

NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

Calendar Number: 2019-94-A

36 West 66th Street, Borough of Manhattan

Public Hearing

December 17, 2019

1 MR. COSTANZA: Good morning. This is a public hearing
2 for the New York City Board of Standards and Appeals, December 17, 2019. We'll begin
3 with the Appeals Calendar, Continued Hearing, item number one, calendar number 2019-
4 94-A, 36 West 66th Street, 50 West 66th Street, Manhattan. Start?

5 CHAIR PERLMUTTER: Mm-hmm.

6 COMMISSIONER OTTLEY-BROWN: Madam Chair, I
7 must recuse.

8 CHAIR PERLMUTTER: Thank you.

9 MR. KLEIN: Taking the oath?

10 MR. COSTANZA: No.

11 CHAIR PERLMUTTER: No, no. For now, appeals, we
12 don't take oaths. Give us a minute.

13 MR. KLEIN: We're working on the honor system. Good
14 morning. Stuart Klein, Klein Slowik, on behalf of the appellant. Madam Chair and
15 commissioners, my original intent in preparing today was to go over each and every
16 document presented by both DOB and the developer and highlight each, the various and
17 sundry areas that were found in each of their arguments. But my review of the executive
18 session yesterday proved to me that that wasn't important. Uh, rather I would like to
19 reduce my, uh presentation, under the general rule that less of me is actually more than
20 me, more of me, uh, and just discuss one or two of my concerns that were raised at the
21 executive meeting.

22 First of all, I would like to agree with the developer and with DOB, uh, that when
23 analyzing the floor area of a building and what can and cannot be deducted, uh, you have

1 to look at each building and each building must stand on its own merits. As DOB said in
2 the *Sky House* case, in its July 11, 2011 submission, “there is no rule of thumb to
3 determine the maximum mechanical space allowed for a building based upon the
4 percentage of the building, the building’s zoning area”. It went on further saying “each
5 building is analyzed individually”.

6 In its July 23th submission in this particular case, it said “these cases must be
7 judged on a case by case basis”. Now, today, we’re going to depart from the, the history
8 or the form of the *Sky House* case in that we have presented to you and will present to
9 you today expert witnesses on this particular matter. One of the major points revealed in
10 the *Sky House* case, which was BSA 2016-4327-A was that there was no information
11 given by the appellant, uh, that would allow the Board to make a determination as to the
12 proper deductions in that particular building.

13 In fact, it’s our belief that the mechanical space in this particular building were
14 highly and grossly over, over estimated and in fact, Mr. Ambrosino, a mechanical
15 engineer, performed a detailed analysis, which you have and which I’ll expand on today,
16 showing that probably close to 25 to 30,000 feet were deducted, uh, and there’s no
17 justification for that. His analysis was based on both his experience, the items given to
18 the Building Department and sound engineering principles.

19 In addition, our zoning expert, Mr. James, will tell you that his analysis shows
20 that both the gross floor area and the zoning floor area somehow inexplicably changed
21 between the first and second plan iterations but the building shape and massing somehow
22 remain the same, uh, something of a physical impossibility, but I’ll let him go into that in
23 more detail.

1 Now, something was raised yesterday at the Board which I, I found a little
2 disturbing and that was the question was posed, well if, even if we reduce some of the,
3 the footage, the square footage, the height of the building is not going to be appreciably
4 changed. That's really not the issue before the Board. I'm not discussing the height of the
5 building. The only issue before this board is if these mechanical reductions were
6 appropriate.

7 If in fact you determine that they were not appropriate, then the building will self
8 adjust to some extent. I'm not concerned about the massing of the building or the shape
9 of the building in this, in the context of this particular application. I'm only interested in
10 the floor deductions.

11 Now, my problem here, and I think the Board's problem here is that before the
12 DOB can properly review the proffered plans, it must establish some guiding principles
13 to apply to its review. Now, if you take a look at the building code, more particularly,
14 Section 28-104.7.1, it says under scope, "construction documents shall be complete and
15 of sufficient clarity to indicate the location and entire", let me emphasize, "an entire
16 nature and extent of the work proposed, and shall show in detail that they conform to the
17 provisions of this code and other applicable laws".

18 Sadly, this was not done. The plans that were given to the Buildings Department
19 were grossly inadequate and despite your importuning and your entreaties to the
20 developer, they still remain incomplete.

21 In yesterday's review, the Chair said, asked a very poignant question and said I
22 don't know what -- or made a statement -- I don't know what the DOB uses to review
23 these plans. Another member added that we were never given, although it was repeatedly

1 requested, the original plans for the mechanical equipment from the 160 foot Ford
2 version of the plans. Also mentioned at the 21, 27 minute mark was that no parameters
3 were ever submitted by DOB to justify its review.

4 CHAIR PERLMUTTER: I just want to make a correction.

5 MR. KLEIN: Sure.

6 CHAIR PERLMUTTER: It wasn't no plans for the
7 mechanical equipment. We didn't see the plans for the prior approved building.

8 MR. KLEIN: That's what I just said.

9 CHAIR PERLMUTTER: No, you said, mechanical
10 equipment. It's not, that's not what we were looking at. We were just interested in the
11 number of floors that were mechanical floors in the prior version.

12 MR. KLEIN: Okay. Well, I'll go over it again, but that was
13 my recollection. If I, if I'm wrong, I apologize. Uh, uh, furthermore, with regard to the
14 missing components and plans, the board asked about the ductwork, its height, its impact
15 on calculating the FAR deductions, no information on that particular matter is in the
16 plans. As a matter of fact, the plans that were submitted, uh, looked, don't look like that
17 as much as they oftentimes like a Rorschach test. It looks like somebody accidentally spilt,
18 you know, ink on a page, because they're completely --

19 CHAIR PERLMUTTER: But that's what -- that's what a
20 mechanical drawing looks like actually.

21 MR. KLEIN: Well, no, and that, that's why it --

22 CHAIR PERLMUTTER: That's the beauty of a
23 mechanical drawing.

1 MR. KLEIN: -- became -- that's why I became a lawyer I
2 suspect. Uh, um, and, and, so I think it's incumbent upon the Buildings Department
3 before we can go any further to basically describe what they do in analyzing these plans
4 and I think probably the best expert to do that, or the only person that can do that, is the
5 person who in fact reviewed these plans for the Buildings Department. According to the
6 BIS system, that is an architect. Uh, and, uh, this Board has the power, I don't, under the,
7 the rules of the Board, it's in your charter, uh, to bring that person in. Obviously you do,
8 and you could bring it either by request or bring it in by -- bring him or her in by, uh, by
9 subpoena. But, but I think that person should be called to the Board and explain how he
10 or she conducted this review and how is he, he or , how, you know, uh, calculated these
11 particular deductions.

12 Uh, and, and one final matter I'd like to address, and that was, it was raised at
13 yesterday's hearing, and that was the issue of good faith reliance. In order for good faith
14 reliance to, uh, be pled, uh, there has to be good faith on the part of the developers in the
15 first instance. I don't think that happened here.

16 And, and furthermore with regard to good faith reliance, which is otherwise
17 known as, uh, equitable estoppel, under the *Park View* case, as you know, equitable
18 estoppel cannot be pled by a, by a building owner or a developer. If it relied in good faith
19 on a Buildings Department error, which is rather obvious here, then they can seek other
20 channels of redress, but certainly it should not be a foundational element of, of any relief
21 given. The only relief that can be given is through the court system. And with that, I'll
22 turn it over to our experts --

23 COMMISSIONER SCIBETTA: No, I --

1 CHAIR PERLMUTTER: Yeah.

2 MR. KLEIN: -- unless you have any questions.

3 COMMISSIONER SCIBETTA: Yeah. Do you want to go
4 first?

5 CHAIR PERLMUTTER: Go ahead. Go ahead.

6 COMMISSIONER SCIBETTA: My, my question is back
7 to the good faith reliance.

8 MR. KLEIN: Mm-hmm.

9 COMMISSIONER SCIBETTA: If the developer relied on
10 something that is, the DOB has been doing for a number of years, as it suggested that it
11 has been relying on submitted plans, just like the ones they've submitted and receiving
12 this approval just like they did here, even though, even though they may have had
13 intentions of, you know, uh, us- using as much space as possible or taken advantage as
14 much space as possible, or getting as much floor area as possible, even if that was their
15 intention, they would still be in a good faith reliance on that because that's what the
16 DOB's been approving.

17 MR. KLEIN: No.

18 COMMISSIONER SCIBETTA: And it's not necessarily
19 an error on the part of DOB, it's just that's their practice.

20 MR. KLEIN: No, actually, let me -- that's a very good
21 question. I'll answer it this way. In 2007, the Board had a case that was brought to the
22 Board by an appellant, uh, let me see if I can get the number. 67-07-A, uh, what was
23 otherwise referred to, looking back is the Penthouse Case. In that situation, the Buildings

1 Department did not include the penthouse floor --

2 COMMISSIONER SCIBETTA: Right.

3 MR. KLEIN: -- in calculating the height of a building
4 under the sliver rule. Uh, they, the Board decided that, uh, despite the fact that, uh,
5 penthouse was used, I believe it was 73 times in the course of the Zoning Resolution, it
6 did not have a definition. But what happened with that case ultimately was Buildings
7 Department was told A, to look at the -- to, to add the height of the building to the
8 particular building in question and to go over the more than 100 buildings that had
9 previously approved without the penthouse being included. So there is precedent to say --

10 COMMISSIONER SCIBETTA: That's --

11 MR. KLEIN: -- you can then reach back in time and you
12 could, you could adjust --

13 CHAIR PERLMUTTER: No, but isn't that distinguishable
14 -- that was a clear case where the Department of Buildings doing something that wasn't
15 permitted by the zoning? In this situation, you've got mechanical space, which is just
16 described in the Zoning Resolution as mechanical space, right --

17 MR. KLEIN: Well, yeah.

18 CHAIR PERLMUTTER: -- and it doesn't tell you what's,
19 what's in it, or how to calculate so then DOB develops its own methodologies. And so
20 the idea that an owner would rely on DOB methodologies that may shift over time, why,
21 would that be detrimental reliance] --

22 MR. KLEIN: Well, I don't think --

23 CHAIR PERLMUTTER: -- for an owner?

1 MR. KLEIN: I'm sorry, I, I don't think there's as much of
2 a difference. In fact, the penthouse case side in, in pertinent part, the Board further agrees
3 that merely because height is not defined in the ZR does not mean that the word is
4 ambiguous, but rather the height has a commonly accepted meaning and does not require
5 identif- the definition of ZR.

6 COMMISSIONER SCIBETTA: So your argument is --

7 MR. KLEIN: In, in like manner, there's no definition for
8 mechanical equipment, or mechanical space, but you have to apply a common sense
9 definition. And the fact that the Buildings Department had never set a standard for this
10 doesn't basically, for lack of a more judicious term, doesn't let them off the hook. We,
11 we have this case in front of us, the building is being built, there is time to repair the
12 situation. And for the Buildings Department to simply say sorry, we have never done this
13 in the past, so we're going to blindly going to go ahead is not appropriate and I don't
14 think conforms to law.

15 CHAIR PERLMUTTER: I think you need to support that
16 more.

17 MR. Klein: Well, you have the pent -- well, you have the
18 pent -- I, I'll --

19 COMMISSIONER SCIBETTA: I think his argument -- I
20 think the argument he's making is basically this is analogous to that because this is such,
21 in common sense, this is how one would define mechanical room, as room space that is
22 used for mechanical purposes.

23 CHAIR PERLMUTTER: Right.

1 MR. KLEIN: Well, well, also, and I would --

2 CHAIR PERLMUTTER: Right.

3 MR. KLEIN: -- I would add to that, the Buildings
4 Department on repeated occasions, and the developer in this instance, have all said in, in
5 lockstep that each building has to based on its own merits. Well, there has to be some
6 parameters as to what that it is.

7 COMMISSIONER SCIBETTA: As a basis--

8 MR. KLEIN: And to date, despite you, the fact that you've
9 asked them numerous times, they have not supported it. I will refer back two years ago,
10 to a case involving accessory use of antennas on shortwave installations where the
11 Buildings Department consistently refused to give the Board information on what it
12 considers accessory, accessory use for, for shortwave radio operators. And we have the
13 same situation here, you know, stubbornly resisting telling you how it is they look at
14 these plans. They, they came in, they said listen, we reviewed this numerous times and
15 we think deductions are appropriate. And the only question I'm asking is what parameters
16 did they use? If in fact that's your statement, tell us.

17 CHAIR PERLMUTTER: Mm-hmm. Okay. That, I mean I
18 think that part's fair, but we've also seen the, I thought quite interesting comparison of all
19 of these large buildings and how many of these interstitial floors they have, and so there
20 is obviously quite a lot of precedent for Buildings Department accepting many, many
21 mechanical floors in a building, even where ostensibly the purpose of the mechanical
22 rooms was not to make the building taller but to just supply the floors above and below.

23 MR. KLEIN: Well let me, let me address that in two ways.

1 A, all that means is the Buildings Department has repeated their sta- mistake numerous
2 times and second, the comparative --

3 CHAIR PERLMUTTER: Why does it, why does that all
4 that mean? Why does it mean that exactly?

5 MR. KLEIN: Well, it mean -- well, first of all, if you're, if
6 you're arguing, as the Buildings Department, that, that each building is, is judged on its
7 own merits, there are no comparators. I mean if, if you're taking a look at a building and
8 you're saying okay, this building, because of the way it's structured, and the amenities
9 it's giving over to the, the ultimate users is -- requires X amount of space for
10 mechanicals, there are no comparators, because every single building is different. So the,
11 the, to say that well other buildings of this height have similar deductions doesn't mean
12 anything --

13 CHAIR PERLMUTTER: No --

14 MR. KLEIN: -- because every building survives on its own
15 merits. And so therefore, the Buildings Department -- the, the two thoughts cannot exist
16 at the same time. You can't say individual merit and comparators. They, they, it just
17 doesn't make sense. It defies logic.

18 CHAIR PERLMUTTER: Well, it doesn't defy logic
19 because you see all of these buildings built and you see that they require different
20 amounts of mechanical space according to the building and you see that range of three to
21 12 in one case, numbers of interstitial floors. So when we -- and, and one of the
22 accusations here is that four, four of these mechanical floors is excessive, and, but when
23 you see that there's lots of other buildings that have something in that range, and far more

1 of their percentage of floor area devoted to mechanical then it just sort of fits into sort of
2 a range of typical, even if viewed on its own merits because this one has a swimming
3 pool, this one doesn't, this one has --

4 MR. KLEIN: Well, but --

5 CHAIR PERLMUTTER: -- some other kind of heat
6 system.

7 MR. KLEIN: -- we, we made precise calculations and if
8 you take a building, a typical building and atypical building and you break it down and
9 you basically say excuse me, you have deducted 25,000 feet that otherwise should not be
10 deducted. The comparator, the comparison stops there. It is based on its individual merits.
11 So if you're looking at this building and you're sincere about looking at this building and
12 the Buildings Department said it looked at these buildings, then you have to take every
13 single piece of equipment you have to determine how much space it needs and that
14 basically translates into a straight line equation.

15 And if in fact, it translates into a straight line equation which proves that they,
16 they employed games from sheer fear and they added an additional 20 or 30,000 square
17 feet, then all comparisons stop. I mean under the fire code, historically, air conditioning
18 systems were, were based on machines that had, that generated 50 horsepower or more,
19 and in fact the fire code still speaks about, uh, alcohol driven air conditioners.

20 But over time, those mechanical, those pieces of mechanical equipment have
21 changed. So a building that took mechanical deductions ten years ago, uh, if it was built
22 today, is going to have much reduced mechanical deductions. That happened at 375 Pearl
23 Street, the famous Verizon building, it happened on the Second Avenue Building with

1 Verizon after the fire about 30 years ago, it happened recently within the last 10 years in
2 two high rises that were built in lower Brooklyn, where over time, the equipment had
3 minimized and the top two floors, those buildings now have no occupancy in the top two
4 floors because they're no longer dedicated to mechanical use and they can't be converted
5 over.

6 So once you establish that the deductions are improper, then all the comparators
7 go out the window. There's no reason for them because we're -- the, that building is
8 standing on its own two feet. Okay. So, if you would allow me --

9 COMMISSIONER SCIBETTA: I just want to clarify, just
10 --

11 MR. KLEIN: Sure.

12 COMMISSIONER SCIBETTA: -- I believe the applicant
13 was speaking about my request for the mechanical plans of the building at--

14 MR. KLEIN: That's correct.

15 CHAIR PERLMUTTER: Mm-hmm.

16 MR. KLEIN: I can give you uh, uhOkay. Thank you very
17 much. Mr. Ambrosino.

18 MR. AMBROSINO: Good morning.

19 MR. COSTANZA: Please state your name again and your
20 affiliation.

21 MR. AMBROSINO: My name is Michael Ambrosino, PE,
22 I'm here on behalf of Landmark West. Can I move this?

23 MR. KLEIN: We can't hear you.

1 CHAIR PERLMUTTER: Yeah.

2 MR. AMBROSINO: Oh, is it on? How about now?

3 CHAIR PERLMUTTER: Right.

4 MR. AMBROSINO: Better?

5 CHAIR PERLMUTTER: Can you move which?

6 MR. AMBROSINO: Can I move this, so you can see what

7 I'm going to put up on the wall here?

8 CHAIR PERLMUTTER: We, we can actually see it, and

9 you don't, trust me, you don't want to move that.

10 MR. AMBROSINO: Alright. I'm going to just go, I'm

11 going to go behind here for a second.

12 CHAIR PERLMUTTER: So you --

13 COMMISSIONER SCIBETTA: You can pick the

14 microphone up.

15 CHAIR PERLMUTTER: -- can pick up the mic.

16 MR. AMBROSINO: I'm just going to bring something.

17 CHAIR PERLMUTTER: Okay.

18 MR. AMBROSINO: Alright. So Landmark West

19 approached me.

20 CHAIR PERLMUTTER: You can, if you want to point at

21 things, you can take the mic with you.

22 MR. AMBROSINO: I will when the time comes.

23 CHAIR PERLMUTTER: Okay.

1 MR. AMBROSINO: And they gave me a very simple task.

2 They basically said please look at the drawings and determine if the layouts of the

3 mechanical electrical systems are reasonable use of the space.

4 CHAIR PERLMUTTER: Mm-hmm.

5 MR. AMBROSINO: What we did not do, I did not do, is I

6 didn't look for code conformance of the systems, I didn't look for their, uh, energy

7 efficiency, I didn't look for their performance. Uh, I didn't look at changing the type of

8 systems or the size of the systems. I didn't move equipment from floor to floor to

9 composite mechanical rooms, I left them on the floors they were. I did not in detail

10 review the sprinkler, electrical or plumbing systems. We left those deductions totally

11 intact with no, uh, minimization.

12 What we did do was just look at the mechanical because that was easier. We did

13 not determine what the deductions for this building should be. That's not our role.

14 Although we came up with some numbers, but not because we think that's the absolute

15 number. What we did come up with is a way for professional reviewers to look at these

16 drawings in a different way to determine what is a reasonable deduction.

17 How did we do this? We used the original design drawings, which I'll show you

18 in a minute. We color coded them. We then took the exact equipment, its size and service

19 area and repositioned it on the floor and decided whether or not that was a reasonable

20 way to lay out a floor plan and save some floor space. Because of the height of these --

21 COMMISSIONER SCIBETTA: How did you determine

22 its service area?

23 MR. AMBROSINO: We took it from the design drawings.

1 For instance, this is not our drawing. This is the design drawing. The red is mechanical
2 equipment, the blue was very nicely detailed by the engineer as the service requirements.
3 That's what we used. And we'll go back to this in a second. And because of the height of
4 these mechanical rooms, 48 feet, 60 feet and 60 feet, which is more than I've ever seen in
5 40 years, we did not concern ourselves with the ductwork and piping that was horizontal
6 because there was plenty of space to run the ductwork and piping. Usually, mechanical
7 room in a building like this is maybe 20 feet tall and you fit the entire boiler plant and
8 chiller plant within that. Here we have 60 feet to do anything horizontal. So let me just go
9 through these --

10 CHAIR PERLMUTTER: Can, can I ask you a question
11 about that?

12 MR. AMBROSINO: Sure.

13 CHAIR PERLMUTTER: So, uh, I think I mentioned this
14 yesterday in the, in the review session. Uh, when I used to work on buildings where I was
15 working with a mechanical engineer, they would yell at me when I would tell them that I
16 wanted to group the HVAC in a different way, or the, or the plumbing in a different way.
17 And they would say if we do that, it's going to whistle, or it's not going to cool properly,
18 or, uh, it won't exhaust properly and so on. So if, if you're saying that you would lift the
19 associated, uh, sheet metal and piping higher than the usual 20 feet to take advantage of
20 the height, wouldn't that have an impact on the efficacy of the connections between the
21 different pieces of equipment?

22 MR. AMBROSINO: Well, if we look at some of these, we
23 can offer a piece of equipment vertical, let's say we only go 15 feet. We run 100 feet

1 horizontal and then we go up 50 feet. If we go up 30 feet and then run horizontal and go
2 up 20 feet, it's the exact same run of ductwork. We didn't add anything.

3 CHAIR PERLMUTTER: But you have more bends.

4 MR. AMBROSINO: No, same amount of bends. You
5 make a right turn, and a left turn, except instead of doing it here, you do it up higher.

6 CHAIR PERLMUTTER: Mm-hmm.

7 MR. AMBROSINO: All I'm saying is the ductwork and
8 the piping should have no impact on how much space --

9 CHAIR PERLMUTTER: But aren't you --

10 MR. AMBROSINO: -- we need.

11 CHAIR PERLMUTTER: -- connecting pieces of
12 equipment onto the other? They're not just standing there alone.

13 MR. AMBROSINO: We are. And I think within a room
14 that we've left, there's plenty of height, whatever height they pick, to do that with. We
15 didn't change that. I'm saying when we move equipment out of a space, and the only
16 thing left is horizontal distribution, there's no reason horizontal distribution has to be at
17 six feet or eight feet or ten feet. It could be at 20 feet, which makes the space underneath
18 it very usable.

19 COMMISSIONER SCIBETTA: And you're also saying
20 that the same problem would, would avail itself wherever they placed the equipment, the
21 mechanical room, the mechanical equipment in that room?

22 MR. AMBROSINO: Problem?

23 COMMISSIONER SCIBETTA: The same issue of where

1 it's going to be in height and how it's going to turn is going to be the same in both
2 scenarios.

3 MR. AMBROSINO: Right. Take this room. I mean this is,
4 we have ductwork and we have diffusers and lighting. There's stuff above this ceiling.

5 CHAIR PERLMUTTER: Right. But the equipment isn't in
6 here. So put the pieces of equipment --

7 MR. AMBROSINO: And there are rooms here where
8 there's some equipment.

9 CHAIR PERLMUTTER: No, put the --

10 MR. AMBROSINO: There are spaces that are just --

11 CHAIR PERLMUTTER: -- pieces of equipment --

12 MR. AMBROSINO: -- horizontal.

13 CHAIR PERLMUTTER: -- where you're standing and
14 now duct it. Right now connect the piping and the ductwork to connect to the other pieces
15 of equipment. Where -- how is that working without filling up the room?

16 MR. AMBROSINO: I'm going to give you a perfect
17 example of your question right now.

18 CHAIR PERLMUTTER: Okay. Okay.

19 MR. AMBROSINO: So make believe this is the piece of
20 equipment.

21 CHAIR PERLMUTTER: Mm-hmm.

22 MR. AMBROSINO: So this is the existing design of the
23 19th floor. There are a series of red pieces of equipment, two large air handlers, there's

1 one large fan, which is a post fire smoke purge fan, and there's a series of little red boxes,
2 which are heat pumps, which I believe their purpose is to heat the void because the void
3 the void is so big that somehow it has to be heated and cooled, which are on the floor, but
4 they're really serving the space above. So, if we take that layout, now that's the base -- all
5 I did here is, is take away the service area, left the equipment where it was. This yellow
6 was the electrical plumbing rooms. We left those intact, we said you get all that credit, as,
7 as an exercise. If I look at this room now, it's 800 square feet. It has a heat pump,
8 probably the size of this podium in the middle of the room. Now, it says it's two tons, but
9 really the cooling capacity and not the weight. It's probably 300, 200 pounds.

10 CHAIR PERLMUTTER: What floor is that one?

11 MR. AMBROSINO: This is 19.

12 CHAIR PERLMUTTER: Okay.

13 MR. AMBROSINO: It's the first sheet, uh, second sheet.

14 So, I have an 800 square foot room holding a piece of equipment that's six square feet,
15 that in theory could also be raised up because it's not a heavy piece of equipment and it's
16 serving the space above.

17 COMMISSIONER SCIBETTA: So is it, is it part of your
18 testimony that these heating, this heating equipment, would this still be necessary in a
19 smaller, in a smaller room, a room with lower ceilings?

20 MR. AMBROSINO: You'd still have to heat and cool this
21 room. It would be a smaller piece of equipment where it's really serving 60 foot of
22 height. But it's, you know, you could put it in a closet in the corner if you didn't want to
23 put it up height, but 800 square feet, it's like the size of this area to hold this.

1 CHAIR PERLMUTTER: Have you seen the submission
2 by Mr. Bienstock? I don't know if you saw the submission in response to your
3 submission.

4 MR. AMBROSINO: I did.

5 CHAIR PERLMUTTER: Okay. So, Mr. Bienstock's
6 submission, that's Exhibit B, which is a comparison between the simple drawing on 19,
7 that one I think that you have and what actually happens once with the shop drawings and
8 so on. Can you talk about that and all of the other stuff that's in that area, uh, independent
9 of the equipment?

10 MR. AMBROSINO: Well, what's in the area --

11 CHAIR PERLMUTTER: For instance, I'll just, you know,
12 I think it's the same corner that you're pointing to. It's the heat pump on the 19th floor.

13 MR. AMBROSINO: Mm-hmm.

14 CHAIR PERLMUTTER: Right. Some of it is structure,
15 obviously, so structure is in the way. Domestic water heater rigs require egress and access
16 paths of PLBGPRV station, standpipe to stage PRV heat pump heater and then lots and
17 lots of ductwork and piping.

18 MR. AMBROSINO: Well, all of that plumbing stuff is
19 here, and we've left it.

20 CHAIR PERLMUTTER: No, no, on the 19th floor.

21 MR. AMBROSINO: This is 19.

22 CHAIR PERLMUTTER: Oh, that's also 19?

23 MR. AMBROSINO: This is the plumbing room and the

1 electrical room. We didn't touch it.

2 CHAIR PERLMUTTER: Oh, okay. No, no.

3 MR. AMBROSINO: And there are always --

4 CHAIR PERLMUTTER: In that savings act area, I'm
5 talking about around the heat pump.

6 MR. AMBROSINO: There are, the ductwork is 14 inches
7 by 12 inches. It's smaller than a ceiling tile. That's on these drawings. And it's got two
8 one-inch pipes going to it. And it's hard to read. But if you look at the bigger drawings,
9 the ducts off this unit are very small. But let me just go one, one thing further. So here is
10 that equipment, stripping away all the colors, where it is designed.

11 CHAIR PERLMUTTER: Okay.

12 MR. AMBROSINO: And all we're saying is if you took
13 this piece of equipment, either raised it up or moved it here, you get 800 square foot back.
14 It's one piece of equipment. If you take these two air handlers, and just move them
15 closer. We didn't degrade the service space. Take these three, again, three small eight
16 pumps, they could be up high or they could be here and ducted to where have to go and
17 you get all of this space back. These are big spaces. It's not 10 square feet. It's hundreds,
18 thousands of square feet.

19 CHAIR PERLMUTTER: Can I ask you a question?

20 MR. AMBROSINO: Sure.

21 CHAIR PERLMUTTER: In the buildings that you've
22 worked, where you have uses that either below -- directly above or below the mechanical
23 room, don't you locate the equipment to be convenient to the uses?

1 MR. AMBROSINO: And --

2 CHAIR PERLMUTTER: So that you don't have to do as
3 much ducting or piping or so on?

4 MR. AMBROSINO: You, yes, you try to do that. And
5 these equipment serves above us. But again, it's 12 X 10 ducts, it's tiny, it's tiny
6 ductwork that's going up to serve the void. The units could be up in the void.

7 CHAIR PERLMUTTER: Mm-hmm.

8 MR. AMBROSINO: All I tried to do was get the small
9 stuff out of here to free up big chunks of space. So, 19 is pretty simple. There's one other
10 piece here, which is a smoke fire purge fan, which is in a room, which also could be
11 raised up and put up high. This fan should only be on once in the life of the building.
12 When they balance the fan and never again, unless there's a fire in the building, god
13 forbid. So again, why this has its own room when you could just raise it up would save
14 again another chunk of floor space here.

15 COMMISSIONER SHETA: So you're saying if, if you lift
16 this equipment up and you believe that the clearance, the head clearance will allow that?

17 MR. AMBROSINO: I have 60 feet.

18 COMMISSIONER SHETA: And when you move it up,
19 would, would that impact the efficiency?

20 MR. AMBROSINO: No.

21 CHAIR PERLMUTTER: Whoa, whoa, whoa. Now we're
22 losing track of the whole thing. So what we're looking at is not the vertical, right. We go
23 back to the definition of floor area. The definition of --

1 COMMISSIONER SCIBETTA: No, no --

2 CHAIR PERLMUTTER: No, no, let me finish. Definition
3 of floor area talks about floor space, right. Floor space used for mechanical equipment. If
4 we start talking about, because we've said that there's nothing to determine what the
5 height of the space is, that's decided, right. Nothing in the Zoning Resolution regulates
6 the height. So what we're talking about is what goes on the floor, right.

7 COMMISSIONER SHETA: I'm not talking about the
8 height of the building or even the height of the space. What I'm talking about if he's --
9 he's claiming that instead of this equipment on the floor, if I just lift them up and what
10 I'm asking is according to the plans submitted -- let's say the floor height is 12 feet. This
11 is the proposal.

12 CHAIR PERLMUTTER: Mm-hmm.

13 COMMISSIONER SHETA: And he want to lift this
14 equipment and this equipment is five feet, still even if he lifts up --

15 CHAIR PERLMUTTER: It has to sit on something.

16 COMMISSIONER SHETA: -- it's not on the plan, but the
17 head clearance under this equipment is used. So his claim is, is not intact. But if the floor
18 height is 30 feet and he's taking this equipment and the equipment is five feet and lifting
19 up, he's hanging it from let's say the ceiling.

20 CHAIR PERLMUTTER: Mm-hmm.

21 COMMISSIONER SHETA: Then he has 30 minus five, he
22 has 25 feet, this is a useable space.

23 CHAIR PERLMUTTER: But then --

1 COMMISSIONER SHETA: Then what's talking about is,
2 makes some sense.

3 CHAIR PERLMUTTER: Except how do I service the
4 equipment that's up 30 feet in the air?

5 COMMISSIONER SHETA: Yeah, yeah.

6 MR. AMBROSINO: Yeah.

7 CHAIR PERLMUTTER: I need catwalks --

8 COMMISSIONER SHETA: And --

9 MR. AMBROSINO: You could do catwalks.

10 CHAIR PERLMUTTER: -- that's called, or, I mean, right.
11 So now --

12 MR. AMBROSINO: You could do catwalks. Or you could
13 take that one piece of equipment and put it in the corner.

14 CHAIR PERLMUTTER: So you're asking now the guys
15 who are working on the equipment who have to replace a pump or something like that to
16 schlep the pump that weigh, I actually have cut sheets on the pump, so I think I know
17 how much it weighs, so to carry the pumps up catwalks is a pract- is a practical solution?

18 MR. AMBROSINO: It's been done. If you organize it
19 correctly with one catwalk and equipment on both sides.

20 CHAIR PERLMUTTER: But it, but you have to admit it's
21 not really a practical solution. You want all your equipment --

22 MR. AMBROSINO: Well, I --

23 CHAIR PERLMUTTER: -- down below where the guys

1 can work and --

2 MR. AMBROSINO: To me, practical is give me 1,000

3 square feet that I can sell. That's more practical than putting a catwalk in.

4 COMMISSIONER SCIBETTA: With this --

5 COMMISSIONER SHETA: When, when they want to do

6 some maintenance for this equipment, wouldn't they come from the same space that you

7 just presumed that it, it should be a floor area and walk through that space and go up and

8 do the maintenance?

9 MR. AMBROSINO: Let's go back --

10 COMMISSIONER SHETA: Wouldn't that render this

11 space unusable?

12 MR. AMBROSINO: Let's go back to those pieces, which

13 are -- did I take these down. So we have three pieces here, right, which could be lined up

14 here. They could be in a mechanical room here on the floor. They don't have to be up

15 high. I'm saying it's an option to raise them or you could put them in a mechanical room

16 and duct them over. It's small ductwork, it's small systems. To have that guy, six square

17 feet, take up that room because you don't want to do a catwalk, okay, put him in the

18 corner, make it a closet, take back the rest of the space.

19 COMMISSIONER SHETA: And this wouldn't lengthen

20 like a riser or, or need more, more fittings, wouldn't, wouldn't increase the loses in the

21 system, nothing like that?

22 MR. AMBROSINO: Not really. It's 12 X 10 ductwork. If

23 you're worried about losses, make it 12 X 12, and you've, you've made up for any

1 additional static loss.

2 COMMISSIONER SHETA: Okay.

3 COMMISSIONER SCIBETTA: With this equipment --

4 CHAIR PERLMUTTER: So, one of the pieces of
5 equipment that I found, which is the vertical water source air conditioner, is 4,000
6 pounds.

7 MR. AMBROSINO: Where is it?

8 CHAIR PERLMUTTER: I'm not -- these are all cut sheets
9 that I downloaded --

10 MR. AMBROSINO: Okay.

11 CHAIR PERLMUTTER: -- from the schedule, right.

12 MR. AMBROSINO: There, there is equipment throughout
13 this building.

14 CHAIR PERLMUTTER: So I don't know exactly where it
15 is, but -- no, no, no, it's inside. It's the schedule -- it's all from the 18th floor actually. I
16 downloaded only the equipment on the 18th floor.

17 MR. AMBROSINO: Let's go to 18.

18 COMMISSIONER SCIBETTA: But is there any reason
19 why the mech- could the mechanical equipment on this floor be added to another floor?

20 MR. AMBROSINO: I, I didn't look at that. I, I started by
21 saying we did not try to take mechanical rooms and put them together. They're on
22 different floors, according to the affidavit because of where they have to serve up and
23 down the building. We accepted the design as it is. We didn't say we're going to change

1 the design concept. We're just going to see if we can move it around a little bit to make it
2 more efficient in the use of space.

3 CHAIR PERLMUTTER: So you're accepting that it's a
4 good idea to be on the 18 with some of the equipment and on --

5 MR. AMBROSINO: Yeah.

6 CHAIR PERLMUTTER: -- 17 with another --

7 MR. AMBROSINO: Absolutely.

8 CHAIR PERLMUTTER: -- bit of -- okay.

9 COMMISSIONER SCIBETTA: So this, the mechanical
10 equipment would have to be on separate floors?

11 MR. AMBROSINO: Does it have to?

12 COMMISSIONER SCIBETTA: As, as designed.

13 MR. AMBROSINO: I don't know that it has to. I didn't
14 look at whether it has to or not. I left it where it was. I didn't want to make that -- if, if
15 you give this building to five engineers, you're going to get back five different designs.

16 CHAIR PERLMUTTER: Mm-hmm.

17 MR. AMBROSINO: They're all going to be design
18 concept pretty good. But they'll be different. I wasn't looking to make it different. I was
19 only looking to save space.

20 CHAIR PERLMUTTER: Okay.

21 MR. AMBROSINO: Alright. This is 18, which we have a
22 chiller plant, we've got equipment in red, service in blue. We have, let me pick one item
23 out here, VFDs. This VFD is literally two feet by about 12 inches. It's two square foot of

1 space.

2 CHAIR PERLMUTTER: Sorry, everyone is going to get
3 some kind of an alert. An Amber?

4 COMMISSIONER CHANDA: Yes.

5 CHAIR PERLMUTTER: Amber alert.

6 MR. AMBROSINO: We're good?

7 CHAIR PERLMUTTER: Okay. Please go ahead.

8 MR. AMBROSINO: Okay. I'm going to pick up one piece
9 of equipment, these VFDs, which are about two foot wide, one foot deep and about 18
10 inches tall. And each one has three foot of clearance in front of it, by code, which is fine.
11 But, they're spread out all over the place so that you see a lot of blue. What we did again,
12 is we took that layout, we stripped away the colors just to show where the equipment is.
13 So this is where all the equipment is located now. Every tank, every VFD, every electric
14 panel, every pump. We then re-laid out the chiller plant. For instance, we took this block,
15 as one drawing block and just slid it over here and put it there. We didn't change a thing.
16 We took this chiller plant and just slid it down a little bit, and all these nine or 11 pumps
17 that are spread out all over the place, we just lined them up for a very efficient pumping
18 plant.

19 So now we have taken all of this stuff, including, as you can see, all the expansion
20 tanks, all the VFDs we lined up, all the electric panels, everything in red there, is here. So
21 what did we free up? We freed up this entire room, and this entire room, which I don't
22 even know what this -- two, 3,000 square feet, because right now plain just deductible.
23 Could be useable space, could be unusable space, but it doesn't have to be mechanical

1 space.

2 COMMISSIONER SHETA: And again, this is without
3 impacting the efficiency of the system?

4 MR. AMBROSINO: Correct. As a matter of fact, I think
5 it's more efficient.

6 COMMISSIONER SCIBETTA: But wouldn't that be --

7 MR. AMBROSINO: You have the pumps and you have
8 the chillers and you have the heat exchangers, everything is condensed.

9 COMMISSIONER SCIBETTA: Wouldn't that be a very
10 loud room?

11 MR. AMBROSINO: It's going to be loud room no matter
12 where you put it. It's the same equipment, all I did was put it over here.

13 COMMISSIONER SCIBETTA: Right. But if we're going
14 to use the other part as useable space, what use could it have?

15 MR. AMBROSINO: Well, if I was a developer, I'd put
16 cages in it and sell it as storage to the condo owners. They love storage. You can put a
17 paint shop up here, you could put offices up here. And it's not to me to tell them how to
18 use it, but buildings we've done, storage is gold.

19 CHAIR PERLMUTTER: So can I ask you a question.
20 Have, have -- I assume that in your work you've submitted mechanical drawings to the
21 Department of Buildings?

22 MR. AMBROSINO: Many times.

23 CHAIR PERLMUTTER: Are you the person or, are you or

1 were you the person who went to the Department of Buildings when they were reviewing
2 the mechanical drawings?

3 MR. AMBROSINO: Sometimes, yes.

4 CHAIR PERLMUTTER: Did they question where you put
5 your equipment?

6 MR. AMBROSINO: They almost never do.

7 CHAIR PERLMUTTER: Mm-hmm.

8 MR. AMBROSINO: In 40 years, I don't think they ever
9 came back and said why is this piece of equipment here. They don't look.

10 CHAIR PERLMUTTER: Okay. So then, if they're not
11 looking on all of the buildings for 40 years that you've been doing, and that's one layout,
12 and yours is another potential layout without getting more information from the engineer
13 who actually designed it, right. Why would the assumption be that DOB should have
14 allowed -- should have suggested that it should all get gathered there instead of accepting
15 that layout.

16 MR. AMBROSINO: I'm not saying they should do that.

17 CHAIR PERLMUTTER: Okay.

18 MR. AMBROSINO: I don't, I don't know what their
19 charge is. I don't know how they review these.

20 CHAIR PERLMUTTER: Okay.

21 MR. AMBROSINO: I don't know what they're supposed
22 to do.

23 CHAIR PERLMUTTER: Mm-hmm.

1 MR. AMBROSINO: All I'm saying is that's the way to lay
2 out a floor --

3 CHAIR PERLMUTTER: Mm-hmm.

4 MR. AMBROSINO: -- to get more space when typical
5 projects for us have always been take the least amount of space. Whatever we want,
6 usually someone says you can only have less.

7 CHAIR PERLMUTTER: Mm-hmm.

8 MR. AMBROSINO: This is a case where there's plenty of
9 space. So if someone said here's a room, lay it out, and you have all this space, well, you
10 could do it that way.

11 CHAIR PERLMUTTER: Mm-hmm.

12 MR. AMBROSINO: And even if they gave me all that
13 space, I don't think I would have, because I don't think it's very efficient. But there could
14 be other reasons it's done that way. I don't know the design principles, which I think I
15 stated in my affidavit.

16 CHAIR PERLMUTTER: Right.

17 MR. AMBROSINO: You know, the engineer meets with
18 the developers or the architect and they say this is why we want a design, this is the
19 principle for you to follow. I don't know what the principles were, but for me, the design
20 principle for me is use the least amount of space that's reasonable. Because even doing
21 this, I still have plenty of space to walk around here. There's no shortage of access space,
22 corridors, vestibules, wherever you want to put it.

23 CHAIR PERLMUTTER: Mm-hmm.

1 COMMISSIONER SHETA: I, I'm coming from structural
2 background. Sometimes I design reinforced concrete slabs. In this work, that long
3 direction of the slab should have the lighter reinforcement. That shorter should have the
4 heavier reinforcement. Sometimes, looking at some drawings by others, I can see that,
5 that the engineer put the heavier reinforcement in the long and the lighter in the short.
6 And, and I think about the reason for that and I, I could like guess that it might be this or
7 that. The, if you look at the two concepts that you just put in front of us, do you think it
8 could be a good reason for going that route rather than the other?

9 MR. AMBROSINO: I, I don't know the reasoning.

10 COMMISSIONER SHETA: Do, do you -- if you think --

11 MR. AMBROSINO: But, you know --

12 COMMISSIONER SHETA: -- [Could you think of
13 something.

14 MR. AMBROSINO: Of, of why it's like that?

15 COMMISSIONER SHETA: Yes.

16 MR. AMBROSINO: I could think of a reason, but I'm not
17 willing to say what it is.

18 COMMISSIONER SHETA: If, if you think this is, this is
19 much more efficient space wise --

20 MR. AMBROSINO: Yes.

21 COMMISSIONER SHETA: -- but could it be much more
22 efficient economy wise, for example? I don't know. Any, any other wise, other than
23 space?

1 MR. AMBROSINO: I don't see it.

2 CHAIR PERLMUTTER: Aren't you getting at structure,
3 that you're fully loading that one side?

4 COMMISSIONER SHETA: No, I'm talking about -- I'm,
5 I'm trying to use the structural analogy to help him --

6 CHAIR PERLMUTTER: Oh, oh, I see.

7 COMMISSIONER SHETA: -- think what -- I'm trying to
8 understand why would somebody go that rather than that.

9 CHAIR PERLMUTTER: Mm-hmm.

10 COMMISSIONER SHETA: And if we put the space aside,
11 could it be more hydraulic efficiency? Could it be more electric efficiency?

12 MR. AMBROSINO: I, I think, you know what, I think you
13 should ask them.

14 COMMISSIONER SHETA: Could it be anything else?

15 MR. AMBROSINO: I think you should ask them. They're
16 good engineers. The set of drawings is actually a very nice set of drawings, good details,
17 good information, they're reputable. You may want to ask them why they did it.

18 COMMISSIONER SHETA: So you're saying if two
19 engineers come up with at least two designs, one is like that, the other is like this. And
20 the two engineers, you -- let's say you're evaluating them in an interview for the job. You
21 would, you would believe that this guy's is more smart, more efficient?

22 MR. AMBROSINO: Well, I would have to ask the guy
23 why he did that versus that. Because to me --

1 COMMISSIONER SHETA: And he doesn't have --

2 MR. AMBROSINO: -- that saves a lot of money.

3 COMMISSIONER SHETA: -- he doesn't have a good

4 reason for that?

5 MR. AMBROSINO: Then I'd hire that guy.

6 COMMISSIONER SHETA: Okay.

7 MR. AMBROSINO: Because it costs less to build that

8 than to build that.

9 COMMISSIONER SHETA: Thank you.

10 CHAIR PERLMUTTER: Okay.

11 COMMISSIONER SCIBETTA: And you can't think of

12 any good reason why they would do that outside of the space reason?

13 MR. AMBROSINO: No.

14 CHAIR PERLMUTTER: Okay

15 MR. AMBROSINO: Alright. One more?

16 CHAIR PERLMUTTER: Mm-hmm.

17 MR. AMBROSINO: You want to do one more? Okay.

18 CHAIR PERLMUTTER: Sure. Oops.

19 MR. AMBROSINO: Reusable. [laughter] Alright. This is

20 the 17th floor. Again, this is as designed by the owner, as presented to DOB. Red is

21 equipment, blue is service, and white is just space. This is that same, exact drawing,

22 stripping away the colors. That's the equipment in red. Now a lot has been said about

23 access to fresh air and exhaust. This is the boiler plant. The boilers are only less than

1 seven feet tall, so they're not very big. All we did was take the boilers, condense the
2 access space slightly to something that's more standard, move them up the sheet, so
3 they're still near the fresh air, took all of the pumps, all the VFDs, and we put them in
4 front of the boiler plant as one would typically do a boiler plant. That saved this space
5 and this space, which is now usable for something else. Now, this is the first one we did,
6 so every little round circle, which are expansion tanks, we didn't show here, but we have
7 all of this space left over here. So, all those tanks would fit right in here.

8 This particular one, which I found interesting because you talked about length of
9 ductwork and efficiency, this air handler, this duct runs here and connects here. The other
10 half of it runs here and connects here. So, here's the two connection points for that air
11 handler which is up here. I don't know why this air handler isn't down here and save all
12 of that duct run. I'm sure there's a reason. But you know, you could look at making
13 things more efficient in many different ways. So efficiency wasn't necessarily how this
14 was laid out. And again, I don't know the meaning. Here again are these VFDs. You see
15 a lot of blue all along here, but you can have them face each other and save -- use
16 common access space for this stuff. It's a small piece of equipment, two feet by one foot,
17 why it needs eight square foot of space every time is kind of -- it's more space use than I
18 think I would ever use.

19 CHAIR PERLMUTTER: Mm-hmm.

20 COMMISSIONER SHETA: If, if I'm the mechanical
21 engineer for this, I mean I, I came up with this design, submitted it, approved by the DOB
22 and, and in a year or two with the construction, I want to change, like, like again on the
23 structure, we design things and then we change, we value engineer and put a change

1 order through. Do you need to go back to the DOB to change?

2 MR. AMBROSINO: You're supposed to do a post

3 approval amendment, to show --

4 COMMISSIONER SHETA: You -- yes, the answer is yes,

5 you need to.

6 MR. AMBROSINO: Yeah.

7 CHAIR PERLMUTTER: Is that before you do the -- make

8 the change or after you make the change?

9 MR. AMBROSINO: It's usually after. It's usually during

10 construction.

11 CHAIR PERLMUTTER: Right.

12 MR. AMBROSINO: And if I was the contractor, I would

13 like at that and I would say alright, I'll give you a price to build that but I'd come back

14 and I'll give you a value engineering to save a lot of money and do it different.

15 CHAIR PERLMUTTER: Right. But then you file them as

16 as built rather than going to DOB, asking for permission to change, right?

17 MR. AMBROSINO: You, post approval amendment,

18 you're not necessarily asking for permission to change. You're telling them what the

19 change is.

20 CHAIR PERLMUTTER: Yes.

21 MR. AMBROSINO: It's not a request. It's a here's what

22 we did.

23 CHAIR PERLMUTTER: Right.

1 MR. AMBROSINO: You know, field condition is VE,
2 whatever the reason is.

3 CHAIR PERLMUTTER: Okay

4 MR. AMBROSINO: I have one, one more, which is the
5 15th floor, which is a very confusing floor. And I didn't redo the layout. All I did was
6 identify what was equipment, which is red. The mustard and the blue are mechanical and
7 electrical rooms, I mean are plumbing, sprinkler and electrical rooms. We took that entire
8 square footage and said that would be a deductible amount. Adding that to the red and the
9 blue, came up with a total of 4,000 square feet out of 20. Now there's a lot of stuff here.
10 There's ductwork, there's stairs. There's no equipment, but there's a horizontal stuff. I
11 don't remember the floor-to-floor height on 15, that's going to be the one that's 48 feet.
12 And I see a lot of stairs going up the walls, I'm not sure what this is. It may not be usable
13 space structurally the way it is, but I don't -- I'm not familiar architecturally what this is.

14 CHAIR PERLMUTTER: Mm-hmm.

15 MR. AMBROSINO: But in terms of the usage of space for
16 mechanical electrical equipment, it's 4,000 square feet.

17 CHAIR PERLMUTTER: Mm-hmm. Okay.

18 COMMISSIONER SHETA: Wouldn't, wouldn't that sort
19 of concentration of equipment at a given portion of the building, wouldn't that -- I'm
20 concerned about the vibrations. It could impose vibrations on one side, no vibrations on
21 the other side. Have you ever done something similar to that, and then use them to do the
22 -- let's say the structural engineer, the structural engineer says no, no, no, I can't do that.
23 It'd going to be huge vibrations on this side of the building?

1 MR. AMBROSINO: Of course. I mean the whole -- this
2 process probably lasted nine months.

3 COMMISSIONER SHETA: Of course. Did, did it happen
4 before?

5 MR. AMBROSINO: To me?

6 COMMISSIONER SHETA: Yeah.

7 MR. AMBROSINO: Yeah, of course. You sit down, the
8 structural engineer and the architect. You, you do a layout together, which is more of
9 what I did, which is just sketch layouts, you sit down with the architect and structural
10 engineer and someone says that's good or it's bad for whatever reason and you work
11 together to make it better.

12 COMMISSIONER SHETA: Let me explain myself.

13 MR. AMBROSINO: Sure.

14 COMMISSIONER SHETA: My concern is -- this is their
15 design. This is, this is your suggested design My concern is if I take this and give it to the
16 structural engineer and say here, this is the mechanical design, then he will come back
17 and say, oh, you took all the mechanical equipment and put them in just a limited portion
18 of the floor footprint. You know what these mechanical equipments could produce huge
19 vibrations. I'm not sure if I'm going to be able to design a structurally efficient system to
20 transfer the load and then they will come back to you and say hey, the structural engineer
21 doesn't like the design, spread your equipment. Did this happen to you before?

22 MR. AMBROSINO: No. We've, we've modified design to
23 move it around over a beam, but never to spread stuff out because the building is so

1 poorly struct- unless it's an existing building, where the structure is existing, you can't do
2 much to it. A new building, you can build any structure you want.

3 CHAIR PERLMUTTER: But, okay. You can build any
4 structure you want, but let's just say there's, uh, some kind of a thinking about what the
5 structure is going to be right. And the building is designed with that structural concept
6 and sort of super loading the equipment in one part of the building wouldn't be consistent
7 with that structural concept. Then the structural engineer might say actually I, I have a
8 really kind of flexible building or resilient building --

9 MR. AMBROSINO: Mm-hmm.

10 CHAIR PERLMUTTER: -- I don't actually know what the
11 term is, and therefore, I need you to distribute it more evenly on the floor. Or a building
12 that's subject to enormous wind forces, for example.

13 MR. AMBROSINO: You wonder if that's possible? Sure
14 it's possible.

15 CHAIR PERLMUTTER: Mm-hmm. Okay. Mm-hmm.

16 COMMISSIONER SHETA: What is, what is the total
17 weight rating for, for an equipment, like roughly, to the nearest ten pounds, total weight
18 of this equipment.

19 MR. AMBROSINO: Oh, I don't know the total weight.

20 COMMISSIONER SCIBETTA: You got a few boilers
21 there--

22 COMMISSIONER SHETA: Look --

23 MR. AMBROSINO: But you know, it's a boiler plant. We

1 do boiler plants all the time midrise in a building. It's not unusual to have six boilers
2 lined up on the 15th floor in a building and the 30th floor in a building.

3 COMMISSIONER SCIBETTA: So you've had designs
4 similar to the one that you're proposing?

5 MR. AMBROSINO: Yeah.

6 COMMISSIONER SCIBETTA: And without
7 consequence?

8 MR. AMBROSINO: Well, you'd work early with the
9 architect and structural engineer to make sure everyone is on the same page, and if it's a
10 problem, they'd let you know and if it's not, everyone designs around it.

11 CHAIR PERLMUTTER: Mm-hmm. Okay. Thank you.

12 COMMISSIONER SCIBETTA: Similar height and, and
13 all?

14 MR. AMBROSINO: Oh, much less height. This is, I've
15 never done 48 feet.

16 COMMISSIONER SCIBETTA: But a similar height, high
17 up on a building?

18 MR. AMBROSINO: Oh, yeah. Yeah.

19 CHAIR PERLMUTTER: Mm-hmm. Okay.

20 MR. AMBROSINO: We're good?

21 CHAIR PERLMUTTER: Great, thank you very much.

22 Appreciate it.

23 MR. AMBROSINO: George, thank you very much, I

1 appreciate it.

2 CHAIR PERLMUTTER: Thank you. You can leave those
3 up if it's okay.

4 MR. AMBROSINO: I'll leave it.

5 MR. Daly: Excuse me Madam Chair?

6 Chair Perlmutter: Mm-hmm

7 Mr. Daly: Could we just make a comment before they...

8 CHAIR PERLMUTTER: Sure, sure, it's the fire
9 department. They, they get priority.

10 Mr. Daly: Thank you.

11 MR. RESSNER: Hi. I am Battalion Chief Ressner for the
12 fire department and we just have a very quick statement to make. It may not be germane
13 to what you're discussing here, but the drawings that indicate FDNY access, the green
14 color coding, uh, that's, that's not quite accurate. It's corridor -- it's supposed to be
15 corridor, it's supposed to allow us to do operations but it can be used by anyone, and I
16 don't know if that makes any difference in your consideration of the zoning floor area.

17 CHAIR PERLMUTTER: Mm-hmm.

18 MR. RESSNER: But the modifications that we had asked
19 for to the plan weren't designated solely for FDNY access.

20 CHAIR PERLMUTTER: Understood.

21 MR. RESSNER: Okay.

22 CHAIR PERLMUTTER: So you just wanted maybe the
23 corridors to be bigger or something like that?

1 MR. RESSNER: Well, we went through, I mean we can go
2 through. We went through a whole system of, of changes we needed to do operations, but
3 that was also to allow the public to have additional egress area, sheltering area, and so on.
4 So, I don't know if it makes any difference whatsoever to determining, you know, if they
5 are deductions, but it, calling it FDNY access is not, is not accurate.

6 CHAIR PERLMUTTER: Okay. Great. Thank you. Okay.
7 Mr. James, please come back.

8 MR. JAMES: Hi, I'm George James. I filed the initial
9 zoning challenge on the project. Stuart mentioned about the, the tower, uh, the volume of
10 the tower not changing, even though we added 6,000 square feet of zoning floor area
11 because of the FDNY, uh, requirements. That's actually happened because they added
12 balconies, uh, they used to have zoning floor area in these places where they've added
13 balconies. They were less than 67 percent enclosed. It's actually clever. It's not a
14 problem.

15 Uh, and I think, uh, what I really want to talk about is, we've been talking about
16 the Zoning Resolution and we've been talking about the exemption for mechanical
17 equipment. There's another part of the Zoning Resolution I think is equally important.
18 And it is the reminder that the Zoning Resolution says "floor space that is or becomes
19 unused counts as floor area". So unlike *Sky House*, right, where *Sky House*, we have no
20 direction in the Zoning Resolution about vertical space. But we have direction in the
21 Zoning Resolution about horizontal space. And so therefore, you have this, this conflict
22 between well you can exempt this space but you have to count this space that's unused.

23 And so it creates, it creates a tension between creating vast amounts of unused

1 space in a building that is, that is claimed as being exempt, but which is not exempt,
2 because it's just necessary and not unused. Or that it is unused.

3 I, I think, yes, we, we -- the department, the Building Department, they evaluate
4 each building individually. But I actually think having some sort of standards or
5 guidelines maybe, let's say guidelines, uh, as the Building Department tried to do with
6 their draft building bulletin, and as Mr. Partley explained in his affidavit, they tried over
7 years to do that. And I think it's actually necessary to have at least some sort of
8 guidelines, because -- because of this conflict between, uh, these two parts of the Zoning
9 Resolution and also because zoning provides predictability, right. It provides
10 predictability not only to developers, but it also provides predictability to the larger
11 community.

12 And if we have the space, this, this floor area, which can be exe- largely exempted
13 because people say they can exempt it and, and we learn from Mr. Ambrosino that there
14 really isn't this sort of critical look at the mechanical space that's claimed to see if it's, is
15 actually necessary. I think we have to have, I would say, you know, this sort of exercise
16 is really great, but we don't want to have to do this for every building, right. This is, this
17 is not practical.

18 If we had some sort of guidelines in place that, that, that people can rely on and
19 then there are exceptions. You have, you know, some building that has some sort of, of
20 need, you can go and get an exception to those guidelines. That could be a special case.
21 But I think we have to have some sort of guidelines and I think the DOB agrees, at least
22 they used to agree with that, when they tried to put these, these, uh, this draft building
23 bulletin in place.

1 CHAIR PERLMUTTER: I, I have a question about that,
2 though.

3 MR. JAMES: Sure.

4 CHAIR PERLMUTTER: As we've seen over the course of
5 a very short period of time where we've had to move mechanical equipment that used to
6 be in the cellar and on the first floor --

7 MR. JAMES: Yes.

8 CHAIR PERLMUTTER: -- and even on the second floor -
9 -

10 MR. JAMES: Yep.

11 CHAIR PERLMUTTER: -- up into the building, things
12 change a lot with mechanicals as it does with structure --

13 MR. JAMES: Absolutely.

14 CHAIR PERLMUTTER: -- and so on. And the Zoning
15 Resolution needs to be malleable, right. So -- or let's say the interpret- the way the DOB
16 interprets it --

17 MR. JAMES: Absolutely.

18 CHAIR PERLMUTTER: -- needs to be malleable. So the--
19 So, and to respo- be responsive to changing technologies and environmental conditions --

20 MR. JAMES: Absolutely.

21 CHAIR PERLMUTTER: -- and so on, right. So you can't
22 be so -- so what the problem with those bulletins, uh, is, are, that there's a specific list of
23 the equipment that you can deduct. And then all of a sudden we learn everyone has to

1 have an emergency generator. That's not on the list. And then we learn that, um, the
2 boilers that you used to put in the cellar are now on the fourth floor. That's not on the list,
3 etc., etc., right. So what are --

4 MR. JAMES: So my response is --

5 CHAIR PERLMUTTER: -- you going to do about that?

6 MR. JAMES: Yeah, so my response to that would be is
7 that's exactly why it's not in the Zoning Resolution.

8 CHAIR PERLMUTTER: Mm-hmm.

9 MR. JAMES: Because the Zoning Resolution is hard to
10 change.

11 CHAIR PERLMUTTER: Right.

12 MR. JAMES: The building bulletins are not hard to
13 change, not compared to the Zoning Resolution. And so, yes, you, you absolutely do not
14 want this in the Zoning Resolution because it is, technology changes, right. And, and
15 demands change and needs change. But, but you need it somewhere. And so where else is
16 it going to go? It has to be in a building bulletin and you should be able to amend the
17 building bulletins as required.

18 CHAIR PERLMUTTER: But so you see what ended up
19 happening with those bulletins, right? And I have been on the other side of reviewing
20 bulletins as well, where the bulletin goes out to the community and everyone flips out,
21 saying Buildings Department, you don't understand how we do this thing and if you issue
22 that bulletin, banks won't fund or all sorts of things like that. So how do they fix in time
23 for, for the minute the answer, when the community is actually actively building new

1 buildings, using new technology constantly that they're learning about as we speak, right,
2 or importing from other countries, etc., etc., etc. How do you do it?

3 MR. JAMES: Well, I think, you know, there are
4 complicated buildings and there are simple buildings, right.

5 CHAIR PERLMUTTER: Mm-hmm.

6 MR. JAMES: And I think actually you, in terms of
7 percentages, complicated buildings are a relatively small percentage.

8 CHAIR PERLMUTTER: Mm-hmm.

9 MR. JAMES: And I think you -- I think having some sort
10 of standards in place that are adaptable and that can change over time is a requirement.
11 And, you know, Chair Perlmutter, I would say, yes, people are always going to be upset
12 when you try to regulate them, and, and change what they can do. But, you know, I argue
13 with the Building Department all the time. But, you know, they have more experience
14 than anyone. They -- collectively. They review all of these plans. And so if we can
15 harness -- if they can harness their collective experience to come up with some sort of
16 standards and guidelines, I think that's -- that can be exempted for or have exceptions for
17 the really complicated building that has some sort of special need. I think we -- it would
18 go a long way to making this whole process much more predictable, which is what we all
19 want out of our zoning.

20 COMMISSIONER SCIBETTA: Do you think the
21 Buildings Department has a, a practice in reviewing these mechanical floors?

22 MR. JAMES: Well, I think they, I think they review them
23 for health and safety. I think they --

1 CHAIR PERLMUTTER: I'm sure of that, yes.

2 MR. JAMES: -- that, that sort of stuff, I think they actually
3 do really, really well. I think as far as the question of unused space counting as zoning
4 floor area, I don't, I don't think they look at that at all. I, I don't think that's really much
5 of their concern. I think if the engineer says it's mechanical, you know, it's -- unless
6 there's an extreme example --

7 COMMISSIONER SHETA: We have --

8 MR. JAMES: -- I think it's going to be mechanical.

9 COMMISSIONER SHETA: -- we have them here. Let's,
10 let the DOB speak for themselves.

11 MR. JAMES: Surely.

12 COMMISSIONER SCIBETTA: That wasn't, uh --

13 CHAIR PERLMUTTER: Mm-hmm.

14 COMMISSIONER SCIBETTA: -- but if's been the
15 practice that, that DOB would accept an engineer's statement as to what mechanical
16 space is needed for, and that's been the practice for a number of years, as the, as the
17 owners showed, that that's how they've been doing it, do you think it's bad faith for them
18 to rely on a permit based on that?

19 MR. JAMES: So I would say that the DOB should be
20 doing their job in terms of enforcing the Zoning Resolution. And I think there are two
21 pieces of the Zoning Resolution that have equal weight. One is exempting the mechanical
22 equipment, one is counting unused floor area. And they should have equal weight, but
23 they don't. And so how do you fix that? How do we ended up fixing that, meaning like

1 how do you say if you all agreed and you told the Building Department yes, these parts
2 have equal weight, you need to do something about this, either creating standards or
3 doing this sort of complex review, I, uh, it's something that they need to do. And I think
4 what, what the, what Stu was saying is that if they made a mistake, if they, they can't,
5 you can't rely upon a government mistake in terms of building your building. That's like,
6 that's something that -- I'm not the lawyer here, right. But --

7 CHAIR PERLMUTTER: Right, you don't have to do that.

8 MR. JAMES: -- that's something that the lawyers tell me.

9 CHAIR PERLMUTTER: Right. Right.

10 COMMISSIONER SHETA: When you raised the initial
11 concerns regarding the size of the medical void--

12 MR. JAMES: Yeah.

13 COMMISSIONER SHETA: -- was it height, was it floor
14 area, or was it both?

15 MR. JAMES: Well, I know it was primarily about height,
16 but I think the, the vast amount of space that is devoted to mechanical in this building, uh,
17 I think I, I said vast and I think it was real- mostly related to height, but also due to also
18 horizontal space. And I think the whole issue of, you know, there is some- a lot of talk in
19 the papers about the, the rule of thumb, right, and how the rule of thumb in terms of
20 mechanical deductions have changed over time and how a lot of buildings, you know,
21 just go way beyond the rule, even the adapted rule of thumb. And, and I think there's an
22 issue, and I think that, that, that's a sign of a problem. It, there -- there is a problem
23 because there are no guidelines, there are no standards. And, and that really hurts the

1 predictability of the zoning. And that's what we all want.

2 CHAIR PERLMUTTER: But I just want to leave -- and
3 then I'd to go -- continue on, but the, I just want to make the analogy, building design has
4 changed a lot in the last, we can just say ten years, right.

5 MR. JAMES: Yes, it has.

6 CHAIR PERLMUTTER: Lightweight concretes that we
7 never saw before, or all kinds of use of glass that we've never -- and metals -- that we've
8 never seen before. If, if it was interpreted by the Department of Buildings 15 years ago,
9 or 20 years ago, that there was a bulletin that says you're not allowed to use concrete on
10 the exterior of a building because, you know, the last time it was used, it was really a bad
11 result, then we wouldn't have lightweight concrete without going through who knows
12 what kind of hoops to prove its viability and changing the bulletins and all of that. The
13 reason that I'm saying that is architecture needs to change, right.

14 MR. JAMES: Absolutely. I agree.

15 CHAIR PERLMUTTER: And you need to allow for
16 technology to change, right.

17 MR. JAMES: But, if I may respond.

18 CHAIR PERLMUTTER: Mm-hmm.

19 MR. JAMES: Because the building bulletins are slow to
20 change or hard to change doesn't mean that we should -- it's like the, the tail wagging the
21 dog, right.

22 CHAIR PERLMUTTER: Mm-hmm.

23 MR. JAMES: We should be able to adapt the building

1 bulletins to address the issues of the time.

2 CHAIR PERLMUTTER: Mm-hmm.

3 MR. JAMES: And, and to, to say well, we can't change
4 fast enough, that's not a good answer.

5 CHAIR PERLMUTTER: So I think what you're saying is
6 you want some sort of general guideline without having a list of equipment?

7 MR. JAMES: I think that's exactly right. And I think that's
8 what, what, at least the building bulletin included had. It, it, it --

9 CHAIR PERLMUTTER: No.

10 MR. JAMES: -- it really talked about general guidelines,
11 10 percent and the amount of space. It deferred to the --

12 CHAIR PERLMUTTER: No, actually, it had a list of
13 specific equipment and said if your ductwork is lower than X, then you can count it and if
14 it's higher than X, you can't. And so then it precludes all kinds of ducting systems. It
15 precludes lots and lots of equipment. There was a lot not listed.

16 MR. JAMES: So, so, we may be talking about different
17 versions.

18 CHAIR PERLMUTTER: Oh.

19 MR. JAMES: Because I know there were many versions
20 over time, uh, or at least that's what I understand. Uh, but I know that, that, that at least,
21 at least portions of it were talking about like you could, for circulation space, you could
22 take X amount or whatever the specifications say plus 10 percent. Something along those
23 lines I think would be, would be extraordinarily valuable. And again, I think it needs to

1 be a guideline as opposed to a zoning, because ultimately you have --

2 CHAIR PERLMUTTER: Right.

3 MR. JAMES: -- to be responsive.

4 CHAIR PERLMUTTER: Mm-hmm. Okay. Understood.

5 Thank you.

6 MR. JAMES: Thank you.

7 CHAIR PERLMUTTER: Anyone else for appellant?

8 Right. Okay. So from DOB, please. Did you want to ask a question?

9 COMMISSIONER CHANDA: I just want to bring up one
10 point is that New York City, uh, being a city of its -- with a lot of history and a lot of
11 building typology, I think the request that has been made while theoretically makes sense,
12 I think it, it, it's a huge honor for DOB to come up with a general guidelines for
13 mechanical space for so many different building typologies over so many years of
14 construction and methodology. So, I just want to put a little bit of a reality check on that.

15 MS. MILLER: Good morning, commissioners. I am
16 Felicia Miller, on behalf of the Department of Buildings. I am standing in for Michael
17 Zoltan, who became a new dad Sunday afternoon, with the birth of his daughter. Excuse
18 my voice, I have a little laryngitis. I will do my best to address the Board's request at the
19 previous hearing and the Board's comments at yesterday's executive session.

20 On September 17, 2019, the Board closed this hearing with regards to the two
21 issues raised on appeal. That is the height of the mechanical space and the bulk
22 distribution in a special district. However, the Board reopened the hearing on this third
23 issue, namely whether the mechanical plans show sufficient mechanical equipment in the

1 mechanical spaces to justify floor area deductions under the definition in Zoning
2 Resolution 12-10.

3 Specifically, during the September 17th hearing, the Board requested that the
4 department review the mechanical plans in the same manner as was what was done in the
5 *Sky House* case, a reference to the building at 15 East 30th Street in Manhattan. As
6 articulated in the Department's August 25, 2017 submission to the Board in that case in
7 explaining its determination that floors with mechanical equipment were exempt from
8 floor area calculations, the Department stated, "the Department has reviewed the
9 mechanical space drawings for the space at issue, in including new, more detailed
10 approved drawings for the space at issue and has concluded that the floor space on such
11 floors is devoted to housing the mechanical equipment of the building and it cannot be
12 occupied for purposes other than housing such equipment". As such, the floor space
13 devoted to mechanical equipment, is properly exempt from floor area. And the
14 Department attached the mechanical drawings as an exhibit.

15 Likewise, as directed by the Board, in our October 16, 2019 submission in the
16 instant matter, we explained that the Department reviewed the approved mechanical
17 drawings, just as it had done in the *Sky House* case, and concluded that the space as
18 shown on the approved mechanical plans cannot realistically be occupied for purposes
19 other than housing such equipment. And as such, is properly exempt from floor area.

20 In addition, the Department provided in its October 16, 2019 submission, a
21 detailed list of the proposed equipment on each floor and attached copies of approved
22 mechanical plans, so that the Board could read along with the Department's descriptions
23 and its submission.

1 Additionally, in an attempt to more clearly illustrate the extent of mechanical
2 equipment housed on the floors, the Department submitted a single page compilation that
3 it, that it received from the owner for each floor displaying all the separate components of
4 the mechanical plans, the HVAC, plumbing, standpipe, etc. onto one single drawing. On
5 October 21st, the owner submitted additional mechanical drawings to the Board to further
6 supplement the Department's submission.

7 And as explained in the Department's fourth clarification letter, the owner
8 provided the Board with the appropriate sprinkler and standpipe plans for the 15th floor.
9 The one previously submitted by the Department had only a portion of the floor. And the
10 owner provided mechanical piping system plans and other mechanical equipment
11 drawings that were, all had been previously approved by the Department.

12 Lastly, the owner clarified that some of the compilation drawings submitted by
13 the Department contained architectural features and not mechanical ones. They,
14 therefore, provided the Board with updated compilation drawings showing mechanical
15 equipment.

16 In response to the Department's October 16th submission, appellants provided an
17 analysis of the mechanical floors by their own engineer, based on his review of the plans.
18 Appellant's engineer's affidavit states that in his expert opinion, the building's
19 mechanical floors containing mechanical equipment covered 18 to 28 percent of the floor
20 space of the mechanical floors.

21 And based on a draft bulletin circulated by the Department, which states that there
22 must be 90 percent coverage, the appellant's engineer states that the proposed mechanical
23 equipment does not comply with the requirements to afford an entire story deduction.

1 However, there are many floors with appellant's analysis. First, the appellant's engineer's
2 affidavit states that his review was based on August 17, 2018 plans on file with the
3 Department and not based on the final April 5, 2019 ones.

4 Appellant's analysis also leaves out many of the mechanical equipment systems
5 in the building, crucially, the analysis only focused on one set of plans, the HVAC set,
6 and did not show the mechanical piping, plumbing or sprinkler standpipe plans. This was
7 why the Department attempted so- to submit the composite plans to clearly show the
8 actual mechanical completeness of the floors.

9 And lastly, and most importantly, appellant's critique of the mechanical
10 deductions is based on a draft bulletin circulated by the Department a few years ago. The
11 draft bulletin lays out proposed conditions for full floors mechanical deductions, the --
12 but the appellants rely on this draft bulletin as if it were finalized, going as far as referring
13 to it as approved on January 14, 2019.

14 To state as clearly as possible, the draft bulletin is a draft, and it has never been
15 issued. Circulation of draft bulletins is standard department practice to solicit comments
16 and feedback before officially issuing a finalized version. Not all circulated bulletins are
17 finalized and this one certainly was not.

18 Appellant's reference to the 20- 2019 approval is in fact, was an approval of only
19 a ZRD-1 request by an applicant for a totally separate building seeking confirmation that
20 certain proposed mechanical deductions would be permitted by the Zoning Resolution
21 because it met the threshold of the draft bulletin. The Department approved that request
22 and stated specifically in its response that the attached draft bulletin has not been issued
23 by the Department of Buildings and may not be deemed as such.

1 Because the applicant's proposal was permitted by the Department in that request,
2 the plans, the ZRD-1 was stamped approved on all the submitted pages. So that was the
3 misleading approval reference by the appellants. It was not the draft bulletin.

4 Moreover, the 90 percent coverage standard mentioned in the draft bulletin has
5 not been applied by the Department as a minimum requirement. Rather, the draft bulletin
6 has been referenced at times as a safe harbor, meaning if there's a 90 percent coverage,
7 there's no doubt that the space is devoted to mechanical equipment.

8 The Department is currently seeking the most optimal solution to standardize the
9 review process and may pursue such goals through the issuance of a finalized bulletin.
10 However, to date, no bulletin has been published because it has been too difficult to
11 articulate how much mechanical equipment is acceptable in all buildings throughout the
12 city, given the differing needs of every building.

13 In addition, mechanical footprint alone does not equate with how the space is
14 used. The nature of the equipment and the relation between different systems and the
15 space needed to maintain the system must be considered. For example, a large exhaust
16 with intake ducts pull volumes of air and need large space around it, around the ducts to
17 accommodate that.

18 We, we know for certain that equipment cannot cover 100 percent of the floor
19 space. How much less depends on many different factors. And appellants offer -- they've
20 proffered alternative layouts for the mechanical equipment, which they claim would
21 allow it to occupy less floor space. Besides the fact that the alternative layouts omit
22 proposed equipment in the building, this type of alternative design layout analysis, uh, is
23 not required to be done by the Department, and it is not done. Uh, it's an area that we

1 leave to the design applicant and for them to consider together with the owner, the
2 economic impacts of that.

3 To the extent that the Department does review, you know, we, we are, we will
4 make sure that it's not an -- if we see an utterly empty floor, uh, you know, a single piece
5 of equipment, we will, we will question it, we would reject if it was obvious, we would
6 give pushback and ask for more. Um, if the room contains, uh, so much equipment and
7 associated room to maneuver around it, and to be able to operate equipment such that the
8 uses, other uses can't be occupied in this space, that would be what we're looking for,
9 you know, that would be considered deductible. Thank you.

10 CHAIR PERLMUTTER: Okay. That's great. Okay. So,
11 when, but one of my questions yesterday was who actually, who actually reviews the
12 mechanical drawings? I know you're required to submit them and you get an approval.
13 And maybe there's an objection, I don't know if there are objections on mechanical
14 equipment. I know they're looking for egress obviously. But, uh, I'm assuming that
15 there's someone who's knowledgeable about mechanicals who would be looking at the
16 mechanicals, otherwise, why submit them.

17 MS. MILLER: Yeah, we, we are looking at them, plan
18 examiners do look at them. Certainly, we're looking at them for code issues.

19 CHAIR PERLMUTTER: Do you know what kind -- for
20 egress you mean --

21 MS. MILLER: Mm-hmm.

22 CHAIR PERLMUTTER: -- when you say code. Or are
23 you looking at them for some kind, for mechanical codes?

1 MS. MILLER: Um, I --

2 CHAIR PERLMUTTER: Yeah, yeah. That's the, that's I
3 guess the question because there's so much detail that's submitted, I'm pretty sure you
4 don't look at electrical drawings, right. Uh, there's so much detail submitted on
5 mechanicals, and I'm curious why DOB receives them in that level of detail if no one's
6 reviewing them. Unless there's some very obvious calculations, like on the plumbing
7 drawings, there are riser diagrams. I can understand why they take a quick look at a riser
8 diagram to see if it makes sense, or just see that the gas pipe is the right size or something
9 like that.

10 MS. MILLER: Uh, you know, we do look at them and I
11 could come back with, we could come back with more specifics.

12 CHAIR PERLMUTTER: Okay. Okay. Thank you. You
13 have a question?

14 COMMISSIONER SHETA: Yeah, you indicated that if
15 somebody submits plans with equipment that you believe that are scattered or there are,
16 like, too much waste of floor space that's claimed to be for mechanical, but apparently
17 it's not, you would question this, right?

18 MS. MILLER: Yes. There are times --

19 COMMISSIONER SHETA: Based on what?

20 MS. MILLER: -- there are times if we see, you know, an
21 empty room, you know, we're going to question it. I know that --

22 COMMISSIONER SHETA: Based on, based on what?

23 MS. MILLER: We want to know that there is mechanical

1 equipment in this space.

2 COMMISSIONER SHETA: So if there is a room that size
3 and I put boiler in it, it's for mechanical space, and if it's one quarter of the size, and I put
4 the same equipment in it, it's for mechanical space?

5 MS. MILLER: There are a lot of factors that are going to
6 be -- that are involved this. So for the most part, we're leaving it to the design
7 professionals to present us that this is, and they, they're representing that this is the
8 mechanical space.

9 COMMISSIONER SHETA: But there is no quantitative --

10 MS. MILLER: There is no --

11 COMMISSIONER SHETA: -- criteria

12 MS. MILLER: -- quantitative criteria, correct.

13 COMMISSIONER SHETA: And the bulletin with all the
14 versions indicated, never been used, never been applied?

15 MS. MILLER: It's a safe harbor. If somebody presents
16 that, then we, we are comfortable with that, with that, yeah.

17 COMMISSIONER SHETA: Was it ever applied to any of
18 the projects -- or that was something unique--

19 MS. MILLER: Only as a safe harbor.

20 COMMISSIONER SCIBETTA: I think she's saying yes.

21 COMMISSIONER SHETA: I don't understand that. What
22 does that mean?

23 MS. MILLER: If, if they meet that standard, then, then

1 we're not at all -- there's no issue.

2 COMMISSIONER SHETA: And if they don't meet?

3 MS. MILLER: If they don't meet it, that doesn't mean that
4 they, they don't otherwise qualify as being acceptable mechanical space.

5 COMMISSIONER SHETA: What is the benefit of this
6 bulletin?

7 MS. MILLER: There is no bulletin. It has not been issued.
8 We, we've struggled. We would love to be able to come up with guidelines. We're
9 continuing to struggle. We hope perhaps we'll reach a point where we can come with it.
10 But there are so many factors. There are different kinds of buildings. A hospital versus a
11 commercial office, uh, tall buildings that may have to have different kind of risers and
12 have different, you know, small footprint, be able to accommodate, uh, to be able to cool.
13 There are just too many factors right now that we have not been able to come up with
14 standards.

15 COMMISSIONER SHETA: What was the reason it was
16 attached to the ZRD-1?

17 MS. MILLER: I, I believe in that case, they were using it
18 to say we're, that we are, that, that we've met that standard.

19 COMMISSIONER SHETA: Did they meet the standard?

20 CHAIR PERLMUTTER: Did they what?

21 COMMISSIONER SCIBETTA: They met the standard.

22 COMMISSIONER SHETA: Did they meet the standard?

23 If, if they attached it --

1 CHAIR PERLMUTTER: Apparently they met the
2 standards, because they got an approval.

3 COMMISSIONER SHETA: -- if, if it was attached to
4 indicate that hey, we're good, we meet, we met the standards.

5 MS. MILLER: Yeah, I don't have specifically about that
6 particular --

7 COMMISSIONER SHETA: Did somebody say that?

8 MS. MILLER: -- ZRD-1, but in that case it was approved.

9 CHAIR PERLMUTTER: Mm-hmm.

10 COMMISSIONER SCIBETTA: To your knowledge --
11 may I?

12 CHAIR PERLMUTTER: Go ahead.

13 COMMISSIONER SHETA: One, one more. Can we just
14 know an answer to this? Would this project ever checked against this bulletin and was it
15 okay?

16 CHAIR PERLMUTTER: Say again. Was it checked
17 against the bulletin?

18 MS. MILLER: No. It would not have been checked against
19 a bulletin that was not issued.

20 CHAIR PERLMUTTER: Yeah.

21 MS. MILLER: We would not do that.

22 CHAIR PERLMUTTER: Right.

23 MS. MILLER: I don't know whether the applicants

1 considered it, looked at it --

2 COMMISSIONER SHETA: But --

3 MS. MILLER: -- but we would not.

4 COMMISSIONER SCIBETTA: But other projects have
5 been checked against this bulletin?

6 CHAIR PERLMUTTER: No.

7 MS. MILLER: No, not that we have ever done, no. If an
8 applicant wants to show it to us, look, we meet that --

9 COMMISSIONER SCIBETTA: Okay.

10 MS. MILLER: -- that, we'd accept it.

11 COMMISSIONER SCIBETTA: To your knowledge --

12 CHAIR PERLMUTTER: So, let me, to put this in
13 perspective, because this is how you, when you file drawings, you -- you're nervous
14 about your floor, right.

15 COMMISSIONER SCIBETTA: I understand.

16 CHAIR PERLMUTTER: So architect or engineer
17 recommends to client, I'd really like to go to the Department of Buildings and get a sign-
18 off on this because I'm nervous, right. So you go through the -- you, you have this
19 bulletin, which you don't realize the, the, whatever, the efficacy of, or the reality of, and
20 you say well, I go through all of this and I'm meeting the criteria on the bulletin, so I --

21 MS. MILLER: There is no bulletin here.

22 CHAIR PERLMUTTER: -- attached it. Yeah, so no
23 bulletin, I meet the criteria on this draft thing, which I have, because it has DOB

1 letterhead on it, right. And I go through the list and I submit that with my ZRD-1 and I
2 say, am I good, and they'll say, well, you know, you went through the checklist so you're
3 good. But it's not like what I think Ms. Miller is saying is it's not the DOB uses, has all
4 their examiners with a checklist on the wall and they go through it. It's more the architect
5 or engineer says this will just make it easier for me if I go through the checklist.

6 COMMISSIONER SHETA: It's kind of a complimentary
7 analysis. When we, when we submit structural plans to the DOB, if I'm looking at thing
8 which is in the building code, I would cite the building code, provide the article and I'm
9 done.

10 CHAIR PERLMUTTER: Mm-hmm.

11 COMMISSIONER SHETA: But if it's not, like, like for
12 example, if I want to put a floating shower, four feet in New York, cross steps, it's not
13 going to fly. So if I come up with some sort of analysis and support this, let's say with a
14 copy from the Bridge Standard, and, and, and I attached it. But my point is if, if
15 somebody attaches something, it should be meaning, since it is attached to the, to the --

16 CHAIR PERLMUTTER: No.

17 COMMISSIONER SCIBETTA: But we can't hold the
18 Department of Buildings --

19 [CROSSTALK]

20 MS. MILLER: No, there was no bulletin attached here.

21 COMMISSIONER SCIBETTA: We can't hold the
22 Department of Buildings, uh, to the position of any other -- yeah.

23 COMMISSIONER SHETA: I got it, I got it.

1 COMMISSIONER SCIBETTA: But my, my question, uh,
2 is that you stated that the Department of Buildings will review if they see a one piece of
3 equipment in a large room, and would respond, would, would ask more questions about
4 that.

5 MS. MILLER: They're looking to see that it can real -- can
6 it, uh, is it, does it look like a mechanical equipment space.

7 COMMISSIONER SCIBETTA: Do you have any
8 examples of Department of Buildings rejecting a mechanical space like that?

9 MS. MILLER: Uh, I'm not aware.

10 COMMISSIONER SCIBETTA: Do you have any
11 examples of the Department of Buildings requesting information about a mechanical
12 space after such a space -- not, not with concern to safety but with a concern to is this
13 actual mechanical -- is this excluded as mechanical space.

14 MS. MILLER: I don't have the benefit of that knowledge.

15 COMMISSIONER SCIBETTA: So counsel, where would
16 you come, how did you come to the statement that this is something that happens?

17 MS. MILLER: Oh, the, the, the, the examiners that review
18 this have said that they, they do look at, we, we've spoken with, uh, the, uh, borough
19 commissioners and they, uh, they will look at it very much to know that can you
20 realistically, can this floor be realistically used for, is it going to become some other use,
21 or is this a mechanical space. They will look at it to determine that.

22 COMMISSIONER SCIBETTA: That's what they told you
23 but we --

1 MS. MILLER: Mm-hmm.

2 COMMISSIONER SCIBETTA: -- you don't know if
3 that's happened?

4 MS. MILLER: Whether we have rejected spaces
5 specifically because --

6 COMMISSIONER SCIBETTA: Yes.

7 MS. MILLER: -- um, I, I would imagine colloquially, they
8 would tell me that they have if they're telling me that they look at that, but I don't have
9 the specifics.

10 COMMISSIONER SCIBETTA: Thank you, counsel.

11 COMMISSIONER CHANDA: And I'm assuming if they
12 did find a situation where space was being used technically for mechanical, but upon
13 review they felt it was not fully utilized accordingly, the drawings would have been
14 revised.

15 MS. MILLER: Sure, that's right.

16 COMMISSIONER CHANDA: So you may not have that
17 review process of that document where that decision may have been made.

18 MS. MILLER: Of course.

19 COMMISSIONER CHANDA: But what you have is the
20 end result --

21 MS. MILLER: The, the end result.

22 COMMISSIONER CHANDA: -- of that review --

23 MS. MILLER: Correct.

1 COMMISSIONER CHANDA: -- which may not help
2 answer your question.

3 MS. MILLER: It could have been happening in a meeting,
4 where they're talking and looking at the plans together.

5 CHAIR PERLMUTTER: Mm-hmm. And, and also we
6 actually see sometimes, in this context of houses, it's actually one of my favorite, where a
7 house will use part of it as the attic deduction and then other part of it is the impossible to
8 believe mechanical deduction where it's a house, how much mechanical would a house
9 really need, and they're creating an entire attic that they're saying is deducted. That's
10 when DOB would more likely, because DOB has a lot of experience with those kind of
11 things, more likely say seriously, you already have your boiler in the cellar, what else do
12 you have in the attic that would need mechanicals for, right, those kinds of things. I think
13 that's more typical of the way DOB looks at it. We do it here. If it looks like it's for
14 something else, it's probably for something else and it's just labeled mechanical right, as
15 opposed to a set of drawings that's got all of this equipment in it, which on those
16 situations, you never see. You know.

17 COMMISSIONER SHETA: If, let's -- I'm not a
18 mechanical engineer. Let's say I have the two designs presented, one by the owner, one
19 by the appellant engineer. And, and let's say in, in a month from now, in a year, in ten
20 years, the owner comes back and files a PEA.

21 MS. MILLER: P?

22 CHAIR PERLMUTTER: PAA.

23 COMMISSIONER SHETA: What gets post approval --

1 MS. MILLER: PAA?

2 COMMISSIONER SHETA: -- and -- yes.

3 CHAIR PERLMUTTER: Mm-hmm.

4 COMMISSIONER SHETA: And, and let's say he goes
5 with, with a scenario like that. He, did it happen before? Did the DOB check before when
6 somebody is filing PEA for --

7 CHAIR PERLMUTTER: A PAA.

8 MS. MILLER: PAA.

9 CHAIR PERLMUTTER: Post approval amendment.

10 COMMISSIONER SHETA: -- a PAA for mechanical
11 drawings, did you go back and check the deductions. This is the first part of my question.
12 And if it happens on this specific project, would you have in place a procedure to say
13 okay, you got this amount of deduction, now you do not deserve it, you need to change
14 something.

15 CHAIR PERLMUTTER: What? The building is built. It
16 happens all the time.

17 Mr. Steinhouse: No, but I think the question is that you're
18 converting the building to a use later, the zoning calculations would be taken into account
19 for whether you're allowed to proceed with the conversion, such as for instance, where a
20 community facility has a higher FAR and it's being proposed to be converted to a
21 residential use, which has a lower FAR, if DOB would consider the zoning calculations
22 for the proposed conversion in determining whether to allow that to happen. Is that
23 similar to the question?

1 COMMISSIONER SHETA: Sort of.

2 Mr. Steinhouse: My understanding is yes, but--

3 Ms. Miller: The Department is going to look at what the
4 applicant presents and we're going to know that it meets for the current proposed use.

5 CHAIR PERLMUTTER: Right.

6 Mr. Steinhouse: And to the extent that floor area is no
7 longer -- or floor space is no longer being used for mechanical equipment, the, uh, plan
8 examination process would take that into account, um, for whether to --

9 Ms. Miller: Correct.

10 Mr. Steinhouse: -- approve those construction documents
11 later on.

12 CHAIR PERLMUTTER: Mm-hmm. Right. But it's very
13 common that in the older buildings, mechanical penthouses became no longer necessary,
14 right. They got converted to some other use. But the Zoning Resolution actually permits
15 that in those buildings. Those are 361 buildings I believe, so. Okay. Any other questions
16 here. Thank you very much. Thank you. You want to take the boards --

17 MR. KARNOVSKY: Yeah.

18 CHAIR PERLMUTTER: The boards are away, in front of
19 your projector actually. You need to move the board from your projector.

20 MR. KARNOVSKY: Okay, not too big? Yeah, thank you.

21 Madam Chair, members of the Board, David Karnovsky, Fried Frank, land use counsel to
22 owner. Uh, I'd like to first address briefly, the threshold question from our perspective, at
23 least, of whether the Board has jurisdiction to consider the mechanical space issues,

1 particularly in light of comments that were made at yesterday's meeting.

2 We believe that the board does not and that the, the proceedings should therefore
3 be dismissed. Of course, should the Board continue to disagree, we'll go on to
4 demonstrate why we believe that Landmark West's arguments fail on the merits, while
5 reserving our rights with respect to the jurisdictional issue. Now to- --

6 COMMISSIONER SHETA: Can, can, can you please
7 explain again why you believe that?

8 MR. KARNOVSKY: I, I'm about --

9 CHAIR PERLMUTTER: That's what he's about to.

10 MR. KARNOVSKY: -- to -- I'm about to explain --

11 CHAIR PERLMUTTER: He's introducing --

12 MR. KARNOVSKY: -- and clarify, uh --

13 CHAIR PERLMUTTER: -- what he's going to say.

14 COMMISSIONER SHETA: Oh, I'm sorry.

15 MR. KARNOVSKY: No, that's okay.

16 COMMISSIONER SHETA: Go ahead.

17 MR. KARNOVSKY: Now, today's proceeding has been
18 described as a continued, or reopened hearing on appellant's appeal. But it is not, because
19 Landmark West did not raise the issue of mechanical deductions in its appeal filed in
20 May of last year. The Board's October 15th resolution in this matter expressly recognizes
21 that Landmark West failed to raise a timely challenge to the mechanical deductions. And
22 this is what the Board's decision says, and Commissioner Sheta, you read this language
23 yesterday as if it was ours. It is not ours. It is yours. It is the Board's language from its

1 resolution in this matter.

2 And it reads, “a timely third issue has not been presented by appellants regarding
3 whether the amount of floor space used for mechanical equipment in the new building is
4 excessive or irregular. And appellant’s discussion of mechanical equipment space in the
5 new building in their initial filings instead center on the volume and floor-to-ceiling
6 heights of mechanical spaces.” So there was some confusion on this point yesterday.

7 COMMISSIONER SHETA: There was not.

8 MR. KARNOVSKY: But it is not our statement. It is your
9 statement. It is the Board’s. And it makes clear that the Board has determined that
10 Landmark West did not base its appeal on the mechanical floor space issue. So, rather
11 than a continuation of Landmark West’s appeal, today’s hearing is the product of the
12 Board acting sua sponte, of its own initiative, to expand the scope of the appeal beyond
13 what Landmark West properly identified in its appeal. But the City Charter does not give
14 the Board this authority and for that reason, this proceeding should be discontinued. And
15 I’ll explain why.

16 Now, the Board’s October 15th decision, the written decision that I quoted from
17 cites section 72-11 of the Zoning Resolution as legal authority for the decision to reopen
18 the hearing and it cites the language of that provision, which states in relevant part that
19 quote, the Board of Standards & Appeals shall hear and decide appeals from, or may, on
20 its own initiative, review any rule, regulation, order, requirement, decision or
21 determination of the Commissioner of Buildings. But the Board’s appeals jurisdiction is
22 not defined by the City Charter -- by the Zoning Resolution. It is defined by the City
23 Charter. And there is no basis to conclude that the Zoning Resolution can modify or

1 augment the powers and duties of the Board under the City Charter, including the scope
2 of its appellant jurisdiction. Section 72-11 of the Zoning Resolution cited by the Board in
3 its October 15th determination is simply a paraphrase, and an incomplete one at that, and
4 as I'll explain, of what the City Charter in fact says. And it is the City Charter that
5 governs, not the Zoning Resolution.

6 So what does the Charter say? Section 666.6(a) states that the Board shall have
7 the power to hear and decide appeals from decisions of the BOD, and Section 669 says
8 who may file, that the people who may file an appeal are aggrieved persons.

9 Now, let's turn to this language in question. Section 666.8 of the Charter, which is
10 a provision that is separate and apart from the appeals provision that I just read, states in
11 part, that the Board shall have the power to review, upon motion of any member of the
12 Board, a rule, regulation, amendment, etc. decision of the, of the, of, of an agency from
13 which an appeal may be taken.

14 Accordingly, the Charter distinguishes very carefully between the Board's role in
15 hearing appeals and its role in conducting a review. These are separate sections of the
16 Charter. It is only in connection with a review, that the Board, acting in its own initiative,
17 can consider an issue, including a decision or determination by the DOB commissioner.

18 But there's a critical difference here. The critical difference between an appeal
19 and a review lies in this. 666.8 states with respect to any review undertaken upon the
20 motion of a commissioner, that no such review shall prejudice the rights of any person
21 who has in good faith acted thereon before it is reversed or modified. This critical phrase
22 is missing from the Zoning Resolution, from the paraphrase in the Zoning Resolution
23 cited in the October 5th decision.

1 If then the board overturns a rule or a regulation or a determination or a decision
2 of the DOB Commissioner pursuant to a review, it cannot do so in a way that would
3 prejudice a party who has relied upon the DOB action at issue. That would mean that as
4 to that party, as to that party, the Board action has prospective application only. Now, it
5 follows from this that the Board cannot graft a review onto an appeal as a means of
6 expanding the scope of the appeal, yet that is exactly what's happened here with respect
7 to the expansion of Landmark West's appeal beyond what Landmark West timely
8 presented in its appeal as determined by the Board.

9 Said differently, under the Charter, the Board cannot, by means of a review, grant
10 the relief that Landmark West seek. It cannot vacate the building permit, nor can it grant
11 relief that would prejudice the rights of owner acting in reliance on that permit.

12 COMMISSIONER SCIBETTA: In good faith?

13 MR. KARNOVSKY: Yes.

14 COMMISSIONER SCIBETTA: Okay.

15 MR. KARNOVSKY: For these reasons, and good faith I
16 think in the sense that you've been describing. For those reasons, the Board should vacate
17 its September 17th determination, and it should not consider an issue which the Board
18 itself has expressly determined, on October 15th that Landmark West failed to properly
19 raise in its appeal. Any decision in favor of Landmark West in this reopened appeal
20 would be contrary to the language of the City Charter. And that's our presentation on this
21 issue.

22 I think yesterday, Madam Chair, there was a discussion as well about whether
23 DOB was correct in its assertion that should Landmark West come before it with a

1 request for a final determination with respect to this issue be -- and that should the Board
2 decline -- excuse me, that if DOB declined, that that would be appropriate. If DOB is
3 correct, uh, and we think it is, then they are correct. If they're not correct, Mr. Klein's
4 remedy would be to seek mandamus or other judicial relief. The remedy was not for the
5 Board we think, to expand the scope of the proceeding beyond its jurisdiction. So, I, I'm
6 not going to address that, other than to say that the remedy lied elsewhere, if there was a
7 remedy, and if DOB was incorrect. So that's our point on this jurisdictional matter. I'm
8 glad to take any questions on this first, but if not, I'll move on.

9 CHAIR PERLMUTTER: Let's move on.

10 MR. KARNOVSKY: Okay.

11 COMMISSIONER SCIBETTA: You don't want -- we
12 don't want to address that at all?

13 CHAIR PERLMUTTER: If, if you want to, be my guest,
14 but I think we can move on to the meat of the issue since we're here for the meat, right.

15 COMMISSIONER SCIBETTA: Well.

16 COMMISSIONER SHETA: Yes, but didn't, didn't the
17 Board indicate, even if this language is coming from our resolution, in, in the language, it
18 says that instead it centered around the volume of the space.

19 MR. KARNOVSKY: The --

20 COMMISSIONER SHETA: In my opinion, the language
21 here indicated that maybe, like a separate issue regarding the floor space deducted as
22 mechanical wasn't explicit. But it was implicit by raising the issue of the volume. The
23 volume means area and height. And, and when they started an issue in talking about the

1 volume, I believe it could be -- if, if I'm saying the volume of this is ten, and you're
2 questioning that, saying not, it's 20, that means that the height could be double, or the
3 area could be double or it could be both. So you're, you're either questioning the height
4 or the area of both. And, and that's what I, what I said yesterday.

5 MR. KARNOVSKY: Well, I think this particular point
6 was discussed at length on September 10th. Uh, the counsel to the Board and the Chair
7 expressed the view that it was a different issue, that it was not timely raised, and that's
8 what's reflected in the Board's decision. So, uh, I understand your, your opinion there,
9 but that is not the Board's opinion as expressed in its October 15th decision.

10 COMMISSIONER SHETA: That was my understanding.

11 I, I'm a member of the Board and that was my understanding --

12 CHAIR PERLMUTTER: Yeah.

13 COMMISSIONER SHETA: -- for that --

14 CHAIR PERLMUTTER: Right.

15 COMMISSIONER SHETA: -- issue.

16 CHAIR PERLMUTTER: So what I do want to say is --

17 COMMISSIONER SCIBETTA: I think I could say we

18 share that.

19 CHAIR PERLMUTTER: -- I think we would have stood
20 on that resolution had we not gotten the reaction that we did from the Department of
21 Buildings because our direction was to the appellant, go back to DOB, and have them
22 review the mechanicals and then come back to us with, uh, if necessary, with a challenge
23 to DOB's determination. But DOB said we will not issue a determination. So we were

1 concerned in light of the *Sky House* decision, that the Court, and we assume this is going
2 to court, right, uh, that the Court would, uh, have trouble with our not treating this case in
3 the same way as we treated *Sky House*, which was to invite the mechanical drawings and
4 a mechanical engineer to look at them, right. So, so we just, we decided in fairness to the
5 appellant, that we would allow the mechanicals to be considered in a second hearing. Uh,
6 and closed out the other issues. That's actually procedurally what we did. And whether
7 it's an appeal or a review, we can get into in, in the resolution itself and how, how we
8 justify either it being an appeal or either it being a review.

9 COMMISSIONER SCIBETTA: Okay. I was there for the
10 decision, for the resolution then.

11 CHAIR PERLMUTTER: Sorry?

12 COMMISSIONER SCIBETTA: I was there for the
13 resolution then.

14 CHAIR PERLMUTTER: Mm-hmm.

15 MR. KARNOVSKY: Okay. So turning to the merits, uh, I
16 wanted to start by addressing two very specific questions that the Chair posed at the
17 September 17th meeting. Uh, first whether there's a standard or typical amount of floor
18 space devoted to mechanical space in buildings and you referred, Madam Chair to a rule
19 of thumb of five percent that had been used in the past, and second, whether there's a
20 typical number of interstitial full mechanical floors in tall buildings. And you noted at
21 that time that there are, that several tall buildings with mechanical void spaces that were
22 brought to the Board's attention in the *Sky House Condominium* matter, had three
23 interstitial full floors, uh, mechanical floors, while the 66th Street building has four, 15,

1 17, 18 and 19. Uh, and we've included in our papers an affidavit, an analysis from
2 Michael Parley, a preeminent zoning expert who reaches two basic conclusions.

3 First, that there isn't a standard amount of deduction. You've heard that today as
4 well from everyone, in residential buildings measured as a percentage of gross floor area,
5 and second that there's no typical number of interstitial full mechanical floors in tall
6 buildings including those, including those with so-called mechanical voids. The five
7 percent rule, of course, refers essentially to the amount of deduction on an occupied floor
8 as a percentage of that particular floor.

9 But beyond that, there's a widespread variation in buildings in terms of the totals
10 and Mr. Parley's affidavit discusses all of the variables in detail and explains why
11 variations can occur based on building type size, location and other factors, which I won't
12 go into detail on.

13 But his assessment, his overall assessment, that there's no standard amount of
14 mechanical deduction and that DOB doesn't assume one and doesn't apply one when it
15 reviews mechanical drawings is actually fully consistent with the explanation that DOB
16 itself gave to the board in the *Sky House* matter. And in a letter dated July 11, 2017,
17 which is attached to our papers, the Department stated to the Board question is there a
18 rule of thumb to determine the maximum mechanical space allowed for a building based
19 on the percentage of the building zoning floor area, answer, there is no such rule of
20 thumb.

21 The Parley analysis goes further, however, and examines how the 66th Street
22 building compares to other tall buildings and it looks at the total percentage of gross that
23 doesn't count towards floor area for a number of buildings that fall into two categories,

1 buildings between 1,000 and 1,500 feet tall, the so-called super talls, and buildings
2 between 665 and 880 feet, which is the classification that this building falls into. He
3 focuses on gross floor area above grade and therefore excludes below grade and the
4 results show a widespread variation in the percentage of total gross.

5 In the first class, the taller buildings, the so-called super talls, the percentages
6 range from nine percent to, about nine percent to a much larger number, 22 percent.
7 Where buildings between 665 feet and 880 feet, the category we're in the percentages
8 range from about 13 percent to 21 percent. The deductions for the 66th Street building
9 constitute 13.45 percent of total gross floor area, which is well within the range.

10 I want to mention that the building at 15 East 30th Street that was at issue in the
11 *Sky House* case shows deductions, um, according to Mr. Parley's analysis that are 15.14
12 percent of total gross. Now, we understand in that case that the record may have indicated
13 that it was just five percent. That is not borne out by our own examination of the
14 drawings, 15.14.

15 Then we looked, uh, to see how many interstitial full mechanical floors there were
16 in these buildings, that's exclusive of below grade and rooftop mechanicals in these
17 buildings. And there's also a widespread variation ranging from two, to three, to four, to
18 five, to six, and in one case, to 12. I think you alluded to that. Four buildings on the chart,
19 other than 66th Street have four interstitial full mechanical floors.

20 Uh, at the September 17th meeting, uh, you recall Madam Chair, that existing
21 buildings with mechanical voids identified in that proceeding in *Sky House*, uh, each had
22 three and we have four. Uh, however, 220 Central Park West, uh, 111 West 57th Street,
23 217 West 57th Street and 432 Park, all buildings cited to the Board in the 30th Street

1 proceeding, each have more than three interstitial full mechanical floors.

2 So what this analysis demonstrates in response to the questions raised by you on
3 September 17th is that there's no standard amount of mechanical space in tall buildings
4 and not a standard either, with respect to the number of interstitial full mechanical floors.
5 And that the amounts in this building, amounts of space, number of floors are similar,
6 comparable to that found in similar tall buildings. And this belies I think any claim that
7 the amount and the number of floors in the building are improper or excessive.

8 And I want to note that Mr. Parley is here today if you have questions for him and
9 he's available to answer them at the end of my presentation.

10 CHAIR PERLMUTTER: Thank you.

11 MR. KARNOVSKY: And I have to have a drink of water
12 or I will not be able to continue.

13 COMMISSIONER SCIBETTA: Just a question on that
14 point then.

15 MR. KARNOVSKY: Sure.

16 COMMISSIONER SCIBETTA: How do you respond to
17 the applicant's statement that this case should be held analogous to the Penthouse
18 matters, the Penthouse case, I think it's 6707-A, where there, there were plenty of history
19 of this being approved, but it was improper?

20 MR. KARNOVSKY: Uh, first of all, there was no
21 evidence that it's improper. Uh, and what we're just, what we're simply illustrating is
22 that to the extent that there's a claim here, that there's something very atypical and out of
23 line, uh, in terms of the amount mechanical deduction, in terms of the number of

1 interstitial floors, that it not the case. This particular analysis doesn't address the practice.

2 Mr. Constanza: Can you speak to the mic, please.

3 MR. KARNOVSKY: This, this analysis of Mr. Parley's
4 doesn't address the DOB practice. It's about comparison of other buildings to a similar
5 type. Uh, now, uh, I'm not going to address now, because I think we heard a very good,
6 uh, and complete presentation from the DOB, the status of the bulletin. But our papers do
7 detail --

8 CHAIR PERLMUTTER: Yes.

9 MR. KARNOVSKY: -- uh, all of the reasons why the
10 bulletin has not actually been implemented in terms of various things such as the fact as
11 its list of mechanical equipment isn't complete, uh, that it's approach towards the
12 calculation of the permitted amount of area allowed for access and repair of mechanical
13 equipment is not, is overly rigid and unrealistic in a number of cases and so on and so
14 forth. So I would refer you to that. There's a laundry list of things that the industry has
15 presented the DOB over the years, over the course of these five versions of the, of the
16 bulletin and why it simply doesn't work.

17 CHAIR PERLMUTTER: Mm-hmm.

18 MR. KARNOVSKY: It's impractical and, and, and it is,
19 uh, one of the reasons we believe that, as you heard, it is not actually, uh, in effect. Uh,
20 but I do want to note two things. One is that Mr. Ambrosino, uh, says that his analysis
21 was guided by that bulletin. And further, he says, in his affidavit, that the bulletin has
22 been approved, which is flatly incorrect.

23 MR. AMBROSINO: I didn't say that.

1 CHAIR PERLMUTTER: Okay.

2 MR. KARNOVSKY: Excuse me, I'll quote --

3 CHAIR PERLMUTTER: Please --

4 MR. KARNOVSKY: -- from his --

5 CHAIR PERLMUTTER: -- don't, uh --

6 MR. KARNOVSKY: -- I'll quote from his affidavit if

7 you'd like.

8 CHAIR PERLMUTTER: Please don't banter back and

9 forth.

10 MR. KARNOVSKY: Okay. Uh, no interruptions, thank

11 you.

12 CHAIR PERLMUTTER: Yeah.

13 MR. KARNOVSKY: That's what he says. It is not correct,

14 and, uh, the reality is exactly what Felicia Miller said, which is that the ZRD-1 cited in

15 his affidavit for that.

16 CHAIR PERLMUTTER: Mm-hmm.

17 MR. KARNOVSKY: It says precisely the contrary. It says

18 the attached bulletin has not been officially issued by DOB and may not be deemed as

19 such. Uh, I also want to just, since it relates to the bulletin in some respects, uh, address

20 something that Mr. James said. Uh, you know, Mr. James, uh, talked about this

21 theoretical, uh, tension between two provisions of the Zoning Resolution. Um, and I want

22 to just talk a little bit about what he actually said in his affidavit, uh, because what he said

23 in his affidavit was that the fact that the mechanical floors have these fire department

1 refuge areas marked on them means that they must count as floor area and therefore,
2 there's an exceedance of space on the floors that is not mechanical space, therefore, the,
3 uh, stairwell and elevator shafts, uh, cannot be deducted either. Therefore, they cannot be
4 treated as mechanical floors and so on and so forth, sort of the cascade, cascading effect.

5 So I'm very glad the fire department was here today to clarify that the space is
6 shown that way and it's denominated that way, but in fact, it is corridor space, we've
7 always understood it as corridor space, circulation space that, uh, any reasonable person
8 would say is necessary on a mechanical floor for purposes of access and circulation,
9 egress, etc.

10 COMMISSIONER SCIBETTA: I believe the fire
11 department said that it, it's not exclusively, it, it --

12 CHAIR PERLMUTTER: For fire department use.

13 COMMISSIONER SHETA: For fire department.

14 MR. KARNOVSKY: That is correct. And it's, it functions
15 as corridor space, access space.

16 CHAIR PERLMUTTER: Mm-hmm.

17 MR. KARNOVSKY: As, uh, Felicia Miller said, the
18 Department of Buildings confirmed in response to the request made by the Chair on
19 September, September 17th, that a full deduction of the floors was warranted. And in
20 support of that determination, the Board has been provided with these composite
21 drawings, which overlay on a single drawing for each floor all of the separate mechanical
22 drawings approved for that floor. These illustrate the full range, the full range of
23 mechanical equipment for a floor reviewed by DOB through examination of all the

1 separate drawings and I'll just put up the one for the 18th floor just for reference. And
2 these drawings illustrate the basis of DOB's review and determination.

3 Now the Ambrosino analysis argues that the floors are largely empty, but his
4 analysis understates the size and scope of the mechanical program. First, the analysis is
5 based, as Felicia Miller said, on only one drawing from the mechanical drawing set only,
6 the mechanical ductwork plans alone. It doesn't show any of the mechanicals shown on
7 the other three mechanical plans prepared for each floor, HVAC mechanical piping, fire
8 protection and plumbing.

9 Second, even with respect to the HVAC mechanical ductwork plans, the analysis
10 does not account for mechanical fans, heaters, shafts, chasers, horizontal ductwork
11 distribution and plenums shown on those plans.

12 Now, Mr. Ambrosino today, for the first time acknowledges that he didn't look at
13 these and says it doesn't matter essentially, that they're irrelevant. Well, they're not. This
14 is what they show in total. The full range is shown on these composite drawings, which
15 the Ambrosino analysis ignores. These accurately reflect that each floor is devoted to
16 multiple systems of mechanical equipment. Next slide, please.

17 Here is a comparison of the northwester portion of the 19th floor, showing on the
18 left in red what the Ambrosino analysis deducts based on its incomplete methodology, the
19 area of a single smoke exhaust fan. And on the right, you see the same area as shown on
20 the composite drawing with labels added identifying the various forms of equipment that
21 were not identified on the Ambrosino diagram. And, Patel, sorry, Vivek Patel from
22 ICOR, engineering firm that was responsible for the mechanical layout will be glad to
23 explain this in more detail.

1 But I simply wanted to illustrate to you the effect, the effect of the undercounting
2 that Mr. Ambrosino's analysis, uh, did. For all these reasons, what he calls his method
3 one, his analysis of the amount of space occupied by mechanical equipment should be
4 disregarded.

5 Now, I'm going to turn to his method two, his proposed alternative layout for
6 certain equipment located on the 17th floor, which was prepared in an attempt to show
7 how less floor space could be used for mechanical equipment than under the mechanical
8 floor layouts designed by ICOR. Igor Bienstock and Vivek Patel were the project
9 mechanical engineers.

10 This alternative layout is flar- flawed, excuse me, for multiple reasons, uh, that
11 are outlined in the Bienstock affidavit and will also be outlined in some detail today by
12 Mr. Patel. But, most importantly, the Ambrosino alternative layout is flawed because it's
13 based on one design principal only, one design principle only, occupy the minimum
14 amount of floor area space as possible.

15 But Mr. Ambrosino himself acknowledges that there are hosts of design criteria
16 for mechanical program, quote, this is from his affidavit. The design criteria can range
17 from most sustainable, least capital cost and best counter performance to a host of other
18 criteria which can vary, depending on the size, layout and budget of the project, end
19 quote. And he admits, quote, I am not privy to the original design principles for the
20 HVAC systems for this building, end quote.

21 Despite this, he prepared an alternative layout based on one design criterion alone,
22 minimize the use of space. Now, in a further leap, Landmark West states in its
23 supplemental submission that Ambrosino demonstrates that under this alternative plan,

1 the equipment, quote, can be more efficiently positioned without negatively impacting on
2 its operability. In fact, Mr. Ambrosino's affidavit says nothing of the sort, although he
3 tried to say it today. He says only that his plan maximizing the efficient use of space
4 under one design criterion, as he says, the alternative layout was prepared, quote, as if the
5 design principle was to be a more efficient use of the floor area. That's it.

6 The alternative layout is based on a false premise, that the exclusive design
7 criteria that guides preparation of a mechanical layout is to occupy the minimum amount
8 of space on the floor. Now, that may produce an efficient use of the space. But it does not
9 equate to mechanical efficiency.

10 As Mr. Bienstock states in his affidavit and Mr. Patel will discuss further, there
11 are a host of considerations an engineer must take into account in designing a mechanical
12 floor, including constructability, accessibility, proximity of equipment to the occupied
13 spaces they serve, required separation between systems under code, proximity to exterior
14 walls for air intake and exhaust, etc.

15 In short, the alternative layout for the 17th floor is not an engineering plan based
16 on criteria of the kind outlined by Mr. Bienstock and used by mechanical engineers. It is
17 a cartoon.

18 In his affidavit, Mr. Bienstock describes in detail the systems designed for each of
19 the four interstitial floors, with a detailed explanation of what types of equipment are
20 located on each floor, why they are located on a particular floor, why they are located in a
21 particular location within a floor and the like. The Bienstock affidavit fully refutes the
22 arguments made by Landmark West and Ambrosino that the mechanical layouts at 66th
23 Street are simply random arrangements of equipment made in an attempt to spread it

1 throughout the space.

2 The layouts reflect a carefully considered plan developed and based on a set of
3 engineering criteria and designed to meet the needs of the building. Mr. Patel will
4 illustrate this further by discussing the 18th floor. But all the floors are discussed in detail
5 in Mr. Bienstocks' affidavit.

6 Now, uh, I wanted to address one other issue, uh, which has to do with I think,
7 and the question that the members of the Board may have that somehow, along the way,
8 uh, the number of interstitial mechanical floors was increased from three to four. And as I
9 will explain, after I have another drink of water, there have always been four such floors,
10 15, 17, 18 and 19.

11 Now, next slide, please. Okay. So Landmark West has of course suggested
12 otherwise. Here claiming earlier in the year, on its website that the 15th floor was added
13 as an additional mechanical floor at the last minute. That's what this is getting at. So let's
14 look at what the records show and let's set it straight.

15 Okay. Go back one. Uh, this is the ZD1. These are documents taken from the ZD1
16 for July 26, 2018, at the time foundation approval. Alright. Here are the four floors, 15th
17 floor is here. It is labeled as residential. Okay. And as I'll show you, it is mislabeled as
18 residential. This is an error. But let's go on to the next one. And this is a blowup.
19 Residential, mislabeled. But let's go on.

20 CHAIR PERLMUTTER: Mm-hmm.

21 MR. KARNOVSKY: Here is 15 as shown on the proposed
22 floor area table for the ZD1, 15 building gross, residential zero, okay.

23 CHAIR PERLMUTTER: Mm-hmm.

1 MR. KARNOVSKY: A count for the floor. Next.

2 MR. COSTANZA: Mr. Karnovsky, could you take the, the
3 microphone?

4 CHAIR PERLMUTTER: Yeah, yeah.

5 MR. KARNOVSKY: Oh. Okay, we'll do an Elvis. Okay.

6 CHAIR PERLMUTTER: Is there any way to blow that up?
7 I don't know --

8 MR. KARNOVSKY: We tried, uh, we tried. But it --

9 CHAIR PERLMUTTER: You tried that, okay.

10 MR. KARNOVSKY: Yeah, it is, it's, it's mechanical.

11 CHAIR PERLMUTTER: Okay.

12 MR. KARNOVSKY: We can provide a blowup if you like,
13 but it's correctly identified, properly labeled as mechanical on this table here. And then
14 let's go to the next one, which is the schedule A, as of July, which shows for 15 storm
15 water detention tank, boo, bah, bah, bah, mechanical equipment.

16 CHAIR PERLMUTTER: Mm-hmm.

17 MR. KARNOVSKY: So there is an error in the labeling of
18 the floor on the elevation.

19 CHAIR PERLMUTTER: On the section.

20 MR. KARNOVSKY: The section, sorry. The section.

21 Now, let's turn to the ZD1 as of April 4th, at the time of the PAA approval. Uh,
22 mechanical, mechanical, mechanical, mechanical.

23 CHAIR PERLMUTTER: So it, it really was a --

1 MR. KARNOVSKY: Mechanical --

2 CHAIR PERLMUTTER: -- redistribution of the floor-to-
3 floor heights over the four floors --

4 MR. KARNOVSKY: Of the -- that changed.

5 CHAIR PERLMUTTER: -- that was done. Yeah.

6 MR. KARNOVSKY: We all know that that changed.

7 CHAIR PERLMUTTER: Yeah.

8 MR. KARNOVSKY: But 15 has always been a
9 mechanical floor. There was a mislabeling in the July ZD1, which is shown correctly in
10 the tables, uh, which show that it has no floor area. So I wanted to clarify that, uh, for
11 once and for all.

12 CHAIR PERLMUTTER: So what's on 16?

13 MR. KARNOVSKY: Sixteen is an amenity floor.

14 CHAIR PERLMUTTER: Oh, okay, 16, 17, okay.

15 MR. KARNOVSKY: Yeah. Okay.

16 COMMISSIONER SCIBETTA: Was it the same
17 mechanical plan?

18 MR. KARNOVSKY: Between the --

19 COMMISSIONER SCIBETTA: In, in your first --

20 MR. KARNOVSKY: To my understanding, the
21 mechanicals were the same, yes.

22 COMMISSIONER SCIBETTA: Can we have a
23 submission of the mechanical plans? Or the prior mechanical plans?

1 MR. KARNOVSKY: Well, direct your request to the
2 Chair, please, because, uh, at this point, you know, we have been here since May, and
3 now --

4 CHAIR PERLMUTTER: Yeah.

5 MR. KARNOVSKY: -- we're asking for another set of
6 plans, another review. I --

7 CHAIR PERLMUTTER: Right. I'm not really sure what
8 the relevance is, whether it's the same layout. Why, are we going to start studying
9 mechanical drawings for the other building, you know, for this version? I'm not even sure
10 there were mechanical drawings ready by that time.

11 COMMISSIONER SCIBETTA: But if they weren't, then,
12 uh --

13 CHAIR PERLMUTTER: No, no. But, but the point is are
14 we going to be now comparing whether they put the pump over here or over here because
15 that's what you're saying we need to do.

16 COMMISSIONER CHANDA: But I think more to the
17 point, is that the zoning calculation, the zoning calculation did not count 15th floor as a
18 residential floor. It, it counted as a mechanical floor. And, and the fact that that was
19 corrected in the 19th and more documents and information also is what we should -- we
20 are focusing on and that makes sense. Because that's the most current mechanical
21 drawings which DOB has reviewed.

22 COMMISSIONER SCIBETTA: Right. But I think that --

23 CHAIR PERLMUTTER: Well, maybe not. Maybe it's the

1 same mechanical drawings, like we need to look at the drawing date.

2 COMMISSIONER CHANDA: But it's, but based on
3 DOB's last submission, they have looked at the latest submission, right?

4 CHAIR PERLMUTTER: Mm-hmm.

5 COMMISSIONER CHANDA: So, I, I don't see the
6 relevance of looking at an older one.

7 COMMISSIONER SCIBETTA: We do have a host of
8 experts.

9 COMMISSIONER SHETA: It just verifies the, the
10 alternative approach from the appellant expert indicating that he just followed one
11 criteria, which is efficient usage of floor space.

12 CHAIR PERLMUTTER: So I, so when was this? This was
13 a July, uh, ZR- ZD1 right? The first one?

14 MR. KARNOVSKY: No, this, the first one is July of 2018.

15 CHAIR PERLMUTTER: Okay. July of 2018. So, there is
16 design development drawings on the mechanicals of November 2017. November 2017,
17 they filed with DOB, uh, March of 2018, there was a construction document progress set.
18 It's all -- it's the revision dates that you're seeing on the set of mechanicals that we
19 received, right. So these were in play at the time. Though, you'd be asking to see all the
20 revisions and how the mechanicals might have changed over the time period.

21 COMMISSIONER SCIBETTA: There are experts on this,
22 there are experts who are reviewing whether or not the space is, the, the criteria of how
23 this space is being used. I think it would be helpful to the experts to review what the

1 original plans were.

2 COMMISSIONER CHANDA: But, but what will that get
3 us? I mean it was still a mechanical space and the number of mechanical equipments and
4 everything did not change. The only thing that changed --

5 COMMISSIONER SCIBETTA: We don't know that.

6 CHAIR PERLMUTTER: No, so what I just want to say is
7 the floor plates are the same, right?

8 COMMISSIONER CHANDA: Yeah.

9 COMMISSIONER SCIBETTA: The floor plates are the
10 same.

11 COMMISSIONER CHANDA: The floor plates are the
12 same.

13 CHAIR PERLMUTTER: Number one is the same floor
14 plate.

15 COMMISSIONER CHANDA: Yeah.

16 CHAIR PERLMUTTER: Number two, three, four, it's just
17 a different distribution in ceiling height.

18 COMMISSIONER SCIBETTA: Yeah.

19 CHAIR PERLMUTTER: So, what you're asking -- you
20 are actually suggesting that we would look at where the equip-, no matter what, they
21 designated it as a mechanical floor, right?

22 COMMISSIONER SCIBETTA: Mm-hmm.

23 CHAIR PERLMUTTER: And at some point, filed in

1 whatever I just said, uh, they filed at DOB and at some point, I don't know when DOB
2 ultimately approved the, the actual set. What's the date on this ZD1?

3 MR. KARNOVSKY: Uh, April 4th.

4 CHAIR PERLMUTTER: April 4th of this year?

5 MR. KARNOVSKY: This year, correct.

6 CHAIR PERLMUTTER: Oh, so, the last version of the
7 mechanicals that we have here are from August of 2018.

8 COMMISSIONER SCIBETTA: Right.

9 CHAIR PERLMUTTER: So it predates and that's what --
10 so effectively, we're looking at the mechanical set before the ZD1 changed.

11 COMMISSIONER SCIBETTA: Okay.

12 CHAIR PERLMUTTER: Okay. So.

13 MR. KARNOVSKY: Okay. Uh, uh, let me just close and
14 then Mr. Patel will speak and address some of the points, uh, given over to you --

15 CHAIR PERLMUTTER: Okay.

16 MR. KARNOVSKY: -- but also address some of the
17 points that, uh, Mr. Abrosino made. I think, you know, in particular, uh, he talked about
18 hanging equipment up in the sky. Uh, and why that didn't effect, how there was no
19 reason not to do that, and Mr. Patel will address, uh, that question. Uh, and, uh, there was
20 a particular discussion about the 19th floor. That will be addressed as well. Um, and so
21 we'll go from there.

22 Uh, but to sum up this presentation, what I'd like to say is that at the September
23 17th meeting, uh, the Chair posed the question to be answered as whether the mechanical

1 floor space is appropriately occupied by mechanical equipment necessary to support the
2 building. And in that regard, the Chair asked for the MEP drawings, an explanation,
3 explanation of what is on each floor, and a justification for the number of, of mechanical
4 floors. Uh, and further, the Chair asked whether the amount of mechanical space overall
5 and the number of mechanical floors are typical of a building, uh, of this kind, in this
6 class.

7 Um, we have provided all that information. And the answers to the Chair's
8 questions are decidedly yes. The mechanical floor space is appropriately occupied by
9 mechanical equipment necessary to support the building as best illustrated on the
10 composites. And both the amount of the floor space and the number of floors are
11 comparable to found, what's found in other buildings.

12 The Chair also rightly pointed out yesterday that Landmark West's objection has
13 always been to the building height, but that none of these arguments with respect to the
14 amount of the mechanical deductions or the floors being improper in some way have
15 anything to do with height. Um, and the Board decided in September and October, that
16 the floor-to-ceiling heights of the mechanical spaces are unregulated at that time. They
17 are regulated today. And their contribution towards the building height is not affected by
18 the number of mechanical floors.

19 The professionals have stated in their affidavits that the mechanicals for this
20 building were developed based on bona fide engineering criteria, and multiple criteria,
21 and not a single criterion. And were reviewed and approved in the normal course. The
22 claim that somehow a mechanical floor was added at the last minute is incorrect, as I've
23 just shown you, and in any event, there's no plausible reason why that would be done,

1 since it wouldn't achieve an advantage with respect to height, given the fact that the voids
2 were lawful.

3 The Board should dismiss the proceeding, and if you do not dismiss the
4 proceeding, you should reject Landmark West's arguments, and I thank you.

5 CHAIR PERLMUTTER: Thank you. Any other questions
6 for Mr. Karnovsky? Okay. Great. You wanted to bring another expert.

7 MR. RESSNER: Madam Chair?

8 CHAIR PERLMUTTER: Oh, the fire department again.

9 MR. COSTANZA: Chief, just please restate your name.

10 MR. RESSNER: Battalion Chief Ressler for the fire
11 department. Madam Chair, uh, the approval of the building was based in part on
12 receiving a letter of no objection from the fire department after review of their plans. So
13 since I've been seeing that there's been a number of revisions that have taken place and
14 I'm not sure when they were relative to our letter, we'd ask that the, uh, the owner or the
15 applicant submit a full set of plans to us electronically, just so we make sure that the
16 accommodations that were made for fire department operations have, have remained in
17 that base plan.

18 CHAIR PERLMUTTER: Mm-hmm. Okay.

19 MR. RESSNER: Thank you.

20 CHAIR PERLMUTTER: I, I actually think if I'm looking,
21 that the drawings that we have predate your agreement about the modification in the
22 floor-to-floor heights. Maybe they're -- the drawings that we have, the most recent is
23 dated 2018.

1 MR. RESSNER: Okay.

2 CHAIR PERLMUTTER: And my understanding, this

3 happened 2019, right --

4 MR. RESSNER: Right. Well, we would still like to have --

5 CHAIR PERLMUTTER: -- relative to the mechanical

6 drawings. Okay.

7 MR. RESSNER: -- the set that's approved by the

8 Department of Buildings in our records to make sure that we have the accommodations

9 that were agreed to.

10 CHAIR PERLMUTTER: Okay.

11 MR. PATEL: Good afternoon, commissioners. My name is

12 Vivek Patel, and I'm an engineer with ICOR Associates, the MEP engineer who desi-

13 engineering firm for this project. I'm the senior mechanical engineer and project manager

14 for the MEP design of 36 West 66th Street project. My colleague Mr. Igor Bienstock, the

15 engineer of record for the project could not attend today's hearing he's out of -- out, uh,

16 he is traveling overseas.

17 So, my primary goal today is to describe how the mechanical floors at 36 West

18 66th were developed and designed. This process was typical of the way in my experience

19 mechanical programs are designed in residential buildings in New York City. I would

20 like to cover four items. First, I'll describe in general terms the process we went through

21 to design mechanical floors at 36 West 66th, 66th Street and the factors that were

22 considered. Second, to help illustrate this process, I'll discuss the 18th floor as an

23 example, and described how we prepared the layout for that floor. This process was

1 applied to each of the mechanical floors. Third, I would like to speak to diagrams that
2 Landmark West entered showing an alternate layout of 17th floor, which are inaccurate
3 and misleading. I'll describe the inaccuracies and omissions and also explain how like the
4 18th floor, the 17th floor was designed based on number of parameters which are ignored
5 in these diagrams. Fourth and last, I would like to respond to a question brought up in the
6 review session yesterday about the height of ductwork and piping.

7 So, to begin with, I would say there is no standard mechanical program for any
8 building. Each building has individually tailored mechanical, electrical, fire protection
9 and plumbing system the engineer must design based on the pro- program of the building,
10 architectural elements and the constraints, the end use equipment, energy efficiency
11 concentration and other goals and standards.

12 The engineer identifies the array of equipment to implement this program. The
13 engineer then establishes a schematic design to locate the equipment throughout the
14 building and within each floor, taking into account a host of factors. Typically, in the
15 design process of the new building, such as this one, the mechanical engineer coordinates
16 with the architect and other design consultants to identify the needs of the building, type
17 of system that'll be provided, loads imposed and capacity requirements.

18 In the early schematic level of design, the engineer will size the equipment that
19 will be necessary to satisfy this building demands and will begin to locate the equipment
20 within the stack, or MERs, mechanical equipment rooms, sorry, in a way that is efficient.
21 A number of considerations come into play when, excuse me, come into play when
22 determining the placement of specific equipment, such as proximity to the occupied
23 space, the area it serves, optimizing distribution for manageable shaft sizing and location,

1 limiting operating pressures, uh, wattage drop on the electrical system as much as
2 possible, as well as constructive ready and cost concentration. The engineer must also
3 consider the future operation and serviceability of the system and equipment once a
4 building is complete.

5 Within each mechanical floor, the engineer designs a floor layout that can be
6 effectively and affordably constructed by the contractors. Certain systems are
7 requirements under building code to isolated or separated from other systems. Certain
8 pieces of equipment require proximity to exterior walls for connection to the louvers for
9 air intake and exhaust requirements.

10 Other factor is that placing equipment near to the corresponding risers that they
11 connect to decrease the amount of horizontal distribution, which limits the cost and
12 spatial requirement. And each floor needs to provide space for personnel to safely move
13 around and access the equipment for maintenance and replacement purpose.

14 So, the process for designing the mechanical floors at 36 West 66th Street, was no
15 different from any other project I have worked on. Based on the desired mechanical
16 program, and with the systems and parameters, we developed schematics aimed at
17 satisfying the building demands while optimizing operational and energy efficiency and
18 creating a safe, accessible and constructible floor.

19 To illustrate how an individual floor plan is created with attention to these
20 multiple factors, I would like to quickly walk through the design program of one of the
21 mechanical floors at 36 West 66th Street. I have taken an example of the 18th floor.

22 Mr. Constanza: Take the microphone.

23 MR. PATEL: So basically 18th floor is our main chiller

1 plant, which houses all the primary cooling, primary and secondary cooling equipment,
2 which includes pumps, primary pumps, secondary pumps, all the heat exchangers, water
3 cooler chillers that support the entire cooling demand of the building. And the reason we
4 decided to place this cooling equi- this cooling plant on this floor is because it is closely,
5 uh, to our residential floor, which is the maximum cooling demand of the building. And
6 from here, it distributes to the other systems, uh, where it requires the cooling as well.
7 And if you can see, this is a composite drawing, this is chiller banks, these are a set of
8 pri- secondary pumps, plate and frame heat exchanger, there are plate and frame heat
9 exchangers here for the main building isolation, primary condenser water pumps are
10 located here and overall distribution, piping distribution, ductwork distribution, sprinkler
11 and plumbing distribution on this floor. So basically, this is what I described. I was going
12 to go through the testimony, but I just explained it through this diagram.

13 CHAIR PERLMUTTER: Can you explain why you have
14 that little section A there that's -- gives the ceiling height for fire department access? Is
15 that the access? Is that the -- that's lower than the actual ceiling height, right, in this
16 space? That little diagram on the right, section A.

17 MR. PATEL: This one?

18 CHAIR PERLMUTTER: Yeah.

19 MR. PATEL: This is --

20 CHAIR PERLMUTTER: It's indicating the floor-to-
21 ceiling height for --

22 MR. PATEL: This is slab-to-slab height.

23 CHAIR PERLMUTTER: That's slab-to-slab height?

1 MR. PATEL: Yes.

2 CHAIR PERLMUTTER: It's like 30 feet? What does it
3 say?

4 MR. PATEL: No, it reads 16.

5 CHAIR PERLMUTTER: Sixteen feet? Slab-to-slab just
6 where the fire department access is?

7 MR. PATEL: No, these are the floor levels.

8 CHAIR PERLMUTTER: So the 18th floor is a 16 foot
9 high floor? Slab-to-slab? Really?

10 MR. KARNOVSKY: Sixteen.

11 CHAIR PERLMUTTER: Hmm. Confusing. Okay. Go
12 ahead.

13 Commissioner Sheta: Top slab, top slab is say 16 feet.

14 CHAIR PERLMUTTER: Yeah, but --

15 COMMISSIONER SCIBETTA: But that can't be.

16 CHAIR PERLMUTTER: That's --

17 COMMISSIONER SCIBETTA: I don't seem, it doesn't
18 seem to coincide with --

19 CHAIR PERLMUTTER: It may not matter to this
20 drawing here, but I don't understand it, actually. Uh, yeah, maybe someone can probably
21 explain that.

22 MR. RUSSO: This is the FDNY access.

23 CHAIR PERLMUTTER: Yeah, yeah, so that's what I'm

1 trying to understand. So that's just the slab-to-slab height in the corridor? For some
2 reason.

3 COMMISSIONER SCIBETTA: Is the corridor lower than
4 --

5 CHAIR PERLMUTTER: Yeah, so the corridor must be
6 lower. If you, if you made a section through, you'd have multiple slab-to-slab heights I
7 guess, even though it says 16th floor. The gentleman who just seems to be the one who
8 actually did the drawing? No?

9 MR. KARNOVSKY: Do you want him to clarify?

10 CHAIR PERLMUTTER: Yeah, please. Yeah.

11 MR. COSTANZA: Mr. Patel? Sign right there. I didn't get
12 your name. Just --

13 MR. RUSSO: Good afternoon, everybody. My name is
14 Luigi Russo. I'm the architect of record for project.

15 CHAIR PERLMUTTER: Oh, okay.

16 MR. RUSSO: How are you? Uh, the 16 foot is really the
17 floor-to-floor to the actual FDNY access. So it's an interstitial floor that basically
18 requires access. So it's certainly not a true section of the overall floor. The plan, if I may
19 point --

20 CHAIR PERLMUTTER: Take the --

21 MR. RUSSO: The FDN- the FDNY floor above basically
22 incorporates two elevators, the stairs, the service elevator and the actual corridor above.
23 So this section reflects really a section at this point.

1 CHAIR PERLMUTTER: Oh, okay. And so above, so there
2 are several floors above --

3 MR. RUSSO: Several floors, yeah.

4 CHAIR PERLMUTTER: -- that?

5 MR. RUSSO: In, in the overall section, I think, do we have
6 the overall section? We can show that. Even the ZD1, that's fine too. Yeah.

7 CHAIR PERLMUTTER: Yeah, that's what it is.

8 MR. RUSSO: Right. Exactly. So, these are 16 foot
9 intervals.

10 CHAIR PERLMUTTER: Mm-hmm. I see.

11 MR. RUSSO: That, that section is taken right there.

12 CHAIR PERLMUTTER: Okay. That was the discussion
13 you had with the fire department about --

14 MR. RUSSO: Indeed.

15 CHAIR PERLMUTTER: -- access. Okay. I get it. Alright.
16 Thank you very much.

17 MR. RUSSO: Come there?

18 MR. COSTANZA: Yes, please.

19 COMMISSIONER SCIBETTA: So there, there are four
20 sections and two?

21 CHAIR PERLMUTTER: So there are four slabs within the
22 full height of the mechanical floor. So fire department, because we learned that the fire
23 department wanted more easier access as you proceed up the height of the space. Right.

1 Okay, now I get it.

2 MR. PATEL: So, I'll just explain in detail the other
3 layouts, the mechanical room, mechanical room number one on the east portion of the
4 floor houses 18 water cooler chillers as well as primary standby chill water and
5 condensed water pump. They are large and associated with the chillers and the pumps,
6 the large header pipes for the system as well as associated air separators and accessories,
7 expansion tanks, etc.

8 This, this mechanical room also houses BFDs, air conditioning units and fan are
9 in the room and also located in this mechanical room. Together, the systems in this room
10 circulates secondary condensive water to the biggest loops throughout the building as
11 well as produce and chill, circulate chilled water for the tower residential units above.
12 The system is located here, as I mentioned, because of the floor's proximity to the
13 residential floor above and limits the pipe, dry runs, risers, etc.

14 Mechanical room number two, which is in the middle, middle of the floor area
15 here. It contains primary plate and heat frame exchangers. So basically these heat
16 exchangers are located on this level to provide necessary pressure break from the primary
17 condenser water system and the secondary distribution system. They are located in this
18 location on the floor as a midpoint between the primary condenser water pumps and
19 secondary condenser water pumps, thereby minimizing piping distribution.

20 So basically, this is our primary condenser water pump system. It goes through
21 here, heat exchanges, comes back, returns back to the tower, and from here, the
22 secondary distribution happens. And these are the pumps that distribute water through the
23 chillers as well as the entire building.

1 Mechanical room number three, on the western portion, as I just explained, these
2 are the primary pumps, uh, for the condenser water system. The electrical room on the
3 northern portion, uh, of the floor, houses transformers, electrical distribution panel and
4 AC unit which serves, which is serving the electrical room. This room provides power to
5 all the mechanical equipment on this floor. So in this way, basically what I was trying to
6 explain that this is the way we lay out the system in the most efficient way then
7 coordinate of the structural engineer and that's how we come up with this most effective
8 distribution for the equipment layout.

9 And Landmark West's argument ignores all this factors in their presentation.
10 Now, I would like to comment on the submission by Landmark West. Landmark West
11 submitted an alternate layout of the 17th floor. So to respond to that submission, I will
12 shift focus from 18th floor to the 17th floor. Landmark West submitted the diagram
13 shown here, which is --

14 COMMISSIONER SHETA: Can you, can you address the
15 18th floor as well, because I see that they moved some equipment around. Can you, like,
16 explain it to us briefly?

17 MR. PATEL: Sure.

18 COMMISSIONER SHETA: Why do you think that the
19 kind of redistribution that they've done is, is not appropriate.

20 MR. PATEL: Right. So basically, with every --

21 COMMISSIONER CHANDA: Well, did you have a
22 chance to review their submission? The complete submission for all the floors?

23 MR. PATEL: Yes.

1 COMMISSIONER SCIBETTA: If you want a copy of it.

2 MR. PATEL: Yes. So basically, the way this whole floor is
3 laid out, first of all, there's a structural constraint. We don't want to park all the
4 equipment on one side of the floor area even though we understand that this is a new
5 building but then they would have to reinforce it further to support all these heavy pieces
6 of equipment. So that's one of the considerations. Now, second consideration is all these
7 pieces of equipment have piping connection to that, right. So it's not just putting
8 everything in front of each other. It requires access, proper movement around it for
9 maintenance purpose, so that, those are the factors that we considered. And on top of that,
10 there's a distribution that comes out of this equipment which goes above the, to the floors
11 above and equipments are located below.

12 COMMISSIONER SHETA: So the structural, the
13 structural, the structure perspective was in play.

14 MR. PATEL: Exactly.

15 COMMISSIONER SHETA: From the beginning?

16 MR. PATEL: So we -- once we start, once we started the
17 schematic progress, we start coordinating with the architect, okay, this is how we're
18 going to start, and there are structural implications. Not only the floor, uh, equipment
19 concentration on one side of the floor, but there are certain components which all these
20 are shear walls. And unlike the other standard walls, it's tough to penetrate the shear wall
21 in certain location. So by distributing the equipment, we can reduce the amount of
22 penetration to the shear from one side of the room and distribute throughout the floor.

23 COMMISSIONER SHETA: Have you as a mechanical

1 engineer conveyed this to the structural engineer --

2 MR. PATEL: Yes.

3 COMMISSIONER SHETA: -- and he said no, we don't
4 like that?

5 MR. PATEL: Yeah, so we, this is not only for the entire --
6 all this mechanical, but the entire building, all other mechanical floors we do the same
7 way. We provide our equipment weight and then what we do is we prepare composite
8 drawing showing all the distribution of ductwork, mechanical piping, sprinkler,
9 plumbing, everything. And then they will tell us whether, at certain location, whether we
10 can penetrate those areas or not. If they allow, then they will tell us okay, you have
11 certain amount of opening that you can penetrate or read out your distribution at another
12 location.

13 COMMISSIONER SHETA: And you're saying you've
14 communicated this --

15 MR. PATEL: Yes, yes.

16 COMMISSIONER SHETA: -- to the structural?

17 MR. PATEL: Yes.

18 COMMISSIONER SHETA: And he got back to you --

19 MR. PATEL: Yes.

20 COMMISSIONER SHETA: -- saying it's not desirable?

21 MR. PATEL: Yes.

22 COMMISSIONER SHETA: Is there any concern with the,
23 like, hydraulic efficiency of the system if you redistribute the equipment the way that

1 they've done in their submission? I'm talking about appellant of course.

2 MR. PATEL: I'm sorry, what type of efficiency?

3 COMMISSIONER SHETA: If, if --

4 CHAIR PERLMUTTER: Can you speak into the mic
5 please? Directly into the mic.

6 COMMISSIONER SHETA: Yeah, sure, sure. Is there any
7 other concern, other than the structural concern when you redistribute the equipment --

8 MR. PATEL: Mm-hmm.

9 COMMISSIONER SHETA: -- the way the appellant --

10 MR. PATEL: You mean the way we have arranged?

11 COMMISSIONER SHETA: Yes, the way the appellant
12 has done them. Is there --

13 CHAIR PERLMUTTER: The way that's recommended,
14 Landmark West is recommending?

15 COMMISSIONER SHETA: Mm-hmm. Yes. Is there like
16 any other concern, other than the structural?

17 MR. PATEL: Oh, yeah.

18 COMMISSIONER SHETA: Was there any mechanical?

19 MR. PATEL: Right. Absolutely. So --

20 COMMISSIONER SHETA: Hydraulic?

21 MR. PATEL: -- basically, as I was trying to explain that all
22 these pieces have piping connected to them. It's not that we have a, a square or
23 rectangular piece on the floor and then we come drop the piping on it. There are certain

1 constructability, with the, the elbows, bands, valves, sensors, gauges, there are lot of
2 other factors that go into when a piece of equipment is connected to -- oh, sorry, piping is
3 connected to a piece of equipment. So if you place everything in front of each other the
4 way it was demonstrated, by the time we do the distribution, just the mechanical piping
5 distribution, then comes ductwork, plumbing. Now we are running out of space. Not only
6 elevation wise but horizontally as well. So it's better to keep everything cleaner this way,
7 it's accessible, easy to maintain and structurally, it also helps.

8 CHAIR PERLMUTTER: Okay, continue.

9 MR. PATEL: So do we want to go on --

10 CHAIR PERLMUTTER: I mean I think we get the gist,
11 right?

12 COMMISSIONER SCIBETTA: Yeah.

13 CHAIR PERLMUTTER: But is there something specific
14 you want to add, yeah.

15 MR. PATEL: I mean those were the items.

16 CHAIR PERLMUTTER: Okay.

17 MR. PATEL: Distribution, efficient distribution.

18 CHAIR PERLMUTTER: Mm-hmm.

19 MR. PATEL: Constructability and maintenance, and again,
20 it's not, it's not a good practice to put everything, jam the equipment together because it's
21 a big concern about moving, replacing.

22 CHAIR PERLMUTTER: Have you personally ever gone
23 to DOB to, to show them, to work on the mechanicals with them?

1 MR. PATEL: No, we don't interact with DOB directly.

2 CHAIR PERLMUTTER: You don't?

3 MR. PATEL: We file our drawings through expeditor.

4 CHAIR PERLMUTTER: Through expeditor, so, okay. Do
5 you know if what, your expeditor has ever, sort of called you up while they're at DOB in
6 the middle of a meeting and said, and asked a question about, you know, whether you can
7 justify the layout or anything like that?

8 MR. PATEL: No. Typically, we get comments or
9 objections back through the expeditor. They're like DOB has reviewed your set of
10 documents and here is a list of comments. So that's what they review.

11 CHAIR PERLMUTTER: Do you have -- like, can you
12 give an example of the --

13 MR. PATEL: Yeah.

14 CHAIR PERLMUTTER: -- the type of comment you
15 might get on, on the mechanicals?

16 MR. PATEL: Yes, certainly. So one of the examples
17 would be provide a break glass station, uh, at the boiler entry, uh, provide smoke perch,
18 or your documents are missing smoke perch, or your documents are missing or confront
19 where there are sprinkler coverages required in a certain area or not. So those are basic
20 examples.

21 CHAIR PERLMUTTER: So then --

22 MR. PATEL: Whether your louver, your exhaust and
23 ventilation, intake louvers are a certain code required separation between them or not. So

1 this would be some examples.

2 CHAIR PERLMUTTER: So would you say what they're
3 doing is they're looking at the mechanical codes and sprinkler codes and checking that
4 you comply?

5 MR. PATEL: Yes. Every one of the review, right.

6 CHAIR PERLMUTTER: So, so they're not looking at the
7 kind of my -- what I'm -- this is a question.

8 MR. PATEL: Mm-hmm.

9 CHAIR PERLMUTTER: Are they looking at how you
10 design the system in terms of your design criteria or they're looking to see whether your
11 system just complies with the mechanical, plumbing, sprinkler code?

12 MR. PATEL: Right. What, most important thing is code
13 compliance as well. But then as an example, you see here just large floor with just one
14 piece of equipment and they will obviously comment on that. But we can see here, it's
15 not one piece of equipment, it's several pieces of equipment, including the distribution
16 and everything.

17 CHAIR PERLMUTTER: Have you ever had them
18 comment that you know of? That, what's going on here, you only have one piece of
19 equipment?

20 MR. PATEL: No.

21 CHAIR PERLMUTTER: No?

22 MR. PATEL: Not that I know of.

23 CHAIR PERLMUTTER: Okay. Alright. Thank you very

1 much.

2 COMMISSIONER SHETA: If, if I ask you what is the
3 total weight of the equipment on, on let's say the 18th floor?

4 MR. PATEL: It would be very tough to give a lump
5 amount because --

6 COMMISSIONER SHETA: Even roughly?

7 MR. PATEL: As an example, a boiler alone could be
8 10,000 pounds, 5,000 pounds, depending, just one piece of boiler.

9 CHAIR PERLMUTTER: No, I found one that's 4,000
10 pounds, it says right here.

11 MR. PATEL: Right. So as I said, 5,000, 10,000 depending
12 on --

13 CHAIR PERLMUTTER: Yeah, yeah.

14 MR. PATEL: -- what manufacturer, what capacity.

15 CHAIR PERLMUTTER: Right.

16 MR. PATEL: Same thing goes with pumps, expansion
17 tanks.

18 COMMISSIONER SHETA: You didn't, you didn't answer
19 the question about the height of the ductwork.

20 MR. PATEL: I'm sorry, say that again.

21 CHAIR PERLMUTTER: Height of the ductwork.

22 COMMISSIONER SHETA: You didn't ans-, the height of
23 the ductwork.

1 MR. PATEL: What?

2 CHAIR PERLMUTTER: You were going to go over the
3 height of the ductwork.

4 MR. PATEL: Yeah, so basically, we don't establish, we
5 don't indicate elevation of the ductwork or the piping system on our drawing. However,
6 it's very important to maintain ductwork at certain -- ductwork and piping in certain
7 elevation, which is clearing the path of egress, not coinciding with other, conflicting with
8 other piece of equipment at certain level, which maintains the required egress path, plus
9 it's, uh, all the accessories, like valves, if there's insulation that needs to be -- it's easily
10 accessible. So, and this whole process goes through the whole construction document
11 process goes through shop drawing, when contractors get together, they prepare all the
12 shop drawings and they start setting up the elevations of all the distribution. Then they
13 get --

14 COMMISSIONER SHETA: I believe you misunderstood
15 me. I'm not talking about from the floor.

16 MR. PATEL: Mm-hmm.

17 COMMISSIONER SHETA: To the --

18 CHAIR PERLMUTTER: Oh, you're not?

19 COMMISSIONER SHETA: -- invert of the pipe. I'm
20 talking about the height of the system itself. The, the duct system.

21 CHAIR PERLMUTTER: That's what he's talking about.
22 He's talking about the heights of the sys- of --

23 COMMISSIONER SHETA: No, no, the size of the

1 ductwork itself.

2 CHAIR PERLMUTTER: Oh.

3 COMMISSIONER SHETA: Not from the floor --

4 MR. PATEL: Mm-hmm.

5 COMMISSIONER SHETA: -- to the invert.

6 MR. PATEL: Mm-hmm.

7 COMMISSIONER SHETA: The pipe size itself.

8 MR. PATEL: Okay.

9 COMMISSIONER SHETA: What is the maximum pipe
10 size on that floor?

11 MR. PATEL: Oh,okay--

12 CHAIR PERLMUTTER: Oh.

13 MR. PATEL: This one, uh, 12-inch is the, on 18th floor,
14 12 inch is the, my largest pipe size. Accounting for insulation, it will be, uh, 18 inches.

15 COMMISSIONER SHETA: In the building, what is the,
16 like the largest?

17 COMMISSIONER SHETA: Again, I'm talking about the
18 duct, the circulation pipes.

19 MR. PATEL: The pipe, as I said, the largest with
20 insulation will be, uh, 16 to 18 inches. And the largest ductwork, there are bigger sizes,
21 but there are sizes from 36-inch wide by 24-inch deep. The small perch shaft alone,
22 which is the fan on the 19th floor, that is the larger. Probably that is like 60 by 48.

23 COMMISSIONER SHETA: No, I'm talking about the

1 horizontal piping.

2 MR. PATEL: Horizontal, so 36 by 24.

3 COMMISSIONER SHETA: So it's fair to say two feet is,
4 is like the maximum?

5 MR. PATEL: Two feet drop.

6 COMMISSIONER SHETA: Thank you.

7 CHAIR PERLMUTTER: Mm-hmm. And I think in, in
8 terms of what DOB reviews, I think it's important to remember that all this is figured out
9 more in detail on the shop drawing level, which DOB never sees, right?

10 MR. PATEL: Right, yeah.

11 CHAIR PERLMUTTER: So, so this is still schematic until
12 they actually draw it up in shop drawings.

13 MR. PATEL: Right. So most of the accessories like valves
14 and certain accessories --

15 CHAIR PERLMUTTER: Mm-hmm.

16 MR. PATEL: -- are not indicated on design drawings.
17 Once they prepare the shop drawings, then we start looking at all those details.

18 COMMISSIONER SHETA: What is the tallest height of,
19 of one of these equipments? The tallest equipment in this is, is how tall?

20 MR. PATEL: Uh, in this particular boiler, uh is the tallest
21 one. It's roughly 72 or 78 inches high. And then on the 19th, on the other floor, the air
22 handling units, uh, they are even taller than that.

23 COMMISSIONER SHETA: Okay.

1 CHAIR PERLMUTTER: Yeah. So, this same air
2 conditioning that they spec'ed is 85 inches high on the 18th floor.

3 MR. PATEL: Eighteen?

4 CHAIR PERLMUTTER: Yes.

5 COMMISSIONER SHETA: So you could say duct plus
6 equipment is roughly 12 feet?

7 MR. PATEL: Roughly 12 feet but again, simply if it's a
8 piece of equipment and ductwork, yes, 12 feet. But now we are going through other
9 distribution. Now we have piping and there, there are situations where we are crossing
10 piping with the ductwork. There's an example here. This is a boiler flume, from the boiler
11 going to the shaft here, and we can see it's crossing the pipe, it's crossing the ductwork
12 here. And by the time you go through all those crossovers, the height actually is much
13 more there.

14 CHAIR PERLMUTTER: Mm-hmm. Plus the pipes have to
15 take a certain slope, right?

16 MR. PATEL: Yes, if there are gravity fed pipes, then it has
17 to be at a certain pitch from starting point to where it's getting discharged.

18 COMMISSIONER SHETA: Is it better to put the duct
19 higher or lower? My understanding is the lower the duct -- the closer the ductwork to the
20 equipment is, the less pipe length and the less hydraulic losses.

21 MR. PATEL: Absolutely. So, it's hard --

22 COMMISSIONER SHETA: Is that --

23 MR. PATEL: Yeah, so it's not practical to have let's say

1 you, in our case, if you have 40 feet tall mechanical room as an example. It's not practical
2 to go up at that level, that high and then go distribute and if you are going down. It makes
3 sense to keep everything at a lower level, or reachable level and let's say if there is an
4 insulation which is damaged, if there's a damper which needs to be accessed, it's easy for
5 somebody to get on a ladder and easily access, uh, those services.

6 COMMISSIONER SHETA: Thank you.

7 CHAIR PERLMUTTER: Okay. Thank you very much,
8 very helpful.

9 MR. PATEL: Do I continue?

10 CHAIR PERLMUTTER: Uh, I think we, we got the gist
11 unless there's something -- a different subject that you wanted to go into.

12 MR. PATEL: Um, I just wanted to go through just the
13 floors.

14 CHAIR PERLMUTTER: No, that -- I think we, I think
15 we've got the general concept, right.

16 MR. PATEL: Okay.

17 CHAIR PERLMUTTER: Is everybody okay with that?

18 COMMISSIONER SCIBETTA: Yeah.

19 CHAIR PERLMUTTER: Because it's already 12:30 and
20 we have, uh, 30 more cases I think. Uh, okay, I -- Mr. Karnovsky, did you have other --

21 MR. KARNOVSKY: No.

22 CHAIR PERLMUTTER: -- things that you wanted to add?

23 I do have a question for Mr. Parley, one short question if he's still here.

1 MR. KARNOVSKY: For Mr. Parley?

2 CHAIR PERLMUTTER: Yeah.

3 MR. PARLEY: Good afternoon, I'm Michael Parley.

4 CHAIR PERLMUTTER: Hi, thank you for coming. I have
5 a, a kind of question and a half for you. The first is have you ever had to go to DOB to
6 talk about the mechanical spaces being not -- being not counted as zoning floor area to
7 argue on behalf of a client? That you remember.

8 MR. PARLEY: No, but let me, uh, it might prove
9 instructive for me to tell you how the, that draft bulletin started. The, the first meeting
10 that we had with the Department of Buildings about the draft bulletin, they said the
11 necessity for it was that there were problematic practitioners who were doing really
12 bizarre things, uh, and Deputy Commissioner Fariello actually said in Brooklyn, where
13 they would put a heat pump in the corner of a room, which would be a bedroom that had
14 a closet and there was a, a toilet right -- a bathroom right outside, and they would call the
15 whole room mechanical. This kind of abuse was the kind of thing that they needed to, uh,
16 address and in some way give their examiners guidelines so that they didn't have that
17 kind of egregious, uh, uh, evasions of the law. But for, generally for regular, more
18 modest, uh, uh, clearly, uh, are clearly acceptable mechanical spaces, we've never had a
19 question about it.

20 CHAIR PERLMUTTER: So the next question is you've
21 already been asked this by DOB, but I'm just, you know, you've heard all of this
22 discussion and you hear all the angst on the part of the community about mechanical
23 floors. Do, do you have any suggestions that -- you don't have to give us right now, but

1 do you have suggestions for how, uh, DOB might set up some kind of criteria that makes
2 it easier for practitioners to know what's a mechanical space versus what's not a
3 mechanical space without listing all the equipment? Have you --

4 MR. PARLEY: No, not --

5 CHAIR PERLMUTTER: No?

6 MR. PARLEY: The, when the Department bulletin was,
7 the last draft and that was dropped, I was under the impression that the industry and the
8 Department were not too far apart --

9 CHAIR PERLMUTTER: Oh.

10 MR. PARLEY: -- in the list and the stumbling block was
11 the amount of space that could be used by equipment, the latter part of the DOB bulletin
12 which addresses how much can be deducted, the 90 percent, that the industry was
13 pushing back very hard because they still felt it was extraordinarily inadequate.

14 CHAIR PERLMUTTER: Oh.

15 MR. PARLEY: The front -- the, the former part of the, of
16 the list where specific equipment was listed was gone over by industry experts and the
17 architects and, uh, it had been changed over time and was gaining some very good
18 acceptance as a list that could be worked with and could prove useful.

19 CHAIR PERLMUTTER: Okay. Thank you very much. I
20 appreciate it. Any other questions for Mr. Parley? No.

21 COMMISSIONER SCIBETTA: Thank you.

22 MR. PARLEY: Thank you.

23 CHAIR PERLMUTTER: Okay. Thank you very much.

1 Okay. I think we're moving on to the public. Is anyone here --

2 MR. COSTANZA: Elected officials?

3 CHAIR PERLMUTTER: Electeds, electeds to speak? Yes,
4 please.

5 MR. BRANDER: We come up there?

6 CHAIR PERLMUTTER: Yeah, so please state your name,
7 and eventually, you'll sign in with Mr. Costanza in the corner.

8 MR. COSTANZA: Yeah, so please, for everyone, uh,
9 you're, you're with the elected official?

10 MR. BRANDER: Yes, I'm with Richard Gottfried.

11 MR. COSTANZA: Okay. But for everyone else, just when
12 you come up, I will set a timer for three minutes, when you're done with your testimony,
13 please come to me so you can print your name. Thank you. You may begin.

14 MR. BRANDER: Okay. Hi, my name is Richard Brander
15 and I'm policy associate for Assembly Member Richard Gottfried, who is sorry he won't
16 be able to attend today. He's at a conference out of town. But I'm here, and we're going
17 to submit written testimony later. And, uh, basically, if you know Assemblyman
18 Gottfried's district, the 75th District, includes many, many very tall, very dense
19 buildings. He represents the Upper West Side, Hell's Kitchen, Chelsea, the Midtown
20 area, and, uh, it's a pressing concern to use over here. And basically, we agree -- I think
21 we all agree that buildings should have just enough space exempted from their FAR for
22 mechanical, for, uh, real mechanical equipment.

23 And what we're hearing today is that a lot of this space, a lot of the FAR that's

1 exempted, is in excess of it. And we find Landmark West's argument largely convincing,
2 uh, and, uh, we feel that, uh, it's of concern to us because not only do we want in this one
3 case to prevent having a huge building casting all sorts of shadows into Central Park, but
4 we're afraid of establishing a precedent without any sort of requirements as to how you
5 define excess space over here, that we may be risking to have a whole bunch of super
6 dense buildings in the future because of this exemption.

7 So basically, that's our argument. We're trying to protect not only Central Park
8 but the whole future of the streetscape in our district and in other districts throughout the
9 city. So that's under three minutes.

10 CHAIR PERLMUTTER: Thank you very much. Next
11 speaker please.

12 MR. COSTANZA: Print your name here, please.

13 CHAIR PERLMUTTER: So, if, if there are a lot of
14 speakers, please stand ready to speak so we can save some time and you're --

15 MR. COSTANZA: Thank you.

16 CHAIR PERLMUTTER: -- you're not an elected official
17 rep are you?

18 MS. CHAPARRO: I am.

19 CHAIR PERLMUTTER: You are?

20 MS. CHAPARRO: Yes.

21 CHAIR PERLMUTTER: Okay.

22 MS. CHAPARRO: Good afternoon, Chair Perlmutter and
23 commissioners. My name is Lizette Chaparro and I'm an urban --

1 MR. COSTANZA: No, [unintelligible] [02:36:29].

2 CHAIR PERLMUTTER: Sh, sh, Sh.

3 MS. CHAPARRO: And I'm an urban planner from
4 Manhattan Borough President Gale Brewer and I'm here to deliver a statement on her
5 behalf regarding 36 West 66th Street.

6 When the developer filed plans for the 775-foot building, a primary issue became
7 the abuse of the mechanical floor deductions that he was claiming. Neighbors, advocates
8 and elected officials pointed out that the floors were excessively tall and had no practical
9 or safety justification. In fact, the DOB issued a notice of its intent to revoke the
10 building's permit based on the concerns, uh, regarding their access to these excessively
11 tall mechanical floors.

12 The DOB's concerns were addressed by the developer, who allowed -- who was
13 allowed to proceed with construction and eventually, the question of whether the
14 mechanical floors were impermissibly tall was dismissed by this Board. However, at the
15 September 17, 2019 hearing, this Board decided to reopen the issue of the mechanical
16 floors, this time to argue whether the lateral use of the floors is justified.

17 Now this Board is faced with a more nuanced question, whether or not the
18 deducted floor area is truly being used for mechanical purposes. I believe that the
19 analysis presented here today demonstrates that this is not the case. Uh, the four floors
20 analyzed by the MEP engineer have on average 23 percent of their floor area dedicated to
21 mechanical uses. This figure takes into account not only the mechanical equipment, but
22 also the necessary clearances that each piece of equipment requires for operational and
23 safety reasons. The developer simply cannot be allowed to deduct these entire floors from

1 its FAR calculation when such a significant portion is not being utilized.

2 What we are seeing once again is the use of a loophole that serves to boost the
3 building's height beyond what is allowed by our city's zoning and building code
4 regulations. These mechanical floors are not being occupied by their purported use. They
5 are more than half filler space that will go unused.

6 To permit this development to move forward as proposed sends a dangerous
7 message to the develop- to other developers who will surely seek similarly unjustified
8 mechanical deductions for their buildings. I urge you to require that the floor area on
9 these mechanical floors be counted toward, uh, the allowed height of the building only if
10 they are fully, uh, used for mechanical space. Thank you for your time and consideration.

11 CHAIR PERLMUTTER: Thank you.

12 COMMISSIONER SCIBETTA: Thank you.

13 MR. COSTANZA: Yeah, just print your name, please.

14 MR. DILLER: I guess it's now good afternoon, members
15 of the commission.

16 CHAIR PERLMUTTER: It is.

17 MR. DILLER: My name is Mark Diller. I'm the chair of
18 Community Board 7 and our, our resolutions on this issue are already before you. I'm
19 mostly here to support the members of my community who, from whom you're going to
20 hear and who will have much more detailed and much more erudite testimony than I can
21 provide. I do want to make sure that my support for my community is on record, and my
22 one observation to you is that reverse design is something I would encourage you to take
23 into account in your decision making. And by that, I mean, uh, the adage that my mother

1 taught me, which is that work expands to fill all available time. If you give a designer an
2 amount of space, you can always justify some way to use it. The question before you is
3 what is the appropriate amount of space, not what one can manufacture in order to meet a
4 predetermined designation. So with that, I will leave you with the much more intelligent
5 and erudite, uh, testimony of my neighbors, which I hope will be taken into account.

6 CHAIR PERLMUTTER: I, I just want to clarify, you're
7 with Community Board 7?

8 MR. DILLER: I'm the chair.

9 CHAIR PERLMUTTER: You're the chair. So are you
10 speaking on behalf of the board, or on your own?

11 MR. DILLER: I am because we have previous resolutions
12 before you which speak to these issues.

13 CHAIR PERLMUTTER: Okay.

14 MR. DILLER: Thank you very much.

15 CHAIR PERLMUTTER: Thank you.

16 COMMISSIONER SHETA: Thank you.

17 MR. COSTANZA: Just print your name please, right here.

18 MR. DILLER: Thank you.

19 MS. FREUD: My name is Olive Freud. I am president for
20 the Committee for Environmentally Sound Development.

21 CHAIR PERLMUTTER: Could you say your last name
22 again, please? Olive?

23 MS. FREUD: I can't hear. Olive Freud.

1 CHAIR PERLMUTTER: Freud.

2 MS. FREUD: Yeah. Just a few years ago, or even now,
3 for honest developers, 35 stories means a 350-foot high building. This is 775-foot, 400
4 feet we have to explain. Mostly, because the developer would like to have a tall building,
5 400 feet, higher apartments, more money. But how did this come about? Basically, we
6 were talking about mechanical equipment. Mechanical equipment belongs in the
7 basement. In the basement, it was free. Uh, after Superstorm Sandy and low lying areas
8 kept, had difficulty with the mechanical equipment, they wanted to put it up higher. But
9 the buildings that we're talking about are not in low lying area. There's no excuse for
10 this.

11 Uh, the 400 feet, someone was asking that before, why, why they're there.
12 They're there so the developers -- why is it laid out the way it is, uh, because they wanted
13 a taller building, it's financially better. It's 400 feet of empty space. It's not providing
14 housing for anybody. And I want to say this. Government is supposed to protect people
15 from, from developers like Gary Barnett. Their, their aim is to make more money. But the
16 government's aim is to protect the tens of thousands of people that are going to have to
17 live with the shadow of this building falling on Central Park. They're going to space --
18 they're taking away space, light, sun from about tens of thousands of people just to
19 satisfy one developer who would like to make more money.

20 Uh, I, I know we were talking about the details, but developers can think of all
21 kinds of ways, of loopholes of whatever you want. But the only thing that I want to say to
22 you people is that your decisions should be made on not whether you can put the space
23 here or the space there, but what is it better for the people who live in the area. This is all

1 new, this business of, uh, voids, mechanical equipment higher up. And I think, I think it's
2 the wrong thing and your decision should be made considering those of us, the tens of
3 thousands of us who live in the neighborhood.

4 CHAIR PERLMUTTER: Thank you very much.

5 COMMISSIONER SHETA: Thank you.

6 MR. COSTANZA: Please print your name.

7 MR. GIORDANO: I'm here again with this model to
8 remind you of the neighborhood we're actually talking about. Hi. I'm Chris Giordano.
9 I'm the president of the 64 to East 67th Street Block Association My kitchen window
10 looks out at a empty hole in the ground presently. We're now in the fifth month that
11 Extell's 36 West 66th Street Construction site has been quiet. Extell has not answered
12 requests for information from the community.

13 Word on the street and in the media is the glut in the real estate -- the luxury real
14 estate market, as well as legal challenges, has created uncertainty for developers and their
15 investors. It appears that Extell has overreached, leaving our neighborhood with a large
16 hole in the middle of it, displacing Congregation Habonim all because of their
17 extraordinary and contentious exploitation of zoning regulations.

18 As you know, our community came together in 1993 to create the Lincoln Square
19 Special District Zoning Resolution. At that time, City Planning stated the controls in
20 place should predictably regulate the heights of new development and that these controls
21 would sufficiently regulate the resultant building form and scale, even in the case of
22 development including zoning lot mergers. City Planning stated the intention of the
23 Zoning Resolution included limited buildings to mid-20 to 30 stories tall, which would

1 complement the district's existing neighborhood character.

2 And in a September 4th meeting last year, City Planning told us they find this
3 proposed building egregious and even obscene. We don't take City Planning's words
4 lightly. They promised predictability in zoning, which the community relies on.

5 At the August 6th BSA hearing, Extell's lawyers argued that the proposed 775-
6 foot mid-block tower would not be an absurd result based on the intention of our special
7 district's Zoning Resolution. This is that tower.

8 At the September 10th BSA hearing, we brought this model to illustrate how
9 absurd the result could be. Whether looking at excessive voids vertically or laterally, we
10 believe it's clear, Extell's proposed development violates both the letter and the intention
11 of the Special District Zoning Resolution and we ask that you not allow the use of this
12 void space, which contributes to the unpredictability otherwise expected in the Zoning
13 Resolution and as a result of which could establish new precedent. Thank you.

14 CHAIR PERLMUTTER: Thank you.

15 MR. COSTANZA: Mr. Giordano. Please print your name.

16 CHAIR PERLMUTTER: Just a reminder to speakers, the
17 subject here is the mechanical space. The subject of the void has already been decided in
18 a prior decision. Please.

19 MS. KENDRICK: I am Sheila Kendrick with Save Central
20 Park NYC. This weekend, I saw a movie, "Dark Waters". I'm not spoiling it for anybody
21 by what I'm going to say next. At the climax, Mark Ruffalo yelled in frustration that
22 DuPont could never be beaten, that the system is rigged in favor of titans of the industry.
23 I couldn't help but see the parallels to what we're doing here today. We, all of us, are just

1 looking for a fair outcome.

2 We all know that no count space allotted to mechanicals is meant to be consistent
3 with manufacturers specifications and the necessary servicing of equipment. As we've
4 heard here today even, adding too much space can reduce the efficiency and ultimately
5 increase the carbon footprint. Spreading the mechanicals to buy more space is a parlor
6 trick and it's an obvious one at that.

7 Our right to air and light, which was enacted as part of the 1916 zoning law is
8 very much threatened. These tricks of the trade need to be stopped. And you can do it
9 here today. This is about our neighborhoods, it's about Central Park. It's about the
10 livability of our neighborhoods in New York City. Most importantly, it's about the New
11 York that we're leaving behind for future generations. Thank you.

12 CHAIR PERLMUTTER: Thank you. [applause] Next
13 speaker. Please, please, please. You have to refrain from applause. We ask you please not
14 to do that. One recommendation is clicking. It's much quieter and shorter.

15 MS. DAY: I'm speaking for John Valdez, an engineer and
16 Ph.D. physicist who chairs the 10 West 66th Street Co-Op board. I'm his neighbor, an art
17 dealer, and a great, a great-great auntie. We live right next to the pending Extell building
18 and we're worried about our safety. I want to show you a map where we've drawn a 500
19 foot circle in red, showing the possible damage area where Extell -- were the Extell
20 building to fall down. It's possible that debris from such a catastrophe may fall even
21 farther away.

22 Now, why are we concerned about the safety of the building? Its design follows
23 all the rules of building code, so where's the issue? Briefly, the issue is the mechanical

1 floors. The super tall mechanical floors create conditions that building codes never con-
2 templated. Why not? Because building codes are modified after a catastrophe, not
3 before.

4 Historically, this made sense. There was no way to predict failure modes of
5 buildings and structures before they failed. Think about the Tacoma Narrows Bridge. But
6 today we have many advanced methods for simulating all sorts of conditions that could
7 impact the safety of a new type of building.

8 Remember New York is the major place in the world where super tall buildings
9 with super voids are being built. This is due to the New York City zoning rules which can
10 be finessed with new building techniques. But finessing the rules does not a safe building
11 make. Building to code is no guarantee of safety if the code has not been updated to the
12 engineering and design techniques used to build the structure.

13 Let's move on to fire propagation, another critical aspect of building safety. One
14 of the major advances in fire understanding is the use of models to simulate the
15 propagation of fire in various structures. Much work has been done in this field, but we
16 have not found any papers discussing results of the propagation in large buildings with
17 super voids. Whether the voids are linked 40 -- are linked 40 foot ones, are a single 160
18 foot void, there seem to be no studies which have looked at the fire failure modes of these
19 buildings. Of course, we have the example of 9/11 to show what happens when fire
20 propagates in a tall building. The World Trade Center fell vertically. It still spread
21 damage beyond the building's footprints.

22 Why is our damage zone so different? Because the Extell building does not ensure
23 symmetric structural failure as did the World Trade Center. So the Extell building could

1 collapse in any direction from its base.

2 CHAIR PERLMUTTER: Please wrap up your comments.

3 Your time is up.

4 MS. DAY: Okay. Let's use the tools we have to make the
5 Extell building next to where we live safe and not be the next catastrophe.

6 CHAIR PERLMUTTER: Thank you.

7 MR. COSTANZA: Ma'am.

8 CHAIR PERLMUTTER: Thank you. Ma'am, please, uh,
9 bring it over here, and sign, and sign in.

10 MR. DAY: I'm going to continue with the person.

11 CHAIR PERLMUTTER: Okay. Fine.

12 MR. COSTANZA: Here, ma'am.

13 CHAIR PERLMUTTER: Ma'am, please sign in.

14 MR. DAY: You have to sign over there.

15 MR. COSTANZA: I'm sorry. Thank you.

16 MR. DAY: Very quickly, Judy's my wife and she wanted
17 to end --

18 CHAIR PERLMUTTER: What's your name?

19 MR. DAY: John Day.

20 CHAIR PERLMUTTER: Okay. Uh, wanted to say look at
21 her, and look at her husband. That's me. Our friends, our neighbors, who I'm asking to
22 please stand -- would our friends and neighbors all please stand. They've been waiting
23 here all morning.

1 Now, you won't die when that building falls, but all of us might. So take a good
2 look because blood will be on your hands if it does. Thank you. And I'll leave this
3 here. And this is for all of you.

4 CHAIR PERLMUTTER: Thank you.

5 MR. COSTANZA: Mr. Day.

6 MR. DAY: I'm not done.

7 CHAIR PERLMUTTER: Can, oh, sorry. Can --

8 MR. COSTANZA: Oh, you're not? Sorry.

9 MR. DAY: So, as I said, I'm John Day, I spoke for Central
10 Park NYC about our safety fears at your earlier hearing. We now address a specialized
11 vital challenge to the floor area used to justify mechanical void loopholes. I'll talk about
12 that, fairness and our communities.

13 At the earlier hearing, after listening to three plus hours of testimony from our
14 neighbors and elected representatives, we were shocked to hear a commissioner favorably
15 compare this 775-foot middle finger stuck in our community's face to other 30 plus story
16 buildings in the area. What? Had you not heard us? That 775-feet is the equivalent of a
17 75-story building, three times taller than any in the area, not 300 feet.

18 New York has the savvy folks. Vast numbers love Lincoln Center, 50 million visit
19 Central Park yearly. This venile 775- foot building will cast shadows shrouding play
20 areas from the Amsterdam homes to the Hudson and to Bethesda Fountain, potentially
21 increasing crime and health risks, and will endanger our beloved parks.

22 So, in fairness, we suspect most of its 200 or so apartments, and I think it's a lot
23 less, will prove unoccupied. Many may be bought with foreign money seeking safe

1 deposit boxes in the sky. Plus, there's no affordable housing offset on this project.

2 Last week, I joined a New York League of Conservation Breakfast, hosted by the
3 Durst Organization for the DOB commissioner Melanie LaRocca. Her Queens
4 upbringing and Fordham education impress, as do the DOB's sustainability efforts to
5 address New York City's carbon neutral goals. We can't imagine this building meeting
6 those goals. Or that Commissioner LaRocca would allow DOB staff to get away, as they
7 did in the last hearing, with saying they checked detail drawings they didn't even have.

8 Who elects the mayor who appoints you? We do. The Upper West Side has the
9 highest voter turnout in the state, knows the ropes and has allies across the globe. Yes, we
10 heard and respect the New York Fire Department say their concerns are addressed, but
11 the uniformed fire fighter's statement still, quote, strongly opposes construction methods
12 that are inherently dangerous, increase the threat to the public and their members.

13 Our heroic Jackie Kennedy Onassis, decades back led an umbrella brigade with --
14 and that with market recessions, which we're going through now, forced reconfiguring
15 the Columbus Circle buildings to a more community friendly status. We're facing a
16 similar situation. The mid-block building broaches community and zoning standards. It
17 must be restrained.

18 So bless the mechanical engineers, inquiring minds, New York's tenacity and to
19 be frank, the BSA's technical expertise. We look to you to alter this project and protect
20 the health, safety and life quality of all New Yorkers, and that's a quote from you,
21 commissioner, thank you. [applause]

22 CHAIR PERLMUTTER: Mm-hmm. Please.

23 MR. COSTANZA: Just print your name there.

1 MS. LENKE: This says good morning, but good afternoon.

2 My name is Beth Lenke and I live at 1965 Broadway, located on Broadway, between
3 West 66th and West 67th Street. On be- behalf of myself and my neighbor and fellow
4 member of Save Central Park NYC, Robert Gottlieb, who lives at 10 West 66th Street,
5 we are submitting this joint statement in support of Landmark West's application to
6 revoke the permit issued by the New York City Department of Buildings, DOB, for the
7 construction of the 775-foot building at 36 West 66th Street.

8 The height of this building is exaggerated because approximately 200 feet of that
9 space is being used for mechanical equipment. If construction is permitted, the building
10 will result in a mid-block tower, which is completely out of context with the surrounding
11 neighborhood. The commissioners must remember the fact that the project is located
12 within the special Lincoln Ce- Lincoln Square District.

13 Although the DOB does not regulate the design or height of the buildings within
14 the special Lincoln Square District, it certainly has a duty to ensure the developers
15 comply with zoning regulations. The zoning regulations provide that areas within the
16 building, which are devoted to mechanical equipment, are not included in the calculation
17 of the permitted floor area of the building.

18 Therefore, the DOB examiners had the obligation to carefully evaluate the plans
19 submitted by the developer to ensure that the areas alc- allocated for mechanical
20 equipment were not unnecessarily expanded for the purpose of improperly increasing the
21 size of the building. As demonstrated by the submissions of Landmark West, the DOB in
22 this instance, did not properly evaluate the usage of the floors devoted to mechanical
23 space.

1 The DOB apparently de- determined that as long as a floor contained mechanical
2 equipment, the entire floor should be excluded from the total gross area of the building.

3 As a result, the developer was able to increase the size and height of the building.

4 Landmark West submitted diagrams prepared by Michael Ambrosino, a
5 professional engineer, who we heard earlier, demonstrating that, demonstrating that on
6 the plans, the me- the mechanical equipment on the floors were placed as far apart as
7 possible. The diagrams show that if the equipment were more efficiently positioned, there
8 would be substantial empty space on these floors.

9 If that empty space on the mechanical floors is counted towards the building's
10 FAR, the building as proposed will exceed the maximum allowable FAR for the site.
11 Consequently, this Board should make the determination that the permit issued by the
12 Department of Buildings should be denied. Thank you.

13 CHAIR PERLMUTTER: Thank you. Please sign in over
14 there. Next speaker, please.

15 MS. SIMON: Good afternoon, commissioners.

16 CHAIR PERLMUTTER: State your name, please.

17 MS. SIMON: My name is Susan Simon. I'm a member of
18 this Upper West Side community, although 30 blocks north, but I'm, I'm, uh, very aware
19 that what happens here is precedent setting and that we may very well soon see more
20 Extell towers lining our communities up and around Central Park to 110th Street. I'm a
21 member of Landmark West and I'm the founder of the Central Park West Neighbors
22 Association, and I come here again to oppose this plan.

23 No matter how fancy the legal footwork of Extell, a Goliath of the New York

1 development world, this is still an obfuscation and violation of the zoning law, which
2 gives maximum heights for this special district, which this plan greatly exceeds. It is well
3 known throughout the city, no matter what's been said, that this is a very excessive
4 amount of void space and a really dazzling display of footwork, an abuse so egregious
5 that it has brought City Planning to regulate the allowable height of mechanical space.
6 More legislation is pending from the state to assure developers don't play with pushing
7 up height with empty voids to make more and more money.

8 It's very sad that developers can come into a residential community to build
9 monoliths that are marketed to foreign investors who will visit two weeks a year and
10 subsequently rob the real taxpaying residents of light, air and space. It's sad that they
11 have no concern that their buildings are throwing Central Park into permanent shadow,
12 even while they market those views.

13 I understand that this doesn't matter to Gary Barnett or his lawyers. But it does
14 matter to the ecosystem of the park, the city and the community. This building must not
15 be given special dispensation to manipulate and circumvent the zoning law, especially for
16 the construction of somewhere just over 100 apartments and 800 feet of height. I call that
17 a height of arrogance. Thank you.

18 CHAIR PERLMUTTER: Thank you. Next, please. Next
19 speaker, please.

20 MR. SAMTON: good afternoon, Madam Chairman and
21 members of the Board. My name is, sorry, my name is Peter Samton. Uh, I'm an
22 architect.

23 CHAIR PERLMUTTER: Do you want to get some water?

1 There's a water fountain out there, you can come back.

2 MR. SAMTON: I can come back?

3 CHAIR PERLMUTTER: Yeah, just go right through this
4 door and there's a water fountain and we can get the next speaker. Next speaker, please.

5 Yeah, go through that door. Carlo, can you show him where the water fountain?

6 COMMISSIONER SCIBETTA: Is there a next speaker?

7 CHAIR PERLMUTTER: Oh, there are no more members
8 of the public to speak? Okay. Let's just give Mr. Samton a second and then we'll hear
9 him speak.

10 MR. SAMTON: Thank you very much. I apologize. Uh,
11 uh, I'm an architect, I'm an Upper West Sider for 50 years, having moved there, uh,
12 because of the great, uh, Sam Ratensky, who, uh, helped, uh, develop the Upper West
13 Side urban renewal area.

14 As an architect, my firm, uh, Gruzen Samton has worked in this area and in the
15 city. Uh, I designed the police headquarters. I also designed, with another firm
16 Stuyvesant High School and I never thought I would be coming before you to talk against
17 a large building, many of which I have done also. But, also, one of my other credentials is
18 my three sons all were bar mitzvah by Congregation Habonim, so I'm a big supporter of
19 Habonim. But I'm not a supporter of this building.

20 This is a huge building. You've heard from other people, um, not only is it, uh,
21 the equivalent of 70 stories high, but different from the buildings on 57th Street, uh,
22 many of which we see as super tall, this building is west of Central Park, not south. And
23 the shadow it will cast is huge. It will go, uh, in fact, this time of year, when the sun is

1 down, the shadow will produce a shadow that goes almost to 5th Avenue. Imagine that.

2 And I just would like you to go on a nice day, go there and think about that.

3 But the other thing I want to say is that I also worked with Mike Ambrosino and
4 he is one of the most conservative engineers I ever worked with. So his, uh,
5 consideration, which was before you earlier, uh, about the mechanical space needed for
6 this building, uh, is in itself very conservative. But he ended up, as he mentioned to you,
7 saying that there's far too much space being designated for mechanical, and I know this,
8 because I was on the opposite position, I was trying to get him to, uh, put more in and so
9 forth on mechanical floors. So you should consider what he said and that the developer
10 coming before you with all of this, uh, needs for open space, for space for mechanical, is
11 asking for much too much. Thank you very much.

12 CHAIR PERLMUTTER: Thank you. Thanks for coming.

13 MR. COSTANZA: Please sign here.

14 CHAIR PERLMUTTER: Okay. Is that is? Are there any
15 other speakers from the public?

16 MR. COSTANZA: Print your name.

17 CHAIR PERLMUTTER: We asked before.

18 UNIDENTIFIED MALE: Just a point of decorum.

19 CHAIR PERLMUTTER: No, we, we don't --

20 UNIDENTIFIED MALE: I want to point out the three
21 thugs that were there --

22 CHAIR PERLMUTTER: Sorry, sir. You're out of order.

23 We'll ask you to be removed.

1 UNIDENTIFIED MALE: [unintelligible] [03:07:36].

2 CHAIR PERLMUTTER: You're going to be removed. I

3 need for him to be removed from the hearing room.

4 UNIDENTIFIED MALE: And for [unintelligible]

5 [03:07:40] --

6 CHAIR PERLMUTTER: [gavel banging] I'm sorry, sir,

7 you need to leave.

8 UNIDENTIFIED MALE: [unintelligible] [03:07:42]

9 Mr. Constanza: Sir, please.

10 CHAIR PERLMUTTER: You need to leave.

11 UNIDENTIFIED MALE: Then help me. They're thugs.

12 CHAIR PERLMUTTER: Okay.

13 UNIDENTIFIED MALE: They're lying.

14 CHAIR PERLMUTTER: Alright. Please sir, otherwise,

15 we'll ask the police outside to remove you, we've done it before.

16 UNIDENTIFIED MALE: Thank you.

17 MR. COSTANZA: Please restate your name for the

18 record.

19 MR. KLEIN: Sure. Stuart Klein, Klein Slowik, on behalf

20 of the appellant. Uh, there are a number of things to unpack here. I'll try and be as

21 succinct as possible. Uh, I'll start out with some, a personal request and observations.

22 Number one, uh --

23 CHAIR PERLMUTTER: And if you wouldn't mind,

1 speaking really fast.

2 MR. KLEIN: Okay. Well, you know how fast I can speak,
3 so I don't know if you really want that. But, uh, number one, I don't know how germane
4 any of this testimony is, because apparently everybody is working with different plans.
5 You're talking about plans from 2018, they're talking about plans from 2019. We're
6 talking about some other plans. So I really would like to get a handle on, on what plans
7 we're talking about and what plans you're taking, you're, you're looking at. That's the
8 first observation.

9 The second is a request. And I'd like whatever plans they send over to the fire
10 department, uh, to be copied to me. I'd like to take a look at them. Uh, the third
11 observation is that while it's not contained in the build- in, in the Zoning Resolution, I
12 think it's fair to say that mechanical space is that space required by mechanical
13 equipment. And that is three dimensional. And you, on the record, said that you
14 downloaded the manufacturing specs on these items. Apparently the Buildings
15 Department did not do that. Uh, and as one of the commissioners noted, there's certain
16 height requirements for these things. So if a particular piece of equipment requires five
17 feet of ac-, of head space, access space above it, and you have four or five, feet above that
18 for, for other mechanical ancillary equipment, why are we putting an additional 50 feet
19 above that? That is not mechanical space.

20 CHAIR PERLMUTTER: You're going into a place we've
21 already discussed.

22 MR. KLEIN: Excuse me. I'm not addressing voids. I'm
23 saying mechanical space is that space required to accommodate mechanical equipment.

1 Anything beyond that envelope is not mechanical space, so therefore, it, it should not be
2 involved in the building envelope. Uh, the opposing counsel described this space in his
3 first submission as not having any particular use, apparently, it's somehow rendered
4 invisible, uh, through, through the eyes of his lens. But, but let's go into another subject
5 for a second.

6 MR. STEINHOUSE: Oh, I actually have a question about
7 that.

8 MR. KLEIN: Okay.

9 MR. STEINHOUSE: Where are you getting the language
10 required?

11 CHAIR PERLMUTTER: Mm-hmm.

12 MR. KLEIN: I, I think, I think it's a fair statement to say.

13 MR. STEINHOUSE: Doesn't it state on this--

14 MR. KLEIN: It's not -- excuse me. How else would you
15 define mechanical space? Is it, is it space required by mechanical equipment?

16 CHAIR PERLMUTTER: No, it's --

17 MR. KLEIN: Because if it's not, please tell me.

18 CHAIR PERLMUTTER: -- space, it says it's space
19 occupied by mechanical equipment, right.

20 MR. STEINHOUSE: Used for.

21 MR. KLEIN: Well, that --

22 CHAIR PERLMUTTER: -- used for.

23 MR. KLEIN: Well that, excuse me, but, but assuming

1 that's the standard, that would allow me to put in a 5,000 BTU Friedrich air conditioner
2 on grade in a 10,000 square feet space and build a 500 foot glass tower above it capped
3 by a one bedroom apartment and it'll be perfectly legal. That's absurd.

4 CHAIR PERLMUTTER: No, so that's not what we're
5 saying and the Department of Buildings has already explained that that's not something
6 that they would have allowed and I think Mr. Parley also --

7 MR. KLEIN: But excuse me.

8 CHAIR PERLMUTTER: -- explained that that was
9 something they -- something like that they were struggling with when they created this
10 variety of bulletins.

11 MR. KLEIN: Well, the problem with that is the Buildings
12 Department hasn't said much of anything. The Buildings Department has not done its job
13 here. There is not one piece of evidence that presen-, that has been presented to you that
14 indicates the -- how much space, even two dimensionally, how much space is required by
15 this equipment.

16 COMMISSIONER CHANDA: Of course --

17 MR. KLEIN: Dismiss the verticality for a second.

18 COMMISSIONER CHANDA: I understand.

19 MR. KLEIN: How much space is required by a, by a five
20 by five boiler?

21 CHAIR PERLMUTTER: So, wait, wait, wait. So --

22 MR. KLEIN: Yeah.

23 CHAIR PERLMUTTER: -- I just want to, because I don't

1 want this to go on indefinitely.

2 MR. KLEIN: Mm-hmm.

3 CHAIR PERLMUTTER: We can't afford for it to be. Uh,
4 it was, it was clarified that the Department of Buildings doesn't, doesn't look at the sort
5 of tiny areas around a piece of equipment. The bulletin is not a bulletin, right. It's not, it's
6 not requiring, that is simply the, the number that your, that the engineer Ambrosino, Mr.
7 Ambrosino used as a factor. It made very clear that there's a dispute about that. And Mr.
8 Parley clarified that there is a dispute about how much area you need to have around a
9 piece of mechanical equipment in order to be able to install, service, etc.

10 So that hasn't been, uh, codified. And so to say that DOB measures that -- what
11 we did learn from the engineer for the project is that DOB looks at the code compliance
12 of the mechanical equipment, does it have the right number of dampers, does it have -- is
13 the exhaust located in the right location relative to the intake according to code. It's not
14 designing the mechanical system. That's very clear.

15 MR. KLEIN: Nobody's asking you to design the
16 mechanical equipment.

17 CHAIR PERLMUTTER: Well then --

18 MR. KLEIN: But, excuse me. I'm not responsible for the
19 Buildings Department not doing its job. The fact --

20 CHAIR PERLMUTTER: But, but you're saying it has a --
21 what's its job?

22 MR. KLEIN: Its job is to determine whether or not the
23 space taken off for mechanical equipment is appropriate. In two of the examples, our

1 engineer cited, we have a room that is, that's occupied by a very, very small piece of
2 equipment and yet they took off the entire room or 1,000 feet in incid- in each incidence,
3 800 to 1,000 feet as total mechanical space, space.

4 Now let's address the, the 800-pound gorilla that's only been alluded to. Under
5 the recent sales, uh, statistics presented in "Real Deal" ultra modern luxury space, which
6 is what we're talking about here, is selling between five and \$10,000 a square foot. So
7 those two areas alone, if we take it out of the deduction side is, or rather if we put it into
8 the deduction side, which is what they did, is going to generate anywhere from ten to \$30
9 million in additional sales for this building. I think that is wrong. And I think everybody
10 in the room thinks that's wrong.

11 And I think you should believe it's wrong. So, the, the fact of the matter is, the
12 Buildings Department and I will disagree with our own certain expert here. There
13 apparently is a criteria, because the Buildings Department has repeatedly said today and
14 in its prior submissions, that it reviewed the plans. Implicit in that statement is that there
15 is some standards that they applied. They have yet to describe what those standards are.
16 Dimensionally.

17 CHAIR PERLMUTTER: We already talked about this,
18 right?

19 MR. KLEIN: Dimensionally.

20 CHAIR PERLMUTTER: Right. But we already talked
21 about this. We learned from the engineer for the project that DOB looks at whether or not
22 the sprinkler system and so on complies with code.

23 MR. KLEIN: That's right.

1 CHAIR PERLMUTTER: Whether or not the mechani- the
2 HVAC, whether the ductwork complies with code, the intakes, the exhausts and so on
3 complies with code and there's adequate egress. They do not look at -- they told us.

4 MR. KLEIN: Fine, so they --

5 CHAIR PERLMUTTER: They don't at the layout.

6 MR. KLEIN: -- they're not doing their job. They're
7 basically allowing them to take 54,000 square feet of deductions when in fact they can
8 only justify approximately 25 to 30,000 feet.

9 CHAIR PERLMUTTER: Mm-hmm.

10 MR. KLEIN: The Buildings Department is simply not
11 doing its job.

12 CHAIR PERLMUTTER: Okay.

13 MR. KLEIN: And to basically --

14 CHAIR PERLMUTTER: Okay. [unintelligible]
15 [03:14:59].

16 MR. KLEIN: -- and to basically say, because the Buildings
17 Department historically has not done the proper thing, this building should suddenly get a
18 pass is ridiculous on its face. In fact, you in the 2007 case on Penthouses, said, excuse me
19 Buildings Department, you are wrong, and you've been defining this improperly for the
20 last ten years. We want you to go back and look at those, those buildings and readjust the
21 height. What, what is wrong in, in asking the same thing of this applicant?

22 CHAIR PERLMUTTER: Because I don't think they're --

23 MR. KLEIN: Or the Buildings Department

1 CHAIR PERLMUTTER: -- analogous. I, I actually don't
2 think the cases are analogous. But I do also have to say and you can make sort of --

3 MR. KLEIN: Mm-hmm.

4 CHAIR PERLMUTTER: -- stot-, startled looks, but we
5 don't, I don't think they're analogous. And you would need to show me why those cases
6 are analogous, but I don't see it.

7 MR. KLEIN: Well, they're analogous because in that
8 instance, the Board said that the Buildings Department wasn't properly applying the law.

9 CHAIR PERLMUTTER: Yes.

10 MR. KLEIN: And in this situation, they're not properly
11 applying the law because they're not --

12 CHAIR PERLMUTTER: No. No, no, no --

13 MR. KLEIN: -- looking at the dimensions.

14 CHAIR PERLMUTTER: -- because --

15 COMMISSIONER SCIBETTA: Can I ask a question?

16 CHAIR PERLMUTTER: -- in the, in the Penthouse case,
17 those penthouses were taller than what's permitted in whatever it was, the zoning district,
18 the limited height district, and often they exceeded the amount of allowable floor area
19 and DOB gave them sort of this 33 percent pass generally. And that was clearly not
20 permitted by any of the language --

21 MR. KLEIN: Well, I'll respectfully --

22 CHAIR PERLMUTTER: -- in the Zoning Resolution. The
23 Zoning Resolution here just says floor space devoted or used by mechanical equipment.

1 That's it. So everything else is a DOB interpretation, and you see how much DOB
2 struggles with trying to figure out on this building, it's this much mechanical space, on
3 this building, it's another amount and on this building, it's another. And for us to look at
4 it and to say, uh, was DOB reasonable in coming to the conclusion that the mechanical
5 space, that mechanical equipment w- is being used in that area, that the area is occupied
6 by mechanical equipment sufficient to justify the floor area deduction. I, that's the
7 question before us. And it's not at all the same as a clear, uh, noncompliance with the
8 Zoning Resolution.

9 MR. KLEIN: No, I actually -- the 277 case was, the
10 Buildings Department's position was that since it was mounted in the back of the
11 building and that particular law was supposed to deal only with aesthetics, it shouldn't be
12 included in the height. You're, you're -- with all due respect, you're misquoting the, the
13 underpinning of that case. But --

14 COMMISSIONER SCIBETTA: I do have a question for
15 you. Just for a moment.

16 MR. KLEIN: Sure.

17 COMMISSIONER SCIBETTA: You started off, uh,
18 stating that it's about, uh, the, it's about what, what space is used by mechanical
19 equipment.

20 MR. KLEIN: That's correct.

21 COMMISSIONER SCIBETTA: And, and I'm, my co- --
22 and you included height into this, but I don't see how we can differen- how we can
23 separate the, the decision in *Sky House* with the void, how do you differentiate as these

1 two arguments?

2 MR. KLEIN: Well, it -- I think that they're two entirely
3 different arguments. One, the *Sky House* case was predicated on the fact that A, you
4 didn't have experts quantifying the space and saying that the voids, you know, should not
5 be used because they weren't appropriate and B --

6 COMMISSIONER SCIBETTA: They were --

7 MR. KLEIN: -- it was only speaking about a deficiency in
8 the Zoning Resolution. What I'm talking about is the actual use of the space. And use is
9 the controlling definition here. The Zoning Resolution, as it was amended in '61, went
10 from with the streets to an FAR based determinant. And what I'm saying is that there has
11 to be justification and proof that the mechanical space in this building actually merits the
12 50,000 square foot deduction. And I'm saying there's nothing on the record whatsoever
13 that indicates, that justifies that much deduction. And Mr. Ambrosino specifically cited
14 two examples where there's at least 2,000 square feet that is not being used in any way
15 for mechanical space and yet it's deducted. So I think what should happen here, as an
16 attorney, is I think you should basically ask the Buildings Department to define what
17 standards it applied in its review because they still haven't done that.

18 CHAIR PERLMUTTER: We, we already did that.

19 MR. KLEIN: No, no. Excuse me.

20 CHAIR PERLMUTTER: And I, and I --

21 MR. KLEIN: They're talking about --

22 CHAIR PERLMUTTER: -- don't want to keep going
23 around.

1 MR. KLEIN: -- technical connections or valves. That --

2 CHAIR PERLMUTTER: No.

3 MR. KLEIN: -- has nothing to do with FAR.

4 CHAIR PERLMUTTER: No, we asked them what
5 standards do you use.

6 MR. KLEIN: Right.

7 CHAIR PERLMUTTER: We've asked them several times.
8 And we've give- been given the answer. And the --

9 MR. KLEIN: Well, yeah.

10 CHAIR PERLMUTTER: -- answer was --

11 MR. KLEIN: Yes?

12 CHAIR PERLMUTTER: -- each building is viewed on a
13 case by case basis, it really depends, there's so many different variables, etc. etc. That's
14 what they said. And there is this bulletin that they have been working on --

15 MR. KLEIN: Yes.

16 CHAIR PERLMUTTER: -- and the industry, of which you
17 are a part --

18 MR. KLEIN: Right.

19 CHAIR PERLMUTTER: -- right, the industry has not
20 come, come to an agreement about how you deal with the amount of access needed for
21 the equipment. And that seems to be the open question because they seem to be close to
22 an agreement about the type of equipment, right. So, so Department of Buildings
23 answered the question, and please, I don't want to keep going around in circles.

1 MR. KLEIN: Well --

2 CHAIR PERLMUTTER: So I'd like to move on.

3 MR. KLEIN: Okay.

4 CHAIR PERLMUTTER: If you -- so what I would like to
5 suggest now --

6 MR. KLEIN: Mm-hmm.

7 CHAIR PERLMUTTER: -- because we've been at this for,
8 uh, I think it's three and a half hours --

9 MR. KLEIN: Three and a half hours, yeah.

10 CHAIR PERLMUTTER: -- uh, we, we need to move on to
11 other cases.

12 MR. KLEIN: Sure.

13 CHAIR PERLMUTTER: I would like you now to, uh,
14 make a submission of not more than ten pages, including exhibits.

15 MR. KLEIN: Mm-hmm.

16 CHAIR PERLMUTTER: Because I don't think there's
17 more than two pages to say, and, uh, and also for the owner and we're going to, we're
18 going to close this hearing and base the decision on, on that, okay.

19 MR. KLEIN: Uh, could I at least find what plans have
20 been submitted to you and what plans you used as --

21 CHAIR PERLMUTTER: We have the same plans as --

22 MR. KLEIN: No, you said you had 2018 plans and they're
23 referring to 2019 plans.

1 COMMISSIONER CHANDA: No, no, no.

2 CHAIR PERLMUTTER: No.

3 COMMISSIONER CHANDA: The same set of plans that

4 Mr. Karnovsky was referring to that --

5 MR. KLEIN: Right.

6 COMMISSIONER CHANDA: -- the engineer spoke to are

7 all in the submission package. I don't think any of us are reviewing different sets of

8 plans.

9 MR. KLEIN: Well then I misheard, because before I heard

10 --

11 CHAIR PERLMUTTER: I --

12 COMMISSIONER CHANDA: No.

13 MR. KLEIN: Specifically --

14 CHAIR PERLMUTTER: -- because you're not reading --

15 MR. KLEIN: Yeah.

16 CHAIR PERLMUTTER: -- the revision dates on the, in

17 the revision panel of the drawings. I'm looking at the revision dates, and I'm just saying

18 Mr. -- they actually were Exhibit A to Mr. Bienstock's, uh, affidavit, um, and I'm

19 referring to the revision dates that are listed in the, in the title block.

20 MR. KLEIN: Do you -- okay.

21 CHAIR PERLMUTTER: That's where I'm getting those.

22 MR. KLEIN: Would you like me to take two minutes and

23 address the jurisdiction issue?

1 CHAIR PERLMUTTER: In your papers, please.

2 MR. KLEIN: Sure.

3 CHAIR PERLMUTTER: We, we, we just can't go on with
4 this for four hours.

5 MR. KLEIN: Mm-hmm.

6 COMMISSIONER SCIBETTA: And if you could explain
7 more about how the void and it's not analogous to the height of the 3D, so --

8 MR. KLEIN: Sure, absolutely.

9 CHAIR PERLMUTTER: Okay.

10 MR. KLEIN: I'll compare the two.

11 COMMISSIONER SCIBETTA: Yeah.

12 CHAIR PERLMUTTER: Okay. So I, I'm serious, ten
13 pages, including exhibits. So because really --

14 MR. KLEIN: I, I will try.

15 CHAIR PERLMUTTER: -- in terms of talk --

16 MR. KLEIN: But there's just so much here to --

17 CHAIR PERLMUTTER: -- no, no --

18 MR. KLEIN: -- unpack.

19 CHAIR PERLMUTTER: -- you're -- I'm going to reject
20 the submission if it's more than ten pages including exhibits.

21 MR. KLEIN: Well, I will do my best, but, uh.

22 CHAIR PERLMUTTER: No, you're not going to do your
23 best. You're either doing it or I'll reject the submission.

1 MR. KLEIN: Well, it, to --

2 CHAIR PERLMUTTER: Do you understand my

3 statement?

4 MR. KLEIN: I, I understand your statement and you have

5 to understand --

6 CHAIR PERLMUTTER: I will reject it --

7 MR. KLEIN: -- that, that my warrant is to represent my

8 clients --

9 CHAIR PERLMUTTER: No, I know, but okay, so --

10 MR. KLEIN: -- and if my clients believe --

11 CHAIR PERLMUTTER: So let me just ask you a

12 question.

13 MR. KLEIN: Yeah.

14 CHAIR PERLMUTTER: If you were in a court and, and

15 the judge tells you ten pages or you're defaulting, will you give him 10 pages or will you

16 give him 20?

17 MR. KLEIN: Luckily, we're not in court.

18 CHAIR PERLMUTTER: Right, luckily we're not in court.

19 However, ten pages or I reject your submission, including exhibits. And, and no follow-

20 ups or anything. It's a one submission chance. That's it. Okay. And I, and I don't want

21 any excuses about the owner X,Y, Z or anything like that. You submit on your

22 submission date, alright. Otherwise, we just won't have anything to read from you. And

23 then we'll make a decision based on what we've heard here today. Alright.

1 MR. KLEIN: Well, what you've heard here today is, it's
2 nothing to support the position of this deduction, but that's -- I'll go into the papers.

3 CHAIR PERLMUTTER: Okay. We're --

4 COMMISSIONER SCIBETTA: Will his submission --

5 CHAIR PERLMUTTER: -- I think we're -- what?

6 COMMISSIONER SCIBETTA: Will his submission be
7 after the owner's submission or is the owner --

8 CHAIR PERLMUTTER: No, the owner will be -- the
9 owner always has the last word. So this submission first, and then if owner wants to come
10 up --

11 MR. KLEIN: What, what about my suggestion that we,
12 that we ask that the person who actually examined these plans come before the Board and
13 say what they looked at?

14 CHAIR PERLMUTTER: We've had enough testimony,
15 okay. We have heard --

16 MR. KLEIN: Wouldn't that be the primary source --

17 CHAIR PERLMUTTER: -- a lot from lots of --

18 MR. KLEIN: -- of all this stuff?

19 CHAIR PERLMUTTER: Excuse me, Mr. Klein. We're
20 done here.

21 MR. KLEIN: Okay.

22 CHAIR PERLMUTTER: Okay. So I would like to then
23 make a submission schedule--

1 MR. KLEIN: Mm-hmm.

2 CHAIR PERLMUTTER: -- as fast as possible, so, uh, so
3 Mr. Klein, ten pages, including exhibits, and if it's 11 pages, we won't accept it, in which
4 case, owner has less to do. And owner, the same limitation, ten pages including exhibits,
5 okay.

6 MR. KLEIN: Well, the, the exhibits alone right off the bat
7 it's five to ten pages mechanical space.

8 CHAIR PERLMUTTER: Figure out how to do it.

9 MR. KLEIN: So you're limiting me to five pages of, of
10 narrative.

11 CHAIR PERLMUTTER: I'm, I'm limiting you to ten
12 pages including exhibits. You do it however you see fit.

13 MR. KLEIN: And if I have five pages of mechanical
14 space, you're now talking about five pages of narrative. I won't be able to do that. I can't
15 --

16 CHAIR PERLMUTTER: Then don't, then don't do it.

17 MR. KLEIN: I have never in 40 years submitted --

18 CHAIR PERLMUTTER: This is your option.

19 MR. KLEIN: -- a brief that's five pages long.

20 CHAIR PERLMUTTER: Sorry, sir. We've heard lots,
21 we've heard three and a half hours of testimony, we have plenty of other exhibits to look
22 at. If you have something new to add that we haven't heard today, add it in your ten
23 limited pages.

1 MR. KLEIN: Okay.

2 CHAIR PERLMUTTER: Basta. Okay.

3 MR. KLEIN: Six type.

4 COMMISSIONER SCIBETTA: Yeah, I think that's not
5 the way to do it.

6 CHAIR PERLMUTTER: What?

7 COMMISSIONER SCIBETTA: I was waiting for the font
8 size.

9 MR. KLEIN: But yeah, six font, yeah.

10 CHAIR PERLMUTTER: Okay.

11 MR. KLEIN: I'll just sent it along to Microsoft.

12 COMMISSIONER SCIBETTA: Yeah, just put all the
13 plans on one page.

14 CHAIR PERLMUTTER: I don't want this to go on much
15 longer, so, uh, no, no don't do it for so long---

16 [CROSSTALK]

17 CHAIR PERLMUTTER: Okay. So we're going to close
18 the hearing -- uh, well, everyone's leaving, but we're actually going to -- I'm making a
19 motion to close the hearing. So, uh --

20 [CROSSTALK]

21 CHAIR PERLMUTTER: -- yeah, please, everyone, we're
22 still in, we're still in hearing. Okay, I'm going to make a motion to close the hearing.

23 MR. COSTANZA: Okay. On a motion to close, Chair

1 Perlmutter?

2 CHAIR PERLMUTTER: Aye.

3 MR. COSTANZA: Vice Chair Chanda?

4 COMMISSIONER CHANDA: Aye.

5 MR. COSTANZA: Commissioner Sheta?

6 COMMISSIONER SHETA: Aye.

7 MR. COSTANZA: Commissioner Scibetta?

8 COMMISSIONER SCIBETTA: Aye.

9 MR. STEINHOUSE: Okay. Submission date of January

10 8th --

11 CHAIR PERLMUTTER: Mm-hmm. No, so --

12 MR. KLEIN: I'll need more time than that because when,

13 when are they going to submit --

14 CHAIR PERLMUTTER: We're coming back here on --

15 please, Mr. Klein.

16 MR. KLEIN: Oh, sure, sure.

17 CHAIR PERLMUTTER: We're coming back here on

18 January, what is it?

19 MR. STEINHOUSE: 28th.

20 CHAIR PERLMUTTER: 28th.

21 MR. STEINHOUSE: Okay. So --

22 CHAIR PERLMUTTER: So everyone gets maybe two

23 weeks?

1 MR. STEINHOUSE: So submission date December 24th.

2 MR. KLEIN: That's next week.

3 MR. STEINHOUSE: Mm-hmm.

4 CHAIR PERLMUTTER: Think fast. And then another --

5 MR. STEINHOUSE: And a reply on January --

6 MR. KLEIN: I'm sorry. The 24th for me? That's a week
7 from today.

8 CHAIR PERLMUTTER: Alright. So give him two weeks,
9 but then it's going to two weeks.

10 MR. KLEIN: When are they submitting the plans to the
11 fire department?

12 CHAIR PERLMUTTER: Hello.

13 MR. KLEIN: I need those.

14 CHAIR PERLMUTTER: Hello. I just told you what the
15 parameters are. I didn't say that the fire department needs to give you a copy or any, or
16 anything like that.

17 MR. KLEIN: Well, how am I supposed to intelligently
18 address this issue?

19 CHAIR PERLMUTTER: We're working off the plans we
20 have. We're working off the plans we have, not fire department set or anything. We need
21 to bring this to a close and we gave you --

22 MR. KLEIN: By tying my hands effectively.

23 COMMISSIONER CHANDA: Sorry, Mr. Klein, I think

1 that was improper for you to say that.

2 MR. KLEIN: Excuse me, this has been going on --

3 CHAIR PERLMUTTER: Stop it.

4 COMMISSIONER CHANDA: This has --

5 CHAIR PERLMUTTER: Stop or I will send you right out

6 and you won't get to discuss the date. So 17, two weeks is the 31st and then two weeks is

7 the 14th and then that's perfect, okay. Two weeks is the -- you get two weeks until the

8 31st and two weeks for Mr. Karnovsky is the 14th for a hearing on the -- for a decision on

9 the 28th.

10 MR. KLEIN: Well, can I then have an additional week?

11 CHAIR PERLMUTTER: No. Two weeks and two weeks.

12 That's how it works.

13 MR. KLEIN: It's going, it's going --

14 CHAIR PERLMUTTER: And -- alright, Mr. Klein, we're -

15 -

16 MR. KLEIN: -- to take two, it's going to take three --

17 CHAIR PERLMUTTER: -- done now.

18 MR. KLEIN: -- full days to review the hearing minutes.

19 CHAIR PERLMUTTER: Did, did you understand what I

20 just said?

21 MR. KLEIN: I understand that I'm not being allowed to --

22 MR. STEINHOUSE: Okay. Well, okay --

23 MR. KLEIN: -- represent my clients.

1 MR. STEINHOUSE: -- so as a reminder, the dates --

2 MR. KLEIN: Right.

3 MR. STEINHOUSE: -- are January, uh, December 31st,
4 January 14th and the decision is January 28th.

5 CHAIR PERLMUTTER: And I, and I'm serious.

6 MR. KLEIN: Will I be given -- will I be receiving a copy
7 of the plans they submit to the fire department?

8 CHAIR PERLMUTTER: No.

9 MR. KLEIN: Only because --

10 CHAIR PERLMUTTER: You will not.

11 MR. KLEIN: -- my clients are kind of concerned about fire
12 issues here.

13 CHAIR PERLMUTTER: You will not. You will not
14 receive any other plans --

15 MR. KLEIN: I'll put in a FOIL request to the fire
16 department.

17 CHAIR PERLMUTTER: -- that we've seen.

18 MR. KLEIN: Battalion chief, expect that. Thank you.

19 CHAIR PERLMUTTER: Thank you. Alright.

20

21

22

23

CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript of the Public Hearing of New York City Board of Standards & Appeals on December 17, 2019 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: January 13, 2021

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