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Via Fax & UPS Overnight

February 13, 2013

Property Management Bureau
New York State Division of Housing
and Community Renewal
Gertz Plaza
92-31 Union Hall Street
Jamaica, New York 11433

Re: AW 230030 RO
AW 230031 RO
AW 230032 RO
AW 230033 RO
AW 230034 RO

Premises: 10, 20 and 30 Columbia Place
& 24, 32 Joralemon Street;
Brooklyn, NY 11201

Dear Ms. Albano:

This office represents the The Riverside Apartments Tenants Association a/k/a the Riverside Tenants Association ("the TA"), in the above referenced PAR dockets filed by the Owner.

Initially, we are requesting that the above referenced dockets be consolidated, consistent with the Agency's policy in these matters, with the following dockets assigned to the PAR filed by the TA: AW 230004 RT, AW 230005 RT, AW 230006 RT, AW 230007 RT, AW 230008 RT.

All of these dockets relate to a common order by the Rent Administrator, dated October 11, 2012, which was assigned separate docket numbers for each of the five buildings comprising the Riverside Apartments complex.

There are common questions of law and fact, and consolidation will serve the interests of efficiency, and avoid wasteful duplication.

THE RENT ADMINISTRATOR'S DETERMINATION THAT THE OWNER'S LATEST APPLICATION IS NOT RIPE FOR ADJUDICATION IS CORRECT

In the Absence of Demolition and Construction Plans, Let Alone Approved Plans, the Owner's Application Is Entirely Speculative

There is no actual architectural *or* engineering *plan* for the Owner's newly revised *proposal,* the *fourth* in a series designed to promote parking facilities at Riverside Apartments.[1]

In the proceedings before the Rent Administrator ("RA"), the Owner failed to dispute the TA's contention, fully supported in the submission by the New York Environmental Law and Justice Project ("NYELPJ") (Exhibit "D-V" to TA's February 6, 2012 submission to the RA), that the approval of architectural and engineering *plans,* which must be submitted to, *inter alia*, the Department of Buildings ("DOB"), the New York City Waterfront Revitalization Program ("WRP") and Metropolitan Transportation Authority ("MTA"), the New York City Department of Transportation ("NYCDOT") and the New York State Department of Transportation ("NYSDOT"), and the issuance of permits by these agencies, charged with the responsibility of protecting the health and safety of the public, will be needed before any work can even begin. [2]

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[1] See the description of proceedings before the Agency set forth in the Orders of the Rent Administrator dated October 11, 2012.

[2] For the first time, in its PAR, the Owner has disputed, with no basis in the record, that the approval of NYSDOT and NYCDOT will be necessary when and if actual architectural and engineering plans are prepared by the Owner. The Owner entirely ignores the fact that excavation and demolition of the existing Courtyard will be taking place directly adjacent to the triple cantilever section of the Brooklyn Queens Expressway ("BQE"). Further, one of the Owner's selling points for

As is fully described in the NYELPJ Report, the Owner's proposal to demolish and excavate the Riverside Courtyard, which is directly adjacent to the raised triple cantilever section of the Brooklyn Queens Expressway, and the 100+ year old buildings of Riverside Apartments, and is built on landfill, just above the water table, represents a environmental potential environmental and structural disaster waiting to happen.

The Owner's repeated insistence that the Agency's concern regarding the viability of its proposal, and the potential for further major revisions, are *speculative,* turns reality on its head. It is the Owner's proposal that is speculative - a *moving target* that keeps changing.

As is described more fully below, the Owner's submissions to the RA are riddled with indications of the speculative nature of the present application.

The humongous demolition, excavation and construction work that will be required to effectuate the present proposal put this application, for a modification and permanent reduction in rent, in a class by itself. The Owner has not cited any authority for a proposed modification or reduction of services which resembles this unique project, which will necessitate the approvals of formal plans and the issuance of permits by many governmental agencies, and the termination of *all* Courtyard services, during what is sure to be a prolonged period.

The TA respectfully submits that the present proposal, which is almost ethereal in its absence of specifications, is far too speculative for the Agency to rule upon. Until formal architectural and engineering plans are prepared and submitted for approval to the agencies with oversight, and permits are issued, the ultimate construction of the Disneyesque, Fantasy Courtyard, is entirely speculative.

The Owner's Submission of Lengthy Technical Engineering Reports Fully Supports the Conclusion that Prior Approval of Actual Plans by DOB, NYSDOT, NYCDOT, NYCWRP and MTA, Should Be Required before DHCR Makes A

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the former rejected proposal was that it would not route traffic directly in front of any of the buildings. The present proposal does precisely that, creating an obvious danger to tenants and their children.

Determination on the Present Theoretical Proposal

The Owner's March 2, 2012 submission to the RA correctly noted that *"[i]t is obviously not DHCR's province to determine whether the proposal is feasible from an engineering or geotechnical standpoint." Emphasis supplied.* The TA wholeheartedly agrees with that conclusion.

The Owner then proceeded to attach to this DHCR submission 136 pages consisting of a November 10, 2004 Geotechnical Investigation and Foundation Recommendations, and a revised version of same as of April 3, 2009, filled with engineering and geotechnical "subsurface investigation and site characterizations", "engineering evaluations and recommendations," and various charts and graphs that only an MIT graduate could love.

Presumably the Owner considered these submissions to be directly relevant to the present application or it wouldn't have bothered to include these reports.

However, consistent with its own conclusion contained above, the proper place for an evaluation of this material is *not* DHCR.

Only the various agencies with oversight over the technical requirements for demolition, excavation and construction, and the particular rules and requirements for performing such work on the East River landfill, just above the water table, and directly adjacent to a raised section of a major highway, are in a position to make any sense of these reports.

In its present PAR, the Landlord has simply ignored this submission, prepared by its own expert, URS. Joel Weiner, whose only known expertise appears to be violating the rent laws, as the principle of the notorious Pinnacle group, has now deemed himself an expert on a host of topics, including traffic flow, structural engineering, DOB procedures, etc.

Mr. Weiner may be fully confident that the current proposal, which proposes a U-turn entrance ramp directly in the rear of the Joralemon Street buildings, which were erected more than one hundred years ago, will be approved with no more than minor mechanical changes required, but it is entirely possible that

the DOB will have other ideas, forcing Mr. Weiner and his cohorts to go back to the drawing board yet again.

The Owner's March 2, 2012 submission to the RA also noted that "URS did not find that the project was not viable; it simply pointed out issues that might need to be addressed in the course of completing the project."

Nor did either of the URS studies find that the "project" *was* viable. That does not appear to be the question which was addressed. Clearly, the viability of the "project" from an engineering standpoint is a question that must be determined by the agencies with the necessary expertise and oversight responsibilities. Whether the project is viable from a financial standpoint is a question that the Owner must address, but the TA respectfully submits that without formal plans being approved by the supervisory agencies, there is no way in the world that the Owner, or this Agency, can know a) whether this project can actually, and safely, be built; b) whether major modifications will be required, and c) whether the costs of demolition, excavation and construction are financially feasible.

The TA's February 6, 2012 submission to the R.A. contained a detailed analysis by the New York Environmental Law and Justice Project ("NYELJP") (Exhibit D-V) of the original November 10, 2004 URS Study, which pointed up the numerous potential dangers projected in the URS Report itself.[3]

The revised URS report, updated on April 3, 2009, is filled with provisos that make it impossible to draw a definite conclusion as to viability. *See,* e.g., p.2, fn 7:

> installation of deep foundations at this site could be hampered at some locations should any pre-existing foundations or debris remain below pile cap locations;" ("...some voids were noted under the footing at that location which extended some distance under the building. It is not known whether this feature is unique to this location, or exists at other locations, but if it

[3] Not to worry. The Owner assured the RA that "[a]ny concerns there are concerning engineering or geotechnical aspects of the project will be addressed at the appropriate time."

does, this would serve to *increase the risk of building damage from construction vibrations*");

p.12:

> It could have an impact on construction as the piles could serve as potential obstructions to driving temporary sheeting for support of excavations or if a deep foundation is used of support the new building. It is recommended that this issue be studied in more detail *as part of the final design process*;

p.19:

> the piles supporting the retaining structure for the access roadway of the BQE may pose as obstructions to installation of a temporary retaining structure along the western side of the site. *Available information regarding those foundations should be analyzed carefully in conjunction with the DOT engineering department to verify that no special construction provisions or restrictions will be required which could impact the project.*

Emphasis supplied. In view of the above, Mr. Weiner's present contention that no DOT review is needed, appears to be pure invention.

Finally, it must be noted that in its April 14, 2012 Response to the NYELJP Report, URS appears to have abandoned any pretense of engineering objectivity and has become more of an advocate for the Owner. For example the claim is made, at p.2 of the Response, that "[i]n any event, the construction will be performed in accordance with all applicable NYC building code requirements." At p. 3, URS assures the Agency that "[a]ppropriate measures will be taken to ensure that construction vibration threshholds do not cause liquefaction." In the absence of actual plans, it is hard to find the basis for these and other reassuring claims, which will need to be reviewed by the Agencies with the appropriate engineering expertise.

The Agency's Requirement of Approved Plans and Permits Is Fully Consistent with the Rent Stabilization Code and Prior Practice

The Owner's citation to the requirements for approved plans for demolition and major capital improvement ("MCI") applications fully supports the RA's determination in this matter.

Those provisions are designed to routinely deal with situations which normally involve plans which require the approval of the DOB. A demolition of an existing building and the construction of a new one cannot be accomplished without plans filed with and permits issued by DOB. Similarly, MCI's *frequently* involve the replacement of building wide systems, such as electricity, gas, plumbing, and heating, which mandate the approval of other agencies. Hence, it makes perfect sense for the Agency to require the submissions of approved plans prior to even considering a demolition or MCI application.

An application for a modification or reduction of services, on the other hand, does not routinely involve demolition or construction work which would require the approval of another Agency.

In fact, the Owner has failed to cite a single example of a modification or decreased services application which necessarily required DOB approval. The single example submitted by Owner of a DHCR modification application (Exhibit "H" to Owner's application) did not necessarily required DOB approval. Under any circumstances, comparing a 20% reduction of lounge space to the present massive undertaking, which could conceivably flood Brooklyn Heights, bring down the BQE, and undermine the structural stability of the existing buildings at Riverside Apartments, deserves an award for invidious comparisons.

Since this project involves the excavation and demolition of the current Courtyard, and the construction of a new underground facility, and undoubtedly requires extensive government review, the RA was entirely justified in looking to companion sections of the Rent Stabilization Code for instruction on how the Agency routinely deals with projects involving these requirements.

The fact that an Owner is *precluded* from even *filing* demolition or MCI proceedings, with necessary plans, approved by other Agencies, does not mean that

in a different appropriate case, such as the present one, the Agency is precluded from insisting on such plans. Doing so in the present case is perfectly consistent with the goals of ensuring the safety of the public and compliance with required laws and codes, and utilizing the limited resources of the Agency for applications which are not speculative.

Finally, it should be noted that RSC §2252.4(d) does not mandate the Agency to grant, or even act, on every proposal, even, assuming arguendo, that it complies with the three grounds stated therein.[4] It merely states that "[t]he Owner may file an application..." The Agency retains its discretionary powers to deal with an application in a suitable fashion.

The Agency's Conclusion that Review by the Various Oversight Agencies May Result in Significant Changes to the Owner's Proposal Is Based Upon Direct Experience During the Prior Application

In the text of the present PAR, the Owner has been careful to omit a most damaging, yet undisputed fact contained in the record.

As a direct result of the review by the Landmark Preservation Commission ("LPC") of the Owner's original 2008 proposal, for a two floor garage, with one level above ground, the Owner was compelled to revise its garage proposal to one that only includes *one* level, below ground. This finding is contained in the July 14, 2009 Order of the RA, which has been affirmed by the Commissioner, the Supreme Court, and now by the Appellate Division. (Exhibit "**A**").

Since Petitioner apparently has conceded the point that the requested modification could *not* be issued without the LPC approval, whose jurisdiction is limited to historical architectural features, there is no logical reason why DHCR should approve the present application in the absence of the necessary authorizations from the other City and State agencies whose approvals *must* be obtained before the

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[4] In its PAR, the TA argues that the proposal, which, if effectuated, will eliminate the fundamental purpose of the Courtyard, and eliminate the Courtyard service completely during the lengthy period of construction, is inconsistent with the RSL or the Code. Assuming arguendo that this argument is rejected, there is no way to determine at this stage, in the absence of formal plans, approved by the Agencies with jurisdiction, whether the final plan will result in a decrease of services that is not inconsistent with the RSL or the Code.

proposal can be put into effect.

It is also noteworthy that the present application has eliminated the proposed use of the DOT easement, required to maintain the adjacent section of the BQE, as a proposed entrance and exit ramp. The Owner has failed to explain the reason for this change, but it is reasonable to assume that the prior proposal's use of this space, which clearly would interfere with the purpose of the easement, was ruled out by the authorities.

In a case such as the present one, in which numerous governmental agencies must review and approve detailed engineering and architectural plans, it makes no sense whatsoever, and it is a complete waste of the Agency's time, as well as the TA's, for the Agency to permit this proceeding to be maintained, without the approval of not just the LPC, but of *all* of the governmental agencies with jurisdiction over the project.

Until actual demolition and construction plans are prepared and filed by the Owner, and reviewed and approved by the numerous agencies with jurisdiction, the Agency cannot possible determine an amount of a rent reduction to be applied to the residents of the various buildings.

The Agency is Not Barred by It's Prior Determinations from Dismissing the Present Application

The Agency's April 10, 2010 determination on the Owner's 2008 application dismissed the application on the grounds that the purported modification comprised a *reduction of services*. Despite the fact that this Order was upheld by the Supreme Court and the Appellate Division, the Owner continues to insist that it has no res judicata or collateral estoppel effect.[5]

Nevertheless, without citation to any authority, the Owner appears to be suggesting in its present PAR that the Commissioner's claimed failure to dismiss

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[5] In the TA's PAR, we argue that the prior Order's determination that the proposal comprises a reduction of services, as well as other findings in the Order, including, *inter alia*. the beneficial effects of the majestic old trees, are binding on the Agency's determination in this proceeding, based upon the doctrines of res judicata and collateral estoppel.

the prior application on the grounds of prematurity somehow bars the Agency from doing so now.

However, since the Commissioner never reached this ground in dismissing the prior application, there is no basis for any claim that the Agency is precluded from doing so now.

Furthermore, in the present proceeding, unlike the prior one, DHCR would be called upon to set a specific amount for a rent decrease. As is noted in footnote 2 of the Owner's PAR, "another difference between this Application and the 2008 Application is that, because cars will no longer traverse the length of the courtyard along the access easement, *the impact on each building in the complex is different.*

Nothing in the present record would enable the Agency to compute an appropriate rent decrease for each building.[6]

CONCLUSION

For the foregoing reasons, and all of the reasons cited by the TA in the underlying proceedings before the RA, the Owner's PAR should be denied in all respects, and the Tenant's PAR should be granted in all respects.

Dated: New York, New York
February 13, 2013

Stephen Dobkin

[6] The Owner's suggestion that the decrease run from $0 to $15.00 runs the gamut, from insisting that no decrease is justified, to proposing a piddling decrease, based on the rent controlled rents that were in effect many years ago. In either case, no distinction is set forth for adjustments for the different buildings.