

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: SPECIAL TERM

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In the Matter of the Application of	:	
NEW YORK CITY COUNCIL	:	
BARUCH HOUSES TENANTS' ASSOCIATION,	:	Index No.
ROBERTO NAPOLEON,	:	
DOUGLASS HOUSES TENANTS' ASSOCIATION,	:	<u>VERIFIED PETITION</u>
and JANE WISDOM,	:	
	:	
Petitioners,	:	
	:	
For an Order Pursuant to Article 78 of	:	
the Civil Practice Law and Rules, and	:	
for other relief,	:	
	:	
-against-	:	
	:	
NEW YORK CITY HOUSING AUTHORITY;	:	
JOHN B. RHEA, as Chairman of the Board of the	:	
New York City Housing Authority,	:	
	:	
Respondents.	:	
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To The Court:

The NEW YORK CITY COUNCIL, BARUCH HOUSES TENANTS' ASSOCIATION, ROBERTO NAPOLEON, DOUGLASS HOUSES TENANTS' ASSOCIATION, and JANE WISDOM for the petition, allege:

INTRODUCTION

1. Earlier in 2013, the New York City Housing Authority (“NYCHA”) announced an unprecedented initiative, popularly known as its “Land Lease” initiative or plan, to allow private developers to build market-rate residential high rises on several parcels of public housing land in Manhattan south of 104th Street. Despite NYCHA’s mission to provide housing for low-income New Yorkers, the rents in these buildings will be affordable only to high-income

New York City residents.

2. NYCHA's Land Lease initiative is contrary to the law. First, leasing New York City's public housing for use as housing for high-income individuals is beyond the statutory authority granted to NYCHA by New York State law. Second, NYCHA has refused to submit the Land Lease initiative to New York City's Uniform Land Use Review Procedure ("ULURP"), even though Section 150 of the New York State Public Housing Law requires it to do so. Third, NYCHA has pressed forward with the Land Lease initiative in 2013 despite having failed to describe the initiative in its 2013 Annual Plan as required by federal law.

3. NYCHA insists that it is entitled to carry out the Land Lease initiative without the approval of anyone besides the federal government. Petitioners, the New York City Council, the residents' associations of two of the affected developments, and the presidents of these associations, bring this petition to prevent NYCHA from proceeding with an initiative that is beyond NYCHA's statutory authority and that was created without the collaboration of City elected officials or NYCHA residents, which is required by law.

The Parties

4. Petitioner the New York City Council is the legislative body of the City of New York, and is responsible for reviewing housing and urban renewal plans and projects pursuant to city, state, and federal housing laws. *See* New York, N.Y. Charter ch. 8, §§ 21, 197-c, 197-d.

5. Petitioner Baruch Houses Tenants' Association ("BHTA") is the democratically elected residents' association at the Bernard M. Baruch Houses ("Baruch Houses"), a federally funded public housing project managed by NYCHA in the Lower East Side of Manhattan between East Houston Street and Delancey Street. The Baruch Houses are the

largest NYCHA development in Manhattan, comprising 2,194 apartments housing over 5,000 people. BHTA is dedicated to representing the interests of the tenants of the Baruch Houses and to improving the quality of life in the Baruch Houses and the surrounding neighborhoods.

6. Petitioner Roberto Napoleon is a resident of the Baruch Houses and the democratically elected president of the BHTA.

7. Petitioner Douglass Houses Tenants' Association ("DHTA") is the democratically elected residents' association at the Frederick Douglass Houses ("Douglass Houses"), a federally funded public housing project managed by NYCHA on the Upper West Side of Manhattan. The Douglass Houses are located between 100th Street and 104th Street, to the east of Amsterdam Avenue and the west of Manhattan Avenue, and consist of 2,056 apartments housing over 4,500 people. DHTA is dedicated to representing the interests of the tenants of the Douglass Houses and to improving the quality of life in the development and its surrounding neighborhoods.

8. Petitioner Jane Wisdom is a resident of the Baruch Houses and the democratically elected president of the DHTA.

9. Respondent NYCHA is a state governmental agency and public corporation created by the New York State legislature pursuant to Article XVIII of the New York State Constitution and section 2 of the New York Public Housing Law for the purposes of clearing, reconstructing, and rehabilitating substandard and insanitary areas in New York City and providing adequate, safe, and sanitary low rent housing accommodations for persons or families of low income.

10. Respondent John B. Rhea is the chairman of the board of NYCHA. In this capacity, Chairman Rhea is responsible for, and on information and belief has played an active

role in the development of, the actions of NYCHA that are being challenged here.

NYCHA's Land Lease Initiative

11. Early in 2013, NYCHA publicly unveiled a plan to lease land from existing public housing projects to private developers. Under the plan, which NYCHA calls its "Land Lease" initiative, fourteen parcels of land from eight NYCHA developments, including the Baruch Houses and the Douglass Houses, would be leased for 99 years to private developers for the purpose of building high-rise residential buildings.¹

12. All eight of the NYCHA housing developments affected by the Land Lease initiative are public housing projects under the meaning of the New York Public Housing Law, existing for the purpose of "providing homes for persons of low income."² Nevertheless, the Land Lease initiative calls for eighty percent of the units in the new high rises to be leased out at market rates, with only twenty percent of the units reserved for low-income individuals.

13. On information and belief, NYCHA's Land Lease initiative, if implemented, would mark the first time in the history of New York City that public housing land is opened to large-scale private residential development with the majority of units rented out at market rates.

14. NYCHA asserts that it is pursuing the Land Lease initiative to raise money for its capital budget.³ Accordingly, NYCHA has chosen the fourteen Land Lease sites primarily for "their potential to generate significant revenue," that is, for the purposes of maximizing the

¹ The Land Lease initiative is described in detail on a dedicated NYCHA website available at <http://www.nyc.gov/html/nycha/html/preserving/leasing-land.shtml>.

² N.Y. Pub. Hous. Law §§ 3(13)-(14).

³ See Land Lease Opportunity to Preserve Public Housing, <http://www.nyc.gov/html/nycha/html/preserving/leasing-land.shtml>.

market rents available to private developers.⁴ The properties NYCHA selected for inclusion in the Land Lease program are characterized by their locations in high-rent districts of New York City. All of the proposed Land Lease sites are in the borough of Manhattan, south of 104th Street. Five of the eight affected developments are located in lower Manhattan, primarily on the Lower East Side.

15. Though NYCHA has objected to characterizations of the proposed Land Lease developments as “luxury” housing, NYCHA’s focus on high-rent areas, coupled with its intention to develop primarily market-rate residential housing, will inevitably result in a stark contrast between the socioeconomic status of the majority of the residents of the proposed developments and that of the low-income individuals that it is NYCHA’s mission to serve.

16. For example, rent in a private building across the street from the Baruch Houses is, on information and belief, \$3,100 per month, or \$37,200 per year, for a one-bedroom apartment. By comparison, 50% of the area median income for New York City, which is the maximum average income for the low-income portion of affordable housing developments in the city, is \$38,700 for a family of three, and the median income of NYCHA’s residents is \$17,800. Only New York City families earning significantly more than the median area income are likely to be able to afford the market-rate units in the proposed Land Lease developments.

17. Another criterion NYCHA applied in selecting Land Lease sites was to choose those that “permit the construction of new buildings in compliance with the existing NYC Zoning Code.”⁵ In other words, NYCHA’s objective was to avoid the need to obtain the participation or approval of New York City elected officials in the development process. Despite

⁴ See Land Lease Opportunity to Preserve Public Housing Frequently Asked Questions, <http://www.nyc.gov/html/nycha/html/preserving/leasing-land-faqs.shtml#14> (last visited Oct. 8, 2013).

⁵ *Id.*

NYCHA's efforts to avoid it, however, such participation and approval is required by law.

**NYCHA Fails to Seek Meaningful Input
From NYCHA Residents and Elected Officials**

18. NYCHA states that it has undertaken “a multi-year effort to engage residents, elected officials and other community leaders in the development process” for the Land Lease initiative.⁶ In truth, however, NYCHA has refused to submit the plan for approval by elected officials and has presented the Land Lease initiative to affected residents and resident associations in a series of check-the-box public meetings which it has had little intention of incorporating into its actual decision-making process.

19. Under Section 18 of the 1937 Act, federally funded public housing land or interests (including long-term lease interests) in such land cannot be demolished, sold, or transferred without the approval of the federal department of Housing and Urban Development (“HUD”).⁷ HUD statutes and regulations require that any application to transfer interests in public housing land be “developed in consultation” with public housing residents and resident associations.⁸

20. Because of the importance of resident consultation to the HUD process, public officials and community leaders have repeatedly called for NYCHA to genuinely include the tenants of the affected NYCHA houses in the process of developing its Land Lease initiative. Unfortunately, NYCHA has determined the essential details of the Land Lease initiative behind closed doors, without soliciting public input, and has subsequently presented them to the residents as a fait accompli.

⁶ Land Lease website, <http://www.nyc.gov/html/nycha/html/preserving/leasing-land.shtml> (last visited Oct. 8, 2013).

⁷ See 42 U.S.C. § 1437p.

⁸ 24 C.F.R. § 970.9(a).

21. Before it began presenting the Land Lease initiative to NYCHA residents, NYCHA released a document entitled “Land-Lease Initiative – Pre-RFP [Request for Proposals] Discussion Document” (“Pre-RFP”) (attached as Exhibit A). The Pre-RFP provides significant information about the Land Lease initiative to potential developers. It identifies the sites at issue, the amount of square footage that is available under as-of-right zoning, and NYCHA’s views on the applicable approval processes. The Pre-RFP also presents NYCHA’s “proposed RFP terms,” which outline financing guidelines, design/zoning criteria, labor standards, and other detailed information for developers intending to submit Land Lease proposals.⁹ NYCHA’s pre-RFP document indicates that NYCHA had already determined the essential details of the Land Lease initiative before it ever sought resident input.

22. After releasing the pre-RFP document, NYCHA held a series of meetings with residents and resident associations of the affected NYCHA developments, as federal law required it to do. These meetings have been designed to create the appearance of resident consultation without actually including the views of NYCHA residents in the development of the Land Lease initiative. NYCHA’s approach to these meetings with residents is epitomized by the way one of its officials reportedly responded to a question at a meeting at the Campos Plaza development: “Come up with a better idea or shut up.” Not surprisingly, NYCHA’s residential meetings resulted in few changes to NYCHA’s original Land Lease initiative as outlined in the pre-RFP document.

NYCHA Refuses to Submit the Land Lease Plan to ULURP

23. Despite NYCHA’s failure to meaningfully consult the public, residents of the affected NYCHA developments have considered the Land Lease initiative, and they have

⁹ *Id.* at 4.

overwhelmingly rejected it in its current form. Resident associations representing seven of the eight impacted developments, including petitioners BHTA and DHTA, have publicly opposed the plan. NYCHA residents have called for NYCHA to submit the plan for approval pursuant to ULURP, and have stated that the plan should not be approved as it presently stands.

24. In addition to NYCHA residents, numerous local community leaders and elected officials have called on NYCHA to slow down the Land Lease development process to allow for broader community consultation and consideration of a wider range of development alternatives. In particular, there has been a widespread call for NYCHA to submit to the Land Lease initiative to ULURP, New York City's established mechanism for deliberation and community participation concerning proposed developments.¹⁰

25. To date, NYCHA has ignored NYCHA residents and community leaders and refused to submit the Land Lease initiative to the ULURP or otherwise alter the content or the timetable of the Land Lease initiative.

26. However, section 150 of the New York State Public Housing Law, the statute under which NYCHA is constituted, provides that the "prior approval of the local legislative body and of the planning commission" is "requisite to the final adoption or approval by an authority or municipality of a plan or project."¹¹ Under controlling New York Court of Appeals case law, any "essential or significant" modification to a public housing plan or project

¹⁰ Officials who have called on NYCHA to follow ULURP, in addition to petitioner the New York City Council, include U.S. Congress Member Carolyn B. Maloney; State Assembly Speaker Sheldon Silver; State Assembly Member Brian Kavanagh; State Assembly Member Robert Rodriguez; State Assembly Member Daniel J. O'Donnell; State Senator Brad Hoylman; State Senator Daniel Squadron; State Senator Bill Perkins; State Senator José Serrano; Community Board 3 Chair Gigi Li; and Community Board 11 Chair Matthew S. Washington.

¹¹ N.Y. Pub. Hous. Law § 150.

requires approval under Section 150.¹² In particular, a change to the “number and quality of the tenant population” is a significant modification requiring prior approval.¹³

27. For cities like New York with over one million people, the Public Housing Law defines “local legislative body” as the “officer or agency vested with power under the charter of such city, or by other law, to act pursuant to this chapter.”¹⁴ The relevant officers and agencies designated by the New York City Charter are set forth in ULURP. Indeed, one of the “categories” to which ULURP expressly applies is “[h]ousing and urban renewal plans and projects pursuant to city, state and federal housing laws.”¹⁵ Thus, under Section 150 of the Public Housing Law, the entities “vested with power” to approve public housing plans or projects – or significant modifications thereto – are those specified in ULURP. NYCHA is required to comply with those procedures.

NYCHA Issues RFEI Reflecting No Material Changes from Original Proposal

28. On August 16, 2013, NYCHA issued its Request for Expressions of Interest (“RFEI”) for the Land Lease program, a copy of which is attached as Exhibit B. While not titled a “Request for Proposals,” the RFEI is for all intents and purposes a request for proposals. It “invites developers to submit *proposals* for the design, construction and operation” of the residential developments called for by the Land Lease initiative.¹⁶ As NYCHA had previously indicated on its Land Lease website, a request for proposals would represent

¹² *Margulis v. Lindsay*, 31 N.Y.2d 167, 173 (1972).

¹³ *See id.*

¹⁴ N.Y. Pub. Hous.Law § 3(7).

¹⁵ New York, N.Y. Charter ch. 8, § 197-c(a)(8).

¹⁶ Press Release, NYCHA, The New York City Housing Authority Seeks Expressions of Interest in Development on Public Housing Property (Aug. 16, 2013) at 1 (attached as Exhibit C).

NYCHA's formal decision to move forward with the Land Lease initiative.¹⁷

29. NYCHA's RFEI identifies no significant changes to the Land Lease initiative, as compared to what was described in the pre-RFP document issued before NYCHA's summer 2013 meetings with public housing residents. The RFEI includes the same fourteen sites at the same eight developments as originally proposed. It calls for the same 80%/20% mix of market-rate to affordable units, with the 20% affordable units governed by the same income formula as described in the pre-RFP document. It includes substantially the same financing requirements and design requirements. The only change from the pre-RFP document is that an unspecified amount of ground floor retail use is now requested at eight of the fourteen sites.

30. NYCHA's RFEI calls for a rapid process for selecting developers and moving forward with the Land Lease initiative, with no requirement of further deliberation or community input. Expressions of Interest from developers are due on November 18, 2013.¹⁸ An "internal selection committee" of NYCHA staff will review the submissions, and may recommend to the NYCHA board that "a Developer be selected for a particular Development Parcel."¹⁹ If the NYCHA board approves the recommendation, it will issue a Conditional Designation Letter to the developer.²⁰ The "selected Applicant *must* begin pre-development work within thirty (30) days of the date of the conditional Designation Letter."²¹

31. With the issuance of the RFEI, NYCHA has made a formal determination to move forward with the Land Lease initiative.

¹⁷ *See id.*

¹⁸ RFEI, Exhibit B at 32.

¹⁹ *Id.* at 38.

²⁰ *Id.*

²¹ *Id.* at 40 (emphasis added).

NYCHA's Failure to Describe the Land Lease Initiative in its 2013 Annual Plan

32. In addition to the above, NYCHA's federally-mandated annual plan for 2013, dated October 18, 2012 ("2013 Annual Plan"), provides no detailed description of the Land Lease initiative. The 2013 Annual Plan²² does not identify the eight housing developments to be affected, the fourteen parcels to be included, or even that the proportion of low-income units contemplated is only 20%.

33. In contrast to the 2013 Annual Plan, NYCHA's draft 2014 Annual Plan does describe the essential details of the Land Lease initiative, identifying the eight houses to be affected, the number of parcels included, and the proportion of market-rate units to low-income units (80% to 20%).²³ NYCHA's draft 2014 Annual Plan states that "NYCHA staff is currently meeting with stakeholders and plans to develop and issue a Request for Proposal (RFP) *in the Spring* for 14 sites located within 8 developments in Manhattan south of 110th St."²⁴ In fact, however, NYCHA did not wait until the Spring of 2014 to request proposals for the Land Lease initiative. It did so in 2013, despite the lack of notice in the 2013 Annual Plan.

SUMMARY

34. In sum, NYCHA is unilaterally moving forward with the Land Lease initiative, without legal authorization to do so, and without pausing to meet the minimum procedural requirements imposed by federal, state, and city law. Petitioners bring this petition to vindicate the public's interest in having NYCHA do what the law requires it to do, and what it professes to want to do, but which it has not done: to "commence[] a multi-year effort to engage

²² The entire 2013 annual plan, a 226-page document, is available on the Internet at http://www.nyc.gov/html/nycha/downloads/pdf/Final_FY2013_Annual%20Plan_10_18_2012.pdf.

²³ The draft 2014 Annual Plan is available at <http://www.nyc.gov/html/nycha/downloads/pdf/draft-annual-plan-fy2014.pdf>, at 13-16.

²⁴ *Id.* at 14 (emphasis added).

residents, elected officials and other community leaders in the development process” of the Land Lease initiative.²⁵

First Cause of Action

Request for Relief Under Article 78

35. The above allegations are incorporated into the First Cause of Action.

36. NYCHA is a public corporation created pursuant to the Public Housing Law of the State of New York for the purpose of implementing the State Constitution by providing low-rent housing for persons of low income as defined by law.

37. While NYCHA’s federally funded projects are also subject to federal law and regulations, federal law does not and cannot confer powers on NYCHA. NYCHA’s powers derive from New York State law.

38. New York State law does not authorize NYCHA to transfer public housing land to private developers for the development of residential high rises to be rented out to high-income New Yorkers at market rates.

39. In moving forward with the Land Lease initiative, NYCHA is acting without or in excess of its jurisdiction, and its determination to do so is affected by an error of law or was arbitrary and capricious or an abuse of discretion in violation of Civil Practice Law and Rules (“CPLR”) Article 78.

Second Cause of Action

Request for Declaratory Relief under Article 30 of the CPLR

40. The above allegations are incorporated into the Second Cause of Action.

41. NYCHA’s issuance of the RFEI and publicly stated intention not to

²⁵ *Id.*

submit the Land Lease developments to ULURP, except insofar as the inclusion of ground floor retail space requires rezoning, creates a justiciable controversy as to whether the Land Lease initiative is subject to ULURP.

42. Section 150 of the New York State Public Housing Law provides that the “prior approval of the local legislative body and of the planning commission” is “requisite to the final adoption or approval by an authority or municipality of a plan or project.”²⁶

43. Under controlling New York Court of Appeals case law, any “essential or significant” modification to a public housing plan or project requires approval under Section 150.²⁷ In particular, a change to the “number and quality of the tenant population” is a significant modification requiring prior approval.²⁸

44. The Land Lease initiative is an essential or significant modification to a public housing plan or project, and, as such, requires prior approval of the local legislative body and of the planning commission pursuant to Section 150 of the Public Housing Law.

45. For cities of one million or more people such as New York City, “local legislative body” means the “officer or agency vested with power under the charter of such city, or by other law, to act pursuant to this chapter.”²⁹ Under the New York City Charter, “[h]ousing and urban renewal plans and projects pursuant to city, state and federal housing laws” are subject to the ULURP.³⁰ This is the relevant vesting provision called for in Section 150 of the Public Housing Law. Thus, New York State law requires NYCHA to submit any public housing plan or project, or a significant modification thereto, to ULURP.

²⁶ N.Y. Pub. Hous. Law § 150.

²⁷ *Margulis*, 31 N.Y.2d at 173.

²⁸ *Id.*

²⁹ N.Y. Pub. Hous. Law § 3(7).

³⁰ New York, N.Y.Charter ch. 8, § 197-c(8).

46. In order to comply with Section 150 of the Public Housing Law, the Land Lease initiative must be submitted to ULURP.

Third Cause of Action

Request for Relief Under Article 78

47. The above allegations are incorporated into the Third Cause of Action.

48. Pursuant to 42 U.S.C. § 1437c-1(d)(8) and 24 CFR § 903.7(h), NYCHA is required to include in its Annual Plan a “description of any public housing development, or portion of a public housing development . . . for which [NYCHA] has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act (42 U.S.C. 1437p), and the timetable for demolition and/or disposition.”³¹

49. Throughout 2013 NYCHA has intended to apply to HUD for disposition approval pursuant to Section 18 of the 1937 Act,³² in order to long-term lease parcels of federally funded housing land to private developers, as part of its Land Lease initiative.

50. However, in its 2013 Annual Plan NYCHA has not included a description of the Land Lease initiative sites, a description of the Land Lease initiative’s timetable, or other adequate information about the Land Lease initiative. Nor has NYCHA included a description of the Land Lease initiative in any amendment to its 2013 Annual Plan.

51. NYCHA’s decision to issue an RFEI for the Land Lease initiative in 2013 despite failing to describe the Land Lease initiative in its 2013 Annual Plan is in violation of 42 USC § 1437c-1(d)(8) and 24 CFR § 903.7(h), and was therefore in violation of lawful procedure and was affected by an error of law or was arbitrary and capricious in violation of CPLR Article 78.

³¹ 24 C.F.R. § 903.7(h); *accord* 42 U.S.C. § 1437c-1(d)(8).

³² 42 U.S.C. § 1437p.

WHEREFORE, petitioners request that this Court enter an Order:

- (1) Requiring respondents to rescind the Request for Expressions of Interest issued on August 16, 2013 on the basis that transferring public housing land for the purpose of developing market-rate housing for high-income individuals is outside the scope of the New York City Housing Authority's statutory powers;
- (2) Enjoining and permanently restraining respondents and any of their agents, officers and employees from issuing a further Request for Expressions of Interest or Request for Proposals, or otherwise taking any further action with respect to the Land Lease initiative absent express legislative authorization;
- (3) Declaring that the New York Housing Authority is required to submit the Land Lease initiative, or any other significant modification to a public housing plan or project, including any future plan to transfer any interest in public housing land to private developers, to New York City's Uniform Land Use Review Procedure;
- (4) In the alternative, requiring respondents to rescind the Request for Expressions of Interest issued on August 16, 2013 on the basis that the Land Lease initiative was not described in the New York Housing Authority's 2013 Annual Plan in violation of 42 USC § 1437c-1(d)(8) and 24 CFR § 903.7(h), and enjoining respondents and any of their agents, officers and employees from issuing a further Request for Expressions of Interest or Request for Proposals, or otherwise taking any further action with respect to the Land Lease initiative during the calendar year of 2013 , or with respect to any proposals, plan, or other expression of interest submitted in response to the Request for Expressions of Interest; and
- (5) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 10, 2013

Respectfully submitted,

Steven Banks
Attorney in Charge
Adriene Holder
Attorney in Charge, Civil Practice
Judith Goldiner
Attorney in Charge, Civil Law Reform Unit
Robert Desir, of counsel
Ellen Davidson, of counsel
Lucy Newman, of counsel
The Legal Aid Society
199 Water Street
New York, NY 10038
(212) 577-3332

Elizabeth Fine, General Counsel
Jeffrey P. Metzler, Chief of Litigation
Lauren G. Axelrod, Associate General Counsel
New York City Council
250 Broadway, 15th Floor
New York, New York 10007
(212) 788-9131

Patterson Belknap Webb & Tyler LLP

By: _____
Lisa E. Cleary
Aron R. Fischer
Zhiqiang Liu
1133 Avenue of the Americas
New York, New York 10036
Tel: (212) 336-2000

Attorneys for the Petitioners