints Vicki Been as Deputy Mayor for Housing and Economic Development

April 4, 2019

Mayor Bill de Blasio: Good morning, everybody. So, I want to say at the outset that it's a special pleasure to make a major announcement of this nature. Every time we add to our team it is an opportunity to express our values and to recommit ourselves to our mission. In this case the value that really jumps here, and the reason we came here was to make sure that New York City remains a city for everyone. I've talked about this over the years, it was the core of so much of what was talked about back in 2013. It remains the most urgent issue today. The issue I hear the most about from my constituents in all those town hall meetings and the call-ins to the radio program and everything else, unquestionably, the number one issue is affordability and the concern people have keeping New York City a place for everyone, keeping New York City really New York City. Protecting the soul of this place, keeping ourselves consistent with our great history.

So, the appointment I'm making today really responds to that imperative. It's all about ensuring that New York City remains affordable for working people. And we've got a lot more work to do to make that happen. But we have the right person to lead us forward in that effort. I want to say that there's a lot of talented people out there and we conducted a nationwide search, looked at some very able and accomplished people but – I guess this is a little bit like the moral of the story in the Wizard of Oz, there's no place like home. It turned out the exact right person was right here under our nose the whole time. And Vicki Been did such an outstanding job as HPD Commissioner, was such a valued member of this team. I remember many a day in this room talking about some of the most complex and pressing issues – and what was so clear throughout, Vicki's intelligence, her experience, her analytical ability, her ability to see solutions that often times others didn't see. And her heart, her

government, she comes in with a mandate from me but she also comes in with her own strong values. We have to go farther, we have to accelerate the work we are doing in terms of preserving affordable housing and this is crucial, the preservation of affordable housing is 60 percent of our affordable housing plan. It's really the essence and the work horse of the affordable housing plan – keeping people in their neighborhoods, in affordable apartments. We are going to do more of that faster. We have to do – and I have to say, that is – I really want to say this because I think it hasn't gotten the attention it deserves. This is the ultimate anti-displacement tool. A lot of discussion about rezoning and that's a good discussion to have but the simplest, strongest, clearest anti-displacement tool is to protect a working family in their apartment, in their neighborhood, subsidize it, protect it for decades ahead. That's what this administration has been doing but we are going to do even more under Vicki's leadership.

We have more to do to make sure our affordable housing plan reaches lower income New Yorkers. We have more to do to ensure that seniors can reach affordable housing, a growing part of our population. We have a lot to do to make fundamental change at our Housing Authority but the good news is we have a great game plan and people ready to make to the changes we need, and Vicki will be a central architect of all we do at this point forward to turn around NYCHA. Our residents in public housing deserve a lot better and I think for the first time in decades there's a plan in place and the leadership in place to achieve that change. And, of course, Vicki's going to focus on jobs, she's going to focus on economic development but she comes onto the playing field at a propitious moment. This city has over 4.5 million jobs, the most in our history but we ain't done. We intend to create an even stronger and more diverse economy, and Vicki will lead the way.

So for all of those years that Vicki served us, we were all very fortunate and we could tell we had a great talent among us and she stuck with it a long time, took a little break, went out to think great thoughts again, and now she is back. So, Vicki, I am going to say a few words in Spanish but on behalf of a lot of people in this building are feeling what am I feeling right now – we are so happy to have you back and we welcome you.

[Applause]

The quick Spanish version –

[Mayor de Blasio speaks in Spanish]

With that, I now get to call you by a new name, I get to call you Deputy Mayor for Housing and Economic Development, Vicki Been.

[Applause]

Deputy Mayor Vicki Been, Housing and Economic Development: Thank you so much, Mr. Mayor. I am deeply honored to be asked to rejoin your team as Deputy Mayor. It's an awesome responsibility and I am humbled to take it on. But I am also super excited and grateful for the opportunity to work with the Mayor and his incredible team to make the city an even better place to

No city across the nation has done as much to prevent displacement as New York City. At the end of 2018 the city had preserved more than 83,000 homes. That's about 216,000 people who are in the home that they love, knowing that it's stable, knowing that it's secure, knowing that they'll be able to afford it because the housing team in this administration preserved those affordability protections.

Preservation, as the Mayor said, is the most important tool that we have. It keeps people in their homes at rents they can afford for the long run. But it's only one of our tools. This administration has built a tremendous tool kit from legal assistance to tenants facing eviction to anti-harassment protections, for more vigorous housing and building code enforcement, to more rental assistance – MIH, ZQA, I see Carl here. The list goes on and on. But people are still afraid and so we have to double down.

We have to use those tools faster, we have to be more effective, and we have to be more coordinated in trying to ensure that people aren't forced out of their homes or out of neighborhoods that they helped to build and that they call home.

When people do lose their homes, we have to get them from shelter into permanent housing quickly and sustainable. We've made lots of progress but we still aren't where we need to be and I intend to work closely with Deputy Mayor Palacio and Commissioner Banks along with the Housing and Economic Development teams to make sure that we don't let a single opportunity pass to combat homelessness.

Rent regulation is up for reform in Albany – so a once-in-a-generation chance to end failed policies like the current vacancy de-control rules and to stop the irrevocable loss of those precious rent stabilized units. We also have a daunting challenge to bring NYCHA back to fiscal and physical health after a generation of neglect.

NYCHA is so critical to the city. It houses one out of 11 of our renters, it brings diversity to communities across New York City, and most importantly it houses many amazing hard-working adults who are the mainstay of City government, they're the mainstay of lots of work forces throughout the city, and it houses wonderful kids with enormous promise.

The federal government, of course, starved NYCHA for resources for decades and the price of that neglect hit us in the face, it came due. The Mayor and Deputy Glen and their teams have come up with a plan to fix the fundamentals, to generate revenue, to harness the workforce, to fix the heat, to stop the mold, to get the lead out – it won't be easy. It's required massive, massive thinking. We've seen some fits and starts but we have a solid plan and I intend to drive that plan forward every day of the year, meeting and beating time tables, stretching every dollar we have, and pushing for more money. The Mayor is committed to turning NYCHA around. The ground work's been laid, the time is now for action and every single day counts.

Being in a second term also liberates us a bit to take on tough challenges that were hard to take on in the first term. If the last few months have taught us anything, it's that New Yorkers are not going to allow economic development incentive programs that have been allowed for decades to go

Cuomo signs landmark rent regulation reform bill

Governor immediately signed the bill

TRD NEW YORK /

June 14, 2019 04:44 PM

By [Kathryn Brenzel](#) and [Georgia Kromrei](#)

[Photo omitted]

Assembly Speaker Carl Heastie and Senator Andrea Stewart-Cousins

The New York state legislature passed sweeping rent regulation reform on Friday, dramatically limiting how landlords can increase rents on stabilized apartments and opening the door for rent stabilization to expand outside of New York City. Gov. Andrew Cuomo signed the bill almost immediately.

The bill includes the elimination of vacancy decontrol and new caps on the Major Capital Improvements and Individual Apartment Improvement programs, which respectively allowed landlords to hike rents on regulated apartments when a unit is vacated or renovations performed.

The bill didn't go as far as tenant advocates had initially wanted. [Earlier proposals](#) sought to eliminate MCIs and IAs altogether. One measure, "Good cause eviction," which would've effectively limited rent increases on market rate apartments, ultimately didn't make it into the package. Still, Friday's vote marks the first time in decades that major reforms to the rent laws have been enacted. Though the state Assembly had repeatedly proposed similar changes to the law in the past, these attempts were always curbed by a Republican-led Senate.

The bill also includes a provision that allows municipalities in counties outside the city — that have a vacancy rate of less than 5 percent — to opt into rent stabilization. Also, for the first time, these laws were made permanent, meaning they won't sunset after four years. This could change the

dynamic in the years ahead because proposed changes to rent reform won't be entangled with the potential expiration of the rent laws.

"We'll be on offense rather than defense," one real estate source said.

Real estate groups and landlords have called the changes "devastating" and predict they will result in the decline of the city's housing stock and the flight of investors to other areas of the state and outside New York. Meanwhile, tenant advocates and state officials have indicated that they view the changes as a beginning to implementing robust tenant protections across the state.

"The construction of future affordable units will slow, if not end altogether, the housing vacancy rate will worsen and nothing will have been done to make it easier for those who struggle to pay their rent," Real Estate Board of New York President John Banks said in a statement. "There was a path to responsible reform that could have protected tenants as well as owners, jobs and revenue, but Albany chose not to take it."

The trade group did not immediately respond to requests for comment on what "responsible reform" would look like.

In a victory lap press conference before the vote, elected officials spoke in front of a crowd of tenant activists on the "Million dollar stairs" in the state Capitol. Sen. Michael Gianaris noted that he still supported the full elimination of MCIs and IAI. Assembly Speaker Carl Heastie, standing in front of tenants who had just weeks earlier protested outside his office calling on him to act, struck a defensive note.

"I feel like people questioned the Assembly's heart even though we've always been in the right place, on the tenants' side," he said. "In the dark ages, when there was a Republican governor and a Republican Senate, the Democratic members of the Assembly always stood strong. And I just hope in the future, on the same issues, that all you advocates give the Assembly members the benefit of the doubt. We've never failed you and we never will."

He noted that he and the Assembly had voted in favor of rent reform in the past, when the Republicans controlled the Senate.

After the press conference, Andrea Stewart-Cousins told reporters that she hadn't spoken to the governor since the Senate and Assembly announced an agreement over the rent reform law earlier this week. She said doesn't read too much into that.

"We do what we do," she said.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

-against-

CITY OF NEW YORK,

Defendant.

-----x

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

DEPOSITION OF

RAFAEL E. CESTERO

New York, New York

November 14, 2017

9:15 a.m.

Reported by:
JUDITH CASTORE, CLR
Job No. 52672

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CESTERO

you understand it, part of that legacy was a sense that there were some neighborhoods that in New York City that were not for us, that is, African American, Latino New Yorkers?

MR. VIDAL: Objection.

A Yes, I'm sure that that was one of the impacts.

Q We agree that HPD has a variety of tools in its tool kit or toolbox or wherever it keeps its tools.

Do you agree that there are ways to assure community boards and community organizations and council members on this not aimed at removing current residents' point other than the use of community preference?

MS. SADOK: Objection.

A I'm sorry, can you -- can you restate the question?

Q Yes. You're saying -- you're saying in the article Community Preference is a way to make these assurances.

1 CESTERO

2 And I'm asking do you agree
3 that there are other and additional
4 ways that the city has in its toolbox
5 or tool kit to provide assurances that
6 the idea is not to have people kicked
7 out?

8 A Yes, I've already
9 acknowledged that the Community
10 Preference is but one thing.

11 Q And so the various anti
12 displacement, anti-harassment steps
13 are -- are among the other tools?

14 A They are among the other
15 tools.

16 Q Right.

17 Am I leaving anything out?

18 A Well, there are many tools,
19 many tools. There's just provision of
20 affordable housing that's affordable to
21 people at the income levels of those
22 who live in the neighborhoods. That in
23 and of itself you're not -- you're not
24 redeveloping, you know, a strip mall or
25 a shopping center or you're actually --

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CESTERO

you know, so it all -- it's all part of
a, you know, a package.

Q I've been trying to listen
carefully not just today but what's
going out in the world on these issues
as I'm sure you have, and to me it
seems, we may have discussed this very
briefly, this question of what incomes
are going to be served. That's --
that's been a point of tremendous
contention, right?

A Yes.

Q And that has a very direct
impact, does it not, on whether someone
believes the housing is or is not for
me.

MR. VIDAL: Objection.

Q Correct?

A Yes.

Q I mean, a very common refrain
from various advocacy organizations is
it's very nice given the areas as a
whole that you might be doing
60 percent or 50 percent AMI but in

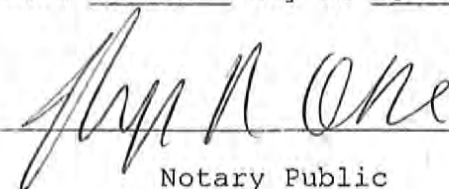
1
2 STATE OF New York)
3) :ss
4 COUNTY OF New York)
5
6

7 I, RAFAEL E. CESTERO, the witness
8 herein, having read the foregoing
9 testimony of the pages of this deposition,
10 do hereby certify it to be a true and
11 correct transcript, subject to the
12 corrections, if any, shown on the attached
13 page.
14

15 
16

17 RAFAEL E. CESTERO
18
19

20 Sworn and subscribed to before me,
21 this 25 day of January, 2018.
22

23 
24 Notary Public
25

JACLYN R KEANE
Notary Public, State of New York
No. 01KE6199572
Qualified in Nassau County
Commission Expires January 20, 2021

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

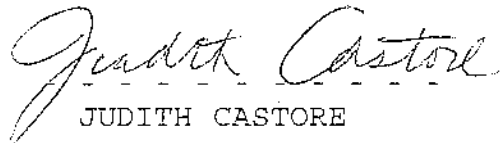
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That RAFAEL E. CESTERO, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that this
transcript of such examination is a true
record of the testimony given by such
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 29th day of November,
2017.


JUDITH CASTORE

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 JANELL WINFIELD, TRACEY
6 STEWART and SHAUNA NOEL,
7 Plaintiffs,
8 -against-

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

9 CITY OF NEW YORK,
10 Defendant.
11 -----x

12 JORDAN PRESS
13 New York, New York
14 June 28, 2018
15 9:25 a.m.

16
17
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19
20
21 Reported by:
22 JUDITH CASTORE, CLR
23
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25

1 PRESS

2 all agree amongst ourselves, we get a
3 counterproposal, we might be willing to
4 go a little bit further on some things.
5 So the fact that Vicki stated this in
6 her November 3rd e-mail does not
7 necessarily mean that that was her
8 final position on anything.

9 Q Okay. Fair enough.

10 But in the course of
11 negotiating with council members it
12 was -- there were times when you
13 figured out how to appease their
14 concern by giving them other things and
15 sometimes you held firm and sometimes
16 it was a fluid process going back and
17 forth; is that right?

18 A Correct.

19 Q And it's fair to say to say
20 that it involves many different
21 incentives, and to some degree, I guess
22 for lack of a better word,
23 disincentives and pushing back; is that
24 right?

25 MS. SADOK: Objection.

1 PRESS

2 Q That is meaning this process
3 with the city council member in getting
4 them onboard?

5 MS. SADOK: Objection.

6 A I just don't want to imply
7 that any incentives are kind of
8 untoward because I didn't --

9 Q I certainly did not mean to
10 imply that.

11 I -- all I'm trying to get at
12 is that the negotiating process with
13 the council member and getting the
14 council member onboard involves a lot
15 of different tools both carrots and
16 sometimes pushing back, right?

17 A That's correct.

18 Q And those tools come from all
19 parts of the city including, as we
20 talked about earlier, maybe other
21 agencies, maybe the Mayor's office,
22 right?

23 A That's right.

24 And I just want to clarify
25 that in discussing any other agencies

1 PRESS

2 that the vast majority of what I saw
3 was like the application of services
4 that were probably due to that
5 community or to that specific locality
6 anyways.

7 Q Right. Yes. And, again, I
8 was not suggesting anything untoward
9 either. That's probably some different
10 case somewhere, but it's not this one
11 as far as I know. But not untoward --
12 I'll stop there. We'll just stop.

13 I'm going to pass you what's
14 been marked as Plaintiff's Exhibit 192.

15 (Article in the Gothamist.com
16 entitled, Bedford-Union Armory
17 Developer Faces Questions From
18 City Planning Commission, was
19 marked Plaintiff's Exhibit 192,
20 for identification, as of this
21 date.)

22 Q You should feel free to read
23 all of it if you want, but I really
24 just have one particular question which
25 is directed towards the line that is on

A C K N O W L E D G E M E N T

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


I, JORDAN PRESS, certify, I have read the transcript of my testimony taken under oath in my deposition of June 28, 2018; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

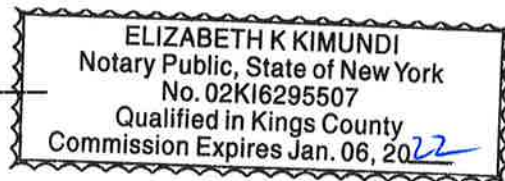


JORDAN PRESS

Sworn and subscribed to before me

this 8th day of August, 2018.


Notary Public



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

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That JORDAN PRESS, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that this transcript
of such examination is a true record of
the testimony given by such 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 10th day of July, 2018.



JUDITH CASTORE

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 JANELL WINFIELD, TRACEY
6 STEWART and SHAUNA NOEL,
7 Plaintiffs,
8 -against-

Civil Action No.:
15CV5236(LTS)(KHP)

9 CITY OF NEW YORK,
10 Defendant.
11 -----x

12 DEPOSITION OF DAVID QUART
13 New York, New York
14 June 14, 2018
15 9:33 a.m.
16
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21 Reported by:
22 JUDITH CASTORE, CLR
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25

1 QUART

2 information about that.

3 Q And when I say specific, I
4 mean based on your experiences at HPD
5 could you conclude that there is any
6 particular council member with whom you
7 worked or interacted who would reject
8 affordable housing if there were no
9 Community Preference Policy in place?

10 MS. DALAL: Objection.

11 A I mean, I could imagine it.
12 I don't have -- you know, again, I
13 think -- I can just reiterate that I
14 think it's something that's extremely
15 important to council members to know
16 that it's in place.

17 Q And that's fair and you've
18 said that. And so I just wanted to
19 make sure I understood your testimony,
20 and I think I do, that you don't have
21 any way of knowing what they would do
22 if it did not exist today, you don't
23 have any way of concluding that they
24 would reject affordable housing
25 projects just because the community

1 QUART

2 preference policy is no longer there;
3 is that correct?

4 MS. DALAL: Objection.

5 A I mean, my sense is that they
6 would, but I don't have a kind of
7 factual to compare it to. But given my
8 experience and conversations with
9 community boards, borough president's,
10 council members across the city during
11 my time at HPD, I would say that -- I
12 mean, I can easily see -- but, again, I
13 have no proof or specific reason or
14 facts, but I can easily see that if HPD
15 were to say on these "X" number of
16 projects there's no Community
17 Preference Policy, that the outcome
18 would be different.

19 Q Okay.

20 But I think -- I'm posing
21 something different. You seem to imply
22 in what you've just said that there
23 might be some projects where community
24 preference existed and some where it
25 didn't exist. And I'm suggesting to

1 QUART

2 A Yes. Some of those were,
3 yes.

4 Q Is there anything that was
5 used in that context that you haven't
6 mentioned?

7 A I am trying to think. What
8 else? Another one was a -- it was
9 related to HPD, but not only HPD, it
10 was in partnership with other agencies
11 to pilot a certificate of no harassment
12 program was another one that was
13 important to the community. So it was
14 related to housing. Those are the ones
15 that stick out in my mind.

16 Q Is it fair to say that the
17 types of carrots or benefits that work
18 for a particular council member will
19 depend on that particular council
20 member's community needs. In other
21 words, that not every carrot will be
22 applicable to each project; is that
23 right?

24 A Yes. I would say, yes, not
25 every carrot is applicable to each

1 QUART

2 project. And the city also takes its
3 own view -- I mean, again, as I was
4 saying before about the importance of
5 community engagement and listening to
6 what the community desires,
7 understanding what they desire, but
8 also understanding what the city is
9 comfortable investing in, sometimes
10 with tens of millions of dollars of
11 limited resources to invest in the
12 community depending on what the needs
13 of that particular community may be.

14 Q I'm going to hand you what's
15 been previously marked as Plaintiff's
16 Exhibit 86.

17 (Document, Bates-stamped
18 NYC_0030927 through 30928, was
19 previously marked Plaintiff's
20 Exhibit 86, for identification, on
21 1/18/18.)

22 Q If you could just take a
23 minute. And I believe you're on this
24 e-mail chain.

25 A Okay.

A C K N O W L E D G E M E N T

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

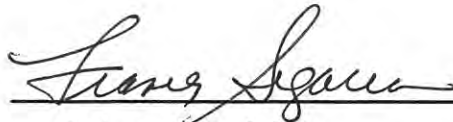
I, DAVID QUART, certify, I have read the transcript of my testimony taken under oath in my deposition of June 14, 2018; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

-----

DAVID QUART

Sworn and subscribed to before me

this 9th day of August, 2018.



Notary Public

FRANCES SEGARRA
Notary Public-State of New York
No. 01SE6290604
Qualified in Queens County
Commission Expires 10/07/2021

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

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That DAVID QUART, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that this transcript
of such examination is a true record of
the testimony given by such 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 25th day of June, 2018.



JUDITH CASTORE

ERRATA

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

PAGE LINE

14 3 CHANGE: “Essence” to “Essex”

REASON: Incorrect transcription.

15 2 CHANGE: “came up” to “it came up”

REASON: Clarify intent of statement.

16 9 CHANGE: “project which” to “project with which”

REASON: Clarify intent of statement.

19 17-18 CHANGE: “Strategy research in communications” to “Strategy Research and Communications”

REASON: Incorrect transcription.

20 24 CHANGE: “HPD with an interactions” to “HPD with interactions”

REASON: Clarify intent of statement.

22 3 CHANGE: “then sort of contract” to “then some contract”

REASON: Incorrect transcription.

23 7 CHANGE: “deficiencies” to “efficiencies”

REASON: Incorrect transcription.

23 12 CHANGE: “commission of” to “commissioner”

REASON: Incorrect transcription.

32 21 CHANGE: “to of” to “to think of”

REASON: Clarify intent of statement.

35 15 CHANGE: “secretary” to “second”

REASON: Incorrect transcription.

39 4 CHANGE: “is the we” to “is that we”

REASON: Incorrect transcription.

40 18 CHANGE: “implications ensuring that” to “implications, ensuring that didn’t happen”

REASON: Clarify intent of statement.

43 8 CHANGE: “main mission is to build” to “main missions to build”

REASON: Clarify intent of statement.

47 5 CHANGE: “education with which” to “education which”
REASON: Incorrect transcription.

47 9 CHANGE: “some of things” to “some of the things”
REASON: Clarify intent of statement.

49 12 CHANGE: “say that” to “I’d say that”
REASON: Clarify intent of statement.

50 9 CHANGE: “discussions and still” to “discussions still”
REASON: Clarify intent of statement.

55 20 CHANGE: “therefore people” to “therefore help people”
REASON: Clarify intent of statement.

56 18 CHANGE: “But f I could it” to “But if I could say it”
REASON: Incorrect transcription.

56 20-22 CHANGE: “between economic where families are economically in terms of their income and racial.” to “between economic – where families are economically in terms of their income – and racial makeup”
REASON: Clarify intent of statement.

61 10 CHANGE: “priority” to “prioritizing”
REASON: Incorrect transcription.

62 2 CHANGE: “why” to “with”
REASON: Incorrect transcription.

82 9 CHANGE: “would I say” to “what I would say”
REASON: Clarify intent of statement.

83 9 CHANGE: “seller” to “cellar”
REASON: Incorrect transcription.

83 23 CHANGE: “felling” to “feeling”
REASON: Incorrect transcription.

84 13 CHANGE: “that am some” to “that some”
REASON: Incorrect transcription.

88 22 CHANGE: “counsel” to “council”
REASON: Incorrect transcription.

90 8 CHANGE: “baseless – the word baseless” to “baseless – if the word baseless”

REASON: Clarify intent of statement.

100 22 CHANGE: “institution” to “institutions”

REASON: Incorrect transcription.

102 13 CHANGE: “Counsel” to “Council”

REASON: Incorrect transcription.

102 20 CHANGE: “showing my this to me” to “showing this to me”

REASON: Clarify intent of statement.

111 8 CHANGE: “with” to “will”

REASON: Incorrect transcription.

112 22 CHANGE: “counsel” to “council”

REASON: Incorrect transcription.

112 22-23 CHANGE: “would project a because” to “would reject a project because”

REASON: Clarify intent of statement.

114 6-7 CHANGE: “a kind of factual” to “a counter factual”

REASON: Incorrect transcription.

116 6 CHANGE: “Salamanka” to “Salamanca”

REASON: Incorrect spelling of name.

127 2 CHANGE: “have, lack of” to “have, for lack of”

REASON: Incorrect transcription.

127 24 CHANGE: “end” to “and”

REASON: Incorrect transcription.

129 19 CHANGE: “impowering” to “empowering”

REASON: Incorrect transcription.

131 2 CHANGE: “end” to “and,”

REASON: Incorrect transcription.

139 11 CHANGE: “and priced” to “being priced”

REASON: Incorrect transcription.

146 2 CHANGE: “their” to “they’re”

REASON: Incorrect transcription.

147 15 CHANGE: “comb of other authority policy” to “tone of other authors’ policy”

REASON: Incorrect transcription.

148 6 CHANGE: "reading" to "read"
REASON: Clarify intent of sentence.

150 25 CHANGE: "end" to "and"
REASON: Incorrect transcription.

174 21 CHANGE: "moon" to "meant"
REASON: Incorrect transcription.

175 17 CHANGE: "rezoning or" to "rezoning are"
REASON: Incorrect transcription.

176 5 CHANGE: "projector" to "project"
REASON: Incorrect transcription.

183 12 CHANGE: "end" to "and"
REASON: Incorrect transcription.

204 4 CHANGE: "it" to "to"
REASON: Clarify intent of sentence.

209 10 CHANGE: "exclusionary" to "inclusionary"
REASON: Incorrect transcription.

209 22 CHANGE: "scrapple" to "scrabble"
REASON: Incorrect transcription.

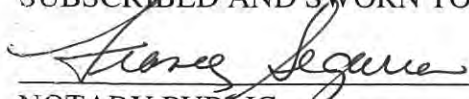
213 2-3 CHANGE: "White House holds" to "white households"
REASON: Incorrect transcription.

213 3-4 CHANGE: "White House holder's outsiders" to "white households as outsiders"
REASON: Incorrect transcription.


WITNESS' SIGNATURE

August 9, 2018
DATE

SUBSCRIBED AND SWORN TO BEFORE ME THIS 9th DAY OF AUGUST, 2018


NOTARY PUBLIC

FRANCES SEGARRA
Notary Public-State of New York
No. 01SE6290604
Qualified in Queens County
Commission Expires 10/07/2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANELL WINFIELD, SHAUNA NOEL and
EMMANUELLA SENAT,
Plaintiffs,

vs.

Case No.:
15-cv-05236
(LTS) (KHP)

CITY OF NEW YORK,
Defendant.

January 16, 2019

9:45 a.m.

Deposition of JAMES PATCHETT, taken by
Plaintiffs, held at the offices of Cuti Hecker Wang,
LLP, 305 Broadway, New York, NY 10007-3664, pursuant
to agreement, before Elizabeth F. Tobin, a
Registered Professional Reporter and Notary Public
of the State of New York.

1 J. Patchett

2 remember, in other words, if I had the discussion
3 directly or if it was conveyed to me by someone who
4 had the discussion.

5 Q. And this would have been around what
6 point in time, when the lawsuit started or when
7 there were discussions later?

8 MS. SADOK: Objection.

9 A. It was -- I don't know if it would have
10 been when the lawsuit started. Originally there was
11 a discussion with HUD and then later under this
12 lawsuit, potentially as a part of settlement. I
13 don't remember exactly.

14 Q. Other than this very, very general
15 description, can you give me any more information
16 about this conversation; who it was with, when, how,
17 what was discussed?

18 MS. SADOK: Objection.

19 A. No. I can't. But it would have been
20 three years or something at this point.

21 Q. Have you ever had a conversation with any
22 council member or his or her staff about whether the
23 Community Preference policy perpetuated segregation?

24 MS. SADOK: Objection.

25 A. I don't believe so.

1 J. Patchett

2 Q. Or whether it had a disparate impact on
3 race?

4 MS. SADOK: Objection.

5 A. I don't believe that this was something
6 that there was a significant concern of ours. I
7 don't think we would have raised it to the council.

8 Q. Did you ever suggest to any council
9 member or his or her staff that the Community
10 Preference should be reduced?

11 MS. SADOK: Objection.

12 A. No, not that I recall.

13 Q. Did any council member or staff state to
14 you that they would vote for a project only if there
15 was a Community Preference in place?

16 MS. SADOK: Objection.

17 A. My recollection is that the majority of
18 conversations about specific projects -- there were
19 affordable housing projects happened with HPD. I
20 don't remember specifically, but it doesn't mean
21 that that was something that happened frequently
22 with HPD or others.

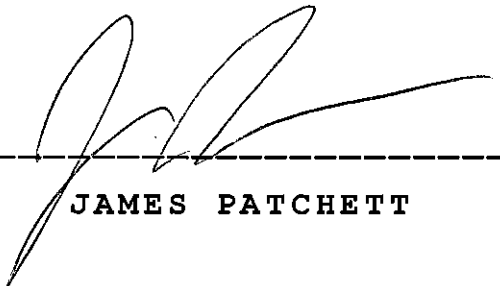
23 Q. I just can't tell you if you answered the
24 question or not.

25 A. I think I did.

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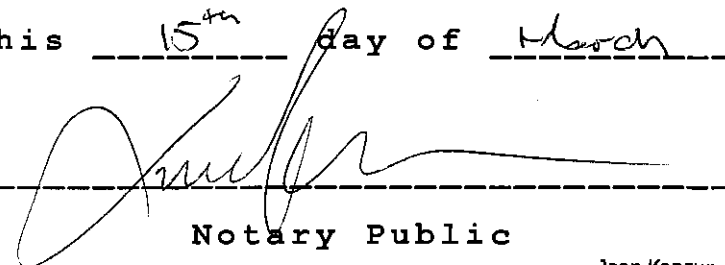
STATE OF _____)
) : ss
COUNTY OF _____)

I, JAMES PATCHETT, 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.



JAMES PATCHETT

Sworn and subscribed to before me,
this 15th day of March, 2019.



Notary Public

Jaen Kangur
Notary Public State of New York
No. 01KA6310065 Qualified in Queens County
Certificate Filed in New York County
Commission Expires 8/18/2022

CERTIFICATE

STATE OF NEW YORK)

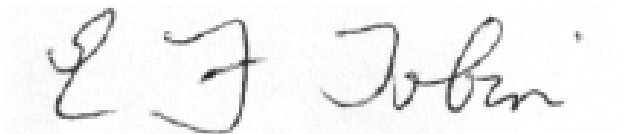
) ss.

COUNTY OF SUFFOLK)

I, Elizabeth F. Tobin, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify:

That James Patchett, 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 such 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.

A handwritten signature in dark ink, appearing to read "E F Tobin". The signature is written in a cursive, flowing style.

ELIZABETH F. TOBIN, RPR



MayorFirst LadyNewsOfficials

Transcript: Mayor de Blasio Delivers Remarks at NYSAFAH Housing for All Conference

May 11, 2016

Video available at: <https://youtu.be/H1SZ7MyijpQ>

Mayor de Blasio Delivers Remarks at NYSAFAH Housing for All C...



Mayor de Blasio: Good Morning Housers.

It is so good to be with you. I appreciate so deeply the work you do, and I want you to know we consider NYSAFAH crucial allies in this work that is absolutely about keeping New York City – New York City. About keeping everything we love about this city, about the values of this placed alive for future generations. Now, I must take this occasion to note – some people apparently don’t like New York values. I don’t know if you’ve read about that. You’ll notice that those people are no longer on the stage. They’ve left now, but you know it was a worthy question. What are New York values? And I think NYSAFAH epitomizes those values. Those values are of a city and a state that is inclusive, that is a place where everyone is valued. Doesn’t matter if you’ve been here for generations, or you’ve just gotten here – where working people are given every opportunity to succeed. Where families have the ability to put food on the table to live in a good and a decent place they can afford

about, nothing is more important than affordable housing. So, we said when you're thinking in those terms – this is about everything we believe in, everything we are historically, everything we were meant to be – we didn't have a choice of half measures, we had to go to the farthest extent possible. What's amazing is the numbers that have been put up already. Again, I hope everyone feels a share in these victories because everyone here has participated so intensely. As of March 31 of this year, we have financed 43,500 affordable apartments in all five boroughs – 43,500 apartments. Includes nearly –

[Applause]

You can clap for that.

[Applause]

21,000 of those achieved in 2015 alone. So, that made 2015 the year in which the most apartments were built or preserved in any single year since Mayor Koch was rebuilding the South Bronx. That was an extraordinary time in our history, and a time that I think many of us thought could never be matched, but because of your help we're actually achieving things on a level that can be compared to those extraordinary times.

Now, within the 21,000 units I mentioned, 7,179 are new construction sites – excuse me, new construction starts, the most since year since HPD was founded in 1978. So, we set a record with your help, and it says so much about the approach we're taking because we have set the bar high and then we keep getting higher and then we clear the bar because we have the alliance and the partnership with you that allow us to do it.

Now, that was certainly true when we were fighting for MIH and ZQA. You will remember that at the beginning of that discussion in the City things did not look promising. We were talking about big, big changes. We were talking about thinking about our City in a whole new way – opening up space for the creation of affordable housing that had not been available to us before, focusing on senior affordable housing, requiring that developers create affordable housing as a condition of development wherever we rezoned. This was a whole new way of thinking. And you're never surprised, when you put a whole new way of thinking on the table, that there's immediate resistance. It's normal, it's human. And I say – with absolute respect to all our brothers and sisters on community boards – I'm never 100 percent surprised when the community board disagrees with something emanating from City Hall. So, the early going was tough. But we rallied. We rallied with the help of NYSFAH. We rallied with the help of community leaders and clergy and labor unions and so many others who believed these were the changes our city need. So many people came together – AARP did amazing work. It was an example of a really broad coalition for change. And we knew we were on the right side, and we knew we could win the day, and we preserved together.

The day that that vote was won – and it was won by a very healthy margin, I'd like to remind you – at that moment we achieved the most progressive affordable housing plan of any big city in this country. On that day we showed that things could really be done differently, and that we could

marshal all our forces in the interest of working people and low-income New Yorkers and everyday New Yorkers who are just struggling to make ends meet – that we could actually change our policies profoundly and be on their side. That's what that vote showed. And all of you played a profound role in garnering the support that got us there.

So, I want you to know that now that we have the tools we can talk about what we're going to achieve for everyday New Yorkers. And I think you know this from your work, but I want you to visualize the meaning of what you're doing. We all deal in statistics – statistics are important. Measures and metrics are important, they tell us something. But I want you to think about the people whose lives you're changing. I'll tell you an easy vignette – a quick vignette. I was once challenged when I was a city councilmember – I fought very hard to add ten more units of affordable housing in a particular development in my district. And I remember being at – I think it was a community board meeting – and someone said why should we care about ten more units of affordable housing. And I said – think about ten families whose lives will be changed forever – literally – because they got one of those affordable apartments. Think about a family that can finally put food on the table, pay for medicines, and pay the rent all at once – maybe even start to save a little money for their child's education. That's what this is about. Every single additional affordable apartment changes the trajectory of a family's life. And when you go about your daily business today – if you stop at the coffee cart, the person in line next to you might be the person that one day gets some of the affordable housing that you create, when you go on the subway, the person who – the straphanger next to you might be the person whose life is changed because they got affordable housing – and not just for them, for their entire family. That is why we do this work.

And we know that the people of this city want to see this change. They understand that the City is changing for bigger reasons. They understand the economy is changing, technology is changing, global realities have made this place more appealing than ever. They get that, but they also think they have some rights in the equation. I've never known New Yorkers to fear change in the broad sense. It's too dynamic a place for that, but they do believe that they matter in the context of change. They do believe that fairness is something that needs to be guaranteed in the context of change. That's where we all come in – creating a reality that takes the good elements of change and the good resources and opportunities that it provides and marshals them to create fairness and inclusion. That is our mission.

And I have to tell you, when you think about the impact – we talk a lot about the new housing we will build together, we talk a lot about what it means or people to see a vacate lot turn into a beautiful affordable development, but we also have to focus on the 300,000 or so New Yorkers who will be able to stay in their apartments and will have an affordable apartment for the long term because of our preservation efforts. Imagine again – put it in very human terms – that that individual, that family feeling a great deal of insecurity and not sure at all what life will bring them, worried that they won't be able to stay in the neighborhood they love – the neighborhood they contributed so much to, the neighborhood they defended in the bad old days, in the tough times. Every time we preserve an apartment, we're taking a situation that felt unsupportable and insecure, and we make it strong and good and worthy of that family. That's the work we do together. And that was true for folks at the

Making the Grade:

The Path to Real Integration
and Equity for NYC
Public School Students

Letter from the Executive Committee

New York City is not only the largest city in the country, we believe, as New Yorkers, that it is the greatest city in the country. One reason is that it is a truly global city. With an estimated 800 native languages and almost forty percent of our friends and neighbors born abroad, we are much more than just the home to the United Nations. We **are** the United Nations. Our city's history is as complicated and troubled as that of our country. We are immigrants and migrants, documented and undocumented. We are descendants of slaves. We are from the West Indies. Our city is home to the highest number of Native Americans of any US city, the original descendants of North America and New York City. We are new to New York City, and we are multi-generational New Yorkers. And this is our great pride and our great strength.

When we, five members of the Executive Committee of the School Diversity Advisory Group, first came together, it was with a conscious resemblance of this history and present. We came together not all knowing each other and not all knowing the other members of the Advisory Group. However, we share a sense of the tremendous importance of the questions before us. This country is experiencing a time of deep division along racial lines. From solving climate change, to managing technology, the rapid shifts of people and economies and the desperate need for social unity and collaboration, the world is making new and more complicated demands of our children. We recognize that as a city, as a people, we can only meet our challenges and improve our lives if we find ways to do it together.

Sixty-five years since Brown v. Board of Education declared racially segregated schools unconstitutional, New York City has taken only very modest steps to live up to these challenges. In fact, a 2014 [study](#) by the UCLA Civil Rights Project found that New York State schools are the most segregated in the country – more segregated than the schools in Alabama or Mississippi. This fact ought to horrify every member of our proud city.

Segregation by the color of our skin, the language we speak, our income, our physical ability or the way we learn robs all children of the chance to improve their ability to think critically, to work collaboratively, to engage globally and to benefit from the city as the classroom. Researcher Eugene Garcia has noted, “When a child comes to school for the first time he/she comes with a little suitcase full of experiences (language and culture) that he/she had before coming to school.” All students benefit when a teacher says, “Welcome, let’s open that little suitcase and see what you have so you can share and we can learn from you.”

Segregation also robs children who have been robbed already by a society that dictates where they can live based on the race, income or language of their parents. Our societal decisions about public housing and private housing, our history of creating and believing stereotypes about race and immigration and income have created neighborhoods and zoned schools that mirror housing discrimination and poverty. On average, racially and socioeconomically segregated schools have fewer resources – less experienced teachers, higher concentrations of need, and lower academic standards, despite the talents of



MayorFirst LadyNewsOfficials

Transcript: Mayor de Blasio Appears Live on Inside City Hall

June 12, 2017

Errol Louis: We are back on the road to City Hall and we just saw a report about Mayor de Blasio and the fight for Mayoral control of city schools. I'm now joined by the Mayor himself as part of our weekly "Monday's with the Mayor" segment. Welcome back, always good to see you.

Mayor Bill de Blasio: Thank you, Errol.

Louis: Let's clear this up. We thought at first actually, you might be in Albany today, and that turned out not be the case. You also informed me right before we went on the air that your relationship to this discussion in Albany is not quite what some of us thought. Please explain.

Mayor: Sure, I appreciate it, Errol. So, first of all, every year has been different when it comes to the discussion of mayoral control of education. I want to say at the outset we clearly need to renew mayoral control of education. I think one of the things that's actually affecting this whole discussion is a lot of people honestly don't remember what it was like under the previous system. And if you want something to give you a clear illustration, think of today's board of elections –something you've spent a lot of time focusing on, that is dysfunctional and not up-to-date and not stream line and not efficient. That's what are local school boards were like in too many cases. They didn't get the job done; they didn't take care of schools, including those that were failing. So, that's what's hanging in the balance here. I have been concerned to make sure that I am presenting to the people who make the decision – the key legislative leaders, our position and what we are trying every day to do to improve our schools. I had a good conversation last week with the Majority Leader of the Senate, John Flanagan. I've had a series of conversations with Governor Cuomo, with Speaker Heastie, and with the Leader of the IDC, Jeff Klein. And those have been phone calls over the last few days including today. In light of that, I decided it made sense to stay here and deal with other matters and keep going by phone, but the point I made from the previous report, last year there had been hearings called by the Senate Republicans on this matter. This year there were not hearings. So it's just literally different, I attended one of them last year. It just didn't exist this year.

Louis: So even aside from narrow issue of mayoral control. There wasn't sort of broad general oversight hearings where you go up, and sort of present the school system and why they should be funding it?

weeks have a lot more to say in depth on it, and how we will build towards a much bigger plan to address the problem of segregation, but the challenge is this, this was not and problem that came from our schools. And, too much of the debate has in my view asked the schools to address what is really a problem of economics, obviously race, economics and housing, and geography. We need to go at those issues and a whole host of ways, and I think that is about addressing income inequality. Because when you're addressing income inequality in New York City you're also simultaneously addressing issues of race because let's face it, the economic divide.

Louis: There certainly is an interaction, I mean, but, know like – for example we all know that real estate brokers when they're selling a neighborhood, they're selling what district is it – it is in. And they're selling the characteristics of that district, including the degree of segregation whether they're doing it directly or not, right? I mean it's – I agree with you you're not going to strand out and say, "Let's desegregate this part of our zone school system". Well, you've got to; you've got to deal with the zone, right?

Mayor: Well, and that's a crucial example. So, zones go with elementary schools, everything pre-K to fifth grade. And zones are based on geography by their very nature. And there are some places as was true recently in Downtown Brooklyn and it was true in the Upper West Side, where we did a rezoning working with the local community education counsel, because by law they take the leading role on the rezoning of schools. And we got to a place that created more balance and more diversity in the schools, while making we were providing great school options for everyone involved. I really feel great about those examples. Here's the problem. Many of our school districts don't afford us that opportunity at the elementary school level because you can have a huge geography that is overwhelmingly people of one particular background and that is the reality in New York City. So, what I want is a little more clarity and I would argue honesty in the discussion. Where we – we have real structural barriers at elementary school, we have more options with middle school and high school, where we have a robust school choice approach that's been there for years. It has not organically created more diversity in schools. I think it's helped in some ways, but it hasn't organically done it. Therefore, it's telling us something, we have much bigger problems to get to the core of, to get to the root of. Now, the plan we put forward was the beginning and we said it was the beginning. There will be bigger bolder plans to come. But one thing I feel strongly about is, there's a piece of this problem that is in the admissions process when it comes to middle schools and high schools and the plan we put forward started to get at that. How do you get rid of some of the barriers of the past, how do you get [inaudible] – even things like parents not getting the same information, depending on where they live. We can do a lot more to fix that. And selective schools – how can we make sure there is much stronger efforts at diversification. But this is a long tough battle because it's rooted in things that go far beyond the schools, and that's what I'm trying to emphasize, more economic opportunity, so people can live in any neighborhood regardless of background, is crucial to this.

And, obviously a host of things we do attack discrimination in housing. There are so many pieces, but this is going to be a long haul problem.



MayorFirst LadyNewsOfficials

Transcript: Mayor de Blasio Appears Live on the Brian Lehrer Show

May 11, 2018

Brian Lehrer: It's the Brian Lehrer Show on WNYC. Good morning everyone. And we begin as we usually do on Fridays with our weekly Ask the Mayor segment, my questions and yours for Mayor Bill de Blasio. And our phones are open at 2-1-1-4-3-3-WNYC, 2-1-2-4-3-3-9-6-9-2. Or you can tweet a question, just use the hashtag #AskTheMayor. Mr. Mayor welcome back to WNYC.

Mayor Bill de Blasio: Thank you very much Brian.

Lehrer: So the big news all across New York State this week is obviously the resignation of Eric Schneiderman after the New Yorker Magazine revealed four women accusing him of intimate partner violence. Are there any legal or policy implications that you see for the city in the short-term with that position being temporarily filled? Like with cases or investigations? That it'll be harder to conclude or anything like that?

Mayor: Well it's a good question Brian. That's not what I think at this moment. I mean Barbara Underwood, who has stepped into the acting role, is tremendously talented and experienced. And I would not expect her to change the direction of the office in the short-term. So you've got a lot of professionals at the Attorney General's office. I think they will continue doing their work. Obviously, you know, there will be a new permanent Attorney General in place in a matter of months. So, you know, I think it – you'll see a lot of continuity.

Lehrer: Were you completely surprised by this Schneiderman story? Or had you heard any inside buzz of like Schneiderman has a big drinking problem or the actual incidents or anything like that?

Mayor: It was shocking. I mean it's truly, literally shocking. As I read the article, I mean it was painful. It was painful first and foremost for the women who suffered, and the way they suffered. And the fact that they were intimidated and told, you know, threatened – told not to say what they knew, which is just disgusting in any situation, but especially from someone who purported to be a progressive and an enforcer of the law. It was sickening. And it was sickening also that someone who a lot of us thought was doing important work proved to be someone very different.

Now let's hasten to say, he will have his day in court and his chance to offer his side. But, you know, when you see that much laid out it's deeply, deeply troubling. And no, I didn't see anything at all that

policy moves, will be strengthened further and we want to do that. But at the same time, you know, the medallion problem is a real problem. So we decided that the best way to address it was to no longer, for the foreseeable future, next few years, do anymore auctions, keep the medallion market fixed to try and bring up the value of each medallion a little bit more.

We think medallions will have value in the long term, we think the market will correct but for now part of what we have to do to move that along is not sell more.

Lehrer: Next question from Twitter and as a little prelude to this, we had the new schools chancellor, Chancellor Carranza, on the program earlier this week for the first time and we talked a lot about segregation and desegregation and this listener writes, "Ask the Mayor why do you refuse to use the word segregation to talk about New York City schools?"

Mayor: I've covered this so many times, I don't know why it still needs to be clarified but I'm happy to do it again. And I've spoken to the Chancellor at length and we are absolutely on the same page that we are going to do a series of efforts to address what's going on in our schools. We have two really promising models in District 3 on the West Side of Manhattan and District 1 in the Lower East Side that show a way to diversify classrooms that is based in a real community dialogue and simultaneously focuses on making sure schools are getting better all around.

That is the way forward. I think that model is going to be something we can use citywide. I think we're going to be able to have much more diverse classrooms and we're going to have a bigger plan coming forward about that. But the reason – the terminology point is real simple.

I have no problem saying there is structural racism in New York City and in America. I have no problem saying there's segregation in all facets of our city and our country. I got no problem saying the word.

I have a problem with – and I am asking advocates to acknowledge this so if we want to have semantic debate, I'll push back – I have a problem with people focusing on the end-point in the process rather than root causes. The schools didn't create segregation.

Segregation is based on economics and structural racism and then that plays out in employment and in housing and then eventually all that affects who goes to school where. And I just think that – I have a long, rich history with advocates. I know the vast majority are well-intended but to suggest the schools can solve this problem without first focusing on the root causes, I think it's a mistake.

We can do some very good things and we need to do more. There's definitely much more we need to do to have diverse classrooms. We can't solve the problem to the degree I think a lot of people would like to if we don't go at all those other issues first which is why this administration is entirely devoted to addressing income inequality. The whole theme, the whole concept of the second term is to make this the fairest big city in America.

That is about economics first and foremost.

Committee on Civil Rights

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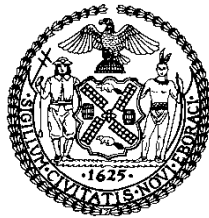
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THE COUNCIL

COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION

Matthew Gewolb, Legislative Director

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COMMITTEE ON CIVIL RIGHTS

Council Member Darlene Mealy, Chair

March 8, 2016

ii. Int. No. 814-A

Over at least the last 25 years, the Council has sought to protect the HRL from being narrowly construed by courts, particularly through major legislation adopted in 1991 and 2005.³ These actions have expressed a very specific vision: a Human Rights Law designed as a law enforcement tool with no tolerance for discrimination in public life. The 2005 Restoration Act⁴ provided that the HRL is to be interpreted liberally and independently of similar federal and state provisions to fulfill the “uniquely broad and remedial” purposes of the law. The Act amended the HRL’s liberal construction provision, Administrative Code § 8-130, to accomplish this goal. Some courts have recognized and followed this vision, but others have not, and many areas of the law remain as they were before the 2005 Restoration Act because they have not been scrutinized to determine whether they are consistent with the uniquely broad requirements of the HRL.

First, Int. No. 814-A would complement the liberal construction requirement in § 8-130 by directing that exemptions from the HRL’s general provisions be construed narrowly in order to maximize deterrence of discriminatory conduct.

Second, Int. No. 814-A would cite three cases—*Albunio v. City of New York*, 16 N.Y.3d 472 (2011), *Bennett v. Health Management Systems, Inc.*, 92 A.D.3d 29 (1st Dep’t 2011), and the majority opinion in *Williams v. New York City Housing Authority*, 61 A.D.3d 62 (1st Dep’t 2009)—that are important for their understanding and interpretation of the Restoration Act, including its strengthening of the liberal construction provision of the HRL. Highlighting these cases (1) would reaffirm that courts must apply the liberal construction provisions in every case

³ See Local Law No. 39 (1991); Local Law No. 85 (2005); see also Craig Gurian, “A Return to Eyes on the Prize: Litigating Under the Restored New York City Human Rights Law,” 33 Fordham Urb. L.J. 255 (2006).

⁴ Local Law No. 85 (2005).

and with respect to every issue; (2) would illustrate best practices when engaging in the required analysis; (3) would endorse the legal doctrines where they were developed pursuant to liberal construction analyses; and (4) would accelerate the process by which other doctrines inconsistent with the commands of Restoration Act are abandoned.

The examples from the cases cited below are illustrative, not comprehensive.

Broad and Independent Construction

As noted, Int. No. 814-A would recognize three cases as having given the HRL the independent construction required by the Restoration Act—*Albunio*, *Bennett*, and the majority opinion in *Williams*.

In *Albunio*, the New York Court of Appeals recognized that the 2005 Restoration Act required it to interpret an anti-retaliation provision of the HRL liberally. The court quoted the Council’s finding from the Restoration Act that the HRL ““has been construed too narrowly to ensure protection of the civil rights of all persons covered by the law,””⁵ concluding that § 8-130 required that the anti-retaliation provision contained in the HRL had to be construed, “like other provisions of the City’s Human Rights Law,” “broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible.”⁶

In *Bennett*, the Appellate Division, First Department, reexamined the application of a federal summary judgment burden-shifting procedure, known as the *McDonnell Douglas* analysis, to claims brought under the City’s HRL. Although the court ultimately concluded that a version of the *McDonnell Douglas* analysis may be applied to HRL claims, the court first

⁵ *Albunio*, 16 N.Y.3d at 477, quoting Local Law No. 85 § 1 (2005).

⁶ *Id.* at 477-78.

satisfied the requirement of the Restoration Act by evaluating the framework to ensure that it comported with the “uniquely broad and remedial purposes of the [HRL].”⁷ *Bennett* provided, among other things, important reconfirmation that there are no provisions of the law or judge-made doctrines that stand outside the liberal construction requirements of § 8-130. *Bennett* found that:

[T]he identification of the framework for evaluating the sufficiency of evidence in discrimination cases does not in any way constitute an exception to the section 8-130 rule that all aspects of the City HRL must be interpreted so as to accomplish the uniquely broad and remedial purposes of the law . . . and for [the court] to create an exemption from the sweep of the Restoration Act for the most basic provision of the City HRL—that it is unlawful “to discriminate”—would impermissibly invade the legislative province.⁸

Bennett altered the way that courts use *McDonnell Douglas* analysis for deciding summary judgment motions in discrimination cases under the HRL and provided a reminder that *McDonnell Douglas* is only one of the evidentiary routes available to plaintiffs.

Third, in the majority opinion in *Williams*, the Appellate Division, First Department, held that sexual harassment need not rise to the level of “severe and pervasive” to invoke the HRL’s protections against gender discrimination, even though that would have been the federal standard for sexual harassment. The court’s analysis of the HRL standard as independent of the federal standard thus fulfilled the Restoration Act’s requirement that the City’s HRL be interpreted independently of similar federal and state laws.⁹ As the majority opinion explained,

[T]he Restoration Act notified courts that (a) they had to be aware that some provisions of the City HRL were textually distinct from its state and federal counterparts, (b) *all* provisions of the City

⁷ *Bennett*, 92 A.D.3d at 34-35.

⁸ *Bennett*, 92 A.D.3d at 34-35.

⁹ *Williams*, 61 A.D.3d at 73.

HRL required independent construction to accomplish the law's uniquely broad purposes, and (c) cases that had failed to respect these differences were being legislatively overruled.¹⁰

The court wrote that the liberal construction provision was envisioned as “obviating the need for wholesale textual revision of the myriad specific substantive provisions of the law.”¹¹

As the court further explained,

While the specific *topical* provisions changed by the Restoration Act give unmistakable *illustrations* of the Council's focus on broadening coverage, section 8-130's specific *construction* provision required a “process of reflection and reconsideration” that was intended to allow independent development of the local law “in all its dimensions.”¹²

Thus, “areas of law that have been settled by virtue of interpretations of federal or state law ‘will now be reopened for argument and analysis As such, advocates will be able to argue afresh (or for the first time) a wide range of issues under the City's Human Rights Law’”¹³ The *Williams* court found that the HRL's text and legislative history represent a legislative desire that the HRL “‘meld the broadest vision of social justice with the strongest law enforcement deterrent.’”¹⁴

Development of Legal Doctrine Reflecting Those Principles

Having correctly understood and interpreted the Restoration Act, the cases developed legal doctrine accordingly. Some of that doctrine reflects determination of specific issues.

¹⁰ *Id.* at 67-68 (internal footnote omitted).

¹¹ *Id.* at 74.

¹² *Id.*, quoting Craig Gurian, “A Return to Eyes on the Prize,” 33 Fordham Urb. L.J. at 280.

¹³ *Id.* at 77 n.24, quoting Craig Gurian, “A Return to Eyes on the Prize,” 33 Fordham Urb. L.J. at 258 (first alteration in *Williams*).

¹⁴ *Id.* at 68, quoting Craig Gurian, “A Return to Eyes on the Prize,” 33 Fordham Urb. L.J. at 262.

For example, *Albunio* held that “opposition” to discrimination under the HRL can be established on limited evidence, with a jury given broad range to infer that the plaintiff was “in substance” conveying the idea that a third party had been discriminated against.¹⁵

And *Williams* concluded that the question of the “severity” or “pervasiveness” of harassment is relevant only to the question of damages, not to liability under the HRL.¹⁶ *Williams* also stated that an affirmative defense is available to a covered entity to show that the conduct complained of consisted of nothing more than petty slights and trivial inconveniences, but provided that this defense is limited to “truly insubstantial” cases.¹⁷ *Williams* further elaborated on the uniquely broad coverage of the HRL’s retaliation provision, concluding that “no challenged conduct may be deemed nonretaliatory before a determination that a jury could not reasonably conclude . . . that such conduct was . . . ‘reasonably likely to deter a person from engaging in protected activity.’”¹⁸ *Williams* also rejected the U.S. Supreme Court’s 2002 narrowing of the doctrine of continuing violations,¹⁹ holding that the narrowing was inapplicable to the HRL.²⁰ Accordingly, all types of discriminatory conduct, including what the Supreme Court had characterized as “discrete” actions,²¹ continue to be eligible to be treated as continuing violations.²² In restoring the broad scope of the continuing violation doctrine, the *Williams* court wrote that:

¹⁵ *Albunio*, 16 N.Y.3d at 478-79.

¹⁶ *Williams*, 61 A.D.3d at 76.

¹⁷ *Id.* at 80.

¹⁸ *Id.* at 71, quoting New York City Admin Code § 8-107(7).

¹⁹ See *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002).

²⁰ *Williams*, 61 A.D.3d at 72-73.

²¹ Discrete actions include actions such as a failure to promote, or a change in assignment, or a reduction in pay. *Williams* explained that different types of discrimination could combine to constitute a continuing violation—for example, an instance of harassment outside of the limitations period and a different type of gender-based discrimination within the limitations period. *Id.* at 81 n.31.

²² See *id.* at 72-73.

[T]he Restoration Act's uniquely remedial provisions are consistent with a rule that neither penalizes workers who hesitate to bring an action at the first sign of what they suspect could be discriminatory trouble, nor rewards covered entities that discriminate by insulating them from challenges to their unlawful conduct that continues into the limitations period.²³

These cases do not just establish specific ways in which the HRL differs from its federal and state counterparts; they also illustrate a correct approach to liberal construction analysis and then develop legal doctrine accordingly. It is therefore important for courts to examine the reasoning of the cases—including their extensive discussions of why the U.S. Supreme Court's analysis can be inadequate to serve the purposes of the HRL—and then for courts to employ that kind of reasoning when tackling other interpretative problems that arise under the HRL. Finally, Int. No. 814-A would remind courts that legal doctrine might need to be revised to comport with the requirements of § 8-130 of the Administrative Code.

Int. No. 814-A would take effect immediately upon enactment.

iii. Int. No. 818-A

Int. No. 818-A affects attorney's fee awards both in front of the Commission and in the courts. Regarding the Commission, currently, attorney's fees are not included in the enumerated list of awards the Commission may include in an order.²⁴ Int. No. 818-A would allow the Commission to include reasonable attorney's fees, expert fees and other costs in that list. If the Commission decides to award the complainant reasonable attorney's fees, the Commission may consider factors in setting the amount such as the novelty or difficulty of the issues presented, the

²³ *Id.* at 73.

²⁴ Pursuant to NYC Admin Code § 8-120, the awards the Commission may include in an order include, but are not limited to hiring, reinstatement or upgrading of employees; back pay and front pay; and payment of compensatory damages to the person aggrieved by such practice or act.

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2005**

No. 85

Introduced by Council Member Brewer, The Speaker (Council Member Miller), and Council Members Comrie, Jackson, Jennings, Koppell, Lopez, Martinez, Monserrate, Perkins, Quinn, Sanders, Seabrook, Stewart, Vann, DeBlasio, Reyna, Moskowitz, Gonzalez, Rivera, James, Yassky, Gerson, Barron, Palma, Baez, Katz, Weprin, Clarke, Liu, Dilan, Reed, Sears, Boyland, Gentile, Recchia, Foster, Avella, Arroyo, Gioia, Gennaro and The Public Advocate (Gotbaum).

A LOCAL LAW

To amend the administrative code of the City of New York, in relation to the human rights law.

Be it enacted by the Council as follows:

Section 1. The purpose of this local law, which shall be known as the "Local Civil Rights Restoration Act of 2005," is to clarify the scope of New York City's Human Rights Law. It is the sense of the Council that New York City's Human Rights Law has been construed too narrowly to ensure protection of the civil rights of all persons covered by the law. In particular, through passage of this local law, the Council seeks to underscore that the provisions of New York City's Human Rights Law are to be construed independently from similar or identical provisions of New York state or federal statutes. Interpretations of New York state or federal statutes with similar wording may be used to aid in interpretation of the New York City Human Rights Law, viewing similarly worded provisions of federal and state civil rights laws as a floor below which the City's Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise.

§ 2. Section 8-102 of chapter one of title eight of the administrative code of the City of New York is amended as follows:

24. The term "partnership status" means the status of being in a domestic partnership, as defined by § 3-240(a) of the administrative code of the city of New York.

§ 3. Subdivisions 1, 2, 4, 5, 7, 9 and 18 of section 8-107 of chapter one of title eight of the administrative code of the City of New York are amended to read as follows:

1. Employment. It shall be an unlawful discriminatory practice:

(a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, *partnership status*, sexual orientation or alienage or citizenship status of any person, to

desist from such unlawful discriminatory practice or acts of discriminatory harassment or violence. Such order shall require the respondent to take such affirmative action as, in the judgment of the commission, will effectuate the purposes of this chapter including, but not limited to:

- (1) hiring, reinstatement or upgrading of employees;
- (2) the award of back pay and front pay;
- (3) admission to membership in any respondent labor organization;
- (4) admission to or participation in a program, apprentice training program, on-the-job training program or other occupational training or retraining program;
- (5) the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges;
- (6) evaluating applications for membership in a club that is not distinctly private without discrimination based on race, creed, color, age, national origin, disability, marital status, *partnership status*, gender, sexual orientation or alienage or citizenship status;
- (7) selling, renting or leasing, or approving the sale, rental or lease of housing accommodations, land or commercial space or an interest therein, or the provision of credit with respect thereto, without unlawful discrimination;
- (8) payment of compensatory damages to the person aggrieved by such practice or act; and
- (9) submission of reports with respect to the manner of compliance.

§ 6. Section 8-126 of chapter one of title eight of the administrative code of the City of New York is amended as follows:

a. Except as otherwise provided in subdivision thirteen of section 8-107 of this chapter, in addition to any of the remedies and penalties set forth in subdivision a of section 8-120 of this chapter, where the commission finds that a person has engaged in an unlawful discriminatory practice, the commission may, to vindicate the public interest, impose a civil penalty of not more than [fifty] *one hundred and twenty-five* thousand dollars. Where the commission finds that an unlawful discriminatory practice was the result of the respondent's willful, wanton or malicious act or where the commission finds that an act of discriminatory harassment or violence as set forth in chapter six of this title has occurred, the commission may, to vindicate the public interest, impose a civil penalty of not more than [one hundred thousand] *two hundred and fifty* thousand dollars.

§ 7. Section 8-130 of chapter one of title eight of the administrative code of the City of New York is amended as follows:

§ 8-130. Construction. The provisions of this [chapter] *title* shall be construed liberally for the accomplishment of the *uniquely broad and remedial* purposes thereof, *regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title, have been so construed.*

§ 8. Section 8-502 of chapter five of title eight of the administrative code of the City of New York is amended as follows:

b. Notwithstanding any inconsistent provision of subdivision a of this section, where a complaint filed with the city commission on human rights or the state division on human rights is dismissed by the city commission on human rights pursuant to subdivisions a, b or c of section

8-113 of chapter one of this title, or by the state division of human rights pursuant to subdivision nine of section two hundred ninety-seven of the executive law *either* for administrative convenience *or on the grounds that such person's election of an*

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THE COUNCIL
REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION
MARCEL VAN OUYEN, LEGISLATIVE DIRECTOR

COMMITTEE ON GENERAL WELFARE
BILL DE BLASIO, CHAIR

August 17, 2005

PROP. INT. NO. 22-A:

By Council Members Brewer, The Speaker
(Council Member Miller), Comrie, Jackson,
Jennings, Koppell, Lopez, Martinez, Monserrate,
Perkins, Quinn, Sanders Jr., Seabrook, Stewart,
Vann, DeBlasio, Reyna, Moskowitz, Gonzalez,
Rivera, James, Yassky, Gerson, Barron, Palma,
Baez, Katz, Weprin, Clarke, Liu, Dilan, Reed,
Sears, Boyland, Gentile, Recchia, Foster, Avella,
Arroyo and The Public Advocate (Ms. Gotbaum)

TITLE:

To amend the administrative code of the city of New
York, in relation to the human rights law.

The Committee on General Welfare, chaired by Council Member Bill de Blasio,
will meet on Wednesday, August 17, 2005, at 10:45 a.m. to consider Prop. Int. 22-A, the
“Local Civil Rights Restoration Act of 2005,” a proposed local law that would amend
New York City’s human rights law.

Prop. Int. 22-A aims to ensure construction of the City’s human rights law in line with the purposes of fundamental amendments to the law enacted in 1991. Speaking at the bill signing ceremony for Int. 465-A, the 1991 amendments to the City’s human rights law, Mayor Dinkins stated: “[t]his bill gives us a human rights law that is the most progressive in the nation, and reaffirms New York’s traditional leadership in civil rights.”¹ Mayor Dinkins went on to explain: “there is no time in the modern civil rights era when vigorous local enforcement of anti-discrimination laws has been more important. Since 1980, the federal government has been steadily marching backward on civil rights issues”² and “it is the intention of the Council that judges interpreting the City’s Human Rights Law are not bound by restrictive state and federal rulings and are to take seriously the requirement that this law be liberally and independently construed.”³

Prop. Int. 22-A responds to concerns that construction of numerous provisions of the human rights law as amended in 1991 has narrowed the scope of the law’s protections since its enactment by clarifying a number of its provisions and by again underscoring that protections afforded by New York City’s human rights law are not to be limited by restrictive interpretations of similarly worded state and federal statutes.

Specifically, the bill would add “partnership status,” defined as the status of being in a domestic partnership, as set forth in § 3-240(a) of the administrative code of the city of New York, to the list of categories protected from discrimination under the administrative code. Pending judicial reconsideration of the proper scope of protection from discrimination based on marital status, this provision will ensure that life partners

¹ Remarks by Mayor David N. Dinkins at public hearing on Local Laws, June 18, 1991, 1 (on file with Committee on General Welfare).

² Id.

³ Id. at 2.