Board of Standards and Appeals

BSA SUBMISSION NOTICE

Date: 8/26/19 Examiner's Name: Toni Matias

BSA Calendar #: 2019-89-A and 2019-94-A Electronic Submission: ☐ Email ☐ CD

Subject Property/
Address: 36 West 66th Street

Applicant Name John R. Low-Beer and Charles N. Weinstock on behalf of City Club of New York

Submitted by (Full Name): Charles N. Weinstock

A) The material I am submitting is for a case currently **IN HEARING,** scheduled for _____.
The reason I am submitting this material:

- ○ Response to issues/questions raised by the Board at prior hearing
- ○ Response to request made by Examiner
- ◉ Other: _____

Brief Description of submitted material: Letter on behalf of City Club of New York in response to 8/21 submissions

List of items that are being voided/superseded: _____

B) The material I am submitting is for a **PENDING** case. The reason I am submitting this material:

- ○ Response to BSA Notice of Comments
- ○ Response to request made by Examiner
- ○ Dismissal Warning Letter

Brief Description of submitted material: _____

List of items that are being voided/superseded: _____

MASTER CASE FILE INSTRUCTIONS

- ***Bind** one set of new materials in the master case file*
- *Keep master case file in reverse chronological order (all new materials on top)*
- *Be sure to VOID any superseded materials (no stapling!)*
- *Handwritten revisions to any material are unacceptable*

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August 26, 2019

Honorable Members of the Board
New York City Board of Standards and Appeals
250 Broadway, 29th floor
New York, New York 10007

Re: Cal. No. 2019-94-A, 36 W. 66th Street, Manhattan

Dear Honorable Members of the Board:

Appellants City Club of New York *et al.* submit this Letter-Statement to respond to the parties' August 21st submissions.

The City Club Appellants agree with Landmark West! that its claims should be severed from those of the City Club so that they can be decided appropriately at a later date. In its April 13, 2019 submission, at 20, Landmark West! properly raised the issue of whether Extell's mechanical equipment will actually occupy the space allegedly devoted to such equipment, stating that "the space housing the mechanical equipment . . . needs to be given its commonly accepted meaning of covering only footprint area and volumetric space . . . necessary for optimal operation of the equipment."

Extell's and DOB's submissions track their oral presentations at the August 6th hearing, to which the City Club Appellants responded in their own August 21st submission. Extell again argues that the CPC Report on the 1993 amendments and the legislative history show that whereas community groups and elected officials advocated for an absolute height limit of 275 feet, the rules then enacted did not "promise with mathematical certainty that the district would be limited to buildings with stories ranging from the mid-20 to the low-30 stories." Extell submission, at 7.

It is true that those who sought an absolute height limit expressed doubt about whether the rules proposed and enacted by CPC were sufficient to limit height – and history has proven them right. However, the issue is not that the rules as enacted failed to limit the number of stories with mathematical certainty. As Appellants' prior submission shows, the rules do do precisely that. The problem was, rather, that those rules did not limit floor-to-floor heights. But this loophole is not a reason not to enforce the limits that those rules did, with mathematical certainty, create.

Trying to show that it is reasonable to apply the Bulk Packing Rule to the R8 portion of the Special District, Extell argues that "ZR Section 82-34 and development under standard height and setback regulations are compatible and do not conflict with each other." Its Exhibit E shows a

hypothetical building on a 10,000 square-foot zoning lot that complies with R8 height and setback regulations and has 82 percent of its zoning floor area below 150 feet. Extell submission, at 3. This example, however, actually supports Appellants' argument, not Extell's: it shows that applying the Bulk Packing Rule in this situation is absolutely pointless, as that Rule is doing no work at all. Notably, Extell does not present an example of a building subject to R8 standard height and setback regulations in which the Rule would have an impact. It knows that such a building would require a lot so large as to be extremely unlikely. It should be noted, too, that even without the Bulk Packing Rule, the height of such a building would be limited by the sky exposure plane.

As to the hypothetical community facility tower, as previously noted, such towers are very rare. Pursuant to ZR § 24-54(a)(2), they must be 100 percent occupied by the community facility, for which, unlike a residential building, there is no incentive to raise building height beyond the necessary. The floor area and height of any such tower would in any event be limited by the applicable 6.5 FAR, in contrast to the 12 FAR available in C4-7/R10. Had the drafters really intended to further limit the height of community facility towers in R8, there is no conceivable reason why they would have made the Bulk Packing Rule, but not the Tower Coverage Rule, applicable. Extell notes, at 3 n.3, that a maximum tower coverage of 40 percent would apply pursuant to ZR § 24-54(a), and cites this as evidence that the Tower Coverage and Bulk Packing Rules were "not necessarily linked." But this requirement predated the 1993 amendments, and is therefore not probative of whether the Tower Coverage and Bulk Packing amendments were intended to apply together.

Nothing in Extell's August 21st submission counters the conclusion that the drafters of the 1993 amendments intended those rules to limit building heights throughout the Special District by limiting buildings there to a maximum of "low-30 stories." By applying the 60/40 ratio to a zoning lot limited in part to 6.02 FAR while benefitting from the larger envelope provided by the 12 FAR of C4-7, Extell's application of the Bulk Packing Rule to its 40-story building directly negates the logic of that Rule, which is embodied and expressed in its language. It also directly negates the purpose of the Rule. It is therefore illegal.

Very truly yours,

/s/

John R. Low-Beer

Charles N. Weinstock

c: Michael J. Zoltan, Esq., NYC Dept. of Buildings
David Karnovsky, Esq., Fried, Frank, Harris, Shriver & Jacobson
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