



October 16, 2019

Via Email and First-Class Mail

Tim Czerwienski, Project Manager
Boston Planning and Development Agency
One City Hall Square
Boston, MA 02201
tim.czerwienski@boston.gov

Re: Suffolk Downs

Dear Mr. Czerwienski,

On behalf of a coalition of Boston-based community groups organized by and for residents of color, including GreenRoots, City Life/Vida Urbana, Neighbors United for a Better East Boston, MassCOSH, the Center for Cooperative Development and Solidarity, and Stand for Democracy (hereinafter, “the Community Groups”), Lawyers for Civil Rights respectfully submits this comment to express the Community Groups’ significant concerns regarding the Supplemental Information submitted on September 16, 2019 by the HYM Investment Group (hereinafter, “HYM”). In light of these concerns, the Community Groups strongly oppose the redevelopment of Suffolk Downs in its present form.

As a threshold matter, the Community Groups note that a month was insufficient time for this comment period. Given the immense importance of this project, the extensive documentation submitted by HYM, and the translation issues noted below, a much longer comment period was warranted. The Community Groups respectfully request that the comment period be extended 120 days to allow time for additional interested residents, stakeholders, and advocacy organizations to submit comments addressing questions and shortcomings with HYM’s proposal.

Overarching Flaws in The Development Review Process

Before addressing the substantive problems with the Supplemental Information, the Community Groups highlight several overarching flaws in the Development Review Process, which cumulatively serve to shut out from the review process many of those who will be most directly affected. Taken together, these concerns demonstrate how low-income residents, immigrant residents, and residents of color are being systematically excluded from the largest development project in Boston history—a development that will primarily impact and displace those very residents.

I. Lack of Translation

HYM failed to translate the Supplemental Information into Spanish, continuing a longstanding problem in the development process. By failing to translate the Supplemental Information, HYM displaced the burden of translation onto residents and community groups such as those represented in this comment letter, which are already operating with limited

financial and human resources. The failure to translate the document—even though HYM is well aware that many residents of East Boston are monolingual Spanish speakers or English language learners and has translated prior submissions—raises serious legal and equity concerns. Similarly, the Community Groups note that the oral Spanish translation provided at community meetings has been problematic and unprofessional. HYM translators appear unfamiliar with the technical jargon used in planning documents and so simply repeat these terms in English, to the confusion of the audience. On at least one occasion, HYM utterly failed to provide a translator, leaving a City of Boston employee who happened to speak Spanish to step in.

This deliberate indifference to the demographics and needs of the East Boston community may subject HYM (and the Boston Planning Development Agency (BPDA)) to liability under state and federal anti-discrimination laws, including Title VI. Title VI, the accompanying regulations and state law prohibit discrimination based on national origin. *See* 42 U.S.C.A. § 2000d; *see also* 28 C.F.R. § 42.405(d)(1) (“Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons.”). In comparable instances, the lack of translation into languages spoken by affected communities has drawn legal scrutiny. *See, e.g., Nat’l. Multi Housing Council v. Jackson*, 539 F.Supp. 2d 425, 430 (D.D.C. 2008) (observing DOJ has “consistently adhered to the view that the significant discriminatory effects that the failure to provide language assistance has on the basis of national origin, places the treatment of LEP individuals comfortably within the ambit of Title VI and agencies’ implementing regulations.” (citation omitted)).

This project cannot and must not move forward without professional translation of every public document and community presentation.

II. References to External Documents and Discussions

As other commenters have noted, HYM’s BPDA submissions have attempted to incorporate by reference external discussions, plans, and memoranda without actually including them in the Planned Development Area (PDA) or other binding documents. Residents cannot meaningfully assess the impact of, or comment on, decisions they are excluded from reviewing. In its current form, even with the Supplemental Information, the PDA is incomplete.

Accordingly, the Community Groups request that HYM both provide the following documents and incorporate them in their entirety into the PDA:

- A detailed description of the “regional solutions” to climate change HYM is seeking with the Commonwealth and the Cities of Boston and Revere;
- An itemized breakdown of the proposed contribution to transit upgrades that is currently “under discussion” with the MBTA;

- A detailed description of the “significant linkage funds” HYM claims will flow to the Neighborhood Housing Trust, so that the community can assess their impact and adequacy;
- Any agreements, including drafts, with MBTA and/or MassDOT; and
- Any Project Labor Agreements pertaining to the construction and staffing of Suffolk Downs, such that the Community Groups can assess whether the project’s workforce will include local residents, women, and people of color, as well as women-owned and minority-owned small businesses.

III. Lack of Representation on the Impact Advisory Group (IAG)

Suffolk Downs cannot be separated from the context in which this development is taking place. Since 2013, 19 large residential projects have been approved by the BPDA, injecting approximately \$700 million in condominiums and apartments into a historic immigrant enclave.¹ Yet tellingly, no representative from any of the Community Groups was invited to sit on the project’s IAG, despite their years of activism and advocacy in East Boston. It is shortsighted to include primarily “abutters” of the project on the IAG, as if the only stakeholders are those adjacent to the former racing site. Suffolk Downs is regional in scope and impact; it involves the wholesale construction of a new mixed-used neighborhood, with 10.5 million square feet of development across two cities. The project will fundamentally change the character, cost, and composition of every neighborhood it touches and all surrounding communities. Without including organizations led by and serving people of color on the IAG, the BPDA will have an incomplete picture of the social and environmental impacts of Suffolk Downs.

Housing and Affordability

IV. Amount and Rental Pricing of Affordable Housing

In the Supplemental Information, HYM states that 13% of the total square footage of all dwelling units in Boston will be set aside as affordable units, in order to facilitate the provision of two- and three-bedroom units suitable for families. On-site rental units will be provided at an average of 70% of Area Median Income (“AMI”).

The Community Groups request additional information on how the decision to keep a set percentage of the total residential square footage affordable, rather than a set percentage of the total units, impacts the number and size of affordable units. Given the housing shortage in Greater Boston, the lower median household income of East Boston, and the need for multi-bedroom units, the Community Groups strongly believe that half of the residential units built by HYM should be provided at 30% AMI, an amount that reflects the actual earnings of East Boston residents. Additionally, half of these residences should be two and three-bedroom units.

Although the Community Groups recognize that their proposal exceeds the City of Boston’s mandatory set-aside of 13% of available residential space for affordable housing, this allocation

¹ Conti, K., *East Boston Health Center Tries to Adapt to a Gentrifying Neighborhood*, The Boston Globe (Jul. 17, 2016).

is amply justified. Vacancy rates are at historical lows, putting ever greater pressure on low-income renters. In a 2019 Housing Report Card, the Boston Foundation observed that while a 6% vacancy rate is generally considered stable for rental properties, the vacancy rate in Greater Boston “dipped well below 4% in 2015 and has yet to recover.”² This low vacancy rate disincentivizes landlords from listing rentals at affordable prices, while increasing the risk of displacement, as “vulnerable renters” are unable to compete for an ever-decreasing number of apartments with higher-income households.³ The Boston Foundation specifically noted that a “disproportionate percentage of the region’s renters are low-income and people of color who have historically been pushed or priced out of the housing market.”⁴ A similar report by the Federal Reserve Bank of Boston estimated that Massachusetts must nearly double its stock of affordable apartments in order to support extremely low-income households, which would require the construction of over 4,000 affordable apartments per year.⁵ Indeed, in the Supplemental Information, HYM itself acknowledges the “ongoing displacement pressures in and around East Boston,” which are driving long-term residents out of their homes.

The Community Groups’ proposal that half of the affordable units be two- and three-bedroom apartments recognizes the need for larger-sized units for those who will be most impacted by the Suffolk Downs project. Immigrants make up over half of East Boston’s population.⁶ Immigrant-headed households in Massachusetts are, on average, larger than native-born households, which is due in considerable part to the larger number of children in immigrant families.⁷ If BPDA were to endorse HYM’s proposal, it would be effectively guaranteeing that East Boston immigrant families and families of color will be shut out of Suffolk Downs, even though the project spans a historically working-class immigrant community. In so doing, the BPDA would be perpetuating the housing segregation that has characterized displacement and gentrification in Boston for generations. This worrisome trend of building white neighborhoods has been extensively documented by the Boston Globe’s Spotlight series in connection with the development of the Seaport.⁸

Community Groups believe their affordable housing proposal is also justified in light of the anemic nature of HYM’s proposed financial contributions to public transportation. These contributions are significantly out-of-step with other large-scale developments in Greater Boston that are dwarfed by the size and scope of Suffolk Downs. By contrast, HYM and NB Development Group paid for and constructed an entirely new regional rail station serving the multi-phase, mixed-use 15.2 acre Boston Landing Development that directly links downtown

² The Boston Foundation, The MHP Center for Housing Data, & The University of Massachusetts Donahue Institute (UMDI). (2019, June). *The Greater Boston Housing Report Card 2019 Supply, Demand and the Challenge of Local Control. The Greater Boston Housing Report Card 2019 Supply, Demand and the Challenge of Local Control.*

³ *Id.*

⁴ *Id.*

⁵ Federal Reserve Bank of Boston. (Apr. 3, 2019). *The Growing Shortage of Affordable Housing for the Extremely Low Income in Massachusetts.* Retrieved from <https://www.bostonfed.org/publications/new-england-public-policy-center-policy-report/2019/growing-shortage-affordable-housing-extremely-low-income-massachusetts.aspx>

⁶ Boston Planning & Development Agency Research Division, *East Boston* (May 2017).

⁷ The Immigrant Learning Center, Inc., Clayton-Matthews, A., & Watanabe, P. (2012, March). *Massachusetts Immigrants by the Numbers, Second Edition: Demographic Characteristics and Economic Footprint.*

⁸ Ryan, A., et al., *A Brand New Boston, Even Whiter Than The Old*, Boston Globe (Dec. 11, 2017) (noting that Boston “had a rare opportunity to build a new neighborhood for all Bostonians. Instead it built the Seaport.”)

Boston and Brighton.⁹ In Somerville, Federal Realty Investment Trust invested \$15 million to build Assembly Station on the Orange Line for the primary purpose of serving Assembly Square, a retail and residential development.¹⁰ As part of a community benefit package, Encore Boston Harbor invested over \$70 million in roadway improvements in Everett and Sullivan Square and transportation alternatives, including shuttle buses and water taxis, with plans to potentially extend the Silver Line from Chelsea to Encore in Everett.¹¹

Given the low level of HYM’s public transportation investment for Suffolk Downs, the Community Groups propose that the BPDA require HYM to commit funds equivalent to what a development of this size would typically invest in public transportation, and dedicate them to affordable housing instead. Such a contribution would amply support Community Group’s proposal that half of the residential units built by HYM should be provided at 30% AMI and that half of these should be two and three-bedroom units

V. Stabilization Fund

As per the Supplemental Information, HYM has agreed to provide \$5 million to a housing stabilization fund that will be used to assist East Boston-based nonprofits in purchasing existing market-rate housing units to lease or sell them at affordable rates. The Community Groups believe this sum is utterly insufficient to address displacement pressures in East Boston. When considering the scale of this project and its attendant footprint in this region, \$5 million is a paltry sum. Indeed, HYM’s own project liaison has estimated that each housing unit costs the developer about \$500,000. To dedicate the approximate cost of ten rental units to housing stabilization, given the scale of Suffolk Downs, is insulting and inadequate. Instead, the Community Groups propose HYM’s contribution to the stabilization fund should represent a meaningful percentage of the cost of the overall project, to be determined by the BPDA in consultation with the community, including the undersigned groups.

Climate Resilience

VI. Compliance with Climate Action Plan

Suffolk Downs must meet all construction standards outlined in the City of Boston’s 2019 Climate Action Plan, including, but not limited to ensuring the entire development is zero net carbon or energy positive and submitting a Carbon-Neutral Building Assessment. Given the urgency of the climate change crisis, the enormous and unprecedented footprint of Suffolk Downs, and the lengthy anticipated construction period, there is no justification for noncompliance. Resiliency is particularly needed in East Boston and Revere, which are uniquely vulnerable to sea level rise propelled by climate change. Indeed, the Climate Action Plan estimates that by the end of the 21st century, “between 10 and 20% of East Boston will face flooding at high tide, even when there is no storm.” HYM has not meaningfully explained or

⁹ Sperance, C., *Developers Seen As Key Ingredient in Several Multibillion-Dollar Transit Plans*, Bisnow (Jul. 30, 2019).

¹⁰ Moskowitz, E., *MBTA Board OK’s Millions for Station Improvements*, The Boston Globe (Oct. 5, 2011).

¹¹ LaFratta, K. & Solis, S., *As Encore Boston Harbor Prepares to Open, Traffic Nightmares Could Present New Transit Opportunities*, MassLive (Jun. 21, 2019).

justified its failure to comply with the City’s own standards. The Community Groups urge the BPDA to hold Suffolk Downs to the standard Boston has set for its future.

Additional Mitigation

VII. Diversity and Training for Private Security

It is anticipated that HYM will hire private security officers during the pendency of construction and across the vast Suffolk Downs worksite. Given the demographics of East Boston, this workforce must be drawn from the community they serve, include a percentage of people of color that reflects East Boston’s neighborhoods, and be largely bilingual in English and Spanish. Additionally, prior to any breaking of ground, all private security officers must undergo extensive implicit bias training to reduce the influence of racial bias in community interactions and officer decision-making.

VIII. Use of Commercial and Rental Space

In its present form, Suffolk Downs will include two retail squares at Suffolk Downs and Beachmont Stations and a public plaza with over 100,000 square feet of ground floor retail. In order to preserve the character of these neighborhoods, it is essential that locally-owned, women-owned and minority-owned businesses be afforded access to this commercial and retail space. Gentrification has not simply displaced individuals and families—local businesses and nonprofits, which anchor whole communities, have been forced to relocate from long-held homes. Accordingly, the Community Groups request information on what steps, if any, HYM is taking to prioritize the inclusion of locally-owned, women-owned and minority-owned small businesses and nonprofits in Suffolk Downs’ commercial spaces to ensure residents are able to share in the wealth generated by this project. This is particularly urgent in light of the ongoing crisis surrounding women- and minority-owned small businesses in Boston, who received “less than 1% of the \$664 million Boston awarded last year for contracts for constructions and professional goods and services.”¹²

IX. Mitigation for Vulnerable Residents

As community activists and advocates, the Community Groups have firsthand familiarity with the vibrancy and diversity of East Boston. However, with the marked rise in gentrification, the Community Groups also see the challenges experienced by many East Boston residents, including opioid addiction, chronic homelessness, and significant underemployment. These residents and their lived experiences are entirely missing from the PDA and Supplemental Information, even though they are an integral part of East Boston. The Community Groups request information as to what mitigation, financial or otherwise, HYM is intending to make to benefit East Boston’s most vulnerable residents, including support services and workforce development. This mitigation will be especially salient if, as the Community Groups predict, the project accelerates the rate of displacement in East Boston, leaving families financially destabilized and without adequate housing to meet their needs.

¹² Valencia, M., *Boston Awarded \$664m In Contracts. Less Than 1% Went To Women- And Minority-Owned Businesses*, Boston Globe (May 2, 2019).

Conclusion

In summary, for the reasons expressed herein, the Community Groups strongly oppose the redevelopment of Suffolk Downs in its present form. A project of this magnitude, in a lower-income, historically immigrant community suffering from rising rents, must incorporate a far fuller set of benefits for the communities of color harmed and displaced by the proposed redevelopment.

Sincerely,



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cc: John Walkey, GreenRoots
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Luz Zambrano, Center for Cooperative Development and Solidarity
Blake Shetler, Stand for Democracy
Boston City Councilor Lydia Edwards