

NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

Calendar Number: 2019-89A, 2019-94A

36 West 66th Street, Manhattan

Public Review Session

August 5, 2019

1 MS. MATIAS: New cases, item number one. 2019-89A,
2 36 West 66th Street, Manhattan. Do I call them together?

3 CHAIR PERLMUTTER: Yeah.

4 MS. MATIAS: Okay. I'm sorry. Item number two, 2019-
5 94A, 36 West 66th Street, also.

6 CHAIR PERLMUTTER: And Commissioner Ottley-, --

7 COMMISSIONER OTTLEY-BROWN: I must recuse.

8 CHAIR PERLMUTTER: Okay. I just want to add that we
9 had some very late submissions on Friday, reply submissions. So I'm not sure if
10 everyone saw them because they came in late on Friday. So that's from the Appellants.
11 Okay.

12 We have proof of service of initial application to Owner, DOB, and City
13 Planning. The questions before us, ultimately have to do with split lot rules of Article 7,
14 Chapter 7, and how these are read in conjunction with the bulk provisions for tower
15 coverage and bulk distribution in the Special Lincoln Square District Sections 82-34 and
16 82-36.

17 In order to try to understand this, I always find the split lot rules quite confusing,
18 so I went through them syste- systematically. 77-01 applies to all lots divided by district
19 boundaries with respect to bulk regulations. 77-02 states that where a zoning law is
20 divided by district boundaries, but did not exist as of December '61 or where applicable
21 when the split lot boundaries were created, "each portion of such zoning lot shall be
22 regulated by all the provisions applicable to the district in which such portion of the
23 zoning law is located." There are two exceptions not relevant here where the pre-existing

1 condition isn't relevant.

2 Section 77-20, Bulk Regulations for Split Lots. So there is, actually, a provision
3 that has to do with towers that would have applied had this been a pre-existing, pre-
4 existing zoning lot, and, but, but it applies as an option. It's not a requirement. But it
5 does clarify what the City Planning Commission had in mind when you've got a pre-
6 existing lot and that the concept that the tower, that all the tower regulations sort of get
7 distributed throughout the pre-existing zoning lot. But that's not the case here. This is a
8 newly formed zoning lot with recent merger with adjoining properties.

9 So where the zoning lot is not pre-existing, the only option is to treat the zoning
10 lot on each side of the division separately, unless the regulation on both sides of the
11 division as, is the same, as was made clear in the case of Beekman Hill, which was
12 decided in 2000. It's a very important case to read for all the Commissioners because it
13 goes kind of systematically through almost every imaginable provision. To, because in
14 that case, the appellants were arguing that if you have one difference in the bulk
15 regulations or the use regulations, that's enough to require that you treat both sides of the
16 zoning lot, of the split lot separately. But in that case, the court said no. When you have
17 identical provisions, then you can treat it as if there is no subdivision of the lot.

18 So the subject zoning lot is partly in an R8 and partly in a C4-7. The Lincoln
19 Square District does not have special rules for lot coverage in the R8. However,
20 however, towers are permitted in an R8 where they contain community facilities, facility
21 uses -- that's Section 24-54. Since this building contains community facility use, I just
22 would like the property owner, actually, to respond to whether 24-54 is implicated here
23 since you do have some community facility. And that 24-54(a) has similar tower

1 coverage requirements to 82-36.

2 The Appellants disagree with the Owner and DOB about Section 82-34. They
3 actually agree that 82-36 applies to separate sides of the zoning lot. 82-34 states plainly
4 that the bulk distribution rules apply to any zoning lot with-, "within the Special District"
5 requiring "at least 60 percent of the total floor area permitted on a zoning lot to be located
6 below 150 feet above curb level." This bulk distribution language in 82-34 is nearly
7 identical to that of Section 23-651, Tower-on-a-base. I note that Owners kind of insist
8 that the two provisions are very different. But if you compare the language, the language
9 is almost identical, and you track it along and it's clear that, for whatever reason, it was, it
10 didn't just say in, in the Special District the tower coverage regulations in Section, in
11 Article 2, Chapter 2 apply. It, it made them special to this district because there were
12 slight modifications.

13 So, so at a very large zoning lot, and there's only a two-block area in this Special
14 District that's an R8 where height factor and sky exposure plane regulations apply. But
15 they also, as was actually pointed out by the Owner, there is a tower cover -- there is a
16 tower provision for community facilities so towers can be built in an R8 if they contain
17 community facilities. So I have to assume, since I don't have a diagram to prove it
18 impossible, that even without a tower, 60 percent of the total floor area on the large R8
19 zoning lot would fit within the envelope that limits street wall heights to 85 feet, and
20 which must fall within the applicable sky exposure plane.

21 So, you know, in terms of this conversation about absurd results. If the, if the
22 bulk packing, as they say, bulk distribution rules actually apply to any lot anywhere in the
23 Special District, then you're talking about a sky exposure -- a height factor building, then

1 you should be able to design a height factor building where you pack below the 150 feet.
2 So I don't know whether you can even build a height factor building that's higher than
3 150 feet unless you have an enormous zoning lot. And so, maybe that's one of the tests
4 because Appellants are arguing that it's an absurd provision. It's absurd if you can't use it
5 at all for height factor buildings. It's not absurd if it's community facility building, but
6 then that should have been something that City Planning kind of pointed out that, except
7 that for community facilities, this bulk distribution rule would apply in every district, for
8 example.

9 So although the zoning lot is divided by district boundaries, the bulk regulations
10 as to distribution are the same on both sides of the lots. That's, that's the way the
11 language is reading. So according to that, the split lot rules would be ineffective in the
12 same way as would be the case if the floor area ratio on both sides of a split lot were the
13 same. Hence, they could move across district boundaries. That's the way the sort of
14 plain reading of the text is working, but I -- so there was a lot of discussion about the City
15 Planning reports, and I'm, and I'm sympathetic to the -- what, what's interesting is that
16 both the Appellants and the, and counsel, in fact, for the Owner, were present at the time
17 of the creation of these Special Districts. Right? So, so for it -- so Appellants cite to
18 reports from the early 90s that express concern about towers being over 50 feet high and
19 that the reports were trying to regulate the heights of towers to be more in the 30 to 40-
20 foot, 40-story range. I don't mean 50 feet, 50 stories high. So, and trying to regulate the
21 towers to be more in the 30 to 40-story range.

22 So what's strange about that kind of 90s argument is at the time, nobody could
23 imagine that anyone would build such tiny floor plates. Nobody -- I, I remember,

1 actually, when I would advise clients and we would figure out the shape of tower. As
2 soon as the tower got to be sort of under 6,000 square feet or 8,000 square feet, we'd,
3 we'd cut it off because we'd say, nobody would ever build that because it's just all
4 staircases and elevators. And now, we have several buildings with 4800 square foot floor
5 plates being built. So that whole idea of keeping height down is sort of old-fashioned
6 according to what's happened in the last 20 years of development, you know, and the
7 mechanical void question aside. Right. Also never predicted.

8 So but, nonetheless, I do see appli-, Appellant's point about the relationship
9 between tower coverage and bulk distribution as illustrated in the chart they provided,
10 which is at Section 23-651(a)(3), that, which shows that the two criteria of bulk and
11 tower coverage are linked in proportion to one another and use the same lot area
12 denominator to calculate coverage and floor area. And it sort of does make sense that
13 there would have been this kind of proportionate analysis, and it doesn't make sense that
14 another provision would just ignore that. But on the other hand, the text seems to be very
15 direct and it says, in, in the zoning district.

16 So, so I'm still, I have to say I'm still struggling with this. I do think that the last
17 submission by Appellants in their reply was very strong in going through this sort of the
18 history of the City Planning's analysis that the Environmental Simulation Center actually
19 tried to predict how these things would work. And, and then I go to those types of cases
20 that indicate that when the purpose of the legislature is not being met by text, the, a
21 court -- we're not a court -- but a court shouldn't be blindly following the text if the text
22 was badly written that the comma somewhere forced a reading that undermines what the
23 legislature was looking at. So I, I, I would need more from the Owner to try to explain

1 how the City Planning Commission's concern, not just the Commission, but other
2 electeds' concerns about these high towers. And I remember this was the Millennium
3 Tower and I remember what an uproar was caused on the Upper West Side because the
4 tower was so big. And so this was an effort to bring tower heights down. And so how do
5 you reconcile the reality of what was stated in the City Planning report with the result that
6 is being proposed here of reading the text literally? I mean, I don't argue that the text, the
7 literal reading of the text says you, you distribute the bulk on both sides.

8 So, but I -- on the question of mechanical voids, I think this subject is issue
9 precluded as having been decided by this Board on September 20, 2017 in the case 2016-
10 4327-A, the subject of whether mechanical space is an accessory use was also considered
11 in that case. So the proper venue for continued discussion on the issues is or was, I
12 believe an Article 78, and I think the 30 days is up to review that.

13 I do, however, want to correct what I believe is a misappreha- misapprehension
14 by DOB, who submitted materials, of the Board's decision on that 30th Street case.
15 While the Board did consider whether the amount of floor space being used for
16 mechanical space was customarily found in buildings of the subject type, and did request
17 copies of mechanical drawings that demonstrated how the floor space was being occupied
18 at that those floors, the Board did not conclude anything about the height of such floors,
19 observing that the Zoning Resolution gives no guidance as to maximum heights for any
20 of the listed use groups and uses.

21 So, for instance, I, I know we discussed you could have an apartment with a 40-
22 foot ceiling -- there's no prohibition against that -- or a classroom or a ballroom or
23 whatever. So that's a way of bringing height up too. Is it artificial? There are apartments

1 that exist that have mezzanines in them already -- the famous Gainsborough Studios has,
2 I don't know, 30-foot ceilings -- so it's not such a --

3 So and, and just to say because DO-, Department of Buildings brought it up, I'd
4 like a bit of clarity on the plan amendment approval dates and the foundation permit
5 issuance. BIS records are confusing because they kind of overwrite and it's also very
6 hard to follow the sequencing. So they're confusing, and they don't completely agree
7 with DOB's statements that the, the post-amendment approval permit was only approved
8 on April 4th '19, 2019. So I'd like to know when was the post-approval amendment for
9 the foundation approved and permitted? It's very, it's just very confusing to follow along
10 those materials and it's helpful with other cases also.

11 Okay. Next?

12 COMMISSIONER CHANDA: I agree with most of the
13 statements you have stated. I'll start with the mechanical void. As you mentioned, I
14 think -- sorry -- with regards -- I'll start with the mechanical void. As you have stated,
15 this was determined by the Board and if the numbers, the date of the issuance and the
16 vesting as stated follows the vesting regulations per ZR 30, 11-33, then the project is
17 vested. I, I, I don't think any of the other questions is material for a discussion and so I
18 really don't want to take too much time to discuss that. It stands on its own, I do believe.

19 With regards to the, the bulk distribution, I'm going to read what I've written.
20 While the Appellants are correct in stating that in a split lot condition, pursuant to Section
21 77-02, the rules of each zoning district to each respective portions of the lot would apply.
22 The subject site is in a Special District, with its specific regulations. Special Districts
23 override underlying zoning regulations where stated. And in this specific case, the

1 Zoning Resolution Section 82-34 required the bulk backing to apply uniformly to any
2 zoning lot that is located within the Special District irrespective of a zoning district.

3 The Appellants argue that the text intended to apply only to C4-7 within the
4 Special District. And I, so far from the documentation, I have not found a basis based on
5 the reading of the text that, and the CPC report. The Special District text, only in a
6 limited manner, uses the phrase -- as I was reading the text over and over again, I was
7 trying to find where the phrase, within the Special District, has been applied and in what
8 manner. And it has used the phrase, within the Special District, in a very limited manner.

9 For example, in Section 82-10, which is the mandatory district improvement, the
10 phrase has been used and it has been used in reference to with certain zoning lots.
11 Section 82-20, which is the Special Use and Sign Regulations, the phrase has been used
12 with regards to limitations imposed on ground floor use. Section 82-34, which is the
13 subject section that we are discussing, the Bulk Distribution, it refers to the phrase, but it
14 says, where it requires 60 percent of the floor area permitted on a zoning lot. And 82-35
15 is also another section where that phrase has been used and it has been used with regards
16 to subject to height and setback regulations of the underlying district except where
17 specified.

18 So what I'm trying to get at is that all, all these four sections, only two of the
19 sections applied, apply to the entire Special District, within the Special District. The rest
20 of them, it has the text, the text has been very clear and thorough in carving out ex-,
21 areas, street frontages, certain zoning lots, zoning districts, and even to the extent sub
22 areas. So I think it has been very carefully used, but -- and, and it has been used only
23 with regards to sections where it meant to apply to the entire zoning district, as opposed

1 to where it meant to apply to a portion of a zoning district.

2 For example --

3 Ms. Monroe: Special District?

4 COMMISSIONER CHANDA: Yeah. I'm referring to
5 those Special District all throughout. I, I'm not staying out and going out of the Special
6 District of Lincoln Center.

7 So, for example, the City Planning Commission report recognized that in sub-,
8 sub-district A, the subject site is in sub-district A, where the site is located in sub-district
9 A -- where the subject site is located, residential or institutional developments are
10 predominant and that as a community facility could be developed in an R8 and in C4-7
11 district. Its concern was with the commercial floor area. And for, for that, it introduced a
12 Section 82-31 to limit the commercial floor area to 3.4 FAR in sub-district A. So that
13 would've -- that applies to the C4-7 portion of this site.

14 So I, I think the drafters of this text from, at that point, were very much aware of
15 the potential for zoning lot merger. And I think, again, this was something the, the
16 applicants, the Owner can verify. When all these soft sites were analyzed, the, the
17 portion of the subject site that is in the R8 district, if you look at it, if you just look at the
18 building that's in the R8 district, (a) it was under different ownership; (b) it was fairly
19 built up. So it wouldn't have met the soft site requirement. And, but if you consider the
20 portion of the --

21 CHAIR PERLMUTTER: It was very built up.

22 COMMISSIONER CHANDA: It was very built -- it was --

23 CHAIR PERLMUTTER: So why would it have met the

1 soft site requirement.

2 COMMISSIONER CHANDA: It wouldn't have.

3 CHAIR PERLMUTTER: Would not have. Oh.

4 COMMISSIONER CHANDA: It wouldn't have met the
5 soft site requirement --

6 CHAIR PERLMUTTER: Right.

7 COMMISSIONER CHANDA: Except if you can consider
8 a portion of its leg that fronts along the 66th Street that is in the C4-7 District, then there -
9 - it did have unused floor area. And maybe, at that time, the applicant recognized -- the,
10 the Commission recognized that there was a possibility for this development, for the R8
11 use, which was a non-profit group, could be using that air right to sell and use that
12 proceed towards its own future improvements for its non-profit organization.

13 So I'm not saying I know that for sure, but that may have been another reason
14 because that's the only community facility in the entire R8, the two, the two-block,
15 actually one and a half block that's mapped R8. That's the only community facility
16 building. And I think they probably were aware of the fact that there was a possibility of
17 air right that could have been taken and did not want to take away that opportunity. And
18 the way that air right transfer, as we all know, is through a zoning lot merger.

19 So I just think they were -- my understanding and my read of the text, it seems
20 they were very much aware of all the possibilities and they were very clear in their text.
21 They applied within the Special District where it needed to apply. And I completely
22 understand the Appellants' reasons and argument and City Planning Commission report.
23 But as you pointed out, mechanical void was not something at that time, an issue.

1 Nobody -- and, and the tower, that the fact that a tower footprint of a smaller dimension
2 would even be considered was also not there. So I think those were factors that, at that
3 time, was not analyzed, was not even in the real estate picture, so it's not considered. So
4 there is a mismatch.

5 CHAIR PERLMUTTER: So I just wanted to pick up with
6 something that you said with the community facil- facility, which was the synagogue.
7 Right?

8 COMMISSIONER CHANDA: Right.

9 CHAIR PERLMUTTER: So the fact that there -- they
10 didn't disturb the tower coverage of the tower regs for the R8 in the Special District.
11 Right? And so it wouldn't have been unreasonable because other community facilities
12 were doing it, to imagine that the synagogue site would be built with a tower for the
13 benefit of the synagogue. Other community facilities were doing those kinds of things.
14 The residential above --

15 COMMISSIONER CHANDA: Right.

16 CHAIR PERLMUTTER: -- and the synagogue below to
17 support its future.

18 COMMISSIONER CHANDA: Right.

19 CHAIR PERLMUTTER: Right? So -- okay.

20 Ms. Matias: The microphone, please.

21 COMMISSIONER SCIBETTA: I do agree with a bunch of
22 what's been said --

23 CHAIR PERLMUTTER: Speak louder, please.

1 COMMISSIONER SCIBETTA: I do agree with much of
2 what has been said by the Chair. I'm struggling with the point between the text and the
3 intent and the debate of who should prevail when the two do not coincide. It seems pretty
4 clear that the intent behind the, the legislation did not anticipate such, such a tower. But
5 on the other hand, the Owner -- should it be the Owner who prevails when they rely on
6 text that's unambiguous or is it that the intent's so clear that this is an absurd result. I'm,
7 I'm having a difficulty finding a distinction between the two. I think it was helpful
8 reading the final submission of the Appellant, but I, I'm not convinced yet as to that.

9 CHAIR PERLMUTTER: As to which?

10 COMMISSIONER SCIBETTA: As to whether the, this,
11 the intent is so clear that this result is ambiguo-, this result is absurd to have such a high
12 tower that it would override what seems to be plain letter text.

13 CHAIR PERLMUTTER: Okay.

14 COMMISSIONER SCIBETTA: With regard to the
15 manic-, mechanical void and the accessory use. While I do agree that much of this issue
16 may be precluded, I do also have a certain level of hesitation because there's a certain -- I
17 hate to say a gut feeling that for it be mechan-, be considered a mechanical void or be
18 considered accessory use, it can't be superfluous. So for it to fall into that type of caveat
19 of -- I, I think that we can't permit any type of exaggeration as to how large or what size
20 this could be.

21 CHAIR PERLMUTTER: Right. But we've already talked
22 about this and I don't want to -- I mean, we decided a case upon which City Planning, it
23 created a text, which I understand will be -- there's a continuation on that text

1 modifications. The council voted on it. They acknowledged that the text was unclear.

2 COMMISSIONER SCIBETTA: Mm-hmm.

3 CHAIR PERLMUTTER: Hence, it amended a Zoning

4 Resolution. So I don't think there's more for us to do --

5 COMMISSIONER SCIBETTA: I don't think there is

6 much more.

7 CHAIR PERLMUTTER: -- on that subject. We've already

8 spoken. So anything you want to add? No?

9 COMMISSIONER SCIBETTA: Nothing else from me.

10 CHAIR PERLMUTTER: Okay. Anything you wanted to

11 add? Okay.

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CERTIFICATE OF ACCURACY

I, Devin Turpin, certify that the foregoing transcript of the Public Review Session of New York City Board of Standards & Appeals on August 5, 2019 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: January 8, 2020

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

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NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

Calendar Number: 2019-89A, 2019-94A

36 West 66th Street, Manhattan

Public Hearing

August 6, 2019

1 MS. PRENGA: We'll begin with the Appeals Calendar,
2 new cases. Item number one: 2019-89A, 36 West 66th Street, aka 50 West 66th Street,
3 Manhattan. Call?

4 CHAIR PERLMUTTER: Yeah, we can call them together.

5 MS. PRENGA: Item number two: 2019-94A, 36 West
6 66th Street, aka 50 West 66th Street, Manhattan.

7 CHAIR PERLMUTTER: Okay. We'll begin with the
8 Appellants.

9 COMMISSIONER OTTLEY BROWN: Madam Chair, I
10 must recuse.

11 CHAIR PERLMUTTER: Yes. State your name, please.

12 MR. LOW-BEER: John Low-Beer for Appellant, City
13 Club of New York, et al. Is this working?

14 CHAIR PERLMUTTER: Yeah, it's working.

15 MR. LOW-BEER: Okay. Okay. I'd like to say a few
16 words about timing first. I'd like to thank the Board for agreeing to advance the date of
17 this hearing, which I had understood was originally not going to be heard until
18 September, the case. I know you have a crowded calendar, but you know, even so, it's
19 still three months since we filed this appeal, and during that time, Extell has been
20 building.

21 For us, a rapid decision is really critical. In this kind of case, it's clearly the
22 principal of justice delay being justice denied applies. And we explained the reasons for
23 this in our reply statement. Basically, the Court of Appeals decision in Dreikausen v.

1 Zoning Board of Appeals makes it very difficult, if not impossible for challengers to
2 obtain a preliminary injunction halting construction and once construction reaches the
3 point where demolition would be required if appellants were to prevail, Appellants will
4 face very serious difficulties in obtaining a remedy, even if a tribunal finds that a case to
5 be meritorious. And according to Extell, that point will be reached in March of next year.
6 That's not a long time considering the fact that if we lose before you, we then have to get
7 a decision on the merits from a Supreme Court. And if we lose there, we would go to the
8 Appellate Division and then to the Court of Appeals.

9 So that said, I'd like to turn to the merits. The proposed building we allege
10 violates the City Zoning Regulations in two ways. First, it's based on a methodology for
11 calculating allowable floor space that violates the bulk packing rule, Zoning Resolution
12 Section 82-34, and the split lot rules of Section 33-48 and 77-02. And this violation adds
13 somewhere between 128 and 144 feet to the height of the building.

14 Second, it illegally claims an exemption from FAR for 196 vertical feet of
15 purported mechanical space in the midsection of the building that is neither "used for
16 mechanical equipment" nor a customarily accessory to residential uses and it's, therefore,
17 illegal or, at least, should be counted towards FAR. And that's under Zoning Resolution
18 Sections 12-10 and 22-12.

19 I'd like to focus today on the bulk packing argument because it was clear to me
20 from yesterday's review session that the Board believes the mechanical voids argument to
21 be precluded by its prior decision in 15 East 30th Street.

22 As we said in our statement, we believe that decision left the question open
23 because it was expressly based, in part, on the failure of the Appellant there to provide

1 any evidence or testimony in support of its claim that such voids were truly "irregular"
2 despite the Board's request that it do so. Since then, the Department of City Planning
3 provided the cites of evidence for this claim. And indeed, the Supreme Court rejected
4 our argument that this issue was foreclosed stating, "it remains possible that the BSA will
5 agree with plaintiffs that an aggregation of mechanical spaces where one or all are used
6 solely as voids to increase the building's height violates at least the spirit of the Zoning
7 Resolution." That was from Justice Jaffe's opinion in City Club v. Extell. In any event,
8 on that point, we will rest on our paper as we'd ask you to consider them.

9 And there's only one more thing I want to say about the voids' issue. In our reply
10 papers, we responded to Extell's argument that it had completed its foundation and that its
11 right to complete its foundation, its building, therefore, vested before the amended statute
12 came into effect. We pointed out that Extell's counsel, Kramer Levin, stated in another
13 case concerning 200 Amsterdam that a foundation was not completed until the pouring of
14 the first floor slab. And consistent with that statement, Kramer Levin only informed the
15 petitioners in that litigation that the foundation was about to be completed when the
16 developer there was about to pour the first slab. By a letter yesterday, Extell counsels,
17 Extell's counsel denies this. Well, I don't actually think he denies that what happened so -
18 - hmm. He denies that this is the definition of a completed foundation though. And he
19 accuses my co-counsel, Mr. Weinstock, of unethical conduct for allegedly discussing
20 what occurred in settlement discussions. Mr. Weinstock responded to that in a letter and
21 I don't think we should be further sidetracked by that issue here because I don't believe
22 that the issue of whether Extell completed its foundation and thereby obtained a vested
23 right to complete this building is before this Board on this appeal.

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CHAIR PERLMUTTER: Right. So that's what I wanted to

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just clarify. Are you questioning the vesting of this app-, of this building? And if s-, is

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that one of the questions that you wanted to bring before us of whether or not the building

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vested because it's actually not right because Department of Buildings hasn't issued a

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determination on that.

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MR. LOW-BEER: Well, that was exactly my thought.

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CHAIR PERLMUTTER: Okay.

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MR. LOW-BEER: I mean, if you're going to tell me we

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can question it and it's ripe --

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CHAIR PERLMUTTER: No.

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MR. LOW-BEER: -- by, I would.

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CHAIR PERLMUTTER: Okay.

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MR. LOW-BEER: But I don't believe it's ripe.

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CHAIR PERLMUTTER: Okay.

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MR. LOW-BEER: So that's why I say I don't believe it's

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before the Board at this time. I'd just like to say that the discussion, I mean, I'm informed

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by Mr. Weinstock that the discussion in question was had after, not before the signing of

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the stipulation and that even -- I mean, I haven't research this, but it seems to me that

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since the purpose of the rule of confidentiality and settlement discussions is that a party

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should not be compromised by conceding something in a settlement discussion, and then

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later have it held against them at, if it doesn't settle or at trial or whatever, that that's the,

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the purpose of the ruling. Once the settlement is done with, if an issue arises regarding

1 the meaning of the words in the settlement that, like any other agreement, you could
2 adduce parol evidence to --

3 CHAIR PERLMUTTER: So since we're not talking about
4 vesting, why don't we not talk about vesting.

5 MR. LOW-BEER: Alright. We won't talk about it.

6 CHAIR PERLMUTTER: Okay. Understood.

7 MR. LOW-BEER: I just felt I had to defend the reputation
8 of my co-counsel in this matter. That's all.

9 CHAIR PERLMUTTER: He's got it.

10 MR. LOW-BEER: So now I'd like to turn to the bulk
11 packing rule. So we, we believe that the -- or bulk distribution rule -- whatever. We
12 believe that the statute in the legislative history are clear. The bulk packing rule and the
13 tower coverage rule apply only to towers, even though the bulk packing rule doesn't have
14 the word tower in it. Together, they compromise the tower and a base rule. These rules
15 were enacted in two versions; one for the Special Lincoln Square District and one for our
16 R9 and R10 Districts generally in response to concerns of "significant increases in the
17 height of buildings" from an average of 32 stories to an average of 40 stories. That quote
18 is from the Department of City Planning study, I believe it's from 1989 called Regulating
19 Towers and Plaza at pages --

20 COMMISSIONER SCIBETTA: Before we move on, I just
21 want to go back to the mechanical voids for a moment.

22 MR. LOW-BEER: Yeah.

23 COMMISSIONER SCIBETTA: You disagreed with

1 Justice Jaffe on whether or not the issue is precluded. Is that accurate?

2 MR. LOW-BEER: Right.

3 COMMISSIONER SCIBETTA: Okay.

4 CHAIR PERLMUTTER: I'm sorry. The Justice -- did he
5 say that the issue was not precluded?

6 MR. LOW-BEER: Well, well, let me clarify that. We
7 argue there that --

8 COMMISSIONER SCIBETTA: The issue is precluded.

9 MR. LOW-BEER: -- we should not be required to exhaust
10 our remedies here because it would be futile.

11 COMMISSIONER SCIBETTA: Because it was your
12 belief that the issue is precluded.

13 MR. LOW-BEER: Well, arguably, it is. Arguably, it isn't.
14 I mean, you know, I don't think -- apparently, it's -- I don't know. Anyhow, that is what
15 we argued, yes.

16 COMMISSIONER SCIBETTA: Thank you.

17 MR. LOW-BEER: I think you could make an argument
18 that it's not precluded too. And, in fact, she made that argument.

19 COMMISSIONER SCIBETTA: No, I'm aware. Thank
20 you.

21 CHAIR PERLMUTTER: Sorry. Go on with your --

22 MR. LOW-BEER: So --

23 CHAIR PERLMUTTER: You were at --

1 MR. LOW-BEER: Where was I?

2 CHAIR PERLMUTTER: -- that tower coverage --

3 MR. LOW-BEER: Yes, yes. Regulating towers and
4 plazas. The purpose of those rules stated numerous times in the reports was to create a
5 mechanism to limit building height to the low 30 stories. That's a quote, which occurs in
6 both the R9/R10 report and the Special District Report, I think more than once. They can
7 only accomplish this if they are applied to the same area. The City Planning reports and
8 the Borough Presidents report make very clear that the chosen parameters of 60 percent
9 of bulk below 150 feet and minimum tower percent tower coverage of 30 percent were
10 carefully chosen to ensure that buildings stayed within this low 30 stories limit "even in
11 cases of zoning lot mergers." These parameters, which are very similar in both the
12 R9/R10 amendments and the Special District amendments were chosen after careful work
13 which went on for over a year with Michael Kwartler's Environmental Simulation Center,
14 also known as Sim Lab.

15 The Borough president described that process in her report on the R9/R10
16 amendments. She said, "In 1991, the Department of City Planning assembled a working
17 group of design professionals, community and development industry representatives in an
18 attempt to reach consensus on various elements of the tower and plazas issues," and so
19 on. She mentions the participants included REBNY and CIVITAS and DCP and so on,
20 and her office. And she said, the working group decided to test its ideas on a
21 computer simulation tool at the New Schools Environmental Simulation Center known as
22 Sim Lab for short. Design criteria were established for specific soft sites and for over a
23 year, the participants tested their ideas in the Sim Lab. And that, that was from her report

1 on the R9/R10 amendments. And in her report on the Lincoln Square Special District,
2 the Borough President noted that the Sim Lab analysis of six soft sites referenced in that
3 report was funded by Landmark West. And she specifically thanked Arlene Simon, who
4 founded Landmark West, and at that time was also its president. She's an appellant in the
5 City Club's appeal and is here today and will address you later.

6 Although the bulk packing and tower coverage rules -- I'm sorry -- although the
7 bulk packing rule is slightly different in the Special District and in R9 and R10, the
8 purpose in both rules is to limit building heights to the mid-20 to low 30 stories. And this
9 is, I mean, I can give you citations where they say this. It's in the DCP Zoning Review of
10 May 1993 at pages 1 and 14, in the Special District Report pages 18,19, and the R9/R10
11 Report at page 5, and in the Borough President's November 15th report at 2 and 15, and
12 perhaps in her other rep-, this is her report, I believe on R9/R10. It's probably in her
13 other report as well, anyway. So, yes, as Mr. Karnovsky points out, there are differences
14 between the Special District rules and those applicable elsewhere, but those differences
15 are irrelevant to the basic purpose of it. The mechanism works to keep tower height
16 constant in exactly the same way in the general rule and in the Special District rule. And
17 I gave an example, I believe, on page 12 of my statement about how that works
18 mathematically. This was the intent. If it were not the intent, the City Planning
19 Commission could not and would not have said as it did repeatedly that the measures
20 being adopted would keep heights to a predictable low 30 stories. And that they would
21 work just as well as an absolute height limit, but afford more flexibility, and that they
22 would work even in cases of zoning lot mergers. So to apply the bulk packing rule in a
23 context where you can't build a tower is pointless because most of the bulk is going to be

1 below 150 feet anyway.

2

3 COMMISSIONER SCIBETTA: How do you respond to,
4 how do you respond to the Owner's statement that you can build a tower?

5 MR. LOW-BEER: I'm going to get to that.

6 COMMISSIONER SCIBETTA: Okay.

7 MR. LOW-BEER: I think that works to our advantage
8 actually. But to apply it in this split lot situation is worse than pointless. It leads to the
9 absurd result that towers on a split lot can avoid the bulk packing rule in part or even in
10 whole and thereby being much taller than they would be if they were wholly in the C4-7
11 R10 District. And there's no rational reason to think that just because somebody has a
12 split lot, they should be allowed to build a much higher tower. The mechanism only
13 keeps height constant regardless of lot size if the two rules are applied within the same
14 envelope. If you put the bulk below 150 outside the envelope, as I said in my statement,
15 it might as well be in Timbuktu for all the good it does in, in controlling height.

16 CHAIR PERLMUTTER: I have a question about that
17 actually.

18 MR. LOW-BEER: Mm-hmm.

19 CHAIR PERLMUTTER: So the, the, sort of the base
20 building of the tower-on-a-base that's supposed to grow to 150 feet in height. Right?
21 There's an earlier City Planning report that talks about the Upper East Side because
22 actually that's where they started to be looking at these tower-on-a-base. Right? And the
23 issue was the loss of street wall continuity. So there's, there's two things at play. Right?

1 One of them is to create a mast that has street wall continuity. So the Timbuktu statement
2 isn't really correct because it's encouraging street wall continuity in both the R 10 or R9
3 and the R8. The R8 has a different height limit, but still, it's a street wall continuity
4 where you're packing all of it before the setback. Right?

5 MR. LOW-BEER: Yeah, but don't the -- you know, I'm
6 not really all that expert in all the provisions of the Zoning Resolution. But don't the
7 quality housing regulations also require a street wall?

8 CHAIR PERLMUTTER: But this is an R8. It's not a
9 contextual district, so you have an option to do a height factor building. Right?

10 MR. LOW-BEER: Well, you have a --

11 CHAIR PERLMUTTER: So if, if you have an option to do
12 a height-factor building where, without the bulk packing --

13 MR. LOW-BEER: Right.

14 CHAIR PERLMUTTER: -- you could start your, your
15 setback and rise at the lower base height.

16 MR. LOW-BEER: Mm-hmm.

17 CHAIR PERLMUTTER: That would arguably not be
18 pursuing what the Special District had in mind. Right? To where you wouldn't have the
19 full height, the full base height. And rather than saying that in these R8 Districts, the
20 base height minimum has to be whatever it is, 85 feet. Instead, it's, it's requiring you to
21 pack the bulk below whatever the maximum base height is here.

22 MR. LOW-BEER: But as I understand it, it's not generally
23 advantageous for a developer to use the height factor district, regulations when the other

1 one, you know, affords more --

2 CHAIR PERLMUTTER: It's an option, so --

3 MR. LOW-BEER: Well, it is an option, so --

4 CHAIR PERLMUTTER: -- you see buildings in both
5 types.

6 MR. LOW-BEER: -- it would be possible, but apparently,
7 it's not often done. I mean, it was done --

8 CHAIR PERLMUTTER: No, no. it depends on your
9 zoning lot.

10 MR. LOW-BEER: Uh-huh.

11 CHAIR PERLMUTTER: A lot of times you can cut back
12 your buildings -- there's a lot of --

13 MR. LOW-BEER: Uh-huh.

14 CHAIR PERLMUTTER: -- significant buildings.

15 MR. LOW-BEER: I know Mr. Janes here is here and
16 maybe he, at some point --

17 CHAIR PERLMUTTER: Okay. We can talk about that.

18 MR. LOW-BEER: Where is he? I don't know --

19 CHAIR PERLMUTTER: But go, go on with your
20 presentation. I do have a question in after your presentation about this, yeah.

21 MR. LOW-BEER: Okay. So in any event, with respect to
22 this mechanism, it does lead to the absurd result that if you build on a split lot, you can
23 build your tower much higher than if it were not on split lot. And in this case, I know we

1 had some back and forth over this, but the illegal gain in tower floor area, we contend,
2 amounts to 8.3 stories, which would be eight or nine stories. I guess what happened in
3 my first iteration of this in the initial statement, I was assuming that they could build the
4 base out to the full allowable amount, and I wasn't taking into account (a) that the armory
5 building is there and (b) that there are, they already have a permit to build a building
6 which has a base, which has been designed in a certain way. So if you take the permit
7 that was approved and that is being appealed from here, the result is that -- as I explained
8 in my reply statement -- if you take that base, then the, the, the loss in tower floor area, if
9 you like, from applying the rules correctly would be 8.3 stories. And I guess Mr.
10 Karnovsky was kind of implying that this is a trivial point, but I would contend that 144
11 feet is significant, even in the context of a 775-foot high building with its huge
12 mechanical voids.

13 Now, I'm going to come to the point that Mr. Scibetta was raising. So in
14 yesterday's review session I think you made clear that you didn't really buy my argument
15 that within this Special District was intended to contrast with the similar rule applicable
16 elsewhere. And, you know, I'm not solely wedded to that interpretation of why they did
17 it. We really don't know why they vote that, but they, there are various reasons they
18 could have --

19 CHAIR PERLMUTTER: Sorry. Wrote what? Was it the
20 Board within the District --

21 MR. LOW-BEER: Those words within the Special
22 District. I mean, one possible explanation is -- although I think it's unlikely -- but maybe
23 they had in mind community facility towers. In which case, the rule could be said to

1 apply to R8, as well as to the rest of the District, but only in that context. I mean, I would
2 say that implicit in saying it -- let's assume for a moment that that was what they meant.
3 But still, it doesn't mean you also apply it in a context where it doesn't make sense to
4 apply. It only applies to towers. I would submit that the bulk packing rule is a rule that
5 applies to towers as much as the tower coverage rule, even though it doesn't have the
6 word, tower, in it because there's a long historical discussion about this rule. And every
7 time it's discussed and every time it's mentioned in every report, it's always conjoined
8 with the tower coverage rules and mechanism to keep high constant. There are occasions
9 too, I think, in the early reports where it was discussed on its own, but always as a tool to
10 reduce the height of towers, not in any other context. So, so maybe when they said
11 within the Special District, they meant everywhere within the Special District because
12 they were thinking of towers in the Special District. There are other possibilities too.

13 CHAIR PERLMUTTER: So that brings up my question.

14 So here I am, an architect trying to design a building in the City of New York. And
15 maybe I have a client who is, has the wherewithal to even hire a zoning consultant and
16 zoning counsel, and so, and an expediter who actually knows about zoning. Right? And
17 so I start to draw my, my building and I go systematically through the Zoning Resolution
18 and I try to figure out what it is I'm going to do. And I get to this Section 82-34 and I
19 read it, and it says within the Special District, that at least 60 percent of the total floor
20 area, et cetera, has to be below the 150 mark. Right?

21 MR. LOW-BEER: Mm-hmm.

22 CHAIR PERLMUTTER: So I read that and it just tells me
23 within the Special District so I must have to do with me. Right? And my zoning lot is

1 however big my zoning lot is, it says within the Special District. So, so the question is
2 would I even ask the question since it's so clear of the zoning counsel and my zoning
3 consultant, who, by the way, my zoning consultant is probably giving me a wire diagram
4 to say here's your wire diagram, you can fill your building in like this. But let's just say
5 in my office, I also have people who also know about zoning and they're reading it and
6 they're saying, we don't really need to ask the zoning consultant about that because it says
7 within the Special District.

8 So the reason that I, that I ask this is that as, as you know, laws are made for use
9 to follow. Right?

10 MR. LOW-BEER: Right.

11 CHAIR PERLMUTTER: And when they're clear, we
12 follow them.

13 MR. LOW-BEER: Right.

14 CHAIR PERLMUTTER: And when we don't have a
15 question about them, we don't ask the question. Right? And so we proceed. And then
16 we go to, in this case, we eventually go to the Buildings Department. And if we have a
17 question, we ask the Buildings Department specifically, I'm not sure really what this
18 means, what does this mean. And Department of Buildings then gives you an
19 interpretation. Right? But if we don't have a question, we don't ask. And if the
20 Buildings Department doesn't find it as an error, then if they don't find that you've
21 misinterpreted something or the way they see it, they don't point it out.

22 So, so my question is though it, though there's this long history about what City
23 Planning may have intended to do so on, if City Planning wanted the buildings to only be

1 40 stories for argument sake, why isn't there somewhere in this Special Purpose District
2 that little phrase? The Special Purpose District was created to limit building heights to 30
3 to 40 stories and, and so there's this mechanism. And it would have been the case of the
4 tower-on-the-base also, the little introductory statement saying we've discovered that, and
5 there's buildings that are 50 stories high. And so this is a mechanism to limit the buildings
6 to around 30, 40 stories.

7 MR. LOW-BEER: That's what it says.

8 CHAIR PERLMUTTER: No, it says -- doesn't say it in the
9 Zoning Resolution. It says it in an ancient report that I, as an architect practicing in a
10 little office, would nev-, or even in a big office, would, would never consult. Why would
11 I go back to 40-year old history? It, it's just not how we read the law. We read the text.
12 And when the text is clear, we keep going. And when the text isn't clear, we ask all of
13 our consultants and our friends, did you ever build something like this because I don't
14 understand these rules. And then they say, you know, the rules before were read like this
15 at DOB and now they're read another way, so you should probably go to DOB and check.
16 So that's, that's my question. How, why are you expecting that a prop-, that an architect,
17 first of all, or a property owner would dig into the history of clear language? And in
18 terms of what the courts have determined, how does that you're proposing comport with
19 the holdings that the court has made that when you have clear language, you don't look
20 further. You don't look at the legislative intent. It's only when the language is
21 ambiguous that you look at legislative intent.

22 MR. LOW-BEER: Well, well, first of all, I cited a lot of
23 cases to you, and I think I cited even more cases to you in the previous time I was before

1 you on 180 East 88th Street to the effect that where the -- even where the literal language
2 of the law says something contrary to the obvious purpose and leads to an absurd result,
3 it's not to be followed. But that's not the case here.

4 CHAIR PERLMUTTER: Whoa, whoa, stop. Because
5 that's not what the cases say. You want to --

6 COMMISSIONER SCIBETTA: There, there certainly are
7 some cases that would stand for, for what you're saying. Although, you're missing part of
8 the balancing test. And part of that balancing test is, is you have to consider it and make
9 it coincide with other cases like Allen v. Adami, and, and how property rights are, are,
10 have a special -- people have a special right to property known, and if there is an
11 ambiguity. Even if there is an ambiguity, which I'm not sure if you've, you've shown just
12 yet, because the language seems pretty clear, just on its face. So, now, even if there is an
13 ambiguity, that should be resolved in favor of the owner. So, I guess, the first step is
14 show them there's an ambiguity. And because I, it's very, very rare the circumstances,
15 and I haven't seen those circumstances in property cases.

16 MR. LOW-BEER: Mm-hmm.

17 COMMISSIONER SCIBETTA: I've only seen those
18 circumstances in, I know, child neglect cases as, as you cited, Jamie, In the Matter of
19 Jamie. I've seen them in large public policy cases, such as with rights to public safety in
20 hospitals.

21 MR. LOW-BEER: Well, what about Long, Long v.
22 Adirondack Park?

23 COMMISSIONER SCIBETTA: But didn't that go in favor

1 of the property owner?

2 MR. LOW-BEER: No, I did not.

3 CHAIR PERLMUTTER: But I think that this, this does go
4 to the, I mean, for instance, all the land use cases.

5 MR. LOW-BEER: Mm-hmm.

6 CHAIR PERLMUTTER: You construe in fa-, ambiguities
7 in favor of the owner because it's a deprivation of property rights otherwise. But that's
8 only in the case where you have an ambiguity. When you have something clear, and I,
9 and I just have to say, you know, the BSA is -- there are many, many Article 78
10 challenges brought against the BSA so it's kind of, almost, bread and butter. And when
11 we make a determination that the court views is our interpreting a statute where the
12 statute doesn't need interpretation, we get out knuckles rapped. So the court will actually
13 say things in, in the cases, the court will actually say things like, come on BSA, what
14 were you thinking. Right?

15 MR. LOW-BEER: Well, but, but, for example, I mean,
16 there are cases where, you know, as in Payton which I also, as you know, was my case, at
17 least in the Appellate Division.

18 CHAIR PERLMUTTER: Mm-hmm.

19 MR. LOW-BEER: You know, in which the court
20 recognized or the BSA did not actually -- well, in my view, BSA didn't follow the statute
21 in that case.

22 CHAIR PERLMUTTER: Right. And that's a litigation we
23 can't speak of right now.

1 MR. LOW-BEER: Let me -- first of all, let me say that the
2 rule of, the presumption in favor of the property owner has not been followed very much
3 in, in recent cases and also, I believe that just reading the cases, it seems to me when the
4 courts want to find in favor of the property owner, they, they invoke that rule. But when
5 they don't, they just don't mention it. And I think, in this case, the language is pretty
6 clear. I mean, let's, let's talk about the facts of this case, this particular issue was in the
7 forefront already in 2017, I believe, when Mr. Karnovsky wrote his first memo about it to
8 Councilmember Rosenthal, I believe it was.

9 CHAIR PERLMUTTER: Mm-hmm.

10 MR. LOW-BEER: So it's not like nobody thought about
11 this. That's not this case. Whether that could be true in another case, I don't know. It
12 seems to me that any zoning consultant or anyone who is building a substantial building
13 and who employs knowledgeable people would, would certainly know that the bulk
14 packing rule is part of tower-on-a-base rules and would understand the history of this.

15 CHAIR PERLMUTTER: No, no, no. But that's, that's not
16 the point. They're reading a statute. Right?

17 MR. LOW-BEER: Mm-hmm.

18 CHAIR PERLMUTTER: Statute gives a clear instruction.
19 So you don't need to hire fancy zoning counsel or zoning consultants to just read the
20 sentence, within the Special District, do this.

21 COMMISSIONER SCIBETTA: And that's very different
22 than Long, iIn the Matter of Long that you cited, which was about a 30-day conditional,
23 you know, phrases that we see quite often in legislation and what they really mean and

1 how a literal interpretation of that meaning would completely obfuscate the reason for
2 having that statute.

3 MR. LOW-BEER: Mm-hmm.

4 COMMISSIONER SCIBETTA: And, so that's, that's a
5 particular type of case. And I still think -- and I'll have to review it again, you did cite a
6 lot of cases -- but I still think that they did find in favor of, against the, the Agency in
7 favor of the owner in that matter.

8 CHAIR PERLMUTTER: Oh, okay.

9 MR. LOW-BEER: I think -- you know, I haven't read that
10 case in quite a while, but I think the dispute there was about whether the town could -- it
11 was between the town and the Adirondack Park Agency.

12 COMMISSIONER SCIBETTA: Right. And whether or not
13 30 days was the --

14 MR. LOW-BEER: Yeah. But I believe there are other
15 land use cases in which this principal has invoked, been invoked and if I may take a day
16 or two after today to submit to you some of those cases, I think you'll find that it has been
17 invoked in, in land use cases, as well as in --

18 CHAIR PERLMUTTER: The principal of, the principal of
19 taking something that's clear and unpacking the intent?

20 MR. LOW-BEER: Yeah. That where, that -- even though
21 the literal language of a statute says X, that where it leads to an absurd result that's
22 contrary to the purpose of the law --

23 COMMISSIONER SCIBETTA: And you're discovering

1 that, and you're discovering the purpose of the law through, parol evidence, through
2 evidence that's not, not in the statute.

3 MR. LOW-BEER: No, no. Usually, usually the purpose of
4 the law -- I mean, there are many ways --

5 CHAIR PERLMUTTER: It's in the statute.

6 MR. LOW-BEER: -- you look at the purpose of the law.
7 But one way you look at it is looking at the statute as a whole is this consistent with what
8 the statute is trying to accomplish or not. I mean, that's certainly the case here.

9 COMMISSIONER SCIBETTA: Right, but --

10 MR. LOW-BEER: We don't need parol evidence here. I
11 mean, we do have the reports --

12 COMMISSIONER SCIBETTA: The letters and reports, I
13 think, are, are some of the most convincing evidence that there, there may have been an
14 intent behind this legislation to limit the, the height.

15 MR. LOW-BEER: Mm-hmm.

16 COMMISSIONER SCIBETTA: But from, from a clean
17 reading of the statute, it doesn't show that.

18 CHAIR PERLMUTTER: No.

19 MR. LOW-BEER: Well, I, I would say that implicit --
20 even though the word, tower, does not occur in the bulk packing rule that it's obvious that
21 the bulk packing rule applies to towers. And anybody who knows even the little, littlest
22 bit about zoning and about this area of the law would know that. I mean, I don't, you
23 know, people who build tall buildings are not unsophisticated in these, in these areas.

1 And they -- I don't believe that anybody would be surprised to hear that, you know, who
2 is building a tall building in New York City would be surprised to hear that the bulk
3 packing rule and the tower coverage rule are --

4 CHAIR PERLMUTTER: Yeah, okay.

5 MR. LOW-BEER: -- part of tower-and-a-base and, you
6 know --

7 CHAIR PERLMUTTER: But if --

8 MR. LOW-BEER: -- if you don't know that, you shouldn't
9 be --

10 CHAIR PERLMUTTER: But if you're reading the whole
11 stat-, this whole section, this whole Special District Section and you read along and you
12 follow the instructions, it's not absurd to consider spreading the bulk on the entire zoning
13 lot. In fact, it makes it easy to follow. Right? So, if anything, for me, it's just kind of a
14 simple instruction, just spread the bulk out on the zoning lot. And now, let's move on.
15 And tower coverage has a different rule because split lot regulations apply to it.
16 Whereas, this is saying split lot regulations don't apply to it. So the instructions don't
17 sound absurd at all to me. They sound that whatever the size of my zoning lot is, spread
18 the bulk around. Right?

19 MR. LOW-BEER: But it's, it's not the instructions that are
20 absurd. It's the result that's absurd.

21 CHAIR PERLMUTTER: Ah. But, but a statute -- but it's
22 not necessarily an absurd result either. It's that you've got this low base that's supporting
23 a tower. So I don't see the result as being absurd either. It's only that you're saying you

1 need to go look back at the tower-on-the-base regulations that are in another section and
2 see how that chart plays out where, arguably, it's not playing out the same way as the
3 chart.

4 COMMISSIONER SCIBETTA: If this was all on the same
5 lot, would it be different?

6 MR. LOW-BEER: Yes, of course.

7 COMMISSIONER SCIBETTA: Then explain -- can, can
8 you get into that a little bit?

9 MR. LOW-BEER: Of course. You mean would the result
10 be different?

11 COMMISSIONER SCIBETTA: Would the result be
12 different? If it was all on, if it was all in the, in the --

13 CHAIR PERLMUTTER: In the same zoning district?

14 COMMISSIONER CHANDA: Zoning district.

15 COMMISSIONER SCIBETTA: Same zoning district.

16 MR. LOW-BEER: Well, yes, that's exactly, I think, on
17 pages 12 and maybe 13 of my statement, I spell out a hypothetical of how this would
18 work -- maybe I should -- hold on, let me get that, but -- it makes a, it makes a huge
19 difference. Okay. So I had discussed on previously on how no matter the lot size, if
20 you're within C4-7, you get 13.3 tower floors. Now, that doesn't consider the penthouse
21 rules and all. That's why, you know, there's flexibility in it. They never said this is
22 exactly how many floors 'cause it depends on your mechanical space. It depends on the
23 penthouse rules and so on. But no matter the lot size, if you have 60 percent below 150

1 and 30 percent tower coverage, you come out with 13.3 tower floors.

2 So on the other hand, as I say on footnote 24, consider the result of using Extell's
3 methodology on a split lot with 10,000 square feet in C4-7 R10 and 30,000 square feet in
4 R8. And I work it all out and the result is a 33.3 story tower. So it's a huge difference. I
5 mean, basically, insofar as your bulk is not within this district where towers are allowed
6 is outside of the envelope where you're counting, you know, I mean, it would be -- of
7 course, if they, if they counted the tower coverage also in the whole lot, then it would,
8 then the height would remain the same. But the fact that the tower coverage is being
9 applied only in C4-7 and the bulk packing is being applied in both to the extent that it's
10 applied in R8, it's not doing any work.

11 CHAIR PERLMUTTER: Okay. We need to move on to
12 the next appellant. But what I would like you to do because we are bound by the
13 standards that the court imposes on the BSA for how we review things.

14 MR. LOW-BEER: Mm-hmm.

15 CHAIR PERLMUTTER: I would like you to look at the, at
16 the Special Purpose District itself and the language in the Special Purpose District, and
17 within that District, explain to us how the, the language in the entire section leads to the
18 conclusion that this is not how the -- this is not -- just reading that section, 82-34 in
19 isolation is improper because when read within the confines of the Special Purpose
20 District, it leads you to a different conclusion. As opposed to going outside and looking
21 at a 1993 report or looking at Article 2, Chapter 2 where it's a completely different
22 section and whether or not you pull in from another section not, not sure that that's the
23 right way to do it because we are in a Special Purpose District. And so, to look at those

1 four corners of that.

2 MR. LOW-BEER: You know, I can take a look, but I
3 doubt that, you know, typically, in drafting legislation, legislatures don't spell out the
4 purpose. You have to infer it from the language.

5 CHAIR PERLMUTTER: From the language of the statute.
6 Right?

7 MR. LOW-BEER: Right. And here --

8 CHAIR PERLMUTTER: So --

9 MR. LOW-BEER: -- I think it's clear from the language of
10 the statute.

11 CHAIR PERLMUTTER: Okay. So explain to us how it's
12 clear from the language of not just 82-34, where it's not clear that there's a problem, but
13 the entire Special Purpose District. Something in that Special Purpose District should be
14 leading the reader to, to scratch their head and say this is strange, why am I, why am I
15 doing this is 82-34? Okay? That's, that's usually what leads the court to say there's
16 ambiguity here; something's not jiving between the individual instruction and the bigger
17 purpose of the statute.

18 MR. LOW-BEER: Well, I, I --

19 COMMISSIONER SCIBETTA: I' also ask for the case
20 that you, you said you were going to provide cases that would show with regard to
21 property rights.

22 MR. LOW-BEER: Well, I can provide you those cases. I
23 don't think I'm going to find what you're looking for in the text of the statute, but I'll, I'll,

1 but I don't think it explicitly addresses what these rules are supposed to do. You have to
2 glean --

3 CHAIR PERLMUTTER: Or implicitly addresses.

4 MR. LOW-BEER: Well, I mean, I, you know, I, I have --
5 that's what I've argued. I mean, I'm also concerned, you know, I'm happy to try and do it,
6 but I may not find anything more than what I've said in my briefs, and I'm hesitant to
7 extend --

8 COMMISSIONER SCIBETTA: I, I would also ask --

9 MR. LOW-BEER: -- our schedule too far.

10 CHAIR PERLMUTTER: Well, but so it, so the issue really
11 is that the, the case law, it gives us a direction. To the extent that you can't, let's say, alter
12 the direction that the case law is, is leading to, then I don't see how we get to ambiguity.
13 Because ambiguity isn't found outside of the frame of the statute. It's found inside the
14 frame of the statute.

15 MR. LOW-BEER: Well, I assu-, as I explained in my
16 briefs, I think that the ambiguity comes from the fact that it is obvious from reading the
17 bulk packing rule that it applies to towers, except for the -- well, obviously, it applies to
18 community facility towers, as well as to other towers --

19 CHAIR PERLMUTTER: Right.

20 MR. LOW-BEER: -- other than towers, it's not relevant.

21 COMMISSIONER SCIBETTA: So the only other
22 argument you would have is the absurd result by, by following that way and how that
23 absurd result would, would mean that that following it literally would not --

1 MR. LOW-BEER: Well, there's that, and then there's the
2 fact that this rule is not relevant outside the context of towers.

3 CHAIR PERLMUTTER: Okay.

4 MR. LOW-BEER: It's not doing any work.

5 CHAIR PERLMUTTER: Okay. So I think you, you --

6 MR. LOW-BEER: I, I did want to say -- can I just take a
7 couple more --

8 CHAIR PERLMUTTER: Yeah, yeah. Please.

9 MR. LOW-BEER: -- minutes quickly? So, I mean, you
10 know, I think there are any number of possibilities why this Planning Commission might
11 have written within the Special District. They might have thought it doesn't make any
12 difference if the bulk packing rule were made applicable there because they didn't foresee
13 any development happening in that very small portion of R8, which was filled with
14 occupied apartment buildings. They're relatively large and relatively new Jewish Guild
15 building and a landmark church. They, they really focused on the C4-7 area and the six
16 potential development sites. And if they had thought about development in R8, they may
17 have believed that the bulk packing rule wouldn't apply because most buildings would be
18 quality housing, and wouldn't even apply to height factor buildings unless the zoning lot
19 were really huge. And in this area, you wouldn't have a really huge zoning lot. You do
20 in 200 Amsterdam because it's on a super block and it -- and also I'd like to note that the
21 Commission is not always so precise as what you're imputing to it. I mean, in, in the
22 report, it states twice that the tower, both the tower coverage and the bulk packing rule
23 apply throughout the District. Well, obviously, it didn't really mean that. And Mr.

1 Karnovsky had cited that in support of his argument in this memo to Councilmember
2 Rosenthal, but it, you know, it doesn't really support his argument and it's, it's just a
3 mistake.

4 CHAIR PERLMUTTER: Okay. Okay.

5 MR. LOW-BEER: Okay.

6 CHAIR PERLMUTTER: Okay. I think we should move
7 on to the next appellant. Is that okay?

8 MR. LOW-BEER: Yeah.

9 CHAIR PERLMUTTER: Okay. Thank you very much.

10 COMMISSIONER SCIBETTA: Thank you.

11 MR. LOW-BEER: Sure. Mr. Klein?

12 MR. KLEIN: Our representative would like to speak.

13 CHAIR PERLMUTTER: Ah. Okay.

14 MR. JANES: Hi. My name is George Janes. I'm the
15 planner that --

16 CHAIR PERLMUTTER: Sorry. Can you lift your mic up
17 to be more your height?

18 MR. JANES: Absolutely.

19 CHAIR PERLMUTTER: Yeah.

20 MR. JANES: Is this better?

21 CHAIR PERLMUTTER: Yes.

22 MR. JANES: Okay. My name is George Janes. I'm the
23 urban planner that filed the zoning challenge for Landmark West. I also was,

1 coincidentally, Executive Director of the Environmental Simulation Center, although all
2 this work had done, had happened before my time there.

3 So I was engaged by 10 West 66th Street, the building next to this property in
4 2017 to look at possible development scenarios on this site. That was after the initial
5 plans for the shorter building were filed, but before the, the plan that we know now. And
6 I never, I -- the thought of divorcing the bulk packing from tower coverage just didn't
7 occur. It didn't seem like that would be something that could be possible. And I can
8 provide this, this Board -- with permission of my client, of course -- those analyses and
9 say, well, you know, you're saying that that, that a -- yes, a plain, I wish the plain
10 language were clearer. But the fact that it, it couldn't -- I couldn't conceive of the purpose
11 of bulk packing without tower coverage. The two are always linked. And there is a long
12 legislative history of that.

13 And in terms of absurd results, I mean -- so the challenge has an example in it
14 where it would show what would happen if this is actually the case on a different kind of
15 site. A site that is a little larger, that you could meet the bulk packing requirement of the
16 district simply by zoning lot mergers. Right? So you could just go into the site and say,
17 well, you know, in terms of the amount of floor area under 150 feet, we have an
18 enormous zoning lot, including a lot of old buildings that have been built 100 years ago
19 and those all count for under 150 feet, but the, the floor area produced by the, the tower
20 portion of the lot could all be above 150 feet.

21 CHAIR PERLMUTTER: But it still has to be 60 percent
22 of the, all of the floor area on the zoning lot. Right?

23 MR. JANES: Yes. Yes. So it just depends on the size of

1 your zoning lot. Again, I would, I wish I had pictures to show you, but they're in my
2 zoning challenge. And you can theoretically -- I used a different site on the other side of
3 town, which has a bigger block. But if you take your interpretation, it will lead to absurd
4 results. And it -- not necessarily here. I mean your point is saying that this is not
5 necessarily an absurd result. And, you know, I would cha-, I think it is an absurd result.
6 However, I see your point. But you can take it to an extreme with this interpretation by
7 divorcing the two, and essentially allow for all of the floor area to be over 150 feet that's
8 produced by the, the tower portion of the lot.

9 COMMISSIONER SCIBETTA: And only having the
10 coverage on the tower co-, right.

11 MR. JANES: Exactly. That's exactly right. And even
12 with --

13 COMMISSIONER SCIBETTA: And in doing that
14 interpretation would be an absurd interpretation.

15 MR. JANES: It's an absurd result. It's an absurd result of,
16 of the interpretation that you're proposing. And I would also say is that the, the void text
17 amendment, which the Department of City Planning passed recently, that wouldn't even
18 address this because they've left open open void, so you can put it on stilts and, and still
19 allow for the building to be entirely over 150 feet, the tower portion of the building.

20 And, you know, I think it's, I, I understand your point about hardship on
21 applicants, but you're here to interpret the law. Right? What does the law mean? Right?
22 And what does, what does that mean? And I think --

23 CHAIR PERLMUTTER: So just to be clear about that.

1 That's the court's instruction to us. Right? That when we have ambiguity, you construe it
2 to the benefit of the property owner when it's ambiguous and bo-, and it's a tie. So it's not
3 to say it's ambiguous and one version is ridiculous and the other one makes sense. It's
4 when it's a tie, when it could be this way, could be this way, I don't know, you know.
5 That's when you construe in favor of the owner. Okay?

6 MR. JANES: There is so much record.

7 COMMISSIONER SCIBETTA: But it comes down to a
8 common -- the, the conflict comes down to the common law and, and property rights as,
9 as a product of common law.

10 MR. JANES: My response to that is that there is so much
11 record here. There is so much record in terms of the City Planning reports, in terms of
12 the hearings of what the intention of the law allows.

13 CHAIR PERLMUTTER: Right.

14 MR. JANES: There's so much information.

15 CHAIR PERLMUTTER: So, so let's do it like this because
16 you're the zoning specialist. You're not the zoning lawyer?

17 MR. JANES: Yes. And --

18 CHAIR PERLMUTTER: So the zoning lawyer is in
19 charge of the, the zoning law, and you're in charge of zoning special, specialty --

20 MR. JANES: Yeah.

21 CHAIR PERLMUTTER: -- and what the Zoning
22 Resolution says, et cetera. So why don't we handle it like that?

23 MR. JANES: Okay. Alright. So I will say a couple other

1 points. So I, I was before you a couple years ago on 15 East 30th Street, and, in fact, you
2 told us to get an engineer to evaluate these spaces, and in that building. And, in fact, I
3 tried very hard and we had actually some people evaluate them, but they would not go on
4 the record.

5 CHAIR PERLMUTTER: Okay. But I just want to clarify
6 what the request was. We were looking at whether those, I think it was three mechanical
7 floors were actually occupied by mechanical equipment. Right? And so we asked the
8 property owner, show us your mechanical floor plans, and they did. And the mechanical
9 floor plans showed mechanical equipment filling all three floors in plan. We never asked
10 how tall is the mechanical equipment because we concluded that the Zoning Resolution
11 gives no instruction whatsoever as to height of any space at all, any use, anywhere.
12 Right?

13 MR. JANES: You did ask, however, for us to get an
14 engineer to evaluate the use of the space.

15 CHAIR PERLMUTTER: Right. To, to check whether
16 they were exaggerating on the amount because --

17 MR. JANES: Yes.

18 CHAIR PERLMUTTER: -- because your position was that
19 there's too much mechanical equipment in this place and we said, we're not mechanical
20 engineers. Mechanical engineer says they need all that floor space so therefore, it seems
21 to be a legitimate use of mechanical equipment and DOB agrees with that. Right? So
22 and, and your opposition disagreed that there was the need for that much mechanical
23 space and so we said, well, then hire an engineer. But it wasn't to talk about the height.

1 Right? It was just about the layout of the mechanical equipment on the floor. Right?

2 MR. JANES: And I, I would say --

3 CHAIR PERLMUTTER: Okay.

4 MR. JANES: -- that the issue is not precluded because we
5 didn't -- never got that. And that if we -- I understand what you're saying about the
6 height. Right? It's not about the height. It's about the use of the space. And there was
7 an enormous amount of space in both that building and this building that's being used for,
8 for mechanical equipment. And there should be an evaluation of both buildings in terms
9 of the adequacy of that space for, for the mechanical equipment that satisfies.

10 CHAIR PERLMUTTER: So I think that DOB, for one, has
11 now -- well, long before we had that case, DOB analyzed whether mechanical spaces
12 being improperly designated as mechanical space. Right? They always had rules of
13 some percentage of the building was a reasonable percentage. Very tall towers, of
14 course, have different kinds of mechanical needs than, than other kinds of buildings.
15 Right? And so they're the ones who we would then have to ask, DOB, did you check
16 whether, sort of check the smell test on, on the amount of mechanical space. But that's,
17 that's actually a different question than whether the definition of mechanical at not being
18 floor area is, is properly allowing height. Right? What you're asking, which is a
19 completely different question that DOB didn't analyze is is that amount of mechanical
20 floor space appropriately designated as mechanical floor space. So we would need to go
21 back to DOB and say to them, they would need to say to them, we need a determination
22 on whether there's an added -- whether there's too much mechanical floor space, which
23 DOB is actually better equipped to analyze than we are because none of us are

1 mechanical engineers.

2 MR. JANES: Right.

3 CHAIR PERLMUTTER: Right?

4 COMMISSIONER SCIBETTA: But that's not before us.

5 CHAIR PERLMUTTER: And it's not -- that's why -- that's

6 what I'm trying to say. You need to go back and get a different determination on a

7 different question. Your question was about whether the voids were legitimately high.

8 MR. JANES: Okay.

9 CHAIR PERLMUTTER: Right?

10 MR. JANES: So let me make one final point.

11 CHAIR PERLMUTTER: Okay.

12 MR. JANES: I'm going to delete most of this because it

13 was largely about voids and you don't want to talk about voids.

14 CHAIR PERLMUTTER: Right.

15 MR. JANES: But I will say -- I'm sorry, not voids,

16 vesting.

17 CHAIR PERLMUTTER: Mm-hmm.

18 MR. JANES: But the one question about vesting I will say

19 is that there was, Mr. Karnovsky's papers said that the developer informed the DOB that

20 they had vested. And the point is is that there hasn't been a, a vesting determination.

21 And the fact that there is no slab --

22 COMMISSIONER SCIBETTA: That would make us not

23 have jurisdiction over the issue at this point though.

1 CHAIR PERLMUTTER: What --

2 COMMISSIONER SCIBETTA: Because there wasn't a
3 determination so we, we can't decide on that.

4 CHAIR PERLMUTTER: We don't have a determination.

5 COMMISSIONER SCIBETTA: We don't have
6 jurisdiction. If, if, if there was a determination and that was challenged, that would be a
7 different story.

8 CHAIR PERLMUTTER: Right. I mean, we arguably
9 should have challenged DOB's finding of vesting within 30 days of the vesting date.
10 That's really the way you should have done it and I don't know if there's another way to
11 pursue it now. But we can't because it's not before us without a DOB determination that
12 their vesting was --

13 COMMISSIONER CHANDA: Pre-req jurisdiction.

14 CHAIR PERLMUTTER: Right, right.

15 MR. JANES: right.

16 CHAIR PERLMUTTER: Okay?

17 MR. JANES: Are there any questions?

18 CHAIR PERLMUTTER: No. This was your, your chance.

19 MR. JANES: Thank you.

20 CHAIR PERLMUTTER: Thank you. Mr. Klein, did you
21 want to add something?

22 Mr. Klein: Yes. Good morning, Madam Chair and
23 Commissioners. My name is Stuart Klein, Klein Slowik on behalf of Landmarks West.

1 Just to put a fine point on this vesting issue, I will be filing -- it is obviously not before
2 the Board -- I will be filing a request to revoke the permit based on failure to file and
3 failure to complete the foundation in a timely fashion, and that would be supported by
4 both testimony of the surrounding community and pictures. But putting that aside for the
5 moment, I'd like to address the last matter that was raised by the Board and by George.

6 And I first look to page 3, paragraph 4 of the ZRD 2 denial, which said, the
7 challenger claims that areas claimed for mechanical exemptions should be proportionate
8 to their mechanical use. In response to that, the City said, a review of the proposed PAA
9 document 16 indicates the proposed mechanical deductions are substantially compliant.
10 In my papers that we submitted in May, on May 13, 2019, we suggested that those
11 mechanical deductions were a bit fanciful and overreaching. And I'm not speaking to
12 height. I think the problem with this particular area of concern is that everybody's
13 discussing height, and I'm not discussing height. Height has nothing to do with this.

14 In the Sky House case, it was resolved by the Board that the height is not to be
15 take into consideration. However, the mechanical space, the use of the mechanical space,
16 or rather, the space used by mechanical equipment should be taken into account and --

17 CHAIR PERLMUTTER: Sorry. What you read, was that
18 a final determination --

19 MR. KLEIN: Yes, it was.

20 CHAIR PERLMUTTER: -- or an objection?

21 MR. KLEIN: Yes, that was page 3, paragraph 4 of the final
22 determination by Scott Paven at the HUB.

23 CHAIR PERLMUTTER: Can you show me that?

1 MR. KLEIN: Sure.

2 CHAIR PERLMUTTER: Because it's too hard to find it in
3 the PDF. It -- because it wasn't discussed in any of the papers. Right? About a
4 mechanical equipment not being, so that the pre-, the question wasn't presented to us in
5 the papers that there was a question about the amount of mechanical equipment.

6 MR. KLEIN: I don't think it was expanded upon, but it
7 certainly, it's certainly the question was asked. We asked on our, in our May submission
8 that we challenge that particular section that said the mechanical deductions were
9 appropriate. And the mechanical deductions, obviously the Board accepts the fact that
10 the mechanical deductions are two dimensional. It's the area covered --

11 CHAIR PERLMUTTER: Okay.

12 MR. KLEIN: -- by the mechanical space.

13 CHAIR PERLMUTTER: So that was the Borough
14 Commissioner denial on looking at the amount of --

15 MR. KLEIN: That's correct.

16 CHAIR PERLMUTTER: -- mechanical space.

17 MR. KLEIN: And that, in fact, was the --

18 CHAIR PERLMUTTER: Right. Okay.

19 MR. KLEIN: -- the predicate for this entire application.

20 COMMISSIONER SCIBETTA: Counsel, may I?

21 CHAIR PERLMUTTER: So what I would have to say
22 because at the beginning of this, this case, Mr. Low-Beer, and, and we've had submission
23 on this, stated that you wanted, that the appellants want a kind of speedy review of, of

1 this challenge. And a review of mechanical voids is a very, is a long review process. I
2 mean, mechanical space is a long process because it requires a submission by properties,
3 property owners, engineers of the mechanical equipment. It requires DOB to go through
4 it with us and to through and look again because we don't have enough detail from them.

5 MR. KLEIN: With all due respect, that's not the burden on
6 the DOB or the Board. It is not for the Board to determine if the mechanical deductions
7 are correct.

8 CHAIR PERLMUTTER: Oh.

9 MR. KLEIN: In the representation on the Sky House case,
10 the Buildings Department came in and said it reviews these things on a case-by-case
11 basis --

12 CHAIR PERLMUTTER: Right.

13 MR. KLEIN: -- based on the information that was given to
14 them.

15 CHAIR PERLMUTTER: Okay.

16 MR. KLEIN: The problem with this particular case is that
17 none of that information was given to them. Yet they somehow decided that the
18 mechanical deductions were appropriate.

19 CHAIR PERLMUTTER: But they get mechanical
20 drawings filed with the application. I don't understand.

21 MR. KLEIN: Excuse me. I, I blew up each and every one
22 of those mechanical spaces. I think it's floors 15 through 19 and none of them are
23 dimensioned, number one. The floors are not dimensioned, number two, so there's no

1 proportionality drawn between the particular piece of equipment and the amount of space
2 that was being in --

3 CHAIR PERLMUTTER: You, you looked at mechanical
4 drawings?

5 MR. KLEIN: Yes, I did.

6 CHAIR PERLMUTTER: And you determined from just
7 looking at mechanical drawings that they were not proportionate?

8 MR. KLEIN: No, no, I, I determined that --

9 COMMISSIONER SCIBETTA: He couldn't determine.

10 MR. KLEIN: -- you couldn't arrive at any determination
11 'cause the numbers weren't there. And, in fact, the recently filed a, an Alt-2 application to
12 put in two boilers and the boilers are not identified and there's no other information as to
13 the dimensionality of any of the issuance. But let me just go on for a moment.

14 CHAIR PERLMUTTER: Yeah. 'Cause I'm not really sure
15 what you're asking us to do, if anything.

16 COMMISSIONER SCIBETTA: I think the argument is--

17 CHAIR PERLMUTTER: Nothing?

18 MR. KLEIN: I'll make it very clear.

19 CHAIR PERLMUTTER: Okay. Okay.

20 MR. KLEIN: Okay. After the Trump SoHo hotel case and
21 there was an issue in Trump's SoHo hotel case as to whether or not staircases that went
22 through his spaces used entirely by mechanical floors, whether they should be eliminated
23 from FAR and complications. And in order to clear that up, in the wake of that, there

1 was a great deal of discussion over at the Buildings Department and Tom Fariello, the
2 First Deputy Commissioner, came out with a draft memo, a draft bulletin rather, that the
3 plans examiners are using to this day for reconsiderations. And he said in that, and I will
4 submit a copy to the Board, the bulletin reads in part: the purpose of this bulletin is to
5 clarify what types of equipment qualify as mechanical equipment, as well as establishing
6 the size criteria the mechanical floor area of deductions. It goes to say that that the
7 Department must consider for floor space directly adjacent to the mechanical equipment
8 for the purposes of access defined by the ratio of equipment -- something you raised
9 yesterday -- ratio of the equipment to the adjacent surface area or the manufacturer's
10 recommendations regarding required service area. Further, examples are given regarding
11 pipe shafts and horizontal piping. None of that information, none, zero was submitted to
12 the Buildings Department. Despite the fact that in the Sky House case, the Buildings
13 Department said before we give approval on a permit, it reviewed each and every one of
14 those issues.

15 Now, I reviewed the mechanical plans for floors 15 through 19 and not only were
16 there no specifications, there was nothing submitted to the Buildings Department with
17 regard to manufacturer's cut sheets or manufacturer's recommendations. Now, you have
18 to take into account that this particular building is asking for a 10 percent reduction in
19 mechanical space, as opposed to Sky House, which is asking for five percent.
20 Historically, the Buildings Department will accept anywhere between five and six percent
21 as maximum deduction. Here we have 10 percent and there is not a scintilla of evidence
22 submitted to the Buildings Department which indicates that additional four or five
23 percent is, is acceptable or approvable. So I believe, just like in the Sky House case, you

1 have to be given, or the Buildings Department has to be given those very facts that were
2 apparently intentionally eliminated from the submission to the Building Department and
3 review them to see what the proportionality is between the units in question, which
4 apparently haven't been identified to anybody, and the amount of deductions taken. And
5 once again, this has nothing whatsoever to do with height.

6 CHAIR PERLMUTTER: Understood.

7 MR. KLEIN: Okay.

8 CHAIR PERLMUTTER: So just to clarify, you just said
9 before that it's not our job or DOB's job to calculate this, but you're saying --

10 MR. KLEIN: Oh, it's DOB's job.

11 CHAIR PERLMUTTER: So it is DOB's job.

12 MR. KLEIN: DOB's job in, in Sky House, they were
13 quoted as saying, it is -- we look at this on a case-by-case basis --

14 CHAIR PERLMUTTER: Okay.

15 MR. KLEIN: -- before we give our approval. That could
16 not happen here because they didn't have the information.

17 CHAIR PERLMUTTER: Okay, so --

18 COMMISSIONER SCIBETTA: And you're requesting for
19 DOB to respond to that here.

20 MR. KLEIN: That's absolutely right.

21 CHAIR PERLMUTTER: Okay. So then I say, so I don't
22 think we're in a different place than what I said before. This -- it takes -- it takes time for
23 the DOB to review this material. We would ask them to review the material and then

1 applicant, the property owner would have to submit that material. That takes time for
2 review. And then if you disagree with DOB's determination, DOB may change its
3 position. Right? But if you disagree with the determination, then, then you would, you
4 would bring it here, you know, the follow-up here. I understand there's a final
5 determination. But you're asking DOB to do something arguably more than they did
6 already. They may have --

7 MR. KLEIN: No, no. I'm only -- I'm asking DOB to do
8 what they say they do in every single case.

9 CHAIR PERLMUTTER: Okay.

10 MR. KLEIN: Which wasn't done here. Now, I, I know
11 where you're going with this, so it may be --

12 CHAIR PERLMUTTER: More time.

13 MR. KLEIN: What?

14 CHAIR PERLMUTTER: It's just -- we're running out of
15 time.

16 MR. KLEIN: Yeah, I know, I know. So, so what I would
17 suggest is maybe we should split the two applications and the Board can decide vis-à-vis
18 the packing issue and the tower issue --

19 CHAIR PERLMUTTER: Then you submit this --

20 MR. KLEIN: -- you could reserve this --

21 CHAIR PERLMUTTER: Okay.

22 MR. KLEIN: We could reserve this for a further
23 submission via the Buildings Department.

1 CHAIR PERLMUTTER: Right. Okay. That's --

2 MR. KLEIN: That would move this along.

3 CHAIR PERLMUTTER: That would move this along.

4 MR. KLEIN: Right, exactly.

5 CHAIR PERLMUTTER: And then you can decide what to
6 do with your other issues.

7 MR. KLEIN: Exactly. Because we feel like we have
8 20,000 square feet of space here that I don't believe should be given to this building.

9 CHAIR PERLMUTTER: Mm-hmm. Okay.

10 COMMISSIONER SCIBETTA: At least you don't see
11 there's any basis for it at this time.

12 MR. KLEIN: Excuse me?

13 COMMISSIONER SCIBETTA: You didn't find any basis
14 for it at this time.

15 MR. KLEIN: Well, there was no basis for me to make that
16 determination.

17 CHAIR PERLMUTTER: He didn't write the manual.

18 MR. KLEIN: In like manner, there was no basis for for the
19 Buildings Department to improve it.

20 COMMISSIONER SCIBETTA: Right.

21 CHAIR PERLMUTTER: Mm-hmm.

22 MR. KLEIN: Thank you.

23 CHAIR PERLMUTTER: Thank you. Okay. Anybody

1 else for the appellant representative? Okay. So then property -- DOB, actually.

2 MR. ZOLTAN: Good morning, Commissioners. Michael

3 Zoltan on behalf of the Department of Buildings. The appellants challenge the

4 Department's issuance of the permit for two reasons. Therefore, there are only two

5 questions before the Board. One, whether the Department correctly determined that the

6 building complied with the bulk distribution provision of 82-34, and two, were the floors

7 containing mechanical equipment permitted to be deducted from the available floor area

8 on the zoning lot due to the floor to ceiling heights. I'll discuss the building's compliance

9 with the bulk distribution provision first.

10 So during yesterday's executive session and today, the Board seemed to

11 understand the Department's argument regarding the reading of the statute. The plain

12 language of 82-34 is unambiguous. It clearly applies to the entire Special District. One

13 point I'd like to add to the whole argument of the phrase within the Special District. The

14 Zoning Resolution is road map. You can turn to any -- you turn to any section and it tells

15 you which district it's applicable to. Frequently, sections specifically list the relevant

16 districts. So if you turn to a provision, it will say, this applies to R9 and R10. Sometimes

17 the provisions are incorporated by reference, such as in this one in 82-36, which is the

18 tower coverage provision that's sort of linked here that we've discussed. That's

19 specifically sends you to 33-45 and 33-45 tells you which districts it applies to. It says on

20 it, R9 and R10. And sometimes you need to refer to earlier in the chapter to see where

21 the parent section applies to. So 23-65(1) doesn't say that the districts, but you go right

22 up to 23-65, and it tells you it applies to R9 and R10. Zoning Resolution tells you where

23 it applies. It's not just within the, within the Special District. Each section always tell

1 you where it applies.

2 The appellants admit that the Zoning Resolution does not, in any written way,
3 state that 82-34 does not apply in the R8 district. Instead, they request the readers of the
4 Zoning Resolution infer its applicability to the C4-7 district only. Nowhere else in the
5 Zoning Resolution is applicability or lack of applicability, as the case may be here, is it
6 inferred within the Zoning Resolution.

7 So I think Commissioner Scibetta put it best yesterday -- I think this was the
8 quote -- my recording was a little fuzzy. Is a legislative intent so clear that this result is
9 absurd enough to override unambiguous language? The Department submits that the
10 evidence of the legislative intent is not clear enough to override plain unambiguous
11 language. Clearest evidence of legislative intent is the plain reading of the statute. In this
12 case, the text provides all the evidence as to what the drafters were intending. Any time
13 provision in the Special District was intended to apply to only a portion of the Special
14 District, the drafters did one of two things. Either they listed the subdistrict, 82-31, it
15 says, within Subdistrict A, for any building in a C4-7 District. Or they incorporated
16 another provision by reference that clearly laid out the applicable district. Again, going
17 back to 82-36, the tower coverage one, they send you back.

18 In this case, the drafters wrote the language in a very specific way. They did not
19 list specific portions of the District, nor did they incorporate by reference a provision
20 state that it only applies. Quite the opposite, they added the words, within the Special
21 District. The plain language, it's not a Scribner's error. It's specifically chosen by the
22 drafters.

23 So now I turn to whether or not this accomplishes the drafter's goals.

1 CHAIR PERLMUTTER: I just want to pick up with one
2 paragraph there. So that's 82-35, which says, within the Special District. 82-36, which is
3 the Special Tower Coverage and Setback Regulations says, to pick up on what you were
4 saying, the requirement set forth in Section 33-45, (Tower Regulations of another
5 chapter), or 35-64 (Special Tower Regulations for Mixed Buildings in another chapter)
6 for any building or a portion thereof, that qualifies as a "tower" shall be modified as
7 follows. So to the point of your specificity --

8 MR. ZOLTAN: That was 82-36. Right?

9 CHAIR PERLMUTTER: Yes.

10 MR. ZOLTAN: Yes. That sends you back and tells you
11 specifically which district applies. I, I may have misheard, but the other one I referenced
12 was 82-31, which talked about Subdistrict and that --

13 CHAIR PERLMUTTER: Right.

14 MR. ZOLTAN: -- specifically said with -- and it didn't
15 send you outside the Special District provisions, but it referenced the Subdistrict, which
16 is in the maps and C4-7.

17 CHAIR PERLMUTTER: Correct.

18 MR. ZOLTAN: So they specifically enumerated the, the
19 zoning districts in the Special District as opposed to just saying within the entire Special
20 District.

21 CHAIR PERLMUTTER: But I just, I'm, I'm reading this
22 for the benefit of a transcript. So 82-31 says Floor Area Ratio Regulations for
23 Commercial Uses, within Subdistrict A, for any building in a C4 District, the maximum

1 permitted commercial floor area shall be. So it's qualifying and qualifying and qualifying
2 several times so you know exactly what to do where.

3 MR. ZOLTAN: Okay. Now, going onto the drafter City
4 Plans goals. The appellants allege that the plain reading of the unambiguous text is at
5 odds with City Planning Commission's goals of limiting building height. Not that
6 building, not that building height was the only goal, but going with that.

7 Specifically, appellants argue that the plain reading of the statute would result in a
8 reading that would actually permit an increase in the height of the tower beyond what
9 would otherwise be permitted. This, however, is not true. In order to understand whether
10 the plain reading of the provision effectuates City Planning's stated goal of limiting the
11 height of buildings, we need to look at a world with the provision, with plain reading, and
12 a world without one.

13 So 82-34 that within the Special District, at least 60 percent of the total floor area
14 permitted on a zoning lot shall be within stories located partially or entirely below a
15 height of 150 feet.

16 COMMISSIONER SCIBETTA: I have a question. Are,
17 are you conceding that the goal is to eliminate the -- are you saying that's --

18 MR. ZOLTAN: No.

19 COMMISSIONER SCIBETTA: You're not conceding
20 that.

21 MR. ZOLTAN: I mean, they, they say that as one of their,
22 one of their goals. I mean --

23 COMMISSIONER SCIBETTA: Do you agree with that

1 statement?

2 MR. ZOLTAN: That it was one of their goals?

3 COMMISSIONER SCIBETTA: That this is one of the
4 goals that, to limit the height of a building?

5 MR. ZOLTAN: Of that section specifically? No. But of
6 the entire Special District, one of the things was, yeah, they talked about the height of, of
7 all the, of, of the buildings that were, that were there beforehand or that could have been
8 built. And they enacted a broad set of regulations with a bunch of goals, one of --

9 COMMISSIONER SCIBETTA: One of which limit
10 height.

11 MR. ZOLTAN: Yeah. Right. So now applying the
12 provision to the entire zoning lot regardless of the district does place a limitation on the
13 height of buildings. It requires 60 percent of the floor area of a zoning lot to be located
14 below 150 feet. This does place a limitation on the height of buildings. Now, possibly
15 not to the extent appellants want it to be where it would be for the smaller zoning lot, but
16 it does limit the height of buildings.

17 Now imagine a world without it. No requirements impact the building. Now,
18 there's no requirements to maintain 60 percent -- 60 percent of any percent of the floor
19 area below that 150 foot line. This would lead to taller buildings. So the provision, as
20 read plainly, does cause buildings to be lower. Now, not to the extent that, that appellants
21 would like it to be, but it does keep it lower. And this shows that 82-34 is not an absurd
22 result as it does accomplish their, their goal.

23 Now, turning to the CPC report, which, again, I agree its possibly -- it's, it's not

1 required to turn to when the plain language is unambiguous. That's the end. You read it
2 as it's written. But arguendo, when discussing 82-34, the CPC report refers to the
3 provision as applying to massing in heights of new buildings. However, when referring
4 to the tower coverage provision of 82-36, the report, and again allowing for effect, says,
5 it would establish minimum tower coverage standards. Even in the report, the drafters
6 were clearly indicating that 82-34 that applied to all buildings, power or otherwise,
7 whereas 82-36 would only apply to towers. This shows that the drafters were intending
8 to apply 82-34 to the R8, which is not typically developed to towers. Again, it's just
9 evidence that even in the drafting stage, this was a consideration.

10 COMMISSIONER SCIBETTA: You believe the intent,
11 they considered this result, this particular result?

12 MR. ZOLTAN: I'm sort of arguing both sides. So if, if
13 they intended it -- I'm saying that the evidence is not clear --

14 COMMISSIONER SCIBETTA: I understand your
15 argument.

16 MR. ZOLTAN: -- in the CPC report of what they intended,
17 that they 100 percent intended that this should not be allowed. I think the plain, the plain
18 text is clear. The plain text.

19 COMMISSIONER SCIBETTA: Okay.

20 MR. ZOLTAN: And then within the City Planning report,
21 the drafter's intent is not fully clear. They're, it's still messy there.

22 COMMISSIONER SCIBETTA: I understand.

23 CHAIR PERLMUTTER: And, and in the report because

1 this discussion was about towers, the idea that they use the word, building, when the real
2 discussion was about tow-, well, not the real discussion. When the discussion was
3 concerned about height of towers, and then they used the word, building, in the report
4 shows that they're actually considering both eventualities. Not everyone's going to build
5 a tower. Right? So there will be buildings that are affected by these regulations, and
6 towers that are affected by the regulations. Not everybody will build a tower here
7 because they don't have the zoning lot size. There's a preference for not a tower. It's not
8 the right type of building typology for 40 percent coverage. That kind of thing.

9 MR. ZOLTAN: Okay. The appellants cite numerous
10 elements of the report to evidence the intent of the drafters. However, nowhere in the
11 report does it clearly state that 82-34 is only applied to the C4-7 portion of the Special
12 District. It's not a case where the report says one thing and the drafters forgot to add that
13 small, but crucial, detail. Instead, the appellants are attempting to infer from some of the
14 CPC's words that the appellants believe that the drafters meant to apply 82-34 to the C7,
15 C4-7 portion only. However, absent clear and unambiguous language affirmatively
16 stating that 82-34 can only apply to the C4-7 districts, this is only really speculation.

17 For instance, the appellants 23-651(c) as being similar to 82-34 and as a provision
18 which applies only to R9s and R10s is indicative as to what the drafters were thinking.
19 But I would counter by saying that this shows me that the drafters knew how to
20 distinguish their section applies only to R9 or R10, or in this case C4-7, and chose not to
21 in this case. The drafters' intent is not clear from the CPC reports.

22 So for this issue, I remind you of the question I'm asking the Board to answer. Is
23 the legislative intent so clear in unambiguous language of the ZR is rendered absurd

1 enough to be overwritten? The Department submits that it is not.

2 Now, I'm going to turn to the second part of this mechanical space.

3 CHAIR PERLMUTTER: Mm-hmm. So I actually had had
4 a question for you -- oh, so -- actually, it was a question for the owner, but it's a DOB
5 question as well. So because the R8 district permits towers in, on, in the R8 for
6 community facility, this is something you probably won't be able to respond to on the fly.
7 Right? Is there any interpretation that the community facility portion of the building
8 somehow or other invokes the community facility tower regs for this site which is -- I'm
9 trying to get my head around exactly how you do it, but the instructions are kind of,
10 they're the same. Right? But then you would be applying the tower coverage to the
11 entire site because you've got both community facility and a residential tower. If that
12 were the case. Right? I'm not sure that it's --

13 MR. ZOLTAN: To apply the tower coverage provision or
14 the --

15 CHAIR PERLMUTTER: To the, yeah. To the coverage.
16 So, it --

17 MR. ZOLTAN: Well, the tower coverage provision
18 specifically references district.

19 COMMISSIONER CHANDA: I think the tower coverage
20 portion of the community facility in R8 and C4-7 is the same.

21 CHAIR PERLMUTTER: Is the same.

22 MR. ZOLTAN: Same. Right.

23 CHAIR PERLMUTTER: So that, so that's the thing --

1 MR. ZOLTAN: So then it would link you into --

2 CHAIR PERLMUTTER: It would link you in --

3 MR. ZOLTAN: Exactly.

4 CHAIR PERLMUTTER: -- and then you would be
5 distributing the coverage on the entire zoning lot. So, so it would be bulk and tower on
6 the entire zoning lot. But the question is, and I'm not sure because I just didn't sit there
7 and try to analyze it.

8 MR. ZOLTAN: Okay.

9 CHAIR PERLMUTTER: Whether the programming in
10 this building might, might invoke tower regulations for the community facility.

11 MR. ZOLTAN: Okay. I understand the question.

12 CHAIR PERLMUTTER: But I didn't analyze it.

13 MR. ZOLTAN: Right.

14 CHAIR PERLMUTTER: I just noted that there's, that
15 there's a tower --

16 MR. ZOLTAN: Community facility.

17 CHAIR PERLMUTTER: Yeah.

18 MR. ZOLTAN: So, right. I don't have an answer on that
19 right now. I can look into it.

20 CHAIR PERLMUTTER: Okay.

21 MR. ZOLTAN: Moving on to the mechanical.

22 CHAIR PERLMUTTER: Mm-hmm.

23 MR. ZOLTAN: If I may. So when the Board stated

1 yesterday that the issue of the floor to ceiling height is --

2 COMMISSIONER SCIBETTA: I'm sorry, just one more
3 question.

4 MR. ZOLTAN: Sure. No problem.

5 COMMISSIONER SCIBETTA: Are there any other, any
6 districts where tower, where towers are permitted, but tower coverage rule doesn't apply?

7 MR. ZOLTAN: I can't state about the Special District
8 offhand or anything. I mean, I'm not gonna speculate -- I'm not sure. I can look into it if
9 you want.

10 COMMISSIONER SCIBETTA: I really would appreciate
11 that.

12 MR. ZOLTAN: So to clarify --

13 COMMISSIONER SCIBETTA: Where tower coverage,
14 where towers are permitted, but tower coverage rule doesn't apply.

15 MR. ZOLTAN: Tower coverage does not --

16 COMMISSIONER CHANDA: No, tower --

17 CHAIR PERLMUTTER: Towers don't exist without a
18 coverage --

19 COMMISSIONER SCIBETTA: A tower coverage rule.

20 CHAIR PERLMUTTER: It's not a tower unless it has a
21 tower coverage --

22 COMMISSIONER SCIBETTA: And it has a --

23 CHAIR PERLMUTTER: -- rule.

1 COMMISSIONER CHANDA: Right.

2 COMMISSIONER SCIBETTA: Right.

3 CHAIR PERLMUTTER: That's how you make a tower is
4 you don't cover more than X of the lot.

5 COMMISSIONER SCIBETTA: Okay.

6 MR. ZOLTAN: That was tower coverage, not bulk
7 distribution that you were asking about. Right?

8 COMMISSIONER SCIBETTA: Right.

9 MR. ZOLTAN: Okay.

10 CHAIR PERLMUTTER: Okay.

11 MR. ZOLTAN: So on mechanical equipment. The Board
12 stated that the issue of the floor to ceiling height is an issue precluded as previously
13 decided by 15 East 30th Street and the Department agrees and so I'm not going to talk
14 about that any further.

15 However, yesterday, the Chair asked for clarification regarding the timing of the
16 foundation permits. So under the Ad. Code, you can receive a foundation permit once
17 you get zoning approval, even if you don't have the NB permit yet to actually building a
18 building. And it says in the code how it's at the risk of the developer to continue, but you
19 can get the foundation permit once the zoning has fully been approved.

20 In this case, the owner received zoning approval way back when the building had
21 a bit of a different design with a mechanical space structured a little bit differently. This
22 was in July of 2018. That was when the zoning approval was given and the foundation
23 was planned for the same footprint as the building currently is going up.

1 Then procedurally, Department issued an intent to revoke on that zoning
2 approval. Never revoked it, but issued an intent to revoke. The foundation permit was
3 still valid. And then there was the PAA, which changed the scope of the NB permit and
4 the zoning approval a little bit, but again, the foundation was never changed. So the
5 foundation has been approved since July of 2018. That didn't change based on this PAA.
6 That was only affecting the NB permit, not the foundation.

7 CHAIR PERLMUTTER: Okay. And in terms of vesting,
8 as long as the foundation that's going to be used for the building above it is complete,
9 then it doesn't matter if there's a change in the building above it as long as there's a
10 change prior to the enactment date?

11 MR. ZOLTAN: It -- the, the -- well, the -- if the foundation
12 is complete and the foundation itself doesn't change.

13 CHAIR PERLMUTTER: Right.

14 MR. ZOLTAN: And the foundation -- that's fine with the
15 foundation being complete. But the permit still has to be valid. You can't change and
16 increase your non-compliance or non-conformance after the text change.

17 CHAIR PERLMUTTER: Not, but before the text change.
18 So any time up to the text change, you can change the design of the NB. Right? As long
19 as it's relying on the same foundation.

20 MR. ZOLTAN: If -- see if this clarifies or is enough. If
21 you -- if on the date of the text change, you have foundation permit, foundation was
22 completed, and it's completed for the building going forward, and you have an NB
23 permit, you have vested.

1 CHAIR PERLMUTTER: Okay. And it doesn't matter
2 when the NB permit --

3 MR. ZOLTAN: Permit, correct.

4 CHAIR PERLMUTTER: -- is approved as long as its prior
5 to the enactment date.

6 MR. ZOLTAN: Of the vesting date, right.

7 CHAIR PERLMUTTER: Okay. Thank you. Okay.

8 MR. ZOLTAN: One of the last things that came up was
9 regarding the ZRD, the public challenge and then the ZRD2 signed by RO Commissioner
10 Scott Paven. Just for clarification because this case has had a lot of procedural
11 happenings. That was based on a public challenge and a ZRD2 that was the subject of a
12 formerly filed BSA case that was mooted out based on the new ZD1 and zoning approval.
13 So this BSA case is not a challenge of any DOB public change ZRD2 decision. It's a
14 challenge of DOB issuance of that PAA approval which changed the scope of the NB
15 permit. So it's essentially challenging a permit, not that underlying ZRD2.

16 CHAIR PERLMUTTER: Oh.

17 MR. ZOLTAN: That ZRD2 was actually rescinded by
18 implication when, when the intent to revoke was sent out. So that ZRD2 is sort of moot-,
19 was mooted out in the BSA case based on it was mooted out. So --

20 CHAIR PERLMUTTER: Okay.

21 MR. ZOLTAN: -- that's what's before the Board now.

22 CHAIR PERLMUTTER: Okay. So if the challengers
23 wanted to challenge, for instance, vesting that's a whole new pursuit to DOB.

1 MS. MONROE: But not just vesting. It sounds like he's
2 saying if they want to challenge --

3 CHAIR PERLMUTTER: Mechanical, mechanical also --

4 MR. ZOLTAN: Well, the height was before the Board.

5 CHAIR PERLMUTTER: Right.

6 MR. ZOLTAN: But the 2D layout was, was apparently not
7 as it wasn't part of this actual appeal.

8 COMMISSIONER SCIBETTA: But they do have a basis
9 for -- you're saying they don't -- it's not before us because it was -- you did an intend to
10 revoke, rescind and therefore mooted out the original --

11 MR. ZOLTAN: I'm saying that right now it's not before
12 the Board --

13 CHAIR PERLMUTTER: Right.

14 MR. ZOLTAN: -- as it's not one of the final
15 determinations that is being --

16 COMMISSIONER SCIBETTA: Presented here.

17 MR. ZOLTAN: Right. It's not the subject of the appeal.

18 CHAIR PERLMUTTER: Okay. Okay. Thank you very
19 much. That was helpful. Okay.

20 MR. KARNOVSKY: We have a slide show if you could
21 just wait one minute.

22 CHAIR PERLMUTTER: Okay.

23 MR. KARNOVSKY: Madam Chair, Members of the

1 Board, David Karnovsky, Fried, Frank, Harris, Shriver & Jacobson, Land Use counsel to
2 the project to the appellee in this matter.

3 The appellants have raised two issues and two issues only in this matter, but the
4 Board was clear yesterday that it views the height of the mechanical spaces issues as
5 decided in its 2017 decision regarding a site on East 30th Street, as well as on the basis of
6 a subsequent legislative action taken by CPC and the Council in 2019. We agree for the
7 reasons set forth in our papers and I won't dwell on this issue further unless you have
8 questions.

9 Second, of course, appellants argue that the plain language of 82-34 of the Special
10 Lincoln Square District doesn't mean what it says; it means something altogether
11 different; what appellants would like it to say.

12 I'm going to go through this issue of Within the Special District in some detail to
13 examine all of the various arguments that they make about it, precisely because, as you,
14 Madam Chair, have said, one has to understand that not just on its own terms, but in the
15 context of the structure of the Special District as a whole. And then going to talk about
16 the legislative history. I'm going to talk about the absurdity point. And finally, I want to
17 make some remarks about the issues raised by Mr. Klein with regards to mechanical
18 space as a matter of process and procedure before this Board.

19 Section 82-34 states, very simply, we know it, within the Special District, at least
20 60 percent of the total floor area permitted on a zoning lot shall be within stories located
21 partially or entirely below a height of 150 feet from curb level. Except, say the
22 appellants, within the Special District, somehow means in certain portions of the Special
23 District, not the entire Special District. In fact, they now say in their most recent papers

1 that it means, "within the Special District where applicable." But the areas within the
2 Special District to which appellants say 82-34 applies, the C4-7 portion of the zoning lot,
3 and the portion of the zoning lot to which they say it does not, the R8 portion are
4 nowhere identified in this regulation. And so, what they are asking this Board to do is
5 rewrite the statute either to exclude the R8, or to include the C4-7 or perhaps do both.
6 And they assert, without any support, that what they call "implicit qualifications of this
7 kind are routinely, are routinely read into language all the time. That is not the case.

8 As Commissioner Chanda pointed out at the review session yesterday, the Special
9 District does not operate on the basis of implicit exclusions or inclusions. Instead, the
10 Special District regulations are fine-grained and highly tailored and, in many instances,
11 only apply to specified portions of the district only, to specified subdistricts, to specified
12 street frontages, to only certain of the underlying zoning districts map within the Special
13 District. And here are some of those provisions. In particular, and this was pointed out
14 early, earlier, 82-31 is an example, within Subdistrict or any building in a C4-7 district,
15 the maximum permitted commercial floor area is 100,000 square feet. And on and on
16 provisions which specify the area, the location, the subdistrict, the zoning district to
17 which they apply.

18 Now, other Special District regulations are not as narrow in scope as these and
19 there are many more cited in our papers, but they instead, apply within the Special
20 District, but with certainly specifically identified exceptions. And here are some
21 examples of this kind. Within the Special District, all buildings shall be subject to the
22 height and setback regulations of the underlying districts, except as set forth. And then
23 modifications, the exceptions are set forth with specificity. Likewise, that second

1 provision with regard to loading.

2 So when the City Planning Commission wanted a provision to apply to a
3 particular subdistrict or a particular street frontage to a particular zoning district, it said
4 so, and it did so often. And it wanted, when it wanted a rule to apply to the entire Special
5 District, but with some exceptions or modifications, it also knew how to do so and it did
6 so. Unlike all of these provisions, Section 82-34 applies without any exceptions. By its
7 terms, it applies irrespective of subdistrict, street frontage or any other limitation as to
8 location. It, therefore, applies to the zoning lot irrespective of the underlying zoning
9 district of the zoning lot.

10 Appellants' argument is not only at odds with the structure and language of the
11 Special District, but it's at odds with the Zoning Resolution as a whole, which uses the
12 term, within the Special District, in other Special District chapters at least 90 times, 90
13 times to mean what it says. According to appellants' latest argument that within the
14 Special District means within the Special District where applicable, where applicable
15 means where towers are allowed. And they first assert that towers are not allowed in the
16 R8. But, of course, as the Chair pointed out yesterday, community facility towers are
17 allowed in R8 districts under Section 24-54. And it says, basically, that in the R8 district,
18 portions of buildings which in the aggregate occupy not more than 40 percent of the lot
19 area penetrate the site, the sky exposure plane. That is a tower, community facility tower
20 in the R8.

21 Now, our papers attach two illustrations of community facility towers that could
22 be built within the R8 portion of the zoning lot. And here they are. It's a little hard to
23 read, and we have copies we can circulate as well. But the first chose the height and

1 number of stories of a community facility tower that could be built on the R8 portion of
2 the zoning lot without application of 82-34, 60 percent of distribution. It's a building of
3 470 feet and 30 stories. The second ill-, on the right, illustrates the height and number of
4 stories of a community facility tower that could be built with application of a bulk
5 distribution under 82-34. It is a tower of 350 feet with 22 stories.

6 CHAIR PERLMUTTER: But you're just applying that to
7 the R8 portion in terms of bulk distribution.

8 MR. KARNOVSKY: That is correct in this case. We're
9 showing you a community facility tower in the R8 portion, and showing you the
10 difference between the application of the rule.

11 CHAIR PERLMUTTER: But, but this is using the tower
12 coverage and tower, and bulk distribution on the same size lot.

13 MR. KARNOVSKY: Yes. This is on the R8 portion only
14 of ours only.

15 CHAIR PERLMUTTER: Right. But, but this is exactly
16 what appellants are saying that's what you're supposed to have been done in the C4-7.
17 Right? Your picture should have looked like that in the C4-7.

18 MR. KARNOVSKY: We'll get to -- we will get to that,
19 but --

20 CHAIR PERLMUTTER: Okay.

21 MR. KARNOVSKY: -- the point here is just a very simple
22 one to illustrate --

23 CHAIR PERLMUTTER: Okay.

1 MR. KARNOVSKY: -- community facility tower can be
2 built and 82-34 has an effect on the result.

3 CHAIR PERLMUTTER: Okay.

4 MR. KARNOVSKY: So appellants' repeated statements
5 that there's no conceivable purpose to apply an 82-34 in an R8 district is belied by these
6 examples.

7 Now, trying to overcome this, the appellants say, well, community facility towers
8 are rare, the drafters probably didn't think about this. Of course, as Commissioner
9 Chanda said yesterday, this is an area that is characterized by some major community
10 facility uses, and indeed, until very recently, Touro College had a facility on a site just
11 across the street from the project site within an R8 district. But appellants then say, well,
12 even if 82-34 applies everywhere in the district, that doesn't mean that it must apply
13 everywhere in the district. In other words, I guess what they're saying is that it only
14 applies when development occurs under the tower regulations so that standard height and
15 setback buildings are not subject to the requirement. But 82-34 says nothing of the kind
16 and draws no distinction between standard height and set back and tower development

17 Now, Madam Chair, you asked two questions about this yesterday. At first, you
18 asked whether the portion of the proposed development located in the R8 portion of the
19 zoning lot is being built pursuant to the tower regulations or pursuant to standard height
20 and setback. The answer is standard height and setback. We can provide more
21 information on that. Second, you asked whether there is any incompatibility between
22 section 82-34 and development under standard height and setback regulations. In other
23 words, would compliance with 82-34 impede development under standard height and

1 setback in any way. And the answer to this is it would not.

2 This is an illustration of a generic R8 building built under standard height and
3 setback that rises to 85 feet and lives within the sky exposure plane, and it shows that --

4 CHAIR PERLMUTTER: This is an alternate.

5 MR. KARNOVSKY: Yeah, this is alternate.

6 CHAIR PERLMUTTER: Okay.

7 MR. KARNOVSKY: And we can provide other examples.

8 This is alternate. And it shows that the 60 percent within the 150-foot requirement is
9 more than met. It's somewhere in the 80 percents.

10 CHAIR PERLMUTTER: Mm-hmm.

11 MR. KARNOVSKY: So any suggestion by the appellants
12 that 82-34, by definition, can only apply to tower development is simply wrong.

13 CHAIR PERLMUTTER: And I just want to point out with
14 that diagram. I understand why alternate was used because it's the skinniest version. We
15 see a lot of hotels that are built with this alternate setback. Right? It's the skinniest
16 version and if the idea was to prevent the skinny version, it's still possible to, to build it
17 that way as opposed to a street wall height setback building.

18 COMMISSIONER CHANDA: Provided it is permitted.

19 CHAIR PERLMUTTER: No, no. The height and
20 setback -- the street wall height and setback is permitted in an R8. Right? This is an
21 alternate setback version and I understand why the test was done for alternate setback
22 because if there was an intention to prevent skinnier building, which those alternate street
23 wall buildings are, alternate setback buildings are, it's obviously not being prevented. It

1 permits it to comply with the 150-foot rule.

2 MR. KARNOVSKY: Right.

3 CHAIR PERLMUTTER: Okay.

4 MR. KARNOVSKY: Now, at the same time, the
5 appellants -- excuse me -- the appellants have made the argument that DOB's calculation
6 of a 60 percent of permitted floor area based on the zoning lot as a whole violates the
7 split lot rules because 82-34 applies only to C4-7 district. So under this argument, unlike
8 the one we've just discussed where appellants acknowledge that 82-34 may apply to the
9 entire zoning lot in both districts, they're saying that it doesn't apply in the R8 district at
10 all. So they're arguing this every which way.

11 But in the absence of any language in 82-34 which limits its application to the C4-
12 7 portion of the district -- C4-7 portion of the zoning lot, appellants resort to pointing to a
13 different section altogether, which is 82-36. And they argue that provision somehow
14 limits the application of 82-34 to the C4-7 portion of this project site.

15 This is 82-36. And we've talked about this before. Or I should say that my
16 colleague, Department of Buildings, talked about it before so I won't dwell on it too
17 much. However, 82-36, by its terms, governs how tower development under 33-45 and
18 35-65 apply within the Special District with certain modifications specific to the Special
19 District. Now, Sections 33-45 and 35-65 are commercial tower regulations that
20 necessarily apply in the C4-7 district, but not in an R8 district. And the same is therefore
21 the case for 82-36. And so, the project site is clearly a split lot for purposes of 82-36.
22 Nothing in Section 82-34 sets forth a similar limitation restricting its applicability to a
23 C4-7 district only. And there is also nothing in 82-36 itself, which by cross reference or

1 otherwise, provides that 82-34 only applies to the C4-7 portion. So unlike in the case of
2 82-36, the project site is not a split lot for purposes of 82-34 and the 60 percent
3 calculation under that provision must be applied across the entire zoning lot.

4 Now, in yet another attempt to narrow the scope of 82-34 to the C4-7 portion of
5 the project site only, the appellants argue that the phrase, within the Special District, is a
6 kind of explanatory note that is only intended to highlight that 82-34 differs in what they
7 characterize as minor respects from the bulk packing rule of Section 23-651(a)(3), the
8 tower-on-a-base rule.

9 According to this fairly convoluted logic, the phrase, within the Special District,
10 signifies in four words -- and this is the language from the appellants' brief -- signifies the
11 following: that the general version of the bulk packing rule in 23-651 differs from the
12 Special District version in 82-34, in that it is slightly less demanding and also more
13 complex. The required percentage in floor area below 150 feet starts at 55 percent and
14 increases as tower lot coverage decreases from 40 percent to 31 percent. This is packing
15 a lot of words into, within the Special District.

16 What appellants are arguing is that the Special District is either governed by or
17 somehow just a variation on the tower-on-a-base regulation set forth in 23-651. Of
18 course, if the City Planning Commission had wished this to be the case, it would have
19 said so. And CPC routinely does this sort of thing in Special District regulations under
20 which underlying rules apply with specified modifications or exceptions.

21 And here are a few examples from other Special Districts. These are all situations
22 where the Special District regulation says within the Special District underlying rules
23 apply with certain exceptions and modifications. The City Planning Commission knows

1 how to do this when they want to do it and they did not do it here.

2 Now, appellants' response to why the City Planning Commission didn't do
3 something like what I just showed you is that the drafting would have been too
4 complicated. And here's what they say: It would have severely challenged the drafters
5 and resulted in an incomprehensible provision had they tried to draft the Special District
6 version as a modification of the general provision, as Extell suggests].

7 In fact, DCP did precisely what the appellants say would have severely
8 challenged the drafters when in 1993, it adopted Section 35-64 at the very same time as
9 the tower-on-a-base rule. Now, this section, 35-64(a) expands the locations to which
10 tower-on-a-base regulations apply, beyond the R9 and R10 districts that are specified in
11 23-651. And it provides that the tower-on-a-base regulations apply to specified
12 commercial districts -- by the way, not including a C4-7 -- subject to certain enumerated
13 modifications. By contrast, 82-34 does nothing of the sort. It makes no cross reference
14 to 23-651 and it doesn't incorporate the provisions of that section by cross reference,
15 either with or without modifications.

16 Why exactly are the appellants making this tortured interpretation of the term,
17 within the Special District? By characterizing the phrase, within the Special District, as a
18 kind of explanatory note that 82-34 varies from tower-on-a-base with respect to the
19 percentage of floor area subject to bulk distribution, the 60 percent versus the 55 sliding
20 scale, the appellants' objective is to create the impression that 82-34 otherwise operates
21 identically to tower-on-a-base. And as I'll explain in a minute, this is a slight of hand
22 designed to read tower-on-a-base into the Special District in order to calculate bulk
23 distribution under 82-34 without including the R8 portion of the zoning lot.

1 Now, tower-on-a-base and 82-34 differ from each other in a number of ways, both
2 large and small, and our papers discuss many of those differences. One such difference,
3 for example, is that tower-on-a-base applies to zoning lots that have frontage on a wide
4 street. 82-34 has no such limitation. Appellants' attempt to erase the differences between
5 the two provisions fails for all of the reasons that we cite in our papers. But the key
6 difference between the tower-on-a-base regulations and 82-34 and 82-36 for purposes of
7 our discussion today boils down to this. Under the tower-on-a-base regulations, both the
8 minimum tower coverage requirements and the bulk packing requirement are found
9 within the tower regulations of Section 23-65, the tower regulations of 23-65. They
10 apply only to tower development within R9 and R10 districts only. The minimum tower
11 coverage requirements in 23-651(a) and the bulk packing requirement in 23-651(a)(3)
12 are, in fact, subparts of the same provision, 23-651, which again, applies only to tower
13 development in R9 and R10 zoning districts.

14 Therefore, where a tower on a base building is built on a zoning lot that it is split
15 between an R9 or an R10 and another district, such as an R8, the bulk packing calculation
16 is consistent with the express terms of 23-65 made based on the floor area of the portion
17 of the zoning lot within the R9 or R10 only.

18 82-34 and 82-36, on the other hand, are two separate provisions. They are not
19 subparts of a single provision, nor do they cross reference each other. One, 82-34,
20 governing bulk distribution applies to any zoning lot within the Special District. The
21 other, 82-36, governing the calculation of tower coverage and towers built under
22 commercial district regulations applies in the C4-7 district. They both apply to the
23 project site. There's no question about that. But are not linked in terms of applying to the

1 same zoning districts, as is the case with 23-651.

2 Therefore, whereas here a tower is built within the Special District on a zoning lot
3 that is split between a C4-7 and an R8, the bulk distribution calculations based on the
4 floor lot of the zoning lot as a whole consistent with the plain language of 82-34.

5 Now, perhaps recognizing that they're explanatory note theory is wholly
6 implausible, they now say that CPC "had no need to cross reference the two versions of
7 the bulk packing rule or to indicate in any way that they are essentially the same." Well,
8 why is that? Appellants now say because it's obvious they are the same. But tower-on-a-
9 base and 82-34 are different, and they operate differently. And the fact that the two
10 provisions were adopted on the same date, doesn't make them the same -- another
11 argument made by appellants. These are two separate provisions adopted through
12 separate applications with different language and different applicability.

13 I'm now going to turn to the legislative district. And on that I would say that this
14 Board, I think, has consistently followed the admonition of the Court of Appeals in the
15 Raritan case, which I believe is still good law that where the statutory language is clear
16 and unambiguous, the court should construe it so as to give effect to that language and
17 resort to the legislative history is not necessary. And we think that standard is met here
18 and that the analysis really should end here. However, yesterday, the Board did express
19 an interest in the legislative history, so I'm going to turn to that now.

20 Looking to the legislative history, the appellants point out that in considering the
21 1993 amendments which added 82-34, DCP identified what it considered to be six
22 remaining development sites in the Special District for study. These were selected based
23 on traditional soft site criteria: vacant land, vacant building, site which contains a

1 commercial building, which is at least 50 percent underbuilt, only up to 50 percent built
2 under the allowable FAR, a site which contains a residential building but has less than
3 four occupied units.

4 Now, each of these sites was located entirely within the C4-7 district and
5 appellants cite this as support for the proposition that Section 82-34 must, therefore, only
6 apply to property maps in C4-7. In effect, what are they saying? They are saying that a
7 zoning provision should be narrowly construed to apply only where the characteristics of
8 a site match those of soft sites that were studied in the preparation of the amendment. In
9 other words, that within the Special District means -- and here's some language I've
10 drafted which would have to be added to reflect their position -- within the Special
11 District for those sites with the characteristics which match those of the six potential sites
12 identified and studied by the Commission in the preparation of this amendment. The
13 absurdity of this proposition is obvious. The fact that these six soft sites did not include
14 one in the R8 or even partially in the R8 is not a basis for ignoring the plain language of
15 the statute that was adopted.

16 The legislative history, in fact, shows that both CPC and the stakeholders in the
17 process understood that the new rule governing bulk distribution would apply on a
18 district-wide basis. And that's because, as discussed in the CPC report, various
19 stakeholders had proposed a district-wide 275-foot height limit, absolute height limit.
20 The City Planning Commission rejected that district-wide height limit in favor of its own
21 proposal, which did not include fixed height limits express either in terms of feet or
22 numbers of stories.

23 Now, the appellants state, essentially, that in rejecting a district height limit that

1 the CPC made -- and I'm quoting -- repeated invocations -- and they repeated this today
2 in its report that the regulations would produce buildings of "a specific height range and
3 upper limit from the mid-20 to the low-30 stories." Although you heard about 20 to 40
4 today so I'm not sure what's really being said.

5 In point of fact, the CPC report says this once only, there is only one reference of
6 this kind in the CPC report, and it says it only with regard to "the remaining development
7 sites," meaning the six soft sites. To be specific, CPC states in its report that its proposal
8 "would produce building heights ranging from the mid-20 to the low-30 stories, including
9 penthouse floors on the remaining development sites." The appellants ignore this
10 qualification because their underlying agenda is to convince that buildings with stories in
11 the low-30s were affixed and firm maximum throughout the district and that somehow
12 CPC knew and believed this with a mathematical certainty.

13 What the CPC said, in fact, was only that its proposed rules "should predictably
14 regulate the heights of new development" nothing more. Significantly, Community
15 Board 7 and others strongly disagreed with this. With the Board stating in its resolution
16 recommending disapproval of the 1993 text amendment that "City Planning's proposal to
17 limit building height with packing the bulk, requiring 60 percent of the bulk below 150
18 feet has not been tested on actual buildings and is, therefore, unpredictable." And the
19 Borough President also took issue with the City Planning Commission's rejection of a
20 absolute height limit and was concerned about this other approach, and encouraged the
21 Planning Commission to consider the issue further, to reintroduce into the process an
22 absolute height limit. And she said, it's essential to continue discussions with DCP
23 during the review process so that a more suitable recommendation evolves that takes into

1 account the context of the entire district, as well as each of its subdistricts.

2 So overall, what does this show? It shows that while DCP conducted planning
3 studies on six soft sites, the DCP and the various stakeholders understood full well that
4 that new rules would not be limited to those sites and would apply throughout the district
5 in lieu of a district-wide height limit. And it shows that how the rules would play out on
6 sites other than the six soft sites was a matter of dispute due to the fact that it had not
7 been studied. The Environmental Simulation work focused on the six soft sites.

8 Again, the appellants argue that the fact that the project site wasn't studied
9 somehow means that 82-34 doesn't apply to the R8 portion. They state, in 1993, the very
10 small R8 portion of the site was entirely developed with substantial residential buildings
11 in the large and then relatively new building in the Jewish Guild for the Blind, so it's
12 unlikely that the drafters would have considered such, that that portion of the Special
13 District might be redeveloped, much less that it would be redeveloped with a tower. But
14 as we all know, the drafters never have a perfect crystal ball. And the fact that
15 development occurs, which may have not been anticipated by the drafters, is not a basis
16 for having this Board or a court rewrite the zoning which was drafted and adopted. As
17 stated by the Court of Appeals in the Raritan case, the courts are not free to legislate.
18 And if any unsought consequences result, the legislature is best suited to evaluate and
19 resolve it. These appellants believe that this is an unsought consequence. Their recourse
20 is to the legislature.

21 In another slight of hand, the appellants repeatedly state that application of the
22 plain language results in an increase in the number of stories and building height. The
23 question is compared to what?

1 As shown here and in our papers, if 82-34 had never been enacted, the building,
2 this building could achieve 43 stories and a height of 839 feet. With 82-34 in place, the
3 building achieves 39 stories and a height of 775 feet. Appellants do not dispute, nor can
4 they, that under the DOB approval, the combination of 82-34 and 82-36, each applied in
5 accordance with their terms, operates to reduce building height and stories relative to
6 what would otherwise occur in the absence of those provisions.

7 Is this an absurd result? It is obviously not. Instead, the so-called increase in
8 stories and height that they complain of is the difference between the height and number
9 of stories that result from DOB's lawful approach in compliance with the language of 82-
10 34 and the approach that the appellant, appellants would prefer based on their
11 interpretations.

12 What are they saying? They're saying ignore the plain language of 82-34.
13 Indeed, ignore the language and structure of this Special District regulations and the clear
14 differences between 82-34 and the tower-on-a-base rules on the basis of a statement in
15 the CPC report that refers only to six soft sites that states in a rather tepid fashion that the
16 application of the rules should be predictable and it makes reference to a vague and
17 undefined mid-20s to low-30s range of stories. And you should ignore, also ignore the
18 fact -- this is what they're saying -- you should also ignore the fact that the CPC's less
19 than definite, if not equivocal, statement was actually the subject of a lot of dispute about
20 the time, about the efficacy of these rules to produce what the stakeholders wanted, which
21 was more definition and more certainty as to what would result.

22 Adopting the appellants' reasoning is the absurd result. And further, to suggest, as
23 I think you pointed out, that in face of the language of the statute that a property owner or

1 a zoning consultant should be required to figure out whether a building of 35 stories, 36
2 stories, 37 stories is somehow illegal because of the reference in the CPC report to mid-
3 20s and low-30s is absurd.

4 At the end of the day, appellants' complaint is not really with how DOB applied
5 82-34 to the site. It's with the height of the mechanical spaces, which is 176 feet, the tall
6 mechanical spaces. But as discussed earlier and as recognized by the Board, the
7 building's mechanical spaces are lawful under the regulations in effect prior to May 29,
8 2019, these being the regulations under which the project was vested in April of 2019.

9 I'm going to just talk a little bit about Mr. Klein's issue with respect to
10 mechanical --

11 CHAIR PERLMUTTER: Before, before you do that.

12 MR. KARNOVSKY: Sure.

13 CHAIR PERLMUTTER: One of the questions that I did
14 have for you which, I don't know if there's any more diagrams.

15 MR. KARNOVSKY: Yeah.

16 CHAIR PERLMUTTER: Was whether the fact that there's
17 a community facility in the R8 portion would somehow or other invoke a writ-, an R8
18 community facility tower. I, I just don't -- I'm not -- 'cause I'm not really sure where the
19 community facility is located in the building, and I didn't try to figure it out.

20 MR. KARNOVSKY: Can we follow-up with that just to
21 show you-

22 CHAIR PERLMUTTER: Yeah.

23 MR. KARNOVSKY: The location of the synagogue and

1 the massing of the, in the R8 with more precision. And I think what it will show is that
2 it's been approved beyond the basis that the split lot functions so that the standard height
3 and setback produces the base in the R8 and then, and then there's the tower portion on
4 the --

5 CHAIR PERLMUTTER: So that the community facility
6 isn't in the tower.

7 MR. KARNOVSKY: Right.

8 CHAIR PERLMUTTER: Right?

9 MR. KARNOVSKY: Correct. That's correct, yes.

10 CHAIR PERLMUTTER: Yes.

11 MR. KARNOVSKY: So we can, we can show you that.

12 CHAIR PERLMUTTER: Because that's the only way that
13 it's community facility tower regulation would apply, in which case, now you've got
14 tower coverage on the entire zoning lot as opposed to just --

15 MR. KARNOVSKY: Right. We're not -- that was not the
16 way it was done, and we can show you the location of the --

17 CHAIR PERLMUTTER: Okay.

18 MR. KARNOVSKY: -- community facility.

19 COMMISSIONER SCIBETTA: If I may?

20 MR. KARNOVSKY: Yes.

21 COMMISSIONER SCIBETTA: You -- I'm sure you've
22 heard the arguments that of the absurd result. Do you want to respond to that, the absurd
23 result of--

1 MR. KARNOVSKY: I think the, the question is, is this an
2 absurd result, in this case.

3 COMMISSIONER SCIBETTA: Well, we're talking about
4 this type of interpretation can lead to an absurd result.

5 MR. KARNOVSKY: You know, you can always put
6 together a hypothetical, which leads to "absurd results." And I think the courts, and we
7 cite a case, I've said that is not the way to measure the absurdity doctrine under New
8 York State law. You look at the question of the whether the result in the case before you
9 is absurd or not. Not on the base of hypotheticals that are not before you that don't exist,
10 and that have put out there simply to go down a rabbit hole. And we'll be glad to share
11 that with you again.

12 With respect to mechanical equipment, the issue raised by Mr. Klein. What I
13 would say is this. If you read that statement of facts that Landmark West submitted in
14 May, there are only two issues raised. With respect to the height of the mechanical
15 spaces, and with respect to 82-34. It mirrors, precisely, the two issues raised by City
16 Club.

17 Extell joined in the request for expedited treatment made by the City Club and the
18 Board scheduled a hearing for August 6th, as John Low-Beer said, about a month earlier
19 would otherwise have been the case. We were served with papers by the City Club and
20 Landmark West in May, and those papers, as I just said, raise two issues and two issues
21 only. We submitted our papers on July 23rd and at the same time as DOB, and then last
22 week, two and a half months after filing our papers and a week -- two and a half months
23 after Landmark West had filed its papers, and a week after we had filed our papers,

1 Landmarks West raises, for the first time, other issues relating to the mechanical
2 equipment. And you will not find that discussion in the original papers. It was about the
3 voids.

4 And what Mr. Klein said at that time was that he wanted copies of records as their
5 receipt will go a long way in determining if and when I can submit an appropriate
6 response. Clearly, this was not about a response, as was the case in Mr. Low-Beer's
7 situation where he replied. This was not about a response. This was about whether
8 Landmarks West was going to raise a whole new set of issues and, and essentially
9 conduct, what I believe, was a kind of a fishing expedition to determine whether or not it
10 would, in fact, raise those issues.

11 My point is that Landmarks West had ample opportunity to raise these issues in
12 May, and it chose not to do so for whatever reason. And I think that this current request
13 is an effort at delay. We don't think that the appeals process should work this way. And
14 we don't think that appellants should be able to raise issued like this at the last minute.
15 And we will be prejudiced by this because this is inevitably going to result in second
16 hearings, third hearings, who knows. Precisely the result that we and the City Club were
17 seeking to avoid when we asked for expedited treatment. So I, I enjoin the, the, and
18 request that the Board not consider these issues in the manner that was suggested earlier
19 because it is the late introduction of a new issue that could have been raised back in May,
20 was not and, and should not now.

21 CHAIR PERLMUTTER: Right. So you know that we
22 can't prevent the appellants from going back to DOB from scratch and raising new issues.
23 That's not our -- we're unable to prevent that. So if they choose to do that, that's the way

1 it goes. In another case, we tried to -- there wasn't a time concern as much, so in another
2 case we pursued something, and you provided materials in order to respond to that, that's
3 your option to do that. But then that extends the hearing process and did extend the
4 hearing process.

5 MR. KARNOVSKY: Could you indulge me a little bit in
6 explaining exactly how you see this working then?

7 CHAIR PERLMUTTER: So in that other case, because we
8 could predict that the appellants were going to go back to DOB and ask for a
9 determination on, on another issue, we suggested here that you had the option of allowing
10 it to, DOB to give their testimony on the subject and then, and you responding by
11 providing the materials for us, for DOB and us to review. Right? And that was a way of
12 kind of moving those questions along more expeditiously, as opposed to having them go
13 back and starting again. And in that case, you were quite concerned and everybody was
14 willing to move that way.

15 COMMISSIONER CHANDA: Watchtower?

16 CHAIR PERLMUTTER: Yes. It was the sign --

17 MR. KARNOVSKY: This is the Watchtower,
18 Watchtower.

19 CHAIR PERLMUTTER: Yes, correct. So, but in this
20 case, you know, both you and appellants are saying that they want to move the decision
21 quickly, so my recommendation is that we just stick with these, the questions that have
22 been presented already and the papers, which are bulk packing and the subject of the
23 mechanical voids, which we've already said is issue precluded. Right? And, and then if

1 appellants are going to come back with their next challenge, that's, that's just the way it's
2 going to be, but you won't get an answer -- this way you'll have an answer on the, on the
3 first issues.

4 MR. KARNOVSKY: On the first issue. Okay. Thank
5 you.

6 CHAIR PERLMUTTER: Yeah, yeah. I, I do have a
7 question about the, the CPC report.

8 MR. KARNOVSKY: Yes.

9 CHAIR PERLMUTTER: So I was trying to, when you
10 said the subject of height was only mentioned once or something in the --

11 MR. KARNOVSKY: No. The subject of height was
12 discussed sporadically --

13 CHAIR PERLMUTTER: No, but I mean 30 stories --

14 MR. KARNOVSKY: Number of stories, yeah.

15 CHAIR PERLMUTTER: -- number of stories.

16 MR. KARNOVSKY: Page 17.

17 CHAIR PERLMUTTER: You know, I'm, I'm sort of
18 chewing gum and walking at the same time while you're talking and trying to do, check
19 the numbers, times that it's mentioned. And it, it seems like the subject of height of the
20 tower was of great concern in the CPC report. And, and, and struggling with whether
21 they actually limit the height by saying a maximum of 300 feet or 267 feet or something
22 like that. And then a decision, no that's a bad idea except for those special sites in those
23 designated location sites 1 through 4 or something like that. Right?

1 MR. KARNOVSKY: Yeah.

2 CHAIR PERLMUTTER: So, so help me with this. If the,
3 if the text were more ambiguous -- let's just, I don't know how we would phrase within
4 the district in a way that it's more ambiguous. But let's just say it would say where
5 applicable or something like that. And then with, where applicable in the district, and
6 you, and you don't really know what you mean by that because what do you mean by
7 where applicable. Because, as you say, that would apply to the R8 in the case of height
8 and setback building. Right? Then looking at the report and the concerns in the report
9 expressing, expressed about a 50-story building as being so completely out of context.
10 How, how would you respond to what this bulk packing separated from coverage is
11 doing?

12 MR. KARNOVSKY: Well, first of all. I don't think it's
13 possible to adopt a, within the Special District, interpretation that has that ambiguity.

14 CHAIR PERLMUTTER: No, I don't --

15 MR. KARNOVSKY: And so I don't --

16 CHAIR PERLMUTTER: Yeah.

17 MR. KARNOVSKY: -- think we go there --

18 CHAIR PERLMUTTER: Right.

19 MR. KARNOVSKY: -- to begin with. And I think that's
20 very fundamental.

21 CHAIR PERLMUTTER: Mm-hmm.

22 MR. KARNOVSKY: I think what the history shows is that
23 here was a very intensive effort to study a limited range of issues on a limited range of

1 sites.

2 CHAIR PERLMUTTER: Mm-hmm.

3 MR. KARNOVSKY: That's not surprising. Soft sites are
4 what rezonings tend to focus on, particularly when you're in a predominantly built up
5 area like the Lincoln Square Special District. So I think that's what was going on. But
6 the community board and others, and there's a fuller record on this in terms of various
7 stakeholders, including Landmark West, who were in favor of this, which took the view
8 that there should be this -- they wanted certainty. It should be 275 feet district-wide.

9 The Commission said, no, we've come up with this system and we're going to
10 apply it district-wide, and they only noted what it would produce, however, on the studies
11 and the site safe study. They had not, it seems to me, probably studied the fact that the
12 district has more than one zoning district designation, although they were aware of it, and
13 the report identifies the R8 as a component of the district. So our, our point is just that
14 that is not -- the fact that it may not have study, may not have studied a R8 site or a split
15 lot site does not mean you rewrite the law. If you don't like the results, you go change the
16 law.

17 COMMISSIONER SCIBETTA: If it's completely against
18 the intention of the law, then following it would not be appropriate.

19 MR. KARNOVSKY: Well, we disagree on that because --

20 COMMISSIONER SCIBETTA: Okay, so --

21 MR. KARNOVSKY: -- we've showed, I think, that
22 following this law as written in its plain language, does produce a reduction in height and
23 in the number of stories. It may not be the reduction of height and stories that the

1 appellants would prefer, but it does work. It operates -- 82-34 and 82-36 work together --

2 COMMISSIONER SCIBETTA: I guess --

3 MR. KARNOVSKY: -- reduction height.

4 COMMISSIONER SCIBETTA: Would the, is the
5 intention, is the intention a reduction in height or is the intention a much larger reduction
6 in height?

7 MR. KARNOVSKY: There's no evidence of that.

8 CHAIR PERLMUTTER: Yeah, there's, so --

9 MR. KARNOVSKY: There's one reference to -- one
10 reference. You can't find anything in the report that indicates that.

11 CHAIR PERLMUTTER: Well, there --

12 MR. KARNOVSKY: Say, say that this is an absurd result,
13 I think is really stretching it.

14 COMMISSIONER SCIBETTA: Okay.

15 CHAIR PERLMUTTER: I think the, the report does talk
16 about the concern about a 50-story building and, and talks about -- it says this would
17 produce building heights ranging on from the mid-20 to low-30 stories --

18 MR. KARNOVSKY: Yeah.

19 CHAIR PERLMUTTER: -- including penthouse floors on
20 the remaining development sites. But those are those small development sites which are
21 really little islands. Right?

22 MR. KARNOVSKY: Yeah. I would also say if this
23 building has 35 residential floor --

1 CHAIR PERLMUTTER: Mm-hmm.

2 MR. KARNOVSKY: -- it has these large mechanical
3 spaces. It is within, and you could even argue, and I think this is a good argument, that
4 it's within the range of what City Planning was predicting.

5 CHAIR PERLMUTTER: Mm-hmm.

6 MR. KARNOVSKY: 35, 35, 34, 33, I mean, you know, is
7 that what we're going to base a decision on? I don't think so. The real issue here, I think,
8 as I said at the end, is the 176 feet or total of 196 feet of mechanical space which is legal.

9 CHAIR PERLMUTTER: Mm-hmm. And I, I just want to
10 -- I'm reading some of the provisions where the word, stories, show up. The prior
11 regulations only provided for a maximum tower coverage, not a minimum tower
12 coverage. So among the many things that they were doing was making sure that at least
13 the tower takes up a certain amount of space on the zoning lot proportionate to the size of
14 the zoning lot. Right? So most of the time, 40 percent and then it goes down if the
15 zoning lot gets smaller. Right? So the, so there, they were looking at tower coverage as
16 the main control, it seems of keeping the, keeping the height down. So, so there were
17 two controls at play, tower and packing, which were both introduced as a way to keep the
18 height down. And I think that diagram, which now vanished from the screen though, is
19 interesting because it shows the efficacy of the tower, the tower coverage rule in concert
20 with the packing rule. There's a, there's a four-story difference between those two
21 buildings. So, and I think that's what Mr. Karnovsky stated, that obviously the packing
22 rule had an impact. And yeah. So, you know, and, you know, had, had City Planning
23 looked at this site, they might have come to a different conclusion in how they worded it,

1 but they didn't look at this site. Right? And they may have also assumed that this site
2 was going to be built -- that's what I'm kind of guessing is that because the site was
3 owned by Community Facility, that they were going to be building a community facility
4 tower, if anything, and then that diagram that you showed previously would have applied
5 here. Right?

6 MR. KARNOVSKY: Yeah.

7 CHAIR PERLMUTTER: Okay. Any other comments,
8 questions? Thank you. Alright. So are there any other representatives, legal
9 representatives of any of the parties, otherwise we'll move to public testimony.

10 Commissioner Scibetta: Do you want to issue a response?

11 MR. LOW-BEER: A brief response to this?

12 CHAIR PERLMUTTER: I should, this should be at the, at
13 the very end, but I'd like to take public testimony. We've been at this for quite some time.

14 MR. KARNOVSKY: Then I'd like to reserve to respond to
15 his response --

16 CHAIR PERLMUTTER: Sure.

17 MR. KARNOVSKY: -- because --

18 CHAIR PERLMUTTER: Yeah, sure.

19 MR. KARNOVSKY: To have it here and doing rebuttals
20 and replies without --

21 CHAIR PERLMUTTER: Yeah, I know. So that's the
22 other thing. The sur-replies for 30 pages and things like that, that's not okay.

23 MS. PRENGA: There are some elected --

1 CHAIR PERLMUTTER: Yeah. So elected officials,
2 please.

3 MS. ROSENTHAL: Thank you. Where should I leave my
4 copies?

5 Ms. Monroe: You can hand them to Ms. Prenga.

6 MS. ROSENTHAL: Thank you.

7 MS. PRENGA: Thank you.

8 MS. ROSENTHAL: Thank you very much. Honorable
9 Chair Perlmutter and Honorable members of the Board. I'm going to speak from my
10 heart --

11 CHAIR PERLMUTTER: State your name, please.

12 MS. ROSENTHAL: I am Helen Rosenthal.

13 CHAIR PERLMUTTER: Thank you.

14 MS. ROSENTHAL: And I represent the 6th District in the
15 New York City Council. I'm testifying today in strong support of the application filed by
16 Landmarks West to revoke the building permit for the 50 West 60th Street, 66th Street
17 development granted by the Department of Buildings April 11, 2019. I'm just going to
18 start by saying, I really understand how it feels to be the little guy, the community, the
19 people in the community here who just want to live in peace without really tall buildings
20 surrounding where they thought they were going to live in the area where the common
21 height was 23 stories. The, you know, language, zoning language is just so complicated.
22 You don't need to hear that from me and I'll wrap up by talking about a couple of obvious
23 points. But it, it is just so frustrating to be a common resident. And I just want to share

1 that with you. I've sat on your side as a community board chair, but boy, this is, this is
2 truly overwhelming.

3 As I and other local elected officials have pointed out repeatedly, the burd-, the
4 building permit relies on a flawed interpretation of the zoning resolution. This
5 development simply does not conform with the zoning regulations or intentions of the
6 Special Lincoln Square District. In 1993, the City Planning Commission, as we've just
7 discussed, created rules for the Special District, which essentially limit buildings to their
8 mid-20 and low-30 stories in height by controlling their floor area and footprint. And I'll
9 note that at that time, we did not have the technology that would make it so it is not cost
10 prohibitive to build a 1,000-story building, which is the case now, but wasn't the case
11 then.

12 The rules require that 60 percent of the building's floor area be located below 150
13 feet, and each floor above 85 feet occupy a minimum footprint. These two provisions
14 work as intended to restrict height only when they are both applied to the same zoning
15 lot. The developer's decision to apply his tower coverage in bulk distribution calculations
16 inconsistently across a split lot contradicts both the letter and the spirit of the Special
17 District regulations in the zoning resolution. It's so frustrating to hear Extell talk about
18 the -- what are they called? The appellate, appellate -

19 CHAIR PERLMUTTER: Appellant.

20 MS. ROSENTHAL: Appellant. Sorry. I'm not a lawyer.

21 Master's in public health. To say that they're, you know, throwing ideas to see what
22 sticks -- it's, they're throwing ideas against a developer that similarly is picking and
23 choosing when and where to apply certain of the zoning district regulations and the

1 zoning resolution. And it raises real questions about the integrity of the land use process
2 overall.

3 Secondly, the City's negotiated settlement with this developer flies in the face of
4 the recently approved text amendment that caps mechanical void spaces at 25 feet and
5 requires voids be no less than 75 feet apart. I hear you're not going to look at that. But
6 again, from the perspective of a lay person, it's pretty remarkable, the timing of reviewing
7 those mechanical void spaces and the timing of this application, you know, leaves us
8 disappointed at how slow the process works for the community. As currently planned,
9 this building will have 239 feet, almost 24 typical stories of vertical void space, 196 feet
10 of which are supposedly intended for mechanical purposes. And, in truth, these voids are
11 not used for mechanical equipment at all, nor are they accessory uses to the residential
12 space in the building. And, in fact, the Fire Department had to go back and work with
13 City Planning and the build-, DOB and the developer to make sure that that mechanical
14 void spaces would be tolerable for the Fire Department should they be in a situation when
15 they're running up these floors. Again, back to this point that technology has allowed us
16 to build so tall, but it doesn't necessarily mean that it is in the spirit of what the public
17 needs and desires. This continues Extell's pattern of incomplete and inaccurate
18 information.

19 For well over two years, my office and the surrounding community has been
20 pushing for transparency about what would be built at the site. And, as you know,
21 despite their initial filing plans for a 25-story building, interestingly, at roughly 250 feet,
22 in 2016 the developer sought and has received approval for what his true intention has
23 always been, a 775-foot building remarkably only 39 stories tall.

1 Fully enforcing the Zoning Resolution is beyond critical. The public interest is
2 not served when developers selectively follow regulations in a way which undermines
3 their clear purpose. Similarly, the Special Lincoln Square District guidelines were
4 specifically created to control building heights. If the City wishes to revisit this public
5 policy goal and eliminate the Special District, the public is entitled to a straightforward
6 and thorough discussion. And essentially dismantling the Special District through
7 selective permitting decisions is disingenuous at best. By revoking the permit for 50
8 West 66th Street, the BSA will taking a strong step toward ensuring the integrity of the
9 land use and development process in New York City. Look, in plain language, even the
10 City Planning Development document itself said it expected that the height here would be
11 no more than mid-20s to mid-, low-30 stories. And even if you bastardize what height is
12 of a story and use mechanical voids, we're not even in there. We're at 39 stories.

13 I think we're being a little -- I think the developer is being a little flip with what is
14 intended to be law that, I believe, was meant to ensure that the district around Lincoln
15 Center would be free and clear of 80-story buildings, which is what this is. Thank you
16 very much.

17 CHAIR PERLMUTTER: Thank you very much.

18 COMMISSIONER SCIBETTA: Thank you.

19 CHAIR PERLMUTTER: I just want to kind of clarify
20 what the role of the BSA is. I know you're not a lawyer --

21 MS. ROSENTHAL: Fair.

22 CHAIR PERLMUTTER: -- so that's, that's, you know, the
23 part that's difficult for people who aren't, say, land use wonks, like, legal wonks. So, so

1 the BSA's job is, is actually to, in interpretative appeals, is to review decisions by the
2 Department of Buildings, but for one, it's the Department of City Planning that drafts the
3 zoning regulations based on its studies and, as you know, the City Planning Commission
4 then approves them and then City Council ultimately is the decider of whether it finally
5 goes forward. Right? Or it gets modified. So, and then the Department of Buildings is
6 just there to interpret the regulation. Right? And when there's a disagreement about how
7 DOB has interpreted the regulation, then it comes to the BSA for us just to essentially run
8 a check that they interpret it reasonably. Is it, is it fair? Because we can't legislate. We
9 can't be the ones who say, you know, I mean, we've seen this in several recent cases. We
10 appreciate where the community's coming from about whichever subject and we
11 appreciate that the zoning resolution probably should have dealt with that issue. But we
12 can't make the zoning resolution deal with that issue. We can only look at whether it's
13 handling it now. And if it's not handling it, then it's for City Planning to handle it.

14 So on the subject of the mechanical voids, obviously, City Planning realized that
15 there is this -- excuse the pun -- but void in the Zoning Resolution that was allowing
16 something it could never have anticipated happening when it, when it wrote the
17 regulations. Right? So, so there's that part of it. And so, I do want to say that a lot of
18 this is, is about what we interpret, what we view Department of Buildings' job is and
19 whether Department of Buildings has done the correct job. And then if there's a problem
20 and City Planning is directed to address the problem, then it should be dealing with that
21 in legislation. So, so that's part of it.

22 MS. ROSENTHAL: I really -- yeah. With all due respect,
23 I appreciate that.

1 CHAIR PERLMUTTER: Mm-hmm.

2 MS. ROSENTHAL: And, and we all know -- we all know,
3 as residents, that at the end of the day, that's what's going to happen. We're very well
4 aware.

5 CHAIR PERLMUTTER: Mm-hmm.

6 MS. ROSENTHAL: What I'm doing is reminding the BSA
7 that for three years, we've been trying every angle possible to our ability to deal with
8 really, fundamentally, a disingenuous developer. We wrote op-eds. We pushed hard for
9 DOB to relook at the paperwork. We sued at every level. And here we are at the end
10 and, of course, of course you're right. So, so why are we all standing here if its futile?

11 Couple of things. One is that it's critical for the public -- there are a couple of
12 reasons. One is to reiterate the injustice of it. Simply that. You know, in the 19-, what
13 was it '30s, '40s -- and I apologize that I'm, I'm sure I will be attacked for this -- but, you
14 know, when black people tried to vote, they were first told they had to learn how to sign
15 their name. Right? When they learned their name, all of a sudden the criteria changed.
16 You have to be able to count the number of marbles in this jar. From the perspective of a
17 constitu-, of a resident, someone who lives there, it's like the criteria is always changing.
18 And even when you meet the criteria, the rules of, you know, well, the rules, the void,
19 mechanical voids, that was changed last month not in time. And, you know, it's exactly
20 why all these rules, arcane rules that are set up are exactly why so many people are held
21 back. It's why there are only 12 women in the New York City Council out of 51. And
22 it's why the poor and less educated people will always be at the mercy of the .01 percent.
23 And I'm just, I'm here reiterating that for the last three years, as a community, we have

1 fought really hard. We have tried every avenue. We've tried to close a loop hole. Now,
2 it turns out, we closed it too late. It's really frustrating. So that's the best I got.

3 CHAIR PERLMUTTER: Thanks very much.

4 MS. ROSENTHAL: Thank you.

5 CHAIR PERLMUTTER: Any other elected officials?

6 MS. BREWER: Thank you very much. I am Gale Brewer,
7 Manhattan Borough President. And I hope that I don't fall into the same trap. But I will
8 say that little unknown fact, Department of Buildings and City Planning Commission
9 don't always talk. So that's a problem that you can't solve, but it is a big one so.

10 I am here to oppose the construction of this project at 50 West 66th Street as
11 designed. Much has been reported about the unprecedented height of the mechanical
12 floor. Some call it a mechanical void. On May 29, 2019, as you know, the City Council
13 approved an amendment to the Zoning Resolution to address mechanical voids. That
14 amendment may affect this project, as you know.

15 In addition, FDNY raised safety concerns about the developer's initial 160-foot
16 mechanical floor. The developer addressed these concerns in part by subdividing that
17 mechanical portion of the building into three contiguous floors. Those floors are still too
18 tall. In fact, at a collective 176 feet, they are 16 feet taller than the original mechanical
19 floor. However, leaving aside the mechanical void text amendment and the measures the
20 developer took to address the Fire Department's concerns, this proposed building raises
21 specific critical zoning issues.

22 First, there is a question about whether or not this space is truly being used for
23 mechanical equipment. In total, the proposed mechanical floors in this tower will add up

1 to 229 feet, nearly one-third of the building's overall height. I've yet to hear of a building
2 that needs that much mechanical equipment. What will likely be above the mechanical
3 equipment on these floors is a great deal of empty space, a void. This empty space does
4 not adhere to Section 12-10 of the zoning resolution.

5 Second, the tower cover and bulk packing rules are established by Sections 82-36
6 and 82-34 of the Zoning Resolution, the ZR. The area of this building occupies two
7 zoning districts. The developer has chosen to use a larger portion of the merged zoning
8 lot to pack more floor area at the base of the tower. Tower itself is configured to rise on
9 the smaller portion of the lot, enabling the developer to pack more FAR at the top of a
10 narrow envelope of excessive height. The tower coverage and bulk packing rules were
11 enacted specifically to ensure predictable, contextual building heights. The developer's
12 incorrect interpretation, in my opinion, of these zoning requirements has resulted in a
13 significantly taller building than would otherwise have been allowed. The developer
14 needs to follow both the letter and the spirit of the law and apply it to the entire lot area as
15 intended by the zoning. By any reasonable measure, I think, the empty half shell that
16 forms the core of the tower is subterfuge. It is not a mechanical void as defined by the
17 Code and the BSA should not allow it to become a precedent, I think.

18 We cannot permit the construction of development and evade the intent of the
19 Zoning Resolution. The developer needs to follow the rules. The BSA must rule that
20 tower coverage, I think, bulk packing, and the design of mechanical space must conform
21 to existing rules before projects are approved. Thank you very much.

22 CHAIR PERLMUTTER: Thank you. Any other elected?
23 Any other elected officials?

1 Ms. Prenga: Or representing an elected official.

2 MS. LETTERY: Hi. My name is Kaitlin Lettery

3 [phonetic]. I'm here representing Assembly Member Linda Rosenthal. So I'll be reading
4 her testimony.

5 I'm Assembly Member Linda B. Rosenthal and I represent the Upper West Side in
6 Hell's Kitchen and the New York State Assembly. As a longtime opponent of
7 overdevelopment and an outspoken critic of zoning lot mergers that have heretofore,
8 heretofore allowed the construction at 200 Amsterdam to continue in my district, and the
9 author of state legislation to close the mechanical void loophole, I strongly urge the New
10 York Board of Standard and Appeals to appeal NYC DOB Extell proposal at 36 West
11 66th Street. Extell has reserved an astounding and excessive 161 feet of interbuilding
12 space for mechanical infrastructure. Knowing that mechanical void space is not counted
13 toward total building floor area ratio, Extell is attempting to circumvent the letter of the
14 law to stretch the building height so that units above the void will have better, access to
15 better views and thereby fetch higher prices on the market.

16 Earlier this year, the City Council passed a local law to clarify the law on void
17 space and set clear limits on the amount of space within a building that can be used
18 before counting toward the FAR. While I and more than 30 of my colleagues in the state
19 legislature who represent parts of New York City do not believe the council effort went
20 far enough. The effort did not -- did clarify the intent of local lawmakers to circumscribe
21 the kind of development. BSA cannot allow plans for development so contrary to the
22 spirit of the Zoning Resolution to move forward. Doing so would signal the developers
23 that they could calculatedly flout the zoning rules so long as the plans are filed within a

1 certain timeline. As if that weren't enough, to add 160 additional feet of empty space to a
2 building, Extell also proposed to use a series of other developers' trick to do an end run
3 around zoning rules. The zoning lot merger that Extell utilizes to cobble together
4 development rights enabling it to achieve its current 775-foot height violates the rules of
5 the Lincoln Square Special District, which limits building height to approximately 30
6 stories by controlling FAR. By merging zoning lots and selectively applying the Special
7 District rules to different lots, Extell is constructing a building much taller than what
8 would have been permitted if it had followed the rules of the Special District.

9 In addition to the obvious developer overreach, the building represents the kind of
10 shortsighted urban planning that New York City must abandon. The zoning rules are not
11 in place -- are not just in place to protect our access to light and air, two precious
12 commodities in a concrete jungle, but also to ensure that all development is contextual.
13 A 775-foot tower may make sense for midtown, but not for the middle of a much more
14 residential Upper West Side. Development of this scale will have a tremendous and
15 unplanned for impacts on local infrastructures such as local schools, transportation, super
16 markets, and sidewalks, just to name a few.

17 Rubberstamping the plans for this development now doesn't just allow
18 construction at the site to move forward, it broadcasts to developers citywide that BSA is
19 weak and when challenged, will not -- will stand with developers who have violated the
20 letter and spirit of the law, and not the people in the communities it should serve. All
21 across the City, people are rising up against the kind of system a broken government
22 where wealthy and well-connected continue to chart their path like manifest destiny while
23 the rest of us are left holding the bag full of consequences. New York City has been

1 struggling through an affordable housing crisis that has left more than 60,000 people and
2 so many children living on the streets every single night while thousands of others
3 struggle to pay rent and put food on the table.

4 And despite these grim statistics, we are here fighting to stop a building with 16
5 stories of empty space. This space could be used to provide homes to the hardworking
6 New Yorkers, but instead, it's being used so the residents on the top floors can literally
7 look down on the rest of us from penthouses in the clouds. There are few dichotomies
8 that more clearly and sadly embody the Tale of Two Cities narrative that city hall has
9 sworn to fight against.

10 I thank you again for the opportunity to testify. And again, renew my request that
11 the BSA reject this proposal at 36 West 66th Street.

12 COMMISSIONER SCIBETTA: Thank you.

13 CHAIR PERLMUTTER: Thank you. Please refrain from
14 clapping, pleas. It will take a long time. The next speaker please.

15 MS. MONROE: I think we're done with electeds.

16 CHAIR PERLMUTTER: Yeah, I think we're done.

17 MS. MONROE: If there are members of the public who
18 wish to testify on these applications?

19 MS. PRENGA: We have a sign-in sheet. Should I read
20 from the sign-in sheet?

21 MS. MONROE: We're at almost hour 3. Can we just like
22 start lining up and talking?

23 MS. PRENGA: Just state your name.

1 MS. MONROE: Yeah. State your name before you start.

2 You have three minutes.

3 CHAIR PERLMUTTER: I'm sorry. Could people who
4 want to speak line up on the ramp so that we can move this along? You have three
5 minutes.

6 MS. SIMON: Good afternoon. My name is Arlene Simon.
7 I am one of the appellants in the City Club lawsuit. I have -- I, I'd like to just deviate
8 from my statement a little. I will deviate from my statement for just a moment. Amazed
9 that I stand before you looking back and remembering Landmark West's hard fought
10 battle almost 30 years ago. Nothing has changed. I have lived on the Upper West Side of
11 Manhattan since 1960, and since 1969, on West 67th Street, one block away from the
12 Extell project. I founded Landmark West in 1985 to preserve endangered landmarks and
13 to protect a treasured neighborhood from inappropriate overdevelopment.

14 The Upper West Side is a vibrant diverse human scale community. I was
15 president of Landmark West from 1985 to 2016. In that capacity, in 1992/93, we fought
16 to block construction of the Millennium Tower, a 545-foot tower on Broadway and 67th
17 Street, a block and a half from the Extell tower. We worked with other civic
18 organizations, including the Municipal Arts Society in the fight to amend the Zoning
19 Resolution to prevent similar outsized towers in the future. And then, as then Borough
20 President Ruth Messinger stated in her reports on the zoning amendments, Landmark
21 West funded Michael Kwartler's new school, Environmental Simulation Center's work
22 with the Department of City Planning. That work created the simulation of minimum
23 tower coverage and bulk packing. That work resulted in the tower on base rules at issue

1 in this case. Let me emphasize. Again, let me emphasize it was understood by everyone
2 involved in the process at the time, everyone, that the new rules would limit building
3 height to the low 30 stories as stated in the City Planning Commission's own report.
4 Landmark West and the other civics advocated strongly for an absolute height limit.

5 CHAIR PERLMUTTER: If you could wrap up. Your three
6 minutes are up.

7 MS. MONROE: If you could wrap up your comments.

8 CHAIR PERLMUTTER: You can submit your comments
9 to the desk and we will read them, but your three minutes are up.

10 MS. SIMON: I'm sorry?

11 CHAIR PERLMUTTER: Your three minutes are up. You
12 can submit your comments.

13 MS. SIMON: Okay. I'm just almost finished. But City
14 Planning assured us that the new rules would work just as well. One look at the City
15 skyline today and Extell's plans shows that we were right and City Planning was wrong.

16 CHAIR PERLMUTTER: Ms. Simon, please --

17 MS. SIMON: [A few more words and that's it. But beyond
18 that, neither we nor anyone else anticipated the shenanigans that Extell is pulling here.
19 The building is not human scale as a matter of law, common sense and a decent regard
20 for a culture and future. It should not be built.

21 CHAIR PERLMUTTER: Thank you.

22 MS. MONROE: Next speaker please. Please refrain from
23 clapping. We're trying to keep the hearing moving. You can snap, but please don't clap.

1 Thank you.

2 MS. COWLEY: Good afternoon. Thank you very much
3 for this opportunity. I'm here today --

4 CHAIR PERLMUTTER: State your name, please.

5 MS. COWLEY: I'm Paige Cowley, an architect and also
6 chair of the wonderful organization I inherited through the Simons, representing CB7. I'm
7 hoping my three minutes starts now. This --

8 CHAIR PERLMUTTER: What organization? Sorry.
9 Chair of?

10 MS. COWLEY: Landmark West. But today, I'm reading a
11 statement relating to Community Board 7. We've been looking at this also for three
12 years. So my three minutes, I hoped will start now.

13 We have, on many occasions, over the last three years, generated various
14 resolutions about this project. We've noted that the proposed tower would generate
15 oversized shadows onto Central Park, would be dramatically out of character with the
16 existing cityscape. We also noted the excessive height of the proposed tower provided no
17 compensating benefits in terms of increased housing stock, as most excessive height
18 would be consisting of voids. We've read the brief by Klein Slowik for Landmark West
19 opposing the tower and are in full agreement.

20 And very quickly, two important facts. One, provisions of the zoning resolution
21 governing bulk packing and tower coverage were enacted in response to the then
22 anomalous Millennium 1 building. I won't mention that in any greater detail. The clear
23 and express intent of these rules was to require at least 60 percent of the floor area in R10

1 or R9 zone in the Lincoln Square Special District. I disagree with Mr. Karnovsky here
2 with all the diagrams. To be honest, it's chicken soup, alphabet soup there in trying to
3 determine what is practical. You can make any of these calculations comply if you study
4 them hard enough and bend the rules. These requirements were obviously intended to
5 restrict building heights.

6 On to point number two, and again, I have the full text for your review. In
7 addition to perverting the bulk packing and tower coverage rules, the developers achieved
8 much of the height of its proposed building by the simple expedient of creating 196
9 vertical feet of essentially voids. Obviously, these spaces do not contribute, and again, I
10 won't belabor that. You've heard enough and you will hear more.

11 It is our understanding that every structure in this City must comply with the use
12 group resola-, regulations contained in the zoning resolution. The only uses permitted in
13 the tower portion of an R10 structure are residential or accessory to residential. There is
14 no use group designated as void. That's really important. This is something that we
15 hadn't anticipated years ago when the, when the writers of the code had anticipated
16 technology, voids, view corridors, money, or where we would be. But now the world
17 has changed and now we're asked, we're told to we have -- that we need to accept this and
18 not listen to the public who live in these neighborhoods.

19 Lastly, while necessary space for mechanical equipment is clearly accessory,
20 unnecessary height of these spaces is not. From the standpoint of the surrounding
21 community, these voids constitute waste whose only function is to reduce light, air, and
22 create an eyesore.

23 We respectfully urge the Board of Standards and Appeals to disallow a permit, a

1 building permit for 36 West 66, unless the developer submits plans that conforms to the
2 Zoning Resolution and actually addresses some of the concerns of the community so
3 these types of buildings can be curbed. Thank you.

4 CHAIR PERLMUTTER: Thank you.

5 MS. MONROE: Next speaker, please.

6 MR. HARWAYNE: Good afternoon. I'm Michael
7 Harwayne, an Upper West Side resident and head of the real estate committee for
8 Congregation Habonim, an 80-year old treasure of our neighborhood. I'm here to make
9 sure you're aware that there are many residents of our neighborhood who are not only in
10 favor of this building, but are counting on it being built in a timely way. Thank you for
11 this opportunity to testify with regard to the appeals pending before you.

12 I urge the BSA to help us protect our only option for a new permanent home for
13 our synagogue and nursery school by allowing construction of 50 West 66th Street to
14 proceed as currently planned. Please do not allow the appeals to stop this development
15 and thereby prevent us from returning to our home on 66th Street.

16 Congregation Habonim is currently in a temporary location that cannot
17 accommodate our needs, is draining our resources, and is not a long-term solution. We've
18 invested significant time and resources to advance plans for a new permanent home in a
19 condo unit that we will own on the ground floor, basement, and outdoor space of the as of
20 right building currently being constructed at 50 West 66th Street. I've been working on
21 the plans for our new home for seven years with other members of our community and
22 outside professionals hired by Habonim.

23 Our plans include a beautiful new synagogue with a large sanctuary and smaller

1 chapel, a school with seven new classrooms for preschool and school-aged children, and
2 adult education, and a programming and events space, all of which will serve the Upper
3 West Side. If construction on this site is not allowed to proceed, our congregation will be
4 irreparably harmed and we will be left with no alternative for a permanent home on the
5 Upper West Side.

6 I'd also like to specifically address some comments we've heard from those who
7 believe we should just hope that the developer of 50 West 66th Street will revert to its
8 obsolete plans for a 25-story building on part of the current site. The simple fact is that
9 this is not a feasible outcome. We've been following this story closely. The developer
10 originally owned a smaller piece of land on West 66th Street and filed plans for a
11 building appropriate for that site in 2015. Well, in November of 2017, the developer
12 acquired the adjacent Guild for the Blind building on 65th Street, doubling the size of the
13 land and the developer then amended his plan to a larger building designed for this larger
14 site. An enormous amount of design and construction work has been done for this larger
15 building, which is as of right, and Congregation Habonim has invested significant
16 resources planning for its new home in reliance on the City's approvals of this Building.
17 We can't just wish for a smaller building that will never be built. That is not a solution
18 for our congregation, and will only put our very existence in jeopardy.

19 What we can do is ask the BSA to respect the well-considered decision of the
20 DOB for 50 West 66th Street and allow this project to proceed as currently planned. That
21 is the only option that will enable Habonim to build our beautiful new home and continue
22 serving hundreds of families on the Upper West Side. Thank you.

23 CHAIR PERLMUTTER: Thank you.

1 MS. PRENGA: Can you please come and sign in. Thank
2 you. Oh, you did?

3 MS. MONROE: Next speaker, please.

4 MS. WITKOFF: Good afternoon. I am Elaine Witkoff, an
5 Upper West side resident for 26 years and a member of Congregation Habonim. The
6 synagogue founded in 1939 by Jewish refugees from Nazi Germany, exactly one year
7 after Kristallnacht, the night of broken glass, where Jewish homes and stores were
8 ransacked, synagogues were burned and Jewish men were arrested.

9 I was the president of Habonim when we began the difficult search for a new
10 home seven years ago. We were in dire financial straits in a crumbling building built in
11 the late 1950s that we had outgrown. Today, we stand ready to make a positive addition
12 to the Upper West Side by building a brand new synagogue and school on the ground
13 floor of the building under construction at 50 West 66th Street. Thank you for this
14 opportunity to testify.

15 I am here to make the BSA aware of a serious potential consequence of the
16 current appeals should they be granted and the building permit revoked. We're not
17 involved with the development of this building, but our future depends on its continued
18 construction. If the DOB approval of the project at 50 West 66th Street is invalidated,
19 Congregation Habonim will lose our only viable option for a permanent home. We urge
20 the BSA to help us save our synagogue by allowing 50 West 66th Street to continue
21 construction as approved by the DOB and proceed as currently planned.

22 Congregation Habonim is an egalitarian conservative synagogue serving hundreds
23 of families. Our religious school and nursery school have educated thousands of Upper

1 West Side children. Congregation Habonim is currently in a temporary rental location
2 that just simply cannot accommodate our needs. This year, we turned away 18 nursery
3 school families, nearly one-third of our enrollment who we could not accommodate.
4 However, we will be able to serve these families in our new home at 50 West 66th Street.
5 We have invested seven years and significant resources in our dream for a new
6 permanent home. And if this project is stopped, we have nowhere to go.

7 Using this appeals process to stop construction at 50 West 66th Street now, puts
8 the future of our congregation in serious jeopardy. We were distressed to see that these
9 appeals could be used to halt the current plan for 50 West 66th when enormous amount of
10 design and construction work has already been done. Indeed, in our current lobby, we
11 have beautiful renderings of our future home on display to buoy our members' hopes
12 about our wonderful future. If construction is not allowed to proceed, our congregation
13 will be left with no other feasible option for a permanent home on the Upper West Side.
14 Without Congregation Habonim, our neighborhood would lose its only conservative
15 synagogue. We do not want to become collateral damage in the current appeal process.
16 We ask you to please save our beloved synagogue by respecting the careful review of this
17 project -- review this project underwent at the DOB and allowing this project to proceed
18 as currently planned, thus enabling Congregation Habonim to build our beautiful new
19 home and continue serving hundreds of Upper West Side families. Thank you.

20 CHAIR PERLMUTTER: Thank you. Next speaker,
21 please.

22 MR. GRUEN: Good afternoon. My name is Michael
23 Gruen. I'm the president of the City Club of New York, one of the appellants. I have

1 very little to say. I want to acknowledge and thank our very fine attorneys for the
2 excellent work that they've done on this to express our total agreement with their
3 position. Second, I was somewhat surprised to hear in the course of the hearing, not only
4 from parties, but from some of the members of the Board that there is a rule that requires,
5 in the case of ambiguity or uncertainty about the meaning of the statute requires that it be
6 interpreted in favor of the owner. I, I won't express an opinion on that now, but I do want
7 to express my gratitude for the Board's offer to, of an opportunity to respond to that and
8 other issues in the next near term. Thank you very much.

9 CHAIR PERLMUTTER: Thank you. I just want to clarify
10 that point. It's construed in favor of the owner where there's a tie on the two sides of the
11 interpretation, not where there's a kind of an absurd reading versus a reasonable reading.
12 Okay? Where it's a tie.

13 MR. GRUEN: Thank you.

14 MS. PRENGA: Can you please sign in? Sir?

15 CHAIR PERLMUTTER: Next speaker, please.

16 MR. RAUDENBUSH: Hello. My name is William
17 Raudenbush. I'm the vice president of CFESD, which is the Committee for
18 Environmentally Sound Development. We are the appellant on the 200 Amsterdam case.
19 And I wanted to illuminate, mainly to the public, and support our city councilperson
20 Helen Rosenthal in what she said is a frustrating process, and illuminate to you why this
21 is such a frustrating process, and what's going on behind the scenes that make it such a
22 frustrating process.

23 Under the guise of the LLC that's currently developing this project, extensive

1 lobbying was done --

2 CHAIR PERLMUTTER: Please ad-, please address the
3 Board and not the audience.

4 MR. RAUDENBUSH: It was done -- extensive lobbying
5 was done. It was done about mechanical voids and the process at City Planning which
6 may, this may ultimately come to. Now wrap your heads around this. Ten members of
7 Department of Buildings and eight members of FDNY were lobbied extensively during
8 this entire process. FDNY, you know, our bravest, that lobbied about the possible safety
9 to these mechanical void issues. And I couldn't find a single engineer, fire engineer in
10 the entire country, and I called several, that could justify putting an auditorium, empty
11 sized, empty size space below a bunch of residences high up in a tower. Now, I
12 understand that's not before this Board, but frankly, the kind, the amounts of lobbying,
13 the access that the developers have that members of the public do not have in these
14 agencies is a complete ethical outrage. We need to raise these standards and the
15 developers, I have to tell you, if you thought the rent laws hurt up in Albany, just wait
16 until this event, until this kind of thing reaches Albany because it's going to be a lot
17 worse than it could if we just simply step back and have good faith on the kinds of
18 decisions we make and how, take both sides evenly and equally. Thank you very much
19 for your time.

20 COMMISSIONER SCIBETTA: Thank you.

21 CHAIR PERLMUTTER: Thank you.

22 MS. MONROE: Next speaker, please.

23 CHAIR PERLMUTTER: Please --

1 MS. MONROE: Go ahead.

2 MR. DILLER: Good afternoon. My name is Mark Diller
3 and I'm sorry to take a moment to tell you who I'm not before I tell you who I am. I am a
4 member of Community Board 7, and I am also a member of the New York City Civic
5 Engagement Commission, but I'm here solely on my own capacity today, so please don't
6 hold anything I say against either of those two wonderful bodies.

7 And I'm here in another attempt to invoke the community interest and perhaps to
8 give a mechanism for that to be implemented. Ambiguity should be evaluated in context.
9 And I understand that one of the issues before you is whether a statute that may appear to
10 be clear is, in fact, ambiguous in the context in which it is being applied. I understand the
11 admonition that Chair Perlmutter voiced before that the courts look to the BSA and say, if
12 I'm quoting you correctly, come on, BSA, what were you thinking. I suggest to you that
13 that same standard should be applied in evaluating the word, ambiguity, when
14 approached by the context of what the community will say when the decision is rendered.
15 Whether this is a sensible application of the law, and if the, if the standard is ambiguity,
16 then any good lawyer that I know can find a way to make sure that that word means what
17 we all think it means, and that shorn of, shorn of embellishment, and the, the absurdity of
18 a result that produces a building that because of the way in which the zoning resolution
19 was written 50, 60 years ago could not have anticipated the way in which it is being
20 applied today, should be the vehicle for finding that, finding that, finding that ambiguity
21 that allows us to open this up and say, is this what the folks really meant when they
22 talked about stories because they didn't have in mind the technology that today creates
23 opportunities that were not in the contemplation. I'll leave it there.

1 I think that that is the vehicle by which a just result for the community, so that the
2 community doesn't turn to you all and to us in the Community Board and to those in
3 between and say, what were you thinking? Thank you very much.

4 CHAIR PERLMUTTER: Thank you.

5 MR. GIORDANO: Hi. Chris Giordano, West 64th and
6 67th Streets block association. Thank you, Chair Perlmutter and Board for hearing our
7 community's concerns, giving us an opportunity to share this with you.

8 So in 1992, I moved next door to the Jewish Guild for the Blind, which was a
9 great institution that served, not just our neighborhood, but the entire city. Now, I live
10 next door to a construction site. In 1993, the Lincoln Square Special District zoning
11 resolution was established, and as we've heard repeatedly, at that time, City Planning
12 stated the controls in place should predictably regulate the heights of new development
13 and that these controls would sufficiently regulate the resulting building form and scale,
14 even in the case of development involving zoning lot mergers.

15 While we find Extell's midblock development a 775-foot tower twice the height
16 of surrounding buildings with about 240 feet of void space and only 127 apartments
17 anything but predictable, we, we do find it ironic that Extell's lawyer was part of the City
18 Planning team that established that framework and controls for predictable and reliable
19 development when the Special District was created.

20 We have asked the question, what is the benefit to the community? Why should
21 this Special District Zoning Resolution be set aside for this development? Even City
22 Planning called it egregious and obscene when we met with them last September. And
23 yet, our experience has been that the Department of Buildings will stamp a ZD1

1 regardless of an existing zoning resolution or loopholes or fire safety concerns, leaving
2 the community in the dark trying to defend interest it thought it had already defended.
3 Further, to the benefit of the community question. Even though it's been the
4 administration's, this administration's expressed intent, we see no integrated planning, no
5 housing affordability, no financial benefits, negative environmental impacts and safety
6 concerns, land use reviews that were too little too late, and a lack of adherence to the
7 data. But ultimately, we've heard a lot of lawyers talking about zoning. I am not a
8 lawyer. I'm not a zoning expert. But as a member of the community, ultimately we see
9 this as a moral issue. We don't want to be judged by history as a society that allowed
10 buildings to be built by exploiting rules and bringing no value to the community that they
11 sit in. Thank you.

12 CHAIR PERLMUTTER: Thank you. Next spea-, please
13 refrain from clapping.

14 MS. MONROE: I did say they could snap.

15 CHAIR PERLMUTTER: Oh, they cou-, she said you
16 could snap. I'm sorry.

17 MS. SHUB: Hi. My name is Stacey Shub. I live down
18 near the South Street Seaport and am a member of Seaport Preservation with a bit of a
19 cautionary tale.

20 I've lived here in the South, historic South Street Seaport for over 20 years and
21 every day I'm watching as developers are buying, stealing my sky, my light, and the
22 history of my neighborhood. Fulton Street is a perfect example, and a warning. Fulton
23 Street was supposed to have been wider than it actually is. It was never widened, but

1 they're sticking with the regulations for what should have been. So now that they've
2 started with tall towers, there's a precedent. The horse has left the gate, so to speak, and
3 they continue to get taller and taller. At this point, if I wanted to see the sky, would
4 practically have to lie on my back and look straight up. To see the impact of an Extell
5 tower, I ask you to walk through Chinatown, Little Italy, or the historic South Street
6 Seaport as it looms over everything. With its very privileged residents, it casts large
7 shadows on the Section 8 housing below. It's only 50 percent to capacity, largely
8 inhabited with people who only live here part-time, many of whom are foreign nationals
9 looking for an investment and a view. They don't send their kids to our schools and they
10 don't contribute to the community.

11 These outside buildings replace, at their base, the local mom and pop businesses
12 that keep the neighborhoods affordable and safe, where everyone knows everyone, the
13 tailor, the bodega, keep an eye on our neighborhood kids, are being replaced by big box
14 stores, chains or enormous vacuous lobbies. Affordable housing is lip service. I've
15 observed a few low income units being added to these buildings, while the rents in the
16 remaining housing stock skyrockets, forcing low income people to leave.

17 The fact that they are destroying the historic South Street Seaport and their
18 enjoyment of the street of our beloved Brooklyn Bridge and our waterfront as evidence
19 by recently Howard Hughes Corporation shuttering Pier 17 to the public for a private
20 event on 4th of July in violation of the ULURP. To think that they'll be killing the
21 history down here, the birth of New York City and replacing with purely high end
22 entertainment, even renaming it the Trendy Seaport District is depressing and frustrating.
23 But to see that they will now be doing this to a national treasure, the living, breathing

1 Central Park, is unconscionable.

2 And if I'm not mistaken, although you mentioned this isn't your role, don't quote
3 me. But I believe the judge in the two bridges case granted a stay saying just because
4 something is allowed to be built doesn't mean that it should.

5 CHAIR PERLMUTTER: We're not a court, by the way.
6 Just letting you know.

7 MS. MONROE: Next speaker, please.

8 MS. PRENGA: Excuse me, can you come sign in?

9 MS. WALSH: Good day to Chair Perlmutter and
10 Commissioners. I'm Blair Walsh speaking on behalf of the New York Landmarks
11 Conservancy. For nearly five decades, the conservancy has been dedicated to preserving,
12 revitalizing and reusing New York's buildings and neighborhoods.

13 The current proposal for a 775-foot tower at 36 West 66th Street would set a
14 reckless precedent and we ask you to support the challenges to its building permit. The
15 Department of City Planning established amendments to the Special Lincoln Square
16 District in 1993 exactly to address out of scale buildings in this area. The amendments
17 include measures that spread bulk across a lot and define a range of tower coverage, used
18 in tandem, they maintain existing scale. The proposal for 36 West 66th Street delinks
19 those rules to push bulk into one small part of the site. Then it doubles down with a 160-
20 foot tall mechanical void that appears to exist primarily to boost the building's height.
21 This maneuver was so egregious it inspired the Department of City Planning to amend
22 the Zoning Resolution earlier this year and set limits on voids.

23 Skyscrapers are a part of New York's character and heritage, but their owners

1 need to follow the same rules as everyone else. The zoning resolution is supposed to
2 create predictability for all New Yorkers and blatant attempts to manipulate the system
3 should not be rewarded. We urge the BSA to support appeals from Landmarks West and
4 the City Club of New York which challenge the validity of the building permit for 36
5 West 66th Street. Thank you for the opportunity to present the Conservancy's] views.

6 CHAIR PERLMUTTER: Thank you.

7 COMMISSIONER SCIBETTA: Thank you.

8 MS. MONROE: Next speaker, please.

9 MR. KHORSANDI: Good afternoon, Commissioners.

10 Sean Khorsandi for Landmark West. And Landmark West is grateful to finally be able to
11 address this development issue in a public forum.

12 For the first time, neighbors, advocates, the community board and electeds who
13 have remained completely shut out of a behind the scenes whodunit, as of right, none of
14 your business while they dominate your neighborhood development will, after more than
15 four years and at least one bait and switch placeholder building, for the first time, have an
16 opportunity to be heard and considered by a deciding public agency.

17 Should this be at the BSA? Likely not. City Planning, the Agency, has said they
18 are "not happy about it," referring to the site as obscene, has otherwise been silent. We
19 look to their minutes and discussions preceding the 1993 revisions of the Special District
20 and the resulting text which calls for "producing building heights ranging from the mid-
21 20 to low-30 stories." Given the language, one is then hard-pressed to imagine they
22 didn't expect to see buildings with heights ranging in excess of that limit. Yet today we're
23 here discussing a building three times as tall, where 239 cumulative feet of vertical rise,

1 30 percent of its proposed height is sheer void.

2 We're discussing a building, in part, on a specific site that DCP considered.
3 Development Site 6, the ABC assemblage is more than half of the C4-7 footprint. But
4 DCP still never imagined it would metastasize into something like what is before you.
5 Zoning is meant to be a limit, one that provides a sense of predictability to the neighbors
6 and the community. It's set forth to protect the public and the case such as this,
7 specifically those of 400 or more families in contiguous apartments from an out of scale
8 neighbor.

9 The current iteration of 36 West 66th Street is a building that is a merger of more
10 than five zoning lots for 127 units. This is a far cry from the 261-foot tall, 25-foot story
11 structure initially filed when they complied with the Lincoln Square Special District
12 requirements. After repeated amendments and filing of a wholly different building bring
13 us before you today.

14 We're requesting you look at the facts. Is the split zoning lot properly applied?
15 No. Is the bulk distribution applied as intended? No. Is the mechanical space justified?
16 No. Then why does this unwarranted development continue as of right? Why is it
17 exempt from the zoning that governs the rest of the neighborhood? And most
18 importantly, when can the public have their right to protections as afforded to them by the
19 Zoning Resolution?

20 This project is egregious on so many levels and we ask that you revoke their
21 permits in favor of a compliant design which follows zoning. Thank you for your time.

22 CHAIR PERLMUTTER: Thank you.

23 MS. MONROE: Next speaker, please.

1 MS. AMATO: Good afternoon. My name is Josette
2 Amato, and I'm speaking on behalf of the West End Preservation Society. I come before
3 you today in support of our colleagues and all challenging the approval for this building
4 as proposed.

5 Originally, the DOB approved plans for a much smaller building. With an
6 acquisition of another lot, a heap of air rights, and some fanciful interpretations of
7 regulation, the scope jumped dramatically to the 775-foot building we are now facing.
8 The DOB was prepared to revoke the permit earlier this year when confronted with the
9 fact that 161-foot mechanical void was both dangerous and unconscionable -- my words,
10 not theirs. A revision was forthcoming, but oversized void space still remains. The sole
11 purpose of this is to increase height to obtain top dollars for top floors. While it may be
12 legal, doesn't make it right. As we have heard, the site conflates different zoning districts
13 into one enormous lot. Here, the development is picking which rules apply to different
14 sections within the same proposed building. This cannot possibly be a correct
15 interpretation of the zoning regulations.

16 You don't have to be an expert to see that the proposed building, as lovely as its
17 renderings may be, is totally out of context for this mid-block Upper West Side
18 neighborhood. It sits on the doorstep of a historic district and will literally tower over its
19 surroundings. It will throw shade everywhere, including Central Park, which should
20 concern us all.

21 We ask you to find the Department of Buildings was in error when they approved
22 these amended plans. We ask you find this does not adhere to the zoning resolutions for
23 this area. And finally, we ask that exploiting the system should not be rewarded. Thank

1 you for considering our comments.

2 CHAIR PERLMUTTER: Thank you.

3 MS. MONROE: Next speaker, please.

4 MR. YURO: Thank you, Madam Chair. Howard Yuro
5 [phonetic], a concerned member of the species homosapiens. In short, times change in
6 nature and in life. And human consciousness changes with times. In the good old days,
7 New York was the leader in the development of the skyscraper. When the Flatiron
8 Building was built and the Empire State Building and Chrysler and all the rest, we were
9 not aware that human activity was brining upon us a global climate crisis. Now we are.
10 And I think that that makes all the difference, in this discussion specifically, and in all
11 similar discussions. I'm advocating an immediate moratorium on the construction of all
12 mega towers or how -- whatever you want to term them. I call them monster towers, but
13 super towers and so on -- until such time as we can sort out how they fit in or do not fit in
14 to the global climate crisis which is upon us. And I think that New York, which was the
15 leader in the development of the skyscraper, and rightly so in its day, should now become
16 the world leader in the development of the moratorium on the super tall building, again,
17 until such time as we have figured out, globally, what to do about construction in light of
18 our consciousness of a global climate crisis, which we have brought upon ourselves and
19 upon the planet. Thank you.

20 CHAIR PERLMUTTER: Thank you.

21 MS. MONROE: Next speaker, please.

22 MS. ELLSWORTH: I'm Lynn Ellsworth with Human-
23 Scale NYC. I'm an economist. I tend to look at these things from a less than legal point

1 of view, which may not be of great interest to you all.

2 But I'll start by saying that in 1999 the then chair of the CPC, Joe Rose, described
3 a race to the top to capture views, and he said that zoning has become neither predictable
4 nor comprehensible. It has become discredited in the eyes of the public, and he said that
5 height limits are clearly needed and there are zoning permits and architectural vision that
6 does violence toward urban fabric. Not much has changed since he wrote that. And in
7 the case of Hand, the violence and the wrongs and the damages have several parts.

8 First, there's a fiscal wrong in the seizure of the public sky dome for private gain.
9 Both right and left wing economists agree on this. Neoclassical economists, like myself,
10 would call it an uncompensated seizure of the public commons for unproductive
11 economic wits. Karl Marx would have described it as an act of primitive accumulation of
12 a natural asset. Either way, it's the same thing, and not a good thing.

13 Second, there's the intergenerational damage to Central Park and other residents
14 of the City through the excessive shadowing of the public realm. Economies have a hard
15 time assigning appraise to this damage, but suffice to say that our best estimates is that it
16 far outweighs the billions that Gary Barnett will earn in profits should this building rise.

17 Third, there is the damage to all the people who have had to raise the funds to pay
18 for lawyering to counter the convoluted and absurd arguments that make up the claims of
19 the developers and attorneys.

20 Fourth, there is the damage to our municipal democracy when the developer hires
21 a former legal counsel to DCP to represent him.

22 And fifth, there is damage to the broader economy when huge amounts of
23 international investment capital are wasted on unproductive things, such as luxury second

1 homes for international oligarchs, which we know is that, those are the people who buy
2 these units.

3 The solution to all this is time honored and even ancient. Even the Mishnah Bava
4 Kamma says that if a man who is splitting wood in the private domain and injured anyone
5 in the public domain, he is liable for damages. Such is the case here. Thank you.

6 MS. MONROE: Thank you. Next speaker, please.

7 CHAIR PERLMUTTER: Are there any other speakers?

8 No other speakers? Okay. Alright then. So a very, very short, short response.

9 MR. LOW-BEER: You want to take a break first?

10 CHAIR PERLMUTTER: No. We'll take the break after.

11 MS. MONROE: To encourage us to be short.

12 CHAIR PERLMUTTER: Yes.

13 MR. LOW-BEER: Okay. Well, first of all, you know, I
14 was thinking a little slow on the uptake, but I was thinking about what you said about the
15 poor applicant who just looks at the Zoning Resolution. And, and, you know, I agree
16 with Mr. Janes, maybe he should go to law school and be here instead of me. But, you
17 know, it's the job -- it's your job to interpret the law and the owner who comes to DOB,
18 it's DOB's job to tell them, well, maybe you thought it meant that, but here's the rules.
19 So, you know, I don't, I don't really see how this example of the naïve owner who doesn't
20 know what the rules are. I mean, the Zoning Resolution is very complex. It's full of
21 ambiguities. And if they can't figure out what the bulk packing rule is supposed to mean,
22 they shouldn't be advising a developer. So --

23 CHAIR PERLMUTTER: I just want to correct. I wasn't

1 talking about a naïve applicant. I was talking about an educated applicant with zoning
2 counsel and zoning consultants and a very good expediter who knows about zoning
3 altogether reading the text and following the instructions of the text. Right? And then
4 going to DOB and, and having DOB review the drawings. 'Cause this was not a self-
5 certified project. Right?

6 MR. LOW-BEER: Well, no.

7 CHAIR PERLMUTTER: So this was a DOB reviewed
8 project.

9 MR. LOW-BEER: No, it was not. And, in fact, they were
10 very aware of this issue from the very beginning.

11 CHAIR PERLMUTTER: Right.

12 MR. LOW-BEER: So, and they took a very aggressive
13 stance, but the Zoning Resolution is full of ambiguities and they can be interpreted one
14 way or another. Now, okay. As to Mr. Karnovsky's point that all these provisions in the
15 Zoning Resolution always say where they apply and saw, and I would just point to -- I
16 haven't gone through the whole Zoning Resolution, but just -- I mentioned it in my reply
17 statement section 82-22, it's called Location of Floors Occupied by Commercial Uses. I
18 don't believe it has any -- it doesn't state any locational limitations or exclusions. I
19 presume it does not apply in R8 because commercial uses, as I understand it, are not
20 allowed in R8. So and there are other instances, I believe, too, but I had, I had -- they
21 may be in our papers. I believe they are.

22 CHAIR PERLMUTTER: Yeah. I, I'm looking it up now,
23 82-25. That's the sign regulations. It says no permitted sign. Right? 82-24, is that what

1 you said?

2 MR. LOW-BEER: No.

3 MS. MONROE: 82-22.

4 CHAIR PERLMUTTER: Oh, 22.

5 MR. LOW-BEER: 82-22.

6 CHAIR PERLMUTTER: Location of Floors.

7 COMMISSIONER CHANDA: It says Location of Floors

8 Occupied by Commercial Use. The provisions of Section 32-422 --

9 MS. MONROE: Which I'll just note refers to C4, C5, and
10 C6.

11 CHAIR PERLMUTTER: So, so that's a specificity. It's an
12 example of specificity. First, it's telling you it's floors occupied by commercial uses. So
13 automatically, we don't think about it in the R8 because we don't have any commercial
14 uses. Right? It'd be different if it said, location of floors.

15 MR. LOW-BEER: Absolutely, but here it says, bulk
16 packing. We know that only applies to towers so --

17 CHAIR PERLMUTTER: No, no. Actually, we don't know
18 that. That's why I asked why can't this apply in a height and setback building and, in fact,
19 it can apply in a height and setback building. That's the test that I wanted to see. You
20 know, if for example, it didn't work in a height and setback building, then that might be
21 something where you say, well, that's confusing because I can't make this work on any of
22 my buildings. But it does work on a height and setback building.

23 MR. LOW-BEER: Well, I thought Mr. Karnovsky, if I'm

1 not wrong, was saying that that building had 80 percent of its bulk below 150 feet so is' --

2 CHAIR PERLMUTTER: Right. So it means you can get
3 60 percent below 150 feet. Right? And they were using it --

4 MR. LOW-BEER: Well, you certainly can, but the rule
5 isn't doing any work in that example.

6 CHAIR PERLMUTTER: The rule isn't doing any work.

7 MR. LOW-BEER: The bulk packing rule.

8 MS. MONROE: Doesn't impact the envelope of the
9 building.

10 CHAIR PERLMUTTER: So you can get -- I'm not sure --

11 COMMISSIONER CHANDA: I'm not sure I follow you.

12 CHAIR PERLMUTTER: -- that that's correct so you can
13 give us more information on that, but it's at least complying. It's showing that 60 percent
14 is --

15 MR. LOW-BEER: It's complying, but the bulk packing
16 rule is not adding anything. It's superfluous in that context.

17 COMMISSIONER CHANDA: I thought that Mr.
18 Karnovsky showed us a plan where applying the packing of the bulk, the height is what is
19 being built to as opposed to if the packing of the bulk was not applied to the zoning lot if
20 the Zoning Resolution was not revised in 1994, then the tower would be much taller. So
21 there seems to be an effect of the packing of the bulk. So you, I'm not sure I understand
22 how you're making the argument that the packing of the bulk is superfluous because it
23 seems to be working in the way that drafters intended.

1 MR. LOW-BEER: In this building or in a hypothetical.

2 COMMISSIONER CHANDA: In -- I'm not talking about
3 hypothetical, I'm talking about this building.

4 MR. LOW-BEER: Oh, in this building. In this building, it
5 has an effect to the extent that the bulk is in C4-7. It's limiting what can go in the tower,
6 as George Janes explained, hypothetically though, if all of the bulk could be placed
7 outside of C4-7, then the entirety. So to the extent that there is bulk in R8, it is enabling
8 an absurd result. The absurd result is not the absolute height of the, of the building. The
9 absurd result is in the mechanism that works precisely in the opposite way of what's
10 intended.

11 CHAIR PERLMUTTER: So, so --

12 MR. LOW-BEER: Mainly to the extent that you have bulk
13 below 150 feet, you are allowing the outside of C4-7, you're allowing more space in the
14 tower.

15 CHAIR PERLMUTTER: Right. No, we under-, we
16 understand this point and I think the point was simply that if there had been no bulk
17 packing rule, the building would have been taller.

18 MR. LOW-BEER: This building --

19 CHAIR PERLMUTTER: -- and having an effect.

20 MR. LOW-BEER: Yes.

21 CHAIR PERLMUTTER: Okay. Thank you. If you want
22 to add anything, please do it in writing. So let's just move on to, to give Mr. Karnovsky a
23 chance so that we can move on to the rest of our, our many cases. Yeah. We have -- this

1 is number, case number two. One and two. No, one and two. It's actually one and two.

2 MR. KARNOVSKY: There's another appellant.

3 CHAIR PERLMUTTER: Yes, I know. He's raising his
4 hand.

5 MR. KARNOVSKY: I have nothing more to say for
6 today. Thank you.

7 CHAIR PERLMUTTER: Okay. Thank you. Mr. Klein.

8 MR. KLEIN: Thank you, Madam Chair. I'd just like to
9 address two items that Mr. Karnovsky brought up. One is that -- well, one item that he
10 brought up and one item that I think the Board has to consider. He said that this, the
11 issue of the spatial relationship between the mechanical use and the floors was not
12 brought up before. I would cite to page 18 of my May submission where it says nothing
13 in the owner's public documents supports his claim that this space is necessary to house
14 mechanical equipment. The subject mechanical equipment is not described nor is any
15 technical data given to either the DOB or the, the community. I'm sorry.

16 In its opposition filing, Extell, parent of the owner, remains silent on the nature of
17 the mechanical equipment or its operational character as such that would clarify its
18 spatial requirements and describe how cavernous volumetric cubic footage is tied to the
19 optical, the optimum technical exploitation of the subject equipment. So once again, this
20 is not only defined by height, we did -- it is defined in the Sky House case as the spatial
21 relationship between the mechanical and space and the surrounding space. But so, so I
22 think that was raised.

23 Of a greater, a greater concern to me is a safety issue that hasn't been addressed

1 today. And that is if you remember, the Buildings Department was waiting to hear back
2 from the Fire Department as to the safe operation of firemen within these voids. And it
3 came in with a one-page letter saying it reviewed the changes in the plans and could now
4 agree with them. I find that rather mystifying, just as I find the Buildings Department
5 case-by-case analysis of this particular building mystifying because the Fire Department
6 had the same information that the Buildings Department received with regard to these
7 mechanical spaces, and that was zero. The Fire Department predicated its decision on
8 absolutely no information supplied by the developer.

9

10 CHAIR PERLMUTTER: Okay. So I just need to ask you.

11 Are you asking us to look at whether the Fire Department did its job and whether we
12 should be reviewing --

13 MR. KLEIN: No, no. No. What I'm doing, what I'm
14 simply saying is that that is something that will be dialed into the equation and I will be
15 speaking to the Fire Department about it. But I think it's of overarching and importance
16 that somebody look at this. It could be the Board. It could be me. It could be the
17 Buildings Department.

18 CHAIR PERLMUTTER: Okay.

19 MR. KLEIN: But it has to be looked at. With regard to the
20 mechanical space, once again, everybody has allowed the, the word height, the over
21 privilege, all the other arguments being made, and I think the Sky House case eliminated
22 that from the equation.

23 CHAIR PERLMUTTER: Okay. Thank you very much.

1 Alright. So in terms -- Mr. Karnovsky.

2 MR. KARNOVSKY: I wanted to note that if you look at
3 page 18, it's clear that that discussion is in the context of a volumetric measurement --

4 CHAIR PERLMUTTER: Okay.

5 MR. KARNOVSKY: -- not a horizontal measurement. So
6 I think it's clear that the issue was not raised. However, you've made clear how this is
7 going to proceed from here on in, so I have no more to say.

8 CHAIR PERLMUTTER: Right. So we're just dealing
9 with the one issue. Right? It's the bulk packing issue because mechanical voids are, at
10 the moment, off -- well, mechanical voids are off the table. Mechanical space is, is
11 something that needs to be brought up to DOB for their review because if they haven't
12 reviewed it, they need to review it. Okay? Let's just finish it that way. You know, no,
13 no, no, I think we're good here.

14 So what I would like to do is create a briefing schedule. And I need to limit the
15 length of the papers to six pages, not more. I'm sure that you can get your arguments in
16 concisely in six pages. And you can have exhibits, but don't use the exhibits as a way to
17 make 100-page document, please. But six pages of writing. Alright. And try not to be
18 redundant. We already have the information, the arguments previously made. Okay.

19 So I leave to counsel for the briefing schedule.

20 I just want to bring up one last point. I was looking up the -- this is actually an
21 Extell development as well, the famous 99th and 100th Street buildings on Broadway.
22 Those were developed in 2005 when the buildings were in an R8 zoning district. So
23 subsequent to the tower on the base regulations, both of those buildings, the one in

1 particular that's on the west side of Broadway, is a 38-story building that is built
2 according to the height factor regulations at the time, and so the building is, in fact, 38
3 stories built after tower-on-a-base regulations were created. And so, and I know that the
4 neighborhood had a reaction by changing the zoning in that district, but there you get to
5 predict what happens when you have a large enough zoning lot where you -- it's a very
6 large zoning lot where you can transfer all that excess development -- right -- and you get
7 a tall building. So that's something that, therefore, was predictable under height factor
8 zoning that you would get tall buildings if the zoning lot was large enough. And so City
9 Planning, let's just say, didn't take into account those eventualities if it was really
10 interested in keeping buildings in the low 30s. This was a 38-story building prior to the
11 facts of the mechanical void concept. Okay?

12 Alright. So briefing schedule. So we should start off with appellants getting --

13 MR. LOW-BEER: Apart from giving you some cases, I
14 mean, I don't really see a need to write a brief about it. I would send you some cases in
15 response to Mr. Scibetta's --

16 CHAIR PERLMUTTER: Well, but don't just send us
17 cases. Tell us what they stand for or otherwise we'll just read them and then come to our
18 own conclusions.

19 MR. LOW-BEER: Alright. Well, I -- they basically will
20 be land use cases if I can find them standing for the proposition that when you have an
21 absurd result, even if the literal language of the statute is to the contrary, you don't
22 necessarily follow literal language. That's all.

23 CHAIR PERLMUTTER: That -- okay.

1 COMMISSIONER SCIBETTA: I think, I think you might
2 also want to specify why this is an absurd result.

3 MR. LOW-BEER: Why what?

4 COMMISSIONER SCIBETTA: Why this is an absurd
5 result.

6 CHAIR PERLMUTTER: Yeah. You would need to
7 clarify why it's an absurd result, but it's, more importantly, when -- because the
8 proposition is when the language is clear and unambiguous, has the court ever looked
9 behind that beyond the statute into the legislative --

10 MR. LOW-BEER: In a land use case.

11 CHAIR PERLMUTTER: In the land use context. Because
12 here are, land use.

13 MR. LOW-BEER: Alright. If I find such a case, I will
14 send it to you.

15 CHAIR PERLMUTTER: Okay. Thank you.

16 MR. LOW-BEER: I can do it in one page. And I can do it
17 -- I don't know --

18 CHAIR PERLMUTTER: How much time?

19 MR. LOW-BEER: -- but within a few days. It's not --

20 CHAIR PERLMUTTER: Okay.

21 MS. MONROE: Might it make sense for all of the parties
22 to have a single submission date and a single simultaneous reply date? Would that make
23 sense?

1 Mr. Karnovsky? If you're not going to submit anything g--

2 MR. KARNOVSKY: First of all, Mr. Low-Beer put in his
3 31-page reply.

4 CHAIR PERLMUTTER: Yes.

5 MR. KARNOVSKY: And I --

6 CHAIR PERLMUTTER: No, we're not allowing --

7 MR. KARNOVSKY: No, I know you're not, I know you're
8 not allowing it --

9 CHAIR PERLMUTTER: Oh, and you haven't responded.

10 MR. KARNOVSKY: -- but we have not responded. So we
11 intend to respond to it and I don't think we should be limited to six pages in responding to
12 31 pages. So I think we have that reply and then we can do a three-page reply to
13 whatever he puts in on --

14 CHAIR PERLMUTTER: So that's --

15 MR. KARNOVSKY: I mean, you know, I, I think that was
16 not right.

17 CHAIR PERLMUTTER: Mm-hmm. I agree.

18 MR. KARNOVSKY: And I don't think we should suffer
19 the consequences.

20 CHAIR PERLMUTTER: How about if we make a
21 compromise? Wait, wait, wait. Make a compromise. We extend the number of pages to
22 10 and you concisely respond to the points that you think need responding. And --

23 MR. LOW-BEER: I mean, it's normal in every court that,

1 you know --

2 MS. MONROE: This isn't a court, Mr. Low-Beer.

3 MR. LOW-BEER: -- you have an appellate brief, and you
4 have an opposition, and a reply.

5 CHAIR PERLMUTTER: No, , no, no. So for one, it's not
6 a court. And for two, we didn't know either that we were going to be getting on Sunday a
7 32-page reply. Right? So, so the Board has to review these things and has to respond to
8 them. And so, yeah, you were supposed to have just submitted your argument and the
9 other side submits its argument, and then we reply.

10 MR. KARNOVSKY: I would suggest that Mr. Low-Beer
11 can respond to the issues which have been raised. I would -- I do not think he should be
12 responding to arguments made today again on the same issues of 82-34 on statutory
13 history and all of that. We will respond to that and we will respond to his 32-page brief.

14 CHAIR PERLMUTTER: Okay. And --

15 MR. LOW-BEER: I mean, I did, I just did that to
16 accelerate, you know, so it wouldn't have lengthy briefing after -

17 COMMISSIONER SCIBETTA: But generally, appellant
18 does have the last --

19 MS. MONROE: This was an appeals hearing at the Board
20 of Standards and Appeals. What typically happens is you file your appeal, their response,
21 it gets calendared for hearing. That's it. The reply brief and all of that is what comes out
22 of the hearing process. It's, it's not. It's actually not the standard practice here to have
23 reply briefs. Just FYI.

1 CHAIR PERLMUTTER: Yeah. Okay.

2 MS. MONROE: But that lesson having been learned, any
3 objection to simultaneously submitting your response to his reply and him submitting his
4 kind of response to this hearing on the same date, Mr. Karnovsky?

5 MR. KARNOVSKY: Well, he's going to presumably
6 address new materials that we will not have seen and will not --

7 MS. MONROE: Right. But I, I was just, I was proposing
8 that the submissions be simultaneous and then the replies to the first submission to
9 simultaneous so as to not --

10 MR. KARNOVSKY: I'm sorry. I've lost you. I'm a
11 little -- it's late in the day.

12 CHAIR PERLMUTTER: So, so in other words, you
13 both -- let's just say for argument sake because we don't have a date. We're trying to put
14 you into September because there is a concern about speed. Right?

15 MR. KARNOVSKY: Yes, yes.

16 CHAIR PERLMUTTER: So in order to be able to do that,
17 we need a rapid turnaround on the first submission. Right? And a rapid turnaround on
18 the second submission, there being a total of two submissions.

19 MS. MONROE: Rather than ping-ponging back and forth
20 and having four or five.

21 CHAIR PERLMUTTER: Yes. Right? So, so --

22 MR. LOW-BEER: So he's going to respond to my --

23 CHAIR PERLMUTTER: So let, so let, listen. Everybody

1 submits simultaneously. Everyone knows what their arguments are going to be. You've
2 already heard each other. You've already read each other's papers. You respond all at the
3 same time on the same date to those issues. And then --

4 MS. MONROE: Having received each other's responses --

5 CHAIR PERLMUTTER: -- having received, and two
6 weeks later or whatever we settle on, you respond simultaneously to those issues and then
7 it's done. Right?

8 MR. KARNOVSKY: Do we all agree to that?

9 CHAIR PERLMUTTER: And no sur-sur-replies, et cetera.

10 MS. MONROE: So we can --

11 MR. LOW-BEER: I don't have a lot more to say --

12 CHAIR PERLMUTTER: Good, good. Excellent. So
13 you'll be less than 10 pages.

14 MS. MONROE: How about if we -- so, Mr. Karnovsky,
15 understanding you have to reply to Mr. Low-Beer's reply brief, what if it was two weeks
16 for the first submission and then a week for your simultaneous replies? And, and that
17 way we can put them actually on for September 10th.

18 MR. KARNOVSKY: So two weeks from, until when/

19 MS. MONROE: So two weeks from tomorrow, the first set
20 of submissions would be due August 21st. And then any replies would be August 28th.
21 And that'd be in two weeks in advance of the September 10th hearing.

22 CHAIR PERLMUTTER: Okay.

23 MR. ZOLTAN: So mine would be one week later?

1 MR. LOW-BEER: And then what happens...

2 MS. MONROE: Sorry, Mr. Low-Beer.

3 MR. ZOLTAN: So it would be submissions in two weeks

4 and then one week for a reply?

5 MS. MONROE: Yes.

6 CHAIR PERLMUTTER: Correct.

7 MR. LOW-BEER: And then what happens in September?

8 MS. MONROE: If there needs to be a reply.

9 CHAIR PERLMUTTER: And then we come back and

10 either the Board -- do we close the hearing based on this?

11 MR. STEINHOUSE: We can close.

12 CHAIR PERLMUTTER: Do we close the hearing?

13 COMMISSIONER CHANDA: No.

14 CHAIR PERLMUTTER: No, we cannot. Okay. So then
15 the Board either closes or the Board continues the discussion depending on what we learn
16 from the submission. We don't know what it's going to say. Right? Okay.

17 MS. MONROE: So it's possible there could be a decision
18 September 10th. It's possible there won't be.

19 MR. ZOLTAN: What were the --

20 CHAIR PERLMUTTER: The dates again?

21 MS. MONROE: September 10th.

22 MR. LOW-BEER: Okay. Well, I, I, I will say very little
23 only because I think it would be best not to have a second hearing.

1 CHAIR PERLMUTTER: Well, you have -- we have to --
2 we have to have time to review the materials. Right? Okay. So you get the second
3 hearing.

4 MS. MONROE: So does everyone have those dates? Mr.
5 Klein? Mr. Zoltan?

6 MR. KARNOVSKY: Is it the 21st?

7 MS. MONROE: The 21st and the 28th.

8 CHAIR PERLMUTTER: Okay. Thank you.

9 MS. MONROE: Mr. Zoltan, any --

10 MR. ZOLTAN: No, that works. Thanks.

11 CHAIR PERLMUTTER: It works. Okay. Thank you very
12 much. Thank you everyone for coming.

13 MS. MONROE: Thank you everyone for coming. Thank
14 you for snapping.

15 CHAIR PERLMUTTER: Mr. Klein?

16 MR. KLEIN: This has nothing to do with scheduling.

17 Obviously, I don't agree with regard to the whether the mechanical space is right before
18 the Board. But all I ask is this, that I will be making an application to the Buildings
19 Department to review this. The last, the last five times I've submitted FOIL requests --

20 CHAIR PERLMUTTER: Shh, shh. Please, everyone.
21 Please.

22 MR. KLEIN: The last five time I've billed, I've brought a
23 request before the Buildings Department, I ended up having to bring a 78 forcing them to

1 give me the information. So all I would like, if possible, is a letter from the Board asking
2 them to expedite their review.

3 MS. MONROE: We can provide a letter. I don't know
4 what, what good it will do, but we're happy --

5 MR. KLEIN: Fine, fine.

6 MS. MONROE: -- to provide a letter for Mr. Klein.

7 MR. KLEIN: That's all I ask for. Thank you very much.

8 MS. MONROE: Sure. Thank you very much. We're
9 going to take a 10-minute recess.

10 CHAIR PERLMUTTER: No, no, no, no.

11 MS. MONROE: Five-minute:

12 CHAIR PERLMUTTER: It's got to be 20 minutes. It's
13 lunchtime already. Right? Let's, let's resume at 2:00. How about that?

14 MS. MONROE: We're taking a break. We're resuming at
15 2:00.

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CERTIFICATE OF ACCURACY

I, Devin Turpin, certify that the foregoing transcript of the Public Hearing of New York City Board of Standards & Appeals on August 6, 2019 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: January 8, 2020

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018

NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

Calendar Number: 2019-89-A and 2019-94-A

36 West 66th Street, Manhattan

Public Review Session

September 9, 2019

1 MS. MATIAS: Item number three. 2019-89-A. 36 West
2 66th Street, Manhattan.

3 COMMISSIONER OTTLEY-BROWN: Madam Chair, I
4 must recuse.

5 CHAIR PERLMUTTER: Indeed. Okay. Thank you.

6 MS. MATIAS: Am I calling the fourth one also or
7 separating them? On the fourth one.

8 CHAIR PERLMUTTER: I -- call them together.

9 MS. MATIAS: Calling both?

10 CHAIR PERLMUTTER: I think we called them together,
11 right, last time?

12 MS. MATIAS: We called them together.

13 CHAIR PERLMUTTER: Yeah.

14 MS. MATIAS: Okay. Item number four. 2019-94-A. 36
15 West 66th Street. Sorry.

16 COMMISSIONER OTTLEY-BROWN: Madam Chair, I
17 must recuse.

18 CHAIR PERLMUTTER: Okay.

19 MS. MATIAS: Sorry, Commissioner.

20 COMMISSIONER OTTLEY-BROWN: It's alright.

21 CHAIR PERLMUTTER: Okay. So we have final
22 submissions from appellant and owner and I didn't find anything new in either
23 submission that would change my view. As I said at the last hearing, this split lot rules

1 direct lot coverage to apply only to the C4-7 portion of the zoning lot and the bulk
2 packing rules to apply to the entirety of the zoning lot. That's the split lot rules. And
3 although I do have to say I sympathize with appellants in that their analysis of the
4 proportional relationship between coverage and bulk packing as demonstrated by the
5 chart in the tower-on-a-base rules at 23-651A3 makes a certain elegant sense. I don't
6 think that is what the text says in this particular case of this special district and I don't
7 believe it's the Board's job to impose textual corrections where there is inadequate
8 evidence that the difference between the text was an oversight on City Planning's part.

9 We have -- there have been cases where City Planning has made a mistake in, in,
10 in -- I remember there was one that had to do with community facility towers or
11 something like that where they actually made a mistake and they issued a change, a very
12 large text change and then left off a change to that portion of the text and we saw two
13 cases here where an applicant -- one applicant comes in taking advantage of the mistake
14 and go ahead, it says it right there, just do it and we weren't -- it wasn't an interpretative
15 appeal. It just was part of their zoning analysis, right? And then pretty literally a few
16 hours later someone else came in and they said we're not taking advantage of that mistake
17 because we know City Planning is gonna come and change it.

18 Now whether City Planning ever changed it, I don't know but you had two
19 different people taking advantage and not taking advantage of a mistake. There isn't any
20 indication here that this was a mistake. Really, I, I really just don't find that. I also note
21 that appellants' intent to challenge the mechanical space and whether that's laid out as
22 mechanical space separately and whe-, and so that issue is not right for us now. Okay.
23 Anybody else?

1 VICE-CHAIR CHANDA: I agree with you. I think what
2 was helpful in some of the additional submission was over in the corners we have
3 provided various combinations of bulk analysis. Sorry.

4 MS. MATIAS: I was just gonna say the microphone was.

5 VICE-CHAIR CHANDA: I agree with you and I think of
6 what I -- okay.

7 CHAIR PERLMUTTER: Two sides.

8 VICE-CHAIR CHANDA: Two sides to my voice. That
9 the additional information that was pro- provide by the owner's representative further
10 went to show various combinations of bulk possibilities both in a C4-7 district, in a R8
11 district merged, unmerged with the Section 82-34 without the Section 82-34 and how that
12 would affect the building height and I think that definitely is consistent with the way the
13 City Planning Commission was envisioning this text to be applied.

14 That is it would result in a height reduction which in every one of those instances
15 with the C82-34 versus the 82-37 -- 34, there was a distinct reduction in the height. It
16 might not be to the extent that one imagined but that's not how the text is written and the
17 text has been -- and the, and the City Planning Commission report and the discussions
18 that ensued during that hearing also made it very clear that there was no intent- intention
19 to have a very prescribed height limit. So I think the text is very clear and I don't have
20 any other.

21 COMMISSIONER SHETA: So I, I didn't attend the last
22 hearing so after reviewing this case I did listen actually to the video for both the
23 Executive Session and the actual hearing and I, I believe this case is all about chairing a

1 building height and I during listening to the video, I, I did hear that it was mentioned that
2 this, this case or that, that Legislative intent of the bulk packing rule is not to limit a
3 building height or a building bulk. I, I, I just wanted to comment on this at the beginning.
4 I believe the entire like purpose of the Zoning Resolution is to limit building's heights and
5 bulks. That's, that's my understanding from the Zoning Resolution.

6 To limit it doesn't mean to reduce it. To limit it that to put like to set forth limits
7 to how tall a building could be or how bulky a building could be. This is, this is number
8 one. Number two, the, the two issues I, I did look at is the bulk issue or the, the, the bulk
9 packing rule. I, I did go over the zoning text like probably five times and I, I tried to
10 because I'm, I'm sympathetic with the, with the public. I tried to find the hope that telling
11 me that this text is, text is unclear or ambiguous and I couldn't.

12 I, I believe the text is very clear and when it comes to applying this, this rule to
13 the entire zoning lot, I believe this is what the Zoning Resolution mentioned. On the
14 other hand, regarding the mechanical space issue, I did look at the drawings and, and, and
15 I'm just gonna like summarize my opinion on this. I believe the DOB should have looked
16 and scrutinized the size and the design of the mechanical void or what's called
17 mechanical void because I have--

18 CHAIR PERLMUTTER: I, I need to interrupt you on this,
19 on this one for, for procedural reasons. The, the first is we already had a case --

20 COMMISSIONER SHETA: Yes, yes, I know.

21 CHAIR PERLMUTTER: -- to discuss the height of the
22 mechanical void so we just determined that, that, that what's that issue is precluded from
23 discussion here and then the section about whether the mechanical equipment in is laid

1 out in plan and fills up those floors is not before us yet --

2 COMMISSIONER SHETA: Yes, understood.

3 CHAIR PERLMUTTER: -- because DOB hasn't reviewed

4 the question yet and apparently some of the, one of the appellants at least says they're

5 going to be going to DOB to challenge DOB's determination. DOB I don't even know if

6 it has made a determination. It's going -- DOB for -- is going to look at the layout of the

7 mechanical equipment and decide whether they are persuaded that the mechanical

8 equipment fills up those floors and if they are persuaded and they'll issue a determination

9 that they agree that that's correct, then perhaps we'll see in another case the discussion

10 about whether that's a legitimate use of mechanical space in plan, not vertically.

11 COMMISSIONERS SHETA: Okay.

12 CHAIR PERLMUTTER: Okay?

13 COMMISSIONER SHETA: Okay. So yes. If, if the

14 mechanical space issue is not like before us, the size of the mechanical space issue is not

15 before us, I, I believe the fairest part of these two case, the first case is, is, is like at the

16 end car. I believe we can close it and vote on it tomorrow.

17 CHAIR PERLMUTTER: Uh-huh.

18 COMMISSIONER SCIBETTA: I, I, I submit that to the

19 community the applicant here, it's likely the code did not intend or anticipate for this

20 specific result but pursuant to the prevailing case law, that alone in the face of clear text

21 is simply not enough. While I am frustrated by this decision, the statute is clear and the

22 alleged intent is not so clear that we can usurp the right to the property owner retained

23 from reading that text. Finding otherwise, I believe it would be an overstep of the Board

1 into the powers of the Legislature.

2 CHAIR PERLMUTTER: Okay. Thank you.

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CERTIFICATE OF ACCURACY

I, Devin Turpin, certify that the foregoing transcript of the Public Review Session of New York City Board of Standards & Appeals on September 9, 2019 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: November 26, 2019

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018

NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

Calendar Number: 2019-89-A and 2019-94-A

36 West 66th Street, Manhattan

Public Hearing

September 10, 2019

1 MS. MATIAS: Okay. Item number three. 2019-89-A. 36

2 West 66th Street. This is the application from City Club and item number four correct?

3 CHAIR PERLMUTTER: Yes.

4 MR. STEINHOUSE: This is the application -- 219 --

5 2019-94-A. 36 West 66th Street also. This is the application filed by Landmark West.

6 So--

7 CHAIR PERLMUTTER: Okay. So does the appellant just

8 want to get up and --

9 COMMISSIONER OTTLEY-BROWN: Wait. Madam

10 Chair.

11 CHAIR PERLMUTTER: Oh, yeah. I'm sorry.

12 COMMISSIONER OTTLEY-BROWN: I must recuse.

13 CHAIR PERLMUTTER: Yes. Thank you. This is still

14 open right?

15 VICE-CHAIR CHANDA: Yes.

16 MR. LOW-BEER: Good morning. I have a -- oh, I have a

17 handout which I should also.

18 CHAIR PERLMUTTER: Can you speak up please

19 because?

20 MR. LOW-BEER: Yes. I have a--

21 MR. STEINHOUSE: Please identify yourself for the

22 record. Sorry.

23 MR. LOW-BEER: John Low-Ber for appellant's City

1 Club of New York Et Al. I have something I'd like to give to the members of the Board.

2 CHAIR PERLMUTTER: You can just hand it over here.

3 It's more effective. Thank you.

4 VICE-CHAIR CHANDA: Thank you.

5 MS. MATIAS: Thank you.

6 MR. LOW BEER: So while I heard from the Executive
7 Session yesterday that pretty much the Board is not inclined to grant the appeal so I'll be
8 brief. I just wanna add these things to the record. I wanna say too that I hope this
9 decision can be rendered quickly because I think the key thing in this case as in all cases
10 in which construction is ongoing is that a court should or courts should be able to reach
11 the merits before the building is substantially complete because otherwise I don't think
12 there's really any chance that the decision of the Board could be reversed even if the court
13 were otherwise inclined to do so. I'd just like to spend a moment--

14 CHAIR PERLMUTTER: So, so then to that point. So the
15 -- we didn't close the record last time to enable a submission to continue the argument,
16 right? We sometimes close and vote decisions but only when there's no new material that
17 you want us to consider.

18 MR. LOW-BEER: Uh-huh.

19 CHAIR PERLMUTTER: So if you're interested in closing
20 this hearing and having us come to a decision, I'd recommend that you not introduce new
21 arguments unless you think they're strong ones that we should consider. Otherwise, it
22 will put off on our ability to decide on this today.

23 MR. LOW-BEER: Well, I, I don't, I don't think that this,

1 I'd just like it to be in the record, but I don't think it will change your mind. I mean I
2 think this whole post-hearing round of briefing added, you know, as I believe I don't
3 know. I believe somebody said yesterday it didn't add that much and I would have been
4 more than happy to call the case after the first hearing. So but I'm -- these are just in --
5 they're not new arguments, they're just in response to things that Mr. Karnovsky said
6 some of which since I got the date wrong on the simultaneous briefing, I think he, he
7 responded to what I had said in my post-hearing submission.

8 So about just about, about the law and how statutory interpretations should work
9 in a case like this, I think it's pretty clear we disagree with Mr. Karnovsky, with Extell.
10 It's true that there's a difference between legislative intent or purpose or legislative history
11 but we're not just relying on legislative history here. We're looking at the whole picture.
12 What the statute is intended to do as evidenced by its entire language, not just one or two
13 phrases and I think it's obvious that the statute was intended to limit height.

14 We can discuss exactly how precisely City Planning Commission intends to limit
15 height and whether it did so or not but I don't think there can really be any dispute that by
16 enacting these provisions the City Planning Commission intended to limit height and
17 Extell hasn't proposed any purpose in a rule that would permit buildings to be much taller
18 just because they straddle two zoning districts, one of which provides for a lower density,
19 not a higher density.

20 And I think this is obviously from the language, not just from legislative history
21 but both from the formula of the bulk packing rule at 60 percent of the bulk has to be
22 below 150 feet and, and the tower coverage rule of 30 percent minimum tower coverage.
23 It's also obvious as I've said in my last submission from the fact that let's contemplate is a

1 60/40 ratio that the 60 and the 40 should add up to 100, not to 130 or whatever it is in this
2 case.

3 So and Mr. Scibetta, Commissioner Scibetta had raised the question about
4 whether the rule of absurd results applies in cases in- involving zoning and property and
5 we cited Stringfellow's to address that particularly and I think, you know, that case does
6 say that while zoning ordinances must be narrowly interpreted, and that ambiguities are
7 to be construed against the Zoning Authority, the fundamental rule in construing any
8 statute or in this case an amendment to Zoning Resolution is to ascertain and give effect
9 to the intention of the legislative body and I don't think that the intention of the legislative
10 body was to allow a much higher building just because part of it was in a lower density
11 zoning district part of the zoning lot.

12 And I also would disagree with Mr. Karnovsky's interpretation of some of the
13 cases but perhaps it's a moot point at this point, but I think it's very clear that although the
14 cases on occasion do say that you have to find ambiguity, they find that ambiguity not
15 only in the provision in the narrow in words being construed but they look at the statute
16 as a whole and what it's trying to accomplish and at its legislative history as well.

17 For example, in Abood v. Hospital Ambulance Service, the Court of Appeals said
18 that intent is to be gleaned from the entire statute, it's legislative history or the statutes of
19 which it is made a part and that intent must be followed in construing the statute. There's
20 a lot of in a Bankers Association v. Albright has a very good explanation of how the court
21 or, or this body for that matter should approach cases of this kind but--

22 CHAIR PERLMUTTER: But what you're suggesting is
23 that for every single statute written, every one, the reader, the user of the statute shouldn't

1 look at the plain meaning what it says to do right in front of you but instead should try to
2 glean from legislative history and other case law and so on what it really meant as
3 opposed to what it really meant as opposed to what it says so.

4 MR. LOW-BEER: Well.

5 CHAIR PERLMUTTER: Well, but that's effectively what
6 you're saying because what, what we've been saying here is when, when the bulk packing
7 rule says it applies to the entire special, special purpose district, that's a direction and that
8 a user of that text should have to look around what is actually meant and, you know, the
9 Zoning Resolution like every piece of legislature has an instruction for buildings located
10 in a certain place --

11 MR. LOW-BEER: Right.

12 CHAIR PERLMUTTER: -- for schools operating in a
13 certain way. What you're suggesting is that in every single case, you should always look
14 behind the plain language. It's as opposed to when you don't know what to do because
15 the language is unclear.

16 MR. LOW-BEER: No, it's not in every single case. It's
17 only when the result is absurd or unreasonable or obviously contrary to the purpose and
18 then of course we get to the next question which is, is this such a case but --

19 CHAIR PERLMUTTER: Right.

20 MR. LOW-BEER: -- but, you know, and--

21 CHAIR PERLMUTTER: But then I go back to the same
22 question. You're ask -- you would say looking at a very simple statute that says for
23 buildings located in an R10 district and then you look at should I be unpacking that and

1 seeing whether there's an absurd result here before I move on? You, you can't expect an
2 architect to look at, to do that for one, what are the absurd results, how do you analyze
3 them etc. and for two, really, is that what you're supposed to be doing?

4 MR. LOW-BEER: But this isn't up to necessarily the
5 architect. The architect of course will do his best and will try to s- see what it all means
6 and, and maybe will even push the envelope and say well I think it means this, but it's up
7 to the Department of Buildings and to this, this Board to have that view of the Zoning
8 Resolution that would enable the Buildings Department or this Board to say well actually
9 it's very clear that this statute was intended to do x and you know?

10 COMMISSIONER SCIBETTA: Does that argument hold
11 up against Raritan?

12 MR. LOW-BEER: Well, I, I, you know, if you, if you read
13 the dissent in Raritan they put the case very well.

14 COMMISSIONER SCIBETTA: I personally agree with
15 the dissent in Raritan but Raritan is, is what's dictating, it's, it's the law that we have to
16 follow. It's our precedent at this moment. But--

17 CHAIR PERLMUTTER: Sorry. Speak up. I know your
18 void is harse -- hoarse.

19 COMMISSIONER SCIBETTA: I'm sorry.

20 CHAIR PERLMUTTER: Speak up right into themic.

21 COMMISSIONER SCIBETTA: At this moment, Raritan
22 is the controlling precedent.

23 MR. LOW-BEER: But, you know, in each one of these

1 cases, you'll find it's all a question of, you know, one judge might think this is an absurd
2 result or an unreasonable result, another judge might not. I mean that's the nature of the
3 law. In Raritan, the majority thought it was not unreasonable, dissent thought it was
4 unreasonable in--

5 COMMISSIONER SCIBETTA: They, they, they kind of --
6 it was more that the language was so clear, not so much that is this result that absurd or
7 unreasonable. The language was so clear. Similar to this case, the language is very clear.
8 Now legislative intent is, is important but not when it usurps a property owner's right and
9 in, in such a clear text. If there was ambiguity in the text and that ambiguity was, was,
10 was substantial, then we can start going into the intent.

11 MR. LOW-BEER: Uh-huh.

12 COMMISSIONER SCIBETTA: But pursuant to Raritan,
13 that is our precedent.

14 MR. LOW-BEER: Uh-huh. Well, I, you know, I would
15 say that the ambiguity consists in the obvious contrast between the outcome and the
16 purpose of the statute.

17 CHAIR PERLMUTTER: No, no. You're jumping to the
18 absurd result.

19 MR. LOW-BEER: Right.

20 CHAIR PERLMUTTER: Assuming ambiguity but when
21 you look at the text --

22 MR. LOW-BEER: Right. Right.

23 CHAIR PERLMUTTER: -- the text has no ambiguity.

1 MR. LOW-BEER: But, but in every one of these cases or
2 any way in every one really, I think if you read the text, there is no ambiguity. Now
3 sometimes the courts come back, sometimes they say, even though their literal language
4 says x, we won't, we won't apply it here. In other cases, they say we see ambiguity not in
5 the literal language of the text but looking at the statute as a whole so they, the courts do
6 routinely or I mean routinely in these kinds of cases which admittedly are not routine but
7 they do arise not that infrequently and where that happens they do look beyond the literal
8 language of the text. I mean let's take -- we don't have any water here, do we?

9 CHAIR PERLMUTTER: Sorry.

10 MR. LOW-BEER: Oh, well. Let, let's take Stringfellow's.
11 If you look at Stringfellow's, the, the lower court said it was clear and unambiguous that
12 that club did not fit within the definition of an adult establishment because one of the
13 requirements of the definition is that the club customarily not admit minors. Now the
14 appellant division wanted to look at the statute as a whole and clearly this club was an
15 adult establishment said well maybe, you know, customarily here could mean what's
16 customary for adult establishments generally but basically in doing that, I mean when you
17 have a definition, it the c-, the -- when the statute was written that way, it, it's just it
18 doesn't make a-, the appellant division's interpretation of it doesn't make any sense
19 because essentially they're saying well this was just a statement about adult
20 establishments in general, it didn't mean that you look to each club to see whether it
21 meets the criteria. Well, if, if you don't, if you're not gonna look to see if the club meets
22 the criteria, then why is this a pro-, you know, a part of the test, part of the definition. It
23 has to be that it's applied to each club to see whether it does or does not customarily

1 admit minors.

2 So, you know, they, they kind of got around it but I think if you read that
3 language, it's really hard to say that that language means what the Court of Appeals --
4 what the appellant division says it does and in many other cases they, the courts don't
5 even and by the way, post Raritan because I think Mr. Karnovsky suggested that these
6 cases are all, all cases. I mean--

7 COMMISSIONER SCIBETTA: If there's good law, there
8 is, there is, there is good law in these cases. I just believe that it's been made abundantly
9 clear to this Board through Raritan that when the language, when, when an owner is
10 following the language of the text, the, the for the result, the result must be extremely
11 absurd, it must be very clear, the text must show something that is clearly or never or
12 something that any responsible person would read and say that's not what this means
13 even though it's written like that. I think our hands are tied.

14 MR. LOW-BEER: Okay. Well.

15 CHAIR PERLMUTTER: And by the way, I don't really
16 see the absurd result. It's a four-story difference so.

17 MR. LOW-BEER: Well, it's not four stories difference as
18 we showed in our -- I'm losing track of all the submissions, but I believe it was in my
19 reply possibly that I submitted before the last hearing that it's actually eight or nine
20 stories but that's because when I first did this calculation, I was assuming that they could
21 put all of the available 60 percent of the bulk on the zoning lot in the C4-7 portion, but I
22 was -- I wasn't looking at the reality of this zoning lot and the fact that the Landmark on
23 the rebuilding is on that zoning lot and moreover you're considering a permit that has

1 already been, been approved and has a certain amount of bulk below 150 feet. If you
2 take that bulk and then say okay so if they follow the rules as, as we believe they should
3 be applied, how much could they build, it would be eight point something stories less
4 than what they have. So that--

5 CHAIR PERLMUTTER: I'm, I'm, I'm looking at a
6 diagram right now that's showing if the distribution was in both zones, you get a 39 story
7 tower 'cause that's what we're talking about, both the R and the C and if there were no
8 bulk packing rule so in other words it doesn't apply in the R district which is what's being
9 suggested, then it would be a 43 story tower so.

10 MR. LOW-BEER: I- is this the diagram that Mr.
11 Karnovsky submitted?

12 CHAIR PERLMUTTER: Yeah. On 8/27.

13 MR. LOW-BEER: Yeah. But, but as I said in response to
14 that that's a very, that's a hypothetical case. It's not this case on this zoning lot.

15 CHAIR PERLMUTTER: But, but that's, but, you know,
16 when City Planning is looking at no builds and builds which was the what the, what
17 you're, your argument earlier was that there were these soft sites that were considered in
18 the rezoning in the new zoning district, right, and they looked at those soft, soft sites but
19 they didn't look at this soft site.

20 MR. LOW-BEER: Uh-huh.

21 CHAIR PERLMUTTER: Or they didn't look at this soft
22 site the same way, right?

23 MR. LOW-BEER: Uh-huh.

1 CHAIR PERLMUTTER: So they couldn't have predicted
2 whether you keep a building, you don't keep a building, how many buildings are on a
3 zoning lot. When they look at a soft site, they tear down all the buildings on the lot so
4 you're gonna compare apples to apples, you have to have a vacant site and that, that
5 straddles the two boundaries. Otherwise, there's infinite possibilities for every single soft
6 site.

7 MR. LOW-BEER: Right.

8 CHAIR PERLMUTTER: Right? So this one is for lack of
9 a better word sort of the dumb version. They clear the site, what can you build if you
10 have the bulk packing rule that straddles, and what can you do if you don't have it.

11 MR. LOW-BEER: Uh-huh.

12 CHAIR PERLMUTTER: Right? And so there is a four-
13 story difference.

14 MR. LOW-BEER: Uh-huh.

15 CHAIR PERLMUTTER: An absurd result would be a ten-
16 story difference or a 20-story difference maybe.

17 MR. LOW-BEER: Well, well, in addition to the fact that
18 four or whatever it is, five times 16 is whatever, I forget how many feet that is but it's not
19 totally insignificant at all but it's the logic of the interpretation that is absurd. In other
20 words to the extent that you buy this rule that they have that, that they would have you
21 accept to the extent that the bulk is put outside of where the tower coverage rule applies
22 and where there would ordinarily be towers. It leads to a perverse result. Of course, it's
23 not as perverse as it could be because they didn't have enough room in the R portion of

1 the lot to, to move all that bulk out and to put the building on stilts as they could have
2 done if they had a bigger R what is it R8 section. But anyhow, you know, it's the logic of
3 it really, not just the amount by which.

4 VICE-CHAIR CHANDA: Okay. So if I were to take that
5 si-, take your presentation here where you're saying it's the logic of it so as you have
6 stated and the City Planning Commission's report, started off with the intent to find bulk
7 form that would be more in keeping with the -- that would, that would not result in tall
8 towers, right? That's what you're arguing. And they propose certain amount, certain text
9 and the text is what is being contested or the interpretation of the text.

10 MR. LOW-BEER: Uh-huh.

11 VICE-CHAIR CHANDA: The way it's being. What I'm
12 trying to understand is how is it not, how is it failing to meet the goals that the City
13 Planning Commission started off with? The with this text, it does result in a height
14 reduction both in R8 and C4-7.

15 MR. LOW-BEER: Uh-huh.

16 VICE-CHAIR CHANDA: I think everybody's in
17 agreement and the diagrams have been show -- have shown that. The fact that the zoning
18 lot has become larger than when it was reviewed then in 96 which nobody could have
19 guessed what the zoning lot. Is partially to a large extent is causing a larger zoning lot
20 with a larger floor area. I mean you're getting the floor area from the Landmark Building
21 also which is in the C4-7 area. There are a lot of other factors that are also adding to a
22 more buildable floor area which was not anticipated then. If this text was not there, it
23 would have resulted in a taller building. Because of the text what we see is a shorter

1 building. May not be as short as you want but it shorter than what would have been
2 without the text. So I'm, I'm not able to find that connection.

3 MR. LOW-BEER: Right.

4 VICE-CHAIR CHANDA: So the logical part of the
5 argument seems to work is that this text does result in a reduction in height.

6 MR. LOW-BEER: Right. But the thing is, it's not because
7 the lot is larger because as I showed in my first submission, this interaction between
8 tower coverage and bulk packing results in height being kept constant regardless of the
9 lot size and so I mean I, I do believe that--

10 CHAIR PERLMUTTER: Sorry, but that's a different
11 provision. That which I, you know, I agree with you that the provision that is the tower-
12 on-a-base rule in residence districts is an elegant structure. It's very nice the way it works
13 but when we look at this special purpose district where they write it very intentionally, it
14 takes a long time to put together a special purpose district, right? They intentionally kept
15 this section on bulk separate from this section on lot cover-, on tower coverage. Why? I
16 don't know but so they may not have been looking at the same kind of result. We don't
17 know that because it doesn't say that in any of the, in the report, the, you know, so that
18 elegant chart that applies to all sizes of zoning lots and all sizes of tower coverage and so
19 on was anticipating great variety throughout the city wherever towers apply, right?

20 MR. LOW-BEER: Uh-huh.

21 CHAIR PERLMUTTER: Now this case, there were only a
22 few sites that they were anticipating and in addition to which you never know but they,
23 they didn't anticipate or allow for that. That was the other part. They were not allowing

1 for any skinny towers. Forty percent or nothing, right? And so in this district, they
2 decided that a 40 percent tower coverage is the minimum you get.

3 MR. LOW-BEER: Thirty but yeah.

4 CHAIR PERLMUTTER: And, and, and whereas in the
5 other districts, you could go much lower than that. I think it's 30 percent.

6 MR. LOW-BEER: No, no. It's 30 here and I think it as I.

7 CHAIR PERLMUTTER: It's 40, no it's 40 here.

8 MR. LOW-BEER: Forty.

9 CHAIR PERLMUTTER: Forty and 55 percent.

10 MR. LOW-BEER: Okay. Well anyway.

11 VICE-CHAIR CHANDA: Forty percent of.

12 CHAIR PERLMUTTER: Yeah. Okay. So.

13 MR. LOW-BEER: Okay.

14 CHAIR PERLMUTTER: Did you want to tell us what --
15 why you brought this?

16 MR. LOW-BEER: Yeah. I just so I, I brought this so.

17 CHAIR PERLMUTTER: Yeah. It's 45.

18 MR. LOW-BEER: I just wanted to address Mr.

19 Karnovsky's argument that our little model which I sent you in Extell -- Excel
20 spreadsheet.

21 CHAIR PERLMUTTER: We can see. Okay.

22 MR. LOW-BEER: I don't know how -- it is works for this
23 building at 1865 Broadway and that it the prediction is a exactly what we say it would be

1 so there's something strange in this building and, you know, we could go down a whole
2 rabbit hole here which but essentially what is very odd about this building is that if you
3 look at okay so on the there's a page here which I think is one, two, three, the fifth page it
4 shows it's a blow up of from the ZD1. It shows special tower coverage under Section 82-
5 36 and it says that the lot coverage of the tower is 7,297 square feet. Of course, just
6 below it says 7,298 but we'll let that pass and that, that is 32.32 percent to tower coverage
7 and that's complying.

8 CHAIR PERLMUTTER: But yeah, I just want to correct
9 my sentence now that I'm looking at Section 82-36. It says at any level at or about a
10 height of 85 feet above curb, a tower shall occupy in the aggregate not more than 40
11 percent of the lot area of a zoning lot or for a zoning lot of less than 20,000 square feet
12 the percent set forth in Section 23-65 tower regulations and not less than 30 percent of the
13 lot area of the zoning lot.

14 MR. LOW-BEER: Right. So we're, we're concerned here
15 primarily with the minimum, not the maximum --

16 CHAIR PERLMUTTER: Right.

17 MR. LOW-BEER: -- which the minimum is 30. So the
18 tower cov-, the supposed tower coverage according to this is 7,298 square feet but then if
19 you look at the next page where I've blown up the, you know, where it lists all the floors
20 and their floor area, gross floor area and residential floor area --

21 CHAIR PERLMUTTER: Uh-huh.

22 MR. LOW-BEER: -- so if you look at these tower floors,
23 so typically since, since floor area is defined this as being from the outside, the outer wall

1 -- I mean the thickness of the outer wall is included in gross floor area. So it should be
2 pretty much the same as lot coverage but here there's an 18 percent difference if you look
3 at this.

4 CHAIR PERLMUTTER: I'm sorry. Where are we going
5 with this? I'm a little confused.

6 MR. LOW-BEER: Okay.

7 CHAIR PERLMUTTER: No, no, I understand that you're,
8 you're --

9 MR. LOW-BEER: Okay. All I'm, all I'm --

10 CHAIR PERLMUTTER: -- breaking this apart --

11 MR. LOW-BEER: -- going to say.

12 CHAIR PERLMUTTER: -- but why are we doing it?

13 MR. LOW-BEER: Well why are we doing it is because
14 Mr. Karnovsky said that this building was as tall as it was, that my model of how the bulk
15 packing and tower coverage rules created a precise height limit is wrong because look at
16 this building and this building has some very strange things going on within it. But if you
17 sa-, instead of lo-, using that 7,298 square foot number, you use gross floor area for tower
18 coverage, then the model exactly predicts.

19 CHAIR PERLMUTTER: Now wait. This is for 1865
20 Broadway, right?

21 MR. LOW-BEER: Right.

22 VICE-CHAIR CHANDA: Right.

23 CHAIR PERLMUTTER: This the site in question is sorry,

1 just checking the correct address just a second. Is 36 West 66th Street and 50 West 66th
2 Street.

3 MR. LOW-BEER: Right. So all I want to say is that Mr.
4 Karnovsky in his last submission used this building as an example of why or how the
5 model that we, we say that the bulk packing rule, the tower coverage rule when working
6 together create a precise or almost exact height limit and he says no, look at this building,
7 it's way taller than your model predicts. And so I look, I got the ZD1 for this building
8 and I looked at it and it has some strange things in it. He then, he then went on to say
9 well actually, this building could have been even taller and he presents another model
10 which shows how it could have been even taller but that one has even more strange things
11 going on in it. For example, it has 16 floors below 150 feet.

12 This is his exhibit D on his last submission. I don't know how you get 16 floors
13 especially given the ceiling heights of 15 feet, 10 feet, 10.7 feet and 12 feet how all that
14 fits below 150 feet it just doesn't and then he has a penthouse where penthouses are
15 required to be 80 percent of the floor area of the immediate -- the floor immediately
16 below. His first penthouse floor is only 50 percent of floor area of the floor below so I
17 submit all I want to say with all this and I just like to put it in the record is that I think
18 that to the extent that Mr. Karnovsky was trying to undermine our contention that these
19 two rules work together to fix a height in the low 30s, he didn't succeeded or he hasn't
20 shown that with these examples.

21 CHAIR PERLMUTTER: Okay. So again, you want us to
22 be looking at this and unpacking this and going to make --

23 MR. LOW-BEER: No, no. I just--

1 CHAIR PERLMUTTER: -- because you're introducing
2 additional information that we have--

3 MR. LOW-BEER: I don't think it will I mean since he
4 brought up these examples submit it as rebuttal, but I don't think it should delay you one
5 second.

6 CHAIR PERLMUTTER: Right. Right.

7 MR. LOW-BEER: Because--

8 VICE-CHAIR CHANDA: So we can ask Mr. Karnovsky
9 to explain.

10 CHAIR PERLMUTTER: Respond to this but I --

11 VICE-CHAIR CHANDA: Yeah.

12 CHAIR PERLMUTTER: -- maybe by being even taller,
13 the floor to floor heights are quite low here. So this actually could have been a much
14 taller building and still comply with the lot coverage and bulk packing rule so.

15 MR. LOW-BEER: W- wait. The floor to floor heights in
16 which?

17 CHAIR PERLMUTTER: In, in the building that you gave
18 to us.

19 MR. LOW-BEER: Oh.

20 CHAIR PERLMUTTER: It's got very low floor to floor
21 heights relative to a lot of the projects we see. They have 15-foot floor to floor heights in
22 some of our projects so.

23 MR. LOW-BEER: But I'm not talking about the height.

1 I'm just --

2 CHAIR PERLMUTTER: No, I, know.

3 MR. LOW-BEER: -- talking about the number of floors.

4 CHAIR PERLMUTTER: But maybe that's what Mr.

5 Karnovsky was referring to.

6 MR. LOW-BEER: No.

7 CHAIR PERLMUTTER: I don't know.

8 MR. LOW-BEER: I don't believe he was. I mean this

9 building actually only has 13 floors below 150 f-, 150 feet. We in our model said he

10 could have 14 feet floors below 150 feet. This has 13 floors below 150 feet so I don't

11 think that's the, the answer but, you know, if you, if you'd rather just not accept it into the

12 record that's fine.

13 CHAIR PERLMUTTER: No, it's in the record.

14 MR. LOW-BEER: I don't wanna delay anything.

15 CHAIR PERLMUTTER: You've submitted it . And you

16 are talking about it so you'll be alright.

17 MR. LOW-BEER: Okay. Well I don't think it'll change

18 anything. I just wanted to defend our well the model and to say that the criticism that

19 was made of it doesn't prove that we're wrong on that point but since your point is that

20 the tower-on-base, the, the bulk packing and tower coverage rules in your view were

21 meant to be separate here, you know, the whole model really doesn't.

22 CHAIR PERLMUTTER: No, that's not what I said. I said

23 they are separate. Whether they were meant to be separate, we can't know. There they

1 are --

2 MR. LOW-BEER: Yeah.

3 CHAIR PERLMUTTER: -- separately written in the text
4 within instruction.

5 MR. LOW-BEER: Yeah. Right.

6 CHAIR PERLMUTTER: Right? And so as, as opposed to
7 tower-on-a-base rules in residence district they're all together.

8 MR. LOW-BEER: Well, they are physically, they are
9 physically separate by, by one other provision but nobody has come up with any reason
10 why the, the, the City Planning Commission would have wanted to do this so, you know.

11 CHAIR PERLMUTTER: Okay. Or why they didn't want
12 to do it so that's part of the point.

13 MR. LOW-BEER: Right. Right.

14 CHAIR PERLMUTTER: We don't have --

15 MR. LOW-BEER: Right.

16 CHAIR PERLMUTTER: -- as I mentioned yesterday,
17 we've been exposed sometimes to provisions of the zoning that were inadvertently missed
18 when City Planning did a comprehensive zoning text change and for a while the
19 architectural community is all confused because they know they made a mistake and do
20 they take advantage of the mistake which will be corrected in some eventually maybe or
21 do they not dare because they might get stopped in the middle of construction right? We,
22 we've seen a few examples of that. This is, this isn't one of those examples where City
23 Planning realized oh, we made a mistake in which case they would have corrected it or

1 they might correct it in the future if they --

2 MR. LOW-BEER: Uh-huh.

3 CHAIR PERLMUTTER: -- determine from our decision

4 that they made a mistake.

5 MR. LOW-BEER: Right.

6 CHAIR PERLMUTTER: But it's not our impression that

7 they think they did.

8 MR. LOW-BEER: Right.

9 CHAIR PERLMUTTER: So okay. So let's hear from --

10 Mr. Steinhouse: DOB.

11 CHAIR PERLMUTTER: -- DOB.

12 MR. ZOLTAN: Good morning. Sorry.

13 CHAIR PERLMUTTER: Yeah. Go ahead.

14 MR. ZOLTAN: I'm Michael Zoltan on behalf of the

15 Department of Buildings. A lot has been spoken about at the meeting.

16 [CROWD]

17 CHAIR PERLMUTTER: Yeah. So, so we're having a lot

18 of trouble with mics. You have to put your like mouth really close and speak loudly like

19 you're screaming at somebody.

20 MR. ZOLTAN: Sure. How's this?

21 CHAIR PERLMUTTER: Yeah. That's good. Excellent.

22 MR. ZOLTAN: So Michael Zoltan on behalf of the

23 Department of Buildings. A lot has been spoken about the bulk distribution rule and

1 about plain meaning doctrine and I think for the most part the Board understands the
2 Department's position so I'm not gonna expound much on that. Yesterday, there was a
3 little discussion about the mechanical space regarding the horizontal layout of, of it as
4 opposed to the, the height of the floor. This was more in the Landmark West case than
5 the --

6 CHAIR PERLMUTTER: Right.

7 MR. ZOLTAN: -- City Club one. So just one clarification
8 to make. The Department has issued a final determination in this case in a sense of there
9 is a PAA that was filed that changed the scope of the permit and so that's a final
10 determination and that is before the Board today and we have two BSA cases, two
11 calendar numbers challenging that the issuance of that PAA approval and that permit. So
12 now if there is a new challenge that comes to the Department about a different issue, the
13 mechanical space on a horizontal analysis, there is no challenge period that is before the
14 Department.

15 CHAIR PERLMUTTER: Correct.

16 MR. ZOLTAN: So as with all complaints, the Department
17 reviews complaints and we'll make sure that everything is okay but that may not lead to a
18 new final determination to come back to the Board in the future.

19 CHAIR PERLMUTTER: May not. Okay.

20 MR. ZOLTAN: Right. So we'll review it and, and, and if
21 we are still convinced that everything is fine, there may not be a new final determination
22 before the Board that, that can lead to an appearance before the Board.

23 CHAIR PERLMUTTER: A challenge.

1 MR. ZOLTAN: Yes.

2 CHAIR PERLMUTTER: So if the appellants are interested
3 in having Department of Buildings re-, take another look at the mechanicals and the
4 Department looks at the mechanicals in terms of their layout and plan and determines that
5 it's a reasonable layout or it justifies the amount of floor space to occupy by the
6 mechanicals you're saying the Department might not issue another determination?

7 MR. ZOLTAN: A final determination. One that is
8 appealable.

9 CHAIR PERLMUTTER: Appealable.

10 MR. ZOLTAN: Yes.

11 CHAIR PERLMUTTER: Be- because?

12 MR. ZOLTAN: There is, there is no public -- the challenge
13 -- public challenge period closed so this ZD1 goes up and that's a public challenge period
14 on a new building or when the permit is issued, that's a public challenge period that they
15 can take to BSA which they did in this case but there's no new avenue for a public
16 challenge or to request, to that necessitates DOB issuance of a final determination.

17 CHAIR PERLMUTTER: Oh, unless for example, the
18 appellant reviewed the materials themselves and found that they were faulty for example.
19 Would that?

20 MR. ZOLTAN: The--

21 CHAIR PERLMUTTER: If the appellant hired an engineer
22 and the engineer said there's too much mechanical equipment in here and contests it,
23 would that open a challenge? Not necessarily.

1 MR. ZOLTAN: It can be a, a complaint to the Department
2 and we will review it, but it won't necessitate a final determination. That's the decision.

3 CHAIR PERLMUTTER: Okay. So this is again
4 Department of Building practice and I would say counsel of appellants and DOB counsel
5 would, would talk that out 'cause I don't -- that's not really our domain. Okay? But, but
6 the question isn't before us because DOB hasn't reviewed it so. Okay. Thank you very
7 much.

8 CHAIR PERLMUTTER: Okay. Yeah, Mr. Klein.

9 MR. KLEIN: Good morning, Madam Chair,
10 Commissioners. My name is Stuart Klein.

11 CHAIR PERLMUTTER: Speak really loudly.

12 MR. KLEIN: Okay. Sorry. My name is Stuart Klein of
13 Klein Slowick and.

14 CHAIR PERLMUTTER: And say who you represent so
15 everyone can hear.

16 MR. KLEIN: I represent Landmark West and let me
17 preface what I'm about to say which is that is the most absurd statement I've ever heard in
18 my life.

19 CHAIR PERLMUTTER: Which?

20 MR. KLEIN: Well, the fact that the Buildings Department
21 admits it made a mistake in not reviewing the plans 'cause the plans were grossly
22 incomplete and yet there's no, there's no review process available to the Board because
23 they will not issue a final determination on that. Aside from being grossly wrong, if they

1 took a look at the 45-day challenge rule and the history of legislation, they're completely
2 misinterpreting it. They are also misinterpreting or misreading our application. The
3 appeal -- our appeal was predicated not on the zoning document. Our appeal was
4 predicated on the DOB issue -- permit issued on April 11, 2019 which was based in part
5 on mechanical space plans submitted by the applicant. That permit is an appealable final
6 determination as per code City of New York 101-15A3. So obviously it is appeal-, it is
7 properly before this forum and for them now to say that we have no appeal rights in this
8 because they're not going to review these and render a final determination literally takes
9 away our right to appear before the Board.

10 CHAIR PERLMUTTER: So they didn't say they wouldn't
11 review it. They said it might not result in a final determination.

12 MR. KLEIN: Well, that's another way of saying no result.
13 I have three applications in front of the BSA now for to appeal permits. They are sitting
14 on their desk for over a year and each of them is a single-issue item and I keep on e-
15 mailing them and they keep on saying we're working on it.

16 COMMISSIONER SCIBETTA: It's currently before the
17 Board now.

18 MR. KLEIN: What? Excuse me?

19 COMMISSIONER SCIBETTA: It is currently before the
20 Board now?

21 CHAIR PERLMUTTER: No, no, no, no. That's what we
22 don't b-, go ahead.

23 MR. KLEIN: No, no, excuse me. It is before the Board

1 because under the City rules, this is a -- the permit is a final determination. Our appeal
2 was not made pursuant to the 45-day rule.

3 MR. STEINHOUSE: Right. The issue though is that you
4 have to raise the specific issue within 30 days in order for it to be before the Board.

5 MR. KLEIN: And we did. It was -- excuse me.

6 MR. STEINHOUSE: I believe at the last hearing, it was
7 discussed and this was briefed in the papers that actually the characterization of the issue
8 in your papers was as to this sort of horizontal issue at the time.

9 MR. KLEIN: No, actually absolutely not. It basically.

10 MR. STEINHOUSE: As to the --

11 CHAIR PERLMUTTER: Don't interrupt.

12 MR. KLEIN: I'm sorry. I'm sorry.

13 MR. STEINHOUSE: -- the measurements of the
14 mechanical space and since that issue was not presented in a timely, timely manner under
15 the Boards rules of practice and procedure, that is not before the Board but nothing would
16 preclude the Department of Buildings from issuing a final determination as to that matter.
17 It's --

18 MR. KLEIN: Excuse me.

19 MR. STEINHOUSE: -- obviously subject to discretion
20 from what we just heard although the public challenge rule also provides for a new public
21 challenge period should a new ZD1 be uploaded. However, because you did not raise
22 this issue in your papers within 30 days, that is why it is not before the Board.

23 MR. KLEIN: With all due respect, that is wrong. The

1 permit was issued April 11th. We filed within the 30 days on May 13th because there
2 was a Sunday involved so we submitted it the last day of the 30-day period. That permit
3 is appealable as it is a final deamination. So it is --

4 MR. STEINHOUSE: That's not --

5 MR. KLEIN: -- excuse me.

6 MR. STEINHOUSE: -- that is not the issue.

7 MR. KLEIN: It is before the Board. Let me address your
8 second issue. Your second issued wasn't raised. Well number one, you don't have to
9 raise every single issue in your first application. You always supplement it. So there are
10 issues that are raised subsequent to the initial application which the Board is always
11 engaged and always resolved and always received testimony.

12 CHAIR PERLMUTTER: Sorry. We don't always engage
13 and always resolve. We have many applications where an appellant brings up -- we have
14 one we're working on now, brings up hundreds of issues that the Board can't possibly
15 look at right. One at a time has to be something where DOB has considered the issue
16 clearly and the Board has had an opportunity to understand the arguments being made by
17 appellant and in this situation, we were never presented with any information about the
18 mechanicals in horizon-, mechanical layout and so all, all of these papers that have been
19 submitted not one says there have been something actually given to us for us to analyze
20 mechanicals and nor has DOB iss-, opined on whether they think the mechanical space
21 has been properly laid out.

22 MR. KLEIN: That is with all due respect again. That is
23 not true. In our original application, on 5/13, we said the permit, not the, not the, the

1 zoning, not the ZD1, the permit should be revoked because the underlying plans
2 contravene the Zoning Resolution in that the owner's attempts to exempt the voids from
3 floor area should be rejected as the voids are neither used for mechanical equipment nor
4 are they accessory uses to the residential uses in the tower.

5 CHAIR PERLMUTTER: Sorry. A void is not the same as
6 the mechanical space. Mechanical space is occupied and a void is sort of a recent term of
7 art that's been coined by challengers to these buildings, right, but void by its very word
8 implies nothing inside, right, but when we have a mechanical floor, it's filled with
9 mechanical stuff sitting on the -- in plan on the floor and so the language in your appeal
10 refers to voids. I'm sorry, it doesn't refer to mechanical space or mechanical equipment
11 being not rectifiable.

12 MR. KLEIN: You're defining, you're defining a term that
13 is not defined anywhere in the code. I mean voids means space and this space if you look
14 at the plans is a uni- unified space with --

15 CHAIR PERLMUTTER: Sorry.

16 MR. KLEIN: -- mechanical elements in there and the
17 Buildings Department in the Sky House case specifically said that it reviews every single
18 case to determine the functionality of the mechanical space and if in fact the deductions
19 are merited. We argued that the mechanicals do not merit those deductions and as a
20 matter of fact we cited to a memo submitted by, by the Buildings Department which
21 indicates -- excuse me for a second. That A, the plans will not be reviewed unless there's
22 sufficient detail on all the drawings, that they will not be accepted or approved for review
23 and that in the Building Code -- rather in the BIS [phonetic] system, it says mechanical

1 drawings show the building systems that provide for the heating, ventilation, air
2 condition, plumbing, and a fire protection needs for the proposed project. They shall
3 include mechanical drawings involving heating systems, ventilation systems, air
4 conditioning systems, exhaust air systems, piping layout, locations and return, air
5 plenums, location heights of exhaust and vents above and goes and on and on.

6 CHAIR PERLMUTTER: What is it you're reading?

7 MR. KLEIN: None of those--

8 CHAIR PERLMUTTER: Sorry. I don't know what you're
9 reading.

10 MR. KLEIN: I'm reading from a guideline for filing plans
11 issued on the Buildings Department computer.

12 CHAIR PERLMUTTER: How, how is that relevant to
13 what we're talking about?

14 MR. KLEIN: Because the Buildings Departments to
15 approve those plans and none of those articles, none of those items were submitted to the
16 Buildings Department despite the fact that in the Townhouse case they said they review
17 each and every building for particularities of the mechanicals submitted.

18 CHAIR PERLMUTTER: So you're--

19 MR. KLEIN: So the first--

20 CHAIR PERLMUTTER: I'm sorry.

21 MR. KLEIN: Yeah.

22 CHAIR PERLMUTTER: But you're aware 'cause I know
23 you're aware that a buil-, I don't know actually what the status and Mr. Karnovsky will

1 address this. What the status of the filings are on this building, whether they were
2 already filed for electricals and mechanicals. I just don't know.

3 MR. KLEIN: Yeah, they were approved. They had to be
4 filed in order to have the permit issued. The permit was issued for this mechanical space
5 and those plans were submitted to you and the mechanical space was I took all those
6 plans. It was about ten in nature. I blew them up and there was absolutely nothing in the
7 plans that complied with the Building Code directors and the Building Code law. So they
8 approved a permit to issue for this building and those, those plans were palpably
9 deficient.

10 So I'm simply asking one of two things. That the permit be revoked as per my
11 request on my May 13th application because it always -- it doesn't deal with height. It
12 deals with spatial realities and the actual description of the mechanical space or that the,
13 the applicant come forward and submit those documents which should have been
14 submitted in the firsthand to the Buildings Department and all I'm asking for the
15 Buildings Department to do is to do that which it's required to do by law and which they
16 agreed to do and they claimed they do in the Sky House case.

17 CHAIR PERLMUTTER: So--

18 MR. KLEIN: It didn't do that here.

19 CHAIR PERLMUTTER: So here's the thing. You're --
20 you are in fact if we simply listen to the videos and read your submission, you're
21 introducing a whole pile of new things that you want us to review.

22 MR. KLEIN: No, I'm not.

23 CHAIR PERLMUTTER: Right? Yeah. Yes, you are.

1 And so we haven't looked at whether or not that those questions about Buildings
2 Department performance or actually properly before us. We usually do not get involved
3 in whether Buildings Department properly processed their materials because they handle
4 the construction of these buildings how, you know, in the way that they do where we've
5 learned that there are series of applications that are filed for all the different trades and
6 that eventually they collect into one complete application but they're not filed all at the
7 same time because it's just not how buildings are designed and so and the Buildings
8 Department allows those applications to be filed sequentially. That's why you have a
9 mechanical submission, an electrical submission, structural submissions, all of that, the
10 main architectural drawings. So if you're asking us --

11 MR. KLEIN: Did they submit it at the time?

12 CHAIR PERLMUTTER: -- to go -- if you're asking us to
13 go through Buildings Department procedure and question how Buildings Department
14 processes their applications, it's a completely --

15 MR. KLEIN: Excuse me.

16 CHAIR PERLMUTTER: -- different -- stop interrupting.

17 MR. KLEIN: Uh-huh. Sure.

18 CHAIR PERLMUTTER: It's a completely different review
19 and then we would need Department of Buildings to get up here and explain to us what's
20 the process that they go through, how does it comply with the, the Building Code and the
21 admin, the admin code, etc., etc. This was not before us and if, if you think it should be
22 before us then we have to certainly delay any decision on this part of the case. I don't
23 know what that does to the concern about the other case, the City Club case and so who

1 wants a decision today, right?

2 MR. KLEIN: I don't care if they want the decision today.

3 That's not my concern.

4 CHAIR PERLMUTTER: They want a decision today.

5 MR. KLEIN: That's not my concern.

6 CHAIR PERLMUTTER: It's not your concern.

7 MR. KLEIN: Absolutely not. I mean you could bifurcate
8 this number one, but number two, in the Sky House case, you specifically went through
9 the protocol as to what the Buildings Department does to review mechanical deductions.
10 You spec-, you asked them and you agreed with their protocol. Here, we raised the fact
11 in our May 13th which was, which is an appeal of the permit, we raised the fact that this
12 mechanical space was improperly deducted. I do not understand how that's not before the
13 Board.

14 CHAIR PERLMUTTER: So the Sky House case was the
15 question about the mechanical voids right? And in the process of reviewing the subject
16 of mechanical voids, we needed to understand what's the mechanical equipment in the
17 space so that we could look at that, right? Because what if the, the void -- we were just
18 talking about what is a void and whether there's a height limitation. So we wanted to also
19 know what's the height of the equipment, etc. So show us drawings to show us how that -
20 - those spaces are occupied by a mechanical equipment.

21 In the end, of course, the appellants didn't come with an engineer so all we had
22 was pictures of mechanical equipment and no determination from DOB. We didn't get a
23 determination from DOB about whether it was a reasonable amount of mechanical

1 equipment. We just got drawings.

2 MR. KLEIN: Well, actually you did. They stated on
3 multiple occasions in that case that DOB came in and told you that they reviewed them
4 and they are, they are sufficient for the building and the deduction was justified. They
5 did say that. Now here it is impossible to make an objection to the mechanical space
6 deduction because nothing was included in the plans.

7 COMMISSIONER SCIBETTA: Counsel.

8 MR. KLEIN: You had 20,000 square foot floors with a
9 little box here that said boiler, a little box here that said something else, and none of the
10 information that is required to be in the plans as per DOB code and DOB protocols was
11 in it so essentially the Buildings Department are saying excuse me, we made a mistake
12 but it's not appealable.

13 COMMISSIONER SCIBETTA: Counsel.

14 MR. KLEIN: That's absurd.

15 COMMISSIONER SCIBETTA: Assuming, assuming it
16 wasn't -- this issue wasn't properly raised --

17 MR. STEINHOUSE: Yes.

18 COMMISSIONER SCIBETTA: -- are we precluded from
19 hearing this?

20 CHAIR PERLMUTTER: Well, so it goes more like this.
21 What Mr. Klein is suggesting is that we unpack the entire application --

22 MR. KLEIN: Absolutely not. I'm just asking the fill of
23 the space.

1 CHAIR PERLMUTTER: -- and, and it just because that's
2 all you're asking -- no, no, no. You did more than that. You said mechanical space --

3 MR. KLEIN: Right.

4 CHAIR PERLMUTTER: -- being occupied by mechanical
5 equipment and then you said oh, but the permit wasn't properly issued because --

6 MR. KLEIN: No. It wasn't properly issued.

7 CHAIR PERLMUTTER: -- they didn't submit the
8 drawings and all that stuff.

9 MR. KLEIN: No, all I'm saying is please. Don't, don't
10 conflate the two. I basically said--

11 CHAIR PERLMUTTER: I'm not conflating. I'm stating.

12 MR. KLEIN: No, I simply said it is your, it is your, within
13 your power to either revoke the permit 'cause it was improperly issued 'cause they never
14 received completed plans or in the alternative ask the Buildings Department to secure
15 plans consistent with the building code and come to the Board and show that the
16 deductions were reasonable. Here there is nothing on the record or at the Buildings
17 Department to show that those tens of thousands of square feet which were given to them
18 in deductions is justified period. There is no justification for a single piece of equipment.

19 As a matter of fact, if you take a look at former Deputy Commissioner Fariello's
20 memo to his own staff, it said you have to include pipes, if it's above five feet above
21 grade, it doesn't count. I mean there's a whole protocol none of which the Buildings
22 Department followed and then they come here before you and brazenly say well we're not
23 gonna issue a final determination.

1 CHAIR PERLMUTTER: Okay. So what I do wanna stop
2 right here is I don't know the status of the current filings with the Buildings Department
3 and so I don't know whether counsel for the owner actually knows the answer to this
4 because the only people would know is the engineer and architect on the job and whether
5 or not those, those things have been filed.

6 MR. KLEIN: They haven't been.

7 CHAIR PERLMUTTER: Sorry.

8 MR. KLEIN: It would either be in the BIS system or not.
9 It's not there.

10 CHAIR PERLMUTTER: I don't know the status of the
11 application. I'm not gonna go on your say so 'cause you're not the --

12 MR. KLEIN: I appreciate that.

13 CHAIR PERLMUTTER: -- you're not the owner of the
14 building.

15 MR. KLEIN: Okay.

16 CHAIR PERLMUTTER: Okay. So I wanna hear from the
17 owner of the building.

18 MR. KLEIN: Thank you.

19 CHAIR PERLMUTTER: Okay. Thank you.

20 [CLAPPING]

21 CHAIR PERLMUTTER: Please. Please refrain clapping.
22 It takes time. It's not necessary.

23 MR. KARNOVSKY: David Karnovsky, Fried, Frank,

1 Harris, Shriver and Jacobson for owner. I'll address the City Club first and then Mr.
2 Klein. I'll try to be brief. I do agree with Mr. Low-Beer that this has been fairly substan-
3 substantially briefed and you're, you're aware of just about everything there is to say. At
4 the August 6th Public Hearing, we demonstrated that the language of the bulk distribution
5 provision is clear and unambiguous within the special district that is within the Lincoln
6 Square Special District without exception or limitation, qualification, exclusion of any
7 zoning district. At least 60 percent of the total floor area permitted on the zoning lot,
8 that's the total floor area on the zoning lot without limitation as to the zoning district shall
9 be within stories located partially or entirely below a height of 150 feet from curb level
10 and that's irrespective of whether development is built under tower regulations or
11 standard height and setback and without any fixed limit on the number of stories either
12 below or above 150 feet and the project complies fully with this provision.

13 In the face of this clear and unambiguous language, the appellants have made
14 multiple arguments that the plain language does not mean what it says and that it
15 somehow excludes the floor area permitted on the R8 portion of the zoning lot from the
16 60 percent bulk distribution calculation. And in their most recent submissions they revert
17 to an argument that section 82-34 mandates a 60/40 ratio between the floor area in the
18 base of the building and the power portions and what they mean by that is simply none
19 other than the 60 percent bulk distribution must be calculated on the basis of the C4-7
20 portion of the zoning lot only which is another way of saying what they've said all along
21 in 20 different ways that 82-34 does not apply to the R8 portion of the zoning lot despite
22 its plain language.

23 At August 6th Public Hearing, the chair asked City Club's counsel whether it

1 could identify any ambiguity in 82-34 whether considered alone or in conjunction with
2 the provisions of the special district with the chair noting that the question should be
3 answered by counsel without resort to extrinsic evidence or the provisions of Article 2
4 meaning without trying to conflate 82-34 with the tower-on-a-base regulations of Article
5 2. As we understand it, the reason for asking this question was that under New York law
6 where a zoning provision is unambiguous, the Board must use the word of the Court of
7 Appeals in the Zaldin v. Concord case "do no more and no less than apply the language
8 as it is written." The appellants have failed to identify any such ambiguity and the statute
9 should apply in accordance with its terms.

10 Unable to identify an ambiguity, they misstate the law saying that the principal
11 that where statutory language is clear and ambiguous, the court must construe it to give
12 effect of the plain language by saying that that is only valid in certain circumstances or in
13 most circumstances but not in all of them. And they misstate Zaldin, they misstate
14 Raritan and they ignore the guidance of those cases that legislative intent is to be
15 ascertained from the language of the statute itself and it resort to extreme -- it's extrinsic
16 evidence beyond the language of the statute occurs only where the language is
17 ambiguous.

18 Now they cite to Stringfellow's as an example of a post Raritan case which they
19 say qualifies Raritan but what does that decision actually say? It says that legislative
20 intent is ascertained from the words and language used in the statute and if the language
21 thereof is unambiguous and the words plain and clear, there is no occasion to resort to
22 other means of interpretation. In that case itself, the issue was about what does the word
23 customarily mean in the context of adult use regulations and there was an ambiguity

1 about it, an identified ambiguity about what that meant.

2 There were two competing interpretations. What did the court do? The court
3 looked to the use of the word customarily under other provisions of the Zoning
4 Resolution like in the home occupation provision and it looked to the rules of
5 construction of the Zoning Resolution and it resolved the decision in the city's favor. It is
6 not of support for a qualification or diminution of the law stated in Raritan. The other
7 cases cited by City Club don't support the proposition that resort to extreme extrinsic
8 evidence is appropriate where the language is unambiguous. They either involve
9 situations where the statutory language was ambiguous and the courts recognized it or
10 where a court interpreted an ambiguous provision by looking to other provisions within
11 the same statute or where a court was called on to resolve a conflict between provisions
12 of a particular statutory scheme.

13 Now here, I think as we've demonstrated over and over again when you read 82-
14 34, in relation to the other provisions of the special district, it only reinforces that its plain
15 language means what it says and that's because as we pointed out in the context of the
16 other special district provisions, it's clear that 82-34 is distinct in applying within the
17 special district without all the various types of exceptions, exclusions, and limitations
18 found in those other provisions. Regardless as has been discussed and I'm not gonna go
19 over this again, the results in this case is not absurd, the absurdity doctrine being very
20 limited exception to the Raritan doc and we've demonstrated that.

21 Most recently, the appellant, City Club, argues and claims that 82-34 and
22 inexorably dictates an upper limit to the number of occupiable floors which they calculate
23 with exacting precision using an Excel or Extell spreadsheet of 32.4 stories, 14 floors

1 below, 150 feet and 18 point four floors above. According to them, the parameters set by
2 the statute embody a mathematical limit that not coincidentally is in the low 30s. Although
3 the statute does not spell out in words the requirement that the number stories remain in
4 the low 30s regardless of lot size, it does so in numbers, it's mad-, mathematics make it
5 so. Of course, had the City Planning Commission wished to establish a fixed limit on the
6 number of permitted stories, it would've done so by codifying the appellants 32.4 floor
7 limit or some other limit in the statute. It did the opposite. It rejected any absolute height
8 limit and it disavowed an interest in producing uniform results by noting that the special
9 district is an area cha- characterized by towers of various heights.

10 And as discussed on August 6th, the Planning Commission predicted in a single
11 statement in its report and a statement that was based only on study of six soft sites
12 studied as part of its work leading up to the zoning text amendment, that it's proposal
13 would produce a range of results, not a single fixed maximum from the mid 20 to the low
14 30s. And as we also discussed, City Planning's proposal was controversial because
15 among stakeholders precisely because it didn't produce a predictable result or so they felt.
16 The exact opposite of what appellants now claim.

17 In fact, Landmarks West was a vocal opponent of the bulk distribution proposal in
18 1993. It testified at City Planning as follows: While we disa-, while we agree with the
19 intention of limiting height expressed by the Department, we cannot accept the device of
20 packing the bulk. This device would not in fact limit the height of the buildings but only
21 makes achieving a tall building slightly more difficult than at present. Moreover,
22 Landmark West stated based on work that was conducted at the Environmental
23 Simulation Center, that buildings of 33 to 35 stories "would not be uncommon on the

1 remaining development sites." This belies appellant's wishful thinking that there is some
2 kind of 32.4 story limit hidden and imbedded in this statute. City Planning did not intend
3 any such mathematically fixed limit and the stakeholders opposed to it -- opposed it
4 precisely for that reason.

5 Now with regard 1865 Broadway, the purpose of our introducing that into the
6 record was simply to illustrate the variability and the application of the rules. 1865
7 Broadway is a building being built by another developer with 32 stories. And what we
8 demonstrate is that 32 stories is a function of the tower coverage which exceeds the
9 minimum required and the fact that they didn't take advantage of the penthouse rule
10 which allows you to have floors at the higher levels which have lower tower coverage.
11 And what we show is simply that by going down to the minimum, the 30 percent and
12 utilizing the penthouse rule, a greater number floors can be achieved and we calculated
13 that as 35. That's 2.6 floors more than the appellants supposed 32.4 limit. By the way it's
14 the number that was cited by Landmark West in 1993 as a possible result and 35 is the
15 number of stories in the project itself exclusive of the mechanicals.

16 It's clearly not an absurd result in this case to have the same number floors as
17 could be available and achievable at 1865 Broadway which is the site wholly in a C4-7
18 district and even assuming arguendo that 82-34 uniformly produces 32.4 residential
19 floors on a zoning lot located wholly within the C4-7 district, it is clearly not absurd that
20 the project different conditions resulting from the fact that it is a split lot, contains 35
21 residential floors, a difference of 2.6 floors.

22 So neither the language nor the legislative history, nor the modeling by appellant
23 supports their theory that the special district rules embody a fixed limit of 32.4

1 occupiable floors. So for all of the reasons set forth in our papers and discussed on
2 August 6th, as well as today, DOB's decision applying the plain language of section 3 --
3 Section 82-34 in accordance with its terms and following the clear direction of the Court
4 of Appeals of the state, should be upheld and the appeal denied. Now--

5 CHAIR PERLMUTTER: I just want to --

6 MR. KARNOVSKY: Oh, sure.

7 CHAIR PERLMUTTER: -- just a quick question on this
8 1865 Broadway.

9 MR. KARNOVSKY: Yeah.

10 CHAIR PERLMUTTER: So what you're saying is if you
11 use the penthouse rule, you could have smaller tower --

12 MR. KARNOVSKY: Yeah.

13 CHAIR PERLMUTTER: -- which allows more height but
14 you still have to have the 60 percent or whatever the number is --

15 MR. KARNOVSKY: Yes.

16 CHAIR PERLMUTTER: -- below the 150 feet. So you
17 need to play around with the floor area. Oh, but then you would just have a smaller floor
18 plate.

19 MR. KARNOVSKY: Yeah.

20 CHAIR PERLMUTTER: At the tower.

21 MR. KARNOVSKY: Higher levels.

22 CHAIR PERLMUTTER: You'd, you'd have a 30 percent
23 tower and then you'd have whatever.

1 MR. KARNOVSKY: And then below, it can be below 50
2 percent.

3 CHAIR PERLMUTTER: Yeah.

4 MR. KARNOVSKY: As long as you comply with that
5 penthouse rule. That, that building for whatever reason that was their choice elected not
6 to do that. We were illustrating that if you do it, you can get to the 35 floors --

7 CHAIR PERLMUTTER: Okay.

8 MR. KARNOVSKY: -- in combination with going down
9 to 30 percent. That was the purpose of, of that and that's its only purpose. With regard to
10 -- should I move onto --

11 CHAIR PERLMUTTER: Uh-huh. Yeah. Yeah.

12 MR. KARNOVSKY: With regard to Landmark West's
13 argument that the Board should address in this proceeding issues regarding the mana-,
14 mechanical floors, excuse me, regarding the floor area deductions taken for mechanical
15 equipment on mechanical floors on the basis that its initial statement of May 13th
16 squarely raised those issues, it did not. These issues regarding mechanical floor space
17 were first raised at the Public Hearing on August 6th, more than two and a half months
18 after submission of the Statement of Facts, well after the 30-day period that Mr.
19 Steinhouse referred to.

20 The issue relating to mechanical deductions as defined in Landmark West's appeal
21 on May 13th is as follows: The permit should be revoked because the underlying plans
22 contravene the ZR in that the "owners' attempts to exempt the voids from floor area
23 should be rejected as the voids are neither used for, for mechanical equipment nor are

1 they accessory uses to the residential uses in the tower." There is no question that the
2 term voids as used here refers to the building's tall mechanical spaces and not to issues
3 relating to whether the amount of horizontal floor space used for medical equipment in
4 the project is excessive. Landmark West statement of facts in fact defines the term voids.

5 It refers to them as vertical space. It states, "a substantial portion of the tower's
6 height 196 vertical feet would be comprised of empty spaces (the "voids")." In so far as
7 Landmarks West's question whether the voids are needed for mechanical equipment, it
8 was with respect to their vertical dimension that is the floor to ceiling heights of the
9 spaces. Each and every one of the arguments was made to argue that mechanical spaces
10 with tall floor-to-ceiling heights are unlawful or must be counted towards floor area,
11 precisely the issues which the board addressed in calendar number 2016-427-A relating
12 to 30th Street.

13 Landmarks West's assertion in its, in its August 21st supplemental statement that
14 the issue presented in its initial May 13th statement of fact "covers all special objections,
15 length, width, and height to the FR de-, the FAR deductions is simply wrong." They had
16 the opportunity as early as May to raise issues whether the floor space used for
17 mechanical equipment in the project is excessive but they chose not to do so until the
18 August 6th hearing. We believe as Mr. Steinhouse indicated that this is improper, that
19 that appeal should have been made within the 30-day period and that the new issues
20 raised by them at this late date should not be heard in this proceeding and that their resort
21 is to the DOB as the DOB counsel explained.

22 With regard to your question about mechanical drawings. Over hundred 150
23 mechanical drawings were submitted and approved by the DOB in connection with

1 affirmative approval. The suggestion that they are incomplete or they don't exist is
2 specious.

3 CHAIR PERLMUTTER: Uh—huh. Okay. Do you
4 happen to know when they were approved just to get that?

5 MR. KARNOVSKY: Well, they were approved in connec-
6 , well I don't know specifically on the mechanical review but the --

7 CHAIR PERLMUTTER: Right.

8 MR. KARNOVSKY: -- April approval of the permit was
9 an approval with respect to everything.

10 CHAIR PERLMUTTER: Okay.

11 COMMISSIONER SCIBETTA: And do you believe we're
12 precluded from hearing this issue on.

13 CHAIR PERLMUTTER: Say that again. I can't hear.

14 COMMISSIONER SCIBETTA: Do believe we're
15 precluded from hearing?

16 MR. KARNOVSKY: As I understand it and you
17 obviously, you'll be guided by your counsel, the appeal period was a 30-day period
18 during which time they had the opportunity to raise the issues they wanted to raise on
19 appeal. This is not a free ranging exercise of raising issues continuously unrelated to the
20 issues raised on appeal so I would say no, they don't have the --

21 CHAIR PERLMUTTER: Right.

22 MR. KARNOVSKY: -- you, you don't have jurisdiction
23 but you have to be guided by your counsel, not me.

1 CHAIR PERLMUTTER: So I wanna, you know, while
2 you've been talking and in response to what Mr. Klein said, I was reviewing all of the
3 submissions for that partic-, for Mr. Klein's case, right, and I, I do have to say that up
4 until August 22nd, there were no submissions made on that case that were different from
5 the case that was for City --

6 VICE-CHAIR CHANDA: By City Club.

7 CHAIR PERLMUTTER: -- by City Club. In fact it was a
8 cut and paste onto new letter- letterhead to the point where we were reading the same
9 thing twice and so the only time and every time that we talked about mechanical
10 equipment in, in those earlier submissions before August 22nd, the, the, the discussion of
11 mechanical equipment always had to do with how tall it is in the space and there is
12 actually acceptance that says if the equipment were six inches high, then that would count
13 and therefore you could have a mechanical void that is however many feet high, right?
14 And so the focus was always on that, not on the mechanical equipment.

15 It's on August 22nd for the first time that there is a submission that says should
16 address the issue of the subject FAR deductions for mechanical equipment space without
17 reviewing the mechanical plans without determining what equipment if any the alleged
18 mechanical voids will house, and without analyzing the technical manufacturing
19 requirements of equipment in the spatial parameters necessary.

20 So that was ju-, really just submitted relative to this, this current hearing. And so
21 really brought up as, as a new subject and without, without knowing exactly what our
22 purview or let's say limitations are, what I, what I do know is that on other cases where
23 we have appellant's bring up things as we go, the Board can't continuously look, look at

1 things that come up in the hearings because it would mean that they go on indefinitely.
2 They need to be raised at the outset so that the Board gets the right information and that
3 it's properly before us according to the statutory requirements. So my personal opinion is
4 that this is raised too late.

5 COMMISSIONER SCIBETTA: Yeah.

6 VICE-CHAIR CHANDA: Yeah. Just to question. If it
7 was raised, it would have been with, with would have been challenging DOB's
8 determination, it would have been the, in those documents and I don't think that was
9 reflected either.

10 CHAIR PERLMUTTER: So, so what the, the appellant is
11 arguing on this second case is that the challenge is of the building permit which therefore
12 is --

13 VICE-CHAIR CHANDA: Everything.

14 CHAIR PERLMUTTER: -- absolutely everything. Right?
15 But without directing us to what building permit to look at in the initial submission, we
16 can't look at absolutely everything, right, and to bring up things on the eve of decision
17 really because it was clear that we were going to be deciding this on the next hearing,
18 right, I think for one I think is improper in addition to which we have no reason to believe
19 because there's been no analysis of the mechanical equipment, there's no reason to
20 believe that it isn't the right amount of mechanical equipment for the space, right? That,
21 that so according to that, you sort of like a red herring, you know? There's lots of things
22 that could be wrong with the building. They could have, you know, they could say the
23 staircases aren't wide enough, the elevators don't meet code, etc., etc. and there's no way -

1 - then we would have to look at whether the staircases meet code because they bring it
2 up?

3 VICE-CHAIR CHANDA: Right.

4 CHAIR PERLMUTTER: And so thi-, this is, this is the
5 problem right, and so I, I, I don't think it's properly raised and I am, you know, I am sorry
6 that really in this case that this appellant wasn't submitting their own papers. Instead they
7 were submitting City Club's papers on, on new letterhead frankly and we were reading
8 the same arguments on both sides. So.

9 MR. STEINHOUSE: And also, as we discussed at the last
10 hearing, the vesting issue under 11-331 isn't before the Board and it appears that
11 everybody was sort of...

12 COMMUNITY MEMBER: We can't hear you again.

13 MR. STEINHOUSE: As we discussed at the last hearing,
14 the issue that was subsequently raised past this 30-day period with respect to Zoning
15 Resolution section 11-331 which is statutory vesting, it was undisputed at that, at that
16 point and still is. Nobody's been talking about it today that that issue is not timely and
17 before the board.

18 CHAIR PERLMUTTER: Right. Okay. So now if you
19 would just so the drawings were submitted -- mechanical drawings were submitted.
20 They're available in public record because they're submitted. You don't find them on
21 BIS. You have to go actually into the Buildings Department and pull files and do it with
22 an engineer who can actually review the drawings but we have no reason to question that
23 the mechanical equipment is defectively represented on the drawings which is a

1 completely different thing that the other appeal. The other appeal actually sets up the
2 argument. It says we think they're wrong, we think they mis- misinterpreted the statute,
3 and this is why. That's, that's how you bring an appeal. Right? With some, with some
4 basis.

5 COMMISSIONER SCIBETTA: So how do we,
6 procedurally, would we not -- we wouldn't decide on the merits of this case then?

7 CHAIR PERLMUTTER: The merits that were brought to
8 us in the initial submission were the same ones as on the City Club case.

9 COMMISSIONER SCIBETTA: Okay.

10 CHAIR PERLMUTTER: The bulk packing rule basically
11 and the mechanical voids were brought to us and we decided that's issue precluded 'cause
12 we already decided that on a prior case and City Planning already amended the Zoning
13 Resolution in response to our decision so. Okay. Alright. Thank you very much. Yeah.

14 MS. MATIAS: Now public testimony. Yeah. Elected
15 officials first please.

16 MR. STEINHOUSE: Just to note that for the public
17 testimony aspect of this application, if you could limit your testimony to the merits of this
18 appeal. Thank you.

19 CHAIR PERLMUTTER: And--

20 ASSEMBLY MEMBER GOTTFRIED: Okay.

21 MS. MATIAS: Please state your name for the record.

22 ASSEMBLY MEMBER GOTTFRIED: Good morning.

23 My name is Richard Gottfried. I represent the 75th Assembly District which includes 33

1 West 66th Street also known as 50 West 66th Street. I oppose the construction because
2 of the impact it would have on the community and the precedent it would set. The Board
3 of Standards and Appeals should revoke the permit, the building permit for the building
4 issued by the New York City Department of buildings on April 11, 2019.

5 The project uses large and mechanical voids dispersed throughout the building.
6 There is a cumulative 239 feet of void space in this tower comparable to 24 stories. The
7 developers' attempts to exempt the voids from counting as equivalent flooring area
8 should be rejected. The developer has failed to prove that such an unprecedented,
9 oversized void is required for proper mechanical functioning of the structure and the New
10 York City Department of buildings has failed to verify the location and spacing of any
11 mechanical make equipment on these floors and therefore cannot justify their existence.

12 These voids like those being included in some other super tall buildings serve no
13 functional purpose. They are used to increase the developer's profit by increasing the
14 altitude and thus the market value of upper floor apartments. They do this at the expense
15 of imposing more visual pollution and loss of light on the surrounding community. If the
16 volume of the voids were counted as if it were divided into ordinary floors, the buildings
17 floor area ratio would plainly violate the applicable zoning. The city should not tolerate
18 this abuse of the zoning and building codes.

19 At the state level, I cosponsor Assembly Member Linda Rosenthal's bill A5026A.
20 This bill would ex-, would provide that if the height of the floor exceeds 12 feet, the
21 additional increments of height would count as additional floors for the purpose of
22 calculating floor area ratio. This buildings' floor area calculation- calculations are
23 contrary to the Zoning Resolution. The bulk packing rule states that 60 percent of the

1 building's floor area must be below 150 feet. And the tower coverage rule states that the
2 lot area of a zoning lot higher than 85 feet must be between 30 and 40 percent of the lot
3 area.

4 In tandem, these two, these tower-on-base rules are in, in place to limit the height
5 of building development. Buildings in this, in the neighborhood that abide by these rules
6 average 20 to 30 stories. These rules were put in place to preserve the context of the
7 neighborhood and to limit the height of buildings to an appropriate level. Because the
8 building's site involves two different zoning districts, a C4-7 and an R8, the developer is
9 seeking -- is choosing to selectively apply portions of the Zoning Resolution to the
10 zoning district and the developer asserts that the developer asserts would allow for a
11 larger and taller building.

12 Both rules must apply to this building and the developer cannot be allowed to pick
13 and choose which rules he wants to abide by. This 36 West 66th Street building
14 development is an abuse of zoning regula- regulations, is contextually out of scale, and
15 would set a terrible precedent for future proposed developments. I strongly urge the BSA
16 to revoke the permit for this super tall tower. Thank you.

17 CHAIR PERLMUTTER: Thank you. Please, no clapping.
18 Please you have to -- please.

19 MR. STEINHOUSE: If you're gonna show support, please
20 use jazz hands. Thank you. Who's next?

21 CHAIR PERLMUTTER: Please.

22 SENATOR BRAD HOYLMAN: Good morning. I'm State
23 Senator Brad Hoylman. Sorry. State Senator Brad Hoylman. I represent part of the

1 Upper West Side including 36 West 66th Street as well as other parts of Manhattan. You
2 know, I would just state from the outset my district certainly does not need a super tall
3 building on the Upper West Side, and therefore, I've come to speak in support of the
4 appellant and their docket numbers today, the challengers by the City Club of New York
5 and Landmark West against the building permits allowed for 36 West 66th Street.

6 There's no question about it. The 775-foot tower proposed for the site is out of
7 character. It's unacceptable and it is fact absurd and a purpose of the Special Lincoln
8 Square District was in fact to preserve, protect, and promote the existing nature of the
9 neighborhood. If built, you know this will be the tallest tower on the Upper West side.
10 How is that in character aligned with the 1993 special zoning text? The height of the
11 building will cast shadows across Central Park that includes recreation space, trees, and
12 lawns that my constituents have fought generations to keep. How is that acceptable?

13 The proposed building utilizes 239 feet of mechanical void space or mechanical
14 space or void or whatever you want to call it that boosts the towers height and will extract
15 the most money the developer can for luxury apartments with views of Central Park. In
16 my opinion, that is excessive, dangerous for first responders to have to traverse, and
17 should be against the law. We are looking in Albany to change that law. It's a shame that
18 we have to do that in Albany when the city could be doing it already.

19 How is this buildings construction predicated on flagrant exemptions from zoning
20 not plainly rejected by you? It is absurd. The bulk packing of such a tower flies in the
21 face of the Special Lincoln Square District. Allowing building permits to remain valid
22 would be a horrendous precedent to set rendering zoning text practically useless and
23 community interests void. And I wanted to thank all the community members who've

1 been fighting on this issue. Community Board 7, Landmark West, the City Club of New
2 York, the West 64th and 67th Street Block Association and save Central Park NYC for
3 their continued work.

4 A tower of luxury condominiums is not what we need or want. I join with my
5 elected colleagues and neighbors encouraging you to uphold the community's challenges
6 to 36 West 66th Street's buildings permits. And let me say that the Extell Tower will be
7 your legacy as you're term members on the Board of Standards and Appeals. If this plan
8 proceeds, you will have flouted the commonsense readings of the Building Code and
9 allowed a developer to take advantage of a loophole that will obliterate the intention of
10 lawmakers who helped create the Special Lincoln Square District. This new 770-foot
11 tower will not only be a monument to greed and the patent disregard of our community's
12 concerns but sadly I think a monument to your bureaucratic fecklessness succumbing to
13 the wishes of the wealthy --

14 [CLAPPING]

15 MS. MATIAS: Stop.

16 SENATOR HOYLMAN: -- and powerful developer who
17 will destroy our neighborhood. I urge you to reconsider and support the appellants'
18 application. Thank you.

19 CHAIR PERLMUTTER: I just, I just need to correct the
20 record a little bit. So the Board of Standards and Appeals and in this particular situation
21 we're kind of like enough, we're kind of like a court so and in this sit-, in this type of
22 situation where the Department of Buildings interprets the Zoning Resolution which is
23 what's before us and then we look at whether or not we believe the Department of

1 buildings properly interpreted the Zoning Resolution. This is not a variance. It's not a
2 situation where a developer is coming to us to ask for a permission to do something.

3 It's simply a question of whether we believe that the Zoning Resolution which is a
4 statute says what DOB thinks it says and sometimes DOB is con-, is opposes the
5 developers so sometimes it's the developer who brings these challenges so our only
6 question is was DOB right and when we look at it we're like a court if any of you follow
7 how the Court of Appeals for inst-, I mean the Supreme Court makes its decisions. We
8 look at what does the text say and if the text is clear. The Supreme Court will say well it
9 says right there in the text or it says right there in the Constitution, right? But when the
10 text is isn't clear then we look to what it is the legislature which in this case would've
11 been the City Planning Commission or, and/or the City Council what they had in mind
12 when they were doing it but we're only doing that when the text is clear.

13 The reason that that's the method that we apply is because the Court of Appeals
14 which is the highest court in New York State orders us to do so. So when we have made
15 decisions for instance there's a case that we keep citing to which is called Raritan I guess
16 versus Board of Standards and Appeals. That was a famous case which I, I love the tell
17 about where the Department of Buildings was interpreting that the definition of cellar
18 when used in the context of a residential building is floor area even though on the, the
19 Zoning Resolution was incredibly clear that it that it actually said almost words to the
20 effect cellar space is almost -- is never floor area.

21 It actually effectively said that and the Board of Standards and Appeals agreed
22 with DOB who was interpreting cellar floor area to be -- cellar space to be floor area
23 because that's just the way the DOB had been doing it all along. And so BSA agreed

1 with DOB and the court threw that back at the Dep-, at BSA and said what are you
2 talking about, it says right there that cellar space is not floor area, it's not floor area and
3 they overturned the decision of the BSA and we are continually reprimanded by the
4 courts when we don't follow their very clear instructions and so it's not -- we're not the
5 legislature.

6 When the legislature decides that the, that the Zoning Resolution is unclear or
7 ending up with negative results or results they view as being negative, then it's the
8 Legislature therefore City Planning Commission and the City Council that changes the
9 text. In the case of the mechanical voids, they agreed that the text was unclear and they
10 actually changed the Zoning Resolution to allow -- to, to limit the heights of mechanical
11 spaces. The problem in this case is this building was already under construction by the
12 time the zoning text was changed to limit the heights of mechanical spaces and so
13 creating a bad precedent isn't probably what you're 'cause your real concern is about
14 height here and the mechanical voids, you won't in districts like this one that to which
15 that new Zoning Resolution, new Zoning text applies. In districts like this one, you won't
16 see stacks of mechanical voids anymore because it's not allowed as of whatever that date
17 was, May something, right, okay?

18 So I just want to be clear and we're not looking at the mechanical voids. That was
19 already decided in another case and changed in the Zoning Resolution. We're only
20 looking at what's known as this bulk packaging rule that has to do with the amount of
21 coverage of a tower and how much floor area has to be located below 150 feet. I just
22 wanna make it clear to everyone what's before us, what we're looking at in this case.
23 Okay. All right. Next speaker please.

1 COUNCILMEMBER ROSENTHAL: Chair Perlmutter, I
2 appreciate you.

3 CHAIR PERLMUTTER: State, state your name please.

4 COUNCILMEMBER ROSENTHAL: My name is Helen
5 Rosenthal. I'm a member of the New York City Council representing this building on the
6 Upper West Side and all the people who live in the district around where this building
7 will go and to, to the point you just made, I do just wanna mention that the City Council's
8 hands were completely tied when we passed our new law having to do with mechanical
9 space because it was this administration's City Planning that presented the City Council
10 with really only one option and did not listen to the community that did not want that one
11 option and so as a City Council we were really forced to accept something that I think all
12 of us in this room wholly reject which is allowing a lot of, of mechanical void space.

13 So I wanna start by setting the record straight on who drove that process. It was
14 absolutely driven by this, this administration. Just to piggy back on State Senator
15 Hoylman's point. I also I would like to make three points and first is that I actually object
16 to the BSA's admonishment just before the Public Session started to stay within what
17 really -- well I heard the words you said about courts and Supreme Court and decisions
18 and overturning BSA decisions. I, I would like to similarly assert that these parameters
19 are subjective that on its face these parameters that you've given us favor the developer
20 and reflects a meaningful bias that does not serve New Yorkers and does serve for-profit,
21 luxury real estate developers and it calls into question the ability of the BSA to be
22 impartial in its decision-making.

23 It is too cute by half to hear the lawyer from the developer say that this building is

1 35 floors and therefore falls within the original parameters of the Lincoln Square Special
2 District rule. He mumbles under his breath that that does not include mechanicals, those
3 35 stories. The special district--

4 CHAIR PERLMUTTER: No, I think he's talking about the
5 mechanical penthouse on the top. I think that was the reference.

6 MS. ROSENTHAL: That was the whisper under the
7 breath. Okay. Perhaps. Look, when the special district rules were written that referred
8 to an expectation that buildings would not be taller than 20 to low 30 stories, there was no
9 contemplation that technology would advance to the point where it is within a
10 developer's budget to build a nearly 800 foot building and I believe now that we're in the
11 land of subjective parameters that we should contemplate what the CPC would have
12 stated in their rules had they known that we could build a nearly 800 foot tall building
13 that is called 35 stories.

14 And lastly, picking up from the last hearing, and this gets back to the first point
15 but I, it's important to reiterate, because I already gave testimony and, and gave that to,
16 I'm, I'm not repeating that. But at the last hearing that BSA seemed to indicate that there
17 was a rule somewhere that said they had to in the case of a tie side with the developer.

18 CHAIR PERLMUTTER: It's a Court of Appeals decision.
19 It's not to side with the developer. That's not what the case says.

20 COUNCILMEMBER ROSENTHAL: Please.

21 CHAIR PERLMUTTER: The, the case and please counsel
22 correct me 'cause you're better at citing exact text, but it's that laws that essentially
23 deprive people of their rights. It's a kind of a general theory, right, that deprive people of

1 their rights. When a person has been deprived of their rights and there's a question about
2 the clarity of the case -- of the statute, that the stat-, so some -- we have statutes that are
3 unambigu-, that are ambiguous, right? When an ambiguous statute has the possibility of
4 it depriving somebody of their rights, whatever their rights are, the right to walk a dog,
5 the right to hang your laundry. In fact, there I think the case might have been a laundry
6 case. Then, then the statute should be construed in favor of the person who is being
7 restricted by that law because it's unambig-, it's an ambiguous situation so it's but in an
8 unambiguous situation, you don't have any ambiguo- ambiguity. You do what the statute
9 says to do and if the owner -- if the person didn't do it, it's their fault because it was clear
10 what they should have done so they were in error. Okay?

11 COUNCILMEMBER ROSENTHAL: I hear you. I

12 appreciate --

13 CHAIR PERLMUTTER: So it's to cons-, -- right.

14 COUNCILMEMBER ROSENTHAL: -- I appreciate your
15 taking that time.

16 COMMISSIONER SHETA: And by the way, this person
17 could be a developer, it could be like a private citizen.

18 CHAIR PERLMUTTER: A homeowner.

19 COUNCILMEMBER ROSENTHAL: Exactly.

20 COMMISSIONER SHETA: It could be you.

21 CHAIR PERLMUTTER: A dog walker.

22 COUNCILMEMBER ROSENTHAL: Right.

23 COMMISSIONER SHETA: So it's not necessarily a

1 developer.

2 COUNCILMEMBER ROSENTHAL: That's right. In this
3 particular situation, it is a gagillionaire real estate developer whose rights we're protecting
4 to the loss of the community and I am no lawyer and I am no.

5 [CLAPPING]

6 MS. MATIAS: Ladies and gentlemen please.

7 CHAIR PERLMUTTER: Stop.

8 COUNCILMEMBER ROSENTHAL: Judge -- I am no
9 judge and I, I'm not gonna be the one arguing this case as it moves forward, but I would
10 ask you to consider the rights of the community. You have a unified not always
11 happening, a unified elected body, a unified Community Board, unified community
12 residents who are here time and time again who are saying they are the ones whose rights
13 are being taken advantage of. I'm no lawyer, but I would ask you to consider that in the
14 way that you can to take leadership, to take leadership in reflecting the needs and desires
15 of a community that has spent the last six years fighting this development, has brought to
16 bear, this community is responsible for getting DOB to reverse its decision saying that
17 had they had information, they would not have allowed the building to go forward. This
18 community has fought for responsible mechanical void limits which I am sorry to say we
19 did not achieve and I, I am sorry about that but that was truly driven by this
20 administration. It is a point of fact that you represent the administration here at BSA.

21 CHAIR PERLMUTTER: I need to correct you on that.
22 There is even a rule that was passed recently by us. This is an independent body.
23 Though it's true we're appointed by the mayor, we serve independently, completely and

1 the, and the mayor's office and any elected official and any outsider is not permitted to
2 speak to any of the Commissioners during the pendency of a case. We are an
3 independent body and we do not represent the administration so I need -- we, we exist as
4 a, as a relief valve effectively from some, some kinds of agency action and I really wish
5 because you are indeed an elec- elected official that you, that you properly represent what
6 it is that the Board of Standards and Appeals and its independent body of Commissioners
7 does and that our decisions are based on what the law instructs us to do and what, yeah.
8 We have, we have regulations about when an application is ripe for us to be heard, when
9 a question is ripe for us to consider it and because we are constantly having counsel
10 defend our decisions, we need to make sure that our decisions are well founded and based
11 on the law.

12 COUNCILMEMBER ROSENTHAL: You know that--

13 COMMISSIONER SCIBETTA: I just wanna say one, one
14 thing we're not. We're not legislature.

15 CHAIR PERLMUTTER: Uh-huh.

16 COMMISSIONER SCIBETTA: And, and I, I'm sure I'm
17 not the only Board Member that wished this was written differently but when faced with
18 it written the way it is, there's case law that, that basically ties our hands. We have to
19 interpret it that way.

20 COUNCILMEMBER ROSENTHAL: I will take that
21 admonishment and with deep respect and, and with which it was given and I, I really
22 appreciate what you've said. This community has heard that excuse for the last six years.
23 I hear case law. I hear your hands are tied. We've been hearing your -- this

1 administration's hands are tied for six years. And so you'll forgive our frustration. Thank
2 you.

3 CHAIR PERLMUTTER: Thank you.

4 MS. MATIAS: Do we have other elected officials?

5 CHAIR PERLMUTTER: Do we have other elected
6 officials?

7 MS. MATIAS: From Scott Stringer's office please. I'm
8 sorry, what did you say?

9 Ms. Rosenthal: Thank you very much.

10 MS. MATIAS: Is there anymore elected officials that are?

11 Oh, that's right. I'm sorry. I apologize. Go ahead. I'm sorry.

12 MR. STINSON: Okay. Thank you Chair Perlmutter and
13 Commissioners for the opportunity to testify today on behalf of Comptroller Scott
14 Stringer. I believe the proposed building permit--

15 MS. MATIAS: I'm sorry to interrupt you. State your name
16 for the record.

17 MR. STINSON: Michael Stinson.

18 MS. MATIAS: Thank you.

19 MR. STINSON: I believe the proposed building permit
20 issued for this building by the Department of Buildings was simply issued incorrectly and
21 must be revoked. This is not simply a case of a developer exploiting zoning loopholes to
22 produce a building larger than expected, this is a case of a developer creating zoning
23 loopholes to produce a building whose height is unsafe, grossly out of context, with the

1 surrounding community, completely contrary to the intent of the Zoning Resolution and
2 the associated environmental studies as adopted for the Lincoln Square Special District in
3 1993. If the Commission allows these loopholes to be codified into law through their
4 decision, it will represent a backdoor rezoning whose impacts on the community and the
5 environment have not been studied.

6 In 1993, New York City adopted changes to the Lincoln Square Special District
7 by implementing both packing and tower coverage rules. These rules are explicitly
8 intended to regulate the height element and limit new buildings' ability to exceed 40
9 stories. In the rezoning report, the commission stated it's believed that the regulations
10 should predictably regulate heights of new development and produce building heights
11 ranging from the mid-20 low 30 building stories. By misinterpreting these rules, and
12 creating new loopholes, the developer has proposed a building rising to farcical 776 feet,
13 nearly three times the height was intended.

14 The developer was able to achieve this height in two ways. First by misapplying
15 Zoning Resolution sections 82-34 and 77-02 and secondarily by allowing large unsafe
16 mechanical voids in the building. The Lincoln Square Special District requires through
17 82-34 that 60 percent of all bulk in the building be located below 150 feet in height. The
18 zoning lot is a split between two zoning districts, a C4-7 and an R8 zoning district. If
19 these lots were developed individually then both sites would need to comply with 82-34
20 and any other bulk provision.

21 The owner has interpreted that density in both districts should count towards the
22 requirement that 60 percent of the bulk must be below 150 in height but otherwise chosen
23 to interpret bulk provisions such as tower coverage and setback regulations to only be

1 analyzed based on the C4-7 or R8 zoning districts respectively. This is fundamentally a
2 misinterpretation of Zoning Resolution 77-02 which states in part that whenever a zoning
3 lot is divided by boundary between two or more districts and such a zoning lot did not
4 exist on December 15, 1961 or any applicable subsequent amendment thereto, each
5 portion of the zoning lot should -- shall be regulated by all provisions applicable to the
6 district in which such portion of the zoning lot is located. Simply put, when a zoning lot
7 is split by two districts, each portion of the zoning lot must comply with all bulk
8 regulations of that specific district unless otherwise noted in Zoning Resolution.

9 The tower portion of the building does not comply with the requirements of the
10 C4-7 district which requires that 60 percent of the bulk in the C4-7 portion of the district
11 will be below 150 feet. This alone is grounds for revoking the permit. However, the
12 developer has further added large mechanical voids to articu-, artificially boost the height
13 of the building. The owner has added a total of 196 feet of height dedicated to
14 mechanical spaces or nearly 25 percent of the building's total height before one includes
15 rooftop mechanicals which add another 33 feet of height.

16 Zoning Resolution section 12-10 stipulates that all accessory uses such as
17 mechanical uses must be clearly incidental and customarily found in conjunction with the
18 principal use. The owner originally proposed 160-foot mechanical void. Once this
19 mechanical void was found to not be customarily found in connection with residential
20 uses by DOB and unsafe by the FDNY, the owner then divided the space into three
21 mechanical floors with the total height of 176 feet and added a fourth mechanical space
22 with 20 feet of height in the building. The fact that one floor of floor space can be
23 divided into four simply to subvert an objection by city agency bring into deep question

1 of whether these spaces are clearly incidental and customarily found in conjunction with
2 the principal use.

3 In addition, the recent Department of City Planning survey mechanical spaces
4 found that in the equivalent R10 dis-, zoning districts, mechanical floors typical height
5 was 12 to 15 feet. The proposed building at 50 West 66th street was four -- has four
6 mechanical floors all between three and five times larger than a typical building. This
7 survey places further skepticism as to whether the proposed mechanical spaces meet the
8 standard that they are customarily found in conjunction with the primary use.

9 Simply put, based on the all available evidence, the mechanical spaces the owner
10 has proposed are both more numerous and larger than necessary. Based on the proven
11 previous subterfuge that the owner needed a 160-foot-tall mechanical space and potential
12 current subterfuge that they need four spaces at 196 feet tall, the owner must provide
13 proof positive that these spaces must meet the basic definition of mechanical space. This
14 is sup- supported by the New York County's Supreme Court finding since there is no
15 specific definition of mechanical equipment in the Zoning Resolution or any definitive
16 finding by the DOB on this issue, it demands administrative determination in the first
17 instance.

18 Given the owner's silence on the specific designs for these spaces despite the
19 objections by agencies and the community, it is reasonable to assume they cannot do this
20 and this is another subterfuge to get additional height. Based on the available evidence,
21 all building permits should be revoked. Thank you.

22 CHAIR PERLMUTTER: Thank you.

23 [CLAPPING]

1 MS. MATIAS: One more. And then we have the public.

2 MS. COWLEY: My name is Page Cowley and I have the
3 honor of reading Assembly Member Linda Rosenthal's statement. She represents the
4 Upper West Side. Forgive me, but I'm reading typed. It's about four point so I'm gonna
5 try to edit as I go along. First of all, she says here that she's sorry she can't be here today,
6 but she has been a longtime opponent of overdevelopment, an outspoken critic of the
7 zoning lot mergers that have hereto for allowed the construction at 200 Amsterdam to
8 continue in her district and the author of State Legislation A.5026 to close the mechanical
9 void loophole.

10 I strongly urge the New York Board of Standards and Appeals (BSA) to appeal
11 the New York City Department of buildings, reject Extell's proposal at 36 -- 36 West
12 66th Street. Extell has reserved an astounding and excessive 161 feet of interbuilding
13 space for mechanical infrastructure. Knowing that mechanical voids space is not counted
14 towards the total building floor area FAR, Extell is attempting to circumvent the letter of
15 the law to stretch the building heights so that the units above the void will have access to
16 better views and thereby fetch higher prices on the market. Extell has not proven that this
17 mechanical space is necessary to their operation and it is clearly only in place to boost
18 their height of the building.

19 Earlier this year, the New York City Council passed a law to clarify the law on
20 void space and set clear limits on the amount of space within a building that could be
21 used for void space before counting towards FAR. While Linda and more than 4 -- 40 of
22 her colleagues in the New York State Legislature who represent parts of New York City
23 believe that the city Council effort did not go far enough, the effort to clarify the intent of

1 local lawmakers to circumscribe this kind of development.

2 The BSA cannot possibly allow for a plan for development so contrary to the
3 spirit of the Zoning Resolution to move forward. Doing so would signal to the
4 developers they could calculatedly flout zoning rules so long as plans are filed
5 within a certain timeline. Time is irrelevant in this particular case. If it weren't enough to
6 add 160 feet of empty space to the building, Extell also proposed to use a series of other
7 developer tricks to do an end run around the zoning rules. The zoning lot merger that
8 Extell utilizes to cobble together development rights enabling it to achieve its current
9 775-foot height violates the rules of the Lincoln Square Special District which limits
10 building height to approximately 30 stories by controlling FAR.

11 By merging zoning lots and selectively applying the special district rules to
12 different lots, Extell is constructing a building much taller than would be permitted if it
13 followed the rules of the special district. I'm almost done. In addition to the obvious
14 developer overreach, this building represents the kind of short sided urban planning that
15 the, that New York City must abandon. The zoning rules are in place not just to protect
16 our access to light and air, two precious commodities in our concrete jungle but also to
17 ensure that all new development is contextual.

18 A 775-foot tower may make sense for Midtown but not in the middle of a much
19 more residential Upper West Side. Development of this scale will have tremendous and
20 unplanned for impacts on local infrastructure such as schools, transportation,
21 supermarkets, sidewalks just to name a few. Rubberstamping the plans for this
22 development now doesn't just allow construction at this site to move forward, it
23 broadcasts to developers citywide that the BSA is weak and when challenged it will stand

1 with developers who violated the letter and spirit of the law and not the people in the
2 communities they serve or should serve. Sorry. All across the city, people are rising up
3 against this kind of system of broken government where the wealthy and the well
4 connected--

5 CHAIR PERLMUTTER: Sorry. You've exceeded your
6 three minutes by a lot.

7 MS. COWLEY: I know but it's not--

8 CHAIR PERLMUTTER: Can we just finish this up
9 quickly please?

10 MS. COWLEY: I, I can't edit somebody else's text. This is
11 an Assembly Member.

12 CHAIR PERLMUTTER: Yeah, you, you actually. You,
13 okay.

14 MS. COWLEY: Anyway, she talks about her district. The
15 last two major sentences and despite these grim statistics, we are here today to fight a,
16 fighting to stop a building with 16 stories of empty space. This space should be used to
17 provide homes to hard working New Yorkers but instead it is being used so the residents
18 in the top floors can literally look down on the rest of us. Last sentence, there are few
19 dich- dichotomies that more clearly and sadly embody the Tale of Two Cities narrative
20 that City Hall has sworn to fight against. I thank you for the opportunity to testify again
21 and renew my request that the BSA reject Extell's proposal at 36 West 66th Street.

22 CHAIR PERLMUTTER: Sorry. You were --

23 MS. COWLEY: Thank you.

1 CHAIR PERLMUTTER: -- representing the Senator --
2 you're reading a Senator's?

3 MS. COWLEY: Assembly Member's.

4 CHAIR PERLMUTTER: Assembly Member.

5 MS. COWLEY: Rosenthal. Linda Rosenthal. Thank you.

6 CHAIR PERLMUTTER: Okay. Thank you. Okay.

7 MS. MATIAS: Okay. So--

8 CHAIR PERLMUTTER: Three minutes, right?

9 MS. MATIAS: Three minutes.

10 CHAIR PERLMUTTER: Okay. So now assuming no
11 more representatives of elected officials true? Then everyone else is invited to speak.

12 Your limit is three minutes. When the beeper goes off, wrap up quickly please.

13 Mr. Constanza: Yeah. Just please state your name for the
14 record.

15 MR. KHORSANDI: Good afternoon, Commissioners.
16 Sean Khorsandi for Landmark West. Landmark West is short of words. We've been
17 saying it all for nearly five years. We've talked about this in various forms through
18 placeholder buildings and an unsatisfactory DOB challenge. To an initial BSA filing
19 without a single issued comment, to a DOB notice to intent, intent to revoke,
20 mysteriously cleared yet simultaneously unresolved in any accordance of semblance to
21 DOB's own and enumerated procedures and now a second BSA filing where we know
22 that even a tie favors the developer over the community. Thus, tie equals community
23 loss.

1 All the while, we examine the voluminous record of what City Planning intended.
2 However, intent equals irrelevance. Today again, City Planning who called this project
3 obscene is again absent. So a central dark tower equals obscenity. We must ignore City
4 Planning intent as we await a tertiary agency's interpretation of the DOB's interpretation
5 of City Planning's Zoning Resolution AKA their intent.

6 We argue over futile meetings, ceiling height, void, foundation, vesting, words we
7 know but must unlearn as their planning definition is purposely absent in the 1,300-page
8 Zoning Resolution and thus ambiguous. Conveniently, ambiguity equals carte blanche.
9 And unfortunately, zoning equals fake news. We argue over basic language but we
10 understand what this is. We know from last session that expecting the text to follow
11 meaning is "strange" and a "90s argument" because nobody could imagine that anyone
12 would build like this. Nobody. If this follows trends begun by this developer a decade
13 and a half prior and although income grows with expectation of plan is somehow not
14 absurd.

15 We are schooled that a 161-foot void in the belly of a building, and unjustified
16 greater than 10 percent loss factor deduction, more than 30 percent void for vertical rise,
17 a single building casting shadows across the park is not absurd. By way of antonym, the
18 scenario must then be deemed logical, practical, reasonable, responsible, sensible, and
19 wise. There are so many words but it's merely a limited vocabulary without mentioning
20 once of community, neighborhood, health, quality of life, or even life safety to be found.
21 It's a time that New York State, it's time that New York stands for something meaningful
22 once again in order to restore intention, rationale, and predictability into planning. This
23 is not it.

1 MS. MATIAS: Next speaker.

2 CHAIR PERLMUTTER: Thank you. Please, please

3 refrain from clapping.

4 MS. MATIAS: How many times we got to tell them?

5 CHAIR PERLMUTTER: Actually, we developed

6 something that is much faster, click. It takes less time and it's not as noisy.

7 MS. MATIAS: Or glad hands or whatever, whatever it is.

8 Okay.

9 MR. GIORDANO: Hi. Chris Giordano, West 64th
10 through 67th Streets Block Association.

11 COMMUNITY MEMBER: We can't hear you.

12 MS. MATIAS: Repeat your name in the mic please.

13 MR. GIORDANO: Chris Giordano, West 64th through
14 67th Streets Block Association. We wanted to intro-, --

15 CHAIR PERLMUTTER: Can you just lift the mike up so
16 it's closer to you 'cause we have trouble hearing on the Board.

17 MR. GIORDANO: Chris Giordano, West 64th through
18 67th Streets Block Association. After all these meetings and hearings, we decided we
19 wanted to introduce us to our neighborhood. As you know, the community came together
20 in 1993 to create the Lincoln Square Special District Zoning Resolution. At that time, it's
21 clear that City Plan -- City Planning stated the controls in place should predictably
22 regulate the heights of new development and these controls would sufficiently regulate
23 the resultant building form and scale even in the case of development including zoning

1 lot merger. City planning stated the intention of the Zoning Resolution included limiting
2 buildings to mid-20 and 30 stories tall which would complement the District's existing
3 neighborhood character.

4 We don't take City Planning's words lightly. They promise predictability in
5 zoning. In fact, the community relies on them. They also met with us on September 4th
6 of last year and they told us in their opinion the building was egregious, even obscene.
7 At the August 6th BSA hearing, Extell's lawyers argued that the proposed 775-foot
8 midblock tower would not be an absurd result based on the intention of our Special
9 District Zoning Resolution. We were struck by the language of the absurd result. So we
10 built a model of the neighborhood so that we could share that with you 'cause it's where
11 we live.

12 Extell su- submitted designs for a 290-foot building in order to get permission to
13 begin demolition. This is, this is that building. But it's a 775-foot building that they
14 intend to build. Just for perspective. This is Columbus Avenue. This is 66th Street.
15 This is 65th Street. This is Central Park West. This is the park. So our community is
16 here to ask you does this look like what City Planning and the community intended in
17 1993 when the Lincoln Square Special District Zoning Resolution was created? Can you
18 tell us this is not an absurd result? Thank you.

19 CHAIR PERLMUTTER: So I just want to point out.
20 Please. We're clicking, right, not clapping. I want to point out that the central portion
21 which is the mechanical void is the, is the issue that's no longer before us that City
22 Planning agreed should not be allowed to continue that way and they changed the Zoning
23 Resolution and with all due respect to the City Council, the City Council has the authority

1 to make modifications but none- nonetheless, the and now that's no longer permitted.

2 This building started construction before the Zoning Resolution was changed and you can
3 no longer in this district anyway -- I can't speak for all the districts do that. Okay?

4 MR. GIORDANO: But we understand that there's still 293
5 feet of we'll call it mechanical void space in a 775-foot building and we have not been yet
6 told whether if it's been vested yet --

7 CHAIR PERLMUTTER: No, no, no.

8 MR. GIORDANO: -- or what the vesting date was.

9 CHAIR PERLMUTTER: So the, so the -- that's not a
10 question before us except to say that the Department of Buildings apparently has
11 considered the building vested so it doesn't -- is not subject to that change in the Zoning
12 Resolution but going forward other buildings built in your district will not be permitted to
13 do that.

14 MR. GIORDANO: Is there a vesting date that's been
15 established 'cause I haven't seen it?

16 CHAIR PERLMUTTER: That's a DOB question for it's
17 the May whatever the date that the --

18 MS. MATIAS: Text change.

19 CHAIR PERLMUTTER: -- text change occurred which I
20 could look up but I can't remember off hand.

21 MR. GIORDANO: That's, that's for the, the change to the
22 Zoning Resolution but what date was the built-, was the developer vested?

23 CHAIR PERLMUTTER: That's how, that's how you vest.

1 So the building has to have been the foundations completed by the date that the zoning
2 changed which was May something. So DOB determined that the building had vested.
3 That's not before us but that's the, that's how the rules works.

4 MR. GIORDANO: Okay.

5 CHAIR PERLMUTTER: Okay.

6 MS. MATIAS: Next speaker.

7 CHAIR PERLMUTTER: Next speaker please.

8 MS. SEMEMER: Hi. Thank you for -- I'm Roberta
9 Sememer. I'm Chair of Community Board 7 on the Upper West Side. Several weeks
10 ago, my testimony at CB7 is generated resolution strongly opposing the erection of this
11 building was presented. Today, I'm here to discuss the effects on our Upper West Side
12 community. I believe very strongly that Community Boards are tasked with ensuring that
13 their communities thrive. As chair, I take my responsibility to all the members of the
14 community seriously. The building will generate oversized shadows on Central Park,
15 will deprive large swaths of the park and surrounding community of much-needed
16 sunlight and daylight. It will create major health consequences.

17 Open space must be protected. In many cities, there is legislation to protect
18 parkland. Open space, trees, and other greenery are central to the physical and mental
19 health of residents, workers, and tourists. Light and air must be protected. The
20 neighborhood must remain resilient. The proposed building would remove sunlight and
21 daylight from surrounding buildings increasing use of electricity, lighting, and gas
22 heating and other resources. There will be a decrease in essential services for all
23 members of the community and deleterious effects on the environment.

1 Health of residents must be protected. Tall buildings prevent air from circulating
2 and increase particulates in the air at street level leading to increased rates of asthma,
3 bronchitis, and other life-threatening illnesses. Affordable housing is essential. The
4 proposed building stands in the way of much-needed affordable housing being provided
5 for our community. Every year we lose affordable housing and lastly safety for all. We
6 worry about the safety of residents, firefighters, and other emergency respond-
7 responders. How will the building do local law 11 work? What happens in a superstorm
8 and other disasters? Thank you very much.

9 CHAIR PERLMUTTER: Thank you.

10 COMMISSIONER SCIBETTA: Thank you.

11 MS. MATIAS: Next speaker. Could you sign in please? I
12 don't see your name on the list.

13 MS. KENDRICK: I'm Shelia Kendrick with Save Central
14 Park NYC. I have a prepared statement but I heard a comment from the attorney for
15 Extell that said and this is consistent with the language that's been used, that once you
16 look at the Zoning Resolution, you don't go deeking -- digging deeper to find alternative
17 interpretations in other outside sources. He used the term extraneous sources, but I just
18 wanted to point out that the comment about 20 to 30 stories is in the executive summary
19 of the Special Lincoln Square District. You don't have to go very far past page one to see
20 that language.

21 Now I'm going to get to my prepared statement. I'm responding to the abuse of
22 tactics being implemented by developers around the park. We can already see a wall of
23 super tall towers across Central Park South and the resulting shadows. The impact is

1 both obvious and detrimental. In the August 6th BSA hearing as we've heard, it was
2 stated that all things being equal, the decision will favor the developer. How can this be a
3 result of the fair reading of the Zoning Code? There seemed to be an argument for not
4 having a thorough understanding of the Special Lincoln Square District specifications
5 and intent even though language clearly says in not in extraneous way that it would top
6 out, construction would top out at no more than 30 stories.

7 Did the developer who singularly is redefining the New York skyline not have the
8 legal and zoning resources to understand every word of the underlining zoning when they
9 have billions of dollars at stake, is that reasonable? Is it reasonable to think that they did
10 not understand that the bulk distribution and tower coverage rules are always applied
11 together? Or is it more likely that they wanted to break into the neighborhood of the
12 Upper West Side with a mid le-, mid-block mega tower and they looked for a
13 workaround in the law. Why didn't they create a rendering and submit plans that were
14 compliant with the underlying zoning and the Special Lincoln Square District? Did they
15 really not understand the depths of the zoning.

16 Then we ask since when is ignorance an excuse. We might recall a beautiful art
17 deco building on 5th Avenue that was destroyed under the cover of darkness by a
18 developer who was intent on bending the rules to suit his needs claiming ignorance. That
19 resulted in Trump Tower. The letter and the intent of the Special Lincoln Square District
20 is clear. To let it be obliterated is to acknowledge that we are being Trumped.

21 CHAIR PERLMUTTER: Thank you. Snaps.

22 MS. KENDRICK: Thank you.

23 MS. MATIAS: Next speaker please.

1 COMMISSIONER SCIBETTA: Thank you.

2 CHAIR PERLMUTTER: Thank you.

3 MS. MATIAS: Next speaker please.

4 MS. FREUD: I'm Olive Freud, President of the Committee
5 for Environmentally Sound Development. I want to go back to square one. How did the
6 mechanics get out of the basement and into the middle of the buildings? A 35-story
7 building should be 350 feet high. If it isn't the law, it's the tradition. That's how we
8 determine height on the Upper West Side and in the city. You take the number stories and
9 you multiply it by ten and you get the height. So why and how is this building 775 feet
10 high?

11 Mechanics belong in the basement. They were free there. They didn't have to
12 use, they were not counted against the square footage. But put them in the middle of the
13 building and what you're doing here is pegging the freedom and putting them up in the
14 middle of the building. Taking a long their free status and adding voids which makes it
15 possible to put them into up that high, you have obtained a very tall building with very
16 luxurious apartments that increase the developer's profits. Never mind that the rest of the
17 community has lost their sun, their sky, their space and it has been taken from them that
18 they are subjected to long dark shadows.

19 Who has more right to space? The 135 residents in this building or the thousands
20 of the residents in the neighborhood? Since when are mechanics not in the basement?
21 We are not in the low-lying area. That's when it started after Superstorm Sandy. They
22 allowed the low-lying area to put their mechanics up, but we're way up. There is no
23 reason for this. There's no, no one has challenged it. They just let it go. The mindset

1 that allows this to happen is like that of the greedy owners of coal mines and oil fields.
2 That that mindset exhibited here. They're not harming anybody because there is no
3 global warming if that's what you say there's no global warming, why can't you dig for
4 gold.

5 But developers of real estate, their maximum profit comes before any concern and
6 damage they may do to existing populations. Our rules and regulations are here to
7 protect those of us who live here now not to enrich the wealthiest. There are numerous
8 and even more than this is far more important. There are numerous new buildings that
9 have gone up in our neighborhood.

10 MS. MATIAS: Please wrap up.

11 MS. FREUD: That are built without voids and without
12 questionable zoning lots 200 Amsterdam Avenue.

13 CHAIR PERLMUTTER: Please wrap up. You, you
14 exceeded your three minutes please. We need to --

15 MS. FREUD: That are profitable and acceptable to these
16 communities.

17 CHAIR PERLMUTTER: Thank you.

18 MS. MATIAS: Thank you.

19 MS. FREUD: I think it's up to you folks to answer these
20 questions and to stop this outrage.

21 CHAIR PERLMUTTER: Thank you very much. I just
22 want to add though that in general mechanicals equipment has been located on the roof of
23 buildings since the Empire State Building. That's where the water comes from. That's

1 what powers the elevators, the air conditioning systems, and so on and as we got towers,
2 they started to be located in the middle because it became less expensive to manage
3 sections of buildings so they put and if you look at lots and lots of towers that have been
4 built over the last 40 years, there's a mechanical system in the middle of the buildings as
5 well. It's just that they're not, you know, 45 feet high. They're something like you--

6 MS. FREUD: In our neighborhood which is 20 and 30 feet
7 mechanicals --

8 CHAIR PERLMUTTER: Okay.

9 MS. FREUD: -- are in the basement.

10 CHAIR PERLMUTTER: Okay.

11 MS. SENAT: Good afternoon. My name is Linda Senat.

12 I'm a supporter of Landmark West and the important work they do to ensure that New
13 York is both livable and prosperous city. I'm a 20-year resident of the neighborhood and
14 live on West 66 Street. I'm protesting this development because it's a mid-block building
15 that is huge, will completely overwhelm surrounding buildings and is completely out of
16 context with all its neighbor- neighboring buildings.

17 This obviously contradicts the stated, very clear goals of the Special Lincoln
18 Square District which in Article 8 Chapter 2, Section 82-00 General Purposes says it is
19 "to encourage a desirable urban design relationship of each building to its neighbors." It's
20 obvious from this model that this monster building is totally and distinctly different from
21 any other building in the whole Special Lincoln Square District. Other words, in the
22 creation of the Special Lincoln Square District that is used to describe the anticipated
23 development, they knew it would develop. The anticipated development include the

1 words complement consistent with and enhance the aims and concept of the special
2 district.

3 This building does not enhance the neighborhood. It's neither consistent with the
4 surrounding area nor is it complementary to it. It is jarring and literally sticks up like a
5 store -- sore thumb. Surely, you cannot completely disregard the clearly stated reason for
6 creating certain building zone ar- areas. If you allow this building, it's going to be the
7 first domino, the whole of the Special Lincoln Square District will be overwhelmed with
8 huge buildings.

9 I'm not against development on the contrary, but please ensure the development of
10 this area compliments, is consistent with, and enhances this lively, diverse, and attractive
11 neighborhood. As someone who moved to this city because of its wonderful mix of
12 people and neighborhoods, of arts and commerce, I beg you to protect this unique area.
13 Keep this Special District as the City Planners intended it.

14 The Special Lincoln Square District is valued by people all over the state and city
15 who come from all areas of the five boroughs and in fact from all over the world to enjoy
16 the arts and its very special atmosphere. It's in your power to destroy that right now with
17 this project. Please don't do that. I beg you please protect the health, safety, and life
18 quality of New Yorkers.

19 CHAIR PERLMUTTER: Thank you. Next speaker please.

20 MR. GOTTLIEB: Good morning Commissioners. My
21 name is Robert Gottlieb and I reside at 10 West 66th Street, approximately 40 feet from
22 the proposed building.

23 CROWD: We can't hear you. Speak into the mic.

1 MR. GOTTLIEB: I appear in opposition to this project.
2 The clear intent of the Zoning Regulations enacted by City Planning Commission were to
3 control the size and height of new development within the Special Lincoln Square
4 District. It is obvious that the Extell Building as you see it is completely out of context
5 with the neighborhood. And I believe that all of you instinctively realize that this
6 building with its huge bulk and height does not belong within the special district. I
7 submit to you that the zone -- that the Building Department did not properly interpret the
8 Zoning Resolutions regarding this building.

9 Section 82-34 measures the bulk of the building by the floor area which is
10 permitted on the zoning lot and the word zoning law is used. The zoning lot created by
11 Extell is 54,687 square feet. From this zoning lot, Extell created this huge building of
12 548,543 square feet spread out over the entire lot. The tower coverage of the special
13 district 82-36 provides the methods for determining the size of the tower, how much of
14 that tower actually can fit on the, on the lot. The section says that the tower must occupy
15 no more than 40 and not less than 30 percent of the zoning lot, the same language that is
16 used in 82-34. The zoning lot is 54,687 square feet, the zoning lot that is used, the zoning
17 lot is used to determine the size of the building. Based on this, the tower portion of the
18 building should be computed as between 16,406 and 21,874 feet.

19 Despite the very clear language in this section, the developer states the tower
20 should be smaller, the footprint should be predicated only on the C4 section of the zoning
21 lot, not the entire lot. Now we have a question of intent. Despite the unequivocal
22 language that states that the tower must be measured by the sizes of the zoning lot which
23 is 54,000 square feet, the developer sates -- states it should not, it should this be measured

1 by a different criteria.

2 Every statement of the City Planning Commission points to the conclusion that
3 the tower and bulk regulations were intended to be applied over the same lot area. This
4 word zoning lot has to be interpreted the same in each section in order for this to apply.
5 We request that you follow the intent of the Special Lincoln Square District that the bulk
6 and regulations be measured by the same lot area and that accordingly the building permit
7 for this should be revoked. Thank you.

8 CHAIR PERLMUTTER: Thank you.

9 MS. MATIAS: Next speaker please.

10 MS. COHN: Hello. My name is Joan Cohn. I'm a
11 member of Save Central Park and -- I am I thought. My name is Joan Cohn. I'm a
12 member of Save Central Park NYC and have owned an apartment at 10 West 66th Street
13 for 25 years. I would just like to share an interview from GlobeSt.com on February 21,
14 2018. They had interviewed John and Richard Calico of Gamma Real Estate after one of
15 our partner organizations, the East River Fifties Alliance had great success in obstructing
16 a 950-foot-tall, 87 story building that was planned for 3 Sutton Place with the help of
17 their City Council Member Ben Kallos.

18 One of the executives of Gamma said that a different and I quote, a different
19 developer is something smart at a site we looked at on West 66th Street. The developer
20 filed for a building was that was this high. John motioned a short land. But once he had
21 his plans ready, he amended the tower to make it that high. He then continued and I
22 quote his belief and hope and he's probably right is that the community cannot muster the
23 resources to stop him. But these are the kinds of tricks you have to do these days if you

1 even hope to be successful John Calico stated. We as residents of New York City depend
2 on the BSA to do the right thing. I implore you to protect the health, the safety, and life
3 quality of all New Yorkers. Thank you.

4 CHAIR PERLMUTTER: Thank you.

5 MS. MATIAS: Next speaker.

6 MS. ROTHICOPF: Hi. My name is Holly Rothicopf. I'm
7 a resident of the Lincoln Square neighborhood, a Board Member of the West 64th
8 through 67th Street Block Association, a Board Member of the Upper West Side
9 Community Emergency Response Team, a supporter of Save Central Park, a Member of
10 Landmark West and City Club. I have a prepared statement but just the discussion before
11 where you mentioned oh, it's only a few stories difference that you're talking about, you
12 can just look at it and see and it's just not a few stories.

13 CHAIR PERLMUTTER: No, no, no. But again, the focus
14 is on -- your focus which I understand completely is on this mechanical void but ours is
15 on the bulk packing rule. The mechanical voids were already decided and dealt with the
16 City Council and City Planning, right?

17 MS. ROTHICOPF: Well the actual zoning, the intent of
18 the zoning and the public's right to protection should take precedence over a whim of a
19 developer. Nothing of the new proposed height is north of 60th Street nor mid-block in
20 Manhattan. The language in the special district says that as a result of the rules, buildings
21 in the district should be no more than 30 stories or around 330 feet. As City Club and
22 Landmark West have shown, I think it's absurd that the developer didn't know the tower
23 coverage rule and bulk packaging were al- always applied together.

1 From corporation of so-called mechanical void space to circumvent the zoning
2 code and incorporate needless no count space is absurd. The Department of City
3 Planning itself called the incorporation of mechanical voids of 239 feet with 30 percent of
4 the building obscene. It's absurd to allow a developer to pull a bait and switch by
5 submitting plans to the DOB for a building that they appear to have had no intention of
6 executing and then developing a tower three times the height. The relief the developer's
7 looking for or in this case would want if the appeal is denied is one -- it's just not right.
8 We urge you to deny the request by the developer to deny this appeal. Sorry. That got
9 jumbled. But protect the health, safety, and the quality of all New Yorkers.

10 CHAIR PERLMUTTER: Thank you.

11 [CLAPPING]

12 MS. MATIAS: Next speaker.

13 MS. SIMON: My name is Susan Simon and I'm the
14 founder of Central Park West Neighbors Association. I'm here today to fight for our
15 community and all New York communities where developers with no real aim but to
16 accumulate more and more money continue to exploit our neighborhoods. Extell came to
17 the Lincoln Square community with a proposal to build a complex of an entirely different
18 kind. They applied to the DOB for permits for a 25-story building. I'm quite sure they
19 did so because it was within the regulations of the Lincoln Square District zoning law
20 which was an easy way for Extell to get their project off the ground with little friction as
21 it was within the law.

22 But Extell's real intent was to build a nearly 800-foot tower and not be bound by
23 the zoning law but circumvent it. As if that were not enough, the developer has

1 incorporated over 160 feet of empty space within this tower to prop up higher more
2 expensive views with a plan to build only a total of 127 apartments. Wow. I wondered
3 whether each apartment comes with its own four, four car garage. But what's lost in this
4 whole drama is while everyone seems to be reacting to some distracting part of the story,
5 this working around the zoning law should not be thought of as normal. Not by this body
6 or anyone else.

7 What it is, is a manipulation of the law and a way enough to follow it. This is
8 high-stakes casino gambling with our communities and when the developer takes the
9 house, the community is left bereft. Robbed of central light, air, and human scale.
10 Robbed of sunlight in the magnificent Central Park, another assault on an entire
11 ecosystem that would sit in shadow all the way to Be- Bethesda Fountain. That's a price
12 no one should be willing to pay. The zoning laws were enacted to protect our
13 communities from all sorts of potential predations yet routinely they are ignored or
14 obfuscated.

15 The mandate of this body is to assure that doesn't happen. The mandate of this
16 body is to read the clear language of the zoning law and not to slice and dice it and
17 quibble about what the meaning of it "is" is. I'm asking something really simple. I'm
18 asking the BSA to do the job you were appointed to do. I'm asking you to consider that
19 once upon a time a Robert Moses tried to divide the village in Washington Square Park
20 with a giant highway. And it was activists in neighborhood residents who fought and
21 stopped one of most powerful men in New York in his day from destroying the village.
22 Just for a moment imagine if they had not succeeded. We cannot allow greed to destroy
23 the future of this great city. Thank you.

1 [CLAPPING]

2 CHAIR PERLMUTTER: Thank you.

3 MS. MATIAS: Next speaker. Next speaker please. Thank
4 you very much.

5 MS. MELLONS: Hi. I'm Sue Mellons. I live at 22 West
6 66th Street in the building that is right next to the build-, proposed building. We have
7 from the beginning we, we were told that it was gonna be 25 stories and I, I just want to
8 point out the deceit of the developer in, in telling us this. There was no transparency
9 during this time. That was what we were told and we accepted it and then it turned out
10 that they were going to do the 75-story building. I can only say that the possibility of a
11 really dark city in the future if these buildings are allowed to go up above the height that's
12 in the zoning law, it, it just the darkness in the city is unimaginable to me and I can I
13 think of these, these buildings as not as skyscrapers but really as sky rapers.

14 And I, I also think about the health of the people in the community. I'm speaking
15 for the people in the community. We have precious little power at the moment so they
16 think, but we are a voice and I am begging you to consider this voice very seriously that
17 we are all opposed, many of us -- most of us are opposed to this type of structure coming
18 in destroying the whole character of the neighborhood, the whole community, the whole
19 feeling. Moreover, these buildings when they go up are not inhabited very often by
20 residents of the city because they are so expensive that people can't afford to live in them
21 so they are inhabited by people who come from other parts of the world and live in them
22 for maybe a week or a few days of the year.

23 What benefit is this to the city? They don't play -- pay taxes. What benefit can it

1 be to the city to have such buildings there? We need buildings that people can live in.
2 The city needs more housing but we need things that are consistent with the
3 neighborhood and not these things that stick up out of there which is sort of to me just an
4 example of sheer hubris. And I, you know, it's a, it's almost a dare. Knock us over. I, I
5 just, you know, for me to knock over but for somebody from which has happened in the
6 past as we know but I, I, I just beg you to consider the needs of the commun-, of our
7 community and other communities in the residential area around the city. The residential
8 areas don't deserve buildings like this. Thank you.

9 CHAIR PERLMUTTER: Thank you.

10 MS. MATIAS: Next speaker.

11 MR. DAY: My name is John Day. I support Central Park
12 NYC and am a member of also a member of Landmark West and City Club. My wife
13 and I are neighbors of the disputed 50 West 66th Street project. For 21 years, we loved
14 living in the Special Lincoln Square District. We support both of the appeals before you.
15 They contest the merged zoning lots and the absurd, massive mechanical void loopholes
16 for the planned midblock 775-foot building. Three times taller than any others in the
17 area.

18 I'm in Central Park every day. This building will cast shadows as far as Bethesda
19 Fountain, across the park, and across our neighborhoods. But really my primary concern
20 is safety. Please record this Uniformed Firefighters Association of Greater New York
21 memorandum. The firefighter statement "strongly opposes construction methods that are
22 inherently dangerous and for no valid reason increased the threat to the lives of the public
23 and our members." Today is the eve of 9/11. Can we forget the firefighters' lives lost

1 then or their continuing heroism? I was three blocks away on the street when I heard and
2 felt the sonic boom, saw the first and second towers hit and neighboring buildings
3 destroyed when they fell.

4 Our brave public servants' warnings merit your most serious consideration.
5 Enormous vertical voids like the ones planned are far greater than in any other New York
6 building and I believe unknown globally. They are untested and potentially deadly.
7 During Superstorm Sandy, friends of ours were ripped from their homes in the three-
8 block radius of 153 West 57th Street when the multi-ton crane atop that project blew over
9 risking the area's destruction. That crane if it had fallen would have hit a major gas main.

10 The developer and contract- contractor on that project are the same as on 50 West
11 66th Street. Okay? Do you feel our fear? Do you understand why we're concerned?
12 The project architects on this appear creative. They're well regarded. They even
13 designed the 9/11 Museum yet their website indicates they've not completed a building of
14 this height nor do they -- nor do we know of any architect who incorporates voids this
15 high or with this potential risk. Yes, we are afraid for our and our community's safety. In
16 your own words, the BSA stated that it should consider "the health, safety, and life
17 quality of all New Yorkers." We implore you to do that now.

18 CHAIR PERLMUTTER: Thank you.

19 MR. DAY: Thank you.

20 [CLAPPING]

21 MS. MATIAS: Next speaker.

22 CHAIR PERLMUTTER: Please.

23 MS. MATIAS: Next speaker.

1 MR. DAY: And this is the statement that--

2 CHAIR PERLMUTTER: Thank you. Thank you.

3 MS. LENKE: Hello. My name is Beth Lenke. As a new
4 New York resident, my husband and I carefully considered the myriad of locations to live
5 in this vast city. It was obvious that Lincoln Square and the Upper West Side were a
6 perfect fit for our family. I would like to refer to a letter written by Gale Brewer, Corey
7 Johnson, and the entire delegation of the City Council dated August 16th of last year. In
8 it they speak of the integrity of the Zoning Resolution and I quote "all across our
9 Borough, developers have found numerous novel work arounds to circumvent the
10 limitations that we commonly misunderstood to apply them under zoning. The Zoning
11 Resolution is meant to provide consistency and predictability for both developers and
12 residents. But again, we have seen buildings constructed that defy our expectations and
13 long held beliefs of what the rules are."

14 Usually appeals come to the BSA because clarity is needed where parties differ as
15 to interpretation. But the case of the mid-block tower now slated as 775 feet on West
16 66th is very different. This building sits in the Special Lincoln Square District where the
17 building height regulations are clearly defined and then clarified. It specifies that when
18 the rules are followed, the buildings would not exceed 25 to 30 stories for a maximum of
19 330 feet. The rules that result in the buildings of 30 stories or less are concurrent use of
20 the tower coverage rule and the bulk package rule.

21 I believe Extell knew the rules when they submitted the 25-story plan. The
22 original contextual building plans were consistent with the Special Lincoln S-, Lincoln
23 Square District rule usage and seemed reasonable given the block placement. City

1 Councilmember Helen Rosenthal called out the developer when they changed their, their
2 plans to the massive tower that is three times the original height and even called it bait
3 and switch. Diversity, the arts, the architecture, and just the right amount of noise and
4 traffic made easy to fall in love with the Lincoln Center area and the Upper West Side.
5 We never doubted that New York City would make sure our area remained neighborly
6 and that buildings would be consistent. Because developers are being allowed to move
7 around zoning regulations much of which we took for granted is being compromised.

8 A perfect example is the effect on Central Park. The massive tower in its present
9 form has been talked about in multiple times is expected to cast afternoon shadows across
10 Central Park up to the Bethesda Fountain right in the heart of our Park. The novel
11 workarounds might be con-, inconsequential in some cases. My family and our
12 neighbors believe that in the case of the massive tower on West 66th Street,
13 circumventing the limitations will have devastating and forever lasting impact on our life
14 quality as residents of New York City. Board of Standards and Appeals please be the
15 relief valve as we heard today and protect the health, safety, and life quality of all New
16 Yorkers.

17 CHAIR PERLMUTTER: Thank you.

18 MS. MATIAS: Next speaker.

19 MS. KRESKY: My name is Mary Kresky. I support the
20 appeals by Landmark West and the City.

21 CHAIR PERLMUTTER: Please speak louder and direct to
22 the mic. Thank you.

23 MS. KRESKY: Thank you. And City Council. And

1 support Zoning Resolutions designed to enhance sound and careful development. I'm
2 also a native New Yorker and over a 45 year resident of the Lincoln Square area. Today,
3 I wanna step back a moment and look at how the BSA approaches its decision making.
4 What goals, what principals does it use as a guideline? What should it consider when
5 making rulings regarding questions such as is the language clear, clear, is the application
6 now proposed in a court with the language? This is particularly difficult when an expert
7 such as George Janes challenges the views of others as some have said today.

8 CHAIR PERLMUTTER: Sorry. Speak up. Sorry. Put,
9 put the mic near you.

10 MS. KRESKY: Okay. Sorry. Another question. If the
11 application involves a zoning district that was created because of a unique situation,
12 should the reasons for that and other background information be included in the
13 deliberations? I do not know minimize the challenge such questions and other pose. It's
14 extremely difficult to draft language that will over the life or the law or resolution ensure
15 that the implementation will continue to be in accord with the purpose.

16 Thus, it is essential it seems to me that the BSA look to what it has said are its
17 goals, purpose, in what -- and making the decision it should consider. To determine this,
18 I quote from the statement from the BSA itself. Please be patient. The New York City
19 Zoning Resolution building and fire codes, the New York State multiple dwelling and
20 general city laws were enacted to protect the health, safety, and life quality of all New
21 Yorkers.

22 Continuing the quote, consequently, BSA's authority to vary these regulations
23 must always be tempered by the agency's consideration of the impacts that the insertion

1 of a building modified by such waivers, waivers will have on the urban fabric
2 surrounding neighborhoods and neighbors as well as on the greater vision of our city it
3 has been conceived of by its urban planners, architects and engineers and codified in
4 these regulations.

5 The specific appeals now before the BSA involve the use of loopholes relating to
6 combining zoning lots and mechanical space which if allowed will result in an over 750-
7 foot mid-block building. In considering these appeals, it seems to encumbent on the BSA
8 to consider the their quote "impacts" this would have as it has stated on the urban fabric
9 surrounding neighborhoods and neighbors as well as on the greater vision of our city that
10 has been conceived of by its urban planners, architects, and engineers and codified in
11 these resolutions. The fundamental question it seems to me is what will best help "to
12 protect the health, safety, and life quality of all New Yorkers." Thank you.

13 CHAIR PERLMUTTER: Thank you.

14 MS. MATIAS: Next speaker.

15 [CLAPPING]

16 MR. YOUROL: Thank you Madam Chair. I'm Howard
17 Yourol. I wish to offer a different vision of, of the proceedings and in my vision the BSA
18 is relieved of the onerous task such as it is suffering through this morning because in my
19 vision the City Council of New York takes global leadership and passes a moratorium on
20 monster towers. The rationale being as I said last month that in the global climate crisis
21 which we all appreciate we are fully in at, at this time, there is no longer room for the, the
22 building of such, of such buildings. They are not sustainable in any way, shape, or form
23 and they're spread within our city and around the world is a recipe for disaster. So I'm

1 calling on the City Council of New York to pass a moratorium and to, to this effect and to
2 relieve the BSA of the onerous task such as is exemplified by this morning's proceedings.
3 Thank you.

4 CHAIR PERLMUTTER: Thank you.

5 MS. MATIAS: How sweet.

6 MS. THAUSER: Hello. My name is Arlene Thausen. I
7 live on West 67th Street. I belong to Landmark West Block Association. I'm here as a
8 neighbor who is extremely concerned about what's going on now and in the future. What
9 your decision could mean is a death sentence to our Upper West Side neighborhood,
10 population in the thousands. I recently read a book by a gentleman named Byron
11 Stephenson who talked a lot about the prisoners on death sentence and mostly in the
12 South where timelines and statutes of limitations and 30 days were completely ignored
13 over that incredible logic and the obviousness of what was going wrong.

14 You have the authority to not ren-, not render a death sentence to this
15 neighborhood, to not undo the purpose of Lincoln Square's zoning intent. What will
16 happen in the future? River to park in the 60s, 70s, 80s, 90s and upward? There are,
17 there are also at least four public schools in the immediate area. The decision you are
18 tasked with could affect the future of over, well over 50 city blocks, thousands of
19 schoolchildren, and committed Manhattan residents of longstanding.

20 This decision will be impacting the probable team that is now working experts
21 now preparing plans for West 66th, West 67th, and Columbus Avenue now known as the
22 ABC Campus. Our beautiful Upper West Side residential and landmark streets are about
23 to be turned into the greed of the extremely wealthy real estate developers. The BSA

1 your mission is to protect our health and safety and the life quality of all New Yorkers.

2 Thank you.

3 CHAIR PERLMUTTER: Thank you.

4 MS. MATIAS: Next speaker. Next speaker please.

5 CHAIR PERLMUTTER: Next speaker please.

6 MS. MATIAS: Thank you. Is there any more after this

7 lady? Any more speakers? Okay. Thank you.

8 MS. VAZQUEZ: Hi. My name is Eileen Vazquez. I'm the

9 president of the West 69th Street Block Association. I want to start off with two things.

10 It's very disgraceful and disappointing that we all have to come here and fundraise and

11 stay up all night and do turn out and all these other things to plead with you guys to

12 enforce the laws that are supposed to protect us. It's ridiculous that we have to do this. I

13 haven't slept all night. I don't know what condition Chris is in. I'm exhausted just trying

14 to get people here and trying to get this to fall on your ears.

15 Secondly, regarding mechanicals, I know the, the new law has passed. No matter

16 what side of the argument we are on about mechanicals, it's 2019, not 1819. We all know

17 that mechanicals are slimmer, they're more efficient, they're smaller. Nobody in New

18 York needs that much mechanical space for mechanicals.

19 [CLAPPING]

20 MS. MATIAS: No clapping please. Thank you.

21 MS. VAZQUEZ: I want to say as my block approaches its

22 50th anniversary, I'm reminded with great pride the courageous advocacy beginning in

23 1969 and continuing til today of my block association. For over five decades, we have

1 stood together to support our block and our neighbors. Today, we are here to continue
2 supporting our neighbors in their struggle regarding this building. I'm reminded of the
3 rules regarding this meeting and rules are funny things. There seems to be rules when
4 rules apply so certain rules have rules. Some rules could be broken but some can't be.
5 Some rules only apply to some people. Some rules are considered more important than
6 other rules.

7 All of this reminds me of a conversation I have with my son many years ago. We
8 were discussing the consequences of broken rules. Truthfully, I cannot even remember
9 the details but I do remember clearly my son turning to me with an earnest face that only
10 a six-year-old can have and saying there are rules for a reason mommy. The reason for
11 the rules we are discussing here are to protect New York City residents, protect the
12 architectural integrity of the neighborhood, to not overload our already heavily burdened
13 infrastructure.

14 As I live on the street where a \$100 million dollar home featured on the New
15 York Times recently is being built, I can tell you what the consequences of rule breaking
16 are. A street filled with dirt and dust, construction material and machinery beyond
17 permitted areas, construction debris beyond permitted areas, but beyond permitted areas. Up to
18 17 cars stopped at once to make room for their equipment to move. Noise of power tools
19 on weekends, damage to parked cars, damage to trees.

20 CHAIR PERLMUTTER: Please.

21 MS. VAZQUEZ: Within the rules, we suffer dearly daily
22 all of the above but in addition to pneumatic drilling that takes a subterranean route up to
23 200 feet from the site.

1 CHAIR PERLMUTTER: Please wrap up. Your three
2 minutes is up. Okay. Thank you. Please wrap up quickly.

3 MS. VAZQUEZ: Workers urinating on the street, up to
4 four concrete trucks a day, a team meeting of 30 workers outside of our windows at 7:00
5 a.m. The list goes on and on. The point remains. There are rules for a reason and they
6 apply to all.

7 CHAIR PERLMUTTER: Thank you.

8 MS. MATIAS: Thank you very much.

9 MS. GUEST: Hi, I am Carol Guest and I live at 10 West
10 66th Street. And quite frankly I'm sorry to say I'm not been more involved in all of this.
11 It really -- when I see this model here today, you know, I know it's gonna affect me living
12 at 10 West 66th. But I now see how it's gonna affect everyone here. So I'm going to take
13 another close-up photograph of this, send it to a hundred of my best friends on the Upper
14 West Side and I would suggest that you all do the same because this is enough. Well you
15 all have some kind of...

16 CHAIR PERLMUTTER: Please address us.

17 MS. GUEST: Anyways.

18 CHAIR PERLMUTTER: Please address us.

19 MS. GUEST: This, this is tells a story right here. Talk
20 about bulk and some of the other things that you're addressing here today. You are
21 destroying our neighborhood. So I'm gonna take one more picture close up and make
22 sure that everybody I know sees this model which doesn't show one tower by itself but
23 shows the effect on all the other buildings in the surrounding area. And I thank you all

1 for being here. Thanks.

2 CHAIR PERLMUTTER: Are there any other speakers on
3 this? Any other speaker, members of the public on this?

4 MS. MATIAS: Okay. The appellants please come
5 forward.

6 CHAIR PERLMUTTER: And, and while they are
7 assembling here, one of the speakers brought up the subject of legislation that we weren't
8 -- I wasn't aware of which was introduced in February -- please -- was introduced in
9 February to the State Legislature. I think it was introduced by the Assembly and then it
10 was brought to the Senate, State Senate. It's an amendment proposed introduced in
11 February and it seems to have been introduced to the, the Senate in May which is an
12 amendment to the multiple dwelling law and Council Member --

13 CROWD: Assembly Member. Assembly Member.

14 CHAIR PERLMUTTER: No, no, no. No, no, no. Council
15 Member Rosen --

16 CROWD: Linda Rosenthal.

17 CHAIR PERLMUTTER: Rosen -- no, no, no.

18 VICE-CHAIR CHANDA: Councilmember Helen
19 Rosenthal.

20 CHAIR PERLMUTTER: No, the other one.

21 VICE-CHAIR CHANDA: Linda Rosenthal.

22 CHAIR PERLMUTTER: Linda Rosenthal. See that's a
23 problem. We have too many Rosenthal's so it's a little confusing. Anyway so the

1 Council Member said, said that she was not able to amend the Zoning Resolution the way
2 they had in mind for the mechanical voids because City Planning didn't introduce
3 whatever it was they preferred to see introduced, but the multiple dwelling law which is a
4 very powerful state law that affects all multiple dwellings which includes hotels is
5 proposed to be amended and for those who of you who don't know about it and you
6 should be active in, in that subject is proposed to be amended to, to talk about the
7 maximum height of a floor.

8 Whether or not this will go ahead, who knows but you should be aware that the
9 State Legislature is working on that subject with State law if the City Council is unable to
10 accomplish this with local New York City Law. Okay? Okay. Did you want to add --
11 and I actually think that Commissioner Chanda should -- has been doing some research
12 while we talk about the character of the neighborhood and so on.

13 VICE-CHAIR CHANDA: I think keeping in mind what
14 the intent of the proposed text was, I was looking at the very --- I was looking at various
15 buildings that, that have been built in this area within the Special Lincoln Square District
16 and outside the Special Lincoln Square District but are in zone C4-7 and I was just trying
17 to do a, do a comparison, a quick comparison and I know I, didn't, you know, I'm not
18 getting into the details of the zoning for each one of the sites.

19 When looking at this information, those developments that were built prior to the
20 adoption of the 1994 zoning text which is what we are contesting today or sections of it
21 that is, for example, the One Lincoln Square Plaza with that was built in 1970 rose to --
22 had 42 stories and it's built on a 59,000 square-foot lot area. A similar comparable lot
23 area that is one block to the south of it is 15 Central Park West which is a similar lot area

1 but the number of stories on that one is 37 and that was built in 2005. That goes to show
2 that the text that was proposed did have an effect in terms of the comparable lot areas but
3 you're resulting in a smaller -- shorter buildings. So the text did apply.

4 MR. LOW-BEER: I'm sorry. That was built in, in how
5 many stories was it?

6 VICE-CHAIR CHANDA: 2005. Thirty-seven stories built
7 in 2005. And if I were to compare that to what the applicant is proposing, keeping the
8 mechanical void out of the question.

9 [LAUGHTER]

10 VICE-CHAIR CHANDA: It's not before us. I'm sorry.

11 MS. MATIAS: Ladies and gentlemen.

12 VICE-CHAIR CHANDA: I'm sorry. It's not -- we have
13 dealt with that in a previous action. This result -- this proposed project similar lot area as
14 been actually lesser -- similar lot areas of Central Park would also result in 35 story
15 building. So, you know, I'm just looking at the various numbers. Again, another one,
16 1992 in 1992 actually 1995. 144 Columbus Avenue. That had a lot smaller lot area but it
17 had a 30-story building. It was an 18,000 square foot of lot area but had a 30-story
18 building.

19 CHAIR PERLMUTTER: Please, please sir. You'll be
20 removed if you do that. Okay?

21 MS. MATIAS: Sir, please.

22 Mr. Day(?): That we came here is totally absurd.

23 CHAIR PERLMUTTER: Please.

1 VICE-CHAIR CHANDA: I'm just kind of laying out the
2 various number for me to help understand what the intent of the text was and whether the
3 text did work and I when I'm looking at these various developments that have been built
4 prior to the enactment of the text and after that and doing the comparison I, I feel that the
5 text has been effective and I just wanted to state that.

6 CHAIR PERLMUTTER: And again, I -- we need to repeat
7 again and again for the public. The question of mechanical voids is not before us today.
8 We decided that on another case and City Planning reacted by changing the Zoning
9 Resolution and so we don't look at those cases twice. It's called an issue preclusion. We
10 don't look at cases twice when the same question is presented in another case so we're
11 only looking at what's known as bulk packing, bulk distribution rule which is what
12 Commissioner Chanda is referring to right now. Okay.

13 MR. LOW-BEER: Okay. Just very briefly. Well you said
14 several times that your hands are tied and you interpret the Zoning Resolution as written
15 and, you know, I only bring it up because it's the one case that I'm particularly familiar
16 with but, you know, in the Patent case, the language of the Zoning Resolution said that
17 the open space on a zoning lot has to be accessible to and usable by all residents. You
18 found--

19 CHAIR PERLMUTTER: We can't speak about that case.
20 It's in litigation. So you--

21 MR. STEINHOUSE: The City has a strict policy against
22 discussing pending litigation.

23 MR. LOW-BEER: Against what?

1 MR. STEINHOUSE: Discussing pending litigation.

2 CHAIR PERLMUTTER: That case is in litigation with the
3 BSA.

4 MR. LOW-BEER: Well, I know.

5 CHAIR PERLMUTTER: So we cannot discuss it so you,
6 you can't -- you can raise it but we can't comment.

7 MR. LOW-BEER: Well, okay. I'll just --

8 CHAIR PERLMUTTER: Okay.

9 MR. LOW-BEER: -- I don't expect you to comment. I just
10 like to say that you found an ambiguity there whereas a subsequently, you know, at least
11 the appellant addition said that there wasn't one so, you know, I would and, and of course
12 as an attorney for the petitioners in that case I also believe there was no ambiguity so, you
13 know, I would question whether it's always the case that you -- yeah, I mean I believe this
14 was done in good faith but somebody looked at what was happening there and I know
15 you were the only one who's still -- well Commissioner Ottley-Brown but she's not on
16 this case.

17 So in any event, I'm sure that was all done in good faith and you did find an
18 ability and you did not follow the plain language of the statute and I'm sorry to bring it up
19 if you can't respond to it. I wasn't aware of that but anyway. Let me also say that in
20 Stringfellow's it's true as Mr. Karnovsky said that the court said that the intent of the
21 statute is to be ascertained from the words and the language used in the statute and if the
22 language is thereof unambiguous and the words plain and clear, there is no occasion to
23 resort to other means of interpretation. However, a sentence or two later the court said,

1 however, according construing the law will sometimes be guided more by its purpose
2 than its phraseology and in fact in that case they -- I submit that they were.

3 I really -- I think that's all I have to say about this. I'm sorry about this rabbit hole
4 of 1865 Broadway but as, as I was saying I think that if you look at the, the real tower
5 coverage in that case, it was less than 38 -- 30 percent. It was 28.9 percent and that
6 building is also taller than it legally should be because of a loophole that was exploited.
7 Thank you very much --

8 CHAIR PERLMUTTER: Thank you.

9 MR. LOW-BEER: -- for your consideration.

10 CHAIR PERLMUTTER: Thank you.

11 MR. LOW-BEER: And oh, one other thing, I have no
12 objection whatsoever if you decide to sever the City Club case from the Landmark West
13 case, but I do urge you to decide our case as quickly as you can. Thank you.

14 CHAIR PERLMUTTER: Okay. Thank you.

15 MR. KLEIN: Good afternoon. Again, Stuart Klein on
16 behalf of Landmarks West. Two questions have been raised by you in the course of
17 today's proceedings or two arguments rather. One is the timing of our appeal and the
18 second is the substance of our appeal and whether or not you have the jurisdictional right
19 or obligation to review that. To tell you the truth, I'm reminded of a quote from a Court
20 of Appeals case you previously cited to and the question posed to the Board then and I
21 pose to the Board now is what are you talking about.

22 This was filed in a timely fashion. This was filed within the 30 days pursuant to a
23 final determination made by the Buildings Department which was further defined by a

1 permit. That is a final determination made that is appealable to the Board of Standards
2 and Appeals. In our application, we specifically said the owner's attempt to exempt the
3 voids from floor area should be rejected as the voids are neither used for mechanical
4 equipment nor are they accessory, the mechanic-, the residential uses in the tower. No
5 mention of height is made in there. You're basically conflating void with heights. We
6 couldn't even address whether or not a void was involved because the plans don't show
7 the height of the mechanical space so that was hidden from us. It's been hidden from the
8 Building's Department. It's been hidden from this Board.

9 COMMISSIONER SCIBETTA: Where is that? I'm sorry.
10 What page is that on?

11 CHAIR PERLMUTTER: That's their initial.

12 MR. KLEIN: That's the initial 5/13/19.

13 COMMISSIONER SCIBETTA: Okay.

14 MR. KLEIN: So it is a core issue and core issues must be
15 addressed by this Board. I'm not talking about the myriad of outlier issues that come
16 before you in something of a, a staccato fashion over time. This was presented to you in
17 our first application and it is clear on the language. There is no ambiguity here just like
18 you're arguing there's no ambiguity with regard to the bulk resolution. There is no
19 ambiguity here. We argued that this, this mechanical space was improper and an
20 improper deduction so therefore it is before the Board.

21 Now, the, the B-, certainly the Buildings Department did as a matter of fact in Sky
22 House case say that it was able to approve those mechanical drawings because as
23 proposed, especially in light of composite mechanical plans for the proposed building

1 illustrating the mechanical then proposed for the second, third, and fourth stories is found
2 that it conformed to code. Here--

3 CHAIR PERLMUTTER: What are you reading?

4 MR. KLEIN: I'm reading from page four of 2016-4327A
5 resolution.

6 CHAIR PERLMUTTER: The re-, the resolution on that
7 case?

8 MR. KLEIN: That's correct. So the, the Buildings
9 Department said it had complete plans in that case. It also said during the context of that
10 case that it reviewed each and every mechanical plan to determine whether it conforms to
11 code and whether or not in this instance the five percent could be reduced. Here we're
12 talking about a lot more than five percent. I mean it's, it's off the board percentage wise.
13 So then the Building's Department now comes to you today and it says well we didn't re-,
14 we didn't review plans. The plans aren't here.

15 In fact, the Fire Department has plans that I made up that indicate that not a single
16 item that's required in code was contained in those plans yet the Buildings Department
17 passed them anyway and now the Buildings Department is saying to you well if they do
18 apply again, based on the illicit, illicitly or the argued illicitly issued permit, we will not
19 issue a final determination. That is a perversion of law and the judicial process.

20 It in effect is saying that we're not giving you the Board the power to review and
21 we're not giving the people in the neighborhood or Landmarks West the ability to appeal
22 because we're never giving you a final determination to take to court. So basically they
23 didn't follow their protocol as set forth in Sky House, they didn't follow the building

1 code, they didn't follow the pro-, the in-house protocol established by Tom Fariello and
2 on top of that they're saying ha, ha, we're tying your hands, you can't do anything beyond
3 this. Now in order to do that, the Court of Appeals in the field case said that if an agency
4 breaks from long-established protocol, it has to give a reason why it's doing that.

5 CHAIR PERLMUTTER: Can you sorry. Can you give us

6 --

7 MR. KLEIN: There is no reason.

8 CHAIR PERLMUTTER: -- can you give us a citation?

9 MR. KLEIN: Excuse me?

10 CHAIR PERLMUTTER: What's the field, what's the field
11 case?

12 MR. KLEIN: Field case. I'll give you the cite later.

13 CHAIR PERLMUTTER: Okay.

14 MR. KLEIN: It's a Court of Appeals case that says if a
15 governmental agency breaks from protocol, it has to give a good reason determination
16 why it broke from protocol. None was given here. So right now, the Buildings
17 Department didn't look at these plans and if it did look at these plans and didn't see
18 anything, of course nothing was contained, contained in it. Those plans violated the
19 building code, violated building standards, violated buildings protocol and now they're
20 backing up by saying an oh, by the way, we're not gonna give you the right to appeal. I
21 think it's incumbent upon you to demand the Buildings Department receive those plans so
22 we can determine whether or not the mechanical deductions, not the height that the
23 mechanical deductions were in fact properly taken off and this permit is valid. Thank

1 you.

2 CHAIR PERLMUTTER: Okay. Thank you. Mr.

3 Karnovsky.

4 MR. KARNOVSKY: Just two, two quick points.

5 Stringfellow's speaks for itself. That case involved a question of what the term

6 customarily should be understood to mean and the point is the court looked at it in the

7 context of the Zoning Resolution and made its decision based on its understanding of the

8 Zoning Resolution and context here understanding the special district rules and context

9 leads inexorably to the conclusion that 82-34 means what it says. With respect to Mr.

10 Klein's arguments, the point again is whether or not these issues were raised on appeal.

11 UNIDENTIFIED FEMALE 1 [03:04:08]: Could you speak

12 up a little bit please?

13 MR. KARNOVSKY: The question is whether or not the

14 issues was raised on appeal. It was not and it should not be heard.

15 CHAIR PERLMUTTER: Thank you. Okay. Okay. Any

16 additional comments from Board members? Okay. What I would like to do is close this

17 hearing, close both of these hearings and we will put this on for decisions for next week

18 September 17th. It -- during which time we will look more clearly into this question of

19 whether the mechanical question should be considered by us or whether it is precluded.

20 COMMISSIONER SCIBETTA: Should we close it?

21 CHAIR PERLMUTTER: Sorry?

22 Mr. Klein: Do you want me to give you the field case?

23 MR. STEINHOUSE: No, we have it.

1 CHAIR PERLMUTTER: We have it. Okay. Okay. And
2 so, we don't need additional submissions because we don't know whether that's
3 something that we're going to be reviewing. We have to see whether it is properly before
4 us or not. Okay? Okay.

5 MS. MATIAS: Okay.

6 CHAIR PERLMUTTER: So, so motion to close.

7 MS. MATIAS: Chair Perlmutter?

8 CHAIR PERLMUTTER: Aye.

9 MS. MATIAS: Vice-Chair Chanda?

10 VICE-CHAIR CHANDA: Aye.

11 MS. MATIAS: Commissioner Ottley-Brown abstained.

12 Commissioner Sheta -- She-, sorry. Commissioner Sheta?

13 COMMISSIONER SHETA: Aye.

14 MS. MATIAS: Commissioner Scibetta?

15 COMMISSIONER SCIBETTA: Aye.

16 CHAIR PERLMUTTER: Okay. So, the case the hearing is

17 closed. No further submissions and we'll have -- make our decision next Tuesday okay

18 and you can hear us comment on it next Monday in Review Session.

19 MS. MATIAS: Okay. Thank you everyone for coming.

20 COMMISSIONER SCIBETTA: Can we take a?

21 CHAIR PERLMUTTER: Yeah.

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I, Devin Turpin, certify that the foregoing transcript of the Public Hearing of New York City Board of Standards & Appeals on September 10, 2019 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: November 26, 2019

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018

NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

Calendar Number: 2019-89-A

36 West 66th Street, Manhattan

Public Review Session

September 16, 2019

1 MS. MATIAS: The appeals calendar. Decision items.

2 Item number one. 2019-89-A. 36 West 66th Street, Manhattan. This is the appeal
3 brought by City Club.

4 CHAIR PERLMUTTER: Alright. So we're gonna do
5 these separately and correctly?

6 COMMISSIONER OTTLEY-BROWN: I must recuse.

7 CHAIR PERLMUTTER: Yes. Okay. Right. Sorry.

8 Okay. This case was closed and so as I said we're going to do these two applications
9 separately and vote just on this one. Okay? The question presented in this application is
10 whether the mechanical space is limited as to height by the Zoning Resolution. I believe
11 that that identical question was asked and answered in the Sky House case on East 30th
12 Street so there is no need to look again, look at it again and my position on the issue
13 hasn't changed. I, I'm saying that in part because I use the term issue precluded and that
14 is used in a different sort of a term of art. This is about asked and answer. A question
15 has already been asked and an- answered and no reason to change position, and no
16 difference in facts or questions that would cause me to wanna change position.

17 The section question has to do with bulk distribution and I think the text is clear
18 that it applies to all zoning lots in this special district. So just on that case so other
19 comments on that case?

20 VICE-CHAIR CHANDA: No.

21 CHAIR PERLMUTTER: Anybody else?

22 COMMISSIONER SHETA: No, I share the same opinion.

23 CHAIR PERLMUTTER: Okay.

1 COMMISSIONER SCIBETTA: I, I just want to add I can
2 certainly understand the frustration.

3 MS. MATIAS: Can you use the mike please?

4 CHAIR PERLMUTTER: Stop and pull the mike to you.

5 COMMISSIONER SCIBETTA: I can certainly understand
6 the frustration that the community has on this, on this case 'cause I'm very frustrated with
7 the result here as well. There is -- I can -- it even looking at the model, the 3D model that
8 was brought in by one of the speakers, it's clear that this building does not conform with
9 the neighborhood. That being said, I agree with, with the Chair. I, I don't believe that --
10 what are we looking for -- oh, sure. I, I don't believe that the language in the Resolution
11 permits us to look behind anything else as it is clear and unambiguous. And for us to do
12 so would be, would be stepping outside of what our mandate and we're not the body to
13 decide whether or not the legislation how it should be written. We're just interpreting
14 what is written.

15 CHAIR PERLMUTTER: I agree. Okay.

16 COMMISSIONER SHETA: I believe last hearing the
17 Chair made it clear, clear that the, the our job as a Board is not to like write laws or write
18 Zoning Resolution. Our role is to -- our job is to just apply and I, I hope like the majority
19 of the public and, and, and whoever testified before us got this and I'm hoping that the
20 text is, is this is specific text and every actually every other text that was like available
21 before us like too many other cases that during voting on them I was like hearing pain
22 inside yourself because I, I did feel like this is not the way to go but at the end of the day,
23 it is the way that the ZR is written. I, I hope this text pertains to this is specific case is

1 gonna be fixed in such a way to avoid similar situations in the future and again, it's not
2 our job to fix it. It's our job just to look at it and apply it.

3 COMMISSIONER SCIBETTA: Right. And, and that's
4 what makes this case particularly frustrating in that the -- when it came to mechanical
5 voids, that issue was then readdressed by the legislation. Unfortunately, that hasn't been
6 an issue that was brought to the, to the Board about whether or not they, the, the parties
7 vested prior to the enactment of this, of this new regulation. I again I can certainly
8 understand the frustration as it's a difficult decision to come to.

9 CHAIR PERLMUTTER: Thank you.

10 VICE-CHAIR CHANDA: Can I?

11 CHAIR PERLMUTTER: Sure.

12 VICE-CHAIR CHANDA: Since I went back and
13 rereviewed DOB's statements, I, I agree with the DOB that the permit was validly issued.
14 The proposed project does comply with Zoning Resolution 82-36 and 82-34 and that
15 there is no ambiguity with regards to the text or the intent. It achieves the reduction in
16 height, in heights as the, the drafters of the Zoning Resolution had proposed back in
17 1993.

18 As of the last hearing, I had as I was reviewing some of the projects that were
19 built along the corridor within the Special Lincoln Square District and with outside the
20 Special Lincoln Square District in the C4-7 zoning district, what I did notice was that
21 given similar lot size, the building heights did differ significantly from the period when
22 the zoning resolution was amended in 1993 so projects that were within the Special
23 Lincoln Square District that were built prior to 1993 of a similar lot area had much taller

1 building than projects that were built after 1993 and similarly projects that are outside the
2 Lincoln Square District where this regulation does not apply and the general height and
3 setback where other regulations apply even in those areas the heights were much taller.

4 So definitely, the intent of the drafters was to bring the heights down within the
5 Special Lincoln Square District and the project does that and as I have stated before and I
6 think the Chair has stated it also I think nobody could have predicted then the kind of
7 zoning lot that could have been developed, the kind of mechanical spaces that would
8 have been considered, and those are added to the height.

9 The actual livable space, the residential number of floors 35 floors is the most
10 typical number of floors that one sees in the Special Lincoln Square District. So I do, I
11 take a slight diversion from what my fellow Commissioners have said and I do believe it
12 is very consistent what the Zoning Resolution has stated. With regards to the mechanical
13 void--

14 CHAIR PERLMUTTER: I'm not sure. I think they're
15 talking about the mechanical voids, not the bulk distribution question. Right? In, in and
16 I think the comments that they were --

17 VICE-CHAIR CHANDA: Okay.

18 CHAIR PERLMUTTER: -- talking about had to do with
19 the voids.

20 VICE-CHAIR CHANDA: Okay.

21 CHAIR PERLMUTTER: And not the mechanical.

22 VICE-CHAIR CHANDA: Right.

23 CHAIR PERLMUTTER: The bulk distribution.

1 COMMISSIONER SCIBETTA: That, that's, that's what in
2 reality, that is what's making the height.

3 VICE-CHAIR CHANDA: And that's what's -- that is
4 what's and, and --

5 COMMISSIONER SCIBETTA: For the most part.

6 VICE-CHAIR CHANDA: -- and the fact that this project
7 did get the permit before the Zoning Resolution was amended, it's, it's kind of--

8 COMMISSIONER SCIBETTA: And that's, that's what
9 we're --

10 VICE-CHAIR CHANDA: That's what we can.

11 COMMISSIONER SHETA: -- that's, that's what we're,
12 that's what we're seeing.

13 VICE-CHAIR CHANDA: Okay. Then I'm in agreement.

14 COMMISSIONER SHETA: If, if they are similar
15 situations, in the zoning text amended before another came before another case comes
16 before us and the public and the elected officials become like very frustrated, you're
17 hearing like, like the last hearing. I actually during the last hearing I was like very upset
18 because I feel, I did feel like I'm powerless because I feel like they have a point, but we
19 can do nothing about it.

20 COMMISSIONER SCIBETTA: There's, there's no height
21 restriction in the Zoning Resolution and we can't write one in.

22 CHAIR PERLMUTTER: Right.

23 COMMISSIONER SCIBETTA: Because the legislation

1 had the opportunity to do so and it didn't and for us to do so --

2 CHAIR PERLMUTTER: Right.

3 COMMISSIONER SCIBETTA: -- again would make us
4 legislat-, would -- it's not something would survive an appeal in any event.

5 CHAIR PERLMUTTER: Right. And, and I do wanna add
6 since you raised the subject. I was very disturbed by a comment by one of the Legislators
7 that the Legislators are powerless to do anything about it and we're powerless because by
8 the way this mechanical void if you want to call it that subject started fairly long ago,
9 right, and when I think of how facile the City Council is in drafting legislation and
10 passing it very quickly, I was very surprised to hear that they felt powerless because we
11 are not Legislators, they are and, and they don't need to wait for the City Planning
12 Commission to propose something that they view as inadequate.

13 They have the ability to propose their own kind of legislation and have done so
14 many times on many other kinds of situations and by way of example the Sen-, the State
15 Senate and Assembly introduced a very aggressive bill to reduce the height of all floors
16 in buildings and where that goes and so on is another question. But it just shows that and
17 the State Legislature is less let's say facile about passing legislation. They propose a lot
18 but it's harder to get it approved but it's -- I don't find that to be the case with the City
19 Council. Everyday we're looking at legislation that aff-, that actually affects the BSA
20 that's being proposed so I was really disturbed by Legislators putting it on the BSA which
21 really is an adjudicatory body. We're not a legislative body and I just wanted just to add
22 that.

23 COMMISSIONER SCIBETTA: In this particular case,

1 they did change, they did change the law on this.

2 CHAIR PERLMUTTER: Yes. But the council members.

3 COMMISSIONER SCIBETTA: And to their credit--

4 VICE-CHAIR CHANDA: Council members said it wasn't

5 to their satisfaction. Unfortunately, that's not something we can do. They are the

6 legislative body. They could have. Couldn't do it, that's not something that we can opine

7 on.

8 CHAIR PERLMUTTER: Right. Okay. Thank you.

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CERTIFICATE OF ACCURACY

I, Devin Turpin, certify that the foregoing transcript of the Public Review Session of New York City Board of Standards & Appeals on September 16, 2019 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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Date: November 26, 2019

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018

NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

Calendar Number: 2019-94-A

36 West 66th Street, Manhattan

Public Review Session

September 16, 2019

1 MS. MATIAS: Item number two. 2019-94-A. 36 West
2 66th Street, Manhattan.

3 COMMISSIONER SCIBETTA: Do we get Co-
4 Commissioner Ottley-Brown?

5 CHAIR PERLMUTTER: No, no, no. It's the same case.
6 Same case.

7 VICE-CHAIR CHANDA: It's from that.

8 COMMISSIONER SCIBETTA: Oh, I'm sorry.

9 MS. MATIAS: I'm sorry. The appeal by Landmark West?
10 Say that, say that case again 'cause it was.

11 MS. MATIAS: Item number two. 2019-94-A. 36 West
12 66th Street, Manhattan. This is the appeal filed by Landmark West Et. Al.

13 CHAIR PERLMUTTER: Right. Okay. So as to this
14 submission in this case, the first questions are the same as in the prior case 2019-89-A.
15 So my response is to those first two questions are the same. And so if I understand it
16 correctly and cou- counsel please correct me if I'm --

17 MR. STEINHOUSE: Yes.

18 CHAIR PERLMUTTER: -- misunderstand. We'll issue a
19 resolution as to those two questions indicating that a third issue remains to be decided.
20 The third issue is and first I say I while I do not concede that the papers in this case raise
21 the question whether the mechanical floor space is being used for mechanical equipment
22 in a manner that justifies the several levels of mechanical floors on which the equipment
23 sits, I was very surprised to hear that DOB would not issue a final determination on that

1 question if asked to do so by appellants, hence, depriving appellants of their right to
2 appeal that question.

3 In reviewing the Sky House Resolu- Resolution which is very detailed and also
4 listening to the videos of the hearings, it's clear that once asked by this Board to do so
5 DOB looked very carefully at the mechanical drawings and issued a letter to BSA stating
6 why it determined that the amount of equipment in those mechanical floors was typical of
7 a building of that type so I don't see how we cannot avail appellants of that same
8 opportunity in this case so this case would remain.

9 We would have to reopen it and allow first of all appellants to provide the
10 mechanical drawings, direct DOB to review the mechanical drawings, direct the owner to
11 provide the mechanical drawings which by the way in Sky House, the owner was very
12 cooperative. They provided the mechanical drawings, the detailed sets, right, and with
13 that we could see them and as a person who, you know, as an architect, I look at
14 mechanical drawings and I just see all -- a lot of equipment, but there was no question
15 there was a lot of equipment in that case with ductwork and so on and so it was easy to
16 see that the rooms were filled but it was DOB's engineers who actually looked at the
17 mechanical equipment and, and deemed that the amount of equipment made sense for
18 that building type. So direct all three parties to cooperate in that.

19 VICE-CHAIR CHANDA: In DOB's initial submission,
20 DOB had stated that it had applied the Board's direction in analyzing the floors housing
21 mechanical equip-, in -- sorry. DOB, DOB had applied BSA's direction in analyzing
22 floors housing mechanical equipment regarding incidental prong and on the amount of
23 equipment proposed for this project was sufficient to justify its exemption from floor area

1 as it was serving the principal use. That's I'm quoting DOB's statement so.

2 CHAIR PERLMUTTER: There's a statement in the letter
3 that where we can't tell how -- what they looked at, how far they looked and so on as
4 opposed to what the Sky House case had which was a very detailed lesson -- letter that
5 said things like there are this many furnaces, this many chillers, this many this, this many
6 that. They're tied together. I mean it went into enormous detail which is why our
7 resolution goes into such enormous detail and I don't think then -- so in the issue of asked
8 and answered in the Sky House case, the question of asked and answered was does the
9 Zoning Resolution tell you how tall the mechanical space has to be? So that we, we
10 didn't but in Sky House, one of the other questions was do they need this many
11 mechanical floors right? Is there enough mechanical equipment to justify the number of
12 floors. That was carefully reviewed in front of us, right, and so I don't see how we can
13 treat these two cases differently.

14 COMMISSIONER SCIBETTA: And I think it's
15 particularly interesting in this case considering the history of this case and how an
16 additional floor was added to the project in response to the, to the Fire Department's
17 concern. Therefore, I would like to know whether these floors are being properly utilized
18 or utilized if one could just add a floor in response to the Department -- the Fire
19 Department's concerns.

20 CHAIR PERLMUTTER: Uh-huh. Okay. Okay.
21 Anything else?

22 COMMISSIONER SHETA: No, I have nothing to add on
23 this.

1 CHAIR PERLMUTTER: Okay.
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Date: November 26, 2019

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256 West 38th Street - 10th Floor

New York, NY 10018

NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

Calendar Number: 2019-94-A

36 West 66th Street, Manhattan

Public Hearing

September 17, 2019

1 MS. MATIAS: We'll start with the appeals calendar
2 decision items. Item number one, 2019-89-A. 36 West 66th Street, Manhattan. The
3 appeal filed by the City Club.

4 CHAIR PERLMUTTER: Alright. Does anyone want from
5 the City Club wanna come up?

6 COMMISSIONER OTTLEY-BROWN: I must recuse.

7 CHAIR PERLMUTTER: Oh, yeah. Yeah.

8 MS. MATIAS: This matter is on for decision.

9 CHAIR PERLMUTTER: Yeah. But some usually
10 someone gets up and stands there when we vote so that's. State your name please.

11 MR. WEINSTOCK: Chuck Weinstock.

12 CHAIR PERLMUTTER: Okay.

13 MR. WEINSTOCK: Representing City Club.

14 CHAIR PERLMUTTER: City Club. Okay. So--

15 MR. WEINSTOCK: And other, and other appellants.

16 CHAIR PERLMUTTER: Okay. So for the members of
17 the public who weren't at the Review Session yesterday, there was a Review Session at
18 which time the Commissioners spoke at length about their opinions on this so if you want
19 to hear the lengthy conversations, please listen to the video which is on our website for
20 yesterday's Review Session. Okay? Correct, it's on our website?

21 MS. MATIAS: Yep.

22 CHAIR PERLMUTTER: Okay. So then I would like to
23 bring this -- so what we're bringing to a vote is the questions that were presented by City

1 Club which were specifically about mechanical space and the bulk distribution. Okay?

2 So for a motion to -- oh, we closed the hearing already. A motion to grant the appeal.

3 MS. MATIAS: Chair Perlmutter?

4 CHAIR PERLMUTTER: No.

5 MS. MATIAS: Vice-Chair Chanda?

6 VICE-CHAIR CHANDA: No.

7 MS. MATIAS: Commissioner Ottley-Brown?

8 COMMISSIONER SCIBETTA: She recused.

9 MS. MATIAS: Oh, sorry. Abstained sorry.

10 MS. MATIAS: Commissioner Sheta?

11 COMMISSIONER SHETA: No.

12 MS. MATIAS: Commissioner Scibetta?

13 COMMISSIONER SCIBETTA: No.

14 MS. MATTIAS: Application is denied.

15 Mr. Weinstock: You're done with us?

16 Ms. Matias: Yes.

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TRANSCRIPTION

Calendar Number: 2019-94-A

36 West 66th Street, Manhattan

Public Hearing

September 17, 2019

1 MS. MATIAS: 4A, 36 West 66th Street, Manhattan. This
2 is the appeal brought by parties of Landmark West.

3 CHAIR PERLMUTTER: Okay, so.

4 MS. MATIAS: Mr. Klein.

5 CHAIR PERLMUTTER: This, this -- yes, Mr. Klein. Just
6 want to say your name.

7 MR. KLEIN: Stuart Klein, Klein Slowick on behalf of the
8 appellant.

9 CHAIR PERLMUTTER: Okay. So we're going to sort of
10 bisect this application into two parts. The -- it was closed but we will for one part of it o-,
11 reopen, but I don't know that we need to specifically reopen today. It's more instruction.
12 I'm not really sure how we're handling that technically.

13 MS. MATIAS: I thought we should reopen.

14 CHAIR PERLMUTTER: But we're -- but we need to vote
15 on the two questions that are identical to the questions for City Club, right? So we're
16 gonna bisect the --

17 MS. MATIAS: Okay.

18 CHAIR PERLMUTTER: -- the decision. Okay? So as to
19 the two questions that we just voted on which are the mechanical space as to the height of
20 the ceiling and the bulk distribution, we talked about that at the Review Session and so I'd
21 just like to bring that to a, a vote okay, and leave out of it the question of the mechanical
22 equipment and whether that's the appropriate amount of mechanical equipment. Okay?
23 So on those two questions, a motion to grant the appeal.

1 MS. MATIAS: Chair Perlmutter?
2 CHAIR PERLMUTTER: No.
3 MS. MATIAS: Vice-Chair Chanda?
4 VICE-CHAIR CHANDA: No.
5 MS. MATIAS: Commissioner Sheta?
6 COMMISSIONER SHETA: No.
7 MS. MATIAS: Commissioner Scibetta?
8 COMMISSIONER SCIBETTA: No.

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