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QUEENS CIVIC CONGRESS OPPOSES BDWY. AIR RIGHTS TRANSFER

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The Queens Civic Congress [QCC] opposes the *Transfer of Unused Development Rights (Air Rights) of Broadway Theaters Beyond their Adjacent Property*, announced Sean M. Walsh, QCC President. In testimony today (Wednesday, May 6, 1998) before the New York City Planning Commission prepared by Mr. Walsh and presented by QCC Vice President and Land Use Committee Chair Patricia A. Dolan, the Congress praised the goal of promoting legitimate theater but found dangerous the precedent of linking social and development objective in another location through the transfer of development rights outside the subject area which receives the benefit. The QCC testimony [THE EXPANSION OF THE SUBDISTRICT FOR THE AS OF RIGHT TRANSFER OF BROADWAY THEATERS AIR RIGHTS ULURP Nos: N 980271ZRM & C 980272ZMM] follows:

Thank you for giving me the opportunity to address you on this critical issue. My name is Sean M. Walsh; I am President of the Queens Civic Congress an umbrella organization of eighty five civic organizations in Queens county. The Congress is opposed to the proposal to allow the transfer of unused air rights over Broadway theaters outside the boundaries of the of the present subdistrict. While this proposal to promote legitimate theater and theater related issues is a laudable goal, it is a dangerous precedent to link a social objective and development objective in another location by permitting the Transfer of Development Rights (TDRs).

The City Planning Commission in its Resolution of April 28th 1988 stated that:

"Numerous proposals have been made regarding the use of zoning devices to support the legitimate theater. Some proposals have been based solely on economics and are inconsistent with the utilization of the Zoning Resolution as a land use tool. Possibly the most debated proposal has been the provision of some form of an air rights transfer system, whereby unused development rights from listed theaters could be sold and utilized on development sites throughout a wide area. The commission believes it is inappropriate to proceed in this direction due in part to the unpredictability of its results, the negative implication for density in the area and for the existing landmarks regulations, and the precedent that could be set."

"The Zoning Resolution has carefully guarded the use of TDR provisions to benefit designated landmarks.... An unprecedented broadening of the class of properties to which the TDR provisions apply and the required nexus between sites would, at least disrupt, and potentially undermine, the current regulations governing landmarks. ... Transfer experiments which disrupt the time-tested regulations of New York City are ill-advised."

We agreed then and we agree now that this proposal is ill advised.

Our purpose in testifying here today is not to suggest that the theaters do not need financial incentives to thrive or that new approaches to development west of Eight Avenue should not be explored. Those issues we leave to our Manhattan neighbors to decide what is best. Why then are we so adamantly opposed to the expanded use of TDRs in Manhattan? The reason is simple this proposal creates and legitimizes an expanded tool in the hands of city planners. A tool that can lead to unpredictable results.

Houses of worship, private educational facilities, hospitals, community facilities, etc. are institutions in financial need and who serve the public interest. These institutions, which have substantial TDRs to sell, have as much right for relief as our theaters. When we look at the rail yards, cemeteries, and baseball teams in the other boroughs, we foresee a tremendous danger of massive transfer of TDRs far from the contiguous property site. We know of charitable institutions preparing plans in anticipation of your using this tool again to encourage development in the other boroughs. Once you let the genie out of the lamp; I am afraid you will not be able to put him back.

There are several other practical difficulties in allowing the transfer of millions of square feet of air rights beyond a clearly definable contiguous property owner. First, the conflicts that can occur between competing developers in the utilization of air right they purchased years before. Second, the depreciation of the value of the air rights beyond the district when sold in such a large quantity. Third, the inability of one third of the theaters to participate, because they have already sold their rights.

The use of a Special Permit as suggested by some will not alleviate the problem. First, Special Permits create uncertainty for developers and will therefore under cut any serious development proposals under these circumstances. Second, Community Boards, the Borough Board, and yourselves can not deny or substantially modify a proposal because you have already acknowledged in this plan the desire to create more density on the west side of Manhattan.

In conclusion there are many other tools in the zoning and tax laws of the city to change density and assist the theaters which are more certain in their results. Therefore, we strongly urge you not to adopt this proposal. Thank you.