



## **Our Legal Challenge to the Taking of Harlem's Main Street: NYC's Rezoning of 125<sup>th</sup> Street**

### **An Opposition to Displacement**

#### **Voices of the Everyday People (VOTE People)**

VOTE People is a community-based human rights group focusing on economic, social, cultural, political, and civic rights. (VOTE People Mission Statement available at <http://www.votepeople.net>)

VOTE People is focusing on New York City's rezoning of 125<sup>th</sup> Street, Harlem's main street. The rezoning sets the stage for mass displacement of long-time residents and small businesses while allowing for towering buildings to replace Harlem's internationally known and loved neighborhood charm and institutions of historical importance to the African-American experience. VOTE People believes that the plan was developed without meaningful consideration of the needs and interests of the community, and has thus pursued litigation to validate these rights.

VOTE People has approximately 900 signature members, largely consisting of residents, business owners and property owners in Harlem, mostly on or near 125<sup>th</sup> Street, who have signed petitions in support of VOTE People and its efforts to ensure that any proposal or act to rezone or otherwise alter the Harlem community is effectuated according to the law, with accurate information and environmental impact assessment and with due respect of the community's needs and interests.

VOTE People's position paper, which more fully articulates our objections to the rezoning, is available at [www.votepeople.net](http://www.votepeople.net).

#### **Background of the Issue: the Rezoning Application**

On October 1, 2007 the Department of City Planning certified as complete an application to rezone 125<sup>th</sup> Street in Manhattan, including the south side of 126<sup>th</sup> Street and the north side of 124<sup>th</sup> Street, from Broadway to Second Avenue. The certification of the application invoked the Uniform Land Use Review Procedure (ULURP) of the New York City Charter, which provides for several stages of public review of an application before culminating in a vote of the City Council.

The application, by its own terms, admitted it would cause the displacement of—at least—71 local businesses. In fact, since the Council passed the rezoning resolution on April 30, 2008, several businesses that were projected to be displaced by the plan have been displaced and/or facing evictions and some sued the owner/developer forcing them to leave (this lawsuit was settled). In sum, the rezoning was designed to bring thousands of market-rate housing units beyond the financial reach of the residential community, while making no requirements for affordable housing or compensation to displaced businesses.

City officials claimed that the rezoning would bring affordable housing in 48% of all new residential units to

be developed. However, an examination of the resolution that was passed by the Council and the “points of agreement” memo between City administration and affected council members, obtained by VOTE People before the Council vote, shows that claims of the rezoning bringing up to 48% affordable housing are simply untrue. The actual figure is closer to 5% when considering the real income of Harlem residents.

The rezoning, intended to create a “regional business hub”, would also bring a significant up zoning, allowing for 30 story buildings in an area of historically low to medium height buildings, despite City claims that height restrictions were being introduced.

### **VOTE People’s Response**

When VOTE People decided to take on as a project a challenge to the then proposed rezoning of 125<sup>th</sup> Street, it stated that it would adopt a holistic approach, using all tools necessary and/or likely to effectuate the desired outcome. This included engaging with elected officials, mobilizing members to object to the proposal and taking legal action, if necessary.

On April 1, 2008 VOTE People announced its intent to invoke Section 200(a)(3) of the New York City Charter to present a property owner protest of the proposed rezoning. Our research indicates that this section has not been invoked in New York City for at least 60 years, and has never been invoked to defeat a proposed rezoning of the size and scale of the 125<sup>th</sup> Street proposal. (See April 1 New York Times Article, <http://www.nytimes.com/2008/04/01/nyregion/01rezone.html>.)

While undertaking research and outreach to effectuate a §200(a)(3) protest, VOTE People uncovered larger legal issues with the rezoning. In organizing members and affected property owners to protest the proposal, VOTE People learned that a significant part of the immediately impacted property owners were completely unaware of the then proposed rezoning. Additionally, many property owners were unable to be contacted through publicly available records. The lack of awareness of the sweeping proposal, in addition to the inability of owners to be reached due to inaccurate public records culminated in the curtailing of property owners' right to protest the proposal, as provided under the City Charter.

After discovering the extent of the wrongfulness of the rezoning, and an inability to effectively challenge it outside of the courts, VOTE People decided to take legal action.

### **Legal Action**

VOTE People filed an Article 78 proceeding in the State Supreme Court for New York County on April 29, 2008. The case was assigned to Judge Nicholas Figueroa and an emergency hearing on our application for a temporary restraining order to prevent a Council vote on the rezoning application was held on the morning of April 30. The application was denied, and a hearing date was set for May 22. VOTE People immediately appealed, but the Council had voted by the time the Appellate Division had an opportunity to consider our arguments.

Judge Figueroa heard oral arguments on a preliminary injunction to prevent further action in furtherance of the rezoning pending the outcome of the suit on June 30. On the 30<sup>th</sup>, Judge Figueroa noted that there appeared to him to be other claims that could be raised in the context of this lawsuit. We agree, but simply have not had the resources to put together a bigger case. The Court, on November 20, 2008, issued a decision dismissing all of our claims in their entirety. It issued this decision after refusing to review VOTE People’s Reply papers, which we believe was a clear violation of the CPLR.

Substantively, the main issue argued in our filings surrounds notice and due process. In our Reply papers, we also raised subsequent due process issues related to the New York State Open Meetings Law, which we believe the City violated, after our initial complaint was filed, and in the same course of action of progressing the rezoning through ULURP to a final City Council vote, by forcing the public to leave the Council chambers when the members voted on the proposal. Finally, as a way of background, we also believe that there are federal law claims, which we have not yet explored. These three areas of claims are discussed below.

#### **Argument: City Failed to Fulfill its Notice Obligations**

The first stage of the public review process within the ULURP is with the affected community boards, which are required to publish notice of public hearings on the proposal in The City Record. With regards to the proposed rezoning of 125<sup>th</sup> Street, the affected community boards are Boards 9, 10 and 11. None of these Boards posted the required notice under the ULURP.

The lack of notice is a breach of the ULURP provision of the City Charter, which provides the due process protections of notice and hearing when land use proposals are deemed sufficiently significant to be required to enter the public review process. In this case, where property owners were effectively stopped from pursuing a §200(a)(3) protest due to lack of awareness of the proposal itself, the breach of the community's process rights to notice of hearing was not without repercussion.

Two other major flaws in the process of this proposal have occurred. First, alleged modifications proposed by Harlem council member Inez Dickens were never publicly disclosed before the City Planning Commission considered them, and the City Council voted on them. What was disclosed was a pithy press statement from Ms. Dickens' office, which offers misleading statements about the benefits to the community. The "points of agreement" memo, exchanged between the Deputy Mayor, Ms. Dickens and other Council members explains in greater detail the alleged modifications, but the resolution voted on by the City Council reflects neither of these documents, particularly in the hotbed issues of affordable housing and height restrictions.

VOTE People believes the ULURP review process must be reinitiated with adequate notice to the community, in particular property owners, so that rights to participate in and protest the proposal may be exercised.

#### **Potential Second Claim: Open Meetings Law Violation**

On April 30, the City Council voted on the proposal – out of the public purview. Extra security was present at the start of the meeting and members of the public, aside from a small group of Dickens "VIP" supporters, were all forced to sit on the second-level balcony. After some members of the audience responded unfavorably to the comments of council members Inez Dickens and Robert Jackson by calling out "liar" and "sell-out", all members of the public, aside from a group of Dickens supporters, were removed from the hall before the Council voted on the proposal. After they were removed, they were never offered an opportunity to return or watch the vote through any other provisions. While the City Council has a rule which allows it to maintain decorum, the New York State Open Meetings Law provides that such a rule can not override its mandate, which requires that public functions, such as votes, not be held in private.

VOTE People seeks to annul the council vote on the proposal, which it believes violates the Open Meetings Law. It has conducted intake of affidavits of several members of the public present at the Council on the day of the vote who were removed, but has not yet filed a claim.

### **Further Potential Claims: Voting, Housing, Civil Rights Violations, Environmental Claims**

In addition to the procedural defects and above-described issues with the rezoning, VOTE People also believes there may be civil rights claims worthy of exploring, including for example, possible violations of the Voting Rights Act and the Fair Housing Act and abuse of eminent domain. We would like to explore these areas with the assistance of counsel, as the rezoning appears to have the effect of disrupting a significant voting block, even in the way it physically divides and separates affordable housing unit provisions with where the bulk of market-rate housing would be developed. Further, VOTE People believes the rezoning, with its significant upzoning, is a precursor to identifying the area as underdeveloped and blighted in order to exact eminent domain as a tool to remove local business and property owners. Also, preliminary assessment of environmental standards indicate there may be claims relating to the City's insufficient identification and mitigation of negative environmental impacts of the plan.

### **Request for Legal Services**

VOTE People is a small, community-based grassroots organization with extremely limited funding. **We are currently under severe time restraints to perfect our appeal of the State Supreme Court decision, by October 5.**

We are reaching out to the New York legal community for assistance in representation at this crucial moment, in any number of ways including support in strategizing, research, drafting, editing, and administrative support. We have faced setbacks in the past, but are fully committed to perfecting this appeal in the short term and continuing a strategic advocacy approach long-term. However, we truly need assistance and representation to fulfill these goals.

### **Need for Financial Support**

VOTE People has launched a grassroots fight to legally challenge New York City's rezoning of 125th Street. This fight is literally a David and Goliath battle requiring moral and financial support beyond the means of any one organization such as ours. We need your financial support: without your help, the wheels fall off of our machine, with your help victory is within our reach.

Please donate to our mission by either mailing a check or money order to: VOTE People (mailing address: 331 West 57th Street, #146, New York, NY 10019) or visiting our website (<http://www.votepeople.net>) and clicking "Donate". No contribution is too small or too large to assist in the fight for our community and to help stop displacement.

On behalf of our entire organization, thank you,

Craig Schley  
Executive Director  
VOTE People  
917.720.8341  
331 West 57 Street, #146  
New York, NY 10019