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**TESTIMONY OF  
NEW YORK STATE SENATORS BRAD HOYLMAN AND LIZ KRUEGER  
ON THE DRAFT SCOPE OF WORK  
FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT  
FOR THE GREATER EAST MIDTOWN REZONING**

**October 4, 2016**

Thank you for the opportunity to comment on the Department of City Planning's Draft Scope of Work for the preparation of a Draft Environmental Impact Study (DEIS) for a rezoning of the Greater East Midtown area. We applaud Mayor Bill de Blasio and the Department of City Planning, in close conjunction with Manhattan Borough President Gale Brewer, Council Member Dan Garodnick, and Community Boards 5 and 6, for their diligent efforts to make serious improvements to the plan to rezone East Midtown that was originally introduced under the Bloomberg administration.

While office facilities are expanded and modernized through new development in other parts of our city, East Midtown remains outdated and poorly equipped to handle the demands of modern-day business. East Midtown, once New York City's premier business district, has fallen behind and urgently needs better building stock, as well as transit and public realm improvements. However pressing the need, a zoning change of this magnitude requires thoughtful planning, enormous outreach, and the ability to adapt to community needs. This rezoning is a once-in-a-generation opportunity. The stakes for public benefits, infrastructure improvements, historic preservation and economic development are too high not to take the appropriate amount of time to get this proposal right. That is why we are grateful that the DCP scrapped the original rezoning plan which was deeply flawed and rushed, and took the time to appropriately engage with the community and facilitate the Steering Committee group. Although the zoning text and map amendments were set back by a few years, we believe that a few years' delay is worthwhile to achieve a zoning plan that will serve the business district in a rational, comprehensive, and community-minded way.

The importance of community input on a project of this scale cannot be understated. Steering Committee members met for countless meetings where detailed and

meticulous evaluation was undertaken and smart recommendations were made, and we are grateful that many of those recommendations were incorporated into the proposed rezoning. We commend the Steering Committee, as well as Council Member Dan Garodnick and Manhattan Borough President Gale Brewer, for taking on the tough questions our colleagues in government, the community, and advocates have been asking.

We strongly support the goals of the proposed rezoning plan but have a number of remaining questions that need to be addressed during the environmental review process. We ask DCP to closely consider the following in their preparation of an Environmental Impact Statement:

### **Transit Improvements**

The successful rezoning of East Midtown rests on a concrete plan to finance the much-needed improvements to the area's transportation infrastructure. Such infrastructure is fundamental to our city's economy, culture and global stature, and ensuring its long-term viability must be a top priority.

However, we are concerned about relying upon a local rezoning and subsequent development to fund transit infrastructure improvements that benefit the entire region. For this reason, we ask that DCP and the MTA provide a timeline for when transit improvements will take place and how projects will be prioritized. How does the City plan to divorce the funds for transit improvements from a developer's schedule? Urgently needed improvements must be made and funds must be secured before we put more pressure on Grand Central Terminal and local subway stations that cannot safely sustain existing ridership let alone that which would result from new development. While the proposed development incentives will raise much needed revenue for necessary transit improvements, the amount of necessary MTA work in the district is already significant, even without any increases in building density. What is the estimated amount of funds the city believes it will raise through developers purchasing additional FAR for transit benefits?

The MTA has not yet released its list of proposed transit improvements. Until we have this list, we will not be able to adequately evaluate the transit improvement mechanism laid forth in the rezoning plan. Moreover, we will not be able to evaluate whether these transit improvements will justify the additional square feet gained by developers. With direct transit improvements only accounting for 10-20% of additional FAR for new developments in transit improvement zones, will the predicted funds adequately cover the necessary transit work? We ask that DCP compare the estimated value of additional floor area gained by developers to the estimated value of the respective transit benefits.

Although we still await a clear list of improvements from the DOT and MTA, we would like to pose a few questions here regarding the contents of a pre-identified transit

improvement list. With increased building density and an anticipated increase in daily commuters to East Midtown, how will the proposal address existing and exacerbated platform overcrowding at Grand Central and other stations? What efforts will be made to improve connectivity between transit options and the circulation of commuters through sidewalks and subway stations? How does the proposal help facilitate a future Second Avenue subway station entrance at 42nd Street and Second Avenue? The prioritization of local improvements, followed by improvements on the same route and then district-wide improvements, makes sense given the need for more robust transit infrastructure directly surrounding any new development. However, we assume that most of these pre-determined improvements will be located within existing MTA or DOT properties. What other sites, both on development sites and in the public realm, have been evaluated for transit improvements such as additional subway entrances or new bus stops?

The Steering Committee determined that two east/west corridors should receive special attention—42<sup>nd</sup> and 53<sup>rd</sup> Streets—since they are East Midtown’s most important pedestrian routes and connect multiple subway stations. The committee recommended a full-scale analysis of ways to improve transit and the pedestrian experience along 42<sup>nd</sup> Street, and numerous pedestrian improvements to 53<sup>rd</sup> Street. We strongly urge the DCP to fully analyze what improvements can be made to these corridors in the environmental analysis.

### **Landmarks**

We are grateful that this zoning proposal accounts for the needs of our districts’ historic and cultural resources through a mechanism that allows landmarks to transfer their air rights to any location in the district. Given the potential benefit available for landmarked sites and the development pressure that any underbuilt site will face, we urge the Landmarks Preservation Commission to formally consider all sites identified by the Landmarks Conservancy and the Historic Districts Council that have not yet been calendared.

Under DCP’s proposal, the city will set aside a percentage of all landmark air rights transfer sales to be put toward public improvements. What processes will both developers and landmark owners be subject to during these transfers? How will a percentage point be determined for the portion of a sale that goes to a public improvement fund? How will that percentage point change over time to reflect current economic conditions for developers, landmark owners, and city needs?

We remain concerned with the potential for a property owner to benefit from an air rights sale without investing the proceeds into the maintenance of their historic building. For example, in the case of Lever House at 390 Park Avenue, the owner of the land does not operate the landmark building. Under the previous rezoning text, the owner could pocket up to \$75 million in proceeds from the sale of the development

rights without any obligation to maintain the building or to invest the proceeds from an air rights sale into the building's preservation. As such, we thank the DCP for including a requirement for landmarks to work with the LPC to develop a restoration and continuing maintenance plan that any funding must be devoted to. However, can the DCP clarify whether this mechanism requires property owners to invest the proceeds into the maintenance of their buildings? And finally, during construction periods, what steps will be taken to protect historic and cultural resources from unintentional damage?

### **Socioeconomic Conditions**

The proposed rezoning anticipates a net increase of nearly six million square feet of commercial space. What is the current vacancy rate in the Greater Midtown East Area? What is the expected drop in vacancies following the rezoning and the development of new building stock? What conditions are anticipated if the aging building stock remains? Have efforts at renovation been evaluated? Additionally, what are the expected increases in rent following development under the proposed rezoning?

While this proposal carries enormous promise for bringing new business tenants to the Greater East Midtown area, we also believe that there is a great unaddressed need for so-called Class "B" office space in New York City. In our Senate districts, startup companies and technology firms are increasingly choosing spaces in neighborhoods like Chelsea and Flatiron. Many of these companies are the future of our city's economy and they need affordable Class "B" office space. More established companies like Google aren't seeking Park Avenue addresses either. Google's decision to establish its New York headquarters in the old Port Authority building in Chelsea suggests that the idea of modern glass-enclosed towers housing corporate world headquarters may be an outmoded way of thinking. How will the modernization of building stock in East Midtown diversify the existing commercial tenants in the area? Additionally, how will the rezoning promote a diversity of street level retail and store formats?

While DCP notes that the DEIS will include analysis of direct or indirect business displacement, we hope that the DEIS will also analyze any potential for residential displacement. Although the residential population in East Midtown is relatively small, what actions will be taken to minimize any direct or indirect displacement of tenants?

The Steering Committee recommended that the DCP explore ways to promote a variety of store sizes and formats in East Midtown. The vitality of this mixed use neighborhood and the quality of the pedestrian experience depends on variety in the street-level environment. This recommendation appears to have been left out of the scoping document and we would like to see zoning regulations that promote locally owned businesses of different sizes.

Any investigation into socioeconomic impacts should also look closely at how the proposed rezoning and expected development will impact commercial building service workers and the local building service industry. How many new commercial building service jobs are projected? How many commercial service jobs are projected to be displaced during a building demolition or construction?

### **Open Space**

The proposed text amendment deviates from the Steering Committee's recommended 2 FAR incentive for developers to create privately owned public spaces. The proposal retains the existing 1 FAR as-of-right bonus and creates a 3 FAR plaza bonus obtained through a special permit. Can DCP anticipate the extent to which developers will contribute improvements to the public realm or privately owned public spaces into the rezoning district with a 1 FAR bonus? How does that differ from a scenario where developers are offered a 2 FAR bonus? With an anticipated increase in commercial square footage and commercial tenants, how will this increased population impact existing open space resources?

### **Public Realm Improvements**

Until we receive a list of proposed public realm improvements from DOT, we are unable to fully evaluate the rezoning text's public realm improvement mechanism. East Midtown already has some of the most congested sidewalks in the city. During rush hour, pedestrians on Lexington and Madison Avenues are frequently forced into the streets. In anticipation of various public realm projects, can DCP evaluate the impacts of these projects on vehicular and pedestrian traffic?

What mitigations will be put in place to accommodate the additional pedestrian traffic that will come with increased density? What conditions are anticipated for pedestrians if no zoning changes are undertaken? If sidewalk extensions are installed, what is the estimated increased capacity for additional pedestrians? Will the proposal evaluate potential intersection improvements at existing dangerous intersections? Can the city provide a list of sidewalks where improvements are most needed to accommodate pedestrians walking to their destination or transferring to various transit options?

### **Shadows, Light and Air**

While we applaud the plan's intention to gather funds for MTA and DOT transit and pedestrian improvements, how will these improvements weigh against impacts to light and air, open spaces, and contextual design? The Special Midtown District uses "daylight evaluations" to measure the degree of "sky exposure" left by a building and how much daylight can reach the street. How will increased FAR be balanced with existing daylight evaluations?

With the possibility that new construction will obstruct publicly accessible views to visual resources, can the DCP anticipate which sites and views will be impacted? With a

significant expected net height increase of a number of structures in the proposed rezoning area, how will the city mitigate increases in large shadows cast by buildings onto already sunlight-sensitive resources? Does DCP anticipate any assemblages or zoning lot mergers as a result of greater allowable FAR?

### **Public Health, Air Quality, and the Environment**

What are the projected daily emissions that would be caused by both mobile and stationary sources during anticipated development and construction? How do those projected emissions levels compare with the emissions levels currently present in the East Midtown area? How do these emission figures and any increase compare to overall figures for emissions in other major business districts?

What measures can DCP take to ensure that developers use the cleanest possible technology throughout the construction process? Given the proposed rezoning map's inclusion of actively used office space in a central business district, how would noise resulting from construction be minimized during the work day? Please also describe how increases in energy efficiency in the East Midtown building stock might impact New York City's overall energy usage.

### **Reasonable Worst- Case Development Scenario**

We question some of the criteria used in the draft scoping document to exclude sites from the Reasonable Worst-Case Development Scenario. The scoping document excludes all condominium, co-op, and rental buildings with more than six rent regulated units from the list of projected and potential development sites. In recent years, we have seen developers in our districts manage to buy out all the owners and/or rent regulated tenants in buildings in order to redevelop the sites. In order to assess the possible effects of the proposed action, the environmental analysis must assume that some condominium, co-op, and rental buildings may be redeveloped.

The environmental analysis should also assume that the Hyatt Hotel site at 42<sup>nd</sup> Street also redevelops under the Reasonable Worst-Case Development Scenario. While there are clearly hurdles to redeveloping this site, it is one of the most valuable locations in the city and a 27 FAR as-of-right development opportunity is unprecedented.

### **Additional Questions**

Under the proposed zoning text, how many properties would be considered underbuilt? Under current zoning, how many properties are currently considered underbuilt?

Why is the as-of-right FAR on the Pfizer site being increased absent any public benefit? This is inconsistent with the rest of the proposal which only permits other sites to grow above currently permitted levels if development rights are purchased from a landmark and funds are provided to improve the public realm or transportation infrastructure.

What provisions will be made to ensure that all contributions to the transportation and public realm improvement funds cannot be diverted for other purposes in the future?

We ask that scenarios where the East side of Third Avenue is both included and excluded within the proposed subdistrict be studied as part of the scope of work.

How will DCP ensure the rezoning text accounts for other significant public infrastructure projects that will either occur directly in or close to the subdistrict? These include the East Side Access project, the 2nd Avenue Subway, and Citywide Ferry Service.

We look forward to responses to the above questions. Thank you for your attention to our concerns on this important matter.