



**Via U.S. and Electronic Mail**

April 4, 2018

RuthAnne Visnauskas  
Commissioner and Chief Executive Officer  
New York State Homes and Community Renewal  
38-40 State Street  
Albany, NY 12207

RE: Stuyvesant Town/Peter Cooper Village MCIs

Dear Commissioner Visnauskas:

I am writing as the State Senator representing Stuyvesant Town/Peter Cooper Village (STPCV) to express my concern and frustration regarding New York State Division of Housing and Community Renewal's (DHCR) historically consistent approval of Major Capital Improvements (MCIs) in Stuyvesant Town/Peter Cooper Village (STPCV) despite frequent challenges logged by their Tenants Association (TA). We have received hundreds of complaints about these approvals from the approximately 25,000 residents living amongst the historically middle-class complex comprising 11,237 apartments. At a recent meeting of the STPCV TA which I attended, dozens of concerned residents shared the negative impact the frequent approval of MCIs has had on their families.

I am particularly concerned by both the blanket approvals and by the disregard for DHCR's own requirement that such decisions be accompanied by explanations. This raises questions about the specific MCI decisions as well as the agency's overall process for handling such matters. In light of the failure to provide mandated explanations, I

ask that DHCR reexamine each MCI application discussed below and provide appropriate written explanations for each decision.

Since 2009, the STPCV TA has filed objections to 39 MCIs approved for the properties. When MCI applications were first submitted to DHCR in 2009, several elected officials wrote to the agency expressing significant concerns. At the time, then-DHCR Deputy Commissioner of Rent Administration, Leslie Torres, responded that while a perception of DHCR as a rubber stamp for landlord MCI's may exist, "that perception is erroneous." She went on to say, by letter dated October 15, 2009, that the agency would review "not only evidence submitted by the owners, but also the statements and evidence submitted by tenants." After that response, the elected officials who sent the letter met directly with DHCR and the STPCV TA and received direct assurances that the agency would carefully review objections submitted by the tenants. You can imagine the disappointment and confusion on behalf of the TA when, having dutifully filed those objections, DHCR did not acknowledge receipt or respond to a request for mediation, including many dating as far back as 2009.

As the enclosed list of MCIs in question illustrates, DHCR has consistently failed to honor its own regulations. The TA's objections fall into seven specific areas: depreciation, statute of limitations, insurance/hurricane Sandy, non-eligible MCI costs, commercial allocation, incomplete applications, and unnecessary consultant costs.

**Depreciation:** The statute dictates that to qualify for an MCI rent increase, the work must be depreciable [see, 9 NYCRR§ 2522.4(i)(a)]. Tenants respectfully submit that the definition of POINTING contained in RSC §2522.4(a)(3) 15, which provides that "pointing and waterproofing need only be done 'as necessary,'" is wholly inconsistent with RSC Section 2522.4, which requires that work be "(a) deemed depreciable under the Internal Revenue Code, other than for ordinary repairs."

Despite the TA's objections and the plain language of the statute, it does not appear that DHCR requested, nor did the Owner submit, any evidence to show how the minimal pointing work at issue was classified for tax purposes.

**Statute of Limitations:** In several instances involving these MCIs, DHCR ignored its long-standing practice, affirmed by the courts, of placing a strict two-year limit on the filing of an RA-79 MCI application form. The evidence submitted by the TA

unequivocally demonstrated the application was filed after expiration of the two-year window.

In *Matter of Newport Apartments* (8/7/02) HB-110005-RO, where an owner protested the purported 'unfairness' and legality of the strict two-year limit, the Commissioner answered:

"With respect to the owner's contentions concerning the two-year rule, the Commissioner notes that this requirement of the Rent Stabilization Code has been consistently upheld by the New York State Supreme Court."

Courts continue to affirm DHCR's practice regarding strict adherence to the two-year rule as evidenced in a recent case, *301 West 45<sup>th</sup> Street/Mehlon Properties* (11/28/14) YH-410043-RO, wherein the two-year limitation was exceeded by only 10 days:

"The Commissioner finds that in the instant case the Administrator properly determined that the elevator work had been completed more than two years before the application was filed... application initially received at DHCR on May 19, 2009, however DOB [work completion] on the elevator was received on May 9, 2007, indicating that the work had been completed more than two years before the application was filed."

**Insurance/Hurricane Sandy:** DHCR did not require reasonable documentation to support Owner's claim that it did not benefit from insurance proceeds for some of the work. Tenants provided documentation sufficient to rebut the Owner's unsupported and self-serving claim that it did not receive insurance proceeds for MCI work, including affidavits from the Owner itself confirming that insurance proceeds were sought and/or received for the relevant work, as well as evidence the Owner sued its insurer for some \$40,000,000 in additional funds related to that work.

In drafting objections to the instant MCI, Tenants were limited to documents publicly available through eCourts pertaining to damage sustained during Hurricane Sandy. In the documents, there were various references to damage to the facades, intercom and hot water heating systems in some of the buildings. Based on the tidbits of information available on the disputed insurance items, Tenants' asked the Rent Administrator to

request full disclosure from the Owner concerning damage to the hot water heating systems.

As Tenants have repeatedly stated, without full disclosure and a breakdown from the Owner of the monies it received from its insurer as compensation for losses it sustained during Hurricane Sandy, Tenants cannot properly determine the extent of reimbursement Owner may have received for all or a portion of the work.

**Non-Eligible MCI Costs:** Rent Administrator reached “different result[s] on essentially the same facts” when he determined that specific costs were “disallowed” in some of the façade MCIs in the Apartment Complex, but not in others.

**Commercial Allocation:** While some of the commercial entities were disclosed in the MCI Application, the underground parking garages, which are structurally integrated with some of the buildings encompassed in the MCIs, were not disclosed. Moreover, some of the commercial spaces identified in Owner’s MCI Applications were not included in the benefited commercial square feet calculations

A majority of the commercial entities provide a service to all of the residents within the Apartment Complex, as well as the general public, including Walgreen’s Starbucks, Ess-a-Bagel, Petite Abeille, the Stuyvesant Town Leasing Offices and Fitness Center, the rentable storage space, the Manhattan Kids Club, Gracefully, Hane and the parking garages. Tenants have questioned how the commercial offset available can reasonably be deemed to benefit only the tenants in the specific building where the commercial entity is located. The Rent Administrator’s Order failed to acknowledge or address Tenants’ request that DHCR employ an equitable method of calculating commercial square footage so that no one building receives a commercial offset windfall.

**Incomplete Applications:** In some instances, the Owner’s application contains hundreds of documents wholly unrelated to the applied for MCI, including invoices, purchase orders, cancelled checks, contracts, and architectural drawings and change orders, each for work purportedly performed on other buildings in the Stuyvesant Town- Peter Cooper Village complex.

For example, in connection with the 390 First Avenue MCI Application, key documents submitted with the application, such as the contracts and architectural drawings, relate to work performed during “Phase II” of the façade work. However, according to the Exhibit C annexed to the contract between the Owner and Spring Scaffold, the subject

buildings were not included in "Phase II." According to Change Orders submitted on behalf of the subject buildings related to Hurricane Sandy, the subject buildings, 315, 319, and 321 Avenue C are identified as "Structure 25" and thus, according to the "Schedule" were part of "Phase I." Architectural drawings of safety plans and shed installations along with contracts between the Owner and its various contractors and consultants that relate to *other* buildings in the ST-PCV complex cannot be used to support the Owner's instant MCI application. Nor can the submission of Phase II documents or documents related to Hurricane Sandy be used to chariot the instant application into compliance with the two-year stature of limitations.

**Unnecessary Consultant Costs:** Owner chose to apply for this MCI on a building-by-building basis, rather than as a complex-wide MCI project. The work applied for in the instant MCI, as well as Owner's other façade MCI's, is simply Local Law 11 façade repair work. See, Application for Owner's admission that work was related to Local Law 11. This type of work is common to all buildings throughout New York City that stand above six stories and is therefore ineligible.

Owner has submitted documentation identifying multiple levels of middlemen above the masonry contractor that performed the work, even though the masonry contractor's "expertise" in simple Local Law 11 façade repair work should be more than sufficient for this standard type of project.

These inconsistencies and questionable decisions are especially concerning given that there are still a significant number of other MCI applications pending before DHCR for STPCV. If allowed to stand, the approval of such an unusually large number of applications all at once has the effect of suddenly and unexpectedly raising individual tenants' rents -- and in some cases making it impossible for them to stay in their units. This community is unique in New York State for its sheer size and scale, and the owner's ability to invest in these improvements and pass the costs along. It is, therefore, imperative that you establish and maintain standards so that residents are not pushed out.

In fact, on a number of occasions the STPCV Tenants Association has formally requested reconsideration of such MCIs by DHCR, citing the seeming irregularity with which they were approved. Because the TA's efforts in such instances have resulted in minimal relief despite the validity of their objections, I ask that you reexamine the

specific MCIs in question and provide an explanation for the approvals in light of the information provided herein.

Thank you for your attention to this matter.

Sincerely,

Handwritten signature of Brad Hoylman in black ink.

Brad Hoylman  
State Senator, 27<sup>th</sup> District

Handwritten signature of Keith Powers in black ink.

Keith Powers  
City Council Member, 4<sup>th</sup> District