

Cu4ml Members Testify at City Council Hearing on HPD, March 24, 2014

On March 24, 2014, the New York City Council Committee on Housing and Buildings, chaired by Assembly Member Jumaane Williams, held a public hearing on housing agency oversight. Three members of Cooperators United for Mitchell-Lama (cu4ml) attended and offered testimony regarding Council oversight of HPD's responsibilities for setting and amending HPD's "Mitchell-Lama Rules." The participants were grateful for a few minutes before the committee and hope that the Council will find our complaints worthy of attention within its oversight responsibilities.

The basic complaint presented by the cu4ml members was that HPD does not always allow public review when making substantive change in governing policies for M-L housing. On two such matters in recent years, in particular, HPD's failure to follow an open course for changes results in severe damage to the affordability of the M-L cooperatives.

The first such change is HPD's insertion of paragraph 15 into section 3-14(i) of the HPD Rules. This added paragraph allows withdrawal of a cooperative from the M-L Program by conversion to a Housing Development Fund Company (HDFC) cooperative. Such conversion degrades the affordability of the M-L coop at two levels: it increases the sales prices of the dwelling units 7- to 10-fold, and increases the monthly charges by various distressing amounts, depending on the coop and the details of the planned conversion.

In the summer of 2012, cu4ml submitted a position paper on this matter to the housing agencies and to the State Attorney General. Our position is that the only meaningful remedy to this paragraph is to rescind the entire paragraph 15 of §3-14(i)(15). In January, 2013, cu4ml submitted to HPD a petition to that effect signed by 451 M-L cooperators. To date, HPD has proposed some modifications to steps in the conversion process, notably a longer period for shareholder comments, and requirement for approval by vote of 2/3 of the shareholders of the coop; however, HPD has not yet adopted these changes. To date (March, 2014), this is the only known response from HPD to this effort by hundreds of M-L cooperators to protect their developments from a severe loss of affordability.

Cu4ml raises no objection to HDFC cooperatives as desirable housing for some developments. It is the conversion of M-L coops to HDFC developments that we oppose; we do not want HDFC coops to contribute to the elimination of M-L coops. NYC would be well served by an increase in the number of both types of coops.

The second such change that seriously degrades the affordability of M-L coops is HPD's nearly silent introduction in 2005-2006 of a so-called "First Sale Capital

Assessment” (FSCA). Briefly: “FSCA” was begun in 2005/2006 by HPD without seeking public comment. “FSCA” has not been adopted by HPD as an amendment of the Rules; there is no First Sale Capital Assessment program at HPD. As far as we can tell, it seems that it is urged on M-L cooperatives by word of mouth, and is strongly encouraged by HPD.

What is it? It is permission from HPD for the corporation to charge an incoming cooperator twice the statutory price of the unit. The statute (PHFL Article 2 section 31-A “Resale price of shares”) sets the resale price of a M-L coop unit as the cumulative sum that the outgoing cooperator has paid as original equity + any assessments + the apartment’s proportionate share of mortgages. When “FSCA” is imposed, the incoming purchaser pays twice the statutory amount. The statutory price is repaid to the outgoing cooperator, and the corporation keeps the remainder.

One of us was awakened to the details of this process by the introduction of “FSCA” at her coop (East Midtown Plaza) as of January 18, 2014. Until that date, the resale price of her apartment was \$37,500; overnight, the price became \$75,000. Meanwhile, although apartment sales at EMP from mid-January to mid-March have averaged 5.75 units over the past six years, the number for 2014 is zero. Lack of sales is hardly a surprise, although the doubled prices surely were a serious disappointment to applicants on the waiting lists, internal and external.

Although profitable in the short run (when sales occur), this “assessment” is deeply troubling for a M-L coop. Sooner or later, the legality of charging double the statutory price for M-L apartments will be challenged, and restitution of the excess payments already made by purchasers at many (possibly more than 15) developments so far will surely be problematic. Further, this “assessment” constitutes an indefensible breach of faith with the public by attacking -- not just failing to protect -- a major component of affordable housing available to the people of New York.

Our plea to the Council is to examine the behavior of HPD in these and similar matters and ask whether lack of public input into such changes is a flaw in need of correction at HPD. Again, we thank you for allowing us time to speak.

Testimony presented by cu4ml members and officers:

J. Poindexter, East Midtown Plaza

E. Reimann, Ruppert House

S. Stroman, Gouveneur Gardens