

Testimony of Jerilyn Perine  
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Of the House Financial Services Committee  
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Good morning Chairwoman Waters and members of the subcommittee. My name is Jerilyn Perine. I am Executive Director of the Citizens Housing and Planning Council. Thank you for this opportunity to testify on this important issue.

Since 1937 the Citizens Housing and Planning Council of New York has, through its impartial research and nonpartisan advocacy, shaped and influenced public policy to improve the City's housing stock and the quality of life in New York City's neighborhoods. Its board of practitioners includes experts in the fields of urban planning, architecture, zoning and land use law, housing finance and development, and community development. They provide a practical perspective that enhances the Council's high quality quantitative research and analysis on issues affecting the City's future.

The sale of Starrett City raises two sets of issues: the long term affordability of the project and the ongoing financial and physical stability of the project. By drawing a distinction between threats to affordability alone and long term maintenance and capital investment, the justification for when government should intervene can be determined. The Starrett City story is also important since it is the most prominent of a rising tide of high-cost purchases of affordable housing stock.

In a city where affordability gaps are growing and the housing needs of working households are universally recognized, it is easy to understand why there is widespread concern as projects age out of their regulatory restrictions. However government intervention is not always warranted. For instance government intervention in the recent sale of Stuyvesant Town and Peter Cooper Village was not warranted, precisely because the sale of the project did not threaten the buildings' underlying solvency nor did it directly threaten the existing tenants. While affordability grabbed the headlines, in fact the tenants would still enjoy all the protections of rent stabilization after the sale.

In Starrett City, and in many other projects, there is widespread concern that the proposed purchase price is simply too high to allow for proper capital investment, maintenance, and operation of Starrett City, raising questions about the intent of the proposed new owners and the future of the project's physical and financial viability. Starrett City is but one example of a growing trend of high cost purchases which raise grave questions as to the continued viability of such housing.

Some would argue that purchase price reflects the market and government should not play a role. Letting market forces correct over-leveraging may work in overbuilt new home markets where homes up for sale are left vacant. There the pain of market correction falls typically on the builder who must cut back on production and the seller who must lower the purchase price. However the burden of market correction in over-leveraged, *occupied multi-family rental* buildings falls squarely on the existing tenants. In the case of Starrett City, as many as 20,000 people may bear the consequences. As this phenomenon grows many more people are facing the same problem.

While it is clear that government has a valid interest, unfortunately most regulations are not designed to prevent potentially "bad" owners from purchasing projects at highly speculative prices. Legislative changes are required to ensure that sales of projects which were the beneficiary of significant government investment are to be properly reviewed.

Starrett City, the largest subsidized housing development in the United States, has achieved affordability through a cornucopia of subsidy from the Federal government, the State of New York and the City of New York. Hundreds of millions of dollars have been poured into this project. Those subsidies include:

- The §236 program - Also known as the Interest Rate Reduction Program, §236 provided a long term subsidy that reduced the interest rate on the mortgage, thereby reducing the owner's costs. For Starrett City, the §236 subsidy continues through the year 2016 although the owner may terminate the contract at any time.
- Rental Assistance Program (RAP) - In order to reduce rents that were too high for the local market at the time, the Department of Housing and Urban Development (HUD) put about 2,500 apartments into the Rental Assistance Program (RAP), a forerunner of the Section 8 rent subsidy program. Under RAP, owners are paid the difference between what the tenant can afford to pay, and the HUD-computed cost of the apartment that the tenant occupies.
- Section 8 - HUD also added about 1,100 Section 8 project-based vouchers to the project and the original rent was determined by projected operating costs.
- Mitchell Lama Loan – The State of New York provided the original construction loan for the property at below market interest rates.
- Real Estate Tax Abatement - The City also provides real estate tax abatements, as it does for all Mitchell-Lama developments.

62 percent of the households in Starrett City currently receive direct rental assistance. Another 1,600 of the apartments are restricted to households earning less than 80 percent of Area Median Income by the §236 program, a lower income standard than required in the Mitchell-Lama program (Mitchell-Lama tenants at Starrett City can have incomes between \$90,000 and \$152,000 depending on apartment size; HUD income limits at the 80 percent of AMI standard is \$56,700 for a family of four). In total 88 percent of Starrett City's households qualify under HUD income limits at the 80 percent of median income level.

The proposed \$1.3 billion purchase price, bid by Clipper Equities LLC, whose main principal is David Bistricher, breaks down to about \$221,000 per apartment. If the buyers borrow the purchase funds at 6.5 percent, the monthly cost per apartment to pay an interest-only loan is about \$1,200. If operating costs are conservatively estimated at \$500 per unit per month, the average rent needed to pay for purchase and operations is at least \$1,700 per month, not including taxes and profit. Current monthly rentals on RAP and Section 8 subsidized apartments at Starrett City are well below that number.

HUD must approve the new buyer in order to transfer the §236 subsidy and the RAP contracts. The review for this is the "Previous Participation Review" or "2530 process" named after the form which is filed with HUD when seeking permission to become the new owner or principal of a HUD subsidized project. The standard of review is set forth in 24 Code of Federal Regulations §200.230. HUD reviews the new owner's participation in other HUD projects, whether they are debarred by the Federal government, whether they have been convicted of a crime, or whether they have defaulted on Federal or local housing finance agency loans.

One of the few provisions under which non-HUD related conduct can be considered is under 24 CFR 200.230 (c) (7) where HUD may consider "...other evidence that the principal's previous conduct or method of doing business has been such that his participation in the project would make it an unacceptable risk from the underwriting standpoint of an insurer, lender or governmental agency."

However, HUD in the past has not performed this type of review. The 2530 form itself does not ask the questions needed to conduct a review on this basis. Congress recently addressed this question in the area of sales of HUD-owned property by requiring HUD to review the applicant's record of code compliance in the local jurisdiction (Section 219 of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199, approved January 23, 2004)). However Congress did not mandate a similar review where HUD was merely approving the transfer of a project from one owner to another.

Starrett City is merely one example of owners buying out of programs which regulate the price of affordable housing. While these buyouts are to some extent inevitable, much more could be done to

ensure predictability for owners, assuage the fears of existing tenants, and protect the government's interest in the long-term stability of the project.

In New York City, as a result of an extremely hot real estate market, we have seen numerous purchases of rental housing, both regulated and unregulated, at prices that raise serious questions about the continuing viability of the buildings.

Mitchell-Lama owners of projects such as Starrett City have a right to ask that the City, State, and Federal governments live up to the original deal, allowing an end to the restrictions. At the same time, it is not unreasonable for the government to seek to insure that its considerable investment remains financially and physically viable into the future. If additional affordability is desired, owners should be compensated in some way.

Legislation introduced in Albany (A795) by Assembly Housing Chair, Vito Lopez, would make two basic reforms to the Mitchell-Lama process. First, in order to induce owners to remain in Mitchell-Lama, it would end the current cap of 6 percent returns to the owner on their investment in such projects. The bill presumes that it is in the interest of the public and the tenants to maintain as many such buildings in the program as possible. If a building can earn a bigger return for owners while keeping the building affordable, there is no reason to limit an owner's return.

Second, in order to protect tenants, all units in Mitchell-Lama buildings that leave the program should be subject to rent stabilization. The current oddity is that all Mitchell-Lamas constructed prior to 1974 are rent stabilized. Those constructed after that date, like Starrett City, are not subject to rent stabilization. Providing the restrictions that come with rent stabilization would serve to dampen down the prices being bid for acquisition.

While there is considerable opposition from owners of rental property to expanding rent stabilization to new categories of rental properties, this subset is finite and will not increase over time. Furthermore, New York City already has examples of tax abatement programs which condition exemptions on the acceptance of rent stabilization for the period of abatement.

Lastly, the pending legislation should be amended to include clear language giving either the City or the State the authority to approve any new purchaser or principal to insure that they have a good track record in maintaining and operating housing.

At the federal level, Congress should mandate that review of the purchasers in federally subsidized housing should include the track record of the new owner beyond HUD-subsidized housing. The new owner's performance on housing maintenance and construction should be reviewed by HUD, in concert with local authorities, prior to HUD approving any such purchase. HUD should also review the purchase price to insure that it is based on a reasonable expectation of rental income and future capital appreciation.

This principle has been included in HR 44 introduced by Representative Nydia Velazquez in January of this year. Congress should pass it and the President should sign it.

Last and most important, its time to consider how to reconfigure some of our rent and tax subsidy programs to target assistance to tenants in projects that may be sold. The Section 8 enhanced voucher program does this in part. However it should be expanded to non-federally assisted projects such as Mitchell-Lamas. The City and the State should also consider real estate tax abatement programs that are geared to rewarding owners for keeping rents affordable.