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THE SEWARD PARK URBAN RENEWAL AREA, FORTY-FIVE YEARS LATER: AFFORDABLE TO WHOM?

Eugene Chen

INTRODUCTION

From the 1950s through the 1960s, two thousand families with low incomes were displaced from their homes when the City of New York embarked on an urban renewal plan targeting the area east along Delancey Street at the foot of the Williamsburg Bridge, otherwise known as the Seward Park Urban Renewal Area (SPURA).¹ Forty-five years later, the “Seward Park Slum Clearance Project” left 165 million square feet of parking lot space, devoid of any signs of human occupation aside from the coming and going of vehicles. After a contentious community debate, the City Council passed a resolution (the “Resolution”) on October 11, 2012, for a mixed-use plan to develop SPURA.² Proposals were due to the New York City Economic Development Corporation (NYCEDC) on May 6, 2013, and on September 18, 2013, Mayor Bloomberg announced that Delancey Street Associates LLC, a joint venture composed of L+M Development Partners, BFC Partners, and Taconic Investment Partners, had been selected to develop the site.³ The plan calls for 60/40 residential and commercial development, with 500 units of permanently affordable

¹ E. Tammv Kim, *Compromise City: A Battle Over Affordable Housing*, OPEN CITY

² See N.Y.C. Council Res. No. 1552 (Oct. 11, 2012), available at <http://legistar.council.nyc.gov/View.ashx?M=F&ID=2175162&GUID=D858724A-E126-4B0A-A348-CA1BB3058FC6>.

³ Press Release, NYC Economic Development Corporation, Mayor Bloomberg Unveils Plans for Mixed-Use Development in Long Vacant Seward Park Area on Lower East Side (Sept. 18, 2013), <http://www.nycedc.com/press-release/mayor-bloomberg-unveils-plans-major-mixed-use-development-long-vacant-seward-park-area>.

housing, out of the 1000 units of housing being built.⁴ In all likelihood, the developer chosen to develop SPURA will apply for the 421-a tax exemption, an incentive intended to encourage the construction of market-rate and affordable housing in New York City (the “City”).

The decision by the City to develop SPURA forty-five years later galvanized community groups and residents in Manhattan Community Board 3 (“CB3”), a neighborhood historically made up of low-income immigrants, who wanted to ensure that the project would benefit the community and not just enrich private developers.⁵ Though community boards did not exist⁶ when the City razed the area it deemed a “slum” in the 1960s, it was at community board meetings and hearings that the community voiced demands for more affordable housing, the construction of more schools in a burdened school district, prevailing wage jobs, and a ban on big-box stores in the plan for SPURA. This paper will examine the meaning of “affordability,” as defined by the U.S. Department of Housing and Urban Development through the concept of Area Median Income, the alternative definition of affordability known as Local Median Income, and the role of the 421-a Real Property Tax Exemption in the creation of affordable housing.

I. SPURA’S “AFFORDABLE” UNITS ARE NOT AFFORDABLE TO MANY CB3 RESIDENTS BECAUSE THE UNITS’ MEDIAN INCOME GUIDELINES COUNT THE INCOMES OF SURROUNDING WEALTHIER COUNTIES.

SPURA’s 50% mandate for permanently affordable housing was unprecedented⁷ in a private mixed-use project in New York City, but the notion of what is “affordable” is surprisingly subjective. “Affordability,” though governed by numbers, is a calculation that depends on various factors, including the size of the geographic area sampled and who is counted. As far as affordable housing programs at the federal, state, and local levels are concerned, the notion of affordability is pegged to a hard number known as Area Median Income (AMI), which is determined by the

⁴ *Resolution in Support of ULURP and UDAAP to the Seward Park Mixed-Use Development*, Land Use, Zoning, Public & Private Housing Committee (Dec. 2012), available at <http://www.nyc.gov/html/mancb3/downloads/cb3docs/Seward%20Park%20Mixed-Use%20Development%20ULURP%20Resolution.pdf> (hereinafter “ULURP Support Resolution”).

⁵ Kim, *supra* note 1.

⁶ TOM ANGOTTI, *NEW YORK FOR SALE: COMMUNITY PLANNING CONFRONTS GLOBAL REAL ESTATE* 114 (2011).

⁷ Laura Kusisto, *A Plan for Seward Park*, WALL ST. J., Aug. 19, 2012, <http://www.wsj.com/articles/SB1000087239639044443504577599820911808472>.

United States Department of Housing and Urban Development (HUD), a federal agency.⁸

II. THE LOCAL MEDIAN INCOME OF CB3 IS A MORE ACCURATE REPRESENTATION OF AFFORDABILITY IN THE LOWER EAST SIDE THAN HUD AREA MEDIAN INCOME.

The HUD AMI calculation does not accurately represent CB3 because it takes into account the incomes of not only the five boroughs of New York City, but also the surrounding counties of Nassau, Suffolk, Putnam, and Richmond, whose median incomes are significantly greater than that of CB3.⁹ The use of incomes from this area (referred to by HUD as the Metropolitan New York City Area), resulted in a 2012 HUD AMI of \$83,000 for a family of four living in CB3¹⁰—almost twice as much as CB3’s actual Local Median Income (“LMI”) of \$43,518,¹¹ according to the Furman Center for Real Estate and Urban Policy (the “Furman Center”).¹²

When the income guidelines for the proposed 500 units of affordable housing in SPURA were released, community groups questioned whether these guidelines were indeed affordable for the residents of the Lower East Side.¹³ Eligibility for the affordable units will be governed by bands of affordability based on percentage ranges of HUD AMI.¹⁴ Using

⁸ It is unclear why AMI is used, given its relative inaccuracy compared with Local Median Income. One reason may be that it creates less conflict between local and federal housing programs, both of which a housing developer could qualify for when building affordable housing.

⁹ U.S. Dep’t of Hous. & Urban Dev., FY 2012 Area Definition Report 49, *available at* http://www.huduser.org/portal/datasets/il/il12/area_definitions.pdf. *See also* data for New York County on the “FY 2013 Income Limits Documentation System,” U.S. Dep’t of Hous. & Urban Dev., *available at* http://www.huduser.org/portal/datasets/il/il13/index_il2013.html.

¹⁰ *Income Eligibility*, New York City Hous. Dev. Corp., <http://www.nychdc.com/pages/Income-Eligibility.html> (last visited Nov. 13, 2013).

¹¹ VICKI BEEN, ET AL., FURMAN CTR. FOR REAL EST. & URB. POL’Y, STATE OF NEW YORK CITY’S HOUSING & NEIGHBORHOODS 2011 92 (2011), http://furmancenter.org/files/sotc/SOC_2011.pdf.

¹² Although the Furman Center only releases Median Household Income without specifying household, the comparison with HUD AMI is still stark. HUD AMI for a family of three is \$74,700; a family of two is \$66,400; an individual is \$58,100—all of which are at least 33% greater than the median household income specified by Community Board 3 of \$43,518.

¹³ Xiao Mei Li, *Councilwoman Chin Takes Heat Over Seward Park Plan*, VOICES OF NY, (Oct. 18, 2012), <http://voicesofny.org/2012/10/councilwoman-chin-takes-heat-over-seward-park-plan>.

¹⁴ Lesley Sussman, *SPURA Vote Unanimous; Task Force Picks Contentious*, THE VILLAGER, (Oct. 18, 2012), <http://www.thevillager.com/?p=8034>; *see also* ULURP

HUD's 2012 AMI of \$83,000 for a family of four, this means that 20% of the total units will be reserved for low-income families of four earning \$41,000 annually, 10% for low-income seniors, 10% for moderate-income families of four earning \$107,000 annually, 10% for middle-income families of four earning \$136,000 annually, and the remaining 50% reserved for market-rate housing.¹⁵

The 500 units billed as "affordable" belie how unaffordable these units actually are to the current residents of CB3. According to HUD, rent is only affordable when a household pays less than 30% of its income towards rent.¹⁶ The Furman Center found that the median income of CB3 in 2010 was \$43,518, with almost half of CB3 earning below \$38,000.¹⁷ For those residents earning \$38,000, an affordable monthly rent for CB3 would be \$950.¹⁸ And yet, at the SPURA affordability guidelines, a low-income rental unit is \$1,225 for a low-income family of four, which makes up 39% of a typical CB3 household's income.¹⁹ At that rent, roughly half of the residents of CB3 would be unable to afford even the so-called "low-income" units proposed for SPURA under the AMI guidelines.²⁰ And with only 200 affordable units available, it is doubtful whether these new affordable units will do much to prevent displacement of current low-income residents due to gentrification. Therefore, many advocate for the use of LMI in defining "affordability" to more accurately reflect a community's housing needs.²¹

III. NEITHER AREA NOR LOCAL MEDIAN INCOME CALCULATIONS ACCOUNT FOR DISPLACEMENT DUE TO GENTRIFICATION.

Support Resolution, *supra* note 4.

¹⁵ Sussman, *supra* note 14.

¹⁶ *Affordable Housing*,

Hud.com http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing (last visited Mar. 15, 2015).

¹⁷ Been, *supra* note 11.

¹⁸ This figure is the result of \$38,000 multiplied by 0.3 and then divided by twelve, according to HUD's definition of affordable rent.

¹⁹ The affordability guidelines call for 20% of the total units to be reserved for low-income families of four earning \$49,000 annually. Thus, 30% of this annual income amounts to a monthly rent of \$1,225 ($[\$49,000 \times 0.30]$).

²⁰ For similar reasons, Manhattan's AMI does not represent Community Board 3, since Manhattan's overall AMI, at \$65,648, is 50% higher than that of Community Board 3. Been, *supra* note 11, at 88.

²¹ Ginia Bellafante, *When 'Affordable' is Just a Word*, N.Y. TIMES, Apr. 13, 2013, <http://www.nytimes.com/2013/04/14/nyregion/in-housing-affordable-is-often-just-a-word.html>.

As defined, the income guidelines for SPURA's affordable units would do little to stop gentrification in the Lower East Side of Manhattan, which in the past ten years has become a destination for the young and well-to-do.²² In the Lower East Side, the issues of affordable housing and gentrification are inextricably linked, since longtime residents are forced to leave when they can no longer afford their own homes due to the influx of wealthier residents. In *New York for Sale*, urban planning policy expert Tom Angotti examines the economic injustice behind gentrification:

As tenants and small business owners invest their time and money to gradually upgrade their neighborhoods, real estate investors become attracted to those areas and anxious to capitalize on the improvements [These investors] effectively appropriate the value generated by others. This is the essence of what is now known as Gentrification. It is not simply a change in demographics. It is the appropriation of economic value by one class from another.²³

Framed this way, setting aside housing units for low- to moderate-income earners is an intuitive solution to the problem of gentrification. To this end, many affordable housing advocates insist that LMI²⁴ be used to define affordable housing guidelines because it is more accurate than HUD AMI.²⁵ While LMI is a better reflection of a community's income, it is also an imperfect measure. LMI, like AMI, fails to illuminate what part of a median income increase in a community results from the displacement of low-income earners by higher-income earners. According to the Furman Center, from 2008 to 2010 the LMI of households in CB3 increased from \$36,408 to \$43,518.²⁶ This is surprising, especially given the recession in

²² Allen Salkin, *Lower East Side is Under a Groove*, N.Y. TIMES, Jun. 3, 2007, <http://www.nytimes.com/2007/06/03/fashion/03misrahi.html>.

²³ Angotti, *supra* note 6, at 108.

²⁴ There is no precise definition of local income, other than that it is geographically "more local" to the area, and thus more representative of a particular neighborhood. Here, Local Median Income will be the median income for Community Board 3, which in 2010 was \$43,518. Been, *supra* note 11, at 92.

²⁵ Association for Neighborhood and Housing Development, Inc., *Real Affordability: An Evaluation of the Bloomberg Housing Program & Recommendations to Strengthen Affordable Housing Policy* 22 (2013), <http://www.anhd.org/wp-content/uploads/2011/07/real-affordability-evaluation-of-the-bloomberg-housing-program2.pdf><http://www.anhd.org/wp-content/uploads/2011/07/ANHD-Real-Affordability-in-Housing-2-13-131.pdf>.

²⁶ VICKI BEEN ET AL., FURMAN CENTER FOR REAL ESTATE AND URBAN POLICY, STATE OF NEW YORK CITY'S HOUSING & NEIGHBORHOODS (2009), *available at*

2008, from which the nation has not completely recovered.²⁷ This increase in median income may be due in part to the influx of wealthier residents, a steady pattern of gentrification occurring in the Lower East Side since at least the 1970s.²⁸ At the same time that the LMI of CB3 increased, the City's unemployment rate for Hispanics, who make up about 20% of CB3, rose from 7.2% to 13.3%²⁹—nearly three times as high as white residents, who make up 30% of CB3.³⁰ Although LMI is more representative of CB3 than HUD AMI, using LMI is still problematic because it does not take into account the historical impact that gentrification has had on communities facing a shortage of affordable housing. Income increases due to the displacement of low-income residents, particularly immigrants and people of color, should be taken into account to fully address the effects of gentrification with respect to affordable housing, regardless of whether AMI or LMI is used in determining affordability standards.

To be fair, the City Council Resolution does attempt to address gentrification in several ways through what it calls “community preferences.”³¹ Under the Resolution, at least 50% of the affordable units (250 units) will be given to qualifying CB3 residents.³² It also aims to give preference to CB3 residents for 50% of all jobs generated from the project (during and after construction). And, to address gentrification in commercial contexts, the Resolution addresses the displacement of small businesses in the soon-to-be demolished Essex Market by guaranteeing them a space in the new market facility at a similar rent, with moving costs paid for by the City.³³

Gentrification is a complex problem, which, in the case of the 421-a tax exemption, is simultaneously addressed and perpetuated through tax exemptions given to luxury developers who integrate affordable housing into their projects. In the next section, the 421-a tax exemption is discussed as an imperfect solution to inducing the development of affordable housing.

http://furmancenter.org/files/sotc/SOC_2009_Full.pdf; *see also* Been, *supra* note 11.

²⁷ Susan Saulny, *After Recession, More Young Adults Are Living on Street*, N.Y. TIMES, Dec. 18, 2012, <http://www.nytimes.com/2012/12/19/us/since-recession-more-young-americans-are-homeless.html>.

²⁸ NEIL SMITH, *THE NEW URBAN FRONTIER* (Routledge, 1996).

²⁹ Press Release, Office of the N.Y.C. Comptroller John C. Liu, *Persistent Disparities in NYC Unemployment* (Oct. 28, 2010), *available at* <http://comptroller.nyc.gov/wp-content/uploads/2013/07/PR10-10-100.pdf>.

³⁰ *Id.*

³¹ ULURP Support Resolution *supra* note 4, at 5.

³² *Id.* at 1.

³³ *Id.* at 6.

IV. DEVELOPERS MAY RECEIVE A WINDFALL UNDER THE 421-A REAL PROPERTY TAX EXEMPTION, ESPECIALLY IF THE LAND IN SPURA IS SOLD AT A DISCOUNT.

Delancey Street Associates will almost certainly apply for the 421-a tax exemption to help finance construction. Under 421-a, owners of exempt property pay significantly lower property taxes, which are assessed at the property's value prior to any improvements instead of at its value after improvements.³⁴ So, if the value of undeveloped land in SPURA is worth \$1 billion now, and after the construction of apartments, condos, parks, and stores will be worth \$10 billion, developers of the property would only pay taxes on the pre-improvement value of \$1 billion for fifteen years.³⁵ In exchange for the tax exemption, a developer in Manhattan benefiting from 421-a must allocate 20% of newly built residential units to on-site affordable housing,³⁶ which are subject to rent stabilization for thirty-five years.³⁷

The Pratt Center for Community Development argues that 421-a does little to create affordable housing while providing windfalls to developers of market-rate housing. The Center contends that incentives are not actually needed to create market-rate housing in robust housing markets like New York City—especially in Manhattan, which received 75% of the benefit in 2005.³⁸ Indeed, “only one-third of new construction utilizes the program, so it is clearly possible to develop without the subsidy.”³⁹ In the 2011 fiscal year alone, the City lost over \$1 billion in tax revenue due to 421-a exemptions,⁴⁰ but according to the Pratt Center, only 5,700 units of affordable housing have been created through 421-a since the program's

³⁴ N.Y. REAL PROP. TAX LAW § 421-a(2)(a)(i) (2010).

³⁵ N.Y. REAL PROP. TAX LAW § 421-a(2)(a)(ii)(C) (2010).

³⁶ N.Y. REAL PROP. TAX LAW § 421-a(2)(a)(ii)(C)(b) (2010).

³⁷ N.Y. REAL PROP. TAX LAW § 421-a(7)(e) (2010).

³⁸ Pratt Center for Community Development and Habitat for Humanity New York City, *Reforming New York City's 421-a Property Tax Exemption Program: Subsidize Affordable Homes, Not Luxury Development*, 7 (2003), <http://prattcenter.net/sites/default/files/prattcenter-ny421-areport.pdf>.

³⁹ Pratt Center for Community Development and Habitat for Humanity New York City, *Understanding the NYC 421-a Property Tax Exemption Program: How Can it Be Reformed to Create Affordable Housing?*, 1 (2006), <http://www.habitatnyc.org/pdf/advocate/Pratt421a.pdf>.

⁴⁰ Furman Center for Real Estate and Urban Policy, *Distribution of the Burden of New York City's Property Tax 15* (2011), http://furmancenter.org/files/sotc/Distribution_of_the_Burden_of_New_York_Citys_Property_Tax_11.pdf. See also Cara Buckley, *City Weighs Extending a Tax-Break Deadline*, N.Y. TIMES, Feb. 8, 2011, <http://www.nytimes.com/2011/02/09/nyregion/09affordable.html>.

inception.⁴¹ The Pratt Center argues that not only is the 421-a tax exemption unnecessary to encourage development, but such a windfall to developers deprives the City of hundreds of millions in tax revenue dollars each year,⁴² which could be used to build 100% permanently affordable housing.

In the case of SPURA, the Resolution so closely tracks the requirements of N.Y. Real Prop. Tax Law § 421-a such that Delancey Street Associates will likely qualify for the tax exemption. Provisional requirements for 421-a that SPURA guidelines meet or exceed include the mandate for 20% on-site affordable housing;⁴³ the affordability guidelines themselves, which are pegged to a percentage of AMI;⁴⁴ that residents of the community board where the property is located be given priority for purchase or rental of 50% of the affordable units;⁴⁵ that service employees employed at the building be paid a prevailing wage;⁴⁶ Given the City's perception of the tax exemption's importance in creating affordable housing, it is not unreasonable to assume that those involved in SPURA's planning made efforts to ensure that the project would meet or exceed 421-a requirements in order to attract developers.

Early on, there was speculation that the land in SPURA would be sold at a "huge discount."⁴⁷ It is unclear how the potential for 421-a tax exemptions factored into \$180 million price that Delancey Street Associates paid for the enormous parcels of land in SPURA,⁴⁸ which by all accounts, is an unprecedented development opportunity. To put into perspective the bargain price tag of \$180 million for 6 acres of land with a potential for 165 million square feet of development: in March 2013, Extell Development paid \$103 million for a nearby waterfront site at 250 South Street zoned for

⁴¹ Pratt Center for Cmty. Dev., Issue Brief: A Luxury Housing Subsidy New Yorkers Can't Afford 1 (Jun. 6, 2010), available at http://prattcenter.net/sites/default/files/luxury_housing_subsidy_new_yorkers_cant_afford_report.pdf.

⁴² Pratt Center for Cmty. Dev. & Habitat for Humanity N.Y.C., Reforming New York City's 421-a Property Tax Exemption Program: Subsidize Affordable Homes Not Luxury Development 2 (2006), <http://prattcenter.net/sites/default/files/prattcenter-ny421-areport.pdf>.

⁴³ N.Y. REAL PROP. TAX LAW § 421-a(7)(c) (2010).

⁴⁴ N.Y. REAL PROP. TAX LAW § 421-a(7)(c) (2010).

⁴⁵ N.Y. REAL PROP. TAX LAW § 421-a(7)(d)(ii) (2010).

⁴⁶ N.Y. REAL PROP. TAX LAW § 421-a(8)(ii)(b) (2010).

⁴⁷ Lincoln Anderson, *New Group is Working to Get SPURA Out of Park, into Gear*, THE VILLAGER (Dec. 30, 2010), http://thevillager.com/villager_401/newgroup.html.

⁴⁸ *Bloomberg Unveils Seward Park Redevelopment Plan*, REAL ESTATE WEEKLY (Sept. 18, 2013), <http://www.rew-online.com/2013/09/18/bloomberg-unveils-seward-park-redevelopment-plan>.

1 million square feet of development.⁴⁹ The City, having come further than it has in previous attempts to develop SPURA over the last forty-five years, was likely eager to sell the land for development. The requirement for affordable housing was likely a factor in SPURA's price as well. However, the price paid for the SPURA site by Delancey Street Associates is an anomaly for prime Manhattan real estate. Therefore, in addition to this arguably discounted price, any 421-a tax exemptions (that Delancey Street Associates will easily qualify for) would truly amount to a windfall. The City could instead have used that money towards reducing cutbacks in public services and education in low-income communities like Manhattan's Lower East Side.

CONCLUSION

After forty-five years, the City is finally moving forward with plans to develop SPURA as a mixed-use, mixed-income development with 50% of the housing earmarked as permanently affordable. However, questions remain as to whether gentrification can be prevented, as many residents of Community Board 3 will not be able to afford even the 200 units set aside for low-income earners, since the guidelines used to determine their eligibility are based on higher federal AMI calculations. Additionally, affordable housing advocates express concern over what they deem a windfall that developers of SPURA will receive from 421-a tax exemptions, money that could otherwise be used by the City for the public. Nonetheless, the plans to develop SPURA are unprecedented in requiring half of all residential units built be permanently affordable. SPURA development is highly anticipated by many residents of Community Board 3, as they seek some measure of closure after forty-five years of blight caused by the City's razing of the Seward Park area.

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⁴⁹ Ed Litvak, *Gary Barnett Pays \$150 Million For Pathmark Site*, THE LO-DOWN (Mar. 25, 2013), <http://www.thelodownny.com/leslog/2013/03/breaking-gary-barnett-buys-pathmark-site-for-103-million.html>.