

DEVELOPING PROGRESS

Ensuring that public resources contribute to New York's equity, resilience, and dynamic democracy



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EXECUTIVE SUMMARY

Progressive development policies that ensure consideration of economic, social, and environmental impacts will grow a city that is equitable, resilient, and democratic. While stimulating new revenues for the city, progressive development policies will also promote the economic and environmental sustainability of our communities and provide good jobs to both construction and permanent employees.

Each year New York City invests \$2 billion to encourage private development, but it does not require progressive development practices, transparency about job creation or other contributions to community well-being, or accountability to benchmarks that could demonstrate the return on this investment.

Starwood Capital Group's track record for development in New York City provides a good example of the problems with the current approach to the public's investment. While some Starwood developments meet responsible development standards, others endanger workers and other community members. Notably, on its publicly subsidized project at Pier 1 in Brooklyn Bridge Park, Starwood has partnered with a general contractor with a history of safety violations and alleged illegal behavior.

Examples like the Pier 1 project highlight the need for higher standards with stronger enforcement on projects the public invests in. Brooklyn Bridge Park – particularly, the development of Pier 6 there – offers the city an opportunity to develop principles, institute policies, and enforce standards to ensure that public resources contribute to New York's equity, resilience, and dynamic democracy.

We recommend that immediate steps be taken as a broader set of progressive development policies takes shape:

- The request for proposals for development of Brooklyn Bridge Park's Pier 6 should include strong, clear criteria to promote the economic and environmental sustainability.
- Starwood Capital should use only responsible contractors and subcontractors on the Pier 1 project.
- Pension funds should withhold future investments with Starwood Capital until the group meets the pension funds' Responsible Contractor standards.
- Developers should be legally accountable and culpable for the safety, health, and environmental conditions on their worksites.
- Penalties for violations of safety, health, building, and environmental standards, as well as for violations of community benefits and other agreements in public contracts should be raised.

Progressive Development policies are vital to the growth of an equitable, resilient, and sustainable economy.

Progressive development policies that ensure consideration of economic, social, and environmental impacts will grow a city that is equitable, resilient, and democratic. Currently, New York's excessive¹ – and growing² – inequality threatens the city's economic well-being.³ While stimulating new revenues for the city, progressive development policies will also promote the economic and environmental sustainability of our communities and provide good jobs to both construction and permanent employees.

Equity. The city's development decisions can drive continued economic growth, while also promoting a more equitable economy for all New Yorkers. We can keep more of our investment in the local economy by directing public investment to projects that promote training opportunities to prepare local New Yorkers for placement in new temporary construction jobs created, prioritize local hires for permanent jobs created in the development, and target procurement from local enterprises.

Progressive development decisions can also address particular needs for the local economy. For instance, as of 2013, the average duration of unemployment in New York City was higher than in the rest of the state and country.⁴ While that is true, a development policy prioritizing projects with solid plans to hire long-term



While public hearings provide a forum for responses to proposed projects, progressive development would incorporate community needs and concerns into both the city's broad development plan and the process of creating specific project proposals.

Photo: NYC's High Line Park. Credit to David Berkowitz.

unemployed New Yorkers into good jobs would contribute more to the shared prosperity within the city.

Resilience. The city's development policies and practices must promote the vigor of our communities and residents. Projects that include community space encourage community cohesion. Plans that maintain public access to the city's natural assets fulfill a New York tradition of public space for public health. Designs that encourage the use of environmentally sound transportation and energy alternatives contribute to community and individual health. Responsible contractors provide the training and equipment necessary to ensure that workers are as safe as possible on dangerous jobs and that communities do not suffer preventable fatalities.

In addition to promoting community health, development policies need to prioritize projects that prepare the city to readily recover from a range of



Photo: construction site on Upper Broadway in Manhattan. Credit to Jeffrey Zeidman.

disasters. Resilience rests, in part, in the social and hard infrastructure built over time to ensure that communities can return to health in the wake of disasters.

Dynamic Democracy. While public hearings provide a forum for responses to proposed projects, progressive development would incorporate community needs and concerns into both the city’s broad development plan and the process of creating specific project proposals. While certain needs may differ from neighborhood to neighborhood and project to project, the need for transparency and accountability is constant. New York residents should have ready access to information about public subsidies and the performance of projects that are subsidized by the public.

The City has the greatest ability to ensure progressive development in the projects it subsidizes.

New York City gives out about \$2 billion each year to encourage private development through agencies like the Industrial Development Agency (NYCIDA),⁵ which provides tax exemptions and access to low-interest borrowing.⁶ State-operated entities, particularly the Empire Development Corporation, also provide tax credits, technical assistance, low-interest loans, and grants.⁷ Other agencies provide assistance to private developers in the form of nominal rents or land grants.

With these subsidies, the city shapes its economic, social, and environmental destiny. Pro-active, progressive development policies and practices can leverage New York City’s assets to create an inclusive economy and an equitable and resilient city.

While the New York City Economic Development Corporation articulates a similar vision, New Yorkers are largely in the dark about the kinds and amounts of subsidies the city is giving to private companies. Once the subsidies are given out, few programs report on job creation outcomes or whether the developers or contractors meet their obligations under the program or under the law.⁸ These subsidy programs use the city’s resources, but too often they do not help create a New

York City that works for all of us.

When We Give Public Money Away Without Strong (and Enforced) Standards: The Case of Starwood Capital

What is Starwood Capital?

Starwood Capital Group, founded in 1991, is a global investment firm with over \$29 billion in assets under management. Though it invests in various asset classes, Starwood Capital’s roots are in real estate investment, and the Group has invested in the full spectrum of real estate – multifamily, office, retail, hotel, industrial, residential and commercial land, senior housing, mixed-use and golf – and through both debt and equity instruments.⁹

Starwood’s Capital

The pension funds of public employees constitute one of Starwood’s core classes of investors. Starwood’s Distressed Opportunity Fund IX raised \$490 million from pension funds from Florida to California.

Investor	Commitment ¹⁰
Florida State Board of Administration	\$100 million
Houston Municipal Employees' Pension System	\$25 million
Illinois Municipal Retirement Fund	\$20 million
Los Angeles Fire and Police Pension System	\$30 million
New Mexico Public Employees' Retirement Association	\$25 million
New York State Teachers' Retirement System	\$50 million
State of Connecticut Retirement Plans and Trust Funds	\$50 million
Teachers' Retirement System of the State of Illinois	\$150 million
Texas County & District Retirement System	\$40 million

During the period from 2011 to 2013, Starwood Capital reported spending \$220,000 on lobbying New York City pension funds – the Board of Education Retirement System, the NYC Employees’ Retirement System, the NYC Police Pension Fund, the NYC Teachers’ Retirement System, and the NYC Fire Department Pension Fund.¹¹

Starwood’s Development Track Record in New York City

Starwood Capital is involved in several developments

throughout New York City. The Group's condominium conversion projects include 210 West 18th St and 425-435 West 50th St, both with JDS Development Group and Property Markets Group. Starwood's mixed-use development projects include the condo-and-hotel project at Pier 1 in Brooklyn Bridge Park.

Walker Tower at 210 West 18th St. A luxury condominium conversion completed in 2013, this Starwood-JDS-Property Markets Group project has been cited since 2011 by the NYC Department of Buildings for 22 violations.¹² Penalties have included a Partial Stop Work Order¹³ for unsafe construction activity and worker injuries.

OSHA also found dangerous construction practices on the project and fined contractors for safety violations. In one instance, a worker fell when a partial floor collapsed from the 20th floor to 19th floor. The contractor had not provided required safety equipment.¹⁴ Initial fines on the project totaled \$12,600, but were reduced by one-third to \$8,050 (see sidebar).

Stella Tower at 425-435 West 50th St. Work on this luxury condominium conversion is ongoing and involves the same partners – Starwood Capital, JDS, and Property Markets Group.

- February 21, 2014: A worker fell from a scaffold that had no railings.¹⁵
- February 27, 2014: NYC Department of Buildings responded to the incident with a Partial Stop Work Order.¹⁶
- March 5, 2014: Partial Stop Work Order lifted.¹⁷
- March 13, 2014: Second worker is reportedly injured as the result of unsafe working conditions.¹⁸

Brooklyn Bridge Park Pier 1. This mixed-use condominium-hotel project of Starwood Capital and Toll Brothers is being built on publicly owned land. New York City and the State have budgeted \$360 million of public funds to develop the surrounding park,¹⁹ improvements that will likely boost the value of the Starwood property.



In 2010, M. A. Angeliades, a company found to be an alter ego of, or single employer with, Hudson Meridian, pled guilty to cheating workers out of nearly \$600,000 in wages and benefits.

Photo: Construction worker at a development site in Queens.

The Starwood Capital and Toll Brothers joint venture won a 97-year ground lease.²⁰ Rather than paying property taxes, which are regularly assessed to reflect market value, Starwood will pay about \$3.3 million per year in rent and Payments in Lieu of Taxes (or PILOTs) to maintain the park.²¹ The company's rent is set for the first 25 years and increases after that period are capped.²² The PILOT payments can be reduced if Starwood applies the City's Industrial and Commercial Abatement Program tax abatement formula to the property.²³

The Pier 1 Requests for Proposals allows for consideration of labor issues and pension funds investing in Starwood have Responsible Contractor Policies touting the benefits of safe workplaces and fair wages. However, these provisions do not have strong enforcement.

The Pier 1 request for proposals stipulated that the successful respondent would benefit from showing "a lack of negative labor issues."²⁴ However, it is unclear whether this provision takes into consideration OSHA or DOB safety violations.

The New York City and State pension funds, which are invested in the project through Starwood's Distressed Opportunity Fund IX, have Responsible Contractor Policies that require the funds to invest in real estate projects that employ only responsible contractors whose workers receive fair wages and benefits.

Despite both the Pier 1 RFP language and the pension fund provisions, Starwood has hired the Hudson Meridian Construction Group to be the general contractor for the

Pier 1 project,* despite its history of safety violations and alleged unlawful conduct that could expose the project and the public to unnecessary disruption and risk. The many incidents cited by the Department of Buildings and Environmental Control Board include:

- A recently completed residential building had crumbling balconies and a loose fire escape. (2013)²⁵
- A worker was struck in the face by a heavy metal end cap that dislodged during a pressure test of the water supply (June 2012)²⁶
- A pedestrian was struck by plywood from a construction site. (2012)²⁷
- One construction site failed to have any sidewalk shed to protect pedestrians – on three separate inspections. (2007)²⁸
- Seven times since 2007, Hudson Meridian has been cited for failure to provide adequate guard rails to protect construction workers.²⁹

In 2010, M. A. Angeliades, a company found to be an alter ego of, or single employer with, Hudson Meridian,³⁰ pled guilty to cheating workers out of nearly \$600,000 in wages and benefits.³¹ A year earlier, Hudson Meridian, and others, were sued by a subcontractor for failing to pay more than \$2,000,000 for work performed.³² Several pending lawsuits allege that Hudson Meridian is responsible for significant construction defects, project delays, and overbilling.³³

This contractor is a partner that does not meet the standards of a responsible contractor. By selecting Hudson Meridian for this publicly subsidized project, Starwood Capital disregards any standard of responsible development.

An Opportunity in Brooklyn Bridge Park – Pier 6 and Other Future Development

Starwood’s Pier 1 project is part of an 85-acre, multiphase

**A general contractor is the company that is primarily responsible for the day-to-day operations on a construction site, including hiring other contractors and dealing with vendors.*

OSHA, DOB, and Workers’ Compensation Gaps Expose Workers to Unnecessary Dangers; the Scaffold Law begins to fill those gaps

The Occupational Safety and Health Administration (OSHA), the federal agency with primary responsibility for protecting construction workers’ safety, is understaffed because of inadequate funding. So, OSHA is unable to inspect a significant number of construction, demolition and building rehabilitation sites active at any one time in the state. According to the AFL-CIO, OSHA has only 113 safety and health inspectors in New York State. It

would take those inspectors 107 years to inspect each workplace once.³⁴ When OSHA does inspect a construction site, the monetary penalties imposed for violations are so small that employers can see them as just an incidental cost of doing business.³⁵ For instance, OSHA has issued 90 citations to contractors and subcontractors on Starwood Capital developments, but fined them only \$173,600 in the past 5 years, down from initial citations nearing \$250,000. Further, OSHA almost never pursues criminal penalties, even for egregious and willful violations that are directly linked to a worker’s death.³⁶

The New York City Department of

Buildings (DOB) is also charged with enforcing safety and code standards in buildings and on construction sites. According to one report, “the Health Department deploys 19 times more inspectors proportionately for restaurants than the Department of Buildings does for buildings.”³⁷

The insufficient preventive oversight threatens not only workers’ safety, but their lives. In the past month, two workers have died after falling from elevations. In one case, the DOB cited the contractor for insufficient safeguards.³⁸ In an earlier study, we found that the unsafe conditions that remain largely unchecked by

redevelopment plan for the Brooklyn Bridge Park. The park – particularly and immediately, the development at Pier 6 – offers the city an opportunity to develop principles, institute policies, and enforce standards to ensure that public resources contribute to the equitable, resilient, and democratic strengths of New York. Because the standards articulated by pension-fund investors, the state labor-peace standards, and requests for proposals appear inadequate to ensure that developments that benefit from public resources will be in the public’s interest, it is vital that the City explicitly require higher standards for these projects.

On April 7, 2014, State Senator Daniel Squadron, Congress Member Nydia Velazquez, Assembly Member Joan Millman, Council Member Brad Lander, and Council Member Stephen T. Levin urging the de Blasio administration to restructure the expired agreements under which the development of Pier 6 at the Park would proceed. The group called for:

- [Park Increment Recapture \(PIRC\)](#), which “would



By playing an active and determined role in the developments that benefit from public investment, the city can ensure that the projects promote the economic and environmental sustainability of our communities.

Photo: NYC cityscape. Credit to Kurtis Garbutt.

redirect a percentage of property tax increases on any rezoned or newly taxed property within a 0.4 mile radius of the park” in order to fund the Park and allow for an aggressive affordable housing strategy.

- Reevaluate the impacts of the plan to build two condominium towers at Pier 6, given other development in the area and the limits of existing infrastructure.
- Reassess the projects mitigation plans for

understaffed and underfunded agencies have a disparate impact on construction workers of color, who disproportionately work for low-road, non-union construction companies that cut corners on safety equipment and training.³⁹

Workers’ Compensation provides some protection for workers injured in accident; however, it is a safety net filled with holes. In March, the New York County District Attorney released a report of a Supreme Court Grand Jury, which found that the workers’ compensation system is “vulnerable ... to fraud by employers scheming to reduce their workers’ compensation insurance premiums.” This premium fraud created “an improper competitive

advantage over all law-abiding businesses, divested vulnerable workers of important protections and benefits, and deprived New York State and New York City of substantial revenue.”⁴⁰

New York State has filled some of the gap left by insufficient preventive oversight with the Scaffold Law (Labor Law §240), an essential safety measure to protect construction workers. The law holds owners and contractors fully liable if their failure to provide the legally required safety equipment and training causes a worker to be injured or killed. It works to short-circuit the incentive for owners and general contractors to hire cut-rate subcontractors who take safety

shortcuts. The law requires owners and general contractors to provide adequate compensation for medical care for the life of the injury and pain and suffering if their inadequate safety equipment or training causes serious injury or death to a worker. The law also fills an important gap in workers’ compensation, which is time-limited and can run out before a worker has recovered from a serious injury.

These agencies need to enforce worker safety standards more actively and aggressively. All forms of enforcement can be strengthened by heftier fines that reflect more closely the severity of the violations.

dramatically increased flood risks.

- Revise the financial modeling for the development building in prevailing wages, training and safety standards.

These proposals concretely embody the progressive development principles of equity, resilience, and dynamic democracy. The Pier 6 portion of the Brooklyn Bridge Park development plan gives the city a perfect opportunity to pilot these progressive development principles.

By playing an active and determined role in the developments that benefit from public investment, the city can ensure that the projects promote the economic and environmental sustainability of our communities and provide good jobs to both construction and permanent employees.

Steps toward Progressive Development

In the immediate term, we offer the following proposals of steps in the direction of progressive development for the projects underway.

- Strong, clear criteria in the Pier 6 Request for Proposals that promote the economic and environmental sustainability of our communities and provide good jobs to both construction and permanent employees. Contractors that do not meet the standards should be removed from the process. Developers selecting failing contractors should be warned and, if they do not replace those contractors with responsible contractors, should be stripped of the project.
- At Pier 1, Starwood Capital should be made to replace Hudson Meridian with a responsible contractor.
- Pension funds should withhold future investment through Starwood Capital until the group meets the Responsible Contractor standard already set forward in their agreements with pension funds. The public-sector retirees whose moneys are invested through Starwood can insist that their

pension fund managers require Starwood to meet the existing obligations.

- As owners and contractors are jointly and severally liable under the Scaffold law, so developers should be accountable and culpable for the safety, health, and environmental conditions on their worksites.
- Penalties for violations of safety, health, building, and environmental standards, as well as for violations of community benefits and other agreements in public contracts should be raised to increase their deterrent effect, but also to provide greater resources for more robust enforcement.

In the coming year, we will work with key stakeholders and build on previous work to frame specific progressive development policies for New York to grow a city that is more equitable, resilient, and democratic. As that process is moving forward, these steps at Brooklyn Bridge Park will put New York City in a more engaged stance when leveraging public resources to assist private development.

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