New York Supreme Court

APPELLATE DIVISION—FIRST DEPARTMENT

LANDMARKWEST! INC.,

Petitioner-Appellant,

—against—

NEW YORK CITY BOARD OF STANDARDS AND APPEALS, NEW YORK CITY DEPARTMENT OF BUILDINGS, EXTELL DEVELOPMENT COMPANY, and WEST 66TH SPONSOR LLC,

Respondents-Respondents.

CASE NOS.
2021-02808
2021-04423

RECORD ON APPEAL
VOLUME V OF IX
(Pages 2739 to 3346)

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SUPPLEMENTAL STATEMENT OF FACTS

BSA Calendar No: 2019-94-A

Premises:	36 West 66th Street, a/k/a 50 West 66th Street, Manhattan Block 1118, Lot 45 ("the Parcel")
Determination Challenged:	Issuance of Permit No. 121190200-01-NB ("the Permit")

Appellant LandMark West! ("LW!") submits this supplemental statement of facts to address the Board's refusal at the hearing held on August 6, 2019 to address the issue of the subject FAR deductions taken by the Developer for mechanical equipment space without reviewing the mechanical plans, without determining what equipment, if any, the alleged mechanical voids will house, and without analyzing the technical manufacturing requirements of the equipment and the spatial parameters necessary for its proper operation. The appellant requested that the Board divorce this matter from the City Club's appeal and ask the Developer to provide complete shop drawings of the claims mechanical spaces and direct the Department of Buildings to review them for reavaluation of its approval of the FAR deductions.

At the very core of the issue is that of the actual floor space dedicated to the mechanical equipment, which, Developer claims, inexorably leads to the FAR deductions. Frankly, this entire "height" issue is a giant red-herring, a thinly veiled misdirection argued to steer people away from the true nature of the floor deductions. Even Developer recognized this by citing to BSA Application # 2016-4327-A, the Sky House Condominium decision, wherein the Board

recognized the need to evaluate whether the, "…[a]mount of floor space used for mechanical equipment in the Proposed Building is excessive or irregular...." (Citing to Z.R. 12-10). In fact, in its decision the Board specifically reviewed Developer's affidavits describing in great detail the equipment to be used and stated:

> Whereas, the *Board credits DOB's review of the specific mechanical equipment proposed* and, in the absence of contradicting testimony or evidence from a licensed and appropriately experienced engineer, the Board has no basis upon which to question the evidence in the record suggesting that the floor space on the second, third and fourth stories of the Proposed Building is 'clearly incidental' to the principal use of the Proposed Building, in satisfaction of subdivision (b) of the 'accessory use' definition in ZR §12-10 (emphasis added).
>
> . . .
>
> WHEREAS, in response to an inquiry from the Board regarding whether a standard percentage of floor space dedicated to mechanical equipment has been interpreted as reasonable for similar developments and, thus, properly exempt from floor-area calculations, *DOB states that mechanical floor space deductions are evaluated on a case-by-case basis* and that the deduction of floor space on the second, third and fourth stories of the Proposed Building is consistent with its evaluation of mechanical floor space in comparable mixed-use developments in the City . . . (emphasis added)

So, it is beyond peradventure that the issue of mechanical deductions is not solely defined by height but by the spatial needs of the equipment and its associated elements. Sadly, in the instant case, the plans submitted totally lack any definition of the mechanical equipment, its size and its physical needs (e.g., ventilation), as per the manufacturers. The shop drawing specifications or the shop drawings themselves, produced for the developer would **contain all of these items**. Yet, the plans submitted simply assign types of units to rooms without any offering unit dimensions. The paucity of these plans violates DOB filing requirements. But that argument, much like the height argument, does not fully address the question of allowable mechanical deductions.

Mikhail Sheynker, Esq.
August 21, 2019

As an example, according to your ZD1 Zoning Diagram, the developer deducted the entire 20,478.25 sq. of the 15th floor from the FAR. calculations. Yet, Plan No. A-302.00, offers no support for this deduction, other than room assignments. i.e, Generator room, Mechanical room, etc. How then, can any responsible determination be made regarding the actual use of these spaces and their entire attribution as accessory space under the ZR?

Similar disingenuous ploys were used by developers seeking to subvert the MDL's window requirements by seeking variances for residential buildings that exceeded the underlying district floor area limits. Oftentimes, you would have plans describing single bedroom apartments surrounded by a multitude of storage spaces, which are exempted from the "living space" windows demanded by the MDL. Once the Board saw that ploy, many applications were discarded before they were even filed. It is suggested that the Board look at the shop drawings using the same heedful eye it used to review those bogus plans. No less an investigative standard should be applied to this larger, infinitely more expensive structure, which will have far more deleterious effects on the surrounding community than any of those fraudulent, small-scale multiple dwellings.

With regard to the Developer's objection to addressing the FAR deductions on the ground that Landmark West's initial statement of facts raised only addresses the height of the proposed mechanical space, that is plainly wrong. The first of the two issues presented to the BSA as the last full paragraph on the first page fairly covers all spatial objections (length, width and height) to the FAR deductions:

Mikhail Sheynker, Esq.
August 21, 2019

The Permit should be revoked, because the underlying plans contravene the Zoning Resolution ("ZR") in that:

a) the Owner's attempts to exempt the Voids from floor area should be rejected, as the Voids are neither "used for mechanical equipment," ZR §12-10, nor are they accessory uses to the residential uses in the Tower, ZR §22-12; . . .

Further, the ZRD2 Form, denied November 19, 2018, contained as item numbered 4 a challenge that the "Areas claimed for mechanical use should be proportionate to the mechanical use." This document was annexed as Exhibit F to the Statement of Facts, and is such is part of the Record presented to the Board for review.

The fact that the body of the Statement of Facts addresses the issue of height of the mechanical voids to a much greater extent than the two-deminsional calculation of the foot print of the equipment and resulting FAR deductions is merely borne out by the fact that the DOB failed to procure from the Developer the necessary specifications. Absent the necessary shop drawings, and /or manufacturer's specifications, we cannot address the FAR foot print deductions at great length. The Board is effectively overlooking an issue properly raised simply because the Statement of Facts did not offer and analyze facts that are within the sole possession of the Developer, and which counsel for the Developer has refused to share.

The Board's unwillingness to engage in a thorough review was done under a further pretext that Mr. John Low-Beer, Esq., counsel for City Club Appellant in a related appeal, requested to expedite the hearing, and the Appellant's request for the shop drawings and their subsequent review by the Department of Buildings would only further delay the proceedings. Although we are otherwise in agreement with the arguments presented by the City Club, our arguments are more extensive with regard to the FAR deductions. As a result, Landmark West has a right to be heard independent of any other appellant, and the Board's cavalier "grouping"

of the two appeals without affording each appellant a separate right to have its grievances addressed violates the basic tenets of "due process" and the First Amendment right to "petition the Government for a redress of grievances." Such rights are individual and not communal. Mr. John Low-Beer might have bound his own client to a particular pace of review before the Board, but he is no position to speak for Landmark West.

Accordingly, Landmark West requests that the Board continue its appeal to consider the issue of the propriety of the FAR deductions taken by the Developer on its April 4, 2019 Zoning Diagram.

Dated: August 21, 2019
New York, New York

KLEIN SLOWIK PLLC

Mikhail Sheynker, Esq.

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August 21, 2019

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

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

Dear Honorable Members of the Board:

Appellants submit this Letter-Statement to respond to questions raised by the Board at the August 6th hearing in this matter. While we appreciate the opportunity to make this additional submission, we continue to believe that the passage of time is highly injurious to Appellants' interests, and that the perfect is the enemy of the good in this situation. We are hopeful that with this and the next statement due on August 28th, the parties and the Board can put this matter to bed, and that the Board can vote on it on September 9th or 10th.

A. The Language of the Statute Is Ambiguous

1. The Bulk Packing Rule Requires That the Portion of the Building Above 150 Feet Be Limited to 40 Percent of Total Allowable Floor Area

At the August 6th hearing, Board Chair Perlmutter asked Appellants' counsel to point to something in the language of the statute that shows that Extell's interpretation does not jibe with the purpose of the statute.

The language of the Bulk Packing Rule itself makes it obvious that Extell's interpretation violates it. By requiring that 60 percent of the allowable floor area be in the lower portion of the building, the Rule limits the upper portion to 40 percent. The two portions must add up to 100 percent. This is baked into the concept of "percent." Moreover, only in this way can the Rule achieve its purpose – obvious even from its language alone – of limiting height. Extell's interpretation plainly does not meet this condition.

Although it is unnecessary to consider legislative history, that history confirms that the purpose of requiring most of the floor area to be below a certain height was to limit the amount of floor area above that height: to "control[ ] .... the amount of floor area that could be massed in the tower portion." DCP, Regulating Towers and Plazas (1989) (Exh. L), at 26 (underlining added).

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"The DCP working group refers to this concept as 'Packing-the-Bulk.' In exploring this approach, staff ... concluded that a minimum percentage in the low 60's would result in an appropriate relationship between the base and the tower portions of new buildings." *Id*. at 27 (underlining added). In other words, requiring a certain amount of floor area in the base serves to control the height of the tower.[1]

It is not disputed that the total floor area of the upper portion of Extell's building is limited to the total allowable floor area in the C4-7 portion of the lot, which is 421,260 square feet. If that upper portion were similarly limited to 40 percent of that allowable floor area, as the law plainly requires, it could be no more than 168,504 square feet. But by calculating the 40 percent based on its entire lot, which has 548,543 square feet, Extell was able to put 219,417 square feet into the upper portion of its building instead of 168,504 square feet. This is 52 percent rather than 40 percent of the allowable total. Another way of saying this is that the upper portion of Extell's building has 30 percent more floor area than it would have if it were limited to 40 percent of total allowable floor area.

To the extent that Extell has placed the lower portion of the building outside the relevant envelope within which the 60 percent and the 40 percent must sum to 100, it has eliminated the 40 percent limit on the upper portion of its building. In Extell's telling, the 60 and the 40 can, and do, add up to much more – 30 percent more – than 100.

The result of Extell's interpretation is that instead of limiting tower height, each square foot added to the base in the R8 portion of the lot removes a square foot from the base in the C4-7 portion of the lot, and thereby allows the height of the tower to grow by one square foot as if there were no Bulk Packing Rule. Given enough space in R8, the entire base could be placed outside the envelope. This would allow all the floor area available in the C4-7 portion of the zoning lot to go into the upper portion of the building – the result being a tower many stories higher than it would be if it were entirely in C4-7.

Extell's response to this is that the Bulk Packing Rule is limiting height to some extent in this building, and if there were no Bulk Packing Rule the building could be even higher. However, to the extent that the Bulk Packing Rule is working in this situation, it is only because Extell does not have a large enough R8 portion to move all of the square footage of the base into the R8 district. The fact remains that the logic of Extell's interpretation is directly contrary to the Rule's purpose.

To the extent that Extell was able to apply this logic here, it nullified the Bulk Packing Rule, and its building got taller than it could have if it were entirely in the C4-7 district. This is directly contrary to legislative intent, and therefore absurd. This building is 8 or 9 stories – 128 or

[1] At the hearing, Chair Perlmutter suggested that another purpose of the Bulk Packing Rule might be to preserve street wall continuity. However, that end is achieved explicitly by a different section of the Special District regulations: ZR § 82-37. If the Bulk Packing Rule serves this purpose, it does so incidentally and indirectly. Nowhere in any of the four reports discussing the Bulk Packing Rule (the 1989 Discussion Document, the May 1993 Zoning Review of the Special District, and the two CPC Reports that accompanied enactment of the Rule in the Special District and in R9 and R10) is there any mention of preserving street wall continuity as a purpose served by the Bulk Packing Rule.

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144 feet, the equivalent of 13 or 14 stories of an ordinary building – taller than it would be if it were located entirely in C4-7.

There is no earthly reason why the City Planning Commission would have intentionally written regulations to allow a building to be so significantly taller than would otherwise be allowed merely because a portion of its zoning lot is in a lower density district. Indeed, it would have been totally irrational of that body. If anything, one might think that a building that is partly in a lower density district should be lower, not higher.

Extell's interpretation violates the basic principle that zoning must be internally consistent, based on a rational underlying policy and a comprehensive plan – which, by the way, is evidenced by the legislative history of the Zoning Resolution as well as by the text itself. *Udell v. McFadyen*, 40 Misc. 2d 265, 267 (S. Ct. Nassau Co. 1963), *aff'd in relevant part sub nom. Udell v. Haas*, 21 N.Y.2d 463 (1968) (citing C. Haar, "In Accordance With a Comprehensive Plan," 68 Harv. L. Rev. 1154 (1959)); *Udell v. Haas*, 21 N.Y.2d at 471-472; *Asian-Americans for Equality v. Koch*, 72 N.Y.2d 121, 131 (1988).

2. The Mathematics of the Statute as a Whole Dictate that the Maximum Number of Floors Must Remain Constant at the "Low-30 Stories"

The legislative history states, not just in one place, as Mr. Karnovsky stated, but in multiple places, that although the drafters did not limit height per se, they intended to. and did, limit the number of stories to the low 30s (not 40, as Mr. Karnovsky erroneously claimed we stated). This limit is stated twice in the May 1993 Special District Zoning Review, at 1, 14 (Exh. B), once in the CPC Special District Report, at 18-19 (Extell Exh. 17), twice in the Borough President's Report on the Special District amendments, at 2,15 (Extell Exh. 17), and once in the CPC Report for the R9/R10 amendments, at 5.[2]

But there is no need to go beyond the words – and numbers – of the statute itself. They speak loud and clear. The parameters of 30 percent tower coverage and 60 percent floor area below 150 feet inexorably dictate an upper limit to the number of floors that is in the low 30s, and in any event nowhere near 40, as in Extell's building. In their first Statement, at pp. 12-13, Appellants presented some simplified examples to show how the number of floors remains invariant regardless of lot size. In those simplified examples, the statutory parameters permitted 13.3 floors above 150 feet. Attached hereto as Exhibit A is an Excel spreadsheet that adds more detail to take into account the penthouse rule (ZR § 82-36(a)(2)), the Inclusionary Housing bonus, and the difference between gross floor area and zoning floor area. This spreadsheet shows that under the parameters given by the statute a developer could build 14 floors below 150 feet and 18.4 floors above, for a total of 32.4 floors – i.e., precisely the low-30s promised in the various reports. Opening the spreadsheet on a computer and changing the parameters in the spreadsheet, one can see how the number of floors would be affected by variations in lot size (no effect), bulk packing percentage (the lower the percentage the more floors), tower coverage (the lower the

[2] Available at https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/940013.pdf .

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minimum, the more floors), and percent non-zoning floor area (the higher the percentage, the more floors).[3]

The only variable in this model that is to some extent within the developer's control is the percentage of non-zoning floor area. In the upper portion of any building, by far the largest component of non-zoning floor area is the space for accessory mechanical equipment. In 1993, it was rare for residential buildings to have even one mid-building mechanical floor, because very few such buildings had central air conditioning. But even adding a mechanical floor to the upper portion of the building would only bring the total to 33.4 floors. In order to arrive at the 40 floors, as in Extell's building, a building would have to add 7.6 floors' worth of non-zoning floor area – primarily accessory mechanical space – to the upper portion of the building.[4] DOB properly requires that mechanical floor space actually be used for mechanical equipment. Even today, no developer could legitimately claim to fill approximately 7 floors in the middle of a building with necessary accessory mechanical equipment to service the 32.4 residential floors.

This demonstrates that the parameters set by the statute embody a mathematical limit that, not coincidentally, is in the low-30 stories. Although the statute does not spell out in words the requirement that the number of stories remain in the low 30s regardless of lot size, it does do so in numbers. Its mathematics make it so. It does not make sense, and would be contrary to the constitutional principles of consistency that undergird all zoning, to assume that the City Planning Commission wished to impose this limit everywhere in the Special District except for split lots, community facility towers, and very tall height factor buildings – all rare and improbable developments here – in the R8 portion that makes up about 5 percent of that District.

B. The Most Fundamental Rule of Statutory Interpretation, Applicable to Land Use Cases as to Others, States that the Literal Language of the Statute Does Not Control Where It Leads to an Absurd Result

Even if the statute were not ambiguous on its face, it still could not be applied as Extell does.

At the August 6th hearing, Board Chair Perlmutter and Commissioner Scibetta repeatedly asserted that ZR § 82-34 was unambiguous, and that resort to legislative history was therefore not merely unnecessary, but contrary to the rule of statutory interpretation set forth in *Raritan*

[3] The formula embedded in this spreadsheet is a more elaborate version of the one described on page 12 of Appellant's initial Statement. All this is simple arithmetic: addition, subtraction, multiplication, and division. By clicking on each cell, the reader can see the underlying formula that produces the number in that cell.

[4] In modelling the maximum number of stories, we did not consider the amount of non-zoning floor area below 150 feet, because adding non-zoning floor area to the lower portion of the building would, if anything, decrease the total number of stories, not increase it. This is because the number of stories below 150 feet is fixed at 14, and adding non-zoning floor area in the lower portion of the building would only make it more difficult to fit all of the 60 percent of total allowable zoning floor area there, and consequently more difficult to use all of the 40 percent of total allowable floor area for the upper portion of the building.

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Development Corp. v. Silva, 91 N.Y.2d 98 (1997). *Raritan* states that "'[a]bsent ambiguity the courts may not resort to rules of construction to broaden the scope and application of a statute,' because 'no rule of construction gives the court discretion to declare the intent of the law when the words are unequivocal.'" *Id*. at 107.

While this principle is valid in most circumstances, there is a more fundamental principle that requires courts to override even unambiguous statutory language where that language leads to a result that is plainly contrary to legislative intent or otherwise absurd. As Appellants previously noted:

> "The legislative intent is the great and controlling principle" of all statutory interpretation. . . . Therefore, even if the words of the statute could only be read as Extell does – and that is far from the case here – the Bulk Packing Rule still would not apply to a situation in which, as here, applying it is so directly contrary to the statutory intent.

Appellants' Reply Statement, at 6 (quoting *Council v. Giuliani*, 93 N.Y.2d 60, 68-69 (1999)).

Commissioner Scibetta questioned whether this most fundamental principle – that even the unambiguous language of a statute must give way in the face of results that are absurd or contrary to legislative intent – applies in land use cases. It does.

In *City v. Stringfellow's of New York*, 253 A.D.2d 110, 115-116 (1st Dep't 1999), *aff'd,* 96 N.Y.2d 51 (2001), the First Department explicitly rejected the contention that ambiguities in the Zoning Resolution are to be construed in favor of the owner when the result is contrary to the legislative intent, and the Court of Appeals affirmed without even mentioning this supposed rule.[5] *Stringfellow's* turned on the Zoning Resolution's definition of "adult establishment." Such an establishment was defined as one that, *inter alia*, was "not customarily open to the general public ... because it excludes minors by reason of age." The defendant establishment did admit minors. Accordingly, the Supreme Court held that the plain language of the statute "clearly and unambiguously" required judgment in favor of the owner. *Id.* at 114. Reversing and ruling against the owner, the Appellate Division stated: "While zoning ordinances must be narrowly interpreted and ambiguities are to be construed against the zoning authority, . . . the fundamental rule in construing any statute, or in this case an amendment to the City's Zoning Resolution, is to ascertain and give effect to the intention of the legislative body, here the New York City Council." *Id.* at 115-116.

At the hearing, we discussed *Long v. Adirondack Park Agency*, 76 N.Y.2d 416 (1990), in which the Court of Appeals read additional language into a statute to overcome "an absurd result that would frustrate the statutory purpose." *Id*. at 420. Although the literal language of the statute pointed to an outcome in favor of the property owner, who had been granted a variance by the Town Zoning Board of Appeals, the Court of Appeals decided the case against the owner. The statute there gave the Adirondack Park Agency 30 days from the granting of a zoning variance to

[5] Indeed, in the over 80 zoning cases that the Court of Appeals has decided since 1999, it has not mentioned that rule even once. This statement is based on a Lexis search for cases that contain the word "zoning" at least five times.

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disapprove it. The local government did not forward the record to the Agency until shortly before the 30 days had run, and the Agency therefore was unable to complete its review within the 30 days. Finding that reading the law as written would frustrate its purpose, the Court of Appeals instead read it as providing that the 30 days did not begin to run until the Agency had all the documentation it needed to review the variance. The dissent there made the same arguments that Extell and the Commissioners made here: that the statute was unambiguous and rules of construction therefore could not be invoked; that the consequence was not "absurd" and did not completely frustrate the legislative goal; that the statute was intentionally written the way it was, as evidenced by "the existence of ... detailed rules governing" the question in another portion of the same statute; and that the Court's re-writing of the statute created additional problems. *Id.* at 423-427 (Titone, J., dissenting).

The principle that the statute's purpose governs even when the literal language is contrary has also been applied in other cases involving property rights and statutes in derogation of the common law. In *89 Christopher, Inc. v. Joy*, 44 A.D.2d 417 (1st Dep't 1974), *aff'd in relevant part*, 35 N.Y.2d 213 (1974), the Appellate Division refused to allow "a landlord to circumvent the requirement" of the City Rent and Rehabilitation Law, despite its literal language. *Id.* at 421. It stated:

> In reaching our determination, we have not overlooked those decisions which require us to read and give effect to statutes as written, to refrain from resorting to conjecture when confronted with clear and unambiguous statutory language and to give due weight to administrative construction. However, we are not obliged to follow literal language where to do so would thwart the obvious legislative intent and lead to unexpected and absurd results.

Id. at 422 (internal citations omitted) (underlining added).

Similarly, in *People ex rel. McGoldrick v. Sterling*, 283 A.D. 88, 90 (1st Dept. 1953), the First Department applied the State Residential Rent Law to the coop conversion plan of a Park Avenue building. Under the plan, only certain tenants would be given an option to buy. The court construed the statute against the landlord despite its literal language, holding that although the plan was in literal compliance with the statute and regulations, "a statute may not be read so literally that it yields in application a nonsensical result." *Id.* at 93. Observing that the provision relied on by the landlord "would have the very reverse effect of that intended if occupants were not given an option to 'purchase' their apartments before they were 'sold' over their heads," *id.* at 95, the Court held that evictions could not go forward.[6]

[6] The Board itself has also held that the rule that zoning restrictions should be construed in favor of the owner must yield to the public policy goals of the Zoning Resolution. In *2368 12th Avenue*, BSA Cal. Nos. 24-12-A & 147-12-A (Aug. 7, 2012), the appellant contended that its rooftop signs were accessory and not advertising signs, invoking the supposed rule of construction in favor of the owner. Nevertheless, the Board, noting the "public policy goal of ensuring that otherwise unlawful advertising signs or billboards cannot circumvent the requirements of the Zoning

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In criminal cases, the accused enjoys constitutional protections that are at least as weighty as those of a property owner in a zoning case. The courts are justly reluctant to hold a defendant criminally liable for conduct that is not expressly prohibited by law. Yet in *People v. Santi*, 3 N.Y.3d 234 (2004), the Court of Appeals did just that, applying the principle that legislative purpose trumps plain language. The defendant, a medical doctor authorized to practice, was charged with "aiding and abetting an unauthorized individual in the unlawful practice of medicine." *Id.* at 239. The statute, by its terms, criminalized aiding and abetting only when done by "anyone not authorized to practice" medicine. Nevertheless, the Court held that the phrase "anyone not authorized to practice" must be construed to include persons, such as the defendant doctor, who were authorized to practice medicine. The Court stated that "courts normally accord statutes their plain meaning, but 'will not blindly apply the words of a statute to arrive at an unreasonable or absurd result.'" *Id*. at 242-44.

C. The Application of ZR § 82-34 to this Split Lot Situation Yields a Result that Defeats the Purpose of the Bulk Packing Rule, and Is Therefore Absurd

Extell disputes that the application of § 82-34 leads to an absurd result in this case. But "absurd" in this context means nothing more than "contrary to the purpose and intent of the underlying statutory scheme," and allowing an "end-run around" the statute. *Matter of Jamie J.*, 30 N.Y.3d 275, 284-285 (2017) (quoting *Long v. Adirondack Park Agency*, 76 N.Y.2d at 420). *See also People v. Santi*, 3 N.Y.3d at 243 (even if it "represents a fair and literal reading of the text, ... an interpretation [that] ignores the legislative intent underlying the statute's enactment" is incorrect); *New York State Bankers Ass'n v. Albright*, 38 N.Y.2d 430, 436-37 (1975) ("even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words"); *Abood v. Hospital Ambulance Service, Inc.*, 30 N.Y.2d 295, 298 (1975) (citation omitted) ("'[to] effect the intention of the legislature the words of a single provision may be enlarged or restrained in their meaning and operation, and language general in expression may be subjected to exceptions through implication'"); *Hogan v. Culkin*, 18 N.Y.2d 330 (1966) ("Literal meanings of words are not to be adhered to or suffered to 'defeat the general purpose and manifest policy intended to be promoted.'").

The logic of Extell's interpretation of the Bulk Packing Rule is directly contrary to the Rule's purpose of limiting height. For every square foot of floor area that Extell adds from the R8 district, it increases the floor area above 150 feet by a corresponding square foot over what it would be if it were entirely in the C4-7 district. Nothing in the statute's language or history even remotely suggests that City Planning Commission intended to allow a building to gain in height merely because it is on a split lot with a lower density district.

Extell, however, argues that the result here is not absurd because the building is, according to it, "only" six stories and 96 feet too high – an exceedance that it characterizes as "permissible" – and if the Bulk Packing Rule were not applied at all, its building could have been four floors higher than it is. Extell Statement, at 19-20. Appellants, in their Reply Statement, showed that in

Resolution by designating a 'sham' warehouse or storage facility as a principal use," ruled against the property owner. *Id*. at 6.

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reality the excess number of floors attributable to Extell's absurd application of the Bulk Packing Rule is eight or nine, not five or six. Either way, the excess is far from trivial. Either way, too, its tower still constitutes 52 percent of the square footage allowable in the C4-7 area, rather than the maximum allowable of 40 percent, and is far taller than the intended low-30 stories. But no matter the size of the effect, Extell's interpretation is directly contrary to the legislative intent, because it increases rather than decreases the floor area above 150 feet.

D. If the Application of the Rule in This Context Leads to an Unanticipated Result That Is Contrary to Legislative Intent, a Limitation or Exception Must Be Implied

At the hearing, Mr. Karnovsky agreed that the City Planning Commission "had not, probably, studied the fact that the Special District has more than one zoning district designation," Aug. 6th Hearing Video at 2:08, and that this development "may not have been anticipated by the drafters," *id*. at 1:55. However, he argued, "this doesn't mean that you should re-write the law. If you don't like the result, you and change the law," *id.* at 2:08-2:09. The Commissioners appeared to agree.

The Court of Appeals, however, disagrees. It has observed:

> The law-makers cannot always foresee all the possible applications of the general language they use; and it frequently becomes the duty of the courts in construing statutes to limit their operation, so that they shall not produce absurd, unjust or inconvenient results not contemplated or intended. A case may be within the letter of the law, and yet not within the intent of the law-makers; and in such a case a limitation or exception must be implied.

Lake S. & M.S.R. Co. v. Roach, 80 N.Y. 339, 344 (1880) (underlining added); *see also Abood v.* 30 N.Y.2d at 298 ("language general in expression may be subjected to exceptions through implication"). This means that if a particular application of a statute leads to a result opposite to the statute's intended result, that particular application is unlawful.

This principle is fully applicable here. Pursuant to it, the Board need not decide, for example, whether the Bulk Packing Rule of ZR § 82-34 would apply to a community facility tower in R8. It needs only to decide the case before it. And in this case, the absurdity of the result is evident.

E. The Argument That the Drafters Intended to Make the Bulk Packing Rule Apply to the R8 Portion of the Special District Is Implausible

Extell's arguments as to why the drafters might have intended to make the Bulk Packing Rule, but not the Tower Coverage Rule, applicable to the R8 district are implausible. Nothing in the extensive legislative history suggests that the City Planning Commission wanted to allow a building partially in the very small R8 portion of the Special District to be taller than it would be if it were entirely in C4-7/R10, a higher-density zoning district. Nor has Extell ever given any explanation, plausible or otherwise, for why the City Planning Commission might have wanted to do so.

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Extell cites the fact that community facility towers are allowed in R8 – so, according to it, the Rule has a purpose in that zoning district. At the hearing, Mr. Karnovsky stated that there were many community facilities in the Special District. It remains the case, however, that while community facilities are plentiful, community facility towers are very rare. A community facility tower must be "comprised, at every level, of only community facility uses." ZR § 24-54(a)(2). Therefore, even if the synagogue in Extell's building were located in the R8 portion, it would not make the building a community facility tower.

The only other possible application of the Bulk Packing Rule would be to a height factor building tall enough to have more than 40 percent of its floor area above 150 feet. The portion of the R8 district that occupies part of a block north of 65th Street only fronts a narrow street and any development solely in this R8 district would be on interior lots. The height of such development would be effectively limited by the narrow-street sky exposure plane and the yard requirement of interior lots so that the bulk packing rule would not be relevant.

The only other portion of the Special District zoned R8 is the through-block portion of the midblock of block 1117, between 64th and 65th Streets. This block contains 14 residential buildings, which contain hundreds of residential units, most of which are in cooperative or condominium ownership. It is far-fetched to think that this provision was designed to apply to this single partial block with no development sites, contrary to the legislative history.

As Appellants previously argued, and Mr. Karnovsky conceded, the drafters likely did not consider any development in the R8 portion of the Special District. The conclusion to be drawn from this, however, is not the one Mr. Karnovsky draws: that this failure can only be remedied by legislation. Rather, it is up to the Board to rule that this absurd application of the Bulk Packing Rule is unlawful.

Very truly yours,

/s/

John R. Low-Beer

Charles N. Weinstock

c: Michael J. Zoltan, Esq., NYC Dept. of Buildings
David Karnovsky, Esq., Fried, Frank, Harris, Shriver & Jacobson
Susan Amron, Esq., NYC Dept. of City Planning
Stuart A. Klein, Esq., Klein Slowick PLLC

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Maximum height of tower in Special Lincoln Square District (zoning floor area = non-zc

Maximum zoning floor area	240,000		**Assumptio**
Area under 150	144,000	Taper	80%
Max over 150	96,000	FAR	12
Floor area per floor			
Excluding penthouse	6,000	Max Penthouse floors	4
Floors above 150'			
With no penthouse	16.0	Floors below 150	14
Floors below 150	14.0		
Total floors, no penthouse	30.0		

With penthouse

Non-penthouse floors	13.6
Max penthouse floors	4.0
Floors above 150 feet	17.6
Floors below 150	14.0
Total floors, with penthouse	31.6

Maximum building height in Special Lincoln Square District (with NZFA deductions in

GFA Max over 150	100,800	**Assumptio**
Gross floor area per floor		
Excluding penthouse	6,000	
Floors above 150'		
With no penthouse	16.8	

With penthouse

Non-penthouse floors	14.4
Max penthouse floors	4.0
Floors above 150 feet	18.4
Floors below 150	14.0
Total floors	32.4

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ɔning floor area)

ıns

Lot area	20,000	SF
Coverage tower	30%	
Floor area under 150	60%	

portion over 150)

ıns

NZFA	5%
Gross up	105%

89 Christopher, Inc. v. Joy

Supreme Court of New York, Appellate Division, First Department

May 14, 1974

No Number in Original

Reporter
44 A.D.2d 417 *; 355 N.Y.S.2d 584 **; 1974 N.Y. App. Div. LEXIS 5022 ***

In the Matter of 89 Christopher Inc., on Behalf of Itself and All Other Property Owners Similarly Situated, Appellant-Respondent, v. Daniel W. Joy, as Commissioner of Rent and Housing Maintenance, Respondent-Appellant

Prior History: [*1]** Cross appeals from a judgment of the Supreme Court (Sidney A. Fine, J.), entered in New York County on February 27, 1974, in a proceeding pursuant to CPLR article 78. Petitioner appeals from so much of the judgment as failed to grant the petition and invalidate certain city rent regulations. Respondent appeals from so much of the judgment as permitted petitioner to collect, effective January 1, 1974, a 7 1/2% annual increase in rent for any apartment below the Maximum Base Rent established in 1972, provided petitioner complied with the 90% Operation and Maintenance certification, mandated by the statute, during the year 1974.

Disposition: Judgment, Supreme Court, New York County, entered February 27, 1974, unanimously reversed, on the law, without costs and without disbursements, the petition granted to the extent indicated in the opinion of this court and the matter remanded to respondent Rent Commissioner for further proceedings consistent herewith.

Settle order on notice.

Core Terms

rent, landlord, expenditures, certification, maximum rent, collected, effective, increases, biennially, allowance, expended, rent increase, violations, apartment, regulations, services, maximum

Counsel: *Robert S. Fougner* of counsel (*Wynne B. Stern* with him on the brief; *McLaughlin & Fougner* and *Fellner & Rovins*, attorneys), for appellant-respondent.

William E. Rosen of counsel (*Harry Michelson*, attorney), for respondent-appellant.

Judges: Murphy, J. Nunez, J. P., Kupferman, Murphy, Steuer and Tilzer, JJ., concur.

Opinion by: MURPHY

Opinion

[*418] [585]** Both petitioner and respondent appeal from a judgment entered below in an article 78 proceeding instituted by petitioner landlord (on behalf of itself and all other landlords similary situated) to review and annul the determination of respondent Rent Commissioner denying a protest to certain sections of the City Rent, Eviction and **[***5]** Rehabilitation Regulations which purport to interpret the statutory requirements for eligibility for a 1974 rent increase under the current City Rent and Rehabilitation Law.

In denying virtually all of the relief sought by petitioner, the judgment below affirmed the Maximum Base Rent ("MBR") sections of the city rent regulations requiring a landlord to ceritfy that he has expended 90% of the total amount of the cost index for operation and maintenance ("O&M") established for his type of building in order to obtain a rent increase, effective January 1, 1974, pursuant to the MBR sections of the statute (§ Y 51-1.0 *et seq*. of the Administrative Code of the City of New York, as amd. by Local Laws, 1970, No. 30 of City of New York). However, Special Term permitted petitioner **[**586]** to collect, effective January 1, 1974, a 7 1/2% increase in rent for any apartment below the MBR established in 1972, despite the landlord's seeming failure to comply with the 90% O&M certification mandated by the statute, on condition that it make up the deficiency in expenditures during 1974. Petitioner appeals from the entire judgment, except to the extent that it permits collection of a 1974 **[***6]** increase subject to the above condition; and respondent appeals from so much thereof as granted petitioner even limited relief.

The central issue on this appeal is the construction to be given the following statutory provision which prescribes the conditions **[*419]** for the MBR calculation and recalculation, particularly the portion dealing with certification of expenditures.

"No new maximum rent shall be established pursuant to paragraph (3) [providing for the maximum base rents effective January 1, 1972] or (4) [requiring the establishment of maximum base rents effective January 1, 1974 and biennially thereafter] of subdivision a of this section unless not more than one hundred fifty days nor less than ninety days prior to the effective date thereof, the landlord has certified that he is maintaining all essential services required to be furnished with respect to the housing accommodations covered by such certification, and that he will continue to maintain such services so long as such new maximum rent is in effect. Each such certification filed to obtain a new maximum rent pursuant to paragraph (4) of subdivision a of this section shall be accompanied by a certification **[***7]** by the landlord that he has actually expended or incurred ninety percentum of the total amount of the cost index for operation and maintenance established for his type of building." (Administrative Code, § Y51-5.0, subd. g, par. [6] cl. [d].)

Examination of Local Law No. 30 of 1970 reveals that the City Council made a concerted effort to cope with the widespread problem of housing disinvestment and abandonment and to preserve the existing stock of rent-controlled apartments in New York City; and to balance the interests of both landlords and tenants. After providing for rent increases on the basis of the prior rental history of the individual apartments in a building and for increased labor costs, it introduced a new long-range system for rent control by establishing an MBR for each controlled apartment. A statutory scheme was devised, essentially, to increase the financial returns of rent-controlled buildings and allocate to each apartment its fair share of the amount the landlord required to carry the building and to realize a fair return on its value, to assure the improved maintenance and upgrading of rent-controlled buildings out of the increased income obtained through **[***8]** the MBR provisions and to limit the amount of annual increases to 7 1/2% over the previously existing maximum rent.

In its initial phase, an MBR for each apartment, effective in 1972 and 1973, was to be computed. Consideration was to be given to the **[**587]** size and location of, and the number of rooms contained in, the housing accommodation and the computation was to be based on such factors as real estate taxes, water rates and sewer charges, a formula allowance for O&M, a **[*420]** limited vacancy allowance and an 8 1/2% return on capital value. (Administrative Code, § Y51-5.0, subd. a, par. [3].) Eligibility to collect the initial MBR increase (limited to 7 1/2% per annum [*id*., § Y51-5.0, subd. a, par. [5]) was conditioned upon the landlord providing timely certification in 1971 that he (a) was maintaining and would continue to maintain all essential services (*id*., § Y51-5.0, subd. g, par. [6], cl. [d]), (b) had cleared, corrected or abated all rent-impairing violations and (c) had cleared, corrected or abated at least 80% of all other violations of a stated age (or agreed to enter into a written agreement with the city rent agency to deposit all income **[***9]** derived from the property into an escrow or trust account for such purpose). (*Id*., § Y51-5.0, subd. h, par. [6].)

The statutory plan then appears to mandate the disestablishment of the 1972 MBRs and the establishment of new MBRs effective January 1, 1974 and biennially thereafter to reflect changes, if any, in the factors upon which the prior MBR was based, since it states: "The city rent agency shall establish maximum rents effective January first, nineteen hundred seventy-four and biennially thereafter by adjusting the existing maximum rent to reflect changes, if any, in the factors which determine maximum gross building rental under paragraph (3) of this subdivision." (*Id*., § Y51-5.0, subd. a, par. [4].)

In order to be eligible for a rent increase in 1974 the landlord was required, pursuant to the same provisions referred to above, to timely file new certifications as to the maintenance of essential services and the correction of rent impairing and other housing code violations. However, and in addition to the foregoing, the last sentence of clause (d) (subd. g, par [6]) of section Y51-5.0 now became operable; and the landlord was also required to provide a certification **[***10]** that "he has actually expended or incurred ninety percentum of the total amount of the cost index for operation and maintenance established for his type of building."

By Amendment No. 33 to its Rent, Eviction and Rehabilitation Regulations, respondent promulgated regulations sections 24, 25 and 26 to implement Local Law No. 30. On October 4, 1973, he interpreted the statute and regulations as requiring an expenditure for the building equal to 90% of the established O&M, even if such amount had not been collected.

The premises involved herein is a 20-unit, walk-up structure which had qualified for a January 1, 1972 MBR of $ 21,467, predicated, *inter alia*, on an O&M of $ 11,269.40. Because of **[*421]** the 7 1/2% rent increase limitation, petitioner was precluded from collecting more than $ 14,957.52 through 1973 and would need approximately six additional 7 1/2% annual increases to reach its 1972 MBR.

[588]** In applying for its January 1, 1974 rent increase petitioner certified that it had expended $ 9,108.93 for O&M. This sum was $ 1,033.53 less than the required expenditure of $ 10,142.46 (i.e., 90% of $ 11,269.40), but substantially in excess of the O&M actually **[***11]** collected.

On this appeal petitioner contends that the certification of actual expenditures requirement is inapplicable to the landlord who is merely seeking additional increases to achieve his 1972 MBR, as distinguished from the owner who applies for a biennial recalculation. Alternatively, petitioner argues that the statute should be so interpreted as to require an O&M expenditure equivalent to the MBR being collected. Thus, in the instant proceeding petitioner asserts that since it was only collecting 70% of its MBR, it should only

be required to expend $ 7,099.72 for O&M (i.e., 90% of 70% of $ 11,269.40). Both sides now agree that there was no justification for the exception granted by Special Term to petitioner.

Section Y51-5.0 (subd. a, par. [4]) of the Administrative Code requires the city rent agency to adjust the existing rents, effective January 1, 1974, and biennially thereafter to reflect economic changes in the pertinent MBR components. We find no basis for an interpretation which would permit a landlord to circumvent the requirement of submitting an O&M certification, before he obtained a 1974 increase, by merely requesting a continuation of his 7 1/2% increases **[***12]** until his 1972 MBR is obtained instead of seeking a recalculation. Such a construction of the statute would enable a landlord to avoid any expenditures for O&M, which clearly contravenes the legislative intent, as expressed in the report of the City Council's Committee on Housing:

"Maximum rents will be recomputed every two years as provided in the bill, rather than annually as proposed by the Administration. Furthermore, commencing on January 1, 1974, the City Rent Agency is required to examine every landlord's books and financial records once every three years to determine what his actual expenditures for operation and maintenance are, and if there are any significant deviations in actual expenditures and the cost allowance, to appropriately adjust the maximum rent. Furthermore, the Agency is required to establish maximum allowances for types of housing on the **[*422]** basis of such actual costs to assure that a landlord may not overimprove or overmaintain his property at the tenant's expense. This required opening of the books and adjustment of individual rents in the event of significant deviations from the cost allowance was deemed essential by the Council to prevent the **[***13]** indolent landlord from obtaining the same rent for the same type of building as the conscientious landlord who was actually expending such amount.

"In order to obtain biennial increases in rent the landlord must certify that he has expended at least 90 per cent of the cost **[**589]** allowance collected for his type of building. Furthermore, six months before an increase is due the landlord must certify that he has corrected all of the rent impairing violations against his building and 80 per cent of all other violations or he must agree to place all income from the building in trust for such purposes in accordance with a contract he enters into with the City Rent Agency." (City Council Minutes, July 26, 1970, pp. 2998-9.)

What clearly appears, therefore, is the requirement that 1972 increases under MBR are conditioned on continued maintenance of essential services and the removal of housing violations, and that biennial increases thereafter are conditioned on such factors plus a specific standard of expenditure for O&M. Accordingly, petitioner's first argument is unsound.

However, we find merit in petitioner's second contention. Although the statute appears at first blush to **[***14]** leave no room for construction, we nevertheless conclude that its literal application to this petitioner, and others similarly situated, would lead to an absurd and unintended result.

The Council Committee's own report referred to the "cost allowance collected" in reference to the 90% expenditure requirement; and we do not find such phrase limited, as respondent urges, to a particular type of building.

In reaching our determination, we have not overlooked those decisions which require us to read and give effect to statutes as written (*Lawrence Constr. Corp. v. State of New York, 293 N. Y. 634*), to refrain from resorting to conjecture when confronted with clear and unambiguous statutory language (*Meltzer v.*

Koenigsberg, 302 N. Y. 523) and to give due weight to administrative construction (*Matter of Howard v. Wyman, 28 N Y 2d 434*).

However, we are not obliged to follow literal language where to do so would thwart the obvious legislative intent and lead to unexpected and absurd results. (*Matter of Chatlos v. McGoldrick, [*423] 302 N. Y. 380*.) Our reading of the statute, in the context of the legislative intent and the over-all objective of the **[***15]** MBR program, persuades us that the required expenditure for O&M of a building may be reduced to reflect the ratio between the full MBR for the building and the amount of rent increases under MBR the landlord is permitted to collect. The indicated legislative concern with the landlord's physical plant was counterbalanced by a desire not to overburden his tenant. The limitation on the landlord's return requires a commensurate reduction in mandated maintenance expenditures to avoid an unreasonable and arbitrary consequence.

Accordingly, the judgment of Supreme Court, New York County (Fine, J.), entered February 27, 1974, should be reversed, on the law, without **[**590]** costs or disbursements, the petition granted to the extent hereinabove indicated and the matter remanded to respondent Rent Commissioner for further proceedings consistent herewith.

Settle order on notice.

Judgment, Supreme Court, New York County, entered February 27, 1974, unanimously reversed, on the law, without costs and without disbursements, the petition granted to the extent indicated in the opinion of this court and the matter remanded to respondent Rent Commissioner for further proceedings consistent herewith.

[*16]** Settle order on notice.

End of Document

Asian Americans for Equality v. Koch

Court of Appeals of New York

June 1, 1988, Argued ; July 7, 1988, Decided

No Number in Original

Reporter
72 N.Y.2d 121 *; 527 N.E.2d 265 **; 531 N.Y.S.2d 782 ***; 1988 N.Y. LEXIS 1684 ****

Asian Americans for Equality et al., Appellants. v. Edward I. Koch, as Mayor of the City of New York and Chairman of the Board of Estimate, et al., Respondents

Subsequent History: [**1]** As Amended April 11, 1989.

Prior History: Appeal from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered May 5, 1987, which, with two Justices dissenting, modified, on the law and the facts, and, as modified, affirmed an order of the Supreme Court (David B. Saxe, J.; opn *129 Misc 2d 67*), entered in New York County, *inter alia*, denying motions by defendants to dismiss the complaint as to the first, second and third causes of action which concerned the amendment to the New York City Zoning Resolution establishing the Special Manhattan Bridge District and the special permit issued pursuant to that amendment. The modification consisted of granting defendants' motions to dismiss as to the first and second causes of action.

Asian Ams. for Equality v Koch, 128 AD2d 99.

Disposition: Order affirmed, with costs.

Core Terms

zoning, housing, well-considered, exclusionary, municipality, low-cost, cause of action, low-income, City's, Township, Village, developers, rehabilitation, restrictions, facilities, ordinance, Planning, zoning ordinance, zoning law, opportunities, plaintiffs', districts, density, region

Counsel: *Frank J. Barbaro, Earle R. Tockman, Stephen Dobkin, Geoffrey D. H. Smith, Richard Sussman* and *Ann L. Detiere* for appellants. I. Plaintiffs' allegations that the Special Manhattan Bridge District zoning regulations are exclusionary states a cause of action under New York law. *(* *Robert E. Kurzius, Inc. v Incorporated Vil. of Upper Brookville [****7]* , 51 NY2d 338, 450 U.S. 1042*; *Suffolk Hous. Servs. v Town of Brookhaven, 70 NY2d 122*; *Group Hous. v Board of Zoning & Appeals, 45 NY2d 266*; *Matter of Golden v Planning Bd., 30 NY2d 359*; *Berenson v Town of New Castle, 38 NY2d 102*; *Udell v Haas, 21 NY2d 463*; *Guggenheimer v Ginzburg, 43 NY2d 268*; *Russell v Trask Co., 125 AD2d 136*.) II. The court below failed to apply the correct standard for pretrial motions to dismiss. *(* *Guggenheimer v Ginzburg, 43 NY2d 268*; *Kaufman v Lilly & Co., 65 NY2d 449*; *Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359*; *Goldsmith v Sternberg, 125 AD2d 365*; *Bryant Ave. Tenants' Assn. v Koch, 127 AD2d 470*; *Rovello v Orofino Realty Co., 40 NY2d 633*; *Four Seasons Hotels v Vinnik, 127 AD2d 310*; *Business Assn. v Landrieu, 660 F2d 867*; *Matter of Save the Pine Bush v City of Albany, 70 NY2d 193*; *Berenson v Town*

of New Castle, 38 NY2d 102.) III. The court below misapplied the requirements of *Berenson v Town of New Castle to the Special Manhattan Bridge District. (Berenson v Town of New Castle, 38 NY2d 102*; *Euclid v Ambler Co., 272 U.S. 365*; *Village of Belle Terre v Boraas [****8] , 416 U.S. 1*; *Suffolk Hous. Servs. v Town of Brookhaven, 70 NY2d 122*.) IV. Plaintiffs' cause of action is not barred by the Statute of Limitations. *(Matter of Voelckers v Guelli, 58 NY2d 170*; *Matter of Save the Pine Bush v City of Albany, 70 NY2d 193*; *Lutheran Church v City of New York, 27 AD2d 237*; *Matter of Kovarsky v Housing & Dev. Admin., 31 NY2d 184*; *De Luca v Kirby, 83 AD2d 621*; *Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359*; *Matter of Golden v Planning Bd., 37 AD2d 236, 30 NY2d 359*.) V. Plaintiffs seek relief consistent with traditional principles of judicial review. *(Udell v Haas, 21 NY2d 463*; *Berenson v Town of New Castle, 67 AD2d 506*; *Matter of Golden v Planning Bd., 30 NY2d 359*; *Robert E. Kurzius, Inc. v Incorporated Vil. of Upper Brookville, 51 NY2d 338*.) VI. Plaintiffs are entitled to appeal as of right. *(Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359*; *Lighting Horizons v Kahn & Co., 120 AD2d 648*; *Leonhart v McCormick, 395 F Supp 1073*; *Federal Sav. & Loan Ins. Corp. v Director of Revenue, 650 F Supp 1217*; *Sherry v New York State Educ. Dept., 479 F Supp 1328*; *Guggenheimer [****9] v Ginzburg, 43 NY2d 268*; *Garvin v Garvin, 306 NY 118*; *Suffolk Hous. Servs. v Town of Brookhaven, 70 NY2d 122*; *Robert E. Kurzius, Inc. v Incorporated Vil. of Upper Brookville, 51 NY2d 338, 450 U.S. 1042*; *Berenson v Town of New Castle, 38 NY2d 102*.)

Peter L. Zimroth, Corporation Counsel (Edward F. X. Hart and *Leonard Koerner* of counsel), for Edward Koch and others, respondents. Since plaintiffs' constitutional challenge is not directed to the City's Zoning Resolution but solely to an amendment affecting a small area which already contains primarily low-income housing and since plaintiffs' challenge to the amendment is premised upon an assumption that the New York State Constitution requires a municipality affirmatively to provide for low-income housing, it fails to state a cause of action cognizable under the Constitution or laws of this State. *(Matter of Save the Pine Bush v City of Albany, 70 NY2d 193*; *Matter of Voelckers v Guelli, 58 NY2d 170*; *Town of Huntington v Park Shore Country Day Camp, 47 NY2d 61*; *Suffolk Hous. Servs. v Town of Brookhaven, 70 NY2d 122*; *Robert E. Kurzius, Inc. v Incorporated Vil. of Upper Brookville, 51 NY2d 338*; **[****10]** *Marcus Assocs. v Town of Huntington, 45 NY2d 501*; *Euclid v Ambler Co., 272 U.S. 365*; *Rogers v Village of Tarrytown, 302 NY 115*; *Matter of Mahoney v O'Shea Funeral Homes, 45 NY2d 719*; *Shepard v Village of Skaneateles, 300 NY 115*.)

Ronald J. Offenkrantz and *Michael H. Smith* for Henry Partners, respondent. I. These proceedings were instituted more than four months after creation of the Special Manhattan Bridge District and more than four months after issuance of the special use permit. Affirmance of the order appealed from is required because this proceeding is untimely. *(Matter of Jackson v New York Urban Dev. Corp., 67 NY2d 400*; *Town of Orangetown v Gorsuch, 718 F2d 29*, *cert denied sub nom. Town of Orangetown v Ruckelshaus, 465 U.S. 1099*.) II. Plaintiffs do not state a claim under *Berenson. (Berenson v Town of New Castle, 38 NY2d 102*; *Suffolk Hous. Servs. v Town of Brookhaven, 70 NY2d 122*.) III. This action is not moot insofar as Henry Street Partners is concerned; while the special use permit may have been invalidated the constitutional attack on its issuance has not been withdrawn. IV. Plaintiffs may not be entitled to appeal **[****11]** as of right. *(Gillies Agency v Filor, 32 NY2d 759*.)

Leslie Salzman, Shirley Traylor, Esmeralda Simmons, Andrew Scherer, Jocelyne Martinez and *Roger*

Wareham for Ansonia Tenants Coalition, Inc., and others, *amici curiae*. I. New York City is experiencing an extreme shortage in the availability of decent, affordable housing for low- and moderate-income people. *(McCain v Koch, 117 AD2d 198, 70 NY2d 109*.) II. The housing crisis currently prevailing in New York City is creating and exacerbating serious social and medical problems. III. Given New York City's housing crisis and the impact of that crisis, the challenged zoning resolution violates the City's obligation to assure that the housing needs of low-income people are met. *(Euclid v Ambler Co., 272 U.S. 365*; *Berenson v Town of New Castle, 38 NY2d 102*; *Udell v Haas, 21 NY2d 463*; *Suffolk Hous. Servs. v Town of Brookhaven, 70 NY2d 122*; *Tucker v Toia, 43 NY2d 1*; *McCain v Koch, 117 AD2d 198, 70 NY2d 109*; *Matter of Jones v Berman, 37 NY2d 42*; *Matter of LaPorte v Berger, 57 AD2d 425*; *Matter of Rosenfeld v Blum, 82 AD2d 559*; *Matter of Lee v Smith, 43 NY2d 453*.)

Kalman Finkel, **[****12]** *Helaine Barnett, Arthur J. Fried, John E. Kirklin* and *Lynn M. Kelly* for The Legal Aid Society of New York, *amicus curiae*. The challenged zoning resolution violates New York constitutional and statutory requirements that it be part of a well-considered plan to promote the public health, safety and general welfare. *(McCain v Koch, 70 NY2d 109*; *Robert E. Kurzius, Inc. v Incorporated Vil. of Upper Brookville, 51 NY2d 338*; *Berenson v Town of New Castle, 38 NY2d 102*; *Suffolk Hous. Servs. v Town of Brookhaven, 70 NY2d 122*; *Euclid v Ambler Co., 272 U.S. 365*; *Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359*; *Matter of Save the Pine Bush v City of Albany, 70 NY2d 193*.)

Judges: Simons, J. Chief Judge Wachtler and Judges Kaye, Alexander, Titone, Hancock, Jr., and Bellacosa concur.

Opinion by: SIMONS

Opinion

[*126] [*784] [**267] OPINION OF THE COURT**

Plaintiffs instituted this action to challenge an amendment to the New York City Zoning Resolution which established the Special Manhattan Bridge District in Chinatown. Plaintiffs either live or work in Chinatown or represent those who do and the gist of their complaint is that the new zoning will displace residents who require **[****13]** low-income housing because it will eliminate some of the existing housing without providing sufficient incentives for the development of affordable new housing to replace it. They seek judgment (1) declaring the Special Manhattan Bridge District amendment unconstitutional because it was not enacted pursuant to a well-considered plan and (2) imposing a mandatory injunction compelling the City to create a zoning plan for the District "which provides for and mandates a realistic opportunity for the construction of low income housing". A divided Appellate Division dismissed the complaint finding the first and second causes of action failed to state a claim and the third cause of action, seeking to enjoin development of Henry Street Towers, moot after our decision in *Chinese Staff & Workers Assn. v City of New York (68 NY2d 359*). On this appeal, plaintiffs seek reinstatement of their first and second causes of action. They contend in their complaint that the amendment results in exclusionary zoning and, referring specifically to *Southern Burlington County N.A.A.C.P v Township of Mount Laurel (92 NJ 158, 456 A2d 390 [Mount Laurel* **[****14]** *II])*, they seek affirmative relief

similar to the relief fashioned in that decision. On **[*127]** appeal to this court they have modified their argument, however, placing principal reliance on our decision in *Berenson v Town of New Castle (38 NY2d 102)*.

I

Plaintiff Asian Americans for Equality is a not-for-profit corporation engaged in supporting the rights of men and women of all races for improved housing, job opportunities and working conditions. The individual plaintiffs are now or formerly were residents of the area known as Chinatown, a center of Chinese culture and services in New York City where persons of Chinese and Asian ancestry reside. The individual plaintiffs allege either that they live in substandard housing there or that they were compelled to leave because of their inability to find suitable housing. They are persons of low income and none own property **[***785]** **[**268]** in Chinatown. [1] Defendants are the City of New York, various officers and agencies of the City and a private developer.

[**15]** The Special Manhattan Bridge District was created in 1981 by amendment to the City's Zoning Resolution. The District encompasses 14 blocks in the area of the Manhattan Bridge and includes a part, but by no means all, of Chinatown. One area south of Monroe and Madison Streets and west of St. James Place, was excluded from the District because it had been redeveloped with public or publicly assisted housing. Others were excluded because they were commercial.

The amendment was preceded by a study of the Manhattan Bridge area which confirmed that Chinatown contains a substantial proportion of high density, substandard housing occupied by low-income groups who work there in the garment, tourist and related industries. The amendment sought to correct these housing conditions by encouraging construction of new residential facilities, the rehabilitation of existing structures and the expansion of community facilities. To achieve those aims, it authorized development of mixed-income housing on land vacant or substantially vacant at the **[*128]** time the amendment was enacted. [2] The amendment provides that new construction must be authorized by special permit and regulated by a system **[****16]** of bonus points permitting increased density in new housing units for those developers who agree to do one or a combination of the following: (1) donate space for community facilities such as senior citizen or day care centers, educational facilities, or a combination of these; (2) construct low-income dwelling units; or (3) rehabilitate existing substandard housing. Defendant Henry Street Partners obtained a permit to build mixed-income housing with a greater floor area than otherwise permitted on vacant land on condition that it provide community facility space on the first floor and contribute $ 500,000 to help fund low-income housing in the District.

Recognizing that the stated goals of the City's study of the Manhattan Bridge **[****17]** area and the amendment creating the District are "very similar" to their own, plaintiffs nevertheless contend that the amendment is invalid because the means adopted to achieve them are inadequate. They charge that the bonuses awarded to permit high density housing favor moderate and high-income development and do not

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[1] Plaintiffs contend that the amendment violates their rights under the New York State Constitution. Their claims rest on due process and equal protection grounds. They have standing to raise these issues *(see, Suffolk Hous. Servs. v Town of Brookhaven, 63 AD2d 731, 109 AD2d 323, affd 70 NY2d 122; Long Is. Region N.A.A.C.P. v Town of N. Hemsptead, 102 Misc 2d 704, affd* ***75 AD2d 842****; cf., Warth v Seldin, 422 U.S. 490; see generally*, Tribe, American Constitutional Law § 3-18, at 132-134 [2d ed]).

[2] A site is substantially vacant if less than 10% of the zoning lot contains residential buildings. New construction may not be authorized for such sites, however, until the developer submits an approved relocation plan and unless it affirms that it has not harassed the tenants to relocate.

provide sufficient incentive to encourage construction of low-cost housing. They ask the court to require defendants to (1) improve existing housing in the Special Manhattan Bridge District, (2) provide more affordable low-income housing, (3) minimize the adverse affects of rehabilitation and (4) assure that the present residents who wish to stay in Chinatown are able to do so.

Defendants assert that the complaint fails to state claims for legal relief because (1) the amendment creating the Special Manhattan Bridge was in accord with a well-considered plan for the City of New York and (2) the City has no obligation to zone specific areas for low-income housing nor any constitutional obligation to affirmatively provide substantive guarantees of low-income housing in Chinatown.

II

Zoning, as first devised, was a means of dividing the whole territory of a municipality **[****18]** into districts and imposing restrictions on the uses permitted in them. Restrictions **[***786]** on size and **[*129]** density of construction **[**269]** to control fire and traffic hazards, for example, or to eliminate offensive uses from residential districts were deemed a reasonable exercise of the police power *(see, Euclid v Ambler Co., 272 U.S. 365)*. Such traditional zoning is both restrictive and passive, providing minimum encouragement for development of the municipality as a whole.

Special district zoning -- exemplified by the Manhattan Bridge District questioned here -- represents a significant departure from this traditional *Euclidian* zoning concept. It is based on the idea that zoning can be used as an incentive to further growth and development of the community rather than as a restraint. It is one of several imaginative legislative schemes intended to encourage, or even coerce, private developers into making the City a more pleasant and efficient place to live and work. Incentive zoning is based on the premise that certain uneconomic uses and amenities will not be provided by private development without economic incentive. The economic incentive frequently used, **[****19]** and the one used in the Manhattan Bridge District amendment, is the allowance of greater density within a proposed building, more floor area than permitted under general zoning rules, if developers provided certain amenities for the community. The amendment awards bonus points which entitle developers to expand their construction in return for increased construction of other, uneconomic projects such as low-cost housing, slum rehabilitation or public facilities. The bonus awarded for each amenity must be carefully structured, however, to make the cost-benefit equation favorable enough to induce the developer to provide the desired uneconomic benefit to the city but sufficiently limited to avoid a windfall to it.

New York City has used these special district incentive programs to develop uneconomic but necessary uses since 1961. By means of them they have encouraged the preservation and redevelopment of the Broadway Theatre District, protected a major investment in the Special Lincoln Square District, preserved historic shopping areas such as Fifth Avenue and provided relocation housing in the Lower Third Avenue District *(see generally*, Elliott and Marcus, *From Euclid to Ramapo:* **[****20]** *New Directions in Land Development Controls*, 1 Hofstra L Rev 56; Marcus and Groves, The New Zoning: Legal, Administrative, and Economic Concepts and Techniques, at 200 *et seq*. [1970]; 2 Rathkopf, Zoning and Planning § 17.06 [2] [4th ed]). The districts created are not traditional zoning districts, narrowly limited to particular **[*130]** uses, but broad-based plans intended to preserve and enhance troubled areas of the City which, because of their singular characteristics, are important to its wealth and vitality. The Special Manhattan

Bridge District was created to protect a badly deteriorated part of the unique area of New York City known as Chinatown.

III

A

In plaintiffs' first cause of action, they allege that the Special Manhattan Bridge District enactment is "piecemeal" legislation. Piecemeal zoning exists when only part of the land within a municipality is regulated by the zoning laws *(see*, 1 Anderson, New York Zoning Law and Practice §§ 5.03, 5.10 [3d ed]). However, the entire City of New York is zoned; indeed, New York City enacted the first comprehensive zoning law in the Nation in 1916. The litigation before us simply relates to **[****21]** one of many amendments to it. Manifestly, it is not "piecemeal" legislation.

Plaintiffs further allege in the first cause of action that the amendment is "not comprehensive in outlook" and that the study on which it is based is not part of a well-considered plan. The pleadings refer to the amendment only in this one conclusory assertion; the remaining several paragraphs of the cause of action challenge the planning study which preceded it. The plan is attacked as "not well considered", based upon insufficient information, "not related" to the District, "limited", and not addressed to the community. The validity of the amendment is not dependent solely **[***787]** upon the adequacy of the study of the **[**270]** Manhattan Bridge area, however, but on all the City's zoning policies and plans *(see, Udell v Haas, 21 NY2d 463*) and nowhere in the complaint have plaintiffs alleged that the City has failed to plan for the balanced and well-ordered development of the community or that it has neglected to zone the City to provide for the needs of its inhabitants or those in the region. Accordingly, the first cause of action does not state a legal claim for relief.

Moreover, plaintiffs have **[****22]** not only failed to plead a cause of action based upon the City's failure to follow a well-considered plan but it is clear that under established law they have none *(see, Guggenheimer v Ginzburg, 43 NY2d 268, 275*; *Foley v D'Agostino, 21 AD2d 60, 64-65)*.

[*131] The power to zone is derived from the Legislature and must be exercised in the case of towns and villages in accord with a "comprehensive plan" *(see*, *Town Law § 263*; *Village Law § 7-704*) or in the case of cities in accord with a "well considered plan" (*General City Law § 20 [25]*). The requirement of a plan is based on the premise that "zoning is a means rather than an end" (1 Anderson, New York Zoning Law and Practice § 5.03, at 158 [3d ed]). The function of land regulation is to implement a plan for the future development of the community *(Berenson v Town of New Castle, 38 NY2d 102, 109*, *supra)*. Its exercise is constitutional only if the restrictions are necessary to protect the public health, safety or welfare. The requirement of a comprehensive or well-considered plan not only insures that local authorities act for the benefit of the community as a **[****23]** whole but protects individuals from arbitrary restrictions on the use of their land *(see, Udell v Haas*, 21 NY2d, *supra, at 469*; *see*, Note, *Comprehensive Plan Requirement in Zoning*, 12 Syracuse L Rev 342).

A well-considered plan need not be contained in a single document; indeed, it need not be written at all. The court may satisfy itself that the municipality has a well-considered plan and that authorities are acting in the public interest to further it by examining all available and relevant evidence of the municipality's land use policies *(Udell v Haas, supra, at 470-472*). Zoning legislation is tested not by whether it defines

a well-considered plan but by whether it accords with a well-considered plan for the development of the community. When a zoning ordinance is amended, the court decides whether it accords with a well-considered plan in much the same way, by determining whether the original plan required amendment because of the community's change and growth and whether the amendment is calculated to benefit the community as a whole as opposed to benefiting individuals or a group of individuals *(see, Randolph v Town of Brookhaven, 37 NY2d 544, 547*; **[****24]** *Matter of Town of Bedford v Village of Mount Kisco, 33 NY2d 178, 187-188*, *rearg denied 34 NY2d 668*).

Because zoning is a legislative act, zoning ordinances and amendments enjoy a strong presumption of constitutionality and the burden rests on the party attacking them to overcome that presumption beyond a reasonable doubt *(Matter of Town of Bedford v Village of Mount Kisco, supra, at 186*; *Shepard v Village of Skaneateles, 300 NY 115, 118)*. In claims such as this, the analysis follows traditional due process rules: if the **[*132]** zoning ordinance is adopted for a legitimate governmental purpose and there is a "'reasonable relation between the end sought to be achieved by the regulation and the means used to achieve that end'", it will be upheld *(see, McMinn v Town of Oyster Bay, 66 NY2d 544, 549*, quoting *French Investing Co. v City of New York, 39 NY2d 587, 596*, *rearg denied 40 NY2d 846*, *appeal dismissed 429 U.S. 990*). **[***788]** An amendment which has been **[**271]** carefully studied, prepared and considered meets the general requirement for **[****25]** a well-considered plan and satisfies the statutory requirement *(Randolph v Town of Brookhaven, supra, at 547*; *Matter of Town of Bedford v Village of Mount Kisco, supra, at 188-189*; *see*, 1 Anderson, New York Zoning Law and Practice § 5.03, at 161-162 [3d ed]). The court will not pass on its wisdom *(see, Matter of Voelckers v Guelli, 58 NY2d 170, 177)*.

Manifestly, this legislation was reasonably related to its goals: the development of needed housing and the rehabilitation of existing housing in one area of Chinatown. There is no allegation that it was not consistent with the City's general planning or that the City had failed to make provision for low-cost housing. That being so, and inasmuch as the amendment was enacted after study and consideration *(see, Lai Chun Chan Jin v Board of Estimate, 62 NY2d 900* [reciting the preenactment procedures of the present legislation]), it met the requirements for a well-considered plan set forth in *Randolph v Town of Brookhaven (supra)* and *Matter of Town of Bedford v Village of Mount Kisco (supra)*.

B

Plaintiffs' second **[****26]** cause of action seeks a mandatory injunction compelling the City to amend the Special Manhattan District Zoning to create greater opportunity for the construction of low-income housing. Plaintiffs do not attack the purpose of the amendment but rather the adequacy of the legislative scheme. They claim that the incentives offered will not provide sufficient low-cost housing because the rewards for doing so are too low compared to the rewards the amendment authorizes for other amenities. As pleaded, the cause of action seeks relief from exclusionary zoning similar to that granted in *Southern Burlington County N.A.A.C.P v Township of Mount Laurel (67 NJ 151, 336 A2d 713*, *appeal dismissed 423 U.S. 808 [Mount Laurel I]*; *92 NJ 158, 456 A2d 390 [Mount Laurel II], supra)*: a mandatory injunction compelling the City to correct the problem. On appeal plaintiffs rely primarily on **[*133]** the rule in *Berenson v Town of New Castle (38 NY2d 102*, *supra)*, a decision of this court which held that a zoning ordinance would be annulled if it did not include districts for multiple housing **[****27]** when community and regional needs required such housing. *Berenson* did not mandate affirmative relief, nor have we had occasion to do so since that decision *(see*, Anderson & Mayo, *Land Use Control*, 35 Syracuse L Rev 485, 488-489; *see also, Blitz v Town of New Castle, 94 AD2d 92, 98-99*; *see generally*,

Nolon, *A Comparative Analysis of New Jersey's Mount Laurel Cases with the Berenson Cases in New York*, 4 Pace Env L Rev 3).

Exclusionary zoning may occur either because the municipality has limited the permissible uses within a community to exclude certain groups *(see, e.g., Dowsey v Village of Kensington, 257 NY 221)*, or has imposed restrictions so stringent that their practical effect is to prevent all but the wealthy from living there *(see, Levitt v Incorporated Vil. of Sands Point, 6 NY2d 269*; *and see generally*, Annotation, *Exclusionary Zoning*, *48 ALR3d 1210)*. It is a form of racial or socioeconomic discrimination which we have repeatedly condemned *(see, e.g., Suffolk Hous. Servs. v Town of Brookhaven, 70 NY2d 122*; *Robert E. Kurzius, Inc. v Incorporated Vil. of Upper Brookville, 51 NY2d 338, 345*; **[****28]** *Berenson v Town of New Castle, supra; Matter of Golden v Planning Bd., 30 NY2d 359*, *appeal dismissed 409 U.S. 1003)*. If the party attacking the ordinance establishes that it was enacted for an exclusionary purpose or has an exclusionary effect, then the ordinance will be annulled *(see Robert E. Kurzius, [***789] [**272] Inc. v Incorporated Vil. of Upper Brookville, supra)*.

In *Berenson* we reviewed an ordinance which made no provision for low- or moderate-income housing in undeveloped areas of the municipality. We held that there must be a legitimate basis for such exclusions; limitations on development will be permitted only if the ordinance satisfies the needs of the community and also reflects a consideration of regional needs and requirements. We stated, however, that our concern was not "whether the zones, in themselves, are balanced communities, but whether the town itself, as provided by its zoning ordinances, will be a balanced and integrated community" *(Berenson v Town of New Castle, supra, at 109)*. Constitutional principles are not necessarily offended if one or several uses are not included **[****29]** in a particular area or district of the community as long as adequate provision is made to accommodate the needs of the community and the **[*134]** region generally *(see, Town of Pompey v Parker, 53 AD2d 125, 127*, *affd 44 NY2d 805)*.

Applying these decisions plaintiffs' second cause of action does not state a claim of exclusionary zoning. New York City does not now nor has it ever excluded low-cost housing in Chinatown or in the City generally. Low-income families now live in the District and will continue to live there, hopefully in rehabilitated or newly constructed low-cost housing, if the purposes of the amendment are fulfilled.

Plaintiffs nevertheless contend that the amendment must be annulled because its effect will be exclusionary. They assert that not only will presently available sites be limited to luxury housing but they predict that new development will force them from their homes and, because the change in zoning favors construction of mixed-income apartments, present structures will be replaced by living accommodations they cannot afford. They note that the constitutional validity of zoning rests on the exercise of the police **[****30]** power for the general welfare and that the general welfare is no more abused by zoning which excludes the poor from a community than by zoning which forces them out of the community. Thus, their complaint seeks an order of the court compelling the City to provide low-cost housing, relief similar to that afforded in the *Mount Laurel* cases. Having failed to sustain that argument in the Appellate Division, they have adopted in this court the position of the Appellate Division dissenters that the *Berenson* rule prohibiting exclusionary zoning must be modified to define the "community" for zoning purposes as the 14-block area of the Special Manhattan Bridge District.

Berenson cannot reasonably be extended to the facts presented here. The City is the governing authority, not the District and this action challenges its laws. When enacting them, City officials must address the needs of the broader community and must act not only for benefit of the District and its residents, but for

the benefit of the City as a whole. Requiring City planners to include particular uses in every district may be truly obnoxious to the City's over-all development, however, and applying the *Berenson* **[****31]** rule to a district as small as this 14-block area could defeat the intended purpose of special district zoning. The interpretation plaintiffs seek also runs counter to the rationale underlying the *Berenson* decision. That holding was deemed necessary to avoid the parochialism of elected local officials in communities which **[*135]** excluded minorities and socioeconomic groups from undeveloped areas of their municipalities to cater to a favored constituency. But here the question of exclusion relates to a Special District in the most highly developed municipality in the Nation, one which already has made extensive allowance for a variety of housing opportunities within its boundaries.

Nor have plaintiffs stated a claim for affirmative relief. The *Mount Laurel* decisions *(supra)*, which they rely upon, addressed a substantially different problem, the zoning of a suburban township approximately 20 miles from centers of employment in Camden and Philadelphia. The New Jersey Supreme Court held that the township's zoning systematically excluded poor and middle-income persons from the community by means of artificially strict, **[***790]** **[**273]** cost-generating zoning restrictions *(e.g.*, **[****32]** minimum lot sizes, prohibition against mobile homes and multiple housing) and that it therefore violated the Equal Protection Clause of the *State Constitution (67 NJ 151, 336 A2d 713*, *supra)*. The township responded to this decision by rezoning for low-cost housing three small, widely scattered areas (less than .25% of its land) suffering from swampy soil conditions, high noise levels and proximity to industrial uses. On a subsequent appeal the court ordered Mount Laurel to amend its ordinance to "create realistic opportunities" for low-cost housing in the township by means of government subsidies and inclusionary zoning. The court acknowledged that it was acting legislatively in determining the use appropriate to the area, and imposing a remedy (92 NJ, *supra*, at 243), but considered the action necessary because of the failure of the local government to address the problem. In doing so, it noted that the Legislature had directed establishment of a Statewide blueprint for the use and development of the land in New Jersey and that State planners had prepared a master plan in response to the statute, the State Development Guide Plan, designating **[****33]** Mount Laurel Township as a "growth" area. The affirmative relief granted by the court was consistent with the planners' classification of the Mount Laurel Township *(see*, *92 NJ 158, 220-248, 456 A2d 390, 421-435*, *supra)*.

Both *Mount Laurel* and *Berenson* examined the limits expanding suburban communities could impose on the type of growth within their boundaries. This action, however, concerns a densely developed area in New York City with substantial low-cost housing, deteriorating to be sure, but bordering on an area of Chinatown containing modern public housing and in a City containing much more. Plaintiffs seek not to **[*136]** overcome exclusionary practices or to correct some past inequity by implementing an existing lawful State-wide legislative policy, as in *Mount Laurel*, but to overturn the considered decision of the executive and legislative branches of New York City's government because they believe the City's chosen remedy for this established area will prove inadequate.

We recognize plaintiffs' concerns over displacement and gentrification in the Chinatown area. Indeed, in a prior appeal involving the Special Manhattan Bridge **[****34]** District, we granted summary judgment annulling the special permit to Henry Street Partners and directed that construction could not commence until the City addressed the potential displacement of inhabitants and businesses before authorizing the work to progress *(see, Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359*, *supra)*. But plaintiffs' attack on the zoning laws, seeks much broader relief, a rewriting of the ordinance itself.

In our prior decisions we have not compelled the City to facilitate the development of housing specifically affordable to lower-income households; a zoning plan is valid if the municipality provides an array of opportunities for housing facilities *(see, Suffolk Hous. Servs. v Town of Brookhaven, 70 NY2d 122, supra)*. We conclude that we should not extend that rule in this case. Those charged with the duty of addressing the problems of Chinatown chose to rezone the Manhattan Bridge area and provide housing incentives they deemed most suitable. They have attempted to use incentive zoning to provide realistic housing opportunities which include new apartments for the poor. Nothing in the legislative **[****35]** plan suggests that it will fail its purpose and plaintiffs do not allege that the solution is arbitrary or capricious or undertaken for an improper purpose, only that they would have zoned the area differently, or better, to avoid a potential future problem. Their allegations fail to state a cause of action entitling them to judicial relief.

Accordingly, the order of the Appellate Division should be affirmed, with costs.

End of Document

24-12-A & 147-12-A

APPLICANT – Richard G. Leland, Esq./Fried Frank, for 12th Avenue Realty Holding Corp., owner; Mizey Realty Co., Inc., lessee.

SUBJECT – Application February 2, 2012 and May 8, 2012 – Appeal challenging the Department of Buildings' determination that outdoor accessory signs and structures are not a legal non-conforming use pursuant to §52-00. M1-2 zoning district.

PREMISES AFFECTED – 2368 12th Avenue, bounded by Henry Hudson Parkway, West 134th Street, 12th Avenue and 135th Street, Block 2005, Lot 32, Borough of Manhattan.

COMMUNITY BOARD #9M

APPEARANCES –

For Applicant: Richard G. Leland.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative: 0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to Notice of Sign Registration Rejection letters from the Borough Commissioner of the Department of Buildings ("DOB"), dated January 3, 2012, denying Application Nos. 1005504 and 1005605 from registration for signs at the subject site (the "Final Determinations"), which read, in pertinent part:

> The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on June 12, 2012, after due notice by publication in *The City Record*, and then to decision on August 7, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the block bounded by the Henry Hudson Parkway to the west, West 134th Street to the south, 12th Avenue to the east, and West 135th Street to the north, in an M1-2 zoning district within the Special Manhattanville Mixed Use District; and

WHEREAS, the site has a lot area of approximately 15,670 sq. ft. and is occupied by a one-story building with a floor area of 3,000 sq. ft. and an illuminated double-faced ground sign with each face measuring 20 feet by 60 feet (1,200 sq. ft.) beginning at a height of approximately 85 feet above grade and rising to a height of approximately 105 feet above grade (the "Signs"); one sign faces to the north and one sign faces to the south; and

WHEREAS, the Signs are located within 200 feet of the Henry Hudson Parkway, a designated arterial highway pursuant to Zoning Resolution Appendix H, and within 200 feet of Riverbank State Park, a "public park" pursuant to ZR § 12-10; and

WHEREAS, this appeal is brought on behalf of the owner of the sign structure (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the Appellant's registration of the signs based on DOB's determination that the Signs are not permitted to be used as non-conforming accessory business signs; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

PROCEDURAL HISTORY

WHEREAS, the Appellant asserts that the Signs were constructed in 1999 pursuant to three permits that were approved by DOB on February 19, 1999 (collectively, the "Permits"): (1) Permit 102051823-01-AL, which approved the sign structure; (2) Permit 102051805-01-SG, which approved an "illuminated accessory business sign"; and (3) Permit 102051814-01-AL, which also approved an "illuminated accessory business sign"; and

WHEREAS, the Appellant represents that beginning on April 1, 1999, the Signs were put into use to display copy in connection with the use of the building on the site for storage and staging of display fixtures used by Tommy Hilfiger U.S.A., Inc. ("Tommy Hilfiger") in its product showrooms and in department stores carrying Tommy Hilfiger licensed clothing and products; and

WHEREAS, the Appellant asserts that the Signs were used exclusively and continuously to display copy in connection with Tommy Hilfiger's use of the site through the end of May 2008, and the Tommy Hilfiger copy was removed from the Signs between May 31 and June 5, 2008; and

WHEREAS, the Appellant represents that Wodka, LLC ("Wodka") has leased the subject site beginning May 1, 2010 through the present, using the subject building for the storage of promotional materials and staging of Wodka promotional activities, and using the Signs for display of copy connected with its use of the site; and

WHEREAS, on or about September 1, 2009, pursuant to the 2008 Building Code and Chapter 49 of Title 1 of the Rules of the City of New York ("RCNY"), the Appellant filed to register the Signs as non-conforming accessory signs; and

WHEREAS, by letter dated June 2, 2011, DOB informed the Appellant that its filing failed to establish that the accessory sign was: (1) legally created before February 27, 2001 (the effective date of the applicable amendment to the Zoning Resolution); and (2) not used to display advertising; and

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WHEREAS, by letter dated August 11, 2011, the Appellant submitted additional photographs and contracts regarding the Signs; and

WHEREAS, DOB determined that the additional materials failed to establish the existence of a non-conforming accessory sign eligible for registration, and issued the Final Determinations on January 3, 2012; and

RELEVANT STATUTORY PROVISIONS

ZR § 12-10 *Definitions*

Accessory use, or accessory (2/2/11)

An "accessory use":

(a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an #accessory building or other structure#, or as an #accessory use# of land), except that, where specifically provided in the applicable district regulations or elsewhere in this Resolution, #accessory# docks, off-street parking or off-street loading need not be located on the same #zoning lot#; and

(b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and

(c) is either in the same ownership as such principal #use#, or is operated and maintained on the same #zoning lot# substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal #use#.

When "accessory" is used in the text, it shall have the same meaning as #accessory use#.

* * *

Sign, advertising (4/8/98)

An "advertising sign" is a #sign# that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same #zoning lot# and is not #accessory# to a #use# located on the #zoning lot#.

* * *

ZR § 42-55 *Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways (2/27/01)*

…(a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:

(1) no permitted #sign# shall exceed 500 square feet of #surface area#; and

(2) no #advertising sign# shall be allowed nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed;

* * *

ZR § 52-11 – *Continuation of Non-Conforming Uses/General Provisions (12/15/61)*

A #non-conforming use# may be continued, except as otherwise provided in this Chapter.

* * *

ZR § 52-61 – *Discontinuance/General Provisions (10/7/76)*

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . .

* * *

Building Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:

(1) The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more…

* * *

RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

…(d)(5) Each sign shall be identified as either "advertising" or "non-advertising." To the extent a sign is a non-conforming sign, it must further be identified as "non-conforming advertising" or "non-conforming non-advertising." A sign identified as "non-conforming advertising" or "non-conforming non-advertising" shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

* * *

RCNY § 49-16 – Non-conforming Signs

(a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-

conforming on the initial registration application may remain erected unless and until the Department has issued a determination that it is not non-conforming…

* * *

RCNY § 49-43 – Advertising Signs

Absent evidence that revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention, the following signs are deemed to be advertising signs for the purposes of compliance with the Zoning Resolution:

(a) Signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot, and that storage or warehouse use occupies less than the full building on the zoning lot; or

(b) All signs, other than non-commercial, larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot.

* * *

THE APPELLANT'S POSITION

a. Lawful Establishment and Continuous Use

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) the Signs were lawfully established in 1999 as an accessory sign as defined by ZR § 12-10 and may therefore be maintained as a legal non-conforming accessory sign pursuant to ZR § 52-11, and (2) the Signs have operated as accessory signs with no discontinuance of two years or more since their lawful establishment; and

WHEREAS, in support of the lawful establishment of the Signs in 1999, the Appellant relies on (1) the 1999 Permits, (2) a 1999 media contract between the Appellant and Tommy Hilfiger for the use of the Signs, dated December 24, 1998, which commenced on April 1, 1999 and expired on March 31, 2002 (the "1999 Media Contract"), (3) a license agreement between the Appellant and Tommy Hilfiger for the use of the site for storage and/or warehousing of Tommy Hilfiger's products, which commenced on January 4, 1999 and expired at the end of the 1999 Media Contract; and (4) an affidavit from Peter Connolly, the President of Marketing for Tommy Hilfiger from 1998 until September 2006, stating that from January 4, 1999 through his departure from the company in September 2006, the subject building was used by Tommy Hilfiger for "the storage, staging and repair of…display fixtures as well as administrative functions related to such use…" (the "Tommy Hilfiger Affidavit"); and

WHEREAS, in support of the continuous use of the Signs since 1999, the Appellant submitted a timeline with supporting evidence consisting of media contracts, license agreements, lease agreements, affidavits, and photographs, for each year from 1999 through 2012; and

WHEREAS, the Appellant asserts that at the time the Signs were erected in 1999, the Zoning Resolution permitted accessory signs in the subject M1-2 zoning district with no restriction as to size, however, on February 27, 2001 new zoning regulations were enacted under ZR § 42-55 imposing a 500 sq. ft. area limitation on signs within 200 feet and within view of arterial highways and public parks; and

WHEREAS, the Appellant contends that following the enactment of ZR § 42-55 on February 27, 2001, the Signs – measuring 1,200 sq. ft. each – became existing non-conforming uses as defined by the Zoning Resolution; and

WHEREAS, the Appellant asserts that it has provided to DOB a preponderance of evidence including DOB permits, advertising contracts, licenses for use of the at-grade portions of the site, and photographs demonstrating that the Signs were lawfully established and continually used from 1999 to the present, without any discontinuance of use of the Signs for two years or more; and

b. The Accessory Sign v. Advertising Sign Analysis

WHEREAS, the Appellant asserts that it has established by a preponderance of the evidence that, when established, the Signs were accessory signs as defined by the Zoning Resolution; and

WHEREAS, the Appellant relies on the definitions for "advertising sign" and "accessory use" set forth at ZR § 12-10; and

WHEREAS, as noted above, ZR § 12-10 defines an accessory use as a use: (1) conducted on the same zoning lot as the principal use to which it is related; (2) which is clearly incidental to, and customarily found in connection with, such principal use; and (3) which is either in the same ownership as such principal use, or is operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal use; and

WHEREAS, the Appellant asserts that the Signs meet each of the criteria of the ZR § 12-10 definition of accessory use; and

WHEREAS, specifically, the Appellant contends that the Signs meet the ZR § 12-10(a) definition of "accessory use" in that the Signs were established in 1999 by Tommy Hilfiger on the same zoning lot (comprised of tax lot 32) as the principal use of the building on the site for storage, staging, and repair of display fixtures by Tommy Hilfiger, and the Signs remain on the same zoning lot as the use of the entirety of the building on the zoning lot by Wodka; and

WHEREAS, the Appellant contends that the Signs meet the ZR § 12-10(b) definition of "accessory use" in that the display of Tommy Hilfiger copy and Wodka copy on the Signs has clearly been incidental to the use by Tommy Hilfiger and Wodka of the building on the site, and a company using a property "customarily" posts signs displaying the company name "in connection with" its use of such property; and

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WHEREAS, finally, the Appellant contends that the Signs meet the ZR § 12-10(c) definition of "accessory use" in that the Signs were operated and maintained on the same zoning lot for display of Tommy Hilfiger copy and Wodka copy, which display of copy has been substantially for the benefit of the occupants of the principal use of the at-grade portions of the site; and

WHEREAS, the Appellant notes that ZR § 12-10 states that an "advertising sign" is a sign which is "not #accessory# to a #use# located on the #zoning lot#," and therefore the Signs are specifically excluded from the definition of "advertising sign" since they were established as accessory to Tommy Hilfiger's use of the same zoning lot; and

WHEREAS, accordingly, the Appellant contends that it satisfies the plain meaning of the Zoning Resolution definition of accessory use, and cites to Gruson v. Dep't of City Planning, 2008 N.Y. Slip Op 32791U (Sup. Ct., N.Y. Cnty October 3, 2008) and Raritan Dev. Corp. v. Silva, 91 N.Y.2d 98 (1997) for the principle that, in interpreting statutes such as the Zoning Resolution, the plain meaning of words should be applied when the statutory language is clear and unambiguous; and

WHEREAS, the Appellant further contends that in rejecting the registration of the Signs, DOB has impermissibly construed ambiguity in the meaning of the term "accessory use" against the Appellant, and any ambiguity in the Zoning Resolution must be determined in favor of the property owner; and

WHEREAS, specifically, the Appellant asserts that even if the meaning of "principal use" in the definition of "accessory use" is ambiguous, the New York State Court of Appeals in Toys "R" Us v. Silva, 89 N.Y.2d 411, 421 (1996) found that "zoning restrictions, being in derogation of common-law property rights, should be strictly construed and any ambiguity resolved in favor of the property owner"; and

WHEREAS, the Appellant also discusses three Board cases cited by DOB as evidence of the Board's experience in reviewing DOB determinations regarding accessory uses (BSA Cal. Nos. 14-11-A, 45-96-A, and 194-94-A); and

WHEREAS, specifically, the Appellant argues that BSA Cal. No. 14-11-A does not offer any precedential value as to whether the Signs may be considered an accessory use because that case concerned permitted floor space in the cellar of a residential building; and

WHEREAS, the Appellant argues that BSA Cal. No. 45-96-A, which concerned a large cigarette sign in connection with a small convenience store, can be distinguished from the instant case because cigarettes were among the many types of products sold from the principal use which was the convenience store itself, while at the subject site the Signs have been leased and operated by and for the benefit of the sole occupant and use of the building on the site; and

WHEREAS, the Appellant contends that the subject case is more analogous to BSA Cal. No. 194-94-A, where the Board found (and the Court of Appeals affirmed in New York Botanical Garden v. Board of Standards and Appeals of the City of New York, 91 N.Y.2d 413 (1998)) that a 480-ft. (approximately 45-story) radio tower for a 50,000 watt radio station constituted an accessory use notwithstanding its large size and the fact that broadcasting from the station would go well beyond the boundaries of the university to which the radio station and its proposed tower were accessory; and

WHEREAS, the Appellant argues that, similar to BSA Cal. No. 194-94-A, the Board should not consider the size of the Signs in relation to the size of the principal use as determinative of whether they may be considered accessory to the use of the building; and

DOB'S POSITION

WHEREAS, DOB makes the following primary points to support its position that the Signs do not qualify as non-conforming accessory signs: (1) the Signs were never lawfully established as accessory signs because the warehouse at the site was not a legitimate principal use; and (2) the Signs are currently used as unlawful advertising signs for the display of Wodka copy; and

WHEREAS, DOB asserts that there was never a legitimate principal use at the subject lot that would have permitted the use of the Signs by Tommy Hilfiger as an accessory use; and

WHEREAS, DOB notes that, according to Certificate of Occupancy No. 102657947, dated January 31, 2003, the principal use of the zoning lot is "warehouse with accessory commercial office;" and

WHEREAS, DOB relies on the language in RCNY § 49-43 which establishes a rebuttable presumption that "signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot" and that signs "larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot" are advertising signs for purposes of compliance with the Zoning Resolution; and

WHEREAS, DOB also relies on Department Operations Policy and Procedure Notice 10/99 ("OPPN 10/99), issued prior to the promulgation of Rule 49 but remaining in effect, which sets forth the requirements for obtaining an accessory sign permit; and

WHEREAS, DOB notes that OPPN 10/99 parallels the rebuttable presumption set forth in RCNY § 49-43, that signs connected to a principal use whose activity on the zoning lot consists primarily of storage or a warehouse, and signs larger than 300 square feet which do not direct attention to the zoning lot are deemed to be advertising signs; and

WHEREAS, DOB further notes that OPPN 10/99 also sets forth what evidence is required in a permit application to demonstrate that the principal use can

support the sign as an accessory use, which includes: (1) the name of the business owner, (2) a description of the business operation signed by the owner, (3) evidence that the use is permitted on the zoning lot, (4) a lease or deed demonstrating the amount of space on the zoning lot that will be used by the principal use and how the space will be used, (5) a description of the proposed sign and copy, (6) evidence that the sign will be owned and paid for by the owner of the principal use, and (7) a statement of the size and type of sign to be installed; and

WHEREAS, OPPN 10/99 further provides that if the plan examiner cannot determine based on the evidence provided that the proposed sign is a legitimate accessory sign, the application may be referred to the borough commissioner for further review, in which case the borough commissioner may request additional evidence to determine:

(1) that the use identified as the principal use is in fact a bona fide business (e.g., a business plan, purchase orders and receipts for merchandise or service equipment, copies of advertisement and/or phone listings identifying the business at the zoning lot, sales or other accounting/financial records (if the business is an existing business), request for a site inspection to show planned or existing business operations, etc.) and/or

(2) that the proposed sign is accessory to the identified principal use (e.g., evidence that the actual or anticipated revenue generated by the business or the expense of operating the business on the zoning lot at least equals or exceeds the cost of purchasing or leasing and maintaining the sign); and

WHEREAS, DOB states that OPPN 10/99 was published to prevent sham warehouses with "accessory signs" which in fact were nothing more than an empty building with an advertising sign, and OPPN 10/99 represents the interpretation and implementation of two well-established Zoning Resolution requirements: (1) that an accessory use be "clearly incidental to" and "customarily found in connection with" the principal use; and (2) that advertising signs be placed a certain distance from the City's arterial highways; and

WHEREAS, DOB asserts that a sign (use) whose revenue far exceeds that which is generated by the principal use of the zoning lot cannot be considered a "clearly incidental" use, and while it is customary for a business to have accessory signage, it is not customary for the sign revenue to dwarf the business revenue such that the business would scarcely exist without the sign; and

WHEREAS, DOB further asserts that where, as here, the surface area of the sign copy is four-fifths the square footage of the warehouse (the Signs measure 1,200 sq. ft. each, for a total of 2,400 sq. ft., while the subject warehouse building is approximately 3,000 sq. ft.), the sign cannot reasonably be considered "clearly incidental to" the warehouse; and

WHEREAS, DOB argues that the Appellant's reliance on DOB permits as evidence of the establishment of non-conforming accessory signs is misplaced, noting that the 1999 Permits were not signed off until January 22, 2003 and were filed under professional certification and pursuant to Department Directive 14/1975, which means that the job applicant certified to DOB at the time of filing and at the time of sign-off that the permit applications complied with all applicable laws, rules, and regulations; and

WHEREAS, DOB contends that, despite the sign-off, a review of the job folders reflects that the items required by OPPN 10/99 to establish a legitimate principal use are not included; and

WHEREAS, DOB asserts that the only evidence provided regarding the warehouse operations from 1999 through 2008 is the Tommy Hilfiger Affidavit, which states that the warehouse was "used by Tommy Hilfiger for the storage, staging, and repair of…display fixtures as well as for administrative functions related to such use…"; however, there is nothing in the record that corroborates this statement; and

WHEREAS, specifically, DOB argues that there is no objective, independently verifiable evidence of warehouse operations, such as a business plan, purchase orders or receipts for merchandise or service equipment, copies of advertisements or phone listings, or financial records of any kind; and

WHEREAS, further, DOB notes that the Signs did not direct the attention of vehicular and pedestrian traffic to the Tommy Hilfiger business on the zoning lot; and

WHEREAS, DOB asserts that one uncorroborated statement cannot be considered sufficient evidence of almost ten years of warehouse operations; accordingly, the legitimacy of the principal use has not been demonstrated; and

WHEREAS, DOB further asserts that absent a demonstrated, legitimate principal use at the subject lot, the Tommy Hilfiger signs could not have been accessory signs; rather, they were by definition advertising signs; and

WHEREAS, DOB states that, therefore, the Signs could not have become non-conforming accessory signs when the Zoning Resolution was amended, effective February 27, 2001, to restrict the height and surface area of accessory signs near arterial highways, and since the Signs were advertising signs near an arterial highway and a public park, the Signs were maintained in violation of ZR § 42-55; and

WHEREAS, DOB asserts that when Wodka took over the use of the site, the use of the Signs as unlawful advertising signs continued; and

WHEREAS, DOB argues that the Appellant has similarly failed to submit evidence to DOB that would rebut the presumption set forth in RCNY § 49-43 and OPPN 10/99 that the Wodka signs – which are located on a zoning lot whose principal use consists primarily of a warehouse and which is greater than 200 sq. ft. and

clearly not used to direct the attention of vehicular and pedestrian traffic to the business of the zoning lot – are advertising signs rather than accessory signs; and

WHEREAS, DOB states that it inspected the warehouse on or about February 3, 2012, and observed minimal warehouse activities and a Wodka sign that did not indicate any connection to the Wodka warehouse; and

WHEREAS, accordingly, DOB concludes that the use of the Signs by Wodka is also deemed to be as advertising signs in violation of ZR § 42-55, and that the registration of the Signs as non-conforming accessory signs was properly rejected; and

WHEREAS, in response to the Appellant's argument that the plain meaning of the Zoning Resolution supports its continued use of the Signs as accessory to the warehouse on the subject lot, DOB asserts that the plain meaning of the text actually supports DOB's determination that the Appellant has failed to demonstrate the existence of a principal use for which an accessory sign may be erected and maintained; and

WHEREAS, specifically, DOB argues that the ZR § 12-10 definition of "accessory use" divides uses into two categories – principal uses and accessory uses – with accessory uses being subordinate and dependent upon principal uses; therefore, before determining whether a particular use may be considered "accessory' per ZR § 12-10, the principal use of the lot must be identified; and

WHEREAS, DOB contends that rather than establishing that the principal use of the subject lot is a warehouse, the evidence submitted by the Appellant, including the Tommy Hilfiger leases and media contracts, favors the conclusion that the principal use of the lot is the advertising sign, and the warehouse exists for the sole purpose of claiming that the advertising sign is accessory to it; and

WHEREAS, DOB further contends that, even assuming the warehouse is considered a principal use, the Signs do not satisfy the remainder of the criteria for an "accessory use," as they are not "clearly incidental to and customarily found in connection with the principal use of the lot;" and

WHEREAS, specifically, DOB states that the combined surface area of the Signs at 2,400 sq. ft. is almost as large as the floor area of the one-story warehouse (3,000 sq. ft.), and the evidence of the operations at the site (media contracts, license agreements, and photographs) relate predominantly to the Signs rather than the warehouse; and

WHEREAS, DOB also cites to New York Botanical Garden v. Board of Standards and Appeals of the City of New York, 91 N.Y.2d 413, 420 (1998), where the Court of Appeals observed that whether a proposed use is accessory "depends on an analysis of the nature and character of the principal use of the land in question in relation to the accessory use, taking into consideration the over-all character of the particular area in question;" and

WHEREAS, DOB argues that the analysis espoused by the Court of Appeals favors DOB's determination, as the subject lot's value derives substantially from its proximity to the Henry Hudson Parkway and 12th Avenue, and while the site could reasonably be used for a warehouse use, the evidence suggests that the use of the Signs is too significant to be accessory to the warehouse operation; and

WHEREAS, as to the Appellant's argument that if there is ambiguity regarding the meaning of "principal use" such ambiguity must be resolved in favor of the property owner, DOB asserts that the Appellant is not requesting the Board to resolve an ambiguity in the meaning of the term; rather, the Appellant is requesting the Board to consider a tiny warehouse with absolutely no proof of active operations to be a "principal use," which amounts to giving the term no effect whatsoever, contrary to the fundamental principles of statutory interpretation; and

WHEREAS, DOB notes that the Board has reviewed DOB determinations regarding accessory uses in the past (citing BSA Cal. Nos. 14-11-A, 45-96-A, and 194-94-A), and asserts that the subject case does not come close to satisfying the criteria for accessory use; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the Signs are unlawful advertising signs which were never established as accessory signs pursuant to the ZR § 12-10 definition of accessory use; and

WHEREAS, the Board finds that the Signs do not meet the criteria of "accessory use" because the warehouse at the site does not qualify as a legitimate principal use and the Signs are not "clearly incidental to" the purported principal use of the site as a warehouse; and

WHEREAS, the Board agrees with DOB that in order to determine whether a use satisfies the ZR § 12-10 definition of "accessory use," the principal use, upon which the accessory use depends, must first be identified; and

WHEREAS, the Board finds that DOB appropriately relied upon RCNY § 49-43 and OPPN 10/99 for guidance in determining whether the purported principal use at the site was legitimate; and

WHEREAS, the Board notes that RCNY § 49-43 and OPPN 10/99 reflect the public policy goal of ensuring that otherwise unlawful advertising signs or billboards cannot circumvent the requirements of the Zoning Resolution by designating a "sham" warehouse or storage facility as a principal use solely in an attempt to justify the actual principal use of the site as an advertising sign; and

WHEREAS, the Board agrees with DOB that RCNY § 49-43 and OPPN 10/99 establish a rebuttable presumption that the Signs are advertising signs because they (1) are connected to a principal use whose activity on the zoning lot consists primarily of storage or a warehouse, and (2) are larger than 300 sq. ft. and do not direct attention to the zoning lot; and

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WHEREAS, the Board finds that the Appellant has failed to submit evidence reflecting that the "revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention," and therefore has not met the criteria in RCNY § 49-43 for overcoming the presumption that the Signs are advertising signs; and

WHEREAS, similarly, the Board finds that the Appellant has failed to submit sufficient evidence pursuant to OPPN 10/99 to establish that the claimed principal use is a "bona fide business" or that "the actual or anticipated revenue generated by the business or the expense of operating the business on the zoning lot at least equals or exceeds the cost of purchasing or leasing and maintaining the sign;" and

WHEREAS, specifically, the Board agrees with DOB that the leases and media contracts submitted by the Appellant reflect that the revenue generated from the Signs far exceeds the revenue generated by the warehouse or storage facility use on the site, and that all of the evidence provided indicates that the use of the building on the site is subservient to the Signs; and

WHEREAS, the Board further agrees with DOB that the only evidence submitted by the Appellant regarding the warehouse operations from 1999 through 2008 is the Tommy Hilfiger Affidavit, which provides a generic description of the use of the site for "storage, staging, and repair of…display fixtures as well as for administrative functions related to such use," and which, absent the submission of objective, independently verifiable evidence of warehouse operations to corroborate the affidavit, as required by OPPN 10/99, the Board finds insufficient to establish a legitimate principal use on the site; and

WHEREAS, as to the current use of the site, the Board finds that, based on its site visits and the photographs submitted by the Appellant and DOB, Wodka's use of the warehouse building is not indicative of a legitimate principal use, and there is nothing on the Signs that directs attention to the building on the site; and

WHEREAS, specifically, the Board notes that the building currently consists largely of empty space, with the occupied portions used for the storage of a small amount of "promotional material," which the Board finds cannot support the Appellant's contention that this is a principal use to which the two 1,200 sq. ft. signs are accessory; and

WHEREAS, the Board further notes that a large, deteriorating Tommy Hilfiger sign remains on the exterior of the subject building despite the fact that Wodka has operated the site exclusively since 2010, which further indicates that the only purpose for the subject building is to justify the Appellant's claim that the Signs qualify as accessory rather than advertising signs; and

WHEREAS, the Board agrees with DOB that, since the Signs were never established as accessory signs, they could not have become non-conforming accessory signs when ZR § 42-55 was modified on February 27, 2001 to restrict the height and surface area of accessory signs near arterial highways; accordingly, the Appellant's reliance on ZR § 42-55 and the provisions for the continuance of non-conforming uses is misplaced; and

WHEREAS, the Board disagrees with the Appellant's contention that the Signs satisfy the plain meaning of the ZR § 12-10 definition of "accessory use," as the text requires that such use be accessory to a principal use, and the Appellant has not established that the purported principal use on the site is legitimate; and

WHEREAS, the Board finds that, even if the principal use identified on the site were legitimate, the Appellant still would not satisfy the plain meaning of "accessory use," as the relationship between the Signs and the warehouse is such that the Signs cannot be considered "clearly incidental to" the warehouse; and

WHEREAS, the Board further finds that the Signs, during their operation by both Tommy Hilfiger and Wodka, meet the ZR § 12-10 definition of "advertising signs" in that they "direct[] attention to a business…conducted, sold, or offered elsewhere than upon the same zoning lot…" and

WHEREAS, specifically, the Board finds that the Signs do not provide any information which would direct attention to the purported principal use on the subject zoning lot; rather, the Signs serve to advertise the business conducted elsewhere; and

WHEREAS, the Board finds the Appellant's argument that the Signs are explicitly excluded from the definition of "advertising sign" because the definition states that an advertsing sign is a sign which is "not #accessory# to a #use# located on the #zoning lot#" to be misguided, as the essence of the subject appeal concerns whether or not the Signs qualify as "accessory," and since the Board has determined that they are not "accessory" signs, they are clearly not excluded from the definition of an "advertising sign;" and

WHEREAS, the Board disagrees with the Appellant's assertion that DOB has injected ambiguity into the term "principal use," and finds that DOB has applied a rational interpretation to the term, pursuant to the guidance provided by RCNY § 49-43 and OPPN 10/99, while the Appellant would have the Board interpret the term in such a way that merely claiming a use as a "principal use" would be sufficient to establish it as such, despite the lack of any evidence whatsoever regarding the actual activity on the site or the relationship between the purported "principal use" and "accessory use;" and

WHEREAS, as to the Appellant's analysis of the prior Board cases cited by DOB, the Board finds that DOB's purpose for citing the cases was merely as evidence that the Board has previously engaged in the analysis regarding what constitutes an accessory use, and DOB did not claim that the facts in any of the cited cases were analogous to the facts in the subject case or that they offered any precedential value; and

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WHEREAS, accordingly, the Appellant's ability to distinguish the facts of the cases under BSA Cal. Nos. 14-11-A and 45-96-A is not relevant to the Board's analysis of the current case; and

WHEREAS, the Board is not persuaded by the Appellant's assertion that the subject case is analogous to BSA Cal. No 194-94-A, where the Board determined that a 50,000 watt radio tower with a height of 480 feet on the Fordham University campus qualified as an "accessory use;" and

WHEREAS, specifically, the Board notes that unlike the subject site, there was no question in the Fordham University case that the university was a legitimate principal use, and in its decision the Board noted that the university submitted evidence demonstrating that the radio station and the radio tower were subordinate to the functions of the university as a whole, that it is commonplace for universities to own and operate radio stations as part of their educational mission, and that many universities had university-affiliated public radio stations with signal strengths of 50,000 watts or more; and

WHEREAS, as to the Appellant's argument that, similar to the radio tower in the Fordham University case, the Board should not consider the size of the Signs in relation to the principal use to be determinative of whether they can be considered an "accessory use," the Board finds the Appellant's argument misguided in that the Board's decision did not directly address that issue; and

WHEREAS further, the Board does not consider the fact that the combined surface area of the Signs (2,400 sq. ft.) is nearly as large as the floor area of the building (3,000 sq. ft.) to be dispositive of whether or not the Signs are an accessory use; however, the Board does find that the size of the Signs in relation to the size of the warehouse reinforces the additional evidence in the record which reflects that the Signs are not "clearly incidental to" the warehouse building; and

WHEREAS, as to the question of continuity, the Board finds that since the threshold matter of the classification of the Signs is not met, it is not necessary to address whether there has been any two-year discontinuance of the Signs; and

WHEREAS, the Board finds that the Appellant has failed to provide evidence that the Signs were established as accessory signs prior to the modification of ZR § 42-55 on February 27, 2001 and, thus, are not eligible for legal non-conforming status as accessory signs; and

WHEREAS, the Board further finds that the current use of the Signs remains as unlawful advertising signs; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant's registration of the Signs as accessory signs.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determinations of the Department of Buildings, dated January 3, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, August 7, 2012.

A true copy of resolution adopted by the Board of Standards and Appeals, August 7, 2012.
Printed in Bulletin Nos. 32-33, Vol. 97.
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City of New York v. Stringfellow's of N.Y.

Supreme Court of New York, Appellate Division, First Department

February 4, 1999, Decided ; February 4, 1999, Entered

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Reporter
253 A.D.2d 110 *; 684 N.Y.S.2d 544 **; 1999 N.Y. App. Div. LEXIS 935 ***

City of New York et al., Appellants, v. Stringfellow's of New York, Ltd., et al., Respondents, et al., Defendants.

Prior History: [*1]** Appeal from an order of the Supreme Court (Stephen Crane, J.), entered November 6, 1998 in New York County, which, *inter alia,* denied plaintiffs' motion for preliminary injunction and granted defendants-respondents' renewed motion for summary judgment dismissing the complaint.

Core Terms

establishment, adult, Zoning, minors, drinking, eating, customarily, entertainment, summary judgment, regularly, features, dances, preliminary injunction, cross motion, admit, general public, inter alia, activities, statutes, topless, words, zoning district, restrictions, anatomical, excludes, premises, patrons, female, infant, provisions

Counsel: *Margaret G. King* of counsel (*Barry P. Schwartz* and *Karen M. Griffin* on the brief; *Michael D. Hess, Corporation Counsel* of New York City, attorney), for appellants.

Mark J. Alonso of counsel (*Michael Braunstein* and *Jaymee Kahn* on the brief, attorneys), for respondents.

Judges: Sullivan, J. P., Nardelli and Williams, JJ., concur.

Opinion by: ANDRIAS

Opinion

[*111] [545]** Andrias, J.

If Hollywood were writing the script or Variety the headline, the issue presented might possibly be characterized as "Ten's World Class Cabaret meets Disney World". Put another way, in a more legally oriented context, "Can an otherwise 'adult eating and drinking establishment' remove itself from restrictive zoning regulations by the simple expedient of admitting previously banned minors when accompanied by a parent or guardian?" The answer must be no.

As described by its president, **[***2]** defendant Stringfellow's of New York, Ltd. has, since 1991, operated an adult cabaret at 35 East 21st Street under the name Ten's World Class Cabaret, featuring among other things, topless entertainment by female entertainers.

In 1995, the New York City Zoning Resolution was amended to add various provisions, including section 12-10 (adult establishment), restricting the locations at which so-called "adult" establishments could be maintained or sited in the future. The constitutionality of such provisions has been upheld (*Stringfellow's of N. Y. v City of New York, 171 Misc 2d 376*, **[**546]** *affd 241 AD2d 360*, *affd 91 NY2d 382*; *see also, Hickerson v City of New York, 997 F Supp 418*, *affd 146 F3d 99*, *cert denied sub nom. Amsterdam Video v City of New York, __ US __, 142 L Ed 2d 658*) and is not in issue, the Court of Appeals having held that the "enactment of the Amended Zoning Resolution was not an impermissible attempt to regulate the content of expression but rather was aimed at the negative secondary effects caused by adult uses, a legitimate governmental purpose" (*Stringfellow's of N. Y. v City of New York, supra,* 91 **[*112]** NY2d at 399 **[***3]** [citation omitted]). However, the applicability of section 12-10 of the Zoning Resolution is.

That section provides, in pertinent part:

"An 'adult establishment' is a commercial establishment where a 'substantial portion' of the establishment includes an adult book store, adult eating or drinking establishment, adult theater, or other adult commercial establishment, or any combination thereof, as defined below …

"(b) An adult eating and drinking establishment is an eating or drinking establishment which regularly features any one or more of the following:

"(1) live performances which are characterized by an emphasis on 'specified anatomical areas' or 'specified sexual activities'; or

"(2) films, motion pictures, video cassettes, slides or other visual reproductions which are characterized by an emphasis upon the depiction or description of 'specified sexual activities' or 'specified anatomical areas'; or

"(3) employees who, as part of their employment, regularly expose to patrons 'specified anatomical areas'; and

"which is not customarily open to the general public during such features because it excludes minors by reason of age."

Sections 32-01 and 42-01 of the **[***4]** Zoning Resolution, in addition to the applicable regulations regarding permitted uses, further limit the location of adult establishments in certain zoning districts. Section 52-77 governs the termination of nonconforming adult establishments in all zoning districts.

During the pendency of the various constitutional challenges to the amendments to the Zoning Resolution, enforcement of such provisions was stayed until July 28, 1998, when the United States Supreme Court denied a further stay (*Amsterdam Video v City of New York, __ US __, 119 S Ct 4*).

By summons and complaint dated July 22, 1998, Stringfellow's sought a declaratory judgment declaring that it is not an "adult eating or drinking establishment" within the meaning of Amended Zoning Resolution § 12-10 (adult establishment) (b) because it does not "regularly feature … employees who, as part of their employment, regularly expose to patrons 'specified anatomical areas' " and because it does

not exclude minors by reason of their age. Thereafter, because of the lack of a stay of enforcement and fear that the City would seek an ex parte order closing its business, Stringfellow's sought **[***5]** to enjoin the City from moving for such relief and the City cross-moved to **[*113]** dismiss the complaint on the ground that Stringfellow's lacked standing and that the issue was not ripe for adjudication, which cross motions were argued before the IAS Court on September 25, 1998, at which time the court stated that it would notify Stringfellow's of any ex parte applications by the City. The cross motions were then marked submitted with a decision promised in mid-October.

While such cross motions were still *sub judice,* the City, by summons and verified complaint dated October 13, 1998, commenced the present action seeking, *inter alia,* to permanently enjoin Stringfellow's, pursuant to sections 7-706 and 7-714 of the Administrative Code of the City of New York, from further conducting or maintaining a public nuisance at the premises; and, permanently enjoining Stringfellow's from operating or allowing the operation of the subject premises as an adult establishment in violation of section 42-01 (b) of the Zoning Resolution.

[547]** By order to show cause, dated October 14, 1998, the City moved for a preliminary injunction closing Ten's because it was being operated **[***6]** in violation of section 12-10 of the Zoning Resolution, whereupon defendant served its verified answer and cross-moved to, *inter alia,* preliminarily enjoin plaintiffs from taking any action to close Ten's; toll the time in which it may cure any defect in its business; and, consolidate this action with the prior action commenced by Stringfellow's.

Thereafter, in a decision dated October 22, 1998, the court granted the City's cross motion to dismiss Stringfellow's declaratory judgment action on the ground that it was superfluous and that the City's present lawsuit is an adequate vehicle by which to determine all of the rights and liabilities of the parties. On October 27, 1998, defendant moved for summary judgment, *inter alia,* dismissing the complaint, and the City cross-moved for summary judgment in its favor on the grounds that there is no triable issue of fact that Ten's is an adult drinking and eating establishment as defined by section 12-10 of the Zoning Resolution and is operating within a prohibited zoning district.

In a decision dated November 4, 1998, the IAS Court denied the parties' cross motions for summary judgment, finding that questions of fact existed as **[***7]** to whether Ten's did in fact exclude minors on account of age because, on the one hand, Ten's had demonstrated that it had instituted a comprehensive policy to admit minors with certain restrictions, while on the other, four City inspectors averred that Ten's had at least one sign in its **[*114]** premises stating that minors will not be admitted. In so ruling, the court found that "defendants do not dispute that Ten's is covered by the definition of 'an adult eating and drinking establishment' ", but argue that the Zoning Resolution does not apply to Ten's because it does not exclude minors on account of their age. As found by the court, "Ten's has a policy to admit minors subject to certain restrictions mandated by the Penal Law and other state laws", which policy was instituted in mid-1997 merely to avoid application of the Zoning Resolution.

In interpreting section 12-10, the IAS Court found that it clearly and unambiguously applies only to businesses otherwise qualifying as adult establishments where such businesses are not customarily open to the general public because they exclude minors by reason of age at times during which certain sexually oriented activities are featured. **[***8]** Therefore, the court held, under the plain language of section 12-10, Ten's cannot be defined as an adult eating and drinking establishment if it does not exclude minors on account of age. The court also found unpersuasive the City's argument that Ten's admission policy amounts to a de facto exclusion policy inasmuch as the several steps required before a minor will be

admitted seem designed to ensure that admission of the minor does not violate any relevant sections of the Penal Law or any statutes governing alcohol and tobacco products. It further found that the City had not set forth any evidence that Ten's admission policy violates any such statutes. As to the City's argument that the exclusion of minors provision was not intended to apply to businesses such as Ten's as opposed to "legitimate theatrical performances and films including nudity or having a sexual theme", the court held that, given that section 12-10 is unambiguous on its face, it would be inappropriate and inadvisable for the court to look behind it to apply the Zoning Resolution to Ten's.

Finally, the court opined that the City cannot argue that the courts should ignore this part of the Zoning Resolution **[***9]** because it removes certain businesses from its reach, stating: "If the ZR as drafted does not attain all of its supposed goals, then it should be revised within constitutional parameters. Such a revision is not within the power of this court in light of the clear language of the ZR."

The next day, November 5, 1998, the IAS Court heard oral argument on the City's motion for a preliminary injunction. During the course of the proceedings, Stringfellow's withdrew its cross motion seeking, *inter alia,* to preliminarily enjoin the **[*115]** City from taking any action to close Ten's; to toll its time to cure any defects in its business; and, to consolidate this action with its prior declaratory **[**548]** judgment action. Counsel for Stringfellow's then stipulated that, if found to be an adult establishment, Ten's is in a location that is prohibited for adult establishments under the Amended Zoning Resolution. Counsel for the parties further stipulated that since October 14, 1998, the date of the order to show cause obtained by the City, there is no evidence of a sign on Ten's premises restricting admission to persons 21 years of age or older.

Thereupon, the court rendered **[***10]** its decision on the record denying the City's motion for a preliminary injunction. The court found that, based on the stipulations entered into by the parties, the City had failed to meet its burden of proving by clear and convincing evidence its right to a preliminary injunction closing Ten's. The court further found that Ten's does not close itself to the general public by excluding minors by reason of age, in light of its written admission policy that admits minors under certain conditions intended to avoid offending the Penal Law, pursuant to which, as the court noted, endangering the welfare of a child is still a crime. The court also granted defendant's renewed motion for summary judgment and dismissed the City's complaint, with defendant withdrawing its motion for sanctions and the first three of its four counterclaims without prejudice, leaving its fourth counterclaim for abuse of process. The court concluded that Ten's is not an adult eating or drinking establishment as defined by section 12-10 (adult establishment) (b) of the Amended Zoning Resolution, finding that it is not, as described in that section, "an establishment which is not customarily open to the general **[***11]** public during such features because it excludes minors by reason of age."

We disagree and accordingly reverse and grant the City's cross motions to the extent of granting it a preliminary injunction and partial summary judgment on the issue of whether Ten's is an adult eating or drinking establishment as defined by section 12-10 (adult establishment) (b) of the Amended Zoning Resolution.

While zoning ordinances must be narrowly interpreted and ambiguities are to be construed against the zoning authority (*Toys "R" Us v Silva, 229 AD2d 308, revd on other grounds 89 NY2d 411*), the fundamental rule in construing any statute, or in this case an amendment to the City's Zoning Resolution, is to ascertain and give effect to the intention of the legislative **[*116]** body, here the New York City Council. The intent of the City Council is controlling and, subject to constitutional or other legal

limitations, must be given force and effect. Such intent is ascertained from the words and language used in the statute and if the language thereof is unambiguous and the words plain and clear, there is no occasion to resort to other means of interpretation. **[***12]** Only when words of the statute are ambiguous or obscure may courts go outside the statute in an endeavor to ascertain their true meaning. The legislative intent is to be ascertained from the words and language used and the statutory language is generally interpreted according to its natural and obvious sense, without resorting to an artificial or forced construction (*see generally,* McKinney's Cons Laws of NY, Book 1, Statutes §§ 92, 94, 96). "[A] court in construing a law will sometimes be guided more by its purpose than its phraseology". (*Id.,* § 96, at 208-909.)

Here, there is no question that the intent of the City Council was to prohibit adult eating or drinking establishments such as Ten's from operating in certain locations or zoning districts in New York City. Stringfellow's having stipulated that it is in such a location, i.e., in an M1-5M Zoning District within 500 feet of a church and an R9A Zoning District, the only remaining issue is whether it falls within the definition of adult eating or drinking establishment contained in section 12-10 (adult establishment) (b).

The operative words for purposes of any analysis of section 12-10 (adult establishment) **[***13]** (b) are "regularly" (as in "regularly features" live performances characterized by an emphasis on " 'specified anatomical areas' " or "regularly features" employees who, as part of their employment, regularly expose to patrons " 'specified anatomical areas' ", later defined as, *inter alia,* "female breast below a point immediately above the top of the areola") and "customarily" (as in "an adult eating and drinking establishment" regularly featuring such activities " **[**549]** which is not customarily open to the general public during such features because it excludes minors by reason of age").

Regularly is generally defined as customarily, usually or normally, but other definitions include: occurring at fixed intervals, i.e., periodic; or, constant, i.e., not varying. (American Heritage Dictionary, Second College Edition [1982].) The fact that Ten's "regularly" features topless and so-called table or lap dancing is established in the record by the affidavits of City inspectors who visited Ten's on at least 10 occasions from August 3, 1998 to October 7, 1998 and observed such performances. **[*117]** In addition to those virtually uncontested observations, Stringfellow's, **[***14]** in affidavits and affirmations by its president and counsel, admits that Ten's features female entertainers who perform topless dances for its patrons, and, for a fee paid by the customer, perform so-called "table dances" in a disrobed fashion, but denies that the entertainers perform "lap dances" and protests that the dancers wear so-called "T-backs" as opposed to the "G-string" described by one inspector. Other inspectors described various dancers as wearing a "thong bikini bottom", "string bikini bottoms" or "hot pants", but all were unanimous in stating that the women were topless and, in addition to the dances performed on stage, various inspectors described lap dances which were offered and performed in a second level seating area or separate cubicles for an additional $ 20 and such dances entailed the dancers gyrating their hips in close proximity to the male patrons' genital areas and shaking their breasts in close proximity to their faces. The women also were observed touching their breasts and buttocks as they performed on stage and gave lap dances while placing themselves between the male patrons' legs. Thus, there can be no question that the described activities are **[***15]** regularly featured at Ten's.

We next turn to the term customarily, as in "not customarily open to the general public". As the City aptly points out, the term "customarily" is often encountered in the language of zoning statutes, most frequently in sections referring to home occupations or accessory uses that are incidental to a principal use (*see, e.g., Matter of New York Botanical Garden v Board of Stds. & Appeals, 91 NY2d 413, 419-420)*. As held in

Matter of Teachers Ins. & Annuity Assn. v City of New York (82 NY2d 35), a case involving the landmarking of the Four Seasons restaurant, the meaning of customary public openness is a legal question for the courts rather than one of administrative expertise and "*customary* openness, accessibility, invitation to the public [are] words that are readily understood to require usual, ordinary or habitual (rather than rare or occasional) availability to the general public". (*Supra, at 43* [emphasis in original].)

The City and respondent differ on whether "customarily" as used in section 12-10 means the practice of Ten's as opposed to the practice of the entire topless bar "industry". The City **[***16]** urges that the section 12-10 definition of "adult eating or drinking establishment" refers to the type of establishment and the term "customarily" logically and necessarily refers to general, **[*118]** not individual, practice, while respondent contends that the fact that such definition uses the singular form throughout is proof positive that the term "customarily" means only the establishment in question and, that if the City Council meant what the City suggests, it would have included the phrase "and which is not *of the type* customarily open to the general public" (respondent's emphasis).

Respondent's argument that its individual practice of admitting minors somehow takes it out of the scope of the Amended Zoning Resolution is belied by the specific rules of construction of language which apply to the text of the Zoning Resolution and are set forth in article 1 (ch 2) of the Zoning Resolution. Section 12-01 (d) specifically provides that "words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary." Such rule comports with *General Construction Law § 35* (*see also,* **[***17]** McKinney's Cons Laws of NY, Book 1, Statutes § 252). As a result, it is unnecessary to add additional language to make it **[**550]** clear that the language of section 12-10 reflects that the City Council intended the term "customarily" to apply to "adult eating or drinking establishment[s]" in general as opposed to any particular establishment. Thus, any argument that the isolated practice of an individual adult establishment somehow changes the broader industry custom and practice of excluding minors is legally flawed and defies logic and common sense.

In addition, a statute generally speaks, not from the time when it was actually enacted or when the courts are called upon to interpret it, but as of the time it took effect. In other words, it is to be interpreted as the courts would have if it had come into question soon after its passage (McKinney's Cons Laws of NY, Book 1, Statutes § 93; *Matter of Spencer v Board of Educ., 39 AD2d 399, 402*, *affd on opn at App Div 31 NY2d 810*). The amendments in issue took effect on October 25, 1995, although enforcement of such provisions was judicially stayed until July 28, 1998, and it is not contended, **[***18]** nor could it be, that, prior to October 25, 1995 or shortly thereafter, adult eating and drinking establishments, as defined by the City Council, admitted minors to their premises with or without an admission charge, with or without parental consent or the consent of the minor, or accompanied or unaccompanied by parents or guardians.

Indeed, Stringfellow's does not question the IAS Court's finding that its "policy to admit minors was instituted in mid-1997 subject to certain restrictions mandated by the Penal Law and **[*119]** other state laws" merely to avoid application of the Amended Zoning Resolution and there is nothing in the record or otherwise that indicates that the adult entertainment industry's customary practice of excluding minors has changed in any respect. Moreover, without characterizing or passing on the moral content of the entertainment presented by Ten's, which is unnecessary to do in this case, we note that any attempt to avoid the impact of the Penal Law, to the extent it criminalizes endangering the welfare of a child under 17 years old (*Penal Law § 260.10*) or disseminating indecent material to minors by admitting them to such **[***19]** performances with an admission charge (*see, Penal Law § 235.21 [2]*) would be ineffective as being against public policy, as expressed by the Legislature in those statutes.

Ten's attempt to avoid both the restrictions of the Zoning Resolution as well as any potential criminal liability is embodied in its "Door Policies for Minors". Such policy provides that customers under the age of 18 may enter the club only if accompanied by a parent/guardian and that both the parent/guardian and the minor must sign sworn statements, after a guided tour of the premises, unaccompanied by the minor, in which the parent/guardian accepts full responsibility for allowing the minor to enter Ten's and warrants that the topless entertainment and/or nudity as presented by Ten's is not harmful to or will not have any negative effect on the minor. The minor, who in the only documented case on the record was a 13-year-old boy from Caracas, Venezuela who visited Ten's with his father on October 11, 1998, is required to swear that he or she will not drink or order alcohol or use tobacco products while in Ten's. He or she is also required to swear that he or she understands **[***20]** that Ten's provides topless dancing by females and that this type of entertainment is not harmful or offensive to him or her in any way and that he or she has or has not, as the case may be, personally observed bare female breasts in various described circumstances including, *inter alia,* movies, cable television, National Geographic, Broadway theater, other magazines, personal experience, etc. Finally, the minor must swear that he or she has not and/or will not be harmed by seeing exposed female breasts. The policy also provides that minors are not to be required to pay the club's cover charge and "should not get dances".

With due respect to counsel who has attempted to bring his client into compliance with the Zoning Resolution by promulgating this policy, the required "consents" are meaningless and **[*120]** without legal effect. An infant is defined by statute in New York as a person under the age of 18 years (*Domestic Relations Law § 2*). Infancy, since common-law times and most likely long before, is a legal disability and an infant, in the absence **[**551]** of evidence to the contrary, is universally considered to be lacking in judgment, **[***21]** since his or her normal condition is that of incompetency. In addition, an infant is deemed to lack the adult's knowledge of the probable consequences of his or her acts or omissions and the capacity to make effective use of such knowledge as he or she has. It is the policy of the law to look after the interests of infants, who are considered incapable of looking after their own affairs, to protect them from their own folly and improvidence, and to prevent adults from taking advantage of them (66 NY Jur 2d, Infants and Other Persons Under Legal Disability, § 2).

That is why there are child labor laws and prohibitions against smoking, drinking and driving before a certain age. That is also why it is generally required for children under the age of 18 to obtain parental consent to participate in beneficial extracurricular activities such as sports, school trips, etc. As for requiring the minor to sign a consent or waiver before being admitted to Ten's, such release or waiver is of no effect since it is conclusively presumed that infants do not have the mental capacity and discretion to protect themselves from the artful designs of adults. (*Id.,* § 15.)

Stringfellow's argues **[***22]** that, if a minor and his or her parent signs a statement that the entertainment (which the parent has reviewed in advance) is not harmful to the minor, it is difficult for the government to contend that such entertainment is harmful, much less hold Ten's responsible for the parent's misapprehension of the minor's maturity level. If a parent feels it is appropriate for his or her child to visit Ten's, it is urged, it is hardly the province of the City to step in and insist that such behavior endangers the child's "moral welfare". It is unnecessary for us to decide whether the entertainment or other activities presented by Ten's constitutes endangering the welfare of a minor because the parental and minor consents could not insulate Ten's or, for that matter the parent, from any potential criminal liability.

Thus, regardless of whether in one isolated instance Ten's has admitted a 13-year-old boy with the approval of his father, the evidence of which is questionable, it cannot be said that Ten's "customarily"

admits minors as that term is ordinarily understood. Ten's status as an adult establishment is defined **[*121]** by the nature of its entertainment which admittedly is intended **[***23]** for an adult clientele. That the same entertainment may also be attractive to minors with or without parental approval, does not change the essential nature of the establishment or remove it from the ambit of the Amended Zoning Resolution.

As to Stringfellow's argument, that, in any event, summary judgment in favor of the City is unwarranted because of its affirmative defense that the Alcoholic Beverage Control Law preempts the Amended Zoning Resolution with respect to liquor-licensed establishments, as well as "the plethora of material issues" which must be addressed before the City can obtain judgment, we note that Stringfellow's failed to raise the preemption issue when it had the opportunity to do so in its constitutional challenge to the Amended Zoning Resolution (it was raised by one of the *amici curiae* [*see, Stringfellow's of N. Y. v City of New York, supra,* 91 NY2d, at 389] to no avail) and it does not indicate in any way how the Amended Zoning Resolution directly or incidentally affects the sale or the consumption of alcohol as was the case in *Matter of Lansdown Entertainment Corp. v New York City Dept. of Consumer Affairs (74 NY2d 761)*. **[***24]** Moreover, although the Alcoholic Beverage Control Law is preemptive of local law in the regulation of the manufacture, sale and distribution of alcoholic beverages, the Court of Appeals has noted that "establishments selling alcoholic beverages are not exempt from local laws of general application", in this case the Amended Zoning Resolution (*supra, at 763*; *see also, People v De Jesus, 54 NY2d 465*).

Nevertheless, despite the fact that Stringfellow's has already stipulated that, if found to be an adult establishment, Ten's is in a prohibited location and it does not specify further what the plethora of factual issues presented are, there are unresolved issues regarding notice and abatement of a public **[**552]** nuisance in the context of *section 7-707 of the Administrative Code*, which governs the procedure to be followed where a preliminary injunction has been granted (*see, City of New York v Basil Co., 182 AD2d 307*).

Accordingly, the order of the Supreme Court, New York County (Stephen Crane, J.), entered November 6, 1998, which, *inter alia,* denied plaintiffs-appellants' motion for a preliminary injunction and granted defendants-respondents' **[***25]** renewed motion for summary judgment dismissing the complaint, should be reversed, on the law, without costs, plaintiffs' motion for a preliminary injunction granted, defendants' renewed motion for summary judgment denied and the City's cross motion **[*122]** for summary judgment granted to the extent of awarding the City partial summary judgment on the issue of whether defendant-respondent Stringfellow's falls within the definition of adult eating or drinking establishment contained in section 12-10 (adult establishment) (b) of the City's Zoning Resolution and remanding the matter for further proceedings, in accordance with the provisions of *section 7-707 of the Administrative Code*, to determine when defendant was or will be on actual or constructive notice of the subject public nuisance and whether it has acted or will act to abate same within a reasonable time, and for further proceedings consistent with said determination.

Sullivan, J. P., Nardelli and Williams, JJ., concur.

Order, Supreme Court, New York County, entered November 6, 1998, reversed, on the law, without costs, plaintiffs' motion for a preliminary injunction granted, defendants' renewed motion for summary judgment **[***26]** denied and the City's cross motion for summary granted to the extent of awarding the City partial summary judgment on the issue of whether defendant-respondent Stringfellow's falls within

the definition of adult eating or drinking establishment contained in section 12-10 (adult establishment) (b) of the City's Zoning Resolution and the matter remanded for further proceedings.

End of Document

Hogan v. Culkin

Court of Appeals of New York

September 29, 1966, Argued ; October 27, 1966, Decided

No Number in Original

Reporter
18 N.Y.2d 330 *; 221 N.E.2d 546 **; 274 N.Y.S.2d 881 ***; 1966 N.Y. LEXIS 1020 ****

In the Matter of Frank S. Hogan, as District Attorney of New York County, Appellant, v. Gerald P. Culkin, as a Justice of the Supreme Court of the State of New York; Warden of Green Haven Prison, Appellant, and David Betillo, Respondent

Prior History: [**1]** *Matter of Hogan v. Culkin, 25 A D 2d 395*.

Appeal, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered May 17, 1966, which unanimously (1) denied an application by petitioner for an order under CPLR article 78 prohibiting (a) respondent Justice of the Supreme Court from holding a hearing pursuant to a writ of habeas corpus issued on March 24, 1966 and (b) respondent Warden of Green Haven Prison from complying with an order of said Justice directing the appearance of relator David Betillo in New York County pursuant to said writ, and (2) dismissed the proceeding.

Disposition: Order of Appellate Division reversed and matter remitted to that court with instructions to grant the order of prohibition as prayed for in the petition.

Core Terms

returnable, detention, state institution, issuing, writ of habeas corpus, state prison, detained, cases, inmates, writs

Counsel: *Louis J. Lefkowitz, Attorney-General* (*Michael H. Rauch* and *Samuel A. Hirshowitz* of counsel), and *Frank S. Hogan, District Attorney* (*Alan F. Leibowitz* of counsel), for appellants. I. A writ of habeas corpus to inquire into the detention of an inmate in a State prison can be returnable only in the county of detention. Accordingly, respondent Justice was without power to make the writ of habeas corpus in the instant proceeding returnable in New York County and would be assuming excessive jurisdiction if he were to hear and determine the merits of the writ. (*People ex rel. Van Buren v. Superintendent, 118 Misc. 145*; *Matter of Holbrook v. Holbrook, 31 Misc 2d 288*; *People ex rel. Ursoy v. Superintendent, 120 Misc. 353*; *People ex rel. Potterton v. Potterton, 169 Misc. 404*; *People v. Huntley, 15 N Y 2d 72*; *Ahrens v. Clark, 335 U.S. 188*; *New York Foundling Hosp. v. Gatti, 203 U.S. 429*; *United States v. Tribote **[****4]** , 297 F. 2d 598*.) II. A writ of prohibition is the proper remedy to test the Appellate Division's interpretation of the statute. (*Matter of Public Serv. Comm. v. Norton, 304 N. Y. 522*; *Quimbo Appo v. People, 20 N. Y. 531*; *Matter of Morhous v. New York Supreme Ct., 293 N. Y. 131*; *Matter of Murphy v. Supreme Ct., 294 N. Y. 440*; *Matter of Culver Contr. Corp. v. Humphrey, 268 N. Y. 26*; *People ex rel. Safford v. Surrogate's Ct., 229 N. Y. 495*; *Matter of Murtagh v. Leibowitz, 303 N. Y. 311*; *People ex rel. Jerome v. Court of Gen.*

Sessions, 185 N. Y. 504; *Matter of Elcock v. Boccia, 12 Misc 2d 955*; *Matter of Fitzgerald v. Wells, 14 Misc 2d 435, 9 A D 2d 812, 7 N Y 2d 711*; *Matter of Hogan v. Court of Gen. Sessions, 296 N. Y. 1*; *Matter of Thompson v. Murray, 271 App. Div. 306*.)

Joseph Aronstein for respondent. I. A writ of habeas corpus to inquire whether a sentence imposed upon a prisoner was a legal or illegal sentence may be issued by a Supreme Court Justice of New York County, the county in which the trial was had, and make such writ of habeas corpus returnable in New York County in the **[****5]** exercise of his discretion. (*People ex rel. Miller v. Martin, 1 N Y 2d 406*; *People v. Sullivan, 3 N Y 2d 196*.) II. A Justice of the Supreme Court derives his power from the common law and the *Constitution of the State of New York. (People v. Folmsbee, 60 Barb. 480*; *People ex rel. Barry* v. *Mercein*, 8 Paige Ch. 46; *People ex rel. Trainer* v. *Cooper*, 8 How. Prac. 289; *People ex rel. Rosenthal v. Cowles, 59 How. Prac. 287*; *People v. Hanna, 3 How. Prac. 39*.)

Judges: Fuld, J. Chief Judge Desmond and Judges Van Voorhis, Burke, Scileppi, Bergan and Keating concur.

Opinion by: FULD

Opinion

[*332] [547] [***882]** The primary question here presented is whether, under *CPLR 7004 (c)*, a writ of habeas corpus directed to the warden of a State prison may be made returnable and heard before a Justice of the Supreme Court in a county other than that in which the relator is detained.

The relator is presently serving a sentence of 25 to 40 years (as a parole violator) at Green Haven State Prison in Dutchess County, consequent upon his conviction on certain felony charges in the Supreme Court, New York County, in 1936. Some months ago he sued **[****6]** out a writ of habeas corpus from the Supreme Court, New York County, alleging, *inter alia*, that, when he appeared for sentence in 1936 he was not asked, as required by section 480 of the Code of Criminal Procedure, why judgment **[***883]** should not be pronounced against him. [1] The writ was made returnable in New York County before the issuing justice who denied a motion by the district attorney to amend the writ by making it returnable in Dutchess County, the situs of the relator's detention. The district attorney thereupon instituted this proceeding under article 78 of the CPLR for a judgment in the nature of prohibition to restrain the issuing justice **[*333]** from holding a hearing on the writ in New York County, and to prohibit the warden from producing his prisoner there. The Appellate Division denied the application, and the appeal is in this court by our permission.

[**7]** Prior to 1922, the pertinent statutes left it within the sound discretion of the issuing judge to determine whether a writ of habeas corpus should be made returnable outside the county in which the relator was detained (See Code Civ. Pro., § 2023 [L. 1880, ch. 178]; Civ. Prac. Act, § 1239, subd. 2 [L.

[1] The petition further alleged that the relator was not represented by his attorney at the time, but that claim would not be redressible by habeas corpus. The exclusive remedy for a deprivation of the right to counsel is *coram nobis*. (See, e.g., *People ex rel. Sedlak v. Foster, 299 N. Y. 291*; *People ex rel. Cunningham v. McNeill, 306 N. Y. 645*.)

1920, ch. 925]; see *People ex rel. [**548] Van Buren v. Superintendent, 118 Misc. 145*.) However, in order to obviate the administrative, security and financial burdens entailed in requiring prison authorities to produce inmates pursuant to such writs in a county other than that in which they were detained, the statute was amended in 1922, on recommendation of the Attorney-General and the Superintendent of Prisons, so as to make special provision for writs directed to those in charge of State prisons or other State institutions. The new legislation (Civ. Prac. Act, § 1239, subd. 3, as added by L. 1922, ch. 187) mandated that "All writs of habeas corpus directed to the * * * warden of a state prison, or the superintendent * * * of a state institution, must be made returnable before a * * * [judge] in the county in which the person is detained", unless there was no **[****8]** such judge "in the county capable of acting", in which event the writ was to be made returnable before the nearest accessible judge "in an adjoining county". This language was thereafter uniformly interpreted as requiring that, under normal circumstances, a writ sued out by an inmate of a State institution was to be made returnable solely in the county where the institution was located. (See, e.g., *Matter of Holbrook v. Holbrook, 31 Misc 2d 288*; *People ex rel. Ursoy v. Superintendent, 120 Misc. 353*.)

Subdivision (c) of *CPLR 7004*, which has superseded the Civil Practice Act section on the subject, continues the differentiation between writs directed to State institutions and writs issued in other cases. The problem here presented arises only because of certain verbal changes made in **[***884]** the course of the consolidation and rephrasing of the applicable provisions. Thus, in place of the former language that "*All* writs of habeas corpus" directed to a State institution were to be made returnable in the county **[*334]** of the relator's detention, the CPLR section recites that "A writ to *secure the discharge* of a person from a state institution" must **[****9]** be made so returnable and that "In all other cases" the writ is to be returnable in the county where it was issued unless the issuing court or judge decides to make it returnable in the county of detention. (Emphasis supplied.) [2]

Interpreting these terms in a strictly **[****10]** literal sense, a majority of the Appellate Division held that, since the relator was not seeking to be "discharged", but only to be "resentenced", the provision limiting the place of return of the writ to the county of detention was inapplicable and the place of return of the writ was, instead, left to the sound discretion of the issuing judge.

We cannot accept that interpretation. As the explanatory notes of the draftsmen of the CPLR make clear, the paraphrasing of the language in the Civil Practice Act was not intended to alter the rule that habeas corpus hearings must be held in the county of detention when the relator is an inmate of a State institution. The notes expressly state that "The only change in substance" was to provide, in cases where no judge was available in the county of detention, for the writ "to be returned to the 'nearest accessible' judge, rather than [as formerly] to the 'nearest accessible * * * judge in an adjoining county.'" (See N. Y. Legis. Doc., 1959, No. 17, p. 66; see, also, 7 Weinstein-Korn-Miller, *N. Y. Civ. Prac., [**549] par. 7004.07*, p. 70-38.) Obviously, then, the phrase, "A writ to secure the discharge of a person from a state institution", **[****11]** was adopted merely as a generic description of habeas corpus in terms of its function.

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[2] The full text of subdivision (c) of *CPLR 7004* is as follows: "A writ to secure the discharge of a person from a state institution shall be made returnable before a justice of the supreme court or a county judge being or residing within the county in which the person is detained; if there is no such judge it shall be made returnable before the nearest accessible supreme court justice or county judge. In all other cases, the writ shall be made returnable in the county where it was issued, except that where the petition was made to the supreme court or to a supreme court justice outside the county in which the person is detained, such court or justice may make the writ returnable before any judge authorized to issue it in the county of detention."

The Legislature has sought to relieve wardens of State prisons from having to comply with writs of habeas corpus by producing inmates out of the county of detention, under guard, and often **[*335]** at great distances and great expense. (See *Ahrens v. Clark, 335 U.S. 188, 191*.) The burden is equally heavy whether the relief sought by the writ be that of a permanent "discharge" or simply **[***885]** a remand for resentencing. Manifestly, to differentiate between the two situations would not only be completely illogical and unrealistic but would, indeed, serve to thwart the very policy considerations underlying the statute. Absent clear language to that effect, and considering the contrary indications to be found in the Revisors' Notes, we will not ascribe such ambivalent intentions to the Legislature." In construing statutory provisions, the spirit and purpose of the statute and the objectives sought to be accomplished by the legislature must be borne in mind. '* * * Literal meanings of words are not to be adhered to or suffered to "defeat the general purpose and manifest policy intended **[****12]** to be promoted".'" (See *Matter of New York Post Corp. v. Leibowitz, 2 N Y 2d 677, 685*; *Matter of Capone v. Weaver, 6 N Y 2d 307, 309*; *People v. Ryan, 274 N. Y. 149, 152*.)

Accordingly, we hold that *CPLR 7004(c)*, like its predecessor in the Civil Practice Act, distinguishes between writs of habeas corpus concerning the inmates of State institutions, in the first instance, and writs "In all other cases", in the second. Where the writ is directed to the warden of a State prison, whether it seeks a complete release from cusody or a remand for resentencing, it must be made returnable in the county of detention, subject to the exception applicable when there is no available judge in that county. In all other cases, the writ is to be made returnable in the county of issuance, unless the issuing judge should decide in his discretion to make it returnable in the county of detention.

One question remains for our consideration -- whether prohibition lies under the circumstances here presented. The majority of the Appellate Division, having concluded that the place for return of the writ was committed to the discretion of the issuing judge, held that prohibition was **[****13]** not available. However, under our interpretation of the statute, the respondent was completely without jurisdiction to hold any hearing on the writ in New York County, and it necessarily follows that the district attorney was fully warranted in seeking to prohibit such **[*336]** a hearing. We have uniformly held that prohibition is the proper remedy whenever a court threatens to act without or in excess of its power, not only with respect to a lack of jurisdiction over the subject matter (see, e.g., *Matter of Kraemer v. County Ct., 6 N Y 2d 363*; *Matter of Hogan v. Court of Gen. Sessions, 296 N. Y. 1, 8-9*; *Matter of Morhous v. New York Supreme Ct., 293 N. Y. 131, 140*; *Matter of Culver Contr. Corp. v. Humphrey, 268 N. Y. 26, 39-40)* but also where the Legislature has confined the exercise of jurisdiction to a court in some other county. (See *Matter of Murtagh v. Leibowitz, 303 N. Y. 311, 319*; **[***886]** *Matter of Murphy v. Supreme Ct., 294 N. Y. 440, 445*; see, also, *Matter of Schneider v. Aulisi, 307 N. Y. 376, 381*.)

Here, in point of fact, prohibition was the only adequate remedy available to prevent the threatened exercise **[****14]** of unauthorized **[**550]** power. No appeal was possible from the issuing judge's direction for return of the writ in New York County or his refusal to make it returnable in Dutchess County, the place of detention; and an appeal from any order made at the completion of the habeas corpus hearing would be *brutum fulmen* -- a complete futility -- since, once the prisoner were produced in New York County and a hearing held, the act in excess of jurisdiction would be consummated, thereby defeating the jurisdictional imperatives of the statute. In such circumstances where the lack of jurisdiction is clearly established, the petitioner is entitled to relief in the nature of prohibition as a matter of law. (See, e.g., *Matter of Baltimore Mail S. S. Co. v. Fawcett, 269 N. Y. 379, 383-385*.)

The order of the Appellate Division should be reversed and the application for a judgment in the nature of prohibition granted, as prayed for in the petition.

Order of Appellate Division reversed and matter remitted to that court with instructions to grant the order of prohibition as prayed for in the petition.

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Neutral
As of: August 21, 2019 2:04 PM Z

Lake S. & M. S. R. Co. v. Roach

Court of Appeals of New York

February 24, 1880, Submitted ; March 9, 1880, Decided

No Number in Original

Reporter
80 N.Y. 339 *; 1880 N.Y. LEXIS 104 **

The Lake Shore and Michigan Southern Railway Company, Respondent, v. Patrick Roach et al., Appellants.

Prior History: [1]** Appeal from order of the General Term of the Supreme Court, in the fourth judicial department, affirming an order of Special Term, denying defendants' motion to set aside proceedings on the part of plaintiff for the claim and delivery of an engine and cars, to recover the possession of which this action was brought.

The facts are sufficiently stated in the opinion.

Disposition: Order affirmed.

Core Terms

taxes, seize

Syllabus

The provision of the charter of the city of Buffalo of 1870 (§ 22, chap. 519, Laws of 1870), declaring that goods and chattels upon lands for which taxes are assessed shall be deemed to belong to the person to whom the lands are assessed, does not apply to property belonging to another person in no way liable for the tax which is transiently upon lands assessed, but in the possession of the owner for his own purposes; and the collector cannot lawfully, by virtue of his warrant, take such property, for the purpose of satisfying the tax.

Where such property is so taken, an action by the owner to recover the possession thereof, may be maintained against the collector.

The property in such case cannot properly be said to be taken for a tax within the meaning of the provision of the Code **[**2]** of Procedure (§ 207), requiring an affidavit for the claim and delivery of property to show that the property has not been taken for a tax, or of the provision of the Revised Statutes (2 R. S., 522, § 4), which provides that "no replevin shall lie for any property taken by virtue of any warrant for the collection of any tax," etc.

It seems, that where property belonging to A., upon lands assessed to B., has been properly levied upon by the collector, under said provision of the charter, it cannot be shown against him that B. did not own or

occupy the lands; there being nothing upon the face of the papers to notify the collector of the alleged illegality, it is his duty to execute his warrant, and he will be protected in doing so.

Counsel: P. A. Matteson, for appellants. When property has been taken in violation of the provisions of law, it is proper practice to make a motion to set aside the proceedings. O'Reilly v. Good, 42 Barb., 521; Niagara Elevating Co. v. McNamara, 1 Sheldon, 361.) The warrant is a protection to the collector, and this action cannot be sustained. (Niagara Elevating Co. v. McNamara, 50 N.Y., 653; The People v. Albany C. P., 7 Wend., 485; Slocum v. Mayberry, **[**3]** 2 Wheat., 1; Taylor v. Caryl, 20 How. [U.S.], 583; Deming v. Janes, 72 Ill., 78; Freeman v. Howe, 24 How. [U.S.], 450; Cooley on Taxation, 302; The Troy and L. R. R. Co. v. Kane, 72 N.Y., 614; Chegaray v. Jenkins, 5 id., 376; Abbott v. Yost, 2 Denio, 86.) Although a warrant may have issued erroneously or irregularly, if on its face it gives authority to the officer to collect the fine etc., replevin cannot be sustained. (O'Reilly v. Good, 42 Barb., 521; People ex rel. Enos v. Albany, 7 Wend., 485; Hudler v. Golden, 36 N.Y., 446; Clearwater v. Bull, 63 id., 627.) The roll and warrant is the process. (Bradley v. Ward, 58 N.Y., 401; See Burroughs on Tax, 256, 261, 262; Nolan v. Busby, 28 Ind., 154.) An inferior public officer, acting within the scope of his warrant when apparently regular, is protected, unless the authority issuing it is without jurisdiction. (Cunningham v. Mitchel, 67 Penn., 78; Moore v. Alleghany City, 18 id., 55; St. Louis Building Assn. v. Lighter, 47 Mo., 393; Pacific R. R. Co. v. Dulle, 48 id., 282; Sheldon v. Van Buskirk, 2 N.Y., 473; Cooley on Taxation, 302; The State v. Allen, 2 McCord, 55, 60; Stockwell v. Vietch, 38 Barb.) The appropriate and only remedy, **[**4]** so far as defendants are concerned, is by an action to restrain them from selling or interfering with this property. (Demings v. Janes, 72 Ill., 78.)

A. P. Laning, for respondent. Replevin, or proceedings of claim and delivery, is the proper and only remedy which the plaintiff has in this action. (Stockwell v. Vietch, 15 Abb., 412; Thompson v. Button, 14 J. R., 84; Judd v. Fox, 9 Cow., 259.) The collector acquired no jurisdiction, his warrant being irregular in that it showed the tax was assessed to neither the owners nor occupants. (1 R. S., 389, §§ 1, 2; Whitney v. Thomas, 23 N.Y., 281; Mygatt v. Washburn, 15 id., 316; Johnson v. Learn, 30 Barb., 616; Pratt v. Stewart, 8 id., 493; Van Rensselaer v. Cotterell, 7 id., 127; Dubois v. Webster, 7 Hun., 371.) Plaintiff had acquired a property in the premises occupied by the railway track, that could not be taken for a tax assessed against the person over whose land the railway passes, or assessed against the lands adjoining, or over which such a right of way has been acquired. (Troy R. R. Co. v. Potter, 42 Vt., 265; Rogers v. Bradshaw, 20 J. R., 735; The State v. Maine, 27 Conn., 641; Mt. Washington Road, 35 N. H., 134.)

Judges: Earl, **[**5]** J. All concur, except Rapallo and Andrews, JJ., not sitting.

Opinion by: EARL

Opinion

[*341] Earl, J. The plaintiff commenced an action to recover of the defendants the possession of a railroad engine and several railroad cars, and upon an affidavit and notice directed to him, the sheriff of Erie county took the property from **[*342]** the possession of the defendants, and while it was in his possession they made a motion at a Special Term of the Supreme Court to set aside the proceedings pertaining to taking the property, which motion was denied. They then appealed to the General Term of the Supreme Court, and from the order of affirmance there to this court.

The defendant Roach was a tax collector of the city of Buffalo, and by virtue of a tax warrant issued to him, he was commanded to collect a certain tax imposed upon certain land in the city of Buffalo, which was assessed to Palmer & Co., and not being able to find any property of Palmer & Co. out of which to make the tax, or to procure payment of the tax otherwise, and finding this personal property upon the land taxed, he, with the aid of the other defendant, seized this property, by virtue of his warrant, for the purpose of satisfying **[**6]** the tax. The property, which consisted of an engine and freight cars, was at the time in the possession of the plaintiff, having been temporarily run upon the land, on a track used by plaintiff communicating with the Union Iron Works, for the purpose of procuring freight. Under such circumstances the collector claims that the plaintiff had no right in this action to direct the sheriff to take the property from him.

The plaintiff claims that Palmer & Co. did not own or occupy the land, and that the assessment and tax were, therefore, illegal and void. But it did not appear upon the assessment-roll, or in the warrant, that they did not own or occupy the land. The assessment, upon the warrant and papers delivered to the collector, was valid. There was nothing upon the face of the papers to notify the collector of the alleged illegality, and hence it was his duty to execute the warrant, and it is well settled that he would be protected in doing so: (*The Niagara Elevating Company v. McNamara, 50 N.Y. 653*; *The Troy and Lansingburgh R. R. Co. v. Kane, 72 N.Y. 614*; *Chegaray v. Jenkins, 5 N.Y. 376*.) And the property which he could take by virtue of such a warrant **[**7]** could not be taken from him in such an action as **[*343]** this. Section 207 of the Code of Procedure, which is still in force, provides that plaintiff's affidavit must show that the property has not been taken for "a tax, assessment or a fine," and the Revised Statutes (2 R. S., 522, § 4) provide that "no replevin shall lie for any property taken by virtue of any warrant for the collection of any tax, assessment or fine," and such is still the law: (*Hudler v. Golden, 36 N.Y. 446*.

But the plaintiff claims that the collector had no right to seize its property for the payment of this tax; and that really presents the only question for consideration here. If the collector had no right to seize this property under his warrant, the plaintiff can maintain this action. If a tax collector illegally seizes the property of A. to satisfy the tax of B., A. can maintain an action of replevin for its recovery: (*Stockwell v. Vietch, 15 Abb. Pr. 412*; *Thompson* v. *Button*, 14 J.R. 84; *Judd v. Fox, 9 Cow. 259*.) As the warrant in such case does not authorize or justify the seizure of the property, it cannot properly be said to be taken by virtue thereof.

This **[**8]** tax was imposed and warrant issued under the revised charter of the city of Buffalo, the act chapter 519 of the Laws of 1870. Section thirteen of title five of that act provides that the comptroller shall issue the warrant commanding the collector to collect from the several persons, etc., the taxes set opposite their respective names; and section nineteen provides that the collector shall demand the taxes, and that he shall make the amount thereof out of the goods and chattels of the persons, etc., opposite to whose names such taxes are set down; and then section twenty-two provides as follows: "Goods and chattels in the possession of the person opposite to whose name the taxes are set down, or upon the lands for which such taxes are assessed, shall be deemed to belong to such person; and no claim of property made thereto by any other person shall be available to prevent a sale." The object of this provision of law is to facilitate the collection of taxes, and to prevent fraud and collusion, by which their collection can be delayed or defeated **[*344]** and the government thus embarrassed. Its main purpose is, not to authorize the property of one to be taken to pay the tax of another, **[**9]** but to prevent disputes as to the ownership of property which the collector might seize. This is to be accomplished by the rule of evidence enacted that property found in the possession of the tax debtor or upon his land when the tax is thereon,

must be deemed to belong to him. It is manifest that this language cannot be taken literally. If one should drive upon the land taxed with a horse and wagon, simply to make a call as a visitor, or as a physician, or as an officer in the discharge of his official duty, could the property be taken out of his possession to satisfy the tax? If a thief had stolen the property, and taken it temporarily upon the land, could it be taken from his possession and sold for the tax? If one is passing over the land of another on his own business, can he be stripped of all the property in his possession for a tax upon the land? It cannot be doubted that the law-makers did not intend that this law should be applied in such cases; and yet they are within the letter of the law. The law-makers cannot always foresee all the possible applications of the general language they use; and it frequently becomes the duty of the courts in construing statutes to limit their **[**10]** operation, so that they shall not produce absurd, unjust or inconvenient results not contemplated or intended. A case may be within the letter of the law, and yet not within the intent of the law-makers; and in such a case a limitation or exception must be implied.

Without attempting to define the precise reach of this law, I am of opinion it was not intended to apply to the case of property transiently upon the land taxed and in the possession of the owner for his own purposes; and that the collector, in such case, cannot by virtue of his warrant lawfully take the property from the owner's possession for the purpose of satisfying a tax for which he is in no way liable.

The order should be affirmed, with costs.

All concur, except Rapallo and Andrews, JJ., not sitting.

Order affirmed.

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Questioned
As of: August 21, 2019 1:57 PM Z

People ex rel. McGoldrick v. Sterling

Supreme Court of New York, Appellate Division First Department

December 8, 1953

No Number in Original

Reporter
283 A.D. 88 *; 126 N.Y.S.2d 803 **; 1953 N.Y. App. Div. LEXIS 2986 ***

THE PEOPLE OF THE STATE OF NEW YORK ex rel. JOSEPH D. McGOLDRICK, as State Rent Administrator, Appellant, and MONROE JACOBS et al., Interveners, Appellants, v. EDWARD C. STERLING et al., Respondents.

Prior History: **[***1]** APPEAL from a judgment of the Supreme Court in favor of defendants, entered October 20, 1953, in New York County, upon a decision of the court on a trial at Special Term (BRISACH, J.).

Core Terms

tenants, apartments, regulation, Rent, co-operative, occupancy, eviction, leases, allocated, certificates, purchasers, housing accommodation, proprietary, premises, dwelling, landlord, purchase stock, two-year, shares, subdivision, stock, shares of stock, stock purchaser, injunctive, reserved

Counsel: *Robert H. Schaffer* **[***6]** of counsel (*Norman S. Fenton* with him on the brief, attorney), for appellant.

Leonard M. Wallstein, Jr., of counsel (*Senjamin Menschel* with him on the brief; *Wallstein, Menschel & Wallstein,* attorneys), for interveners, appellants.

George Brussel, Jr., of counsel (*Rosston, Hort & Brussel,* attorneys), for respondents.

Opinion by: BREITEL

Opinion

[*90] **[**805]** BREITEL, J. The question is whether an owner of real property - a multiple dwelling - may cut off the possessory rights of statutory tenants under the State Residential Rent Law (L. 1946, ch. 274, as amd.) by transferring the property to a corporation under a so-called "co-operative plan" and selling to strangers, without offering to the tenants, the shares allocated to their apartments.

We believe that the statute and regulations by implication do not so permit; that the regulations, as distinguished from the statute, were certainly not intended to so permit; and that, in any event, if the

regulations so permit they are invalid and of no effect to that extent, because not in effectuation of the purposes of the statute, and indeed, in contravention thereof.

This is what happened.

Edward C. Sterling **[***7]** had become the sole owner of 1133 Park Avenue, a multiple dwelling with thirty-two apartments. From 1934 to 1953, Mr. Sterling and his family had owned bonds secured by the building - some $306,500 worth out of a total bonded indebtedness of $504,000. In 1953, when the building was in reorganization, Mr. Sterling bid at public auction for the property, and took title on May 21, 1953.

In June, 1953, Mr. Sterling caused 1135 Park Avenue Corporation to be organized under the Stock Corporation Law (not the Cooperative Corporations Law). On June 29, 1953, the "co-operative plan" was promulgated over the subscription of the managing agents for the building.

The plan provided that of the thirty-two apartments in the building nineteen were allocated to occupant tenants. They would have the privilege of purchasing shares in the corporation allocated to their respective apartments and thereby obtain so-called "proprietary leases". As to the remaining thirteen apartments it was provided in the agreement for the sale of **[*91]** the building to the newly organized corporation that: "As part of the consideration for this sale and the conveyance of title by the Seller [Mr. Edward C. **[***8]** Sterling] to the Purchaser, **[**806]** the Organizer of the Cooperative Plan of Organization referred to in the annexed Plan of Cooperative Organization, shall have the right to purchase and acquire 3,335 shares of the stock of the Corporation allocated to apartments: 1-E, 2-E, 3-E, 5-E, 16-E, 1-SE, 1-W, 2-W, 3-W, 6-W, 9-W, 16-W, and PH-W and to execute Subscription Agreements and Proprietary Leases covering said shares and apartments."

The excepted apartments have been transferred to Mr. Robert D. Sterling, father of the seller. Some of the excluded tenants desire to purchase co-operative interests in their apartments, and at least one of them made a tender to purchase an interest in his at the price scheduled in the plan.

The effect of this "co-operative plan" is that occupant tenants of the apartments reserved for the "organizer" were not permitted to purchase "co-operative" interests in their apartments. The further effect would be that after a two-year lapse as provided in subdivision 3 of section 55 of the Rent and Eviction Regulations of the Temporary State Housing Rent Commission, the stranger purchasers of the shares allocated to the thirteen reserved apartments would **[***9]** be able to obtain certificates of eviction and remove the occupants. So the defendants contend. Indeed, they concede that the purpose of this Sterling plan is to allow the owner's father, Mr. Robert D. Sterling, to whom the reserved apartments were "sold", to speculate with the reserved apartments, sell them, and make a capital profit.

Upon the trial plaintiffs sought to show, but the evidence was excluded, that the seven residential tenants who were precluded from purchase of co-operative interests in the building were especially selected because of their efforts in the past in resisting rent increases before the Rent Administrator and in making complaints with respect to the maintenance of services.

The Rent Administrator brings this action for judgment enjoining defendants - members of the Sterling family who participated in the Sterling plan, the newly organized corporation, and the managing agents - from proceeding with the plan. He claims that it was designed illegally to circumvent the statutes and the regulations thereunder. A number of the tenants, excluded from the privilege of purchasing stock under

the Sterling plan, intervened as plaintiffs. They seek a **[*92]** **[***10]** declaratory judgment, in addition to injunction, that the Sterling plan is invalid, void and of no effect.

Pending determination of the action a temporary injunction was obtained and the plan has consequently not progressed. Upon the trial the court dismissed the complaints at the close of the entire case. In effect, the trial court held that the Sterling plan involved nothing more **[**807]** than a series of legal acts and that Mr. Sterling had a right to do with his property as the plan contemplated.

We cannot wholly agree with the contentions of either side to this controversy.

The State Residential Rent Law (L. 1946, ch. 274, as last amd. by L. 1953, ch. 321) sets up a system of regulation of rented residential dwellings on an emergency basis. Power is given to the Rent Commission to establish maximum rents. Tenants of controlled premises are entitled to possession so long as they pay the rent due, subject to certain exceptions. They may be removed, save in the case of the exceptions, only if certificates of eviction are first obtained from the Rent Commission. The State's police power is exercised through control of evictions. It is thus in that area that one must **[***11]** find warrant or prohibition for the operation of the Sterling plan. It is not in the province of the court to pass upon the character of ownership or the method of transfer of title that Mr. Sterling may propose for property owned by him. The statute does not purport to regulate title or transfer of title. It does, as already stated, impose controls on maximum rents and evictions.

Co-operatively owned apartments are not mentioned in the statute, except for a single reference not applicable to this case (§ 4, subd. 4, par. [a], cl. [3]). Hence, the right to obtain orders for certificates of eviction with respect to co-operatively owned apartments must be found in sections of the statute that deal generally with certificates of eviction.

Paragraph (a) of subdivision 2 of section 5 is pertinent. It reads in part:

"The commission shall issue such an order whenever it finds that:

"(a) the landlord seeks in good faith to recover possession of housing accommodations because of immediate and compelling necessity for his own personal use and occupancy or for the use and occupancy of his immediate family; provided, however, that where the housing accommodations are located **[***12]** in a one- or two-family house and the landlord seeks in good **[*93]** faith to recover possession for his own personal use and occupancy, an immediate and compelling necessity need not be established".

Under the Sterling plan the owner of the fee would be 1135 Park Avenue Corporation. The purchasers of stock in the corporation are entitled to "proprietary" leases to apartments for which specific shares of stock have been allocated. The lessee in the lease is in much the same position as any other tenant under the usual leasing arrangement. The reason is undoubtedly the wish to retain for the corporation the facile **[**808]** and summary remedies that are available to the ordinary landlord, in the event the lessee defaults in his obligations.

The statute defines a landlord as one entitled to the rent for use or occupancy of any housing accommodation (§ 2, subd. 6). Thus, a tenant of an apartment may be a "landlord" to his subtenant. The proprietary leases in this case provide that the lessee is entitled to the rents of his apartment if there is an existing statutory tenancy.

Of course, a statute may not be read so literally that it yields in application a nonsensical **[***13]** result. In the context of a plan, such as the Sterling plan, the 1135 Park Avenue Corporation is the landlord, not the stranger to whom its shares are sold. The co-operative lessee becomes entitled to the rents by assignment and not by virtue of the statutory tenant being his sublessee. (See *Matter of Danforth v. McGoldrick, 201 Misc. 480, 482-483* [Special Term, N.Y. Co., 1951, CORCORAN, J.].) (We note again that it is the shares in the corporation that are sold, and despite a vernacular usage to the contrary, the apartment is not sold, but leased under a so-called "proprietary" lease.)

Consequently, no warrant is found in the statute for granting certificates of eviction to purchasers of shares in the so-called "co-operatively-owned" corporation in this case. If warrant exists for granting the certificates, it must be found in the regulations promulgated by the Rent Commission under the very broad rule-making powers conferred on it (§ 4, subd. 4, par. [a]; § 4, subd. 5, par. [a]; § 4, subd. 5, par. [b]; § 5, subd. 3; § 6, subds. 1, 2; § 12, subd. 1).

Subdivision 3 of regulation 55 reads as follows:

"In the case of housing accommodations in a structure **[***14]** or premises owned by a cooperative corporation or association, a certificate shall be issued by the Administrator to a purchaser of stock or other evidence of interest to possession of such housing accommodations by virtue of a proprietary lease **[*94]** or otherwise where (a) the tenant originally obtained possession of the housing accommodations by virtue of a rental agreement with the purchaser; or (b) the purchased stock was acquired by the landlord more than two years prior to the date of the filing of the application; or (c) the purchased stock was acquired less than two years prior to the date of filing of the application and on that date stock in the cooperative has been purchased by persons who are tenants in occupancy of at least 80 percent of the dwelling units, in the structure or premises and are entitled by reason of stock ownership to proprietary leases of dwelling units in the structure or premises; or (d) the cooperative **[**809]** was organized and acquired its title or leasehold interest in the structure or premises before February 17, 1945 and on that date stock in the cooperative allocated to 50 percent or more of the dwelling units in the structure or premises **[***15]** was held by individual owners, who are or whose assignees or subtenants are tenants in occupancy of such dwelling units in the structure or premises at the date of the filing of the application.

"For the purposes of this paragraph the term 'tenants in occupancy' includes only (1) a person who purchased the stock allocated to a vacant apartment; or (2) a person who while he was a tenant in occupancy in the building, purchased the stock allocated to his or some other housing accommodation in the building for personal occupancy; or (3) a person who purchased the stock allocated to a housing accommodation which is occupied by a tenant who obtained his possession from said purchaser of the stock; or (4) a person who purchased the stock allocated to an apartment from an owner of such stock who was in occupancy of such apartment.

"For the purposes of this paragraph the term 'housing accommodation' shall not include servants' rooms which are non-housekeeping and located in the service portion of the building, and the term 'tenant' shall not include the persons occupying such servants' rooms. Any application under this paragraph must also comply with the requirements of paragraphs 1 and **[***16]** 4 of this section; provided, however, that where the applicant seeks to recover possession for his own personal use, he need not establish an immediate and compelling necessity."

It should be noted that the regulation refers to a purchaser of stock under a co-operative plan as a landlord. Earlier it was said that the statutory reference to a landlord did not include the holder of a proprietary lease. There is only a **[*95]** superficial inconsistency produced by the draftsman of the regulation. There can be no question that the regulation refers to a holder of a proprietary lease. We do not question the effect of that reference, so long as the rent commission had the power to make the regulation in question. It had that power if it is construed to conform with the purpose of the statute in protecting statutory tenants.

The Rent Administrator contends that from a reading of the whole regulation it is evident that primarily tenants in occupancy as statutory tenants are to be protected; hence, the punctilious provisions with respect to the 80% requirement and the definition of tenants in occupancy. He contends that the same punctilious and intended protection must be read **[***17]** into that branch of the regulation which provides for granting certificates of eviction, after a two-year lapse, even if 80% of the occupant tenants have not subscribed to the co-operative plan. Consequently, **[**810]** he argues, the two-year option provision would have the very reverse effect of that intended if occupants were not given an option to "purchase" their apartments before they were "sold" over their heads.

A serious question may be raised, although it was not, as to the applicability of the regulation to the corporation in the particular Sterling plan. It is questionable indeed whether a corporation is embarked on a co-operative plan, within the meaning of the regulation, at least, when thirteen out of thirty two apartments are to be reserved for private manipulative speculation before they will come to rest as co-operative units. We submit that it is not. It is then but a part co-operative. A sensible reading of the regulation suggests that it was contemplated that a co-operative might be set up for the tenants in occupancy. If 80% went along, the participants in the plan are eligible for the benefits of the regulation. If more than 20% of the tenants hold **[***18]** out, even then, the plan may go forward and after the lapse of two years the participants may rely on the alternative requirement prescribed in the regulation. A plan which will be co-operative for strangers to the premises hardly matches the stress placed upon the provisions as to who are "tenants in occupancy".

The Federal statutes and regulations which preceded the State statutes did not have the two-year optional provision (U.S. Code, tit. 50, Appendix, § 1899; Code of Fed. Reg., tit. 24, § 852.26, subd. [c], par. [1], cl. [ii]). Neither did the State regulations prior to 1951. The Temporary State Housing Rent Commission in proposing the change (1951 Rent Control Plan, **[*96]** p. 32) said: "In proposing this change in the Regulations, the Commission does not intend to abandon its position that the right of the recent purchaser of stock allocated to a cooperative apartment to evict the tenant in possession must be limited to avoid improper pressures upon such tenants to purchase stock in dormant or new cooperatives."

Implicit in the regulation and explicit in the proposal for the amended regulation is the concept that it is the occupant tenant to whom rights to **[***19]** the possession of the apartment will be offered. Any other view would permit owners, by the device of the Sterling plan, to remove first large portions, and later the whole of multiple dwellings from the rent control laws, without the intended protection to statutory tenants.

The regulations contain an interesting provision which exemplifies the plan of protection for statutory tenants. Section 57 authorizes subdivision of larger apartments, but conditioned upon providing options to, or in the alternative, relocation of, tenants displaced by the alterations.

[811]** This court has heretofore recognized that co-operative apartment plans are subject to supervision if their effect may be to frustrate the policy of the State in controlling maximum rents and evictions (*Judson v. Frankel, 279 App. Div. 372*). In that case it was noted by Mr. Justice VAN VOORHIS, now Associate Judge of the Court of Appeals, that: "It is not clear, nevertheless, that the intent of the Rent Commission or of the Legislature was to allow statutory tenants to be confronted with the alternatives of purchasing their apartments or of being evicted, at least unless they originally become tenants under **[***20]** leases from owners of separate, individual co-operative apartments, and except at the instance of such individual apartment owners, their successors or assigns." (P. 373.)

It was said further: "Plaintiffs should have the right to test out the question as to whether the co-operative scheme proposed by the defendants is a device to evade and circumvent the emergency rent control laws intended for the protection of the tenants." (P. 374.)

Surely, if an unfairly capitalized co-operative scheme may circumvent the laws by depriving the tenant in occupancy of a reasonable alternative to eviction, the absence of any alternative, reasonable or unreasonable, comes within the strictures of the ruling in *Judson* v. *Frankel.*

But let us assume that the regulation is to be read very literally, as defendants contend, and that the two-year provision **[*97]** serves to cut off the possessory rights of statutory tenants after the lapse of two years. Then, we say, the regulation is to that extent null and void. This would be so because it would no longer be in effectuation of the purposes of the statute but in conflict therewith (*Matter of Hoenig v. McGoldrick, 281 App. Div. 663*). **[***21]** The effect would be, indirectly, to decontrol premises, without warrant in the statute, at the option of owners who could successfully traffic in proprietary leases to the exclusion of tenants in possession. The statute does not give the Rent Administrator power to decontrol premises or categories of dwellings except as particularized in the statute. Consequently, he has no power to make a regulation that would have that effect indirectly. The absence of such delegation of power contrasts with the delegation of power to decontrol and recontrol areas, and under certain circumstances, categories of housing accommodations in the State, when findings are made and particularized standards are met (§ 12).

We would hesitate to declare invalid the two-year provision of subdivision 3 of section 55 of the regulations. Its purpose and effect can be validly retained if it is implied that it, like the balance of the regulation, **[**812]** requires a reasonable protection for statutory tenants for whose protection and benefit the emergency statutes exist in the first instance.

There is still another matter to be mentioned. The tenants, whose apartments were to be "sold" over their heads **[***22]** without option, claimed they were the subject of retaliation, because they had resisted rent increases and had made complaints with respect to the maintenance of services. The bulk of the proffered evidence was excluded by the court. Such retaliation is illegal (§ 10, subd. 2). Evidence to that effect was therefore admissible, and not limited to the period following the taking of title by Mr. Sterling in his individual capacity. That such retaliation be disguised would not avail, nor is it material that the reasons for retaliation arose under different formal ownerships. However, in view of the holding herein, a new trial is not required.

On the trial, and again upon argument in this court, counsel for defendants offered to stipulate to protect the possessory rights of the statutory tenants. The Rent Administrator rejects and objects to the stipulation proffered. The stipulation would not solve the problem. For one, it would affect only the particular

intervening tenants. It would not affect noninterveners. It might not affect successors. Moreover, the Rent Administrator, who initiated this action, is entitled to a declaration **[*98]** as to his responsibilities in **[***23]** connection with plans such as this. Plans such as the Sterling plan may have a coercive effect on tenants. Such possible effect is not completely negated by stipulation extended as a matter of grace. It is the responsibility of the Rent Administrator under the statute to prevent such practices (§ 11, subd. 1).

Declaratory judgment and injunctive relief are needed promptly. If the Rent Administrator must wait until the two-year period has passed and then act only with reference to applications for certificates of eviction, it may be too late. Rights and interests may have vested in bona fide purchasers of stock in the "co-operatively owned" corporation, and the Rent Administrator may be barred from refusing certificates of eviction (See *Matter of Hoenig v. McGoldrick, 281 App. Div. 663*, *supra.*)

Accordingly, the Rent Administrator is entitled to a declaratory judgment that purchasers of shares of stock in the 1135 Park Avenue Corporation, allocated to apartments occupied by statutory tenants who have been precluded from purchasing such shares of stock under the plan, will not be entitled to certificates of eviction against such statutory tenants under subdivision **[***24]** 3 of section 55 of the regulations, as such regulation now reads. Moreover, the Rent Administrator is further entitled to injunctive relief requiring defendants to stamp such shares of stock in an appropriate manner to put the purchasers thereof on notice that the **[**813]** plan under which they are issued does not meet the requirements of the regulation, as it now reads, for the purpose of obtaining certificates of eviction. The relief requested declaring the plan an illegal one and enjoining defendants from putting said plan into effect should be denied, except as above provided.

Judgment dismissing the complaints should be reversed and judgment should be granted in favor of plaintiffs to the extent indicated, without costs.

Settle order. Upon the settlement additional provisions may be submitted for inclusion relating to the declaratory judgment and injunctive relief to be granted and consistent with the holding of the court.

COHN, J.P., BASTOW, BOTEIN and BERGAN, JJ., concur.

Judgment unanimously reversed and judgment is directed to be entered in favor of the plaintiffs to the extent indicated in the opinion herein, without costs. Settle order on notice.

End of Document

People v. Santi

Court of Appeals of New York

October 21, 2004, Decided

No. 122, No. 123

Reporter
3 N.Y.3d 234 *; 818 N.E.2d 1146 **; 785 N.Y.S.2d 405 ***; 2004 N.Y. LEXIS 2442 ****

The People of the State of New York, Respondent, v. Ana Marie Santi, Appellant. The People of the State of New York, Respondent v. Peter Corines, Appellant.

Subsequent History: Related proceeding at *Corines v. Sentry Life Ins. Co., 33 A.D.3d 443, 821 N.Y.S.2d 885, 2006 N.Y. App. Div. LEXIS 12376 (N.Y. App. Div. 1st Dep't, 2006)*

Habeas corpus proceeding at *Corines v. Warden, Otisville Fed. Corr. Inst., 2007 U.S. Dist. LEXIS 40081 (E.D.N.Y., June 1, 2007)*

Related proceeding at *Corines v. Am. Physicians Ins. Trust, 2011 U.S. Dist. LEXIS 21084 (S.D.N.Y., Feb. 25, 2011)*

Prior History: Appeal, in the first above-entitled action, by permission of an Associate Judge of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered September 8, 2003. The Appellate Division affirmed a judgment of the Supreme Court, Queens County (Laura D. Blackburne, J.), which had convicted defendant, upon a jury verdict, of unauthorized practice of medicine (four counts).

Appeal, in the second above-entitled action, by permission of an Associate Judge of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered September 8, 2003. The Appellate Division affirmed a judgment of the Supreme Court, Queens County (Laura D. Blackburne, J.), which had convicted defendant, upon a jury verdict, of unauthorized practice of medicine (four counts).

People v Santi, 308 A.D.2d 464, 764 N.Y.S.2d 193, affirmed.

People v Corines, 308 A.D.2d 457, 764 N.Y.S.2d 117, affirmed. **[****1]**

People v. Corines, 308 A.D.2d 457, 764 N.Y.S.2d 117, 2003 N.Y. App. Div. LEXIS 9268 (N.Y. App. Div. 2d Dep't, 2003)
People v. Santi, 308 A.D.2d 464, 764 N.Y.S.2d 193, 2003 N.Y. App. Div. LEXIS 9276 (N.Y. App. Div. 2d Dep't, 2003)

Disposition: Order of the appellate division affirmed in each case.

Core Terms

Patient, licensed, profession, anesthesia, juror, unauthorized practice, individuals, aiding and abetting, statute's, exempt, medical practice, administered, Surgical, expert testimony, experiences, unlicensed, medicine, legislative intent, juror misconduct, see people, fraudulently, sensation, provides, convict, needle, abets, pain

Counsel: *Appellate Advocates,* New York City (*Lynn W.L. Fahey* of counsel), for appellant in the first above-entitled action. I. The proof was insufficient to establish beyond a reasonable doubt that appellant practiced medicine, when the People relied exclusively on the testimony of three lay witnesses as to what they experienced and observed after appellant started intravenous lines in their hands to prove that she administered anesthetic medication to them. (*Jackson v Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560*; *People v Kenny, 30 N.Y.2d 154, 282 N.E.2d 295, 331 N.Y.S.2d 392*; *People v Abelson, 309 N.Y. 643, 132 N.E.2d 884*; *Mosberg v Elahi, 80 N.Y.2d 941, 605 N.E.2d 353, 590 N.Y.S.2d 866*; *Fiore v Galang, 64 N.Y.2d 999, 478 N.E.2d 188, 489 N.Y.S.2d 47*; *McDermott v Manhattan Eye, Ear & Throat Hosp., 15 N.Y.2d 20, 203 N.E.2d 469, 255 N.Y.S.2d 65*; *Koehler v Schwartz, 48 N.Y.2d 807, 399 N.E.2d 1140, 424 N.Y.S.2d 119*; *Sawyer v Dreis & Krump Mfg. Co., 67 N.Y.2d 328, 493 N.E.2d 920, 502 N.Y.S.2d 696*; *Cole v Fall Brook Coal Co., 159 N.Y. 59, 53 N.E. 670*; *Star v Berridge, 77 N.Y.2d 899, 571 N.E.2d 74, 568 N.Y.S.2d 904*.) II. Appellant, charged with administering anesthetic medication on four occasions, was denied her rights to due process and effective assistance of counsel when the court refused to respond meaningfully to a jury question about whether "introducing an IV" would, in and of itself, constitute the practice of medicine, thereby allowing the jury to convict appellant based on a theory that was at odds with the indictment, unsupported by the evidence, and consistent with innocence. (*People v Almodovar, 62 N.Y.2d 126, 464 N.E.2d 463, 476 N.Y.S.2d 95*; *People v Malloy, 55 N.Y.2d 296, 434 N.E.2d 237, 449 N.Y.S.2d 168*; *People v Weinberg, 83 N.Y.2d 262, 631 N.E.2d 97, 609 N.Y.S.2d 155*; *People v Miller, 6 N.Y.2d 152, 160 N.E.2d 74, 188 N.Y.S.2d 534*; *People v Lupo, 305 N.Y. 448, 113 N.E.2d 793*; *People v Gonzalez, 293 N.Y. 259, 56 N.E.2d 574*; *People v Bleau, 276 A.D.2d 131, 718 N.Y.S.2d 453*; *People v Henning, 271 A.D.2d 813, 706 N.Y.S.2d 748*; *People v Panetta, 250 A.D.2d 710, 673 N.Y.S.2d 434*; *People v Pyne, 223 A.D.2d 910, 636 N.Y.S.2d 491*.) III. Appellant was denied her rights to due process and confrontation when a juror employed at Beth Israel Hospital influenced the other jurors, based on knowledge purportedly gained from her unique work experience, to conclude that appellant was guilty of practicing medicine without a license for merely inserting an intravenous needle into a patient's hand. (*Sheppard v Maxwell, 384 U.S. 333, 86 S. Ct. 1507, 16 L. Ed. 2d 600*; *People v Maragh, 94 N.Y.2d 569, 729 N.E.2d 701, 708 N.Y.S.2d 44*; *People v Arnold, 96 N.Y.2d 358, 753 N.E.2d 846, 729 N.Y.S.2d 51*; *United States v Torres, 128 F.3d 38, 523 U.S. 1065, 118 S. Ct. 1399, 140 L. Ed. 2d 657*; *People v Brown, 48 N.Y.2d 388, 399 N.E.2d 51, 423 N.Y.S.2d 461*; *People v Flores, 282 A.D.2d 688, 725 N.Y.S.2d 655*.) IV. The hearing court improperly precluded the defense from asking the jurors appropriate questions directly relevant to the *People v Maragh (94 N.Y.2d 569, 729 N.E.2d 701, 708 N.Y.S.2d 44 [2000])* issue. (*People v Smith, 59 N.Y.2d 988, 453 N.E.2d 1079, 466 N.Y.S.2d 662*.)

Eliot Spitzer, Attorney General, New York City (*Laurie M. Israel, Michael S. Belohlavek* and *Robin A. Forshaw* of counsel), for respondent in the first above-entitled action. I. The trial evidence, viewed in the light most favorable to the prosecution, was legally sufficient to establish defendant's guilt of the unauthorized practice of medicine. (*People v Bleakley, 69 N.Y.2d 490, 508 N.E.2d 672, 515 N.Y.S.2d 761*; *Jackson v Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560*; *People v Cabey, 85 N.Y.2d 417, 649 N.E.2d 1164, 626 N.Y.S.2d 20*; *People v Contes, 60 N.Y.2d 620, 454 N.E.2d 932, 467 N.Y.S.2d 349*; *People v Ford, 66 N.Y.2d 428, 488 N.E.2d 458, 497 N.Y.S.2d 637*; *People v Williams, 84 N.Y.2d 925, 644*

N.E.2d 1367, 620 N.Y.S.2d 811; *People v Rossey, 89 N.Y.2d 970, 678 N.E.2d 473, 655 N.Y.S.2d 861*; *People v Norman, 85 N.Y.2d 609, 650 N.E.2d 1303, 627 N.Y.S.2d 302*; *People v Hines, 97 N.Y.2d 56, 762 N.E.2d 329, 736 N.Y.S.2d 643*; *People v Cronin, 60 N.Y.2d 430, 458 N.E.2d 351, 470 N.Y.S.2d 110*.) II. The trial court appropriately responded to the jury's note. (*People v Malloy, 55 N.Y.2d 296, 434 N.E.2d 237, 449 N.Y.S.2d 168*; *People v Esquilin, 236 A.D.2d 245, 653 N.Y.S.2d 567*, *91 N.Y.2d 902, 691 N.E.2d 1024, 668 N.Y.S.2d 1000*; *People v Solis, 215 A.D.2d 789, 627 N.Y.S.2d 408*; *People v Almodovar, 62 N.Y.2d 126, 464 N.E.2d 463, 476 N.Y.S.2d 95*; *People v Spann, 56 N.Y.2d 469, 438 N.E.2d 402, 452 N.Y.S.2d 869*; *People v Davis, 223 AD2d 376, 636 N.Y.S.2d 294*; *People v Gonzalez, 293 N.Y. 259, 56 N.E.2d 574*; *People v Sanducci, 195 N.Y. 361, 88 N.E. 385, 23 N.Y. Cr. 389*.) III. The jurors did not act improperly in reaching their verdict of guilt. (*People v Williams, 63 N.Y.2d 882, 472 N.E.2d 1026, 483 N.Y.S.2d 198*; *People v Brown, 48 N.Y.2d 388, 399 N.E.2d 51, 423 N.Y.S.2d 461*; *People v Maragh, 94 N.Y.2d 569, 729 N.E.2d 701, 708 N.Y.S.2d 44*; *People v Testa, 61 N.Y.2d 1008, 463 N.E.2d 1223, 475 N.Y.S.2d 371*; *People v Arnold, 96 N.Y.2d 358, 753 N.E.2d 846, 729 N.Y.S.2d 51*; *People v James, 112 A.D.2d 380, 491 N.Y.S.2d 836*; *People v Thomas, 170 A.D.2d 549, 566 N.Y.S.2d 323*; *People v Leonti, 18 N.Y.2d 384, 222 N.E.2d 591, 275 N.Y.S.2d 825*; *People v Damiano, 87 N.Y.2d 477, 663 N.E.2d 607, 640 N.Y.S.2d 451*; *People v Arnold, 96 N.Y.2d 358, 753 N.E.2d 846, 729 N.Y.S.2d 51*.) IV. The trial court appropriately exercised its discretion in limiting the scope of questions posed during the juror misconduct hearing. (*Pennsylvania v Ritchie, 480 U.S. 39, 107 S. Ct. 989, 94 L. Ed. 2d 40*; *People v Alomar, 93 N.Y.2d 239, 711 N.E.2d 958, 689 N.Y.S.2d 680*; *People v Hameed, 88 N.Y.2d 232, 666 N.E.2d 1339, 644 N.Y.S.2d 466*; *People v Testa, 61 N.Y.2d 1008, 463 N.E.2d 1223, 475 N.Y.S.2d 371*; *People v Loliscio, 187 A.D.2d 172, 593 N.Y.S.2d 991*; *United States v Ianniello, 866 F.2d 540*; *People v Leonard, 252 A.D.2d 740, 677 N.Y.S.2d 639*; *People v Corines, 295 A.D.2d 445, 743 N.Y.S.2d 314*; *People v Friedgood, 58 N.Y.2d 467, 448 N.E.2d 1317, 462 N.Y.S.2d 406*.)

Mark M. Baker, New York City, for appellant in the second above-entitled action. I. As a matter of statutory construction, as well as clear legislative intent, a duly licensed physician cannot be prosecuted under *Education Law § 6512 (1)* as an aider and abettor of a nonlicensed person. (*People v Varas, 110 A.D.2d 646, 487 N.Y.S.2d 577*; *Remba v Federation Empl. & Guidance Serv., 149 A.D.2d 131, 545 N.Y.S.2d 140*, *76 N.Y.2d 801, 559 N.E.2d 655, 559 N.Y.S.2d 961*; *People v Mauro, 147 Misc. 2d 381, 555 N.Y.S.2d 533*; *People v Allen, 92 N.Y.2d 378, 703 N.E.2d 1229, 681 N.Y.S.2d 216*; *Matter of Scotto v Dinkins, 85 N.Y.2d 209, 647 N.E.2d 1317, 623 N.Y.S.2d 809*; *Matter of Sutka v Conners, 73 N.Y.2d 395, 538 N.E.2d 1012, 541 N.Y.S.2d 191*; *People v Lupinos, 176 Misc. 2d 852, 674 N.Y.S.2d 582*; *People v Jelke, 1 N.Y.2d 321, 135 N.E.2d 213, 152 N.Y.S.2d 479*; *People v Ching Fong, 186 Misc. 2d 477, 718 N.Y.S.2d 805*; *People v Chavis, 91 N.Y.2d 500, 695 N.E.2d 1110, 673 N.Y.S.2d 29*.) II. Because the People's articulated theory of the case was based solely on codefendant Ana Marie Santi's alleged administering of anesthesia, the trial court's refusal to provide a meaningful response to the jury's note, by acknowledging that Santi's conceded insertion of intravenous lines was not unlawful, constructively amended the indictment and deprived defendants of due process of law. (*People v Iannone, 45 N.Y.2d 589, 384 N.E.2d 656, 412 N.Y.S.2d 110*; *People v Perez, 83 N.Y.2d 269, 631 N.E.2d 570, 609 N.Y.S.2d 564*; *People v Grega, 72 N.Y.2d 489, 531 N.E.2d 279, 534 N.Y.S.2d 647*; *People v Livoti, 166 Misc. 2d 925, 632 N.Y.S.2d 425*; *People v Plaisted, 1 A.D.3d 805, 768 N.Y.S.2d 236*; *People v Kaminski, 58 N.Y.2d 886, 447 N.E.2d 43, 460 N.Y.S.2d 495*; *People v Fata, 184 A.D.2d 206, 586 N.Y.S.2d 780, 80 N.Y.2d 974, 605 N.E.2d 879, 591 N.Y.S.2d 143*; *People v Powell, 153 A.D.2d 54, 549 N.Y.S.2d 276*; *People v Spann, 56 N.Y.2d 469, 438 N.E.2d 402, 452 N.Y.S.2d 869*; *People v Gachelin, 237 A.D.2d 300, 654 N.Y.S.2d 393*.) III. Because the jury clearly convicted defendant based on Ana Marie Santi's conceded insertion of

the intravenous needles into the three patients, and because no expert testimony was introduced by the People, the evidence was legally insufficient, as a matter of law, to establish that anesthesia had been administered. (*People v Contes, 60 N.Y.2d 620, 454 N.E.2d 932, 467 N.Y.S.2d 349*; *Matter of Morrissey v Sobol, 176 A.D.2d 1147, 575 N.Y.S.2d 960, 79 N.Y.2d 754, 589 N.E.2d 1263, 581 N.Y.S.2d 281*; *People v Amber, 76 Misc. 2d 267, 349 N.Y.S.2d 604*; *People v Cole, 219 N.Y. 98, 113 N.E. 790, 34 N.Y. Cr. 539*; *People v Allcutt, 117 A.D. 546, 102 N.Y.S. 678, 20 N.Y. Cr. 560, 189 N.Y. 517, 81 N.E. 1171*; *People v Rubin, 103 Misc. 2d 227, 424 N.Y.S.2d 592*; *People v Lehrman, 251 A.D. 451, 296 N.Y.S. 580*; *Engel v Gerstenfeld, 184 A.D. 953, 171 N.Y.S. 1084*; *Jackson v Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560*; *Maldonado v Scully, 86 F.3d 32*.) IV. Because a certain juror, who was perceived by the other members of the panel as a medical professional, gratuitously shared her assumed expertise with her colleagues with respect to a material issue in the case which was not within the ken of the average juror, and which was treated by the other jurors as if it were evidence, the resulting misconduct severely prejudiced defendant, thereby warranting a new trial. (*People v Maragh, 94 NY2d 569, 729 N.E.2d 701, 708 N.Y.S.2d 44*.)

Eliot Spitzer, Attorney General, New York City (*Laurie M. Israel, Caitlin J. Halligan, Michael Belohlavek* and *Robin A. Forshaw* of counsel), for respondent in the second above-entitled action. I. Neither the legislative history of *Education Law § 6512 (1)* nor rules of statutory construction support defendant's contention that, as a duly licensed physician, he could not be found guilty of the unauthorized practice of medicine. (*Matter of Delmar Box Co. [Aetna Ins. Co.], 309 N.Y. 60, 127 N.E.2d 808*; *Matter of Knight-Ridder Broadcasting v Greenberg, 70 N.Y.2d 151, 511 N.E.2d 1116, 518 N.Y.S.2d 595*; *People v Coleman, 104 A.D.2d 778, 480 N.Y.S.2d 888*; *People v Calkins, 9 N.Y.2d 77, 172 N.E.2d 549, 211 N.Y.S.2d 166*; *People v Irving, 107 A.D.2d 944, 484 N.Y.S.2d 354*; *People v Evans, 58 A.D.2d 919, 396 N.Y.S.2d 727*; *People v Merfert, 87 Misc. 2d 803, 386 N.Y.S.2d 559*; *People v Prainito, 97 Misc. 2d 66, 410 N.Y.S.2d 772*; *People v Reilly, 85 Misc. 2d 702, 381 N.Y.S.2d 732*; *People v Brody, 298 N.Y. 352, 83 N.E.2d 676*.) II. The trial court appropriately responded to the jury's note. (*People v Malloy, 55 N.Y.2d 296, 434 N.E.2d 237, 449 N.Y.S.2d 168*; *People v Esquilin, 236 A.D.2d 245, 653 N.Y.S.2d 567, 91 N.Y.2d 902, 691 N.E.2d 1024, 668 N.Y.S.2d 1000*; *People v Solis, 215 A.D.2d 789, 627 N.Y.S.2d 408*; *People v Almodovar, 62 N.Y.2d 126, 464 N.E.2d 463, 476 N.Y.S.2d 95*; *People v Davis, 223 A.D.2d 376, 636 N.Y.S.2d 294*; *People v Spann, 56 N.Y.2d 469, 438 N.E.2d 402, 452 N.Y.S.2d 869*; *People v Grega, 72 N.Y.2d 489, 531 N.E.2d 279, 534 N.Y.S.2d 647*; *People v Fata, 184 A.D.2d 206, 586 N.Y.S.2d 780*; *People v Powell, 153 A.D.2d 54, 549 N.Y.S.2d 276*; *People v Gachelin, 237 A.D.2d 300, 654 N.Y.S.2d 393*.) III. The People presented legally sufficient evidence of defendant's guilt. (*People v Bleakley, 69 N.Y.2d 490, 508 N.E.2d 672, 515 N.Y.S.2d 761*; *Jackson v Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560*; *People v Cabey, 85 N.Y.2d 417, 649 N.E.2d 1164, 626 N.Y.S.2d 20*; *People v Contes, 60 N.Y.2d 620, 454 N.E.2d 932, 467 N.Y.S.2d 349*; *People v Ford, 66 N.Y.2d 428, 488 N.E.2d 458, 497 N.Y.S.2d 637*; *People v Williams, 84 N.Y.2d 925, 644 N.E.2d 1367, 620 N.Y.S.2d 811*; *People v Rossey, 89 N.Y.2d 970, 678 N.E.2d 473, 655 N.Y.S.2d 861*; *People v Norman, 85 N.Y.2d 609, 650 N.E.2d 1303, 627 N.Y.S.2d 302*; *People v Hines, 97 N.Y.2d 56, 762 N.E.2d 329, 736 N.Y.S.2d 643*; *People v Rivera, 84 N.Y.2d 766, 646 N.E.2d 1098, 622 N.Y.S.2d 671*.) IV. The jurors did not act improperly in reaching their verdict of guilt. (*People v Williams, 63 N.Y.2d 882, 472 N.E.2d 1026, 483 N.Y.S.2d 198*; *People v Brown, 48 N.Y.2d 388, 399 N.E.2d 51, 423 N.Y.S.2d 461*; *People v Maragh, 94 N.Y.2d 569, 729 N.E.2d 701, 708 N.Y.S.2d 44*; *People v Testa, 61 N.Y.2d 1008, 463 N.E.2d 1223, 475 N.Y.S.2d 371*; *People v Arnold, 96 N.Y.2d 358, 753 N.E.2d 846, 729 N.Y.S.2d 51*; *People v James, 112 A.D.2d 380, 491 N.Y.S.2d 836*; *People v Thomas, 170 A.D.2d 549, 566 N.Y.S.2d 323*; *People v Leonti, 18 N.Y.2d 384, 222 N.E.2d 591, 275 N.Y.S.2d 825*; *People*

v Damiano, 87 N.Y.2d 477, 663 N.E.2d 607, 640 N.Y.S.2d 451; *People v Arnold, 96 N.Y.2d 358, 753 N.E.2d 846, 729 N.Y.S.2d 51*.)

Judges: Opinion by Judge Ciparick. Chief Judge Kaye and Judges Smith, Rosenblatt, Graffeo, Read and Smith concur.

Opinion by: CIPARICK

Opinion

[1148]** **[***407]** **[*239]** Ciparick, J.

We are asked to determine whether a licensed physician is subject to prosecution under *Education Law § 6512 (1)* for aiding and abetting an unauthorized individual in **[***408]** **[**1149]** the unlawful practice of medicine. We conclude that the only reasonable interpretation of the statute does not exempt licensed individuals from criminal prosecution. Additionally, questions regarding sufficiency of the evidence, a response to a jury inquiry and potential juror misconduct are all likewise resolved in the People's favor.

Both appeals here arise out of the same set of facts. Defendant Peter Corines, a licensed medical doctor, owned and operated two medical offices--Surgical Consultants, P.C. and Ambulatory Anesthesia, P.C.--in Queens County, New York. From 1997 **[****2]** to 1998 defendant Ana Marie Santi worked intermittently for Corines at Surgical Consultants. Defendant Santi was licensed to practice medicine in August 1972. Originally, Corines hired Santi as an anesthesiologist, but on March 16, 1998, the Department of Health suspended Santi's license to practice medicine. Despite her suspension, Santi continued to work, in some capacity, at Surgical Consultants. Corines described her as a "medical assistant."

The Attorney General charged each defendant with four counts of unauthorized practice of medicine under *Education Law § 6512 (1)*. The charges stemmed specifically from the treatment of three patients of defendant Corines.

On June 22, 1998, Patient A visited Surgical Consultants to have laser surgery. Defendant Santi entered the operating room **[*240]** where Patient A was waiting and started an intravenous, or "I.V." line, placing the needle in the patient's right hand. The patient testified she immediately felt relaxed. Corines subsequently entered the room. Patient A then became unconscious and Corines began the surgery.

During the procedure, Patient A awoke twice, nauseous and in pain. The second time she awoke, Corines **[****3]** was not present in the room. To calm her, Santi gave her an injection and laid her down. Ultimately, following the procedure, she was led to a recovery room and fell asleep.

On July 28, 1998, Corines treated Patient B at Surgical Consultants. As Patient B testified, shortly after his arrival there, Santi entered the examination room and directed him to lie on his back. Santi then prepped and cleaned Patient B's right hand, unwrapped an I.V. needle and inserted it into the back of his hand. The needle was connected to tubing which led to an I.V. bag. Patient B said he felt a warm sensation and observed Santi adjust the flow of the liquid. Defendant Corines thereafter entered the room and performed the procedure. After it was complete, Santi returned and removed the needle from Patient

B's hand, at which point he said he felt "woozy" and "a bit weak." He received no subsequent medical treatment from Corines.

Patient C testified that on December 4, 1998 she visited Surgical Consultants to have cosmetic eye surgery. Both Corines and Santi were present in the operating room. Corines, situated on Patient C's right side, engaged her in conversation. Santi, standing to the patient's left, **[****4]** inserted an I.V. into her left hand. Immediately after Santi placed the needle in her hand, according to Patient C, she felt the "medication" and fell into unconsciousness. When she awoke both Santi and Corines were in the room. Patient C remained a bit drowsy after she regained consciousness. Santi helped her dress and Patient C ultimately left the office. Following the surgery Patient C's eyelids became infected and she returned to Surgical Consultants on December 30, 1998 for treatment. Again, she testified, both Santi and Corines were present in the operating room. Corines informed her that he was going to give her an injection to help ease the pain. **[***409]** **[**1150]** Santi then placed an I.V. line in Patient C's hand. Santi remained on the patient's left side, where the I.V. line was located. Corines remained on Patient C's right side, away from the I.V. line. Patient C felt the medication take effect. Corines then directed Santi to increase the flow of medication, and Patient C fell into unconsciousness.

[*241] At trial, the People proceeded on the theory that, in each of the aforementioned instances, Santi engaged in the unauthorized practice of medicine by administering anesthesia, and that Corines **[****5]** aided and abetted her. Defendants, by contrast, claim that the I.V. lines contained either a simple water and glucose, or glucose saline, solution and that the I.V. lines that Santi initiated contained no anesthesia, and that she merely prepared the patients and Corines administered the anesthesia.

Following the People's proof, Corines moved for a trial order of dismissal claiming that the evidence was insufficient to support the charges. Specifically, defendant claimed that no "qualified" individual testified to the use of anesthesia. Santi joined the motion and further noted that even "held in the light most favorable to the People . . . [t]here is no specific proof as to actual drugs or anesthesia having been administered." The court reserved decision, ultimately denying defendants' motion. Following their case, defendants again moved to dismiss. [1] The court again reserved decision. The jury convicted both Santi and Corines on each of the four counts of unauthorized practice in violation of *Education Law § 6512 (1)*. After conducting an investigation that revealed what defendants believed to be misconduct by a juror that improperly influenced other members **[****6]** of the jury, defendants moved to set aside the verdict. The court denied the motion without a hearing and defendants appealed.

The Appellate Division remanded the case for a hearing on the juror misconduct issue (*see People v Corines, 295 A.D.2d 445, 743 N.Y.S.2d 314 [2d Dept 2002]*; *People v Santi, 295 A.D.2d 457, 743 N.Y.S.2d 308 [2d Dept 2002]*). Following the hearing, the court again denied defendants' motions. Defendants again appealed.

The Appellate Division, this time addressing the merits, affirmed. The Court conducted both a sufficiency and factual review and ultimately concluded that "[t]he evidence adduced at trial demonstrated that the defendant practiced medicine without a license . . . by administering anesthesia to three patients" (*People v Santi, 308 A.D.2d 464, 465, 764 N.Y.S.2d 193 [2d Dept 2003]*; *see also* **[****7]** *People v Corines, 308 A.D.2d 457, 457-458, 764 N.Y.S.2d 117 [2d Dept 2003]*). The Court further held, with regard to defendant

[1] This second motion to dismiss was actually made the day after summations, just before the judge's charge to the jury.

Corines, that he "aided and abetted Santi in her unlicensed practice of medicine" (*Corines, 308 A.D.2d at 458*). A Judge of **[*242]** this Court granted leave to appeal, and we now affirm each of the appeals.

I. *Education Law § 6512*

[1] We begin our discussion with an analysis of defendant Corines' primary claim assailing the lower courts' interpretation of *Education Law § 6512 (1)*. Specifically, defendant Corines contends that the plain language of *section 6512 (1)* exempts licensed individuals from criminal prosecution under the statute. We disagree.

Title VIII of the New York State Education Law regulates professional conduct and requires certain enumerated professionals, **[***410]** **[**1151]** including physicians, to obtain a license in order to practice such professions lawfully (*see generally Education Law § 6500 et. seq.*; *Education Law §§ 6520, 6521*). *Education Law § 6512 (1)* criminalizes the conduct of any individual who practices any of the enumerated professions in title VIII without **[****8]** authorization. Similarly, it criminalizes the conduct of anyone who aids and abets an unauthorized individual in the unlawful practice of any such profession (*see Education Law § 6512 [1]*; *see also Penal Law § 20.00*).

Specifically, *Education Law § 6512 (1)* provides that:

> "Anyone not authorized to practice under this title who practices or offers to practice or holds himself out as being able to practice in any profession in which a license is a prerequisite to the practice of the acts, or who practices any profession as an exempt person during the time when his professional license is suspended, revoked or annulled, or who aids or abets an unlicensed person to practice a profession, or who fraudulently sells, files, furnishes, obtains, or who attempts fraudulently to sell, file, furnish or obtain any diploma, license, record or permit purporting to authorize the practice of a profession, shall be guilty of a class E felony."

In interpreting the statute we are guided by a well-settled principle of statutory construction: courts normally accord statutes their plain meaning, but "will not **[****9]** blindly apply the words of a statute to arrive at an unreasonable or absurd result" (*Williams v Williams, 23 N.Y.2d 592, 599, 246 N.E.2d 333, 298 N.Y.S.2d 473 [1969]*; *see also Matter of Rouss 221 N.Y. 81, 91, 116 N.E. 782 [1917]*; *Holy Trinity Church v United States, 143 U.S. 457, 460, 36 L. Ed. 226, 12 S. Ct. 511 [1892]*).

[*243] It is equally well settled that, "[i]n implementing a statute, the courts must of necessity examine the purpose of the statute and determine the intention of the Legislature" (*Williams, 23 N.Y.2d at 598*). Indeed, "[t]he primary consideration of the courts in the construction of statutes is to ascertain and give effect to the intention of the Legislature" (McKinney's Cons Laws of NY, Book 1, Statutes § 92 [a], at 177). Legislative intent drives judicial interpretations in matters of statutory construction (*see People v Allen, 92 N.Y.2d 378, 383, 703 N.E.2d 1229, 681 N.Y.S.2d 216 [1998]*).

Corines claims that a plain reading of *Education Law § 6512 (1)* makes clear that only individuals "not authorized to practice under [the *Education Law*]" may be prosecuted under the statute. Defendant also contends that a comparison of the distinct language used in *section 6512 (1)* and *Education Law § 6512 (2)* **[****10]** further supports his reading of the statute and thereby renders subdivision (1) superfluous. [2] Both the trial court and the Appellate Division disagreed with defendant's interpretation, as do we.

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[2] *Education Law § 6512 (2)* provides that

While we acknowledge that defendant's interpretation of the statute represents a fair and literal reading of the text, such an interpretation ignores the legislative intent underlying the statute's enactment. If the phrase "not authorized to practice under this title" **[****11]** modified the pronoun "[a]nyone," **[***411]** **[**1152]** as defendant urges, the statute would necessarily be applied in an unreasonable manner. For example, defendant's interpretation of the statute would exempt any licensed or authorized individual from criminal prosecution if such person aided or abetted fewer than three people in the unlicensed and unauthorized practice of a profession. Following this reasoning, such a reading would allow for authorized or licensed individuals to fraudulently reproduce and distribute diplomas and licenses, an act similarly proscribed in the statute for lay individuals.

In effect, the statute, read as defendant asks, would enable licensed individuals of all professions under the purview of title VIII to engage in conduct that would otherwise be criminal. We **[*244]** cannot accept that the Legislature intended to enable such conduct, nor do we believe that it intended to create such a disparity in the statute's application. Insofar as we must interpret a statute so as to avoid an "unreasonable or absurd" application of the law, we reject defendant's interpretation (*Williams, 23 N.Y.2d at 599*). Instead, we look to the legislative intent underlying the statute's enactment **[****12]** for guidance. A review of the legislative history makes apparent that only one reasonable interpretation of the statute exists.

Title VIII has a clear regulatory purpose. Specifically, the statute's legislative introduction indicates that it "provides for the regulation of the admission to and the practice of certain professions" (*Education Law § 6500*). Indeed, it cannot be reasonably contested that the legislation attempts to provide for the safe interaction of the regulated professions and those individuals that would engage their services, namely, the public. Broadly stated, it is a statute clearly designed to promote the public's safety. Allowing licensed physicians to aid and abet unauthorized individuals in the unlawful practice of medicine does not in any way promote the general welfare or otherwise ensure public safety.

A deeper look at the legislative history underlying the enactment of *Education Law § 6512* further supports our interpretation. In juxtaposing *section 6512*, as originally enacted in 1971, with the enactment of *section 6512 (2)* five years later, it is apparent that the Legislature did not intend to exempt licensed **[****13]** individuals from prosecution under the law for aiding and abetting fewer than three individuals in the unauthorized practice of a profession.

In 1971, as part of a greater revision of the Education Law, the Legislature enacted *section 6512*. At that time, it consisted of only a single section with wording substantially similar to that of *section 6512 (1)* as it exists today (L 1971, ch 987, § 2). [3] The unauthorized practice of a profession, originally, was a class A misdemeanor.

"[a]nyone who knowingly aids or abets three or more unlicensed persons to practice a profession or employs or holds such unlicensed persons out as being able to practice in any profession in which a license is a prerequisite to the practice of the acts, or who knowingly aids or abets three or more persons to practice any profession as exempt persons during the time when the professional licenses of such persons are suspended, revoked or annulled, shall be guilty of a class E felony."

[3] The original 1971 enactment read as follows:

"*§ 6512*. Unauthorized practice a crime

[**14]** **[*245]** In 1976, the Legislature increased the existent sanction by enacting *section 6512 (2)* (L 1976, ch 689). This section, as evidenced by the extensive legislative discussion that preceded its passage, was enacted primarily to combat the growing problem of massage parlor prostitution in urban areas (*see* Mem of Assembly Member **[***412]** **[**1153]** Lipschutz, Bill Jacket, L 1976, ch 689). The Legislature passed the law with the hope that "increasing the penalty in cases where three or more persons are involved in the unauthorized practice of a profession would facilitate law enforcement efforts to eradicate certain evils such as the illicit practice of massage" (*id.*). In 1979 the Legislature, without explanation, raised the penalty for a violation of *section 6512 (1)* to a class E felony.

The statute's evolution makes obvious that *section 6512 (2)* was enacted to combat a specific perceived evil, distinct from that covered in *section 6512 (1)*. Again, there was no legislative discussion concerning an alteration in the scope of *section 6512 (1)*. Neither is there any indication that the Legislature intended to exempt a certain class of individuals, licensed professionals, from criminal prosecution for aiding and abetting **[****15]** fewer than three people in the unauthorized practice of a profession. Absent such an express indication, we cannot and will not assume that the Legislature desired such an exemption.

We conclude that *Education Law § 6512 (1)* does not exempt licensed physicians from prosecution under the statute. To the contrary, *section 6512 (1)* allows for the prosecution of any individual, licensed or not, that aids and abets an unauthorized individual in the practice of medicine. Defendant Corines fits neatly within the statute's scope. Furthermore, under the accessorial liability statute, he is likewise liable as he knew defendant Santi was not authorized to practice medicine, and he "intentionally aided" her in the practice of medicine on his patients through the administration of anesthesia (*see Penal Law § 20.00*). [4] Corines's argument here is thus without merit. We next turn to the sufficiency claim raised by both defendants.

[**16]** **[*246]** II. Defendants' Sufficiency and Expert Witness Claims

Evidence is legally sufficient to support a conviction where, "if accepted as true, [it] would establish every element of an offense charged and the defendant's commission thereof" (*CPL 70.10 [1]*). This Court's role on sufficiency review is limited to determining whether, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" (*Jackson v Virginia, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 [1979]*; *see also People v Contes, 60 N.Y.2d 620, 621, 454 N.E.2d 932, 467 N.Y.S.2d 349 [1983]*). Ultimately, so long as the evidence at trial establishes "any valid line of reasoning and permissible inferences [that] could lead a rational person" to convict, then the conviction survives sufficiency review (*People v Williams, 84 N.Y.2d 925, 926, 644 N.E.2d 1367, 620 N.Y.S.2d 811 [1994]*).

"Anyone not authorized to practice under this title who practices or offers to practice or holds himself out as being able to practice in any profession in which a license is a prerequisite to the practice of the acts, or who aids or abets an unlicensed person to practice a profession, or who fraudulently sells, files, furnishes, obtains, or who attempts fraudulently to sell, file, furnish or obtain any diploma, license, record or permit purporting to au-thorize the practice of a profession, shall be guilty of a class A misdemeanor" (L 1971, ch 987, § 2).

[4] *Penal Law § 20.00* provides that "[w]hen one person engages in conduct which constitutes an offense, another person is criminally liable for such conduct when, acting with the mental culpability required for the commission thereof, he solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct."

Both defendants Corines and Santi contend that the evidence at trial was insufficient to support Santi's conviction for the unauthorized practice of medicine and Corines' conviction for aiding **[****17]** and abetting such unauthorized practice. They focus their claim on the People's failure to call an expert witness to testify to the effects of anesthesia. They assert on appeal that, in the absence of expert testimony establishing a causal connection between the sensations each of the complaining patients experienced and the typical effects attendant to the administration of anesthesia, the **[***413]** **[**1154]** evidence at trial was insufficient to support their convictions.

Expert testimony is properly admitted "when it would help to clarify an issue calling for professional or technical knowledge . . . beyond the ken of the typical juror" (*De Long v County of Erie, 60 N.Y.2d 296, 307, 457 N.E.2d 717, 469 N.Y.S.2d 611 [1983]*). Admission of expert testimony is a matter largely left to the discretion of the trial court (*see People v Brown, 97 N.Y.2d 500, 505, 769 N.E.2d 1266, 743 N.Y.S.2d 374 [2002]*).

[2] While expert testimony may be properly admitted in certain cases, it is not always required to prove a particular crime (*see e.g. People v Cratsley, 86 N.Y.2d 81, 87-88, 653 N.E.2d 1162, 629 N.Y.S.2d 992 [1995]*). Additionally, an expert is not necessarily required to testify to the effects of a particular drug; lay testimony on this issue suffices in **[****18]** some instances (*see People v Kenny, 30 N.Y.2d 154, 156-157, 282 N.E.2d 295, 331 N.Y.S.2d 392 [1972]*). Simply, expert testimony is used to "aid a lay jury in reaching a verdict" (*People v Taylor, 75 N.Y.2d 277, 288, 552 N.E.2d 131, 552 N.Y.S.2d 883 [1990]*). Expert testimony was not required in this case.

We recognized long ago that "modern juries are not bereft of education and intelligent persons who can be expected to apply **[*247]** their ordinary judgment and practical experience" (*Havas v Victory Paper Stock, 49 N.Y.2d 381, 386, 402 N.E.2d 1136, 426 N.Y.S.2d 233 [1980]*). The administration of anesthesia, a commonly employed means of relieving pain during surgical procedures, is not a matter so foreign or esoteric as to require an expert explanation. Jurors, equipped with their everyday knowledge and experience, could reasonably have concluded that the sensations and experiences described by each of the patient-witnesses were caused by the administration of anesthesia. Under the circumstances of this case, on this record, it is clear that the jury did not need expert assistance in determining whether Santi administered anesthesia to each of the complaining patients.

The three patient-witnesses described in detail their experiences **[****19]** with defendants. Each testified regarding a warm sensation following Santi's introduction of the I.V. line. Both Patient A and Patient C fell into unconsciousness shortly after Santi started the respective I.V. line. After Corines directed Santi to increase the flow of the I.V., Patient C immediately lost consciousness. When one patient regained consciousness, she needed assistance dressing, and she remained weak and semi-conscious for a significant period following the procedure.

While Patient B did not lose consciousness, his medical records stated that he received sedatives to ease his pain. He recalled a warm, burning sensation that followed Santi's insertion of the I.V. prior to Corines ever entering the room. Following the procedure Patient B was weak and "woozy." He was unable to rise up off the operating table without holding on to something for support. This evidence, both direct and circumstantial, supported the People's theory.

Furthermore, defendant Corines' own testimony, and his own medical records, proved helpful to the People (*see generally People v Hines, 97 N.Y.2d 56, 61, 762 N.E.2d 329, 736 N.Y.S.2d 643 [2001]*).

Corines described anesthesia as a type of pain reliever, and **[****20]** he described the manner in which anesthesia is typically administered, either through an I.V. line or via direct injection. Additionally, Corines confirmed that each of the patient-witnesses received anesthesia, and he admitted that **[***414]** **[**1155]** defendant Santi, his "medical assistant," attended each of the four procedures.

Reviewing the evidence in the light most favorable to the People, the jury could have used a clear and valid line of reasoning to convict Santi and, consequently, Corines as acting in concert on each of the four counts of the indictment.

[*248] III. Jury Inquiry and the Trial Court's Response

CPL 310.30 provides, in pertinent part, that during deliberations, upon a jury's request for clarification, "the court must direct that the jury be returned to the courtroom and, after notice to both the people and counsel for the defendant, and in the presence of the defendant, must give such requested information or instruction as the court deems proper." The court does not have discretion in deciding whether to respond (*see People v Almodovar, 62 N.Y.2d 126, 131, 464 N.E.2d 463, 476 N.Y.S.2d 95 [1984]*; *People v Malloy, 55 N.Y.2d 296, 301, 434 N.E.2d 237, 449 N.Y.S.2d 168 [1982]*; **[****21]** *People v Gonzalez, 293 N.Y. 259, 262, 56 N.E.2d 574 [1944]*). Moreover, the court, in response, "must give meaningful supplemental instructions" (*Malloy, 55 N.Y.2d at 301*). Therefore, while a trial court is without discretion in deciding whether to respond, the court does have discretion as to the substance of the response.

[3] Simple reiteration of an original instruction may, under appropriate circumstances, constitute a meaningful response sufficient to satisfy the statutory mandate (*see id. at 298*). Specifically, when the original instruction is accurate and "[w]here the jury expresses no confusion [regarding the original charge]," a simple reiteration of the original instruction suffices as a meaningful response (*id. at 302*). This case gives rise to the unique circumstances under which a rereading of the original charge suffices.

The trial court originally instructed the jury, in pertinent part, that:

> "in order for you to find the defendant Ana Marie Santi guilty of the crime of practicing medicine without a license as charged in the four counts of this indictment, the People are required to prove from all of the evidence in the case beyond a reasonable doubt each **[****22]** of the following three elements."

In describing the third element, the trial judge instructed the jury that the People must prove defendant Santi "knowingly practiced medicine upon [each patient] through the administration of anesthesia."

During deliberations the jury inquired whether "[u]nder the conditions of Dr. Santi's suspension as performing the duties of a medical assistant, was Dr. Santi permitted to introduce an I.V. to a patient?" The trial judge, after hearing both parties, responded to the note by rereading the original instruction, **[*249]** including the language specifically requiring proof that Santi administered anesthesia. While it might have been better to address the note more directly, here rereading the original, proper instruction was sufficient to convey the appropriate message to reasonable jurors. The jury's note had not expressed confusion about the meaning of that instruction. We therefore conclude that the trial judge provided a meaningful response to the jury's inquiry.

IV. Juror Misconduct

Finally, defendants claim that during deliberations a juror improperly influenced the others. The juror worked at a hospital as a patient care associate. **[****23]** Defendants claim that she asserted her medical expertise, became an "unsworn witness" **[***415]** **[**1156]** in the jury room and improperly swayed the jury to convict.

[4] Firstly, we are presented with findings of fact made by Supreme Court on remittitur and affirmed by the Appellate Division. Therefore, our review here is limited to whether there is any "possible view of the evidence that would support the determination" below (*People v Damiano, 87 N.Y.2d 477, 486, 663 N.E.2d 607, 640 N.Y.S.2d 451 [1996]*). Clearly, there is record support for the trial court's factual findings and refusal to set aside the verdict based on juror misconduct.

Juror misconduct constitutes reversible error where "(1) jurors conduct[] personal specialized assessments not within the common ken of juror experience and knowledge (2) concerning a material issue in the case, and (3) communicat[e] that expert opinion to the rest of the jury panel with the force of private, untested truth as though it were evidence" (*People v Maragh, 94 N.Y.2d 569, 574, 729 N.E.2d 701, 708 N.Y.S.2d 44 [2000]*). It would be improper for a juror to "engage in experimentation, investigation and calculation that necessarily rely on facts outside the record and beyond the **[****24]** understanding of the average juror" (*People v Arnold, 96 N.Y.2d 358, 367, 753 N.E.2d 846, 729 N.Y.S.2d 51 [2001]*). Jurors are not, however, required to "check their life experiences at the courtroom door" (*id. at 366*).

The record indicates that the juror, while perhaps assertive, was not an "expert." Her experiences in the medical field were limited. Moreover, she did not conduct any experiment or investigation that was later used to influence the jury. Instead, the record makes clear that she merely gave her lay opinions regarding the introduction of an I.V. line, drawing on both her **[*250]** life experiences and the trial evidence. This was proper. These record facts support the conclusion below that the juror's participation in the deliberations did not rise to the level of juror misconduct.

Defendants' remaining claims are without merit.

Accordingly, in each case, the order of the Appellate Division should be affirmed.

Chief Judge Kaye and Judges G.B. Smith, Rosenblatt, Graffeo, Read and R.S. Smith concur.

In each case: Order affirmed.

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Raritan Dev. Corp. v. Silva

Court of Appeals of New York

September 10, 1997, Argued ; October 28, 1997, Decided

No. 169

Reporter
91 N.Y.2d 98 *; 689 N.E.2d 1373 **; 667 N.Y.S.2d 327 ***; 1997 N.Y. LEXIS 3231 ****

In the Matter of Raritan Development Corp. et al., Appellants, v. Gaston Silva et al., Respondents.

Prior History: [**1]** Appeal, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered September 30, 1996, which affirmed a judgment of the Supreme Court (Louis Sangiorgio, J.), entered in Richmond County in a proceeding pursuant to CPLR article 78, dismissing a petition seeking to annul a determination of respondent Board of Standards and Appeals of the City of New York that affirmed a determination of the Borough Superintendent of the Department of Buildings of the City of New York revoking a building permit issued to petitioners.

Matter of Raritan Dev. Corp. v Silva, 231 AD2d 725, reversed.

Disposition: Order reversed, with costs, petition granted and determination of respondent Board of Standards and Appeals revoking petitioners' building permit annulled.

Core Terms

Zoning, space, cellar, floor area, calculations, dwelling purposes, specifically excluded, basement, residential, Dwelling, floor space, supplied, words, subdivision, buildings, Planning, density, regulation, plane, curb, ratio, bulk, legislative history, plain-meaning, Controls, purposes, plain meaning, petitioners', restrictions, measured

Counsel: *Tenzer Greenblatt, L. L. P.,* New York City *(James G. Greilsheimer* and *Lawrence S. Feld* of counsel), for appellants. The Board of Standards and Appeals contravened the plain meaning of the Zoning Resolution when it ruled that the exemption of "cellar space" from the definition of "floor area" is limited to "cellar space" that is not used for dwelling **[****2]** purposes. (*Matter of Trump-Equitable Fifth Ave. Co. v Gliedman, 57 NY2d 588, 98 AD2d 487, 62 NY2d 539*; *Finger Lakes Racing Assn. v New York State Racing & Wagering Bd., 45 NY2d 471*; *Matter of Harbolic v Berger, 43 NY2d 102*; *Matter of Jones v Berman, 37 NY2d 42*; *Matter of Allen v Adami, 39 NY2d 275*; *Thomson Indus. v Incorporated Vil. of Port Wash. N., 27 NY2d 537*; *Matter of 440 E. 102nd St. Corp. v Murdock, 285 NY 298*; *Matter of Exxon Corp. v Board of Stds. & Appeals, 128 AD2d 289, 70 NY2d 614, 151 AD2d 438, 75 NY2d 703*; *Matter of Toys "R" Us v Silva, 89 NY2d 411*; *Appelbaum v Deutsch, 66 NY2d 975*.)

Paul A. Crotty, Corporation Counsel of New York City *(Virginia Waters, Leonard Koerner* and *Ellen B. Fishman* of counsel), for respondents. I. Petitioners have failed to preserve any argument regarding the

correct standard of agency and judicial review. In any event, the courts below properly reviewed the Board of Standards and Appeals' determination in accordance with controlling precedent. (*Matter of Wiegan v Board of Stds. & Appeals, 229 App Div 320, 254 NY 599*; *Matter of Friedman-Kien v City of New York, 92 AD2d 827, **[****3]** 61 NY2d 923*; *Matter of Toys "R" Us v Silva, 89 NY2d 411*; *People ex rel. Fordham Manor Refm. Church v Walsh, 244 NY 280*; *Matter of Cowan v Kern, 41 NY2d 591*; *Matter of Fiore v Zoning Bd. of Appeals, 21 NY2d 393*; *Matter of Doyle v Amster, 79 NY2d 592*; *Conley v Town of Brookhaven Zoning Bd. of Appeals, 40 NY2d 309*; *Matter of Fuhst v Foley, 45 NY2d 441*; *Matter of Khan v Zoning Bd. of Appeals, 87 NY2d 344*.) II. The courts below correctly sustained the Board of Standards and Appeals' determination that a dwelling unit at the zoning cellar level should be included in the calculation of floor area under Zoning Resolution § 12-10. (*Doctors Council v New York City Employees' Retirement Sys., 71 NY2d 669*; *Matter of Chatlos v McGoldrick, 302 NY 380*; *Matter of Carr v New York State Bd. of Elections, 40 NY2d 556*; *New York State Bankers Assn. v Albright, 38 NY2d 430*; *Bragg v Genesee County Agric. Socy., 84 NY2d 544*; *Matter of New York City Asbestos Litig. [Brooklyn Nav. Shipyard Cases], 82 NY2d 342*; *Matter of DeTroia v Schweitzer, 87 NY2d 338*; *Matter of Frishman v Schmidt, 61 NY2d 823*; *Matter of Town of New Castle v Kaufmann, **[****4]** 72 NY2d 684*; *Matter of Parkview Assocs. v City of New York, 71 NY2d 274, 488 US 801*.)

Sean M. Walsh, Douglaston, for Federation of Civic Councils of the Borough of Queens, Inc., *amicus curiae.* The courts below properly sustained the Board of Standards and Appeals' determination that a dwelling unit at the cellar level should be included in the calculation of the Floor Area Ratio under Zoning Resolution § 12-10. (*Appelbaum v Deutsch, 66 NY2d 975*; *Matter of Perotta v City of New York, 107 AD2d 320, 66 NY2d 859*; *Doctors Council v New York City Employees' Retirement Sys., 71 NY2d 669*; *New York State Bankers Assn. v Albright, 38 NY2d 430*.)

Judges: Chief Judge Kaye and Judges Titone, Bellacosa and Ciparick concur with Judge Smith; Judge Levine dissents and votes to affirm in a separate opinion in which Judge Wesley concurs.

Opinion by: SMITH

Opinion

[*100] **[***327]** **[**1373]** Smith, J.

Respondents, the Commissioners of the Board of Standards and Appeals of the City of New York (BSA), argue that this Court should defer to the agency's interpretation of section 12-10 of New York City's Zoning Resolution. However, when an interpretation is contrary to the **[****5]** plain meaning of the statutory language, we have typically declined to enforce an agency's conflicting application thereof. We see no compelling reason to depart from that long-established rule in this case.

In calculating the Floor Area Ratio (FAR) for zoning purposes, floor area includes the total amount of "floor space used for dwelling purposes, no matter where located within a building, when not specifically excluded; … However, the floor area of a building shall not include … cellar space." **[*101]** Contrary to respondents' argument, we find that this language clearly provides that **[***328]** "cellar space" is excluded from "floor area" without further qualification. We further conclude that such an interpretation is not "absurd." The Appellate Division's order should be reversed.

[1374]** BACKGROUND

A development of two-family residences on Staten Island was planned in a R3-2 zoning district. That zoning district permits a "floor area ratio" of 0.50 for each building. That ratio means that the total floor area of each building may not exceed 50% of the area of the lot on which the residence is situated. One particular residence was designed to be a trilevel **[****6]** residential building with one dwelling unit comprised of the top two floors and another single dwelling unit on the ground floor. The architect calculated the FAR without including the floor space of the ground floor.

The relevant zoning provision, Zoning Resolution § 12-10, provides in relevant part:

" 'Floor area' is the sum of the gross areas of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings. In particular, floor area includes: …

"(g) any other floor space used for dwelling purposes, no matter where located within a building, when not specifically excluded; …

"However, the floor area of a building shall not include:

"(a) cellar space".

The Zoning Resolution defines "cellar" in R3 zoning districts as: "a space wholly or partly below the base plane with more than one-half its height (measured from floor to ceiling) below the base plane." It is conceded by both parties that the ground floor of the subject residence fits within this definition of a "cellar."

On October 14, 1993, the New York City's Department of Buildings (DOB) objected to the architect's **[****7]** FAR calculations because the ground level was a "dwelling unit" and should have been included in the FAR calculations notwithstanding the fact that the ground floor was a "cellar" as that term is defined in the Zoning Resolution. The DOB found that the cellar **[*102]** space exclusion only applied to "true cellar space, space used for nonhabitable purposes, such as for furnace rooms, utility rooms, auxiliary recreation rooms, etc." The DOB further claimed that this interpretation was consistent with the "Zoning Resolution's treatment of basement space and the Multiple Dwelling Law's treatment of cellar space."

The DOB also claimed that the "past practice and policy in interpreting the 1916 Zoning Resolution and the current Zoning Resolution has consistently been to require a habitable room at the zoning cellar level to be included as floor area." Previous approvals that did not conform to this interpretation were allegedly "given in error."

The DOB revoked petitioners' building permit and denied the architect's request for reconsideration. The development corporation of the residential community appealed to the BSA. The BSA noted that the Department of City Planning, "the **[****8]** drafters of the Zoning Resolution, strongly supports the determination of the Department of Buildings based upon the language of the Zoning Resolution, the legislative history of the definition of 'floor area' and the interpretation of the Zoning Resolution in conjunction with the Multiple Dwelling Law." The BSA denied the appeal and found that DOB's ruling had been "reasonable and rational."

Petitioners filed this CPLR article 78 proceeding to annul the BSA's decision. Supreme Court examined the legislative history of the provision and determined that cellar space to be used as dwelling space should be included in the FAR calculation. The court also found that DOB had consistently adhered to that interpretation which reflected standard industry practice. The Appellate Division affirmed and found BSA's interpretation rational and supported by legislative history. This Court granted leave to appeal.

ANALYSIS

Contrary to the parties' assertions, this Court has consistently applied the same standard of review for agency determinations. Where "the question is one of pure **[***329]** legal interpretation of statutory terms, deference to the BSA is not required" (*Matter of* **[****9]** *Toys "R"* Us v Silva, 89 NY2d 411, 419). On the other hand, when applying its special expertise in a particular field to interpret statutory language, an agency's rational construction is entitled to deference (*see,* Matter of Jennings v New York State Off. of Mental Health, 90 NY2d 227, 239; Kurcsics **[*103]** v Merchants Mut. Ins. Co., 49 NY2d 451, 459). Even in those situations, however, a determination by the agency that "runs counter to the clear wording of a statutory provision" is given little weight (Kurcsics v Merchants Mut. Ins. Co., 49 NY2d, at 459; *see also, Matter of Toys "R"* Us v Silva, 89 NY2d, at 418-419).

The statutory language could not be clearer. As noted above, a cellar is defined within the Zoning Resolution in terms of its physical location in a building. "Floor area" includes dwelling spaces when not specifically excluded and "cellar space," without further qualification, is expressly excluded from FAR calculations. [1] Thus, FAR calculations should not include cellars regardless of the intended use of the space. BSA's interpretation conflicts with the plain statutory language and may not be sustained.

[**10]** BSA urges this Court to ignore the obvious interpretation of the Zoning Resolution and, instead, to look beyond the pages of statutory text. BSA attempts to justify its reading by first referring this Court to the language of a former version of the regulation. In 1916, the Zoning Resolution defined "floor area" as "the sum of the gross horizontal areas of the several floors … but excluding … basement and cellar floor areas not devoted to residence use." BSA is correct that the 1916 Zoning Resolution supports its contention that cellar space is only excluded from FAR calculations when not used for residential purposes.

However, the provision was changed in 1961 to its present text. In the amended text, cellar spaces were excluded from floor area without qualification. There is no evidence that the changed meaning was accidental or superfluous (*see,* Mabie v Fuller, 255 NY 194, 201 ["We must assume that the Legislature in enacting the section intended that it should effect some change in the existing law and accomplish some useful purpose"]). Still, BSA insists that the amendment did not change the law.

For example, BSA argues that it has always interpreted the **[****11]** resolution a particular way so, presumably, it should be allowed to continue to do so. Such evidence might be more compelling **[*104]** if the present text of the Zoning Resolution offered any support. It should also be noted that BSA concedes that it has not consistently interpreted the statute in the same manner as it did here.

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[1] The dissent interprets the exclusionary language to apply to dwelling space "which is specifically excluded *as such*" (dissenting opn, at 110 [emphasis in original]). The provision, of course, is not so limited. Where, as here, the language is unambiguous, and the result not absurd, we see no reason to depart from the legislative text.

Perhaps most telling is BSA's contention to Supreme Court that its interpretation of the Zoning Resolution is consistent with the Multiple Dwelling Law which applies to residential buildings for three or more families. As BSA notes in its answer, which was verified by its Commissioner:

"Section 26 of Title I in *Article 3 of the Multiple Dwelling Law* reads (under paragraph 2 Definitions):

"b. 'Floor area': the sum of the gross horizontal areas of all of the several floors of a dwelling or dwellings and accessory structures on a lot measured from the exterior faces of exterior walls or from the center line of party walls, except:

"1. cellar not used for residential purposes."

Unfortunately, BSA relies upon a version of the law which was amended over a decade ago. In 1985, the definition of the exclusion was modified from "cellar not used for **[****12]** residential purposes" to the unqualified "cellar space" (*see,* L 1985, ch 857, § 1). According to the legislative memorandum which accompanied **[***330]** the text of the new law, the "amendment resolves [a] conflict by correlating the bulk of yard regulation requirements of the Multiple Dwelling Law with those of the Local Zoning Resolution, thus providing one clear set of guidelines for professionals and administrators" (1985 McKinney's Session Laws of NY, at 3171). The memorandum concludes that "the Mayor urges upon the Legislature the earliest possible favorable consideration of this proposal" (*id.*). Thus, it **[**1376]** was thought in 1985 that the unqualified exclusion of cellar space from floor area calculations would be in conformity with the Zoning Resolution. BSA's reliance on outdated laws to justify its reading of the Zoning Resolution would be yet another reason to annul its determination.

Essentially, BSA has (sometimes) grafted onto the language of the current Zoning Resolution an addendum of its own whereby only certain cellars are excluded from floor area calculations. Typically, we have declined to uphold such an interpretation (*see, Matter of* **[****13]** *Chemical Specialties Mfrs. Assn. v Jorling, 85 NY2d 382, 394* [" '(N)ew language cannot be **[*105]** imported into a statute to give it a meaning not otherwise found therein' "], quoting McKinney's Cons Laws of NY, Book 1, Statutes § 94, at 190). Moreover, the conclusion reached herein is not "absurd" as the BSA contends.

FAR is related to the density of land use and such regulations have been upheld as reasonable (*see, Pondfield Rd. Co. v Village of Bronxville, 1 AD2d 897, affd without opn 1 NY2d 841*; 1 Anderson, New York Zoning Law and Practice § 9.46 [3d ed]). BSA contends that its interpretation of the Zoning Resolution would prevent "the additional burden" of increased neighborhood population upon schools and parking. However, FAR calculations were not designed to control population.

As noted above, FAR is comprised of total floor area within the building divided by the total area of the lot containing the building. Since residential areas have lower FAR, more lot is required to build larger buildings. Such concerns restrict *physical* development within a neighborhood (*see,* 7 Rohan, *Zoning and Land Use Controls § 42.06 [2] [c]* [1997] ["Through **[****14]** this device, zoning ordinances restrict the amount of development on a lot by specifying the ratio that the floor area of a building may bear to the lot area"]; *see also* 3 Rathkopf, Zoning and Planning § 34C.02 [1] [4th ed] [the " 'floor area ratio' or F.A.R. technique is widely used today to establish the gross maximum size of a building in terms of the amount of floor area permitted therein"]).

It has also been stated that "[o]ne way to control the size of a building is to limit its overall volume" through FAR limits (7 Rohan, Zoning and Land Use Controls, at App 42-10; *see also,* 3 Rathkopf, Zoning

and Planning § 34C.02 [1] [4th ed] ["A more flexible method of regulating bulk is establishing a ratio between the size of the lot and the gross floor area of the principal building to be erected thereon"]). Indeed, the area regulations of New York City were originally enacted to regulate bulk in building development (*see,* Bassett, Zoning: The Laws, Administration, and Court Decisions During the First Twenty Years, at 62 ["Many ordinances have followed that of New York City in limiting building area to a fraction of the lot area. … The regulation must **[****15]** not be so drastic that it compels an absurdly small house on a normal lot or an unreasonably large lot for a normal house"]).

It seems clear that such zoning restrictions were never designed to combat the erection of primarily underground housing levels which do not contribute to bulky, high-rise **[*106]** development. [2] It is eminently logical that **[***331]** cellars, housing levels that are more than halfway below the ground, would be excluded from FAR calculations notwithstanding the actual or intended use of the space. Consistent with the purpose of FAR restrictions to control building density, it should be noted that basement space, also defined in the Zoning Resolution in terms of its physical location within a building as being more than halfway above ground, is included in FAR calculations to the same extent as similarly situated space. **[**1377]** Contrary to the views expressed in the dissenting opinion, we find nothing in zoning treatises, California case citations or the legislative history of the 1990 amendment to the Zoning Resolution that would indicate a contrary legislative intent regarding the 1961 amendments to the Zoning Resolution which excluded cellars, **[****16]** in unqualified language as to the intended use, from FAR calculations.

In sum, BSA urges this Court **[****17]** to disregard the plain meaning of the Zoning Resolution because (1) the former version of the Zoning Resolution should be binding upon any interpretation of the amended language thereof; (2) BSA's interpretation is consistent with an outdated version of the Multiple Dwelling Law; (3) the Zoning Resolution was amended to require cellars to be measured from the surrounding ground level rather than curb level to prevent overexcavation of lots; (4) BSA has inconsistently interpreted the Zoning Resolution in a particular manner; and (5) BSA seeks to prevent overcrowding through provisions designed to control physical bulk of buildings. We find such arguments to be unpersuasive.

This Court has long applied the well-respected plain meaning doctrine in fulfillment of its judicial role in deciding statutory construction appeals. We agree that "[i]t is fundamental that a court, in interpreting a statute, should attempt to effectuate **[*107]** the intent of the Legislature," but we have correspondingly and consistently emphasized that "where the statutory language is clear and unambiguous, *the court should construe it so as to give effect to the plain meaning of the words used* **[****18]** " (*Patrolmen's Benevolent Assn. v City of New York, 41 NY2d 205, 208* [emphasis added] [citations omitted]; *see, Doctors Council v New York City Employees' Retirement Sys., 71 NY2d 669, 674-675)*.

We have provided further clear teaching and guidance that "[a]bsent ambiguity the courts may not resort to rules of construction to broaden the scope and application of a statute," because "no rule of construction

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[2] In a 1990 Planning Report prepared by the Department of City Planning, it is stated that under current regulations, a "cellar does not count as floor area" and "cellars are exempt from floor area calculations" (*see,* New York Dept of City Planning, Lower Density Zoning, Proposed Follow-up Text Amendment: A Planning Report, at 35, 37 [June 1990]). Previously, the resolution defined a cellar as more than halfway below "curb" level which caused developers to "level" lots so that a ground floor could still qualify as a "cellar." The Zoning Resolution was amended to provide that "the base plane [ground], and not curb level, be the benchmark for determining whether floor space is a basement or cellar." Thus, a basement, "with more than half its height" above the ground would count as floor area but cellars on sloping sites, even if situated above "curb level" would be excluded in such calculations.

gives the court discretion to declare the intent of the law *when the words are unequivocal*" (*Bender v Jamaica Hosp., 40 NY2d 560, 562* [emphasis added] [citations omitted]). Lastly, "[t]he courts are not free to legislate and if any unsought consequences result, *the Legislature is best suited to evaluate and resolve them*" (*id.* [emphasis added]). Based on this Court's adherence to these respectable principles and precedents as primary sources of authority for the legitimacy of the plain-meaning doctrine, we reject the dissent's characterization of the statutory construction tool generally and as applied in this case.

BSA's interpretation is not only against the plain meaning of the resolution's text and contrary to the Multiple Dwelling Law, **[****19]** but also contrary to the purpose behind FAR restrictions in general. There is no statutory or practical support for BSA's strained construction of the Zoning Resolution for FAR calculations. The solution here is for the City to legislate a different definition if that is its intent, to be manifested by the ordinance itself.

The Appellate Division order should be reversed, with costs, the petition granted and the determination of respondent Board of Standards and Appeals revoking petitioners' building permit annulled.

Dissent by: LEVINE

Dissent

Levine, J. (Dissenting). We respectfully dissent. This case presents an unfortunate yet graphic example of the plain-meaning doctrine in operation, eschewing as it does other sources and evidence of legislative intent, such as context, **[***332]** legislative history and the purpose of the enactment. The majority appears to elevate the plain-meaning rule to a point of interpretive primacy not supported by our precedents. Although, to be sure, our Court has employed plain-meaning arguments in the past (*see, e.g., Patrolmen's Benevolent Assn. v [*108] City of New York, 41 NY2d 205, 208*; *Bender v Jamaica Hosp., 40 NY2d 560, 561-562),* **[****20]** our prevailing view has been, wisely, that the overarching duty of the courts in statutory interpretation is always to ascertain the legislative intent through examination of all available legitimate sources. "The legislative intent is the great and controlling principle. **[**1378]** Literal meanings of words are not to be adhered to or suffered to 'defeat the general purpose and manifest policy intended to be promoted' " (*People v Ryan, 274 NY 149, 152*; *see, Matter of Sutka v Conners, 73 NY2d 395, 403*; *Matter of Albano v Kirby, 36 NY2d 526, 529-531*; *Matter of Petterson v Daystrom Corp., 17 NY2d 32, 38)*.

Chief Judge Breitel articulated well the predominant view of this Court in *New York State Bankers Assn. v Albright (38 NY2d 430*): "Absence of facial ambiguity is … rarely, if ever, conclusive. The words men use are never absolutely certain in meaning; the limitations of finite man and the even greater limitations of his language see to that. Inquiry into the meaning of statutes is never foreclosed at the threshold" (*id., at 436*). The Court went on to quote, with approval, the Supreme Court's opinion in *United States v American Trucking Assns. [****21] (310 US 534, 544)*:

" 'Frequently, however, even when the plain meaning did not produce absurd results but merely an *unreasonable one "plainly at variance with the policy of the legislation as a whole" this Court has followed that purpose, rather than the literal words.* When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no "rule of law" which forbids its use, however clear

the words may appear on "superficial examination" ' " (*New York State Bankers Assn. v Albright, 38 NY2d, at 437*, *supra* [emphasis supplied]).

Criticism of the plain-meaning doctrine has long been expressed by legal scholars as frustrating legislative objectives and placing unrealistic demands upon the legislative process (*see,* Murphy, *Old Maxims Never Die: The "Plain-Meaning Rule" and Statutory Interpretation In The "Modern" Federal Courts,* 75 Colum L Rev 1299 [1975]). More recently, in the current debate over the "new textualism" (*see, e.g.,* Eskridge, *The New Textualism, 37 UCLA L Rev 621* [1990]; Shapiro, *Continuity and Change in Statutory Interpretation, 67 NYU L Rev 921* **[*109]** [1992]), legal and linguistic **[****22]** scholars have criticized the plain-meaning doctrine for oversimplifying the task of interpretation and for, itself, creating new interpretative problems (*see,* Cunningham, Levi, Green and Kaplan, *Plain Meaning and Hard Cases, 103 Yale LJ 1561* [1994], reviewing Solan, The Language of Judges [1993]).

Simply put, even if a court might encounter that rare case where the words of a statute are so utterly and indisputably clear (notwithstanding the litigants' dispute over their meaning) that the court could correctly interpret the statute's meaning merely by reading its words, this is *not* that case.

The issue here is whether space to be used as actual living quarters, located partly below ground at the lowest level of a house in a residential zoning district, is to be excluded from the calculation of the floor area ratio (FAR) under New York City Zoning Resolution § 12-10. The applicable FAR, as the majority points out (majority opn, at 101), would limit the total floor area of petitioners' residential building to 50% of the square footage of the lot on which it is situated.

Petitioners claim that the space, irrespective of its use as a dwelling unit, falls literally **[****23]** within the definition of "cellar" space introduced in a 1990 amendment to Zoning Resolution § 12-10, as "space wholly or partly **[***333]** below the base plane, with more than one half its height (measured from floor to ceiling) below the *base plane*" (NY City Zoning Resolution § 12-10, "cellar" [emphasis in original]). Section 12-10 excludes cellar space as such from the floor area numerator of the FAR (*see, id.,* § 12-10, "Floor area"--exclusions [a]).

Respondents, constituting the Board of Standards and Appeals of the City of New York (BSA) and the New York City Department of Buildings, however, determined that the cellar space exclusion was inapplicable here because the space in question is not used as a cellar but, rather, as a subsurface apartment. Supreme Court and the Appellate Division agreed (*231 AD2d 725*). The BSA relied upon, among other things, subdivision (g) of the floor area **[**1379]** component of section 12-10, which directly applies to the space at issue, mandating that floor area includes:

"any *other floor space used for dwelling purposes, no matter where located* within a building, when not specifically excluded" (NY City Zoning Resolution **[****24]** § 12-10 ["Floor area" (g); emphasis supplied]).

The majority holds that subdivision (g) does not require **[*110]** petitioners' partly below ground living quarters to be included in floor area because cellar floor space is "specifically excluded." Therefore, the majority reasons, a cellar always falls within the exception to subdivision (g), which otherwise includes all space used for dwelling purposes irrespective of its location in the building (*id.*).

To be sure, the "specifically excluded" exception to the inclusion of all space devoted to dwelling purposes under subdivision (g) can be read, as interpreted by the majority, to refer to any space excluded

elsewhere in the Zoning Resolution. Nevertheless, the provision can be read with at least equal plausibility not to apply to cellar *living* quarters. Thus, the "specifically excluded" exception can easily be interpreted as applying only to "floor space *used for dwelling purposes*" (*id.*) which is specifically excluded *as such* elsewhere in the statute. Reading the exception in this fashion, since cellar space *used for dwelling purposes* is not "specifically excluded" from floor area anywhere in the **[****25]** Zoning Resolution, the BSA correctly determined that the floor space of petitioners' subsurface apartment had to be counted in the FAR calculation.

The foregoing contrasting interpretations of the treatment of dwelling space/floor area in Zoning Resolution § 12-10 present a paradigm of what linguists refer to as "*structural ambiguity* [in which] interpretive difficulties arise not from indeterminacy as to the meaning of individual words but from *ambiguity as to the relationship of the words in a sentence structure*" (Cunningham, Levi, Green and Kaplan, *Plain Meaning and Hard Cases,* 103 Yale LJ, at 1570 [emphasis supplied]). Here, the text of subdivision (g) alone does not resolve the issue as to whether the "specifically excluded" phrase in that provision refers to *any* space otherwise expressly excluded from floor area, or solely to any "other floor space *used for dwelling purposes*" specifically excluded as such (*see,* NY City Zoning Resolution § 12-10 "Floor area" [g] [emphasis supplied]). For us, the irrefutable existence of that ambiguity is sufficient to resolve this appeal in the Board's favor. We would defer to the BSA's interpretation, the **[****26]** agency we have recognized as having responsibility for implementing the statutory purposes of New York City Zoning Resolution § 12-10, which not even petitioners dispute is consistent with the general policy of this FAR legislation. Moreover, as the BSA points out, the statute explicitly directs that in the event of an internal conflict between provisions in the regulations over the bulk of buildings, the "more restrictive" provision controls (NY City Zoning Resolution § 11-22).

[*111] Even without according deference to the BSA's interpretation, inclusion in floor area of cellar space used for dwelling purposes, because space used that way is not otherwise "specifically excluded," represents a sounder reading of the "dwelling purpose" inclusory language of subdivision (g), and is more consistent both with section 12-10 as a whole, and with the legislative history and transcendent purpose of the Zoning Resolution.

First, consistent with the BSA's interpretation, Zoning Resolution § 12-10 actually **[***334]** contains a defined floor space *used for dwelling purposes* which is "specifically excluded" as such from floor area. Under subdivision (i) of the exclusionary **[****27]** portion of section 12-10, the lowest stories of qualifying houses in specific residential zoning districts are excluded from floor area if used as a "furnace room, *utility room, auxiliary recreation room*" (NY City Zoning Resolution § 12-10, "Floor area"--exclusions [i] [3] [emphasis supplied]). Thus, it is readily apparent that what was contemplated in the "specifically excluded" exception to the catchall provision (otherwise including in floor area all space used for dwelling purposes) was those particular spaces devoted to some dwelling uses, which the legislative body determined were not to be counted as floor area in the FAR calculation. This conclusion is reinforced by the fact that both subdivision (g) of the floor area definitional portion of section 12-10, in **[**1380]** its present form, and the specific exclusion of certain lower story space utilized for dwelling purposes such as a utility or recreation room, were added simultaneously to the Zoning Resolution in 1961. Thus, the most plausible explanation for the insertion of the "specifically excluded" exception was to avoid conflict between the foregoing provisions.

The majority's interpretation relies heavily **[****28]** upon the fact that, whereas the 1916 Zoning Resolution expressly excluded from floor area basements and cellars only when " 'not devoted to

residence use,' " the 1961 recodification flatly excluded cellars without the nonresidential use qualification (*see,* majority opn, at 103, 106). However, the 1961 resolution substituted the floor area catchall provision contained in subdivision (g) for the 1916 specific exclusion of nonresidential cellar and basement space (*see,* NY City Zoning Resolution § 12-10, "Floor area" [g] [including in floor area *any* space used for dwelling purposes "*no matter where located*"] [emphasis supplied]). It was, therefore, unnecessary to retain the 1916 nonresidential use qualification in the 1961 Zoning Resolution cellar space exclusion. Thus, the absence of that nonresidential use qualification **[*112]** in the cellar exclusion is of no significance whatsoever in interpreting the all-inclusory dwelling space language in subdivision (g) of the 1961 resolution (still in effect), which is the dispositive issue in this case.

It is also highly unlikely that in the 1961 FAR recodification, the legislative body had the intent ascribed **[****29]** to it by the majority, i.e., to permit exclusion from floor area of cellar space used for residential purposes. In the general purpose clause of the 1961 Zoning Resolution, subdivision (d) recites that a specific purpose of the resolution was "[t]o protect residential areas against congestion, as far as possible, by *regulating the density of population*" (NY City Zoning Resolution § 21-00 [d], Statement of Legislative Intent [emphasis supplied]). Permitting cellar area devoted to residential use to be excluded from the numerator of the FAR formula hardly comports with that purpose.

Moreover, the legislative history of the present "base plane" definition of excluded cellar space in Zoning Resolution § 12-10, upon which petitioners concededly must rely in order to exclude, from the FAR, the lowest level living quarters of its building, makes it absolutely clear that the "base plane" definition was never intended to change the settled construction of the prior law which limited the exclusion to "true" cellar space (as commonly understood) and not space, as urged by petitioners, used as a cellar apartment. The present "base plane" definition was added in a 1990 amendment **[****30]** to Zoning Resolution § 12-10. Prior to 1990, and at least as early as 1961, section 12-10 differentiated between basement space and cellar space, and the difference in treatment was maintained in the current statutory scheme. Basement space, *even when not used for dwelling purposes,* was previously and still is included in floor area for determining the FAR. The definitions of basement space and cellar space were (and are) complementary and employed essentially to differentiate one from the other.

As explained in the legislative memorandum in support of the 1990 amendment, the differences between basement and true cellar spaces were originally defined in terms of their location in relation to the curb level of the building lot (*see,* New York Dept of City **[***335]** Planning, Lower Density Zoning, Proposed Follow-up Text Amendment: A Planning Report, at 35 [1990]). Under the 1961 Zoning Resolution, basement space was defined as space partly below curb level, with at least one half of its height *above* curb level (*id.*). Cellar space, although similar, was space whose height was more than one half *below* curb level (*id.*).

[*113] The 1990 amendments **[****31]** only changed the benchmark differentiation between basement and cellar space from curb level to base plane (*id., at 35-36*). Significantly, this change was enacted to address the unintended result of the prior definition, which encouraged needless excavation of upwardly sloping lots in order to avoid having true cellar space counted as basement space, and thereby included in floor area (*see, id., at 35*). Thus, there is not even the hint of any indication that the decisive amendment of the definition of cellar space, upon which petitioners must rely, was intended to expand the cellar **[**1381]** exclusion to space used for subsurface living quarters. Indeed, the manifestation of intent regarding the amendment was completely to the contrary. The 1990 amendment also contained a proviso for reverting the benchmark of the basement and cellar space differentiation back to curb level under

certain circumstances "to *reduce the potential abuse* of this [base plane] provision by excavation of yards, *turning cellars into floor space suitable for additional bedrooms and accessory units*" (*id., at 36* [emphasis supplied]).

Furthermore, as already pointed out, the function **[****32]** of the definition of cellar has nothing whatsoever to do with determining whether any cellar space actually used for dwelling purposes is to be excluded from floor area. Rather, in context, the definition is designed solely to differentiate cellar space from basement space, the latter space always being included in floor area irrespective of its nonuse for dwelling purposes.

Finally, the majority's application of the plain-meaning doctrine here, to permit the exclusion from floor area of cellar space converted to an actual dwelling unit, directly conflicts with the underlying purpose of the FAR concept embodied in New York City Zoning Resolution § 12-10. Contrary to the suggestion in the majority writing that the purpose of the FAR is an apparently aesthetic one, merely to restrict the bulk of buildings within the zoning district and therefore was "never designed to control population" (majority opn, at 105), and was "never designed to combat the erection of primarily underground housing levels which do not contribute to bulky, high-rise development" (majority opn, at 105-106), the well-recognized purpose of FAR residential zoning regulation is to control population density with **[****33]** its resultant adverse impact on quality of life and overtaxing of governmental services within the zoning district.

It should be self-evident and beyond dispute that the primary effect of restricting the amount of buildable floor space **[*114]** for each building lot in a *residential* district, through a FAR, will be to limit the aggregate habitable space occupied by people within the zoning district, i.e., its *population density.*

As explained by Rohan, among the various height, bulk and density controls and "measurement restrictions imposed through the use of zoning power [are] … *devices for limiting population density,* i.e., minimum lot areas, frontage requirements and *floor area ratio*" (7 Rohan, *Zoning and Land Use Controls § 42.01 [5]*, at 42-10--42-11 [1997] [emphasis supplied]; *see generally, id.,* ch 42, at 42-1 ["Measurement Controls: Height, Bulk and Density"]). The Rathkopf treatise discusses zoning controls on building area, bulk and floor size, "including *floor-area-ratio* restrictions that are tied to overall lot size" (3 Rathkopf, Zoning and Planning § 34C.01, at 34C-1 [Ziegler 4th ed] [emphasis supplied]). The author characterizes **[****34]** the function of these controls as including "protection of public health and safety, [and] *prevention of overcrowding* and traffic congestion" (*id.,* § 34C.02 [2], at 34C-6 [emphasis supplied]). Additionally, in *Broadway, Laguna, Vallejo Assn. v Board of Permit Appeals,* a leading early case on the validity of zoning regulation through FARs, the court stated that: "*the consensus among zoning authorities is that, in terms of controlling* **[***336]** *population density* and structural congestion, the technique of restricting the *ratio of a building's* rentable *floor space* to the size of the lot on which it is constructed possesses numerous advantages" (*66 Cal 2d 767, 771, 427 P2d 810, 813* [emphasis supplied]). Indeed, ironically, the legislative report in support of the very amendment to Zoning Resolution § 12-10 relied upon by petitioners here is entitled "*Lower Density* Zoning, Proposed Follow-up Text Amendment" (New York Dept of City Planning [1990] [emphasis supplied]). Moreover, as previously noted, the general purpose clause of the 1961 Zoning Resolution militates strongly against the majority's interpretation of that law's modification **[****35]** of the cellar exclusion as permitting cellar residences to be omitted from the FAR equation.

Thus, petitioners' interpretation of section 12-10 (adopted by the majority here), permitting a developer to set up a cellar dwelling unit not subject to FAR restrictions, is diametrically opposed to the basic purposes

of the Zoning Resolution. This alone should be enough to reject petitioners' interpretation, **[**1382]** even if the "plain meaning" of the words supported that interpretation (*see, New York State Bankers Assn. v Albright, supra*, quoting *United States v American Trucking Assns., supra; see also, Cabell v Markham, 148 F2d 737, 739* [Hand, J.] ["The **[*115]** defendants have no answer except to say that we are not free to depart from the literal meaning of the words, however transparent may be the resulting stultification of the scheme or plan as a whole. Courts have not stood helpless in such situations; the decisions are legion in which they have refused to be bound by the letter, when it frustrates the patent purpose of the whole statute"], *affd 326 US 404*).

Because the pertinent provisions of New York City Zoning Resolution § 12-10 are at the least **[****36]** ambiguous, and because the BSA's interpretation of subdivision (g) is consistent with section 12-10 as a whole, its legislative history and patent statutory purpose, we would uphold the Board's determination and affirm the dismissal of the petition by the courts below.

Chief Judge Kaye and Judges Titone, Bellacosa and Ciparick concur with Judge Smith; Judge Levine dissents and votes to affirm in a separate opinion in which Judge Wesley concurs.

Order reversed, etc.

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Udell v. Haas

Court of Appeals of New York

January 8, 1968, Argued ; February 28, 1968, Decided

No Number in Original

Reporter
21 N.Y.2d 463 *; 235 N.E.2d 897 **; 288 N.Y.S.2d 888 ***; 1968 N.Y. LEXIS 1567 ****

Daniel A. Udell, Appellant, v. Richard Haas, as Mayor of the Village of Lake Success, et al., Respondents

Prior History: [**1]** *Udell v. Haas, 27 A D 2d 750.*

Appeal from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered February 20, 1967, which affirmed, by a divided court, insofar as appealed from, a judgment of the Supreme Court, entered in Nassau County upon a decision of the court on a trial at a trial and Special Term (Bernard S. Meyer, J.; opinion *sub nom.* *Udell v. McFadyen, 40 Misc 2d 265*; see, also, *46 Misc 2d 804*). Plaintiff appealed to the Appellate Division only from such portion of the judgment as read: "Ordered, Adjudged and Decreed that Ordinance No. 60 adopted by the Village of Lake Success on July 27, 1960, insofar and to the extent that it changed the permitted use of properties belonging to this plaintiff within the said Village located on the easterly side of Lakeville Road and on the westerly side of Summer Avenue from a Business 'A' and Business 'B' District to a Residence 'C' District, be and the same hereby is declared constitutional and in all respects valid".

Disposition: Order reversed, with costs in all courts, and case remitted to Supreme Court, Nassau County, for further proceedings in accordance with the opinion herein.

Core Terms

zoning, parcel, village, comprehensive plan, ordinance, rezoning, Northern, courts, business use, recommended, feet, community's, residential use, zoning map, discriminatory, neck, planning, conform, retail, land use control, zoning ordinance, commercial use, land use, nonresidential, residential, invalidity, properties, landowner, traffic

Counsel: *Gerald Dickler* for appellant. I. Ordinance No. 60 is discriminatory as applied to plaintiff's property. (*Hyde v. Incorporated Vil. of Baxter Estates, 2 A D 2d 889, 3 N Y 2d 873*; *Connell v. Town of Granby, 12 A D 2d 177*; *Watson v. Maryland, 218 U.S. 173*; *Mallary, Inc. v. City of New Rochelle, 184 Misc. 66, 268 App. Div. 878, 295 N. Y. 712*; *De Sena v. Gulde, 24 A D 2d 165*.) II. The change in zoning of appellant's property was *ultra vires*, as not in conformity with a comprehensive plan. (**[****6]** *Levitt v. Incorporated Vil. of Sands Point, 3 Misc 2d 92, 2 A D 2d 688, 781*; *Arverne Bay Constr. Co. v. Thatcher, 278 N. Y. 222*; *Harris v. Village of Dobbs Ferry, 208 App. Div. 853*.) III. The ordinance challenged herein was confiscatory as applied to plaintiff's property. (*Dowsey v. Village of Kensington, 257 N. Y. 221*; *Vernon Park Realty v. City of Mount Vernon, 307 N. Y. 493*; *Chusud Realty Corp. v. Village of Kensington, 22 A D 2d 895*; *Mary Chess, Inc. v. City of Glen Cove, 18 N Y 2d 205*.)

John M. Lewis for respondents. I. Plaintiff has failed to sustain his burden of establishing that the zoning as it affects the subject parcel is discriminatory. II. The judgment must be affirmed since plaintiff failed to sustain his burden of proving that the zoning ordinance was not enacted in accord with a comprehensive plan. (*Rodgers v. Village of Tarrytown, 302 N. Y. 115*.) III. Plaintiff failed to sustain his burden of proving beyond a reasonable doubt that the ordinance restricts the use of his property in such a manner that it cannot be used for any reasonable purpose. (*Arverne Bay Constr. Co. v. Thatcher, 278 [****7] N. Y. 222*; *Fusco v. Town of Oyster Bay, 23 Misc 2d 72*; *Gullo v. Village of Lindenhurst, 16 Misc 2d 761*; *Scarsdale Supply Co. v. Village of Scarsdale, 15 Misc 2d 289*; *Gardner v. Le Boeuf, 14 Misc 2d 98*; *Ulmer Park Realty Co. v. City of New York, 270 App. Div. 1044*; *Franklin v. Incorporated Vil. of Floral Park, 269 App. Div. 695, 294 N. Y. 862*; *Matter of Setauket Development Corp. v. Romeo, 18 A D 2d 825*; *Levitt v. Incorporated Vil. of Sands Point, 6 N Y 2d 269*.)

Judges: Keating, J. Chief Judge Fuld and Judges Burke, Scileppi, Bergan, Breitel and Jasen concur.

Opinion by: KEATING

Opinion

[*466] **[**898]** **[***891]** The issue on this appeal is whether a 1960 amendment to the Building Zone Ordinance (altering the Zoning Map) of the Village of Lake Success, which reclassified appellant's property from Business "A" and "B" to Residence "C", is valid. Appellant claims that the rezoning was discriminatory, confiscatory and *ultra vires*.

The background of the dispute is this: The Village of Lake Success is a small, suburban community in the extreme westerly portion of Nassau County. It has a rather irregular shape, but generally **[****8]** is **[**899]** bounded on the south by the Northern State Parkway and on the north and east by the Town of North Hempstead. To the west lies its giant neighbor, the City of New York.

The village is approximately two square miles in size. Running through it in a generally north-south direction is the main artery of the village, Lakeville Road. That street intersects with Northern Boulevard, a major east-west thoroughfare in this section of Long Island.

The village's northern boundary appears to be completely arbitrary. For the most part, it is to the south of Northern Boulevard. However, along Lakeville Road, the village reaches out in a northerly direction to touch Northern Boulevard. The area is not large and is neck-like in shape, consisting of several hundred feet on either side of Lakeville Road extending from Northern Boulevard some 750 feet to University Road on the west side of Lakeville Road and some 600 feet to Cumberland Avenue on the east. Cumberland Avenue and University Road form what may be described as the base of the neck.

Prior to the 1960 rezoning in question, almost the entire neck was zoned for business. For a distance of some 400 feet south of Northern **[****9]** Boulevard, the area was zoned Business "A" which permitted retailing and similar uses as well as laboratories and office and public buildings. The rest of the neck was zoned Business "B" where essentially the only nonresidential use allowed was neighborhood retailing.

[*467] Two parcels of land were initially the subject of this litigation. They are located in this neck and constitute a substantial portion of it. However, as a result of this litigation, only one parcel is now in

question. It consists of approximately two and one-half acres, covering all of the area formerly zoned Business "A" on the *east* side of Lakeville Road, except for a 100 by 100-foot plot in the northwest corner of the parcel at the intersection of Northern Boulevard and Lakeville Road which is occupied by a gasoline station. Twenty-four feet of the southern end of the parcel extend into the former Business "B" zone. Appellant also owns land, adjacent to and east of this property in the Town of North Hempstead.

[*892]** When appellant assembled this east parcel in 1951, the only use being made of this property was in the northerly portion facing Northern Boulevard. It was then being operated **[****10]** as a restaurant.

Also in 1951, plaintiff acquired two and one-half acres of vacant lots on the *west* side of Lakeville Road. This property covered almost the entire block from Lakeville Road to University Place, one block to the west of Lakeville Road, and from Northern Boulevard for a distance of approximately 500 feet to the south towards University Road, except for a few lots facing University Place to the west. Like the northwest corner of the east parcel, the northeast corner of this property is also occupied by a gas station, not owned by appellant.

The zoning amendment, ordinance No. 60, placed the entire neck, except for a 100-foot-wide strip adjacent to Northern Boulevard, in a Residence "C" category. Thus, the northeast and the northwest corners of the east and west parcels, respectively, that is the land fronting on Northern Boulevard, are not directly involved in this proceeding since the rezoning did not affect those portions of appellant's property. Permitted uses in the new classification include public and religious buildings and residences with minimum plot size set at 13,000 square feet and minimum frontage of 100 feet on Lakeville Road.

The trial court **[****11]** held the rezoning with respect to the so-called *west* parcel unconstitutional as being confiscatory, but sustained the ordinance insofar as it affected the *east* parcel (*Udell v. McFadyen, 40 Misc 2d 265*). The decision with respect to the west parcel rested on three grounds. First, there was the **[*468]** size and shape of the plot; second, the topography of the land, which sloped down some **[**900]** 15 feet from Lakeville Road to University Place; and third, the existing neighboring uses. After a careful evaluation of the evidence, the trial court concluded that "residential zoning precludes use for any purpose to which it is reasonably adaptable" (*40 Misc 2d 265, 271)*. It also held the rezoning to be discriminatory, of which more will be said later.

With respect to the east parcel, however, a contrary conclusion was reached as to the validity of the ordinance. In essence, the court held that since the appellant also owned contiguous lots fronting on Summer Avenue in the Town of North Hempstead, residential use was practical for the east parcel since the residences could face Summer Avenue. In addition, it found residential zoning would not be inconsistent with **[****12]** the character of the neighborhood and that a nursery school located on the south side of the east parcel was not incompatible with residential use. The problem raised by the commerce of Northern Boulevard could be remedied by appropriate fencing.

Both sides appealed this decision. During the pendency of the appeal, the village passed a second amendatory ordinance rezoning the *west* **[***893]** parcel into a new Business "C" category, which permitted "such scientific and/or research laboratory use, offices for executive, administrative, banking or professional purposes, libraries, schools, telephone exchanges and municipal building uses, as may be approved by the Village * * * upon recommendation of the Planning Board". Following this second change, the village withdrew its appeal.

On the landowner's appeal, the Appellate Division affirmed. Justice Hopkins, dissenting, stated in a brief opinion that he could see no justification for treating the two properties differently and that the "same considerations that prompted the declaration of invalidity of the ordinance exist on the one side of Lakeville Road as on the other" (*27 A D 2d 750, 751)*.

We hold that ordinance No. 60 **[****13]** is invalid with respect to the *east* parcel as well as the *west* parcel. We have concluded that the rezoning was discriminatory and that it was not done "in accordance with [the] comprehensive plan" of the Village of Lake Success (Village Law, § 177). In our view, sound zoning principles were not followed in this case, and the root cause of **[*469]** this failure was a misunderstanding of the nature of zoning, and, even more importantly, of its relationship to the statutory requirement that it be "in accordance with a comprehensive plan."

Zoning is not just an expansion of the common law of nuisance. It seeks to achieve much more than the removal of obnoxious gases and unsightly uses. Underlying the entire concept of zoning is the assumption that zoning can be a vital tool for maintaining a civilized form of existence only if we employ the insights and the learning of the philosopher, the city planner, the economist, the sociologist, the public health expert and all the other professions concerned with urban problems.

This fundamental conception of zoning has been present from its inception. The almost universal statutory requirement that zoning conform to a "well-considered **[****14]** plan" or "comprehensive plan" is a reflection of that view. (See Standard State Zoning Enabling Act, U. S. Dept. of Commerce [1926].) The thought behind the requirement is that consideration must be given to the needs of the community as a whole. In exercising their zoning powers, the local authorities must act for the benefit of the community as a whole following a calm and deliberate consideration of the alternatives, and not because of the whims of either an articulate minority or even majority of the community. (*De Sena v. Gulde, 24 A D 2d 165* [2d Dept., 1965].) Thus, the mandate of the Village Law (§ 177) is not a mere technicality which serves only as an obstacle course for public officials to overcome in carrying out their duties. Rather, the comprehensive **[**901]** plan is the essence of zoning. Without it, there can be no rational allocation of land use. It **[***894]** is the insurance that the public welfare is being served and that zoning does not become nothing more than just a Gallup poll.

Moreover, the "comprehensive plan" protects the landowner from arbitrary restrictions on the use of his property which can result from the pressures which outraged **[****15]** voters can bring to bear on public officials. "With the heavy presumption of constitutional validity that attaches to legislation purportedly under the police power, and the difficulty in judicially applying a 'reasonableness' standard, there is danger that zoning, considered as a self-contained activity rather than as a means to a broader end, may tyrannize individual property owners. Exercise of the legislative **[*470]** power to zone should be governed by rules and standards as clearly defined as possible, so that it cannot operate in an arbitrary and discriminatory fashion, and will actually be directed to the health, safety, welfare and morals of the community. The more clarity and specificity required in the articulation of the premises upon which a particular zoning regulation is based, the more effectively will courts be able to review the regulation, declaring it ultra vires if it is not in reality 'in accordance with a comprehensive plan.'" (Haar, "In Accordance With a Comprehensive Plan", 68 Harv. L. Rev. 1154, 1157-1158.)

As Professor Haar points out, zoning may easily degenerate into a talismanic word, like the "police power", to excuse all sorts of arbitrary infringements **[****16]** on the property rights of the landowner. To assure that this does not happen, our courts must require local zoning authorities to pay more than

mock obeisance to the statutory mandate that zoning be "in accordance with a comprehensive plan". There must be some showing that the change does not conflict with the community's basic scheme for land use.

One of the key factors used by our courts in determining whether the statutory requirement has been met is whether forethought has been given to the community's land use problems. (See 68 Harv. L. Rev. 1154, 1171; Note, Comprehensive Plan Requirement in Zoning, 12 Syracuse L. Rev. 342, 344-345.)

Where a community, after a careful and deliberate review of "the present and reasonably forseeable needs of the community", adopts a general developmental policy for the community as a whole and amends its zoning law in accordance with that plan, courts can have some confidence that the public interest is being served (*Rodgers v. Village of Tarrytown, 302 N. Y. 115, 121-122*; *Thomas v. Town of Bedford, 11 N Y 2d 428, 434)*. Where, however, local officials adopt a zoning amendment to deal with various problems that have arisen, **[****17]** but give no consideration to alternatives which might minimize the **[***895]** adverse effects of a change on particular landowners, and then call in the experts to justify the steps already taken in contemplation of anticipated litigation, closer judicial scrutiny is required to determine whether the amendment conforms to the comprehensive plan.

[*471] The role of these experts must be more than that of giving rationalizations for actions previously decided upon or already carried out. In recent years, many experts on land use problems have expressed the pessimistic view that the task of bringing about a rational allocation of land use in an ever more urbanized America will prove impossible. But of one thing, we may all be certain. The difficulties involved in developing rational schemes of land use controls become insuperable when zoning or changes in zoning are followed rather than preceded by study and consideration.

By this statement, we do not mean to imply that the courts should examine the motives of local officials. What we do mean is that the courts must satisfy themselves **[**902]** that the rezoning meets the statutory requirement that zoning be "in accordance **[****18]** with [the] comprehensive plan" of the community.

Exactly what constitutes a "comprehensive plan" has never been made clear. Professor Haar in his article discusses most of the meanings which courts have given the term. In the conclusion of his article he notes (68 Harv. L. Rev. 1173): "As we have seen, the courts have taken a number of rather different approaches in testing zoning measures for consonance with the enabling act mandate of 'accordance with a comprehensive plan.' None of the meanings suggested -- broad geographical coverage, 'policy' of the planning or zoning commission, the zoning ordinance itself, the rational basis underlying the ordinance -- do extreme violence to the statutory wording. But all of them share a common defect: they emphasize the question whether the zoning ordinance is a comprehensive plan, not whether it is in accordance with a comprehensive plan. Thus construed, the enabling act demands little more than that zoning be 'reasonable,' and impartial in treatment, to satisfy the constitutional conditions for exercise of the state's police power."

No New York case has defined the term "comprehensive plan". Nor have our courts equated the term with **[****19]** any particular document. We have found the "comprehensive plan" by examining all relevant evidence (*Rodgers v. Village of Tarrytown, 302 N. Y. 115, 122*, *supra; Thomas v. Town of Bedford, 11 N Y 2d 428, 434-435*, *supra*). As the trial court noted, generally New York cases "have analyzed the ordinance * * * in **[*472]** terms of consistency and rationality" (*40 Misc 2d 265, 267-268)*. While these elements are important, the "comprehensive plan" requires **[***896]** that the rezoning

should not conflict with the fundamental land use policies and development plans of the community (see *Santmyers v. Town of Oyster Bay, 10 Misc 2d 614, 616*; *Linn v. Town of Hempstead, 10 Misc 2d 774*; *Place v. Hack, 34 Misc 2d 777*; *Walus v. Millington, 49 Misc 2d 104*). These policies may be garnered from any available source, most especially the master plan of the community, if any has been adopted, the zoning law itself and the zoning map.

In the case at bar, the search for the village's "comprehensive plan" is relatively easy. It may be found both in the village's zoning ordinance and in its zoning map.

In 1925 the Village of Lake Success adopted its **[****20]** first zoning ordinance. At least since 1938, appellant's parcel has been placed in a business use district. Over the years, various amendments were passed, none of them, however, affecting appellant's property. If anything, the changes tended to reinforce the conclusion that the community had decided that the neck of land was most appropriately fitted for business use because of its proximity to Northern Boulevard. Thus, in the early 1950s the west side of University Place near Northern Boulevard was rezoned for business use.

When appellants acquired the parcel, it had been zoned for business use for some 12 or 13 years and so it remained for the next 8 or 9 years.

In 1958 the village undertook to set forth expressly the essential development goals of the community. It did so in the form of an amendment to the zoning ordinance and entitled the statement a "developmental policy". According to the statement, Lake Success was and was to remain a suburban community of low density, one-family residential development. Other uses were to be permitted only to the extent that they were related to residential use, e.g., schools, churches and community institutions, or as they might **[****21]** contribute to the strengthening of the tax base of the community.

[903]** If one examines the zoning map of the village as it stood prior to June, 1960, this policy is carried out almost perfectly. Only a small portion of the community's land was zoned for business **[*473]** use. It is important to note that almost, if not, every piece of property in the nonresidential category was located on the periphery of the community, usually adjacent to lands in neighboring communities with similar nonresidential use. Consistent with this "developmental policy", a portion of the northeast section of the community had previously been rezoned for commercial use.

Thus, as matters stood on the morning of June 21, 1960, the village had a zoning plan with stated community goals and a zoning map which consistently carried out these policies.

[*897]** On June 21, 1960 Fred Rudinger, an associate of the appellant, appeared at the village's offices with a preliminary sketch for the development of the vacant west parcel with a bowling alley and a supermarket or discount house. That same evening, the village planning board recommended a change in zoning from business to residential use.

[**22]** The minutes of that meeting indicate that, following a discussion of the severe traffic problem which had developed on Lakeville Road, a proposed amendment to the zoning map was recommended to the village trustees. A month or so later, this proposal became, in slightly modified form, ordinance No. 60.

Next, the following comment appears in the minutes: "Mr. Klein informed the Board that *by coincidence*, this morning, an informal preliminary sketch was submitted to him by Mr. Fred Rudinger for the

development of the area with a bowling alley and a supermarket or discount house. The Board gave no opinion on this informal sketch and no further action was considered necessary." (Emphasis supplied.)

The reference to Mr. Rudinger's visit as being "by coincidence" appears somewhat odd since no zoning amendments had been considered previously. It is significant that no consideration was given to other possible alternatives for alleviating the traffic problem.

Only after adopting this recommendation did the planning board vote to ask the board of trustees to retain a planning expert to review the village's master plan. On July 5, 1960 the trustees retained Mr. Hugh Pomeroy to make **[****23]** just such an investigation. Later that same day, the planning board and the trustees met in joint session, and it was agreed that a required public hearing **[*474]** should be held promptly. On July 27, 1960 ordinance No. 60 became law following the holding of a public hearing two days earlier.

This history of ordinance No. 60 must immediately raise doubts whether this race to the statute books was in accord with sound zoning principles or was a subversion of them for the process by which a zoning revision is carried out is important in determining the validity of the particular action taken. The village argues that there was no longer any need for shopping facilities in the area. Assuming that to be so, this does not explain why consideration was only given to zoning the area as "Residence C". A fair respect for the community's need for taxables, as set forth in its "developmental policy", required that some thought be given to other possible land use controls.

A more substantial justification for the rezoning was the serious traffic conditions on Lakeville Road. However, at the trial, the village's own expert, Mr. Frederick P. Clark, who was retained by the village after **[****24]** Mr. Pomeroy's death, admitted that business use of the east parcel would create less of a traffic problem than business use of the west parcel **[***898]** would. The reason for this was that access to the east parcel could be restricted to Northern Boulevard, while access to the west parcel would probably have to be from Lakeville Road.

[904]** The point here is not only that the expert's argument does not support the village's position, but that his testimony also conflicted sharply with the community's "developmental policy" and his own earlier recommendations for modifications of that policy, which he had made in 1962 when he drafted a proposed "Comprehensive Zoning Plan" for the community.

In that report, Mr. Clark had recommended the rezoning of various perimeter areas in the community for commercial and light manufacturing use to take account of property developments outside the community and to strengthen the tax base. For example, he suggested that the entire area of the community south of the Northern State Parkway be rezoned for commercial or light manufacturing. On cross-examination, Mr. Clark admitted that the east parcel was in a perimeter area. The fair implication, **[****25]** therefore, is that commercial use of this property would conform with his recommendations for land use control.

[*475] More pertinent is Mr. Clark's testimony at the trial: "In my opinion the property on the east side, the Andre property, could be used either for residential purposes as presently zoned or for business. I do not find in my study of it a marked superiority of one over the other. I believe it could be used for either as an appropriate use."

He later modified this statement to include the proviso that there should be no access from Lakeville Road. This concession by Mr. Clark was no mistake. In light of the recommendations of his

"Comprehensive Zoning Plan of 1962", he had to agree that commercial use was at least equally desirable. Otherwise, he would have discredited his own planning work for the community. Mr. Clark's testimony establishes that the zoning amendment was neither in 1960 nor afterwards in harmony with the community's over-all land use plan.

Aside from this testimony, examining the zoning map, one would find it difficult to locate a more fitting area to use for commercial purposes than this isolated neck near Northern Boulevard of which the **[****26]** subject parcel is part.

Viewing the village's plans on a temporal basis, there is a consistency predating ordinance No. 60 and post-dating the change. In 1958 a large area in the northeast section of the village had been zoned for nonresidential use. After 1960 other changes of a similar nature were recommended in conformity with a policy of expanding areas of noncommercial use on the periphery of the community. The only significant deviation was the ordinance No. 60.

It is not disputed that the village officials faced a traffic problem in the Northern Boulevard-Lakeville Road area. Nevertheless, we can **[***899]** come to no other conclusion that the rezoning was not "accomplished in a proper, careful and reasonable manner" (*Rodgers v. Village of Tarrytown, 302 N. Y. 115, 122*, *supra*). Ordinance No. 60 not only did not conform to the village's general "developmental policy", but it was also inconsistent with what had been the fundamental rationale of the village's zoning law and map. The amendment was not the result of a deliberate change in community policy and was enacted without sufficient forethought or planning. The particular conditions existing in the area **[****27]** did not support the radical change, which ordinance No. 60 embodied.

[*476] More than 60% of the value, of appellant's property, or $ 260,000, * was wiped out because, to use the words of the village's first expert, "in his discussions he had **[**905]** found *it is the feeling of the Village* that it does not want extensive business in that area". (Emphasis supplied.)

These vague desires of a segment of the public were not a proper reason to interfere with the appellant's right to use his property in a manner which for some 20 odd years was considered perfectly proper. If there is to be any justification for this interference with **[****28]** appellant's use of his property, it must be found in the needs and goals of the community as articulated in a rational statement of land use control policies known as the "comprehensive plan". We find that appellant has demonstrated that ordinance No. 60 did not conform to the established "comprehensive plan" of the village. Hence, ordinance No. 60 must be held to be *ultra vires* as not meeting the requirement of section 177 of the Village Law that zoning be "in accordance with a comprehensive plan".

Turning then to the other claims of the appellant, we have also concluded that his claim of discrimination is equally valid.

Discrimination in zoning is usually thought of in terms of the injustice done to the landowner. In reality, it is also a wrong done to the community's land use control scheme. It is the opposite side of the coin, one side of which is "spot zoning".

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* Mr. Erskine, the village's expert, gave as the value of that portion of *east* parcel still in a Business "A" classification as $ 3.50 per square foot and the value of the property rezoned for Residence "C" as $ 1 per square foot. This is a 71.4% reduction in value, and the expert conceded that no consideration had been given to preparing the lots for construction.

Nevertheless, a claim of discrimination is not just another way of saying that the change does not accord with the comprehensive plan. When the claim is one of discrimination, the focus of inquiry is narrower. The issue is the propriety of the treatment of the subject parcel as compared to neighboring properties.

[**29]** Trial Term found the rezoning here to be discriminatory because the rezoning did not affect the retail service area to the south on Lakeville **[***900]** Road. The court pointed out that, while those properties would of course be entitled to an exemption for existing nonconforming uses, there was nothing to differentiate that parcel from the appellant's west parcel, and the failure to include **[*477]** the existing retail area evidenced a discriminatory pattern of treatment. It also found that the "ordinance as enacted discriminated against the east parcel" for the same reason that it discriminated against the west parcel, but also because, unlike the west parcel, most of the east parcel was already being used as a restaurant, that is for a nonconforming commercial use. Nevertheless, there was a "sufficient difference" between the two parcels to warrant their being treated differently (*40 Misc 2d 265, 272)*.

The difference was the fact that the east parcel could be used for residential purposes, where the west parcel could not be. A property owner need not prove confiscation to establish discrimination. In almost every respect, the properties are alike. Also, on the north, **[****30]** west and southwest of the east parcel, the adjacent properties are now zoned for business use.

While not decisive, there is also the added factor that there is at present a nonconforming commercial use on part of the property, which is likely to persist. The treatment accorded the east parcel must take account of economic realities.

There is an inconsistency in the argument of the Trial Justice that there was nothing in the "surrounding residential uses * * * nor any other circumstances" to distinguish the retail service area from both the west and east parcels, and, on the other hand, that the east and west parcels were somehow different (*40 Misc 2d 265, 272)*.

In any event, reversal is clearly warranted by the subsequent history of this case. The village might have met the Trial Justice's objection, had it rezoned the Lakeville Road retail area to Residence "C". Instead, contingent upon the Appellate Division's sustaining the finding of invalidity, the village rezoned the west parcel into a new category Business "C" which permits **[**906]** allegedly non-traffic-creating business use, i.e., laboratories and office and public buildings. Subsequently, the village withdrew its **[****31]** appeal. As Justice Hopkins correctly pointed out, the village thus accepted the finding of invalidity. That being so, it removes all doubt that the treatment of the east parcel is discriminatory.

Having recognized that the west parcel could not fairly be zoned for residential use, the village was bound to show that dissimilar treatment of the east parcel was still warranted. The **[*478]** village offers no acceptable reason to justify the distinction and, as noted above, the position of the village's expert was, if anything, that the east parcel could properly be **[***901]** zoned for non-residential use, but the west parcel should be restricted to residential use. That crucial concession removed any basis for an argument that the needs of the village required a different treatment of the east parcel from that of the west parcel.

Appellant has amply demonstrated that ordinance No. 60 constitutes unjustifiable discrimination. If we also consider the fact that, aside from the lack of any showing of purpose in distinguishing the two parcels, the substantial loss which appellant will sustain if the zoning change is upheld, the invalidity of

the ordinance becomes unquestionably **[****32]** clear (*Stevens v. Town of Huntington, 20 N Y 2d 352*; see, also, *Mary Chess, Inc. v. City of Glen Cove, 18 N Y 2d 205, 209-211)*.

The order of the Appellate Division should be reversed and the judgment of the Supreme Court should be modified by striking out the first decretal paragraph and by substituting in place thereof a decretal paragraph declaring ordinance No. 60 to be *ultra vires*, unconstitutional and void as to the property of plaintiff located on the easterly side of Lakeville Road and the westerly side of Summer Avenue, with costs.

Order reversed, with costs in all courts, and case remitted to Supreme Court, Nassau County, for further proceedings in accordance with the opinion herein.

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Udell v. McFadyen

Supreme Court of New York, Trial and Special Term, Nassau County

September 16, 1963

No Number in Original

Reporter
40 Misc. 2d 265 *; 243 N.Y.S.2d 156 **; 1963 N.Y. Misc. LEXIS 1632 ***

Daniel A. Udell, Plaintiff, v. Edward McFadyen et al., Constituting the Board of Trustees of the Village of Lake Success, Defendants

Core Terms

parcel, Village, zoning, ordinance, residential, Northern, feet, retail, properties, frontage, traffic, reduction, fronting, rezoned, subject parcel, nonconforming, detrimental, distance, Street, values

Counsel: *Hall, Casey, Dickler, Howley & Brady* (*James Austin* of counsel), for **[***3]** plaintiff.

John M. Lewis and *Edward Wallace* for defendants.

Judges: Bernard S. Meyer, J.

Opinion by: MEYER

Opinion

[*266] **[**157]** This action involves two properties in the Village of Lake Success. As stipulated by the parties, the court has viewed the properties and the environs. The north-south artery of the village is Lakeville Road. Generally, the northern boundary of the village is a substantial distance south of Northern Boulevard, but for several hundred feet on either side of Lakeville Road it juts northward and reaches Northern Boulevard. Initially the neck of land thus described was zoned Business "A" for a distance of 400 feet south of Northern Boulevard and Business "B" for the remainder of the distance to Cumberland Avenue on the east side of Lakeville Road and to University Road on the west side of Lakeville Road.

The first of the subject parcels, hereafter referred to as the east parcel, covers all of the area formerly zoned Business "A" on the east side of Lakeville Road, except the 100 by 100-foot parcel at the southeast corner of Northern Boulevard and Lakeville Road which is occupied by a gasoline station. The east parcel also takes in a few feet of **[***4]** the former Business "B" area and includes lots outside the village boundary but contiguous with the eastern boundary of the parcel which give access from the parcel to Summer Avenue. The east parcel has 228-foot frontage on Northern Boulevard, 324-foot frontage on Lakeville Road, and is approximately two acres in size. It was used as a hotel and when acquired by

plaintiff was in use as a restaurant. The lease permits the landlord to withdraw from its terms the land fronting on Lakeville **[**158]** Road to a depth of 100 feet at any time upon 30 days' notice. The remainder of the property formerly zoned Business "B" on the east side of Lakeville Road is used as a nursery school. There is a drop in grade of some 15 feet from Summer Avenue to Lakeville Road.

The second subject parcel, hereafter referred to as the west parcel, is about two and one-half acres in size and includes 20 lots which front on the west side of Lakeville Road beginning at a point 105 feet south of Northern Boulevard and run south for 400 feet, and Lots 39, 40, 41 and 45 through 59 inclusive fronting on University Place. University Place is the next street west of Lakeville Road and, though plaintiff does **[***5]** not own Lots 42, 43 and 44, most of the University Place lots are contiguous to most of the Lakeville Road lots. The plaintiff also owns a parcel, not involved in this proceeding, at the southeast corner of University Place and Northern Boulevard, fronting 135 feet on Northern Boulevard which is joined to the west parcel by a neck of land 10.5 feet wide. All of the west parcel is now vacant land. On the southwest corner of Lakeville Road and Northern Boulevard is a gasoline station. The land **[*267]** fronting on Lakeville Road south of the west parcel a distance of 260 feet to University Road is occupied by two former residences now used for business purposes and a taxpayer containing five small stores. The land fronting on University Place a distance of 200 feet to University Road is occupied by residences. There is a drop in grade of some 15 feet from Lakeville Road to University Place.

Plaintiff assembled the properties thus described in 1951. On June 30, 1960, he applied for permits to erect a bowling alley and a junior department store on the west parcel. The application was denied July 25 for reasons not here material. On June 21, 1960, the Village Planning Commission **[***6]** recommended rezoning the area so that the business areas would be limited to a depth of 150 feet along Northern Boulevard and along each side of Lakeville Road, and that the remainder be rezoned Residence "C". On July 5, 1960, a joint meeting of the Planning Commission and the Board of Trustees was held at which Hugh Pomeroy, consultant to the village, was present. He recommended that the entire area except the Northern Boulevard frontage and the existing business uses south of the west parcel be rezoned residential. On July 27, 1960, the ordinance was amended in conformance with that recommendation. Except for the northernmost 100 feet of the east parcel, the two parcels are now in Residence "C" district, in which permitted uses are one-family dwellings, including accessory professional office use, churches, public schools or libraries or municipal buildings, truck gardening and nurseries. Plaintiff attacks the 1960 rezoning as (1) not in accordance with a comprehensive plan, (2) confiscatory, and (3) discriminatory.

The phrase "in accordance with a comprehensive plan" may be understood to mean (1) conforming to a master plan, (2) broad in scope **[**159]** of coverage, (3) **[***7]** all inclusive in control of use, height and area, or (4) internally consistent zoning based on a rational underlying policy (Haar, "In Accordance With a Comprehensive Plan", 68 Harv. L. Rev. 1154). The second and third meanings are not here involved. As to the first, the only zoning case found in which conformance to a master plan has been considered is *Matter of Fornaby v. Feriola (18 A D 2d 215)* in which the ordinance specifically provided that "use shall not conflict with the direction of building development in accordance with any Master Plan". Most New York cases concerned with the meaning of the phrase have dealt with spot zoning and, while adopting no clear definition, have analyzed the ordinance and the fact situation presented in terms of consistency and rationality (*Rodgers v. Village of Tarrytown, 302 N. Y. 115, 124*; **[*268]** *Connell v. Town of Granby, 12 A D 2d 177*; *Twenty-One White Plains Corp. v. Village of Hastings-on-Hudson, 14 Misc 2d 800*, affd. *9 A D 2d 934*; *Linn v. Town of Hempstead, 10 Misc 2d 774*; *Santmyers v. Town of*

Oyster Bay, 10 Misc 2d 614; *Soule v. Town of Perinton, 152 N. Y. S. 2d 734*, app. dsmd. **[***8]** *2 A D 2d 834*).

The village relies on the statement of "developmental policy" incorporated in its ordinance in 1958, which reads as follows:

"Taking into account considerations of

"(a) the conservation of existing and potential property values in the Village:

"(b) the character of existing development in the Village:

"(c) the physical characteristics of the terrain of the Village and the suitability of the land of the Village for various uses:

"(d) the physical situation of the Village and the functional relationships of the uses of the land therein to the existing and prospective development of the inter-community area consisting of the Great Neck-Manhasset areas and adjoining areas in Nassau County, New York

"it is determined

"(a) that the most appropriate predominant use of land throughout the Village consists of low-density one-family residential development, carefully regulated as to quality;

"(b) that all other uses in the Village shall be either

"1. related to such residential use in a community sense, such as schools, churches, and other community institutions; or

"2. economically related to such residential use by reason of contributing to a tax base for **[***9]** the Village that will make possible the adequate provision of the public **[**160]** facilities and services that are necessary for sound residential development;

"(c) that all such non-residential uses shall be limited in location, size and character to the extent that they will satisfactorily perform their respective functions, as aforesaid, in a manner that will not detract from the predominatly [*sic*] low-density one-family residential character of the Village or hinder further development of like nature and quality."

It argues that retail service uses are not encompassed within that statement. The argument is somewhat disingenuous, however, for (1) had the village fathers so construed the statement they would have amended the ordinance in 1958 to exclude such uses from the permissible ones, and (2) continuance of the **[*269]** existing retail service uses south of the west parcel would, *because inconsistent with the statement*, discriminate against the property that was rezoned.

While the statement does not entirely exclude retail service uses, it does establish the underlying policy of the zoning ordinance. The evidence shows that Lakeville Road in the area **[***10]** of the subject parcels is now a source of traffic difficulty and that the difficulty would be increased by business uses on the subject parcels. Plaintiff's argument that there must be "some very important reason" for a change in zoning has long ago been discredited (Village Law, § 179; *Rodgers v. Village of Tarrytown, 302 N. Y. 115, 121*, *supra*; *Levitt v. Incorporated Vil. of Sands Point, 6 N Y 2d 269, 273)*, but if such a reason were required the traffic problem is quite real and is a valid basis for action by a board charged with adopting

regulations "designed to lessen congestion in the streets" and "to facilitate the adequate provision of transportation" (Village Law, § 177). Moreover, residential zoning is consistent not only with the policy established by the statement but with the actual use of land along Lakeville Road within the village. Nor in view of the shopping available in nearby areas outside the village, and of the fact that the last commercial building erected in the area of the subject parcels was built in 1956, can the court say that the Village Board was arbitrary in its conclusion that more shopping facilities in that area are not required. **[***11]** The court concludes that the 1960 ordinance amendment does not violate the statutory mandate that it "be made in accordance with a comprehensive plan."

The claim that the amendment is as to plaintiff's properties confiscatory is predicated on the reduction in value of the properties as a result of the zoning and the claim that Residence "C" zoning precludes use of the properties for any use for which reasonably adaptable. The village having upzoned the subject properties the court concludes, on the reasoning set forth on this point in *Chusud Realty Corp. v. Village of Kensington (40 Misc 2d 259)* decided herewith, that evidence of values before and after the rezoning is relevant and that the village's motion to strike that testimony must be denied. It finds the value of the east parcel zoned for business to be, in round figures, $ 425,000 and under present zoning to be $ 165,000, a reduction of $ 260,000. It finds the value of the west parcel zoned for business to be, in round figures, $ 250,000, and under present zoning to be $ 46,000, a reduction of $ 204,000. [In arriving at present values the court in light of *Scarsdale Supply Co. v. Village of Scarsdale (8 [***12] N Y 2d 325)* has given no consideration **[*270]** to the value of the nonconforming use of the east parcel. For reasons hereafter indicated, it has accepted plaintiff's values as to the west parcel but defendant's values as to the east parcel.] It further finds that plaintiff's investment in the east parcel is $ 160,000, and in the west parcel, including brokerage, legal fees and taxes $ 65,000. While the reductions in value are substantial and while there is a partial loss of investment as to the west parcel, *Hadacheck v. Sebastian (239 U.S. 394)* which sustained an ordinance notwithstanding a reduction in value from $ 800,000 to $ 60,000, and *Levitt v. Incorporated Vil. of Sands Point (6 N Y 2d 269*, *supra*) make clear that neither factor by itself constitutes confiscation. Against the loss of the property owner is to be balanced the public welfare; other factors to be considered are: the character of the neighborhood, the zoning and use of properties nearby, the suitability of the subject property for the uses to which restricted, the extent to which removal of the restriction will detrimentally affect nearby property, the length of time since structures of **[***13]** the type permitted by the restriction have been built in the area (see *Chusud Realty Co. v. Village [**161] of Kensington, 40 Misc 2d 259*, *supra*).

With respect to the east parcel, the court finds the ordinance not confiscatory. Except for the Northern Boulevard frontage which is still zoned business and the retail service uses south of the west parcel, the character of the neighborhood is still residential. The nursery school use to the south is not detrimental to a residential use; the grade of the property would not prevent the building of salable residences; there is access from Sumner Street and the size and shape of the residential portion of the parcel is such that a plot plan with access from Sumner Street and which would require no one to back out onto Lakeville Road seems feasible, or at least has not been demonstrated to be infeasible. The proximity of the Northern Boulevard business uses is not so detrimental an influence in view of the Sumner Street access and the possibility of screening as to preclude residences. The area may fairly be compared with the Alfieri property on the southwest corner of Lakeville Road and University Road, which sold **[***14]** on November 16, 1961 for $ 1 a square foot and on which a residence has been erected. The detriment to public welfare if traffic stemming from business use of the **[**162]** east parcel is added to the existing traffic problem is substantial. Though a reduction of $ 250,000 in value is also substantial there is, short

of actual and substantial expenditures, no vested right in a zoning classification (*New York Trap Rock Corp. v. Town of Clarkstown, 1 A D 2d 890*, affd. *3 N Y 2d 844*; *Town of [*271] Hempstead v. Lynne, 32 Misc 2d 312*) and it has not been shown that residential zoning precludes use to which the property is reasonably adaptable.

With respect to the west parcel, the situation is, however, quite different. The gasoline station on the north, the retail service uses on the south and the Lakeville Road traffic make the Lakeville Road frontage undesirable for residences. Recognizing the latter factor, the village suggests that residences on the Lakeville Road lots could be given access through University Place by driveways or driveway easements. The suggestion overlooks the modest character of the residences now on the west side of University Place, **[***15]** the undesirability of "piggyback" homes to most buyers, the problem, particularly in snowy weather, created by the grade of the driveway that would be required. The dilemma of such access or the frustration of becoming embroiled in Lakeville Road traffic, particularly in that created by cars backing out of the retail service area on the south, differentiates the west parcel from the Alfieri property (access to which is from University Road) and warrants acceptance of plaintiff's valuation of these plots. As for the University Place frontage, Lots 39, 40 and 41 would be unusable except as adjuncts of Lakeville Road plots, a use which would add little to the selling price. Moreover, the character of the existing residences on the west side of University Place would add to the difficulty of selling residences on the University Place frontage at prices consistent with building costs and the cost of the land involved. Removal of the residential restriction can have relatively little detrimental effect on nearby properties in view of the presence of the retail services uses and the fact that until 1960 the west parcel was entirely zoned for business. While the Alfieri residence has **[***16]** recently been built nearby, it is not comparable for the reasons indicated above. The court concludes that the shape of the west parcel, its terrain and its surroundings differentiate the west parcel from the east parcel, that as to the west parcel plaintiff has sustained its burden of showing that residential zoning precludes use for any purpose to which it is reasonably adaptable, and that, because of that fact, and notwithstanding the public benefit involved in such zoning, it cannot be sustained.

There exists a further reason for invalidating the ordinance: in failing to reclassify the property south of the west parcel now devoted to retail service uses, it denies plaintiff equal protection of the law. Discrimination is not per se invalid, but discrimination without reasonable basis in classification is. That the property is now devoted to business **[**163]** use furnishes a basis for **[*272]** according it nonconforming status; indeed, an ordinance failing to protect existing nonconforming uses may be a denial of due process (*Town of Somers v. Camarco, 308 N. Y. 537*; cf. *Matter of Harbison v. City of Buffalo, 4 N Y 2d 553* and *Town of Somers v. Camarco [***17] Contrs., 24 Misc 2d 673*, affd. *12 A D 2d 977* and *13 A D 2d 531*; but, see, *Matter of Engelsher v. Jacobs, 5 N Y 2d 370, 375)*. "The rationalization of exempting previously existing non-conforming uses from the requirements of the ordinance is that vested rights have been obtained by the owner which cannot summarily be liquidated, that the zoning statutes and the ordinance as enacted contemplate their eventual elimination either through obsolescence or through the provisions against rebuilding in case of destruction, or the prohibition of alterations, repairs, enlargement of use and similar restrictions, all of which have been held valid." (Rathkopf, Law of Zoning and Planning [3d ed.], pp. 7-19.) Due process requires the protection of existing uses, but not their exemption from the zoning plan (*Molnar v. Henne & Co., 377 Pa. 571*; see *Stone v. Cray, 89 N. H. 483*; *Sampere v. City of New Orleans, 166 La. 776*, affd. *279 U.S. 812*). In according the retail service use properties business classification, the village granted to their owners not the limited right to continue existing use but the very much more valuable right to change the use of their

properties **[***18]** to any purpose permissible in a business zone. Neither the surrounding residential uses, nor the nature of the traffic problem, nor any other circumstances with respect to the retail service use properties, other than their present nonconforming uses, differentiates them from the west parcel. No distinction can be drawn on the basis of the former Business "A" and Business "B" zoning, for part of plaintiff's west parcel was in the same zone (Business "B") as was the retail service use area. The court is as to the west parcel "able to say that there is 'no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched'" (*Watson v. Maryland, 218 U.S. 173, 179)*. The ordinance is, therefore, discriminatory as to the west parcel.

The ordinance as enacted also discriminated against the east parcel for the reasons above stated and for the further reason that the greater part of the restaurant use is in the area zoned residential. However, there is, as above indicated, a sufficient difference between the east parcel and the west parcel to warrant their being differently zoned. In view of that fact and of the court's holding that **[***19]** the west parcel and the retail service use area must be treated similarly, the apparent discrimination in the ordinance as enacted becomes unreal. The difference **[*273]** between the **[**164]** east and west parcels furnishes reasonable basis for treating the east parcel differently than the retail service use area.

Judgment will, therefore, be entered declaring Ordinance No. 60 unconstitutional as to the west parcel but constitutional as to the east parcel.

End of Document

Annexed to Foregoing Document-
Appendix: August 26, 2019 City Club Submission (R. 002017-002019)
[pp. 2843 - 2845]

FILED: NEW YORK COUNTY CLERK 02/16/2021 01:36 PM INDEX NO. 160565/2020
2019-94-BZ & 2019-89-A 08/26/2019
NYSCEF DOC. NO. 48 RECEIVED NYSCEF: 02/16/2021

NYC Board of Standards and Appeals

BSA SUBMISSION NOTICE

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

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

Subject Property/
Address: 36 West 66th Street

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

Submitted by (Full Name): Charles N. Weinstock

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

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

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

List of items that are being voided/superseded: _____

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

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

Brief Description of submitted material: _____

List of items that are being voided/superseded: _____

MASTER CASE FILE INSTRUCTIONS

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

R. 002017

JOHN R. LOW-BEER
Attorney-at-Law
415 8th Street
Brooklyn, New York 11215

Phone: 718-744-5245 Email: jlowbeer@yahoo.com

August 26, 2019

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

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

Dear Honorable Members of the Board:

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

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

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

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

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

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

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

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

Very truly yours,

/s/

John R. Low-Beer

Charles N. Weinstock

c: Michael J. Zoltan, Esq., NYC Dept. of Buildings
David Karnovsky, Esq., Fried, Frank, Harris, Shriver & Jacobson
Susan Amron, Esq., NYC Dept. of City Planning
Stuart A. Klein, Esq., Klein Slowick PLLC

Annexed to Foregoing Document-
Appendix: August 28, 2019 LandmarkWest! Reply Statement (R. 002020-002022)
[pp. 2846 - 2848]

FILED: NEW YORK COUNTY CLERK 02/16/2021 01:36 PM INDEX NO. 160565/2020
NYSCEF DOC. NO. 49 RECEIVED NYSCEF: 02/16/2021

NYC Board of Standards and Appeals

BSA SUBMISSION NOTICE

Date: 8/28/2019 Examiner's Name: T. Matias

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

Subject Property/
Address: 36 West 66th Street, a/k/a 50 West 66th Street, Manhattan, Block 1118, Lot 45

Applicant Name LandMark West!

Submitted by (Full Name): Klein Slowik PLLC / Mikhail Sheynker, Esq.

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

- ◯ Response to issues/questions raised by the Board at prior hearing
- ◯ Response to request made by Examiner
- ◉ Other: Reply Statement

Brief Description of submitted material: _____

List of items that are being voided/superseded: _____

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

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

Brief Description of submitted material: _____

List of items that are being voided/superseded: _____

MASTER CASE FILE INSTRUCTIONS

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R. 002020

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Ext. 111
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REPLY STATEMENT

BSA Calendar No: 2019-94-A

Premises: 36 West 66th Street, a/k/a 50 West 66th Street, Manhattan Block 1118, Lot 45 ("the Parcel")

Determination Challenged: Issuance of Permit No. 121190200-01-NB ("the Permit")

Appellant LandMark West! ("LW!") submits this reply statement to address the portion of the Department of Buildings reply statement, dated August 27, 2019, arguing that the issue of FAR deductions for the footprint of the mechanical equipment is not ripe for the Board's review because the DOB previously rescinded the November 19, 2018 ZRD2. The DOB apparently has misread LW!'s supplemental statement of fact and misunderstood the objection raised by the Board at the hearing. The Board voiced concern that the issue of propriety of FAR deductions with regard to the footprint of the mechanical equipment was not raised on this appeal in LW!'s statement of facts, not that the issue was not ripe for theBoard's consideration. In fact, LW! appealed from the issuance of the permit on April 11, 2019, which is a final determination pursuant to 1 RCNY §101-15 (a)(3). An appeal from the issuance of a permit may bring up all relavant issues, including the propriety of FAR deductions included in the April 4, 2019 ZD1 Form, which LW! did raise on this appeal. The reference to the November 19, 2018 ZRD2 was not made for jurisdictional purposes but to clarify that LW! properly raised the subject issue in its original statement of facts and is entitled to have the DOB request and review the shop

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drawings and determine the actual floor area and space dedicated to the mechanical equipment, which, Developer claims, inexorably leads to the FAR deductions.

Accordingly LW! requests that the Board continue its appeal to consider the issue of the propriety of the FAR deductions taken by the Developer on its April 4, 2019 Zoning Diagram.

Dated: August 28, 2019
New York, New York

Mikhail Sheynker, Esq.

Annexed to Foregoing Document-
Appendix: DOB's August 27, 2019 Submission (R. 002023-002047)
[pp. 2849 - 2873]

FILED: NEW YORK COUNTY CLERK 02/16/2021 01:36 PM INDEX NO. 160565/2020
NYSCEF DOC. NO. 50 RECEIVED NYSCEF: 02/16/2021

Date: 8/27/19 Examiner's Name: Toni Matias

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

Subject Property/
Address: 36 West 66th Street, MN

Applicant Name John Low-Beer on behalf of City Club of New York and Klein Slowick, PLLC on behalf of Landmark West!

Submitted by (Full Name): Michael Zoltan, Assistant General Counsel, Department of Buildings

A) The material I am submitting is for a case currently **IN HEARING,** scheduled for 9/10/19. The reason I am submitting this material:

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

Brief Description of submitted material: Leter statement on behalf of the Department of Buildings in response to Appellants' August 21, 2019 submissions to the Board and in response to issues discussed during the 8/6/19 public hearing.

List of items that are being voided/superseded: _____

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

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

Brief Description of submitted material: _____

List of items that are being voided/superseded: _____

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R. 002023

NYC Buildings

Melanie E. La Rocca
Commissioner

Michael J. Zoltan
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+1 212 393 2642 tel
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August 27, 2019

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

RE: Cal. Nos. 2019- 89-A and 2019-94-A
Premises: 36 West 66th Street, Manhattan
Block: 1118; Lot: 45

Dear Honorable Members of the Board:

On August 6, 2019 the Board heard statements from The City Club of New York, Landmark West! (collectively, "the Appellants"), the Department of Buildings, West 66th Sponsor LLC, and members of the public regarding the referenced appeals.

This submission is in reply to Appellants' August 21, 2019 post-hearing statements and the Appellants' arguments generally.

Respectfully submitted,

Michael J. Zoltan

cc: Constadino (Gus) Sirakis, P.E., First Deputy Commissioner
Martin Rebholz, R.A., Borough Commissioner, Manhattan
Scott Pavan, R.A., Borough Commissioner, Development HUB
Mona Sehgal, General Counsel
Felicia R. Miller, Deputy General Counsel
Susan Amron, General Counsel, Department of City Planning
John R. Low-Beer, Esq.
(On behalf of City Club Appellants)
Stuart Klein, Esq.
(On behalf of Landmark West Appellants)
David Karnovsky, Fried, Frank, Harris, Shriver & Jacobson LLP
(On behalf of West 66th Street Sponsor LLC)

FILED: NEW YORK COUNTY CLERK 02/16/2021 01:36 PM INDEX NO. 160565/2020
NYSCEF DOC. NO. 50 RECEIVED NYSCEF: 02/16/2021

NYC Buildings

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Commissioner

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August 27, 2019

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

RE: Cal. Nos. 2019- 89-A and 2019-94-A
Premises: 36 West 66th Street, Manhattan
Block: 1118; Lot: 45

Dear Honorable Members of the Board:

The Department of Buildings (the "Department") respectfully submits this third statement in response to the referenced appeals by John Low-Beer on behalf of The City Club of New York, James C.P Berry, Jan Constantine, Victor A. Kovner, Agnes C. McKeon, and Arlene Simon (collectively "City Club Appellants") and by Klein Slowick, PLLC on behalf of Landmark West! ("Landmark West Appellants") (collectively, the "Appellants"), challenging the Department's April 4, 2019 approval of a post-approval amendment application (the "PAA") which changed the scope of permit 121190200-01-NB (the "Permit") authorizing construction of a new building located at 36 West 66th Street New York, New York (the "Proposed Building"). Appellants allege that the Department's approval of the PAA is inconsistent with the New York City Zoning Resolution (the "ZR").

On August 6, 2019, the Board heard statements from the Appellants, the Department, West 66th Sponsor LLC, (the "Owner"), and members of the public regarding the referenced appeals. Subsequently, on August 21, 2019, all parties submitted post-hearing submissions to the Board. This statement is in response to Appellants' August 21, 2019 submissions, specifically concerning cannons of statutory construction, a topic that the Board requested the Department address in this submission, and arguments by the Appellants generally.

For the reasons explained below, the Department respectfully requests that the Board affirm the Department's determination to approve the PAA and uphold the underlying Permit.

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I. THE PLAIN LANGUAGE OF ZR § 82-34 (BULK DISTRIBUTION) CLEARLY AND UNAMBIGUOUSLY APPLIES TO THE ENTIRE SPECIAL LINCOLN SQUARE DISTRICT

As stated in the Department's two previous submissions to the Board and at the August 6, 2019 public hearing, ZR § 82-34 applies across the entire Special Lincoln Square District without differentiation between underlying zoning districts. This is seen in the plain language of the provision. ZR § 82-34 reads: "[w]ithin the Special District, at least 60 percent of the total *floor area* permitted on a *zoning lot* shall be within *stories* located partially or entirely below a height of 150 feet from *curb level*." As noted in the Department's August 21, 2019 submission to the Board, under ZR § 12-02 direct statements of zoning district applicability are a requirement of limiting a provision's zoning district applicability. The sheer lack of any verbiage indicating that the provision is limited to the C4-7 (R10 equivalent) Zoning District portion of the Special Lincoln Square District, coupled with the prefatory language of "within the Special District," clearly and unambiguously shows that, when read plainly (and indeed properly) ZR § 82-34 applies to the entire Special Lincoln Square District.

City Club Appellants erroneously attempt to sow ambiguity into the language of ZR § 82-34 by conflating "total floor area permitted on a zoning lot" with "total floor area permitted [to be utilized by the subject building] on a zoning lot." In fact, ZR § 82-34 clearly ties the bulk distribution requirement to floor area on the zoning lot—not the building itself. [1]

City Club Appellants read language into the ZR which plainly is not there. The ZR does not limit § 82-34 to the C4-7 portion of the Special Lincoln Square District, and therefore the Department acted appropriately in not limiting the provision's applicability.

II. WHEN THE ZR IS CLEAR AND UNAMBIGUOUS, LEGISLATIVE HISTORY SHOULD NOT BE ANALYZED

Given that the plain language of ZR § 82-34 is clear and unambiguous, the Board need not—in fact should not—investigate the legislative intent by turning to external sources. During the August 6, 2019 public hearing, members of the Board pondered whether an analysis of legislative history was permitted in the presence of unambiguous language. The answer in this case is no.

[1] Indeed, the aggregate floor area for a merged zoning lot will always include more floor area than is permitted for a building on one portion of the zoning lot. Floor area utilized by other buildings on the zoning lot is not permitted to be used for new buildings; however, the floor area contained within those other buildings, below the 150-foot height limit is certainly included in the calculation of 60 percent of the total floor area below a height of 150 feet laid out in ZR § 82-34.

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This rule is clearly laid out, *vis-à-vis* the ZR, in *Raritan Dev. Corp. v. Silva*, 91 N.Y.2d 98 (1997).[2] In *Raritan*, the Court of Appeals reaffirmed the "well-respected plain meaning doctrine" of statutory construction. *Id.* at 106. The Court emphasized the importance of legislative intent, but clarified that, "where the statutory language is clear and unambiguous, *the court should construe it so as to give effect to the plain meaning of the words used*." *Id.* at 107. (emphasis in original) (internal citations omitted). In fact, in *Raritan*, the Court of Appeals went so far as to declare that courts should not drift into canons of construction to impermissibly broaden the scope of a statute, "because no rule of construction gives the court discretion to declare the intent of the law *when the words are unequivocal*." *Id.* (emphasis in original) (internal citations omitted). A court may not adopt a legislative hand in interpreting unambiguous statutes. The legislature is "best suited to evaluate and resolve" any unintended consequences of the plain language. *Id.*

To put it simply, the Court of Appeals held that, when the language of a statute (including the ZR) is clear, the language itself is the only indicator of legislative intent. While legislative history shadows every statute, the Board should not read such legislative history absent ambiguity in the statute.

City Club Appellants, in an effort to show that this rule should not be applied in the instant case, cite *City v. Stringfellow's of New York*, 253 A.D.2d 110 (1st Dep't 1999).[3] In *Stringfellow's*, the Appellate Division, First Department, overturned the New York Supreme Court's decision to interpret a provision of the ZR that had been based on the plain language of the ZR's definition of "adult establishment." City Club Appellants cite statutory interpretive guidance from the decision: "the fundamental rule in construing any statute, or in this case an amendment to the City's Zoning Resolution, is to ascertain and give effect to the intention of the legislative body, here the New York City Council." *Id.* at 115-116. However, City Club Appellants strategically omit the crucial remaining sentences of the paragraph:

> "[s]uch intent is ascertained from the words and language used in the statute and if the language thereof is unambiguous and the words plain and clear, there is no occasion to resort to other means of interpretation. Only when words of the statute are ambiguous or obscure may courts go outside the statute in an endeavor to ascertain their true meaning." *Id.* at 116.

The *Stringfellow's* Court did in fact overturn the Supreme Court's ruling, but only because it found that the text as written wasn't actually clear and unambiguous, and therefore legislative

[2] A copy of *Raritan* was attached to Owner's July 24, 2019 submission in Appendix A.
[3] A copy of *Stringfellow's* was attached as an exhibit to City Club Appellants' August 21, 2019 submission to the Board.

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history was necessary to fill in the gaps. Without a finding that the statute was ambiguous, even the First Department in *Stringfellow's* would not have been able to delve into legislative history.

City Club Appellants also state that the Court of Appeals has not mentioned the plain meaning doctrine in the context of "zoning" cases since 1999.[4] However, a search shows that the Court of Appeals has, as recently as two years ago, decided a land use case based on this specific notion. In *Matter of Avella v. City of New York*, 29 N.Y.3d 425 (2017), the Court of Appeals reviewed whether the then-proposed "Willets West" comported with the New York City Administrative Code § 18-118.[5] The question turned on whether the language of the statute authorized the construction of a shopping mall or movie theater in a location which was originally intended for Shea Stadium. Like the predecessor cases, the Court of Appeals instructed that statutes should be interpreted to effectuate legislative intent and that the "text of a statute is the 'clearest indicator' of such legislative intent." *Id.* at 434. (internal citations omitted).

The Court of Appeals proceeded to find that the plain language of the Administrative Code did not authorize the proposed construction and therefore it was not permitted. The Court of Appeals understood that, even though an interpretation of a provision contrary to the plain language may lead to laudable goals which would "immensely benefit the people of New York City," the Court could not consider outside information in the presence of plain unambiguous text, and that the legislature is the proper route to achieve this goal but it must do so "through direct and specific legislation." *Id.* at 440.

Furthermore, it is also important to note the prevalence of the Appellate Division's reliance on the doctrine of plain meaning in zoning cases: *Erin Estates, Inc. v. McCracken*, 84 A.D.3d 1487, 1489 (2011) ("Unambiguous language is to be construed to give effect to its plain meaning"); *Oakwood Prop. Mgmt., LLC v. Town of Brunswick*, 103 A.D.3d 1067, 1071 (2013) ("In reviewing the ordinance, however, we must 'read[ ] all of its parts together,' construe any unambiguous language contained therein in such a fashion as to 'give effect to its plain meaning' and avoid a construction that 'render[s] any of [the] language [employed] superfluous'"); *Watkins v. Town of N. E. Zoning Bd. of Appeals*, 136 A.D.3d 836, 837 (2016) ("'Where the statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used'"). Moreover, there has been no consequent Court of Appeals case that overturned, modified, or limited this statutory cannon as applied to the ZR. Therefore, contrary to City Club Appellants' assertions, the plain meaning doctrine is alive and well when interpreting land use and zoning cases.

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[4] This is not accurate even with respect to Court of Appeals decisions limited to those identified as "zoning" matters as opposed to "land use" matters. In *Tall Trees Const. Corp. v. Zoning Bd. of Appeals of Town of Huntington*, 97 N.Y.2d 86, 91 (2001), the Court of Appeals stated, "[w]here the language of a statute is clear and unambiguous, courts must give effect to its plain meaning."

[5] A copy of *Avella* was attached as an exhibit to City Club Appellants' August 1, 2019 submission to the Board.

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The Appellants would have the Board introduce district limitations on ZR § 82-34 which are not found within the plain reading confines of the ZR. This is a request that the Court of Appeals has specifically deemed impermissible, stating "BSA has (sometimes) grafted onto the language of the current Zoning Resolution an addendum of its own…[t]ypically, we have declined to uphold such an interpretation. *Raritan*, *supra*, at 104-05. Just as in *Raritan,* where a party asked the Court of Appeals to read language into the ZR contrary to plain reading, based on legislative history, and the Court of Appeals refused, so too here, where the Appellants have asked the Board to read in language not found in the ZR, the Board should refuse.

III. THE BOARD CORRECTLY STATED THAT THE TWO-DIMENSIONAL MECHANICAL EQUIPMENT COVERAGE IS NOT A FINAL DETERMINATION BEFORE THE BOARD IN THE CONTEXT OF THE INSTANT APPEALS

During the August 6, 2019 public hearing, and subsequently in their August 21, 2019 post-hearing submission to the Board, Landmark West Appellants request that the Board review the floor area deductions attributed to mechanical equipment in the Proposed Building. During the public hearing, the Board stated that this issue was not ripe for Board review since there was no final determination issued by the Department on this matter for which the Appellants have appealed.

In response, Landmark West Appellants cite a November 19, 2018 ZRD2 denial signed by Development Hub Borough Commissioner, Scott Pavan. Landmark West Appellants state that since this ZRD2 was included in their original submission, it is part of the record before the Board. To clarify, this ZRD2 denial form was a response to a previous public challenge submitted by Landmark West Appellants to the Department pursuant to 1 RCNY § 101-15. The referenced ZRD2 was subsequently appealed to the Board under Cal. No. 2018-199-A. However, the Department ultimately issued an "Intent to Revoke Approval" letter to the Owner based on the original Zoning Diagram. In the Intent to Revoke Approval letter, the Department explicitly stated that "the ZRD2 issued on November 19, 2018, in response to a public challenge pursuant to 1 RCNY § 101-15, of the Subject ZD1, is hereby rescinded."[6] Since the ZRD2 was rescinded, the Board rendered BSA Cal. No. 2018-199-A as moot. Therefore, Landmark West Appellants' assertion that the ZRD2 is a final determination before the Board is incorrect.

[6] Landmark West Appellants attached a copy of the "Intent to Revoke Approval" letter as Exhibit I to their May 14, 2019 submission to the Board.

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IV. CONCLUSION

Based on the foregoing, the Department respectfully requests that the Board affirm the determination to issue the Permit.

Respectfully submitted,

Michael J. Zoltan

cc: Constadino (Gus) Sirakis, P.E., First Deputy Commissioner
Martin Rebholz, R.A., Borough Commissioner, Manhattan
Scott Pavan, R.A., Borough Commissioner, Development HUB
Mona Sehgal, General Counsel
Felicia R. Miller, Deputy General Counsel
Susan Amron, General Counsel, Department of City Planning
John R. Low-Beer, Esq.
(On behalf of City Club Appellants)
Stuart Klein
(On behalf of Landmark West Appellants)
David Karnovsky, Fried, Frank, Harris, Shriver & Jacobson LLP
(On behalf of West 66th Street Sponsor LLC)

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Appendix A – Cited Case Law

- Tall Trees Const. Corp. v. Zoning Bd. of Appeals of Town of Huntington, 97 N.Y.2d 86 (2001).
- Erin Estates, Inc. v. McCracken, 84 A.D.3d 1487 (2011).
- Oakwood Prop. Mgmt., LLC v. Town of Brunswick, 103 A.D.3d 1067 (2013).
- Watkins v. Town of N. E. Zoning Bd. of Appeals, 136 A.D.3d 836 (2016).

761 N.E.2d 565, 735 N.Y.S.2d 873, 2001 N.Y. Slip Op. 09254

KeyCite Yellow Flag - Negative Treatment
Disagreement Recognized by Ridge Transport Systems, Inc. v. City of New York, N.Y.Sup., August 20, 2010

97 N.Y.2d 86
Court of Appeals of New York.

In the Matter of TALL TREES CONSTRUCTION CORP., Appellant,
v.
ZONING BOARD OF APPEALS OF THE TOWN OF HUNTINGTON, Respondent.

Nov. 19, 2001.

Synopsis

Property owner brought Article 78 proceeding after town zoning board of appeals took no action on owner's applications for area variances, based on its tie votes. The Supreme Court, Suffolk County, Peter Fox Cohalan, J., granted petition, annulled determination, and directed that applications be granted. Zoning board appealed, and the Supreme Court, Appellate Division, 262 A.D.2d 494, 692 N.Y.S.2d 110, reversed and remitted. After granting permission to appeal, the Court of Appeals, Wesley, J., held that: (1) when a quorum of a zoning board of appeals is present and participates in the proceedings on a variance application, a tie vote failing to garner a majority to grant the application is in effect a denial, abrogating *Walt Whitman Game Room v. Zoning Bd. of Appeals*, 54 A.D.2d 764, 387 N.Y.S.2d 698; (2) tie votes on applications by four-member quorum of board were thus denials of applications; and (3) board acted arbitrarily and capriciously by denying variance.

Appellate Division reversed, and judgment reinstated.

West Headnotes (13)

[1] **Zoning and Planning**
Determination

Zoning and Planning
Voting; bias and disqualification

When a quorum of a zoning board of appeals is present and participates in the proceedings on a variance application by actually casting votes, a tie vote failing to garner a majority to grant the application is not "nonaction" but, in effect, a denial; abrogating *Walt Whitman Game Room v. Zoning Bd. of Appeals*, 54 A.D.2d 764, 387 N.Y.S.2d 698. McKinney's General Construction Law § 41; McKinney's Town Law § 267–a.

2 Cases that cite this headnote

[2] **Zoning and Planning**
Power and Authority

Zoning and Planning
Discretion in general

Zoning boards of appeals were created to interpret, to perfect, and to insure the validity of zoning through the exercise of administrative discretion.

Cases that cite this headnote

[3] **Zoning and Planning**
Nature and extent of power

Zoning and Planning
Hardship, Loss, or Injury

Zoning boards of appeals, which are often regarded as a safety valve, are invested with the power to vary zoning regulations in specific cases in order to avoid unnecessary hardship or practical difficulties arising from a literal application of the zoning law.

3 Cases that cite this headnote

[4] **Statutes**
Plain language; plain, ordinary, common, or literal meaning

Statutes
Superfluousness

Where the language of a statute is clear and unambiguous, courts must give effect to its plain meaning, and words are not to be rejected as superfluous.

37 Cases that cite this headnote

[5] **Statutes**
Subject or purpose

Statutes relating to the same subject matter must be construed together unless a contrary

legislative intent is expressed, and courts must harmonize the related provisions in a way that renders them compatible.

13 Cases that cite this headnote

[6] Zoning and Planning

Voting; bias and disqualification

Although the participation of a majority of a zoning board of appeals is necessary for the board to exercise its authority in considering a variance application, as long as a quorum is present and votes, a concurring vote of the majority is not required for that vote to constitute a denial of the application. McKinney's General Construction Law § 41; McKinney's Town Law § 267–a.

3 Cases that cite this headnote

[7] Municipal Corporations

Quorum or number required to be present or act

Provision of General Construction Law which states that the majority of the members of a public board constitute a quorum allows valid action by such a board so long as there is participation by a majority of the whole number, but imposes no specific voting requirement other than majority participation. McKinney's General Construction Law § 41.

1 Cases that cite this headnote

[8] Zoning and Planning

Voting; bias and disqualification

If after participation and voting by a majority of a zoning board of appeals no concurring vote of the majority exists to grant a variance application, the application must be, a fortiori, denied. McKinney's General Construction Law § 41; McKinney's Town Law § 267–a.

3 Cases that cite this headnote

[9] Zoning and Planning

Voting; bias and disqualification

Tie votes of four members of seven-member zoning board of appeals on zoning variance applications, which occurred at meetings in which two members of board voted to grant application, two members voted to deny application, two members were absent, and one member abstained, were in effect denials of applications. McKinney's General Construction Law § 41; McKinney's Town Law § 267–a.

1 Cases that cite this headnote

[10] Zoning and Planning

Area variances in general

Zoning board of appeals acted arbitrarily and capriciously by denying application for minor area variance, through which property owner sought to divide parcel of land into two lots, one of which would be a "flagstaff" lot located behind second lot and with only a narrow strip of land to access adjoining road, where undisputed testimony indicated that existing lot was only one of its size in neighborhood, that lots to be created by subdivision would be indistinguishable from other neighborhood lots, that variances would present no adverse impact on neighborhood or real property values or on environment, and that board had previously granted a similar variance application.

5 Cases that cite this headnote

[11] Zoning and Planning

Decisions Reviewable

Zoning and Planning

Variances and exceptions

Fact that no factual findings either supporting or opposing requested zoning variances were provided by zoning board of appeals did not preclude judicial review of denials of applications, which resulted from tie votes of a quorum of board; in light of tie votes, an examination of the entire record, including the transcript of the meeting at which the vote was taken along with affidavits submitted in Article 78 proceeding challenging denials, could provide a sufficient basis for determining whether the

denial was arbitrary and capricious. McKinney's CPLR 7801 et seq.

5 Cases that cite this headnote

[12] Zoning and Planning

Area variances in general

In determining whether or not to grant area variances, zoning board of appeals is required to engage in a balancing test, weighing the benefit to the applicant against the detriment to the health, safety, and welfare of the neighborhood or community if the area variance is granted.

2 Cases that cite this headnote

[13] Administrative Law and Procedure

Explanation or reasons for change

A decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reasons for reaching a different result on essentially the same facts is arbitrary and capricious.

14 Cases that cite this headnote

Attorneys and Law Firms

***875 *88 **567 Flynn & Flynn, Huntington (Robert J. Flynn, Jr., of counsel), for appellant.

Thomas A. Abbate, P. C., Woodbury (Thomas A. Abbate of counsel), for respondent.

***89 OPINION OF THE COURT**

WESLEY, J.

This case calls into question the effect of repeated tie votes rendered by the Town of Huntington Zoning Board of Appeals on petitioner's application for area variances. We conclude that when a quorum of the Board is present and participates in a vote on an application, a vote of less than a majority of the Board is deemed a denial.

In 1996, petitioner Tall Trees Construction Corporation applied to the seven-member Zoning Board of Appeals for the Town of Huntington for minor area variances, seeking to divide a 1.94 acre parcel of land into two lots, one of which would be a flagstaff lot,[1] and to construct a home on each. The property abuts the lot of Lawrence Lamanna, the vice-chair of the Board. Following a hearing on the application, the Board issued a "NO ACTION" decision when petitioner failed to obtain a majority vote in favor of the application: two members voted to deny the application; two voted to grant the application; two were absent; and Lamanna abstained. The Board ignored petitioner's subsequent letter requesting another vote.

Petitioner then commenced a CPLR article 78 proceeding seeking to annul the Board's decision and to direct the Board to grant the variances. Supreme Court, relying on *Matter of Walt Whitman Game Room v. Zoning Bd. of Appeals*, 54 A.D.2d 764, 387 N.Y.S.2d 698, *lv. denied* 40 N.Y.2d 809, 392 N.Y.S.2d 1026, 360 N.E.2d 1108, held that the Board's tie determination was a nonaction and remitted the matter to the Board for another vote on the application. The Appellate Division affirmed (262 A.D.2d 494, 692 N.Y.S.2d 110). The Board, however, failed to conduct a new vote, and after repeated requests for compliance, ***90** petitioner commenced a contempt proceeding against the Board. Only then did the Board consider the matter. Once again, it filed a "NON–ACTION" determination based on a vote identical to ***876 **568 that rendered in the first.[2] The Board "authorize[d] the applicant to return" for a new hearing on the application.

Petitioner then initiated the present CPLR article 78 proceeding. Supreme Court granted the petition, annulled the Board's second decision and granted the requested variances. The court reasoned that under Town Law § 267–a (4), a tie vote of the Board should be deemed a denial of the variance. It noted that *Matter of Walt Whitman* could not be read to perpetuate an endless cycle of tie votes. Although expressing concern with some of the Board's actions and directives in this case, the Appellate Division reversed the judgment and remitted the matter to the Board for further proceedings, including a new hearing (278 A.D.2d 421, 717 N.Y.S.2d 369). The Appellate Division again concluded that the Board's vote was not a denial of the application because a majority of the Board did not vote either for or against it. We granted leave to appeal, and now reverse.

[1] Petitioner urges that when a quorum of the Board is present and participates in the proceedings on a variance application by actually casting votes, a tie vote failing to garner a majority to grant the application is not "nonaction" but, in effect, a denial. We agree.

[2] **[3]** Zoning Boards of Appeals were created "to interpret, to perfect, and to insure the validity of zoning" through the exercise of administrative discretion (2 Salkin, New York Zoning Law and Practice § 27:08, at 27–14—27–15 [4th ed.]). Often regarded as a "safety valve," Zoning Boards of Appeals are invested with the power to vary zoning regulations in specific cases in order to avoid unnecessary hardship or practical difficulties arising from a literal application of the zoning law (*id.* § 27:09, at 27–15).

General Construction Law § 41 and Town Law § 267–a govern the procedures of a Town Zoning Board of Appeals. Under ***91** General Construction Law § 41, a majority of the members of a public board constitute a quorum and "not less than a majority of the whole number may perform and exercise such power, authority or duty." Town Law § 267–a (4) provides that "[t]he concurring vote of a majority of the members of the [zoning] board of appeals shall be necessary to *reverse* any * * * determination of any * * * administrative official [charged with the enforcement of any zoning ordinance or local law], or to *grant* a use variance or area variance" (emphasis added).

[4] **[5]** Where the language of a statute is clear and unambiguous, courts must give effect to its plain meaning; words are not to be rejected as superfluous (*see, Rosner v. Metropolitan Prop. & Liab. Ins. Co.,* 96 N.Y.2d 475, 479, 729 N.Y.S.2d 658, 754 N.E.2d 760; *Majewski v. Broadalbin–Perth Cent. School Dist.,* 91 N.Y.2d 577, 583, 673 N.Y.S.2d 966, 696 N.E.2d 978; *see also,* McKinney's Cons. Laws of N.Y., Book 1, Statutes §§ 94, 231). We have also recognized that statutes relating to the same subject matter must be construed together unless a contrary legislative *****877** ****569** intent is expressed, and courts must harmonize the related provisions in a way that renders them compatible (*see, Matter of Dutchess County Dept. of Social Servs. v. Day,* 96 N.Y.2d 149, 153, 726 N.Y.S.2d 54, 749 N.E.2d 733; *see also,* McKinney's Cons. Laws of N.Y., Book 1, Statutes § 221).

[6] Applying these principles here, a plain and harmonious reading of the related statutes leads to the conclusion that although the participation of a majority of the Board is necessary for the Board to exercise its authority in considering a variance application, as long as a quorum is present and votes, a concurring vote of the majority is not required for that vote to constitute a denial of the application.

[7] **[8]** General Construction Law § 41 "allows valid action by a body so long as there is *participation* by 'a majority of the whole number' " (*Matter of Wolkoff v. Chassin,* 89 N.Y.2d 250, 254, 652 N.Y.S.2d 712, 675 N.E.2d 447 [emphasis added]). However, other than majority participation, that section imposes no specific voting requirement. On the other hand, Town Law § 267–a (4) mandates a concurring majority vote of the Board in order to "reverse" a determination of the appropriate administrative official (*e.g.,* a Town building inspector) or to "grant" a variance application. Section 267–a (4) conspicuously fails to require the same majority vote concurrence for the *denial* of an application. Thus, if after participation and voting by a majority of the Board, no concurring vote of the majority exists to grant an application, the application must be, a fortiori, denied (*see, Matter of Monro Muffler/Brake v. Town Bd.,* 222 A.D.2d 1069, 635 N.Y.S.2d 882; *see also, Matter of Zagoreos v. Conklin,* 109 A.D.2d 281, 296, 491 N.Y.S.2d 358).

***92** To the extent that *Matter of Walt Whitman,* 54 A.D.2d 764, 387 N.Y.S.2d 698, *supra* holds to the contrary, that decision is not to be followed. In *Walt Whitman,* the same Board issued a nearly identical tie vote on a special use permit application. Applying General Construction Law § 41, the Appellate Division concluded that the vote was equivalent to nonaction. The Court relied on our decision in *Matter of Squicciarini v. Planning Bd.,* 38 N.Y.2d 958, 384 N.Y.S.2d 152, 348 N.E.2d 609. That reliance was misplaced. In *Squicciarini,* only three members of the seven-member Board voted on a motion to deny an application for a special permit, in direct contravention of the statutory requirement of General Construction Law § 41 of majority participation for effective action. Other cases are similarly inapposite (*see, e.g., Matter of Jung v. Planning Bd.,* 258 A.D.2d 865, 686 N.Y.S.2d 147; *Matter of Hoffis v. Zoning Bd. of Appeals,* 166 A.D.2d 850, 563 N.Y.S.2d 183).

We find it curious that this particular Zoning Board of Appeals has a history of "nonaction" tie votes which, in effect, block an applicant's right to judicial review.[3] Adopting the Board's view—that a tie vote on a variance application cannot be deemed a denial—would be contrary to the plain language of the statutes and, as was *****878** ****570** so aptly characterized by Supreme Court, would leave petitioner's application in "zoning purgatory"—a place from which an

applicant can escape only at the whim and pleasure of the Board. That is, most certainly, a result the statutes do not countenance. [4]

[9] **[10]** Having concluded that the tie votes were, in effect, a denial of petitioner's variance applications, we also agree with Supreme Court that the denial of the variances was arbitrary ***93** and capricious and an abuse of discretion (*see, Matter of Fuhst v. Foley,* 45 N.Y.2d 441, 444, 410 N.Y.S.2d 56, 382 N.E.2d 756 [citing *Conley v. Town of Brookhaven Zoning Bd. of Appeals,* 40 N.Y.2d 309, 386 N.Y.S.2d 681, 353 N.E.2d 594]). In this case, the unrefuted evidence in the record is sufficient, as a matter of law, to support our conclusion that the variances should have been granted.

[11] No factual findings, either supporting or opposing the requested variances, were provided by the Board. That, however, does not preclude judicial review of the determination. Courts have recognized that under circumstances where, as here, an application is rejected by a tie vote, "there exists and can exist no formal statement of reasons for the rejection" and, thus, an examination of the entire record, including the transcript of the meeting at which the vote was taken along with affidavits submitted in the article 78 proceeding can "provide a sufficient basis for determining whether the denial was arbitrary and capricious" (*Matter of Zagoreos,* 109 A.D.2d 281, 296, 491 N.Y.S.2d 358, *supra; see also, Matter of Meyer,* 90 N.Y.2d, at 145, 659 N.Y.S.2d 215, 681 N.E.2d 382, *supra* [citing *Matter of Canfora,* 60 N.Y.2d, at 351, 469 N.Y.S.2d 635, 457 N.E.2d 740, *supra*]).

[12] **[13]** Nothing in the record supports the Board's denial of the variances. In determining whether or not to grant area variances, the Board is required "to engage in a balancing test, weighing the 'benefit to the applicant' against 'the detriment to the health, safety and welfare of the neighborhood or community' if the area variance is granted" (*Matter of Sasso v. Osgood,* 86 N.Y.2d 374, 384, 633 N.Y.S.2d 259, 657 N.E.2d 254 [quoting Town Law § 267–b (3)(b)]). Moreover, " '[a] decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reasons for reaching a different result on essentially the same facts is arbitrary and capricious' " (*Knight v. Amelkin,* 68 N.Y.2d 975, 977, 510 N.Y.S.2d 550, 503 N.E.2d 106 [citation omitted]).

Here, a review of the record reveals undisputed testimony from a real estate expert that this was the only lot of its size in the neighborhood; that if the variance to subdivide were granted, one parcel would be greater than one acre (the minimum lot size), the other parcel would be only slightly smaller than one acre and both would be "indistinguishable" from other neighborhood lots; that there are three other lots directly across the street that are smaller; and, finally, that the variances present no adverse impact on the neighborhood or real property values. *****879** ****571** Petitioner also presented unrefuted testimony from the Town's former Director of Environmental Control that there would be no adverse impact on the environment. Petitioner's president testified that the lots would meet all ***94** other zoning requirements, including the side and rear yard setback conditions. Additionally, petitioner presented evidence that the Board had previously granted a similar variance application in the neighborhood and had noted in its decision that flagstaff lots were traditionally given the Board's imprimatur and that the neighborhood contained at least six other such lots.

Aside from general and conclusory assertions, the Board failed to identify any evidence to refute petitioner's claim that this case involves nothing more than a minor variance application which in prior similar circumstances was routinely granted (*see, Matter of T.J.R. Enters. v. Town Bd.,* 50 A.D.2d 836, 376 N.Y.S.2d 586 [citing *Matter of North Shore Steak House v. Board of Appeals,* 30 N.Y.2d 238, 245–246, 331 N.Y.S.2d 645, 282 N.E.2d 606]). Thus, because the benefit of granting the requested variances to petitioner is great and any detriment to the community and neighborhood is de minimis, and because nearly identical variance applications have been approved in the past, we conclude that the Board acted arbitrarily in failing to grant the requested variances.

Accordingly, the order of the Appellate Division should be reversed, with costs, and the judgment of Supreme Court reinstated.

Chief Judge KAYE and Judges SMITH, LEVINE, CIPARICK, ROSENBLATT and GRAFFEO concur.
Order reversed, etc.

All Citations

97 N.Y.2d 86, 761 N.E.2d 565, 735 N.Y.S.2d 873, 2001 N.Y. Slip Op. 09254

Footnotes

1 This is an arrangement of adjacent property where one lot maintains the appearance of an ordinary rectangular parcel and the second parcel is located almost entirely behind the first, with only a narrow strip of land to access the road.

2 We note that the Board's decision stated that the second vote was taken at the first opportunity that all of the members were in attendance. However, the Board does not dispute that the official minutes of the May 21, 1998 meeting, at which the second vote was allegedly taken, make no reference to a vote on petitioner's application. The official minutes also reveal that Board Member Kurtzberg, who is recorded in the Board's decision as voting in favor of the application, was not present at the May 21, 1998 meeting. Board Member Settle who, according to the Board's decision, was absent, actually was present and voted on other applications.

3 The Board's actions also appear to violate Town Law § 267–a (8), which requires that the Board "shall" render its decision "within [62] days after the conduct of said hearing." The Legislature recognized that a specific time period was necessary to "rule out the possibility of a lengthy delay which may cause so substantial a hardship that a favorable decision may be of no value" (Sponsor's Mem. of Assembly Member Arthur J. Kremer, Bill Jacket, L. 1966, ch. 657, at 1). Further, with a prompt Board decision "an applicant would be able to prepare for * * * court review * * * an unfavorable decision so as to have a prompt judicial determination of the merits of his case" (*id.*).

4 We have in at least one other context concluded that a tie vote by a public agency constituted a denial. An application for accidental disability retirement benefits for police officers and firefighters must be approved by a majority of the appropriate fund's Board of Trustees (*see,* Administrative Code of City of N.Y. § 13–216[b]; § 13–316[b]). This Court has long held that a tie vote is deemed a denial of those benefits which is then subject to judicial review (*see, e.g., Matter of Meyer v. Board of Trustees,* 90 N.Y.2d 139, 659 N.Y.S.2d 215, 681 N.E.2d 382; *Matter of Canfora v. Board of Trustees,* 60 N.Y.2d 347, 469 N.Y.S.2d 635, 457 N.E.2d 740; *see also, Matter of City of New York v. Schoeck,* 294 N.Y. 559, 63 N.E.2d 104).

84 A.D.3d 1487
Supreme Court, Appellate Division,
Third Department, New York.

In the Matter of ERIN ESTATES, INC., Appellant,
v.
John McCRACKEN, as Zoning Enforcement Officer of the Town of Erin, et al., Respondents.

May 5, 2011.

Synopsis

Background: Mobile home park operator initiated article 78 proceeding to review determination of zoning board of appeals prohibiting it from placing mobile home for sale on its premises. The Supreme Court, Chemung County, O'Shea, J., dismissed proceeding. Operator appealed.

[Holding:] The Supreme Court, Appellate Division, Garry, J., held that proposal did not violate ordinance.

Reversed.

West Headnotes (5)

[1] Zoning and Planning
Construction by board or agency

Fact-based interpretation of zoning ordinance that determines its application to particular use or property is entitled to great deference, but deference is not required when reviewing pure legal interpretation of terms in ordinance.

4 Cases that cite this headnote

[2] Zoning and Planning
Construction by board or agency

Meaning of term "sales lot or area" in ordinance governing manufactured home parks presented purely legal question in which no deference to zoning board of appeal's interpretation was required.

4 Cases that cite this headnote

[3] Municipal Corporations
Ordinance as a whole

Statutes
Statute as a Whole; Relation of Parts to Whole and to One Another

Statutes
Superfluousness

Statute or ordinance is to be construed as a whole, reading all of its parts together to determine legislative intent and to avoid rendering any of its language superfluous.

3 Cases that cite this headnote

[4] Statutes
Plain language; plain, ordinary, common, or literal meaning

Unambiguous language of statute is to be construed to give effect to its plain meaning.

2 Cases that cite this headnote

[5] Zoning and Planning
Mobile homes; trailer parks

Manufactured home park operator's proposal to place unoccupied manufactured home on lot for sale did not entail use of "sales lot or area" for purpose of selling manufactured homes, in violation of ordinance; purpose of proposal was "habitation," rather than display for inspection by potential buyers who would ultimately reside elsewhere.

Cases that cite this headnote

Attorneys and Law Firms

****731** Fix, Spindelman, Brovitz & Goldman, Fairport (James J. Bonsignore of counsel), for appellant.

Personius, Mattison, Palmer & Bocek, Elmira (Timothy K. Mattison of counsel), for respondents.

Before: PETERS, J.P., ROSE, LAHTINEN, MALONE JR. and GARRY, JJ.

Opinion

GARRY, J.

***1487** Appeal from a judgment of the Supreme Court ***1488** (O'Shea, J.), entered May 20, 2010 in Chemung County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of respondent Town of Erin Zoning Board of Appeals prohibiting petitioner from placing a mobile home for sale on premises owned by it.

Petitioner operates a manufactured home park on real property that it owns in a residential zone in the Town of Erin, Chemung County. Residents of the park place manufactured homes on lots leased from petitioner. In 2009, petitioner's property manager approached respondent John McCracken, the Town of Erin Code Enforcement Officer, to inquire about obtaining a building permit to install a manufactured home owned by petitioner on a lot in the park to be offered for sale to the public. McCracken advised petitioner that the proposal was a commercial use prohibited by the Town of Erin Zoning Code. Petitioner then applied to respondent Town of Erin Zoning Board of Appeals (hereinafter ZBA) for an interpretation of the ordinance. After a public hearing, the ZBA determined that petitioner's proposed use was prohibited. Petitioner commenced this CPLR article 78 proceeding to annul that determination, and Supreme Court dismissed the petition. Petitioner appeals.

The Town of Erin Zoning Code defines a manufactured home park as "[a] parcel of land under single ownership which is improved for the placement of mobile homes and/or manufactured homes for non-transient use and which is offered to the public of two (2) or more mobile and/or manufactured homes [*sic*]" (Town of Erin Zoning Code § 1300). In a provision entitled "Commercial Sale of Mobile and/or Manufactured Homes," the zoning ordinance provides that "[a] mobile and/or manufactured home park shall be established for the purpose of permitting habitation of such mobile and/or manufactured homes. *No sales lot or area* shall be used for the purpose of selling mobile and/or manufactured homes" (Town of Erin Zoning Code § 1301[10] [emphasis added]). Relying upon the emphasized language, the ZBA found that petitioner's proposal to place an unoccupied manufactured home on a lot for sale "would have the effect of transforming said residential lot into a dedicated lot or area for the commercial sale of a mobile home" and was "an illegal commercial sale of a mobile home within a residential district." The ZBA further distinguished petitioner's proposal from sales of mobile homes by individual owners "in anticipation of moving," finding that such ****732** "casual sales" did not violate the ordinance but nonetheless would "have to be monitored on a case by case basis."

[1] **[2]** Supreme Court accorded deference to the decision of the ZBA, ***1489** but that heightened standard was not merited here. A fact-based interpretation of a zoning ordinance that determines its application to a particular use or property is entitled to "great deference" (*Matter of West Beekmantown Neighborhood Assn., Inc. v. Zoning Bd. of Appeals of Town of Beekmantown,* 53 A.D.3d 954, 956, 861 N.Y.S.2d 864 [2008]; *see Matter of New York Botanical Garden v. Board of Stds. & Appeals of City of N.Y.,* 91 N.Y.2d 413, 420–421, 671 N.Y.S.2d 423, 694 N.E.2d 424 [1998]). However, " deference is not required when reviewing a pure legal interpretation of terms in an ordinance" (*Matter of Shannon v. Village of Rouses Point Zoning Bd. of Appeals,* 72 A.D.3d 1175, 1177, 903 N.Y.S.2d 539 [2010]; *see Matter of Mack v. Board of Appeals, Town of Homer,* 25 A.D.3d 977, 980, 807 N.Y.S.2d 460 [2006]). Here, the meaning of the term "sales lot or area" in the ordinance at issue presents a purely legal question in which no deference to the ZBA's interpretation is required (*see Matter of Shannon v. Village of Rouses Point Zoning Bd. of Appeals,* 72 A.D.3d at 1177, 903 N.Y.S.2d 539; *Matter of Blalock v. Olney,* 17 A.D.3d 842, 843–844, 793 N.Y.S.2d 583 [2005]).

[3] **[4]** A statute or ordinance is to be construed as a whole, reading all of its parts together to determine the legislative intent and to avoid rendering any of its language superfluous (*see Friedman v. Connecticut Gen. Life Ins. Co.,* 9 N.Y.3d 105, 115, 846 N.Y.S.2d 64, 877 N.E.2d 281 [2007]; *Matter of Veysey v. Zoning Bd. of Appeals of City of Glens Falls,* 154 A.D.2d 819, 821, 546 N.Y.S.2d 254 [1989], *lv. denied* 75 N.Y.2d 708, 554 N.Y.S.2d 833, 553 N.E.2d 1343 [1990]; McKinney's Cons Laws of N.Y., Book 1, Statutes § 97). Unambiguous language is to be construed to "give effect to its plain meaning" (*Matter of Tall Trees Constr. Corp. v. Zoning Bd. of Appeals of Town of Huntington,* 97 N.Y.2d 86, 91, 735 N.Y.S.2d 873, 761 N.E.2d 565 [2001]; *see Matter of Shannon v. Village of Rouses Point Zoning Bd. of Appeals,* 72 A.D.3d at 1177, 903 N.Y.S.2d 539). Applying these principles to this ordinance, we find that its plain language does not support the ZBA's interpretation.

[5] Read as a whole, Town of Erin Zoning Code § 1301(10) identifies and prohibits commercial sales within manufactured home parks by looking to the purpose of the contemplated use of land in the park. The first sentence of the ordinance provides that manufactured home parks are to be established for the purpose of "habitation." The second sentence prohibits the use of a "sales lot or area" within such a park for the contrasting "purpose of selling mobile and/or manufactured homes." Nothing in the ordinance distinguishes between acceptable and unacceptable sales of homes according to the previous use of the home (that is, whether the home was previously owned and occupied by a resident, or never occupied and owned by petitioner or some other non-resident). Instead, the ordinance looks to the future, distinguishing between permissible and impermissible ***1490** uses based upon whether the home was placed in the park to be inhabited or to be sold.

The purpose of petitioner's proposal—by which a manufactured or mobile home would be affixed to a residential lot within the park and then sold to be inhabited on that lot—is plainly that of "habitation." Thus, it does not fall within the use prohibited by the ordinance—that is, the designation of a "sales lot or area" that has no residential purpose, but is dedicated instead to the display of model homes to be inspected by potential buyers and ultimately ****733** resided in elsewhere. To construe the language otherwise would render the adjective "sales" in the phrase "sales lot or area" superfluous (*see Matter of Tall Trees Constr. Corp. v. Zoning Bd. of Appeals of Town of Huntington,* 97 N.Y.2d at 91, 735 N.Y.S.2d 873, 761 N.E.2d 565). As petitioner's proposed use does not violate the Town of Erin Zoning Code, Supreme Court's judgment must be reversed.

ORDERED that the judgment is reversed, on the law, without costs, petition granted and determination annulled.

PETERS, J.P., ROSE, LAHTINEN and MALONE JR., JJ., concur.

All Citations

84 A.D.3d 1487, 921 N.Y.S.2d 730, 2011 N.Y. Slip Op. 03707

103 A.D.3d 1067
Supreme Court, Appellate Division,
Third Department, New York.

In the Matter of OAKWOOD PROPERTY MANAGEMENT, LLC, Appellant,
v.
TOWN OF BRUNSWICK et al., Respondents.

Feb. 28, 2013.

Synopsis

Background: After town zoning board of appeals (ZBA) sustained notices of violation issued by town's Code Enforcement Officer, landowner, which operated a landscaping and mulching business, brought combined Article 78 proceeding and action for declaratory judgment. The Supreme Court, Albany County, Devine, J., granted summary judgment to town. Landowner appealed.

Holdings: The Supreme Court, Appellate Division, Egan Jr., J., held that:

[1] town was not estopped from enforcing zoning restrictions on two parcels owned by landowner, which adjoined parcel on which landowner originally conducted its landscaping and mulching business;

[2] assuming that ZBA violated Open Meetings Law, its zoning decision would not be voided;

[3] town's "schools and cemeteries" designation on its zoning map was not unconstitutionally vague;

[4] ZBA rationally concluded that commercial mulching was not a permitted use in schools and cemeteries zone; and

[5] ZBA rationally concluded that commercial mulching was not a permitted use in agricultural zone.

Affirmed.

West Headnotes (12)

[1] Estoppel
Municipal corporations in general

Estoppel cannot be invoked against a municipality to either: (1) prevent it from discharging its statutory duties; (2) ratify administrative errors; or (3) preclude it from enforcing its zoning laws.

1 Cases that cite this headnote

[2] Estoppel
Municipal corporations in general

An estoppel defense may lie where the municipality engages in fraud, misrepresentation, deception, or similar affirmative conduct upon which there is reasonable reliance.

2 Cases that cite this headnote

[3] Estoppel
Municipal corporations in general

Town's alleged conduct did not involve fraud, misrepresentation, or deception, as would estop town from prohibiting owner of landscaping and mulching business, which had received site plan approval to conduct those activities on five-acre parcel zoned for industrial use, from conducting those activities on owner's adjoining 43–acre parcel zoned for schools and cemeteries and abutting 26–acre parcel zoned for agricultural use; alleged conduct included town supervisor encouraging owner to purchase 43-acre parcel for use in owner's existing operations, town's issuance of fill permits for 43–acre parcel, town's issuance of building permit and certificate of occupancy for structure built on five-acre parcel, town's enactment of resolutions supporting inclusion of 43-acre and 26-acre parcels in a New York State Empire Zone, and various inspections of owner's properties by town officials.

Cases that cite this headnote

[4] **Zoning and Planning**

Mode of enforcement and proceedings in general

Even assuming that town zoning board of appeals (ZBA) violated Open Meetings Law by going into executive session during a meeting without stating with sufficient particularity a valid reason for doing so, its actions with respect to landowner's appeals, regarding notices of violation issued by town's Code Enforcement Officer, were not void, but rather voidable upon good cause shown. McKinney's Public Officers Law §§ 105, 107(1).

6 Cases that cite this headnote

[5] **Zoning and Planning**

Review

Assuming that town zoning board of appeals (ZBA) violated Open Meetings Law by going into executive session during a meeting without stating with sufficient particularity a valid reason for doing so, good cause did not exist for court to exercise its discretion to invalidate ZBA's decision sustaining notices of violation issued by town's Code Enforcement Officer, in light of substantial public input at an earlier public hearing and parties' extensive documentary submissions, and in the corresponding absence of any indication that ZBA intentionally violated Open Meetings Law. McKinney's Public Officers Law §§ 105, 107(1).

6 Cases that cite this headnote

[6] **Constitutional Law**

Particular issues and applications

Zoning and Planning

Mortuaries, cemeteries, and mausoleums

Zoning and Planning

Schools and education

Town's "schools and cemeteries" designation on its zoning map was not unconstitutionally vague, as would violate due process; the average person would be able to grasp the meaning of the designation without resorting to guesswork, and the common understanding of those words was not so expansive as to lead to arbitrary enforcement. U.S.C.A. Const.Amend. 14.

3 Cases that cite this headnote

[7] **Constitutional Law**

Certainty and definiteness; vagueness

Constitutional Law

Zoning and Land Use

There is no requirement, for due process purposes, that every term in a statute or zoning ordinance be precisely defined; rather, a statute or zoning ordinance will pass constitutional muster so long as it provides persons of ordinary intellect reasonable notice of the proscribed conduct. U.S.C.A. Const.Amend. 14.

2 Cases that cite this headnote

[8] **Zoning and Planning**

Construction by board or agency

Interpretation of town's zoning ordinance presented a purely legal question, and thus, the court was not required to give deference to the interpretation by town's zoning board of appeals (ZBA).

Cases that cite this headnote

[9] **Zoning and Planning**

Ambiguity

Zoning and Planning

Ordinance as a whole, and intrinsic aids

In reviewing a zoning ordinance, the court must read all of its parts together, construe any unambiguous language contained therein in such a fashion as to give effect to its plain meaning, and avoid a construction that renders any of the language employed superfluous.

Cases that cite this headnote

[10] **Zoning and Planning**

Mortuaries, cemeteries, and mausoleums

Zoning and Planning

Schools and education

Town's zoning board of appeals (ZBA) rationally concluded that commercial mulching was not a permitted use in the schools and cemeteries zone on town's zoning map.

1 Cases that cite this headnote

[11] Zoning and Planning

Agricultural uses, woodlands and rural zoning

Town's zoning board of appeals (ZBA) rationally concluded that commercial production, storage, and distribution of mulch/topsoil was not a permitted use in agricultural zone, which allowed farms and forestry and nursery operations.

Cases that cite this headnote

[12] Zoning and Planning

Uses in general

Generally, use of land in one zoning district for an access road to another zoning district is prohibited where the road would provide access to uses that would themselves be barred if they had been located in the first zoning district.

Cases that cite this headnote

Attorneys and Law Firms

****537** Whiteman, Osterman & Hanna, LLP, Albany (John J. Henry of counsel), for appellant.

Tuczinski, Cavalier, Gilchrist & Collura, PC, Albany (Andrew Gilchrist of counsel), for respondents.

Before: MERCURE, J.P., STEIN, McCARTHY and EGAN JR., JJ.

Opinion

EGAN JR., J.

***1067** Appeal from an order and judgment of the Supreme Court (Devine, J.), entered January 23, 2012 in Albany County, which, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, among other things, granted respondents' cross motion for summary judgment and dismissed the petition/complaint.

Petitioner operates a landscaping and mulching business in the Town of Brunswick, Rensselaer County. In April 2002, petitioner obtained site plan approval from the Planning Board of respondent Town of Brunswick to operate its business on a five-acre parcel of land zoned for industrial use. Shortly thereafter, petitioner purchased an adjoining 43–acre parcel that fell within a "Schools and Cemeteries" zone as depicted on the Town's zoning map [1] and, in 2004, acquired an abutting 26–acre parcel zoned for agricultural use. As each parcel was acquired, petitioner expanded its operations accordingly and, as the business grew, neighboring property owners began to complain of noise and other issues.

In June 2007, respondent John Kreiger, the Town's Code Enforcement Officer, sent a letter to petitioner expressing concern that petitioner's business had expanded beyond the scope of the original site plan. No response from petitioner apparently was forthcoming, prompting Kreiger to advise petitioner in July 2008 that it was in violation of its approved site plan and directing petitioner to submit an amended application with respect thereto. Petitioner submitted the requested application in October 2008 and, when the Planning Board convened in November 2008, the application was adjourned at petitioner's request to allow petitioner to compile "additional ***1068** information." [2] The matter thereafter was tabled several times and, in January 2009, was "adjourned without date[ ] pending further research regarding zoning compliance matters."

In June 2010, Kreiger issued a notice of violation alleging that petitioner was conducting operations on the 43– and 26–acre parcels without the required approvals and, further, had exceeded the bounds of the 2002 site plan approval with respect to the original five-acre parcel. Petitioner appealed that notice of violation to respondent Town of Brunswick Zoning Board of Appeals (hereinafter ZBA) and, while that appeal was pending, Kreiger issued a second notice alleging various violations of the Town's zoning ordinance. Petitioner appealed that notice of violation as well, and the appeals were consolidated for purposes of the public hearing conducted by the ****538** ZBA in August 2011. [3] At the conclusion of that hearing, the ZBA issued a detailed decision sustaining the notices of violation and dismissing petitioner's appeals.

Petitioner thereafter commenced this combined CPLR article 78 proceeding and action for declaratory judgment seeking,

among other things, to annul the ZBA's determination and a declaration that the "Schools and Cemeteries" designation as depicted on the Town's zoning map was unconstitutionally vague. Following interim motions not at issue here, respondents answered and counterclaimed to permanently enjoin petitioner's operations. Petitioner then moved for, among other things, summary judgment on its declaratory judgment claims and dismissal of respondents' counterclaim, and respondents cross-moved for, among other things, summary judgment and dismissal of the petition/complaint. Supreme Court denied petitioner's motion, granted respondents' cross motion and dismissed the petition/complaint. This appeal by petitioner ensued.

[1] [2] [3] We affirm. Initially, we reject petitioner's assertion that respondents are estopped from prohibiting it from conducting ***1069** grinding and mulching operations on the subject parcels. The crux of petitioner's argument on this point is that respondents not only were well aware that petitioner had expanded its operations to the 43– and 26–acre parcels but, more to the point, actively encouraged petitioner to do so. It is well settled, however, that estoppel cannot be invoked against a municipality to either (1) prevent it from discharging its statutory duties, (2) ratify administrative errors, or (3) preclude it from enforcing its zoning laws (*see Matter of Parkview Assoc. v. City of New York,* 71 N.Y.2d 274, 282, 525 N.Y.S.2d 176, 519 N.E.2d 1372 [1988]; *Matter of Village of Fleischmanns [Delaware Natl. Bank of Delhi],* 77 A.D.3d 1146, 1148, 909 N.Y.S.2d 564 [2010]; *Van Kleeck v. Hammond,* 25 A.D.3d 941, 942, 811 N.Y.S.2d 452 [2006]). Although an estoppel defense may lie where the municipality engages in "fraud, misrepresentation, deception, or similar affirmative conduct" upon which there is "reasonable reliance" (*Town of Copake v. 13 Lackawanna Props., LLC,* 99 A.D.3d 1061, 1064, 952 N.Y.S.2d 780 [2012] [internal quotation marks and citations omitted], *lv. denied* 20 N.Y.3d 857, 959 N.Y.S.2d 692, 983 N.E.2d 771 [Jan. 15, 2013]; *accord Matter of County of Orange [Al Turi Landfill, Inc.],* 75 A.D.3d 224, 238, 903 N.Y.S.2d 60 [2010]; *see Matter of Village of Fleischmanns [Delaware Natl. Bank of Delhi],* 77 A.D.3d at 1148, 909 N.Y.S.2d 564), the conduct alleged here, in our view, does not rise to that level.[4] Accordingly, ****539** Supreme Court properly rejected petitioner's estoppel claim.

[4] [5] We reach a similar conclusion with respect to respondents' asserted violation of the Open Meetings Law (*see* Public Officers Law art. 7). Upon determining that a public body has failed to comply with the provisions of the Open Meetings Law, a "court shall have the power, in its discretion, upon good cause shown, to declare ... the action taken in relation to such violation void, in whole or in part" (Public Officers Law § 107[1]; *see New Yorkers for Constitutional Freedoms v. New York State Senate,* 98 A.D.3d 285, 296, 948 N.Y.S.2d 787 [2012], *lv. denied* 19 N.Y.3d 814, 955 N.Y.S.2d 552, 979 N.E.2d 813 [2012]; *Matter of Ireland v. Town of Queensbury Zoning Bd. of Appeals,* 169 A.D.2d 73, 76, 571 N.Y.S.2d 834 [1991]). Thus, even assuming that the ZBA violated the Open Meetings Law by, among other things, going into executive session during its December 5, 2011 meeting without stating—with sufficient particularity—a valid reason for doing so (*see* Public Officers Law § 105), its actions with respect ***1070** to petitioner's appeals are "not void but, rather, voidable" (*Matter of Ireland v. Town of Queensbury Zoning Bd. of Appeals,* 169 A.D.2d at 76, 571 N.Y.S.2d 834) upon good cause shown (*see* Public Officers Law § 107[1]). In light of the substantial public input at the August 2011 hearing and the parties' extensive documentary submissions, and in the corresponding absence of any indication that the ZBA intentionally violated the Open Meetings Law, we find that petitioner failed to establish good cause warranting the exercise of our discretionary power to invalidate the ZBA's determination (*see generally New Yorkers for Constitutional Freedoms v. New York State Senate,* 98 A.D.3d at 296–297, 948 N.Y.S.2d 787; *McGovern v. Tatten,* 213 A.D.2d 778, 780–781, 623 N.Y.S.2d 370 [1995]; *Matter of Malone Parachute Club v. Town of Malone,* 197 A.D.2d 120, 124, 610 N.Y.S.2d 686 [1994]; *compare Matter of Gordon v. Village of Monticello,* 207 A.D.2d 55, 59, 620 N.Y.S.2d 573 [1994], *revd. on other grounds* 87 N.Y.2d 124, 637 N.Y.S.2d 961, 661 N.E.2d 691 [1995]).

[6] [7] Nor are we persuaded that the ZBA's interpretation of the "Schools and Cemeteries" designation as depicted on the Town's zoning map is irrational or that such designation is unconstitutionally vague. As to the constitutional claim, "there is no requirement that every term in a statute [or zoning ordinance] be precisely defined; rather, a statute [or ordinance] will pass constitutional muster so long as it provides persons of ordinary intellect reasonable notice of the proscribed conduct" (*Matter of Flow v. Mark IV Constr. Co.,* 288 A.D.2d 779, 780, 733 N.Y.S.2d 751 [2001] [internal quotation marks and citation omitted]; *see Matter of Griffiss Local Dev. Corp. v. State of N.Y. Auth. Budget Off.,* 85 A.D.3d 1402, 1403, 925 N.Y.S.2d 712 [2011], *lv. denied* 17 N.Y.3d 714, 2011 WL 5041564 [2011]; *Matter of Morrissey v. Apostol,* 75 A.D.3d 993, 996, 906 N.Y.S.2d 639 [2010]). Here, we are satisfied that the average person is able to grasp

the meaning of the designation "Schools and Cemeteries" as depicted on the Town's zoning map without resorting to guesswork and, further, that the common understanding of those words is not so expansive as to lead to arbitrary enforcement (*see Matter of Flow v. Mark IV Constr. Co.,* 288 A.D.2d at 780, 733 N.Y.S.2d 751; *Matter of Griffiss Local Dev. Corp. v. State of N.Y. Auth. Budget Off.,* 85 A.D.3d at 1404, 925 N.Y.S.2d 712; *Matter of Morrissey v. Apostol,* 75 A.D.3d at 996, 906 N.Y.S.2d 639). Accordingly, petitioner's constitutional claim must fail.

Petitioner's related assertion—that the ZBA impermissibly created a use restriction ****540** with respect to the 43–acre parcel that does not otherwise exist in the Town's zoning ordinance—is equally unpersuasive. Section 2 of the Town of Brunswick Zoning Ordinance divides the Town into 10 enumerated zoning districts; "Schools and Cemeteries"—the zone within which the 43–acre parcel lies—is not listed as one of those districts. Similarly, the accompanying Schedule of Regulations, which is ***1071** expressly incorporated into and made a part of the zoning ordinance (*see* Town of Brunswick Zoning Ordinance § 6 [1958]), makes no mention of the permitted uses within the " Schools and Cemeteries" zone. However, section 3 of the ordinance states that the zoning districts "are bounded and defined as indicated on [the Town's zoning] map ... which accompanies and which, with all explanatory matter thereon, is hereby made a part of this ordinance" (Town of Brunswick Zoning Ordinance § 3 [1958]).[5]

[8] **[9]** **[10]** To be sure, the Town's zoning ordinance could have been drafted with greater clarity and, as the interpretation thereof presents a purely legal question, we agree with petitioner that no deference to the ZBA's determination is required (*see Matter of Subdivisions, Inc. v. Town of Sullivan,* 92 A.D.3d 1184, 1185, 938 N.Y.S.2d 682 [2012], *lv. denied* 19 N.Y.3d 811, 2012 WL 3931116 [2012]; *Matter of Shannon v. Village of Rouses Point Zoning Bd. of Appeals,* 72 A.D.3d 1175, 1177, 903 N.Y.S.2d 539 [2010]). In reviewing the ordinance, however, we must "read[ ] all of its parts together," construe any unambiguous language contained therein in such a fashion as to "give effect to its plain meaning" and avoid a construction that "render[s] any of [the] language [employed] superfluous" (*Matter of Erin Estates, Inc. v. McCracken,* 84 A.D.3d 1487, 1489, 921 N.Y.S.2d 730 [2011] [internal quotation marks and citation omitted]). Although petitioner argues that, in the absence of an express list of permitted or prohibited uses, the ordinance "does not impose *any* land use restrictions on property in a 'Schools and Cemeteries' zone," such an interpretation would render the inclusion of the "Schools and Cemeteries" zone on the Town's zoning map meaningless and would ignore what we already have determined to be the commonly understood meaning of those words. For these reasons, the ZBA rationally and properly concluded that petitioner's commercial mulching operation is not a permitted use on the 43–acre parcel lying within the "Schools and Cemeteries" zone.

[11] We reach a similar conclusion regarding the ZBA's determination that petitioner's use of the 26–acre parcel for the production, storage and distribution of mulch/topsoil is not permitted within the agricultural district in which that parcel lies.[6] Pursuant to the Town's Schedule of Regulations, permitted uses within an agricultural district include, insofar as is relevant here, "[f]arms" and "[f]orestry and [n]ursery operations." ***1072** Without repeating the reasoned analysis undertaken by the ZBA, we are satisfied—upon reviewing the definition of the terms "farm" (*see* Town of Brunswick Zoning Ordinance § 1 [1958]), "farm product" (*see* Agriculture and Markets Law § 2[5]), "farm operation" (*see* Agriculture and Markets Law § 301[11]), "forestry" (*see* http://www.merriam-webster.com/ dictionary/forestry) and "nursery" (*see* http://www. merriam- ****541** webster. com/ dictionary/nursery)—that petitioner's commercial mulching operation is not encompassed by any of those terms and, as such, is not a permitted use within an agricultural district. In short, as the ZBA's determination on this point is rational, it will not be disturbed.

Petitioner's remaining contentions do not warrant extended discussion. Contrary to petitioner's assertion, the Planning Board's failure to render a decision on petitioner's October 2008 amended site plan application did not result in a default approval thereof as there is nothing in the record to suggest that petitioner ever tendered a "completed application" (Town of Brunswick Site Plan Review Act § 4[D]) (*see* note 2, *supra*). Petitioner's related assertion—that the ZBA erred in sustaining the underlying notices of violation—is unpersuasive. The ZBA's conclusion that petitioner violated the Town's Site Plan Review Act by conducting operations on the 43– and 26–acre parcels without the required approvals and exceeding the scope of the 2002 site plan approval issued with respect to the five-acre parcel finds ample support in the record,[7] as does—for the reasons already discussed—the ZBA's resolution of the underlying zoning violations.

[12] Finally, petitioner takes issue with the ZBA's determination that petitioner's use of an existing private road, which extends over the five- and 43–acre parcels, to access the 26–acre parcel violates the Town's zoning ordinance. "Generally, [u]se of land in one zoning district for an access road to another zoning district is prohibited where the road would provide access to uses that would themselves be barred if they had been located in the first zoning district" (*Matter of BBJ Assoc., LLC v. Zoning Bd. of Appeals of Town of Kent,* 65 A.D.3d 154, 162, 881 N.Y.S.2d 496 [2009] [internal quotation marks and citations omitted]). Stated another way, the use to which the access road leads must be permitted in the zoning district(s) over which it extends (*see e.g. City of Yonkers v. Rentways, Inc.,* 304 N.Y. 499, 503–504, 109 N.E.2d 597 [1952]; ***1073** *Korcz v. Elhage,* 1 A.D.3d 903, 904–905, 767 N.Y.S.2d 737 [2003]; *Matter of Partition St. Corp. v. Zoning Bd. of Appeals of City of Rensselaer,* 302 A.D.2d 65, 67, 752 N.Y.S.2d 749 [2002], *lv. denied* 99 N.Y.2d 511, 760 N.Y.S.2d 102, 790 N.E.2d 276 [2003]). As noted previously, the five-acre parcel is zoned for industrial use, the 43–acre parcel is zoned "Schools and Cemeteries" and the 26–acre parcel is zoned for agricultural use. Inasmuch as farming is not a permitted use in either an industrial or a "Schools and Cemeteries" zone, the ZBA rationally concluded that petitioner's use of the private road across the five- and 43–acre parcels to access its "farming" operations on the 26–acre parcel violates the Town's zoning ordinance. Petitioner's remaining contentions, including its assertion that Supreme Court erred in granting respondents summary judgment on their counterclaim, have been examined and found to be lacking in merit.

ORDERED that the order and judgment is affirmed, without costs.

MERCURE, J.P., STEIN and McCARTHY, JJ., concur.

All Citations

103 A.D.3d 1067, 960 N.Y.S.2d 535, 2013 N.Y. Slip Op. 01310

Footnotes

1 Prior to expanding its operations to this parcel, petitioner performed certain fill work on the property and obtained permits from the Town in 2002 and 2004 for that purpose. Although petitioner points to these permits as evidence of the Town's awareness that petitioner was using the 43–acre parcel for its landscaping/mulching business, each of the permits identifies the five-acre parcel as the location of the property/work.

2 The record does not disclose the substance of the additional information sought or requested, nor does it reflect that such information ever was tendered to the Planning Board.

3 In the interim, the Town apparently suggested that petitioner either obtain a use variance, pursue a zoning change or apply for designation as a planned development district. Petitioner initially pursued the latter option but, in October 2010, entered into a memorandum agreement with Kreiger and respondent Town of Brunswick Town Board in an effort to resolve the outstanding zoning issues between the parties. Ultimately, the agreement did not achieve its desired goals and, in June 2011, petitioner effectively terminated the agreement, withdrew certain of its site plan and rezoning applications and indicated its intent to, among other things, pursue its appeals before the ZBA.

4 The conduct cited by petitioner includes a conversation with respondent Phil Herrington, the Town Supervisor, who allegedly encouraged one of petitioner's representatives to purchase the 43–acre parcel for use in petitioner's existing operations, as well as the issuance of the relevant fill permits (*see* note 1, *supra*), a building permit and certificate of occupancy for a structure built on the five-acre parcel, resolutions supporting the inclusion of two of the parcels in a New York State Empire Zone and various inspections of petitioner's properties by Town officials.

5 A 1964 amendment to the zoning ordinance modified this provision only to the extent of reflecting the date upon which the zoning map was adopted.

6 There is some indication that petitioner is raising beef cattle on this parcel as well, the propriety of which does not appear to be in dispute at this time.

7 While petitioner's appeals were pending, the Planning Board—consistent with the requirements of section 12(C) of the Town of Brunswick Zoning Ordinance—issued an advisory opinion documenting petitioner's violations of the Town's Site Plan Review Act.

136 A.D.3d 836
Supreme Court, Appellate Division,
Second Department, New York.

In the Matter of Brian Richard WATKINS, appellant,
v.
TOWN OF NORTH EAST ZONING
BOARD OF APPEALS, et al., respondents.

Feb. 10, 2016.

Attorneys and Law Firms

Teahan & Constantino, LLP, Poughkeepsie, N.Y. (Richard I. Cantor of counsel), for appellant.

Rodenhausen Chale, LLP, Rhinebeck, N.Y. (George A. Rodenhausen and Victoria L. Polidoro of counsel), for respondent Town of North East Zoning Board of Appeals.

Grant & Lyons, LLP, Rhinecliff, N.Y. (John F. Lyons and Kimberly A. Garrison of counsel), for respondents Watershed Center, Inc., and Mt. Riga Farm, LLC.

Opinion

***836** In a proceeding pursuant to CPLR article 78 to review a determination of the Town of North East Zoning Board of Appeals dated August 27, 2013, that, under the Zoning Law of the Town of North East, an "educational center" is permitted to include housing and dining facilities, the petitioner appeals from a judgment of the Supreme Court, Dutchess County (Sproat, J.), dated January 3, 2014, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

Generally, "a zoning board's interpretation of its zoning ordinance is entitled to great deference and will not be overturned by the courts unless unreasonable or irrational" ****522** ***837** (*Matter of Green 2009, Inc. v. Weiss,* 114 A.D.3d 788, 788, 980 N.Y.S.2d 510; *see Matter of Toys R Us v. Silva,* 89 N.Y.2d 411, 418–419, 654 N.Y.S.2d 100, 676 N.E.2d 862; *Matter of Henderson v. Zoning Bd. of Appeals,* 72 A.D.3d 684, 685, 897 N.Y.S.2d 518). " '[W]here the statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used' " (*Matter of Raritan Dev. Corp. v. Silva,* 91 N.Y.2d 98, 107, 667 N.Y.S.2d 327, 689 N.E.2d 1373 [emphasis omitted], quoting *Patrolmen's Benevolent Assn. of City of N.Y. v. City of New York,* 41 N.Y.2d 205, 208, 391 N.Y.S.2d 544, 359 N.E.2d 1338). Here, pursuant to the plain meaning of the language of sections 98–5 and 98–33 of the Zoning Law of the Town of North East, it is permissible for an "educational center" to include housing and dining facilities. Accordingly, the Supreme Court properly denied the petition and dismissed the proceeding.

MASTRO, J.P., HALL, MALTESE and LaSALLE, JJ., concur.

All Citations

136 A.D.3d 836, 24 N.Y.S.3d 521 (Mem), 2016 N.Y. Slip Op. 00987

End of Document

Annexed to Foregoing Document-
Appendix: Owner's August 28, 2019 Submission (R. 002048-002086)
[pp. 2874 - 2912]

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Date: August 28, 2019

Examiner's Name: Toni Matias

BSA Calendar #: 2019-89-A and 2019-94-A

Electronic Submission: ■ Email ☐ CD

Subject Property/
Address: 36 West 66th Street, Manhattan

Applicant Name John Low-Beer on behalf of City Club of New York and Klein Slowick, PLLC on behalf of Landmark West!

Submitted by (Full Name): David Karnovsky, Fried, Frank, Harris, Shriver & Jacobson LLP on behalf of West 66th Sponsor LLC

A) The material I am submitting is for a case currently **IN HEARING,** scheduled for 9/10/19. The reason I am submitting this material:

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

Brief Description of submitted material: Statement on behalf of West 66th Sponsor LLC and exhibits

List of items that are being voided/superseded: _____

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

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

Brief Description of submitted material: _____

List of items that are being voided/superseded: _____

MASTER CASE FILE INSTRUCTIONS

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

Fried, Frank, Harris, Shriver & Jacobson LLP

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David.Karnovsky@friedfrank.com

August 28, 2019

Honorable Members of the Board
NYC Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

Re: Cal. No. 2019-89-A; 2019-94-A
Premises: 36 West 66th Street

Dear Honorable Members of the Board:

On behalf of West 66th Sponsor LLC, the owner of the property at 36 West 66th Street, enclosed is one original and one copy of a letter statement and accompanying exhibits, responding to issues raised in Appellants' August 21, 2019 submissions to the Board.

This submission is also being filed electronically by email.

Sincerely,

David Karnovsky

Enclosures

cc: Michael Zoltan, Assistant General Counsel, NYC Department of Buildings
John Low-Beer, Esq. (On Behalf of the City Club of New York)
Charles Weinstock, Esq. (On Behalf of the City Club of New York)
Stuart A. Klein, Esq. (On Behalf of Landmark West!)
Susan Amron, General Counsel, NYC Department of City Planning
Ellen V. Lehman, Esq., Fried Frank Harris Shriver & Jacobson LLP

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BSA Cal. No. 2019-89-A; BSA Cal. No. 2019-94-A
August 28, 2019 Statement of West 66th Sponsor LLC

This statement is submitted on behalf of West 66th Sponsor LLC ("Owner") in response to Appellants' August 21, 2019 submissions to the Board.

A. The Language of Section 82-34 of the Zoning Resolution is Clear and Unambiguous; Appellants Have Not Demonstrated Otherwise

The language of the bulk distribution provision of ZR Section 82-34 is clear and unambiguous:

i. "*Within the Special District...*": within the Lincoln Square Special District ("SLSD" or "Special District") depicted in Appendix A ("Special Lincoln Square District Plan") to the SLSD Regulations and Zoning Map 8c, Exhibits A and B hereto, not limited to any specified subdistrict, zoning district or location therein;

ii. "*...at least 60 percent of the total floor area permitted on a zoning lot...*": the total floor area permitted on any zoning lot within the Special District without limitation as to zoning district designation, split lot condition or otherwise;

iii. "*...shall be within stories located partially or entirely below a height of 150 feet from curb level.*": irrespective of whether a development or enlargement is built under tower regulations or standard height and setback, and without any fixed limitation on the number of stories either below or above 150 feet.

The Project complies with all of the foregoing: (i) the Project Site is located within the SLSD; and (ii) the total floor area permitted on the zoning lot is 548,543 square feet, with 329,125.8 square feet, an amount slightly in excess of 60% of the total, (iii) located below a height of 150 feet. (Owner SOFL at 2, Exhibit 9.)[1]

Throughout this proceeding, Appellants have nevertheless advanced multiple fanciful, ever changing and often inconsistent interpretations of the plain language of ZR Section 82-34 in an attempt to persuade the Board that the provision does not mean what it says, and that it excludes the floor area permitted on the R8 portion of the zoning lot from the 60% bulk distribution calculation:

i. Within the Special District means "within the Special District, where applicable" (Reply SOFL at 5)[2];

[1] Citations to "Owner SOFL" refer to the Statement submitted on behalf of West 66th Sponsor LLC on July 24, 2019.

[2] Citations to "Reply SOFL" refer to the Reply Statement of Facts and Law of the City Club et al. submitted to the Board on August 1, 2019.

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ii. Within the Special District means only that "the general version [of the Bulk Packing rule in ZR Section 23-651(a)(3)] differs from the Special District version [in ZR Section 82-34] in that it is slightly less demanding, and also more complex: the required percentage of floor area below 150 feet [under ZR Section 23-651(a)(3)] starts at 55 percent and increases to 59.5 percent as tower lot coverage decreases from 40 percent to 31 percent]" (CC SOFL at 19; LW! SOF at 12-13)[3];

iii. Within the Special District means that ZR Section 82-34 is a variant of Tower-on-a-Base regulations despite the fact it makes no reference whatsoever to those regulations because it would have been too complicated to do so, and would have "severely challenged the drafters" (Reply SOFL at 16);

iv. Within the Special District refers to the C4-7 portions of the Special District only because Section 82-36, which prescribes a minimum tower coverage requirement for towers built pursuant to commercial tower regulations, applies in the C4-7 district (Reply SOFL at 17);

v. Within the Special District excludes the R8 district from the bulk distribution calculation because towers are not permitted in R8 districts (CC SOFL at 2; LW! SOF at 2);

vi. Within the Special District may include the R8 district when community facility towers are built under ZR Section 24-54, but not when a building is built under standard height and setback regulations (Reply SOFL at 23); and

vii. Within the Special District "implicitly" excludes the total floor area permitted in an R8 district from the bulk distribution calculation, and is an implicit qualification "routinely read into [statutory] language all the time." (Reply SOFL at 22.)

None of these arguments find any support in the language of ZR Section 82-34 for the reasons discussed in detail in our prior papers. The arguments also find no support in the language or structure of the SLSD regulations as a whole; to the contrary, ZR Section 82-34 stands in contrast to the many provisions of the SLSD which, by their terms, apply to a designated Subdistrict, zoning district, street frontage or other specific location within the SLSD, further demonstrating that the phrase "within the special district" means nothing less than what it says—without any of the exclusions, qualifications or exceptions to its language that Appellants' various interpretations add to the provision.

Moreover, by applying ZR Section 82-34 to the C4-7 portion of the Project Site only, and ignoring the R8 portion, each of the arguments made by Appellants flatly violates the split lot

[3] Citations to "CC SOFL" refer to City Club of New York's Statement of Facts and Law, BSA Cal. No. 2019-89-A, submitted May 7, 2019. Citations to "LW! SOF" refer to Landmark West's Statement of Facts, BSA Cal. No. 2019-94-A, submitted May 13, 2019.

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rules, contrary to the Appellate Division's decision in Beekman Hill Ass'n v. Chin, 274 A.D.2d 161 (1st Dep't 2000), which held that compliance with zoning requirements is determined and measured on the basis of the zoning lot as a whole where both parts of a zoning lot split by a zoning district boundary are subject to the same rule. Id. at 175. Nothing in ZR Section 82-34 states that it applies to a C4-7 district only, and nowhere is the "zoning lot" referenced in the provision limited to the C4-7 portion of a zoning lot only. For purposes of the split lot rules, ZR Section 82-34 is a provision where both parts of a zoning lot split by a zoning district boundary are subject to the same rule.

In its August 21 Statement, Appellant City Club resurrects an argument made in its initial papers (see CC SOFL at 16) that ZR Section 82-34 mandates a "60/40" ratio between the floor area in the base and tower portions of the building. (CC 8.21 Letter at 1-2.) What Appellants mean by this, of course, is that in their view the 60 percent bulk distribution must be calculated on the basis of the C4-7 portion of the zoning lot alone in order to produce what they characterize as the "correct" ratio. The 48/52 ratio Appellants judge to be improper is simply the ratio of the floor area located in the tower of the Project (219,403 sf) to the floor area permitted within the C4-7 district (421,260 sf), based on a calculation which removes from the denominator the 127,283 square feet of floor area permitted in the R8 district. This argument is thus nothing more than another way of restating Appellants flawed argument that ZR Section 82-34 applies to only a portion of the Project Site, i.e., the portion within the C4-7 district, contrary to the regulation's plain language.

At the August 6 public hearing, the Chair asked counsel to Appellant City Club whether he could identify any ambiguity in ZR Section 82-34, considered alone or in conjunction with the other provisions of the SLSD of which it is a part, specifically noting that the question should be answered by counsel without resort to extrinsic evidence such as legislative history or the provisions of Article 2, Chapter 2 of the Zoning Resolution (i.e., the Tower on a Base regulations of ZR Section 23-651). Multiple submissions later, Appellants have plainly demonstrated that they cannot identify any such ambiguity. In the face of that failure, they instead continue to base their arguments on preferred readings of the text that have no basis in the actual plain language.

B. There is no Fixed Upper Limit to the Number of Stories Permitted in the Special District

Throughout this proceeding, Appellants have sought to prove that the SLSD establishes an absolute limit upon the maximum of stories allowed in buildings within the Special District. In its August 21 statement, Appellant City Club argues that the statute "inexorably dictate[s]" an upper limit to the number of occupied floors that is in the low 30s, a figure that Appellants calculate with a remarkable (and inherently incredible) precision as 32.4 stories. (CC 8.21 Letter at 3.)[4] No such limit can be found anywhere in the Special District regulations. While it would be inappropriate to rely upon in any event, the legislative history also does not provide support for such a limit. Appellants' 32.4-story calculation is only one result that can be produced under the regulations, demonstrating that Appellants' claim that the statute embodies such a "mathematical limit" is simply an invention. (CC 8.21 Letter at 4.)

[4] Citations to "CC 8.21 Letter" refer to the letter submitted to the Board by City Club of New York et al. on August 21, 2019.

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Had the City Planning Commission wished to establish a fixed limit on the number of permitted stories in the Special District, it obviously and easily could have done so by codifying a 32.4-story limit in the statute. Instead, it did the opposite: it specifically rejected any absolute height limit in the Special District and disclaimed an interest in producing uniform results by noting that the SLSD is an area characterized by towers of various heights. (Owner SOFL, Exhibit 17 at 19.)

Appellants claim that the legislative history is replete with references to the drafters' intention to limit the number of stories to the low 30s, but there is only one such reference in the City Planning Commission Report and, as discussed in our prior submissions, this reference was made only with respect to the six soft sites identified by DCP for study at the time, i.e., "the remaining development sites." (Id.) Appellants point to two similar statements in a May 1993 DCP study document which preceded the referral of the zoning text amendments into the public review process, but these predictions were also clearly based on DCP's evaluation of the soft sites only. (CC SOFL Exhibit B.)

As discussed in our prior submissions (Owner SOFL at 17; Owner 8.21 Letter at 7), the "bulk distribution" proposal advanced by DCP and adopted by CPC encountered significant opposition, precisely because it did not produce the certainty of an absolute height limit. Appellant Landmark West! was a vocal opponent of bulk distribution in 1993, and testified as such in the CPC public hearing held on November 17, 1993:

> While we agree with the intention of limiting height expressed by the Department, we cannot accept the device of "packing the bulk." This device would not in fact limit the height of buildings, but only makes achieving a tall building slightly more difficult than at present. This aspect is especially true on large development sites (ones commanding an entire block frontage or more).

(Exhibit C hereto at 2.) Indeed, Landmark West! itself observed, based on work conducted at the Environmental Simulation Center, that buildings of 33 to 35 stories "would not be uncommon" on the remaining development sites. Id. The legislative history therefore provides no support for Appellants' wishful claim that there is a 32.4-story limit hidden in the statute, and to the contrary shows that the stakeholders recognized and debated the consequences of the proposed regulation including no such limit.

The flaws in Appellants' rigid mechanical application of an Excel spreadsheet formula to produce an invariable 32.4 stories of occupied floors are further demonstrated by a Development Consulting Services study commissioned by Owner of a site located at 1865 Broadway, an actual development site within the SLSD that is wholly located in the C4-7 district. (See Exhibit D hereto.) The actual building being constructed at that site is nearing completion. Avalon Bay, which developed the building with Skidmore, Owings & Merrill LLP as architect, made various zoning and development decisions which resulted in fewer stories than are clearly possible under the regulations. The building will have 32 occupied floors, including two one/half interstitial (mid-rise) mechanical floors, with the balance of each of these two floors containing dwelling units. Specifically, while the minimum tower coverage size of 30% is 6,850 gross square feet,

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1865 Broadway has a tower coverage of 7,298 gross square feet, an equivalent of 33% tower coverage. Additionally, Avalon Bay did not utilize the allowances for floors with less than 30% tower coverage at the top of the building, each of which can have a tower coverage of 80% of the floor below.

The attached study modifies the assumptions for development at 1865 Broadway, all in ways which are fully permitted under the SLSD regulations. The study reduces the tower coverage to 30%, or 6,850 gross square feet per floor, and takes advantage of the lesser coverage requirement for floors at the top of the building. The resulting building has 35 residential floors, 2.6 floors more than Appellants' supposed 32.4-floor limit, *and a number identical to the number of residential floors in the Project*. No mechanical floors are shown in the study, since the number of mechanical floors in contemporary buildings varies, depending upon the amount and size of mechanical equipment planned for the building.

In short, neither the language nor the legislative history of ZR Section 82-34 supports an absolute limit on the number of stories, and Appellants' preferred maximum of 32.4 occupied stories is only one result possible within a range of results.

C. New York Law Does Not Permit the Board to Override the Plain Language of ZR Section 82-34 Based on Appellants' Planning Theories.

In their statement, Appellants stress the importance of legislative intent as a mechanism for introducing extrinsic evidence that cannot be found in the plain language of ZR Section 82-34 itself. (CC 8.21 Letter at 2.) But the law is that "[l]egislative history… should not be confused with legislative intent, as the two are not coextensive with each other." Matter of Peyton v. New York City Bd. of Standards and Appeals, 86 N.Y.S.3d 439, 452 (1st Dep't 2018). Indeed, "the best evidence of the legislative intent is the plain language of the text chosen by the legislature." Matter of Lisa T. v. King E.T., 30 N.Y.3d 548, 556 (2017).

This first principle of statutory interpretation is indisputable. Indeed, Appellant City Club's counsel agrees. Mr. Weinstock, co-counsel to Appellant City Club, has accurately summarized this bedrock principle in another case pending before the Board, as follows:

> The Court of Appeals has stated the controlling legal principle in this case: "[W]hen, as here, a statute is free from ambiguity and its sweep unburdened by qualification or exception, we must do no more and no less than apply the language as it is written." Zaldin v. Concord Hotel, 48 N.Y.2d 107, 113 (1979). More recently, the Court wrote:
>
> > [We] have correspondingly and consistently emphasized that "where the statutory language is clear and unambiguous, *the court should construe it so as to give effect to the plain meaning of the words used*" (Patrolmen's Benevolent Assn. v. City of New York, 41 NY2d 205, 208 [emphasis added] [citations omitted]; see, Doctors Council v. New York City Employees' Retirement Sys., 71 NY2d 669, 674-675).

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> We have provided further clear teaching and guidance that "[a]bsent ambiguity the courts may not resort to rules of construction to broaden the scope and application of a statute," because "no rule of construction gives the court discretion to declare the intent of the law *when the words are unequivocal*" (Bender v. Jamaica Hosp., 40 NY2d 560, 562 [emphasis added] [citations omitted]). Lastly, "[t]he courts are not free to legislate and if any unsought consequences result, *the Legislature is best suited to evaluate and resolve them*" (id. (emphasis added)). Raritan Development Corp. v. Silva, 91 N.Y.2d 98, 107 (1997).
>
> This should properly be the end of the discussion.

(BSA Cal. No. 2019-199-A, Statement of Facts and Findings 9 (received July 31, 2019).) We agree—the language of ZR Section 82-34 is clear and unambiguous and should be applied consistent with its terms.

Appellants in this case nevertheless prefer a different result, and they therefore assert that while the above principles are "valid in most circumstances, there is a more fundamental principle that requires courts to override even unambiguous statutory language where there is a result that is plainly contrary to legislative intent or otherwise absurd." (CC 8.21 Letter at 5.) This bald assertion ignores the Court of Appeals' clear guidance that legislative intent is to be ascertained from the language of the statute itself, and that the courts resort to extrinsic evidence only where a statute is ambiguous. See Raritan, 91 N.Y.2d at 107. In stretching to make their argument, Appellants improperly conflate the absurd results doctrine with methods of interpretation employed to interpret ambiguous statutes.

In fact, the proper approach is confirmed by the very cases Appellants themselves rely on in their letter submission. In City v. Stringfellow's of New York (CC 8.21 Letter at 5), for example, the Appellate Division repeated these same principles of statutory interpretation, emphasizing:

> Such intent is ascertained from the words and language used in the statute and if the language thereof is unambiguous and the words plain and clear, there is no occasion to resort to other means of interpretation. Only when words of the statute are ambiguous or obscure may courts go outside the statute in an endeavor to ascertain their true meaning.

684 N.Y.S.2d 544, 548 (1st Dep't 1999). In that case, the Appellate Division interpreted an ambiguous term in the statute (specifically the term "customarily" as used in the zoning definition of an "adult use establishment") by considering how the term is used elsewhere in the Zoning Resolution and by employing other rules of construction, including the rules of construction set forth in ZR Section 12-01. Id.; see also Abood v. Hospital Ambulance Service, Inc., 283 N.E.2d 754 (1972) (determining how the ambiguous phrase "as may be reasonably necessary" qualifies the statutory requirement for ambulances to use a siren when violating traffic laws); People ex rel. McGoldrick v. Sterling, 126 N.Y.S.2d 803, 808 (1st Dep't 1953)

(applying the terms "landlord" and "tenant" as defined in the State Residential Rent Law to a housing cooperative and its proprietary lessees in order to reconcile different usages of these terms in a manner consistent with the overall system of rent regulation).[5]

In several of the other cases cited by Appellants, the courts were tasked with resolving conflicts between provisions of a particular statutory scheme. In Matter of Jamie J., 30 N.Y.3d 275 (2017) (CC 8.21 at 7), it was unclear whether a procedural provision governing permanency hearings provided the basis for the family court's jurisdiction, which was not otherwise established in the statute. In interpreting the statute, the Court of Appeals explained that the government's "hyperliteral reading" of one particular provision, section 1088, conflicted with other provisions of the Family Court Act (and was also disfavored under the constitutional avoidance doctrine because it would deprive the mother of due process). Id. at 284-85.

To the limited extent that New York courts have described an ability to go beyond the plain meaning of a statute to avoid an "absurd" result, the courts have made clear that such a measure can only be considered "with reluctance and only in extraordinary cases." McNerney v. Geneva, 290 N.Y. 505, 511 (1943). For example, in Long v. Adirondack Park Agency, 76 N.Y.2d 416 (1990), the Court of Appeals interpreted a provision setting the 30-day time limit for agency review to give the statute a practical construction that afforded the agency a meaningful opportunity to review rather than interpreting the period to run in a way that gave the agency no practical notice of the decision to be reviewed, thereby rendering other statutory and regulatory duties "literally meaningless and useless." Id. at 422. Critically, the Court of Appeals did not look beyond the four corners of the statute to do so, rather it explained that it would not read certain phrases "in vacuum-like isolation with absolute literalness," but would "approach the statute's provisions sequentially and give the statute a sensible and practical over-all construction, which is consistent with and furthers its scheme and purpose and which harmonizes all its interlocking provisions." Id. at 420. The court noted that such an approach to statutory interpretation is preferable "especially when an opposite interpretation would lead to an absurd result that would frustrate the statutory purpose,"—but notably the court did *not* reach into the legislative history to deduce some "statutory purpose" absent from the text of the statute. Id. Rather, consistent with the rule prescribed by the Court of Appeals in King E.T. (and applied by the Stringfellow's court), it looked at the "textual primacy" within the statute of the reviewing agency receiving "such pertinent information as the agency may deem necessary" (statutory language), which established the "Legislature's *manifest* intent"—i.e., manifest in the terms of the statute itself. Id. at 420-21 (emphasis added).[6]

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[5] In New York State Bankers Ass'n v. Albright, 343 N.E.2d 735 (1975), the Court of Appeals stated that extrinsic evidence may be employed to interpret unambiguous statutes while acknowledging that the specific statute at issue was "not free from 'ambiguity.'" Id. at 739. Accordingly, the Court's discussion of employing extrinsic evidence to interpret unambiguous statutes was not necessary to its holding. That discussion in any event predates the Court of Appeals' subsequent holdings in Zaldin and Raritan.

[6] Other cases cited by Appellant City Club are similarly "extraordinary cases" involving patently absurd results. See, e.g., People v. Santi, 3 N.E.2d 1146 (2004) (correcting a syntactical error in a statutory provision that if read literally would result in exempting licensed professionals from criminal liability relating to aiding and abetting the unlicensed practice of a profession); 89 Christopher Inc. v. Joy, 44 A.D.2d 417 (1st Dep't 1974), modified 35 N.Y.2d 213 (1974) (involving, as stated by the Court of Appeals, "difficulties rarely confronting a court" resulting from the "patchwork of rent-control legislation in recent years [that] has created an impenetrable thicket, confusing not only to laymen but to lawyers. . . . the legislation contains serious gaps, not readily filled by interpretation based

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Appellants have fallen far short of demonstrating that the application of ZR Section 82-34 according to its clear instruction creates "absurd" results. They describe the purpose of the provision as "limiting height." (CC 8.21 Letter at 7.) We have demonstrated that ZR Section 82-34 operates to do just that—reduce the height of the Project relative to what could be developed absent the bulk distribution requirement. (Owner SOFL at 19, Exhibit 24.) Further, it is clearly not an "absurd" result for the Project to have precisely the same number of residential floors achievable at 1865 Broadway, a site located entirely within a C4-7 district, as shown in the Development Consulting Services study (infra at 4). Finally, even assuming **arguendo** that application of ZR Sections 82-34 and 82-36 uniformly produces 32.4 residential floors on a zoning lot located wholly within a C4-7 district, it is clearly not absurd that the Project, with different conditions resulting from the fact that is a split lot, contains 35 residential floors—a difference of 2.6 floors.

In short, New York law dictates that the fundamental legal principle governing application of unambiguous statutory provisions, i.e., that a court "must do no more and no less than apply the language as it is written," governs and should be properly applied in this case with respect to ZR Section 82-34. Zaldin v. Concord Hotel, 48 N.Y.2d 107, 113 (1979).

D. Appellant Landmark West!'s Belated Attempt to Raise Issues Regarding Floor Area Deductions Taken for Mechanical Equipment Floor Space Should be Rejected

Appellant Landmark West!'s August 21 Supplemental Statement of Facts argues that the Board should address issues it raises regarding the floor area deductions taken for mechanical equipment on mechanical floors at the Project on the basis that its initial Statement of Facts submitted to the Board on May 13 squarely raised these issues. (LW! SSOF at 3.)[7] The Statement of Facts did nothing of the sort and these issues were first raised at the public hearing on August 6, more than two and a half months after submission of the Statement of Facts. The Board should not countenance this obvious attempt to prolong the Board process, and delay a final resolution of the issues.

Landmark West!'s initial Statement of Facts tracks the language and arguments made by Appellant City Club in its own submission, largely word for word, and defines the issues presented on appeal as follows:

> The Permit should be revoked, because the underlying plans contravene the Zoning Resolution ("ZR") in that:

---

on intention, because there was none, or even by judicial construction to make reasonable and workable schemes that are self-abortive as designed" and concluding that a contrary interpretation "would lead to an absurd and unintended result"); Lake S. & M. S. R. Co. v. Roach, 80 N.Y. 339 (1880) (holding that a law that permits tax collectors to collect unpaid property tax by seizing personalty located on the land in question does not permit a tax collector from seizing the property of a visitor who temporarily entered the land, an outcome which would be manifestly unjust).

[7] Citations to "LW! SSOF" refer to the Supplemental Statement of Facts submitted to the Board by Landmark West! on August 21, 2019.

a) The Owner's attempts to exempt the Voids from floor area should be rejected, as the Voids are neither "used for mechanical equipment," ZR Sec. 12-10, nor are they accessory uses to the residential uses in the Tower in the Tower, ZR Sec.22-12; and
b) Floor area calculations are contrary to two sections of the ZR which work in tandem to limit building height in the Special Lincoln Square District ("the Special District") established by ZR art. VII, ch. 2 (ZR 82-00 et seq.):
    1) The "Bulk Packing Rule," ZR sec. 82-34, and
    2) The "Split Lot Rule," ZR Secs. 33-48 and 77-02.

(LW! SOF at 1-2). There is no question that the term "Voids" as used in the statement of the first of the issues raised on appeal refers to the building's tall mechanical spaces, and not to questions relating to whether the amount of horizontal floor space used for mechanical equipment in the Project is excessive or irregular and does not qualify for deduction under the ZR Section 12-10 definition of "floor area." The initial Statement of Facts states that "a substantial portion of the Tower's height - 196 vertical feet - would be composed of empty spaces (the "Voids")." (Id. at 1) Further, that the Voids "comprise purportedly non-floor area space of 20 vertical feet on the fifteenth floor; 'residential amenity space,' 42 feet high, on the sixteenth floor; and more 'mechanical space' on the seventeenth, eighteenth, and nineteen floors for a total of 176 vertical feet." (Id. at 3.)

Appellant Landmark West!'s arguments with regard to the Voids similarly focus on the floor-to-ceiling height of the mechanical spaces, largely tracking the arguments made by Appellant City Club, stating for example that: "[t]hese spaces violate the use restrictions because they are not a use 'customarily found in connection with residential uses.'" (Id. at 16.)

Insofar as Appellant Landmark West! questioned whether the Voids are in fact needed for mechanical equipment, it was with respect to their *vertical* dimension, i.e., the floor-to-ceiling heights of the spaces:

- "The Owner does not even try or feign an attempt to justify the subject 48- or 64-foot tall clearance voids as necessary for the operation of the mechanical equipment." (Id. at 18.)

- "There is nothing to stop the Owner from building a residential floor and use up the FAR at a reasonable height, say 20, 25 or 30 [feet] above the mechanical equipment. Going beyond the clearance that is specified by the manufacturer for the operation of the equipment, the Owner feels that the Zoning Resolution has no say in the height at which it can start building livable space. Hence the idea of the void." (Id. at 19)

- "To achieve the purpose of the 1993 tower on-a-base amendments, the space housing the mechanical equipment, as accessory use exclusion to bulk [sic], needs to be given its commonly accepted meaning of covering only footprint area and volumetric space, or spatial clearance, necessary for optimal operation of the equipment as per the manufacturer's guidelines." (Id. at 20)

Each and every one of these points was made to argue that mechanical spaces with tall floor-to-ceiling heights are unlawful or must be counted towards floor area. These are precisely

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the issues which the Board addressed in Cal. No. 2016-427-A and which were the subject of the "Mechanical Voids Text Amendment." Appellant's assertion in its August 21 Supplemental Statement that the issue as presented in its Preliminary Statement "fairly covers all spatial objections (length, width and height) to the FAR deductions" (LW! SSOF at 3) is wishful thinking.

This is further demonstrated by the fact that on July 31, 2019, only five days before the Board's public hearing, Landmark West!'s counsel emailed this firm (copied to Board staff) requesting detailed information regarding the layout and identification of mechanical equipment in the Project, stating that "their receipt will go a long way in determining *If [sic] and when I can submit an appropriate response [to Owner's Statement in Opposition].*" (Exhibit E hereto (emphasis added).) We responded that the email "shows that you are now trying to determine at this late date-- on the very cusp of the hearing-- whether to add new issues to the mix. The appeals should be heard and decided on the issues raised in your appeal papers. We will therefore oppose any request made to the Board to expand the scope of the appeals to entertain new issues." (Exhibit F hereto.)

Quite simply, Appellants had the opportunity as early as May to raise issues concerning whether the floor space used for mechanical equipment in the Project is excessive or irregular and chose not to do so until just before and at the August 6 hearing. The conclusion is inescapable that this is a tactic designed to prolong proceedings at the Board, and postpone a final resolution of the issues, perhaps in the hopes that the Project will die a death by delay. Appellant Landmark West!'s maneuvering mocks the Board process (and in particular the requirement that an appeal be made within thirty days of the issuance of DOB determination) and if permitted would severely prejudice Owner. It should not be countenanced. The new issues raised by Appellant Landmark West! should not heard by the Board via a continuation of the appeal following a decision on the issues raised by Appellants in May.

E. Conclusion

For the reasons set forth herein, as well as in our prior submissions dated July 24, 2019 and August 21, 2019, we respectfully request that the Board expeditiously deny the appeals.

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BSA Cal. No. 2019-89-A; BSA Cal. No. 2019-94-A
August 28, 2019 Statement of West 66th Sponsor LLC
Index of Exhibits and Appendices

Exhibit A — Special Lincoln Square District Plan

Exhibit B — Zoning Map 8c

Exhibit C — Landmark West! Testimony (November 17, 1993)

Exhibit D — Zoning Diagram - 1865 Broadway (August 23, 2019)

Exhibit E — Stuart Klein Email to David Karnovsky, Toni Matias and others (July 31, 2019)

Exhibit F — David Karnovsky Email to Stuart Klein, Toni Matias and others (August 1, 2019)

Appendix A — Cited Case Law

- Matter of Lisa T. v. King E.T., 30 N.Y.3d 548 (2017).
- McNerney v. Geneva, 290 N.Y. 505 (1943).

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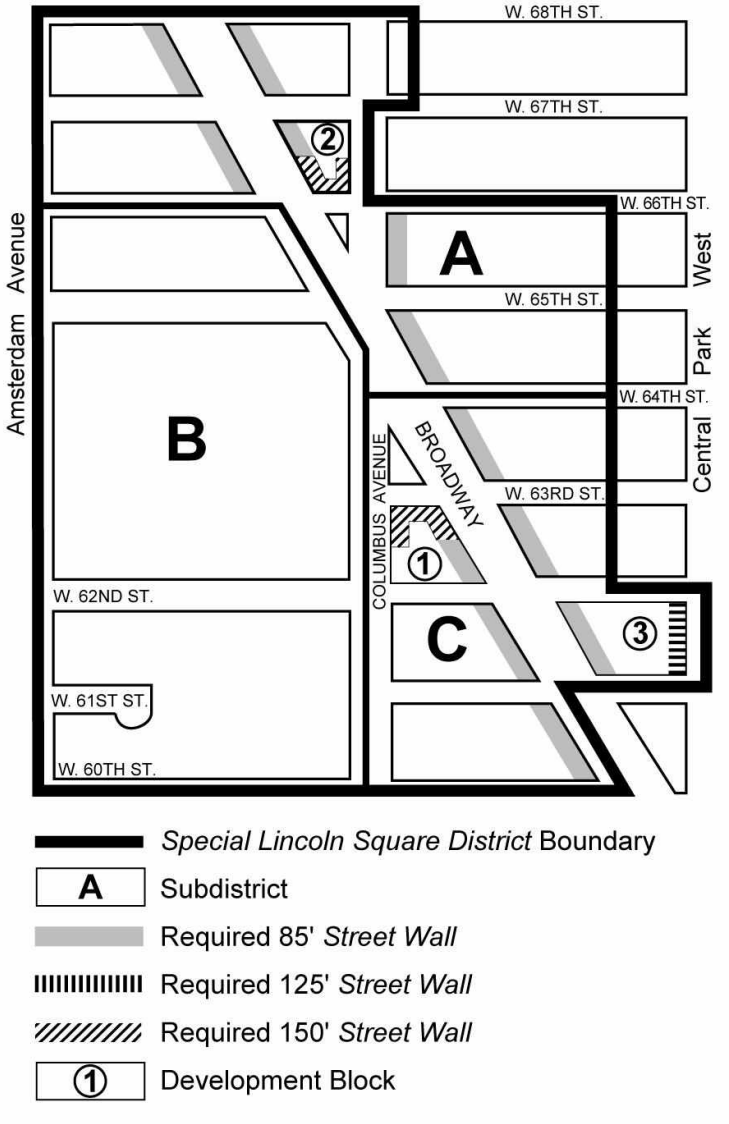
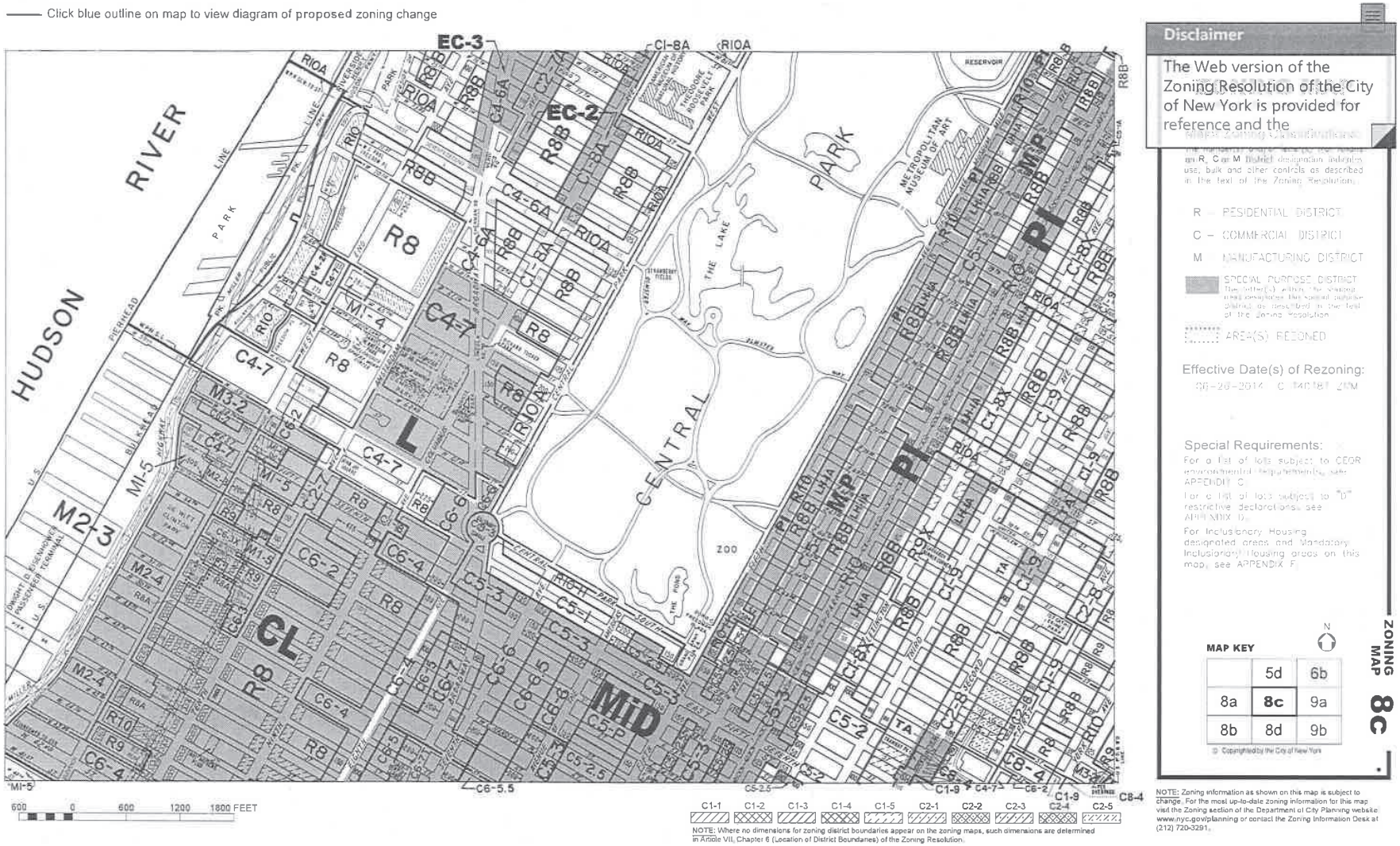
Appendix A - Special Lincoln Square District Plan

LAST AMENDED
2/9/1994





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LANDMARK WEST!

1 copy

THE COMMITTEE TO PRESERVE THE UPPER WEST SIDE

SPECIAL LINCOLN QUARE DISTRICT
PROPOSED ZONING

PUBLIC TESTIMONY
NOVEMBER 17, 1993

VICTOR CALIANDRO, AIA, FIUD, PRACTICING ARCHITECT AND URBAN DESIGNER, PROFESSOR OF ARCHITECTURE, THE CITY COLLEGE OF NY

MR. CHAIRMAN, COMMISSIONERS:

I AM REPRESENTING LANDMARK WEST! AND THE COMMUNITY AFFECTED BY AND CONCERNED OVER THE FUTURE OF THE SPECIAL LINCOLN SQUARE DISTRICT.

WE HAVE WORKED WITH MEMBERS OF THE COMMUNITY AND CITY PLANNING STAFF AND HAVE REVIEWED THE PROPOSED ZONING UNDER CONSIDERATION. WE HAVE MODELED ZONING ENVELOPES AT THE SIMULATION CENTER, AND ANALYZED THEIR IMPACTS UPON THE DISTRICT AT BOTH A LARGE SCALE AND AT THE SCALE OF THE PEDESTRIAN.

THE ZONING ENVELOPES WHICH WE HAVE MODELED INCLUDE: EXISTING ZONING, ZONING PROPOSED BY THE DEPARTMENT OF CITY PLANNING, AND ZONING PROPOSED BY THE COMMUNITY AND LANDMARK WEST! THE MODELING INCLUDES THE SIX "SOFT" SITES AS PREVIOUSLY IDENTIFIED BY THE DEPARTMENT OF CITY PLANNING. THE RESULTS, SET IN A 10 FT BY 13 FT DISTRICT-WIDE MODEL, MAY BE VIEWED AT THE MUNICIPAL ARTS SOCIETY IN THE URBAN CENTER. WE URGE YOU TO SEE THE MODEL, ASSESS THE IMPACTS OF EACH PROPOSED PLAN, AND ASSIST IN FURTHER SIMULATION EFFORTS TO REACH A WIDE CONCENSUS.

THERE ARE THREE OVERRIDING ISSUES OF CONCERN TO THE COMMUNITY. THE FIRST IS DENSITY: IT MUST BE LOWERED SO AS TO NOT FURTHER NEGATIVELY IMPACT THE QUALITY OF LIFE AND SERVICES. WE PROPOSE THAT A MAXIMUM OF 10 FAR BE ESTABLISHED ON A DISTRICT WIDE BASIS. THIS EFFECTIVELY MEANS THAT THERE WOULD BE NO BONUS PROVISIONS. ARCADES, SUBWAY IMPROVEMENTS AND ON SITE INCLUSIONARY HOUSING WOULD BE A NORMAL PART OF DEVELOPMENT. THE AVERAGE FLOOR AREA RATIO (FAR) OF 23 BUILDINGS SURVEYED BY THE DEPARTMENT OF CITY PLANNING, IS 10.6. THE AVERAGE FAR FOR RESIDENTIAL USE IS 8.2. WHAT WE ARE PROPOSING IS INDEED CONTEXTUAL. THE EFFECTS OF A 10 FAR LIMIT CAN BE READILY STUDIED AND EVALUATED IN THE SIMULATION MODEL.

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THE SECOND IMPORTANT ISSUE IS THAT OF BULDING HEIGHT. WE ARE CONCERNED WITH THE IMPACT OF TALL STRUCTURES ON THE DISTRICT AND ON THE PEDESTRIAN IN THE DISTRICT, WHERE URBAN SCALE AND CHARACTER ARE OVERWHELMED BY GIGANTIC MASSES. WE HAVE ONLY TO LOOK AT NOS. 1 AND 2 LINCOLN PLAZA, AND AT THE LINCOLN SQUARE UNDER CONSTRUCTION TO UNDERSTAND THE CONSEQUENCES. YET THE AVERAGE BUILDING HEIGHT FOR THE BUILDINGS SURVEYED BY THE DEPARTMENT OF CITY PLANNING IS JUST UNDER 28 FLOORS, OR 275 FEET. WHILE WE AGREE WITH THE INTENTION OF LIMITING HEIGHT EXPRESSED BY THE DEPARTMENT, WE CANNOT ACCEPT THE DEVICE OF "PACKING THE BULK." THIS DEVICE WOULD NOT IN FACT LIMIT THE HEIGHT OF BUILDINGS, BUT ONLY MAKES ACHIEVING A TALL BUIDING SLIGHTLY MORE DIFFICULT THAN AT PRESENT. THIS ASPECT IS ESPECIALLY TRUE ON LARGE DEVELOPMENT SITES (ONES COMMANDING AN ENTIRE BLOCK FRONTAGE OR MORE). OF THE SIX SOFT SITES, FOUR ARE LARGE, AND WILL CONSISTENTLY PRODUCE TALL BUILDINGS. THIRTY THREE TO THIRTY FIVE STORIES WOULD NOT BE UNCOMMON. WE PROPOSE INSTEAD A SIMPLE HEIGHT LIMIT FOR THE ENTIRE DISTRICT OF 275 FEET. WITHIN THIS UPPER LIMIT THE DESIGN OF THE BUILDING AND ITS MASSING WOULD BE QUITE FREE. ABOVE THIS HEIGHT ONLY MECHANICAL BULKHEADS WOULD BE PERMITTED. THE IMPACT OF HEIGHT (AND LARGE DEVELOPMENT SITES) CAN BE READILY ASSESSED IN THE SIMULATION MODEL.

THE THIRD ISSUE REFLECTS A CONCERN FOR THE IMPACT OF THE GIGANTIC SCALE OF DEVELOPMENT UPON THE DISTRICT AND THE PEDESTRIAN. WHILE WE RECOGNIZE THAT THE "TOWER ON A BASE" BUILDING TYPE WHICH UNDERLIES THE ZONING WAS A 1960'S SOLUTION TO A MIXED COMMERCIAL-RESIDENTIAL DEVELOPMENT, WE ALSO RECOGNIZE THAT IT IS A BUILDING FORM WHICH IS FUNDAMENTALLY NOT AMENABLE TO BEING A GOOD NEIGHBOR-- THAT IS, OF RESPONDING TO ITS CONTEXT. THIS IS ESPECIALLY APPARENT WHEN WE AGAIN LOOK AT NOS. 1 AND 2 LINCOLN PLAZA AND AT THE LINCOLN SQUARE BUILDING UNDER CONSTRUCTION. THEIR LARGE -GIGANTIC- SIZE IS A RESULT OF THEIR LARGE SITES. THEIR LACK OF VARIETY AND ARTICULATION ONLY EXACERBATE THEIR LARGE PRESENCE. THIS IS ALSO APPARENT IN THE UNRELENTING STREET WALLS ALONG BROADWAY-- RUNNING FOR UP TO 235 FEET. THIS IS NOT IN THE CONTEXT OF THE UPPER WEST SIDE OR CENTRAL PARK WEST. WE PROPOSE THAT THE ZONING INCORPORATE A SERIES OF FLEXIBLE CONTEXTUAL RULES WHICH CAN ENCOURAGE VARIETY OF BUILDING FORMS, STREET SCALE AND STRONG ARCHITECTURAL RESPONSES TO LINCOLN CENTER. SPECIFICALLY, THE BUILDINGS ALONG BROADWAY SHOULD EXTEND THE 85 FOOT STREET WALL UP TO 150 FEET FOR NO MORE THAN 60 % OF ITS LENGTH, WRAP AROUND THE CORNERS AND STEP DOWN TO MEET ADJACENT BUILDINGS. THE MODELS SHOWN EXPRESS THE IDEA OF A STREET WALL BUILDING TYPE THAT IS A FAMILIAR FORM THROUGHOUT THE CITY. WE ARE ALSO PROPOSING CONTEXTUAL RULES FOR CENTRAL PARK WEST AND FOR THE BOW TIE SITE.

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COMPARISONS OF THE EFFECT OF THE PROPOSED ZONING RULES AND AN ASSESSMENT OF THEIR IMPACTS BY USE OF THE SIMULATION MODEL IS IMPORTANT.

WE URGE YOU TO VISIT, STUDY, CRITICIZE, PROPOSE AND DESIGN WITH THE SIMULATION MODEL.

WE ARE ALSO ATTACHING A COMPARATIVE ANALYSIS OF BUILDING TYPES IN RELATION TO BULK CONTROL RULES TO ILLUSTRATE THE FLEXIBILITY AND VARIETY WHICH THIS APPROACH CAN FOSTER.

IN SUMMARY, THE COMMUNITY IS IMPACTED AND CONSTRICTED BY EXCESSIVELY LARGE DEVELOPMENT WITHOUT EITHER RELIEF THROUGH THE PROVISION OF PUBLIC AMENITIES OR THE SENSE THAT ITS CHARACTER, VITALITY AND VARIETY CAN BE PRESERVED AND ENHANCED. WE ARE SEEKING A RESPONSIVE ZONING TO GUIDE FUTURE DEVELOPMENT: ONE WHICH LOWERS THE DENSITY AND SCALE OF THE BUIDINGS AND CREATES PREDICTABLE BUILDINGS WHICH ENHANCE THE DISTRICT.

WE WOULD LIKE TO ALSO ILLUSTRATE HERE SOME OF THE EFFECTS OF THE PROPOSED RULES IN COMPARISON WITH THE EXISTING ZONING CONTROLS.

THANK YOU.

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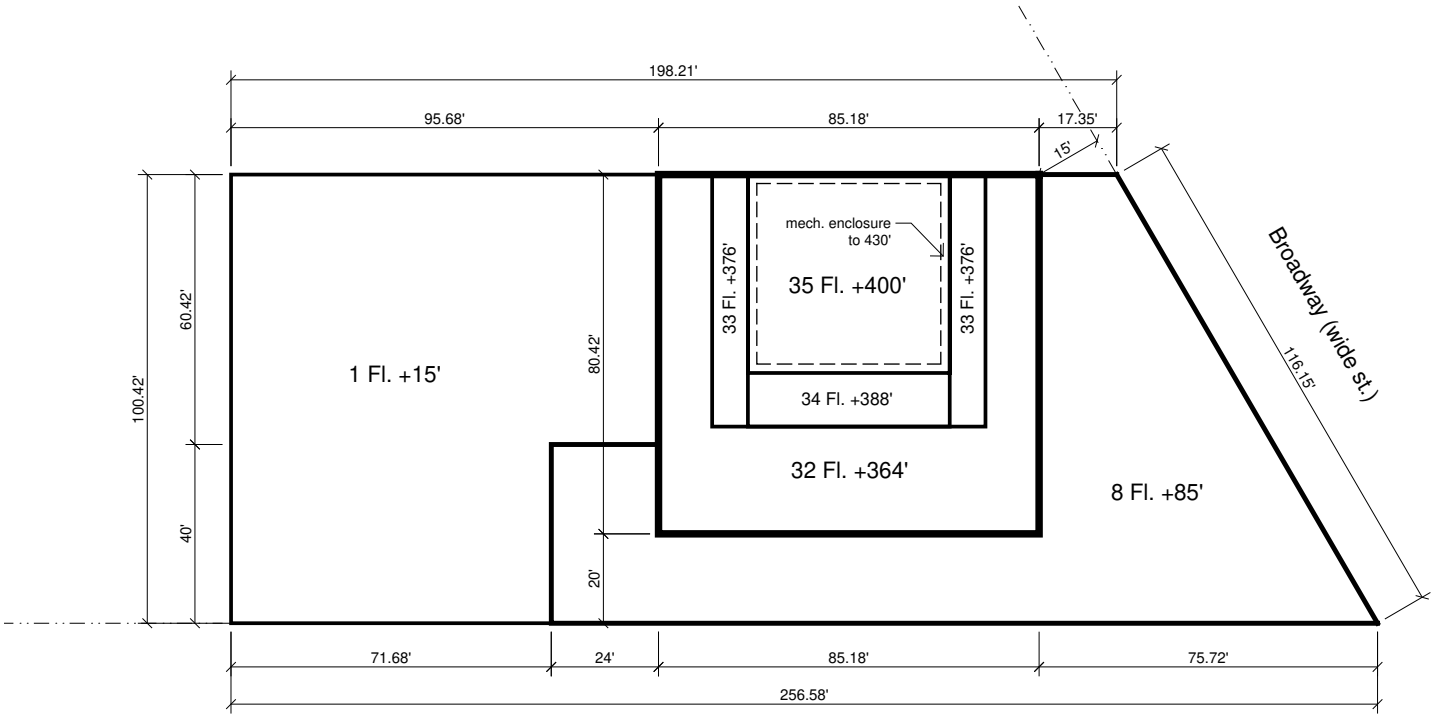
1865 Broadway

Block 1114, Lot 9

Scheme 1: Residential tower above ground floor retail



Zone: C4-7
Special Lincoln Square District

Lot Area: 22,835 SF

Maximum Permitted Floor Area:

Commercial @ 10 FAR	228,350	ZSF
Residential @ 10 FAR	228,350	ZSF
Inclusionary @ 2 FAR	45,670	ZSF
Maximum total @ 12 FAR	274,020	ZSF

Used This Scheme:

Retail	14,000	ZSF
Residential	260,020	ZSF
Total	274,020	ZSF

Floor-to-floor Heights:

150' "measure"

1	15'	Retail & lobby
2-8	10'	Residential
9-15	10.7'	Residential
16	12'	Residential
17-35	12'	Residential
	400'	Building Height (430' w mech. enclosure)

Floor sizes:

1	22,835	GSF	Retail & lobby
2-8	14,187	GSF	Residential
9-32	6,850*	GSF	Residential
33	3,407	GSF	Residential
34	2,726	GSF	Residential
35	2,044	GSF	Residential
Total	294,721	Gross Square Feet	

*Min tower size 30% (6,850 SF)

1865 bulk study.dwg

Note: Lot areas and floor areas are estimates subject to survey verification.

Date: 08/23/19 Scale: 1" = 40'

Drawing No: 1

Development Consulting Services, Inc.
330 West 42nd Street
16th Floor
New York, NY 10036
212 714-0280

R. 002066

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Lehman, Ellen

From: Stuart A. Klein <SKlein@buildinglawnyc.com>
Sent: Wednesday, July 31, 2019 11:01 PM
To: Toni Matias (BSA)
Cc: Mikhail Sheynker; Karnovsky, David; John Low-Beer
Subject: Re: 36 West 66th Street

David:

I have finished reading though your latest, extraordinarily detailed submission, which includes many things about the ZR that I never really wanted to know, most being far beyond my pay grade. But despite the avalanche of notations and references, I do not see a copy of plan number A-300.01, referenced in the FD's March, 2019 letter. Nor do I see any plans indicating the layout of the mechanical equipment, the identification of the mechanical equipment with the MEA and/or UL ratings or any manufacturers' specification sheets for same.

Were items these submitted to DOB prior to its rescission letter, or were they part of the original ND filing or subsequent filings? No matter the answer, could I get copies of all, as their receipt will go a long way in determining If and when I can submit an appropriate response.

Best regards,

Stu

.

STUART A. KLEIN, ESQ.
KLEIN SLOWIK PLLC
90 BROAD ST., SUITE 602
NEW YORK, NY 10004
Phone: (212) 564-7560 x 102
Fax: (212) 564-7845
sklein@buildinglawnyc.com

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Lehman, Ellen

From: Karnovsky, David
Sent: Thursday, August 1, 2019 1:23 PM
To: 'Stuart A. Klein'; Toni Matias (BSA)
Cc: Mikhail Sheynker; John Low-Beer
Subject: RE: 36 West 66th Street

Stuart:

I hope you are well and look forward to seeing you on the 6th.

Our papers address in detail the two issues that Landmarks West and City Club have raised on appeal: First, whether the floor to ceiling heights of the mechanical spaces are lawful under zoning ; and Second, whether DOB correctly applied the bulk distribution provisions of Section 82-34. The documentation we provided as exhibits, including the ZD-1, are addressed to those two issues.

Your request for information relating to the layout of the mechanical equipment on the mechanical floor space, the identification of the mechanical equipment with the MEA and/or UL ratings or manufacturers specification sheets, etc., shows that you are now trying to determine at this late date --on the very cusp of the hearing-- whether to add new issues to the mix.

The appeals should be heard and decided on the issues raised in your appeal papers . We will therefore oppose any request made to the Board to expand the scope of the appeals to entertain new issues.

Best

David

David Karnovsky
Partner

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David.Karnovsky@friedfrank.com | Tel: **+1 212 859 8927**

Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza, New York, NY 10004
friedfrank.com

From: Stuart A. Klein
Sent: Wednesday, July 31, 2019 11:01 PM
To: Toni Matias (BSA)
Cc: Mikhail Sheynker ; Karnovsky, David ; John Low-Beer
Subject: Re: 36 West 66th Street

David:

I have finished reading though your latest, extraordinarily detailed submission, which includes many things about the ZR that I never really wanted to know, most being far beyond my pay grade. But despite the avalanche of notations and references, I do not see a copy of plan number A-300.01, referenced in the FD's March, 2019 letter. Nor do I see any plans indicating the layout of the mechanical equipment, the identification of the mechanical equipment with the MEA and/or UL ratings or any manufacturers' specification sheets for same.

Were items these submitted to DOB prior to its rescission letter, or were they part of the original ND filing or subsequent filings? No matter the answer, could I get copies of all, as their receipt will go a long way in determining If and when I can submit an appropriate response.

Best regards,

Stu

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Matter of Lisa T. v King E.T.

Court of Appeals of New York

November 16, 2017, Argued ; December 19, 2017, Decided

No. 129

Reporter
30 N.Y.3d 548 *; 91 N.E.3d 1215 **; 69 N.Y.S.3d 236 ***; 2017 N.Y. LEXIS 3778 ****; 2017 NY Slip Op 08800; 2017 WL 6454309

[1] In the Matter of Lisa T., Respondent, v King E.T., Appellant.

Prior History: [**1]** Appeal, by permission of the Appellate Division of the Supreme Court in the First Judicial Department, from an order of that Court, entered February 28, 2017. The Appellate Division affirmed (1) an order of the Family Court of Bronx County (John J. Kelley, J.) which, insofar as appealed from, had found that respondent willfully violated two temporary orders of protection; and (2) an order of that court which had issued a one-year order of protection against respondent. The following question was certified by the Appellate Division: "Was the order of this Court, which affirmed the order of the Family Court, properly made?"

Matter of Lisa T. v. King E.T., 147 AD3d 670, 48 NYS3d 119, 2017 N.Y. App. Div. LEXIS 1472 (Feb. 28, 2017)affirmed.

Disposition: Order affirmed, without costs, and certified question answered in the affirmative.

Core Terms

family court, temporary order, violations, offenses, contempt, emails, criminal court, final order, plain language, judiciary law, orders, court's authority, new order, petitions, provides, visitation, obey, willful violation, violation of the order, court's jurisdiction, new family, communications, arrangements, constitutes, harassment, parties, courts, words, bail, jail

Case Summary

Overview

HOLDINGS: [1]-The Appellate Division properly affirmed a family court's dismissal of a family offense petition, sustentation of a violation petition, and issuance of a one-year final order of protection because a father—through e-mail communications unrelated to the parties' child's visitation or any emergency—willfully violated two temporary orders of protection issued during the pendency of a family offense, the plain language of Family Ct Act §§ 846 and 846-a supplied the essential statutory jurisdiction to enter a new order of protection where the original family offense petition had been dismissed, and the jurisdiction exercised by the family court was consistent both with the statutory text and the purpose of Family Ct Act art. 8.

Outcome
Order affirmed and certified question answered affirmatively.

LexisNexis® Headnotes

Family Law

Civil Procedure > ... > Subject Matter
Jurisdiction > Jurisdiction Over Actions > Limited Jurisdiction

HN1 **Family Law**

A family court is a court of limited jurisdiction, constrained to exercise only those powers granted to it by the State Constitution or by statute.

Civil Procedure > ... > Subject Matter
Jurisdiction > Jurisdiction Over

30 N.Y.3d 548, *548; 91 N.E.3d 1215, **1215; 69 N.Y.S.3d 236, ***236; 2017 N.Y. LEXIS 3778, ****1; 2017 NY Slip Op 08800, *****08800

Actions > Concurrent Jurisdiction

Criminal Law & Procedure > Criminal Offenses > Crimes Against Persons > Domestic Offenses

Family Law > Family Protection & Welfare

HN2 **Concurrent Jurisdiction**

In accordance with N.Y. Const. art. VI, § 13, the Family Court Act provides that court with concurrent jurisdiction (shared with the criminal courts) over "family offenses." Family Ct Act § 812(1). The statutory procedures concerning family offenses are set forth in Family Ct Act art. 8, and Family Ct Act § 812 enumerates the crimes which, if committed between persons in specified relationships, constitute family offenses.

Family Law > Family Protection & Welfare

HN3 **Family Protection & Welfare**

A family offense proceeding is commenced by the filing of a petition alleging the commission of a family offense between parties with the requisite familial relationship, and the petition typically seeks an order of protection. Family Ct Act § 821. The purpose of Family Ct Act art. 8 is to remove in the first instance from the criminal courts a limited class of offenses arising in the family milieu, in order to permit a more ameliorative and mediative role by a family court.

Criminal Law & Procedure > ... > Crimes Against Persons > Violation of Protection Orders > Application & Issuance

Family Law > Family Protection & Welfare

HN4 **Application & Issuance**

Upon the filing of a family offense petition, a family court may, for good cause shown, issue a temporary order of protection in favor of the petitioner and against the respondent. Family Ct Act §§ 821-a(2)(b), 828. A temporary order of protection is not a finding of wrongdoing. Family Ct Act § 828(2). Nevertheless, it is an order of the court and, pursuant to Family Ct Act § 846, in the event of a violation, a new petition may be filed alleging that the respondent has failed to obey a lawful order" of the court. The court may hear the violation petition itself and either take such action as is authorized under this article, or determine whether such violation constitutes contempt of court, and transfer the allegations of criminal conduct constituting such violation to the district attorney for prosecution; or transfer the entire proceeding to the criminal court. Family Ct Act § 846(b)(ii)(A)-(C).

Criminal Law & Procedure > ... > Crimes Against Persons > Violation of Protection Orders > Penalties

HN5 **Penalties**

When a family court retains jurisdiction over a violation petition, Family Ct Act 846-a—entitled "Powers on failure to obey order"—sets forth the dispositions available to the court upon a finding of a willful violation. Specifically, if a respondent is brought before the court for failure to obey any lawful order issued under this article or an order of protection or temporary order of protection issued pursuant to this act, and it is proven that the respondent willfully violated such an order, the court may, among other things, modify an existing order or temporary order of protection to add reasonable conditions of behavior to the existing order, make a new order of protection in accordance with Family Ct Act § 842, or may commit the respondent to jail for a term not to exceed six months.

Governments > Legislation > Interpretation

HN6 **Interpretation**

Because the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof.

Criminal Law & Procedure > ... > Crimes Against Persons > Violation of Protection Orders > Application & Issuance

Civil Procedure > Sanctions > Contempt

HN7 **Application & Issuance**

Family Ct Act §§ 846 and 846-a unequivocally grant a family court jurisdiction and authority to prosecute

contempt of its orders, including temporary orders of protection. Further, the statutory text explicitly authorizes the court to enter a new order of protection if a respondent is found to have willfully violated a temporary order of protection.

Criminal Law & Procedure > ... > Crimes Against Persons > Violation of Protection Orders > Application & Issuance

Governments > Courts > Authority to Adjudicate

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > Concurrent Jurisdiction

HN8 **Application & Issuance**

While Family Ct Act § 812 provides a family court with concurrent jurisdiction over only specified family offenses, and the violation of a temporary order of protection does not necessarily involve a family offense, Family Ct Act § 115(c) states that the family court has such other jurisdiction as is provided by law.

Criminal Law & Procedure > ... > Crimes Against Persons > Violation of Protection Orders > Penalties

HN9 **Penalties**

Family Ct Act §§ 846 and 846-a contain no language tying a family court's authority to impose specific penalties for the willful violation of a temporary order of protection to the court's determination of whether or not the family offense petition, itself, should be sustained. Significantly, there is no basis in the statutory text upon which any distinction may be drawn between the family court's jurisdiction over violations of final orders of protection entered after a finding of a family offense, on the one hand, and violations of temporary orders of protection entered during the pendency of a family offense proceeding, on the other. Further, the statutory scheme makes clear that conduct constituting a violation of the order of protection need not necessarily constitute a separate family offense in order for the court to have jurisdiction over the violation. Indeed, § 846-a contains no such requirement.

Criminal Law & Procedure > ... > Crimes Against Persons > Violation of Protection Orders > Application & Issuance

Criminal Law & Procedure > ... > Crimes Against Persons > Violation of Protection Orders > Penalties

HN10 **Application & Issuance**

The reference in Family Ct Act § 846-a to Family Ct Act § 842—which, in turn, references Family Ct Act § 841—implicitly incorporates a limitation that a final order of protection may be entered only after a finding that a family offense was committed. Section 842 sets forth the terms, conditions, and durations, of orders of protection entered pursuant to Family Ct Act art. 8. Notably, while § 842 references orders issued pursuant to § 841—which governs the disposition of family offense petitions—§ 846-a does not contain any such reference to § 841. Thus, on its face, § 846-a incorporates only that which is set forth in § 842 with regard to the terms and conditions of the order of protection entered upon a finding of a violation. This is evidenced by the fact that § 846-a expressly includes violations of temporary orders without drawing any distinction between temporary and final orders; the inclusion of temporary orders would be nonsensical if § 846-a applied only to those orders of protection entered upon a disposition under § 841.

Criminal Law & Procedure > ... > Crimes Against Persons > Violation of Protection Orders > Penalties

HN11 **Penalties**

Family Ct Act § 846-a does not require a family court to make a finding as to whether a new family offense has occurred as a prerequisite to finding and sanctioning a violation of a temporary order of protection. Moreover, the plain language of Family Ct Act § 841 does not address family offense findings made on violation petitions.

Criminal Law & Procedure > ... > Crimes Against Persons > Violation of Protection Orders > Application & Issuance

Criminal Law & Procedure > ... > Crimes Against Persons > Violation of Protection Orders > Penalties

HN12 **Application & Issuance**

To be sure, where a family court concludes that the allegations of the petition charging a respondent with a family offense are not established, it must dismiss the family offense petition. Family Ct Act § 841(a). However, this does not compel the conclusion that a pending petition alleging the violation of a temporary order of protection must also be dismissed. The family offense and violation petitions are authorized by different statutory provisions. Family Ct Act §§ 821, 846, 846-a. Once the family court obtains jurisdiction over the parties by virtue of a petition facially alleging a family offense, it may issue a temporary order of protection. Family Ct Act §§ 821-a(2)(a) 828. A violation of that temporary order of protection is a separate matter over which §§s 846 and 846-a give the family court authority to act, including the authority to issue a final order of protection.

Criminal Law & Procedure > ... > Crimes Against Persons > Violation of Protection Orders > Penalties

HN13 **Penalties**

Insofar as Family Ct Act §§ 846 and 846-a specifically provide for punishments and remedies for violations of temporary and final orders of protection issued pursuant to Family Ct Act art. 8, resort to the Judiciary Law is unwarranted and inappropriate.

Family Law

HN14 **Family Law**

Family Ct Act § 156 provides that the Judiciary Law shall apply unless a specific punishment or other remedy for such violation is provided in this act or any other law. The court is always bound by a specific section of a substantive Family Ct Act article as opposed to § 156. In other words, this section is the default option, available only in the relatively rare event that a different remedy has not been legislated.

Criminal Law & Procedure > ... > Crimes Against Persons > Violation of Protection Orders > Application & Issuance

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions

Criminal Law & Procedure > ... > Crimes Against Persons > Violation of Protection Orders > Penalties

HN15 **Application & Issuance**

Allowing a family court to retain jurisdiction over violations of temporary court orders entered during the pendency of a family offense proceeding reinforces the goal of protecting victims and preventing domestic violence. Although, in some circumstances, the primary harm resulting from a violation of a temporary order of protection may be directed at the court whose authority has been thwarted, there is generally also harm to the person who has been contacted in violation of the order. Further, permitting Family Court to enter an order of protection is consistent with the dispositions available should the matter proceed, instead, to criminal court. Penal Law §§ 215.50(3), 215.51, CPL 530.12(5), 530.13(4). Thus, the statutory language permitting the entry of an order of protection upon a violation of a temporary order is consonant with the legislative goal of achieving resolution of intra-family disputes in a family court without the need to resort to the criminal forum, where harsher sanctions—such as lengthier incarceration periods—may be imposed for criminal contempt. Notably, the act of disobeying the order in and of itself—regardless of whether it amounts to a family offense—constitutes criminal contempt in the second degree. Penal Law § 215.50(3) criminalizes the intentional disobedience or resistance to the lawful process or other mandate of a court.

Governments > Legislation > Interpretation

HN16 **Interpretation**

The best evidence of the legislative intent is the plain language of the text chosen by the legislature. If, however, the wording of a statute has created an unintended consequence, it is the prerogative of the legislature, not a court, to correct it.

Headnotes/Summary

Headnotes

Husband and Wife and Other Domestic Relationships — Order of Protection — Final Order of Protection Issued Where Related Family Offense Petition Dismissed

30 N.Y.3d 548, *548; 91 N.E.3d 1215, **1215; 69 N.Y.S.3d 236, ***236; 2017 N.Y. LEXIS 3778, ****1; 2017 NY Slip Op 08800, *****08800

1. Family Court had jurisdiction to sustain the petition alleging that respondent husband had willfully violated two temporary orders of protection and issue a final order of protection notwithstanding its dismissal of the related family offense petition filed against respondent. Family Court Act §§846 and 846-a unequivocally grant Family Court jurisdiction and **[****2]** authority to prosecute contempt of its orders, including temporary orders of protection. Further, the statutory text explicitly authorizes the court to enter a new order of protection if a respondent is found to have willfully violated a temporary order of protection (*see* Family Ct Act § 846-a). While section 812 provides Family Court with concurrent jurisdiction over only specified family offenses, and the violation of a temporary order of protection does not necessarily involve a family offense, Family Court Act § 115 (c) states that "[t]he family court has such other jurisdiction as is provided by law." Family Court Act §§846 and 846-a contain no language tying Family Court's authority to impose specific penalties for the willful violation of a temporary order of protection to the court's determination of whether or not the family offense petition should be sustained. Thus, the jurisdiction exercised by Family Court here was consistent both with the statutory text and with the purpose of Family Court Act article 8. Allowing Family Court to retain jurisdiction over violations of temporary court orders entered during the pendency of a family offense proceeding reinforces the goal of protecting victims and preventing domestic violence.

Husband and Wife and Other Domestic Relationships — Order [**3] of Protection — Willful Violation — Requisite Knowledge**

2. The lower courts did not err as a matter of law by concluding that respondent had the requisite knowledge to support a finding that he violated a temporary order of protection issued in relation to petitioner's family offense petition under the following circumstances: several successive extensions of the temporary orders of protection were served on respondent, there were no differences between the terms of the challenged order and the most recent prior order, respondent's attorney was present in court when the order was issued, and each temporary order contained a conspicuous written warning to respondent that a failure to appear in court on the next scheduled date could result in an extension of the order of protection and that the order would therefore remain in force and effect.

Counsel: *Law Offices of Richard L. Herzfeld, P.C.*, New York City (*Richard L. Herzfeld* of counsel), for appellant. I. Petitioner failed to prove a violation of the temporary order of protection. (*Matter of Rivera v Quinones-Rivera*, 15 AD3d 583, 790 NYS2d 209; *Matter of Bah v Bah*, 112 AD3d 921, 978 NYS2d 301; *Matter of Tina T. v Steven U.*, 243 AD2d 863, 663 NYS2d 307; *Mayfair Nursing Home v Neidhardt*, 173 AD2d 794, 571 NYS2d 30; *People v McCowan*, 85 NY2d 985, 652 NE2d 909, 629 NYS2d 163; *Matter of B.H. Children [Robert H.]*, 29 Misc 3d 161, 904 NYS2d 653; *Matter of McGregor v Bacchus*, 54 AD3d 678, 863 NYS2d 260.) II. Absent proof of a family offense for the underlying petition or violations of the temporary orders of protection, the court lacked jurisdiction **[****4]** to impose a final order of protec tion. (*Matter of Silver v Silver*, 36 NY2d 324, 327 NE2d 816, 367 NYS2d 777; *Matter of Autar v Karim-Singh*, 144 AD3d 676, 40 NYS3d 482; *Matter of Mary C. v Anthony C.*, 61 AD3d 682, 877 NYS2d 366; *Matter of Steinhilper v Decker*, 35 AD3d 1101, 827 NYS2d 738; *Financial Indus. Regulatory Auth., Inc. v Fiero*, 10 NY3d 12, 882 NE2d 879, 853 NYS2d 267.)

Law Offices of Randall S. Carmel, P.C., Jericho (*Randall S. Carmel* of counsel), for respondent. I. The appellant violated the temporary orders of protection, dated November 20, 2013, and April 3, 2014, where he had actual notice of the terms of each order and willfully contacted the respondent in manners that were expressly prohibited by the temporary orders of protection. (*Matter of Andrews v Mouzon*, 80 AD3d 761, 915 NYS2d 604; *Matter of Rolon v Medina*, 56 AD3d 676, 868 NYS2d 226; *Matter of Winslow v Lott*, 272 AD2d 406, 707 NYS2d 481; *Matter of Janice M. v Terrance J.*, 96 AD3d 482, 945 NYS2d 693; *Matter of Melind M. v Joseph P.*, 95 AD3d 553, 944 NYS2d 82; *Matter of Everett C. v Oneida P.*, 61 AD3d 489, 878 NYS2d 301; *Matter of Lynn TT. v Joseph O.*, 129 AD3d 1129, 10 NYS3d 702.) II. The Family Court appropriately issued a final order of protection against the appellant based on the appellant's violation of temporary orders of protection even though the Family Court found that the appellant's offensive conduct did not constitute family offenses. (*Matter of Molloy v Molloy*, 137 AD3d 47, 24 NYS3d 333; *Anita W. v Rohan W.*, 13 Misc 3d 1224[A], 831 NYS2d 346, 2006 NY Slip Op 51965[U]; *Matter of Anderson v Anderson*, 25 AD2d 512, 267 NYS2d 75; *Kuenen v Kuenen*, 122 AD2d 616, 504 NYS2d 937; *Matter of Mary C. v Anthony C.*, 61 AD3d 682, 877 NYS2d 366; *Matter of Steinhilper v Decker*, 35 AD3d 1101, 827 NYS2d 738; *Matter of Rachel L. v Abraham L.*, 37 AD3d 720, 831 NYS2d 218; *Matter of V.C. v H.C.*, 257 A.D.2d 27, 689 NYS2d 447.)

30 N.Y.3d 548, *548; 91 N.E.3d 1215, **1215; 69 N.Y.S.3d 236, ***236; 2017 N.Y. LEXIS 3778, ****4; 2017 NY Slip Op 08800, *****08800

Judges: Opinion by Judge Stein. Judges Rivera, Fahey, Garcia and Feinman concur. Judge Wilson dissents in an opinion, in which Chief Judge DiFiore concurs.

Opinion by: STEIN

Opinion

[*237] [**1216] [*550]** Stein, J.

Petitioner Lisa T. filed a family offense petition against respondent King E.T., who is her husband and the father of her child. Petitioner requested and received a temporary **[2]** order of protection, ex parte, at her first appearance in Family Court. The temporary order of protection directed respondent to refrain **[****5]** from all communications with petitioner except those relating to visitation arrangements and emergencies **[**1217] [***238]** regarding the child. It is undisputed that respondent was served with, and had knowledge of, this order. Throughout a series of subsequent court appearances concerning the family offense petition—at which respondent was present with one exception—the temporary order of protection was extended. While the family offense proceeding remained pending, petitioner filed two violation petitions, later consolidated into a single petition, **[*551]** alleging that respondent had contacted her in contravention of the temporary orders of protection.

Family Court held a combined hearing on the family offense and consolidated violation petitions. As relevant here, Family Court determined that petitioner had presented insufficient evidence to sustain the family offense petition, but that she had proved respondent's willful violations of two temporary orders through email communications unrelated to the child's visitation or any emergency. Accordingly, Family Court dismissed the family offense petition, but sustained the violation petition and issued a one-year final order of protection precluding respondent **[****6]** from, among other things, communicating with petitioner except as necessary to make arrangements for respondent's visitation with the child.

Upon respondent's appeal, the Appellate Division affirmed, with one Justice dissenting (147 AD3d 670, 48 NYS3d 119 [1st Dept 2017]). The dissenting Justice would have held that Family Court lacked jurisdiction to issue a final order of protection because the family offense petition had been dismissed (147 AD3d at 675). Thereafter, the Appellate Division certified to this Court the question of whether its order was properly made.

Respondent first argues that Family Court lacked jurisdiction to enter a final order of protection upon its finding that he violated the temporary orders of protection, absent a determination that either the conduct alleged in the original family offense petition or the conduct that comprised the violation of the temporary orders of protection constituted the commission of a family offense. We reject respondent's proposed limitation on Family Court's jurisdiction, inasmuch as it contradicts the plain language of the relevant Family Court Act provisions.

It is well established that ***HN1***[] "Family Court is a court of limited jurisdiction, constrained to exercise only those powers granted **[****7]** to it by the State Constitution or by statute" (*Matter of H.M. v E.T.*, 14 NY3d 521, 526, 930 NE2d 206, 904 NYS2d 285 [2010]; *see Matter of Johna M.S. v Russell E.S.*, 10 NY3d 364, 366, 889 NE2d 471, 859 NYS2d 594 [2008]). ***HN2***[] In accordance with the Constitution (NY Const, art VI, § 13), the Family Court Act provides that court with concurrent jurisdiction (shared with the criminal courts) over "family offenses" (Family Ct Act § 812 [1]). The statutory procedures concerning family offenses are set forth in article 8 of the Family Court Act, and section 812 enumerates the crimes which, if committed between persons in specified relationships, constitute family offenses (*see id.*). ***HN3***[] A family offense proceeding is commenced by the filing of a petition **[*552]** alleging the **[3]** commission of a family offense between parties with the requisite familial relationship, and the petition typically seeks an order of protection (*see id.* § 821). We have explained that "[t]he purpose of [article 8 is] to remove in the first instance from the criminal courts a limited class of offenses arising in the family milieu, in order to permit a more ameliorative and mediative role by the Family Court" (*People v Williams*, 24 NY2d 274, 278, **[***239] [**1218]** 248 NE2d 8, 300 NYS2d 89 [1969]).

HN4[] Upon the filing of a family offense petition, the court may, for good cause shown, issue a temporary order of protection in favor of the petitioner and against the respondent (*see* Family Ct Act §§ 821-a [2] [b]; 828). A temporary order of protection "is not a finding of wrongdoing" (*id.* § 828 [2]). Nevertheless, it is an order of the court **[****8]** and, pursuant to Family Court Act § 846, in the event of a violation, a new petition may be filed alleging "that the respondent has failed to obey a lawful order" of the court. Family Court may hear the

violation petition itself and either "take such action as is authorized under this article; or . . . determine whether such violation constitutes contempt of court, and transfer the allegations of criminal conduct constituting such violation to the district attorney for prosecution . . . ; or . . . transfer the entire proceeding to the criminal court" (*id.* § 846 [b] [ii] [A]-[C]). ***HN5***[] When Family Court retains jurisdiction over a violation petition, section 846-a—entitled "Powers on failure to obey order"—sets forth the dispositions available to the court upon a finding of a willful violation. Specifically, "[i]f a respondent is brought before the court for failure to obey *any lawful order issued under this article* or an order of protection or *temporary order of protection issued pursuant to this act*," and it is proved that the respondent willfully violated such an order, the court may, among other things, "modify an existing order or temporary order of protection to add reasonable conditions of behavior to the existing order, *make a new order* ***[****9]*** *of protection* in accordance with section [842] of this part, . . . [or] may commit the respondent to jail for a term not to exceed six months" (*id.* § 846-a [emphasis added]).

It is fundamental that, ***HN6***[] because "the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof" (*Majewski v Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 583, 696 NE2d 978, 673 NYS2d 966 [1998]; *see People v Golo*, 26 NY3d 358, 361, 23 NYS3d 110, 44 NE3d 185 [2015]). ***HN7***[] Family Court Act §§ 846 and 846-a unequivocally grant Family Court jurisdiction **[*553]** and authority to prosecute contempt of its orders, including temporary orders of protection (**see** *People v Wood*, 95 NY2d 509, 514, 742 NE2d 114, 719 NYS2d 639 [2000]). Further, the statutory text explicitly authorizes the court to enter a new order of protection if a respondent is found to have willfully violated a temporary order of protection (*see* Family Ct Act § 846-a).

Nevertheless, respondent argues, and the dissent agrees, that the court's authority to enter a new order of protection under Family Court Act § 846-a upon the violation of a temporary order of protection may not be exercised where the original family offense petition has been dismissed and the conduct underlying the violation does not constitute a family offense. **[4]** Respondent maintains that dismissal of the family offense petition deprives the court of further jurisdiction. We disagree. ***HN8***[] While **[****10]** section 812 provides Family Court with concurrent jurisdiction over only specified family offenses, and the violation of a temporary order of protection does not necessarily involve a family offense, section 115 (c) of the Family Court Act states that "[t]he family court has such other jurisdiction as is provided by law." The plain language of sections 846 and 846-a supply the essential statutory jurisdiction here.

[*240]** **[**1219]** ***HN9***[] Family Court Act §§ 846 and 846-a contain no language tying Family Court's authority to impose specific penalties for the willful violation of a temporary order of protection to the court's determination of whether or not the family offense petition, itself, should be sustained (*see generally People v Finnegan*, 85 NY2d 53, 58, 647 NE2d 758, 623 NYS2d 546 [1995] [courts should not read words into a statute and "courts are not to legislate under the guise of interpretation"]; McKinney's Cons Laws of NY, Book 1, Statutes § 74). Significantly, there is no basis in the statutory text upon which we may draw any distinction between Family Court's jurisdiction over violations of final orders of protection entered after a finding of a family offense, on the one hand, and violations of temporary orders of protection entered during the pendency of the family offense proceeding, on the other. Further, the statutory scheme makes clear that conduct **[****11]** constituting a violation of the order of protection need not necessarily constitute a separate family offense in order for the court to have jurisdiction over the violation. Indeed, section 846-a contains no such requirement.

The dissent contends that ***HN10***[] the reference in Family Court Act § 846-a to section 842—which, in turn, references section 841—implicitly incorporates a limitation that a final order of protection **[*554]** may be entered only after a finding that a family offense was committed (*see* dissenting op at 560). Section 842 sets forth the terms, conditions, and durations of orders of protection entered pursuant to article 8. Notably, while section 842 references orders issued pursuant to section 841—which governs the disposition of family offense petitions—section 846-a does not contain any such reference to section 841. Thus, on its face, section 846-a incorporates only that which is set forth in section 842 with regard to the terms and conditions of the order of protection entered upon a finding of a violation. This is evidenced by the fact that section 846-a expressly includes violations of temporary orders without drawing any distinction between temporary and final orders; the inclusion of temporary orders would be nonsensical if section 846-a applied only to those orders of protection entered upon a disposition under section 841 (*see Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95,

104, 761 NE2d 1018, 736 NYS2d 291 [2001] ["meaning and effect **[****12]** should be given to every word of a statute"]). Contrary to the dissent's assertion, our reading gives effect to, and does not render superfluous, the reference to Family Court Act § 842 found in **[5]** section 846-a, whereas the dissent's reading strains the plain language of that statutory provision.[1]

HN12[↑] To be sure, where the court concludes that the allegations of the petition charging respondent with a family offense are not established, it must dismiss the family offense petition (*see* Family Court Act § 841 [a]). However, this does not compel the conclusion that a pending petition alleging the violation of a temporary order of protection must also be dismissed. As noted, the family offense and violation petitions **[**1220]** **[***241]** are authorized by different statutory provisions (*see id.* §§ 821, 846, 846-a). Once Family Court obtains jurisdiction over the parties by virtue of a petition facially alleging a family offense, the court may issue a temporary order of protection (*see* Family Ct Act §§ 821-a [2] [b]; 828). A violation of that temporary order of protection is a separate matter over which sections 846 and 846-a give Family **[*555]** Court authority to act, including the authority to issue a final order of protection.[2]

The jurisdiction exercised by Family Court here is consistent both with the **[6]** statutory text and with the purpose **[****13]** of article 8 of the Family Court Act. ***HN15***[↑] Allowing Family Court to retain jurisdiction over violations of temporary court orders entered during the pendency of a family offense proceeding reinforces the goal of protecting victims and preventing domestic violence. Although, in some circumstances, the primary harm resulting from a violation of a temporary order of protection may be directed at the court whose authority has been thwarted, there is generally also harm to the person who has been contacted in violation of the order.[3]

Further, permitting Family Court to enter an order of protection is consistent with the dispositions available should the matter proceed, instead, to criminal court (*see generally* Penal Law §§ 215.50 [3]; 215.51; CPL 530.12 [5]; 530.13 [4]). Thus, the statutory language permitting the entry of an order of protection upon a violation of a temporary order is consonant with the legislative goal of achieving resolution of intra-family disputes in Family Court without the need to resort to the criminal forum, where harsher sanctions—such as lengthier incarceration periods—may be imposed for criminal contempt (*see Williams*, 24 NY2d at 278).[4]

[*556] The dissent postulates that it was not the

[1] The dissent posits that Family Court may enter an order of protection upon a violation petition if the underlying conduct constitutes a new family offense, but that the court otherwise may not utilize such a sanction for a mere violation. Significantly, no such distinction can be found in the plain language of the relevant statutes. ***HN11***[↑] Section 846-a does not require the court to make a finding as to whether a new family offense has occurred as a prerequisite to finding and sanctioning a violation of a temporary order of protection (*see* Family Ct Act § 846-a). Moreover, the plain language of section 841 does not address family offense findings made on violation petitions.

[2] The dissent's reference to Judiciary Law § 753 is inapt. ***HN13***[↑] Insofar as Family Court Act §§ 846 and 846-a specifically provide for punishments and remedies for violations of temporary and final orders of protection issued pursuant to article 8, resort to the Judiciary Law is unwarranted and inappropriate (*see* ***HN14***[↑] Family Ct Act § 156 [the Judiciary Law shall apply "unless a specific punishment or other remedy for such violation is provided in this act or any other law"]; Merril Sobie, Practice Commentaries, McKinney's Cons Laws of NY, Book 29A, Family Ct Act § 156 at 123 [2008 ed] ["The court is always bound by a specific section of a substantive Family Court Act article as opposed to Section 156. In other words, this section is the default option, available only in the relatively rare event that a different remedy has not been legislated"]).

[3] For example, a protected party may have reasonable safety fears insofar as a respondent's violation of an order of protection reflects an inability or unwillingness to abide by the court's authority and refrain from prohibited contact. Moreover, such conduct may give the court reason to believe that extended limitation of the contact between the parties is the appropriate sanction for violating the court's prior order of protection.

[4] Notably, the act of disobeying the order in and of itself—regardless of whether it amounts to a family offense—constitutes criminal contempt in the second degree (*see* Penal Law § 215.50 [3] [criminalizing "(i)ntentional disobedience or resistance to the lawful process or other mandate of a court"]). Furthermore, to the extent the dissent claims that it is "inconceivable" that violations of article 8 temporary orders of protection would be prosecuted in criminal court if Family Court lacked authority to issue an order of protection as a violation sanction (dissenting op at 562 n 3), this claim is both unsupported and, significantly, minimizes the seriousness of a respondent's demonstrated willingness to repeatedly ignore temporary orders of protection by directing disparaging and potentially harassing communications to the protected party. .

intention of the legislature to permit Family Court to enter orders of **[**1221]** protection as a sanction **[****14]** for violations of **[***242]** temporary orders of **[7]** protection when it enacted the 2013 amendments to article 8 of the Family Court Act. This is mere speculation, at best, insofar as the amendments were unquestionably intended to strengthen Family Court's authority and ability to prevent domestic violence and the escalation of conflicts among family members (*see* Senate Introducer's Mem in Support, Bill Jacket, L 2013, ch 1 at 9). Our plain reading of the statute is consistent with that stated legislative intent. In any event, ***HN16***[⬆] the best evidence of the legislative intent is the plain language of the text chosen by the legislature which, as already discussed, unambiguously authorizes the imposition of orders of protection for violations of temporary orders of protection (*see Majewski*, 91 NY2d at 583). If, however, the wording of the statute has created an "unintended consequence," as the dissent suggests, it is the prerogative of the legislature, not this Court, to correct it (*Golo*, 26 NY3d at 362).

We further reject respondent's challenge to Family Court's finding that he violated the temporary order of protection issued on November 20, 2013. Several successive extensions of the temporary orders of protection were served on respondent, there were no differences between the **[****15]** terms of the challenged order and the most recent prior order, respondent's attorney was present in court when the order in question was issued, and each temporary order contained a conspicuous written warning to respondent that a failure to appear in court on the next scheduled date may result in an extension of the order of protection and that the order would therefore remain in force and effect. Under these circumstances, the courts below did not err as a matter of law by concluding that respondent had the requisite knowledge to support a finding that he violated the order in question (*see generally McCain v Dinkins*, 84 NY2d 216, 226, 639 NE2d 1132, 616 NYS2d 335 [1994]; *Matter of McCormick v Axelrod*, 59 NY2d 574, 583, 453 NE2d 508, 466 NYS2d 279 [1983], *amended* 60 NY2d 652, 454 NE2d 1314, 467 NYS2d 571 [1983]; *People ex* ***[*557]*** *rel. Stearns v Marr*, 181 NY 463, 470, 74 NE 431, 34 Civ Proc R 300 [1905]). Respondent's remaining contentions lack merit.

For the foregoing reasons, we hold that Family Court properly found that respondent willfully violated two temporary orders of protection issued during the pendency of the family offense proceeding and that the court acted within its jurisdiction to enter an order of protection upon those findings. Accordingly, the order of the Appellate Division should be affirmed, without costs, and the certified question answered in the affirmative.

Dissent by: WILSON

Dissent

Wilson, J.(dissenting):

I would reverse the Appellate Division order. Family Court dismissed **[****16]** the family offense petition, concluding that no family offense had been committed and the alleged violation of the temporary order of protection was not a family offense. In such a circumstance, Family Court lacks the authority to issue a final order of protection as a sanction for violation of a temporary order of protection.

King E.T. and Lisa T. were married and have a son. The couple's relationship disintegrated rapidly. Family Court noted that "for nearly all of [their son's] young life, the parties have been embroiled in a multitude of bitter legal disputes: first in New Jersey, and now **[8]** in New York. In fact, in New York alone, the parties have filed 24 family offense, custody, and violation petitions since December 2012." **[**1222]** When King E.T. obtained an ex parte order **[***243]** from a New Jersey court requiring Lisa T. to deliver their son to him within 24 hours, Lisa T. did not immediately comply. King E.T. sent emails to Lisa T. accusing her of lying, not responding, and neglecting their son. Based on those emails, Lisa T. filed the underlying family offense petition in New York against King E.T., alleging that he committed several designated family offenses—including aggravated harassment **[****17]** in the second degree, harassment in the first or second degree, menacing in the second or third degree and stalking. She obtained a series of temporary orders of protection—the first of which was issued ex parte—which were extended upon the same terms at each successive court appearance. As the majority notes, those preprinted form temporary protective orders contained an additional provision broadly barring King E.T. from communicating with Lisa T., but permitting him to contact her concerning "visitation arrangements."

Lisa T. filed a violation petition alleging that King E.T. failed to obey the temporary order of the court by sending her additional **[*558]** emails unrelated to emergency matters or visitation. She did not file a new

family offense petition in connection with the conduct at issue. After a hearing on both petitions, Family Court determined that the original emails forming the basis for Lisa T.'s complaint did not constitute a family offense, and dismissed the family offense petition. The court characterized Lisa T.'s testimony as "vague, at times unresponsive, and . . . wholly unconvincing." However, Family Court found that two subsequent emails sent by King E.T. to Lisa T., **[****18]** which were the subject of the violation petition, violated the provision of the temporary order of protection as to the permissible content of emails. The first, which Family Court concluded "started out with a legitimate purpose," also reflected King E.T.'s concern that Lisa T. was abusing their son. The second email was in part insulting as to Lisa T.'s parenting skills, while also demanding that their son maintain his telephone visitation with King E.T. at the appointed times. Concluding that those two emails violated the provision of the temporary order of protection as to the permissible content of emails, Family Court entered an order of protection barring King E.T. from any communication with Lisa T. "except as necessary to arrange visitation" and from "assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, strangulation, criminal obstruction of breathing or circulation, disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching, intimidation, threats, identity theft, grand larceny, coercion or any criminal offense against" Lisa T. Thus, even though Family Court determined that King E.T. committed no family offense, **[****19]** it issued an order of protection of the kind that issues only upon proof of a family offense.

The majority correctly notes that Family Court "is a court of limited jurisdiction, constrained to exercise only those powers granted to it by the State Constitution or by statute" (majority op at 551). The majority also notes that Family Court's jurisdiction, which is concurrent **[9]** with the criminal court, extends only to statutorily-defined family offenses, and that here, the Family Court determined that King E.T. had not committed a family offense. However, the Family Court does have the authority to issue sanctions for violations of its own temporary orders of protection in a separate proceeding. In holding that "[t]he plain language of sections 846 and 846-a supply the essential statutory jurisdiction here," (majority op at 553) the **[**1223]** majority has, in fact, contravened the plain **[***244]** language of the Family Court **[*559]** Act and confused the court's statutory jurisdiction to issue an order of protection with its authority to impose a specific sanction for a violation of a court order.

As the majority notes, "[a] temporary order of protection 'is not a finding of wrongdoing,' " (majority op at 552, quoting Family Ct Act § 828 [2]), and therefore **[****20]** may issue even if the alleged family offense is determined to be baseless. Committing a designated family offense is the equivalent of committing the offenses defined in the Penal Law (*see* Family Ct Act § 812; CPL 530.11 [criminal contempt is not a family offense]). Violating a temporary order of protection by conduct that does not constitute a family offense is an affront to the court's authority, and is subject to sanction. It is a fundamentally different matter from offending conduct that constitutes a new family offense. The majority appears to recognize the incongruity of issuing an order of protection as a sanction for disobeying a court order based on nonthreatening speech set forth in an email, acknowledging that such a result may be an "unintended consequence" (majority op at 556). However, the plain language of the Family Court Act shows that the intended consequence is precisely the opposite of what the majority holds today.

Section 846-a, which specifies Family Court's "[p]owers on failure to obey order[s]," provides:

> "If a respondent is brought before the court for failure to obey any lawful order issued under this article or an order of protection or temporary order of protection issued pursuant to this act . . **[****21]** . and if, after hearing, the court is satisfied by competent proof that the respondent has willfully failed to obey any such order, the court may modify an existing order or temporary order of protection to add reasonable conditions of behavior to the existing order, make a new order of protection *in accordance with section [842] of this part*, may order the forfeiture of bail in a manner consistent with article [540] of the criminal procedure law if bail has been ordered pursuant to this act, may order the respondent to pay the petitioner's reasonable and necessary counsel fees in connection with the violation petition where the court finds that the violation of its order was willful, and may commit the respondent to jail for **[10]** a term not to exceed six months"(§ 846-a [emphasis added]).

[*560] If the majority's interpretation were correct, the italicized language would be utterly superfluous; we construe statutes to give "effect and meaning . . . to the entire statute and every part and word thereof" (*Friedman v Connecticut Gen. Life Ins. Co.*, 9 NY3d

105, 115, 877 NE2d 281, 846 NYS2d 64 [2007]).

Section 846-a provides the Family Court with various remedies when faced with a violation of any lawful order issued under article 8, or an order of protection or— as here—a temporary order of protection. However, the statutory **[****22]** language is quite clear that among the remedies, only "mak[ing] a new order of protection" is subject to the qualifier, "in accordance with section [842]." Section 842 itself begins with a limiting construction confining its reach to "order[s] of protection under section [841] of this part."

Section 841, in turn, sets forth the orders of disposition that family court may issue, and includes an order of protection as one such option. The others listed are, "dismissing the petition, if the allegations of the petition are not established," suspending **[**1224]** judgment, probation, and directing **[***245]** restitution. Thus, implementing section 846-a's requirement that, if Family Court intends to make a new order of protection as a sanction, it must do so in compliance with section 842, which in turn incorporates section 841 (d), means that Family Court cannot issue a new order of protection unless there has been a family offense. If, as here, there has been no family offense, the court may redress the offense to its authority by bail forfeiture, attorney's fees or jail time.

I agree with the majority that the Family Court Act provides that the violation of the temporary order of protection is a separate matter, distinct from the dismissal of the petition in which a family offense was alleged. **[****23]** Clearly, if the violation of the temporary order of protection provided a basis for a new family offense petition or prosecution in the criminal court for new crimes, a different path would have been taken to seek measures available for the protection of the petitioner. This fact supports the legislative determination that a new order of protection can issue only when a family offense has been proved. The Family Court Act provides one set of remedies for family offenses, and another for violations of court orders. In response to a proper petition alleging a family offense, the court may (i) dismiss the petition; (ii) suspend judgment; (iii) order probation, which may include education programming or drug and alcohol counseling; (iv) make an order of protection; **[*561]** or (v) order payment of restitution (Family Ct Act § 841). In contrast, a civil finding of contempt may result in jail time or fines, attorney's fees, or bail forfeiture (*see* Judiciary Law § 753; Family Ct Act § 846-a). By disregarding the meaning of sections 842 and 841 in its reading of section 846-a, the majority is undoing this clearly intended separation.

When Family Court determines that the defendant has not committed a family **[11]** offense, issuance of an order of protection to vindicate the court's authority **[****24]** is inappropriate. Instead, Family Court should utilize its contempt powers provided by the remaining sanctions under 846-a (bail forfeiture, attorney's fees or jail time)[5]. The judiciary law addresses the "[p]ower of courts to punish for civil contempts" and provides that "[a] court of record [such as family court] has power to punish, by fine and imprisonment, or either" (Judiciary Law § 753 [A]).

Embroiled in an ugly custody battle, King E.T. sent two intemperate and perhaps baseless emails. Family Court held that his conduct did not constitute a family offense,[6] yet subjected him to a one-year order of protection forbidding, inter alia, strangulation, sexual **[****25]** abuse and identity theft. The majority obliquely addresses this odd result, writing: "[a]lthough, in some circumstances, the primary harm resulting from a violation of a temporary order of protection **[**1225]** may be directed at the court whose **[***246]** authority has been thwarted, there is generally also harm to the person who has been contacted in violation of the order" (majority op at 555). The dismissal of Lisa T.'s family offense petition means that Family Court found that she suffered no legally-defined injury—at least none within Family Court's jurisdiction. The instant violation petition failed to allege any family offense occurred. The cognizable injury here is not to Lisa T., but solely to the court's authority. The majority's **[*562]** interpretation is

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[5] Section 156 of the Family Court Act provides:

> "The provisions of the judiciary law relating to civil and criminal contempts shall apply to the family court in any proceeding in which it has jurisdiction under this act or any other law, and a violation of an order of the family court in any such proceeding which directs a party, person, association, agency, institution, partnership or corporation to do an act or refrain from doing an act shall be punishable under such provisions of the judiciary law, unless a specific punishment or other remedy for such violation is provided in this act or any other law."

[6] Indeed, Family Court observed that mere speech cannot be penalized unless the words themselves "present[ ] a clear and present danger of some serious substantive evil" (*see People v Golb*, 23 NY3d 455, 467, 991 NYS2d 792, 15 NE3d 805 [2014]; *People v Dietze*, 75 NY2d 47, 52, 549 NE2d 1166, 550 NYS2d 595 [1989]).

30 N.Y.3d 548, *562; 91 N.E.3d 1215, **1225; 69 N.Y.S.3d 236, ***246; 2017 N.Y. LEXIS 3778, ****25; 2017 NY Slip Op 08800, *****08800

not just incompatible with the statutory language, but also with the wrong sought to be addressed through a contempt finding. The issuance of an order of protection entails substantial legal consequences unrelated to any affront to the court (*see e.g. Matter of Veronica P. v Radcliff A.*, 24 NY3d 668, 3 NYS3d 288, 26 NE3d 1143 [2015])[7].

Finally, before 2013, while the Judiciary Law would have allowed the Family Court to do so, section 846-a did not authorize any sanctions for violations of temporary orders of protection. It is beyond dispute, **[****26]** then, that before the 2013 amendment, Family Court could not have entered an order of protection as a sanction for the violation of a temporary order. When, in 2013, the legislature amended section 846-a to include the words, "or temporary order of protection," it did so to ensure that a violation of a temporary order of protection would allow the court to "revoke [a] license [to carry a firearm] and . . . arrange for the immediate surrender" of any firearms held in possession by the party that violated the temporary order of protection (Family Ct Act § 846-a; *see* Letter to the Legislature from Counsel to the Governor, Jan. 14, 2013, Bill Jacket, L 2013, ch 1 at 5-6). There is no suggestion whatsoever in the legislative history that the amendment was enacted to permit Family Court to do what it did here: enter an order of protection as if King E.T. had been adjudged guilty of a family offense, when he was not. Family Court has sufficient tools to address contempt; the legislature did not, by amending section 846-a, enhance those; and we should not do so here by eliding statutory language and conflating injury to litigants with injury to the authority of the courts.

For the above reasons, I dissent.

[*563] Judges Rivera, Fahey, Garcia and **[****27]** Feinman concur; Judge Wilson dissents in an opinion, in which Chief Judge DiFiore concurs.

Order affirmed, without costs, and certified question answered in the affirmative.

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[7] The majority's argument that, were Family Court unable to issue an order of protection as a sanction even when no family offense has been proved, a defendant might wind up in criminal court, is a bugaboo. Since 1994, the legislature has made it evident that very serious domestic violence offenses should be prosecuted in criminal court. To this end, the legislature has reserved certain grave offenses for criminal court's jurisdiction by excluding them from the definition of family offense. Here, petitioner's allegations of family offenses fell within the concurrent jurisdiction of the two courts, and Lisa T. elected to proceed to Family Court, seeking an order of protection in connection with the family offense petition. Where the Family Court found upon a dispositional hearing that no family offense occurred in the matter, it is inconceivable that the statutory limitation on the ability to issue a final order of protection under these circumstances would prompt the Family Court to transfer the contempt violation to criminal court.

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McNerney v. Geneva

Court of Appeals of New York

April 19, 1943, Argued ; June 18, 1943, Decided

No Number in Original

Reporter
290 N.Y. 505 *; 49 N.E.2d 986 **; 1943 N.Y. LEXIS 1070 ***

In the Matter of Jeremiah McNerney et al., on Behalf of Themselves and Other Members of the Police Department of the City of Geneva Who Join in the Proceeding, Appellants and Respondents, v. City of Geneva et al., Respondents and Appellants

Prior History: [*1]** Cross-appeals from an order of the Appellate Division of the Supreme Court in the fourth judicial department, entered May 7, 1941, which modified, on the law and facts, and affirmed as modified, an order of the court at Special Term (Miles, J.) made in a proceeding under article 78 of the Civil Practice Act, directing the defendant Walter F. Foreman, as Treasurer of the City of Geneva and as Treasurer of the Police Pension Fund of such city and the defendants Vernon Alexander, Alfred C. Paull and Frank W. Reagen, constituting the Board of Trustees of said pension fund, forthwith to certify to the Comptroller of the State of New York, representing the New York State Employees' Retirement System, that the sum of money comprising the total fund of the Geneva Police Pension Fund, created for the benefit of the Police Department of the City of Geneva by chapter 391 of the Laws of 1911, was the amount of $ 91,326.82 as of March 15, 1940. The order also directed that such defendants certify that the whole sum of $ 91,326.82 now represents, and did represent on March 15, 1940, accumulated contributions of the members of the Police Department of the City of Geneva. It further directed **[***2]** these defendants to certify the relative shares of the members in such sum of $ 91,326.82, transferred as of March 15, 1940, so that each petitioner and member of the pension fund shall be given such proportionate share of the $ 91,326.82 as the amount deducted from his salary bears to $ 7,865.23, the total amount deducted from the salaries of the members of the Police Department and certified as being accumulated contributions of the members of the system as of March 15, 1940. In addition the order directed that the State Comptroller accept such certification. The modification consisted of striking out the figures "$ 91,326.82" from the last three places in which they appear in the ordering paragraph of the Special Term order, and inserting in place thereof the total of the moneys in the pension fund derived from the following sources as accumulated contributions of the members of the police force: (1) Deductions from the salaries of present and former members of the police force; (2) Rewards paid to the police force or to the members thereof; (3) Proceeds of benefit entertainments given by the police force, and (4) Interest received by the City on the above items. The petitioners **[***3]** appeal from the whole of such order of modification. The respondents appeal from so much thereof as directed that there be inserted in place of the figures $ 91,326.82 in the ordering paragraph of the order of Special Term, the total of the moneys in the pension fund derived from the sources enumerated in the order of modification, as accumulated contributions of the members of the police force.

Matter of McNerney v. *City of Geneva*, 261 App. Div. 754.

Disposition: Orders reversed, etc.

Core Terms

pension fund, accumulated contributions, retirement system, pension, police force

Case Summary

Procedural Posture
Petitioner, members of the city police department, and respondent fiscal officers appealed an order of the Appellate Division of the Supreme Court in the fourth judicial department (New York) that affirmed as modified an order of the trial court requiring the fiscal officers to certify the full amount of the former local police pension but to not include moneys used for general purposes of the city.

290 N.Y. 505, *505; 49 N.E.2d 986, **986; 1943 N.Y. LEXIS 1070, ***3

Overview

The members of the city police department brought a proceeding under N.Y. Civ. Prac. Acts § 78 against the fiscal officers who had managed the police pension fund prior to March 15, 1940, the date on which the members were admitted to the New York State Employees' Retirement System. As of that date, the police pension fund amounted to $ 91,326.82. The fiscal officers certified that out of that total remaining in the pension fund on March 15, 1940, the sum of $ 7,865.23 represented the accumulated contributions of the members. The members sought to compel the fiscal officers to certify the full amount of the pension fund on March 15, 1940 as the sum of such accumulated contributions. The trial court ordered the certification. On appeal by the fiscal officers, the appellate division modified the trial court's order so as to not to include moneys used for general purposes of the city. The court reversed and ruled that the fraction of the police pension fund which had its source in the salaries of those who were participators on March 15, 1940, was then the whole of the accumulated contributions of the members within the scope and meaning of that phrase in N.Y. Civ. Serv. Law § 76.

Outcome

The court reversed the orders that required the fiscal officers to certify the full amount of the former local police pension but not including moneys used for general purposes of the city and remitted the matter for further disposition.

LexisNexis® Headnotes

Governments > State & Territorial Governments > Employees & Officials

Pensions & Benefits Law > Governmental Employees > Police Pensions

Pensions & Benefits Law > Governmental Employees > State Pensions

Pensions & Benefits Law > Governmental Employees > General Overview

HN1 **Employees & Officials**

N.Y. Civ. Serv. Law § 76 provides: Any cash and securities to the credit of the local pension system shall be transferred to the New York state employees' retirement system as of the date of the approval. The trustees or other administrative head of the local pension system as of the date of the approval, shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the members, and the relative shares of the members as of that date. Such shares shall be credited to the respective annuity savings accounts of such members in the New York state employees' retirement system. The balance of the funds transferred to the New York state employees' retirement system shall be offset against the accrued liability before determining the special deficiency contribution to be paid by the locality as provided by N.Y. Civ. Serv. Law § 78. The operation of the local pension system shall be discontinued as of the date of the approval.

Governments > Local Governments > Finance

Pensions & Benefits Law > Governmental Employees > Municipal Pensions

Pensions & Benefits Law > Governmental Employees > Police Pensions

Labor & Employment Law > Wage & Hour Laws > Assignments & Deductions

Pensions & Benefits Law > Governmental Employees > General Overview

Pensions & Benefits Law > Governmental Employees > State Pensions

HN2 **Finance**

In New York statutes regulating the retirement benefits of civil employees, the word "contributions" has uniformly been used to signify sums deducted from the pay of an employee for transference to his "annuity"; the extra public commitment to the employee has been described as his "pension"; and such "annuity" plus such "pension" has been called the "retirement allowance." N.Y. Civ. Serv. Law §§ 50(11), (12), (15), (16), (17); N.Y. Educ. Law §§ 1100(10), (12), (13), (14); City of New York, N.Y., Administrative Code §§ B3-1.0 (13), (14), (15) (N.Y. Laws 1937 ch. 929).

Governments > Legislation > Interpretation

HN3[] **Interpretation**

The power of extending the meaning of a statute beyond its words, and deciding by the equity, and not the language, approaches so near the power of legislation, that a wise judiciary will exercise it with reluctance and only in extraordinary cases.

Headnotes/Summary

Headnotes

Civil service -- composition of "accumulated contributions" of members of local retirement system which must be credited to their annuity accounts when admitted to State system (Civil Service Law, § 76) -- police pension fund of City of Geneva arose from salary deductions, other sources, and interest; respondents certified that only the salary deductions of present members were within definition; Special Term directed that they certify whole fund; Appellate Division reduced certification to salary deductions of present and past members, certain other sources, and interest -- word "contributions" includes only salary deductions of present members with interest thereon.

Syllabus

1. Section 76 **[***4]** of the Civil Service Law provides in effect that when members of a local police force are admitted to the State Employees' Retirement System, any cash to the credit of the local pension system as of the date of the approval of the admission shall be transferred to the State system and the relative shares of the members of "the proportion, if any, of the funds of the system that represents the accumulated contributions of the members" shall be credited to "the respective annuity savings accounts" of such members in the State system and the balance of the funds transferred shall be offset against the accrued liability in determining the deficiency contribution to be paid by the locality. The police pension fund of the City of Geneva as of the date of the approval was made up of deductions from police salaries, rewards, proceeds of benefits, court fees, bail forfeitures, dog license fees, fines, recompense for the care of insane persons, liquor taxes and interest. Respondents, trustees of the local system, certified in substance that only the amount derived from deductions from salaries of the members of the department as constituted on that date represented "the accumulated contributions **[***5]** of the members." Petitioners, members of the Police Department, brought this proceeding to compel respondents to certify the full amount, and the Special Term so ordered. On appeal by respondents, the Appellate Division held that the deductions from the salaries of present and former members of the department, the rewards, the proceeds of benefits and the interest received on those items should be certified as such accumulated contributions. This was error.

2. The fraction of the fund which had its source in the salaries of those who were participators on the date of the approval (with the interest thereon) was then the whole of "the accumulated contributions of the members" within section 76 of the Civil Service Law. In the statutes of the State regulating the retirement benefits of civil employees, the word "contributions" has uniformly been used to signify sums deducted from the pay of an employee for transference to his "annuity."

Counsel: *Thomas J. Cleere* for petitioners, appellants and respondents. The demand of the petitioners that the entire fund of $ 91,326.82 be recertified as being their accumulated contributions in the State system, is just and fair. It imposes no **[***6]** hardship upon the city. It is of benefit to the municipality and the taxpayers. The certification of the fund as requested by petitioners would give to them moneys which were derived from their own efforts or donated for their sole benefit and consecrated to their sole use. (*Matter of Harrington* v. *City of Lockport*, 235 App. Div. 895; *Matter of Mahon* v. *Board of Education*, 171 N. Y. 263; *Fox* v. *Mohawk & H. R. Humane Society*, 165 N. Y. 517; *People* v. *President & Trustees of Village of Ossining*, 238 App. Div. 684, 264 N. Y. 574; *People* v. *City of Yonkers*, 177 Misc. 406; *Matter of O'Brien* v. *Tremaine*, 285 N. Y. 233; *Riggs* v. *Palmer*, 115 N. Y. 506; *Surace* v. *Danna*, 248 N. Y. 18; *Rees* v. *Teachers' Retirement Bd.*, 247 N. Y. 372; *People* v. *Dethloff*, 283 N. Y. 309; *People* v. *Ryan*, 274 N. Y. 149.) The rule of law adopted in *Harrington* v. *City of Lockport* (235 App. Div. 895) is just and fair. The rule of law subsequently adopted in this case, *Matter of McNerney* (261 App. Div. 754) is too rigid and is contrary to the settled law of this State. Sections 172 and 181 of the City Charter (L. 1897, **[***7]** ch. 360, as amd.) clearly make the position of the respondents an illegal one. The course of conduct adopted by the municipality estops it from making use of

the moneys of the local fund. (*Harrington* v. *City of Lockport*, 235 App. Div. 895.) The petitioners are entitled to a recertification of the entire fund as their accumulated contributions. (*People ex rel. Westbay* v. *Delaney*, 73 Misc. 5, 146 App. Div. 957; *Sun Publishing Association* v. *Mayor*, 152 N. Y. 257; *Matter of Chapman* v. *City of New York*, 168 N. Y. 80.)

James M. Ryan and *Arthur T. McAvoy* for defendants, respondents and appellants. The certification by the city officials was made in compliance with the mandate of the statute. (Civil Service Law, § 50, subds. 12, 15, 16, 17; § 58, subds. 1, 3; § 61, subd. 6; §§ 76, 78; *Matter of Schinasi*, 277 N. Y. 252; *Gitlow* v. *People*, 195 App. Div. 773, 234 N. Y. 132, 268 U.S. 652; *Matter of Stradar* v. *Stern Bros.*, 184 App. Div. 700.) The rights, if any, of the members of the Geneva Police Department must accrue from the provisions of the local law under which the fund was accumulated. (L. 1911, ch. 391; City Home Rule **[***8]** Law, § 32; *Greiner* v. *City of Syracuse*, 256 N. Y. 688.) The balance in the local pension fund which was transferred to the State Retirement System constitutes public funds which the members of the fund were not entitled to have certified as their accumulated contributions. *Matter of Mahon* v. *Board of Education*, 171 N. Y. 263; *Fox* v. *Mohawk & H. R. Humane Society*, 165 N. Y. 517; *People ex rel. Einsfeld* v. *Murray*, 149 N. Y. 367.) No power is granted to the courts by interpretation to vary the clear and positive mandate of the statute. (*Matter of O'Brien* v. *Tremaine*, 285 N. Y. 233; *Matter of Eberle* v. *LaGuardia*, 285 N. Y. 247; *People v. Ryan*, 274 N. Y. 149; *Matter of McCall*, 289 N. Y. 104; *Sabl* v. *Laenderbank Wien Aktiengesellschaft*, 30 N. Y. S. 2d 608; *Matter of Bissell*, 245 App. Div. 395; *Matter of Dorsey* v. *Cohen*, 268 N. Y. 620; *Sexauer & Lemke* v. *Burke & Sons Co.*, 228 N. Y. 341.) Articles 4 and 5 of the Civil Service Law must both be considered in interpretation of the law. (*Board of Education* v. *Town of Greenburgh*, 277 N. Y. 193; *People* v. *Ryan*, 274 N. Y. 149; *Rees* v. *Teachers'* **[***9]** *Retirement Bd.*, 247 N. Y. 372; *New York Rys. Co.* v. *City of New York*, 218 N. Y. 483; *Breslav* v. *New York & Queens Elec. Light & Power Co.*, 249 App. Div. 181, 273 N. Y. 593; *Matter of Village of Lawrence* v. *Retirement System*, 178 Misc. 962.)

Judges: Loughran, J. Rippey, Lewis, Conway and Desmond, JJ., concur; Lehman, Ch. J., taking no part.

Opinion by: LOUGHRAN

Opinion

[*508] [987]** This is a proceeding under article 78 of the Civil Practice Act. The defendants are fiscal officers who had managed the police pension fund of the city of Geneva prior to March 15, 1940 -- the date on which the members of the **[*509]** local police department (including the petitioners) were admitted to the New York State Employees' Retirement System through the approval of the Common Council of the city. (See Civil Service Law, art. 5.)

As of that date, the police pension fund of the city amounted to $ 91,326.82. ***HN1***[] Section 76 of the statute made this applicable provision: "Any cash and securities to the credit of the local pension system shall be transferred to the New York state employees' retirement system as of the date of the approval. The trustees or other administrative **[***10]** head of the local pension system as of the date of the approval, shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the members, and the relative shares of the members as of that date. Such shares shall be credited to the respective annuity savings accounts of such members in the New York state employees' retirement system. The balance of the funds transferred to the New York state employees' retirement system shall be offset against the accrued liability before determining the special deficiency contribution to be paid by the locality as provided by section seventy-eight. The operation of the local pension system shall be discontinued as of the date of the approval."

In asserted compliance with these words of the statute, the defendants certified to the New York State Employees' Retirement System that out of the total of $ 91,326.82 remaining in the city police pension fund on March 15, 1940, the sum of $ 7,865.23 represented the accumulated contributions of the members. This reckoning left a balance of $ 83,461.59 to be credited to the city by way of offset against the liability which the statute imposed upon it **[***11]** in consequence of the participation of the members of its police force in the New York State Employees' Retirement System.

Dissatisfied with this outcome, the petitioners (as such members) brought the present proceeding to compel the defendants to certify the full amount of the former local police pension fund on March 15, 1940 -- $ 91,326.82 -- as the sum of such accumulated contributions. Special Term ordered the defendants to make that certification, citing *Matter of Harrington* v. *City of Lockport* (235 App.

Div. 895).

[*510] On appeal by the defendants, the order of Special Term was modified by the Appellate Division for reasons stated as follows: "In *Matter of Harrington* v. *City of Lockport* (235 App. Div. 895) the order of the Special Term was affirmed by this court without opinion. It was held in that case that all of the moneys in the local fire pension fund should be certified as representing the accumulated contributions of the members of the fire department. The statute was construed to mean that the accumulated contributions of the members of a local pension system consisted of money 'accumulated by their own acts or donated for their sole benefit.' **[***12]** We believe that this construction of the statute should not be extended so as to include moneys which before the creation of the local pension fund were used for general purposes of the city. Adopting this construction, we conclude that the moneys in the Geneva police pension fund derived from the following sources should be certified as accumulated contributions of the members of the police force: The deductions from the salaries of present and former members of the police force. Rewards paid to the police force or to the members thereof. The proceeds of benefit entertainments given by the police force. The interest received by the city on the above items." (261 App. Div. 754, 756.) **[**988]** As so modified, the order of Special Term was affirmed.

Items of the local police pension fund which were thus excluded from the accumulated contributions of the members had been taken from court fees, bail forfeitures, fees for dog licenses, fines, recompense for the care of insane persons and liquor taxes. (See L. 1911, ch. 391; L. 1916, ch. 288; Geneva Local Laws, No. 4 of 1927 and No. 2 of 1935.) The case is now here on cross-appeals from the order of the Appellate Division.

HN2[↑] In our **[***13]** New York statutes regulating the retirement benefits of civil employees, the word "contributions" has uniformly been used to signify sums deducted from the pay of an employee for transference to his "annuity"; the extra public commitment to the employee has been described as his "pension"; and such "annuity" plus such "pension" has been called the "retirement allowance." (Civil Service Law, § 50, subds. 11, 12, 15, 16, 17; Education Law, § 1100, subds. 10, 12, 13, 14; Administrative Code of the City of New York, § B3-1.0, subds. 13, 14, 15; L. 1937, ch. 929.) We think this definitive statutory **[*511]** usage requires us here to declare that the fraction of the police pension fund of the city of Geneva which (with the interest thereon), had its source in the salaries of those who were participators on March 15, 1940, was then the whole of "the accumulated contributions of the members" within the scope and meaning of that phrase of section 76 of the Civil Service Law.

Argument invoking the fairness of a looser construction of that phrase is out of place. ***HN3***[↑] "The power of extending the meaning of a statute beyond its words, and deciding by the equity, and not the language, approaches **[***14]** so near the power of legislation, that a wise judiciary will exercise it with reluctance and only in extraordinary cases." (*Monson* v. *Inhabitants of Chester*, 22 Pick [Mass.] 385, 387. See *Fisher* v. *Long Island Lighting Co.*, 280 N. Y. 63; *Matter of Rogalin* v. *New York City Teachers' Retirement Board*, 290 N. Y. 664.) In this instance, we see no substantial reason for thinking that the customary letter of the statute does not completely express the intent of the Legislature.

The orders should be reversed, without costs, and the matter remitted to the Special Term for further disposition not inconsistent with this opinion.

End of Document

Annexed to Foregoing Document-
Appendix: Hearing Transcripts -Prior Proceedings (R. 002087-002371)
[pp. 2913 - 3197]

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NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

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

36 West 66th Street, Manhattan

Public Review Session

August 5, 2019

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

CHAIR PERLMUTTER: Yeah.

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

CHAIR PERLMUTTER: And Commissioner Ottley-, --

COMMISSIONER OTTLEY-BROWN: I must recuse.

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

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

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

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condition isn't relevant.

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

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

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

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coverage requirements to 82-36.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Okay. Next?

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

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

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

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

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

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

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

For example --

Ms. Monroe: Special District?

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

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

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

CHAIR PERLMUTTER: It was very built up.

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

CHAIR PERLMUTTER: So why would it have met the

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soft site requirement.

COMMISSIONER CHANDA: It wouldn't have.

CHAIR PERLMUTTER: Would not have. Oh.

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

CHAIR PERLMUTTER: Right.

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

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

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

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

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

COMMISSIONER CHANDA: Right.

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

COMMISSIONER CHANDA: Right.

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

COMMISSIONER CHANDA: Right.

CHAIR PERLMUTTER: Right? So -- okay.

Ms. Matias: The microphone, please.

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

CHAIR PERLMUTTER: Speak louder, please.

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

CHAIR PERLMUTTER: As to which?

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

CHAIR PERLMUTTER: Okay.

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

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

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

COMMISSIONER SCIBETTA: Mm-hmm.

CHAIR PERLMUTTER: Hence, it amended a Zoning Resolution. So I don't think there's more for us to do --

COMMISSIONER SCIBETTA: I don’t think there is much more.

CHAIR PERLMUTTER: -- on that subject. We've already spoken. So anything you want to add? No?

COMMISSIONER SCIBETTA: Nothing else from me.

CHAIR PERLMUTTER: Okay. Anything you wanted to add? Okay.

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CERTIFICATE OF ACCURACY

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

Certified By

Date: January 8, 2020

GENEVAWORLDWIDE, INC

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New York, NY 10018

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NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

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

36 West 66th Street, Manhattan

Public Hearing

August 6, 2019

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

CHAIR PERLMUTTER: Yeah, we can call them together.

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

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

COMMISSIONER OTTLEY BROWN: Madam Chair, I must recuse.

CHAIR PERLMUTTER: Yes. State your name, please.

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

CHAIR PERLMUTTER: Yeah, it's working.

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

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

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

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

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

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

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

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

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

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CHAIR PERLMUTTER: Right. So that's what I wanted to just clarify. Are you questioning the vesting of this app-, of this building? And if s-, is that one of the questions that you wanted to bring before us of whether or not the building vested because it's actually not right because Department of Buildings hasn't issued a determination on that.

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

CHAIR PERLMUTTER: Okay.

MR. LOW-BEER: I mean, if you're going to tell me we can question it and it's ripe --

CHAIR PERLMUTTER: No.

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

CHAIR PERLMUTTER: Okay.

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

CHAIR PERLMUTTER: Okay.

MR. LOW-BEER: So that's why I say I don't believe it's before the Board at this time. I'd just like to say that the discussion, I mean, I'm informed by Mr. Weinstock that the discussion in question was had after, not before the signing of the stipulation and that even -- I mean, I haven't research this, but it seems to me that since the purpose of the rule of confidentiality and settlement discussions is that a party should not be compromised by conceding something in a settlement discussion, and then later have it held against them at, if it doesn't settle or at trial or whatever, that that's the, the purpose of the ruling. Once the settlement is done with, if an issue arises regarding

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

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

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

CHAIR PERLMUTTER: Okay. Understood.

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

CHAIR PERLMUTTER: He's got it.

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

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

MR. LOW-BEER: Yeah.

COMMISSIONER SCIBETTA: You disagreed with

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

MR. LOW-BEER: Right.

COMMISSIONER SCIBETTA: Okay.

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

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

COMMISSIONER SCIBETTA: The issue is precluded.

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

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

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

COMMISSIONER SCIBETTA: Thank you.

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

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

CHAIR PERLMUTTER: Sorry. Go on with your --

MR. LOW-BEER: So --

CHAIR PERLMUTTER: You were at --

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MR. LOW-BEER: Where was I?

CHAIR PERLMUTTER: -- that tower coverage --

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

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

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

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

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below 150 feet anyway.

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

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

COMMISSIONER SCIBETTA: Okay.

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

CHAIR PERLMUTTER: I have a question about that actually.

MR. LOW-BEER: Mm-hmm.

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

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

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

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

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

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

MR. LOW-BEER: Right.

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

MR. LOW-BEER: Mm-hmm.

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

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

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one, you know, affords more --

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

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

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

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

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

MR. LOW-BEER: Uh-huh.

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

MR. LOW-BEER: Uh-huh.

CHAIR PERLMUTTER: -- significant buildings.

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

CHAIR PERLMUTTER: Okay. We can talk about that.

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

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

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

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

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

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

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

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

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

MR. LOW-BEER: Mm-hmm.

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

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

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

MR. LOW-BEER: Right.

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

MR. LOW-BEER: Right.

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

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

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

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

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

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

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

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

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

MR. LOW-BEER: Mm-hmm.

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

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

COMMISSIONER SCIBETTA: But didn't that go in favor

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of the property owner?

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

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

MR. LOW-BEER: Mm-hmm.

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

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

CHAIR PERLMUTTER: Mm-hmm.

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

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

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

CHAIR PERLMUTTER: Mm-hmm.

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

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

MR. LOW-BEER: Mm-hmm.

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

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

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

MR. LOW-BEER: Mm-hmm.

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

CHAIR PERLMUTTER: Oh, okay.

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

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

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

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

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

COMMISSIONER SCIBETTA: And you're discovering

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

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

CHAIR PERLMUTTER: It's in the statute.

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

COMMISSIONER SCIBETTA: Right, but --

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

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

MR. LOW-BEER: Mm-hmm.

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

CHAIR PERLMUTTER: No.

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

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

CHAIR PERLMUTTER: Yeah, okay.

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

CHAIR PERLMUTTER: But if --

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

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

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

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

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

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

MR. LOW-BEER: Yes, of course.

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

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

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

CHAIR PERLMUTTER: In the same zoning district?

COMMISSIONER CHANDA: Zoning district.

COMMISSIONER SCIBETTA: Same zoning district.

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

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

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

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

MR. LOW-BEER: Mm-hmm.

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

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four corners of that.

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

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

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

CHAIR PERLMUTTER: So --

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

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

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

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

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

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

CHAIR PERLMUTTER: Or implicitly addresses.

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

COMMISSIONER SCIBETTA: I, I would also ask --

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

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

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

CHAIR PERLMUTTER: Right.

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

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

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

CHAIR PERLMUTTER: Okay.

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

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

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

CHAIR PERLMUTTER: Yeah, yeah. Please.

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

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

CHAIR PERLMUTTER: Okay. Okay.

MR. LOW-BEER: Okay.

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

MR. LOW-BEER: Yeah.

CHAIR PERLMUTTER: Okay. Thank you very much.

COMMISSIONER SCIBETTA: Thank you.

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

MR. KLEIN: Our representative would like to speak.

CHAIR PERLMUTTER: Ah. Okay.

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

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

MR. JANES: Absolutely.

CHAIR PERLMUTTER: Yeah.

MR. JANES: Is this better?

CHAIR PERLMUTTER: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

CHAIR PERLMUTTER: So just to be clear about that.

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

MR. JANES: There is so much record.

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

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

CHAIR PERLMUTTER: Right.

MR. JANES: There's so much information.

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

MR. JANES: Yes. And --

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

MR. JANES: Yeah.

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

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

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

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

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

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

MR. JANES: Yes.

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

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

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

CHAIR PERLMUTTER: Okay.

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

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

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mechanical engineers.

MR. JANES: Right.

CHAIR PERLMUTTER: Right?

COMMISSIONER SCIBETTA: But that's not before us.

CHAIR PERLMUTTER: And it's not -- that's why -- that's what I'm trying to say. You need to go back and get a different determination on a different question. Your question was about whether the voids were legitimately high.

MR. JANES: Okay.

CHAIR PERLMUTTER: Right?

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

CHAIR PERLMUTTER: Okay.

MR. JANES: I'm going to delete most of this because it was largely about voids and you don't want to talk about voids.

CHAIR PERLMUTTER: Right.

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

CHAIR PERLMUTTER: Mm-hmm.

MR. JANES: But the one question about vesting I will say is that there was, Mr. Karnovsky's papers said that the developer informed the DOB that they had vested. And the point is is that there hasn't been a, a vesting determination. And the fact that there is no slab --

COMMISSIONER SCIBETTA: That would make us not have jurisdiction over the issue at this point though.

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CHAIR PERLMUTTER: What --

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

CHAIR PERLMUTTER: We don't have a determination.

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

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

COMMISSIONER CHANDA: Pre-req jurisdiction.

CHAIR PERLMUTTER: Right, right.

MR. JANES: right.

CHAIR PERLMUTTER: Okay?

MR. JANES: Are there any questions?

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

MR. JANES: Thank you.

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

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

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

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

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

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

MR. KLEIN: Yes, it was.

CHAIR PERLMUTTER: -- or an objection?

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

CHAIR PERLMUTTER: Can you show me that?

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MR. KLEIN: Sure.

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

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

CHAIR PERLMUTTER: Okay.

MR. KLEIN: -- by the mechanical space.

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

MR. KLEIN: That's correct.

CHAIR PERLMUTTER: -- mechanical space.

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

CHAIR PERLMUTTER: Right. Okay.

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

COMMISSIONER SCIBETTA: Counsel, may I?

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

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

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

CHAIR PERLMUTTER: Oh.

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

CHAIR PERLMUTTER: Right.

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

CHAIR PERLMUTTER: Okay.

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

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

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

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

CHAIR PERLMUTTER: You, you looked at mechanical drawings?

MR. KLEIN: Yes, I did.

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

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

COMMISSIONER SCIBETTA: He couldn't determine.

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

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

COMMISSIONER SCIBETTA: I think the argument is--

CHAIR PERLMUTTER: Nothing?

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

CHAIR PERLMUTTER: Okay. Okay.

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

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

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

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

CHAIR PERLMUTTER: Understood.

MR. KLEIN: Okay.

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

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

CHAIR PERLMUTTER: So it is DOB's job.

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

CHAIR PERLMUTTER: Okay.

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

CHAIR PERLMUTTER: Okay, so --

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

MR. KLEIN: That's absolutely right.

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

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

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

CHAIR PERLMUTTER: Okay.

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

CHAIR PERLMUTTER: More time.

MR. KLEIN: What?

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

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

CHAIR PERLMUTTER: Then you submit this --

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

CHAIR PERLMUTTER: Okay.

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

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

MR. KLEIN: That would move this along.

CHAIR PERLMUTTER: That would move this along.

MR. KLEIN: Right, exactly.

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

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

CHAIR PERLMUTTER: Mm-hmm. Okay.

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

MR. KLEIN: Excuse me?

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

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

CHAIR PERLMUTTER: He didn't write the manual.

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

COMMISSIONER SCIBETTA: Right.

CHAIR PERLMUTTER: Mm-hmm.

MR. KLEIN: Thank you.

CHAIR PERLMUTTER: Thank you. Okay. Anybody

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

MR. ZOLTAN: Good morning, Commissioners. Michael Zoltan on behalf of the Department of Buildings. The appellants challenge the Department's issuance of the permit for two reasons. Therefore, there are only two questions before the Board. One, whether the Department correctly determined that the building complied with the bulk distribution provision of 82-34, and two, were the floors containing mechanical equipment permitted to be deducted from the available floor area on the zoning lot due to the floor to ceiling heights. I'll discuss the building's compliance with the bulk distribution provision first.

So during yesterday's executive session and today, the Board seemed to understand the Department's argument regarding the reading of the statute. The plain language of 82-34 is unambiguous. It clearly applies to the entire Special District. One point I'd like to add to the whole argument of the phrase within the Special District. The Zoning Resolution is road map. You can turn to any -- you turn to any section and it tells you which district it's applicable to. Frequently, sections specifically list the relevant districts. So if you turn to a provision, it will say, this applies to R9 and R10. Sometimes the provisions are incorporated by reference, such as in this one in 82-36, which is the tower coverage provision that's sort of linked here that we've discussed. That's specifically sends you to 33-45 and 33-45 tells you which districts it applies to. It says on it, R9 and R10. And sometimes you need to refer to earlier in the chapter to see where the parent section applies to. So 23-65(1) doesn't say that the districts, but you go right up to 23-65, and it tells you it applies to R9 and R10. Zoning Resolution tells you where it applies. It's not just within the, within the Special District. Each section always tell

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you where it applies.

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

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

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

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

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

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

CHAIR PERLMUTTER: Yes.

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

CHAIR PERLMUTTER: Right.

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

CHAIR PERLMUTTER: Correct.

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

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

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

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

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

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

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

MR. ZOLTAN: No.

COMMISSIONER SCIBETTA: You're not conceding that.

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

COMMISSIONER SCIBETTA: Do you agree with that

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statement?

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

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

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

COMMISSIONER SCIBETTA: One of which limit height.

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

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

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

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

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

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

COMMISSIONER SCIBETTA: I understand your argument.

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

COMMISSIONER SCIBETTA: Okay.

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

COMMISSIONER SCIBETTA: I understand.

CHAIR PERLMUTTER: And, and in the report because

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

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

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

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

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

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

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

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

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

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

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

CHAIR PERLMUTTER: Is the same.

MR. ZOLTAN: Same. Right.

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

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

CHAIR PERLMUTTER: It would link you in --

MR. ZOLTAN: Exactly.

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

MR. ZOLTAN: Okay.

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

MR. ZOLTAN: Okay. I understand the question.

CHAIR PERLMUTTER: But I didn't analyze it.

MR. ZOLTAN: Right.

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

MR. ZOLTAN: Community facility.

CHAIR PERLMUTTER: Yeah.

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

CHAIR PERLMUTTER: Okay.

MR. ZOLTAN: Moving on to the mechanical.

CHAIR PERLMUTTER: Mm-hmm.

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

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

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

MR. ZOLTAN: Sure. No problem.

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

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

COMMISSIONER SCIBETTA: I really would appreciate that.

MR. ZOLTAN: So to clarify --

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

MR. ZOLTAN: Tower coverage does not --

COMMISSIONER CHANDA: No, tower --

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

COMMISSIONER SCIBETTA: A tower coverage rule.

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

COMMISSIONER SCIBETTA: And it has a --

CHAIR PERLMUTTER: -- rule.

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COMMISSIONER CHANDA: Right.

COMMISSIONER SCIBETTA: Right.

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

COMMISSIONER SCIBETTA: Okay.

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

COMMISSIONER SCIBETTA: Right.

MR. ZOLTAN: Okay.

CHAIR PERLMUTTER: Okay.

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

However, yesterday, the Chair asked for clarification regarding the timing of the foundation permits. So under the Ad. Code, you can receive a foundation permit once you get zoning approval, even if you don' have the NB permit yet to actually building a building. And it says in the code how it's at the risk of the developer to continue, but you can get the foundation permit once the zoning has fully been approved.

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

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

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

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

CHAIR PERLMUTTER: Right.

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

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

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

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

MR. ZOLTAN: Permit, correct.

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

MR. ZOLTAN: Of the vesting date, right.

CHAIR PERLMUTTER: Okay. Thank you. Okay.

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

CHAIR PERLMUTTER: Oh.

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

CHAIR PERLMUTTER: Okay.

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

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

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

CHAIR PERLMUTTER: Mechanical, mechanical also --

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

CHAIR PERLMUTTER: Right.

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

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

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

CHAIR PERLMUTTER: Right.

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

COMMISSIONER SCIBETTA: Presented here.

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

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

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

CHAIR PERLMUTTER: Okay.

MR. KARNOVSKY: Madam Chair, Members of the

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

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

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

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

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

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

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

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

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provision with regard to loading.

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

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

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

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

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

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

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

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

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

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

CHAIR PERLMUTTER: Okay.

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

CHAIR PERLMUTTER: Okay.

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

CHAIR PERLMUTTER: Okay.

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

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

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

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

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

CHAIR PERLMUTTER: This is an alternate.

MR. KARNOVSKY: Yeah, this is alternate.

CHAIR PERLMUTTER: Okay.

MR. KARNOVSKY: And we can provide other examples. This is alternate. And it shows that the 60 percent within the 150-foot requirement is more than met. It's somewhere in the 80 percents.

CHAIR PERLMUTTER: Mm-hmm.

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

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

COMMISSIONER CHANDA: Provided it is permitted.

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

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permits it to comply with the 150-foot rule.

MR. KARNOVSKY: Right.

CHAIR PERLMUTTER: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIR PERLMUTTER: Before, before you do that.

MR. KARNOVSKY: Sure.

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

MR. KARNOVSKY: Yeah.

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

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

CHAIR PERLMUTTER: Yeah.

MR. KARNOVSKY: The location of the synagogue and

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

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

MR. KARNOVSKY: Right.

CHAIR PERLMUTTER: Right?

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

CHAIR PERLMUTTER: Yes.

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

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

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

CHAIR PERLMUTTER: Okay.

MR. KARNOVSKY: -- community facility.

COMMISSIONER SCIBETTA: If I may?

MR. KARNOVSKY: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMISSIONER CHANDA: Watchtower?

CHAIR PERLMUTTER: Yes. It was the sign --

MR. KARNOVSKY: This is the Watchtower, Watchtower.

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

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

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

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

MR. KARNOVSKY: Yes.

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

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

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

MR. KARNOVSKY: Number of stories, yeah.

CHAIR PERLMUTTER: -- number of stories.

MR. KARNOVSKY: Page 17.

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

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MR. KARNOVSKY: Yeah.

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

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

CHAIR PERLMUTTER: No, I don't --

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

CHAIR PERLMUTTER: Yeah.

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

CHAIR PERLMUTTER: Right.

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

CHAIR PERLMUTTER: Mm-hmm.

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

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sites.

CHAIR PERLMUTTER: Mm-hmm.

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

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

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

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

COMMISSIONER SCIBETTA: Okay, so --

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

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

COMMISSIONER SCIBETTA: I guess --

MR. KARNOVSKY: -- reduction height.

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

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

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

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

CHAIR PERLMUTTER: Well, there --

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

COMMISSIONER SCIBETTA: Okay.

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

MR. KARNOVSKY: Yeah.

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

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

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CHAIR PERLMUTTER: Mm-hmm.

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

CHAIR PERLMUTTER: Mm-hmm.

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

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

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

MR. KARNOVSKY: Yeah.

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

Commissioner Scibetta: Do you want to issue a response?

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

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

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

CHAIR PERLMUTTER: Sure.

MR. KARNOVSKY: -- because --

CHAIR PERLMUTTER: Yeah, sure.

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

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

MS. PRENGA: There are some elected --

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CHAIR PERLMUTTER: Yeah. So elected officials, please.

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

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

MS. ROSENTHAL: Thank you.

MS. PRENGA: Thank you.

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

CHAIR PERLMUTTER: State your name, please.

MS. ROSENTHAL: I am Helen Rosenthal.

CHAIR PERLMUTTER: Thank you.

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

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

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

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

CHAIR PERLMUTTER: Appellant.

MS. ROSENTHAL: Appellant. Sorry. I'm not a lawyer. Master's in public health. To say that they're, you know, throwing ideas to see what sticks -- it's, they're throwing ideas against a developer that similarly is picking and choosing when and where to apply certain of the zoning district regulations and the

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

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

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

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

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

CHAIR PERLMUTTER: Thank you very much.

COMMISSIONER SCIBETTA: Thank you.

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

MS. ROSENTHAL: Fair.

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

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

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

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

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CHAIR PERLMUTTER: Mm-hmm.

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

CHAIR PERLMUTTER: Mm-hmm.

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

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

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

CHAIR PERLMUTTER: Thanks very much.

MS. ROSENTHAL: Thank you.

CHAIR PERLMUTTER: Any other elected officials?

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

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

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

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

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

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

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

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

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Ms. Prenga: Or representing an elected official.

MS. LETTERY: Hi. My name is Kaitlin Lettery [phonetic]. I'm here representing Assembly Member Linda Rosenthal. So I'll be reading her testimony.

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

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

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

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

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

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

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

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

COMMISSIONER SCIBETTA: Thank you.

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

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

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

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

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

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

MS. PRENGA: Just state your name.

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MS. MONROE: Yeah. State your name before you start. You have three minutes.

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

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

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

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

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

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

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

MS. SIMON: I'm sorry?

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

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

CHAIR PERLMUTTER: Ms. Simon, please --

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

CHAIR PERLMUTTER: Thank you.

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

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Thank you.

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

CHAIR PERLMUTTER: State your name, please.

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

CHAIR PERLMUTTER: What organization? Sorry. Chair of?

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

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

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

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

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

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

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

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

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

CHAIR PERLMUTTER: Thank you.

MS. MONROE: Next speaker, please.

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

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

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

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

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

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

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

CHAIR PERLMUTTER: Thank you.

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

MS. MONROE: Next speaker, please.

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

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

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

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

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

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

CHAIR PERLMUTTER: Thank you. Next speaker, please.

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

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

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

MR. GRUEN: Thank you.

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

CHAIR PERLMUTTER: Next speaker, please.

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

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

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lobbying was done --

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

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

COMMISSIONER SCIBETTA: Thank you.

CHAIR PERLMUTTER: Thank you.

MS. MONROE: Next speaker, please.

CHAIR PERLMUTTER: Please --

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MS. MONROE: Go ahead.

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

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

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

CHAIR PERLMUTTER: Thank you.

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

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

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

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

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

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

MS. MONROE: I did say they could snap.

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

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

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

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

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

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

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Central Park, is unconscionable.

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

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

MS. MONROE: Next speaker, please.

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

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

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

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

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

CHAIR PERLMUTTER: Thank you.

COMMISSIONER SCIBETTA: Thank you.

MS. MONROE: Next speaker, please.

MR. KHORSANDI: Good afternoon, Commissioners. Sean Khorsandi for Landmark West. And Landmark West is grateful to finally be able to address this development issue in a public forum.

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

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

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30 percent of its proposed height is sheer void.

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

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

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

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

CHAIR PERLMUTTER: Thank you.

MS. MONROE: Next speaker, please.

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

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

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

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

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you for considering our comments.

CHAIR PERLMUTTER: Thank you.

MS. MONROE: Next speaker, please.

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

CHAIR PERLMUTTER: Thank you.

MS. MONROE: Next speaker, please.

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

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

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

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

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

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

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

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

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

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

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

CHAIR PERLMUTTER: Are there any other speakers? No other speakers? Okay. Alright then. So a very, very short, short response.

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

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

MS. MONROE: To encourage us to be short.

CHAIR PERLMUTTER: Yes.

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

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

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

MR. LOW-BEER: Well, no.

CHAIR PERLMUTTER: So this was a DOB reviewed project.

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

CHAIR PERLMUTTER: Right.

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

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

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you said?

MR. LOW-BEER: No.

MS. MONROE: 82-22.

CHAIR PERLMUTTER: Oh, 22.

MR. LOW-BEER: 82-22.

CHAIR PERLMUTTER: Location of Floors.

COMMISSIONER CHANDA: It says Location of Floors Occupied by Commercial Use. The provisions of Section 32-422 --

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

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

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

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

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

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

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

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

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

MR. LOW-BEER: The bulk packing rule.

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

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

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

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

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

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

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

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

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

CHAIR PERLMUTTER: So, so --

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

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

MR. LOW-BEER: This building --

CHAIR PERLMUTTER: -- and having an effect.

MR. LOW-BEER: Yes.

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

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

MR. KARNOVSKY: There's another appellant.

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

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

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

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

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

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

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

CHAIR PERLMUTTER: Okay. So I just need to ask you. Are you asking us to look at whether the Fire Department did its job and whether we should be reviewing --

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

CHAIR PERLMUTTER: Okay.

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

CHAIR PERLMUTTER: Okay. Thank you very much.

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Alright. So in terms -- Mr. Karnovsky.

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

CHAIR PERLMUTTER: Okay.

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

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

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

So I leave to counsel for the briefing schedule.

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

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

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

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

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

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

CHAIR PERLMUTTER: That -- oaky.

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

MR. LOW-BEER: Why what?

COMMISSIONER SCIBETTA: Why this is an absurd result.

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

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

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

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

CHAIR PERLMUTTER: Okay. Thank you.

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

CHAIR PERLMUTTER: How much time?

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

CHAIR PERLMUTTER: Okay.

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

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

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

CHAIR PERLMUTTER: Yes.

MR. KARNOVSKY: And I --

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

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

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

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

CHAIR PERLMUTTER: So that's --

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

CHAIR PERLMUTTER: Mm-hmm. I agree.

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

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

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

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you know --

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

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

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

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

CHAIR PERLMUTTER: Okay. And --

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

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

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

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CHAIR PERLMUTTER: Yeah. Okay.

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

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

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

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

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

MR. KARNOVSKY: Yes, yes.

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

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

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

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

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

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

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

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

MR. KARNOVSKY: Do we all agree to that?

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

MS. MONROE: So we can --

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

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

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

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

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

CHAIR PERLMUTTER: Okay.

MR. ZOLTAN: So mine would be one week later?

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MR. LOW-BEER: And then what happens...

MS. MONROE: Sorry, Mr. Low-Beer.

MR. ZOLTAN: So it would be submissions in two weeks and then one week for a reply?

MS. MONROE: Yes.

CHAIR PERLMUTTER: Correct.

MR. LOW-BEER: And then what happens in September?

MS. MONROE: If there needs to be a reply.

CHAIR PERLMUTTER: And then we come back and either the Board -- do we close the hearing based on this?

MR. STEINHOUSE: We can close.

CHAIR PERLMUTTER: Do we close the hearing?

COMMISSIONER CHANDA: No.

CHAIR PERLMUTTER: No, we cannot. Okay. So then the Board either closes or the Board continues the discussion depending on what we learn from the submission. We don't know what it's going to say. Right? Okay.

MS. MONROE: So it's possible there could be a decision September 10th. It's possible there won't be.

MR. ZOLTAN: What were the --

CHAIR PERLMUTTER: The dates again?

MS. MONROE: September 10th.

MR. LOW-BEER: Okay. Well, I, I, I will say very little only because I think it would be best not to have a second hearing.

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CHAIR PERLMUTTER: Well, you have -- we have to -- we have to have time to review the materials. Right? Okay. So you get the second hearing.

MS. MONROE: So does everyone have those dates? Mr. Klein? Mr. Zoltan?

MR. KARNOVSKY: Is it the 21st?

MS. MONROE: The 21st and the 28th.

CHAIR PERLMUTTER: Okay. Thank you.

MS. MONROE: Mr. Zoltan, any --

MR. ZOLTAN: No, that works. Thanks.

CHAIR PERLMUTTER: It works. Okay. Thank you very much. Thank you everyone for coming.

MS. MONROE: Thank you everyone for coming. Thank you for snapping.

CHAIR PERLMUTTER: Mr. Klein?

MR. KLEIN: This has nothing to do with scheduling. Obviously, I don't agree with regard to the whether the mechanical space is right before the Board. But all I ask is this, that I will be making an application to the Buildings Department to review this. The last, the last five times I've submitted FOIL requests --

CHAIR PERLMUTTER: Shh, shh. Please, everyone. Please.

MR. KLEIN: The last five time I've billed, I've brought a request before the Buildings Department, I ended up having to bring a 78 forcing them to

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give me the information. So all I would like, if possible, is a letter from the Board asking them to expedite their review.

MS. MONROE: We can provide a letter. I don't know what, what good it will do, but we're happy --

MR. KLEIN: Fine, fine.

MS. MONROE: -- to provide a letter for Mr. Klein.

MR. KLEIN: That's all I ask for. Thank you very much.

MS. MONROE: Sure. Thank you very much. We're going to take a 10-minute recess.

CHAIR PERLMUTTER: No, no, no, no.

MS. MONROE: Five-minute:

CHAIR PERLMUTTER: It's got to be 20 minutes. It's lunchtime already. Right? Let's, let's resume at 2:00. How about that?

MS. MONROE: We're taking a break. We're resuming at 2:00.

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CERTIFICATE OF ACCURACY

I, Devin Turpin, certify that the foregoing transcript of the Public Hearing of New York City Board of Standards & Appeals on August 6, 2019 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

Date: January 8, 2020

GENEVAWORLDWIDE, INC

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NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

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

36 West 66th Street, Manhattan

Public Review Session

September 9, 2019

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MS. MATIAS: Item number three. 2019-89-A. 36 West 66th Street, Manhattan.

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

CHAIR PERLMUTTER: Indeed. Okay. Thank you.

MS. MATIAS: Am I calling the fourth one also or separating them? On the fourth one.

CHAIR PERLMUTTER: I -- call them together.

MS. MATIAS: Calling both?

CHAIR PERLMUTTER: I think we called them together, right, last time?

MS. MATIAS: We called them together.

CHAIR PERLMUTTER: Yeah.

MS. MATIAS: Okay. Item number four. 2019-94-A. 36 West 66th Street. Sorry.

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

CHAIR PERLMUTTER: Okay.

MS. MATIAS: Sorry, Commissioner.

COMMISSIONER OTTLEY-BROWN: It's alright.

CHAIR PERLMUTTER: Okay. So we have final submissions from appellant and owner and I didn't find anything new in either submission that would change my view. As I said at the last hearing, this split lot rules

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direct lot coverage to apply only to the C4-7 portion of the zoning lot and the bulk packing rules to apply to the entirety of the zoning lot. That's the split lot rules. And although I do have to say I sympathize with appellants in that their analysis of the proportional relationship between coverage and bulk packing as demonstrated by the chart in the tower-on-a-base rules at 23-651A3 makes a certain elegant sense. I don't think that is what the text says in this particular case of this special district and I don't believe it's the Board's job to impose textual corrections where there is inadequate evidence that the difference between the text was an oversight on City Planning's part.

We have -- there have been cases where City Planning has made a mistake in, in, in -- I remember there was one that had to do with community facility towers or something like that where they actually made a mistake and they issued a change, a very large text change and then left off a change to that portion of the text and we saw two cases here where an applicant -- one applicant comes in taking advantage of the mistake and go ahead, it says it right there, just do it and we weren't -- it wasn't an interpretative appeal. It just was part of their zoning analysis, right? And then pretty literally a few hours later someone else came in and they said we're not taking advantage of that mistake because we know City Planning is gonna come and change it.

Now whether City Planning ever changed it, I don't know but you had two different people taking advantage and not taking advantage of a mistake. There isn't any indication here that this was a mistake. Really, I, I really just don't find that. I also note that appellants' intent to challenge the mechanical space and whether that's laid out as mechanical space separately and whe-, and so that issue is not right for us now. Okay. Anybody else?

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VICE-CHAIR CHANDA: I agree with you. I think what was helpful in some of the additional submission was over in the corners we have provided various combinations of bulk analysis. Sorry.

MS. MATIAS: I was just gonna say the microphone was.

VICE-CHAIR CHANDA: I agree with you and I think of what I -- okay.

CHAIR PERLMUTTER: Two sides.

VICE-CHAIR CHANDA: Two sides to my voice. That the additional information that was pro- provide by the owner's representative further went to show various combinations of bulk possibilities both in a C4-7 district, in a R8 district merged, unmerged with the Section 82-34 without the Section 82-34 and how that would affect the building height and I think that definitely is consistent with the way the City Planning Commission was envisioning this text to be applied.

That is it would result in a height reduction which in every one of those instances with the C82-34 versus the 82-37 -- 34, there was a distinct reduction in the height. It might not be to the extent that one imagined but that's not how the text is written and the text has been -- and the, and the City Planning Commission report and the discussions that ensued during that hearing also made it very clear that there was no intent- intention to have a very prescribed height limit. So I think the text is very clear and I don't have any other.

COMMISSIONER SHETA: So I, I didn't attend the last hearing so after reviewing this case I did listen actually to the video for both the Executive Session and the actual hearing and I, I believe this case is all about chairing a

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building height and I during listening to the video, I, I did hear that it was mentioned that this, this case or that, that Legislative intent of the bulk packing rule is not to limit a building height or a building bulk. I, I, I just wanted to comment on this at the beginning. I believe the entire like purpose of the Zoning Resolution is to limit building's heights and bulks. That's, that's my understanding from the Zoning Resolution.

To limit it doesn't mean to reduce it. To limit it that to put like to set forth limits to how tall a building could be or how bulky a building could be. This is, this is number one. Number two, the, the two issues I, I did look at is the bulk issue or the, the, the bulk packing rule. I, I did go over the zoning text like probably five times and I, I tried to because I'm, I'm sympathetic with the, with the public. I tried to find the hope that telling me that this text is, text is unclear or ambiguous and I couldn't.

I, I believe the text is very clear and when it comes to applying this, this rule to the entire zoning lot, I believe this is what the Zoning Resolution mentioned. On the other hand, regarding the mechanical space issue, I did look at the drawings and, and, and I'm just gonna like summarize my opinion on this. I believe the DOB should have looked and scrutinized the size and the design of the mechanical void or what's called mechanical void because I have--

CHAIR PERLMUTTER: I, I need to interrupt you on this, on this one for, for procedural reasons. The, the first is we already had a case --

COMMISSIONER SHETA: Yes, yes, I know.

CHAIR PERLMUTTER: -- to discuss the height of the mechanical void so we just determined that, that, that what's that issue is precluded from discussion here and then the section about whether the mechanical equipment in is laid

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out in plan and fills up those floors is not before us yet --

COMMISSIONER SHETA: Yes, understood.

CHAIR PERLMUTTER: -- because DOB hasn't reviewed the question yet and apparently some of the, one of the appellants at least says they're going to be going to DOB to challenge DOB's determination. DOB I don't even know if it has made a determination. It's going -- DOB for -- is going to look at the layout of the mechanical equipment and decide whether they are persuaded that the mechanical equipment fills up those floors and if they are persuaded and they'll issue a determination that they agree that that's correct, then perhaps we'll see in another case the discussion about whether that's a legitimate use of mechanical space in plan, not vertically.

COMMISSIONERS SHETA: Okay.

CHAIR PERLMUTTER: Okay?

COMMISSIONER SHETA: Okay. So yes. If, if the mechanical space issue is not like before us, the size of the mechanical space issue is not before us, I, I believe the fairest part of these two case, the first case is, is, is like at the end car. I believe we can close it and vote on it tomorrow.

CHAIR PERLMUTTER: Uh-huh.

COMMISSIONER SCIBETTA: I, I, I submit that to the community the applicant here, it's likely the code did not intend or anticipate for this specific result but pursuant to the prevailing case law, that alone in the face of clear text is simply not enough. While I am frustrated by this decision, the statute is clear and the alleged intent is not so clear that we can usurp the right to the property owner retained from reading that text. Finding otherwise, I believe it would be an overstep of the Board

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into the powers of the Legislature.

CHAIR PERLMUTTER: Okay. Thank you.

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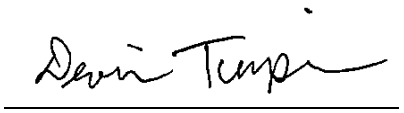
CERTIFICATE OF ACCURACY

I, Devin Turpin, certify that the foregoing transcript of the Public Review Session of New York City Board of Standards & Appeals on September 9, 2019 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: November 26, 2019

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018

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NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

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

36 West 66th Street, Manhattan

Public Hearing

September 10, 2019

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MS. MATIAS: Okay. Item number three. 2019-89-A. 36 West 66th Street. This is the application from City Club and item number four correct?

CHAIR PERLMUTTER: Yes.

MR. STEINHOUSE: This is the application -- 219 -- 2019-94-A. 36 West 66th Street also. This is the application filed by Landmark West. So--

CHAIR PERLMUTTER: Okay. So does the appellant just want to get up and --

COMMISSIONER OTTLEY-BROWN: Wait. Madam Chair.

CHAIR PERLMUTTER: Oh, yeah. I'm sorry.

COMMISSIONER OTTLEY-BROWN: I must recuse.

CHAIR PERLMUTTER: Yes. Thank you. This is still open right?

VICE-CHAIR CHANDA: Yes.

MR. LOW-BEER: Good morning. I have a -- oh, I have a handout which I should also.

CHAIR PERLMUTTER: Can you speak up please because?

MR. LOW-BEER: Yes. I have a--

MR. STEINHOUSE: Please identify yourself for the record. Sorry.

MR. LOW-BEER: John Low-Beer for appellant's City

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Club of New York Et Al. I have something I'd like to give to the members of the Board.

CHAIR PERLMUTTER: You can just hand it over here. It's more effective. Thank you.

VICE-CHAIR CHANDA: Thank you.

MS. MATIAS: Thank you.

MR. LOW BEER: So while I heard from the Executive Session yesterday that pretty much the Board is not inclined to grant the appeal so I'll be brief. I just wanna add these things to the record. I wanna say too that I hope this decision can be rendered quickly because I think the key thing in this case as in all cases in which construction is ongoing is that a court should or courts should be able to reach the merits before the building is substantially complete because otherwise I don't think there's really any chance that the decision of the Board could be reversed even if the court were otherwise inclined to do so. I'd just like to spend a moment--

CHAIR PERLMUTTER: So, so then to that point. So the -- we didn't close the record last time to enable a submission to continue the argument, right? We sometimes close and vote decisions but only when there's no new material that you want us to consider.

MR. LOW-BEER: Uh-huh.

CHAIR PERLMUTTER: So if you're interested in closing this hearing and having us come to a decision, I'd recommend that you not introduce new arguments unless you think they're strong ones that we should consider. Otherwise, it will put off on our ability to decide on this today.

MR. LOW-BEER: Well, I, I don't, I don't think that this,

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I'd just like it to be in the record, but I don't think it will change your mind. I mean I think this whole post-hearing round of briefing added, you know, as I believe I don't know. I believe somebody said yesterday it didn't add that much and I would have been more than happy to call the case after the first hearing. So but I'm -- these are just in -- they're not new arguments, they're just in response to things that Mr. Karnovsky said some of which since I got the date wrong on the simultaneous briefing, I think he, he responded to what I had said in my post-hearing submission.

So about just about, about the law and how statutory interpretations should work in a case like this, I think it's pretty clear we disagree with Mr. Karnovsky, with Extell. It's true that there's a difference between legislative intent or purpose or legislative history but we're not just relying on legislative history here. We're looking at the whole picture. What the statute is intended to do as evidenced by its entire language, not just one or two phrases and I think it's obvious that the statute was intended to limit height.

We can discuss exactly how precisely City Planning Commission intends to limit height and whether it did so or not but I don't think there can really be any dispute that by enacting these provisions the City Planning Commission intended to limit height and Extell hasn't proposed any purpose in a rule that would permit buildings to be much taller just because they straddle two zoning districts, one of which provides for a lower density, not a higher density.

And I think this is obviously from the language, not just from legislative history but both from the formula of the bulk packing rule at 60 percent of the bulk has to be below 150 feet and, and the tower coverage rule of 30 percent minimum tower coverage. It's also obvious as I've said in my last submission from the fact that let's contemplate is a

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60/40 ratio that the 60 and the 40 should add up to 100, not to 130 or whatever it is in this case.

So and Mr. Scibetta, Commissioner Scibetta had raised the question about whether the rule of absurd results applies in cases in- involving zoning and property and we cited Stringfellow's to address that particularly and I think, you know, that case does say that while zoning ordinances must be narrowly interpreted, and that ambiguities are to be construed against the Zoning Authority, the fundamental rule in construing any statute or in this case an amendment to Zoning Resolution is to ascertain and give effect to the intention of the legislative body and I don't think that the intention of the legislative body was to allow a much higher building just because part of it was in a lower density zoning district part of the zoning lot.

And I also would disagree with Mr. Karnovsky's interpretation of some of the cases but perhaps it's a moot point at this point, but I think it's very clear that although the cases on occasion do say that you have to find ambiguity, they find that ambiguity not only in the provision in the narrow in words being construed but they look at the statute as a whole and what it's trying to accomplish and at its legislative history as well.

For example, in Abood v. Hospital Ambulance Service, the Court of Appeals said that intent is to be gleaned from the entire statute, it's legislative history or the statutes of which it is made a part and that intent must be followed in construing the statute. There's a lot of in a Bankers Association v. Albright has a very good explanation of how the court or, or this body for that matter should approach cases of this kind but--

CHAIR PERLMUTTER: But what you're suggesting is that for every single statute written, every one, the reader, the user of the statute shouldn't

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look at the plain meaning what it says to do right in front of you but instead should try to glean from legislative history and other case law and so on what it really meant as opposed to what it really meant as opposed to what it says so.

MR. LOW-BEER: Well.

CHAIR PERLMUTTER: Well, but that's effectively what you're saying because what, what we've been saying here is when, when the bulk packing rule says it applies to the entire special, special purpose district, that's a direction and that a user of that text should have to look around what is actually meant and, you know, the Zoning Resolution like every piece of legislature has an instruction for buildings located in a certain place --

MR. LOW-BEER: Right.

CHAIR PERLMUTTER: -- for schools operating in a certain way. What you're suggesting is that in every single case, you should always look behind the plain language. It's as opposed to when you don't know what to do because the language is unclear.

MR. LOW-BEER: No, it's not in every single case. It's only when the result is absurd or unreasonable or obviously contrary to the purpose and then of course we get to the next question which is, is this such a case but --

CHAIR PERLMUTTER: Right.

MR. LOW-BEER: -- but, you know, and--

CHAIR PERLMUTTER: But then I go back to the same question. You're ask -- you would say looking at a very simple statute that says for buildings located in an R10 district and then you look at should I be unpacking that and

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seeing whether there's an absurd result here before I move on? You, you can't expect an architect to look at, to do that for one, what are the absurd results, how do you analyze them etc. and for two, really, is that what you're supposed to be doing?

MR. LOW-BEER: But this isn't up to necessarily the architect. The architect of course will do his best and will try to s- see what it all means and, and maybe will even push the envelope and say well I think it means this, but it's up to the Department of Buildings and to this, this Board to have that view of the Zoning Resolution that would enable the Buildings Department or this Board to say well actually it's very clear that this statute was intended to do x and you know?

COMMISSIONER SCIBETTA: Does that argument hold up against Raritan?

MR. LOW-BEER: Well, I, I, you know, if you, if you read the dissent in Raritan they put the case very well.

COMMISSIONER SCIBETTA: I personally agree with the dissent in Raritan but Raritan is, is what's dictating, it's, it's the law that we have to follow. It's our precedent at this moment. But--

CHAIR PERLMUTTER: Sorry. Speak up. I know your void is harse -- hoarse.

COMMISSIONER SCIBETTA: I'm sorry.

CHAIR PERLMUTTER: Speak up right into themic.

COMMISSIONER SCIBETTA: At this moment, Raritan is the controlling precedent.

MR. LOW-BEER: But, you know, in each one of these

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cases, you'll find it's all a question of, you know, one judge might think this is an absurd result or an unreasonable result, another judge might not. I mean that's the nature of the law. In Raritan, the majority thought it was not unreasonable, dissent thought it was unreasonable in--

COMMISSIONER SCIBETTA: They, they, they kind of -- it was more that the language was so clear, not so much that is this result that absurd or unreasonable. The language was so clear. Similar to this case, the language is very clear. Now legislative intent is, is important but not when it usurps a property owner's right and in, in such a clear text. If there was ambiguity in the text and that ambiguity was, was, was substantial, then we can start going into the intent.

MR. LOW-BEER: Uh-huh.

COMMISSIONER SCIBETTA: But pursuant to Raritan, that is our precedent.

MR. LOW-BEER: Uh-huh. Well, I, you know, I would say that the ambiguity consists in the obvious contrast between the outcome and the purpose of the statute.

CHAIR PERLMUTTER: No, no. You're jumping to the absurd result.

MR. LOW-BEER: Right.

CHAIR PERLMUTTER: Assuming ambiguity but when you look at the text --

MR. LOW-BEER: Right. Right.

CHAIR PERLMUTTER: -- the text has no ambiguity.

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MR. LOW-BEER: But, but in every one of these cases or any way in every one really, I think if you read the text, there is no ambiguity. Now sometimes the courts come back, sometimes they say, even though their literal language says x, we won't, we won't apply it here. In other cases, they say we see ambiguity not in the literal language of the text but looking at the statute as a whole so they, the courts do routinely or I mean routinely in these kinds of cases which admittedly are not routine but they do arise not that infrequently and where that happens they do look beyond the literal language of the text. I mean let's take -- we don't have any water here, do we?

CHAIR PERLMUTTER: Sorry.

MR. LOW-BEER: Oh, well. Let, let's take Stringfellow's. If you look at Stringfellow's, the, the lower court said it was clear and unambiguous that that club did not fit within the definition of an adult establishment because one of the requirements of the definition is that the club customarily not admit minors. Now the appellant division wanted to look at the statute as a whole and clearly this club was an adult establishment said well maybe, you know, customarily here could mean what's customary for adult establishments generally but basically in doing that, I mean when you have a definition, it the c-, the -- when the statute was written that way, it, it's just it doesn't make a-, the appellant division's intrepretation of it doesn't make any sense because essentially they're saying well this was just a statement about adult establishments in general, it didn't mean that you look to each club to see whether it meets the criteria. Well, if, if you don't, if you're not gonna look to see if the club meets the criteria, then why is this a pro-, you know, a part of the test, part of the definition. It has to be that it's applied to each club to see whether it does or does not customarily

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admit minors.

So, you know, they, they kind of got around it but I think if you read that language, it's really hard to say that that language means what the Court of Appeals -- what the appellant division says it does and in many other cases they, the courts don't even and by the way, post Raritan because I think Mr. Karnovsky suggested that these cases are all, all cases. I mean--

COMMISSIONER SCIBETTA: If there's good law, there is, there is, there is good law in these cases. I just believe that it's been made abundantly clear to this Board through Raritan that when the language, when, when an owner is following the language of the text, the, the for the result, the result must be extremely absurd, it must be very clear, the text must show something that is clearly or never or something that any responsible person would read and say that's not what this means even though it's written like that. I think our hands are tied.

MR. LOW-BEER: Okay. Well.

CHAIR PERLMUTTER: And by the way, I don't really see the absurd result. It's a four-story difference so.

MR. LOW-BEER: Well, it's not four stories difference as we showed in our -- I'm losing track of all the submissions, but I believe it was in my reply possibly that I submitted before the last hearing that it's actually eight or nine stories but that's because when I first did this calculation, I was assuming that they could put all of the available 60 percent of the bulk on the zoning lot in the C4-7 portion, but I was -- I wasn't looking at the reality of this zoning lot and the fact that the Landmark on the rebuilding is on that zoning lot and moreover you're considering a permit that has

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already been, been approved and has a certain amount of bulk below 150 feet. If you take that bulk and then say okay so if they follow the rules as, as we believe they should be applied, how much could they build, it would be eight point something stories less than what they have. So that--

CHAIR PERLMUTTER: I'm, I'm, I'm looking at a diagram right now that's showing if the distribution was in both zones, you get a 39 story tower 'cause that's what we're talking about, both the R and the C and if there were no bulk packing rule so in other words it doesn't apply in the R district which is what's being suggested, then it would be a 43 story tower so.

MR. LOW-BEER: I- is this the diagram that Mr. Karnovsky submitted?

CHAIR PERLMUTTER: Yeah. On 8/27.

MR. LOW-BEER: Yeah. But, but as I said in response to that that's a very, that's a hypothetical case. It's not this case on this zoning lot.

CHAIR PERLMUTTER: But, but that's, but, you know, when City Planning is looking at no builds and builds which was the what the, what you're, your argument earlier was that there were these soft sites that were considered in the rezoning in the new zoning district, right, and they looked at those soft, soft sites but they didn't look at this soft site.

MR. LOW-BEER: Uh-huh.

CHAIR PERLMUTTER: Or they didn't look at this soft site the same way, right?

MR. LOW-BEER: Uh-huh.

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CHAIR PERLMUTTER: So they couldn't have predicted whether you keep a building, you don't keep a building, how many buildings are on a zoning lot. When they look at a soft site, they tear down all the buildings on the lot so you're gonna compare apples to apples, you have to have a vacant site and that, that straddles the two boundaries. Otherwise, there's infinite possibilities for every single soft site.

MR. LOW-BEER: Right.

CHAIR PERLMUTTER: Right? So this one is for lack of a better word sort of the dumb version. They clear the site, what can you build if you have the bulk packing rule that straddles, and what can you do if you don't have it.

MR. LOW-BEER: Uh-huh.

CHAIR PERLMUTTER: Right? And so there is a four-story difference.

MR. LOW-BEER: Uh-huh.

CHAIR PERLMUTTER: An absurd result would be a ten-story difference or a 20-story difference maybe.

MR. LOW-BEER: Well, well, in addition to the fact that four or whatever it is, five times 16 is whatever, I forget how many feet that is but it's not totally insignificant at all but it's the logic of the interpretation that is absurd. In other words to the extent that you buy this rule that they have that, that they would have you accept to the extent that the bulk is put outside of where the tower coverage rule applies and where there would ordinarily be towers. It leads to a perverse result. Of course, it's not as perverse as it could be because they didn't have enough room in the R portion of

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the lot to, to move all that bulk out and to put the building on stilts as they could have done if they had a bigger R what is it R8 section. But anyhow, you know, it's the logic of it really, not just the amount by which.

VICE-CHAIR CHANDA: Okay. So if I were to take that si-, take your presentation here where you're saying it's the logic of it so as you have stated and the City Planning Commission's report, started off with the intent to find bulk form that would be more in keeping with the -- that would, that would not result in tall towers, right? That's what you're arguing. And they propose certain amount, certain text and the text is what is being contested or the interpretation of the text.

MR. LOW-BEER: Uh-huh.

VICE-CHAIR CHANDA: The way it's being. What I'm trying to understand is how is it not, how is it failing to meet the goals that the City Planning Commission started off with? The with this text, it does result in a height reduction both in R8 and C4-7.

MR. LOW-BEER: Uh-huh.

VICE-CHAIR CHANDA: I think everybody's in agreement and the diagrams have been show -- have shown that. The fact that the zoning lot has become larger than when it was reviewed then in 96 which nobody could have guessed what the zoning lot. Is partially to a large extent is causing a larger zoning lot with a larger floor area. I mean you're getting the floor area from the Landmark Building also which is in the C4-7 area. There are a lot of other factors that are also adding to a more buildable floor area which was not anticipated then. If this text was not there, it would have resulted in a taller building. Because of the text what we see is a shorter

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building. May not be as short as you want but it shorter than what would have been without the text. So I'm, I'm not able to find that connection.

MR. LOW-BEER: Right.

VICE-CHAIR CHANDA: So the logical part of the argument seems to work is that this text does result in a reduction in height.

MR. LOW-BEER: Right. But the thing is, it's not because the lot is larger because as I showed in my first submission, this interaction between tower coverage and bulk packing results in height being kept constant regardless of the lot size and so I mean I, I do believe that--

CHAIR PERLMUTTER: Sorry, but that's a different provision. That which I, you know, I agree with you that the provision that is the tower-on-a-base rule in residence districts is an elegant structure. It's very nice the way it works but when we look at this special purpose district where they write it very intentionally, it takes a long time to put together a special purpose district, right? They intentionally kept this section on bulk separate from this section on lot cover-, on tower coverage. Why? I don't know but so they may not have been looking at the same kind of result. We don't know that because it doesn't say that in any of the, in the report, the, you know, so that elegant chart that applies to all sizes of zoning lots and all sizes of tower coverage and so on was anticipating great variety throughout the city wherever towers apply, right?

MR. LOW-BEER: Uh-huh.

CHAIR PERLMUTTER: Now this case, there were only a few sites that they were anticipating and in addition to which you never know but they, they didn't anticipate or allow for that. That was the other part. They were not allowing

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for any skinny towers. Forty percent or nothing, right? And so in this district, they decided that a 40 percent tower coverage is the minimum you get.

MR. LOW-BEER: Thirty but yeah.

CHAIR PERLMUTTER: And, and, and whereas in the other districts, you could go much lower than that. I think it's 30 percent.

MR. LOW-BEER: No, no. It's 30 here and I think it as I.

CHAIR PERLMUTTER: It's 40, no it's 40 here.

MR. LOW-BEER: Forty.

CHAIR PERLMUTTER: Forty and 55 percent.

MR. LOW-BEER: Okay. Well anyway.

VICE-CHAIR CHANDA: Forty percent of.

CHAIR PERLMUTTER: Yeah. Okay. So.

MR. LOW-BEER: Okay.

CHAIR PERLMUTTER: Did you want to tell us what -- why you brought this?

MR. LOW-BEER: Yeah. I just so I, I brought this so.

CHAIR PERLMUTTER: Yeah. It's 45.

MR. LOW-BEER: I just wanted to address Mr. Karnovsky's argument that our little model which I sent you in Extell -- Excel spreadsheet.

CHAIR PERLMUTTER: We can see. Okay.

MR. LOW-BEER: I don't know how -- it is works for this building at 1865 Broadway and that it the prediction is a exactly what we say it would be

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so there's something strange in this building and, you know, we could go down a whole rabbit hole here which but essentially what is very odd about this building is that if you look at okay so on the there's a page here which I think is one, two, three, the fifth page it shows it's a blow up of from the ZD1. It shows special tower coverage under Section 82-36 and it says that the lot coverage of the tower is 7,297 square feet. Of course, just below it says 7,298 but we'll let that pass and that, that is 32.32 percent to tower coverage and that's complying.

CHAIR PERLMUTTER: But yeah, I just want to correct my sentence now that I'm looking at Section 82-36. It says at any level at or about a height of 85 feet above curb, a tower shall occupy in the aggregate not more than 40 percent of the lot area of a zoning lot or for a zoning lot of less than 20,000 square feet the percent set forth in Section 23-65 tower regulations and not less than 30 percent of the lot area of the zoning lot.

MR. LOW-BEER: Right. So we're, we're concerned here primarily with the minimum, not the maximum --

CHAIR PERLMUTTER: Right.

MR. LOW-BEER: -- which the minimum is 30. So the tower cov-, the supposed tower coverage according to this is 7,298 square feet but then if you look at the next page where I've blown up the, you know, where it lists all the floors and their floor area, gross floor area and residential floor area --

CHAIR PERLMUTTER: Uh-huh.

MR. LOW-BEER: -- so if you look at these tower floors, so typically since, since floor area is defined this as being from the outside, the outer wall

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-- I mean the thickness of the outer wall is included in gross floor area. So it should be pretty much the same as lot coverage but here there's an 18 percent difference if you look at this.

CHAIR PERLMUTTER: I'm sorry. Where are we going with this? I'm a little confused.

MR. LOW-BEER: Okay.

CHAIR PERLMUTTER: No, no, I understand that you're, you're --

MR. LOW-BEER: Okay. All I'm, all I'm --

CHAIR PERLMUTTER: -- breaking this apart --

MR. LOW-BEER: -- going to say.

CHAIR PERLMUTTER: -- but why are we doing it?

MR. LOW-BEER: Well why are we doing it is because Mr. Karnovsky said that this building was as tall as it was, that my model of how the bulk packing and tower coverage rules created a precise height limit is wrong because look at this building and this building has some very strange things going on within it. But if you sa-, instead of lo-, using that 7,298 square foot number, you use gross floor area for tower coverage, then the model exactly predicts.

CHAIR PERLMUTTER: Now wait. This is for 1865 Broadway, right?

MR. LOW-BEER: Right.

VICE-CHAIR CHANDA: Right.

CHAIR PERLMUTTER: This the site in question is sorry,

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just checking the correct address just a second. Is 36 West 66th Street and 50 West 66th Street.

MR. LOW-BEER: Right. So all I want to say is that Mr. Karnovsky in his last submission used this building as an example of why or how the model that we, we say that the bulk packing rule, the tower coverage rule when working together create a precise or almost exact height limit and he says no, look at this building, it's way taller than your model predicts. And so I look, I got the ZD1 for this building and I looked at it and it has some strange things in it. He then, he then went on to say well actually, this building could have been even taller and he presents another model which shows how it could have been even taller but that one has even more strange things going on in it. For example, it has 16 floors below 150 feet.

This is his exhibit D on his last submission. I don't know how you get 16 floors especially given the ceiling heights of 15 feet, 10 feet, 10.7 feet and 12 feet how all that fits below 150 feet it just doesn't and then he has a penthouse where penthouses are required to be 80 percent of the floor area of the immediate -- the floor immediately below. His first penthouse floor is only 50 percent of floor area of the floor below so I submit all I want to say with all this and I just like to put it in the record is that I think that to the extent that Mr. Karnovsky was trying to undermine our contention that these two rules work together to fix a height in the low 30s, he didn't succeeded or he hasn't shown that with these examples.

CHAIR PERLMUTTER: Okay. So again, you want us to be looking at this and unpacking this and going to make --

MR. LOW-BEER: No, no. I just--

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CHAIR PERLMUTTER: -- because you're introducing additional information that we have--

MR. LOW-BEER: I don't think it will I mean since he brought up these examples submit it as rebuttal, but I don't think it should delay you one second.

CHAIR PERLMUTTER: Right. Right.

MR. LOW-BEER: Because--

VICE-CHAIR CHANDA: So we can ask Mr. Karnovsky to explain.

CHAIR PERLMUTTER: Respond to this but I --

VICE-CHAIR CHANDA: Yeah.

CHAIR PERLMUTTER: -- maybe by being even taller, the floor to floor heights are quite low here. So this actually could have been a much taller building and still comply with the lot coverage and bulk packing rule so.

MR. LOW-BEER: W- wait. The floor to floor heights in which?

CHAIR PERLMUTTER: In, in the building that you gave to us.

MR. LOW-BEER: Oh.

CHAIR PERLMUTTER: It's got very low floor to floor heights relative to a lot of the projects we see. They have 15-foot floor to floor heights in some of our projects so.

MR. LOW-BEER: But I'm not talking about the height.

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I'm just --

CHAIR PERLMUTTER: No, I, know.

MR. LOW-BEER: -- talking about the number of floors.

CHAIR PERLMUTTER: But maybe that's what Mr. Karnovsky was referring to.

MR. LOW-BEER: No.

CHAIR PERLMUTTER: I don't know.

MR. LOW-BEER: I don't believe he was. I mean this building actually only has 13 floors below 150 f-, 150 feet. We in our model said he could have 14 feet floors below 150 feet. This has 13 floors below 150 feet so I don't think that's the, the answer but, you know, if you, if you'd rather just not accept it into the record that's fine.

CHAIR PERLMUTTER: No, it's in the record.

MR. LOW-BEER: I don't wanna delay anything.

CHAIR PERLMUTTER: You've submitted it . And you are talking about it so you'll be alright.

MR. LOW-BEER: Okay. Well I don't think it'll change anything. I just wanted to defend our well the model and to say that the criticism that was made of it doesn't prove that we're wrong on that point but since your point is that the tower-on-base, the, the bulk packing and tower coverage rules in your view were meant to be separate here, you know, the whole model really doesn't.

CHAIR PERLMUTTER: No, that's not what I said. I said they are separate. Whether they were meant to be separate, we can't know. There they

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are --

MR. LOW-BEER: Yeah.

CHAIR PERLMUTTER: -- separately written in the text within instruction.

MR. LOW-BEER: Yeah. Right.

CHAIR PERLMUTTER: Right? And so as, as opposed to tower-on-a-base rules in residence district they're all together.

MR. LOW-BEER: Well, they are physically, they are physically separate by, by one other provision but nobody has come up with any reason why the, the, the City Planning Commission would have wanted to do this so, you know.

CHAIR PERLMUTTER: Okay. Or why they didn't want to do it so that's part of the point.

MR. LOW-BEER: Right. Right.

CHAIR PERLMUTTER: We don't have --

MR. LOW-BEER: Right.

CHAIR PERLMUTTER: -- as I mentioned yesterday, we've been exposed sometimes to provisions of the zoning that were inadvertently missed when City Planning did a comprehensive zoning text change and for a while the architectural community is all confused because they know they made a mistake and do they take advantage of the mistake which will be corrected in some eventually maybe or do they not dare because they might get stopped in the middle of construction right? We, we've seen a few examples of that. This is, this isn't one of those examples where City Planning realized oh, we made a mistake in which case they would have corrected it or

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they might correct it in the future if they --

MR. LOW-BEER: Uh-huh.

CHAIR PERLMUTTER: -- determine from our decision that they made a mistake.

MR. LOW-BEER: Right.

CHAIR PERLMUTTER: But it's not our impression that they think they did.

MR. LOW-BEER: Right.

CHAIR PERLMUTTER: So okay. So let's hear from --

Mr. Steinhouse: DOB.

CHAIR PERLMUTTER: -- DOB.

MR. ZOLTAN: Good morning. Sorry.

CHAIR PERLMUTTER: Yeah. Go ahead.

MR. ZOLTAN: I'm Michael Zoltan on behalf of the Department of Buildings. A lot has been spoken about at the meeting.

[CROWD]

CHAIR PERLMUTTER: Yeah. So, so we're having a lot of trouble with mics. You have to put your like mouth really close and speak loudly like you're screaming at somebody.

MR. ZOLTAN: Sure. How's this?

CHAIR PERLMUTTER: Yeah. That's good. Excellent.

MR. ZOLTAN: So Michael Zoltan on behalf of the Department of Buildings. A lot has been spoken about the bulk distribution rule and

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about plain meaning doctrine and I think for the most part the Board understands the Department's position so I'm not gonna expound much on that. Yesterday, there was a little discussion about the mechanical space regarding the horizontal layout of, of it as opposed to the, the height of the floor. This was more in the Landmark West case than the --

CHAIR PERLMUTTER: Right.

MR. ZOLTAN: -- City Club one. So just one clarification to make. The Department has issued a final determination in this case in a sense of there is a PAA that was filed that changed the scope of the permit and so that's a final determination and that is before the Board today and we have two BSA cases, two calendar numbers challenging that the issuance of that PAA approval and that permit. So now if there is a new challenge that comes to the Department about a different issue, the mechanical space on a horizontal analysis, there is no challenge period that is before the Department.

CHAIR PERLMUTTER: Correct.

MR. ZOLTAN: So as with all complaints, the Department reviews complaints and we'll make sure that everything is okay but that may not lead to a new final determination to come back to the Board in the future.

CHAIR PERLMUTTER: May not. Okay.

MR. ZOLTAN: Right. So we'll review it and, and, and if we are still convinced that everything is fine, there may not be a new final determination before the Board that, that can lead to an appearance before the Board.

CHAIR PERLMUTTER: A challenge.

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MR. ZOLTAN: Yes.

CHAIR PERLMUTTER: So if the appellants are interested in having Department of Buildings re-, take another look at the mechanicals and the Department looks at the mechanicals in terms of their layout and plan and determines that it's a reasonable layout or it justifies the amount of floor space to occupy by the mechanicals you're saying the Department might not issue another determination?

MR. ZOLTAN: A final determination. One that is appealable.

CHAIR PERLMUTTER: Appealable.

MR. ZOLTAN: Yes.

CHAIR PERLMUTTER: Be- because?

MR. ZOLTAN: There is, there is no public -- the challenge -- public challenge period closed so this ZD1 goes up and that's a public challenge period on a new building or when the permit is issued, that's a public challenge period that they can take to BSA which they did in this case but there's no new avenue for a public challenge or to request, to that necessitates DOB issuance of a final determination.

CHAIR PERLMUTTER: Oh, unless for example, the appellant reviewed the materials themselves and found that they were faulty for example. Would that?

MR. ZOLTAN: The--

CHAIR PERLMUTTER: If the appellant hired an engineer and the engineer said there's too much mechanical equipment in here and contests it, would that open a challenge? Not necessarily.

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MR. ZOLTAN: It can be a, a complaint to the Department and we will review it, but it won't necessitate a final determination. That's the decision.

CHAIR PERLMUTTER: Okay. So this is again Department of Building practice and I would say counsel of appellants and DOB counsel would, would talk that out 'cause I don't -- that's not really our domain. Okay? But, but the question isn't before us because DOB hasn't reviewed it so. Okay. Thank you very much.

CHAIR PERLMUTTER: Okay. Yeah, Mr. Klein.

MR. KLEIN: Good morning, Madam Chair, Commissioners. My name is Stuart Klein.

CHAIR PERLMUTTER: Speak really loudly.

MR. KLEIN: Okay. Sorry. My name is Stuart Klein of Klein Slowick and.

CHAIR PERLMUTTER: And say who you represent so everyone can hear.

MR. KLEIN: I represent Landmark West and let me preface what I'm about to say which is that is the most absurd statement I've ever heard in my life.

CHAIR PERLMUTTER: Which?

MR. KLEIN: Well, the fact that the Buildings Department admits it made a mistake in not reviewing the plans 'cause the plans were grossly incomplete and yet there's no, there's no review process available to the Board because they will not issue a final determination on that. Aside from being grossly wrong, if they

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took a look at the 45-day challenge rule and the history of legislation, they're completely misinterpreting it. They are also misinterpreting or misreading our application. The appeal -- our appeal was predicated not on the zoning document. Our appeal was predicated on the DOB issue -- permit issued on April 11, 2019 which was based in part on mechanical space plans submitted by the applicant. That permit is an appealable final determination as per code City of New York 101-15A3. So obviously it is appeal-, it is properly before this forum and for them now to say that we have no appeal rights in this because they're not going to review these and render a final determination literally takes away our right to appear before the Board.

CHAIR PERLMUTTER: So they didn't say they wouldn't review it. They said it might not result in a final determination.

MR. KLEIN: Well, that's another way of saying no result. I have three applications in front of the BSA now for to appeal permits. They are sitting on their desk for over a year and each of them is a single-issue item and I keep on e-mailing them and they keep on saying we're working on it.

COMMISSIONER SCIBETTA: It's currently before the Board now.

MR. KLEIN: What? Excuse me?

COMMISSIONER SCIBETTA: It is currently before the Board now?

CHAIR PERLMUTTER: No, no, no, no. That's what we don't b-, go ahead.

MR. KLEIN: No, no, excuse me. It is before the Board

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because under the City rules, this is a -- the permit is a final determination. Our appeal was not made pursuant to the 45-day rule.

MR. STEINHOUSE: Right. The issue though is that you have to raise the specific issue within 30 days in order for it to be before the Board.

MR. KLEIN: And we did. It was -- excuse me.

MR. STEINHOUSE: I believe at the last hearing, it was discussed and this was briefed in the papers that actually the characterization of the issue in your papers was as to this sort of horizonal issue at the time.

MR. KLEIN: No, actually absolutely not. It basically.

MR. STEINHOUSE: As to the --

CHAIR PERLMUTTER: Don't interrupt.

MR. KLEIN: I'm sorry. I'm sorry.

MR. STEINHOUSE: -- the measurements of the mechanical space and since that issue was not presented in a timely, timely manner under the Boards rules of practice and procedure, that is not before the Board but nothing would preclude the Department of Buildings from issuing a final determination as to that matter. It's --

MR. KLEIN: Excuse me.

MR. STEINHOUSE: -- obviously subject to discretion from what we just heard although the public challenge rule also provides for a new public challenge period should a new ZD1 be uploaded. However, because you did not raise this issue in your papers within 30 days, that is why it is not before the Board.

MR. KLEIN: With all due respect, that is wrong. The

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permit was issued April 11th. We filed within the 30 days on May 13th because there was a Sunday involved so we submitted it the last day of the 30-day period. That permit is appealable as it is a final deamination. So it is --

MR. STEINHOUSE: That's not --

MR. KLEIN: -- excuse me.

MR. STEINHOUSE: -- that is not the issue.

MR. KLEIN: It is before the Board. Let me address your second issue. Your second issued wasn't raised. Well number one, you don't have to raise every single issue in your first application. You always supplement it. So there are issues that are raised subsequent to the initial application which the Board is always engaged and always resolved and always received testimony.

CHAIR PERLMUTTER: Sorry. We don't always engage and always resolve. We have many applications where an appellant brings up -- we have one we're working on now, brings up hundreds of issues that the Board can't possibly look at right. One at a time has to be something where DOB has considered the issue clearly and the Board has had an opportunity to understand the arguments being made by appellant and in this situation, we were never presented with any information about the mechanicals in horizon-, mechanical layout and so all, all of these papers that have been submitted not one says there have been something actually given to us for us to analyze mechanicals and nor has DOB iss-, opined on whether they think the mechanical space has been properly laid out.

MR. KLEIN: That is with all due respect again. That is not true. In our original application, on 5/13, we said the permit, not the, not the, the

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zoning, not the ZD1, the permit should be revoked because the underlying plans contravene the Zoning Resolution in that the owner's attempts to exempt the voids from floor area should be rejected as the voids are neither used for mechanical equipment nor are they accessory uses to the residential uses in the tower.

CHAIR PERLMUTTER: Sorry. A void is not the same as the mechanical space. Mechanical space is occupied and a void is sort of a recent term of art that's been coined by challengers to these buildings, right, but void by its very word implies nothing inside, right, but when we have a mechanical floor, it's filled with mechanical stuff sitting on the -- in plan on the floor and so the language in your appeal refers to voids. I'm sorry, it doesn't refer to mechanical space or mechanical equipment being not rectifiable.

MR. KLEIN: You're defining, you're defining a term that is not defined anywhere in the code. I mean voids means space and this space if you look at the plans is a uni- unified space with --

CHAIR PERLMUTTER: Sorry.

MR. KLEIN: -- mechanical elements in there and the Buildings Department in the Sky House case specifically said that it reviews every single case to determine the functionality of the mechanical space and if in fact the deductions are merited. We argued that the mechanicals do not merit those deductions and as a matter of fact we cited to a memo submitted by, by the Buildings Department which indicates -- excuse me for a second. That A, the plans will not be reviewed unless there's sufficient detail on all the drawings, that they will not be accepted or approved for review and that in the Building Code -- rather in the BIS [phonetic] system, it says mechanical

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drawings show the building systems that provide for the heating, ventilation, air condition, plumbing, and a fire protection needs for the proposed project. They shall include mechanical drawings involving heating systems, ventilation systems, air conditioning systems, exhaust air systems, piping layout, locations and return, air plenums, location heights of exhaust and vents above and goes and on and on.

CHAIR PERLMUTTER: What is it you're reading?

MR. KLEIN: None of those--

CHAIR PERLMUTTER: Sorry. I don't know what you're reading.

MR. KLEIN: I'm reading from a guideline for filing plans issued on the Buildings Department computer.

CHAIR PERLMUTTER: How, how is that relevant to what we're talking about?

MR. KLEIN: Because the Buildings Departments to approve those plans and none of those articles, none of those items were submitted to the Buildings Department despite the fact that in the Townhouse case they said they review each and every building for particularities of the mechanicals submitted.

CHAIR PERLMUTTER: So you're--

MR. KLEIN: So the first--

CHAIR PERLMUTTER: I'm sorry.

MR. KLEIN: Yeah.

CHAIR PERLMUTTER: But you're aware 'cause I know you're aware that a buil-, I don't know actually what the status and Mr. Karnovsky will

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address this. What the status of the filings are on this building, whether they were already filed for electricals and mechanicals. I just don't know.

MR. KLEIN: Yeah, they were approved. They had to be filed in order to have the permit issued. The permit was issued for this mechanical space and those plans were submitted to you and the mechanical space was I took all those plans. It was about ten in nature. I blew them up and there was absolutely nothing in the plans that complied with the Building Code directors and the Building Code law. So they approved a permit to issue for this building and those, those plans were palpably deficient.

So I'm simply asking one of two things. That the permit be revoked as per my request on my May 13th application because it always -- it doesn't deal with height. It deals with spatial realities and the actual description of the mechanical space or that the, the applicant come forward and submit those documents which should have been submitted in the firsthand to the Buildings Department and all I'm asking for the Buildings Department to do is to do that which it's required to do by law and which they agreed to do and they claimed they do in the Sky House case.

CHAIR PERLMUTTER: So--

MR. KLEIN: It didn't do that here.

CHAIR PERLMUTTER: So here's the thing. You're -- you are in fact if we simply listen to the videos and read your submission, you're introducing a whole pile of new things that you want us to review.

MR. KLEIN: No, I'm not.

CHAIR PERLMUTTER: Right? Yeah. Yes, you are.

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And so we haven't looked at whether or not that those questions about Buildings Department performance or actually properly before us. We usually do not get involved in whether Buildings Department properly processed their materials because they handle the construction of these buildings how, you know, in the way that they do where we've learned that there are series of applications that are filed for all the different trades and that eventually they collect into one complete application but they're not filed all at the same time because it's just not how buildings are designed and so and the Buildings Department allows those applications to be filed sequentially. That's why you have a mechanical submission, an electrical submission, structural submissions, all of that, the main architectural drawings. So if you're asking us --

MR. KLEIN: Did they submit it at the time?

CHAIR PERLMUTTER: -- to go -- if you're asking us to go through Buildings Department procedure and question how Buildings Department processes their applications, it's a completely --

MR. KLEIN: Excuse me.

CHAIR PERLMUTTER: -- different -- stop interrupting.

MR. KLEIN: Uh-huh. Sure.

CHAIR PERLMUTTER: It's a completely different review and then we would need Department of Buildings to get up here and explain to us what's the process that they go through, how does it comply with the, the Building Code and the admin, the admin code, etc., etc. This was not before us and if, if you think it should be before us then we have to certainly delay any decision on this part of the case. I don't know what that does to the concern about the other case, the City Club case and so who

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wants a decision today, right?

MR. KLEIN: I don't care if they want the decision today. That's not my concern.

CHAIR PERLMUTTER: They want a decision today.

MR. KLEIN: That's not my concern.

CHAIR PERLMUTTER: It's not your concern.

MR. KLEIN: Absolutely not. I mean you could bifurcate this number one, but number two, in the Sky House case, you specifically went through the protocol as to what the Buildings Department does to review mechanical deductions. You spec-, you asked them and you agreed with their protocol. Here, we raised the fact in our May 13th which was, which is an appeal of the permit, we raised the fact that this mechanical space was improperly deducted. I do not understand how that's not before the Board.

CHAIR PERLMUTTER: So the Sky House case was the question about the mechanical voids right? And in the process of reviewing the subject of mechanical voids, we needed to understand what's the mechanical equipment in the space so that we could look at that, right? Because what if the, the void -- we were just talking about what is a void and whether there's a height limitation. So we wanted to also know what's the height of the equipment, etc. So show us drawings to show us how that -- those spaces are occupied by a mechanical equipment.

In the end, of course, the appellants didn't come with an engineer so all we had was pictures of mechanical equipment and no determination from DOB. We didn't get a determination from DOB about whether it was a reasonable amount of mechanical

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equipment. We just got drawings.

MR. KLEIN: Well, actually you did. They stated on multiple occasions in that case that DOB came in and told you that they reviewed them and they are, they are sufficient for the building and the deduction was justified. They did say that. Now here it is impossible to make an objection to the mechanical space deduction because nothing was included in the plans.

COMMISSIONER SCIBETTA: Counsel.

MR. KLEIN: You had 20,000 square foot floors with a little box here that said boiler, a little box here that said something else, and none of the information that is required to be in the plans as per DOB code and DOB protocols was in it so essentially the Buildings Department are saying excuse me, we made a mistake but it's not appealable.

COMMISSIONER SCIBETTA: Counsel.

MR. KLEIN: That's absurd.

COMMISSIONER SCIBETTA: Assuming, assuming it wasn't -- this issue wasn't properly raised --

MR. STEINHOUSE: Yes.

COMMISSIONER SCIBETTA: -- are we precluded from hearing this?

CHAIR PERLMUTTER: Well, so it goes more like this. What Mr. Klein is suggesting is that we unpack the entire application --

MR. KLEIN: Absolutely not. I'm just asking the fill of the space.

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CHAIR PERLMUTTER: -- and, and it just because that's all you're asking -- no, no, no. You did more than that. You said mechanical space --

MR. KLEIN: Right.

CHAIR PERLMUTTER: -- being occupied by mechanical equipment and then you said oh, but the permit wasn't properly issued because --

MR. KLEIN: No. It wasn't properly issued.

CHAIR PERLMUTTER: -- they didn't submit the drawings and all that stuff.

MR. KLEIN: No, all I'm saying is please. Don't, don't conflate the two. I basically said--

CHAIR PERLMUTTER: I'm not conflating. I'm stating.

MR. KLEIN: No, I simply said it is your, it is your, within your power to either revoke the permit 'cause it was improperly issued 'cause they never received completed plans or in the alternative ask the Buildings Department to secure plans consistent with the building code and come to the Board and show that the deductions were reasonable. Here there is nothing on the record or at the Buildings Department to show that those tens of thousands of square feet which were given to them in deductions is justified period. There is no justification for a single piece of equipment.

As a matter of fact, if you take a look at former Deputy Commissioner Fariello's memo to his own staff, it said you have to include pipes, if it's above five feet above grade, it doesn't count. I mean there's a whole protocol none of which the Buildings Department followed and then they come here before you and brazenly say well we're not gonna issue a final determination.

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CHAIR PERLMUTTER: Okay. So what I do wanna stop right here is I don't know the status of the current filings with the Buildings Department and so I don't know whether counsel for the owner actually knows the answer to this because the only people would know is the engineer and architect on the job and whether or not those, those things have been filed.

MR. KLEIN: They haven't been.

CHAIR PERLMUTTER: Sorry.

MR. KLEIN: It would either be in the BIS system or not. It's not there.

CHAIR PERLMUTTER: I don't know the status of the application. I'm not gonna go on your say so 'cause you're not the --

MR. KLEIN: I appreciate that.

CHAIR PERLMUTTER: -- you're not the owner of the building.

MR. KLEIN: Okay.

CHAIR PERLMUTTER: Okay. So I wanna hear from the owner of the building.

MR. KLEIN: Thank you.

CHAIR PERLMUTTER: Okay. Thank you.

[CLAPPING]

CHAIR PERLMUTTER: Please. Please refrain clapping. It takes time. It's not necessary.

MR. KARNOVSKY: David Karnovsky, Fried, Frank,

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Harris, Shriver and Jacobson for owner. I'll address the City Club first and then Mr. Klein. I'll try to be brief. I do agree with Mr. Low-Beer that this has been fairly substan- substantially briefed and you're, you're aware of just about everything there is to say. At the August 6th Public Hearing, we demonstrated that the language of the bulk distribution provision is clear and unambiguous within the special district that is within the Lincoln Square Special District without exception or limitation, qualification, exclusion of any zoning district. At least 60 percent of the total floor area permitted on the zoning lot, that's the total floor area on the zoning lot without limitation as to the zoning district shall be within stories located partially or entirely below a height of 150 feet from curb level and that's irrespective of whether development is built under tower regulations or standard height and setback and without any fixed limit on the number of stories either below or above 150 feet and the project complies fully with this provision.

In the face of this clear and unambiguous language, the appellants have made multiple arguments that the plain language does not mean what it says and that it somehow excludes the floor area permitted on the R8 portion of the zoning lot from the 60 percent bulk distribution calculation. And in their most recent submissions they revert to an argument that section 82-34 mandates a 60/40 ratio between the floor area in the base of the building and the power portions and what they mean by that is simply none other than the 60 percent bulk distribution must be calculated on the basis of the C4-7 portion of the zoning lot only which is another way of saying what they've said all along in 20 different ways that 82-34 does not apply to the R8 portion of the zoning lot despite its plain language.

At August 6th Public Hearing, the chair asked City Club's counsel whether it

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could identify any ambiguity in 82-34 whether considered alone or in conjunction with the provisions of the special district with the chair noting that the question should be answered by counsel without resort to extrinsic evidence or the provisions of Article 2 meaning without trying to conflate 82-34 with the tower-on-a-base regulations of Article 2. As we understand it, the reason for asking this question was that under New York law where a zoning provision is unambiguous, the Board must use the word of the Court of Appeals in the Zaldin v. Concord case "do no more and no less than apply the language as it is written." The appellants have failed to identify any such ambiguity and the statute should apply in accordance with its terms.

Unable to identify an ambiguity, they misstate the law saying that the principal that where statutory language is clear and ambiguous, the court must construe it to give effect of the plain language by saying that that is only valid in certain circumstances or in most circumstances but not in all of them. And they misstate Zaldin, they misstate Raritan and they ignore the guidance of those cases that legislative intent is to be ascertained from the language of the statute itself and it resort to extreme -- it's extrinsic evidence beyond the language of the statute occurs only where the language is ambiguous.

Now they cite to Stringfellow's as an example of a post Raritan case which they say qualifies Raritan but what does that decision actually say? It says that legislative intent is ascertained from the words and language used in the statute and if the language thereof is unambiguous and the words plain and clear, there is no occasion to resort to other means of interpretation. In that case itself, the issue was about what does the word customarily mean in the context of adult use regulations and there was an ambiguity

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about it, an identified ambiguity about what that meant.

There were two competing interpretations. What did the court do? The court looked to the use of the word customarily under other provisions of the Zoning Resolution like in the home occupation provision and it looked to the rules of construction of the Zoning Resolution and it resolved the decision in the city's favor. It is not of support for a qualification or diminution of the law stated in Raritan. The other cases cited by City Club don't support the proposition that resort to extreme extrinsic evidence is appropriate where the language is unambiguous. They either involve situations where the statutory language was ambiguous and the courts recognized it or where a court interpreted an ambiguous provision by looking to other provisions within the same statute or where a court was called on to resolve a conflict between provisions of a particular statutory scheme.

Now here, I think as we've demonstrated over and over again when you read 82-34, in relation to the other provisions of the special district, it only reinforces that its plain language means what it says and that's because as we pointed out in the context of the other special district provisions, it's clear that 82-34 is distinct in applying within the special district without all the various types of exceptions, exclusions, and limitations found in those other provisions. Regardless ashas been discussed and I'm not gonna go over this again, the results in this case is not absurd, the absurdity doctrine being very limited exception to the Raritan doc and we've demonstrated that.

Most recently, the appellant, City Club, argues and claims that 82-34 and inexorably dictates an upper limit to the number of occupiable floors which they calculate with exacting precision using an Excel or Extell spreadsheet of 32.4 stories, 14 floors

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below, 150 feet and 18 point four floors above. According to them, the parameters set by the statute embody a mathematical limit that not coincidently is in the low 30s. Although the statute does not spell out in words the requirement that the number stories remain in the low 30s regardless of lot size, it does so in numbers, it's mad-, mathematics make it so. Of course, had the City Planning Commission wished to establish a fixed limit on the number of permitted stories, it would've done so by codifying the appellants 32.4 floor limit or some other limit in the statute. It did the opposite. It rejected any absolute height limit and it disavowed an interest in producing uniform results by noting that the special district is an area cha- characterized by towers of various heights.

And as discussed on August 6th, the Planning Commission predicted in a single statement in its report and a statement that was based only on study of six soft sites studied as part of its work leading up to the zoning text amendment, that it's proposal would produce a range of results, not a single fixed maximum from the mid 20 to the low 30s. And as we also discussed, City Planning's proposal was controversial because among stakeholders precisely because it didn't produce a predictable result or so they felt. The exact opposite of what appellants now claim.

In fact, Landmarks West was a vocal opponent of the bulk distribution proposal in 1993. It testified at City Planning as follows: While we disa-, while we agree with the intention of limiting height expressed by the Department, we cannot accept the device of packing the bulk. This device would not in fact limit the height of the buildings but only makes achieving a tall building slightly more difficult than at present. Moreover, Landmark West stated based on work that was conducted at the Environmental Simulation Center, that buildings of 33 to 35 stories "would not be uncommon on the

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remaining development sites." This belies appellant's wishful thinking that there is some kind of 32.4 story limit hidden and imbedded in this statute. City Planning did not intend any such mathematically fixed limit and the stakeholders opposed to it -- opposed it precisely for that reason.

Now with regard 1865 Broadway, the purpose of our introducing that into the record was simply to illustrate the variability and the application of the rules. 1865 Broadway is a building being built by another developer with 32 stories. And what we demonstrate is that 32 stories is a function of the tower coverage which exceeds the minimum required and the fact that they didn't take advantage of the penthouse rule which allows you to have floors at the higher levels which have lower tower coverage. And what we show is simply that by going down to the minimum, the 30 percent and utilizing the penthouse rule, a greater number floors can be achieved and we calculated that as 35. That's 2.6 floors more than the appellants supposed 32.4 limit. By the way it's the number that was cited by Landmark West in 1993 as a possible result and 35 is the number of stories in the project itself exclusive of the mechanicals.

It's clearly not an absurd result in this case to have the same number floors as could be available and achievable at 1865 Broadway which is the site wholly in a C4-7 district and even assuming arguendo that 82-34 uniformly produces 32.4 residential floors on a zoning lot located wholly within the C4-7 district, it is clearly not absurd that the project different conditions resulting from the fact that it is a split lot, contains 35 residential floors, a difference of 2.6 floors.

So neither the language nor the legislative history, nor the modeling by appellant supports their theory that the special district rules embody a fixed limit of 32.4

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occupiable floors. So for all of the reasons set forth in our papers and discussed on August 6th, as well as today, DOB's decision applying the plain language of section 3 -- Section 82-34 in accordance with its terms and following the clear direction of the Court of Appeals of the state, should be upheld and the appeal denied. Now--

CHAIR PERLMUTTER: I just want to --

MR. KARNOVSKY: Oh, sure.

CHAIR PERLMUTTER: -- just a quick question on this 1865 Broadway.

MR. KARNOVSKY: Yeah.

CHAIR PERLMUTTER: So what you're saying is if you use the penthouse rule, you could have smaller tower --

MR. KARNOVSKY: Yeah.

CHAIR PERLMUTTER: -- which allows more height but you still have to have the 60 percent or whatever the number is --

MR. KARNOVSKY: Yes.

CHAIR PERLMUTTER: -- below the 150 feet. So you need to play around with the floor area. Oh, but then you would just have a smaller floor plate.

MR. KARNOVSKY: Yeah.

CHAIR PERLMUTTER: At the tower.

MR. KARNOVSKY: Higher levels.

CHAIR PERLMUTTER: You'd, you'd have a 30 percent tower and then you'd have whatever.

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MR. KARNOVSKY: And then below, it can be below 50 percent.

CHAIR PERLMUTTER: Yeah.

MR. KARNOVSKY: As long as you comply with that penthouse rule. That, that building for whatever reason that was their choice elected not to do that. We were illustrating that if you do it, you can get to the 35 floors --

CHAIR PERLMUTTER: Okay.

MR. KARNOVSKY: -- in combination with going down to 30 percent. That was the purpose of, of that and that's its only purpose. With regard to -- should I move onto --

CHAIR PERLMUTTER: Uh-huh. Yeah. Yeah.

MR. KARNOVSKY: With regard to Landmark West's argument that the Board should address in this proceeding issues regarding the mana-, mechanical floors, excuse me, regarding the floor area deductions taken for mechanical equipment on mechanical floors on the basis that its initial statement of May 13th squarely raised those issues, it did not. These issues regarding mechanical floor space were first raised at the Public Hearing on August 6th, more than two and a half months after submission of the Statement of Facts, well after the 30-day period that Mr. Steinhouse referred to.

The issue relating to mechanical deductions as defined in Landmark West's appeal on May 13th is as follows: The permit should be revoked because the underlying plans contravene the ZR in that the "owners' attempts to exempt the voids from floor area should be rejected as the voids are neither used for, for mechanical equipment nor are

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they accessory uses to the residential uses in the tower." There is no question that the term voids as used here refers to the building's tall mechanical spaces and not to issues relating to whether the amount of horizontal floor space used for medical equipment in the project is excessive. Landmark West statement of facts in fact defines the term voids.

It refers to them as vertical space. It states, "a substantial portion of the tower's height 196 vertical feet would be comprised of empty spaces (the "voids")." In so far as Landmarks West's question whether the voids are needed for mechanical equipment, it was with respect to their vertical dimension that is the floor to ceiling heights of the spaces. Each and every one of the arguments was made to argue that mechanical spaces with tall floor-to-ceiling heights are unlawful or must be counted towards floor area, precisely the issues which the board addressed in calendar number 2016-427-A relating to 30th Street.

Landmarks West's assertion in its, in its August 21st supplemental statement that the issue presented in its initial May 13th statement of fact "covers all special objections, length, width, and height to the FR de-, the FAR deductions is simply wrong." They had the opportunity as early as May to raise issues whether the floor space used for mechanical equipment in the project is excessive but they chose not to do so until the August 6th hearing. We believe as Mr. Steinhouse indicated that this is improper, that that appeal should have been made within the 30-day period and that the new issues raised by them at this late date should not be heard in this proceeding and that their resort is to the DOB as the DOB counsel explained.

With regard to your question about mechanical drawings. Over hundred 150 mechanical drawings were submitted and approved by the DOB in connection with

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affirmative approval. The suggestion that they are incomplete or they don't exist is specious.

CHAIR PERLMUTTER: Uh—huh. Okay. Do you happen to know when they were approved just to get that?

MR. KARNOVSKY: Well, they were approved in connec-, well I don't know specifically on the mechanical review but the --

CHAIR PERLMUTTER: Right.

MR. KARNOVSKY: -- April approval of the permit was an approval with respect to everything.

CHAIR PERLMUTTER: Okay.

COMMISSIONER SCIBETTA: And do you believe we're precluded from hearing this issue on.

CHAIR PERLMUTTER: Say that again. I can't hear.

COMMISSIONER SCIBETTA: Do believe we're precluded from hearing?

MR. KARNOVSKY: As I understand it and you obviously, you'll be guided by your counsel, the appeal period was a 30-day period during which time they had the opportunity to raise the issues they wanted to raise on appeal. This is not a free ranging exercise of raising issues continuously unrelated to the issues raised on appeal so I would say no, they don't have the --

CHAIR PERLMUTTER: Right.

MR. KARNOVSKY: -- you, you don't have jurisdiction but you have to be guided by your counsel, not me.

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CHAIR PERLMUTTER: So I wanna, you know, while you've been talking and in response to what Mr. Klein said, I was reviewing all of the submissions for that partic-, for Mr. Klein's case, right, and I, I do have to say that up until August 22nd, there were no submissions made on that case that were different from the case that was for City --

VICE-CHAIR CHANDA: By City Club.

CHAIR PERLMUTTER: -- by City Club. In fact it was a cut and paste onto new letter- letterhead to the point where we were reading the same thing twice and so the only time and every time that we talked about mechanical equipment in, in those earlier submissions before August 22nd, the, the, the discussion of mechanical equipment always had to do with how tall it is in the space and there is actually acceptance that says if the equipment were six inches high, then that would count and therefore you could have a mechanical void that is however many feet high, right? And so the focus was always on that, not on the mechanical equipment.

It's on August 22nd for the first time that there is a submission that says should address the issue of the subject FAR deductions for mechanical equipment space without reviewing the mechanical plans without determining what equipment if any the alleged mechanical voids will house, and without analyzing the technical manufacturing requirements of equipment in the spatial parameters necessary.

So that was ju-, really just submitted relative to this, this current hearing. And so really brought up as, as a new subject and without, without knowing exactly what our purview or let's say limitations are, what I, what I do know is that on other cases where we have appellant's bring up things as we go, the Board can't continuously look, look at

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things that come up in the hearings because it would mean that they go on indefinitely. They need to be raised at the outset so that the Board gets the right information and that it's properly before us according to the statutory requirements. So my personal opinion is that this is raised too late.

COMMISSIONER SCIBETTA: Yeah.

VICE-CHAIR CHANDA: Yeah. Just to question. If it was raised, it would have been with, with would have been challenging DOB's determination, it would have been the, in those documents and I don't think that was reflected either.

CHAIR PERLMUTTER: So, so what the, the appellant is arguing on this second case is that the challenge is of the building permit which therefore is --

VICE-CHAIR CHANDA: Everything.

CHAIR PERLMUTTER: -- absolutely everything. Right? But without directing us to what building permit to look at in the initial submission, we can't look at absolutely everything, right, and to bring up things on the eve of decision really because it was clear that we were going to be deciding this on the next hearing, right, I think for one I think is improper in addition to which we have no reason to believe because there's been no analysis of the mechanical equipment, there's no reason to believe that it isn't the right amount of mechanical equipment for the space, right? That, that so according to that, you sort of like a red herring, you know? There's lots of things that could be wrong with the building. They could have, you know, they could say the staircases aren't wide enough, the elevators don't meet code, etc., etc. and there's no way -

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- then we would have to look at whether the staircases meet code because they bring it up?

VICE-CHAIR CHANDA: Right.

CHAIR PERLMUTTER: And so thi-, this is, this is the problem right, and so I, I, I don't think it's properly raised and I am, you know, I am sorry that really in this case that this appellant wasn't submitting their own papers. Instead they were submitting City Club's papers on, on new letterhead frankly and we were reading the same arguments on both sides. So.

MR. STEINHOUSE: And also, as we discussed at the last hearing, the vesting issue under 11-331 isn't before the Board and it appears that everybody was sort of…

COMMUNITY MEMBER: We can't hear you again.

MR. STEINHOUSE: As we discussed at the last hearing, the issue that was subsequently raised past this 30-day period with respect to Zoning Resolution section 11-331 which is statutory vesting, it was undisputed at that, at that point and still is. Nobody's been talking about it today that that issue is not timely and before the board.

CHAIR PERLMUTTER: Right. Okay. So now if you would just so the drawings were submitted -- mechanical drawings were submitted. They're available in public record because they're submitted. You don't find them on BIS. You have to go actually into the Buildings Department and pull files and do it with an engineer who can actually review the drawings but we have no reason to question that the mechanical equipment is defectively represented on the drawings which is a

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completely different thing that the other appeal. The other appeal actually sets up the argument. It says we think they're wrong, we think they mis- misinterpreted the statute, and this is why. That's, that's how you bring an appeal. Right? With some, with some basis.

COMMISSIONER SCIBETTA: So how do we, procedurally, would we not -- we wouldn't decide on the merits of this case then?

CHAIR PERLMUTTER: The merits that were brought to us in the initial submission were the same ones as on the City Club case.

COMMISSIONER SCIBETTA: Okay.

CHAIR PERLMUTTER: The bulk packing rule basically and the mechanical voids were brought to us and we decided that's issue precluded 'cause we already decided that on a prior case and City Planning already amended the Zoning Resolution in response to our decision so. Okay. Alright. Thank you very much. Yeah.

MS. MATIAS: Now public testimony. Yeah. Elected officials first please.

MR. STEINHOUSE: Just to note that for the public testimony aspect of this application, if you could limit your testimony to the merits of this appeal. Thank you.

CHAIR PERLMUTTER: And--

ASSEMBLY MEMBER GOTTFRIED: Okay.

MS. MATIAS: Please state your name for the record.

ASSEMBLY MEMBER GOTTFRIED: Good morning. My name is Richard Gottfried. I represent the 75th Assembly District which includes 33

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West 66th Street also known as 50 West 66th Street. I oppose the construction because of the impact it would have on the community and the precedent it would set. The Board of Standards and Appeals should revoke the permit, the building permit for the building issued by the New York City Department of buildings on April 11, 2019.

The project uses large and mechanical voids dispersed throughout the building. There is a cumulative 239 feet of void space in this tower comparable to 24 stories. The developers' attempts to exempt the voids from counting as equivalent flooring area should be rejected. The developer has failed to prove that such an unprecedented, oversized void is required for proper mechanical functioning of the structure and the New York City Department of buildings has failed to verify the location and spacing of any mechanical make equipment on these floors and therefore cannot justify their existence.

These voids like those being included in some other super tall buildings serve no functional purpose. They are used to increase the developer's profit by increasing the altitude and thus the market value of upper floor apartments. They do this at the expense of imposing more visual pollution and loss of light on the surrounding community. If the volume of the voids were counted as if it were divided into ordinary floors, the buildings floor area ratio would plainly violate the applicable zoning. The city should not tolerate this abuse of the zoning and building codes.

At the state level, I cosponsor Assembly Member Linda Rosenthal's bill A5026A. This bill would ex-, would provide that if the height of the floor exceeds 12 feet, the additional increments of height would count as additional floors for the purpose of calculating floor area ratio. This buildings' floor area calculation- calculations are contrary to the Zoning Resolution. The bulk packing rule states that 60 percent of the

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building's floor area must be below 150 feet. And the tower coverage rule states that the lot area of a zoning lot higher than 85 feet must be between 30 and 40 percent of the lot area.

In tandem, these two, these tower-on-base rules are in, in place to limit the height of building development. Buildings in this, in the neighborhood that abide by these rules average 20 to 30 stories. These rules were put in place to preserve the context of the neighborhood and to limit the height of buildings to an appropriate level. Because the building's site involves two different zoning districts, a C4-7 and an R8, the developer is seeking -- is choosing to selectively apply portions of the Zoning Resolution to the zoning district and the developer asserts that the developer asserts would allow for a larger and taller building.

Both rules must apply to this building and the developer cannot be allowed to pick and choose which rules he wants to abide by. This 36 West 66th Street building development is an abuse of zoning regula- regulations, is contextually out of scale, and would set a terrible precedent for future proposed developments. I strongly urge the BSA to revoke the permit for this super tall tower. Thank you.

CHAIR PERLMUTTER: Thank you. Please, no clapping. Please you have to -- please.

MR. STEINHOUSE: If you're gonna show support, please use jazz hands. Thank you. Who's next?

CHAIR PERLMUTTER: Please.

SENATOR BRAD HOYLMAN: Good morning. I'm State Senator Brad Hoylman. Sorry. State Senator Brad Hoylman. I represent part of the

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Upper West Side including 36 West 66th Street as well as other parts of Manhattan. You know, I would just state from the outset my district certainly does not need a super tall building on the Upper West Side, and therefore, I've come to speak in support of the appellant and their docket numbers today, the challengers by the City Club of New York and Landmark West against the building permits allowed for 36 West 66th Street.

There's no question about it. The 775-foot tower proposed for the site is out of character. It's unacceptable and it is fact absurd and a purpose of the Special Lincoln Square District was in fact to preserve, protect, and promote the existing nature of the neighborhood. If built, you know this will be the tallest tower on the Upper West side. How is that in character aligned with the 1993 special zoning text? The height of the building will cast shadows across Central Park that includes recreation space, trees, and lawns that my constituents have fought generations to keep. How is that acceptable?

The proposed building utilizes 239 feet of mechanical void space or mechanical space or void or whatever you want to call it that boosts the towers height and will extract the most money the developer can for luxury apartments with views of Central Park. In my opinion, that is excessive, dangerous for first responders to have to traverse, and should be against the law. We are looking in Albany to change that law. It's a shame that we have to do that in Albany when the city could be doing it already.

How is this buildings construction predicated on flagrant exemptions from zoning not plainly rejected by you? It is absurd. The bulk packing of such a tower flies in the face of the Special Lincoln Square District. Allowing building permits to remain valid would be a horrendous precedent to set rendering zoning text practically useless and community interests void. And I wanted to thank all the community members who've

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been fighting on this issue. Community Board 7, Landmark West, the City Club of New York, the West 64th and 67th Street Block Association and save Central Park NYC for their continued work.

A tower of luxury condominiums is not what we need or want. I join with my elected colleagues and neighbors encouraging you to uphold the community's challenges to 36 West 66th Street's buildings permits. And let me say that the Extell Tower will be your legacy as you're term members on the Board of Standards and Appeals. If this plan proceeds, you will have flouted the commonsense readings of the Building Code and allowed a developer to take advantage of a loophole that will obliterate the intention of lawmakers who helped create the Special Lincoln Square District. This new 770-foot tower will not only be a monument to greed and the patent disregard of our community's concerns but sadly I think a monument to your bureaucratic fecklessness succumbing to the wishes of the wealthy --

[CLAPPING]

MS. MATIAS: Stop.

SENATOR HOYLMAN: -- and powerful developer who will destroy our neighborhood. I urge you to reconsider and support the appellants' application. Thank you.

CHAIR PERLMUTTER: I just, I just need to correct the record a little bit. So the Board of Standards and Appeals and in this particular situation we're kind of like enough, we're kind of like a court so and in this sit-, in this type of situation where the Department of Buildings interprets the Zoning Resolution which is what's before us and then we look at whether or not we believe the Department of

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buildings properly interpreted the Zoning Resolution. This is not a variance. It's not a situation where a developer is coming to us to ask for a permission to do something.

It's simply a question of whether we believe that the Zoning Resolution which is a statute says what DOB thinks it says and sometimes DOB is con-, is opposes the developers so sometimes it's the developer who brings these challenges so our only question is was DOB right and when we look at it we're like a court if any of you follow how the Court of Appeals for inst-, I mean the Supreme Court makes its decisions. We look at what does the text say and if the text is clear. The Supreme Court will say well it says right there in the text or it says right there in the Constitution, right? But when the text is isn't clear then we look to what it is the legislature which in this case would've been the City Planning Commission or, and/or the City Council what they had in mind when they were doing it but we're only doing that when the text is clear.

The reason that that's the method that we apply is because the Court of Appeals which is the highest court in New York State orders us to do so. So when we have made decisions for instance there's a case that we keep citing to which is called Raritan I guess versus Board of Standards and Appeals. That was a famous case which I, I love the tell about where the Department of Buildings was interpreting that the definition of cellar when used in the context of a residential building is floor area even though on the, the Zoning Resolution was incredibly clear that it that it actually said almost words to the effect cellar space is almost -- is never floor area.

It actually effectively said that and the Board of Standards and Appeals agreed with DOB who was interpreting cellar floor area to be -- cellar space to be floor area because that's just the way the DOB had been doing it all along. And so BSA agreed

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with DOB and the court threw that back at the Dep-, at BSA and said what are you talking about, it says right there that cellar space is not floor area, it's not floor area and they overturned the decision of the BSA and we are continually reprimanded by the courts when we don't follow their very clear instructions and so it's not -- we're not the legislature.

When the legislature decides that the, that the Zoning Resolution is unclear or ending up with negative results or results they view as being negative, then it's the Legislature therefore City Planning Commission and the City Council that changes the text. In the case of the mechanical voids, they agreed that the text was unclear and they actually changed the Zoning Resolution to allow -- to, to limit the heights of mechanical spaces. The problem in this case is this building was already under construction by the time the zoning text was changed to limit the heights of mechanical spaces and so creating a bad precedent isn't probably what you're 'cause your real concern is about height here and the mechanical voids, you won't in districts like this one that to which that new Zoning Resolution, new Zoning text applies. In districts like this one, you won't see stacks of mechanical voids anymore because it's not allowed as of whatever that date was, May something, right, okay?

So I just want to be clear and we're not looking at the mechanical voids. That was already decided in another case and changed in the Zoning Resolution. We're only looking at what's known as this bulk packaging rule that has to do with the amount of coverage of a tower and how much floor area has to be located below 150 feet. I just wanna make it clear to everyone what's before us, what we're looking at in this case. Okay. All right. Next speaker please.

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COUNCILMEMBER ROSENTHAL: Chair Perlmutter, I appreciate you.

CHAIR PERLMUTTER: State, state your name please.

COUNCILMEMBER ROSENTHAL: My name is Helen Rosenthal. I'm a member of the New York City Council representing this building on the Upper West Side and all the people who live in the district around where this building will go and to, to the point you just made, I do just wanna mention that the City Council's hands were completely tied when we passed our new law having to do with mechanical space because it was this administration's City Planning that presented the City Council with really only one option and did not listen to the community that did not want that one option and so as a City Council we were really forced to accept something that I think all of us in this room wholly reject which is allowing a lot of, of mechanical void space.

So I wanna start by setting the record straight on who drove that process. It was absolutely driven by this, this administration. Just to piggy back on State Senator Hoylman's point. I also I would like to make three points and first is that I actually object to the BSA's admonishment just before the Public Session started to stay within what really -- well I heard the words you said about courts and Supreme Court and decisions and overturning BSA decisions. I, I would like to similarly assert that these parameters are subjective that on its face these parameters that you've given us favor the developer and reflects a meaningful bias that does not serve New Yorkers and does serve for-profit, luxury real estate developers and it calls into question the ability of the BSA to be impartial in its decision-making.

It is too cute by half to hear the lawyer from the developer say that this building is

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35 floors and therefore falls within the original parameters of the Lincoln Square Special District rule. He mumbles under his breath that that does not include mechanicals, those 35 stories. The special district--

CHAIR PERLMUTTER: No, I think he's talking about the mechanical penthouse on the top. I think that was the reference.

MS. ROSENTHAL: That was the whisper under the breath. Okay. Perhaps. Look, when the special district rules were written that referred to an expectation that buildings would not be taller than 20 to low 30 stories, there was no contemplation that technology would advance to the point where it is within a developer's budget to build a nearly 800 foot building and I believe now that we're in the land of subjective parameters that we should contemplate what the CPC would have stated in their rules had they known that we could build a nearly 800 foot tall building that is called 35 stories.

And lastly, picking up from the last hearing, and this gets back to the first point but I, it's important to reiterate, because I already gave testimony and, and gave that to, I'm, I'm not repeating that. But at the last hearing that BSA seemed to indicate that there was a rule somewhere that said they had to in the case of a tie side with the developer.

CHAIR PERLMUTTER: It's a Court of Appeals decision. It's not to side with the developer. That's not what the case says.

COUNCILMEMBER ROSENTHAL: Please.

CHAIR PERLMUTTER: The, the case and please counsel correct me 'cause you're better at citing exact text, but it's that laws that essentially deprive people of their rights. It's a kind of a general theory, right, that deprive people of

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their rights. When a person has been deprived of their rights and there's a question about the clarity of the case -- of the statute, that the stat-, so some -- we have statutes that are unambigu-, that are ambiguous, right? When an ambiguous statute has the possibility of it depriving somebody of their rights, whatever their rights are, the right to walk a dog, the right to hang your laundry. In fact, there I think the case might have been a laundry case. Then, then the statute should be construed in favor of the person who is being restricted by that law because it's unambig-, it's an ambiguous situation so it's but in an unambiguous situation, you don't have any ambigu- ambiguity. You do what the statute says to do and if the owner -- if the person didn't do it, it's their fault because it was clear what they should have done so they were in error. Okay?

COUNCILMEMBER ROSENTHAL: I hear you. I appreciate --

CHAIR PERLMUTTER: So it's to cons-, -- right.

COUNCILMEMBER ROSENTHAL: -- I appreciate your taking that time.

COMMISSIONER SHETA: And by the way, this person could be a developer, it could be like a private citizen.

CHAIR PERLMUTTER: A homeowner.

COUNCILMEMBER ROSENTHAL: Exactly.

COMMISSIONER SHETA: It could be you.

CHAIR PERLMUTTER: A dog walker.

COUNCILMEMBER ROSENTHAL: Right.

COMMISSIONER SHETA: So it's not necessarily a

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developer.

COUNCILMEMBER ROSENTHAL: That's right. In this particular situation, it is a gagillionaire real estate developer whose rights we're protecting to the loss of the community and I am no lawyer and I am no.

[CLAPPING]

MS. MATIAS: Ladies and gentlemen please.

CHAIR PERLMUTTER: Stop.

COUNCILMEMBER ROSENTHAL: Judge -- I am no judge and I, I'm not gonna be the one arguing this case as it moves forward, but I would ask you to consider the rights of the community. You have a unified not always happening, a unified elected body, a unified Community Board, unified community residents who are here time and time again who are saying they are the ones whose rights are being taken advantage of. I'm no lawyer, but I would ask you to consider that in the way that you can to take leadership, to take leadership in reflecting the needs and desires of a community that has spent the last six years fighting this development, has brought to bear, this community is responsible for getting DOB to reverse its decision saying that had they had information, they would not have allowed the building to go forward. This community has fought for responsible mechanical void limits which I am sorry to say we did not achieve and I, I am sorry about that but that was truly driven by this administration. It is a point of fact that you represent the administration here at BSA.

CHAIR PERLMUTTER: I need to correct you on that. There is even a rule that was passed recently by us. This is an independent body. Though it's true we're appointed by the mayor, we serve independently, completely and

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the, and the mayor's office and any elected official and any outsider is not permitted to speak to any of the Commissioners during the pendency of a case. We are an independent body and we do not represent the administration so I need -- we, we exist as a, as a relief valve effectively from some, some kinds of agency action and I really wish because you are indeed an elec- elected official that you, that you properly represent what it is that the Board of Standards and Appeals and its independent body of Commissioners does and that our decisions are based on what the law instructs us to do and what, yeah. We have, we have regulations about when an application is ripe for us to be heard, when a question is ripe for us to consider it and because we are constantly having counsel defend our decisions, we need to make sure that our decisions are well founded and based on the law.

COUNCILMEMBER ROSENTHAL: You know that--

COMMISSIONER SCIBETTA: I just wanna say one, one thing we're not. We're not legislature.

CHAIR PERLMUTTER: Uh-huh.

COMMISSIONER SCIBETTA: And, and I, I'm sure I'm not the only Board Member that wished this was written differently but when faced with it written the way it is, there's case law that, that basically ties our hands. We have to interpret it that way.

COUNCILMEMBER ROSENTHAL: I will take that admonishment and with deep respect and, and with which it was given and I, I really appreciate what you've said. This community has heard that excuse for the last six years. I hear case law. I hear your hands are tied. We've been hearing your -- this

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administration's hands are tied for six years. And so you'll forgive our frustration. Thank you.

CHAIR PERLMUTTER: Thank you.

MS. MATIAS: Do we have other elected officials?

CHAIR PERLMUTTER: Do we have other elected officials?

MS. MATIAS: From Scott Stringer's office please. I'm sorry, what did you say?

Ms. Rosenthal: Thank you very much.

MS. MATIAS: Is there anymore elected officials that are? Oh, that's right. I'm sorry. I apologize. Go ahead. I'm sorry.

MR. STINSON: Okay. Thank you Chair Perlmutter and Commissioners for the opportunity to testify today on behalf of Comptroller Scott Stringer. I believe the proposed building permit--

MS. MATIAS: I'm sorry to interrupt you. State your name for the record.

MR. STINSON: Michael Stinson.

MS. MATIAS: Thank you.

MR. STINSON: I believe the proposed building permit issued for this building by the Department of Buildings was simply issued incorrectly and must be revoked. This is not simply a case of a developer exploiting zoning loopholes to produce a building larger than expected, this is a case of a developer creating zoning loopholes to produce a building whose height is unsafe, grossly out of context, with the

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surrounding community, completely contrary to the intent of the Zoning Resolution and the associated environmental studies as adopted for the Lincoln Square Special District in 1993. If the Commission allows these loopholes to be codified into law through their decision, it will represent a backdoor rezoning whose impacts on the community and the environment have not been studied.

In 1993, New York City adopted changes to the Lincoln Square Special District by implementing both packing and tower coverage rules. These rules are explicitly intended to regulate the height element and limit new buildings' ability to exceed 40 stories. In the rezoning report, the commission stated it's believed that the regulations should predictably regulate heights of new development and produce building heights ranging from the mid-20 low 30 building stories. By misinterpreting these rules, and creating new loopholes, the developer has proposed a building rising to farcical 776 feet, nearly three times the height was intended.

The developer was able to achieve this height in two ways. First by misapplying Zoning Resolution sections 82-34 and 77-02 and secondarily by allowing large unsafe mechanical voids in the building. The Lincoln Square Special District requires through 82-34 that 60 percent of all bulk in the building be located below 150 feet in height. The zoning lot is a split between two zoning districts, a C4-7 and an R8 zoning district. If these lots were developed individually then both sites would need to comply with 82-34 and any other bulk provision.

The owner has interpreted that density in both districts should count towards the requirement that 60 percent of the bulk must be below 150 in height but otherwise chosen to interpret bulk provisions such as tower coverage and setback regulations to only be

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analyzed based on the C4-7 or R8 zoning districts respectively. This is fundamentally a misinterpretation of Zoning Resolution 77-02 which states in part that whenever a zoning lot is divided by boundary between two or more districts and such a zoning lot did not exist on December 15, 1961 or any applicable subsequent amendment thereto, each portion of the zoning lot should -- shall be regulated by all provisions applicable to the district in which such portion of the zoning lot is located. Simply put, when a zoning lot is split by two districts, each portion of the zoning lot must comply with all bulk regulations of that specific district unless otherwise noted in Zoning Resolution.

The tower portion of the building does not comply with the requirements of the C4-7 district which requires that 60 percent of the bulk in the C4-7 portion of the district will be below 150 feet. This alone is grounds for revoking the permit. However, the developer has further added large mechanical voids to articu-, artificially boost the height of the building. The owner has added a total of 196 feet of height dedicated to mechanical spaces or nearly 25 percent of the building's total height before one includes rooftop mechanicals which add another 33 feet of height.

Zoning Resolution section 12-10 stipulates that all accessory uses such as mechanical uses must be clearly incidental and customarily found in conjunction with the principal use. The owner originally proposed 160-foot mechanical void. Once this mechanical void was found to not be customarily found in connection with residential uses by DOB and unsafe by the FDNY, the owner then divided the space into three mechanical floors with the total height of 176 feet and added a fourth mechanical space with 20 feet of height in the building. The fact that one floor of floor space can be divided into four simply to subvert an objection by city agency bring into deep question

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of whether these spaces are clearly incidental and customarily found in conjunction with the principal use.

In addition, the recent Department of City Planning survey mechanical spaces found that in the equivalent R10 dis-, zoning districts, mechanical floors typical height was 12 to 15 feet. The proposed building at 50 West 66th street was four -- has four mechanical floors all between three and five times larger than a typical building. This survey places further skepticism as to whether the proposed mechanical spaces meet the standard that they are customarily found in conjunction with the primary use.

Simply put, based on the all available evidence, the mechanical spaces the owner has proposed are both more numerous and larger than necessary. Based on the proven previous subterfuge that the owner needed a 160-foot-tall mechanical space and potential current subterfuge that they need four spaces at 196 feet tall, the owner must provide proof positive that these spaces must meet the basic definition of mechanical space. This is sup- supported by the New York County's Supreme Court finding since there is no specific definition of mechanical equipment in the Zoning Resolution or any definitive finding by the DOB on this issue, it demands administrative determination in the first instance.

Given the owner's silence on the specific designs for these spaces despite the objections by agencies and the community, it is reasonable to assume they cannot do this and this is another subterfuge to get additional height. Based on the available evidence, all building permits should be revoked. Thank you.

CHAIR PERLMUTTER: Thank you.

[CLAPPING]

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MS. MATIAS: One more. And then we have the public.

MS. COWLEY: My name is Page Cowley and I have the honor of reading Assembly Member Linda Rosenthal's statement. She represents the Upper West Side. Forgive me, but I'm reading typed. It's about four point so I'm gonna try to edit as I go along. First of all, she says here that she's sorry she can't be here today, but she has been a longtime opponent of overdevelopment, an outspoken critic of the zoning lot mergers that have hereto for allowed the construction at 200 Amsterdam to continue in her district and the author of State Legislation A.5026 to close the mechanical void loophole.

I strongly urge the New York Board of Standards and Appeals (BSA) to appeal the New York City Department of buildings, reject Extell's proposal at 36 -- 36 West 66th Street. Extell has reserved an astounding and excessive 161 feet of interbuilding space for mechanical infrastructure. Knowing that mechanical voids space is not counted towards the total building floor area FAR, Extell is attempting to circumvent the letter of the law to stretch the building heights so that the units above the void will have access to better views and thereby fetch higher prices on the market. Extell has not proven that this mechanical space is necessary to their operation and it is clearly only in place to boost their height of the building.

Earlier this year, the New York City Council passed a law to clarify the law on void space and set clear limits on the amount of space within a building that could be used for void space before counting towards FAR. While Linda and more than 4 -- 40 of her colleagues in the New York State Legislature who represent parts of New York City believe that the city Council effort did not go far enough, the effort to clarify the intent of

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local lawmakers to circumscribe this kind of development.

The BSA cannot possibly allow for a plan for development so contrary to the spirit of the Zoning Resolution to move forward. Doing so would signal to the developers they could calcu- calculatedly flout zoning rules so long as plans are filed within a certain timeline. Time is irrelevant in this particular case. If it weren't enough to add 160 feet of empty space to the building, Extell also proposed to use a series of other developer tricks to do an end run around the zoning rules. The zoning lot merger that Extell utilizes to cobble together development rights enabling it to achieve its current 775-foot height violates the rules of the Lincoln Square Special District which limits building height to approximately 30 stories by controlling FAR.

By merging zoning lots and selectively applying the special district rules to different lots, Extell is constructing a building much taller than would be permitted if it followed the rules of the special district. I'm almost done. In addition to the obvious developer overreach, this building represents the kind of short sided urban planning that the, that New York City must abandon. The zoning rules are in place not just to protect our access to light and air, two precious commodities in our concrete jungle but also to ensure that all new development is contextual.

A 775-foot tower may make sense for Midtown but not in the middle of a much more residential Upper West Side. Development of this scale will have tremendous and unplanned for impacts on local infrastructure such as schools, transportation, supermarkets, sidewalks just to name a few. Rubberstamping the plans for this development now doesn't just allow construction at this site to move forward, it broadcasts to developers citywide that the BSA is weak and when challenged it will stand

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with developers who violated the letter and spirit of the law and not the people in the communities they serve or should serve. Sorry. All across the city, people are rising up against this kind of system of broken government where the wealthy and the well connected--

CHAIR PERLMUTTER: Sorry. You've exceeded your three minutes by a lot.

MS. COWLEY: I know but it's not--

CHAIR PERLMUTTER: Can we just finish this up quickly please?

MS. COWLEY: I, I can't edit somebody else's text. This is an Assembly Member.

CHAIR PERLMUTTER: Yeah, you, you actually. You, okay.

MS. COWLEY: Anyway, she talks about her district. The last two major sentences and despite these grim statistics, we are here today to fight a, fighting to stop a building with 16 stories of empty space. This space should be used to provide homes to hard working New Yorkers but instead it is being used so the residents in the top floors can literally look down on the rest of us. Last sentence, there are few dich- dichotomies that more clearly and sadly embody the Tale of Two Cities narrative that City Hall has sworn to fight against. I thank you for the opportunity to testify again and renew my request that the BSA reject Extell's proposal at 36 West 66th Street.

CHAIR PERLMUTTER: Sorry. You were --

MS. COWLEY: Thank you.

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CHAIR PERLMUTTER: -- representing the Senator -- you're reading a Senator's?

MS. COWLEY: Assembly Member's.

CHAIR PERLMUTTER: Assembly Member.

MS. COWLEY: Rosenthal. Linda Rosenthal. Thank you.

CHAIR PERLMUTTER: Okay. Thank you. Okay.

MS. MATIAS: Okay. So--

CHAIR PERLMUTTER: Three minutes, right?

MS. MATIAS: Three minutes.

CHAIR PERLMUTTER: Okay. So now assuming no more representatives of elected officials true? Then everyone else is invited to speak. Your limit is three minutes. When the beeper goes off, wrap up quickly please.

Mr. Constanza: Yeah. Just please state your name for the record.

MR. KHORSANDI: Good afternoon, Commissioners. Sean Khorsandi for Landmark West. Landmark West is short of words. We've been saying it all for nearly five years. We've talked about this in various forms through placeholder buildings and an unsatisfactory DOB challenge. To an initial BSA filing without a single issued comment, to a DOB notice to intent, intent to revoke, mysteriously cleared yet simultaneously unresolved in any accordance of semblance to DOB's own and enumerated procedures and now a second BSA filing where we know that even a tie favors the developer over the community. Thus, tie equals community loss.

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All the while, we examine the voluminous record of what City Planning intended. However, intent equals irrelevance. Today again, City Planning who called this project obscene is again absent. So a central dark tower equals obscenity. We must ignore City Planning intent as we await a tertiary agency's interpretation of the DOB's interpretation of City Planning's Zoning Resolution AKA their intent.

We argue over futile meetings, ceiling height, void, foundation, vesting, words we know but must unlearn as their planning definition is purposely absent in the 1,300-page Zoning Resolution and thus ambiguous. Conveniently, ambiguity equals carte blanche. And unfortunately, zoning equals fake news. We argue over basic language but we understand what this is. We know from last session that expecting the text to follow meaning is "strange" and a "90s argument" because nobody could imagine that anyone would build like this. Nobody. If this follows trends begun by this developer a decade and a half prior and although income grows with expectation of plan is somehow not absurd.

We are schooled that a 161-foot void in the belly of a building, and unjustified greater than 10 percent loss factor deduction, more than 30 percent void for vertical rise, a single building casting shadows across the park is not absurd. By way of antonym, the scenario must then be deemed logical, practical, reasonable, responsible, sensible, and wise. There are so many words but it's merely a limited vocabulary without mentioning once of community, neighborhood, health, quality of life, or even life safety to be found. It's a time that New York State, it's time that New York stands for something meaningful once again in order to restore intention, rationale, and predictability into planning. This is not it.

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MS. MATIAS: Next speaker.

CHAIR PERLMUTTER: Thank you. Please, please refrain from clapping.

MS. MATIAS: How many times we got to tell them?

CHAIR PERLMUTTER: Actually, we developed something that is much faster, click. It takes less time and it's not as noisy.

MS. MATIAS: Or glad hands or whatever, whatever it is. Okay.

MR. GIORDANO: Hi. Chris Giordano, West 64th through 67th Streets Block Association.

COMMUNITY MEMBER: We can't hear you.

MS. MATIAS: Repeat your name in the mic please.

MR. GIORDANO: Chris Giordano, West 64th through 67th Streets Block Association. We wanted to intro-, --

CHAIR PERLMUTTER: Can you just lift the mike up so it's closer to you 'cause we have trouble hearing on the Board.

MR. GIORDANO: Chris Giordano, West 64th through 67th Streets Block Association. After all these meetings and hearings, we decided we wanted to introduce us to our neighborhood. As you know, the community came together in 1993 to create the Lincoln Square Special District Zoning Resolution. At that time, it's clear that City Plan -- City Planning stated the controls in place should predictably regulate the heights of new development and these controls would sufficiently regulate the resultant building form and scale even in the case of development including zoning

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lot merger. City planning stated the intention of the Zoning Resolution included limiting buildings to mid-20 and 30 stories tall which would complement the District's existing neighborhood character.

We don't take City Planning's words lightly. They promise predictability in zoning. In fact, the community relies on them. They also met with us on September 4th of last year and they told us in their opinion the building was egregious, even obscene. At the August 6th BSA hearing, Extell's lawyers argued that the proposed 775-foot midblock tower would not be an absurd result based on the intention of our Special District Zoning Resolution. We were struck by the language of the absurd result. So we built a model of the neighborhood so that we could share that with you 'cause it's where we live.

Extell su- submitted designs for a 290-foot building in order to get permission to begin demolition. This is, this is that building. But it's a 775-foot building that they intend to build. Just for perspective. This is Columbus Avenue. This is 66th Street. This is 65th Street. This is Central Park West. This is the park. So our community is here to ask you does this look like what City Planning and the community intended in 1993 when the Lincoln Square Special District Zoning Resolution was created? Can you tell us this is not an absurd result? Thank you.

CHAIR PERLMUTTER: So I just want to point out. Please. We're clicking, right, not clapping. I want to point out that the central portion which is the mechanical void is the, is the issue that's no longer before us that City Planning agreed should not be allowed to continue that way and they changed the Zoning Resolution and with all due respect to the City Council, the City Council has the authority

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to make modifications but none- nonetheless, the and now that's no longer permitted. This building started construction before the Zoning Resolution was changed and you can no longer in this district anyway -- I can't speak for all the districts do that. Okay?

MR. GIORDANO: But we understand that there's still 293 feet of we'll call it mechanical void space in a 775-foot building and we have not been yet told whether if it's been vested yet --

CHAIR PERLMUTTER: No, no, no.

MR. GIORDANO: -- or what the vesting date was.

CHAIR PERLMUTTER: So the, so the -- that's not a question before us except to say that the Department of Buildings apparently has considered the building vested so it doesn't -- is not subject to that change in the Zoning Resolution but going forward other buildings built in your district will not be permitted to do that.

MR. GIORDANO: Is there a vesting date that's been established 'cause I haven't seen it?

CHAIR PERLMUTTER: That's a DOB question for it's the May whatever the date that the --

MS. MATIAS: Text change.

CHAIR PERLMUTTER: -- text change occurred which I could look up but I can't remember off hand.

MR. GIORDANO: That's, that's for the, the change to the Zoning Resolution but what date was the buil-, was the developer vested?

CHAIR PERLMUTTER: That's how, that's how you vest.

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So the building has to have been the foundations completed by the date that the zoning changed which was May something. So DOB determined that the building had vested. That's not before us but that's the, that's how the rules works.

MR. GIORDANO: Okay.

CHAIR PERLMUTTER: Okay.

MS. MATIAS: Next speaker.

CHAIR PERLMUTTER: Next speaker please.

MS. SEMEMER: Hi. Thank you for -- I'm Roberta Sememer. I'm Chair of Community Board 7 on the Upper West Side. Several weeks ago, my testimony at CB7 is generated resolution strongly opposing the erection of this building was presented. Today, I'm here to discuss the effects on our Upper West Side community. I believe very strongly that Community Boards are tasked with ensuring that their communities thrive. As chair, I take my responsibility to all the members of the community seriously. The building will generate oversized shadows on Central Park, will deprive large swaths of the park and surrounding community of much-needed sunlight and daylight. It will create major health consequences.

Open space must be protected. In many cities, there is legislation to protect parkland. Open space, trees, and other greenery are central to the physical and mental health of residents, workers, and tourists. Light and air must be protected. The neighborhood must remain resilient. The proposed building would remove sunlight and daylight from surrounding buildings increasing use of electricity, lighting, and gas heating and other resources. There will be a decrease in essential services for all members of the community and deleterious effects on the environment.

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Health of residents must be protected. Tall buildings prevent air from circulating and increase particulates in the air at street level leading to increased rates of asthma, bronchitis, and other life-threatening illnesses. Affordable housing is essential. The proposed building stands in the way of much-needed affordable housing being provided for our community. Every year we lose affordable housing and lastly safety for all. We worry about the safety of residents, firefighters, and other emergency respond-responders. How will the building do local law 11 work? What happens in a superstorm and other disasters? Thank you very much.

CHAIR PERLMUTTER: Thank you.

COMMISSIONER SCIBETTA: Thank you.

MS. MATIAS: Next speaker. Could you sign in please? I don't see your name on the list.

MS. KENDRICK: I'm Shelia Kendrick with Save Central Park NYC. I have a prepared statement but I heard a comment from the attorney for Extell that said and this is consistent with the language that's been used, that once you look at the Zoning Resolution, you don't go deeking -- digging deeper to find alternative interpretations in other outside sources. He used the term extraneous sources, but I just wanted to point out that the comment about 20 to 30 stories is in the executive summary of the Special Lincoln Square District. You don't have to go very far past page one to see that language.

Now I'm going to get to my prepared statement. I'm responding to the abuse of tactics being implemented by developers around the park. We can already see a wall of super tall towers across Central Park South and the resulting shadows. The impact is

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both obvious and detrimental. In the August 6th BSA hearing as we've heard, it was stated that all things being equal, the decision will favor the developer. How can this be a result of the fair reading of the Zoning Code? There seemed to be an argument for not having a thorough understanding of the Special Lincoln Square District specifications and intent even though language clearly says in not in extraneous way that it would top out, construction would top out at no more than 30 stories.

Did the developer who singularly is redefining the New York skyline not have the legal and zoning resources to understand every word of the underlining zoning when they have billions of dollars at stake, is that reasonable? Is it reasonable to think that they did not understand that the bulk distribution and tower coverage rules are always applied together? Or is it more likely that they wanted to break into the neighborhood of the Upper West Side with a mid le-, mid-block mega tower and they looked for a workaround in the law. Why didn't they create a rendering and submit plans that were compliant with the underlying zoning and the Special Lincoln Square District? Did they really not understand the depths of the zoning.

Then we ask since when is ignorance an excuse. We might recall a beautiful art deco building on 5th Avenue that was destroyed under the cover of darkness by a developer who was intent on bending the rules to suit his needs claiming ignorance. That resulted in Trump Tower. The letter and the intent of the Special Lincoln Square District is clear. To let it be obliterated is to acknowledge that we are being Trumped.

CHAIR PERLMUTTER: Thank you. Snaps.

MS. KENDRICK: Thank you.

MS. MATIAS: Next speaker please.

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COMMISSIONER SCIBETTA: Thank you.

CHAIR PERLMUTTER: Thank you.

MS. MATIAS: Next speaker please.

MS. FREUD: I'm Olive Freud, President of the Committee for Environmentally Sound Development. I want to go back to square one. How did the mechanics get out of the basement and into the middle of the buildings? A 35-story building should be 350 feet high. If it isn't the law, it's the tradition. That's how we determine height on the Upper West Side and inthe city. You take the number stories and you multiply it by ten and you get the height. So why and how is this building 775 feet high?

Mechanics belong in the basement. They were free there. They didn't have to use, they were not counted against the square footage. But put them in the middle of the building and what you're doing here is pegging the freedom and putting them up in the middle of the building. Taking a long their free status and adding voids which makes it possible to put them into up that high, you have obtained a very tall building with very luxurious apartments that increase the developer's profits. Never mind that the rest of the community has lost their sun, their sky, their space and it has been taken from them that they are subjected to long dark shadows.

Who has more right to space? The 135 residents in this building or the thousands of the residents in the neighborhood? Since when are mechanics not in the basement? We are not in the low-lying area. That's when it started after Superstorm Sandy. They allowed the low-lying area to put their mechanics up, but we're way up. There is no reason for this. There's no, no one has challenged it. They just let it go. The mindset

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that allows this to happen is like that of the greedy owners of coal mines and oil fields. That that mindset exhibited here. They're not harming anybody because there is no global warming if that's what you say there's no global warming, why can't you dig for gold.

But developers of real estate, their maximum profit comes before any concern and damage they may do to existing populations. Our rules and regulations are here to protect those of us who live here now not to enrich the wealthiest. There are numerous and even more than this is far more important. There are numerous new buildings that have gone up in our neighborhood.

MS. MATIAS: Please wrap up.

MS. FREUD: That are built without voids and without questionable zoning lots 200 Amsterdam Avenue.

CHAIR PERLMUTTER: Please wrap up. You, you exceeded your three minutes please. We need to --

MS. FREUD: That are profitable and acceptable to these communities.

CHAIR PERLMUTTER: Thank you.

MS. MATIAS: Thank you.

MS. FREUD: I think it's up to you folks to answer these questions and to stop this outrage.

CHAIR PERLMUTTER: Thank you very much. I just want to add though that in general mechanicals equipment has been located on the roof of buildings since the Empire State Building. That's where the water comes from. That's

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what powers the elevators, the air conditioning systems, and so on and as we got towers, they started to be located in the middle because it became less expensive to manage sections of buildings so they put and if you look at lots and lots of towers that have been built over the last 40 years, there's a mechanical system in the middle of the buildings as well. It's just that they're not, you know, 45 feet high. They're something like you--

MS. FREUD: In our neighborhood which is 20 and 30 feet mechanicals --

CHAIR PERLMUTTER: Okay.

MS. FREUD: -- are in the basement.

CHAIR PERLMUTTER: Okay.

MS. SENAT: Good afternoon. My name is Linda Senat. I'm a supporter of Landmark West and the important work they do to ensure that New York is both livable and prosperous city. I'm a 20-year resident of the neighborhood and live on West 66 Street. I'm protesting this development because it's a mid-block building that is huge, will completely overwhelm surrounding buildings and is completely out of context with all its neighbor- neighboring buildings.

This obviously contradicts the stated, very clear goals of the Special Lincoln Square District which in Article 8 Chapter 2, Section 82-00 General Purposes says it is "to encourage a desirable urban design relationship of each building to its neighbors." It's obvious from this model that this monster building is totally and distinctly different from any other building in the whole Special Lincoln Square District. Other words, in the creation of the Special Lincoln Square District that is used to describe the anticipated development, they knew it would develop. The anticipated development include the

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words complement consistent with and enhance the aims and concept of the special district.

This building does not enhance the neighborhood. It's neither consistent with the surrounding area nor is it complementary to it. It is jarring and literally sticks up like a store -- sore thumb. Surely, you cannot completely disregard the clearly stated reason for creating certain building zone ar- areas. If you allow this building, it's going to be the first domino, the whole of the Special Lincoln Square District will be overwhelmed with huge buildings.

I'm not against development on the contrary, but please ensure the development of this area compliments, is consistent with, and enhances this lively, diverse, and attractive neighborhood. As someone who moved to this city because of its wonderful mix of people and neighborhoods, of arts and commerce, I beg you to protect this unique area. Keep this Special District as the City Planners intended it.

The Special Lincoln Square District is valued by people all over the state and city who come from all areas of the five boroughs and in fact from all over the world to enjoy the arts and its very special atmosphere. It's in your power to destroy that right now with this project. Please don't do that. I beg you please protect the health, safety, and life quality of New Yorkers.

CHAIR PERLMUTTER: Thank you. Next speaker please.

MR. GOTTLIEB: Good morning Commissioners. My name is Robert Gottlieb and I reside at 10 West 66th Street, approximately 40 feet from the proposed building.

CROWD: We can't hear you. Speak into the mic.

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MR. GOTTLIEB: I appear in opposition to this project. The clear intent of the Zoning Regulations enacted by City Planning Commission were to control the size and height of new development within the Special Lincoln Square District. It is obvious that the Extell Building as you see it is completely out of context with the neighborhood. And I believe that all of you instinctively realize that this building with its huge bulk and height does not belong within the special district. I submit to you that the zone -- that the Building Department did not properly interpret the Zoning Resolutions regarding this building.

Section 82-34 measures the bulk of the building by the floor area which is permitted on the zoning lot and the word zoning law is used. The zoning lot created by Extell is 54,687 square feet. From this zoning lot, Extell created this huge building of 548,543 square feet spread out over the entire lot. The tower coverage of the special district 82-36 provides the methods for determining the size of the tower, how much of that tower actually can fit on the, on the lot. The section says that the tower must occupy no more than 40 and not less than 30 percent of the zoning lot, the same language that is used in 82-34. The zoning lot is 54,687 square feet, the zoning lot that is used, the zoning lot is used to determine the size of the building. Based on this, the tower portion of the building should be computed as between 16,406 and 21,874 feet.

Despite the very clear language in this section, the developer states the tower should be smaller, the footprint should be predicated only on the C4 section of the zoning lot, not the entire lot. Now we have a question of intent. Despite the unequivocal language that states that the tower must be measured by the sizes of the zoning lot which is 54,000 square feet, the developer sates -- states it should not, it should this be measured

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by a different criteria.

Every statement of the City Planning Commission points to the conclusion that the tower and bulk regulations were intended to be applied over the same lot area. This word zoning lot has to be interpreted the same in each section in order for this to apply. We request that you follow the intent of the Special Lincoln Square District that the bulk and regulations be measured by the same lot area and that accordingly the building permit for this should be revoked. Thank you.

CHAIR PERLMUTTER: Thank you.

MS. MATIAS: Next speaker please.

MS. COHN: Hello. My name is Joan Cohn. I'm a member of Save Central Park and -- I am I thought. My name is Joan Cohn. I'm a member of Save Central Park NYC and have owned an apartment at 10 West 66th Street for 25 years. I would just like to share an interview from GlobeSt.com on February 21, 2018. They had interviewed John and Richard Calico of Gamma Real Estate after one of our partner organizations, the East River Fifties Alliance had great success in obstructing a 950-foot-tall, 87 story building that was planned for 3 Sutton Place with the help of their City Council Member Ben Kallos.

One of the executives of Gamma said that a different and I quote, a different developer is something smart at a site we looked at on West 66th Street. The developer filed for a building was that was this high. John motioned a short land. But once he had his plans ready, he amended the tower to make it that high. He then continued and I quote his belief and hope and he's probably right is that the community cannot muster the resources to stop him. But these are the kinds of tricks you have to do these days if you

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even hope to be successful John Calico stated. We as residents of New York City depend on the BSA to do the right thing. I implore you to protect the health, the safety, and life quality of all New Yorkers. Thank you.

CHAIR PERLMUTTER: Thank you.

MS. MATIAS: Next speaker.

MS. ROTHICOPF: Hi. My name is Holly Rothicopf. I'm a resident of the Lincoln Square neighborhood, a Board Member of the West 64th through 67th Street Block Association, a Board Member of the Upper West Side Community Emergency Response Team, a supporter of Save Central Park, a Member of Landmark West and City Club. I have a prepared statement but just the discussion before where you mentioned oh, it's only a few stories difference that you're talking about, you can just look at it and see and it's just not a few stories.

CHAIR PERLMUTTER: No, no, no. But again, the focus is on -- your focus which I understand completely is on this mechanical void but ours is on the bulk packing rule. The mechanical voids were already decided and dealt with the City Council and City Planning, right?

MS. ROTHICOPF: Well the actual zoning, the intent of the zoning and the public's right to protection should take precedence over a whim of a developer. Nothing of the new proposed height is north of 60th Street nor mid-block in Manhattan. The language in the special district says that as a result of the rules, buildings in the district should be no more than 30 stories or around 330 feet. As City Club and Landmark West have shown, I think it's absurd that the developer didn't know the tower coverage rule and bulk packaging were al- always applied together.

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From corporation of so-called mechanical void space to circumvent the zoning code and incorporate needless no count space is absurd. The Department of City Planning itself called the incorporation of mechanical voids of 239 feet with 30 percent of the building obscene. It's absurd to allow a developer to pull a bait and switch by submitting plans to the DOB for a building that they appear to have had no intention of executing and then developing a tower three times the height. The relief the developer's looking for or in this case would want if the appeal is denied is one -- it's just not right. We urge you to deny the request by the developer to deny this appeal. Sorry. That got jumbled. But protect the health, safety, and the quality of all New Yorkers.

CHAIR PERLMUTTER: Thank you.

[CLAPPING]

MS. MATIAS: Next speaker.

MS. SIMON: My name is Susan Simon and I'm the founder of Central Park West Neighbors Association. I'm here today to fight for our community and all New York communities where developers with no real aim but to accumulate more and more money continue to exploit our neighborhoods. Extell came to the Lincoln Square community with a proposal to build a complex of an entirely different kind. They applied to the DOB for permits for a 25-story building. I'm quite sure they did so because it was within the regulations of the Lincoln Square District zoning law which was an easy way for Extell to get their project off the ground with little friction as it was within the law.

But Extell's real intent was to build a nearly 800-foot tower and not be bound by the zoning law but circumvent it. As if that were not enough, the developer has

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incorporated over 160 feet of empty space within this tower to prop up higher more expensive views with a plan to build only a total of 127 apartments. Wow. I wondered whether each apartment comes with its own four, four car garage. But what's lost in this whole drama is while everyone seems to be reacting to some distracting part of the story, this working around the zoning law should not be thought of as normal. Not by this body or anyone else.

What it is, is a manipulation of the law and a way enough to follow it. This is high-stakes casino gambling with our communities and when the developer takes the house, the community is left bereft. Robbed of central light, air, and human scale. Robbed of sunlight in the magnificent Central Park, another assault on an entire ecosystem that would sit in shadow all the way to Be- Bethesda Fountain. That's a price no one should be willing to pay. The zoning laws were enacted to protect our communities from all sorts of potential predations yet routinely they are ignored or obfuscated.

The mandate of this body is to assure that doesn't happen. The mandate of this body is to read the clear language of the zoning law and not to slice and dice it and quibble about what the meaning of it “is” is. I'm asking something really simple. I'm asking the BSA to do the job you were appointed to do. I'm asking you to consider that once upon a time a Robert Moses tried to divide the village in Washington Square Park with a giant highway. And it was activists in neighborhood residents who fought and stopped one of most powerful men in New York in his day from destroying the village. Just for a moment imagine if they had not succeeded. We cannot allow greed to destroy the future of this great city. Thank you.

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[CLAPPING]

CHAIR PERLMUTTER: Thank you.

MS. MATIAS: Next speaker. Next speaker please. Thank you very much.

MS. MELLONS: Hi. I'm Sue Mellons. I live at 22 West 66th Street in the building that is right next to the buil-, proposed building. We have from the beginning we, we were told that it was gonna be 25 stories and I, I just want to point out the deceit of the developer in, in telling us this. There was no transparency during this time. That was what we were told and we accepted it and then it turned out that they were going to do the 75-story building. I can only say that the possibility of a really dark city in the future if these buildings are allowed to go up above the height that's in the zoning law, it, it just the darkness in the city is unimaginable to me and I can I think of these, these buildings as not as skyscrapers but really as sky rapers.

And I, I also think about the health of the people in the community. I'm speaking for the people in the community. We have precious little power at the moment so they think, but we are a voice and I am begging you to consider this voice very seriously that we are all opposed, many of us -- most of us are opposed to this type of structure coming in destroying the whole character of the neighborhood, the whole community, the whole feeling. Moreover, these buildings when they go up are not inhabited very often by residents of the city because they are so expensive that people can't afford to live in them so they are inhabited by people who come from other parts of the world and live in them for maybe a week or a few days of the year.

What benefit is this to the city? They don't play -- pay taxes. What benefit can it

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be to the city to have such buildings there? We need buildings that people can live in. The city needs more housing but we need things that are consistent with the neighborhood and not these things that stick up out of there which is sort of to me just an example of sheer hubris. And I, you know, it's a, it's almost a dare. Knock us over. I, I just, you know, for me to knock over but for somebody from which has happened in the past as we know but I, I, I just beg you to consider the needs of the commun-, of our community and other communities in the residential area around the city. The residential areas don't deserve buildings like this. Thank you.

CHAIR PERLMUTTER: Thank you.

MS. MATIAS: Next speaker.

MR. DAY: My name is John Day. I support Central Park NYC and am a member of also a member of Landmark West and City Club. My wife and I are neighbors of the disputed 50 West 66th Street project. For 21 years, we loved living in the Special Lincoln Square District. We support both of the appeals before you. They contest the merged zoning lots and the absurd, massive mechanical void loopholes for the planned midblock 775-foot building. Three times taller than any others in the area.

I'm in Central Park every day. This building will cast shadows as far as Bethesda Fountain, across the park, and across our neighborhoods. But really my primary concern is safety. Please record this Uniformed Firefighters Association of Greater New York memorandum. The firefighter statement "strongly opposes construction methods that are inherently dangerous and for no valid reason increased the threat to the lives of the public and our members." Today is the eve of 9/11. Can we forget the firefighters' lives lost

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then or their continuing heroism? I was three blocks away on the street when I heard and felt the sonic boom, saw the first and second towers hit and neighboring buildings destroyed when they fell.

Our brave public servants' warnings merit your most serious consideration. Enormous vertical voids like the ones planned are far greater than in any other New York building and I believe unknown globally. They are untested and potentially deadly. During Superstorm Sandy, friends of ours were ripped from their homes in the three-block radius of 153 West 57th Street when the multi-ton crane atop that project blew over risking the area's destruction. That crane if it had fallen would have hit a major gas main.

The developer and contract- contractor on that project are the same as on 50 West 66th Street. Okay? Do you feel our fear? Do you understand why we're concerned? The project architects on this appear creative. They're well regarded. They even designed the 9/11 Museum yet their website indicates they've not completed a building of this height nor do they -- nor do we know of any architect who incorporates voids this high or with this potential risk. Yes, we are afraid for our and our community's safety. In your own words, the BSA stated that it should consider "the health, safety, and life quality of all New Yorkers." We implore you to do that now.

CHAIR PERLMUTTER: Thank you.

MR. DAY: Thank you.

[CLAPPING]

MS. MATIAS: Next speaker.

CHAIR PERLMUTTER: Please.

MS. MATIAS: Next speaker.

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MR. DAY: And this is the statement that--

CHAIR PERLMUTTER: Thank you. Thank you.

MS. LENKE: Hello. My name is Beth Lenke. As a new New York resident, my husband and I carefully considered the myriad of locations to live in this vast city. It was obvious that Lincoln Square and the Upper West Side were a perfect fit for our family. I would like to refer to a letter written by Gale Brewer, Corey Johnson, and the entire delegation of the City Council dated August 16th of last year. In it they speak of the integrity of the Zoning Resolution and I quote “all across our Borough, developers have found numerous novel work arounds to circumvent the limitations that we commonly misunderstood to apply them under zoning. The Zoning Resolution is meant to provide consistency and predictability for both developers and residents. But again, we have seen buildings constructed that defy our expectations and long held beliefs of what the rules are."

Usually appeals come to the BSA because clarity is needed where parties differ as to interpretation. But the case of the mid-block tower now slated as 775 feet on West 66th is very different. This building sits in the Special Lincoln Square District where the building height regulations are clearly defined and then clarified. It specifies that when the rules are followed, the buildings would not exceed 25 to 30 stories for a maximum of 330 feet. The rules that result in the buildings of 30 stories or less are concurrent use of the tower coverage rule and the bulk package role.

I believe Extell knew the rules when they submitted the 25-story plan. The original contextual building plans were consistent with the Special Lincoln S-, Lincoln Square District rule usage and seemed reasonable given the block placement. City

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Councilmember Helen Rosenthal called out the developer when they changed their, their plans to the massive tower that is three times the original height and even called it bait and switch. Diversity, the arts, the architecture, and just the right amount of noise and traffic made easy to fall in love with the Lincoln Center area and the Upper West Side. We never doubted that New York City would make sure our area remained neighborly and that buildings would be consistent. Because developers are being allowed to move around zoning regulations much of which we took for granted is being compromised.

A perfect example is the effect on Central Park. The massive tower in its present form has been talked about in multiple times is expected to cast afternoon shadows across Central Park up to the Bethesda Fountain right in the heart of our Park. The novel workarounds might be con-, inconsequential in some cases. My family and our neighbors believe that in the case of the massive tower on West 66th Street, circumventing the limitations will have devastating and forever lasting impact on our life quality as residents of New York City. Board of Standards and Appeals please be the relief valve as we heard today and protect the health, safety, and life quality of all New Yorkers.

CHAIR PERLMUTTER: Thank you.

MS. MATIAS: Next speaker.

MS. KRESKY: My name is Mary Kresky. I support the appeals by Landmark West and the City.

CHAIR PERLMUTTER: Please speak louder and direct to the mic. Thank you.

MS. KRESKY: Thank you. And City Council. And

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support Zoning Resolutions designed to enhance sound and careful development. I'm also a native New Yorker and over a 45 year resident of the Lincoln Square area. Today, I wanna step back a moment and look at how the BSA approaches its decision making. What goals, what principals does it use as a guideline? What should it consider when making rulings regarding questions such as is the language clear, clear, is the application now proposed in a court with the language? This is particularly difficult when an expert such as George Janes challenges the views of others as some have said today.

CHAIR PERLMUTTER: Sorry. Speak up. Sorry. Put, put the mic near you.

MS. KRESKY: Okay. Sorry. Another question. If the application involves a zoning district that was created because of a unique situation, should the reasons for that and other background information be included in the deliberations? I do not know minimize the challenge such questions and other pose. It's extremely difficult to draft language that will over the life or the law or resolution ensure that the implementation will continue to be in accord with the purpose.

Thus, it is essential it seems to me that the BSA look to what it has said are its goals, purpose, in what -- and making the decision it should consider. To determine this, I quote from the statement from the BSA itself. Please be patient. The New York City Zoning Resolution building and fire codes, the New York State multiple dwelling and general city laws were enacted to protect the health, safety, and life quality of all New Yorkers.

Continuing the quote, consequently, BSA's authority to vary these regulations must always be tempered by the agency's consideration of the impacts that the insertion

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of a building modified by such waivers, waivers will have on the urban fabric surrounding neighborhoods and neighbors as well as on the greater vision of our city it has been conceived of by its urban planners, architects and engineers and codified in these regulations.

The specific appeals now before the BSA involve the use of loopholes relating to combining zoning lots and mechanical space which if allowed will result in an over 750-foot mid-block building. In considering these appeals, it seems to encumbent on the BSA to consider the their quote "impacts" this would have as it has stated on the urban fabric surrounding neighborhoods and neighbors as well as on the greater vision of our city that has been conceived of by its urban planners, architects, and engineers and codified in these resolutions. The fundamental question it seems to me is what will best help "to protect the health, safety, and life quality of all New Yorkers." Thank you.

CHAIR PERLMUTTER: Thank you.

MS. MATIAS: Next speaker.

[CLAPPING]

MR. YOUROL: Thank you Madam Chair. I'm Howard Yourol. I wish to offer a different vision of, of the proceedings and in my vision the BSA is relieved of the onerous task such as it is suffering through this morning because in my vision the City Council of New York takes global leadership and passes a moratorium on monster towers. The rationale being as I said last month that in the global climate crisis which we all appreciate we are fully in at, at this time, there is no longer room for the, the building of such, of such buildings. They are not sustainable in any way, shape, or form and they're spread within our city and around the world is a recipe for disaster. So I'm

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calling on the City Council of New York to pass a moratorium and to, to this effect and to relieve the BSA of the onerous task such as is exampled by this morning's proceedings. Thank you.

CHAIR PERLMUTTER: Thank you.

MS. MATIAS: How sweet.

MS. THAUSER: Hello. My name is Arlene Thauser. I live on West 67th Street. I belong to Landmark West Block Association. I'm here as a neighbor who is extremely concerned about what's going on now and in the future. What your decision could mean is a death sentence to our Upper West Side neighborhood, population in the thousands. I recently read a book by a gentleman named Byron Stephenson who talked a lot about the prisoners on death sentence and mostly in the South where timelines and statutes of limitations and 30 days were completely ignored over that incredible logic and the obviousness of what was going wrong.

You have the authority to not ren-, not render a death sentence to this neighborhood, to not undo the purpose of Lincoln Square's zoning intent. What will happen in the future? River to park in the 60s, 70s, 80s, 90s and upward? There are, there are also at least four public schools in the immediate area. The decision you are tasked with could affect the future of over, well over 50 city blocks, thousands of schoolchildren, and committed Manhattan residents of longstanding.

This decision will be impacting the probable team that is now working experts now preparing plans for West 66th, West 67th, and Columbus Avenue now known as the ABC Campus. Our beautiful Upper West Side residential and landmark streets are about to be turned into the greed of the extremely wealthy real estate developers. The BSA

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your mission is to protect our health and safety and the life quality of all New Yorkers. Thank you.

CHAIR PERLMUTTER: Thank you.

MS. MATIAS: Next speaker. Next speaker please.

CHAIR PERLMUTTER: Next speaker please.

MS. MATIAS: Thank you. Is there any more after this lady? Any more speakers? Okay. Thank you.

MS. VAZQUEZ: Hi. My name is Eileen Vazquez. I'm the president of the West 69th Street Block Association. I want to start off with two things. It's very disgraceful and disappointing that we all have to come here and fundraise and stay up all night and do turn out and all these other things to plead with you guys to enforce the laws that are supposed to protect us. It's ridiculous that we have to do this. I haven't slept all night. I don't know what condition Chris is in. I'm exhausted just trying to get people here and trying to get this to fall on your ears.

Secondly, regarding mechanicals, I know the, the new law has passed. No matter what side of the argument we are on about mechanicals, it's 2019, not 1819. We all know that mechanicals are slimmer, they're more efficient, they're smaller. Nobody in New York needs that much mechanical space for mechanicals.

[CLAPPING]

MS. MATIAS: No clapping please. Thank you.

MS. VAZQUEZ: I want to say as my block approaches its 50th anniversary, I'm reminded with great pride the courageous advocacy beginning in 1969 and continuing til today of my block association. For over five decades, we have

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stood together to support our block and our neighbors. Today, we are here to continue supporting our neighbors in their struggle regarding this building. I'm reminded of the rules regarding this meeting and rules are funny things. There seems to be rules when rules apply so certain rules have rules. Some rules could be broken but some can't be. Some rules only apply to some people. Some rules are considered more important than other rules.

All of this reminds me of a conversation I have with my son many years ago. We were discussing the consequences of broken rules. Truthfully, I cannot even remember the details but I do remember clearly my son turning to me with an earnest face that only a six-year-old can have and saying there are rules for a reason mommy. The reason for the rules we are discussing here are to protect New York City residents, protect the architectural integrity of the neighborhood, to not overload our already heavily burdened infrastructure.

As I live on the street where a $100 million dollar home featured on the New York Times recently is being built, I can tell you what the consequences of rule breaking are. A street filled with dirt and dust, construction material and machinery beyond permitted areas, construction debris beyond conmid-, but beyond permitted areas. Up to 17 cars stopped at once to make room for their equipment to move. Noise of power tools on weekends, damage to parked cars, damage to trees.

CHAIR PERLMUTTER: Please.

MS. VAZQUEZ: Within the rules, we suffer dearly daily all of the above but in addition to pneumatic drilling that takes a subterranean route up to 200 feet from the site.

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CHAIR PERLMUTTER: Please wrap up. Your three minutes is up. Okay. Thank you. Please wrap up quickly.

MS. VAZQUEZ: Workers urinating on the street, up to four concrete trucks a day, a team meeting of 30 workers outside of our windows at 7:00 a.m. The list goes on and on. The point remains. There are rules for a reason and they apply to all.

CHAIR PERLMUTTER: Thank you.

MS. MATIAS: Thank you very much.

MS. GUEST: Hi, I am Carol Guest and I live at 10 West 66th Street. And quite frankly I'm sorry to say I'm not been more involved in all of this. It really -- when I see this model here today, you know, I know it's gonna affect me living at 10 West 66th. But I now see how it's gonna affect everyone here. So I'm going to take another close-up photograph of this, send it to a hundred of my best friends on the Upper West Side and I would suggest that you all do the same because this is enough. Well you all have some kind of….

CHAIR PERLMUTTER: Please address us.

MS. GUEST: Anyways.

CHAIR PERLMUTTER: Please address us.

MS. GUEST: This, this is tells a story right here. Talk about bulk and some of the other things that you're addressing here today. You are destroying our neighborhood. So I'm gonna take one more picture close up and make sure that everybody I know sees this model which doesn't show one tower by itself but shows the effect on all the other buildings in the surrounding area. And I thank you all

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for being here. Thanks.

CHAIR PERLMUTTER: Are there any other speakers on this? Any other speaker, members of the public on this?

MS. MATIAS: Okay. The appellants please come forward.

CHAIR PERLMUTTER: And, and while they are assembling here, one of the speakers brought up the subject of legislation that we weren't -- I wasn't aware of which was introduced in February -- please -- was introduced in February to the State Legislature. I think it was introduced by the Assembly and then it was brought to the Senate, State Senate. It's an amendment proposed introduced in February and it seems to have been introduced to the, the Senate in May which is an amendment to the multiple dwelling law and Council Member --

CROWD: Assembly Member. Assembly Member.

CHAIR PERLMUTTER: No, no, no. No, no, no. Council Member Rosen --

CROWD: Linda Rosenthal.

CHAIR PERLMUTTER: Rosen -- no, no, no.

VICE-CHAIR CHANDA: Councilmember Helen Rosenthal.

CHAIR PERLMUTTER: No, the other one.

VICE-CHAIR CHANDA: Linda Rosenthal.

CHAIR PERLMUTTER: Linda Rosenthal. See that's a problem. We have too many Rosenthal's so it's a little confusing. Anyway so the

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Council Member said, said that she was not able to amend the Zoning Resolution the way they had in mind for the mechanical voids because City Planning didn't introduce whatever it was they preferred to see introduced, but the multiple dwelling law which is a very powerful state law that affects all multiple dwellings which includes hotels is proposed to be amended and for those who of you who don't know about it and you should be active in, in that subject is proposed to be amended to, to talk about the maximum height of a floor.

Whether or not this will go ahead, who knows but you should be aware that the State Legislature is working on that subject with State law if the City Council is unable to accomplish this with local New York City Law. Okay? Okay. Did you want to add -- and I actually think that Commissioner Chanda should -- has been doing some research while we talk about the character of the neighborhood and so on.

VICE-CHAIR CHANDA: I think keeping in mind what the intent of the proposed text was, I was looking at the very --- I was looking at various buildings that, that have been built in this area within the Special Lincoln Square District and outside the Special Lincoln Square District but are in zone C4-7 and I was just trying to do a, do a comparison, a quick comparison and I know I, didn't, you know, I'm not getting into the details of the zoning for each one of the sites.

When looking at this information, those developments that were built prior to the adoption of the 1994 zoning text which is what we are contesting today or sections of it that is, for example, the One Lincoln Square Plaza with that was built in 1970 rose to -- had 42 stories and it's built on a 59,000 square-foot lot area. A similar comparable lot area that is one block to the south of it is 15 Central Park West which is a similar lot area

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but the number of stories on that one is 37 and that was built in 2005. That goes to show that the text that was proposed did have an effect in terms of the comparable lot areas but you're resulting in a smaller -- shorter buildings. So the text did apply.

MR. LOW-BEER: I'm sorry. That was built in, in how many stories was it?

VICE-CHAIR CHANDA: 2005. Thirty-seven stories built in 2005. And if I were to compare that to what the applicant is proposing, keeping the mechanical void out of the question.

[LAUGHTER]

VICE-CHAIR CHANDA: It's not before us. I'm sorry.

MS. MATIAS: Ladies and gentlemen.

VICE-CHAIR CHANDA: I'm sorry. It's not -- we have dealt with that in a previous action. This result -- this proposed project similar lot area as been actually lesser -- similar lot areas of Central Park would also result in 35 story building. So, you know, I'm just looking at the various numbers. Again, another one, 1992 in 1992 actually 1995. 144 Columbus Avenue. That had a lot smaller lot area but it had a 30-story building. It was an 18,000 square foot of lot area but had a 30-story building.

CHAIR PERLMUTTER: Please, please sir. You'll be removed if you do that. Okay?

MS. MATIAS: Sir, please.

Mr. Day(?): That we came here is totally absurd.

CHAIR PERLMUTTER: Please.

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VICE-CHAIR CHANDA: I'm just kind of laying out the various number for me to help understand what the intent of the text was and whether the text did work and I when I'm looking at these various developments that have been built prior to the enactment of the text and after that and doing the comparison I, I feel that the text has been effective and I just wanted to state that.

CHAIR PERLMUTTER: And again, I -- we need to repeat again and again for the public. The question of mechanical voids is not before us today. We decided that on another case and City Planning reacted by changing the Zoning Resolution and so we don't look at those cases twice. It's called an issue preclusion. We don't look at cases twice when the same question is presented in another case so we're only looking at what's known as bulk packing, bulk distribution rule which is what Commissioner Chanda is referring to right now. Okay.

MR. LOW-BEER: Okay. Just very briefly. Well you said several times that your hands are tied and you interpret the Zoning Resolution as written and, you know, I only bring it up because it's the one case that I'm particularly familiar with but, you know, in the Patent case, the language of the Zoning Resolution said that the open space on a zoning lot has to be accessible to and usable by all residents. You found--

CHAIR PERLMUTTER: We can't speak about that case. It's in litigation. So you--

MR. STEINHOUSE: The City has a strict policy against discussing pending litigation.

MR. LOW-BEER: Against what?

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MR. STEINHOUSE: Discussing pending litigation.

CHAIR PERLMUTTER: That case is in litigation with the BSA.

MR. LOW-BEER: Well, I know.

CHAIR PERLMUTTER: So we cannot discuss it so you, you can't -- you can raise it but we can't comment.

MR. LOW-BEER: Well, okay. I'll just --

CHAIR PERLMUTTER: Okay.

MR. LOW-BEER: -- I don't expect you to comment. I just like to say that you found an ambiguity there whereas a subsequently, you know, at least the appellant addition said that there wasn't one so, you know, I would and, and of course as an attorney for the petitioners in that case I also believe there was no ambiguity so, you know, I would question whether it's always the case that you -- yeah, I mean I believe this was done in good faith but somebody looked at what was happening there and I know you were the only one who's still -- well Commissioner Ottley-Brown but she's not on this case.

So in any event, I'm sure that was all done in good faith and you did find an ability and you did not follow the plain language of the statute and I'm sorry to bring it up if you can't respond to it. I wasn't aware of that but anyway. Let me also say that in Stringfellow's it's true as Mr. Karnovsky said that the court said that the intent of the statute is to be ascertained from the words and the language used in the statute and if the language is thereof unambiguous and the words plain and clear, there is no occasion to resort to other means of interpretation. However, a sentence or two later the court said,

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however, according construing the law will sometimes be guided more by its purpose than its phraseology and in fact in that case they -- I submit that they were.

I really -- I think that's all I have to say about this. I'm sorry about this rabbit hole of 1865 Broadway but as, as I was saying I think that if you look at the, the real tower coverage in that case, it was less than 38 -- 30 percent. It was 28.9 percent and that building is also taller than it legally should be because of a loophole that was exploited. Thank you very much --

CHAIR PERLMUTTER: Thank you.

MR. LOW-BEER: -- for your consideration.

CHAIR PERLMUTTER: Thank you.

MR. LOW-BEER: And oh, one other thing, I have no objection whatsoever if you decide to sever the City Club case from the Landmark West case, but I do urge you to decide our case as quickly as you can. Thank you.

CHAIR PERLMUTTER: Okay. Thank you.

MR. KLEIN: Good afternoon. Again, Stuart Klein on behalf of Landmarks West. Two questions have been raised by you in the course of today's proceedings or two arguments rather. One is the timing of our appeal and the second is the substance of our appeal and whether or not you have the jurisdictional right or obligation to review that. To tell you the truth, I'm reminded of a quote from a Court of Appeals case you previously cited to and the question posed to the Board then and I pose to the Board now is what are you talking about.

This was filed in a timely fashion. This was filed within the 30 days pursuant to a final determination made by the Buildings Department which was further defined by a

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permit. That is a final determination made that is appealable to the Board of Standards and Appeals. In our application, we specifically said the owner's attempt to exempt the voids from floor area should be rejected as the voids are neither used for mechanical equipment nor are they accessory, the mechanic-, the residential uses in the tower. No mention of height is made in there. You're basically conflating void with heights. We couldn't even address whether or not a void was involved because the plans don't show the height of the mechanical space so that was hidden from us. It's been hidden from the Building's Department. It's been hidden from this Board.

COMMISSIONER SCIBETTA: Where is that? I'm sorry. What page is that on?

CHAIR PERLMUTTER: That's their initial.

MR. KLEIN: That's the initial 5/13/19.

COMMISSIONER SCIBETTA: Okay.

MR. KLEIN: So it is a core issue and core issues must be addressed by this Board. I'm not talking about the myriad of outlier issues that come before you in something of a, a staccato fashion over time. This was presented to you in our first application and it is clear on the language. There is no ambiguity here just like you're arguing there's no ambiguity with regard to the bulk resolution. There is no ambiguity here. We argued that this, this mechanical space was improper and an improper deduction so therefore it is before the Board.

Now, the, the B-, certainly the Buildings Department did as a matter of fact in Sky House case say that it was able to approve those mechanical drawings because as proposed, especially in light of composite mechanical plans for the proposed building

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illustrating the mechanical then proposed for the second, third, and fourth stories is found that it conformed to code. Here--

CHAIR PERLMUTTER: What are you reading?

MR. KLEIN: I'm reading from page four of 2016-4327A resolution.

CHAIR PERLMUTTER: The re-, the resolution on that case?

MR. KLEIN: That's correct. So the, the Buildings Department said it had complete plans in that case. It also said during the context of that case that it reviewed each and every mechanical plan to determine whether it conforms to code and whether or not in this instance the five percent could be reduced. Here we're talking about a lot more than five percent. I mean it's, it's off the board percentage wise. So then the Building's Department now comes to you today and it says well we didn't re-, we didn't review plans. The plans aren't here.

In fact, the Fire Department has plans that I made up that indicate that not a single item that's required in code was contained in those plans yet the Buildings Department passed them anyway and now the Buildings Department is saying to you well if they do apply again, based on the illicit, illicitly or the argued illicitly issued permit, we will not issue a final determination. That is a perversion of law and the judicial process.

It in effect is saying that we're not giving you the Board the power to review and we're not giving the people in the neighborhood or Landmarks West the ability to appeal because we're never giving you a final determination to take to court. So basically they didn't follow their protocol as set forth in Sky House, they didn't follow the building

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code, they didn't follow the pro-, the in-house protocol established by Tom Fariello and on top of that they're saying ha, ha, we're tying your hands, you can't do anything beyond this. Now in order to do that, the Court of Appeals in the field case said that if an agency breaks from long-established protocol, it has to give a reason why it's doing that.

CHAIR PERLMUTTER: Can you sorry. Can you give us --

MR. KLEIN: There is no reason.

CHAIR PERLMUTTER: -- can you give us a citation?

MR. KLEIN: Excuse me?

CHAIR PERLMUTTER: What's the field, what's the field case?

MR. KLEIN: Field case. I'll give you the cite later.

CHAIR PERLMUTTER: Okay.

MR. KLEIN: It's a Court of Appeals case that says if a governmental agency breaks from protocol, it has to give a good reason determination why it broke from protocol. None was given here. So right now, the Buildings Department didn't look at these plans and if it did look at these plans and didn't see anything, of course nothing was contained, contained in it. Those plans violated the building code, violated building standards, violated buildings protocol and now they're backing up by saying an oh, by the way, we're not gonna give you the right to appeal. I think it's incumbent upon you to demand the Buildings Department receive those plans so we can determine whether or not the mechanical deductions, not the height that the mechanical deductions were in fact properly taken off and this permit is valid. Thank

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you.

CHAIR PERLMUTTER: Okay. Thank you. Mr. Karnovsky.

MR. KARNOVSKY: Just two, two quick points. Stringfellow's speaks for itself. That case involved a question of what the term customarily should be understood to mean and the point is the court looked at it in the context of the Zoning Resolution and made its decision based on its understanding of the Zoning Resolution and context here understanding the special district rules and context leads inexorably to the conclusion that 82-34 means what it says. With respect to Mr. Klein's arguments, the point again is whether or not these issues were raised on appeal.

UNIDENTIFIED FEMALE 1 [03:04:08]: Could you speak up a little bit please?

MR. KARNOVSKY: The question is whether or not the issues was raised on appeal. It was not and it should not be heard.

CHAIR PERLMUTTER: Thank you. Okay. Okay. Any additional comments from Board members? Okay. What I would like to do is close this hearing, close both of these hearings and we will put this on for decisions for next week September 17th. It -- during which time we will look more clearly into this question of whether the mechanical question should be considered by us or whether it is precluded.

COMMISSIONER SCIBETTA: Should we close it?

CHAIR PERLMUTTER: Sorry?

Mr. Klein: Do you want me to give you the field case?

MR. STEINHOUSE: No, we have it.

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CHAIR PERLMUTTER: We have it. Okay. Okay. And so, we don't need additional submissions because we don't know whether that's something that we're going to be reviewing. We have to see whether it is properly before us or not. Okay? Okay.

MS. MATIAS: Okay.

CHAIR PERLMUTTER: So, so motion to close.

MS. MATIAS: Chair Perlmutter?

CHAIR PERLMUTTER: Aye.

MS. MATIAS: Vice-Chair Chanda?

VICE-CHAIR CHANDA: Aye.

MS. MATIAS: Commissioner Ottley-Brown abstained. Commissioner Sheta -- She-, sorry. Commissioner Sheta?

COMMISSIONER SHETA: Aye.

MS. MATIAS: Commissioner Scibetta?

COMMISSIONER SCIBETTA: Aye.

CHAIR PERLMUTTER: Okay. So, the case the hearing is closed. No further submissions and we'll have -- make our decision next Tuesday okay and you can hear us comment on it next Monday in Review Session.

MS. MATIAS: Okay. Thank you everyone for coming.

COMMISSIONER SCIBETTA: Can we take a?

CHAIR PERLMUTTER: Yeah.

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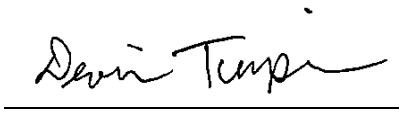
CERTIFICATE OF ACCURACY

I, Devin Turpin, certify that the foregoing transcript of the Public Hearing of New York City Board of Standards & Appeals on September 10, 2019 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: November 26, 2019

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018

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NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

Calendar Number: 2019-89-A

36 West 66th Street, Manhattan

Public Review Session

September 16, 2019

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MS. MATIAS: The appeals calendar. Decision items. Item number one. 2019-89-A. 36 West 66th Street, Manhattan. This is the appeal brought by City Club.

CHAIR PERLMUTTER: Alright. So we're gonna do these separately and correctly?

COMMISSIONER OTTLEY-BROWN: I must recuse.

CHAIR PERLMUTTER: Yes. Okay. Right. Sorry. Okay. This case was closed and so as I said we're going to do these two applications separately and vote just on this one. Okay? The question presented in this application is whether the mechanical space is limited as to height by the Zoning Resolution. I believe that that identical question was asked and answered in the Sky House case on East 30th Street so there is no need to look again, look at it again and my position on the issue hasn't changed. I, I'm saying that in part because I use the term issue precluded and that is used in a different sort of a term of art. This is about asked and answer. A question has already been asked and an- answered and no reason to change position, and no difference in facts or questions that would cause me to wanna change position.

The section question has to do with bulk distribution and I think the text is clear that it applies to all zoning lots in this special district. So just on that case so other comments on that case?

VICE-CHAIR CHANDA: No.

CHAIR PERLMUTTER: Anybody else?

COMMISSIONER SHETA: No, I share the same opinion.

CHAIR PERLMUTTER: Okay.

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COMMISSIONER SCIBETTA: I, I just want to add I can certainly understand the frustration.

MS. MATIAS: Can you use the mike please?

CHAIR PERLMUTTER: Stop and pull the mike to you.

COMMISSIONER SCIBETTA: I can certainly understand the frustration that the community has on this, on this case 'cause I'm very frustrated with the result here as well. There is -- I can -- it even looking at the model, the 3D model that was brought in by one of the speakers, it's clear that this building does not conform with the neighborhood. That being said, I agree with, with the Chair. I, I don't believe that -- what are we looking for -- oh, sure. I, I don't believe that the language in the Resolution permits us to look behind anything else as it is clear and unambiguous. And for us to do so would be, would be stepping outside of what our mandate and we're not the body to decide whether or not the legislation how it should be written. We're just interpreting what is written.

CHAIR PERLMUTTER: I agree. Okay.

COMMISSIONER SHETA: I believe last hearing the Chair made it clear, clear that the, the our job as a Board is not to like write laws or write Zoning Resolution. Our role is to -- our job is to just apply and I, I hope like the majority of the public and, and, and whoever testified before us got this and I'm hoping that the text is, is this is specific text and every actually every other text that was like available before us like too many other cases that during voting on them I was like hearing pain inside yourself because I, I did feel like this is not the way to go but at the end of the day, it is the way that the ZR is written. I, I hope this text pertains to this is specific case is

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gonna be fixed in such a way to avoid similar situations in the future and again, it's not our job to fix it. It's our job just to look at it and apply it.

COMMISSIONER SCIBETTA: Right. And, and that's what makes this case particularly frustrating in that the -- when it came to mechanical voids, that issue was then readdressed by the legislation. Unfortunately, that hasn't been an issue that was brought to the, to the Board about whether or not they, the, the parties vested prior to the enactment of this, of this new regulation. I again I can certainly understand the frustration as it's a difficult decision to come to.

CHAIR PERLMUTTER: Thank you.

VICE-CHAIR CHANDA: Can I?

CHAIR PERLMUTTER: Sure.

VICE-CHAIR CHANDA: Since I went back and rereviewed DOB's statements, I, I agree with the DOB that the permit was validly issued. The proposed project does comply with Zoning Resolution 82-36 and 82-34 and that there is no ambiguity with regards to the text or the intent. It achieves the reduction in height, in heights as the, the drafters of the Zoning Resolution had proposed back in 1993.

As of the last hearing, I had as I was reviewing some of the projects that were built along the corridor within the Special Lincoln Square District and with outside the Special Lincoln Square District in the C4-7 zoning district, what I did notice was that given similar lot size, the building heights did differsignificantly from the period when the zoning resolution was amended in 1993 so projects that were within the Special Lincoln Square District that were built prior to 1993 of a similar lot area had much taller

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building than projects that were built after 1993 and similarly projects that are outside the Lincoln Square District where this regulation does not apply and the general height and setback where other regulations apply even in those areas the heights were much taller.

So definitely, the intent of the drafters was to bring the heights down within the Special Lincoln Square District and the project does that and as I have stated before and I think the Chair has stated it also I think nobody could have predicted then the kind of zoning lot that could have been developed, the kind of mechanical spaces that would have been considered, and those are added to the height.

The actual livable space, the residential number of floors 35 floors is the most typical number of floors that one sees in the Special Lincoln Square District. So I do, I take a slight diversion from what my fellow Commissioners have said and I do believe it is very consistent what the Zoning Resolution has stated. With regards to the mechanical void--

CHAIR PERLMUTTER: I'm not sure. I think they're talking about the mechanical voids, not the bulk distribution question. Right? In, in and I think the comments that they were --

VICE-CHAIR CHANDA: Okay.

CHAIR PERLMUTTER: -- talking about had to do with the voids.

VICE-CHAIR CHANDA: Okay.

CHAIR PERLMUTTER: And not the mechanical.

VICE-CHAIR CHANDA: Right.

CHAIR PERLMUTTER: The bulk distribution.

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COMMISSIONER SCIBETTA: That, that's, that's what in reality, that is what's making the height.

VICE-CHAIR CHANDA: And that's what's -- that is what's and, and --

COMMISSIONER SCIBETTA: For the most part.

VICE-CHAIR CHANDA: -- and the fact that this project did get the permit before the Zoning Resolution was amended, it's, it's kind of--

COMMISSIONER SCIBETTA: And that's, that's what we're --

VICE-CHAIR CHANDA: That's what we can.

COMMISSIONER SHETA: -- that's, that's what we're, that's what we're seeing.

VICE-CHAIR CHANDA: Okay. Then I'm in agreement.

COMMISSIONER SHETA: If, if they are similar situations, in the zoning text amended before another came before another case comes before us and the public and the elected officials become like very frustrated, you're hearing like, like the last hearing. I actually during the last hearing I was like very upset because I feel, I did feel like I'm powerless because I feel like they have a point, but we can do nothing about it.

COMMISSIONER SCIBETTA: There's, there's no height restriction in the Zoning Resolution and we can't write one in.

CHAIR PERLMUTTER: Right.

COMMISSIONER SCIBETTA: Because the legislation

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had the opportunity to do so and it didn't and for us to do so --

CHAIR PERLMUTTER: Right.

COMMISSIONER SCIBETTA: -- again would make us legislat-, would -- it's not something would survive an appeal in any event.

CHAIR PERLMUTTER: Right. And, and I do wanna add since you raised the subject. I was very disturbed by a comment by one of the Legislators that the Legislators are powerless to do anything about it and we're powerless because by the way this mechanical void if you want to call it that subject started fairly long ago, right, and when I think of how facile the City Council is in drafting legislation and passing it very quickly, I was very surprised to hear that they felt powerless because we are not Legislators, they are and, and they don't need to wait for the City Planning Commission to propose something that they view as inadequate.

They have the ability to propose their own kind of legislation and have done so many times on many other kinds of situations and by way of example the Sen-, the State Senate and Assembly introduced a very aggressive bill to reduce the height of all floors in buildings and where that goes and so on is another question. But it just shows that and the State Legislature is less let's say facile about passing legislation. They propose a lot but it's harder to get it approved but it's -- I don't find that to be the case with the City Council. Everyday we're looking at legislation that aff-, that actually affects the BSA that's being proposed so I was really disturbed by Legislators putting it on the BSA which really is an adjudicatory body. We're not a legislative body and I just wanted just to add that.

COMMISSIONER SCIBETTA: In this particular case,

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they did change, they did change the law on this.

CHAIR PERLMUTTER: Yes. But the council members.

COMMISSIONER SCIBETTA: And to their credit--

VICE-CHAIR CHANDA: Council members said it wasn't to their satisfaction. Unfortunately, that's not something we can do. They are the legislative body. They could have. Couldn't do it, that's not something that we can opine on.

CHAIR PERLMUTTER: Right. Okay. Thank you.

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CERTIFICATE OF ACCURACY

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Certified By

Date: November 26, 2019

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018

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NYSCEF DOC. NO. 52 RECEIVED NYSCEF: 02/16/2021

NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

Calendar Number: 2019-94-A

36 West 66th Street, Manhattan

Public Review Session

September 16, 2019

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MS. MATIAS: Item number two. 2019-94-A. 36 West 66th Street, Manhattan.

COMMISSIONER SCIBETTA: Do we get Co-Commissioner Ottley-Brown?

CHAIR PERLMUTTER: No, no, no. It's the same case. Same case.

VICE-CHAIR CHANDA: It's from that.

COMMISSIONER SCIBETTA: Oh, I'm sorry.

MS. MATIAS: I'm sorry. The appeal by Landmark West? Say that, say that case again 'cause it was.

MS. MATIAS: Item number two. 2019-94-A. 36 West 66th Street, Manhattan. This is the appeal filed by Landmark West Et. Al.

CHAIR PERLMUTTER: Right. Okay. So as to this submission in this case, the first questions are the same as in the prior case 2019-89-A. So my response is to those first two questions are the same. And so if I understand it correctly and cou- counsel please correct me if I'm --

MR. STEINHOUSE: Yes.

CHAIR PERLMUTTER: -- misunderstand. We'll issue a resolution as to those two questions indicating that a third issue remains to be decided. The third issue is and first I say I while I do not concede that the papers in this case raise the question whether the mechanical floor space is being used for mechanical equipment in a manner that justifies the several levels of mechanical floors on which the equipment sits, I was very surprised to hear that DOB would not issue a final determination on that

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question if asked to do so by appellants, hence, depriving appellants of their right to appeal that question.

In reviewing the Sky House Resolu- Resolution which is very detailed and also listening to the videos of the hearings, it's clear that once asked by this Board to do so DOB looked very carefully at the mechanical drawings and issued a letter to BSA stating why it determined that the amount of equipment in those mechanical floors was typical of a building of that type so I don't see how we cannot avail appellants of that same opportunity in this case so this case would remain.

We would have to reopen it and allow first of all appellants to provide the mechanical drawings, direct DOB to review the mechanical drawings, direct the owner to provide the mechanical drawings which by the way in Sky House, the owner was very cooperative. They provided the mechanical drawings, the detailed sets, right, and with that we could see them and as a person who, you know, as an architect, I look at mechanical drawings and I just see all -- a lot of equipment, but there was no question there was a lot of equipment in that case with ductwork and so on and so it was easy to see that the rooms were filled but it was DOB's engineers who actually looked at the mechanical equipment and, and deemed that the amount of equipment made sense for that building type. So direct all three parties to cooperate in that.

VICE-CHAIR CHANDA: In DOB's initial submission, DOB had stated that it had applied the Board's direction in analyzing the floors housing mechanical equip-, in -- sorry. DOB, DOB had applied BSA's direction in analyzing floors housing mechanical equipment regarding incidental prong and on the amount of equipment proposed for this project was sufficient to justify its exemption from floor area

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as it was serving the principal use. That's I'm quoting DOB's statement so.

CHAIR PERLMUTTER: There's a statement in the letter that where we can't tell how -- what they looked at, how far they looked and so on as opposed to what the Sky House case had which was a very detailed lesson -- letter that said things like there are this many furnaces, this many chillers, this many this, this many that. They're tied together. I mean it went into enormous detail which is why our resolution goes into such enormous detail and I don't think then -- so in the issue of asked and answered in the Sky House case, the question of asked and answered was does the Zoning Resolution tell you how tall the mechanical space has to be? So that we, we didn't but in Sky House, one of the other questions was do they need this many mechanical floors right? Is there enough mechanical equipment to justify the number of floors. That was carefully reviewed in front of us, right, and so I don't see how we can treat these two cases differently.

COMMISSIONER SCIBETTA: And I think it's particularly interesting in this case considering the history of this case and how an additional floor was added to the project in response to the, to the Fire Department's concern. Therefore, I would like to know whether these floors are being properly utilized or utilized if one could just add a floor in response to the Department -- the Fire Department's concerns.

CHAIR PERLMUTTER: Uh-huh. Okay. Okay. Anything else?

COMMISSIONER SHETA: No, I have nothing to add on this.

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CHAIR PERLMUTTER: Okay.

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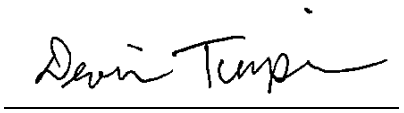

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NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

Calendar Number: 2019-94-A

36 West 66th Street, Manhattan

Public Hearing

September 17, 2019

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MS. MATIAS: We'll start with the appeals calendar decision items. Item number one, 2019-89-A. 36 West 66th Street, Manhattan. The appeal filed by the City Club.

CHAIR PERLMUTTER: Alright. Does anyone want from the City Club wanna come up?

COMMISSIONER OTTLEY-BROWN: I must recuse.

CHAIR PERLMUTTER: Oh, yeah. Yeah.

MS. MATIAS: This matter is on for decision.

CHAIR PERLMUTTER: Yeah. But some usually someone gets up and stands there when we vote so that's. State your name please.

MR. WEINSTOCK: Chuck Weinstock.

CHAIR PERLMUTTER: Okay.

MR. WEINSTOCK: Representing City Club.

CHAIR PERLMUTTER: City Club. Okay. So--

MR. WEINSTOCK: And other, and other appellants.

CHAIR PERLMUTTER: Okay. So for the members of the public who weren't at the Review Session yesterday, there was a Review Session at which time the Commissioners spoke at length about their opinions on this so if you want to hear the lengthy conversations, please listen to the video which is on our website for yesterday's Review Session. Okay? Correct, it's on our website?

MS. MATIAS: Yep.

CHAIR PERLMUTTER: Okay. So then I would like to bring this -- so what we're bringing to a vote is the questions that were presented by City

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Club which were specifically about mechanical space and the bulk distribution. Okay? So for a motion to -- oh, we closed the hearing already. A motion to grant the appeal.

MS. MATIAS: Chair Perlmutter?

CHAIR PERLMUTTER: No.

MS. MATIAS: Vice-Chair Chanda?

VICE-CHAIR CHANDA: No.

MS. MATIAS: Commissioner Ottley-Brown?

COMMISSIONER SCIBETTA: She recused.

MS. MATIAS: Oh, sorry. Abstained sorry.

MS. MATIAS: Commissioner Sheta?

COMMISSIONER SHETA: No.

MS. MATIAS: Commissioner Scibetta?

COMMISSIONER SCIBETTA: No.

MS. MATTIAS: Application is denied.

Mr. Weinstock: You're done with us?

Ms. Matias: Yes.

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NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

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36 West 66th Street, Manhattan

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MS. MATIAS: 4A, 36 West 66th Street, Manhattan. This is the appeal brought by parties of Landmark West.

CHAIR PERLMUTTER: Okay, so.

MS. MATIAS: Mr. Klein.

CHAIR PERLMUTTER: This, this -- yes, Mr. Klein. Just want to say your name.

MR. KLEIN: Stuart Klein, Klein Slowick on behalf of the appellant.

CHAIR PERLMUTTER: Okay. So we're going to sort of bisect this application into two parts. The -- it was closed but we will for one part of it o-, reopen, but I don't know that we need to specifically reopen today. It's more instruction. I'm not really sure how we're handling that technically.

MS. MATIAS: I thought we should reopen.

CHAIR PERLMUTTER: But we're -- but we need to vote on the two questions that are identical to the questions for City Club, right? So we're gonna bisect the --

MS. MATIAS: Okay.

CHAIR PERLMUTTER: -- the decision. Okay? So as to the two questions that we just voted on which are the mechanical space as to the height of the ceiling and the bulk distribution, we talked about that at the Review Session and so I'd just like to bring that to a, a vote okay, and leave out of it the question of the mechanical equipment and whether that's the appropriate amount of mechanical equipment. Okay? So on those two questions, a motion to grant the appeal.

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MS. MATIAS: Chair Perlmutter?

CHAIR PERLMUTTER: No.

MS. MATIAS: Vice-Chair Chanda?

VICE-CHAIR CHANDA: No.

MS. MATIAS: Commissioner Sheta?

COMMISSIONER SHETA: No.

MS. MATIAS: Commissioner Scibetta?

COMMISSIONER SCIBETTA: No.

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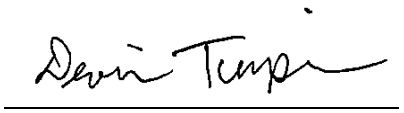

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2019-89-A and 2019-94-A
APPLICANT – City Club of New York, for West 66th Sponsor LLC
OWNER – Extell Development Co.
SUBJECT – Application May 7, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 11, 2019. C4-7, R8 Special Lincoln Square District.
PREMISES AFFECTED – 36 West 66th Street aka 50 West 66th Street, Block 1118, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #7M
ACTION OF THE BOARD – Application Denied.
THE VOTE TO GRANT –
Affirmative: ……..……0
Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta and Commissioner Scibetta……4
Recused: Commissioner Ottley-Brown…..……1
THE RESOLUTION –

WHEREAS, the building permit issued by the Department of Buildings ("DOB") on June 7, 2017, as amended and reissued April 11, 2019, under New Building Application No. 121190200 (the "Permit"), authorizes construction of a 39-story residential and community-facility building with a total height of 776 feet (the "New Building") by West 66th Sponsor LLC (the "Owner") on a zoning lot with 54,687 square feet of lot area; and

WHEREAS, this is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York ("ZR" or the "Zoning Resolution") and Section 666 of the New York City Charter, brought on behalf of the City Club of New York and certain members ("CC Appellant") and on behalf of Landmark West! ("LW Appellant") (collectively, "Appellants"), alleging errors in the Permit pertaining to whether the floor-to-ceiling heights of "floor space used for mechanical equipment" in the New Building complied with the "floor area" definition of ZR § 12-10 in effect before May 29, 2019, and whether the New Building complies with applicable bulk-distribution regulations for zoning lots located in the Special Lincoln Square District in accordance with ZR § 83-34; and

WHEREAS, for the reasons that follow, the Board denies this appeal; and

ZONING PROVISIONS

WHEREAS, ZR § 12-10, entitled "Definitions," provides in pertinent part:

> [T]he *floor area* of a *building* shall not include: . . .
> (8) floor space used for mechanical equipment, except that such exclusion shall not apply in R2A Districts, and in R1-2A, R2X, R3, R4, or R5 Districts, such exclusion shall be limited to 50 square feet for the first *dwelling unit*, an additional 30 square feet for the second *dwelling unit* and an additional 10 square feet for each additional *dwelling unit*. For the purposes of calculating floor space used for mechanical equipment, *building segments* on a single *zoning lot* may be considered to be separate *buildings*; and

WHEREAS, ZR § 82-34, applicable in the Special Lincoln Square District and entitled "Bulk Distribution," states:

> Within the Special District, at least 60 percent of the total *floor area* permitted on a *zoning lot* shall be within *stories* located partially or entirely below a height of 150 feet from *curb level*.
> For the purposes of determining allowable *floor area*, where a *zoning lot* has a mandatory 85 foot high *street wall* requirement along Broadway, the portion of the *zoning lot* located within 50 feet of Broadway shall not be included in *lot area* unless such portion contains or will contain a *building* with a wall at least 85 feet high coincident with the entire *street line* of Broadway; and

BACKGROUND AND PROCEDURAL HISTORY

WHEREAS, the subject site is located on West 66th Street, between Columbus Avenue and Central Park West, in the Special Lincoln Square District (the "Special District"), located partially in a C4-7 zoning district and partially in an R8 zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 350 feet of frontage along West 66th Street, 201 feet of depth, 175 square feet of frontage along West 65th Street, 54,687 square feet of total lot area (35,105 square feet in a C4-7 zoning district and 19,582 square feet in an R8 zoning district), and is occupied by a two-story building and the New Building, which is under construction; and

WHEREAS, in *15 East 30th Street, Manhattan*, BSA Cal. No. 2016-4327-A (Sept. 20, 2017) ("*15 East 30th Street*"), the Board denied an interpretive appeal, finding that DOB appropriately permitted "floor space used for mechanical equipment" to be deducted from floor area without regard to floor-to-ceiling height, ZR § 12-10; and

WHEREAS, on June 7, 2017, DOB issued the Permit, authorizing construction of the New Building, originally proposed as a 27-story residential and community-facility building with a total height of 292 feet on a zoning lot with 15,021 square feet of lot area; and

WHEREAS, on April 11, 2019, DOB reissued the Permit, as amended, authorizing the taller New Building on a larger zoning lot; and

WHEREAS, Appellants commenced this appeal in May 2019 under BSA Calendar No. 2109-89-A and under BSA Calendar No. 2019-94-A, challenging the Permit; and

WHEREAS, on May 29, 2019, the City Council approved with modifications a citywide text amendment generally providing that neither mechanical spaces taller than 25 feet nor mechanical spaces within 75 feet of one another would be deducted from floor area; and

2019-89-A and 2019-94-A

WHEREAS, a public hearing was held on this appeal on August 6, 2019, after due notice by publication in *The City Record*, with a continued hearing on September 10, 2019, and then to decision on September 17, 2019; and

WHEREAS, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

ISSUES PRESENTED

WHEREAS, there are two issues presented in this appeal: (1) whether, at the time of the Permit's reissuance, spaces in the New Building designated to be "used for mechanical equipment" count as floor area under ZR § 12-10 and (2) whether the New Building, which is situated on a zoning lot that is divided by zoning district boundary lines, complies with bulk-distribution regulations applicable in the Special District under ZR § 82-34; and[1]

DISCUSSION

WHEREAS, because this is an appeal for interpretation, the Board "may make such . . . determination as in its opinion should have been made in the premises in strictly applying and interpreting the provisions of" the Zoning Resolution, ZR § 72-11; and

WHEREAS, the Board has reviewed and considered—but need not follow—DOB's interpretation of the Zoning Resolution in rendering the Board's own decision in this appeal, and the standard of review in this appeal is de novo; and

WHEREAS, as discussed herein, (A) the Board finds that Appellants have not substantiated a basis to warrant departure from its decision in *15 East 30th Street* in that the Zoning Resolution in effect prior to May 29, 2019, did not regulate the floor-to-ceiling heights of "floor space used for mechanical equipment" in exempting such mechanical space from floor-area calculations, ZR § 12-10; (B) the Board finds that Appellants have failed to demonstrate that the New Building's zoning lot does not comply with bulk-distribution regulations applicable in the Special District under ZR § 82-34; and (C) the Board has considered all of the parties' arguments on appeal, including those summarized below; and

A. Height of Mechanical Spaces

WHEREAS, Appellants contend that the Zoning Resolution in effect prior to May 29, 2019, regulated the floor-to-ceiling heights of "floor space used for mechanical equipment" in exempting such mechanical space from floor-area calculations, ZR § 12-10; however, the Board finds that Appellants have not substantiated a basis to warrant departure from its decision in *15 East 30th Street*; and

WHEREAS, the Board considered this exact issue in *15 East 30th Street* and determined that, "based upon its review of the record, the definition of 'floor area' set forth in ZR § 12-10 and the Zoning Resolution as a whole, the Board finds that the Zoning Resolution does not control the floor-to-ceiling height of floor space used for mechanical equipment"; and

WHEREAS, in *15 East 30th Street*, DOB presented testimony that "the Zoning Resolution does not regulate the floor-to-ceiling height of a building's mechanical spaces," and the Department of City Planning ("DCP") also submitted testimony stating that "there are no regulations in the Zoning Resolution controlling the height of mechanical floors"; and

WHEREAS, Appellants present no persuasive reason for the Board to depart from its prior consideration of this issue, and the record further supports the Board's interpretation of the floor-area definition in *15 East 30th Street*; and

WHEREAS, the record reflects no evidence characterizing the Residential Tower Mechanical Voids Text Amendment, CPC Report No. N 190230 ZRY (April 10, 2019), as a mere clarification rather than a change in law, as asserted by Appellants; and

WHEREAS, instead, the accompanying report states that "[t]he [Zoning] Resolution does not specifically identify a limit to the height of such [mechanical] spaces," while the text amendment itself explicitly limits the height of mechanical spaces that are exempt from floor-area calculations, *see* CPC Report No. N 190230 ZRY (April 10, 2019); and

WHEREAS, the Residential Tower Mechanical Voids Text Amendment's attendant environmental review also characterizes the "No-Action Scenario" as allowing the development of buildings with mechanical spaces ranging from 80 to 90 feet in height, while the "With-Action Scenario" would limit mechanical spaces

1 There is no dispute that vesting under ZR § 11-33 is not before the Board in this appeal. On the other hand, as discussed at hearing, a timely third issue has not been presented by Appellants regarding whether the amount of floor space used for mechanical equipment in the New Building is excessive or irregular, and Appellants' discussion of mechanical space in the New Building in their initial filings instead center on the volume and floor-to-ceiling heights of mechanical spaces. However, based on the lack of clarity about LW Appellant's ability to procure a final determination from DOB, testimony corroborated by DOB that a subsequent final determination would be refused, and Appellants' requests to proceed separately, the Board finds it appropriate to address this third issue, regarding (3) whether the architectural and mechanical plans for the New Building show sufficient mechanical equipment in the area identified as mechanical space to justify floor-area deductions, in a subsequent decision. *See* ZR § 72-11 (Dec. 15, 1961) (authorizing the Board "on its own initiative" to "review any . . . order, requirement, decision or determination of the Commissioner of Buildings, [and] of any duly authorized officer of the Department of Buildings"). Accordingly, on September 17, 2019, the Board reopened the appeal filed by LW Appellant under BSA Calendar No. 2019-94-A to receive additional testimony only with respect to this third issue, which is not decided herein and is set for a continued hearing on December 17, 2019.

2019-89-A and 2019-94-A

to heights from 10 to 25 feet; and

WHEREAS, lastly, DCP's *Residential Mechanical Voids Findings: Building Permits Issued b/w 2007 and 2017 R6 through R10 Districts* (Feb. 2019) ("*Residential Mechanical Voids Findings*"), about mechanical spaces' floor-to-ceiling heights, which Appellants assert is a study of typical floor-to-ceiling heights for mechanical spaces, is not relevant to the Board's decision in *15 East 30th Street* because *Residential Mechanical Voids Findings* studies floor-to-ceiling heights, while *15 East 30th Street* determined such floor-to-ceiling heights were not regulated to qualify as floor-area-exempted "floor space used for mechanical equipment," ZR § 12-10; and

WHEREAS, accordingly, based on the foregoing, the Board finds that Appellants have not substantiated a basis to warrant departure from its decision in *15 East 30th Street* in that the Zoning Resolution in effect prior to May 29, 2019, did not regulate the floor-to-ceiling heights of "floor space used for mechanical equipment" in exempting such mechanical space from floor-area calculations, ZR § 12-10; and

B. Bulk Distribution

WHEREAS, the Board finds that Appellants have also failed to demonstrate that the New Building's zoning lot does not comply with bulk-distribution regulations applicable in the Special District under ZR § 82-34; and

WHEREAS, the subject zoning lot is wholly located within the Special District, which was established and designed to "conserve [this area's] status as . . . a cosmopolitan residential community," ZR § 82-00(a), and "to promote the most desirable use of land in this area and thus to conserve the value of land and buildings, and thereby protect the City's tax revenues," ZR § 82-00(f); and

WHEREAS, because the subject zoning lot is partially located in an R8 zoning district and partially located in a C4-7 zoning district, the Zoning Resolution treats the subject site as a zoning lot divided by a district boundary; and

WHEREAS, the Zoning Resolution contains special provisions for zoning lots divided by district boundaries,[2] *see* ZR § 77-00, and "[w]henever a *zoning lot* is divided by a boundary between two or more districts and such *zoning lot* did not exist on December 15, 1961, or any applicable subsequent amendment thereto, each portion of such *zoning lot* shall be regulated by all the provisions applicable to the district in which such portion of the *zoning lot* is located," ZR § 77-02; and

WHEREAS, there is no dispute that the Zoning Resolution's split-lot provisions apply "on a regulation-by-regulation basis," *Beekman Hill Ass'n v. Chin*, 274 A.D.2d 161 (1st Dep't 2000); and

WHEREAS, however, Appellants contend that the New Building's zoning lot does not comply with the Zoning Resolution's split-lot provisions with respect to the Special District's bulk-distribution regulations, *see* ZR § 82-34; and

WHEREAS, more specifically, Appellants contend that the Special District's bulk-distribution regulations and tower regulations, ZR §§ 82-34 and 82-36, are intended to operate together—always, and only, together—such that the Special District's bulk-distribution regulations do not constitute "provisions applicable to the [R8] district in which . . . such portion of the zoning lot is located," ZR § 77-02; and

WHEREAS, there is no dispute that the New Building is located on a split lot for purposes of the tower-coverage regulations and that the New Building complies with the Special District's applicable tower-coverage regulations, *see* ZR § 82-36; and

WHEREAS, Appellants, the Owner, and DOB vigorously dispute whether the Special District's bulk-distribution regulations apply to the R8 portion of the subject site, *see* ZR § 82-34; and

WHEREAS, the Zoning Resolution provides that "[w]ithin the Special District, at least 60 percent of the total *floor area* permitted on a *zoning lot* shall be within *stories* located partially or entirely below a height of 150 feet from *curb level*," ZR § 82-34; and

WHEREAS, from this provision, it is clear that the bulk-distribution regulations apply "[w]ithin the Special District"—in other words, throughout the Special District without qualification or regard to subdistrict, street frontage, or underlying zoning district; and

WHEREAS, nothing about the text of the Special District's bulk-distribution regulations evinces an intent to link inextricably these bulk-distribution regulations with tower-coverage regulations; and

WHEREAS, nowhere in the text of this first sentence is there a cross-referenced citation to the Special District's tower-coverage regulations or to the bulk-distribution or tower-coverage regulations found at ZR §§ 23-65, 33-45 or 35-64, *see* ZR § 82-34; and

WHEREAS, in comparison, the text of the second sentence contains provisions applicable to a specifically defined area ("along Broadway"), ZR § 82-34, and the Special District's tower-coverage regulations contain similarly delineated areas ("Subdistrict A" and "Block 3"), ZR § 82-36; and

WHEREAS, on the other hand, the Special District's bulk-distribution regulations applicable to the New Building contain no such qualification—providing only the blanket applicability of "[w]ithin the Special District," ZR § 82-34; and

WHEREAS, there is no basis to import the qualifications suggested by Appellants into the Special District's bulk-distribution regulations where the text describes other regulations as applicable in specifically defined areas ("along Broadway," "Subdistrict A," and "Block 3") in other instances, ZR §§ 82-34 and 82-36; and

2 Such zoning lots are commonly called "split lots."

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WHEREAS, the Board has considered evidence presented by Appellants but finds it unconvincing at best: for instance, *Regulating Residential Towers and Plazas: Issues and Options*, DCP No. 89-46 (Nov. 1989) ("*Regulating Residential Towers and Plazas*"), and the timing of an unrelated same-day text amendment to ZR § 23-651 provide no support for Appellants' assertion that the Special District's bulk-distribution regulations always and only apply together with the Special District's tower-coverage regulations; DCP's *Regulating Residential Towers and Plazas* says no such thing, and the timing of unrelated text amendments provides no guidance whatsoever; and, if anything, DCP's *Regulating Residential Towers and Plazas* reflects that the City rejected an outright height limitation of 275 feet within the Special District, favoring the more flexible bulk controls set forth in ZR § 82-00; and

WHEREAS, while the Board has heard and considered all of Appellants' arguments, Appellants have presented no persuasive basis to find the applicability of the Special District's bulk-distribution regulations unclear, so the Board declines Appellants' invitation to delve further into the legislative history "in strictly applying and interpreting the provisions of" the Special District's bulk-distribution regulations in this appeal, ZR § 77-11; and

WHEREAS, Appellants contend that this literal interpretation ("[w]ithin the Special District" means "throughout the Special District") leads to absurd results that gut the purported purpose of the Special District's bulk-distribution—to whit, reducing the height of buildings; and

WHEREAS, however, nothing in the record indicates that this literal interpretation reflects a mistake or scrivener's error in drafting the 1994 text amendment to the Special District's bulk-distribution regulations; and

WHEREAS, the record instead reflects testimony and credible evidence in the form of architectural diagrams and examples of buildings in the vicinity indicating that such a result is not absurd and that, instead, the Special District's bulk-distribution regulations do operate to reduce the height of buildings in the Special District—only not to the extent Appellants wish; and

WHEREAS, at hearing, the Board examined a number of examples of buildings in the Special District constructed before and after the enactment of the Special District's bulk-distribution regulations in 1994, finding the pre-1994 buildings generally exceeded the heights of post-1994 buildings on similarly sized zoning lots; and

WHEREAS, the Board also compared buildings constructed inside and outside the Special District, finding that post-1994 buildings outside the Special District generally exceeded the heights of post-1994 buildings inside the Special District on similarly sized zoning lots; and

WHEREAS, this discrepancy in building height before and after the enactment of the Special District's bulk-distribution regulations and this discrepancy inside and outside the Special District both lend credence to DOB and the Owner's assertion that the Special District's bulk-distribution regulations—as interpreted herein—do operate to reduce the height of buildings in the Special District; and

WHEREAS, at hearing, the Board further noted that floor plates the size of those in the New Building—a recent architectural development that results in less floor area being used per floor and that allows for taller towers in zoning districts without height limits—could not have been anticipated in 1994 when the City amended the Special District's bulk-distribution regulations, but the Board also observed that Appellants' height concerns in this appeal appear focused not on the Special District's bulk-distribution regulations but rather on the height of mechanical spaces in the New Building—a separate issue settled in *15 East 30th Street* and addressed above; and

WHEREAS, accordingly, the Board finds that Appellants have failed to demonstrate that the Zoning Resolution treats the New Building's zoning lot as a split lot with respect to the Special District's bulk-distribution regulations and that Appellants have failed to demonstrate that the New Building's zoning lot does not comply with the bulk-distribution regulations applicable in the Special District under ZR § 82-34; and

C. Parties' Positions

WHEREAS, in reaching its decision set forth herein, the Board has considered all of the parties' arguments on appeal, including those put forth by Appellants, DOB, and the Owner, but ultimately finds Appellants' arguments unpersuasive; and

Appellants' Position

WHEREAS, the Board has considered all of Appellants' arguments on appeal but finds them ultimately unpersuasive in light of the foregoing; and

WHEREAS, Appellants state that this appeal should be granted because, at the time of the Permit's reissuance, "196 vertical feet of purported mechanical space in the midsection of" the New Building would not be "used for mechanical equipment" and is not "customarily accessory to residential uses," therefore should be included as "floor area" as defined in ZR § 12-10, and because the New Building does not comply with the bulk-distribution regulations applicable in the Special District, *see* ZR § 82-34; and

Appellants: Height of Mechanical Spaces

WHEREAS, Appellants state that "196 vertical feet of purported mechanical space" in the New Building do not comply with the ZR § 12-10 "accessory use" definition because "these floors" are not "customarily found in connection with residential uses"; and

WHEREAS, Appellants state that this issue is not settled by the Board's *15 East 30th Street* decision, where the appellant in that appeal failed to provide any evidence or expert opinion that mechanical space in that building was "irregular"; and

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WHEREAS, Appellants state that, however, since the Board's resolution of that appeal, DCP studied mechanical space in 796 residential buildings constructed between 2007 and 2017 in R6–R10 zoning districts, finding that "[o]nly a few TOB [tower-on-base] buildings had a mechanical floor below the highest residential floor (exclusive of cellars)," that "their typical height was 12–15 feet" and that "[l]arger mechanical spaces were generally reserved for the uppermost floors of the building in a mechanical penthouse, or in the cellar below ground," *Residential Mechanical Voids Findings*; and

WHEREAS, Appellants state that DCP's *Residential Mechanical Voids Findings* shows that the New Building's mechanical space, with an aggregate height of 229 feet throughout the New Building, is anomalous—not customary—because of its height; and

WHEREAS, Appellants state that the Owner's argument that the mechanical spaces do not constitute a "use" under the Zoning Resolution is unpersuasive because these spaces are "designed," "arranged," "intended," "maintained" and "occupied" for mechanical equipment, though Appellants assert their use is better characterized as increasing the New Building's height; and

WHEREAS, Appellants state that mechanical spaces in the New Building are not "floor space used for mechanical equipment," ZR § 12-10, because they are unnecessary since no mechanical equipment requires floor-to-ceiling heights of 48 feet to 64 feet; and

WHEREAS, Appellants state that, accordingly, mechanical spaces in the New Building do not qualify as "floor space used for mechanical equipment" that is exempt from floor-area calculations, ZR § 12-10; and

Appellants: Bulk Distribution

WHEREAS, Appellants state that the New Building does not comply with the Zoning Resolution's split-lot provisions and the Special District's bulk-distribution regulations under ZR §§ 82-34, 77-02 and 33-48; and

WHEREAS, first, Appellants state that the text "[w]ithin the Special District" is vague, and the Special District's bulk-distribution regulations do not apply in districts where, as Appellants contend, no towers are permitted; and

WHEREAS, Appellants state that, here, interpreting the Special District's bulk-distribution regulations to distribute "at least 60 percent of the total floor area" across the entirety of the subject zoning lot "below a height of 150 feet from curb level," ZR § 82-34, runs contrary to the Special District's bulk-distribution regulations' purpose; and

WHEREAS, Appellants state that proper application of the Special District's bulk-distribution regulations requires the total floor area of the tower and base to be equal to the total floor area permitted in the portion of the subject zoning lot located in the C4-7 zoning district; and

WHEREAS, Appellants state that including floor area from the R8 portion of the zoning lot, which floor area is located below a height of 150 feet from curb level, as well as floor area from the C4-7 zoning district does not have the effect of reducing the floor area, and ultimately the height of the tower, which Appellants assert, is the intent of the bulk-distribution regulations; and

WHEREAS, Appellants state that the proffered interpretation by DOB and the Owner actually results in a base with a total of 48 percent of the total floor area and a tower with 52 percent of the total floor area where, Appellants assert, the legislative intent was otherwise; and

WHEREAS, second, Appellants state that the subject zoning lot does not comply with the Zoning Resolution's split-lot provisions, which state that "each portion of such [split] *zoning lot* shall be regulated by all the provisions applicable to the district in which such portion of the zoning lot is located," ZR § 77-02, because residential towers are not permitted in the R8 district and are in the C4-7 district, hence the bulk-distribution regulations of ZR § 82-34 cannot apply in an R8 district ; and

WHEREAS, third, Appellants state that the phrase in ZR § 82-34 "[w]ithin a Special District" differentiates the applicability of the Special District's bulk-distribution regulations from the generally applicable bulk-distribution rule, set forth in ZR § 23-651(a)(2), and does not make ZR § 82-34 applicable to the R8 portion of the subject zoning lot; and

WHEREAS, Appellants state that the legislative history indicates that "[w]ithin a Special District" does not apply to the R8 portion of the subject site because in its consideration of the Special Lincoln Square District, *see* CPC Report, No. N 940127 (A) ZRM (Dec. 20, 1993) (the "1993 CPC Report") and Special Lincoln Square District Zoning Review (May 1993) (the "1993 DCP Lincoln Square Review"), the Department of City Planning studied six sites (including part of the subject zoning lot before its merger into the larger subject zoning lot) where development may occur, and none of the six were located in the 5.3 percent of the Special District located in an R8 zoning district; and

WHEREAS, Appellants state that the 1993 CPC Report, and the 1993 DCP Lincoln Square Review, do not support the Owner's argument that the bulk-distribution rule should apply to the entire zoning lot because they refer to both the Special District's bulk-distribution regulations and the tower-coverage regulations in tandem as conjunctive "urban design" controls; and

WHEREAS, Appellants state that the 1993 CPC Report's reference to "throughout the district" contrasts with the text amendment's other location-specific controls—such as "along Broadway," "for the Bow Tie sites" and "on the Mayflower block"—that do not apply here; and

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WHEREAS, Appellants state that the 1993 CPC Report notes that the tower-on-a-base rules were meant to confine building height to "the low-30 stories" in order to prohibit another Millennium Tower, *id.* at 19, described in the 1993 DCP Lincoln Square Review as "an extreme case [that] will rise to 46 stories or 525 feet in height, with only 42 percent of its bulk located below 150 feet. This is largely due to almost 125,000 square feet of movie theater uses, which create hollow spaces that substantially add to the mass and height of the building," *id.* at 14; and

WHEREAS, furthermore, Appellants state that, even if "[w]ithin a Special District" could be read to apply to the R8 portion of the subject site, ZR § 82-34 must not be interpreted to eviscerate legislative intent; and

WHEREAS, additionally, because the tower-coverage and bulk-distribution text of ZR § 23-651 is substantially similar and "identical in concept," to the bulk distribution text of ZR § 82-34 and the tower-coverage text of ZR § 82-36 Appellants state that there is clear legislative intent that ZR §§ 82-34 and 82-36 must be applied together; and

WHEREAS, Appellants state that the chart in ZR § 23-651 relates general tower-coverage to general bulk-distribution regulations by increasing the amount of floor area that must be located below a level of 150 feet as tower coverage increases, thereby ensuring a constant tower height regardless of tower coverage or lot area, but Appellants provide no evidence or explanation for the absence of such a chart from the Special District's bulk-distribution and tower-coverage regulations, *see* ZR §§ 82-34 and 82-36; and

WHEREAS, Appellants state that DCP's *Regulating Residential Towers and Plazas* supports this contention because it states that "[a] potentially effective approach [to reducing the height of new buildings] could be to require that a minimum percentage of the total floor area of the zoning lot be located at elevations less than 150 feet above the curb level," and "[i]n some instances, an appropriate relationship might be established by coupling other envelope controls, such as a minimum tower coverage, with a lower minimum percentage for the proposed Packing-the-Bulk regulations," *id.* at 27; and

WHEREAS, furthermore, Appellants state that, because ZR § 23-651 and ZR §§ 82-34 and 82-36 purportedly share "a common history and purpose," as suggested by their contemporaneous CPC reports, ZR §§ 82-34 and 82-36 must be applied together, *see* 1993 CPC Report and CPC Report No. N 940013 ZRM (Dec. 20, 1993) (pertaining to tower-on-base regulations for high density districts); and

WHEREAS, additionally, Appellants state that ZR §§ 82-34 and 82-36 only apply to towers, which are not permitted for residential use, but are for community facility uses, in R8 zoning districts; and

WHEREAS, in post-hearing submissions, Appellants argue that the Owner's failure to illustrate a hypothetical building subject to R8 height-and-setback regulations where the Special District's bulk-distribution regulations would have an impact indicates that the Special District's bulk-distribution regulations are pointless because "that Rule is doing no work at all" here; and

WHEREAS, Appellants state that a hypothetical community-facility tower permitted in the R8 portion of the subject site is also unavailing because there was no legislative intent to limit the height of community-facility towers and because the community facility tower regulations at ZR § 24-54(a) predate the 1994 amendments at issue and are not relevant to whether the 1994 amendments to the tower-coverage and bulk-distribution regulations must apply together throughout the Special District; and

WHEREAS, additionally, Appellants state that the text of ZR § 82-34 is ambiguous, and Appellants reiterate that the legislative history indicates that ZR §§ 82-34 and 82-36 must be applied in tandem to the C4-7 portion of the subject site only and not include the R8 portion for bulk-distribution purposes, since tower coverage, ZR § 82-36, applies only to the C4-7 under the split lot rules; and

WHEREAS, Appellants state that the Zoning Resolution's calculations that relate tower-coverage regulations to bulk-distribution regulations, as indicated in the chart in ZR § 23-651, similarly dictate that development cannot mathematically exceed the "low-30 stories" referenced in the legislative history of ZR § 82-34, and Appellants submitted a spreadsheet without zoning citations purporting to demonstrate that "the parameters [on lot area, bulk distribution, tower coverage, and the percentage of floor space that does not count as floor area] embody a mathematical limit that, not coincidentally, is in the low-30 stories"; and

WHEREAS, furthermore, Appellants state that the literal reading of ZR § 82-34 urged by DOB and the Owner does not control in this appeal because it leads to the absurd result of increasing the amount of floor area located more than 150 feet above curb level which results in a taller tower than was contemplated by the Zoning Resolution's drafters; and

WHEREAS, lastly, Appellants state that it is not plausible that ZR § 82-34 was meant to apply to the R8 portion of the subject site because there is no evidence of such intent; and

WHEREAS, accordingly, Appellants submit that the New Building violates the Special District's bulk-distribution regulations, *see* ZR § 82-34; and

DOB's Position

WHEREAS, DOB states that this appeal should be denied because, at the time of the Permit's reissuance, the Zoning Resolution did not regulate the floor-to-ceiling heights of floor space used for mechanical equipment and because the New Building's zoning lot complies with bulk-distribution regulations applicable in the Special District; and

DOB: Height of Mechanical Spaces

WHEREAS, DOB states that notwithstanding an amendment to the Zoning Resolution effective May 29, 2019, it is undisputed that the New Building's foundation had been completed by that time, so the New Building is allowed to proceed with construction as of right under ZR § 11-33; and

WHEREAS, DOB, however, disputes that the Zoning Resolution in effect before May 29, 2019, regulated floor-to-ceiling height of mechanical spaces in buildings, as asserted by Appellants; and

WHEREAS, instead, DOB notes that the Zoning Resolution specifically excluded "floor space used for mechanical equipment" from floor-area calculations under the "floor area" definition, ZR § 12-10; and

WHEREAS, DOB states that the New Building's mechanical space constitutes an "accessory use," ZR § 12-10; and

WHEREAS, DOB disputes the Owner's contention that mechanical space is not a "use" because mechanical space is a "purpose for which a building . . . may be designed, arranged, intended, maintained or occupied" as well as an "activity . . . operation carried on, or intended to be carried on, in a building," ZR § 12-10; and

WHEREAS, DOB states that, in particular, the mechanical space is "either a purpose for which the [New Building] is designed or an activity or operation carried on in the [New Building]"; and

WHEREAS, DOB states that the New Building's mechanical space meets the ZR § 12-10 "accessory use" definition because it is located on the same zoning lot as the related principal residential and community-facility uses; because it is incidental to the principal use by virtue of comprising significantly less floor space than the floor area of the principal uses; because mechanical equipment is customarily found in connection with residential and community-facility uses on a similar scale to the New Building's mechanical space; and because the mechanical space is in common ownership with the principal residential and community-facility uses; and

WHEREAS, DOB states that, additionally, the Board considered this exact issue in *15 East 30th Street* and determined that, "based upon its review of the record, the definition of 'floor area' set forth in ZR § 12-10 and the Zoning Resolution as a whole, the Board finds that the Zoning Resolution does not control the floor-to-ceiling height of floor space used for mechanical equipment"; and

WHEREAS, DOB states that, in so determining, the Board specifically credited DOB's technical review of the amount and size of mechanical equipment, and there is no reason to reach a different determination in this appeal; and

WHEREAS, DOB has reviewed and approved the New Building's mechanical equipment and "found that the amount of equipment proposed was sufficient to justify its exemption from floor area as it was serving the principal use"; and

DOB: Bulk Distribution

WHEREAS, DOB states that the New Building complies with the bulk-distribution regulations applicable in the Special District; and

WHEREAS, DOB cites to ZR § 82-64, which states that "[w]ithin the Special District, at least 60 percent of the *total floor* area permitted on a *zoning lot* shall be within *stories* located partially or entirely below a height of 150 feet from *curb level*,"; and

WHEREAS, DOB states that therefore ZR § 82-64 applies throughout the Special District without regard to the underlying district designations, so the New Building's zoning lot is not treated as a split lot subject to ZR § 77-00 for the purposes of the bulk-distribution regulations of ZR § 82-64; and

WHEREAS, DOB states that, instead, the New Building's zoning lot is allowed 548,543 square feet of floor area, of which more than 60 percent (329,126 square feet) is located below a height of 150 feet from curb level in accordance with ZR § 82-64; and

WHEREAS, DOB states that it is undisputed in this appeal that since the zoning lot is a split lot for purposes of tower-coverage regulations, the New Building complies with applicable tower-coverage regulations, ZR § 82-36; and

WHEREAS, DOB states that Appellants' arguments that the New Building is on a split lot for purposes of ZR § 82-34 are unpersuasive because the Zoning Resolution considers split lots on a regulation-by-regulation basis; unlike ZR § 82-36, which only applies to the portion of the subject site in a C4-7 zoning district, ZR § 82-34 applies equally to the entirety of the subject site without regard to the underlying zoning district designations; and there is no basis to conclude that ZR § 82-34 was intended as a modification to general tower-on-a-base provisions of ZR § 23-651(a)(2) whereby ZR §§ 82-34 and 82-36 only operate together, like the provisions of ZR § 23-651; and

WHEREAS, in post-hearing submissions, DOB reiterates that ZR § 82-34 clearly applies throughout the Special District, and as such no reference to the legislative history is necessary to determine legislative intent; and

Owner's Position

WHEREAS, the Owner states that this appeal should be denied because, at the time of the Permit's reissuance, the Zoning Resolution did not regulate the floor-to-ceiling heights of floor space used for mechanical equipment and because the New Building's zoning lot complies with bulk-distribution regulations applicable in the Special District; and

Owner: Height of Mechanical Spaces

WHEREAS, the Owner states that, notwithstanding an amendment to the Zoning Resolution effective May 29, 2019, it is undisputed that the New Building's foundation had been completed by that time, so the New Building is allowed to proceed with construction as of right under ZR § 11-33; and

WHEREAS, the Owner, however, disputes that the Zoning Resolution in effect before May 29, 2019,

regulated the floor-to-ceiling heights of mechanical spaces in buildings, as asserted by Appellants; and

WHEREAS, in support of this contention, the Owner notes that the Board considered this exact issue in *15 East 30th Street* and determined that, "based upon its review of the record, the definition of 'floor area' set forth in ZR § 12-10 and the Zoning Resolution as a whole, the Board finds that the Zoning Resolution does not control the floor-to-ceiling height of floor space used for mechanical equipment"; and

WHEREAS, the Owner notes that, in that appeal, DOB had taken the position that "the Zoning Resolution does not regulate the floor-to-ceiling height of a building's mechanical spaces," and DCP had also submitted testimony stating that "there are no regulations in the Zoning Resolution controlling the height of mechanical floors"; and

WHEREAS, the Owner states that there is no reason for the Board to depart from its prior consideration of this issue and notes that there is now further support for the Board's interpretation of the "floor area" definition; and

WHEREAS, the Owner disputes Appellants' characterization of the text amendment as a mere clarification rather than a change in law; and

WHEREAS, the Owner notes that the resolution accompanying the zoning text amendment, City Planning Commission Report No. N 190230 ZRY (April 10, 2019) states that "[t]he [Zoning] Resolution does not specifically identify a limit to the height of such [mechanical] spaces," when the text amendment explicitly limits the height of mechanical spaces that are exempt from floor-area calculations; and

WHEREAS, the Owner notes that the attendant environmental review also characterized the "No-Action Scenario" as allowing the development of buildings with mechanical spaces ranging from 80 to 90 feet in height, while the "With-Action Scenario" would limit these mechanical spaces to heights from 10 to 25 feet; and

WHEREAS, the Owner states that mechanical spaces in the New Building need not comply with the Zoning Resolution's "accessory use" definition, contrary to Appellants' assertions that mechanical spaces of such height are not "customarily found in connection with" mechanical spaces; and

WHEREAS, the Owner states that a mechanical space is neither a "use" nor an "accessory use" under ZR § 12-10 because the Zoning Resolution defines a "use" as "(a) any purpose for which a building or other structure or an open tract of land may be designed, arranged, intended, maintained or occupied; or (b) any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on an open tract of land" and defines an "accessory use" as "*use* which is clearly incidental" to a principal use; and

WHEREAS, instead, the Owner characterizes mechanical space as "building infrastructure used for the operation of any type of building . . . similar to many other areas within a building, such as elevator shafts or stairwells, elevator or stair bulkheads, or exterior wall thickness"; and

WHEREAS, assuming mechanical space is appropriately classified as an accessory use, the Owner states that there is no reason in this appeal to depart from the Board's consideration of the specific issue in *15 East 30th Street*, where the Board determined that the floor-to-ceiling height of mechanical space was not relevant to its classification as an accessory use and where DCP had submitted testimony that, "regardless of its floor-to-ceiling height, any space which is devoted to accessory residential mechanical equipment is considered to be a legal accessory use"; and

WHEREAS, contrary to Appellants' arguments regarding the characterization of DCP's citywide analysis of mechanical spaces, the Owner notes that DCP's *Residential Mechanical Voids Findings* and the record in *15 East 30th Street* both demonstrate with ample examples that mechanical spaces with similar heights to those in the New Building are "customarily found in connection" with the New Building's principal uses, and there is no reason to find that "floor space used for mechanical equipment" contemplates an analysis of volume or height to be "clearly incidental" to a principal use under ZR § 12-10; and

WHEREAS, accordingly, the Owner submits that mechanical spaces in the New Building complied with the Zoning Resolution in effect before May 29, 2019, under the Board's interpretation set forth in *15 East 30th Street*; and

Owner: Bulk Distribution

WHEREAS, the Owner states that the New Building's zoning lot complies with bulk-distribution regulations applicable in the Special District; and

WHEREAS, the Owner states that the Zoning Resolution provides that "[w]ithin the Special District, at least 60 percent of the total floor area permitted on a zoning lot shall be within stories located partially or entirely below a height of 150 feet from curb level," ZR § 82-34; and

WHEREAS, the Owner states that the New Building's zoning lot complies with this provision because the total floor area allowed on the subject zoning lot is 548,543 square feet, comprised of 421,260 square feet (12.0 FAR) in the C4-7 zoning district and 127,283 square feet (6.5 FAR) in the R8 zoning district; and

WHEREAS, the Owner states that ZR § 82-34 applies to all zoning lots in the Special District, regardless of underlying zoning district designations, so 60 percent of the total floor area on the subject zoning lot (329,126 square feet) must be located below 150 feet above curb level; and

WHEREAS, the Owner states that, because the DOB-approved drawings for the New Building reflect "at least 60 percent of the total floor area . . . below a height of 150 feet from curb level," the New Building's zoning lot complies with ZR § 82-34; and

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WHEREAS, the Owner states that Appellants' argument that ZR § 82-34 only applies to the portion of the subject site within a C4-7 zoning district is unpersuasive because ZR § 82-34 applies to zoning lots throughout the entire Special District, regardless of the underlying district designations, because ZR § 82-34 states "[w]ithin the Special District" without qualification; and

WHEREAS, the Owner states that Appellant's argument that the Zoning Resolution's split-lot provisions require bulk calculations by zoning district is unavailing because the split-lot provisions apply "on a regulation-by-regulation basis," *Beekman Hill Ass'n v. Chin*, 274 A.D.2d 161 (1st Dep't 2000); and

WHEREAS, the Owner states that ZR § 82-34 applies with equal force in the portion of the subject site in the C4-7 zoning district as in the R8 zoning district—so the New Building's zoning lot is not treated as a split lot with respect to ZR § 82-34; and

WHEREAS, the Owner states that, on the other hand, because tower-coverage regulations differ for the portion of the subject site in the C4-7 zoning district from the R8 zoning district, the New Building's zoning lot is treated as a split lot for the purposes of tower-coverage regulations under ZR § 82-36, which does not apply to the portion of the subject site in an R8 zoning district, *see also* ZR § 33-48; and

WHEREAS, the Owner states that it is undisputed in this appeal that, the zoning lot is a split lot for purposes of the tower-coverage regulations, and the New Building complies with the applicable tower-coverage regulations; and

WHEREAS, the Owner states that Appellant's argument that "[w]ithin the Special District" is a reference to tower-on-a-base regulations of ZR § 23-651 is unpersuasive because tower-on-a-base regulations do not apply in C4-7 zoning districts; because there are major differences between tower-on-a-base regulations and ZR § 82-34, such as the absence in the Special District's bulk-distribution regulations of applicability only to wide-street frontage; ZR § 82-34 contains no cross reference to ZR § 23-651 or other manner of incorporation or modification; while, in contrast to ZR § 82-34, ZR § 82-36 specifically modifies the tower regulations set forth in ZR §§ 33-45, 35-64 and 23-65; and

WHEREAS, the Owner states that Appellants' arguments that the legislative history of the Special District mandates the concurrent operation of ZR §§ 82-24 and 82-36 is unavailing because the six development sites studied by the Department of City Planning in the C4-7 zoning district are irrelevant to the application of the ultimately adopted regulations; because the City Planning Commission further noted that the ultimately adopted regulations "would sufficiently regulate the resultant building form and scale even in the case of development involving zoning lot mergers"; and because the legislative history materials characterize ZR §§ 82-34 and 82-36 as "complementary," not inextricably linked; and

WHEREAS, the Owner states that, ultimately, Appellants take issue with the Zoning Resolution as it exists, which is beyond the purview of this appeal; and

WHEREAS, in post-hearing submissions, the Owner notes that the Zoning Resolution explicitly defines its provisions' applicability, indicating that "[w]ithin the Special District" means what it says: ZR § 82-34 applies throughout the entire Special District; and

WHEREAS, in support of this contention, the Owner notes numerous other instances where the Zoning Resolution qualifies its provisions' applicability in the Special District—such as to certain subdistricts, certain street frontages, certain zoning districts and certain enumerated exceptions—indicating that the absence of similar qualification in ZR § 82-34 indicates that the bulk-distribution regulations do apply throughout the Special District; and

WHEREAS, the Owner states that there is no qualification in ZR § 82-34 that it only applies to towers and not to development subject to height-and-setback regulations, such as the portion of the New Building located in the R8 zoning district; and

WHEREAS, the Owner states that there is no merit to Appellants' contention that "[w]ithin a Special District" merely highlights the minor differences between ZR § 23-651 and ZR §§ 82-34 and 82-36 because, when the Zoning Resolution modifies underlying zoning district regulations, it specifically states so through the use of cross references; and

WHEREAS, the Owner states that, unlike ZR § 23-651, ZR §§ 82-34 and 82-36 are separate sections in the Zoning Resolution that are applied separately and do not, by their express language, apply to the same zoning districts; and

WHEREAS, the Owner states that, because the language of the text of ZR § 82-34 is clear and unambiguous, its plain meaning constitutes the best evidence of legislative intent, and no examination of legislative history is necessary to determine legislative intent; and

WHEREAS, the Owner states that, notwithstanding the clarity of the text, Appellants' analysis of the legislative history is fatally flawed because soft sites studied in conjunction with the 1994 amendments do not override ZR § 82-34's applicability throughout the Special District, because the predictability of the 1994 text amendments' applicability was the subject of wide dispute and because any unpredictable—but lawfully compliant—results must be addressed legislatively by amending the Zoning Resolution; and

WHEREAS, the Owner states that, contrary to Appellant's contention that DOB's interpretation of ZR § 82-34 increases the height of the New Building, the height of the New Building is actually reduced by having 60 percent of its total floor area located below 150 feet above curb level, and ZR § 82-34 operates as intended, even if not to the extent Appellants would prefer; and

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WHEREAS, in support of this contention, the Owner provided comparative architectural diagrams showing that, without the Special District's bulk-distribution regulations, a 43-story, 839-foot tower could be developed on the subject zoning lot or a 30-story, 470-foot community-facility tower could be built in the R8 portion of the subject zoning lot; however, with the Special District's bulk-distribution regulations, only the 39-story, 775-foot New Building on the subject zoning lot or a 350-foot, 22-story community-facility tower in the R8 portion of the subject zoning lot are allowed; and

WHEREAS, the Owner states that, additionally, the Zoning Resolution contains no express limitation on the number of stories permitted in the Special District, and the City Planning Commission specifically rejected a special-district-wide height limitation of 275 feet; and

WHEREAS, accordingly, the Owner submits that the New Building's zoning lot complies with bulk-distribution regulations applicable in the Special District and that this appeal should be denied; and

CONCLUSION

WHEREAS, the Board has considered all of the arguments on appeal but finds them ultimately unpersuasive; and

WHEREAS, in response to concerns from Appellants and the community regarding the height of development within the City, the Board notes that, while it has the power "to hear and decide appeals from and to review interpretations of this Resolution" under ZR § 72-01(a), the Board does not have the power to zone, *see* City Charter § 666; and

WHEREAS, accordingly, insofar as Appellants or members of the community take issue with provisions of the Zoning Resolution—or absence thereof—as enacted, that grievance falls outside the scope of the Board's authority to review this appeal; and

WHEREAS, based on the foregoing, the Board finds that Appellants have not substantiated a basis to warrant departure from its decision in *15 East 30th Street* in that the Zoning Resolution in effect prior to May 29, 2019, did not regulate the floor-to-ceiling heights of "floor space used for mechanical equipment" in exempting such mechanical space from floor-area calculations, ZR § 12-10, and the Board finds that Appellants have failed to demonstrate that the Zoning Resolution treats the New Building's zoning lot as a split lot with respect to the Special District's bulk-distribution regulations and that Appellants have failed to demonstrate that the New Building's zoning lot does not comply with bulk-distribution regulations applicable in the Special District under ZR § 82-34.

Therefore, it is Resolved, that the building permit issued by the Department of Buildings on June 7, 2017, as amended and reissued April 11, 2019, under New Building Application No 121190200, shall be and hereby is *upheld* and that this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, September 17, 2019.

Annexed to Foregoing Document-
Appendix: September 17, 2019 Public Hearing (R. 002382-002406)
[pp. 3208 - 3232]

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NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

Calendar Number: 2019-94-A

36 West 66th Street, Manhattan

Public Hearing

September 17, 2019

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COMMISSIONER SHETA: No.

MS. MATIAS: Commissioner Scibetta?

COMMISSIONER SCIBETTA: No.

CHAIR PERLMUTTER: Okay. So those two questions are now sort of closed out right? So what we could open is for not a lot of discussion because we don't have a lot of information yet is the question of whether the mechanical floor space is appropriately occupied by mechanical equipment necessary to support this building, and so what I would ask of appellant to the extent they're able to get it from public records to provide the Board with mechanical drawings. The Department of Buildings -- is the Department of Buildings here today? Yes. Okay. The Department of Buildings to supply us with the mechanical drawings but also to review the mechanical drawings in the same way that the *Sky House* mechanical drawings were reviewed with same depth and I just want again point out to the public that we spoke a lot about this subject at yesterday's review session which is also on the video and that, that the owner cooperate by providing drawings that are not available in the public record of the mechanical, the mechanical file drawings. So, really it's the , it's the M set and I, and it might be the sprinkler set as well, but there was a request in the papers submitted by appellant for shop drawings. We didn't review shop drawings for *Sky House*. I think that's taking it much too far. Department of Buildings does not review shop drawings either. Yes?

COMMISSIONER Sheta: If it's possible, I would like to get another -- the entire set.

CHAIR PERLMUTTER: The yes, the entire mechanical

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set.

COMMISSIONER SHETA: No, the entire, the entire structural and and architectural set for the building.

CHAIR PERLMUTTER: We're only being asked to look at the mechanicals.

COMMISSIONER SHETA: I, I--

CHAIR PERLMUTTER: I don't want to.

COMMISSIONER SHETA: Yeah.

MR. KLEIN: Madam, Madam Chair.

COMMISSIONER SHETA: Talk to the members then.

MR. KLEIN: Madam Chair, may I?

CHAIR PERLMUTTER: We're only looking at mechanicals. We're not looking at the structure of the building and sub-ground. That's--

MR. KLEIN: No, no, but with regard to mechanicals, under the *Sky House* case -- and under.

CHAIR PERLMUTTER: Oh, we need to --

MS. MATIAS: We have to reopen.

CHAIR PERLMUTTER: -- we need to reopen --

MR. KLEIN: I'm sorry. I'm sorry.

CHAIR PERLMUTTER: -- in order for you to speak.

MS. MATIAS: I'm sorry, Mr. Klein.

CHAIR PERLMUTTER: Yeah. So, we're gonna open exclusively as to mechanical equipment okay? So--

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MS. MATIAS: Motion to reopen.

CHAIR PERLMUTTER: Motion.

MS. MATIAS: Chair Perlmutter?

CHAIR PERLMUTTER: Aye.

MS. MATIAS: Vice-Chair Chanda?

VICE-CHAIR CHANDA: Aye.

MS. MATIAS: Commissioner, Commissioner Sheta?

COMMISSIONER SHETA: Aye.

MS. MATIAS: Commissioner Scibetta?

COMMISSIONER SCIBETTA: Aye.

MR. KLEIN: May I?

CHAIR PERLMUTTER: Yeah.

MR. KLEIN: Under the guidelines set in the, in the BIS system by the Buildings Department and in memos written by the Assistant Commissioner or Deputy Commissioner, it requires that the drawings include all piping ancillary to the mechanical system so they're going to be reasonably complete drawings almost to the extent of being shop drawings and that guideline sets out approximately ten different items that is reflected in *Sky House* case of what has to be included in the drawings. With regard to--

CHAIR PERLMUTTER: I just want to interrupt.

MR. KLEIN: Okay.

CHAIR PERLMUTTER: There's a big difference between shop drawings and mechanical drawings so.

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MR. KLEIN: Oh, no, I appreciate that. Yes.

CHAIR PERLMUTTER: So, shop drawings are off the table okay?

MR. KLEIN: We're not getting ever screw and everything else.

CHAIR PERLMUTTER: Right. Shop drawings and probably aren't even produced at this point --

MR. KLEIN: Yeah.

CHAIR PERLMUTTER: -- on this project so.

MR. KLEIN: I appreciate that.

CHAIR PERLMUTTER: We're not doing.

MR. KLEIN: And, and as to what we can supply the, the, the drawings that were submitted to Buildings Department through review have none of the things that are set in the, in the guidelines so I won't be handing in anything.

CHAIR PERLMUTTER: Okay. So you're not able to get any further, any additional information from going to the Department of Buildings?

MR. KLEIN: No. It's, it's not filed.

CHAIR PERLMUTTER: Is they're not filed as far as you know.

MR. KLEIN: That is correct.

CHAIR PERLMUTTER: Okay. When was the last time that you went to the Department of Buildings to check the file?

MR. KLEIN: About a month ago.

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CHAIR PERLMUTTER: Okay. So, there may be more fi-, --

MR. KLEIN: Yeah.

CHAIR PERLMUTTER: -- I don't know without checking BIS what was filed. I see mechanical filings, but we don't know what the level is. Okay. So I would ask Department of Buildings and the owner to cooperate the way, the same way that was done with the *Sky House* case and provide this Board with a clear set of mechanical drawings, and I don't wanna ask for the electrical and structural because now we're going down a, a wormhole.

The question before us is when you look at the, the, the planning of the floor of each mechanical floor, is the amount of mechanical equipment that's shown on the drawings, the amount that is that you would normally associate with a building of this size. That, that's what we're talking about and that's what we've looked at with *Sky House* and it was actually not the Board so much that looked at those drawings. We, we looked at them, but it was the Department of Buildings' engineers who reviewed them and ca-, and concluded in a letter that the amount of mechanical equipment that was in those spaces was reasonable for a building of that type.

MR. KLEIN: It's not, it's not it, it obviously the, the size of the building and the requirements of the building are dialed into the equation but also the equipment itself because what the Buildings Department refers to is the manufacturing cut slips for the items to determine how much this is around and is necessary preventing the service and things like that.

CHAIR PERLMUTTER: Right. Mechanical drawings do

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that. You know?

MR. KLEIN: Right.

CHAIR PERLMUTTER: The mechanical engineer knows that the workers have to get around.

MR. KLEIN: Well, they don't do that here. That's the problem.

CHAIR PERLMUTTER: Right?

MR. KLEIN: Yeah.

CHAIR PERLMUTTER: So, the workers have to get around and to work and there needs to be room to, to replace equipment --

MR. KLEIN: Sure.

CHAIR PERLMUTTER: -- and that kind of stuff, right? And they show ductwork, they show all of that on the --

MR. KLEIN: Yes.

CHAIR PERLMUTTER: -- mechanical drawings. So that, that should be adequate.

COMMISSIONER SCIBETTA: Should we create a deadline for the owner and the Buildings Department to provide a response thereby giving the appellant some time to respond to it?

CHAIR PERLMUTTER: Well, we'll have the owner up to talk about --

MR. KLEIN: Sure. Thank you.

CHAIR PERLMUTTER: -- when he can produce all of

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these. So okay?

MS. MATIAS: Mr. Karnovsky.

CHAIR PERLMUTTER: And Buildings Department also. Mr. Karnovsky.

MR. KARNOVSKY: David Karnovsky. Fried, Frank, Harris, Shriver, and Jacobson for owner.

CHAIR PERLMUTTER: Morning.

MR. KARNOVSKY: Morning.

CHAIR PERLMUTTER: So, I guess the, the question is – I, I don't actually even know what the status of the mechanical drawings is. Do you have that information?

MR. KARNOVSKY: Mechanical drawings were filed and we will provide copies to the Board --

CHAIR PERLMUTTER: Okay.

MR. KARNOVSKY: -- and to the appellant. The characterization of the process that was followed is grossly inaccurate and we'll provide them.

CHAIR PERLMUTTER: Okay. So that -- it would help a lot to, to clarify when they were filed and make sure that they are complete according to the requirements in the Code and to gi-, and to give us a copy and Buildings Department -- we'll speak to Buildings Department okay?

MR. KARNOVSKY: That's fine.

CHAIR PERLMUTTER: Great. Thank you.

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MR. ZOLTAN: Good morning. Michael Zoltan for the Department of Buildings. So just to clarify one or two things. One is the Department did review the mechanical plans and found them sufficient and went through the proposed equipment and have a -- I wrote up a -- I have a short synopsis of some of the equipment on the mechanical floors. So for instance, mezzanine above the first floor has an expansion tank, heat exchanger, a water source for heater pumps. The 15th floor mechanical floor contains Thornton water detention tank, pool equipment room, emergency generator, electrical switchboard. The 16th floor has the HVAC ducts and equipment. It has the air handler units, span units, other equipment. The 17th floor has an electrical room, mechanical and boiler equipment. The 18th floor has HVAC, air handler units, and fan units. The 19th floor has electrical equipment, fire pump room, fire reserve storage tank. The 39th floor has plumbing, telephone equipment, and a fire proof.

CHAIR PERLMUTTER: Okay.

MR. ZOLTAN: So there was -- the Department did review these. Now if the Board wants us to, to provide more, more of a synopsis, we can of course.

CHAIR PERLMUTTER: Yes, that, that so what to model what happened on *Sky House*. On *Sky House*, we had -- the Board was provided with a full set of mechanical drawings so that we could kind of read along.

MR. ZOLTAN: Sure.

CHAIR PERLMUTTER: And the Department of Buildings issued I think it was two actually very detailed letters about what it reviewed

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and why it considered what it reviewed proper for a building of this size. So that's what, that's what we're looking at here. And, and in this the if, if DOB can also give us more information on what they typically view for a building of this size. I mean kind of back in the day before the buildings were as big as they are, they used to be sort of a five percent rule. I don't know what the rule is today because buildings don't look like those buildings anymore right? So, I don't know if DOB has kind of a standard method of operation to determine whether floor space devoted to mechanical is believable. Right?

COMMISSIONER SCIBETTA: I, I have a request. I request--

CHAIR PERLMUTTER: Speak up.

COMMISSIONER Scibetta: Do you have the original mech- mechanical the plans for the mechanical rooms prior to the addition to of the new floor?

MR. ZOLTAN: I, I'm not sure right now. I only looked at the current ones or not looked at them but have them looked at.

COMMISSIONER Scibetta: I'd ask for a production of the, the original --

MR. ZOLTAN: Sure.

COMMISSIONER Scibetta: -- that were produced.

MR. ZOLTAN: So, one if I may, one of the questions that was brought up yesterday was about the number of floors.

COMMISSIONER Scibetta: That's correct.

MR. ZOLTAN: Right?

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CHAIR PERLMUTTER: Yes.

MR. ZOLTAN: So j- just looking at the two, the Z- ZD1's, the Zoning diagrams that outline the, the floors. A floor it was before it was changed from one, 160, 160-foot ceiling -- floor to ceiling and then split up into three different floors that each that were 64, 64, 48. The number of floors containing mechanical equipment were the same. It was the height of the floors was so you had two that were, that were much -- had much smaller floor to ceiling and one with 160 and then that was -- those three were redistributed into 64, 64, and 48 so there was no additional floor containing mechanical equipment. So, to go through them again, you have the mezzanine, mezzanine above the first floor, the 15th floor, the 17th floor, the 18th floor, the 19th floor, and then by the roof. It's the amount of floors or stories is, is the same. That didn't change between the before and after. It was just the floor to ceiling height of three of them specifically is what changed.

CHAIR PERLMUTTER: Oh, but okay. But I thought one of the ways of solving the problem for Fire Department was to install these sort of catwalks.

MR. ZOLTAN: Yes.

CHAIR PERLMUTTER: So that meant retaining the floor to ceiling height more or less or I thought they subdivided it into different floors so that they would satisfy DO -- Fire Department about the height of firefighting at the top level.

MR. ZOLTAN: The three -- so there were three -- beforehand af-, there were three stories that all contained mechanical equipment. Two of them had more typical s-, floor to ceiling heights and one of them had 160, was 160 feet

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from floor to ceiling. That was changed. We still retained three, the same three stories but now one of them was 64, the next one was 64, and the next one was 48.

CHAIR PERLMUTTER: Oh, I see.

MR. ZOLTAN: So, it's the same number of stories, just the, the height of the ceilings under those three stories were changed and the fire access levels were added in on all three of those stories but the number of stories remained the same.

CHAIR PERLMUTTER: Okay.

VICE-CHAIR CHANDA: I, I just want to make sure I understand it so before the zoning lot merger.

CHAIR PERLMUTTER: Not the merger. No, no, no. This is before the. No, no, no. This is simply.

VICE-CHAIR CHANDA: I'm trying to understand what is the before that is being talked about.

CHAIR PERLMUTTER: The before the building original -- the building once the zoning lot was merged and they were doing the, their project, the Buildings Department --

VICE-CHAIR CHANDA: Okay.

CHAIR PERLMUTTER: -- there was an objection issued by Fire Department --

VICE-CHAIR CHANDA: Okay.

CHAIR PERLMUTTER: -- that said your floor to ceiling height is far too high and we'll not be able to reach the height for firefighting. So that, so

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the project was at risk or, you know, there was an iss-, a letter of --

VICE-CHAIR CHANDA: Thank you.

CHAIR PERLMUTTER: -- notice.

MR. ZOLTAN: Intent to revoke approval.

CHAIR PERLMUTTER: Intent to revoke and then they responded by changing the mechanical spacing.

VICE-CHAIR CHANDA: Okay. Thank you for that clarification. That's.

CHAIR PERLMUTTER: Okay. That's helpful. Thank you. I didn't realize that 'cause I also was under the impression they slipped more floors in there but so and, and as I so we're talking about a total of three stories of mechanical space?

MR. ZOLTAN: There are, I believe there are more throughout the building but only three were, were reconfigured for that objection.

CHAIR PERLMUTTER: No, but a total of actual full -- I know there's a mechanical that's spread around the building. That's always the way it is. But in terms of full floors devoted to mechanical space. Do you know how many there are?

MR. ZOLTAN: I'm not sure exactly. I don't wanna misspeak at all. I can get back to you.

CHAIR PERLMUTTER: Okay. Okay. So that's something -- well, it's for one something we need to know going forward, but we should have a floor plan for all of the floors devoted to mechanical space and a general

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description if there was mechanical rooms on the other floors. I mean the tower plate is very small but the extent there is mechanical rooms on the other floors to explain what those are for. That's a, that's a fairly typical thing that you find small rooms on each floor but so I understand that.

MR. ZOLTAN: So, this is to not just to go through -- your request is not just to go through the floors that were fully deducted for mechanical floors, to go through all the floors of the building?

CHAIR PERLMUTTER: The idea is that 'cause I can, I know the skepticism in the crowd, right, if you're spreading mechanical and there was a -- actually a woman had testified last week I think and said I don't understand why there's so much mechanical space in these buildings anymore. You used to put it in the cellar. So to respond to those kinds of issues that and it's easy enough to see from the zoning diagram, right, that certain amount of area on each floor is allocated to mechanical space just a, a general statement on those residential floors about the however many square feet it is. Do you have that? Is devoted to mechanical space. I don't know if we have that zoning breakdown. Just to explain like what, what goes into the typical floors to the extent there is mechanical deductions there which is usually chases actually, right, so therefore, not actually equipment. It's the vertical, it's the piping, it's the chases, that kind of stuff. Just I don't know if we have. You have mechanical deductions on here? No. Residential, you know, we don't have.

VICE-CHAIR CHANDA: Again, my access is.

CHAIR PERLMUTTER: Yeah. Okay. We, we don't have that chart in front of us. So okay.

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COMMISSIONER SCIBETTA: So, the, the recent testimony --

CHAIR PERLMUTTER: Speak up.

COMMISSIONER SCIBETTA: -- the immediate testimony from the Department of Buildings raises a question that I'm not sure whether or not we're procedurally permitted to inquire within and that is -- I, I'd like to understand when the reconfiguration if these heights were entirely arbitrary, when they reconfigured each all of these, these, these mechanical rooms, did they give any reason or purpose or use as to why they reconfigured it this way?

CHAIR PERLMUTTER: They no but so oh, you mean in terms of it 'cause it was Fire Department telling them it's too high of a ceiling at 160 feet or whatever it was. You have to do something so that we're -- we ,Fire Department, are comfortable with ceiling height that in the event of a fire we can fight a fire. And so, I'm assuming that there was a Fire Department conversation where 60 whatever feet was the magic number.

COMMISSIONER SHETA: Oh, but I thought it was another objection from the DOB stating that --

CHAIR PERLMUTTER: Speak up.

COMMISSIONER SHETA: -- in terms of height --

CHAIR PERLMUTTER: Uh-huh.

COMMISSIONER SHETA: -- that's used is, is kind of like uncommon for, for that size of a building. I, I did read in, in their submission that they objected to the height because the height is, is not common for, for buildings like that.

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CHAIR PERLMUTTER: I'm not fam-, sure what you mean but don't forget try not to -- we already decided on mechanical space height, right?

COMMISSIONER SHETA: No, no, no. I'm not, I'm not going there.

CHAIR PERLMUTTER: Right.

COMMISSIONER SHETA: Yes, I understand.

CHAIR PERLMUTTER: Okay. Okay. Right so if yeah. If you could just give us information. We're talking about mechanical equipment now, right? We already talked about, we closed out the subject of how high the space is and which mechanical equipment fits. We're looking at the floor space now, not the sectional relationship, right? We're looking at the floor space filled with equipment. That, that's our question now okay? Okay? Got it? So okay. So then I would like to hold off on speakers on this question because we don't have any submissions so there's kind of nothing to talk about and I wanted to, to not have a four hour hearing and so let's wait until we actually have some mechanical information and mechanical experts who can actually talk about whether this, what, what the situation is here okay? So how much time do you need DOB to review in detail what you did for *Sky House*, the sa-, the equivalent for *Sky House*? I know you need engineers to do that.

MR. ZOLTAN: So yeah. So, we need an engineers. The Board is sort of asking for a, a more detailed report as opposed to just check and make sure everything's okay which we've done. So I -- it will be a few weeks.

CHAIR PERLMUTTER: Okay.

MR. ZOLTAN: And then --

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CHAIR PERLMUTTER: Any ideas?

MR. ZOLTAN: -- unfortunately run up into holidays. But at this point, we're not getting any more from what I understood from appellant. We're not gonna get a specific allegation of look at this floor, this is insufficient. It's just a general --

CHAIR PERLMUTTER: Right.

MR. ZOLTAN: -- a general breakdown on mechanical equipment. So, we're, we're not responding to anything that way. We're responding to the request from the Board.

CHAIR PERLMUTTER: So, so the thing that we usually look at the *Sky House* letters that you sent again because that's the model and that's the, the basis on which we decided to, to bifurcate this case, right? So that -- those letters were very clear what the engineers looked at. It explained what equipment was on each floor. It explained -- it, it was accompanied by drawings so we could follow along and it justified the existence of that many floors for a building of that type ,so we do want a statement. This much equipment is typical of a building of this type and this many floors, right? Because not I don't know how mechanical, how many mechanical floors are but in the *Sky House* case there, there were three and that -- then we looked at the interstitial floors that we were seeing in other buildings. We named about five other buildings recently built and they all had three interstitial floors plus the, the rooftop mechanical, right? So and I'm assuming some cellar mechanical because utilities are coming in unless you're in a flood plain, utilities are coming in at the cellar level, right, so all of those things seem to be typical of all of those buildings and so a statement about, about whether

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or not the number of floors devoted to mechanical is typical of a building of this type.

[OFF MIC CONVERSATION]

MS. MATIAS: Uh-huh. Yeah.

CHAIR PERLMUTTER: Sure. Fire Department is here, and they just wanted to clarify something, and it might be helpful in us understanding what to do moving forward.

CAPTAIN RESSNER: Good morning. Captain Simon Ressner for the Fire Department Operations. So, I just wanted to talk to you. You had mentioned that our objection to the configuration of, of the space had to do with ceiling height and ceiling height was one of, of many factors. So, I, you know, I just wanted to outline if, if you want to us, we can --

CHAIR PERLMUTTER: Yes, please.

CAPTAIN RESSNER: -- outline other factors that were considered here. We can also wait til the next hearing to do that.

CHAIR PERLMUTTER: No, I think it's useful because then knowing it then everyone can respond.

CAPTAIN RESSNER: Okay. So, the, the issue for us with, with any void space or with any mechanical space has to do with a number of, a number of features. One is the way we fight fires in high-rise buildings is very different from the way we fight fires in traditional lower buildings. We, we utilize the stairways both as a point of operation but we also stage people, we store materials, we have medical staff, we have air cylinders. So we utilize the core of the building for all of these different operational needs and having the original, the original configuration left us in a

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position of having 160 feet to traverse before we could get to an o-, to a floor where we could have available space.

So our discussions with the developer were to try to ma-, have accommodations made in the configuration of the floor plates that made up each individual level within the space so that there'd be adequate room for all those materials and people, there would be the ability to cross over from stairway to elevator shaft, both for rescue and for egress. There'd be the ability to move people out of a contaminated stairway if that does happen which, which it does happen often in residential high-rise. So, I don't want it to be that, that the, the overall height was the only factor.

CHAIR PERLMUTTER: Okay.

CAPTAIN RESSNER: There was, there were many factors.

CHAIR PERLMUTTER: Uh-huh.

CAPTAIN RESSNER: And so.

CHAIR PERLMUTTER: Okay. That' helpful.

CAPTAIN RESSNER: I can take any questions you have about that but I just wanted to make clear that we, we took our high-rise firefighting operational manual which we have which does exist and, and it calls out a whole bunch of features including locations of command posts, locations of material, locations of radio operators and so on and try to sort of graft that into, into the configuration of the building that was presented to us.

CHAIR PERLMUTTER: Uh-huh.

CAPTAIN RESSNER: That was not, the, the solution that

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we came up with was within the context of the building that we had.

CHAIR PERLMUTTER: Alright.

CAPTAIN RESSNER: Okay.

CHAIR PERLMUTTER: Okay. Great. Thank you very much. Very helpful. Are there any questions for the chief? No? Okay. Captain. Okay. No thank you.

CAPTAIN RESSNER: No questions?

CHAIR PERLMUTTER: No questions.

CAPTAIN RESSNER: Okay.

CHAIR PERLMUTTER: Thank you.

MS. MATIAS: Thank you.

CHAIR PERLMUTTER: Okay. So, let's set up a sched-, a submission schedule. So, DOB four weeks to submit, is that enough?

MR. ZOLTAN: Date?

CHAIR PERLMUTTER: I don't -- sorry?

MR. ZOLTAN: Let's see what date is that?

MR. STEINHOUSE: October 15th.

CHAIR PERLMUTTER: I don't know when the holidays are falling.

MS. MATIAS: The 20s-, --

MR. ZOLTAN: I have literally every Tuesday.

CHAIR PERLMUTTER: Every Tuesday. That's so convenient.

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MS. MATIAS: It's gonna be after.

CHAIR PERLMUTTER: 15th for a submission does that work?

MR. STEINHOUSE: Or 16th.

MR. ZOLTAN: 15th. It would be 16th.

CHAIR PERLMUTTER: 16th.

MR. ZOLTAN: Okay, I can try.

CHAIR PERLMUTTER: Okay. Try I mean you need to accomplish it so is that gonna work?

MR. ZOLTAN: Yes.

CHAIR PERLMUTTER: Okay.

MR. STEINHOUSE: October 16th Submission for DOB.

CHAIR PERLMUTTER: Right. And then I don't, does owner want to respond or participate in, in that or?

MR. KARNOVSKY: Yes.

CHAIR PERLMUTTER: Okay. So, do you wanna respond to DOB's submission or do you wanna wait until appellant has responded to D--

MR. KARNOVSKY: I think we're gonna respond to DOB.

CHAIR PERLMUTTER: Okay. So, then we could have a simultaneous response from both you and appellant right? Okay. Is two weeks enough for that or?

MR. KARNOVSKY: Well appellant is not --

MS. MATIAS: David -- I'm sorry, Mr. Karnovsky.

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CHAIR PERLMUTTER: Yeah. You have to come to the.

MS. MATIAS: You're gonna start talking and scatter.

MR. KARNOVSKY: I think we would like to be able to comment on what's produced but since appellant is going to take issue with it no doubt, I think we need that opportunity.

Chair Perlmutter: So do you wanna respond f-, also to DOB or wait til appel-, --

MR. KARNOVSKY: I think we'll wait until appellant has --

CHAIR PERLMUTTER: Okay.

MR. KARNOVSKY: -- responded to DOB.

CHAIR PERLMUTTER: Okay. So, then the next question is, is two weeks enough time to respond for appellant to DOB?

MR. KLEIN: I believe we're gonna need three weeks because we're going to have to review everything that they give us in the first -- it's gonna be the first instanced for us.

CHAIR PERLMUTTER: Right.

MR. KLEIN: But since they're getting, you know three weeks, I think it's appropriate to get three weeks also.

CHAIR PERLMUTTER: Okay. What's three weeks?

MR. STEINHOUSE: Okay. So, November 6th for the appellant?

CHAIR PERLMUTTER: Uh-huh. And then for owner to

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respond to that three weeks is?

MR. KARNOVSKY: Three weeks.

CHAIR PERLMUTTER: Three weeks.

MR. STEINHOUSE: Okay. Three weeks.

CHAIR PERLMUTTER: And then any kind of -- we're not gonna have sur-replies so your sur-reply will be here. Okay. 'Cause otherwise this goes on indefinitely.

MR. STEINHOUSE: Okay. So, the owner will respond by November 27th.

CHAIR PERLMUTTER: Okay.

MS. MATIAS: Okay.

CHAIR PERLMUTTER: Okay. And so, for a hearing that's like the first -- December 2nd hearing. Yeah. 'Cause it's three weeks.

MR. STEINHOUSE: So, for a hearing on December 17th. Okay.

CHAIR PERLMUTTER: Okay.

MR. KLEIN: One quick observation.

CHAIR PERLMUTTER: Uh-huh.

MR. KLEIN: The five percent of rule was in fact the standard rule of the Buildings Department but over the last 20 years because of these most of these items have been miniaturized to a great extent, it's now on a, a case-by-case basis depending upon the equipment that's being used.

CHAIR PERLMUTTER: Okay. Well, I would let DOB

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speak to --

MR. KLEIN: Sure.

CHAIR PERLMUTTER: -- what their methodology is. So, I, I don't know the answer. That's one of the questions for DOB on buildings of this type, what's, what's typical and there and there may not be a typical because almost every one of these buildings is kind of inventing something new each time, right? So, I don't know if there's a typical but just to respond to that. Okay.

MS. MATIAS: Okay so to restate--

MR. STEINHOUSE: So just to go through the submissions again.

MS. MATIAS: Oh.

MR. STEINHOUSE: October 16th for DOB, November 6th for appellant, November 27th for the owner, and a hearing on December 17th.

MR. KLEIN: That should be it. Thank you very, very much.

CHAIR PERLMUTTER: A continued hearing. Thank you very much. Thank you everyone and of course you're welcome to look at these submissions at the Board office at 250 Broadway but you need to make an appointment to see them okay? Okay.

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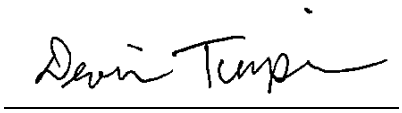
CERTIFICATE OF ACCURACY

I, Devin Turpin, certify that the foregoing transcript of the Public Hearing of New York City Board of Standards & Appeals on September 17, 2019 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: November 26, 2019

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018

Annexed to Foregoing Document-
Appendix: City Club Decision, Order and Judgment (R. 002407-R. 002417)
[pp. 3233 - 3243]

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE CITY CLUB OF NEW YORK, Petitioner, v. NEW YORK CITY BOARD OF STANDARDS AND APPEALS, NEW YORK CITY DEPARTMENT OF BUILDINGS, EXTELL DEVELOPMENT COMPANY, and WEST 66TH SPONSOR LLC, Respondents.	Index No. 161071/2019 **JUDGMENT**

Petitioner, THE CITY CLUB OF NEW YORK, having filed a Petition pursuant to CPLR Article 78, and

Upon the filing of the Petition filed November 14, 2019; Petitioner's Order to Show Cause filed November 14, 2019 (Motion Sequence 1) and all documents filed in support and opposition thereto; the oral argument before the Honorable Arthur Engoron on July 31, 2020; and all the other prior pleadings, papers and proceedings in this case; and upon the Decision and Order dated September 25, 2020 (Motion Sequence 1), and duly entered in the office of the New York County Clerk on September 25, 2020, issued by the Honorable Arthur Engoron, granting the Petition and directing the New York County Clerk to enter judgment in favor of Petitioner, THE CITY CLUB OF NEW YORK, it is

ADJUDGED that the Petition is granted upon the terms set forth in the Court's Decision and Order dated September 25, 2020.

Arthur F. Engoron
Digitally signed by Arthur F. Engoron
DN: C=US, O=NY County Supreme Court, O=New York State Courts, CN=Arthur F. Engoron, E=AENGORON@NYCOURTS.GOV
Reason: I authored, approved, and ordering, and/or officially issuing it
Location: 60 Centre Street, NYC, 10007, Room 418
Date: 2020-11-17 11:11:19
Foxit PhantomPDF Version: 9.7.2

18 th Nov. 2020

Hon. Arthur F. Engoron

Milton Adair Tingling
New York County Clerk

FILED
Nov 18 2020
NEW YORK
COUNTY CLERK'S OFFICE

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE CITY CLUB OF NEW YORK,

Petitioner,

v.

NEW YORK CITY BOARD OF STANDARDS AND APPEALS, NEW YORK CITY DEPARTMENT OF BUILDINGS, EXTELL DEVELOPMENT COMPANY, and WEST 66TH SPONSOR LLC,

Respondents.

Index No. 161071/2019

JUDGMENT

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM
Justice

----------X

THE CITY CLUB OF NEW YORK,

Petitioner,

- v -

NEW YORK CITY BOARD OF STANDARDS AND APPEALS, NEW YORK CITY DEPARTMENT OF BUILDINGS, EXTELL DEVELOPMENT COMPANY, WEST 66TH SPONSOR LLC,

Respondents.

----------X

INDEX NO. 161071/2019
MOTION DATE 9/22/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41,.42, 43, 44, 45, 46, 47, 48, 68, 69, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106

were read on this motion for INJUNCTIVE RELIEF.

Upon the foregoing documents, the petition is granted; the subject decisions and orders of respondents New York City Board of Standards and Appeals and New York City Department of Buildings are vacated; and respondents Extell Development Company and West 66th Sponsor LLC, and anyone acting for, by, or through them, are permanently enjoined from constructing the subject building as proposed.

The Case

In this CPLR Article 78 Special Proceeding petitioner, the City Club of New York ("petitioner"), asks this Court to vacate a September 17, 2019 "Resolution," filed October 15, 2019 (NYSCEF Doc 17), of respondent New York City ("the City") Board of Standards and Appeals ("the BSA") that affirmed respondent the New York City Department of Buildings ("the DOB") in issuing a permit ("the Permit") to respondents Extell Development Company and its affiliate, West 66th Street Sponsor LLC (collectively, "the Developer"), that approved a proposal ("the Proposal") to construct a 775-foot-tall, 39-story residential building ("the Building") at 36 West 66th Street, in a lot fronting on the south side of West 66th Street and backing on the north side of West 65th Street, New York, NY ("the Lot"), three buildings (100 feet) in from Central Park, which is in the Special Lincoln Square District ("the SLSD") that the City created in 1969.

Discussion

The Tower on a Base Rules

This case calls to mind the old adage about not missing the forest for the trees. The parties have submitted reams (or the digital equivalent thereof) of well-argued papers supporting and opposing, respectively, the petition, and the reader who wants to know everything there is to

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know about the zoning rules at issue here, how and why they came about, and the tortuous history of the instant dispute, is welcome to peruse them. But in this Court's view the case is simple and straightforward.

Every government, including, of course, New York City, has the right to limit the height of buildings. The rules here at issue are designed to do just that, to limit the height of buildings, that is their *raison d'etre*. Of course, the other side of that coin is that developers have the right to build as high as they want, unless there is something limiting them. Super-tall buildings have obvious advantages (economic, social, esthetic, environmental) and disadvantages (neighboring views, light, air, a different esthetic), and this Court is not called upon, and is not, weighing or passing judgment on them, a task for the legislative and executive branches of government.

In 1993, to limit the height of buildings in the SLSD, the City imposed two simple rules, envisioning the then-relatively new "Tower on a Base" model. One, Zoning Resolution ("ZR") § 82-34, known as the "Bulk Distribution Rule," (sometimes referred to as the "Bulk Packing Rule"), provides, in relevant part, as follows: "Within the Special District, at least 60 percent of the total ***floor area*** permitted on a ***zoning lot*** shall be within ***stories*** located partially or entirely below a height of 150 feet from ***curb level***" (stylization in original). The other rule, ZR § 82-36, known as the "Tower Coverage Rule," provides that the "tower" above the "base" have a footprint of at least 30% of the lot area ("not less than 30 percent of the ***lot area*** of a ***zoning lot***") (a "zoning lot" being an assemblage of tax lots that collectively constitutes the basis for analyzing compliance with the ZR).

The history and context of these rules, well-described in the submissions, indicate that they work in tandem to limit the height of buildings. Indeed, even the Developer describes them as "complementary" (NYSCEF Doc 93, at 38), while petitioner describes them as "integrated, interlocking" (NYSCEF Doc 1, at 27) and "inextricably linked" (NYSCEF Doc 97, at 4). Of course, also interlocked is the floor-area-ratio, or "FAR," Rule, which, as here relevant, limits total floor space to 12 times the size of the lot, and which also indirectly limits the height of buildings.

Logically, the Bulk Distribution and Tower Coverage Rules must work together in order to limit the height of buildings. The Bulk Distribution Rule without the Tower Coverage Rule would allow a large base topped with a needle-thin "pencil" tower reaching towards the heavens like the beanstalk that Jack climbed. The Tower Coverage Rule without the Bulk Distribution Rule would permit most allowable floor area to go above 150 feet, and would revert buildings to the disfavored, if not discredited, "Tower in a Plaza" model, that is, a tall building surrounded by "open space" that often became "dead space."

In a report titled "1993 City Planning Commission Lincoln Square Report" (Petition, Doc 1, Paragraph 17, fn. 5)[1] the CPC wrote (at 19) as follows:

[1] https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/940127a.pdf

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> These proposed regulations would introduce tower coverage controls for the base and tower portions of new development and require a minimum of 60 percent of a development's total floor area to be located below an elevation of 150 feet. This would produce building heights ranging from the mid-20 to the low-30 stories (including penthouse floors) on the remaining development sites.

The wrinkle in the instant case, which, in this Court's view, the Proposal seeks to exploit, is that the Lot, totaling 54,687 square feet, is split between two zoning districts: 64% of the Lot, 35,105 square feet, comprising five tax lots, is in a C4-7/R10 ("C4-7") zoning district, which runs along the south side of West 66th Street and which allows towers; and 36% of the Lot, 19,582 square feet, comprising one large tax lot, is in an R8 zoning district, which runs along the north side of West 65th Street and which prohibits towers. The dividing line between the zoning districts runs east-west right through the horizontal middle of the Lot, with the northern side zoned C4-7 and the southern side zoned R8. (See NYSCEF Doc 6, "Zoning Map.")

ZR § 77-02, the so-called "Split-Lot Rule," provides, as here relevant, as follows: "[w]henever a ***zoning lot*** is divided by a boundary between two or more districts ... each portion of such ***zoning lot*** shall be regulated by all the provisions applicable to the district in which such portion of the ***zoning lot*** is located" (stylization in original). In other words, each portion of a lot must be evaluated independently and must comply with all the rules applicable to it. One obvious purpose of these rules is to prevent a developer from "picking and choosing," from applying a more liberal zoning rule to a more conservatively zoned portion of a lot. It cannot be stressed enough that the purpose of the rules is to limit the height of buildings. By not allowing the rules governing one portion of a lot to apply to another portion, the Split-Lot Rule mandates that each portion of a lot must stand or fall on its own, without reference to the other part(s) of the lot. The Proposal flouts that purpose, indeed, turns it on its head, by seeking to apply the Bulk Distribution Rule to the entire Lot, rather than have the C4-7 "portion of such zoning lot ... regulated ... by all the provisions applicable to the district in which such portion of the zoning lot is located." Such "regulation" and "application" renders the C4-7 portion of the Proposal illegal on its face, because 60% of the Building on the C4-7 portion of the Lot would not be below 150-feet high.

Here's the rub: the subject Permit considers all floor area, in both portions of the Lot, that is below 150 feet to be part of the base, for purposes of calculating the 60-40% Bulk Distribution Rule, but only considers the ground area of the C4-7 portion of the Lot, not also the ground area of the R8 portion of the Lot, for purposes of calculating the 30% Tower Coverage Rule. This is immediately suspect, violating that old legal maxim, "Sauce for the goose is sauce for the gander." The Developer cannot have it both ways, cannot mix-and-match what area of the Lot (a portion or all) is subject to what rule. As petitioner lucidly explains, without this subterfuge, in a unitary lot every foot of "base" is one less foot of "tower," because the FAR Rule limits the total number of feet. Adding to the base would be "Robbing Peter to pay Paul"; the amount of floor space in your base would increase, but the amount of floor space in your tower would decrease *in pari passu*. The Proposal does almost the exact opposite. Every foot of floor space it jams into the base in the R8 portion of the Lot actually increases the height of the tower, albeit not *in pari passu*, but to a significant 40% of a foot, because of the Bulk Distribution Rule. This is, quite

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simply, an absurd result, and courts should not approve absurd results or turn a blind eye to "ha ha, gotcha" positions or arguments.

Indeed, as petitioner points out, the Building would be illegal if the entire Lot was zoned C4-7, because the tower would violate the Tower Coverage Rule; and the Building would be illegal if the entire Lot was zoned R8, because towers are illegal in R8 zones. In a September 22, 2020 letter to this Court, Pamela A. Koplik, Senior Counsel, Administrative Law Division, New York City Law Department ("the Koplik Letter"), at page 2, writes "[t]he proposed building would not be compliant with the Zoning Resolution if the entire lot was zoned C4-7/R10 or if the entire lot was zoned R8." Game over! Surely that the Lot is split between two zones does not legalize what otherwise would be illegal under either zoning designation. A split-lot is not alchemy that turns base metals into gold; there is no discernible reason that what would be illegal in either zone becomes legal because it is in both zones. In response to the same question that Ms. Koplik answered, the Developer, in a September 17 letter from Jason Cyrulnik, of Roche, Cyrulnik and Freedman, states, "If the entire lot were zoned C4-7... the minimum size of the tower floorplate would be increased." Translation: "the tower would have to be wider, and given the FAR Rule limitation on its floorspace, would have to be lower, i.e., shorter."

The question naturally arises as to why the City did not simply limit buildings to an absolute, quantitative height. When the subject rules were adopted, certain people were advocating, ultimately unsuccessfully, for exactly that, indeed, for a 275-foot limit, which is only 35% of the Proposal. A December 20, 1993 City Planning Report states as follows:

> In response to the Community Board's concern that a height limit of 275 feet should be applied throughout the district, the Commission believes that specific limits are not generally necessary in an area characterized by towers of various heights, and that the proposed mandated envelope [i.e., the Bulk Distribution] and coverage [i.e., the Tower Coverage] controls should predictably regulate the heights of any new development.

Thus, the subject rules were considered to be more creative and flexible, and less of a straight-jacket. But the fact remains that the Bulk, Tower, and FAR Rules are intended to limit the height of buildings.

Respondents' attempt to justify their approach is difficult to understand at first blush, because it is so strained, counter-intuitive, and far-fetched as to be almost farcical. They rely on the Bulk Distribution Rule's prefatory language, "[w]ithin the Special District . . .," which they interpret to mean that because both portions of the Lot are "within the Special District," the Bulk Distribution Rule applies to both portions of the Lot. Well, yes, it does, and, pursuant to the Split-Lot Rule, it applies to each portion of the Lot. Indeed, the Proposal violates both of the subject rules. It violates the Tower Coverage Rule, because the tower portion fails to cover 30% of the ground area of the Lot. And it violates the Bulk Distribution Rule because, more than 40% of the floorspace in the C4-7 portion of the Building is above 150-feet high. The fact that the Building has a "tail" extending from the C4-7 portion of the Lot into the R8 portion of the Lot does absolutely nothing to diminish the impact (on views, light, air, and esthetics) of the C4-7 portion of the Building. Allowing the R-8 portion of the base of the Building to increase the

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tower on the C4-7 portion of the Building would be an extreme case of "the tail wagging the dog."

How much "wag" does the "tail" have? Without the "tail," without all that base floor space on the R8 portion of the lot figuring into the 60-40% Bulk Distribution Rule calculation, a building solely on the C4-7 portion of the Lot would, as the Developer has recognized, be limited to 33 floors, which is six floors, or 96-feet (tower floors being 16-feet high) lower than the Proposal, which is for 39 floors. The R8 portion of the Lot cannot be allowed to spring the C4-7 portion of the Building ever higher. You cannot just park floor space offsite in one portion of a lot to increase your height in another, distinct area. As petitioner argues, the FAR (12%), Bulk Distribution (60-40%), and Tower Coverage (30%) Rules work only if they are calculated for one-and-the-same area; you do not get to pick and choose which rule to apply to which area; that makes no sense. The City designed the rules to limit the height of buildings, not to boost them. In any event, as petitioner convincingly demonstrates, the "[w]ithin the Special District" phrase "was intended to distinguish the Special Lincoln Square District from the rest of Manhattan's high-density residential districts, where the Bulk Distribution Rule takes a slightly different form" (NYSCEF Doc 1, at 27). The prefatory language cannot be read, with a straight face, to obliterate the Split-Lot Rule, or to disengage the Bulk Distribution Rule from the Tower Coverage Rule. The Bulk Distribution Rule cannot be interpreted, construed, or applied in isolation, just because it happens to regulate the SLSD.

Somewhat Orwellian is the following statement in the Developer's Memorandum of Law in Opposition (NYSCEF Doc 93, at 39): "DOB's application of ZR 82-34 to the Project functioned to significantly reduce the amount of floor area within the tower and its height relative to what could be developed [43 floors] absent the bulk distribution requirement." Of course applying ZR § 82-34 operated to limit the height of the Building. That is its purpose, its sole purpose, and there is no way it could do otherwise. The question is whether applying that rule to all of a split-lot while applying its companion, ZR § 82-36, to only a portion of the Lot, is what the drafters intended. If they did, they could easily have said so.

The Developer understandably notes that in the SLSD nothing imposes absolute limits on the height of buildings, the height of floors, or the number of floors. This is all the more reason to hew prudently and cautiously to the carefully crafted, coordinated limits that the City has imposed in the ZR.

All of which calls to mind perhaps the finest words ever written about statutory interpretation, by the immortal Learned Hand:

> There is no more likely way to misapprehend the meaning of language - be it in a constitution, a statute, a will or a contract - than to read the words literally, forgetting the object which the document as a whole is meant to secure. Nor is a court ever less likely to do its duty than when, with an obsequious show of submission, it disregards the overriding purpose because the particular occasion which has arisen, was not foreseen. That there are hazards in this is quite true; there are hazards in all interpretation, at best a perilous course between dangers on

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> either hand; but it scarcely helps to give so wide a berth to Charybdis's maw that one is in danger of being impaled upon Scylla's rocks.

Central Hanover Bank & Trust Co. v Commissioner of Internal Revenue, 159 F2d 167, 169 (2d Cir, 1947) (L. Hand, J.)

The Mechanical Space Rules

Respondents' attempts to validate the "mechanical floors" set forth in the Proposal are, if anything, more bizarre than their attempts to sever the related rules discussed above. Once again, "the forest" provides some guidance. Tall buildings need to house such items as elevator machinery, plumbing, and heating, ventilating and air conditioning equipment. ZR § 12-10 provides that the floor area of a building used to calculate FAR does not include "floor space used for mechanical equipment." These "mechanical floors," also boost the height of buildings, and this Court will take judicial notice of the fact that the higher an apartment, the higher the purchase price or rent it can command. Developers have, thus, increased the number and height of mechanical floors, called by some cynics "mechanical voids," to raise the height of buildings.

The Developer has taken this tactic to a whole new level.

According to petitioner, the original Proposal had two mechanical floors; the 17th, 160-feet high; and the 15th, 20-feet high; totaling 180 feet. After the City Fire Department objected on safety grounds, the Proposal now has four mechanical floors: the 15th, 20-feet high; the 17th, 64-feet high; the 18th, also 64-feet high; and the 19th, 48-feet high; totaling 196 feet.

According to the Developer and the City, the original Proposal had four mechanical floors the 15th, 22-feet high; the 17th, 16-feet high; the 18th, 160-feet high; and the 19th, 16-feet high; totaling 214 feet. After the City Fire Department objected on safety grounds, the Proposal still has four mechanical floors: the 15th, 22-feet high; the 17th, 64-feet high; the 18th, also 64-feet high; and the 19th, 48-feet high; totaling 198 feet.

There is no conceivable mechanical need for anything approaching this many floors, this much height, and this much empty space, and the Developer does not claim otherwise. By one standard measure, we are talking about the height of an 8-20 story building in the middle of an even taller building (sort of like having a frankfurter in the middle of your hamburger). Using the Developer's 198-feet figure, mostly empty space would constitute just over 25% of the Building's 775-feet height. One can glean from the record (and to a certain degree from common experience) that mechanical floors with mechanical equipment are usually no more than 25-feet high, and often are a good deal less; are usually non-contiguous, rather than stacked one on top of another; and are usually in basements or rooftop bulkheads; none of which is remotely the case here.

This blatant jacking-up of close to 200-feet (originally set at 214-feet, with a cavernous 160-feet floor, more appropriate for a satellite transmission tower or a circus big-top) is too brazen to be called a "subterfuge"; rather, the Developer simply thumbed its nose at the rules. The Proposal's mechanical voids would be ingenious if they were not so transparent (the word "chutzpah" comes to mind). No sane system of city planning, and no sane system of judicial adjudication,

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would allow developers to end-run around height-limits by including in buildings gargantuan mechanical spaces that may not even contain mechanical equipment and have no purpose other than to augment height beyond otherwise legal limits. In fact, the Koplik Letter states:

> [I]t does matter whether equipment actually occupies the floor area of the mechanical space[,] and it does matter whether the equipment will be used. Equipment that does not occupy the floor area and/or equipment that will not be used cannot be exempted from floor area calculations.

Amen.

In a more legalistic mode, petitioner argues that the floor area of the four mechanical floors should not be excluded from zoning calculations because they are not "accessory uses," i.e., uses "customarily found in connection with residential uses," and because they are not "used for" mechanical equipment. This accords with common sense; neither the floor area nor the height of mechanical voids should be excluded from what is otherwise permissible. As Marisa Lago, Chair of the City Planning Commission, stated in a speech in early 2019, "[t]he notion that there are empty spaces for the sole purpose of making the building taller for the views at the top is not what was intended" by the ZR. Joe Anuto, Crain's New York Business, February 6, 2018, "City Wants to Cut Down Supertalls" (NYSCEF Doc 11, at 2). Respondents' "anything goes" argument proves too much; it would mean that a developer could add unlimited height to a building by the simple expedient of having empty space and calling it "mechanical space," never mind all those pesky rules meant to limit the height of buildings; it would mean edifices as tall as One World Trade Center, colloquially known as Freedom Tower (94 stories, 1776 feet), or the Burj Khalifa (163 Stories, 2,717 feet, double the Empire State Building's 1,250 feet, not including the latter's antenna) could be built in the SLSD.

This Court declines to embroil itself in the esoteric debate about whether a recent "modification" in the law, which very severely limits mechanical voids, is a "change" or a "clarification." The new rules appear to be a "clarification" in general but a "change" in the specifics, the issue being one of semantics and philosophy. The fact is that allowing a building to breach otherwise inaccessible barriers (and tower over its neighbors), by adding immense dead space, when the goal of the rules is to limit the height of buildings, is arbitrary and capricious. The City legislature has recognized and dealt with this, administrative agencies and the Courts should follow suit.

The BSA arguably (and the parties do argue about this) refused to consider the "mechanical voids" question because the BSA had already decided, in another case, that the ZR "does not control the floor-to-ceiling height of floor space used for mechanical equipment." Many decades ago, this Court was employed as a clerk in a small office in a department of NYC's vast bureaucracy. Every three months the office submitted a requisition for supplies such as pens, pencils and paper. Prior to this Court's appearing on the scene, the modus operandi for many years had been to submit the form with the same numbers every time. So, if the office were ordering too many pens and too few pencils, the mistake would be repeated every time, and the cumulative effect would be a plethora of pens and no pencils. Repetition should not immunize

FILED: NEW YORK COUNTY CLERK 02/16/2021 02:36 PM INDEX NO. 160565/2020
NYSCEF DOC. NO. 555 RECEIVED NYSCEF: 02/16/2021
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NYSCEF DOC. NO. 107 RECEIVED NYSCEF: 09/25/2020

mistakes from scrutiny. The four "mechanical floors" clearly are not designed to contain anywhere near four floors' worth of mechanical equipment (if any).

Highlighting just how ludicrous allowing multiple mechanical voids of no mechanical use and infinite height is, the Section Heading at page 13 of the Developer's Memorandum of Law in Opposition (NYSCEF Doc 93) reads as follows: "The DOB and BSA Properly Determined that the Project's Mechanical Spaces Comply with Operative Floor-to-Ceiling Height Regulations ... The Operative Zoning Resolution Does Not Limit Floor-to-Ceiling Heights of Mechanical Spaces." Thus, the Developer complied with the mechanical floor height requirement because there is none, which sounds like "Alice in Wonderland," not responsible city planning and oversight. Huge mechanical voids make a mockery of every facet of height regulation.

A recent article in the *New York Times* titled "House Report Condemns Boeing and F.A.A. in 737 Max Disasters,"[2] begins as follows:

> The two crashes that killed 346 people aboard Boeing's 737 Max and led to the worldwide grounding of the plane were the "horrific culmination" of engineering flaws, mismanagement and a severe lack of federal oversight, the Democratic majority on the House Transportation and Infrastructure Committee said in a report on Wednesday.

Here, too, a business has gotten an administrative agency to approve a faulty, flawed plan, constituting a "severe lack of oversight" (albeit, nobody has or will die).

Miscellaneous

This Court has considered respondents' other arguments, including the Statute of Limitations argument, and finds them to be unavailing and/or non-dispositive.

CPLR Provisions

CPLR 7803(3) allows a petitioner to challenge administrative actions that are "affected by an error of law," or "arbitrary and capricious or an abuse of discretion." CPLR 3001 allows Supreme Court to "render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy."

Conclusion

Thus, for the reasons stated herein, BSA's determination that the floor area of the tower can be evaluated by referring only to the C4-7 portion of the Lot, while the floor area of the base can be evaluated by referring to both the C4-7 portion of the Lot and the R-8 portion of the Lot, is affected by an error of law; and BSA's determination that mechanical floors can be any number, any height, any contiguity, and any use, or lack thereof, without their floor area being counted towards the Building's FAR, and regardless of how much height they add to the Building, is

[2] https://www.nytimes.com/2020/09/16/business/boeing-737-max-house-report.html?searchResultPosition=1

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affected by an error of law and is an abuse of discretion. The Proposal fails to pass muster for both reasons.

The Clerk is hereby directed to enter judgment (1) declaring that the New York City Department of Buildings and the New York City Board of Standards and Appeals acted arbitrarily and capriciously and contrary to law in issuing and approving a certain permit for respondents Extell Development Company and West 66th Sponsor LLC to construct a building at 36 West 66th Street, New York, NY; (2) declaring that said permit is void; (3) declaring that the Split-Lot Rule of Zoning Resolution § 77-02 means that the structure on each portion of a zoning lot in different zones must individually comply with all regulations applicable to that portion of the lot; (4) declaring that "mechanical voids," meaning space in a building denoted as "mechanical" but without mechanical equipment or a mechanical purpose, or vastly larger than necessary for any mechanical purpose, are illegal, and that any such spaces must be included in all floor area and height calculations; and (5) enjoining anyone acting for, by, or through respondents Extell Development Company and West 66th Sponsor LLC from taking any steps further to construct physically a building at said location pursuant to the permit voided herein.

In the Court's discretion, and/or pursuant to law, each party shall bear its own costs, including attorney's fees.

Arthur F. Engoron

Digitally signed by Arthur F. Engoron
DN: C=US, OU=NY County Supreme Court, O=New York State Courts, CN=Arthur F. Engoron, E=AENGORON@NYCOURTS.GOV
Reason: I authored, approved, am ordering, and/or officially issuing it.
Location: 60 Centre Street, NYC, 10007, Room 418.1
Date: 2020-09-25 14:30:58
Foxit PhantomPDF Version: 9.7.2

9/25/2020
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED	☐	DENIED	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	☐	REFERENCE

Date: 10/16/19 Examiner's Name: Toni Matias

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

Subject Property/
Address: 36 West 66th Street, Manhattan

Applicant Name: Klein Slowick, PLLC on behalf of Landmark West!

Submitted by (Full Name): Michael Zoltan, Assistant General Counsel, Department of Buildings

A) The material I am submitting is for a case currently **IN HEARING,** scheduled for 12/17/19. The reason I am submitting this material:

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

Brief Description of submitted material: Letter statement on behalf of the Department of Buildings in response to issues raised by the Board during the 9/17/19 public hearing.

List of items that are being voided/superseded: _____

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

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

Brief Description of submitted material: _____

List of items that are being voided/superseded: _____

MASTER CASE FILE INSTRUCTIONS

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

R. 002418

NYC Buildings

Melanie E. La Rocca
Commissioner

Michael J. Zoltan
Assistant General Counsel
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+1 212 393 2642 tel
+1 212 566 3843 fax

October 16, 2019

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

RE: Cal. No. 2019-94-A
Premises: 36 West 66th Street, Manhattan
Block: 1118; Lot: 45

Dear Honorable Members of the Board:

On September 17, 2019, the Board heard statements from Landmark West! ("Landmark West Appellants"), the Department of Buildings, and West 66th Sponsor LLC regarding the referenced appeal.

After entertaining a new argument proffered by Landmark West Appellants and bifurcating the instant appeal with the original arguments made in the appeal and in its' sister case (Cal. No. 2019-89-A), the Board requested that the Department review the proposed mechanical equipment in the Proposed Building. This submission is in reply to that request from the Board.

Respectfully submitted,

Michael J. Zoltan

cc: Constadino (Gus) Sirakis, P.E., First Deputy Commissioner
Martin Rebholz, R.A., Borough Commissioner, Manhattan
Scott Pavan, R.A., Borough Commissioner, Development HUB
Mona Sehgal, General Counsel
Felicia R. Miller, Deputy General Counsel
Susan Amron, General Counsel, Department of City Planning
Stuart Klein, Esq.
(On behalf of Landmark West Appellants)
David Karnovsky, Fried, Frank, Harris, Shriver & Jacobson LLP
(On behalf of West 66th Street Sponsor LLC)

NYC Buildings

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Commissioner

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October 16, 2019

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

RE: Cal. No. 2019-94-A
Premises: 36 West 66th Street, Manhattan
Block: 1118; Lot: 45

Dear Honorable Members of the Board:

The Department of Buildings (the "Department") respectfully submits this fourth statement in response to the referenced appeal by Klein Slowick, PLLC on behalf of Landmark West! ("Landmark West Appellants"), challenging the Department's April 4, 2019 approval of a post-approval amendment application (the "PAA") which changed the scope of permit 121190200-01-NB (the "Permit") authorizing construction of a new building located at 36 West 66th Street New York, New York (the "Proposed Building"). Landmark West Appellants allege that the Department's approval of the PAA is inconsistent with the New York City Zoning Resolution (the "ZR").

On September 17, 2019, after entertaining a new argument proffered by Landmark West Appellants and bifurcating the instant appeal with its' sister case (Cal. No. 2019-89-A), the Board requested that the Department review the proposed mechanical equipment in the Proposed Building.

I. THE MECHANICAL EQUIPMENT IN THE PROPOSED BUILDING WAS PROPERLY DEDUCTED FROM THE FLOOR AREA CALCULATIONS

During the September 17th, 2019 hearing, the Board requested that the Department review the Proposed Building's mechanical equipment "in the same way that the Sky House[1] mechanical drawings were reviewed." Specifically, the Board asked for the Department to provide the Board with approved sets of mechanical plans depicting the

[1] During the September 17, 2019 hearing, the Board and Landmark West Appellants referred to the "Sky House case." This is a reference to *15 East 30th Street, Manhattan* (BSA Cal. No. 2016-4327-A). A copy of that BSA decision was attached to the Department's July 23, 2019 submission as Exhibit A.

mechanical equipment in the Proposed Building and a description of the mechanical equipment housed in the floors dedicated to mechanical equipment and thereby deducted from the Proposed Building's floor area pursuant to Exception 8 of the ZR § 12-10 definition of "floor area."

In *15 East 30th*, after a similar request from the Board, the Department provided the Board with a brief description of the proposed mechanical equipment in that building. The Board described that submission as:

> …WHEREAS, DOB states that, based upon its review, the architectural and mechanical plans for the Proposed Building show mechanical space sufficient to justify its exemption from floor are as follows: the second floor contains an emergency generator and switchboard, cooling towers, primary cold-water pumps, secondary condenser water-loop pumps, an expansion tank, heat exchangers and an air separator; the third floor has a cogeneration power plan, a precipitator, boilers, hot-water pumps, an air separator, an expansion tank, heat exchangers, part of the indoor cooling towers from the second floor and other equipment; and the fourth floor includes domestic hot water pumps, domestic-water heat-exchanger units, air handler units, fan units and other equipment…[2]

With that description and analysis as a model, the Department submits this description and analysis of the mechanical equipment in the Proposed Building to verify that the mechanical equipment was properly deducted from floor area and that the Permit was properly issued.

A. The Total Number of Floors Devoted to Mechanical Equipment Deducted from Floor Area for the Proposed Building, Is Appropriate

As can be seen on the 2019 Zoning Diagram (the "2019 ZD1"),[3] the only stories devoted exclusively to mechanical equipment are the first floor mezzanine, the 15th floor, the 17th floor, the 18th floor, the 19th floor, and the roof.[4] The Board asked the Department to review whether

[2] *15 East 30th Street*, at 4.
[3] A copy of the 2019 ZD1 was attached to Landmark West Appellants' May 14, 2019 submission to the Board as Exhibit C.
[4] During the September 16, 2019 Executive Session and during the September 17, 2019 public hearing there was discussion concerning additional floors of mechanical equipment introduced to satisfy Department objections concerning the height of mechanical floors. To set the record straight, no new floors devoted to mechanical equipment were added to satisfy the Department's objections. The Zoning Diagram dated July 26, 2018 (the "2018 ZD1") depicts the same number of mechanical floors as the subsequent 2019 ZD1. The pertinent difference between the two ZD1s is the floor-to-ceiling height distributed between the 17th, 18th, and 19th floors. Before the amendment, the three floors were wholly devoted to mechanical equipment and after the amendment they were devoted to the same amount of mechanical equipment. The amount of floors containing mechanical equipment did not change—just their respective floor-to-ceiling heights. A copy of the 2018 ZD1 is hereby attached for comparison as Exhibit A.

the number of floors devoted exclusively to mechanical equipment was typical for buildings of a similar nature.

The Department has reviewed the mechanical drawings for the Proposed Building and has concluded that the floor space on such floors is devoted to housing the mechanical equipment of the Proposed Building and those floors cannot be occupied for purposes other than the housing of such equipment. As such, the floor space devoted to mechanical equipment is properly exempt from the zoning floor area.

With regard to the Board's request to compare the amount of floors deducted with similarly situated buildings, this is not an analysis that the Department typically makes since each building is reviewed individually based on its unique characteristics and needs. For instance, similarly sized buildings may have different amounts of mechanical equipment based on the design of the building and different energy efficiency goals of different applicants.

In any event, the Department submits that the amount of stories devoted entirely to mechanical equipment in the Proposed Building is consistent with similarly sized buildings.

B. The Stories Devoted Entirely to Mechanical Equipment Do Contain Sufficient Mechanical Equipment to be Deducted

Using the *15 East 30th Street* case as a blueprint, a description of the mechanical equipment included in the Proposed Building includes:

- **First Floor Mezzanine:** Expansion tanks, hot water heat exchangers, cold water heat exchangers, air separators, electric cabinet unit heaters, a pipe fan coil unit, an electric unit heater, water source heat pumps, and exhaust louvers;
- **The 15th Floor:** A storm water detention tank, electrical switchboard, electric unit heaters, water source heat pumps, fan units, a duct heater, an electric humidifier, energy recovery unit (water source heat pump), an emergency generator, an exterior lighting dimmer rack, intake sound attenuators, and a sheet metal plenum behind louver;
- **The 17th Floor:** Boilers, electric unit heaters, water source heat pumps, fan units, a 2-pipe fan coil unit, hot water expansion tanks, air separators, hot water pumps, hot water heat exchangers, an air handler unit, an air intake louver, an exhaust louver, and pipe chase containing the elevator smoke vent and the elevator shaft supply duct passing through the floor;
- **The 18th Floor:** A water-cooled direct expansion air conditioning (DX) unit, cold water pumps; cold and hot water pumps, expansion tanks, air separators, water source heat pumps, electric unit heaters, electric panels, water cooled chillers, fan units, heat exchangers, an exhaust louver, and an intake louver;

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Cal. No. 2019-94-A
Premises: 36 West 66th Street, Manhattan
October 16, 2019
Page 4 of 5

- **The 19th Floor:** A fire reserve storage tank, water source heat pumps, energy recovery units (water source heat pumps), fan units, an electric humidifier, electric unit heaters, an intake louver, and an exhaust louver.[5]

Furthermore, in an effort to clarify the extent of all of the mechanical equipment in the Proposed Building to the Board, the Department requested that the Owner condense all of the submitted and approved plans overlaid on one set of plans. The compilation of approved plans and equipment merged into a single drawing is attached as Exhibit C.[6]

The Board also asked the Department to state what type of mechanical equipment is located on other floors of the building—floors containing principle uses where only a portion of the floor was deducted for mechanical equipment. These floors primarily contain principle residential use and the floor space containing mechanical equipment deducted is used for plumbing and gas pipe risers and chases including their enclosures. On the 16th floor, in addition to these omnipresent plumbing and gas pipe risers and chases, are a low-rise EMR, HVAC ducts and associated equipment, air-handler units, fan units, and an A/V control system room.[7]

Landmark West Appellants assert that the Proposed Building does not contain sufficient mechanical equipment to justify whole floor deductions from floor area. However, the above description of proposed mechanical equipment, coupled with the approved plans detailing the meticulous layout of such equipment, tell an entirely different story. Accordingly, the Department acted appropriately in deducting the floors containing mechanical equipment from the Proposed Building's floor area and the Permit was properly issued.

[5] A copy of the approved plans displaying the sprinkler, plumbing, and mechanical equipment for the referenced floors is attached as Exhibit B.
[6] It should be noted that this version, submitted by the Owner on October 11, 2019, was not submitted to the Department in the context of plan approval, but rather to help clarify the configuration of mechanical equipment on the relevant floors in the context of this appeal. It should be noted that although the second page contains a DOB plan examination stamp, this is because the Owner used the previously approved plans as a baseline and turned on further CAD layers so that multiple sets of approved drawings all appeared within the same set of drawings. While the Department never approved a single drawing depicting all of the levels of mechanical equipment (mechanical, plumbing, sprinkler, electrical) the Department did review and approve all of the individual components (see Exhibit B).
[7] A breakdown of each individual floor's mechanical space floor area deduction can be gleaned from the 2019 ZD1 by comparing the "Building Code Gross Floor Area" with the "Residential Zoning Floor Area." The difference between these numbers is indicative of the zoning floor area deductions taken per floor.

NYC Buildings

II. CONCLUSION

Based on the foregoing, the Department respectfully requests that the Board affirm the determination to issue the Permit.

Respectfully submitted,

Michael J. Zoltan

cc: Constadino (Gus) Sirakis, P.E., First Deputy Commissioner
Martin Rebholz, R.A., Borough Commissioner, Manhattan
Scott Pavan, R.A., Borough Commissioner, Development HUB
Mona Sehgal, General Counsel
Felicia R. Miller, Deputy General Counsel
Susan Amron, General Counsel, Department of City Planning
Stuart Klein
(On behalf of Landmark West Appellants)
David Karnovsky, Fried, Frank, Harris, Shriver & Jacobson LLP
(On behalf of West 66th Street Sponsor LLC)

DEPT OF BLDGS 121190200 Job Number

ES555372378 Scan Code

ZONING CALCULATIONS

ZONING DISTRICT : C4-7 (R-10 EQUIVALENT)
R8
SPECIAL LINCOLN SQUARE DISTRICT
SUBDISTRICT A
MAP: 8C
BLOCK: 1118
LOT: 14, 45, 46, 47, 48 & 52

LOT AREA: C4-7 DISTRICT = 35,105 SF
R8 DISTRICT= 19,582.0 SF
TOTAL LOT AREA = 54,687 SF

NO PARKING REQUIRED WITHIN MANHATTAN CORE AS PER ZR 13-10, NONE PROVIDED

STREET TREE PLANTING AS PER ZR 26-41 & 33-03

4) ZONING FLOOR AREA

a. Floor Area Permitted

C4-7 District (R10 equivalent)

33-122	Commercial	10 FAR	351,050.00 SF
33-123	Community Facility	10 FAR	351,050.00 SF
23-152, 23-16	Residential	10 FAR	351,050.00 SF
23-154	Inclusionary Bonus (see below)	2 FAR	70,210.00 SF
35-31	Res. with Inclusionary (see below)	12 FAR	421,260.00 SF
	Max. Total		**421,260.00 SF**

R8 District

23-151	Community Facility	6.5 FAR	127,283.00 SF
24-11	Residential (See HF Calcs. Z-013)	5.92 FAR	115,925.44 SF
	Max. Total	6.5 FAR	**127,283.00 SF**

Total All Districts

Commercial	351,050.00 SF
Community Facility	478,333.00 SF
Residential w/ Inclusionary	537,185.44 SF
Max. Total	**548,543.00 SF**

b. Inclusionary Housing Bonus in C4-7

23-154	Base Residential	10 FAR	351,050.00 SF
	Max. Inclusionary Bonus	2 FAR	70,210.00 SF
	Max. Residential with Inclusionary	12 FAR	421,260.00 SF
	Low Income Floor Area Provided		70,210.00 SF
	Off-site, see HPD Certificates and Table 1 on Z-001		
	Base Residential		351,050.00 SF
	Actual Inclusionary Bonus		70,210.00 SF
	Actual Residential with Inclusionary		421,260.00 SF

c. Floor Area Proposed

C4-7 District (R10 equivalent)

Existing Lot 52

Commercial	43,053.00 SF
(See Alt. 1 #120422729)	

Proposed

Community Facility	6,350.89 SF
Residential	371,855.27 SF
Total	378,206.16 SF

C4-7 Total

Commercial	43,053.00 SF
Community Facility	6,350.89 SF
Residential	371,855.27 SF
Total	**421,259.16 SF**

R8 District

Proposed / R8 Total

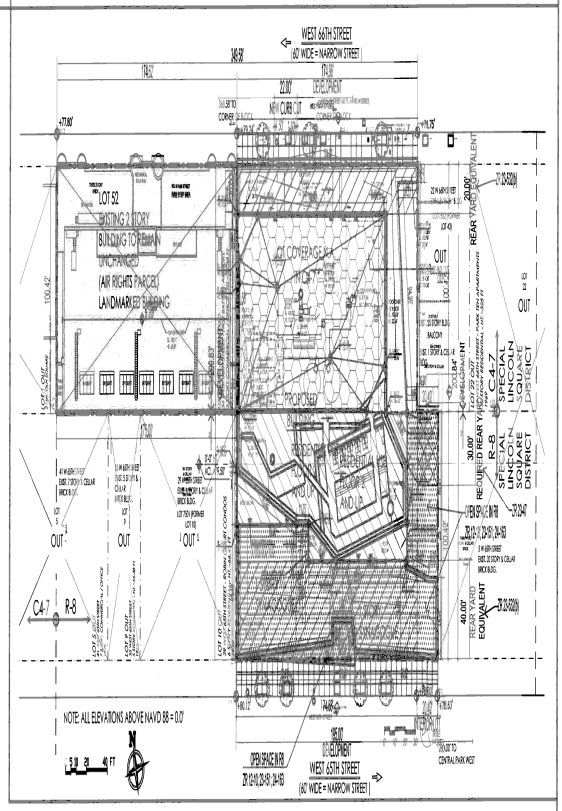
Community Facility	16,054.60 SF
Residential	111,227.78 SF
Total	**127,282.38 SF**

Total both Zones

Commercial	43,053.00 SF
Community Facility	22,405.49 SF
Residential	483,083.05 SF
Total	**548,541.54 SF**

SITE PLAN

Scale: 1/64" = 1'-0"



RESIDENTIAL FAR CALCULATIONS IN R8

12-10 Open Space shall not be included in Lot Coverage

23-151 Residential

Height Factor for Residential FAR

a. H.F. for FAR = Total Floor Area / Total Lot Coverage

H.F. for FAR = 127,282 SF / 8,899 SF = 14

F.A.R. @ H.F. 14 = 5.92

OPEN SPACE CALCULATIONS IN R8

23-151 a. Height Factor for OSR

24-163 H.F. for OSR = Residential FAR/Residential Lot Coverage

H.F. for OSR = 111,228 SF / 8,899 SF = 12

b. Required Open Space

Open Space Ratio @ H.F. 12 = 9.2 %

Min. Open Space = 111,228 X 0.092 = 10,233 SF

c. Open Space Provided = 10,635 SF Complies

d. Open Space at Grade

12-10 Open space at grade shall be accessible and usable by all residential occupants.

e. Open Space on Roof

12-10 - Open Space on roof in R8 need not be accessible

12-10 - No dimension less than 25' except that area adjoining street line or rear yard min. depth 9' and max. length min. 2 times depth (or full width of zoning lot or 50', whichever is less).

24-16 Open Space permitted on roof of community facility

COMMUNITY FACILITY COVERAGE IN R8

24-11 Max. 65% Community Facility Coverage in R8 Zone

19,582 SF X 65 % = 12,728 SF

Provided 0 SF Complies

24-12 Community Facility use below 23' may be excluded from Lot Coverage

LEGEND

- EXISTING BUILDING
- PROPOSED BUILDING
- REAR YARD EQUIVALENT
- REQUIRED REAR YARD
- OPEN SPACE AT ROOF IN R8
- OPEN SPACE AT GRADE IN R8
- RESIDENTIAL COVERAGE IN R8
- TOWER COVERAGE IN C4-7
- ZONING LOT LINE
- STREET TREE
- SKY EXPOSURE PLANE
- PROPERTY LINE
- TOB TOP OF BEAM WITHIN NON-OCCUPIABLE SPACE

NYC Buildings

ZD1 Zoning Diagram

Submitted to resolve objections stated in a notice of intent to revoke issued pursuant to rule 101-15.

☐ YES ☒ NO

Location Information

House No(s) 36

Street Name West 66th Street

Borough Manhattan

Block 1118

Lot 45

Bin 1028168

Falsification of any statement is a misdemeanor and is punishable by a fine or imprisonment, or both. It is unlawful to give to a city employee, or for a city employee to accept, any benefit, monetary or otherwise, either as a gratuity for properly performing the job or in exchange for special consideration. Violation is punishable by imprisonment or fine or both. I understand that if I am found after hearing to have knowingly or negligently made false statement or to have knowingly or negligently falsified or allowed to be falsified any certificate, form, signed statement, application, report or certification of the correction of a violation required under the provisions of this code or of a rule of any agency, I may be barred from filing further applications or documents with the Department.

NAME (PLEASE PRINT) Luigi P. R...

SIGNATURE DATE

P.E./R.A. SEAL (APPLY SEAL, SIGN AND DATE OVER SEAL)

Internal Use Only

BIS Doc #

PLAN EXAMINERS SIGN AND DATE

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ZONING CALCULATIONS

HEIGHT & SETBACK IN BOTH ZONES

35-21 23-641	Maximum Height of Wall and Required Setbacks 20' minimum setback above 85' 2.7:1 Sky Exposure Plane		

TOWER IN C4-7

	a. Lot Area in C4-7		35,105.00 SF
62-36 (a)	b. Max. Tower Coverage Permitted	35,105.00 SF X 0.4 =	14,042.00 SF
	c. Min. Tower Coverage Permitted	35,105.00 SF X 0.3 =	10,531.50 SF
	d. Proposed Tower at floors 7-15		11,579.52 SF Complies
	Proposed Tower at floor 16		10,644.84 SF Complies
	Proposed Tower at floor 17		10,770.86 SF Complies
	Proposed Tower at floor 18		11,092.68 SF Complies
	Proposed Tower at floor 19		11,206.99 SF Complies
	Proposed Tower at floors 20-33		11,208.57 SF Complies
	Proposed Tower at floors 34		11,208.51 SF Complies
	Proposed Tower at floors 35		11,193.32 SF Complies
	Proposed Tower at floors 36		11,156.28 SF Complies
	Proposed Tower at floors 37		11,127.40 SF Complies
	Proposed Tower at floor 38		11,097.02 SF Complies
	Proposed Tower at floor 39		11,064.13 SF Complies
	Proposed Tower at floor 40		11,028.24 SF Complies
	Proposed Tower at floor 41		10,538.00 SF Complies
	e. Minimum Setback 20' above 85'		
	Complies		

TOP 40' OF TOWER

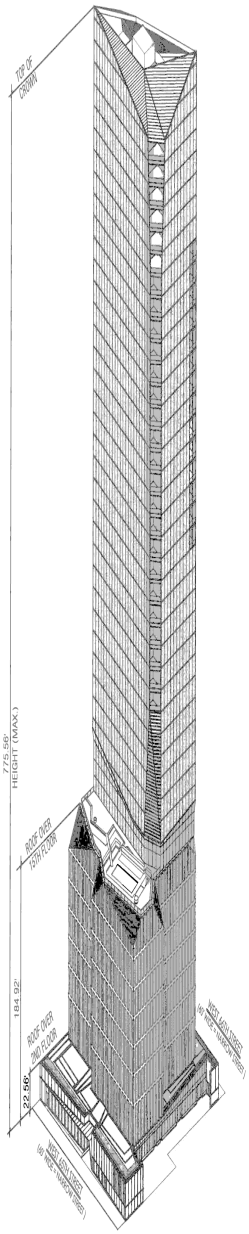
62-36 (a)	The highest 4 stories of the tower or 40 feet, whichever is less, may cover less than 30% of the lot area if the GFA of each story does not exceed 80% of GFA of the story directly below it.		
	Proposed tower at 42nd Floor, Bulkhead (Ht. 732.73')		8,311.00 SF
	Max. 80% of 41st Floor	80% x 10,538 SF =	8,430.40 SF Complies

BULK DISTRIBUTION BELOW 150' IN HEIGHT

62-34	Total Permitted Floor Area		548,543.00 SF
	Min. Required ZFA Below 150'	548,543.00 SF X 0.6 =	329,125.80
	14th Floor - Finished Floor		
	Floor Elevation		226.98 Ft
	Floor Height in C4-7/ Through Lot Portion 1		149.48 Ft
	Floor Height in R8/ Through Lot Portion 2		149.67 Ft
	Provided:		
	Existing Building		43,053.00 SF
	New Building Floors 1-14 (See Floor Area Table)		286,076.04 SF
	Total Below 150'		329,129.04 SF Complies

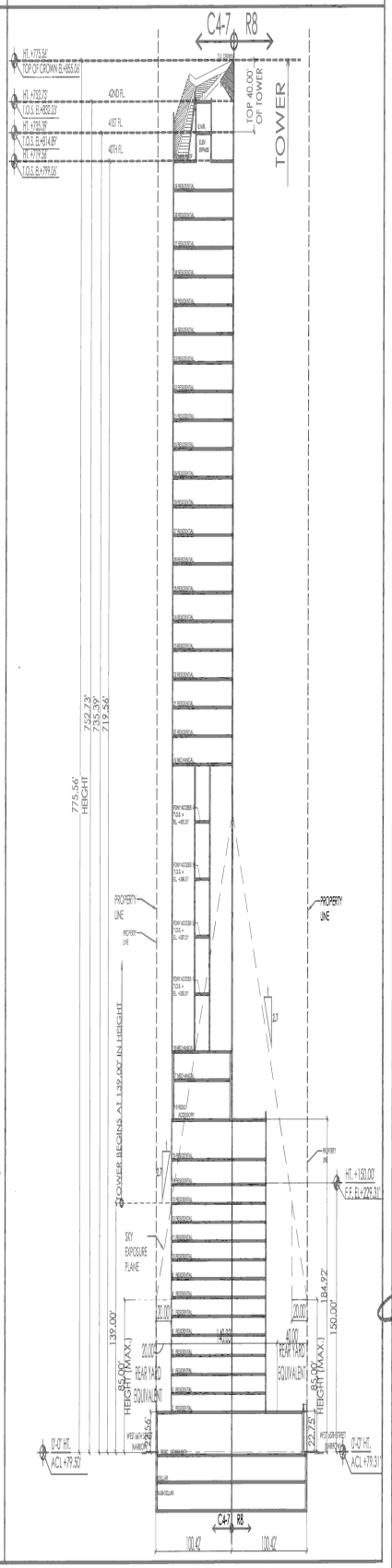
AXONOMETRIC DIAGRAM

Scale: NTS



SECTION DIAGRAM

Scale: NTS



LEGEND

SKY EXPOSURE PLANE

PROPERTY LINE

NYC Buildings

ZD1 Zoning Diagram

Submitted to resolve objections stated in a notice of intent to revoke issued pursuant to rule 101-15.

☐ YES ☒ NO

Location Information

House No(s) 36

Street Name West 66th Street

Borough Manhattan

Block 1118

Lot 45

Bin 1028168

Falsification of any statement is a misdemeanor and is punishable by a fine or imprisonment, or both. It is unlawful to give to a city employee, or for a city employee to accept, any benefit, monetary or otherwise, either as a gratuity for properly performing the job or in exchange for special consideration. Violation is punishable by imprisonment or fine or both. I understand that if I am found after hearing to have knowingly or negligently made false statement or to have knowingly or negligently falsified or allowed to be falsified any certificate, form, signed statement, application, report or certification of the correction of a violation required under the provisions of this code or of a rule of any agency, I may be barred from filing further applications or documents with the Department.

NAME (PRINTED)

Luigi P. Russo

SIGNATURE DATE

P.E./R.A. SEAL (APPLY SEAL, SIGN AND DATE OVER SEAL)

Internal Use Only

BIS Doc.#

PLAN EXAMINERS SIGN AND DATE

R: 002426

FILED: NEW YORK COUNTY CLERK 02/16/2021 01:36 PM INDEX NO. 160565/2020
NYSCEF DOC. NO. 56 RECEIVED NYSCEF: 02/16/2021

NYC Buildings

ZD1 Zoning Diagram

Must be typewritten.
Sheet 2 of 2

ZD1 Sheet 2 of 2

1 Applicant Information *Required for all applications.*

Last Name Russo | First Name Luigi | Middle Initial
Business Name SLCE Architects, LLP | Business Telephone (212) 979-8400
Business Address 1359 Broadway, 14th Floor | Business Fax (212) 979-8387
City New York | State NY | Zip 10018 | Mobile Telephone
E-Mail lrusso@slcearch.com | License Number 020741

2 Additional Zoning Characteristics *Required as applicable.*

Dwelling Units 127 | Parking area sq. ft. | Parking Spaces: Total | Enclosed

3 BSA and/or CPC Approval for Subject Application *Required as applicable.*

Board of Standards & Appeals (BSA)

- ☐ Variance — Cal. No. _____ — Authorizing Zoning Section 72-21
- ☐ Special Permit — Cal. No. _____ — Authorizing Zoning Section _____
- ☐ General City Law Waiver — Cal. No. _____ — General City Law Section _____
- ☐ Other — Cal. No. _____

City Planning Commission (CPC)

- ☐ Special Permit — ULURP No. _____ — Authorizing Zoning Section _____
- ☐ Authorization — App. No. _____ — Authorizing Zoning Section _____
- ☐ Certification — App. No. _____ — Authorizing Zoning Section _____
- ☐ Other — App. No. _____

4 Proposed Floor Area *Required for all applications. One Use Group per line.*

Floor Number	Building Code Gross Floor Area (sq. ft.)	Use Group	Zoning Floor Area (sq. ft.) Residential	Community Facility	Commercial	Manufacturing	FAR
SUB	27,751.62	2B	0				0
SUB	9,362.04	4A		0			0
CEL	27,721.93	2B	0				0
CEL	9,391.64	4A		0			0
001	9,370.60	2	8,923.74				0.16
001	22,405.49	4A		22,405.49			0.41
MEZ1	1,691.49	2	910.32				0.02
MEZ1	2,020.23	4A		0			0
002	20,478.30	2	19,507.39				0.36
003	20,478.30	2	19,509.56				0.36
004	20,478.30	2	19,509.56				0.36
005	20,478.30	2	19,509.56				0.36
006	20,478.30	2	19,531.26				0.36

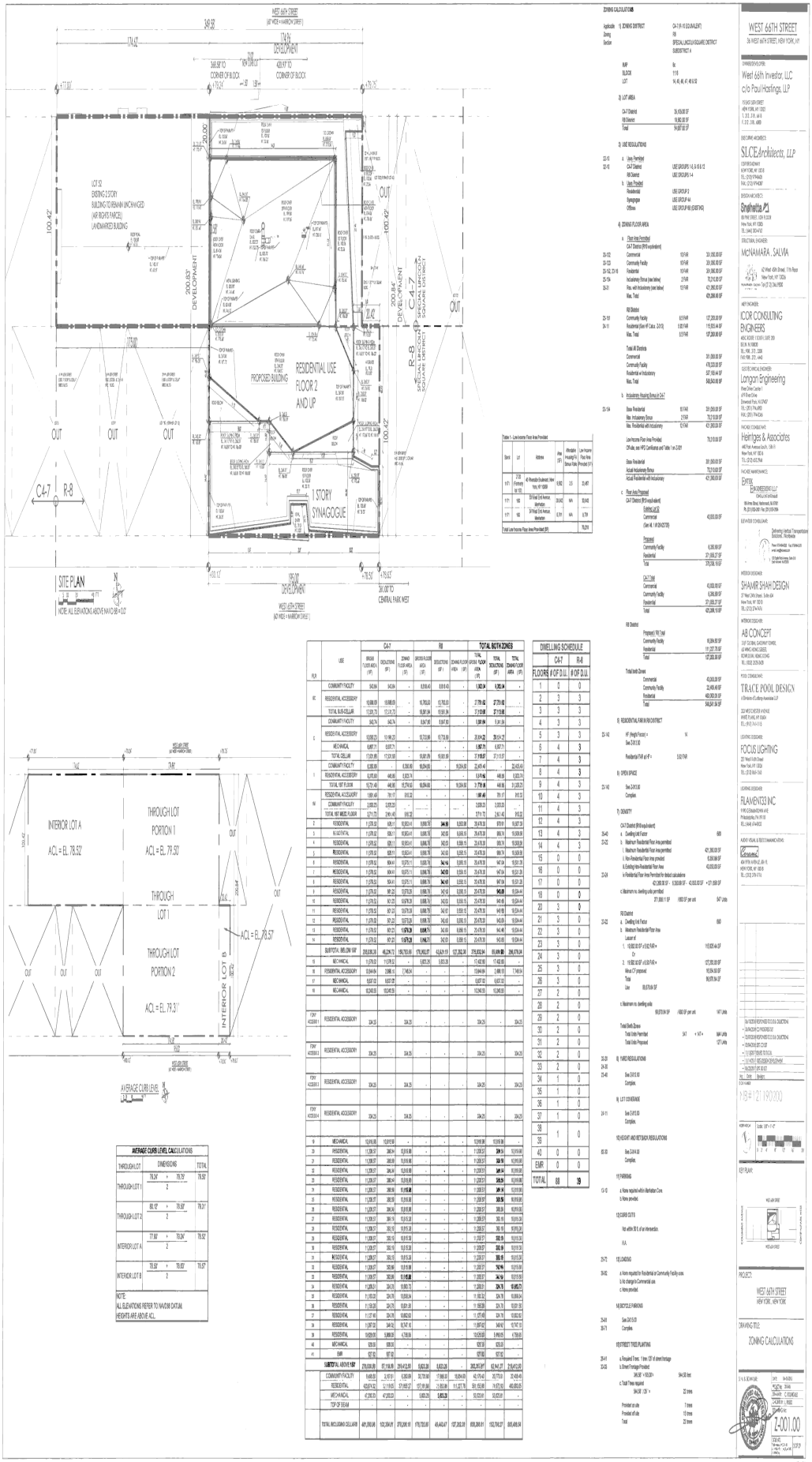
4 Proposed Floor Area *Required for all applications. One Use Group per line.*

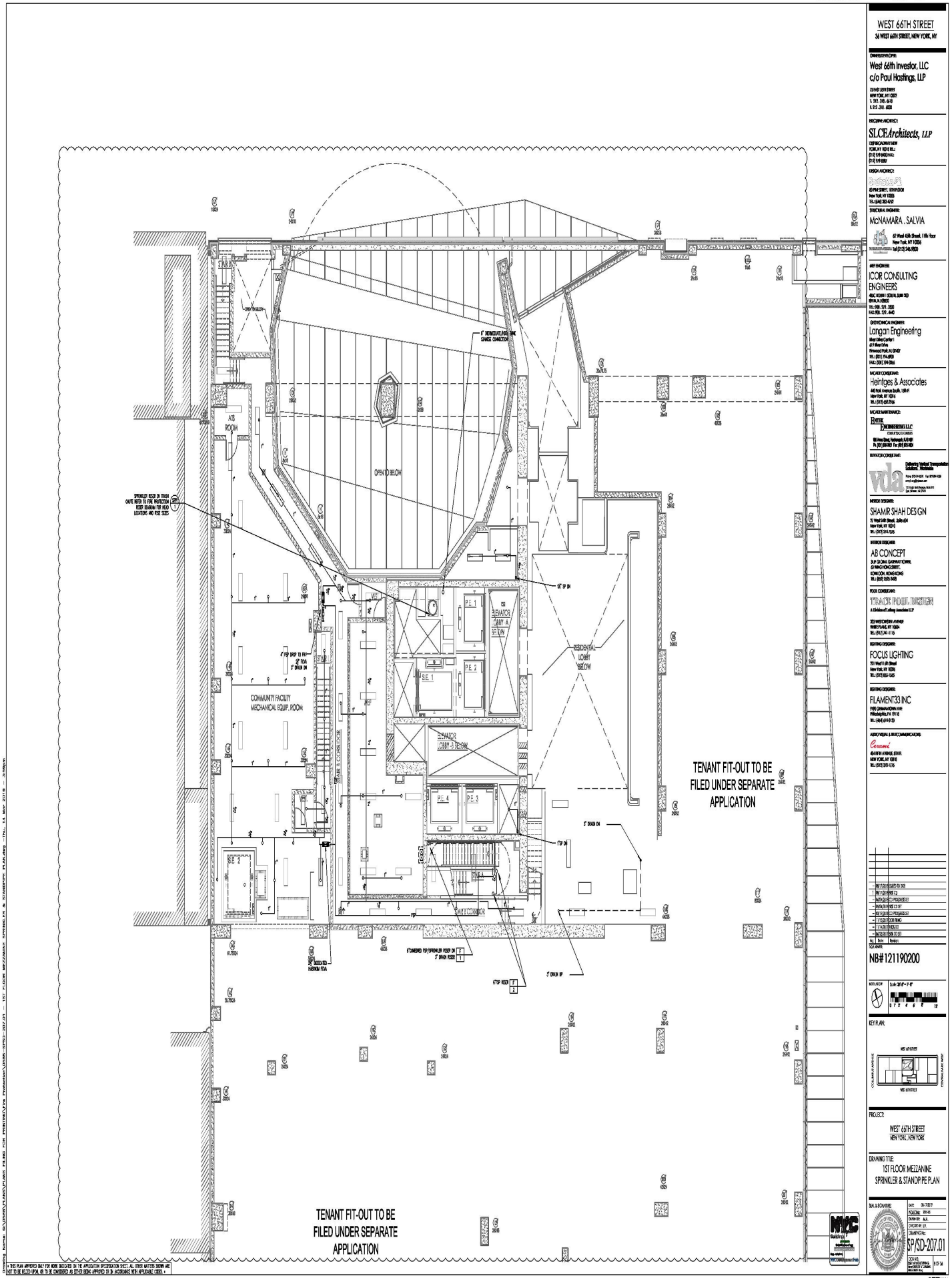
Floor Number	Building Code Gross Floor Area (sq. ft.)	Use Group	Zoning Floor Area (sq. ft.) Residential	Community Facility	Commercial	Manufacturing	FAR
007-008	40,956.60	2	39,062.52				0.71
009-014	122,869.80	2	117,206.64				2.14
015	17,402.80	2	0				0
016	10,644.64	2B	7,746.54				0.14
017	6,637.02	2	0				0
018	10,240.55	2	0				0
FDNY AC 1	334.25	2	334.25				0.01
FDNY AC 2	334.25	2	334.25				0.01
FDNY AC 3	334.25	2	334.25				0.01
FDNY AC 4	334.25	2	334.25				0.01
019	10,916.98	2	0				0
020-026	78,459.99	2	75,739.86				1.38
027-031	56,042.85	2	54,076.90				0.99
032-033	22,417.14	2	21,631.76				0.40
034	11,208.58	2	10,883.73				0.20
035	11,183.38	2	10,858.54				0.20
036	11,156.28	2	10,831.50				0.20
037	11,127.40	2	10,802.62				0.20
038	11,097.02	2	10,747.10				0.20
039	10,626.00	2	4,756.95				0.09
040	928.55	2	0				0
041	927.82	2	0				0
Totals	658,286.81		483,083.05	22,405.49			9.24

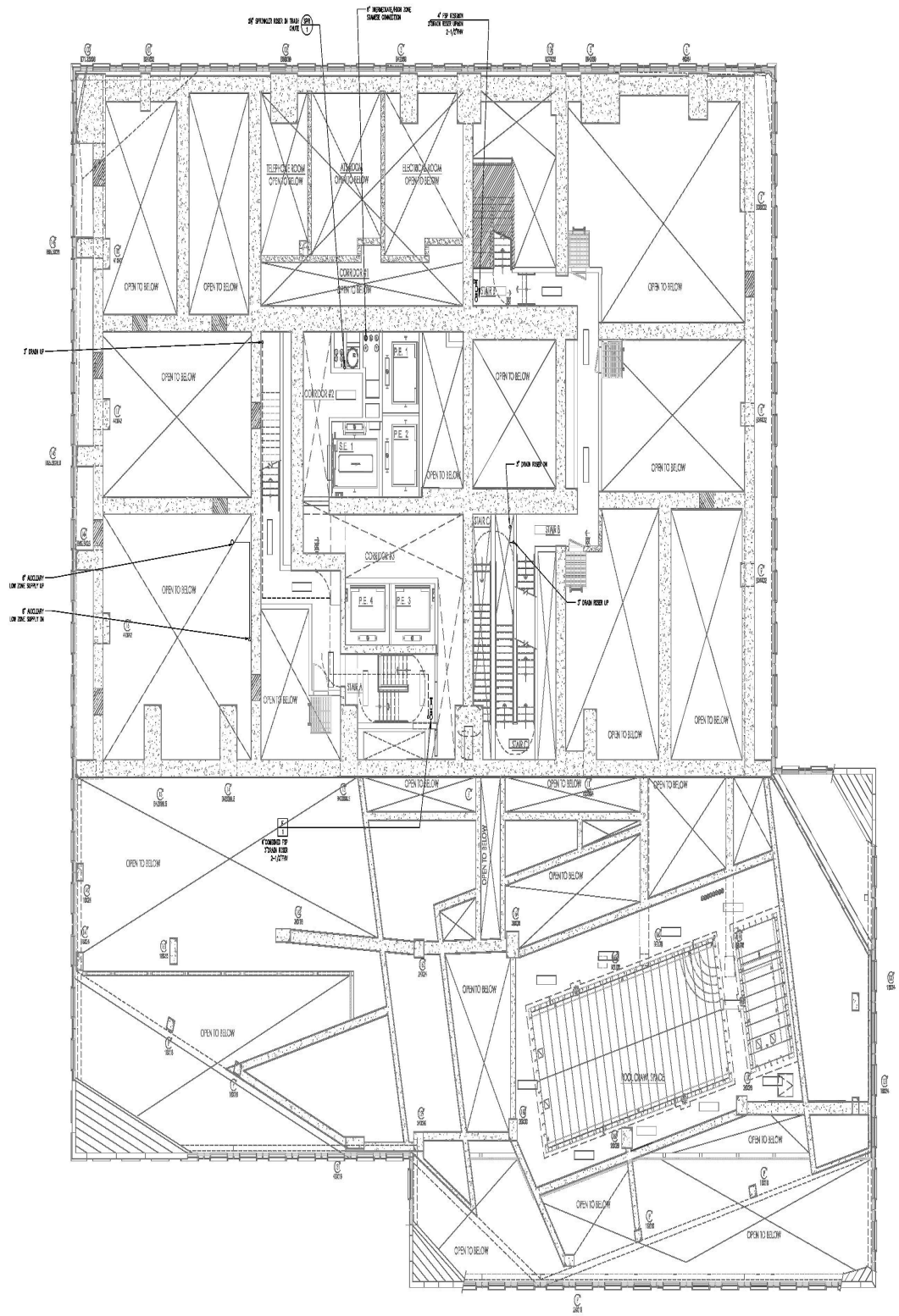
Total Zoning Floor Area	505,488.54

07/09

R. 002427







WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE Architects, LLP

DESIGN ARCHITECT:
Shamir Shah

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:
Bonk Engineering LLC

EXPEDITOR CONSULTANT:
vda

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACK POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC.

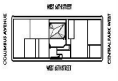
AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

No.	Date	Revision
–	09/11/2020	ISSUED FOR DOB
1	09/11/2020	PAC CS
–	09/24/2020	CO PROGRESS SET
–	09/24/2020	PAC CS SET
–	09/25/2020	CO PROGRESS SET
–	11/13/2020	DOB PAC
–	11/24/2020	PAC CS

NB#121190200

NORTH ARROW — Scale: 3/64" = 1'-0"

KEY PLAN:



PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
15TH POOL CRAWL
SPRINKLER & STANDPIPE PLAN

SEAL & SIGNATURE:

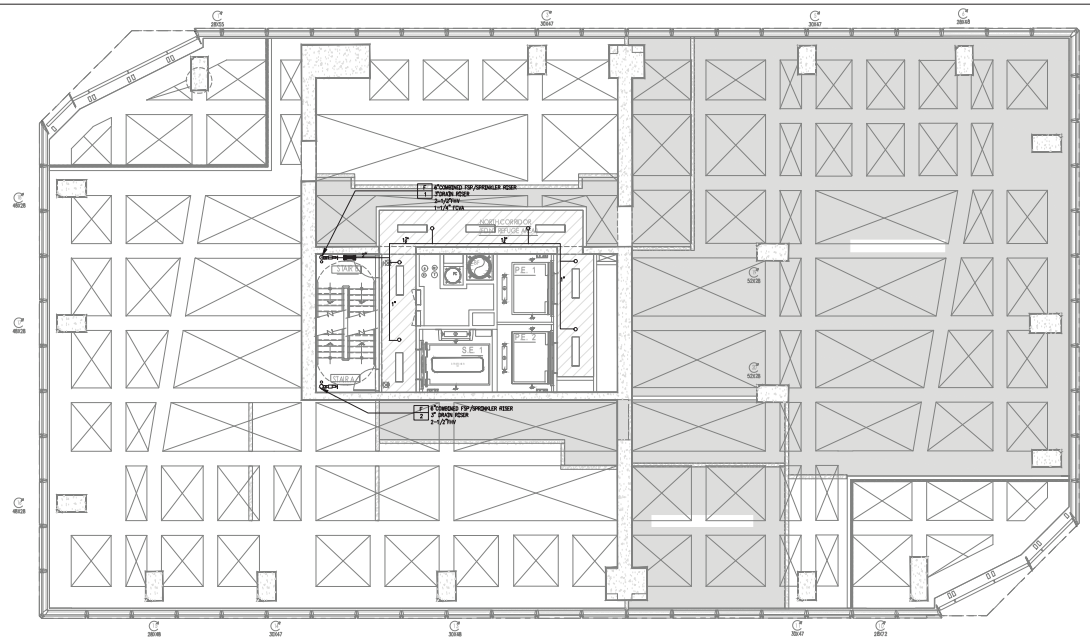
DATE: 09/11/2017
PROJECT#: 2016-02
DRAWN BY: ALA
CHECKED BY: CF
DRAWING NO.: SP/SD-217.00

DOB NO.: 104-16-NB/M
APPLICATION NO.: 121190200
ALTERATION TYPE: 1

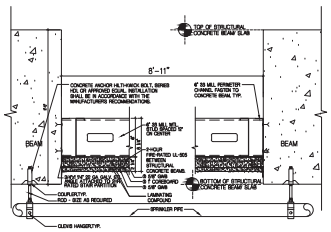
SCALE: 3/64"

THIS PLAN APPROVED ONLY FOR WORK DESCRIBED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE ACTED UPON OR TO BE CONSIDERED AS OTHER WORK APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES.

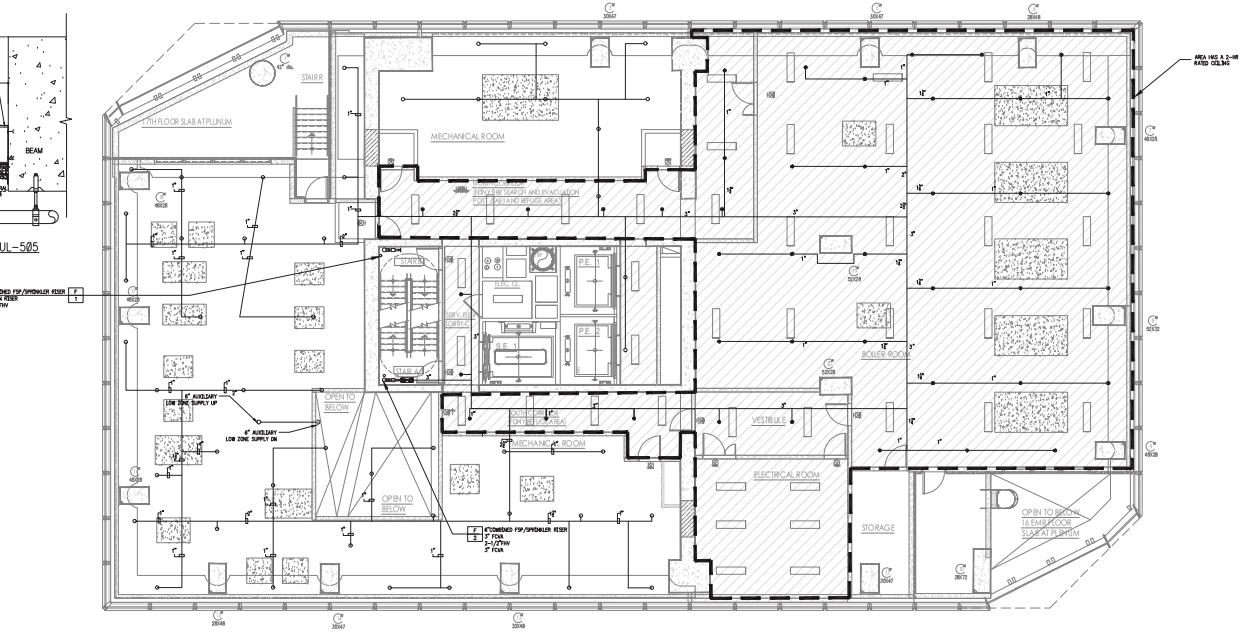
Drawing Name: G:\PROJECTS\2016\02 WEST 66TH STREET\Fire Protection\DOB SPRD-217.00 - 15TH POOL CRAWL SPRINKLER & STANDPIPE PLAN.dwg Thu, 14 Mar 2019 - 4:05pm



2 17TH FL FDNY ACCESS 1 SPRINKLER & STANDPIPE PLAN (SPRINKLERS @ +319.31')
SCALE: 3/16" = 1'-0"



UNDERSIDE OF BEAM 2HR RATED CEILING UL-505
N.T.S.



1 17TH FLOOR SPRINKLER & STANDPIPE PLAN (SPRINKLERS @ +303.31')
SCALE: 3/16" = 1'-0"

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Drawing Name: G:\2018\PLANS\PLANS FILING FOR PRINTING\17th Protection\2018-SPSD-220.00 - 17TH FLOOR & FDNY ACCESS 1 SPRINKLER & STANDPIPE PLANS.pln - Thu, 04 Mar 2019 - 5:02pm

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
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c/o Paul Hastings, LLP
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F. 212. 318. 6000

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(212) 974-8307

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McNAMARA SALVIA Tel (212) 246.9800

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FAX: (201) 798-4046

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FACADE MAINTENANCE:
ENTEK ENGINEERING LLC
18 Arrow Street, Hackensack, NJ 07601
Ph. (201) 820-0181 Fax (201) 820-0184

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P. 914.579.4000 Fx. 973.994.2508
41 Mt Prospect Avenue
Suite 310
Upper Montclair, NJ 07043

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN
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New York, NY 10010
TEL: (212) 274-7076

INTERIOR DESIGNER:
AB CONCEPT
5/F FU GLOBAL CENTER NO 70 YEH, 65 WING HONG STREET
KOWLOON, HONG KONG
TEL: (852) 2620-0428

POOL CONSULTANT:
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333 WESTCHESTER AVENUE
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TEL: (917) 761-1115

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FOCUS LIGHTING
231 West 18th Street
New York, NY 10011
TEL: (212) 865-7565

LIGHTING DESIGNER:
FILAMENT33 INC
9190 GERMANTOWN AVE
Philadelphia, PA 19118
TEL: (484) 674-0133

AUDIO VISUAL & TELECOMMUNICATIONS:
Cosentini
404 FIFTH AVENUE, 8TH FL
NEW YORK, NY 10018
TEL: (212) 390-1776

No.	Date	Revision
1	09/13/2018	ELEVATOR CONSULTANT
2	09/13/2018	DOB
3	10/04/2018	DOB PROGRESS SET
4	10/04/2018	DOB PROGRESS SET
5	01/15/2019	DOB PROGRESS SET
6	01/29/2019	DOB FILING
7	02/14/2019	DOB SIGN OFF

DOB JOB #
NB# 121190200

NORTH ARROW
Scale: 3/16" = 1'-0"

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK , NEW YORK

DRAWING TITLE:
17TH FLOOR & FDNY ACCESS 1 SPRINKLER & STANDPIPE PLANS

SEAL & SIGNATURE:
Roxanne Tsukigata, RA
NYC Development Hub

DATE: 10/12/2018
PROJECT No.: 2018
DRAWN BY: M.A.
CHECKED BY: LV.
DRAWING No.:
SP/SD-220.00
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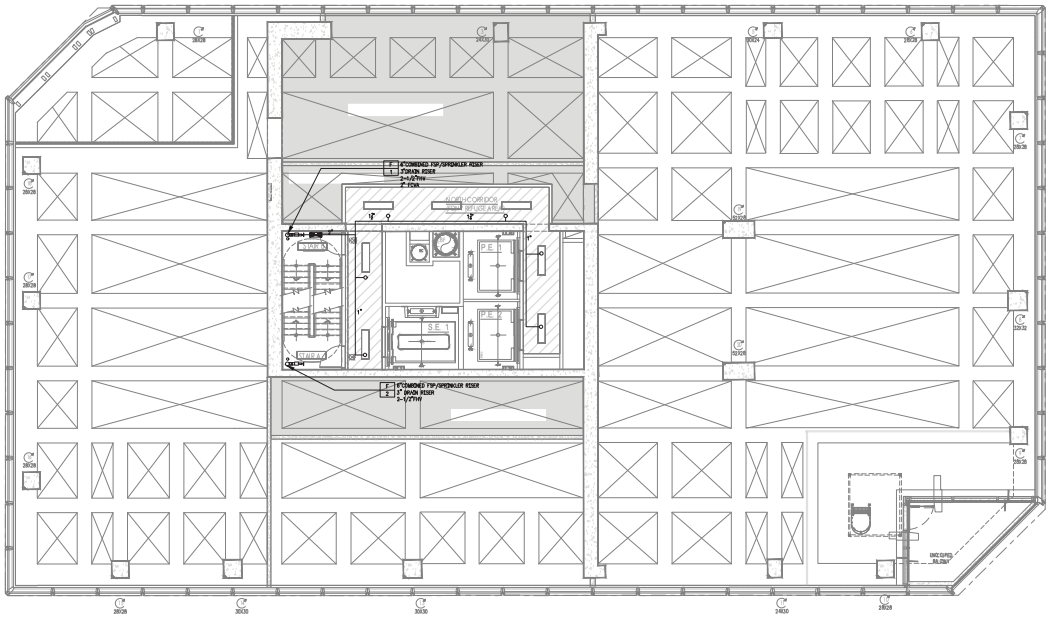
SHEET No.: 11 OF 36
PLOT SIZE: 24" x 36"

3257



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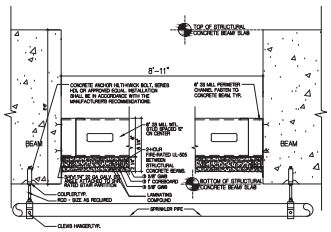

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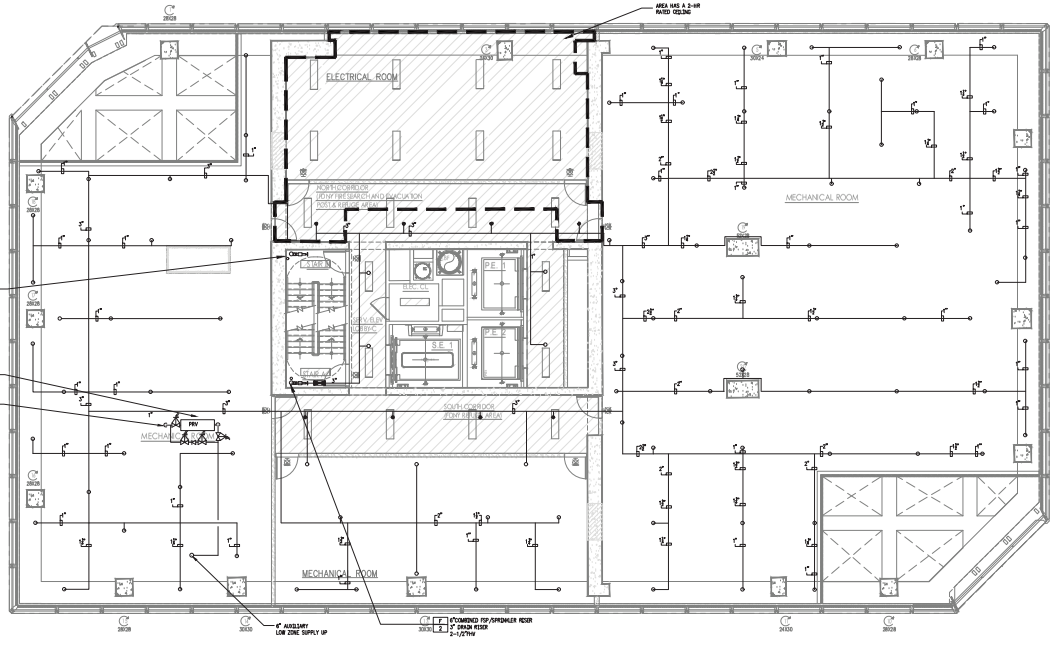
N.T.S.



1 18TH FLOOR SPRINKLER & STANDPIPE PLAN (SPRINKLERS @ +367.31')
SCALES: 3/16" = 1'-0"

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Drawing Name: G:\2018\PLANS\PLANS FILING FOR PRINTING\Fire Protection\2018-SPSD-222.00 - 18TH FLOOR & FDNY ACCESS 4 SPRINKLER & STANDPIPE PLANS.pln - Thu, 04 Mar 2019 - 5:53pm

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
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F. 212. 318. 6000

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SLCE*Architects, LLP*
TEL: (646) 388-4352

DESIGN ARCHITECT:

STRUCTURAL ENGINEER:
McNAMARA . SALVIA
62 West 45th Street, 11th Floor
New York, NY 10036
Tel (212) 246.9800

MEP ENGINEER:
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FAX: 718. 377. 4440

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FAX: (201) 794.0366

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FACADE MAINTENANCE:
ENTEK ENGINEERING LLC
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ELEVATOR CONSULTANT:
vda
Delivering Vertical Transportation Solutions. Worldwide.

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN
TEL: (212) 274-7076

INTERIOR DESIGNER:
AB CONCEPT
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POOL CONSULTANT:
A Division of Lathrop Associates LLP

LIGHTING DESIGNER:
FOCUS LIGHTING
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LIGHTING DESIGNER:
FILAMENT33 INC
TEL: (484) 674-0133

AUDIO VISUAL & TELECOMMUNICATIONS:
Cosentini
TEL: (212) 390-1776

7	09/13/2019 RESUBMISSION
6	08/13/2019 DOB COMMENTS
5	07/12/2019 RESUBMISSION
4	06/14/2019 DOB COMMENTS
3	05/24/2019 DOB COMMENTS
2	01/15/2019 DOB COMMENTS
1	11/14/2018 DOB COMMENTS
No.	Date / Revision

NB# 121190200

Scale: 3/16" = 1'-0"

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK , NEW YORK

DRAWING TITLE:
18TH FLOOR & FDNY ACCESS 4 SPRINKLER & STANDPIPE PLANS

SEAL & SIGNATURE:
Roxanne Tsakopoulos, P.E.
NYC Development Hub

DATE	03/13/2019
PROJECT No.	2018-SPSD
DRAWN BY	M.A.
CHECKED BY	S.V.
DRAWING No.	SP/SD-222.00
DOB NO.	
SHEET	15 OF 36

Plot Size: 24 x 36

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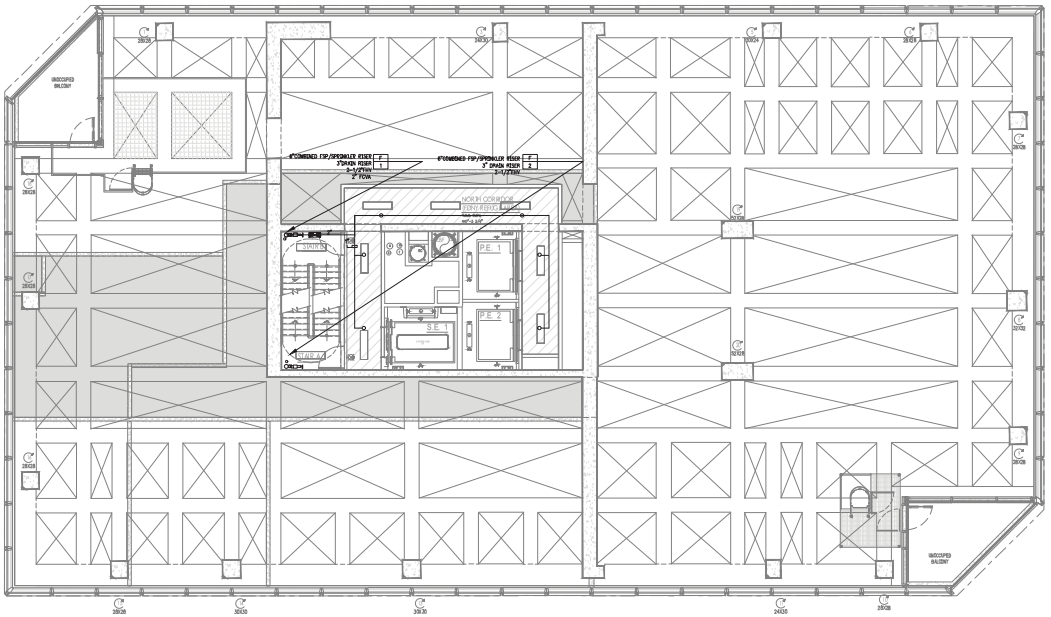

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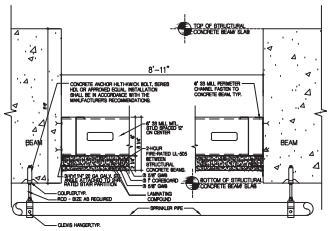

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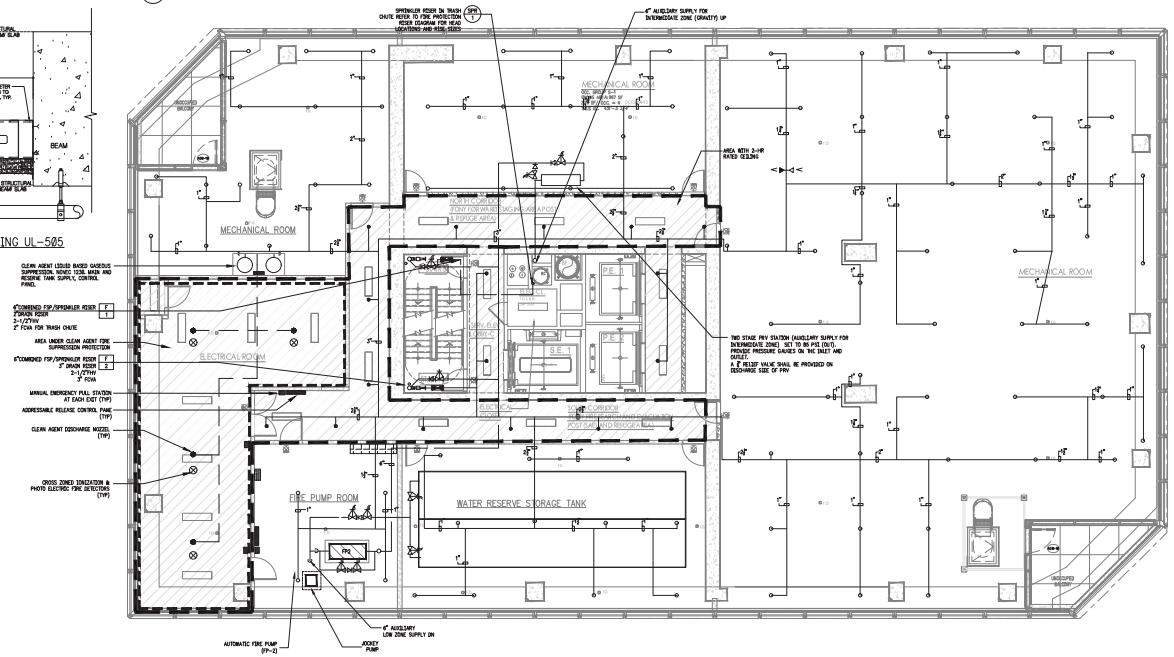

1 19TH FLOOR SPRINKLER & STANDPIPE PLAN (SPRINKLERS @ +431.31')
SCALE: 3/16" = 1'-0"

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Drawing Name: G:\2018\PLANS\PLANS FILING FOR PRINTING\Fire Protection\2018-SPSD-224.00 - 19TH FLOOR & FDNY ACCESS 7 SPRINKLER & STANDPIPE PLANS.dwg - Thu, 04 Mar 2019 - 5:05pm

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP
75 EAST 55TH STREET
NEW YORK, NY 10022
T. 212. 318. 6458
F. 212. 318. 6000

EXECUTIVE ARCHITECT:
SLCE*Architects, LLP*
1359 BROADWAY NEW
YORK, NY 10018
(212) 979-6050
(212) 979-8387

DESIGN ARCHITECT:
60 PINE STREET, 10TH FLOOR
New York, NY 10005
TEL: (646) 389-4782

STRUCTURAL ENGINEER:
McNAMARA . SALVIA
62 West 45th Street, 11th Floor
New York, NY 10036
McNAMARA SALVIA Tel (212) 246.9800

MEP ENGINEER:
ICOR CONSULTING ENGINEERS
450C ROUTE 1 SOUTH, SUITE 200
ISELIN, NJ 08830
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FAX: 908. 272. 4440

GEOTECHNICAL ENGINEER:
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Land Development
Transportation
Water Resources
One Harmon Plaza
Secaucus, NJ 07094
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FAX: (201) 798-4654

FACADE CONSULTANT:
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440 Park Avenue South, 6th Fl.
New York, NY 10016
TEL: (212) 652-2966

FACADE MAINTENANCE:
ENTEK ENGINEERING LLC
CONSULTING ENGINEERS
18 Arrow Street, Hackensack, NJ 07601
Ph. (201) 820-0181 Fax (201) 820-0184

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TEL: (852) 2620-0428

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TEL: (917) 701-1110

LIGHTING DESIGNER:
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231 West 18th Street
New York, NY 10011
TEL: (212) 865-7565

LIGHTING DESIGNER:
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–	09/13/2018 ISSUED TO DOB
1	09/13/2018 PW-1 CO
–	10/04/2018 CO FHC#495518
–	10/04/2018 PW-1 CO SP
–	01/11/2019 CO FHC#495518
–	01/14/2019 PW-1 CO
No.	Date Revision

NB# 121190200

Scale: 3/16" = 1'-0"

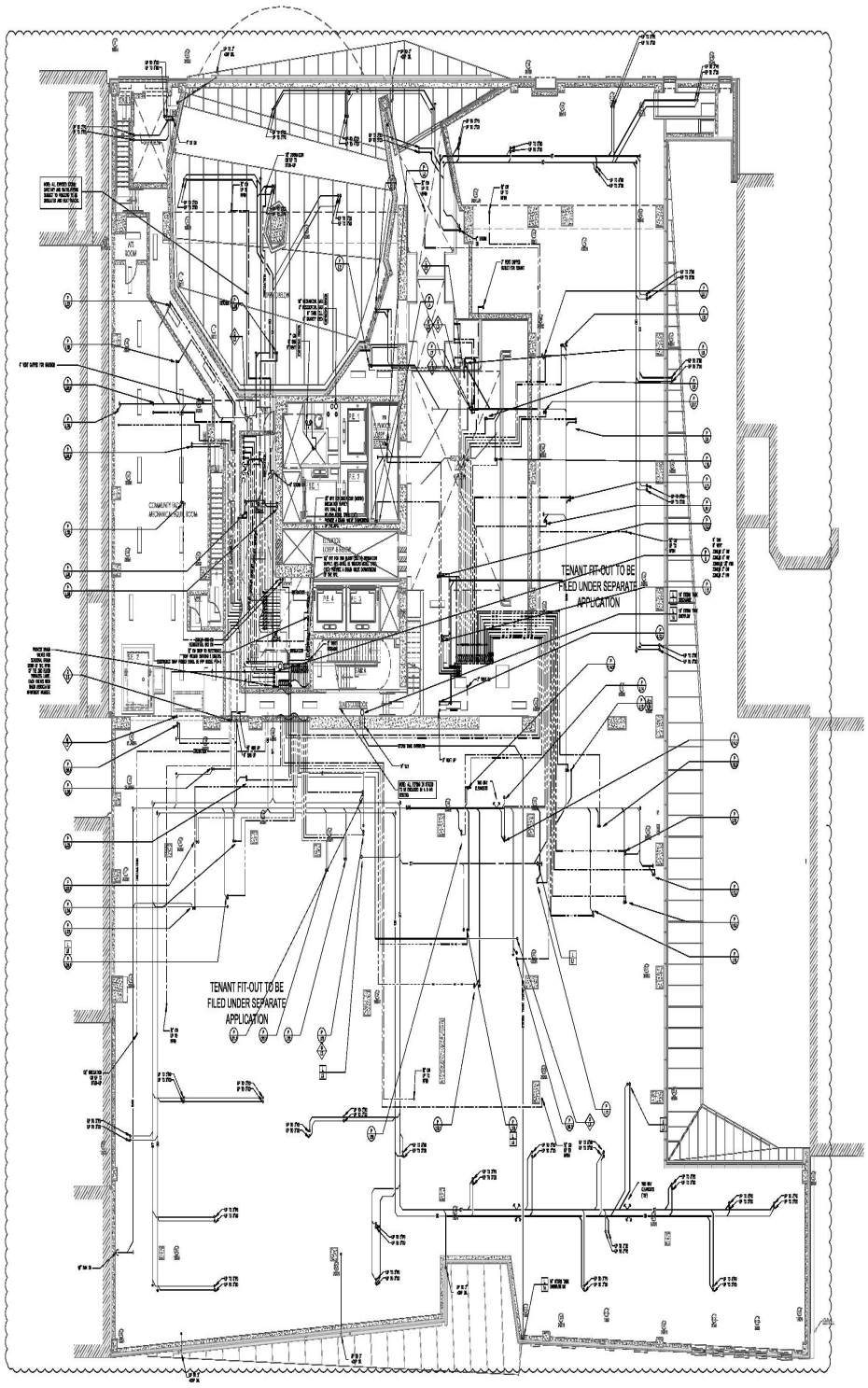
KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK , NEW YORK

DRAWING TITLE:
19TH FLOOR & FDNY ACCESS 7
SPRINKLER & STANDPIPE PLANS

SEAL & SIGNATURES:
Roxanne Tsakopoulos, R.A.
NYC Development Hub

DATE: 03/15/2019
PROJECT No.: 15-1108
DRAWN BY: M.A.
CHECKED BY: R.T.
DRAWING NO.:
SP/SD-224.00
SCALE: 3/16" = 1'-0"
SHEET 19 OF 36



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE Architects, LLP

DESIGN ARCHITECT:
Studio V

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:
BKSK ENGINEERING LLC

EXPEDITOR CONSULTANT:
vla

INTERIOR DESIGNER:
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INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACE POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC.

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

No.	Date	Revision
1	09/17/2020	PER NB COMMENTS
2	10/30/2020	PER DOB COMMENTS
3	11/20/2020	PER DOB COMMENTS
4	12/04/2020	PER DOB COMMENTS

NB#121190200

NORTH ARCH | Scale: 1/8"=1'-0" | 0 1 2 4 8 16

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

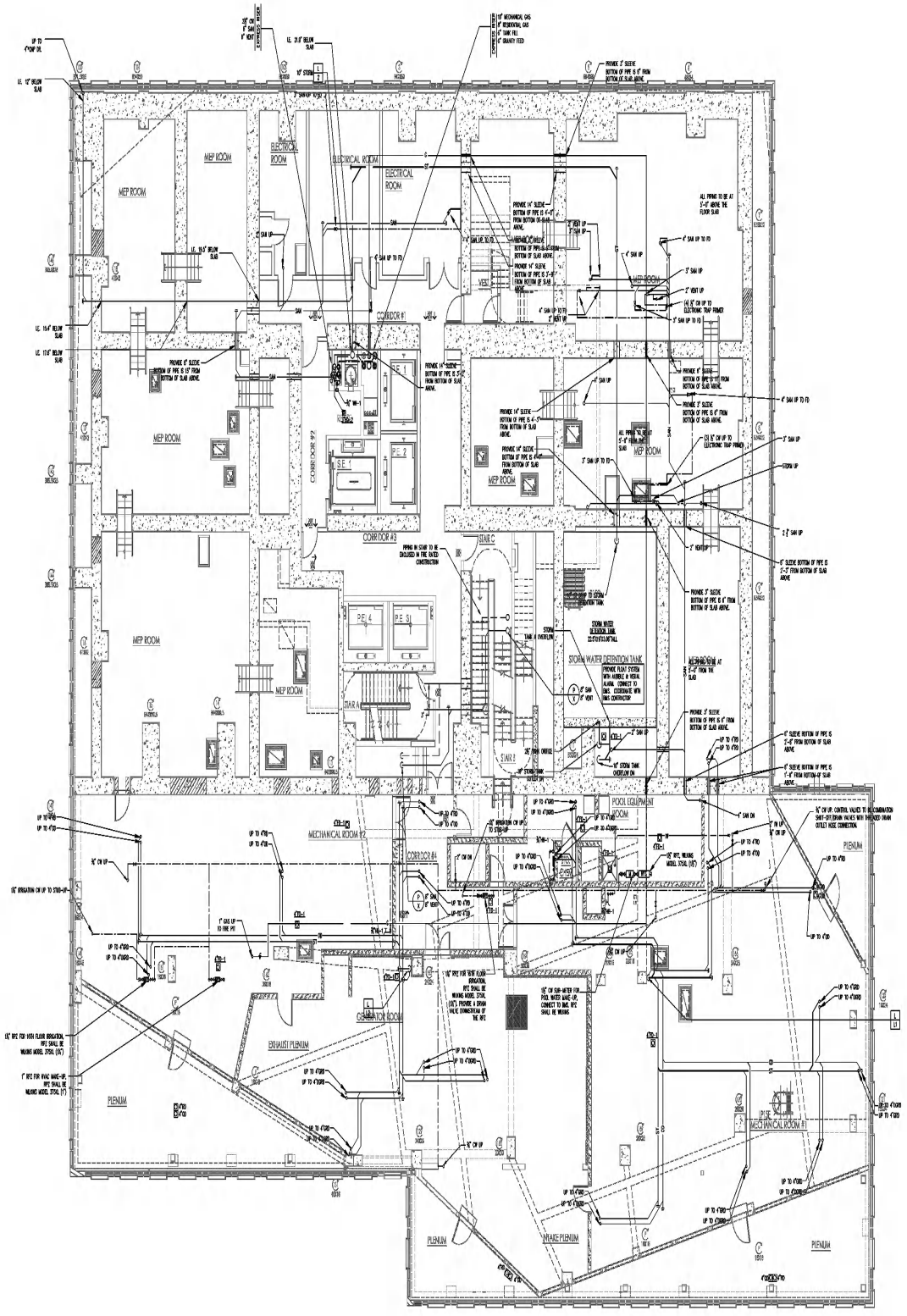
DRAWING TITLE:
1ST FLOOR MEZZANINE
PLUMBING PIPING PLAN

SEAL & SIGNATURE:

DATE: 09/17/2020
PROJECT#: 2014-02
DRAWN BY: ALA
CHECKED BY: EF
DRAWING NO.: P-207.01
DOB NO.: 121190200-I1
SHEET: 207 OF 244

Drawing Name: G:\PROJECTS\2014\2014-02_WEST 66TH\CAD\Plumbing\DRAWINGS - P-207.01 - 1ST FLOOR MEZZANINE PLUMBING PIPING PLAN.dwg - Tue, 05 Mar 2019 - 1:01 pm

THIS PLAN APPROVED ONLY FOR WORK INDICATED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE ACTED UPON OR TO BE CONSIDERED AS OTHER WORK APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES.



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE Architects, LLP

DESIGN ARCHITECT:

STRUCTURAL ENGINEER:
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FACADE CONSULTANT:
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FACADE MAINTENANCE:

ELEVATOR CONSULTANT:

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INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:

No.	Date	Revision
1	09/17/2020	REVISIONS TO DOB
2	09/17/2020	PER DOB COMMENTS
3	10/09/2020	PER DOB COMMENTS SET
4	10/09/2020	PER DOB COMMENTS
5	10/16/2020	PER DOB COMMENTS SET
6	10/19/2020	PER DOB COMMENTS SET
7	11/13/2020	PER DOB FILING
8	11/14/2020	PER DOB COMMENTS
9	12/16/2020	PER DOB COMMENTS

NB# 121190200

NORTH ARCH | Scale: 3/16" = 1'-0"

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
15TH FLOOR
PLUMBING PIPING PLAN

SEAL & SIGNATURE:

DATE: 09/17/2020
PROJECT #: 2014.02
DRAWN BY: A.G.
CHECKED BY: S.P.
DRAWING #: P-216.00

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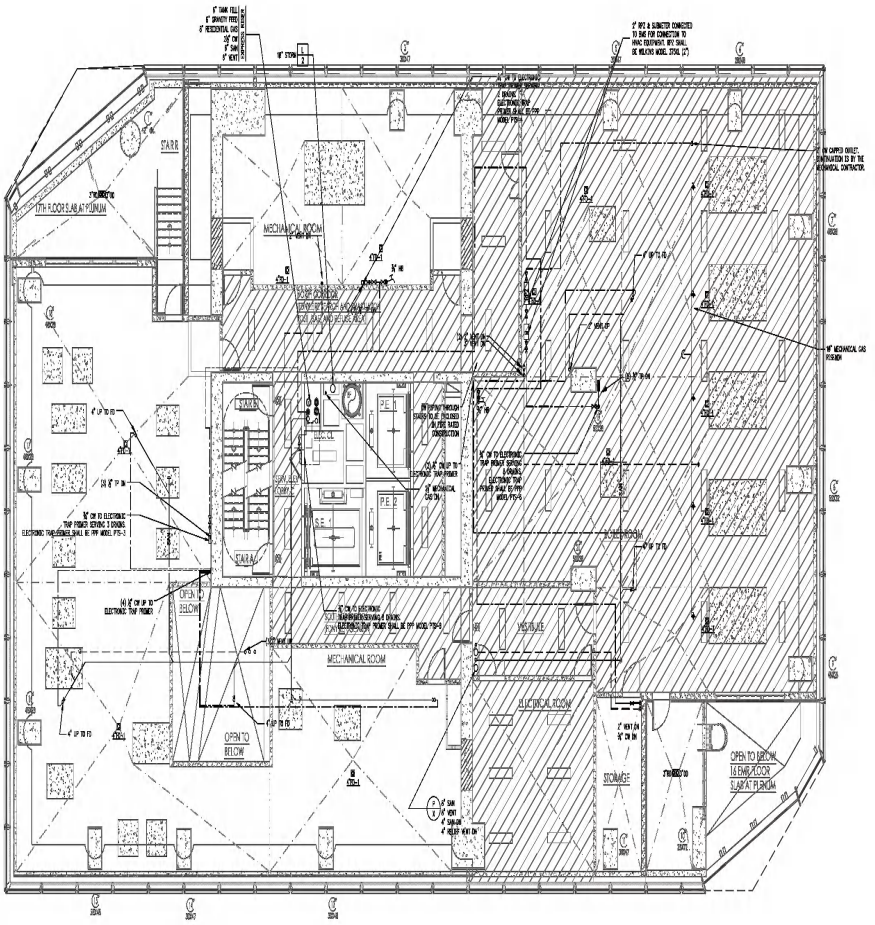

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

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AUDIO VISUAL & TELECOMMUNICATIONS:
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No.	Date	Revision
1	09/17/2020	ISSUED TO DOB
2	09/17/2020	RENEWAL
3	09/04/2020	CO PROGRESS SET
4	09/04/2020	CO SET
5	04/07/2020	CO RENEWAL
6	03/10/2020	CO PROGRESS SET
7	11/15/2019	CO RENEWAL
8	11/14/2019	CO SET
9	10/14/2019	CO CHANGE

NB#121190200

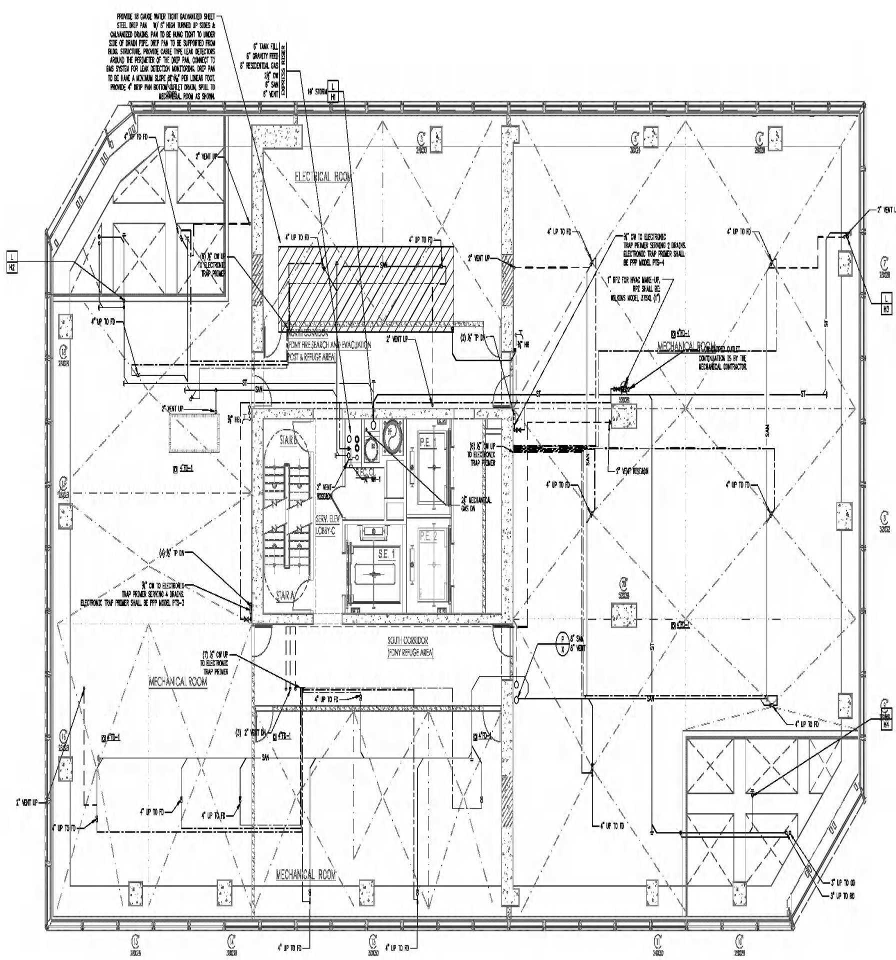
KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
17TH FLOOR
PLUMBING PIPING PLAN

SEAL & SIGNATURE:

DATE: 09/17/2020
PROJECT#: 2019-02
DRAWN BY: A.G.
CHECKED BY: S.P.
DRAWING NO.: P-220.00



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36 WEST 66TH STREET, NEW YORK, NY

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ELEVATOR CONSULTANT:
vda
Delivering Vertical Transportation Solutions...Worldwide

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No:	Date:	Revision:
–	08/17/2018	ISSUED TO DOB
1	08/17/2018	80% CD
–	07/13/2018	ISSUED TO DOB
–	06/04/2018	CD PROGRESS SET
–	05/04/2018	50% CD SET
–	04/27/2018	DOB FILING
–	03/19/2018	CD PROGRESS SET
–	11/14/2017	100% DD
–	02/14/2017	100% SD DWGS

D.O.B. NUMBER:
NB#121190200

NORTH ARROW
Scale: 3/16" = 1'-0"

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK , NEW YORK

DRAWING TITLE:
18TH FLOOR
PLUMBING PIPING PLAN

SEAL & SIGNATURE:

DATE:	08-17-2018
PROJECT No:	2015-85
DRAWN BY:	N.G.
CHECKED BY:	V.P.

DRAWING No:
P-221.00

DOB NO.
26 OF 50

Drawing Name: G:\0588\PLANS\PLANS FILING FOR PRINTING\Plumbing\0588-P-221.00 — 18TH FLOOR PLUMBING PIPING PLAN.dwg —Tue, 05 Mar 2019 — 2:11pm

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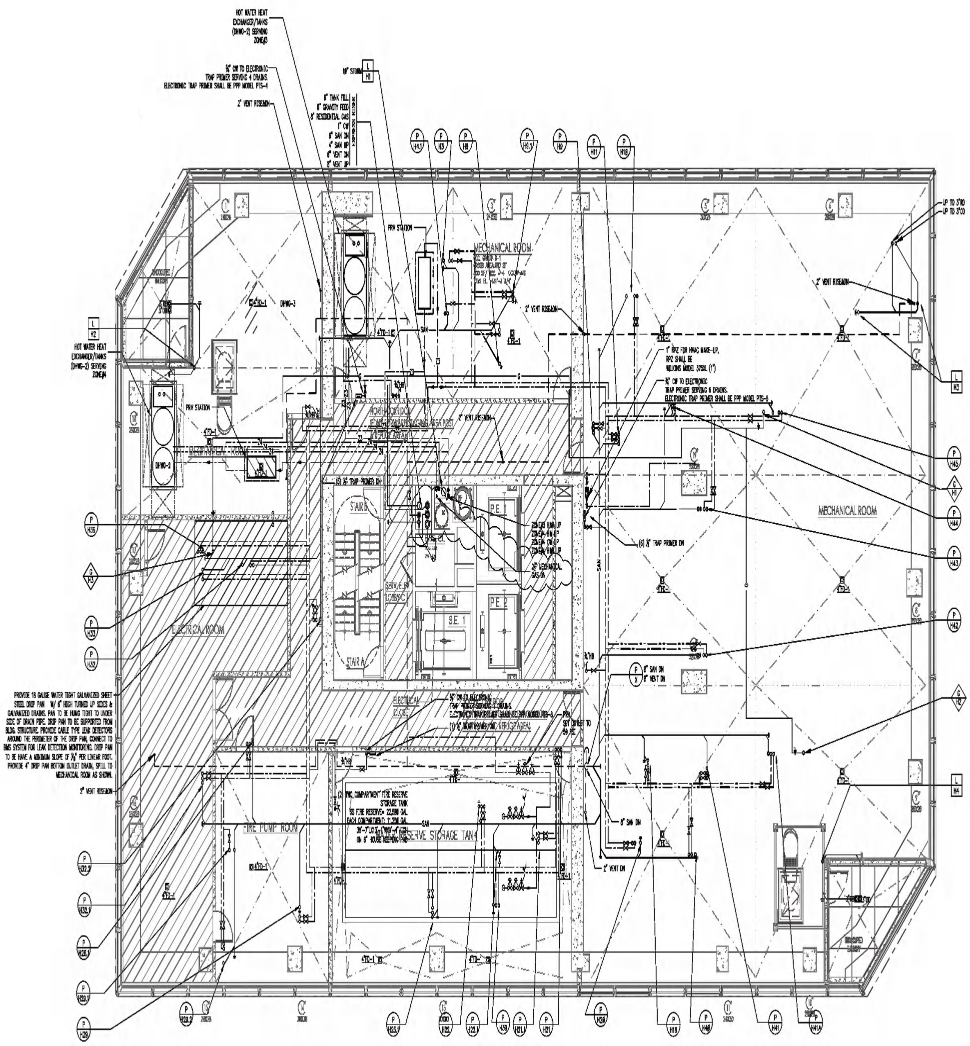
24 X 36



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

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ELEVATOR CONSULTANT:
vda

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACK POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

No:	Date:	Revision:
-	08/17/2018	ISSUED TO DOB
1	08/17/2018	80% CD
-	06/04/2018	CD PROGRESS SET
-	05/04/2018	50% CD SET
-	04/27/2018	DOB FILING
-	03/19/2018	CD PROGRESS SET
-	11/14/2017	100% DD
-	06/23/2017	50% DD SET
-	02/14/2017	100% SD DWGS

D.O.B. NUMBER:
NB#121190200

NORTH ARROW
Scale: 3/16" = 1'-0"

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
19TH FLOOR
PLUMBING PIPING PLAN

SEAL & SIGNATURE:
DATE: 08-17-2018
PROJECT No: 2015-85
DRAWN BY: N.G.
CHECKED BY: V.P.
DRAWING No:
P-222.00
27 OF 50

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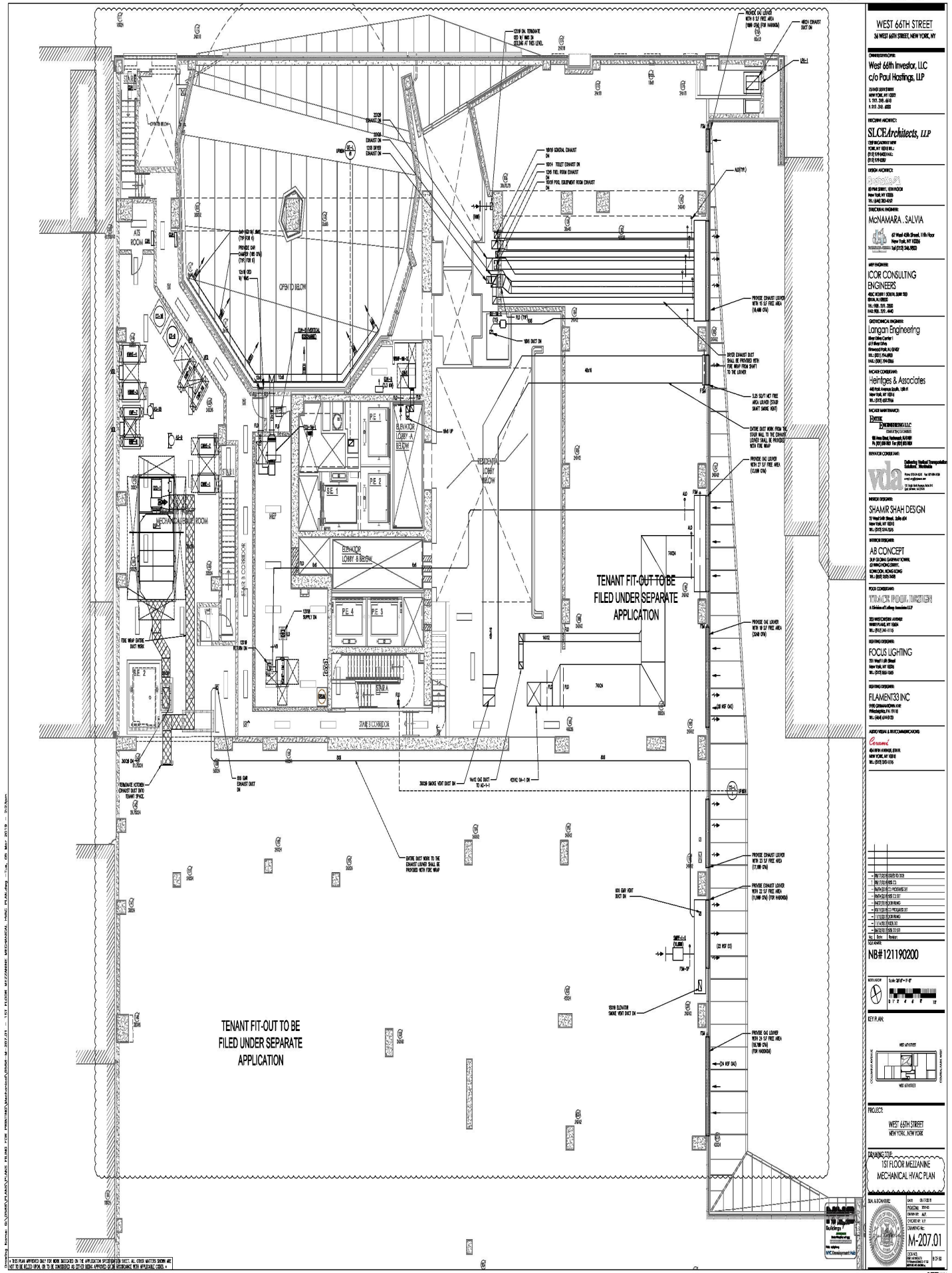


GENERAL NOTES:

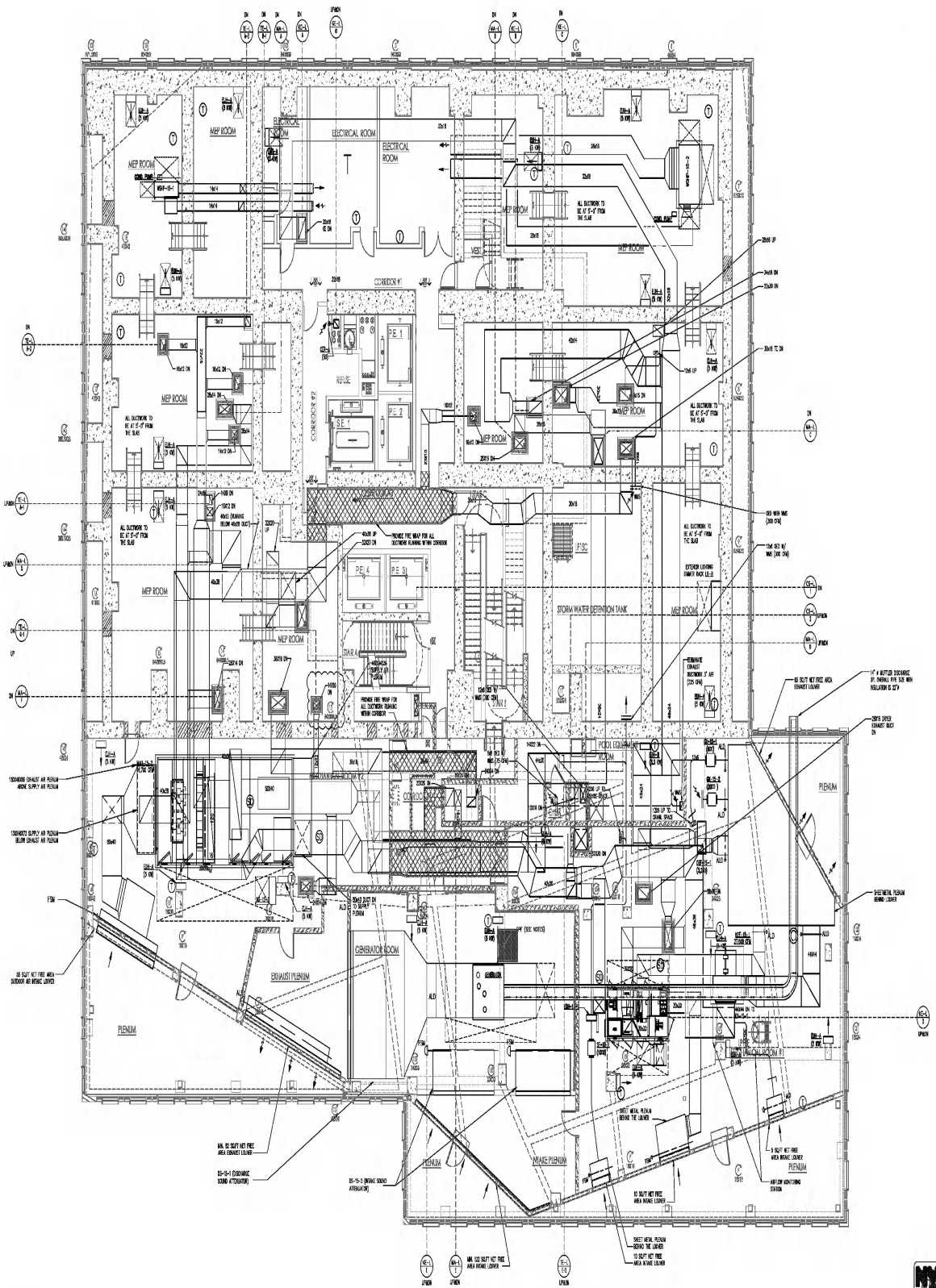
1. ALL ELECTRONIC SERVING FIVE (EXCEPT DRYER EXHAUST ELECTRONIC) AND OR HVAC UNITS ON ROOF OR MER ARE TO BE ACCESSIBLY LABELED ON THAT ROOF.
2. PROVIDE 2 HR FIRE WRAP AS INDICATED.
3. MAU-5-1 & MAU-15-1
   A. OUTDOOR AIR INTAKE DUCT – 10 FEET OF INTERNAL LINING FROM UNIT
   B. 15 FEET INTERNAL LINING ON SUPPLY

DIESEL PARTICULATE FILTER (DPF) NOTES:

(1) 12" DIAMETER X 12" LONG CATALYZED, WALL-FLOW, PASSIVE DIESEL PARTICULATE FILTER ELEMENTS ALL ARRANGED IN A (2) HIGH X (1) WIDE ARRAY DESIGNED FOR 35E ONLY ON AN ATLANTIC ENTERTAINMENT GENERATOR (MANUFACTURED BY ULTIMATE POWER GENERATION CONTACT ZACH WENDKOS P: 609-465-7224) RUNNING AT FULL LOAD. ENGINE EXHAUST IS DIRECTED ACROSS THESE DPF ELEMENTS WITHIN A CUSTOM BUILT 304 SERIES STAINLESS STEEL HOUSING. THE OVERALL HOUSING SIZE CANNOT EXCEED LAUNCH TANK 60.00" LONG, 30.00" WIDE, AND 28.00" TALL. THIS HOUSING MUST INCORPORATE AN INTERNALLY INSULATED BOUNDRY DESIGN TO ACHIEVE CRITICAL SURFACE SOUND ATTENUATION OF 25-30DBA) AT A BACKPRESSURE NO GREATER THAN 50% OF THE ENGINE MANUFACTURERS MAXIMUM ALLOWABLE BACKPRESSURE.

THE CATALYZED DPF ELEMENTS ESSENTIALLY FILTER OUT EMBEDDED CARBON PARTICLES OR SOOT, THAT EXISTS IN THE DIESEL ENGINE EXHAUST). EXPOSED TO HIGHER SOLID STATE OF TEMPERATURE, THE DPF'S WILL OXIDIZE 95+% OF THESE CARBON PARTICLES, OF A SPECIFIED SIZE, TO THEIR OVERALL CAPACITY. THESE CARBON PARTICLES, OR OFTEN CALLED PARTICULATE MATTER (PM), NEED TO BE REMOVED FROM THE DPF'S. THIS IS ACCOMPLISHED BY THE CATALYZED COATING ON THE DPF ELEMENTS REACHING A "LIGHT OFF" TEMPERATURE, DRIVEN BY THE EXHAUST GAS TEMPERATURE. ONCE THIS LIGHT OFF TEMPERATURE IS ACHIEVED, THE DPF WILL OPERATE IN A CONDITION CALLED CONTINUOUS REGENERATION. CONTINUOUS REGENERATION WILL BURN OFF THE CARBON PARTICLES TRAPPED WITHIN THE DPF ELEMENTS AS LONG AS THE LIGHT OFF TEMPERATURE IS SUSTAINED.

IT IS IMPORTANT THAT THE LIGHT OFF EXHAUST TEMPERATURE IS MET FOR PROPER OPERATION. WHEN LIGHT OFF TEMPERATURE IS NOT MAINTAINED, CARBON PARTICLES WILL BUILD UP IN THE DPF ELEMENTS AND WILL INCREASE BACKPRESSURE IN THE EXHAUST. TO HELP MANAGE THIS, A DIFFERENTIAL PRESSURE SWITCH AND MONITORING SENSOR IS RECOMMENDED TO BE UTILIZED IN A PASSIVE DPF SYSTEM TO ALERT THE OPERATOR, OR TO TRIGGER AN ALARM IF A SPECIFIED LIMIT OF BACK PRESSURE HAS BEEN REACHED. WHEN THAT occurs, SUPPLEMENTAL LOAD MUST BE APPLIED TO THE ENGINE IN ORDER TO REACH AND MAINTAIN THE LIGHT OFF TEMPERATURE OF THE DPF'S.



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE*Architects*, LLP

DESIGN ARCHITECT:

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:

ELEVATOR CONSULTANT:

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & DIRECT/ANIMATION CONSULTANT:

No.	Date	Revision
1	08/17/2020	ISSUED TO DOB
2	09/17/2020	RFI 1
3	09/24/2020	RFI 2 PROGRESS SET
4	09/24/2020	RFI 2 & RFI 3
5	10/07/2020	RFI 4 & MISC
6	10/15/2020	RFI 5 PROGRESS SET
7	11/13/2020	RFI 6 & MISC
8	11/24/2020	RFI 7 & MISC
9	12/07/2020	RFI 8 & MISC
10	01/04/2021	RFI 9 & MISC

TAX # NUMBER:
NB#121190200

NORTH ARCH | Scale: 3/16"=1'-0"

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
15TH FLOOR
MECHANICAL HVAC PLAN

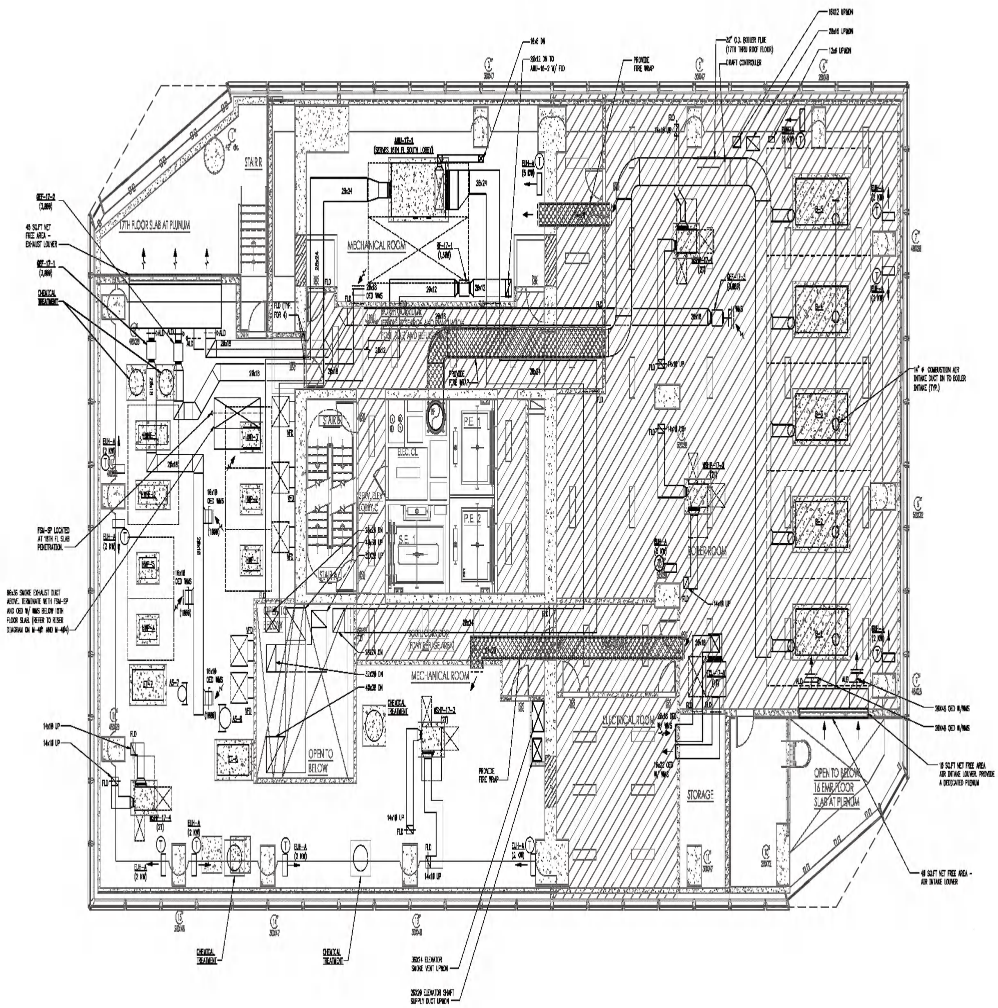
SEAL & SIGNATURE:

DATE	09/17/2020
PROJECT NO.	2019-02
DRAWN BY	AUT
CHECKED BY	S.P.
DRAWING NO.	M-216.00

DOB NO.
DOB APPROVED
DOB PERMIT NO.

GENERAL NOTES:

1. ALL DUCTWORK SERVING FANS (EXCEPT DRYER EXHAUST DUCTWORK) AND OR HVAC UNITS ON ROOF OR MER ARE TO BE ACOUSTICALLY LINED ON THAT FLOOR.
2. FURNISH AND INSTALL ALL NEUTRALIZATION TANKS AT BOILER ROOM AND AS REQUIRED BY CODE OR SPECIFICATIONS. PIPING FROM FLUE TO EACH NEUTRALIZATION TANK SHALL BE BY MECHANICAL CONTRACTOR.
3. PROVIDE DRAIN CONNECTION AT THE BOTTOM OF FLUE RISER AS WELL AS DRAIN CONFECTIONS AT EVERY 15 FEET WITH HIGH TEMPERATURE STAINLESS STEEL HOSE PIPE ON THE FLUE'S HORIZONTAL RUN IN BOILER ROOM. CONDENSATE DRAIN PIPE SHALL BE SCHEDULE 80 CPVC. ALL BREACHING CONNECTIONS TO DRAIN SHALL BE PLASTIC HOSE LOOPED TO CREATE TRAP.



Drawing Name: G:\0588\PLANS\PLANS FILING FOR PRINTING\Mechanical\0588-M-220.00 - 17TH FLOOR MECHANICAL HVAC PLAN.dwg -Tue, 05 Mar 2019 - 2:24pm

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DEPT OF BLDGS 121190200 Job Number
ES130852179 Scan Code

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36 WEST 66TH STREET, NEW YORK, NY

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31/F GLOBAL GATEWAY TOWER,
63 WING HONG STREET,
KOWLOON, HONG KONG
TEL.: (852) 2525-2428

POOL CONSULTANT:
TRACE POOL DESIGN
A Division of Lothrop Associates LLP
333 WESTCHESTER AVENUE
WHITE PLANS, NY 10604
TEL.: (917) 741-1115

LIGHTING DESIGNER:
FOCUS LIGHTING
221 West 116th Street
New York, NY 10026
TEL.: (212) 865-1565

LIGHTING DESIGNER:
FILAMENT33 INC
9190 GERMANTOWN AVE
Philadelphia, PA 19118
TEL.: (464) 674-0133

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami
404 FIFTH AVENUE, 8TH FL
NEW YORK, NY 10018
TEL.: (212) 370-1776

No.	Date:	Revision:
-	08/17/2018	ISSUED TO DOB
1	08/17/2018	80% CD
-	06/04/2018	CD PROGRESS SET
-	05/04/2018	50% CD SET
-	04/27/2018	DOB FILING
-	03/19/2018	CD PROGRESS SET
-	11/15/2017	DOB FILING
-	11/14/2017	100% DD
-	06/23/2017	50% DD SET

D.O.B. NUMBER:
NB#121190200

NORTH ARROW
Scale: 3/16" = 1'-0"

KEY PLAN:
WEST 66TH STREET
COLUMBUS AVENUE
CENTRAL PARK WEST
WEST 65TH STREET

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
17TH FLOOR
MECHANICAL HVAC PLAN

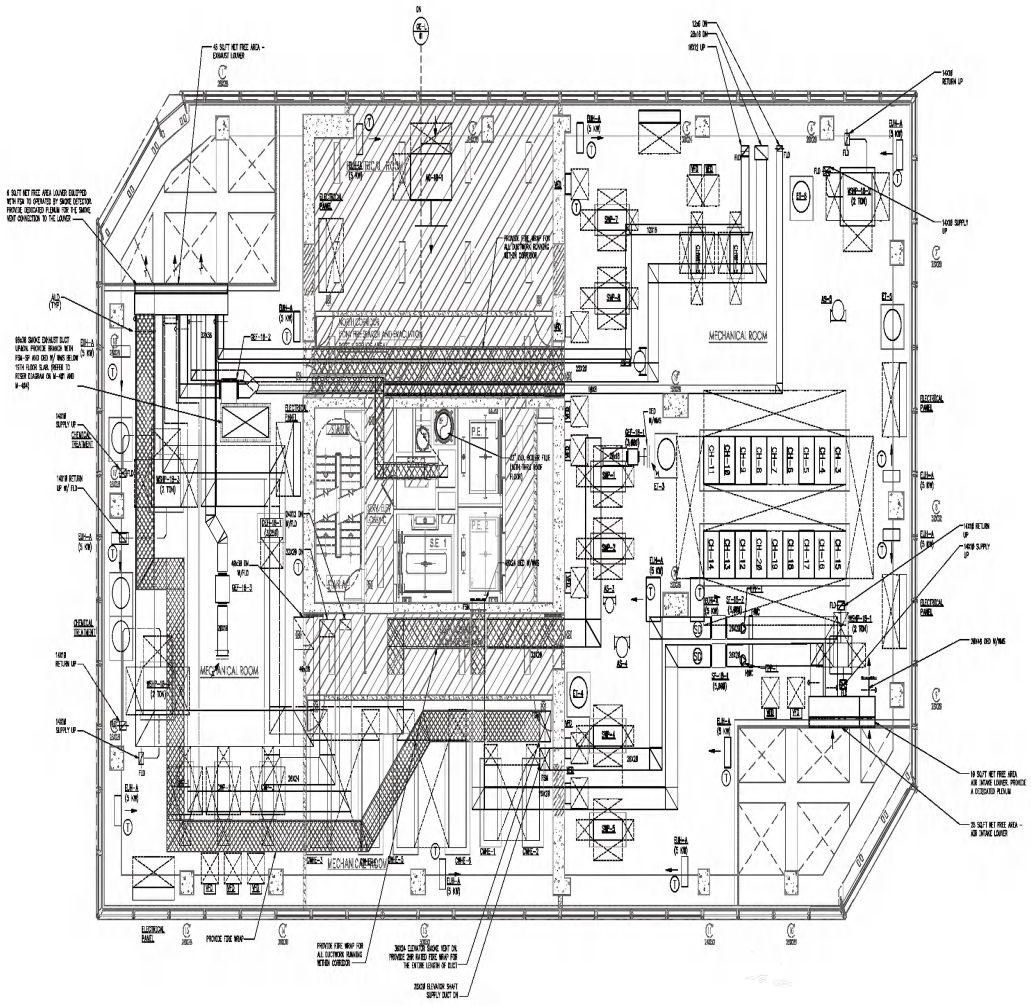
SEAL & SIGNATURE:
DATE: 08-17-2018
PROJECT No: 2015-55
DRAWN BY: M.P.
CHECKED BY: V.P.
DRAWING No:
M-220.00
21 OF 80

NYC Buildings
NYC Development Hub

48 X 36

GENERAL NOTES:

1. ALL DIFFUSERS SERVING FANS (EXCEPT EXPOSED EXHAUST DIFFUSERS) AND OR HVAC UNITS ON ROOF OR MER ARE TO BE ACOUSTICALLY LINED IN THAT FLOOR.



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE Architects, LLP

DESIGN ARCHITECT:

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:

EXPEDITOR CONSULTANT:

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACE POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

No.	Date	Revision
1	08/17/2018	ISSUED FOR DOB
2	08/17/2018	ISSUED FOR DOB
3	01/10/2019	ISSUED FOR DOB
4	04/04/2019	CD PROGRESS SET
5	04/04/2019	DOB CD SET
6	04/17/2019	DOB FILING
7	08/19/2019	CD PROGRESS SET
8	11/15/2019	DOB FILING
9	11/14/2019	ADDENDUM
10	04/27/2020	DOB FILING

NB#121190200

NORTH ARCH | Scale: 3/16" = 1'-0"

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
18TH FLOOR
MECHANICAL HVAC PLAN

SEAL & SIGNATURE:

DATE: 08/17/2018
PROJECT#: 2016-02
DRAWN BY:
CHECKED BY:
DRAWING NO.: M-221.00

DOB NO.
DOB APPROVED

THIS PLAN APPROVED ONLY FOR WORK INDICATED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE ACTED UPON OR TO BE CONSIDERED AS EITHER BEING APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES. •

Drawing Name: G:\PROJECTS\NEW YORK\66 WEST 66TH STREET\CAD\M-221.00 - 18TH FLOOR MECHANICAL HVAC PLAN.dwg - Tue, 05 Mar 2019 - 2:25pm

GENERAL NOTES:

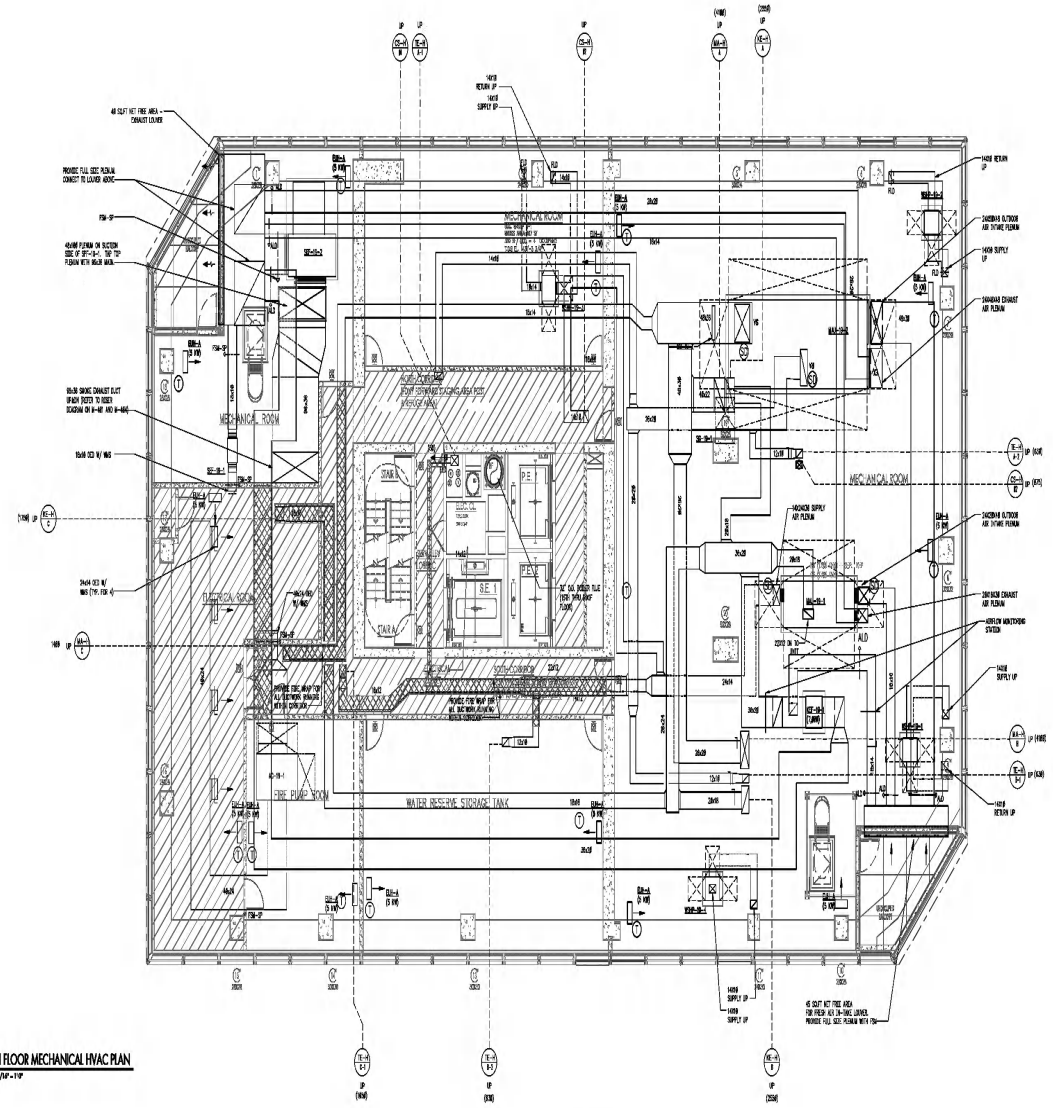
1. ALL DUCTWORK SERVING TANK (EXCEPT DRYER EXHAUST DUCTWORK) AND ON HVAC UNITS ON ROOF OR ABOVE ARE TO BE ACOUSTICALLY LINED ON THAT FLOOR.

2. ALL DUCTWORK SHALL BE PROVIDED WITH 2-HR RATED FIRE WRAP.

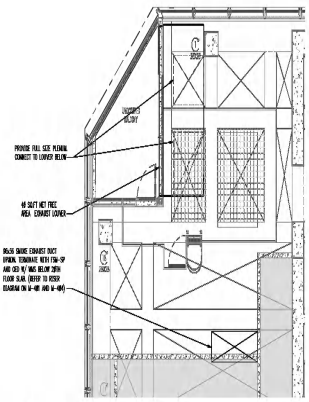
3. MAS-15-1 & MAS-15-2:

A. OUTSIDE AIR INTAKE DUCT – PROVIDE 15 FEET OF ACOUSTICAL LINING.

B. SUPPLY AIR DUCT – PROVIDE 20 FEET OF ACOUSTICAL LINING.



1 19TH FLOOR MECHANICAL HVAC PLAN
SCALE: 3/16" = 1'-0"



2 19TH FLOOR FDNY ACCESS 7 MECHANICAL HVAC PLAN
SCALE: 3/16" = 1'-0"

THIS PLAN APPROVED ONLY FOR WORK INDICATED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE ACTED UPON OR TO BE CONSIDERED AS EITHER BEING APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES. •

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE*Architects*, LLP

DESIGN ARCHITECT:
Stonehill

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

HVAC CONSULTANT:
Heintges & Associates

HVAC MAINTENANCE:
ENTEK ENGINEERING LLC

EXPEDITOR CONSULTANT:
vda

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACE POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

No.	Date	Revision
1	09/17/2019	PER DOB COMMENTS
2	09/17/2019	PER DOB COMMENTS
3	10/04/2019	PER DOB COMMENTS
4	10/25/2019	PER DOB COMMENTS
5	11/14/2019	PER DOB COMMENTS
6	12/02/2019	PER DOB COMMENTS
7	12/20/2019	PER DOB COMMENTS
8	01/03/2020	PER DOB COMMENTS

NB#121190200

NORTH ARCH — Scale: 3/16" = 1'-0"

KEY PLAN:

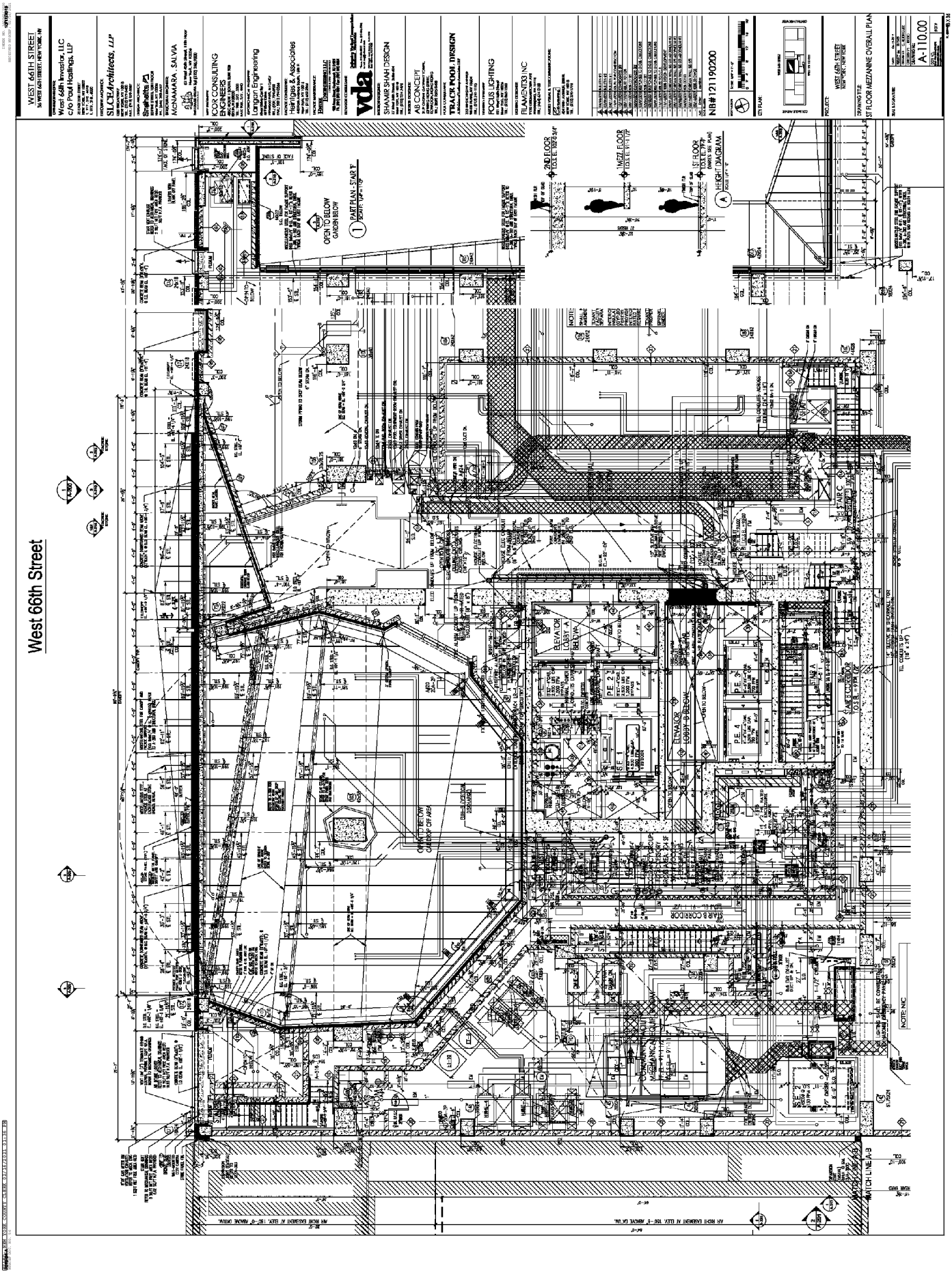
PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

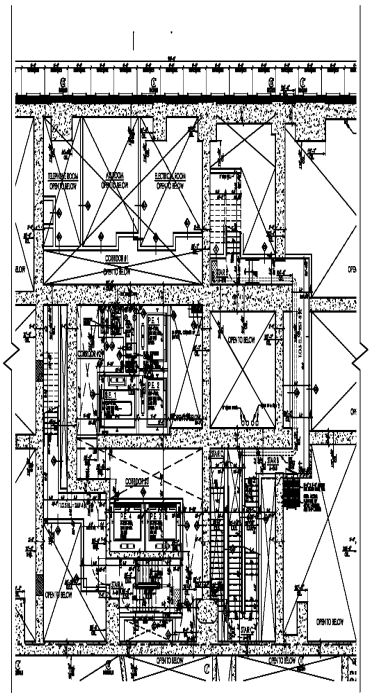
DRAWING TITLE:
19TH FLOOR & FDNY ACCESS 7 MECHANICAL HVAC PLAN

SEAL & SIGNATURE:

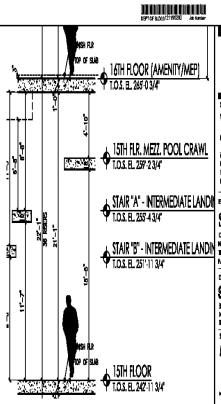
DATE: 09/17/2019
PROJECT#: 2014.02
DRAWN BY: ALF
CHECKED BY: S.F.

DRAWING NO.: M-222.00


WEST 66TH STREET
36 WEST 66th STREET, NEW YORK, NY
West 66th Investor, LLC
C/O Post Hospitality, LLP
SLCEArchitects, LLP
FOR CONSULTING ENGINEERS
Langan Engineering
Hanrahan & Associates
vda
SHAMIR SHAH DESIGN
AB CONCEPT
FOCUS LIGHTING
FLAMENT03 INC
NB#121190200
A-110.00
1ST FLOOR MEZZANINE OVERALL PLAN
West 66th Street
OPEN TO BELOW
GARDEN BELOW
2ND FLOOR
MEZZ FLOOR
1ST FLOOR
HEIGHT DIAGRAM
ELEVATOR LOBBY A
ELEVATOR LOBBY B
STAIR C
STAIR B CORRIDOR
MECHANICAL
NOTE: NIC
MATCH LINE A-3

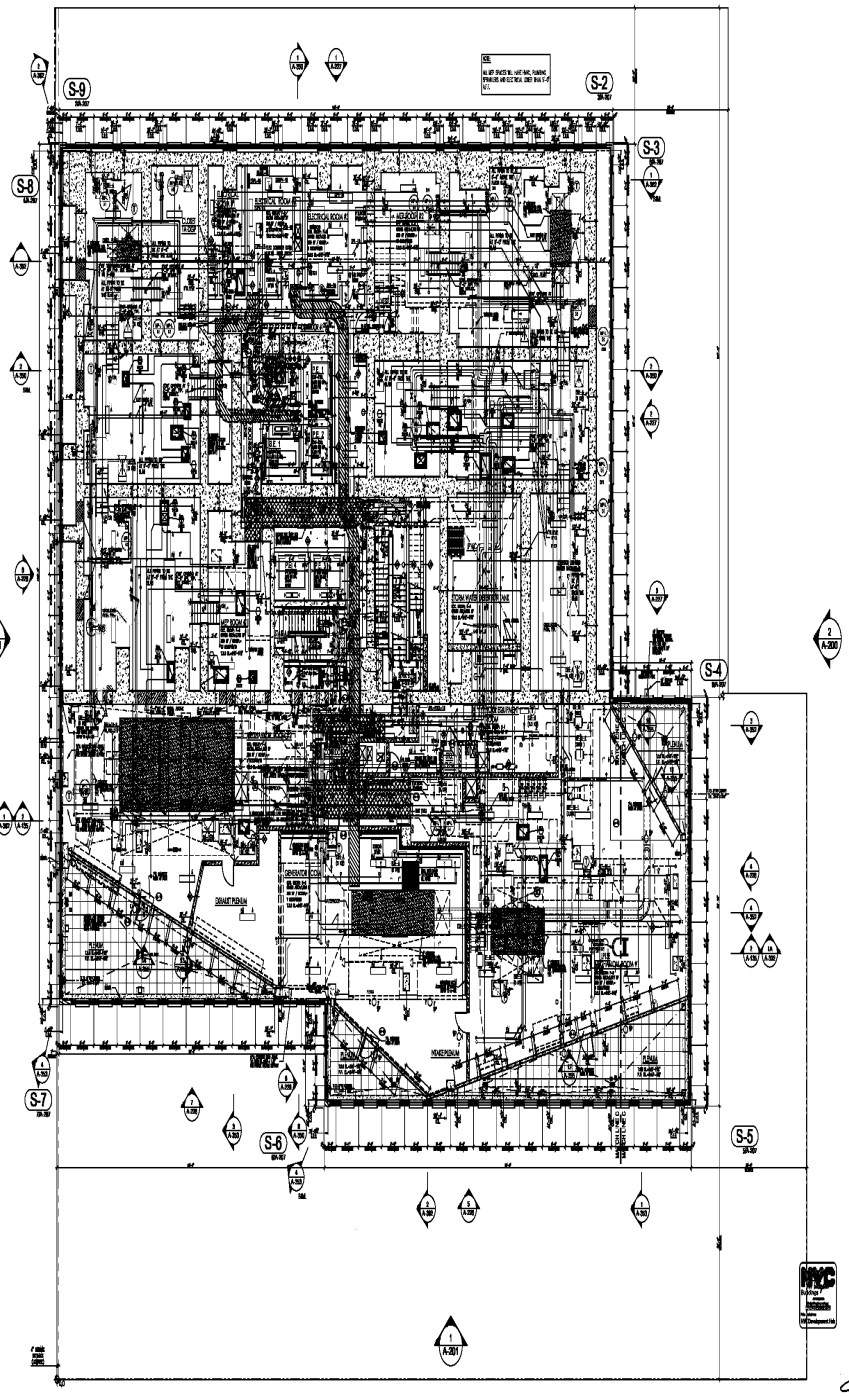


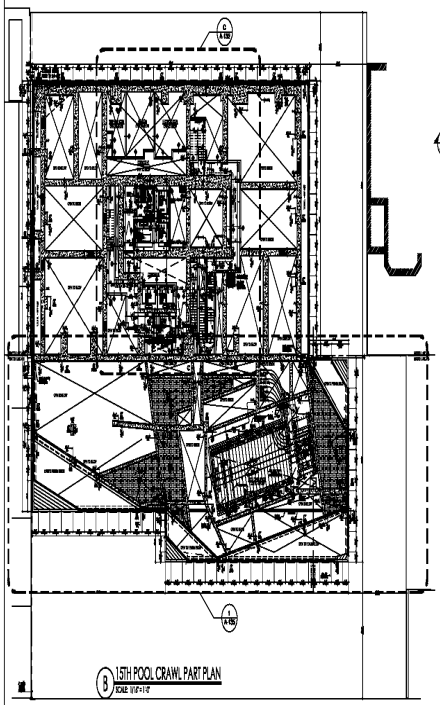
C 15TH POOL CRAWL CORE AND STAIR PART PLAN
SCALE: 1/16"=1'-0"



A HEIGHT DIAGRAM
SCALE: 1/8"=1'-0"

West 66th Street





B 15TH POOL CRAWL PART PLAN
SCALE: 1/8"=1'-0"

West 65th Street

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE*Architects*, LLP

DESIGN ARCHITECT:
Snøhetta

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:
Entek Engineering LLC

ELEVATOR CONSULTANT:
vla

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACE POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

CDA NUMBER
NB#121190200

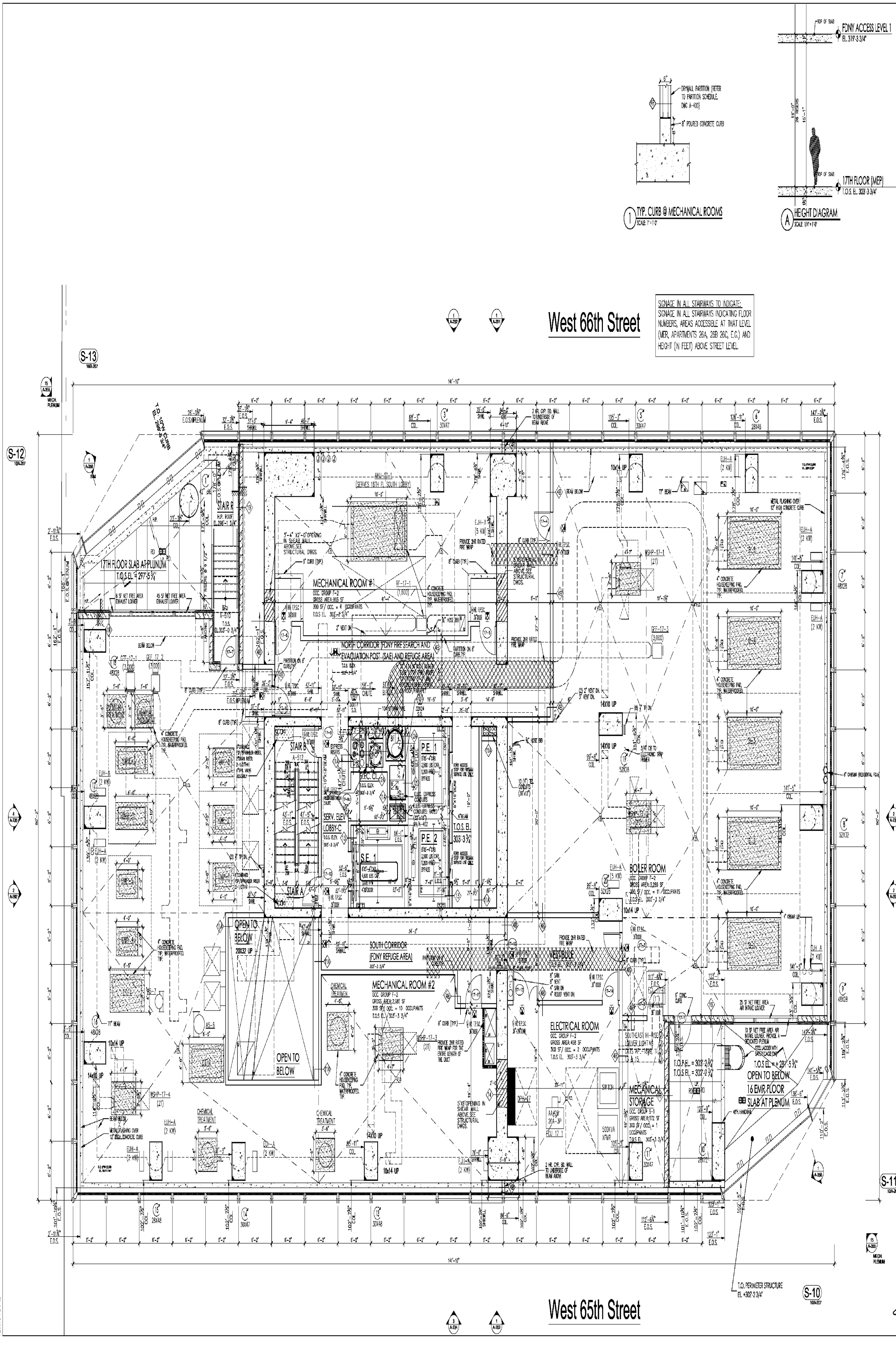
KEY PLAN

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
15TH FLR OVERALL PLAN
(16TH FL MARKETING)

SEAL & SIGNATURE:

A-132.00



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

EXECUTIVE ARCHITECT:
SLCE Architects, LLP

DESIGN ARCHITECT:
Snøhetta

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:
Entek Engineering LLC

ELEVATOR CONSULTANT:
VDA

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACE POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

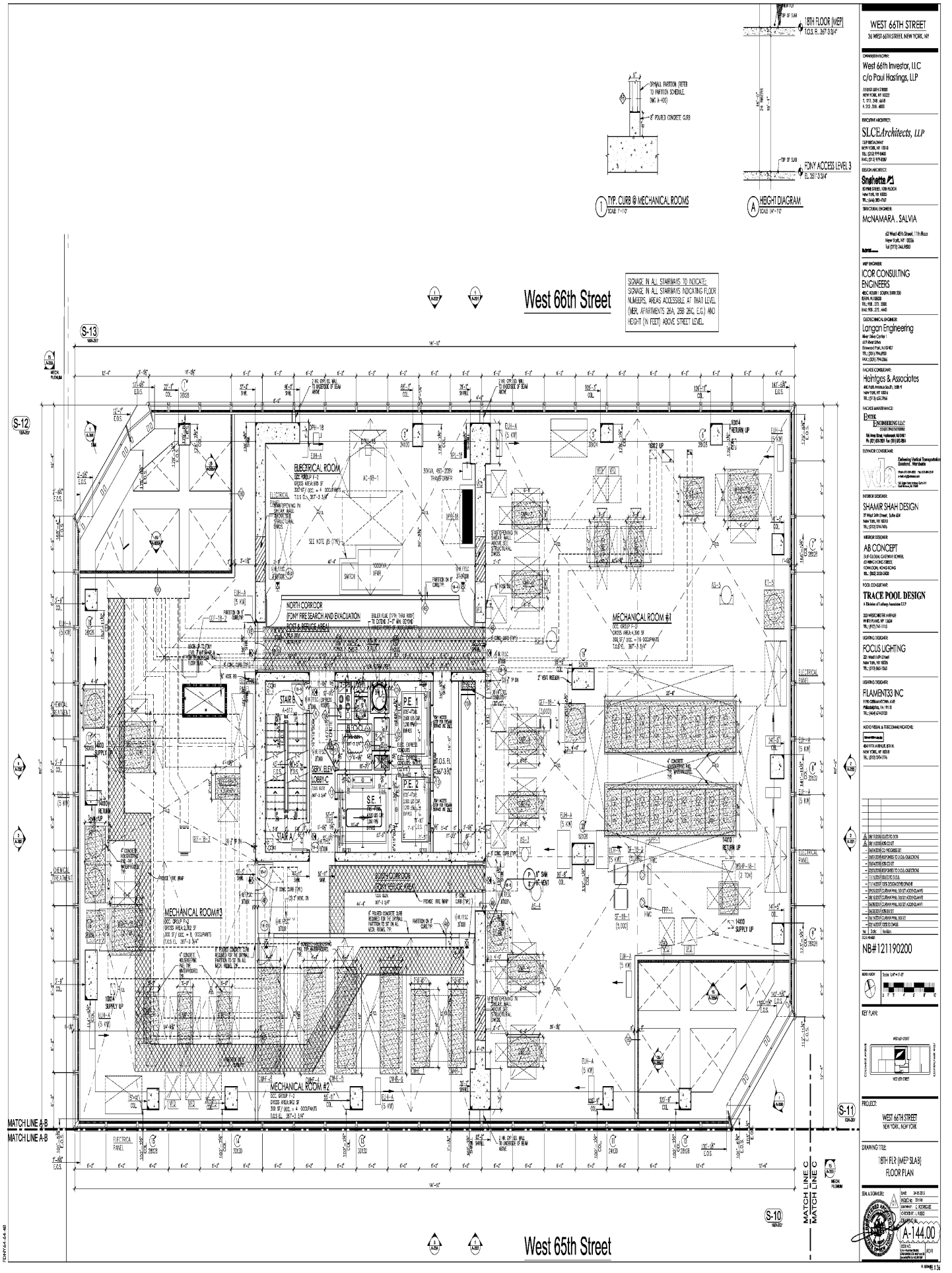
NB#121190200

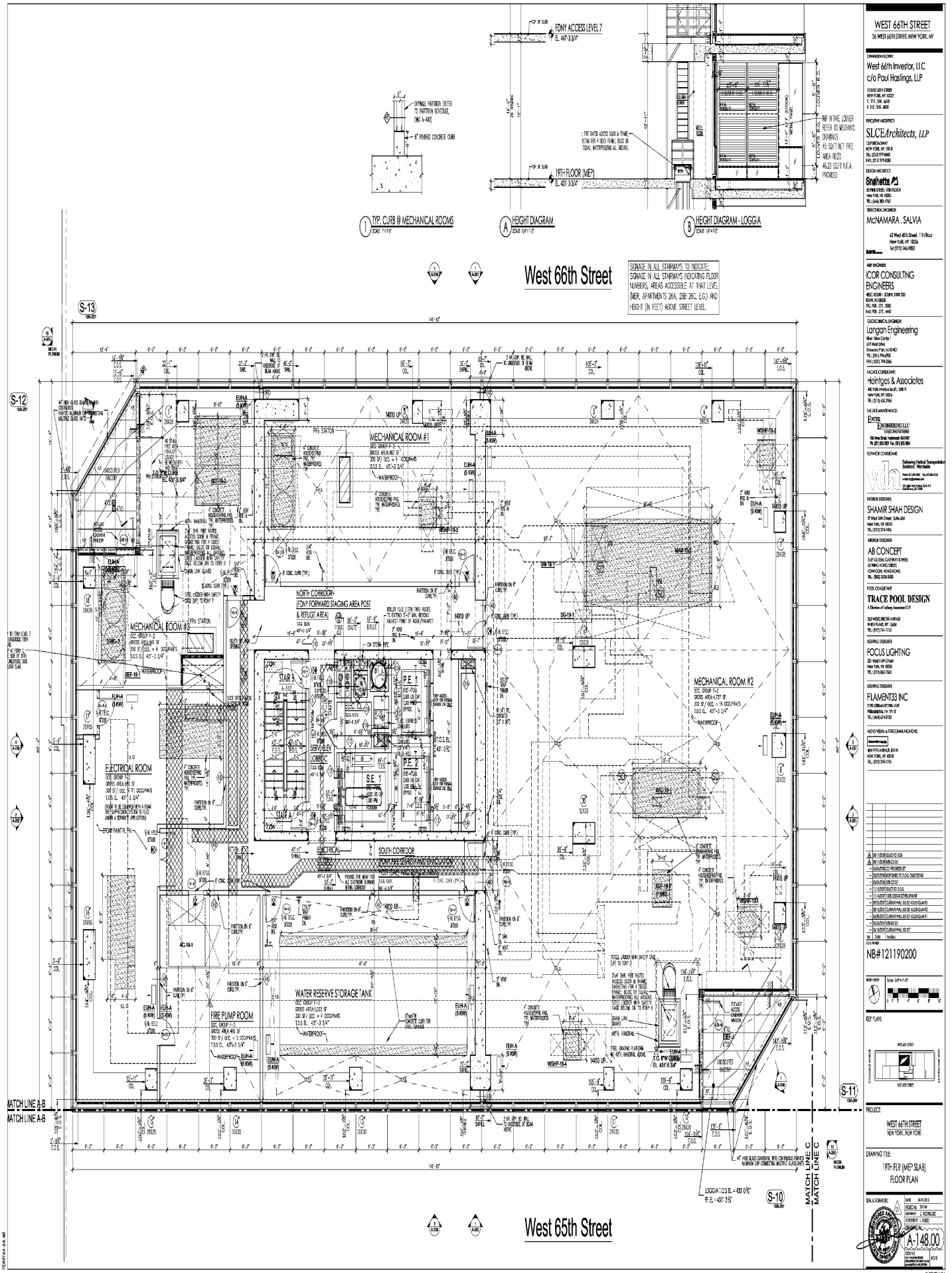
KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
17TH FLR (MEP SLAB) PLAN
(22ND FL MARKETING)

A-140.00





WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

EXECUTIVE ARCHITECT:
SLCE*Architects*, LLP

DESIGN ARCHITECT:
Shigheiro

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:
ENTEK ENGINEERING LLC

ELEVATOR CONSULTANT:
Delivering Vertical Transportation Excellence Worldwide

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

MIRROR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACE POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:

DOB # NB#121190200

KEY PLAN

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
19TH FLR (MEP SLAB) FLOOR PLAN

SEAL & SIGNATURE:

DRAWING NO.
A-148.00

Annexed to Foregoing Document-
Appendix: Extell's October 21, 2019 Submission (R. 002449-002480)
[pp. 3275 - 3306]

Date: October 21, 2019 Examiner's Name: Toni Matias

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

Subject Property/
Address: 36 West 66th Street, Manhattan

Applicant Name Klein Slowick, PLLC on behalf of Landmark West!

Submitted by (Full Name): David Karnovsky, Fried, Frank, Harris, Shriver & Jacobson LLP on behalf of West 66th Sponsor LLC

A) The material I am submitting is for a case currently **IN HEARING,** scheduled for 12/17/19. The reason I am submitting this material:

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

Brief Description of submitted material: Statement on behalf of West 66th Sponsor LLC and exhibits

List of items that are being voided/superseded: _____

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

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

Brief Description of submitted material: _____

List of items that are being voided/superseded: _____

MASTER CASE FILE INSTRUCTIONS

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

R. 002449

Fried, Frank, Harris, Shriver & Jacobson LLP

FRIED FRANK

One New York Plaza
New York, New York 10004–1980
Tel: +1.212.859.8000
Fax: +1.212.859.4000
www.friedfrank.com

Direct Line: (212) 859 – 8927
David.Karnovsky@friedfrank.com

October 21, 2019

Honorable Members of the Board
NYC Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

Re: Cal. No. 2019-89-A; 2019-94-A
Premises: 36 West 66th Street

Dear Honorable Members of the Board:

We have reviewed the submission of the Department of Buildings dated October 16, 2019, and write to provide additional drawings and clarifications that are responsive to the Board's request for the building mechanical plans. We have enclosed those additional drawings and provide the following explanation of the materials for reference:

1. Enclosed as Schedule 1 is a revised set of the approved plans for the sprinkler, plumbing, and mechanical equipment. Schedule 1 differs from "Exhibit B" to DOB's submission in the following ways:

   a. **SP/SD-217.00** has been replaced with **SP/SD-216.00**. **SP/SD-216.00** is the sprinkler drawing for the 15th Floor. **SP/SD-217.00** is the sprinkler drawing for a small crawl space for the pool above; the pool and crawl space level is not one of the full mechanical floors.

   b. The following five additional sheets that were not included in "Exhibit B" are included in Schedule 1: **M-307.00** (1st Floor Mezzanine), **M-316.00** (15th Floor), **M-319.00** (17th floor), **M-320.00** (18th Floor), **M-321.00** (19th Floor). These five sheets show mechanical piping systems.[1]

2. The plans included in "Exhibit C" to DOB's submission for the 17th Floor, 18th Floor and 19th Floor, **A-140.00**, **A-144.00**, and **A-148.00**, respectively, are approved architectural drawing sheets, not composite drawings and therefore do not fully depict

1 The 1st Floor Mezzanine is referenced in the DOB submission as one of the full mechanical floors. Please note that this floor is a stair transfer level designed to comply with building code requirements for separation of egress pathways. It connects a stair with an exit directly to 66th Street. Two mechanical spaces are located at this level for ease of access to service mechanical equipment and access local distribution valves.

the various types of mechanical equipment. Schedule 2 is a complete set of composite drawings for each mechanical floor. Composite drawings are not part of the official DOB drawing set, and are being provided to the Board for illustrative purposes in order to show the complete layout of mechanical equipment on each interstitial mechanical floor.

3. Enclosed as Schedule 3 are the mechanical equipment schedule drawings. These drawings provide additional details about the mechanical equipment.

Please be advised that, as set forth in these additional drawings and equipment schedules, there is additional equipment on each mechanical floor not specifically enumerated in the DOB's submission, as follows:

1. 1st Floor Mezzanine: Kitchen exhaust precipitator, electrical ATS equipment, fuel oil piping and leak detection, HVAC secondary water pumps, zone valves and risers for residential gas distribution and zone valves and risers for residential domestic water distribution.

2. 15th Floor: Zone valves and risers for residential condenser water distribution, generator diesel particulate filter and silencer, generator fuel header assembly, kitchen exhaust fan, pool and spa equipment room, fresh air supply fan, electrical transformers and electrical distribution panels.

3. 17th Floor: HVAC hot water pumps, 32" diameter boiler flue, HVAC water chemical treatment stations, VFDs and an electrical distribution panel.

4. 18th Floor: HVAC secondary water pumps, HVAC chilled water pumps, dryer exhaust fan, condenser water pumps, VFDs, HVAC water chemical treatment stations, standpipe PRV station and standpipe distribution and supply fresh air fans.

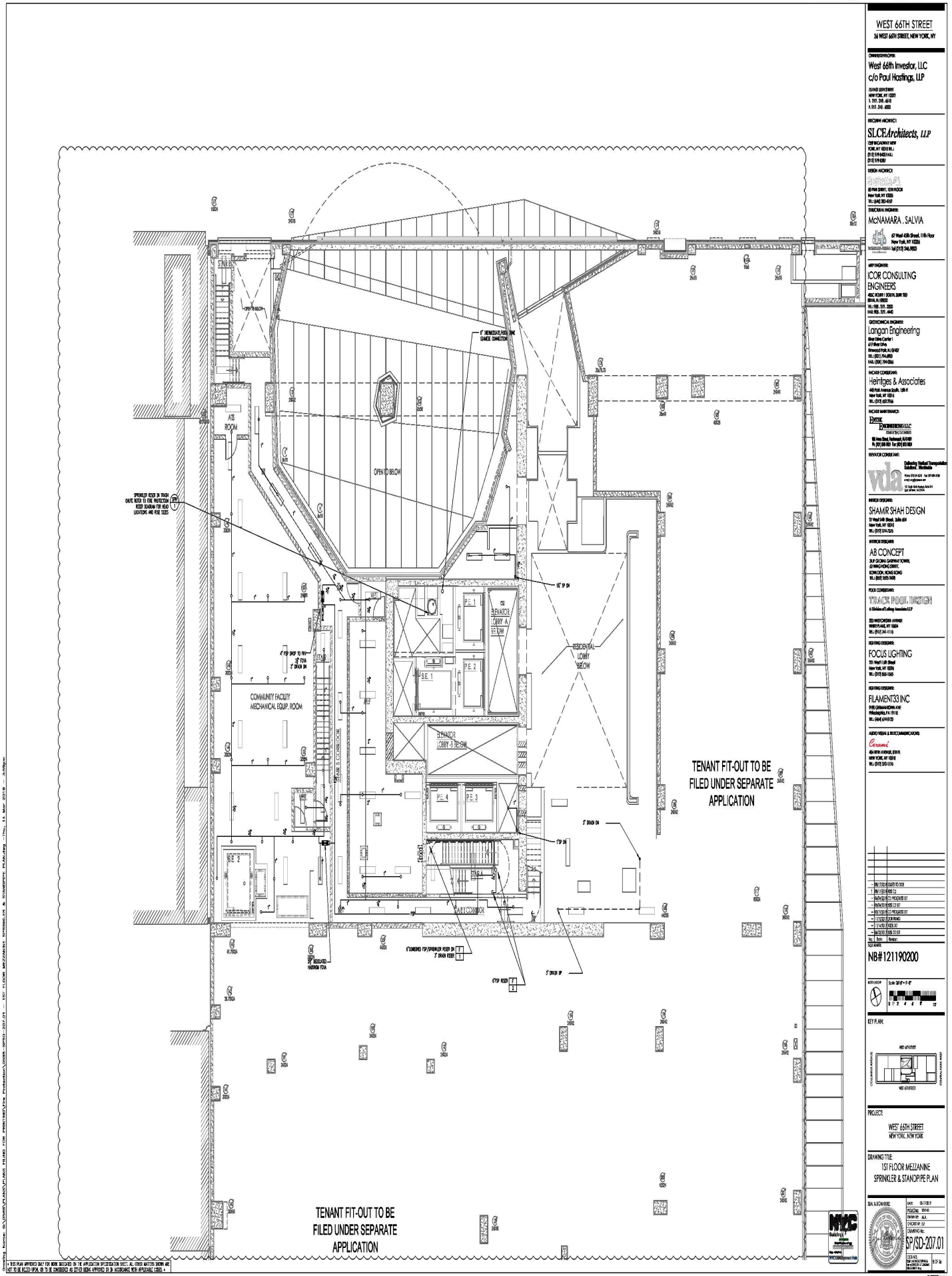
5. 19th Floor: Fire pump, standpipe PRV station and standpipe distribution, zone valves for residential HVAC hot water distribution, post fire smoke purge fan, fire suppression purge fan, supply fresh air fans, kitchen exhaust fan, electrical transformers, electrical distribution panels and electrical room clean agent suppression system.

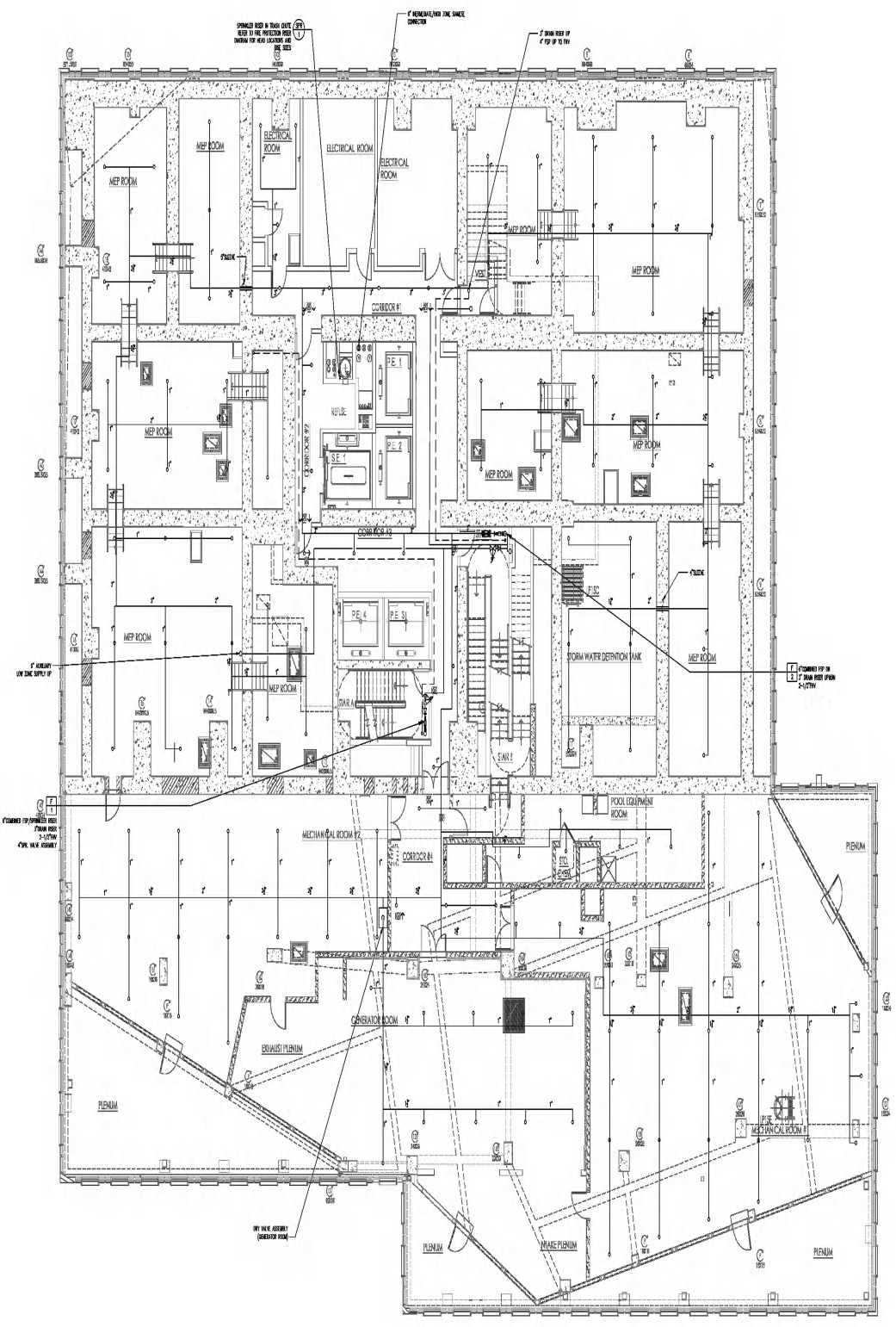
Sincerely,

David Karnovsky

Enclosures

cc: Michael Zoltan, Assistant General Counsel, NYC Department of Buildings
Mona Sehgal, General Counsel, NYC Department of Buildings
Stuart A. Klein, Esq. (On Behalf of Landmark West!)
Susan Amron, General Counsel, NYC Department of City Planning
Ellen V. Lehman, Esq., Fried Frank Harris Shriver & Jacobson LLP





WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE Architects, LLP

DESIGN ARCHITECT:
Stonehill & Taylor

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:
BOSK ENGINEERING LLC

ELEVATOR CONSULTANT:
vda

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACER POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

No.	Date	Revision
1	09/11/2020	REVISED PER DOB COMMENTS DATED 09/01/2020
2	10/16/2020	REVISED PER DOB COMMENTS DATED 10/13/2020
3	11/13/2020	REVISED PER DOB COMMENTS DATED 11/10/2020
4	12/18/2020	REVISED PER DOB COMMENTS DATED 12/15/2020
5	01/15/2021	REVISED PER DOB COMMENTS DATED 01/13/2021
6	02/12/2021	REVISED PER DOB COMMENTS DATED 02/10/2021

FILING NUMBER:
NB#121190200

NORTH ARROW

KEY PLAN:

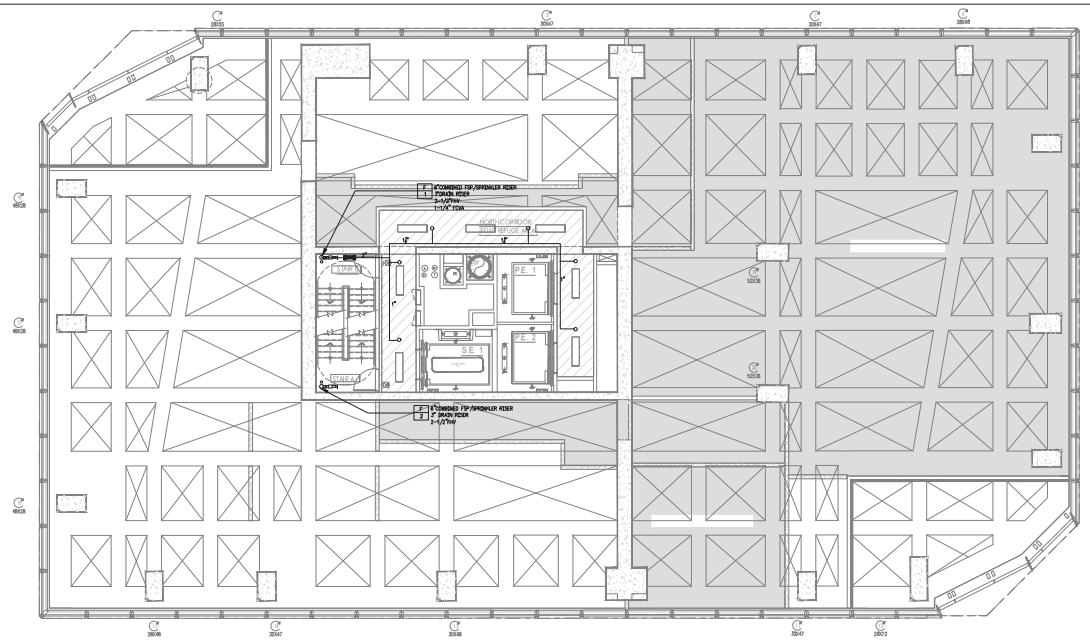
PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
15TH FLOOR
SPRINKLER & STANDPIPE PLAN

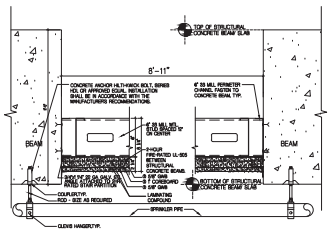
SEAL & SIGNATURE:

DRAWING NO.:
SP/SD-216.00

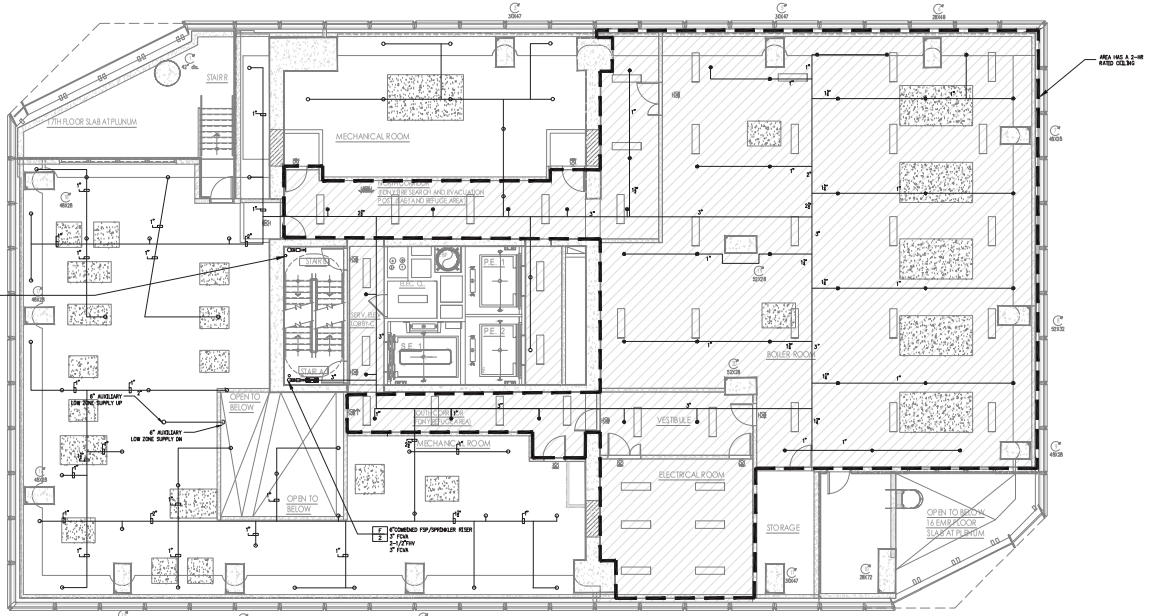
* THIS PLAN APPROVES ONLY FOR WORK INDICATED ON THE APPLICABLE SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE ACTED UPON, OR TO BE CONSIDERED AS EITHER BEING APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES. *



2 17TH FL FDNY ACCESS 1 SPRINKLER & STANDPIPE PLAN (SPRINKLERS @ +319.31')
SCALE: 3/16" = 1'-0"



UNDERSIDE OF BEAM 2HR RATED CEILING UL-505
N.T.S.



1 17TH FLOOR SPRINKLER & STANDPIPE PLAN (SPRINKLERS @ +303.31')
SCALE: 3/16" = 1'-0"

• THIS PLAN APPROVED ONLY FOR WORK INDICATED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE RELIED UPON, OR TO BE CONSIDERED AS EITHER BEING APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES. •

Drawing Name: G:\2018\PLANS\PLANS FILING FOR PRINTING\17th Protection\2018-SPSD-220.00 - 17TH FLOOR & FDNY ACCESS 1 SPRINKLER & STANDPIPE PLANS.dwg - Thu, 04 Mar 2019 - 5:02pm

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

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ELEVATOR CONSULTANT:
vda Delivering Vertical Transportation Solutions. Worldwide.
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Park Ridge, NJ 07656

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SHAMIR SHAH DESIGN
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INTERIOR DESIGNER:
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KOWLOON, HONG KONG
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227 West 10th Street
New York, NY 10036
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LIGHTING DESIGNER:
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9190 GERMANTOWN AVE
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AUDIO VISUAL & TELECOMMUNICATIONS:
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No.	Date	Revision
1	09/13/2018	ADD TO DOB
2	09/13/2018	DS
3	10/04/2018	CO PROGRESS SET
4	10/04/2018	CO DS
5	01/15/2019	CO PROGRESS SET
6	01/29/2019	17 FLRS
7	01/14/2019	DS CO

DOB #
NB# 121190200

NORTH
Scale: 3/16" = 1'-0"

KEY PLAN:

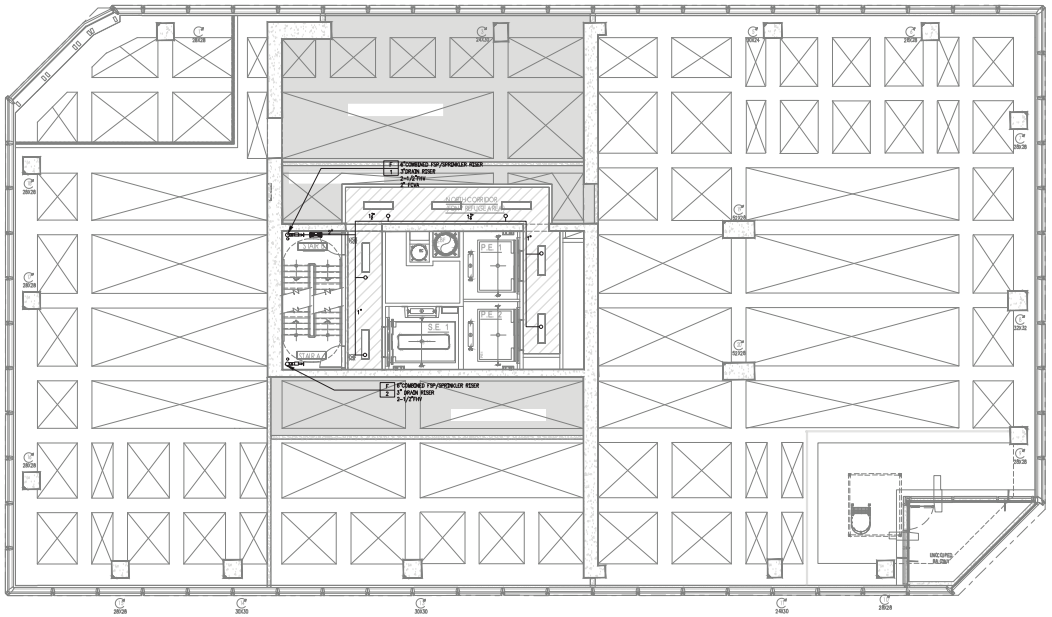
PROJECT:
WEST 66TH STREET
NEW YORK , NEW YORK

DRAWING TITLE:
17TH FLOOR & FDNY ACCESS 1 SPRINKLER & STANDPIPE PLANS

SEAL & SIGNATURE:
Roxanne Tsakopoulos, RA
NYC Development Hub

DATE	03/15/2019
ISSUE No.	SET-FILING
DRAWN BY	M.A.
CHECKED BY	R.T.
DRAWING No.	SP/SD-220.00
DOB NO.	
SHEET	11 OF 36

3280



2 18TH FLOOR FDNY ACCESS 4 SPRINKLER & STANDPIPE PLAN (SPRINKLERS @ +383.31')
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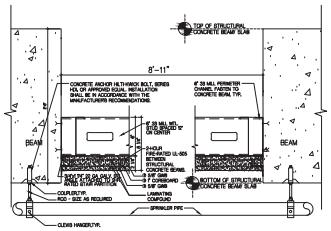

UNDERSIDE OF BEAM 2HR RATED CEILING UL-505
N.T.S.

1 18TH FLOOR SPRINKLER & STANDPIPE PLAN (SPRINKLERS @ +367.31')
SCALE: 3/16" = 1'-0"

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Roxanne Tsakopoulos, RA
NYC Development Hub

WEST 66TH STREET
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vda
Delivering Vertical Transportation Solutions. Worldwide.

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INTERIOR DESIGNER:
AB CONCEPT
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POOL CONSULTANT:
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LIGHTING DESIGNER:
FOCUS LIGHTING
TEL: (212) 865-7565

LIGHTING DESIGNER:
FILAMENT33 INC
TEL: (484) 674-0133

AUDIO VISUAL & TELECOMMUNICATIONS:
TEL: (212) 370-1776

No.	Date	Revision
7	09/17/20	RESPONSE TO DOB
6	08/17/20	RESPONSE TO DOB
5	07/31/20	RESPONSE TO DOB
4	06/04/20	DOB PROGRESS SET
3	05/04/20	RESPONSE TO DOB
2	01/15/20	DOB PROGRESS SET
1	11/14/20	RESPONSE TO DOB

DOB NB#121190200

Scale: 3/16" = 1'-0"

KEY PLAN:

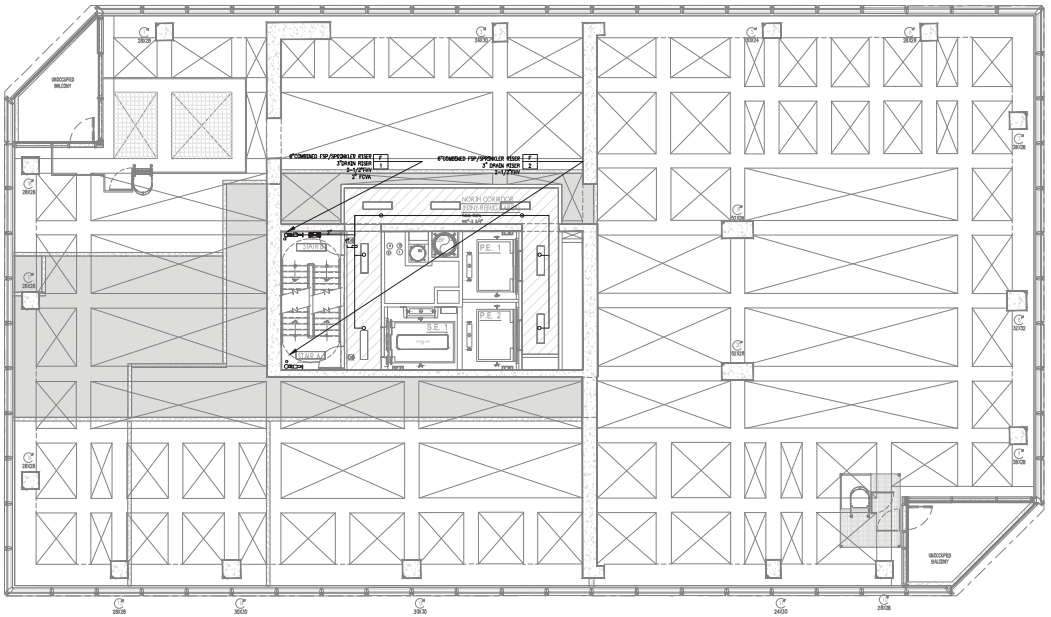
PROJECT:
WEST 66TH STREET
NEW YORK , NEW YORK

DRAWING TITLE:
18TH FLOOR & FDNY ACCESS 4 SPRINKLER & STANDPIPE PLANS

SEAL & SIGNATURE:
STATE OF NEW YORK
MICHAEL A. SALVIA
LICENSED PROFESSIONAL ENGINEER

DATE: 03/15/2021
PROJECT No.: 2017.08
DRAWN BY: M.A.
CHECKED BY: S.V.
DRAWING No.: SP/SD-222.00
SCALE: 3/16" = 1'-0"
SHEET No.: 35 OF 36

3281



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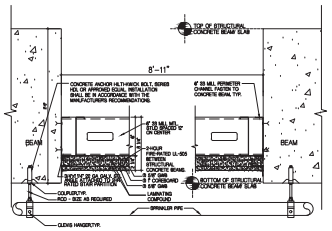

UNDERSIDE OF BEAM 2HR RATED CEILING UL-505
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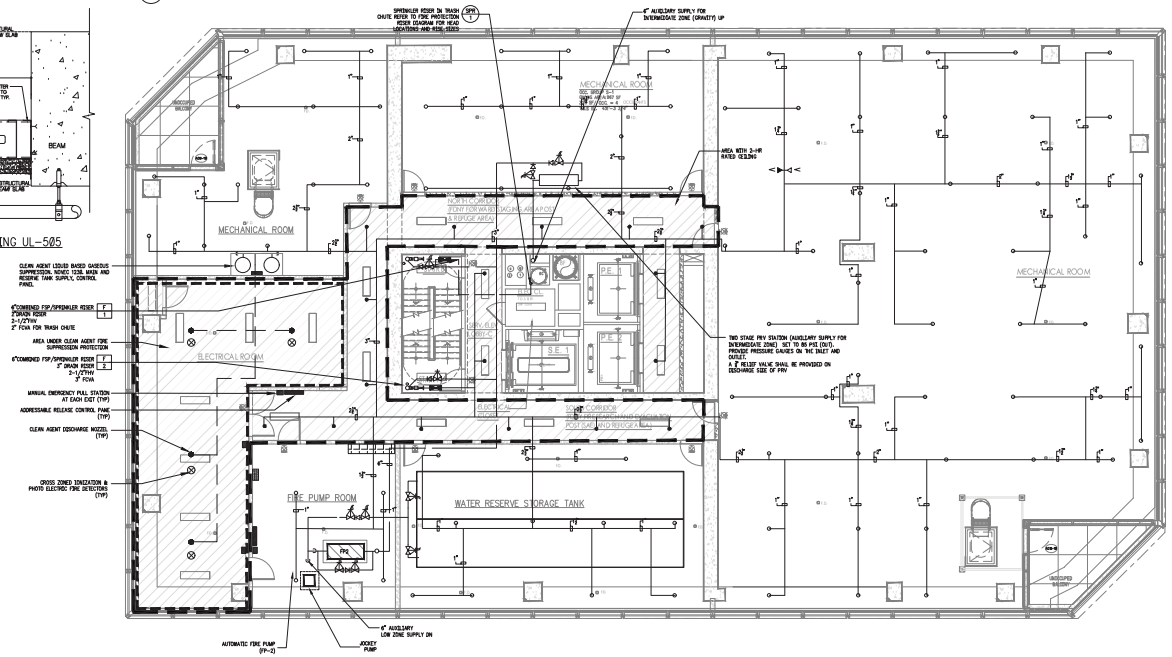

1 19TH FLOOR SPRINKLER & STANDPIPE PLAN (SPRINKLERS @ +431.31')
SCALE: 3/16" = 1'-0"

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WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

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POOL CONSULTANT:
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333 WESTCHESTER AVENUE
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231 West 10th Street
New York, NY 10036
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–	09/13/18 RESUBMITTED TO DOB
1	09/13/18 FILING CD
–	10/04/18 CD ADDENDUM 1 SET
–	10/04/18 FILING CD SET
–	01/11/19 CD ADDENDUM 2 SET
–	01/14/19 FILING CD
No.	Date Revision

NB# 121190200

SCALE: Scale: 3/16" = 1'-0"

KEY PLAN:

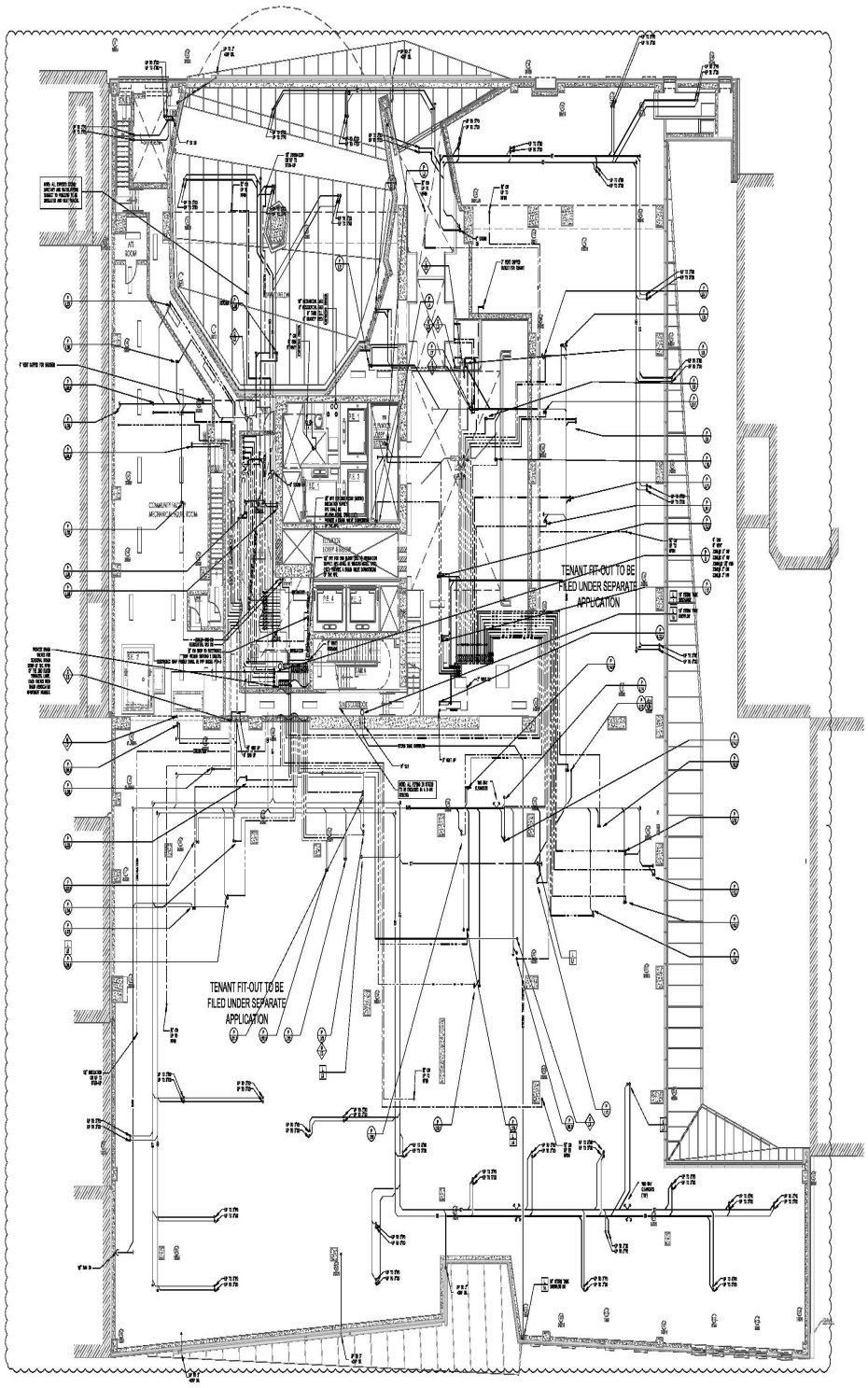
PROJECT:
WEST 66TH STREET
NEW YORK , NEW YORK

DRAWING TITLE:
19TH FLOOR & FDNY ACCESS 7
SPRINKLER & STANDPIPE PLANS

SEAL & SIGNATURES:
Roxanne Tsakopoulos, RA
NYC Development Hub

DATE: 03/12/2019
PROJECT No.: 2018-224
DRAWN BY: M.A.
CHECKED BY: R.T.
DRAWING No.:
SP/SD-224.00
SCALE: 1/2" = 1'-0"
SHEET No.: 35 OF 36

3282



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE Architects, LLP

DESIGN ARCHITECT:
Gensler

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McNAMARA . SALVIA

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ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:
BKSK ENGINEERING LLC

EXPEDITOR CONSULTANT:
vda

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACE POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC.

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

No.	Date	Revision
1	09/17/2020	PER NB COMMENTS
2	10/26/2020	PER DOB PROGRESS SET
3	12/04/2020	PER DOB PROGRESS SET
4	01/08/2021	PER DOB PROGRESS SET
5	01/29/2021	PER DOB PROGRESS SET
6	02/16/2021	PER DOB COMMENTS

JOB NUMBER
NB#121190200

NORTH ARCH | Scale: 1/8"=1'-0" | 0 1 2 4 8 16

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
1ST FLOOR MEZZANINE
PLUMBING PIPING PLAN

SEAL & SIGNATURE:

DATE: 09/17/2020
PROJECT#: 2014-02
DRAWN BY: ALA
CHECKED BY: EF
DRAWING NO.: P-207.01
DOB NO.: 121190200-01
SHEET: 1 OF 1

NYC Buildings Initiative

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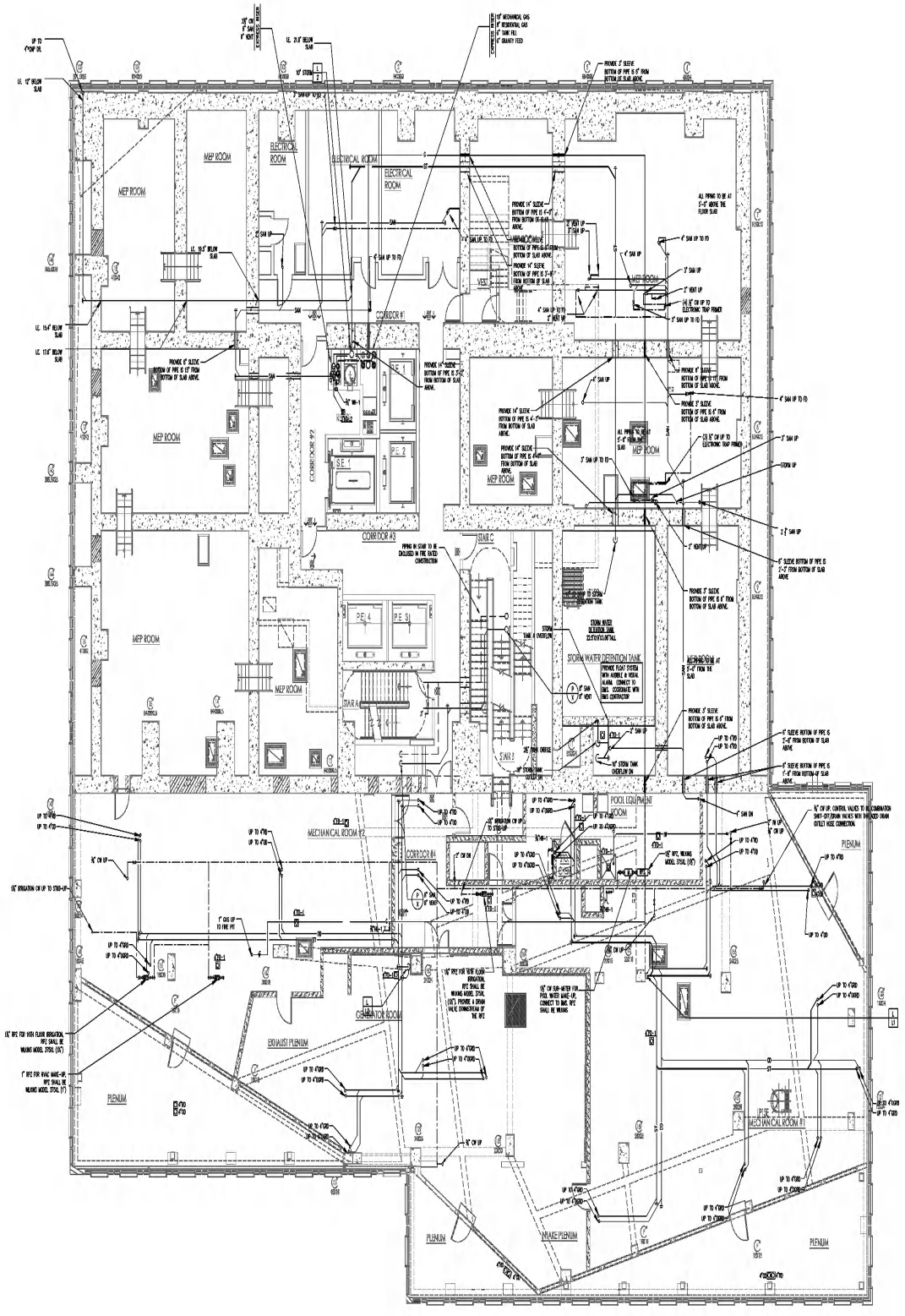

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

EXECUTIVE ARCHITECT:
SLCE*Architects*, LLP

DESIGN ARCHITECT:

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:

ELEVATOR CONSULTANT:

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACE POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:

No.	Date	Revision
1	09/17/2020	REVISIONS TO DOB
2	09/17/2020	PER DOB COMMENTS
3	09/24/2020	PER DOB COMMENTS SET
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9	12/11/2020	PER DOB COMMENTS

NB# 121190200

NORTH ARCH | Scale: 3/16" = 1'-0"

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
15TH FLOOR
PLUMBING PIPING PLAN

SEAL & SIGNATURE:

DATE: 09/17/2020
PROJECT#: 2016.02
DRAWN BY: A.G.
CHECKED BY: S.P.
DRAWING No.: P-216.00

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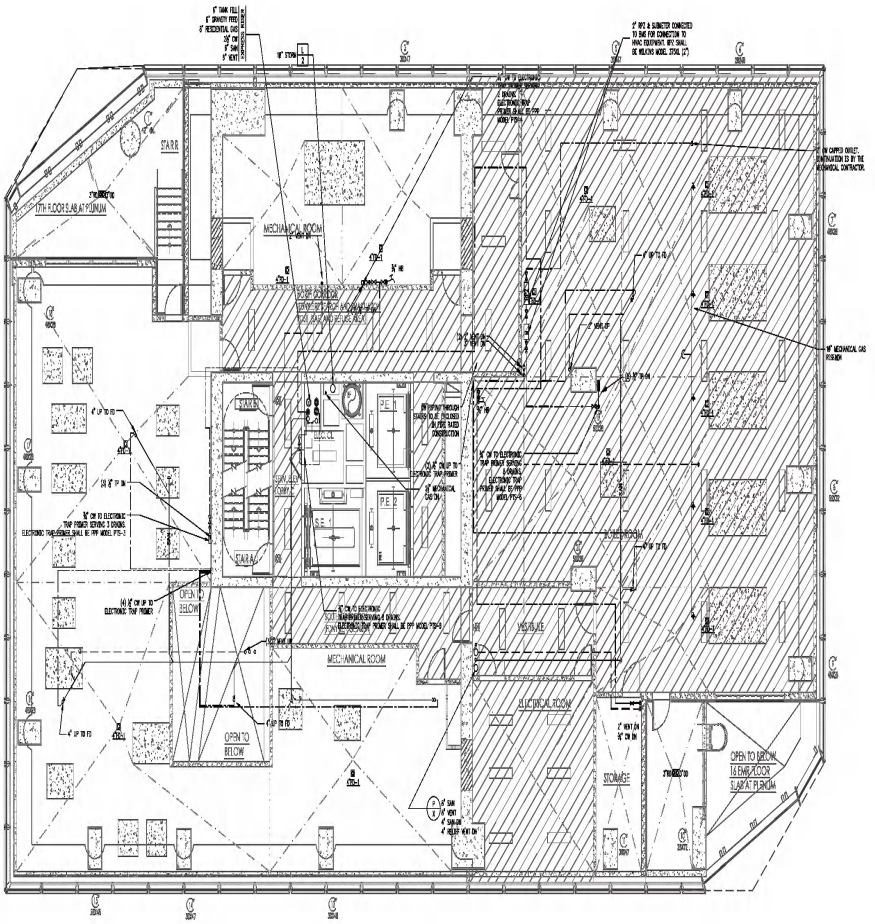

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

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West 66th Investor, LLC
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EXPEDITOR CONSULTANT:
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INTERIOR DESIGNER:
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INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACIE POOL DESIGN

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FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

No.	Date	Revision
1	09/17/2020	ISSUED TO DOB
2	09/17/2020	RENEWAL
3	10/09/2020	DOB PROGRESS SET
4	10/09/2020	CO SET
5	11/02/2020	DOB RENEW
6	11/19/2020	CO PROGRESS SET
7	11/19/2020	DOB RENEW
8	11/24/2020	PANEL SET
9	12/14/2020	PANEL CHGE

NB#121190200

NORTH ARCH — Scale: 3/16" = 1'-0"

KEY PLAN

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
17TH FLOOR
PLUMBING PIPING PLAN

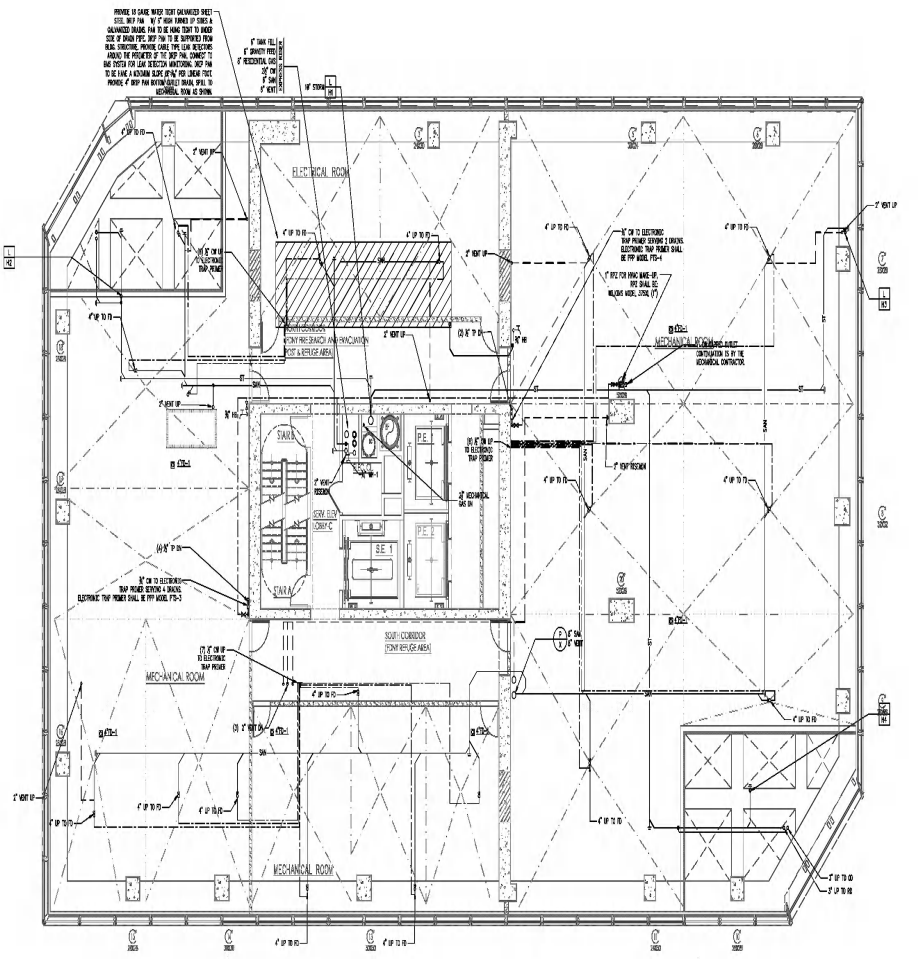
SEAL & SIGNATURE:

DATE: 09.17.2020
PROJECT#: 2019.02
DRAWN BY: A.C.
CHECKED BY: S.T.

DRAWING NO.
P-220.00

DOB NO.
DOB APPROVED
SIGNATURE
DATE

This plan approved only for work described on the application specification sheet. All other matters shown are not to be acted upon or to be considered as either being approved or in accordance with applicable codes.



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE Architects, LLP

DESIGN ARCHITECT:

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:

EXPEDITOR CONSULTANT:

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACER POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC.

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

No.	Date	Revision
1	09/17/2020	ISSUED TO DOB
2	09/17/2020	PER CO
3	01/15/2021	ISSUED TO DOB
4	04/09/2021	PER DOB EX. PROCESS SET
5	05/04/2021	ISSUED TO DOB
6	06/07/2021	PER DOB EX. SET
7	08/13/2021	ISSUED TO DOB
8	09/15/2021	PER DOB EX. PROCESS SET
9	11/04/2021	PER DOB EX. SET
10	12/14/2021	PER DOB EX. COMMENTS

JOB NUMBER
NB#121190200

NORTH ARCH | Scale: 3/8"=1'-0"

KEY PLAN

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
18TH FLOOR
PLUMBING PIPING PLAN

SEAL & SIGNATURE:

DATE: 09/17/2020
PROJECT#: 2014.02
DRAWN BY: A.G.
CHECKED BY: S.P.
DRAWING #: P-221.00
CODE NO.:
DOB / BSA NO.:
SHEET NO.: 18 OF 28

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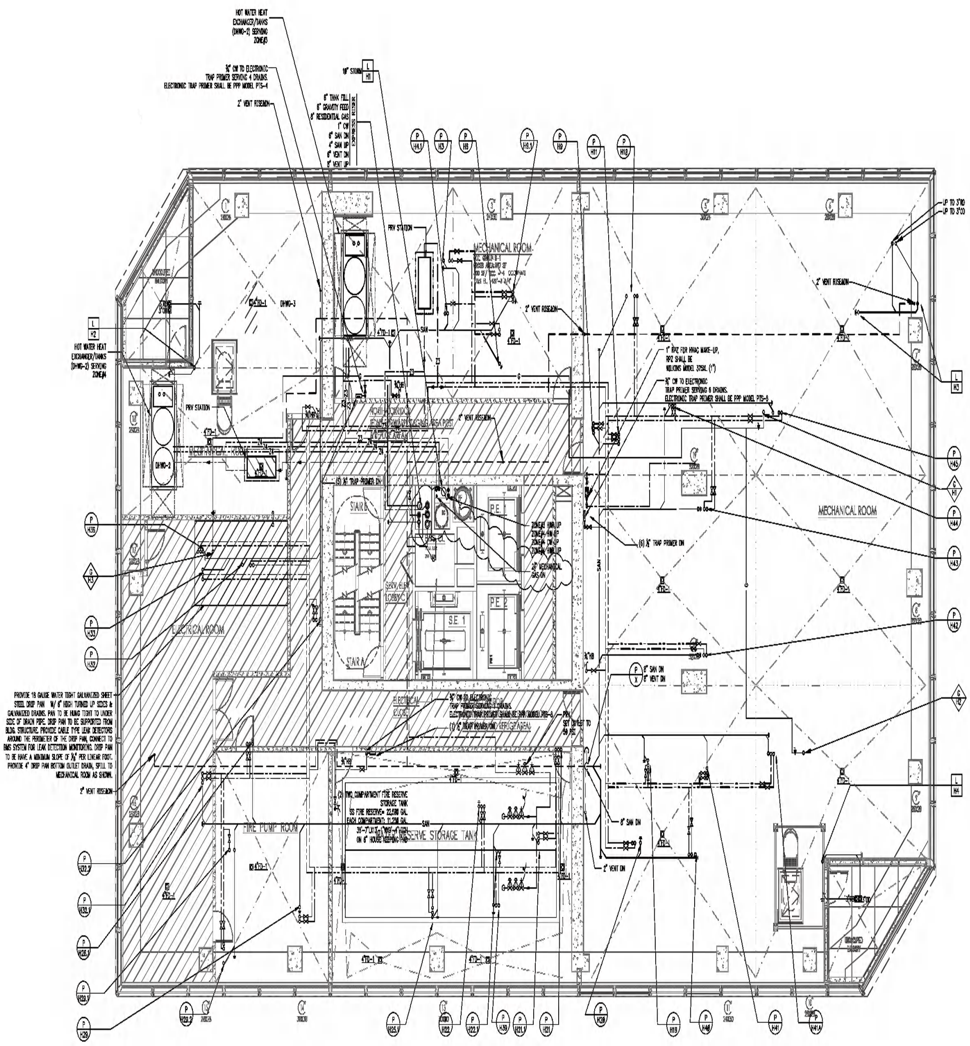
3287



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP
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TEL.: (646) 383-4762

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Tel (212) 246.9800

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FAX: 908.272.4440

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Elmwood Park, NJ 07407
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FAX.: (201) 794-0366

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TEL.: (212) 652.2966

FACADE MAINTENANCE:
ENTEK ENGINEERING LLC
CONSULTING ENGINEERS

ELEVATOR CONSULTANT:
vda
Delivering Vertical Transportation Solutions...Worldwide

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INTERIOR DESIGNER:
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31/F GLOBAL GATEWAY TOWER, 63 WING HONG STREET, KOWLOON, HONG KONG
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A Division of Lathrop Associates LLP
333 WESTCHESTER AVENUE
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LIGHTING DESIGNER:
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221 West 116th Street
New York, NY 10026
TEL.: (212) 865-1565

LIGHTING DESIGNER:
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Philadelphia, PA 19118
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TEL.: (212) 370-1776

No.	Date:	Revision:
–	08/17/2018	ISSUED TO DOB
1	08/17/2018	80% CD
–	06/04/2018	CD PROGRESS SET
–	05/04/2018	50% CD SET
–	04/27/2018	DOB FILING
–	03/19/2018	CD PROGRESS SET
–	11/14/2017	100% DD
–	06/23/2017	50% DD SET
–	02/14/2017	100% SD DWGS

D.O.B. NUMBER:
NB#121190200

NORTH ARROW
Scale: 3/16" = 1'-0"
0 1' 2' 4' 6' 8' 12'

KEY PLAN:
WEST 66TH STREET
COLUMBUS AVENUE
CENTRAL PARK WEST
WEST 65TH STREET

PROJECT:
WEST 66TH STREET
NEW YORK , NEW YORK

DRAWING TITLE:
19TH FLOOR
PLUMBING PIPING PLAN

SEAL & SIGNATURE:

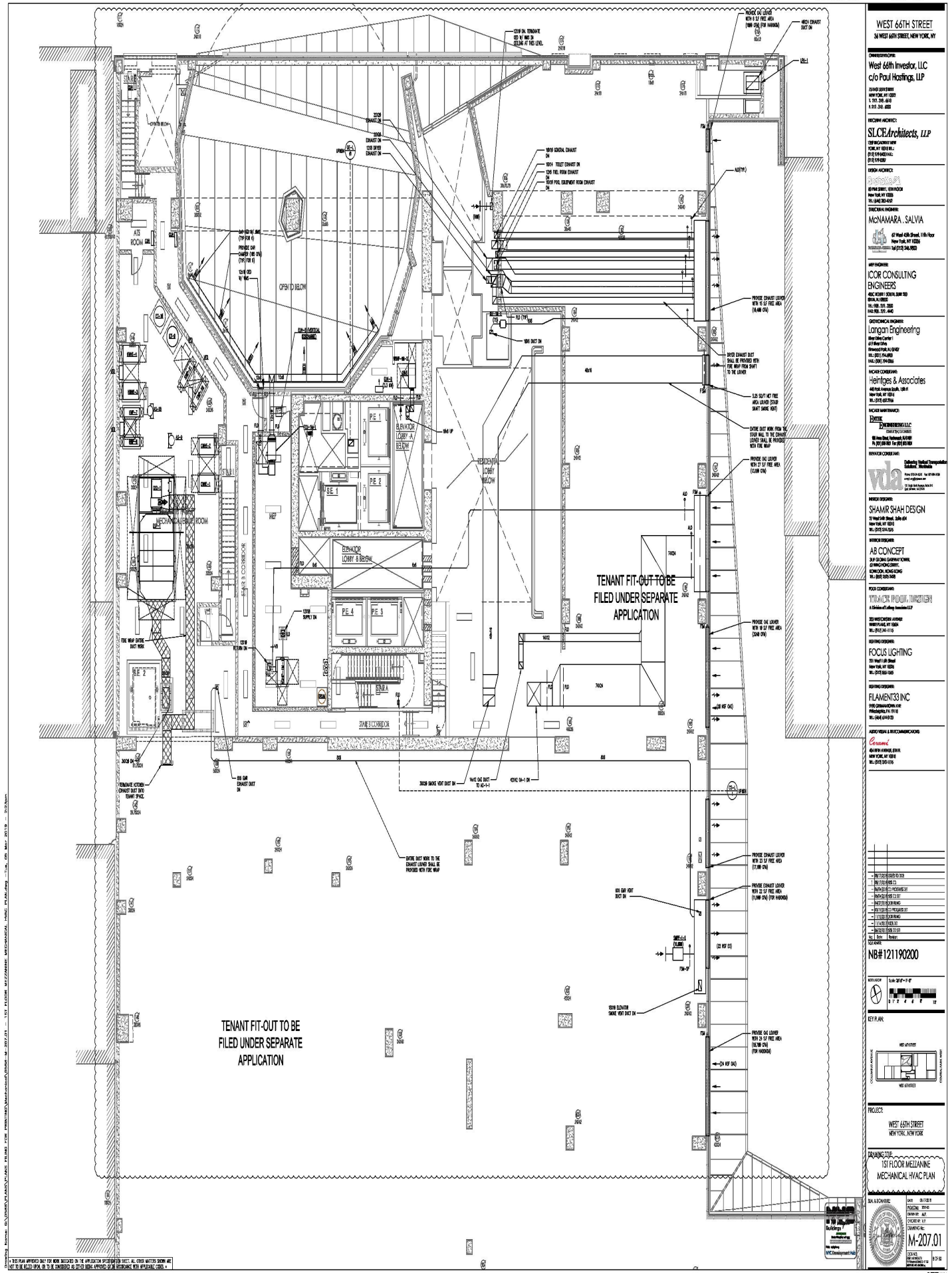
DATE: 08-17-2018
PROJECT No: 2015-55
DRAWN BY: N.G.
CHECKED BY: V.P.
DRAWING No:
P-222.00
DOB NO.
27 OF 50

NYC Buildings
NYC Development Hub

36 X 36

* THIS PLAN APPROVED ONLY FOR WORK INDICATED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE RELIED UPON, OR TO BE CONSIDERED AS EITHER BEING APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES. *

Drawing Name: G:\0588\PLANS\PLANS FILING FOR PRINTING\Plumbing\0588-P-222.00 – 19TH FLOOR PLUMBING PIPING PLAN.dwg –Thu, 14 Mar 2019 – 4:58pm



GENERAL NOTES:

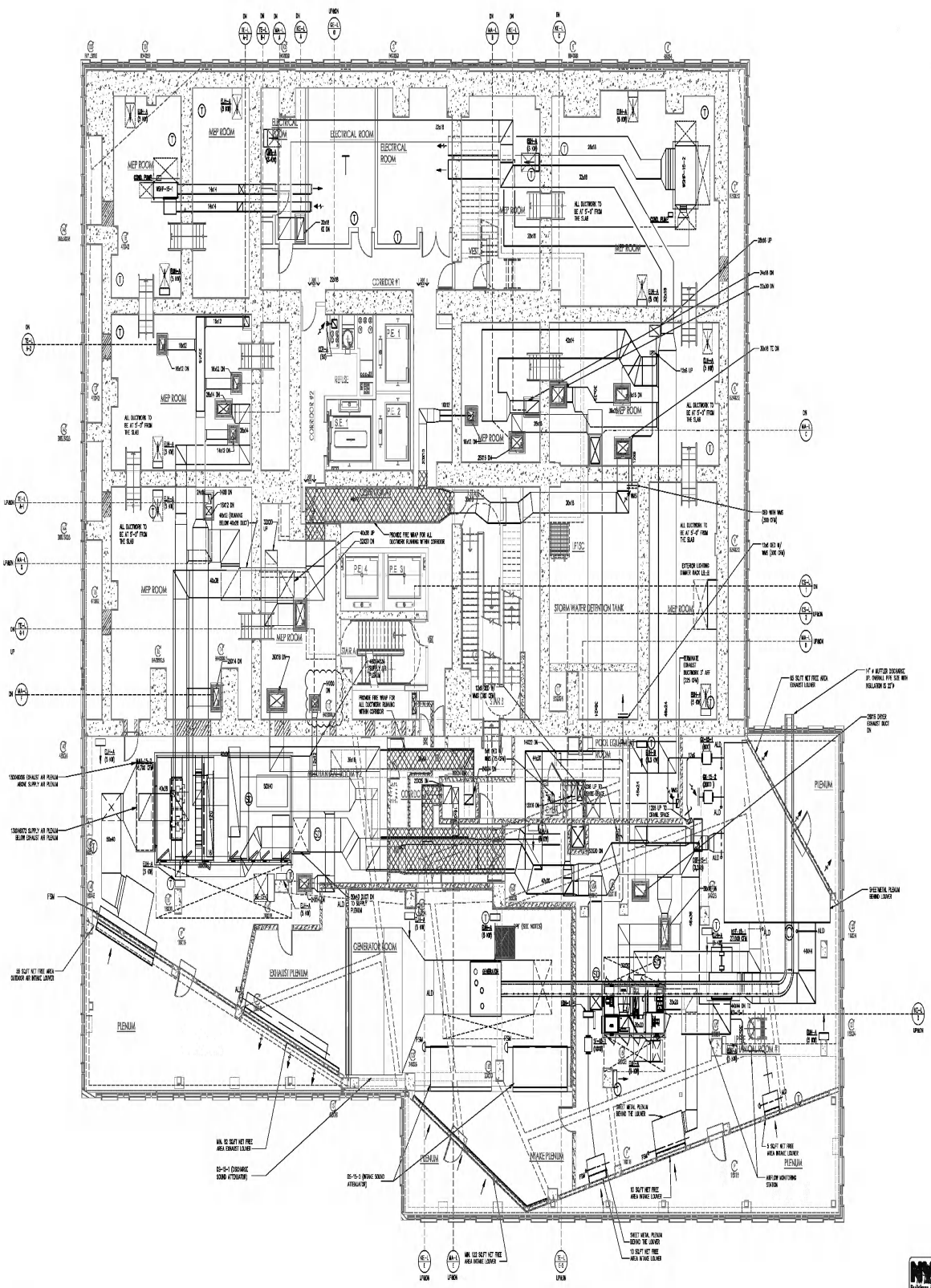
1. ALL ELECTRONIC SERVING FANS (EXCEPT DRYER EXHAUST ELECTRONIC) AND ON HVAC UNITS ON ROOF OR MER ARE TO BE ACCESSIBLY LABELED ON THAT FLOOR.
2. PROVIDE 2 HR FIRE WRAP AS INDICATED.
3. MAU-5-1 & MAU-15-1
   A. OUTDOOR AIR INTAKE DUCT – 10 FEET OF INTERNAL LINING FROM UNIT
   B. 15 FEET INTERNAL LINING ON SUPPLY

DIESEL PARTICULATE FILTER (DPF) NOTES:

(1) 12" DIAMETER X 12" LONG CATALYZED, WALL-FLOW, PASSIVE DIESEL PARTICULATE FILTER ELEMENTS ALL ARRANGED IN A (2) HIGH X (1) WIDE ARRAY DESIGNED FOR USE ONLY ON AN MTU/DETROIT DIESEL 1250KW GENERATOR PROVIDED BY ALTERNATE POWER GENERATION CONTRACT (NEW/MOST 1500-0455-7224) RANKING AT FULL LOAD. ENGINE EXHAUST IS DIRECTED ACROSS THESE DPF ELEMENTS WITHIN A CUSTOM BUILT 304 SERIES STAINLESS STEEL HOUSING. THE OVERALL HOUSING SIZE CANNOT EXCEED LAUNCH TRAN 60.00" LONG, 30.00" WIDE, AND 28.00" TALL. THIS HOUSING MUST INCORPORATE AN INTERNALLY INSULATED BOUNCE SECTION TO ACHIEVE CRITICAL SILENCE SOUND ATTENUATION OF 25-30DBA(A) AT A BACKPRESSURE NO GREATER THAN 50% OF THE ENGINE MANUFACTURERS MAXIMUM ALLOWABLE BACKPRESSURE.

THE CATALYZED DPF ELEMENTS ESSENTIALLY FILTER OUT EMBEDDED CARBON PARTICLES OR SOOT, THAT OCCURS IN THE DIESEL ENGINE EXHAUST). EXPOSED TO UNDER LOAD START UP CONDITIONS, THE DPF'S WILL CAPTURE 85+% OF THESE CARBON PARTICLES, UP A SPECIFIED SIZE, TO THEIR OVERALL CAPACITY. THESE CARBON PARTICLES, OR OFTEN CALLED PARTICULATE MATTER (PM), NEED TO BE REMOVED FROM THE DPF'S. THIS IS ACCOMPLISHED BY THE CATALYZED COATING ON THE DPF ELEMENTS REACHING A "LIGHT OFF" TEMPERATURE, DRIVEN BY THE EXHAUST GAS TEMPERATURE. ONCE THIS LIGHT OFF TEMPERATURE IS ACHIEVED, THE DPF WILL OPERATE IN A CONDITION CALLED CONTINUOUS REGENERATION. CONTINUOUS REGENERATION WILL BURN OFF THE CARBON PARTICLES TRAPPED WITHIN THE DPF ELEMENTS AS LONG AS THE LIGHT OFF TEMPERATURE IS SUSTAINED.

IT IS IMPORTANT THAT THE LIGHT OFF EXHAUST TEMPERATURE IS MET FOR PROPER OPERATION. WHEN LIGHT OFF TEMPERATURE IS NOT MAINTAINED, CARBON PARTICLES WILL BUILD UP IN THE DPF ELEMENTS AND WILL INCREASE BACKPRESSURE IN THE EXHAUST. TO HELP MANAGE THIS, A DIFFERENTIAL PRESSURE SWITCH AND MONITORING SENSOR IS RECOMMENDED TO BE UTILIZED IN A PASSIVE DPF SYSTEM TO ALERT THE OPERATOR, OR TO TRIGGER AN ALARM IF A SPECIFIED LIMIT OF BACK PRESSURE HAS BEEN REACHED. WHEN THAT occurs, SUPPLEMENT LOAD MUST BE APPLIED TO THE ENGINE IN ORDER TO REACH AND MAINTAIN THE LIGHT OFF TEMPERATURE OF THE DPF'S.



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE*Architects*, LLP

DESIGN ARCHITECT:
Stonehill & Taylor

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:
BOSK ENGINEERING LLC

ELEVATOR CONSULTANT:
vda

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACIE POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & DIRECT/ANIMATRONICS:
Cerami

No.	Date	Revision
1	08/17/2020	ISSUED TO DOB
2	09/17/2020	ISSUED TO DOB #2
3	10/09/2020	PER DOB #2 COMMENTS SET
4	10/30/2020	PER DOB #2 SET
5	11/04/2020	PER DOB #2 SET
6	11/13/2020	PER DOB #2 COMMENTS SET
7	11/19/2020	DOB RESUBMISSION
8	12/04/2020	DOB RESUBMISSION
9	12/14/2020	DOB RESUBMISSION
10	01/08/2021	DOB RESUBMISSION
11	02/16/2021	DOB RESUBMISSION

JOB NUMBER:
NB#121190200

NORTH ARROW

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
15TH FLOOR
MECHANICAL HVAC PLAN

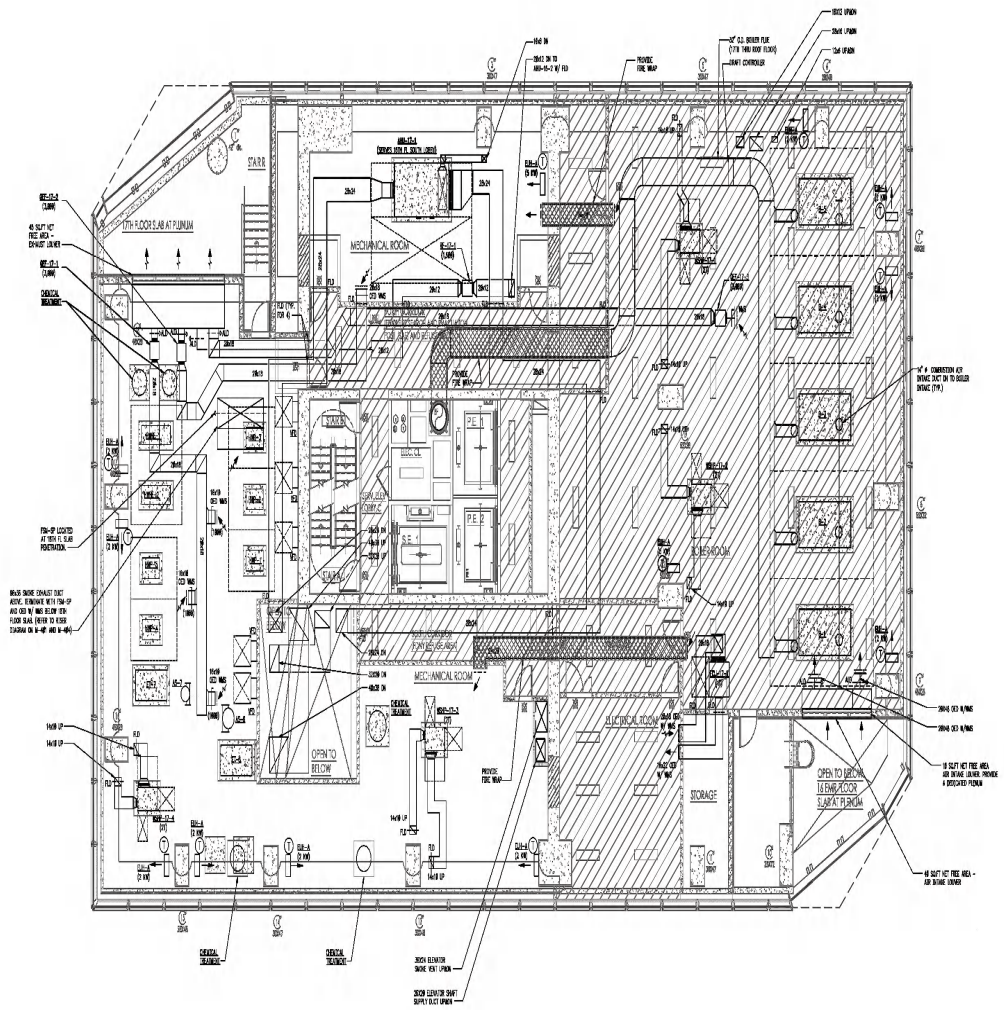
SEAL & SIGNATURE:

DATE: 09/17/2020
PROJECT#: 2019-02
DRAWN BY: AUT
CHECKED BY: S.P.
DRAWING No.: M-216.00
CODE NO.: 2014 NYCBC
OCCUPANCY: B, S-1, S-2
CONSTRUCTION TYPE: I-A
SPRINKLERED: YES
ZONING DISTRICT: C5-2.5 MP
LOT AREA: 7,500 SF
BUILDING AREA: 69,000 SF
FLOOR AREA RATIO: 9.2
NO. OF STORIES: 16
HEIGHT: 150'-0"

NYC Builders' Pledge
NYC Development Hub

GENERAL NOTES:

1. ALL DUCTWORK SERVING FANS (EXCEPT DRYER EXHAUST DUCTWORK) AND GR HVAC UNITS ON ROOF OR MPE ARE TO BE ADDITIONALLY LAGGED 2 in THICK.
2. FURNISH AND INSTALL ALL INSTALLATION ITEMS AT BOILER ROOM AND AS REQUIRED BY CODE OR SPECIFICATIONS. PIPING FROM FLUE TO EASY INSTALLATION TANK SHALL BE BY MECHANICAL CONTRACTOR.
3. PROVIDE DRAIN CONNECTION AT THE BOTTOM OF FLUE RISER AS REQ. AS DRAIN CONDITIONS AT EXISTS OF TEST WITH HIGH TEMPERATURE STAINLESS STEEL. FLUE PIPE ON THE FLOOR HORIZONTAL RUN IN BOILER ROOM. CONDENSATE DRAIN PIPE SHALL BE SCHEDULE 80 CPVC. ALL BREAKING CONNECTIONS TO DRAIN SHALL BE PLASTIC HOSE LOOPED TO CREATE TRAP.



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE Architects, LLP

DESIGN ARCHITECT:
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STRUCTURAL ENGINEER:
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Langan Engineering

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Heintges & Associates

FACADE MAINTENANCE:
BKSK ENGINEERING LLC

EXPEDITOR CONSULTANT:
vda

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACER POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

No.	Date	Revision
1	09/17/2020	RESPONSE TO DOB
2	09/17/2020	PERMIT SET
–	06/04/2020	CD PROGRESS SET
–	06/04/2020	PERMIT SET
–	04/07/2020	CD PROGRESS SET
–	04/07/2020	FILING SET
–	03/13/2020	CD PROGRESS SET
–	11/15/2019	FILING SET
–	11/14/2019	FILING SET
–	06/07/2019	FILING SET

NB#121190200

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
17TH FLOOR
MECHANICAL HVAC PLAN

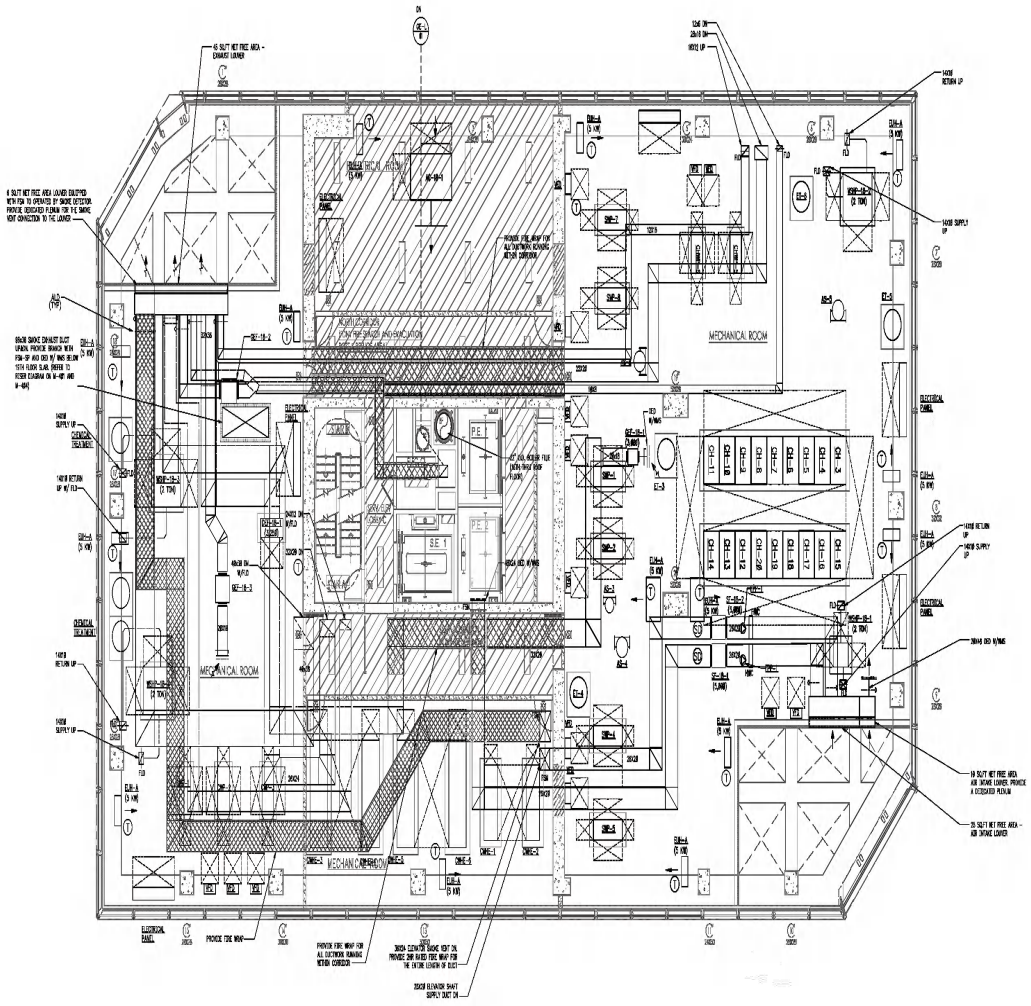
SEAL & SIGNATURE:

DRAWING NO.
M-220.00

THIS PLAN APPROVED ONLY FOR WORK INDICATED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE ACTED UPON, OR TO BE CONSIDERED AS EITHER BEING APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES.

GENERAL NOTES:

1. ALL DIFFUSERS SERVING FANS (EXCEPT EXPOSED EXHAUST DIFFUSERS) AND OR HVAC UNITS ON ROOF OR MER ARE TO BE ACOUSTICALLY LINED IN THAT FLOOR.



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

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No.	Date	Revision
–	08/17/2018	ISSUED FOR DOB
1	08/17/2018	ISSUED FOR DOB
–	07/12/2019	ISSUED FOR DOB
–	09/04/2019	CO PROGRESS SET
–	09/04/2019	ISSUED FOR DOB
–	11/01/2019	ISSUED FOR DOB
–	11/19/2019	CO PROGRESS SET
–	11/19/2019	ISSUED FOR DOB
–	11/14/2020	ISSUED FOR DOB
–	02/12/2021	ISSUED FOR DOB

JOB NUMBER:
NB#121190200

NORTH ARCH | Scale: 3/16" = 1'-0"

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
18TH FLOOR
MECHANICAL HVAC PLAN

SEAL & SIGNATURE:

DRAWING NO.:
M-221.00

THIS PLAN APPROVED ONLY FOR WORK INDICATED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE ACTED UPON OR TO BE CONSIDERED AS EITHER BEING APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES.

GENERAL NOTES:

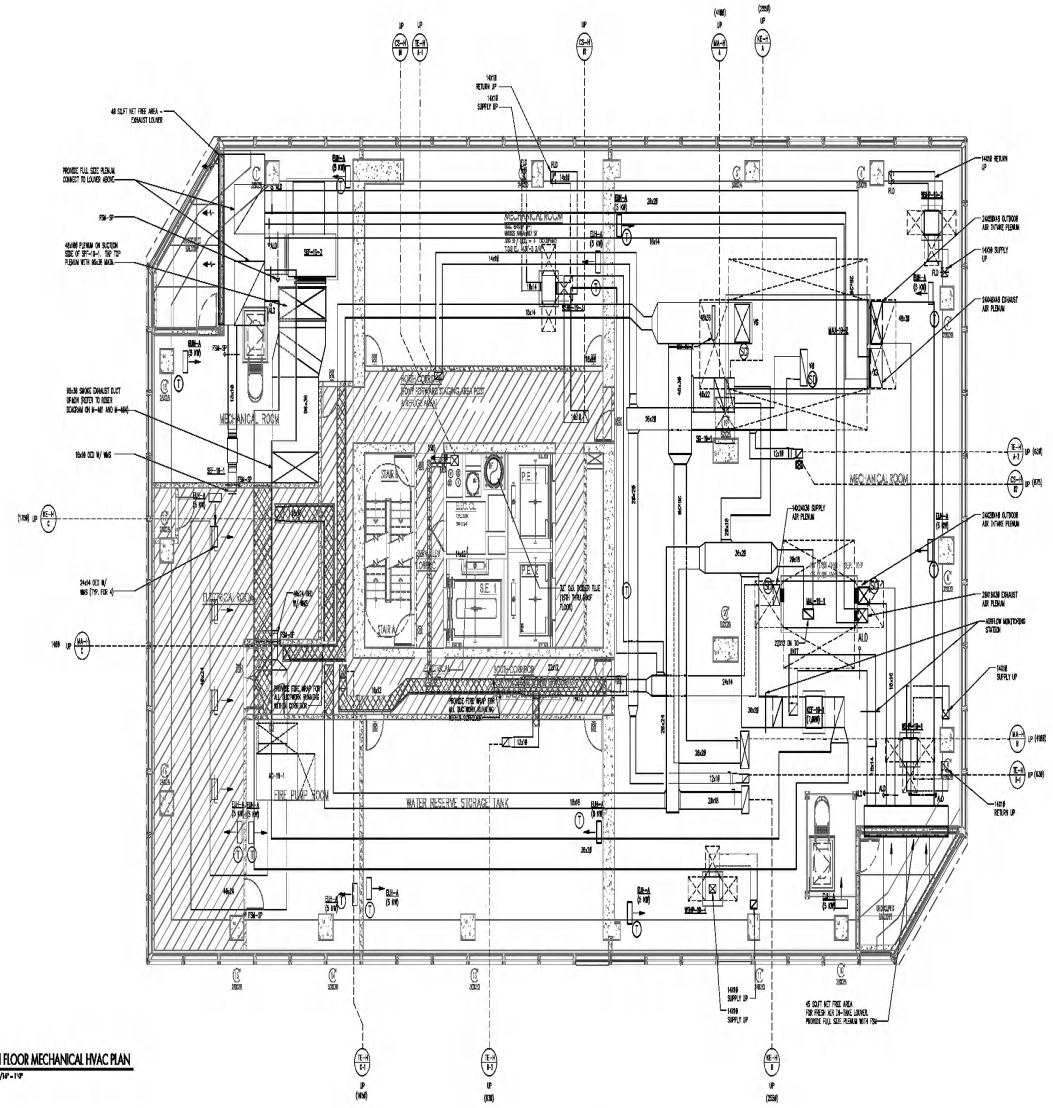
1. ALL DUCTWORK SERVING TANK (EXCEPT DRYER EXHAUST DUCTWORK) AND ON HVAC UNITS ON ROOF OR ABOVE ARE TO BE ACOUSTICALLY LINED ON THAT FLOOR.

2. ALL DUCTWORK SHALL BE PROVIDED WITH 2-HR RATED FIRE WRAP.

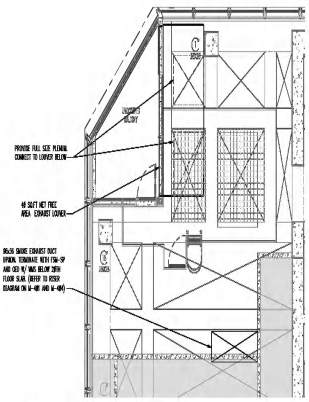
3. MAS-15-1 & MAS-15-2:

A. OUTSIDE AIR INTAKE DUCT – PROVIDE 15 FEET OF ACOUSTICAL LINING.

B. SUPPLY AIR DUCT – PROVIDE 20 FEET OF ACOUSTICAL LINING.



1 19TH FLOOR MECHANICAL HVAC PLAN
SCALE: 3/16" = 1'-0"



2 19TH FLOOR FDNY ACCESS 7 MECHANICAL HVAC PLAN
SCALE: 3/16" = 1'-0"

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WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE Architects, LLP

DESIGN ARCHITECT:
Studio V

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:
BOSK ENGINEERING LLC

EXPEDITOR CONSULTANT:
vda

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACE POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

No.	Date	Revision
–	09/17/2018	ISSUED TO DOB
1	09/17/2018	ADD C.O.
–	04/04/2019	CO RESUBMITTED
–	05/24/2019	CO SET
–	04/07/2020	CO FILING
–	05/15/2020	CO RESUBMITTED
–	11/04/2020	ADD'L CO
–	04/07/2021	CO FILING

NB#121190200

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

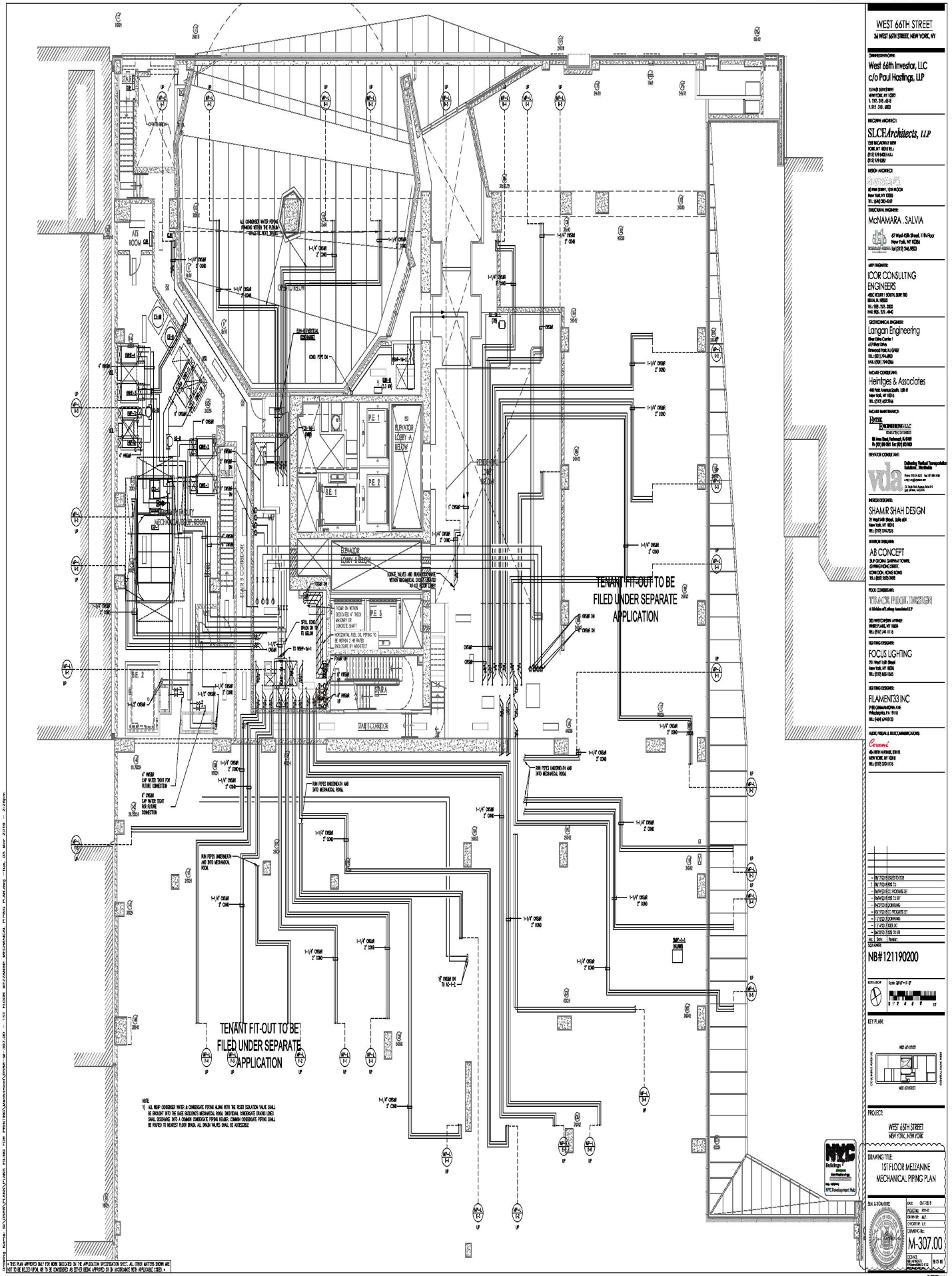
DRAWING TITLE:
19TH FLOOR & FDNY ACCESS 7 MECHANICAL HVAC PLAN

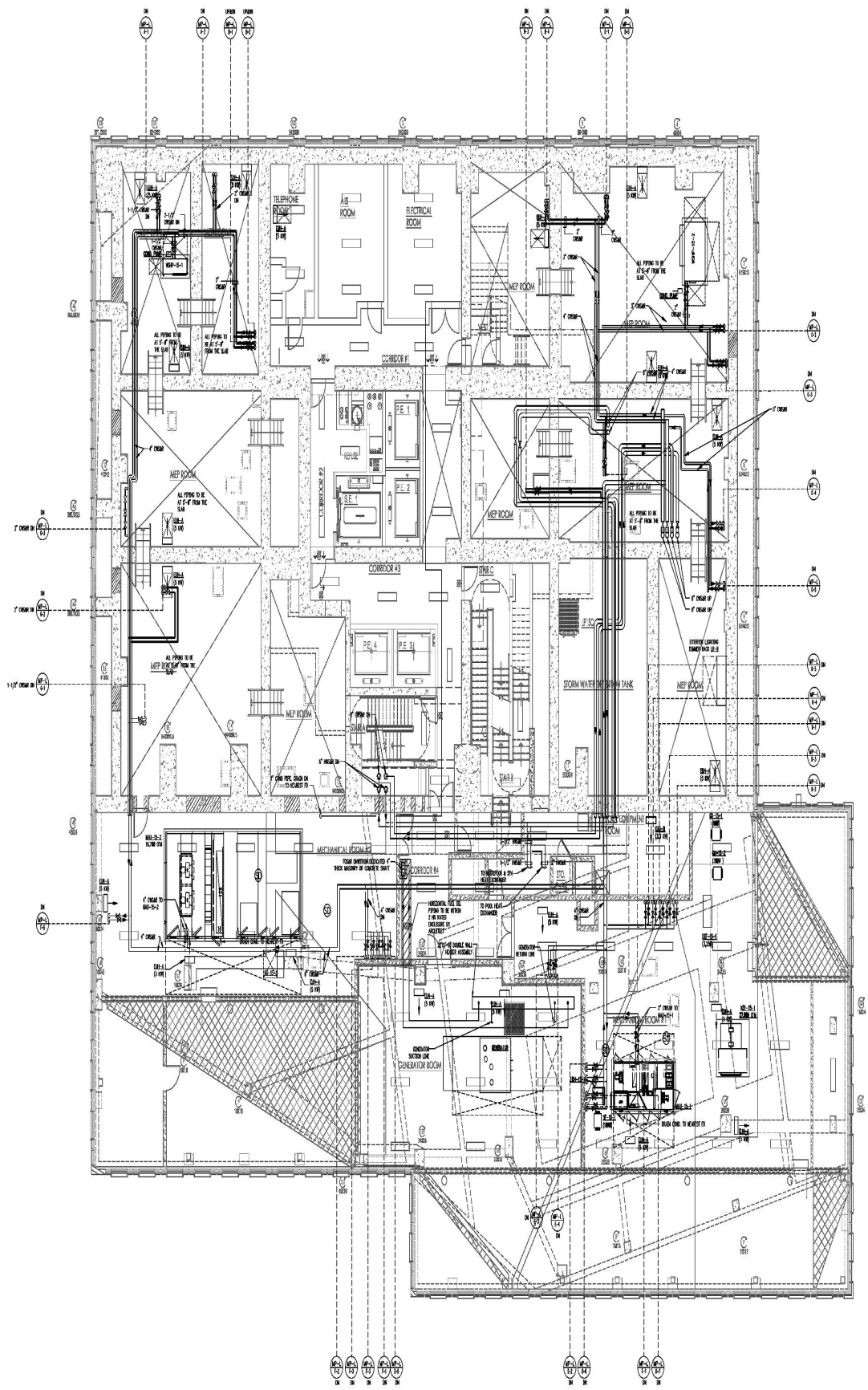
SEAL & SIGNATURE:

DATE: 05/17/2019
PROJECT #: 2016.02
DRAWN BY: AUT
CHECKED BY: S.V.

DRAWING NO.: M-222.00

DOB NO.:
DOB APPROVED





WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE Architects, LLP

DESIGN ARCHITECT:

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:

EXPEDITOR CONSULTANT:

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACE POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

- 09/17/2020 ISSUED TO DOB
- 09/17/2020 HPD CO
- 09/04/2020 CO PROGRESS SET
- 09/04/2020 HPD CO SET
- 04/07/2020 CD PROGRESS SET
- 03/13/2020 CD FOR PERMIT
- 11/14/2019 ADDENDUM
- 08/07/2019 DOB CD SET

No. | Date | Revision

NB#121190200

NORTH ARCH | Scale: 3/16"=1'-0" | 0 1/2 1 2 4 8 12

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
15TH FLOOR
MECHANICAL PIPING PLAN

SEAL & SIGNATURE: | DATE: 08/13/2019 | PROJECT#: 2016-02 | DRAWN BY: AKP | CHECKED BY: VJ | DRAWING NO.: M-316.00

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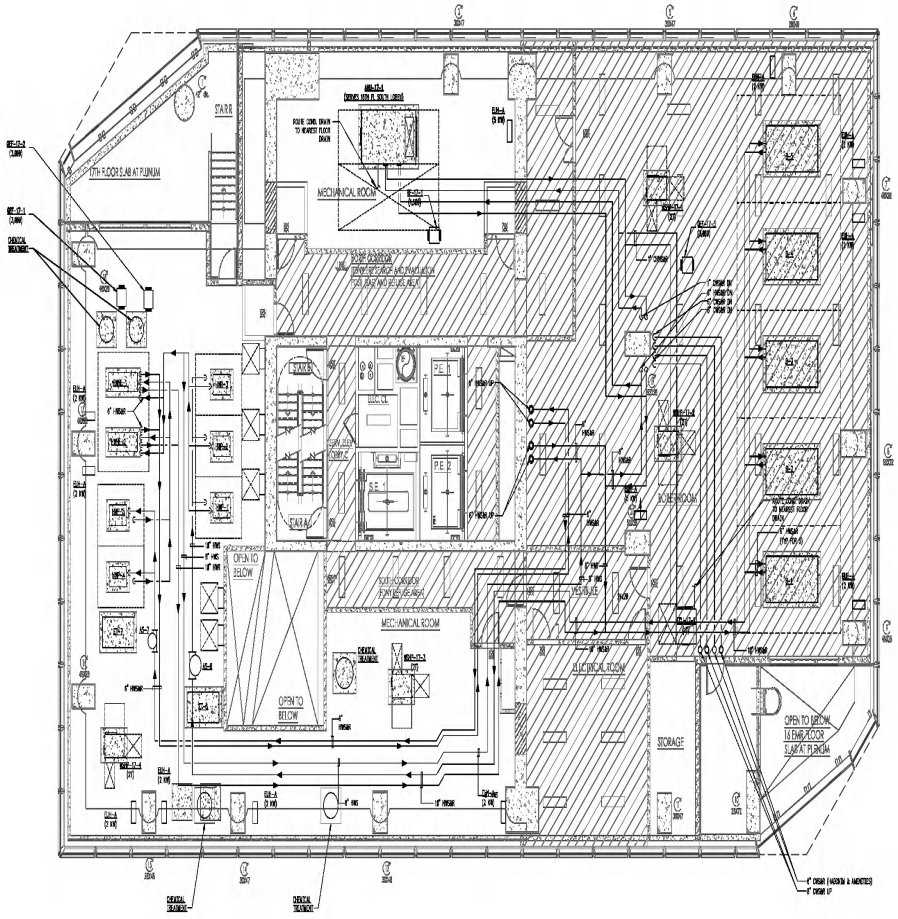

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE*Architects*, LLP

DESIGN ARCHITECT:
Stonehill

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
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GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
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FACADE MAINTENANCE:
BKSK ENGINEERING LLC

EXPEDITOR CONSULTANT:
vda

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
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LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS
Cerami

- PW1 DOB COMMENTS
- PW1 DOB RESPONSE
- PW1 DOB COMMENTS
- PW1 DOB RESPONSE
- PW2 DOB COMMENTS
- PW2 DOB RESPONSE
- PW2 DOB COMMENTS
- PW2 DOB RESPONSE

No. | Date | Revision

JOB NUMBER
NB#121190200

NORTH ARCH | Scale: 3/16"=1'-0"

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
17TH FLOOR
MECHANICAL PIPING PLAN

SEAL & SIGNATURE | DATE: 09.17.2020 | PROJECT#: 2016.02 | DRAWN BY: AKP | CHECKED BY: S.P.

DRAWING No.
M-319.00

DOB NO.
DATE OF APPROVAL

Drawing Name: G:\PROJECTS\PROJECTS\2016.02 - 36 W 66th\CAD\Revit\Mechanical\2016.02 - 36 W 66th - 17TH FLOOR MECHANICAL PIPING PLAN FOR PRINTING.dwg - Thu, 05 Mar 2020 - 2:38pm

THIS PLAN APPROVED ONLY FOR WORK DESCRIBED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE ACTED UPON, OR TO BE CONSIDERED AS OTHER WORK APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES.

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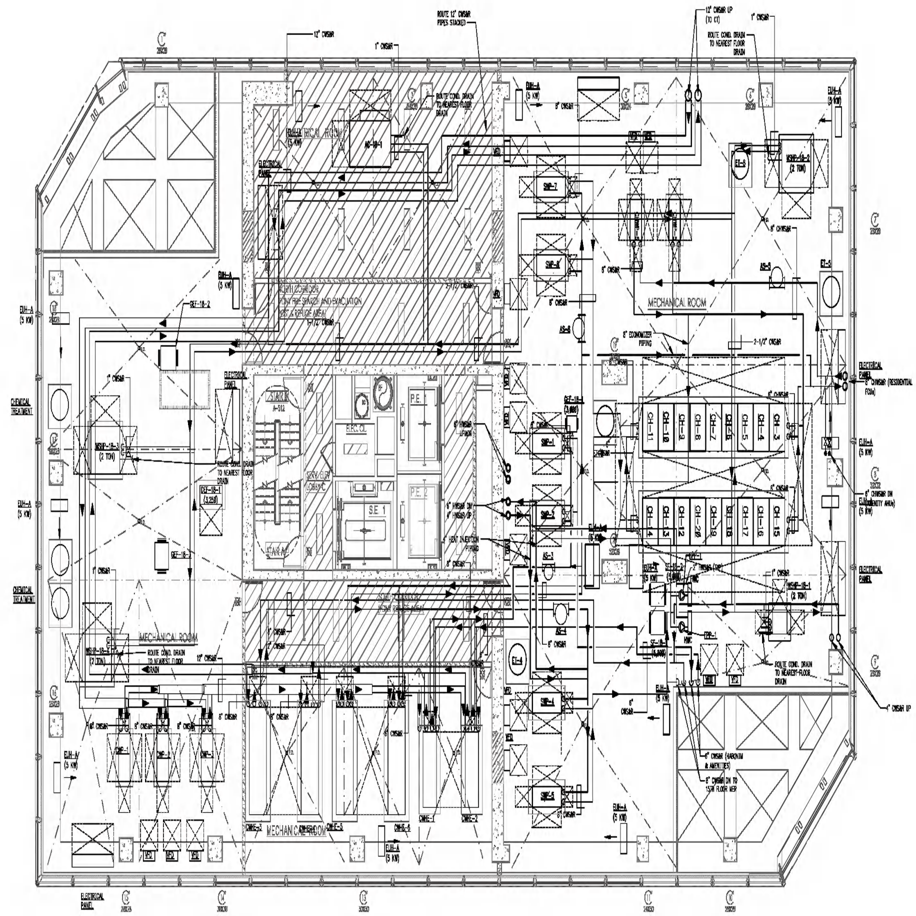

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP
75 EAST 55TH STREET
NEW YORK, NY 10022
T. 212.318.6618
F. 212.318.6000

EXECUTIVE ARCHITECT:
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1359 BROADWAY NEW YORK, NY 10018 TEL.: (212) 979-8400 FAX.: (212) 979-8387

DESIGN ARCHITECT:
Snøhetta
80 PINE STREET, 10TH FLOOR
New York, NY 10005
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STRUCTURAL ENGINEER:
McNAMARA . SALVIA
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Tel (212) 246.9800

MEP ENGINEER:
ICOR CONSULTING ENGINEERS
485C ROUTE 1 SOUTH, SUITE 200
ISELIN, NJ 08830
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FAX: 908.272.4440

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River Drive Center 1
619 River Drive
Elmwood Park, NJ 07407
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FAX: (201) 794.0366

FACADE CONSULTANT:
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440 Park Avenue South, 15th Fl
New York, NY 10016
TEL.: (212) 652.2966

FACADE MAINTENANCE:
ENTEK ENGINEERING LLC

ELEVATOR CONSULTANT:
vda

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACK POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

NB#121190200

KEY PLAN:
WEST 66TH STREET
COLUMBUS AVENUE
CENTRAL PARK WEST
WEST 65TH STREET

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
18TH FLOOR
MECHANICAL PIPING PLAN

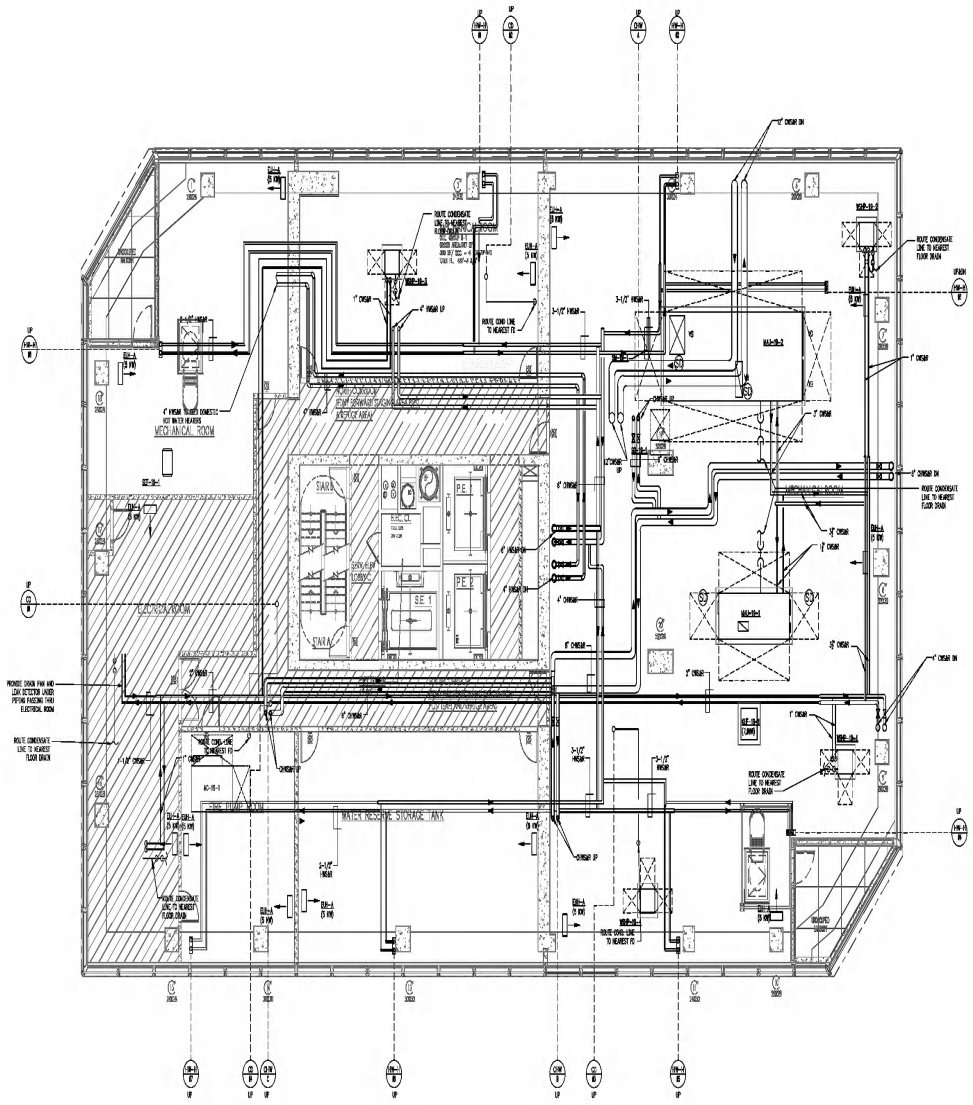
SEAL & SIGNATURE:

DATE:	08-17-2018
PROJECT No:	2015-85
DRAWN BY:	M.P.
CHECKED BY:	V.P.
DRAWING No:	M-320.00
DOB NO.	51 OF 80

48 X 36

NYC Buildings
AMENDED APPLICATION
NYC Development Hub

* THIS PLAN APPROVED ONLY FOR WORK INDICATED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE RELIED UPON, OR TO BE CONSIDERED AS EITHER BEING APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES. *



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

ARCHITECT:
SLCE Architects, LLP

DESIGN ARCHITECT:

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:

EXPEDITOR CONSULTANT:

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACK POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

No.	Date	Revision
–	09/17/2019	ISSUED TO DOB
1	09/17/2019	ISSUED TO DOB (1)
–	04/24/2020	CO PROCEDURE 81
–	05/04/2020	DOB CO SET
–	04/07/2020	DOB FILING
–	05/15/2020	CO PROCEDURE 81
–	11/14/2020	DOB (2)
–	04/27/2021	DOB (3)

NB#121190200

NORTH ARCH

KEY PLAN

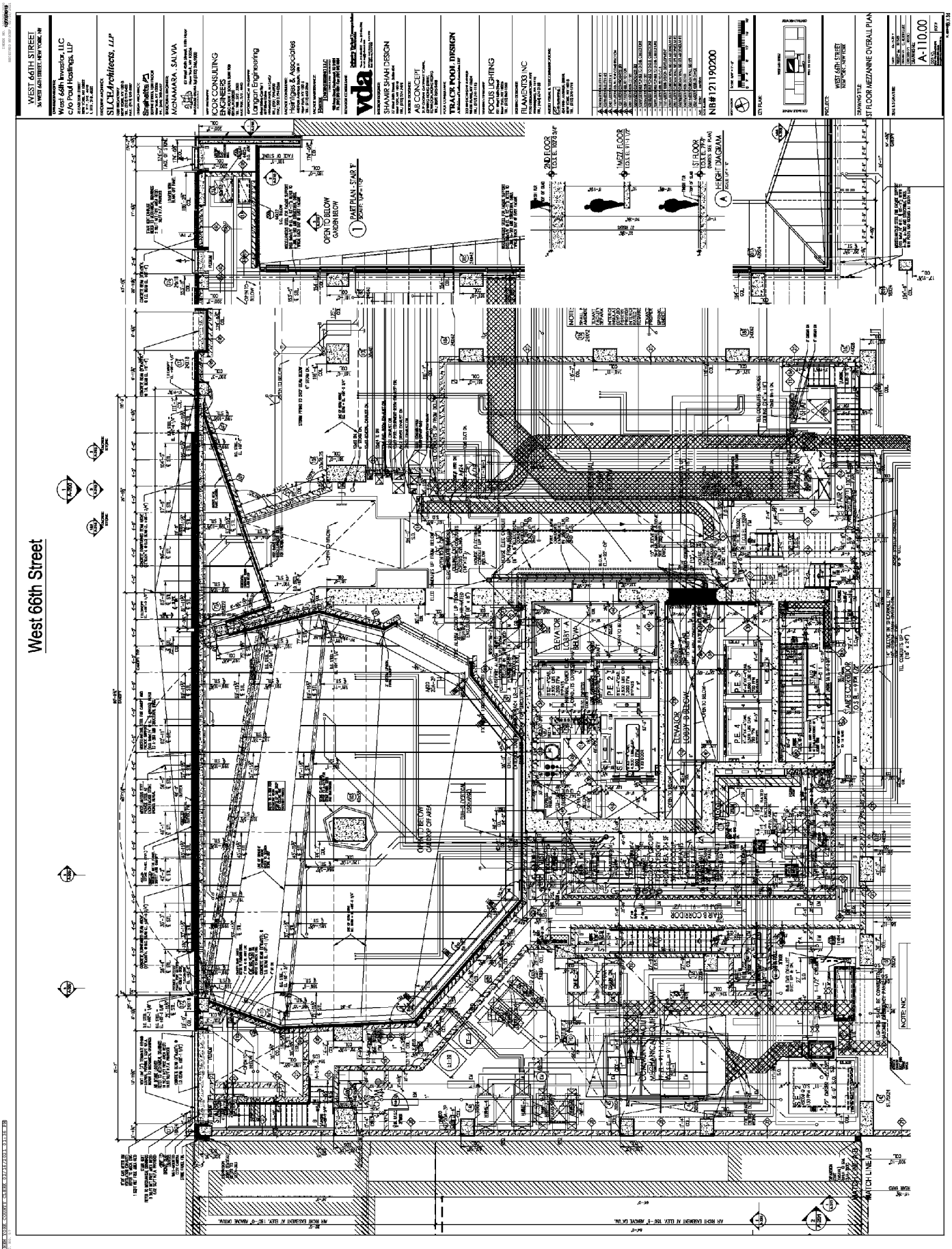
PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

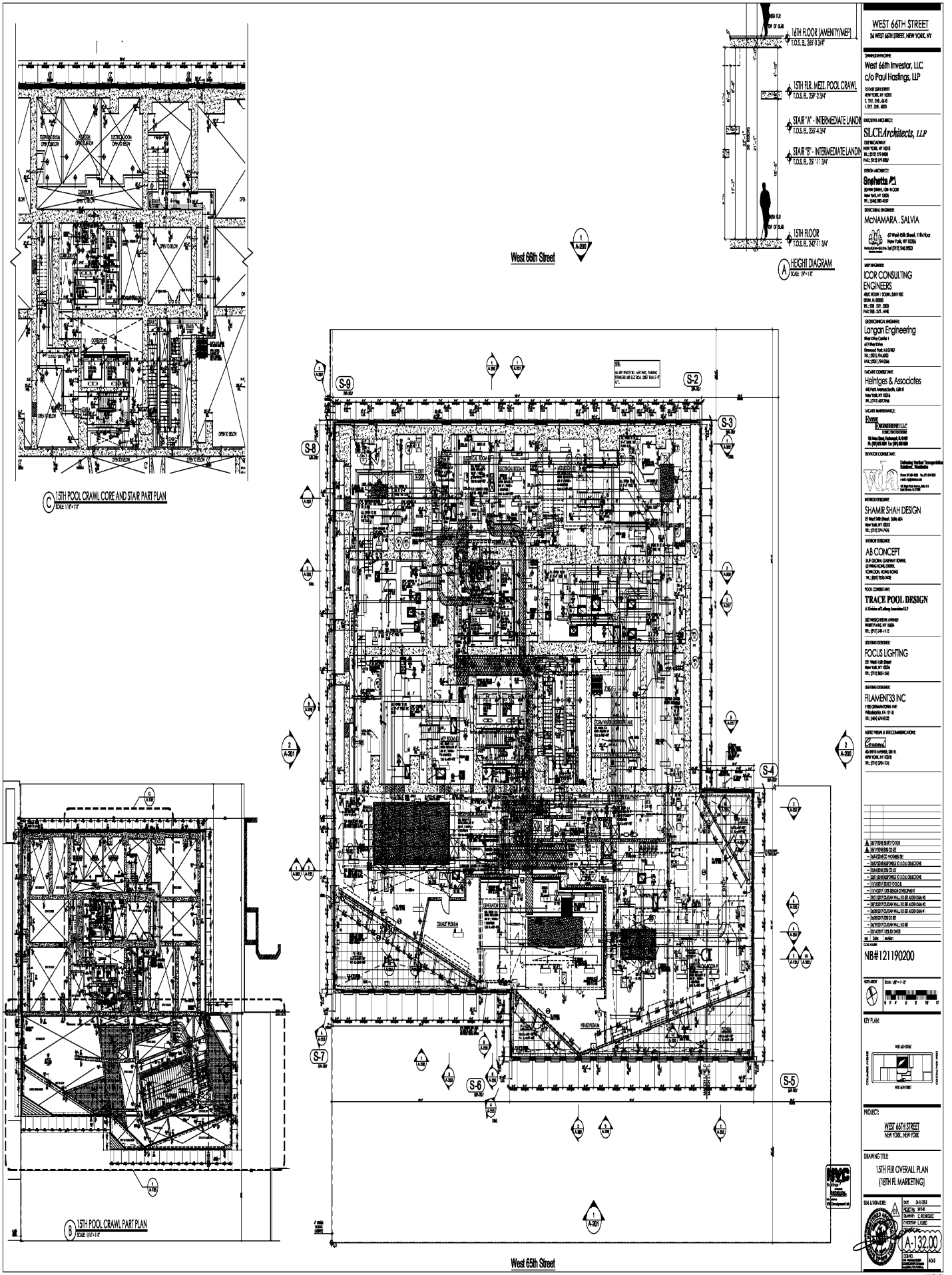
DRAWING TITLE:
19TH FLOOR
MECHANICAL PIPING PLAN

SEAL & SIGNATURE:

DRAWING NO.
M-321.00

THIS PLAN APPROVED ONLY FOR WORK INDICATED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER WORKING SHOWN ARE NOT TO BE BUILT UPON OR TO BE CONSIDERED AS OTHER WORK APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES.


West 66th Street
WEST 66TH STREET
NEW YORK, NEW YORK
ST FLOOR MEZZANINE OVERALL PLAN
A-110.00
NB#121190200
2ND FLOOR
MEZZ FLOOR
1ST FLOOR
HEIGHT DIAGRAM
PART PLAN - STAIR F
OPEN TO BELOW
GARDEN BELOW
ELEVATOR LOBBY A
ELEVATOR LOBBY B
ELEVATOR LOBBY C
ELEVATOR LOBBY D
STAIR A
STAIR B
STAIR C
STAIR D
STAIR E
STAIR F
MECHANICAL
MATCH LINE A-3
NOTE: NIC



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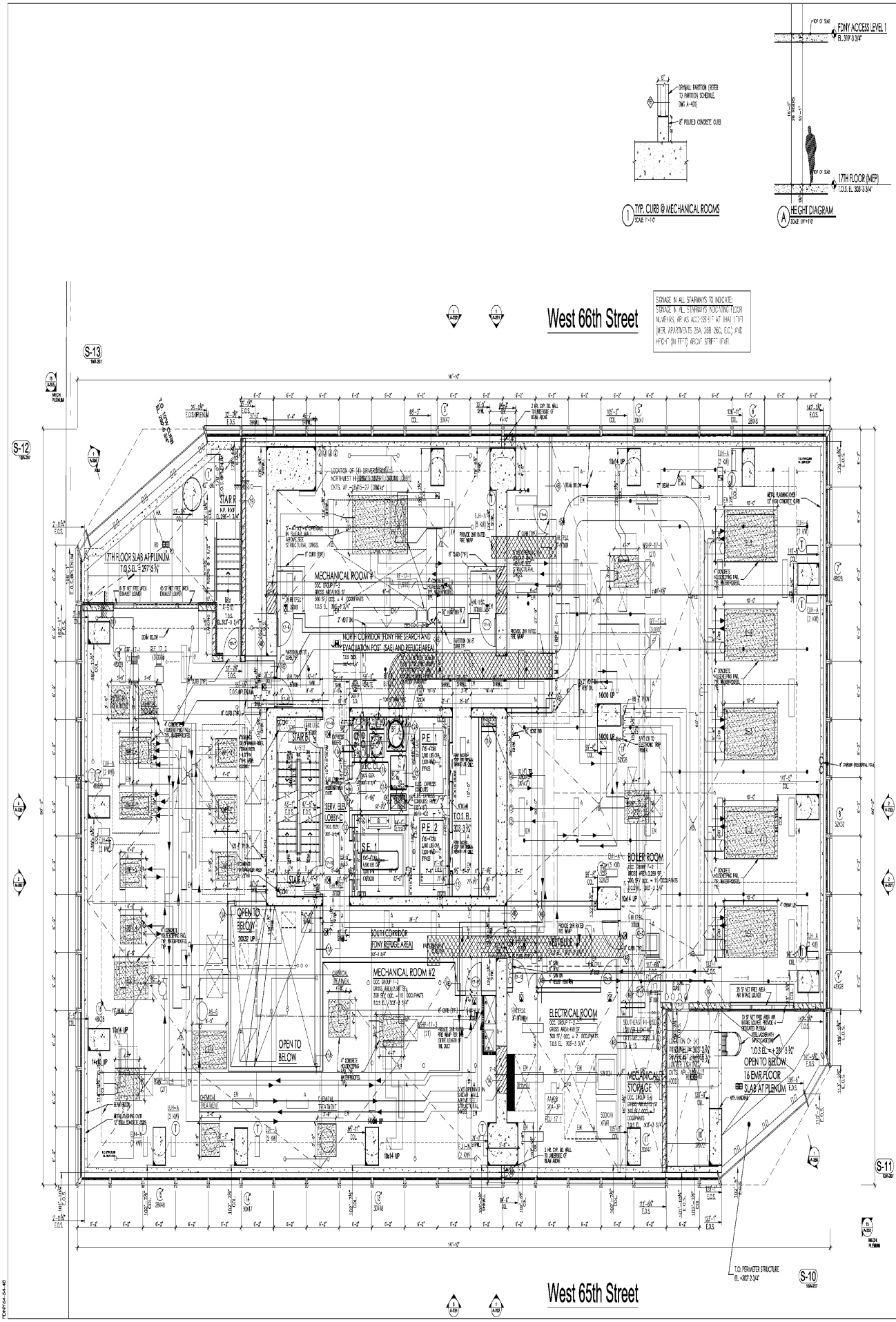

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP
200 PARK AVENUE
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CONSULTING ENGINEERS
166 Avon Street, Hydrospark, NJ 07083
Ph. (201) 659-2821 Fax: (201) 659-2824

ELEVATOR CONSULTANT:
wha Delivering Vertical Transportation Excellence Worldwide

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TEL.: (212) 574-7415

MEP/FP DESIGNER:
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15 WING HONG STREET,
CHEUNG SHA WAN,
KOWLOON, HONG KONG
TEL.: (852) 2520-2438

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TRACE POOL DESIGN
A Division of Lothrop Associates LLP
333 WESTCHESTER AVENUE
WHITE PLAINS, NY 10604
TEL.: (917) 741-1115

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231 West 39th Street
New York, NY 10018
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1190 GERMANTOWN AVE
Philadelphia, PA 19118
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484 PARK AVENUE, 8TH FL
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A	08/17/2020	ISSUED FOR DOB
B	11/06/2020	ISSUED FOR DOB
-	12/04/2020	ISSUED FOR MECHANICS SET
-	12/18/2020	ISSUED RESPONSES TO DOB COMMENTS
-	01/04/2021	ISSUED FOR BIDDING SET
-	01/15/2021	ISSUED RESPONSES TO DOB COMMENTS
-	01/15/2021	ISSUED FOR DOB
-	01/14/2021	ISSUED FOR DOB PLUMBING PLANS
-	02/04/2021	ISSUED FOR DOB PLANS, BID SET ADDENDUM #1
-	02/08/2021	ISSUED FOR DOB PLANS, BID SET ADDENDUM #2
-	02/09/2021	ISSUED FOR DOB PLANS, BID SET ADDENDUM #3
-	02/09/2021	ISSUED FOR DOB SIGN OFF
-	02/16/2021	ISSUED FOR DOB PLANS, BID SET
-	02/16/2021	ISSUED FOR DOB SIGN OFF

No. | Date | Revision

DOB PERMIT
NB#121190200

NORTH ARCH | Scale: 1/4"=1'-0"
0 1" 2" 4" 6" 8" 12"

KEY PLAN

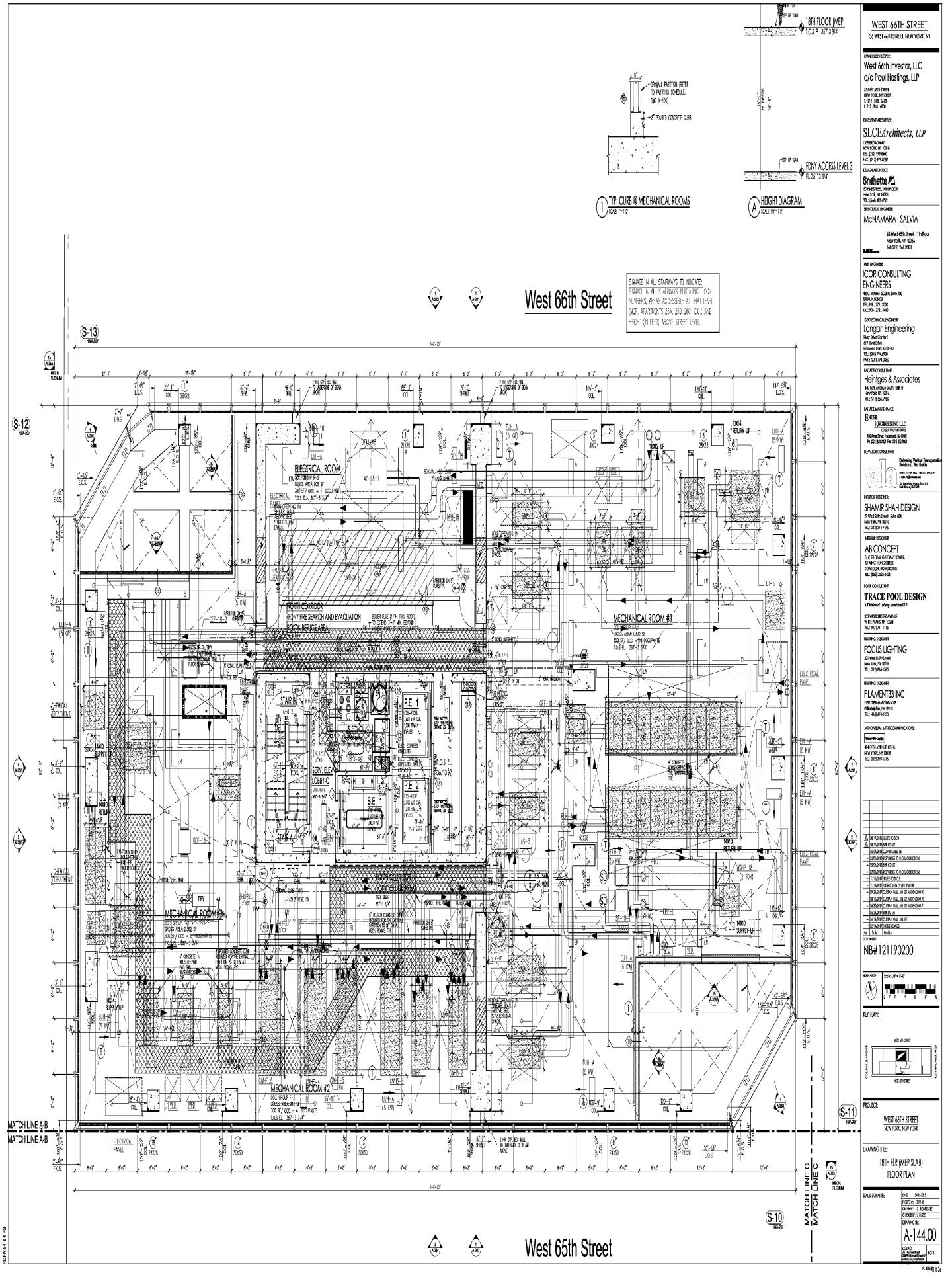
PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
17TH FLR (MEP SLAB) PLAN
(22ND FL MARKETING)

SEAL & SIGNATURE:

DATE: 04.09.2020
PROJECT #: 20048
DRAWN BY: C. RODRIGUEZ
CHECKED BY: K.BOSO
DRAWING NO.
A-140.00
DOB NO.
M19

FDNY64-64-HB



WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
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F. 212.318.6000

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FAX.: (212) 929-6200

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FAX: 908. 272. 4440

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Elmwood Park, NJ 07407
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FAX.: (201) 794-0366

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TEL.: (917) 661-2966

FACADE MAINTENANCE:
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CODE CONSULTANTS
166 Avon Street, Yellowpark, AZ 14580
Ph. (201) 600-2829 Fax: (201) 600-2824

ELEVATOR CONSULTANT:
wha Delivering Vertical Transportation Excellence Worldwide
Phone: 877-924-4200 Fax: 513-924-2120
e-mail: info@wha.com
312 Elm Street, Suite 2410
Cincinnati, Ohio 45202

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN
37 West 26th Street, Suite 404
New York, NY 10010
TEL.: (212) 574-7410

INTERIOR DESIGNER:
AB CONCEPT
31/F GLOBAL GATEWAY TOWER,
63 WING HONG STREET,
KOWLOON, HONG KONG
TEL.: (852) 2520-2468

POOL CONSULTANT:
TRACE POOL DESIGN
A Division of Lothrop Associates LLP
333 WESCHESTER AVENUE
WHITE PLAINS, NY 10604
TEL.: (917) 743-1115

LIGHTING DESIGNER:
FOCUS LIGHTING
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New York, NY 10018
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LIGHTING DESIGNER:
FLAMENT33 INC
1190 GERMANTOWN AVE
Philadelphia, PA 19118
TEL.: (646) 674-2122

AUDIO VISUAL & TELECOMMUNICATIONS:
484 PARK AVENUE, 8TH FL
NEW YORK, NY 10016
TEL.: (212) 335-1776

1	DOB TOWN REVISIONS TO DOB
2	DOB CLOSEOUT COMMENTS
3	ENGINEERING CHANGES PER SET
4	DOB/DOT RESPONSES TO DOB COMMENTS
5	ENGINEERING CHANGES PER SET
6	DOB/DOT RESPONSES TO DOB COMMENTS
7	11/15/2019 RESPONSES TO DOB
8	11/14/2019 DOT DESIGN ADVISORY PANEL
9	DRAWINGS FOR DOB PANEL REVIEW SET ADDENDUM #1
10	DOB/DOT FOR DOB PANEL REVIEW SET ADDENDUM #1
11	ENGINEERING CHANGES PER SET ADDENDUM #1
12	ENGINEERING CHANGES PER SET
13	DOB/DOT FOR DOB PANEL REVIEW SET
14	DOB/DOT FOR DOB PANEL REVIEW SET
No.	Date Revision

DOB NUMBER
NB#121190200

NORTH ARROW
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KEY PLAN

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
18TH FLR (MEP SLAB) FLOOR PLAN

SEAL & SIGNATURE:

DATE: 04-09-2019
PROJECT #: 2016-01
DRAWN BY: C. RODRIGUEZ
CHECKED BY: R.DESC
DRAWING NO.
A-144.00
DOB NO.
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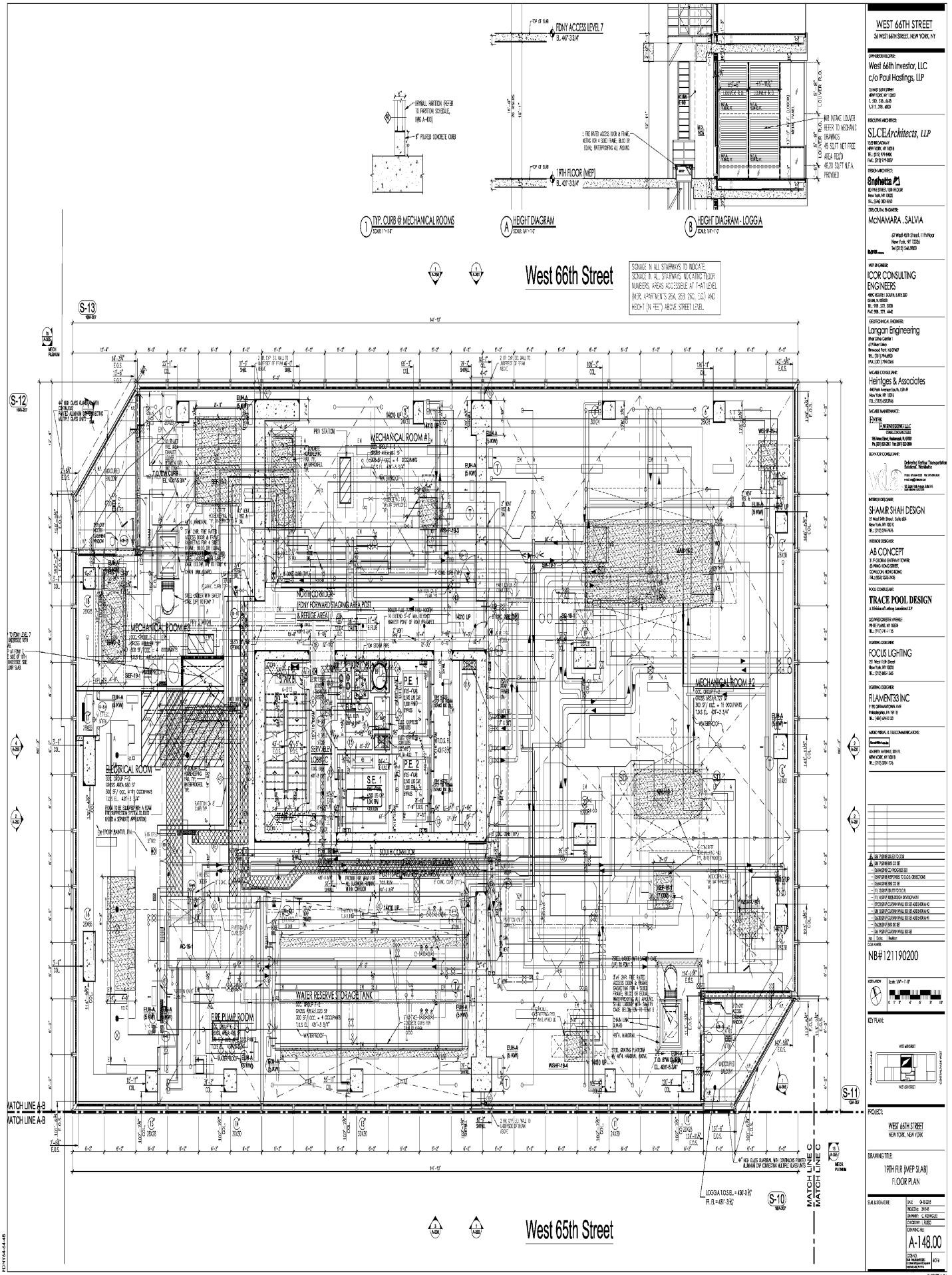

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP
75 EAST 55TH STREET
NEW YORK, NY 10022
T. 212. 318. 6418
F. 212. 318. 4800

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FAX.: (212) 929-0320

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New York, NY 10005
TEL.: (646) 380-4242

STRUCTURAL ENGINEER:
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57 West 57th Street, 11th Floor
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48DC ROUTE 1 SOUTH, SUITE 200
ISELIN, NJ 08830
TEL.: 908. 272. 3000
FAX: 908. 272. 4442

GEOTECHNICAL ENGINEER:
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West Drive Center I
619 River Drive
Elmwood Park, NJ 07407
TEL.: (201) 794-6900
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440 Park Avenue South, 12th Fl
New York, NY 10016
TEL.: (212) 532-2904

FACADE MAINTENANCE:
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CONSULTING ENGINEERS
186 Route 59nd, Hillsborough, NJ 08807
Ph. (201) 429-2821 Fax (201) 522-1884

ELEVATOR CONSULTANT:
Delivering Vertical Transportation Excellence Worldwide
Phone: 973-624-4220 Fax: 973-624-2626
e-mail: vdc@vdcinc.com
151 Lafayette Drive, Building A, Box 479
Lincoln Park, NJ 07035

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN
27 West 24th Street, Suite 604
New York, NY 10010
TEL.: (212) 334-1416

INTERIOR DESIGNER:
AB CONCEPT
31/F QUEEN'S GATEWAY TOWER
83 WING HONG STREET,
KOWLOON, HONG KONG
TEL.: (852) 2520-1488

POOL CONSULTANT:
TRACE POOL DESIGN
A Division of Lothian Associates LLP
333 WESTCHESTER AVENUE
WHITE PLAINS, NY 10604
TEL.: (917) 741-1115

LIGHTING DESIGNER:
FOCUS LIGHTING
222 West 14th Street
New York, NY 10011
TEL.: (212) 645-1616

LIGHTING DESIGNER:
FILAMENT33 INC
1115 GERMANTOWN AVE
Philadelphia, PA 19119
TEL.: (646) 494-2133

AUDIO VISUAL & TELECOMMUNICATIONS:
424 FIFTH AVENUE, 8TH FL
NEW YORK, NY 10018
TEL.: (212) 300-7176

CODE NUMBER
NB#121190200

NORTH ARROW | Scale: 1/4" = 1'-0" | 0 1' 2' 4' 6' 8' 16'

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
19TH FLR (MEP SLAB) FLOOR PLAN

SEAL & SIGNATURE:

DATE: 04/30/2021
PROJECT NO.: 201418
DRAWN BY: C. RODRIGUEZ
CHECKED BY: C. RODRIGUEZ

DRAWING NO.
A-148.00

CODMO
DOB APPROVED PLANS
NOT FOR CONSTRUCTION

PUMP SCHEDULE

PUMP NO.	MANUF.	TYPE	MODEL NO.	LOCATION	SERVICE	DESIGN CAPACITY GPM	DESIGN HEAD (FT.)	MAX. SHUT OFF HEAD (FT.)	MIN. NPSH (FT.)	IMPELLER DIA. IN.	MAX. WORKING PRESS PSIG	MOTOR BHP	MOTOR H.P.	MOTOR RPM	CONTROLLER VFD/ MOTOR STARTER	ELECTRICAL DATA V/P/HZ	WEIGHT (LBS)	REMARKS
CHWP-1&2 (ONE STAND BY)	B&G	END SUCTION	2BD - SERIES E-1510	39TH	CHW	140	65			8.25	175	3.21	5	1800	VFD	460/3/60	268	1,2,3,4
CHWP-3&4 (ONE STAND BY)	B&G	END SUCTION	2BD - SERIES E-1510	39TH	CHW	140	75			8.75	175	3.21	5	1800	VFD	460/3/60	268	1,2,3,4
CHWP-5&6 (ONE STAND BY)	B&G	END SUCTION	6G - SERIES E-1510	18TH	CHW	1300	100			10.625	250	40.3	50	1800	VFD	460/3/60	1630	1,2,3,4
CWP-1,2&3 (ONE STAND BY)	B&G	DOUBLE SUCTION SPLIT CASE	VSC	18TH	CW	1500	85			9.875	300	38.94	50	1800	VFD	460/3/60	1741	1,2,3,4
SWP-1&2(ONE STAND BY)	B&G	END SUCTION	4EB SERIES E-1510	18TH	CW	700	100			11	175	21.3	25	1800	VFD	460/3/60	705	1,2,3,4
SWP-4&5(ONE STAND BY)	B&G	END SUCTION	5GB SERIES E-1510	18TH	CW	1200	100			11.625	175	38.7	50	1800	VFD	460/3/60	1565	1,2,3,4
SWP-7&8(ONE STAND BY)	B&G	END SUCTION	5EB SERIES E-1510	18TH	CW	1160	75			10.375	175	24.9	30	1800	VFD	460/3/60	770	1,2,3,4
SWP-10&11 (ONE STAND-BY)	B&G	END SUCTION	3EB SERIES E-1510	1 MEZZ	CW	460	100			10.625	175	13.11	20	1800	VFD	208/3/60	560	1,2,3,4
HWP-1,2&3 (ONE STAND-BY)	B&G	END SUCTION	5EB SERIES E-1510	17TH	HW	900	100			10.75	175	27.11	40	1800	VFD	460/3/60	945	1,2,3,4
HWP-4&5 (ONE STAND-BY)	B&G	END SUCTION	4EB SERIES E-1510	17TH	HW	800	100			10.75	250	19.4	25	1800	VFD	460/3/60	705	1,2,3,4
HWP-6,7 (ONE STAND-BY)	B&G	END SUCTION	2BD - SERIES E-1510	1 MEZZ	HW	200	75			9.25	175	4.66	7.5	1800	VFD	208/3/60	335	1,2,3,4
FPP-1	B&G	INLINE	PL-45B	SEE PLANS	HW	30	15				150		1/6	3300		115/1/60	15	
FPP-2	B&G	INLINE	PL-130	CELLAR	HW	65	15				150		2/5	3200		115/1/60	27	
CP-1	B&G	INLINE	PL-55	SEE PLANS		30	35				150		2/5	3250		115/1/60	15	

NOTES:

1. PROVIDE VFD. 2. PROVIDE WITH SUCTION DIFFUSER WITH STRAINER. 3. PROVIDE INVERTER DUTY RATED PREMIUM EFF MOTOR. 4.PUMPS TO BE MOUNTED ON INERTIA PAD

AIR SEPARATOR SCHEDULE

UNIT NO.	MANUFACTURER	MODEL No.	SERVICE	LOCATION	CAPACITY GPM	PIPE SIZE	WORK PRESS. (PSIG)	OPERATING WEIGHT (LBS)	REMARKS
AS-1	B&G	RL-3F	CW	L39	140	3	125	173	ASME RATED
AS-2	B&G	RL-3F	CW	L39	140	3	125	173	ASME RATED
AS-3	B&G	RL-6F	HW	L18	700	6	250	564	ASME RATED
AS-4	B&G	RL-8F	HW	L18	1200	8	250	1171	ASME RATED
AS-5	B&G	RL-8F	CW	L18	1300	8	250	1171	ASME RATED
AS-6	B&G	RL-8F	CW	L17	1800	8	125	1171	ASME RATED
AS-7	B&G	RL-6F	CW	L17	565	6	250	564	ASME RATED
AS-3	B&G	RL-8F	CW	L18	1160	8	125	1171	ASME RATED
AS-9	B&G	RL-6F	CW	L1 MEZZ.	400	6	150	564	ASME RATED
AS-10	B&G	RL-3F	CW	L1 MEZZ.	180	3	150	173	ASME RATED

COOLING TOWER SCHEDULE

UNIT NO.	MANUFACTURER	MODEL NO.	TYPE	NOMINAL TOTAL TONS	NO. CELLS	GPM PER CELL	TOTAL GPM	SERVICE	LOCATION	FLUID TEMP ENT. (F)	FLUID TEMP LVG. (F)	AMBIENT TEMP. WB(F)	FANS NO. PER CELL	FANS RPM	FANS AIR FLOW CFM/CELL	FANS MOTOR HP/CELL	ELECTRIC BASIN HEATERS NO. PER CELL	ELECTRIC BASIN HEATERS KW PER CELL	DIMENSIONS PER CELL LxWxH (FT)	OPERATING WEIGHT (LBS) /CELL	ELEC. DATA V/P/HZ	REMARKS
CT-1,2	EVAPCO	UT 224-3M18	INDUCED DRAFT	1,500	2	1,500	3,000	CW	ROOF(40TH FL)	100	85	78	1		268,800	30	2	15	18' x 11'-10" x 18'-9-3/4"	45,100	460/3/60	

NOTES: PROVIDE NEMA 3R VFD W/COOLED AND HEATED ENCLOSURE FOR FANS, PROVIDE VIBRATION ISOLATION, SEE SPECIFICATION FOR ADDITIONAL INFORMATION

PROVIDE FAN WITH PREMIUM EFFICIENT MOTOR AND VFD, PROVIDE TOWER WITH STANDARD FAN, WATER SILENCER, LADDER, LADDER EXTENSION AND PLATFORM, LOUVER ACCESS DOOR.

BOILER SCHEDULE

UNIT No.	MANUFACTURER	MODEL No.	TYPE	SERVICE	LOCATION	INPUT MBH	OUTPUT MBH	WATER EWT (F)	WATER LWT (F)	P.D. psig	FLUE OUTLET SIZE	COMB. INLET SIZE	FUEL	EFFICIENCY AHRI (%)	WORK PRESS. PSIG	ELEC. DATA V/P/HZ	WEIGHT (LBS)	REMARKS
B-1,2,3,4,5	LOCHINVAR	CREST FB6000	GAS FIRED CONDENSING	HW	17TH FL	6,000	5,520		180	4	14"	14"	NAT. GAS	92	150	208/3/60	8000	NOTES

NOTE:

1) PROVIDE PH NEUTRALIZATION KIT, FACTORY DDC CONTROL AND INTERFACE WITH BMS CONTROLS, SEE BOILER SPEC AND BMS CONTROL SPEC. 2) BOILERS TO BE MOUNTED ON 4" CONCRETE PAD.

COOLING TOWER FILTRATION SYSTEM SCHEDULE

UNIT NO.	MANUFACTURER	MODEL NO.	LOCATION	TYPE	FILTERATION EFFICIENCY (%)	FLOW RATE (GPM)	STRAINER INLET (IN)	SEPERATOR OUTLET (IN)	PUMP HP	MAX. PRESS. (PSI)	AMPS	V/PH/HZ	WEIGHT (LBS)	DIMENSIONS (LXWXH)	REMARKS
CTFS-1	LAKOS	ETCX-04100-EFS	L39	SIDESTREAM	99	500	6	4	10	150	12	460/3/60	1233	45X32X82	NOTES

NOTES: PROVIDE PUMP W/HOA STARTER, AUTO-PURGE VALVE AND CONTROLLER, INLET/OUTLET VALVE KIT , CONTROL BY BMS VENDOR,

ENTIRE PACKAGE MUST BE PRE-PIPED AND PREWIRED TO A SINGLE POINT OF POWER CONNECTION , PROVIDE HIGH EFFICEINT WATER NOZZLES THAT OPERATE AS LOW AS 10 PSI,
UNIT TO BE MOUNTED ON 4" CONCRETE PAD.

WATER COOLED CHILLER SCHEDULE

UNIT NO.	MANUF.	MODEL	LOCATION	COOLING CAPACITY PER MODULE (TONS)	PRESSURE RATING (PSIG)	CONDENSER WATER E.W.T. (°F)	CONDENSER WATER L.W.T. (°F)	CONDENSER WATER FLOW RATE (GPM)	CONDENSER WATER PRESSURE DROP (FT.)	CHILLED WATER E.W.T. (°F)	CHILLED WATER L.W.T. (°F)	CHILLED WATER TOTAL CAP. (MBH)	HEAT REJECTED (MBH)	FLOW RATE GPM	P.D. (FT.)	REF. TYPE	COMPRESSOR TYPE	ELECTRICAL (TOTAL) VOLTAGE	MCA	MAX FUSE	EFF. (NPLV)	OVERALL DIMENSION (LxDxH) (IN.)	TOTAL NET INSTALL WT. (LBS)	REMARKS
CH-3 TO 20	MULTISTACK	MS030XC2H2W2AAC	18TH FLOOR	30.8	200	87	102	60.8	8	54	44	369	456	74	13.9	R-410A	STANDARD SCROLL	460/3/60	411	450	0.607	103.5X55.5X78	5480	SEE NOTES

NOTES:
1. PERFORMANCE DATA IS PER MODULE.
2. PROVIDE UNIT DISCONNECT SWITCH PER MODULE.
3. THE UNIT MUST BE FITTED WITH A 60 MESH STRAINER UPSTREAM OF THE HEAT EXCHANGERS
4. GALVANIZED STEEL PIPES & FITTINGS SHALL NOT BE USED FOR PIPING CONNECTING TO CHILLER.
5. THE MINIMUM RECOMMENDED COOLING LOOP SYSTEM FLUID VOLUME SHALL BE >6 GALLONS PER TOTAL CHILLER TONS AT FULL LOAD.
6. FACTORY INSTALLED TEMPERATURE CONTROLLER WITH AQUASTAT.
7. CHILLER TO BE MOUNTED ON 4" CONCRETE PAD.

HEAT EXCHANGER SCHEDULE

UNIT NO.	MANUF.	MODEL	PLATE QUANTITY (#)	FRAME SIZE (IN)	TYPE	LOCATION	SERVICE	PRIMARY WATER TEMP IN (°F)	PRIMARY TEMP OUT (°F)	PRIMARY FLOW RATE (GPM)	PRIMARY MEDIA	PRIMARY WORKING PRESSURE (PSIG)	PRIMARY PRESSURE DROP (PSIG)	SECONDARY WATER TEMP IN (°F)	SECONDARY TEMP OUT (°F)	SECONDARY FLOW RATE GPM	SECONDARY WORKING PRESSURE (PSIG)	SECONDARY PRESSURE DROP (PSIG)	SECONDARY MEDIA	HEAT EXCHANGED (MBH)	FOULING FACTOR	EFFECTIVE SURFACE AREA (S.F.)	OPERATING WEIGHT (LBS)	REMARKS
CHWHE-1&2	B&G	AP64A	93	39.4	PLATE	39TH FLOOR	CHW	44	54	140	30% GLYCOL	150	10	56	46	140	150	10	WATER	703	-	576	3,092	1,2
CWHE-1&2	B&G	AP86	277	78.7	PLATE	18TH FLOOR	CW	85	100	700	WATER	250	10	102	87	700	250	10	WATER	5230	-	2684	9,279	1,2
CWHE-3&4	B&G	AP110	315	78.7	PLATE	18TH FLOOR	CW	85	100	1200	WATER	250	10	102	87	1200	250	10	WATER	8968	-	4043	10,802	1,2
CWHE-5&6	B&G	AP110	283	78.7	PLATE	18TH FLOOR	CW	85	100	1100	WATER	250	10	102	87	1100	250	10	WATER	8218	-	3630	10,261	1,2
CWHE-7&8	B&G	AP110	97	39.37	PLATE	1ST MEZZ	CW	85	100	400	WATER	250	10	102	87	400	150	10	WATER	2987	-	1227	6,830	1,2
HWHE-1&2	B&G	AP110	150	51.18	PLATE	17TH FLOOR	HW	180	160	600	WATER	150	10	158	178	600	250	10	WATER	5,860	-	1912	5,840	1,2
HWHE-3&4	B&G	AF86	75	23.62	PLATE	1ST MEZZ	HW	160	160	200	WATER	250	10	158	178	200	150	10	WATER	1,758	-	630	5,491	1,2

NOTES: 1) PROVIDE 316-SS SINGLE WALL CONSTRUCTION, 2) HEAT EXCHANGER TO BE MOUNTED ON 4" CONCRETE PAD

ENERGY RECOVERY UNIT SCHEDULE (WATERSOURCE HEAT PUMP)

UNIT NO.	MANU.	MODEL	LOCATION	AREA SERVED	SUPPLY Flow (CFM)	SUPPLY ESP (IN)	SUPPLY MOTOR HP	SUPPLY MOTOR BHP	SUPPLY MOTOR RPM	RETURN Flow (CFM)	RETURN ESP (IN)	RETURN MOTOR HP	RETURN MOTOR BHP	RETURN MOTOR RPM	Circuit #1 V/PVHZ	Circuit #1 MCA	Circuit #1 MOP	OA MIN. FLOW (CFM)
MAU-15-1	VENMAR	VHC-50	15TH FL. MER	CORRIDOR	4,300	1.5	202	201.72	2544	5,000	1.5	203	201.93	3269	460/3/60	5	15	4,300
MAU-15-2	VENMAR	A-1-15E	15TH FL. MER	APT MAKE-UP AIR	18,500/27,000	2.0	607.5	606.1	3594	15,200	2.0	207.5	205.8	1781	460/3/60		15	18,500/27,000
MAU-19-1	VENMAR	VHC-36	19TH FL. MEP	CORRIDOR	2,200	1.5	5	2	2640	1,400	1.5	1	0.79	2388	460/3/60	5	15	2,200
MAU-19-2	VENMAR	A-1-10E	19TH FL. MEP	APT MAKE-UP AIR	5500/10000	1.5	205	204.81	2091	4,000	1.5	3	2.55	1805	460/3/60	23	30	5500/10000

UNIT NO.	ENTHALPY WHEEL SUMMER SUPPLY O.A.T. DB/WB (°F)	SUMMER SUPPLY L.A.T. DB/WB (°F)	SUMMER EXH. R.A.T. DB/WB (°F)	SUMMER EXH. E.A.T. DB/WB (°F)	WINTER SUPPLY O.A.T. DB (°F)	WINTER SUPPLY L.A.T. DB (°F)	WINTER EXH. R.A.T. DB (°F)	WINTER EXH. E.A.T. DB (°F)	COOLING (HEAT PUMP) E.A.T. DB/WB (°F)	L.A.T. D.B (°F)	L.A.T. W.B. (°F)	E.W.T. (°F)	L.W.T. (°F)	TOTAL CAP. (MBH)	SEN. CAP. (MBH)	WATER FLOW GPM	WPD (FT)	HOR (MBH)	EER
MAU-15-1	95/78	78.8/68.2	72/62	85.9/71.9	10	52.3	70	33.6	78.6/68.2	55	54.4	87	100	187.9	110.4	24		223	18.3
MAU-15-2	92/73	81.5/67	70/58	86.7/70.4	10	39.5	70	17.6	81.5/67	49.6	49.5	87	102.4	1399	929.4	220	9.3	1892	18.3
MAU-19-1	95/78	83.1/71	72/62	90.7/74.8	10	41	70	21.3	83.1/71	51.3	51.3	87	101.4	137.2	75.6	18		168.2	18.1
MAU-19-2	95/73	80.3/69.5	70/65	90/73	10	46.1	70	20.3	86.9/72	51.3	51.2	87	102.3	666.8	384.5	106	5.4	813.7	15.5

UNIT NO.	HOT GAS REHEAT EAT DB (°F)	HOT GAS REHEAT LAT DB (°F)	HOT GAS REHEAT TOTAL CAP. (MBH)	HEATING (HEAT PUMP) E.A.T. DB (°F)	L.A.T. DB (°F)	E.W.T. (°F)	L.W.T. (°F)	TOTAL CAP. (MBH)	WATER FLOW GPM	WATER PRE. DROP(ft)	HOA (MBH)	COP	HEATING (ELECTRIC PREHEAT) E.A.T. DB (°F)	L.A.T. DB (°F)	CAP. (KW)	FILTERS PRE FILTER	FILTERS UNIT FILTER	REF.	ELECTRICAL Circuit#2 V/P/HZ	MCA	MOP	UNIT WT. (LBS)	REMARKS
MAU-15-1	55	70	58.4	52.3	97.6	70	55	211.4	24	6.9	180	5.9	N/A				MERV-8	R410A	460/3/60	41	50	3,696	NOTES
MAU-15-2	48	73.9	726.1	39.5	65.4	70	55.3	1410	165	9.3	1214	7.2	N/A				MERV-8	R410A	480/3/60	200	350		NOTES
MAU-19-1	51.3	72.8	51.2	41	104.1	70	54.5	149.9	16	5.3	123.8	6.1	N/A				MERV-8	R410A	460/3/60	25	30	2,573	NOTES
MAU-19-2	31	76.2	272.2	30	73	70	62.5	463.6	106	5.4	395.7	6.8	30	32	6.4		MERV-8	R410A	460/3/60	131	175		NOTES

NOTES: 1) PROVIDE 115V FACTORY WIRED CONVENIENCE OUTLET, STAINLESS STEEL DRAIN PANS & INSULATION LINERS, TEMPERATURE SENSOR, AND MODULATING COOLING/HEATING

2) PROVIDE VFD FOR SUPPLY AND RETURN FAN, 3) UNITS TO BE MOUNTED ON 4" CONCRETE PAD,4) UNITS TO BE PROVIDED W/ FACTORY INSTALLED CONTROLLER, 5) SEE SPECIFICATIONS FOR ADDITIONAL INFORMATION,

6) PROVIDE VIBRATION ISOLATORS PER SPEC 230549, 7) CONTROL BY BMS VENDOR, 8) PROVIDE FACTORY MOUNTED MOTORIZED DAMPER FOR ALL INTAKE AND EXHAUST,9) UNITS TO BE EQUIPPED WITH ENTHALPY WHEEL,

10) PROVIDE A DEDICATED POWER CONNECTION FOR RETURN FAN AND ONE SINGLE POWER CONNECTION FOR THE REST OF THE UNIT, 11) PROVIDE WITH VARIABLE CAPACITY SCROLL (VCC) COMPRESSORS ON ALL CIRCUITS.

ENERGY RECOVERY VENTILATOR SGHEDULE (DX AIR COOLED WITH GAS HEATING)

UNIT NO.	MANUF.	MODEL NO.	LOCATION	AREA SERVED	SUPPLY Flow (CFM)	SUPPLY ESP (IN)	SUPPLY MOTOR HP	SUPPLY MOTOR BHP	SUPPLY MOTOR RPM	RETURN Flow MIN. (CFM)	RETURN ESP (IN)	RETURN MOTOR HP	RETURN MOTOR BHP	RETURN MOTOR RPM	Circuit #1 V/PVHZ	Circuit #1 MCA	Circuit #1 MOP	O.A. (CFM)
MAU-40-1	AAON	RN-011-3	ROOF(40TH FL)	CORRIDOR	2,800	1.25	3	1.71	1756	1,300	1.0	1	0.64	1250	460/3/60	4	15	2,500
MAU-40-2	AAON	RN-040-3	ROOF(40TH FL)	APT MAKE-UP AIR	11000/7400	1.25	15	9.38	1528	6,000	1.0	3	2.3	950	460/3/60	6	15	11000/7400

UNIT NO.	HEAT WHEEL SUMMER SUPPLY O.A.T D.B (°F)	O.A.T W.B (°F)	L.A.T D.B (°F)	L.A.T W.B (°F)	SUMMER EXHAUST R.A.T D.B (°F)	R.A.T W.B (°F)	E.A.T D.B (°F)	E.A.T W.B (°F)	WINTER SUPPLY O.A.T D.B (°F)	O.A.T W.B (°F)	L.A.T D.B (°F)	L.A.T W.B (°F)	WINTER EXHAUST R.A.T D.B (°F)	R.A.T W.B (°F)	E.A.T D.B (°F)	E.A.T W.B (°F)
MAU-40-1	95	75	85.3	69.5	75	62	92.7	73.3	10	9	36.35	34.03	70	58	17.9	17.8
MAU-40-2	95	75	85.3	69.3	75	62	92.5	73.3	10	9	37.1	34.8	70	58	18.2	18

UNIT NO.	DX COOLING E.A.T D.B (°F)	E.A.T W.B (°F)	L.A.T D.B (°F)	L.A.T W.B (°F)	TOTAL CAPACITY (MBH)	SENS. CAPACITY (MBH)	EER	HOT GAS REHEAT TOTAL CAPACITY (MBH)	L.A.T D.B (°F)	L.A.T W.B (°F)	GAS HEATING E.A.T D.B (°F)	L.A.T D.B (°F)	TOTAL CAPACITY (MBH)	INPUT CAPACITY (MBH)	FILTERS PRE FILTER	UNIT FILTER	REF.	ELECTRICAL Circuit#2 V/P/HZ	MCA	MAX FUSE	UNIT WT (LBS)	REMARKS
MAU-40-1	85.3	69.5	54	53.3	120.7	82.6	14.6	43	70	59.6	36.35	94.1	158	195		MERV-8	R410A	460/3/60	31	35	2,360	
MAU-40-2	85.3	69.3	55.6	55.4	463.9	341.6	13.5	171	70	60.83	37.1	91.6	648	810		MERV-8	R410A	460/3/60	106	125	7,022	

NOTES:
1. UNIT TO BE PROVIDED WITH FACTORY INSTALLED CONTROLLER
2. 1.15 HP MOTOR SERVICE FACTOR PREMIUM EFFICIENCY MOTOR.
3. DAMPERS LOW LEAKAGE TYPE.
4. STAINLESS STEEL DRAIN PANS.
5. DOUBLE-WALL CONSTRUCTION WITH THERMAL BREAK-R13.
6. PROVIDE CLOGGED FILTER SWITCH.
7. PROVIDE 30" HIGH SEISMIC/WIND RESISTANT ROOF CURB.
8. EXTERIOR PAINT FINISH SHALL BE CAPABLE OF WITHSTANDING AT LEAST 2500 HOURS WITH NO CORROSIVE EFFECTS WHEN AT LEAST 2500 HOURS WITH NO CORROSIVE EFFECTS WHEN TESTED IN ACCORDANCE WITH ASTM B117-95.
9. PROVIDE VFD FOR SUPPLY AND EXHAUST FAN. VFD SHALL BE LOCATED WITHIN UNIT CONTROL PANEL AND SHALL BE PRE WIRED WITH UNIT.
10. EACH R.T. UNIT TO HAVE PREWIRED CONTROL POWER TRANSFORMER FOR POWER TO SERVICE LIGHT WITH ON/OFF SWITCH AND CONVENIENT RECEPTACLE WITH THE CONTROLLER.
11. PROVIDE SEPARATE ELECTRICAL FEED FOR RETURN FAN.
12. PROVIDE ACOUSTICAL PANEL ASSEMBLY FOR ROOF CURB BY TSC ACOUSTICAL PRODUCTS, LLC. (INCLUDES PANELS, SUPPORT CHANNEL, SUPPORT ANGLES, ETC)
13 UNITS TO BE EQUIPPED WITH ENTHALPY WHEEL

AIR COOLED CHILLER SCHEDULE

UNIT NO.	MANUFACTURER	MODEL NO.	LOCATION	AREA SERVED	GLYCOL (%)	TOTAL CAP (TON)	TOTAL # OF MODULES	CHILLER DATA (TOTAL) TOTAL GPM	TEMP ENT.(F)	TEMP LVG.(F)	MAX. PD(FT)	FOULING FACTOR	WORKING PRESS.	COMPRESSOR DATA (PER MODULE) No.	TYPE	STEPS UNLOADING	RLA (PER COMPRESSOR)	MOTOR SPEED	REFRIG.	CONDENSER DATA (PER MODULE) No.OF FANS	H.P. EACH MOTOR	CFM	EFFICIENCY NPLV	EER	COP	ELECTRICAL (TOTAL) MCA	MOP	DATA V/P/HZ	OPERATING WEIGHT (LBS)	REMARKS
CH-1,2	MULTISTACK	(2)ASP020	ROOF(40TH FL)	PENTHOUSE	30	40	2	103	54	44	9.94	0.0001		2	SCROLL		18.8		R-410A	2	2		0.785	15.69	4.601	93	110	460/3/60	3800	NOTES

NOTES:
1) CHILLER TO BE MOUNTED ON STEEL SUPPORTS WITH VIBRATION ISOLATION

* THIS PLAN APPROVED ONLY FOR WORK INDICATED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE RELIED UPON, OR TO BE CONSIDERED AS EITHER BEING APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES. *

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WEST 66TH STREET
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No:	Date:	Revision:
-	08/17/2018	ISSUED TO DOB
1	08/17/2018	80% CD
-	06/04/2018	CD PROGRESS SET
-	06/04/2018	50% CD SET
-	03/19/2018	CD PROGRESS SET
-	11/15/2017	DOB FILING
-	11/14/2017	100% DD
-	06/23/2017	50% DD SET
-	02/14/2017	100% SD DWGS

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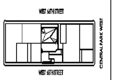
NORTH ARROW
Scale: N.T.S.

KEY PLAN:



PROJECT:
WEST 66TH STREET
NEW YORK , NEW YORK

DRAWING TITLE:
MECHANICAL SCHEDULES

SEAL & SIGNATURE:

DATE: 08-17-2018
PROJECT No: 2016-55
DRAWN BY: M.P.
CHECKED BY: V.P.
DRAWING No:
M-501.01
DOB NO.
71 OF 80

48 X 36

3304

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10/22/2019

WATER SOURCE HEAT PUMP SCHEDULE (RESIDENTIAL)

UNIT NO.	UNIT ARRANGEMENT	MANUF.	MODEL	AREA SERVE	CONSTANT /VAV SYSTEM	NOM. COOLING CAP (TONS)	SUPPLY MED SPEED (CFM)	SUPPLY HIGH SPEED (CFM)	COOLING E.W.T. (°F)	COOLING L.W.T. (°F)	COOLING FLOW RATE GPM	COOLING WATER PRESSURE DROP	E.A.T. D.B (°F)	E.A.T. W.B. (°F)	L.A.T. D.B (°F)	L.A.T. W.B. (°F)	TOTAL CAP. (MBH)	SENSIBLE CAP. (MBH)	HEAT REJECTION (MBH)	EER	HEATING E.W.T. (°F)	HEATING L.W.T. (°F)	FLOW RATE GPM	WATER PRESSURE DROP	E.A.T. D.B (°F)	L.A.T. D.B (°F)	TOTAL CAP. (MBH)	HEAT ABSORBED (MBH)	COP	FILTERS MERV RATING	REFRIG.	ELECTRICAL VOLT.	FAN MOTOR HP	MCA (A)	MOP (A)	NET INSTALL WT. (LBS)	REMARKS
WSHP-A	VERTICAL STACK	CLIMATEMASTER	TSM09	APT. (2ND TO 14TH)	CONSTANT	0.75	300		87	101.7	1.5	0.7	72	61	50.4	45.3	9.0	7.0	11.0	11.3	70	55.8	1.5	0.9	70	108.5	13	11.0	6.2	MERV-8	R410A	208/1/60	1/8	6.1	15	169	
WSHP-B	VERTICAL STACK	CLIMATEMASTER	TSM12	APT. (2ND TO 14TH)	CONSTANT	1.0	400		87	100.4	2	5.9	72	61	53.8	49.1	10.0	8.0	13.0	12.8	70	57.9	2	6.3	70	103.9	15	12.0	5.4	MERV-8	R410A	208/1/60	1/8	7.4	15	169	
WSHP-C	VERTICAL STACK	CLIMATEMASTER	TSM15	APT. (2ND TO 14TH)	CONSTANT	1.25	500		87	99.7	2.5	5.2	72	61	55.5	48.7	12.0	10.0	16.0	12.2	70	58.3	2.5	5.5	70	101.7	17	15.0	5.8	MERV-8	R410A	208/1/60	1/5	9.6	15	169	
WSHP-D	VERTICAL STACK	CLIMATEMASTER	TSM18	APT. (2ND TO 14TH)	CONSTANT	1.5	600		87	98.6	3.4	2.5	72	61	54.3	49.6	16.0	12.0	20.0	12.2	70	59.1	3.4	3.2	70	104.1	22	18.0	5.9	MERV-8	R410A	208/1/60	1/3	10.9	15	169	
WSHP-E	HORIZONTAL	CLIMATEMASTER	TCH-15	PRIVATE STORAGE (2ND TO 5TH)	CONSTANT	1.1	510		87	102	2.5	1.5	76	63	56.3	50.9	13.0	11.0		12.0	70	58	2.5	1.5	68	101.0	18		4.8	MERV-8	R410A	208/1/60	1/2	8.7		153	
WSHP-17-1	VERTICAL	THERMOPLUS	KHPE-024V	MECHANICAL SPACE	CONSTANT	2.0	800		87	102	6	4.2	80	67	58.3	56.9	25.4	18.5	30.6	14.7	70	64	6	4.2	70	102.8	28.5	23.1	4.5	MERV-8	R410A	460/3/60	1/2	8	15	203	
WSHP-17-2	VERTICAL	THERMOPLUS	KHPE-024V	MECHANICAL SPACE	CONSTANT	2.0	800		87	102	6	4.2	80	67	58.3	56.9	25.4	18.5	30.6	14.7	70	64	6	4.2	70	102.8	28.5	23.1	4.5	MERV-8	R410A	460/3/60	1/2	8	15	203	
WSHP-17-3	VERTICAL	THERMOPLUS	KHPE-024V	MECHANICAL SPACE	CONSTANT	2.0	800		87	102	6	4.2	80	67	58.3	56.9	25.4	18.5	30.6	14.7	70	64	6	4.2	70	102.8	28.5	23.1	4.5	MERV-8	R410A	460/3/60	1/2	8	15	203	
WSHP-17-4	VERTICAL	THERMOPLUS	KHPE-024V	MECHANICAL SPACE	CONSTANT	2.0	800		87	102	6	4.2	80	67	58.3	56.9	25.4	18.5	30.6	14.7	70	64	6	4.2	70	102.8	28.5	23.1	4.5	MERV-8	R410A	460/3/60	1/2	8	15	203	
WSHP-18-1	VERTICAL	THERMOPLUS	KHPE-024V	MECHANICAL SPACE	CONSTANT	2.0	800		87	102	6	4.2	80	67	58.3	56.9	25.4	18.5	30.6	14.7	70	64	6	4.2	70	102.8	28.5	23.1	4.5	MERV-8	R410A	460/3/60	1/2	8	15	203	
WSHP-18-2	VERTICAL	THERMOPLUS	KHPE-024V	MECHANICAL SPACE	CONSTANT	2.0	800		87	102	6	4.2	80	67	58.3	56.9	25.4	18.5	30.6	14.7	70	64	6	4.2	70	102.8	28.5	23.1	4.5	MERV-8	R410A	460/3/60	1/2	8	15	203	
WSHP-18-3	VERTICAL	THERMOPLUS	KHPE-024V	MECHANICAL SPACE	CONSTANT	2.0	800		87	102	6	4.2	80	67	58.3	56.9	25.4	18.5	30.6	14.7	70	64	6	4.2	70	102.8	28.5	23.1	4.5	MERV-8	R410A	460/3/60	1/2	8	15	203	
WSHP18-4	VERTICAL	THERMOPLUS	KHPE-024V	MECHANICAL SPACE	CONSTANT	2.0	800		87	102	6	4.2	80	67	58.3	56.9	25.4	18.5	30.6	14.7	70	64	6	4.2	70	102.8	28.5	23.1	4.5	MERV-8	R410A	460/3/60	1/2	8	15	203	
WSHP-19-1	VERTICAL	THERMOPLUS	KHPE-024V	MECHANICAL SPACE	CONSTANT	2.0	800		87	102	6	4.2	80	67	58.3	56.9	25.4	18.5	30.6	14.7	70	64	6	4.2	70	102.8	28.5	23.1	4.5	MERV-8	R410A	460/3/60	1/2	8	15	203	
WSHP-19-2	VERTICAL	THERMOPLUS	KHPE-024V	MECHANICAL SPACE	CONSTANT	2.0	800		87	102	6	4.2	80	67	58.3	56.9	25.4	18.5	30.6	14.7	70	64	6	4.2	70	102.8	28.5	23.1	4.5	MERV-8	R410A	460/3/60	1/2	8	15	203	
WSHP-19-3	VERTICAL	THERMOPLUS	KHPE-024V	MECHANICAL SPACE	CONSTANT	2.0	800		87	102	6	4.2	80	67	58.3	56.9	25.4	18.5	30.6	14.7	70	64	6	4.2	70	102.8	28.5	23.1	4.5	MERV-8	R410A	460/3/60	1/2	8	15	203	
WSHP-19-4	VERTICAL	THERMOPLUS	KHPE-024V	MECHANICAL SPACE	CONSTANT	2.0	800		87	102	6	4.2	80	67	58.3	56.9	25.4	18.5	30.6	14.7	70	64	6	4.2	70	102.8	28.5	23.1	4.5	MERV-8	R410A	460/3/60	1/2	8	15	203	

NOTES:
1. ALL UNITS SHALL BE SUPPLIED WITH 1/2" INTERNAL PIPING & COMPONENTS.
2. UNITS SUPPLIED PIPING PACKAGES TO INCLUDE 2-WAY CONTROL VALVES, SHUT-OFF/AUTOMATIC BALANCING VALVES AND STAINLESS STEEL BRAIDED HOSES. (SHIPPED LOOSE AND INSTALLED BY MECHANICAL CONTRACTOR-COORDINATE RUN-OUT CONNECTION WITH TIE-IN CONNECTION AT UNIT)
3. ALL UNITS SHALL BE SUPPLIED WITH 7-DAY PROGRAMMABLE THERMOSTAT AND 25' FT LONG WHIP TO ALLOW REMOTE MOUNTING OF THERMOSTAT. (SHIPPED LOOSE AND INSTALLED BY MECHANICAL CONTRACTOR-MOUNT T-STAT 58" A.F.F.)
4. CONTROL VALVE ACTUATORS SHALL BE SUPPLIED WITH ISOLATED END SWITCH TIED TO A DRY CONTACT ON UNIT TERMINAL STRIP. (BAS CAN TAP INTO THIS CONTACT TO MONITOR VALVE POSITION/OPERATION)
5. UNITS WITH MULTIPLE SUPPLY AIR OPENINGS TO BE SUPPLIED WITH ACOUSTICALLY WRAPPED LINE OF SIGHT BAFFLES. PROVIDE OBD ON THE GRILLE WITH LOWER AIRFLOW RATE
6. WSHP-A THRU E SHALL BE PROVIDED WITH EXTENDED PLENUMS, 12" HIGH STAND A. ALL UNITS TO BE MOUNTED ON NEOPRENE PAD

WATER-COOLED DX UNIT SCHEDULE

UNIT NO.	UNIT ARRANGEMENT	MANUF.	MODEL	AREA SERVED	CONSTANT /VAV SYSTEM	NOM. COOLING CAP (TONS)	SUPPLY Flow (CFM)	O.A. QUANTITY (CFM)	ESP (IN)	COOLING E.W.T. (°F)	L.W.T. (°F)	FLOW RATE GPM	WATER PRESSURE DROP	E.A.T. D.B (°F)	E.A.T. W.B. (°F)	L.A.T. D.B (°F)	L.A.T. W.B. (°F)	TOTAL CAP. (MBH)	SENSIBLE CAP. (MBH)	HEAT REJECTION (MBH)	EER	WATER SIDE ECONOMIZER COIL E.A.T. D.B (°F)	E.A.T. W.B. (°F)	L.A.T. D.B (°F)	L.A.T. W.B. (°F)	E.W.T. (°F)	L.W.T. (°F)	TOTAL CAP. (MBH)	SEN. CAP. (MBH)	WATER FLOW (GPM)	WPD (FT H2O)	FILTERS MERV RATING	REFRIG.	ELECTRICAL VOLT.	FAN MOTOR HP	MCA	MOP	NET INSTALL WT. (LBS)	REMARKS
AC-C-1	HORIZONTAL	THERMOPLUS	KACE-096H	REFUSE AND RECYCLING	CONSTANT	8.0	3200	1675	0.50	87	102	23	2.0	80	67	58.5	56.7	106.0	74.4	125.7	18.1	80	67	58.3	57	47	55.8	101.5	76.9	23	5.5	MERV 8	R410A	460/3/60	1 1/2	18	25	775	
AC-C-2	HORIZONTAL	THERMOPLUS	KACE-012H	COMPACTOR ROOM	CONSTANT	1.0	400	-	0.30	87	102	4	1.4	80	67	58.4	54.5	15.5	9.4	19.7	12.4	N/A										MERV 8	R410A	208/1/60	1/4	8	15	147	
AC-C-4	HORIZONTAL	THERMOPLUS	KACE-012H	SATELLITE ROOM	CONSTANT	1.0	400	-	0.30	87	102	4	1.4	80	67	58.4	54.5	15.5	9.4	19.7	12.4	N/A										MERV 8.	R410A	208/1/60	1/4	8	15	147	
AC-C-8	HORIZONTAL	THERMOPLUS	KACE-036H	CELLAR CORRIDOR	CONSTANT	3.0	1200	-	0.50	87	102	9	2.1	80	67	58.6	56.8	39.0	27.6	46.6	17.5	N/A										MERV 8	R410A	460/3/60	1	11	15	247	
AC-C-9	HORIZONTAL	THERMOPLUS	KACE-48H	CELLAR EMR	CONSTANT	4.0	1600	-	0.50	87	102	11	1.7	80	67	59.6	57.2	50.5	35.4	60.5	17.0	80	67	59.4	57.8	47	55.5	47	35.5	11	6.8	MERV 8	R410A	460/3/60	1	12	20	316	
AC-C-10	HORIZONTAL	THERMOPLUS	KACE-160H	ELECTRICAL RM	SVAV	15.0	6000	-	0.75	87	102	44	9.0	80	67	58.0	56.5	183.9	130.6	208.6	15.7	80	67			47				44		MERV 8	R410A	460/3/60	5	32	40	1800	
AC-C-11	HORIZONTAL	THERMOPLUS	KACE-180H	ELECTRICAL RM	SVAV	15.0	6000	-	0.75	87	102	44	9.0	80	67	58.0	56.5	183.9	130.5	200.6	15.7	80	67			47				44		MERV 8	R410A	460/3/60	5	32	40	1800	
AC-1-2	HORIZONTAL	THERMOPLUS	KACE-48H	1ST FL HABONIM EMR	CONSTANT	4.0	1600	-	0.50	87	102	11	1.7	80	67	59.6	57.2	50.5	35.4	60.5	17.0	80	67	59.4	57.8	47	55.5	47	36.5	11	6.8	MERV 8	R410A	460/3/60	1	12	20	318	
AC-18-1	HORIZONTAL	THERMOPLUS	KACE-012H	18TH FL ELECTRICAL RM	CONSTANT	1.0	400	-	0.30	87	102	4	1.4	80	67	58.4	54.5	15.5	9.4	19.7	12.4	N/A										MERV 8	R410A	208/1/60	1/4	8	15	147	
AC-19-1	HORIZONTAL	THERMOPLUS	KACE-180H	19TH FL ELECTRICAL RM	CONSTANT	15.0	6000	-	0.75	87	102	44	9.0	80	67	58.0	56.5	183.9	130.5	200.6	15.7	80	67			47				44		MERV 8	R410A	460/3/60	5	32	40	1800	

WATER SOURCE HEAT PUMP SCHEDULE

UNIT NO.	UNIT ARRANGEMENT	MANUF.	MODEL	AREA SERVED	CONSTANT /VAV SYSTEM	NOM. COOLING CAP (TONS)	SUPPLY AIRFLOW (CFM)	ESP (IN.)	OA (CFM)	COOLING E.W.T. (°F)	L.W.T. (°F)	FLOW RATE GPM	WATER PRESSURE DROP	E.A.T. D.B (°F)	E.A.T. W.B. (°F)	L.A.T. D.B (°F)	L.A.T. W.B. (°F)	TOTAL CAP. (MBH)	SENSIBLE CAP. (MBH)	HEAT REJECTION (MBH)	EER	WATERSIDE ECONOMIZER COIL E.W.T. (°F)	L.W.T. (°F)	FLOW RATE GPM	WATER PRESSURE DROP	E.A.T. D.B (°F)	E.A.T. W.B. (°F)	L.A.T. D.B (°F)	L.A.T. W.B. (°F)	TOTAL CAP. (MBH)	SENSIBLE CAP. (MBH)	HEATING E.W.T. (°F)	L.W.T. (°F)	FLOW RATE GPM	WATER PRESSURE DROP	E.A.T. D.B (°F)	L.A.T. D.B (°F)	TOTAL CAP. (MBH)	HEAT ABSORBED (MBH)	COP	FILTERS MERV RATING	REFRIG.	ELECTRICAL VOLT.	FAN MOTOR HP	MCA (A)	MFS (A)	NET INSTALL WT. (LBS)	REMARKS
WSHP-SC-1	HORIZONTAL	CLIMATEMASTER	TCH-012	ELEV. LOBBY B (SUB-CELLAR AND CELLAR)	CONSTANT	1	390	0.5	30	87	102	1.9	2.8	76	64	58.4	53.6	11.0	7.0	14.0	11.3	47		1.9	1.5	76	64	58.0	58.0	8.0	7.1	70	57.6	1.9	3.3	70	106.5	15	12.0	4.3	MERV 8	R410A	208/1/60	1/10	7.3	15	114	
WSHP-C-1	HORIZONTAL	CLIMATEMASTER		SCREENING ROOM	CONSTANT	2	700	0.7	200	87	102	4	4.9	79	66	58.6	53.7	24.0	16.0	30.0	11.4	47		4	1.0	80	67	59.0	58.0	18.0	15.4	70	58.8	4	5.3	70	107.0	29	23.0	4.3	MERV 8	R410A	460/3/60	1/3	5.3	15	174	
WSHP-C-2	HORIZONTAL	CLIMATEMASTER	TCH-012	ELEV. LOBBY A (SUB-CELLAR AND CELLAR)	CONSTANT	1	390	0.5	30	87	102	1.9	2.8	75	64	58.4	53.6	11.0	7.0	14.0	11.3	47		1.9	1.5	76	64	59.0	58.0	8.0	7.1	70	57.6	1.9	3.3	70	106.5	15	12.0	4.3	MERV 8	R410A	208/1/60	1/10	7.3	15	114	
WSHP-C-4	HORIZONTAL	THERMOPLUS	KHPE-144H7AARS	GOLF SIM, GAMING LOUNGE, BOWLING	VAV	15	4400	1.0	1165	87	102	38	2.8	80	67	55.0	53.8	180.1	118.0	217.2	16.4	47	53	38	3.6	80	67	61.0	58.0	119.6	80.8	70	62	38	2.8	70	113.0	205	163.0	4.8	MERV 8	R410A	480/3/60	3	37	50	775	
WSHP-C-5	HORIZONTAL	CLIMATEMASTER	TCH-072	SUPER, SHOP, STAFF, RECEPTION, OFFICE	VAV	6	2700	1.1	450	87	102	12	2.2	78	65	58.0	54.0	88.5	53.0	68.9	10.8	47				78	65					70	56.9	12	2.6	80	93.0	96	76.4	5.5	MERV 8	R410A	480/3/60	3/4	18	20	588	
WSHP-C-6	HORIZONTAL	CLIMATEMASTER	TCH-024	BOWLING ALLEY	CONSTANT	2	840	0.5	100	87	102	4	4.9	80	67	59.9	54.9	23.0	16.0	30.0	11.3	47		4	1.0	80	67	59.0	58.0	18.0	15.4	70	58.8	4	5.3	70	103.1	30	23.0	4.5	MERV 8	R410A	450/3/60	1/4	5.3	15	174	
WSHP-C-8	HORIZONTAL	THERMOPLUS	KHPE-144H7AARS-T816G	HEALTH CLUB, STUDIO, SQUASH CT	VAV	20	5400	1.0	1750	87	102	59	6.3	80	67	54.0	52.7	235.8	152.5	285.1	16.1	47	52	50	6.1	80	67	61.0	58.0	153.3	113.6	70	62	50	6.3	70	116.6	272	216.0	4.7	MERV 8	R410A	480/3/60	5	49	60	775	
WSHP-C-9	VERTICAL	THERMOPLUS	KHPE-144V7AARS	BASKETBALL COURT	SVAV	15	4000	1.0	1650	87	102	39	4.9	82	70	58.9	55.8	185.3	108.9	222.4	16.8	47	53	39	4.2	82	70	62.0	60.0	133.6	86.8	70	62	39	4.2	70	112.8	188	165.4	4.9	MERV 8	R410A	480/3/60	3	37	50	775	
WSHP-C-10	HORIZONTAL	CLIMATEMASTER	TCH-018	RESIDENTIAL STORAGE LOCKERS	CONSTANT	1.5	510	0.5	150	87	102	2.8	3.1	78	65	55.9	50.4	15.0	13.0	21.0	12.1	47		2.8	5.0	78	65	59.4	57.0	13.0	10.5	70	58.5	2.8	3.6	70	107.9	21	16.0	4.4	MERV 8	R410A	208/1/60	1/6	10.2	15	158	
WSHF-C-11	HORIZONTAL	CLIMATEMASTER	TCH-024	LAUNDRY ROOM	CONSTANT	2	840	0.5	50	87	102	4	4.9	80	67	59.9	54.9	23.0	18.0	30.0	11.3	47		4	1.0	80	67	59.0	58.0	18.0	15.4	70	58.8	4	5.3	70	103.1	30	23.0	4.5	MERV 8	R410A	460/3/60	1/4	5.3	15	174	
WSHP-15-1	HORIZONTAL	THERMOPLUS	KHPE-036H	15TH FL ATS RM	CONSTANT	3.0	1200	875	0.50	87	102	9	2.1	80	67	58.8	56.8	39.0	27.6	46.6	17.5	N/A										70	64	9	3.2	70	101.4	40.9	32.8	4.8	MERV 8	R410A	480/3/60	1/2	10	15	247	
WSHP-15-2	HORIZONTAL	THERMOPLUS	KHPE-120H	15TH FL ELECTRICAL RM	CONSTANT	10.0	4000	-	0.50	87	102	30	2.6	80	67	59.2	56.9	127.7	68.7	150.8	16.8	47	53	30	5	80	67	60	59	110	83	70	64	30	2.6	70	103.4	144.9	117.6	4.5	MERV 8	R410A	480/3/60	3	25	30	775	
WSHP-1M-1	HORIZONTAL	CLIMATEMASTER	TCH-024	PACKAGE ROOM AND SERVICE ENTRY	CONSTANT	2	700	0.7	90	87	102	4	4.9	80	67	58.8	53.7	23.0	17.0	30.0	11.4	47		4	1.8	80	67	61.0	60.0	18.0	15.0	70	56.8	4	5.3	70	107.0	29	23.0	4.3	MERV 8	R410A	480/3/60	1/3	5.3	15	174	
WSHP-1M-2	HORIZONTAL	CLIMATEMASTER	TCH-012	ELEVATOR LOBBY	CONSTANT	1	390	0.5	30	87	102	1.9	2.8	76	64	58.4	53.6	11.0	7.0	14.0	11.3	47		1.9	1.5	76	64	58.0	58.0	8.0	7.1	70	57.6	1.9	3.3	70	106.5	15	12.0	4.3	MERV 8	R410A	209/1/60	1/10	7.3	15	114	

FAN SCHEDULE

UNIT NO.	MANUF.	MODEL	LOCATION	SERVICE	CFM MIN.	CFM MAX.	TYPE	DRIVE	STARTER	MOTOR SP (IN)	RPM	HP	BHP	ELECTRICAL V/P/HZ	OPERATIONAL & POWER	REMARKS (NOTES)
DEF-15-1	ENERVEX	BEF500	15TH FL	RESIDENTIAL DRYER EXHAUST		3,300			ECM	1.58		3		460/3/60		9
DEF-16-1	ENERVEX	BEF500	15TH FL	RESIDENTIAL DRYER EXHAUST		4,400			ECM	1.50		5		460/5/60		9
DEF-16-1	ENERVEX	BEF500	15TH FL	RESIDENTIAL DRYER EXHAUST		3,300			ECM	1.58		3		460/3/60		9
DEF-40-1	ENERVEX	BEF500	ROOF(40TH FL)	RESIDENTIAL DRYER EXHAUST		5,000			ECM	1.50	1740	5		460/5/60		9
DRX-C-1	ENERVEX	BEF250	CELLAR	RESIDENTIAL DRYER EXHAUST		460			ECM	1.08		1.00		460/3/60		9
DIF-1	ENERVEX	TDF620	2ND BULKHEAD ROOF(42ND FL)	DRAFT INDUCER FAN		8,033	INLINE		ECM	4.00	1740	10		460/3/60		10
TF-A	GREENHECK	SQ-85-VG	VARIOUS	TELE. CL.		300	INLINE		ECM	0.25	1618	1/10	0.06	115/1/60		1,5,8
TF-B	GREENHECK	SQ-85-VG	VARIOUS	TELE. CL.		400	INLINE		ECM	0.25	1618	1/10	0.06	115/1/60		1,5,8
GEF-C-1	GREENHECK	BSQ-140-15	CELLAR	CELLAR EXHAUST		2,400	INLINE		VFD	1.08	1852	1.5	1.01	460/3/60		1,3,5,7
GEF-C-2	GREENHECK	SQ-85-VG	CELLAR	LSUB-CELLAR --FUEL TANK		300	INLINE		ECM	0.50	1618	0.10	0.06	115/1/60		1,5,8
GEF-C-3	GREENHECK	SQ-95-VG	CELLAR	GENERAL EXHAUST		400	INLINE		ECM	0.50	1586	1/6	0.11	115/1/60		1,5,8
GEF-C-4	GREENHECK	SQ-97-VG	CELLAR	CELLAR EMR		100	INLINE		ECM	0.50	1725	0.23		115/1/60		1,5,8
GEF-C-8	GREENHECK	SQ-80-VG	CELLAR	CELLAR ARCS RM		200	INLINE		ECM	0.30	1725	0.10	0.05	115/1/60		1,5,8
GEF-SC-1	GREENHECK	BSQ-100-5	SUBCELLAR	POOL EQUIPMENT RM		900	INLINE		VFD	1.08	1618	3/4	0.5	460/3/60		1,3,5,7
GEF-1-1	GREENHECK	SQ-85-VG	1ST FL	SE/2 SHAFT		300	INLINE		ECM	0.50	1586	1/6	0.11	115/1/60		1,5,8
GEF-1-2	GREENHECK	SQ-95-VG	1ST FL	PE/5 SHAFT		500	INLINE		ECM	0.50	1586	1/6	0.11	115/1/60		1,5,6
GEF-1-3	GREENHECK	SQ-97-VG	1ST FL	1ST FL EMR		100	INLINE		ECM	0.30	1725	1/10		115/1/60		1,5,8
GX-15-1	GREENHECK	BSQ-80-5	15TH FL			608	INLINE		VFD	0.75		1/2	0.36	460/3/60		1,3,5,7
GX-15-2	GREENHECK	BSQ-100-5	15TH FL			1,000	INLINE		VFD	0.75		3/4	0.5	460/5/60		1,3,5,7
GEF-16-1	GREENHECK	BSQ-70-5	16TH FL	REFUSE		300	INLINE		VFD	0.75	1725	1/2	0.32	460/3/60		1,3,5,7
GEF-17-1	GREENHECK	BSQ-140-20	17TH FL	MECHANICAL ROOM		3,000	INLINE		VFD	1.00		2.00		460/5/60		1,3,5,7
GEF-17-2	GREENHECK	BSQ-140-20	17TH FL	MECHANICAL ROOM		3,000	INLINE		VFD	1.08		2.00		460/3/60		1,3,5,7
GEF-17-3	GREENHECK	BSQ-140-20	17TH FL	MECHANICAL ROOM		3,000	INLINE		VFD	1.00		2.00		460/3/60		1,3,5,7
GEF-16-1	GREENHECK	BSQ-140-20	16TH FL	MECHANICAL ROOM		3,000	INLINE		VFD	1.08		2.00		460/3/60		1,3,5,7
GEF-18-2	GREENHECK	BSQ-130HP-10	18TH FL	REFUSE		1,100	INLINE		VFD	1.08	1830	1.00	0.46	460/3/60		1,3,5,7
GEF-18-3	GREENHECK	BSQ-140-20	18TH FL	MECHANICAL ROOM		3,000	INLINE		VFD	0.75		2.00		460/3/60		1,3,5,7
GEF-39-1	GREENHECK	BSQ-100-7	39TH FL	TRASH EXHAUST		1,050	INLINE		VFD	1.00	1852	3/4	0.44	460/3/60		1,3,5,7
GEF-39-2	GREENHECK	BSQ-100-5	39TH FL	MECHANICAL ROOM		1,600	INLINE		VFD	1.08	2100	3/4	0.5	460/3/60		1,3,5,7
KEF-15-1	GREENHECK	USF-336-BI	15TH FL	RESIDENTIAL KITCHEN EXHAUST		20,008	UTILITY		VFD	1.58	792	15	9.59	460/3/60		1,3,5,7
KEF-19-1	GREENHECK	USF-324-BI	19TH FL			7,000	UTILITY		VFD	1.50	1047	5	2.84	460/3/60		1,3,5,7
KX-39-1	GREENHECK	USF-310-10-BI-5	39TH FL	PENTHOUSE KITCHEN EX.		1,200	UTILITY		VFD	1.00	3371	1/2	0.42	460/3/60		1,3,5,7
KEF-40-1	GREENHECK	USF-320-BI	ROOF(40TH FL)	RESIDENTIAL KITCHEN EXHAUST		4,500	UTILITY		VFD	1.50	1252	3	1.86	460/3/60		2,4,5,7
TEF-C-1	GREENHECK	BSQ-100-10	CELLAR	TOILET EXHAUST		1,450	INLINE		VFD	1.08	2196	1	0.71	460/3/60		1,3,5,7
TEF-1M-1	GREENHECK	SQ-85-VG	1ST MEZZ	TOILET EXHAUST		75	INLINE		ECM	0.50		1/10		115/1/60		1,5,8
TEF-16-1	GREENHECK	SQ-100-VG	15TH FL	AMENITY TOILET EXHAUST		975	INLINE		ECM	0.75	1547	1/4	0.21	115/1/60		1,5,6
SF-1-1	GREENHECK	SQ-85-VG	1ST FL	OUTSIDE AIR		300	INLINE		ECM	0.30	1586	1/6	0.11	115/1/60		1,5,8
SF-1-2	GREENHECK	QEI-15-I-20	L1	OUTSIDE AIR		5,000	INLINE			0.50	2068	2.00	1.56	460/3/60		1,5
SF-15-1	GREENHECK	SQ-99-VG	L15	OUTSIDE AIR		1,000	INLINE		ECM	0.75		1/4	0.19	115/1/60		1,5,8
SF-18-1	GREENHECK	QEI-15-I-20	L18	OUTSIDE AIR		5,000	INLINE		VFD	0.30	2068	2.00	1.56	460/3/60		1,3,5,7
SF-18-2	GREENHECK	QEI-15-I-20	L18	OUTSIDE AIR		5,000	INLINE		VFD	0.50	2068	2.00	1.58	460/3/60		1,3,5,7
SF-40-1	GREENHECK	QEI-15-I-20	ROOF(40TH FL)	OUTSIDE AIR		5,000	INLINE		VFD	0.50	2068	2.00	1.56	460/3/60		1,3,5,7
RF-C-1	GREENHECK	BSQ-140-10	CELLAR	RELIEF AIR		1,800	INLINE		VFD	0.75	1221	1.00	0.41	460/3/60		1,3,5,7
RF-C-2	GREENHECK	BSQ-130-10	CELLAR	RELIEF AIR		1,400	INLINE		VFD	0.75	1505	1.00	0.44	460/3/60		1,3,5,7
RF-17-1	GREENHECK	BSQ-140-10	17TH FL	18TH FLOOR		1,600	INLINE		VFD	0.75	1227	1.00	0.42	460/3/60		1,3,5,7
SMPF-1-1	GREENHECK	AX-60-275-0622-A150	1ST MEZZ	POST FIRE SMOKE PURGE		16,000	INLINE		VFD	1.00		15	9.13	460/5/60		1,3,5,7
SEF-19-1	GREENHECK	QEI-12-II-5	19TH FL	FIRE SUPRESSION PURGE		1,800	INLINE		VFD	0.30	1206	1/2	0.16	460/3/60		1,3,5,7
SEF-19-2	GREENHECK	OSW-60-AF-41-10-II-600	19TH FL	POST FIRE SMOKE PURGE		60,008	UTILITY		VFD	1.25	899	60	53.05	460/3/60		1,3,5,7

NOTES :
1) PROVIDE NEMA 1 DISCONNECT SWITCH. 2) PROVIDE NEMA 3R DISCONNECT SWITCH. 3) PROVIDE NEMA 1 VFD. 4) PROVIDE NEMA 3R VFD. 5) PROVIDE VIBRATION ISOLATION.
6) PROVIDE BACKDRAFT DAMPER. 7) PROVIDE PREMIUM EFFICIENT MOTOR
8) PROVIDE VARI GREEN VARIABLE SPEED 0-10 ODV, REMOTE CONTROLLER AND PRESSURE SENSOR.
9) PROVIDE WITH MDVS MODULATING DRYER EXHAUST SYSTEM
10) PROVIDE WITH GAS1620 FAN SYSTEM

ELECTRIC HUMIDIFIER SCHEDULE

No.	MANUF.	MODEL #	LOCATION	SERVICE	FILL RATE (GPM)	DRAIN RATE (GPM)	CONNECTIONS STEAM OUTLET (IN)	DRAIN (IN)	WATER (IN)	COND. RETURN (IN)	CONTROL INPUT	ABSORBTION DISTANCE (FT)	CAPACITY (LBS/HR)	ELECTRICAL CAPACITY (KW)	AMPS	MOOP	V/PH/HZ	DIMENSIONS HxWxD (IN)	WEIGHT (LBS)	REMARKS
SG-C-1	NORTEC	RS 010	CELLAR	WSHP-C-5	3.7	6.7	1-3/4	1.0	0.5	0.3	MODULATING	UNIT MOUNTED	11	3.8	5	10	460/3/60	58.9x16.5x14.6	89	SEE NOTES
SG-15-1	NORTEC	RS 180	15TH FLOOR	MAU-15-2	3.7 (x 2)	6.7 (x 2)	1-3/4	1.0	0.5	0.3	MODULATING	UNIT MOUNTED	189	64.3	77	100	460/3/60	43.2x38.4x16.3	291	SEE NOTES
SG-19-1	NORTEC	RS 130	19TH FLOOR	MAU-19-2	3.7 (x 2)	6.7 (x 2)	1-3/4	1.0	0.5	0.3	MODULATING	UNIT MOUNTED	126	42.8	52	70	460/3/60	43.2x39.4x16.3	291	SEE NOTES
SG-39-1	NORTEC	RS 130	39TH FLOOR	MAU-40-2	3.7 (x 2)	6.7 (x 2)	1-3/4	1.0	0.5	0.3	MODULATING	UNIT MOUNTED	126	42.8	52	70	460/3/60	43.2x39.4x16.3	291	SEE NOTES

NOTES: PROVIDE ALL REQUIRED ELECTRICAL, WATER, AND DRAINAGE CONNECTIONS. PROVIDE REQUIRED CONTROLS AND BMS INTERFACE.
PROVIDE WITH MODULATING HIGH LIMIT, AIR PROVING SWITCH, AND INTERNAL DRAIN WATER COOLER DOWN TO 140F, CONTROL BY BMS VENDOR.

ELECTRIC DUCT HEATER SCHEDULE

UNIT No.	MANUF.	MODEL No.	ASSOCIATED UNIT	LOCATION	TYPE	AIR QTY (CFM)	STATIC PRESS. IN.W.G.	DUCT SIZE	AIR TEMP(F) ENT.	AIR TEMP(F) LVG.	CAPACITY (MBH)	CAPACITY KW	V/P/HZ	REMARKS
EDH-15-1	TUTCO	DHC	SF-15-1	15TH FLOOR	SLIP-IN	1000	0.03	26x12	60	100	44	13	460/3/60	SEE BELOW

NOTES:
1. PROVIDE WITH THE FOLLOWING: SCR CONTROL W/ DUCT T-STAT, DIFFERENTIAL PRESSURE AIRFLOW SWITCH, MAGNETIC CONTACTORS, FUSES, CONTROL TRANSFORMER, DISCONNECT SWITCH. INTERLOCK WITH UNIT CONTROLS AND BMS SYSTEM
2. PROVIDE FLANGED CONNECTIONS, GASKETED COVER, RECESSED CONTROL BOX

TRENCH HEATING UNIT SCHEDULE

TAC	BASIS OF DESIGN MAKE	MODEL	FAN SPEED	DIMENSIONS L	H	D	CAPACITY INFORMATION EWT	LWT	EAT	FLOW	OUTPUT	AIRFLOW	PRESSURE DROP	ELECTRICAL VOLTAGE	MAX	SOUND	Notes
				INCHES			F	F	F	GPM	BTU/H	CFM	FT-HD	V	A	dBa	1, 2, 3, 4, 5, 6, 7
TFC-A-1	KAMPMANN	QK207	60%	126	4.4	8.1	180	160	68	1.74	17252	304	3.60	24	0.50	42	1, 2, 3, 4, 5, 6, 7
TFC-A-2	KAMPMANN	QK207S	100%	126	4.4	8.1	180	160	68	1.14	11260	322	0.86	24	0.50	44	1, 2, 3, 4, 5, 6, 7
TFC-A-3	KAMPMANN	QK207	100%	126	4.4	8.1	180	160	68	1.82	18040	323	4.28	24	0.50	44	1, 2, 3, 4, 5, 6, 7
TFC-B-1	KAMPMANN	QK207S	100%	88.6	4.4	8.1	180	160	68	0.69	6851	188	0.25	24	0.50	42	1, 2, 3, 4, 5, 6, 7
TFC-C-1	KAMPMANN	QK207	60%	63	4.4	8.1	180	160	68	0.71	7030	127	0.36	24	0.30	38	1, 2, 3, 4, 5, 6, 7
TFC-C-2	KAMPMANN	QK207S	100%	63	4.4	8.1	180	160	68	0.46	4596	134	0.08	24	0.30	40	1, 2, 3, 4, 5, 6, 7
TFC-D-1	KAMPMANN	QK207S	60%	110	4.4	8.1	180	160	68	0.88	8745	253	0.48	24	0.70	41	1, 2, 3, 4, 5, 6, 7
TFC-D-2	KAMPMANN	QK207S	100%	110	4.4	8.1	180	160	68	0.96	9502	269	0.57	24	0.70	43	1, 2, 3, 4, 5, 6, 7
TFC-D-3	KAMPMANN	QK207	100%	110	4.4	8.1	180	160	68		16075		2.80	24	0.70	43	1, 2, 3, 4, 5, 6, 7
TFC-E-1	KAMPMANN	QK207S	60%	70.9	4.4	8.1	180	160	68	0.50	4986	152	0.11	24	0.40	39	1, 2, 3, 4, 5, 6, 7
TFC-F-1	KAMPMANN	QK207S	100%	94.5	4.4	8.1	180	160	68	0.77	7687	215	0.33	24	0.60	42	1, 2, 3, 4, 5, 6, 7

NOTES:
1. UNIT AND THEIR PERFORMANCE TO BE CERTIFIED TO EN 16430 PARTS 1&2
2. UNITS TO BE DELIVERED PRE-ASSEMBLED WITH MULTI-PASS PRESSURE-TESTED COILS
3. FAN MOTORS TO BE ECM WITH 0-10V BMS INTERFACE FOR FAN SPEED CONTROL
4. UNIT AND COILS TO BE COATED IN GRAPHITE GREY RAL 7024
5. UNITS TO BE PROVIDED WITH HEIGHT ADJUSTABLE MOUNTING BRACKETS WITH SOUND INSULATION
6. UNITS TO BE PROVIDED WITH 1/2" GAME-END CONNECTIONS
7. SOUND POWER LEVELS TO BE MEASURED IN ACCORDANCE WITH ISO 3744
8. INSTALL EACH UNIT IN TRENCH. REFER TO INSTALLATION DETAIL ON ARCHITECTURAL DRAWINGS.
9. COIL OPERATING PRESSURE SHALL BE 200 PSI MIN.

HOT WATER COIL SCHEDULE

UNIT NO.	LOCATION & QTY	MANUF.	MODEL	AIRFLOW (CFM)	APD (IN WC)	TOTAL CAPACITY (MBH)	E.A.T. D.B (°F)	L.A.T. D.B (°F)	EWT (°F)	LWT (°F)	FLOW RATE GPM	WPD (ftHD)	CONN. SIZE SUPPLY (IN)	CONN. SIZE RETURN (IN)	OPERATING WT. (LBS)
HWC	SEE PLANS (TOTAL 4)	GREENHECK	HW58S02H08-21x34	5000	0.43	278.8	0	51.5	180	160	28.5	4.9	1-1/2	1-1/2	64

NOTES:
1) PROVIDE FREEZE PROTECTION PUMP FOR HOT WATER COIL. 2) TO BE CERTIFIED IN ACCORDANCE WITH AHRI STANDARD-410 (FORCED-CIRCULATION AIR-COOLING AND AIR-HEATING COILS)

STEAM MANIFOLD SCHEDULE

No.	MANUF.	LOCATION	SERVICE	DUCT SIZE (IN)	AIRFLOW RATE (CFM)	ABSORPTION
SM-C-1	NORTEC	IN DUCT	WSHP-C-5	18x10	850	0.2
SM-15-1	NORTEC	IN DUCT	MAU-15-2	30x20	12000	0.4
SM-15-2	NORTEC	IN DUCT	MAU-15-2	44x30	15000	0.5
SM-19-1	NORTEC	IN DUCT	MAU-19-2	48x30	10000	1.1
SM-39-1	NORTEC	IN DUCT	MAU-40-2	48x30	11000	0.9

• THIS PLAN APPROVED ONLY FOR WORK INDICATED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE RELIED UPON, OR TO BE CONSIDERED AS EITHER BEING APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES. •

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No.	Date:	Revision:
-	08/17/2018	ISSUED TO DOB
1	08/17/2018	80% CD
-	06/04/2018	CD PROGRESS SET
-	05/04/2018	50% CD SET
-	03/19/2018	CD PROGRESS SET
-	11/15/2017	DOB FILING
-	11/14/2017	100% DD
-	06/23/2017	50% DD SET
-	02/14/2017	100% SD DWGS

D.O.B. NUMBER:
NB#121190200

NORTH ARROW | Scale: N.T.S.

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
MECHANICAL SCHEDULES

SEAL & SIGNATURE:
DATE: 08-17-2019
PROJECT No: 2015-65
DRAWN BY: M.P.
CHECKED BY: V.P.
DRAWING No:
M-502.00
DOB NO.
72 OF 80

NYC Buildings
NYC Development Hub

POOL SYSTEM EQUIPMENT SCHEDULE - W/SMART SAVER HEAT RECOVERY COILS

UNIT NO.	MANUF.	MODEL	LOCAT.	INDOOR SUPPLY FAN				EXHAUST FAN #1				EXHAUST FAN #2				COOLING				HEATING						HEAT RECOVERY			ELECTRICAL			EER	MBE
				Flow (CFM)	MOTOR HP	MOTOR BHP	ESP (IN)	Flow (CFM)	OA CFM	MOTOR HP	MOTOR BHP	ESP (IN)	STARTER	Flow (CFM)	OA CFM	MOTOR HP	MOTOR BHP	ESP (IN)	E.A.T. D.B (°F)	E.A.T. W.B. (°F)	L.A.T. D.B (°F)	L.A.T. W.B. (°F)	Flow (GPM)	TOTAL CAP. (MBH)	SENSIBLE CAP. (MBH)	TYPE	ENT (°F)	LWT (°F)	E.A.T. D.B (°F)	L.A.T. D.B (°F)	Flow (GPM)	WATER PRESSURE DROP	TOTAL CAP. (MBH)	CAP. (uBH)	FLOW (GPM)	CONN. SIZE (IN.)	P.D. (FT)	V/P/HZ	MCA	MAX FUSE			UNIT SIZE (LxWxH)
AC-C-2	DOCTRON	DC-092	CELLAR	8000	7.50	5.95	2.0	2235	2000	1.0	1.1	1.0	VFD	4280	2685	3.0	3.2	1.0	80	73.0	65.2			17.8	209	128	HW	180	130	62.1	93.5	19.8	0.7 PSI	196	128	19	1-1/2	14	480/3/60	46	80	11.4	5.2	250X72X87

NOTES:
1. UNIT TO BE MOUNTED ON 4" CONCRETE PAD

AIR OUTLET SCHEDULE

MANUF.	MODEL No.	TYPE	UNIT No.	MOUNT	NECK SIZE (DIA.)	FACE SIZE	MAX CFM	NC	REMARKS
TITUS	OMNI	SUPPLY	(SG)	CEILING MOUNT	4	12X12	90	<15	
			(SG)	CEILING MOUNT	5	12X12	120	<15	
			(SG)	CEILING MOUNT	8	12X12	210	<15	
TITUS	OMNI	SUPPLY	(SG)	CEILING MOUNT	8	24X24	120	<15	
			(SG)	CEILING MOUNT	8	24X24	210	<15	
			(SG)	CEILING MOUNT	10	24X24	320	<15	
			(SG)	CEILING MOUNT	12	24X24	470	<15	
			(SG)	CEILING MOUNT	14	24X24	640	<15	
TITUS	SPECTRUM	SUPPLY	(SG-A)	CEILING MOUNT	12	24X24	450	<15	
TITUS	CT-480	SUPPLY	(SG)	WALL/CEILING	12x10		180		
			(SG)	WALL/CEILING	12x12		300		
			(SG)	WALL/CEILING	16x12		350		
TITUS	350RL	SUPPLY	(SG)	WALL/CEILING	1208	1208	210	<15	
			(SG)	WALL/CEILING	1408	1408	250	<15	
			(SG)	WALL/CEILING	1616	1616	285	<15	
			(SG)	WALL/CEILING	1896	1896	315	<15	
			(SG)	WALL/CEILING	12X12	12X12	450	<15	
			(SG)	WALL/CEILING	24X12	24X12	900	<17	
			(SG)	WALL/CEILING	24X24	24X24	1590	<15	
TITUS	350RL	RETURN	(RG)	WALL/CEILING	12X12	12X12	450	<15	
			(RG)	WALL/CEILING	24X12	24X12	900	<15	
			(RG)	WALL/CEILING	24X24	24X24	1590	<15	
TITUS	350RL	TRANSFER	(TG-A)	WALL MOUNT	1208	1208	200	<15	
			(TG-B)	WALL MOUNT	1616	1616	300	<15	
			(TG-C)	WALL MOUNT	2408	2408	450	<15	
			(TG-D)	CEILING MOUNT	1208	1208	250	<15	
			(TG-E)	CEILING MOUNT	12X12	12X12	500	<25	
			(TG-F)	CEILING MOUNT	14X14	14X14	720	<25	
TITUS	FL-10-RT	SUPPLY	(SG-A	CEILING MOUNT		SEE PLANS	45/LF	<25	1", 1-SLOT, HEATHROW
TITUS	FL-10-RT	SUPPLY	(SG-B	CEILING MOUNT		SEE PLANS	85/LF	<25	1", 2-SLOT, HEATHROW
TITUS	FL-15-RT	SUPPLY	(SG-C	CEILING MOUNT		SEE PLANS	35/LF	<25	1.5", 1-SLOT, HEATHROW
TITUS	FL-15-RT	SUPPLY	(SG-D	CEILING MOUNT		SEE PLANS	100/LF	<25	1.5", 2-SLOT, HEATHROW
TITUS	FL-20-RT	SUPPLY	(SG-E	CEILING MOUNT		SEE PLANS	125/LF	<25	2", 2-SLOT, HEATHROW
TITUS	FL-10-ST	SUPPLY	(SG-F	WALL MOUNT		SEE PLANS	70/LF	<25	1", 1-SLOT, JETTHROW
TITUS	FL-15-ST	SUPPLY	(SG-G	WALL MOUNT		SEE PLANS	110/LF	<25	1.5", 1-SLOT, JETTHROW
TITUS	FL-15-ST	SUPPLY	(SG-H	WALL MOUNT		SEE PLANS	180/LF	<25	1.5", 2-SLOT, JETTHROW
TITUS	FL-10	RETURN/EXHAUST	(SR-A	CEILING MOUNT		SEE PLANS	30/LF	<25	1", 1-SLOT
TITUS	FL-10	RETURN/EXHAUST	(SR-B	CEILING MOUNT		SEE PLANS	80/LF	<25	1", 2-SLOT
TITUS	FL-15	RETURN/EXHAUST	(SR-C	CEILING MOUNT		SEE PLANS	45/LF	<25	1.5", 1-SLOT
TITUS	FL-15	RETURN/EXHAUST	(SR-D	CEILING MOUNT		SEE PLANS	90/LF	<25	1.5", 2-SLOT
TITUS	FL-20	RETURN/EXHAUST	(SR-E	CEILING MOUNT		SEE PLANS	120/LF	<25	2", 2-SLOT
TITUS	FL-10	RETURN/EXHAUST	(SR-F	WALL MOUNT		SEE PLANS	30/LF	<25	1", 1-SLOT
TITUS	FL-15	RETURN/EXHAUST	(SR-G	WALL MOUNT		SEE PLANS	45/LF	<25	1.5", 1-SLOT
TITUS	FL-15	RETURN/EXHAUST	(SR-H	WALL MOUNT		SEE PLANS	90/LF	<25	1.5", 2-SLOT
TITUS	CT-480	SUPPLY / RETURN	(SR-A	WALL MOUNT		SEE PLANS	80/LF	<25	3-1/2" WIDE
TITUS	CT-480	SUPPLY / RETURN	(SR-B	WALL MOUNT		SEE PLANS	115/LF	<25	4" WIDE
TITUS	CT-480	SUPPLY / RETURN	(SR-C	WALL MOUNT		SEE PLANS	125/LF	<25	5" WIDE
TITUS	CT-480	SUPPLY / RETURN	(SR-D	WALL MOUNT		SEE PLANS	155/LF	<25	6" WIDE
TITUS	CT-480	TRANSFER	(JR-A	WALL/CEILING		SEE PLANS	80/LF	<25	3-1/2" WIDE
TITUS	CT-480	TRANSFER	(JR-B	WALL/CEILING		SEE PLANS	115/LF	<25	4" WIDE
TITUS	CT-480	TRANSFER	(JR-C	WALL/CEILING		SEE PLANS	125/LF	<25	5" WIDE
TITUS	CT-480	TRANSFER	(JR-D	WALL/CEILING		SEE PLANS	155/LF	<25	6" WIDE
TITUS	CT-480	SUPPLY	FSG-A	FLOOR		SEE PLANS	155/LF	<25	6" WIDE
AG	AMC-400	RETURN	RG-A	CEILING	72x18	74x20	3200	<25	2.4
AG	AMC-400	RETURN	RG-A	WALL	36x36	38x38	3200	<25	2.4
AG	AMC-400	RETURN	RG-A	WALL	696	898	75	<25	2.4

NOTES:
1. ALL RETURN OUTLETS SHALL BE PROVIDED WITH LIGHT SHIELD. 2. PROVIDE WITH WHITE FINISH. 3. PROVIDE WITH BRUSHED STAINLESS STEEL FINISH
4. PROVIDE WITH TYPE-S FRAME

BRANCH DUCT SCHEDULE

DUCT SIZE (IN)	MAXIMUM CFM	DUCT SIZE (DIA. IN)	MAXIMUM CFM
1004	125	4	30
1008	255	5	65
1010	260	8	200
10X10	425	10	375
1208	250	12	600
1208	400	14	900
1210	525	16	1,200
1408	535	18	1,775
14X10	750	20	2,300
14X12	950		
16X10	850		
16X12	1,100		
16X14	1,350		
18X12	1,500		
18X14	1,800		
18X16	1,800		

PARALLEL CONSTANT AIRFLOW REGULATOR BOX SCHEDULE

UNIT NO.	MANUF.	MODEL	SERVICE	CFM	DIMENSIONS		DUCT SIZE	NO. OF CUFS	CAR DIMENSIONS	DIFFERENTIAL PRESSURE RANGE	REMARKS
				MIN	MAX	LxWxH					
2FT-A	ALDES	2FT-PCA	KITCHEN EXHAUST	50	400	28x24x12	24X12	2	4"/10"	0.5" - 0.8"	NOTES
2FT-B	ALDES	2FT-PCA-HP	KITCHEN EXHAUST	90	600	28x24x12	24X12	2	4"/10"	0.5" - 0.8"	NOTES
2FT-C	ALDES	2FT-PCA-HP	MAKE-UP AIR	180	650	28x24x12	24X12	2	8"/10"	0.5" - 0.8"	NOTES
2FT-D	ALDES	2FT-PCA-HP	MAKE-UP AIR	225	650	28x24x12	24X12	2	8"/10"	0.5" - 0.8"	NOTES
2FT-E	ALDES	2FT-PCA-HP	MAKE-UP AIR	225	650	28x24x12	24X12	2	8"/10"	0.5" - 0.8"	NOTES
2FT-F	ALDES	2FT-PCA	MAKE-UP AIR	265	650	28x24x12	24X12	2	8"/10"	0.5" - 0.8"	NOTES
2FT-G	ALDES	2FT-PCA	MAKE-UP AIR	325	650	28x24x12	24X12	2	10"/10"	0.5" - 0.8"	NOTES
2FT-H	ALDES	2FT-PCA	MAKE-UP AIR	410	650	28x24x12	24X12	2	10"/10"	0.5" - 0.8"	NOTES

NOTES :
1) ALL DUCTWORK AND ASSOCIATED RISERS CONTAINING CONSTANT AIR REGULATING DEVICES SHALL BE CONSTRUCTED AND SEALED TO MINIMIZE LEAKAGE TO NO GREATER THAN 5%.

CONSTANT EXHAUST REGISTER BOX SCHEDULE

UNIT NO.	MANUF.	MODEL	SERVICE	CFM	DIMENSIONS LxWxH	DUCT SIZE	NO. OF CUFS	CAR DIMENSIONS	DIFFERENTIAL PRESSURE RANGE	REMARKS
CERB-A	ALDES	CERB-CS-I	TOILET EXHAUST	20	6x6x6	6"	1	6"	0.2-0.5 IN W.C.	NOTES

NOTES :
1) ALL DUCTWORK AND ASSOCIATED RISERS CONTAINING CONSTANT AIR REGULATING DEVICES SHALL BE CONSTRUCTED AND SEALED TO MINIMIZE LEAKAGE TO NO GREATER THAN 5%.
2) EXHAUST GRILLE TO BE SIMILAR TO TITUS MODEL CT-480 OR APPROVED EQUAL

HEATING AND VENTILATING INDOOR UNIT SCHEDULE

UNIT NO.	MANUF.	MODEL	ORIENT.	SUPPLY			OUTSIDE AIR	HYDRONIC HEATING					FILTERS	ELECTRICAL				NET	REMARKS
				Flow (CFM)	ESP (IN)	MOTOR HP	MIN./MAX.FLOW (CFM)	O.A.T. D.B (°F)	L.A.T. D.B (°F)	ENT (°F)	LWT (°F)	TOTAL CAP. (MBH)	FLOW RATE GPM	TYPE	QUANTITY	VOLTAGE	FLA	MCA	MAX FUSE	INSTALL WT. (LBS)	
HAH-C-1	TRANE	CSAA	HORIZONTAL	12000	2	15	1800	12000	0	75	180	160	679	97.5	MERV 8		460/3/60	21.65	26.9	45	1750	

NOTES:
1) PROVIDE UNIT WITH BACNET INTERFACE. COMPANION VFD

VERTICAL STACK WSHP - AIR OUTLET SCHEDULE

MANUF.	MODEL No.	TYPE	CFM	NOM. GRILLE SIZE (in)	REMARKS
TITUS	CT-480	SUPPLY (SG)	100-250	12X6	
			251-600	12x12	

1. PROVIDE WITH OPPOSED BLADE DAMPER AND DOUBLE DEFLECTION GRILLE
2. ALL BORDER TYPES AND COLORS TO BE REVIEWED AND APPROVED BY ARCHITECT

EXPANSION TANK SCHEDULE

UNIT NO.	MANUFACTURER	MODEL No.	SERVICE	LOCATION	HEIGHT (IN)	DIAM. (IN)	TANK VOLUME GAL	ACCEPTANCE VOLUME GAL	PRECHARGE PRESSURE (PSIG)	MAX. DESIGN PRESSURE (PSIG)	OPERATING WEIGHT (LBS)	REMARKS
ET-1	B&G	B-200	CHW	L30	37	24	53	53	12	125	700	
ET-2	B&G	B-200	CHW	L30	37	24	53	53	12	125	700	
ET-3	B&G	B-400	CW	L18	65-1/8	24	106	106	12	125	1200	
ET-4	B&G	B-1906	CW	L18	72-1/2	36	264	264	12	125	3000	
ET-5	B&G	B-1906	CHW	L18	72-1/2	36	264	264	12	125	3000	
ET-6	B&G	B-1906	HW	L17	72-1/2	36	264	264	12	125	3000	
ET-7	B&G	B-600	HW	L17	69	30	158	158	12	125	1800	
ET-8	B&G	B-200	CW	L18	37	24	53	53	12	125	700	
ET-9	B&G	B-400	CW	L1 MEZZ.	65-1/8	24	80	106	12	125	1200	
ET-10	B&G	B-400	HW	L1 MEZZ.	65-1/8	24	80	106	12	125	1200	

AIR HANDLER EQUIPMENT SCHEDULE

UNIT NO.	MANUF.	MODEL	AIR HANDLER SECTION					COOLING COIL						HEATING COIL						ELECTRICAL	WEIGHT	REMARKS
			SUPPLY					TOTAL CAP. (MBH)	SENSIBLE CAP. (MBH)	CHILLED WATER		E.A.T. D.B (°F)	E.A.T. W.B. (°F)	L.A.T. D.B (°F)	L.A.T. W.B. (°F)	TOTAL CAP. (MBH)	HOT WATER		E.A.T. D.B (°F)	L.A.T. D.B (°F)	FILTER	VOLTAGE PHASE HZ	(LBS)	
			TOTAL FLOW CFM	MIN. O.A. CFM	ESP (IN)	MOTOR HP	MOTOR BHP			TEMP (°F)	FLOW (GPM)						TEMP. (°F)	FLOW (GPM)					
AHU-1S-1	TRANE	UCCA0080D	3,400	450	1.5	1 @ 5 HP	1 @ 3.3	194.2	82.3	45/56.3	18.94	77.0	65.0	55.0	54.8	107.2	150/180	5.36	64	88.1	MERV-8	460/3/60	1222	1,2,3
AHU-1S-2	TRANE	UCCA0350D	17,000	1,800	1.5	2 @ 10 HP	2 @ 8.1	540.0	407.8	45/56.87	140.3	77.0	65.0	55.2	54.5	547.0	150/180	27.39	64	93.72	MERV-8	460/3/60	2989	1,2,3
AHU-1RH-1	TRANE	UCCA0400D	2,000	170	1.5	1-1/2	1 @ 1.2	196.0	68.8	45/56.87	17.7	88.0	71.0	55.0	54.7	121.4	150/180	12.13	26	91.85	MERV-8	460/3/60	1092	1,2,3
AHU-1T-1	TRANE	UCCA0080D	5,000	350	1.5	1 @ 5 HP	1 @ 3.3	188.0	117.6	45/55	34	78.0	64.0	55.0	55.0	175.0	150/180	18	66	88	MERV-8	460/3/60	1400	1,2,3

NOTES:
1) UNITS TO BE MOUNTED ON 4" CONCRETE PAD. 2) ALL FANS TO BE EQUIPPED W/ VFD. 3) CONTROLLER SHALL BE BACNET COMPATIBLE

2-PIPE FAN COIL UNIT SCHEDULE

NO.	MANF.	MODEL	LOCATION	CFM (MED. SPEED)	ESP (IN)	MOTOR HP	COOLING ENT (°F)	LWT (°F)	GPM	WPD	CTR DES DAT TOTAL MBH	SENS MBH	EDB (°F)	EWB (°F)	LAB (°F)	LWB (°F)	72 DES DAT TOTAL MBH	SENS MBH	EDB (°F)	EWB (°F)	LAB (°F)	LWB (°F)	FILTER	V/P/HZ	MCA	MOP	WEIGHT (LBS)	REMARKS
FCU-1	WILLIAMS	HH-1 - 008	SEE PLANS	450	0.5	1/3	45	55	2.1		10.7	8.5	70	61	50.7	50.6	13.1	9.2	72	63	53.1	53	MERV-8	208/1/60	5	15	146	1,2
FCU-2	WILLIAMS	HH-1 - 012	SEE PLANS	900	0.5	1/2	45	55	3.0		15.0	13.0	70	61	54.9	54.8	17.0	13.2	72	63	56.6	56.5	MERV-8	208/1/60	10	15	157	1,2
FCU-3	WILLIAMS	HH-1 - 015	SEE PLANS	1,125	0.5	(2) @ 1/3	45	55	3.7		18.4	18.4	70	61	59	59	23.9	19.8	72	63	59.9	59.8	MERV-8	208/1/60	17	15	252	1,2
FCU-4	WILLIAMS	HH-1 - 018	SEE PLANS	1,350	0.5	(2) @ 1/3	45	55	5.2		26.8	23.1	70	61	54.4	54.3	34.7	26.1	72	63	54.3	54.2	MERV-8	208/1/60	11	15	297	1,2
FCU-5	WILLIAMS	HH-1 - 022	SEE PLANS	1,650	0.5	(2) @ 1/3	45	55	7.2		36.4	30.1	70	61	53.3	53.2	48.9	33.4	72	63	53.8	53.4	MERV-8	208/1/60	17	25	322	1,2
FCU-6	WILLIAMS	HH-8 - 030	SEE PLANS	2,000	0.5	1	45	55	11.0		56.1	41.2	70	61	51	51	67.7	45.6	72	63	51.2	51.2	MERV-8	208/1/60	19	25	350	1,2
FCU-7	WILLIAMS	HH-8 - 030	SEE PLANS	2,000	0.5	1.5	45	55	13.2		65.9	54.8	70	61	53.3	53.3	80.3	58.4	72	63	53.9	53.8	MERV-8	208/1/60	19	35	640	1,2
FCU-17-1	WILLIAMS	HH-8 - 012	17TH FL ELEC. RM	800	0.5	1/2	45	55	3.0		15.0	15.0	70	61	54.8	54.8	17.5	15.2	72	63	56.6	56.5	MERV-8	208/1/60	10	15	157	1,2

NOTES:
1) PROVIDE FAN COIL UNIT VALVE PACKAGE AND COIL END OUTSIDE AIR STRIKAL
2) PROVIDE DRIP PAN. DRIP PAN TO BE EXTENDED BEYOND VALVE PACKAGE.

4-PIPE FAN COIL UNIT SCHEDULE

NO.	MANF.	MODEL	LOCATION	CFM (MED. SPEED)	ESP (IN)	MOTOR HP	COOLING ENT (°F)	LWT (°F)	GPM	TOTAL MBH	SENS MBH	EDB (°F)	EWB (°F)	LAB (°F)	LWB (°F)	WPD	HEATING ENT (°F)	LWT (°F)	GPM	TOTAL MBH	EDB (°F)	LAB (°F)	WPD	FILTER	STARTER V/P/HZ	MCA	MOP	WEIGHT (LBS)	REMARKS
FCU-1M	WILLIAMS	HH-8 - 008	1ST MEZZ	600	0.5	1/3	10 COOLING										180	160	4	39.7	75.0	102.7	5.3		208/1/60	15.0	127		
FCU-A1	WILLIAMS	HH-8 - 009		450	0.5	1/3	45	55	2.1	13.1	9.2	75	63	56	55	1.2	180	160	2	20.3	70.0	111	2.5		208/1/60	6.25	15.0	157	

NOTES:
1) PROVIDE FAN COIL UNIT VALVE PACKAGE AND COIL END OUTSIDE AIR STRIKAL
2) PROVIDE DRIP PAN. DRIP PAN TO BE EXTENDED BEYOND VALVE PACKAGE.

KITCHEN EXHAUST UNIT SCHEDULE (PRECIPITATOR)

UNIT NO.	MANUF.	MODEL	LOCATION	SERVICE	CFM	MOTOR ESP (IN)	MOTOR HP	ELECTRICAL V/P/HZ	FLA	MANUF. & MODEL	SERVICE	CFM	FILTER	WASH SYSTEM FLOW (GPM)	WASH SYSTEM PRESSURE (PSI)	WASH SYSTEM TEMP(°F)	ELECTRICAL V/P/HZ	FLA	WEIGHT (LBS)	REMARKS
PCU-1	GREENHECK	SCW-18-B-41-10-4-100	1ST FLOOR MEZZ.	HAGNNA	8000	4.5	2500	208/3/60	30.8	BMCC-HCS PSC-15-2	KITCHEN EXHAUST	8,000	TYPE-1 PERFORATED BAFFLE TYPE-2 TYPE-3 TYPE-4	19	40	140	208/3/60	37	8000	

NOTES: PROVIDE WITH CLASS II CONTINUOUSLY WELDED HOUSING, BOLTED ACCESS DOOR, DRAIN CONNECTION, OUTLET FLANGE,
UL/cUL-762 OUTDOOR POWER VENT FOR RESTAURANT EXHAUST APPLIANCE RATING, PREMIUM EFFICIENT MOTORS, VARIABLE SPEED MOTOR AND VFD.
UNIT TO BE MOUNTED ON 4" CONCRETE PAD

WATER-COOLED DX W/ HOT WATER COIL UNIT SCHEDULE

UNIT NO.	UNIT ARRANGEMENT	MANUF.	MODEL	AREA SERVED	CONSTANT /VAV SYSTEM	NOM. COOLING CAP (TONS)	SUPPLY Flow (CFM)	O.A. QUANTITY (CFM)	COOLING ESP (IN)	E.W.T. (°F)	L.W.T. (°F)	FLOW RATE (°F)	WATER PRESSURE DROP	E.A.T. D.B (°F)	E.A.T. W.B. (°F)	L.A.T. D.B (°F)	L.A.T. W.B. (°F)	TOTAL CAP. (MBH)	SENSIBLE CAP. (MBH)	HEAT REJECTION (MBH)	EER	WATER SIDE ECONOMIZER COIL E.A.T. D.B (°F)	E.A.T. W.B. (°F)	L.A.T. (°F)	E.W.T. (°F)	L.W.T. (°F)	TOTAL CAP. (MBH)	SEN. CAP. (MBH)	HEATING WATER FLOW (GPM)	WPD (FT H20)	E.W.T. (°F)	L.W.T. (°F)	FLOW RATE (GPM)	WATER PRESSURE	E.A.T. D.B (°F)	L.A.T. D.B (°F)	L.A.T. D.B (°F)	ELECTRICAL MCA	MOP	FILTERS MERV RATING	REFRIG.	VOLT.	FAN MOTOR HP	MCA	MOP	NET INSTALL WT. (LBS)	REMARKS
AC-1-1	HORIZONTAL	THERMOPLUS	4ACZ-10H	1ST FLOOR LOBBY	SVAV	5.0	2200	300	0.50	67	102	5		80	67	55.0	54.0	69.0	42.0		18.1	80	67	57	55	54	45	55.1	40.1	8	0.9	180	160	8.6		55	80.4	80.4	MCP 8	R410A	460/3/60	1	18	25		
AC-C-12	HORIZONTAL	THERMOPLUS	4ACZ-03H	ENTRY VESTIBULE	SVAV	2.5	1950	0	0.50	67	102	4		80	67	55.0	54.0	30.0	21.0			80	67	55	54	45		28	20	4		180	160	4.5		55	80.0	43.0	MCP 8	R410A	460/3/60	1	18	25		

NOTES
1) UNIT TO BE PROVIDED WITH BMS INTERFACE CARD FOR BACNET INTERFACE.

* THIS PLAN APPROVED ONLY FOR WORK DESCRIBED ON THE APPLICATION SPECIFICATION SHEET. ALL OTHER MATTERS SHOWN ARE NOT TO BE READ UPON, OR TO BE CONSIDERED AS EITHER BEING APPROVED OR IN ACCORDANCE WITH APPLICABLE CODES. •

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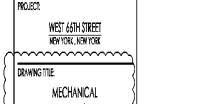
No.	Date	Revision
1	09/17/2020	ISSUED TO DOB
2	09/17/2020	RE CD
3	09/24/2020	CD PROGRESS SET
4	09/24/2020	RE CD SET
5	09/25/2020	CD PROGRESS SET
6	11/13/2020	DOB FILING
7	11/24/2020	ADDM 01
8	12/23/2020	ADDM 02
9	01/15/2021	ADDM 03
10	02/16/2021	RE-ISSUED TO DOB

JOB NUMBER
NB#121190200

NORTH ARCH Scale: N.T.S.

KEY PLAN



PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
MECHANICAL SCHEDULES

SEAL & SIGNATURE:

DATE: 09-17-20
PROJECT#: 2014-02
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CHECKED BY: S.F.
DRAWING #: M-503.00

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TOTAL SHEETS IN SET: 00

Builders Pledge
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Drawing Name: G:\Projects\Projects\2014\2014-02 - 2 West 66th Street\Drawings\Mechanical\M-503.00 MECHANICAL SCHEDULES.dwg - Tue, 09 Mar 2021 - 2:10pm

VAV BOX SCHEDULE

UNIT NO.	MANUF.	AREA SERVED	MODEL	INLET SIZE	CONTROL TYPE	MAX. (CFM)	MIN (CFM)	HEATING TYPE	HEATING E.A.T. (°F)	HEATING L.A.T. (°F)	HEATING CAPACITY (KW)	VOLT/PH/Hz	NC LEVELS RAD.	NC LEVELS DIS.
VAV-BC-1	TITUS	HEALTH CLUB	DESV	14	DDC	2100	700	ELECTRIC	55	75	18.0	460/3/60	24	33
VAV-BC-2	TITUS	HEALTH CLUB	DESV	14	DDC	2100	700	ELECTRIC	55	75	18.0	460/3/60	24	33
VAV-BC-3	TITUS	STORE	DESV	9	DDC	700	210	ELECTRIC	55	75	5.5	460/3/60	19	25
VAV-BC-4	TITUS	SUNDRY COURT	DESV	7	DDC	500	150	ELECTRIC	55	75	4.0	460/3/60	27	36
VAV-BC-5	TITUS	OFFICE	DESV	5	DDC	350	60	ELECTRIC	55	75	1.5	208/3/60	18	29
VAV-BC-6	TITUS	CORRIDOR	DESV	5	DDC	400	120	ELECTRIC	55	75	3.0	460/3/60	24	27
VAV-BC-7	TITUS	CORRIDOR	DESV	9	DDC	700	210	ELECTRIC	55	75	4.5	460/3/60	19	25
VAV-BC-8	TITUS	POOL EQ. ROOM	DESV	9	DDC	650	650					115/1/60	33	27
VAV-BC-10	TITUS	GAMING LOUNGE	DESV	12	DDC	1800	540	ELECTRIC	55	75	11.5	460/3/60	25	35
VAV-BC-11	TITUS	GOLF SIMULATOR	DESV	9	DDC	900	135	ELECTRIC	55	75	5.5	460/3/60	33	28
VAV-BC-12	TITUS	CHILDREN'S PLAYROOM	DESV	9	DDC	800	132	ELECTRIC	55	75	5.5	460/3/60	32	25
VAV-BC-13	TITUS	LOCKER ROOMS	DESV	6	DDC	400	120	ELECTRIC	55	75	3.0	460/3/60	24	27
VAV-BC-14	TITUS	EL TANK ROOM	DESV	6	DDC	270	90					115/1/60	22	23
VAV-C-1	TITUS	WSHP-C-9	DESV	12	DDC	1650	500					115/1/60	25	28
VAV-C-2	TITUS	AC-C-7	DESV	40	DDC	6000	2000					115/1/60	48	37
VAV-C-3	TITUS	WSHP-C-8	DESV	12	DDC	1750	525					115/1/60	25	28
VAV-C-4	TITUS	WSHP-C-7	DESV	7	DDC	450	135					115/1/60	27	32
VAV-C-5	TITUS	WSHP-C-7	DESV	9	DDC	200	80					115/1/60	18	29
VAV-C-7	TITUS	WSHP-C-4	DESV	12	DDC	1165	350					115/1/60	27	31
VAV-C-8	TITUS	AC-C-1	DESV	12	DDC	1875	500					115/1/60	25	28
VAV-C-10	TITUS	STAFF LOUNGE	DESV	6	DDC	400	120	ELECTRIC	55	75	3.0	460/3/60	24	27
VAV-C-11	TITUS	RCE. MANAGER'S OFFICE	DESV	6	DDC	280	75	ELECTRIC	55	75	2.5	460/3/60	19	29
VAV-C-12	TITUS	SUPER'S SHOP	DESV	6	DDC	350	105	ELECTRIC	55	75	2.5	460/3/60	24	27
VAV-C-13	TITUS	LAUNDRY	DESV	9	DDC	450	140					115/1/60	27	28
VAV-C-14	TITUS	WSHP-C-10	DESV	6	DDC	150	45					115/1/60	17	24
VAV-C-16	TITUS	AC-C-8	DESV	6	DDC	225	75					115/1/60	18	28
VAV-C-17	TITUS	WSHP-C-11	DESV	4	DDC	90	30					115/1/60	14	27
VAV-C-18	TITUS	WSHP-C-6	DESV	6	DDC	120	30					115/1/60	14	27
VAV-C-19	TITUS	BIKE STORAGE	DESV	6	DDC	250	75					115/1/60	17	34
VAV-1B-1	TITUS	CORRIDOR	DESV	6	DDC	400	120	ELECTRIC	55	75	3.0	208/3/60	24	27
VAV-1B-2	TITUS	ELEV. LOBBY B	DESV	4	DDC	100	30	ELECTRIC	55	75	1.5	208/3/60	14	27
VAV-1B-3	TITUS	CONF. RM.	DESV	6	DDC	400	120	ELECTRIC	55	75	3.5	208/3/60	24	27
VAV-1B-4	TITUS	CONF. RM. LOBBY	DESV	9	DDC	950	285	ELECTRIC	55	75	6.0	208/3/60	23	26
VAV-1B-5	TITUS	LOUNGE	DESV	12	DDC	1600	480	ELECTRIC	55	75	12.5	460/3/60	25	27
VAV-1B-6	TITUS	PANTRY	DESV	5	DDC	150	45	ELECTRIC	55	75	1.5	208/3/60	14	25
VAV-1B-7	TITUS	ELEV. LOBBY A	DESV	4	DDC	100	30	ELECTRIC	55	75	1.5	208/3/60	14	27
VAV-1BM-1	TITUS	GREAT ROOM (N)	DESV	19	DDC	3300	990	ELECTRIC	55	75	21.0	460/3/60	24	25
VAV-1BM-2	TITUS	GREAT ROOM (W)	DESV	19	DDC	3300	990	ELECTRIC	55	75	21.0	460/3/60	24	25
VAV-1BM-3	TITUS	GREAT ROOM (N)	DESV	19	DDC	3300	990	ELECTRIC	55	75	21.0	460/3/60	24	25
VAV-1BM-4	TITUS	GREAT ROOM (S)	DESV	19	DDC	3300	990	ELECTRIC	55	75	21.0	460/3/60	24	25

NOTES: 1) PROVIDE ALL VAV BOXES WITH DDC ACCESS CAPABILITY FOR CONTROL PANEL.
2) PROVIDE WITH 120/24V TRANSFORMER AND DISCONNECT SWITCH

LOUVERED PENTHOUSE SCHEDULE

UNIT NO.	MANUF.	MODEL NO.	SERVICE	LOCATION	AIRFLOW	MAX. VELOCITY	STATIC PRESSURE (IN WG)	THROAT SIZE (W)	THROAT AREA (SQ.FT.)	OVERALL DIMENSIONS (LxWxH)	OPERATING WEIGHT (LBS)	REMARKS
LPH-1	GREENHECK	WH-1	POOL EXHAUST	1ST MEZZ	9000	900	0.124	40X24	6.67	48X32X196	198	1,2

NOTES:
1. GRAVITY VENTILATOR HOODS TO BE SUPPLIED WITH THE FOLLOWING: ROOF CURB W/CANT STRIP, HINGED BASE, INSECT SCREEN.
2. MATERIAL TO BE ALUMINUM.

ELECTRIC CABINET UNIT HEATER SCHEDULE

UNIT No.	MANUF.	MODEL No.	TYPE	AIR QTY (CFM)	AIR TEMP(°F) ENT.	AIR TEMP(°F) LVG.	HEATING KW	FAN MOTOR V/P/HZ	WEIGHT (LBS)	DIMENSIONS (HxWxD)	REMARKS
CUH	MARVEL	6330954433B3000F	CABINET HEATER	250	60	98	3.0	460/3/60	99	29"x33"x8"	

NOTES:

ELECTRIC BASEBOARD HEATER SCHEDULE

UNIT No.	MANUFACTURER	MODEL No.	ENCLOSURE HEIGHT (IN)	ENCLOSURE DEPTH (IN)	ENCLOSURE LENGTH (IN)	WATTS PER FT.	V/PH/HZ	REMARKS
EBH	BRASCH	28F	6	3.5	SEE PLANS	250	208//1/60	

ELECTRIC PLENUM HEATER SCHEDULE

UNIT No.	MANUF.	MODEL No.	AREA SERVED	TYPE	AIR QTY (CFM)	AIR TEMP(°F) ENT.	AIR TEMP(°F) LVG.	HEATING KW	FAN MOTOR V/P/HZ	ELECTRIC WEIGHT (LBS)	DIMENSIONS (HxWxL)	REMARKS
EPH-1&2	ZIMMER	MSPH134324	1ST FLOOR PLENUM	PLENUM HEATER	400	60	84	3.0	460/3/60	49	12.5"x19.5"x24"	2

NOTES:

8X SPLIT HEAT PUMP SYSTEM EQUIPMENT SCHEDULE

INDOOR UNIT

UNIT No.	MANUF.	MODEL	ASSOC. COND. UNIT	NOM. COOLING CAP (MBH)	INDOOR SUPPLY FAN Flow (H/W/L) (CFM)	ESP (IN)	MOTOR HP	MOTOR RPM	FILTERS	COOLING E.A.T. D.B (°F)	COOLING E.A.T. W.B. (°F)	COOLING L.A.T. W.B. (°F)	COOLING TOTAL CAP. (MBH)	COOLING SENSIBLE CAP. (MBH)	REFRIGERANT	HEATING E.A.T. D.B (°F)	HEATING L.A.T. D.B (°F)	HEATING TOTAL CAP. (MBH)	ELECTRICAL V/P/HZ	ELECTRICAL MCA (A)	ELECTRICAL MAX FUSE (A)	NET INSTALL WT. (LBS)
AC-16H-2	LG	ARNL183TQCA	ACCU-6	18	396/385/363	-				80	67	55	54	18	12	R410A	70		19	208/1/60			
AC-16M-1	LG	ARNU543B9A4	ACCU-6	54	1818/1675/1305					80	67	55	54	42		R410A	70		60	208/1/60			
AC-38-1	LG	ARNL183TQCA	ACCU-2	18	396/388/353	-				80	67	55	54	16	12	R410A	70		19	208/1/60			
AC-38-2	LG	ARNL76GB9A4	ACCU-2	76	2260/1766					80	67	55	54	76	58	R410A	70		82	208/1/60			
AC-41-1	LG	ARNL363TM4A	ACCU-1	36.2	915/812/706	-	0.139	-	WASHABLE	80	67	55	54	3.5	25.9	R410A	70		40.5	208/1/60			58.4
AC-41-2	LG	ARNL363TM4A	ACCU-1	36.2	915/812/706	-	0.139	-	WASHABLE	80	67	55	54	3.5	25.9	R410A	70		40.5	208/1/60			58.4
AC-41-3	LG	ARNL363TM4A	ACCU-1	36.2	915/812/706	-	0.139	-	WASHABLE	80	67	55	54	3.5	25.9	R410A	70		40.8	208/1/60			58.4
AC-41-4	LG	ARNL363TM4A	ACCU-1	36.2	915/812/706	-	0.139	-	WASHABLE	80	67	55	54	3.5	25.9	R410A	70		40.8	208/1/60			58.4
AC-41-5	LG	ARNL76GB9A4	ACCU-3	76	2260/1766					80	67	55	54	76	58	R410A	70		82	208/1/60			

NOTES:
1. PROVIDE DRY CONTACTS
2. PROVIDE FACTORY INSTALLED CONDENSATE PUMP

8X SPLIT HEAT PUMP SYSTEM EQUIPMENT SCHEDULE

OUTDOOR UNIT

UNIT No.	MANUF.	MODEL	REFRIGERANT	LOCATION	COOLING TOTAL CAP. (MBH)	HEATING TOTAL CAP. (MBH)	ELECTRICAL V/P/HZ	ELECTRICAL MOP (A)	ELECTRICAL MCA (A)	EER	COP	DIMENSIONS HxWxD (IN.)	NET INSTALL WT. (LBS)	REMARKS
ACCU-1	LG	ARUM144DTE5	R410A	ROOF(407ft FL)	144	162	460/3/60	35	28.4	12.5	3.84	49x67x20	639	
ACCU-2	LG	ARUM96DTE5	R410A	ROOF(407ft FL)	96	108	460/3/60	25	18.4	14.4	2.85	49x67x20	507	
ACCU-3	LG	ARUM72DTE5	R410A	ROOF(407ft FL)	72	81	460/3/60	20	12.8	12.4	2.66	37x67x20	430	
ACCU-4	LG	ARUM72DTE5	R410A	16TH EMP. FL ROOF	72	81	460/3/60	20	12.8	12.4	2.66	37x67x20	430	

NOTES:
1. PROVIDE AIR GUIDE -DAGKAA03A
2. PROVIDE LOW AMBIENT BAFFLE KIT, CONTROL KIT (1 PER SYSTEM)
3. PROVIDE ACCU-4 WITH THE DISCHARGE HOOD
4. PROVIDE 18" HIGH EQUIPMENT RAIL FOR CONDENSING UNITS

ELECTRIC RADIANT HEATER SCHEDULE

UNIT No.	SERVICE	MANUF.	MODEL No.	NUMBER OF LAMPS	HEATING CAP. (KW)	V/PH/HZ	DIMENSIONS (HxWxL)	WEIGHT (LBS)
ERH-A	ENTRYWAY	FOSTORIA	MTM343	3	7.5	460/3/60	10-1/2" x 21-1/2" x 33"	

NOTES:
1. UNIT TO BE PROVIDED WITH TIMER CONTROL SWITCH

ELECTRIC UNIT HEATER SCHEDULE

UNIT No.	MANUF.	MODEL No.	TYPE	AIR QTY (CFM)	AIR TEMP(°F) ENT.	AIR TEMP(°F) LVG.	HEATING KW	FAN MOTOR V/P/HZ	ELECTRIC WEIGHT (LBS)	DIMENSIONS (HxWxL)	REMARKS
EUH-A	MARVEL	PSP5105DATN	UNIT HEATER	400	60	100	5.0	460/3/60	27	17-3/4" x 14-15/32" x 8-1/2"	
EUH-B	MARVEL	PSP5103DATN	UNIT HEATER	400	80	86	3.3	460/3/60	25	17-3/4" x 14-15/32" x 8-1/2"	

NOTES:

CONSTANT EXHAUST REGISTER WITH INTEGRAL FIRE DAMPER SCHEDULE

UNIT NO.	MANUF.	MODEL	SERVICE	CFM	DIMENSIONS L/WxH	DUCT SIZE	NO. OF CARS	CAR DIMENSIONS	DIFFERENTIAL PRESSURE RANGE	REMARKS
EER-A	ALIDS	EER-FD-1	RETURN	50			1	4"	0.2-0.8 IN W.C.	NOTES

1) ALL DUCTWORK AND ASSOCIATED RISERS CONTAINING CONSTANT AIR REGULATING DEVICES SHALL BE CONSTRUCTED AND SEALED TO MINIMIZE LEAKAGE TO NO GREATER THAN 5%.

DUCT SILENCER SCHEDULE

UNIT NO.	MANUF.	SYSTEM/AREA SERVED	LOCATION	MODEL No.	TYPE	DUCT SIZE (FT)	SILENCER SIZE (in)	MAX.STATIC PRESSURE (W.M.G.)	FACE VELOCITY (FPM)	MAX CFM
DE-16-1	AC	GENERATOR - DISCHARGE	16TH FLOOR	78	RECTANGLE	15x15	18x18	0.1	800	
DE-16-2	AC	GENERATOR - INTAKE	16TH FLOOR	88	RECTANGLE	23x15	23x18	0.1	800	

COMPUTER ROOM AIR CONDITIONER SCHEDULE

UNIT NO.	SERVICE	TYPE	MODEL NO.	FAN CFM	FAN ESP. (in. WC.)	FAN MOTOR (HP.)	COOLING CAPACITY TOTAL (MBH)	COOLING CAPACITY SENSIBLE (MBH)	ENTERING AIR CONDITIONS DRY BULB DEG. F	ENTERING AIR CONDITIONS REL. HUMIDITY (%)	GLYCOL FLOW (GPM)	GLYCOL PRESSURE DROP (FT HD)	GLYCOL % GLYCOL PROP	GLYCOL WATER TEMP ENTERING DEG F	GLYCOL WATER TEMP LEAVING DEG F	COMPRESSORS QTY.	COMPRESSORS FLA EACH	FILTER EFFICIENCY (%)	ELECTRICAL DATA V/P/HZ	ELECTRICAL DATA TOTAL FLA	ELECTRICAL DATA WIRE SIZE AMPS (WGA)	ELECTRICAL DATA MAXIMUM OVERCURRENT PROTECTION	WEIGHT LBS.	NOTES OPTIONS	ACCESSORIES
AC-C-5	SERVER ROOM	UPFLOW	VSH240D4ADB	6,000	0.5	7.5	138	138	75.00	45%	28.0	12.0	0.0	87.0	102.0	2.0		MERV 8	460/3/60	45	48.5	50	1980	2 THRU 23	1 THRU 19
AC-C-6	IDF ROOM	UPFLOW	PDX030A1A	4,200	0.5	4.2	107	93.5	75.00	45%	19.0	11.0	0.0	87.0	102.0	1.0		MERV 8	460/3/60	28.2	35.2	45	810	2 THRU 23	THRU 4,7- 23

NOTES:
1 ALL UNITS SHALL BE FURNISHED WITH A DISCONNECT MOUNTED IN THE FACE OF THE UNIT RATED AT 65 KAIC SCCR.
2 ALL UNITS SHALL HAVE AN INTERNALLY MOUNTED SMOKE DETECTOR FACTORY WIRED TO SHUT-DOWN THE UNIT IF ACTIVATED. SMOKE DETECTOR SHALL BE RESET MANUALLY AFTER THE ALARM CONDITION CLEARS. ONE "NORMALLY OPEN" CONTACT AND ONE "NORMALLY CLOSED" CONTACT SHALL BE WIRED FROM THE SMOKE DETECTOR TO THE TERMINAL BLOCK IN THE UNIT FOR A REMOTE ALARM FUNCTION.
3 ALL UNITS SHALL BE FURNISHED WITH A CONDENSATE PUMP. THE CONDENSATE PUMP SHALL BE WIRED TO THE ELECTRICAL POWER TERMINAL STRIP LOCATED IN THE AC UNIT. THE PUMP TO BE PROVIDED WITH A HIGH WATER SAFETY FLOAT.
4 ALL UNITS SHALL BE PROVIDED WITH A SET OF COMMON ALARM TERMINALS IN SHUTDOWN TERMINALS
5 ALL UNITS SHALL BE PROVIDED WITH TOP DUCT CONNECTION
6 UNITS TO BE PROVIDED WITH 3 WAY VALVES RATED AT 200 PSI WORKING PRESSURE
7 ALL UNITS SHALL BE PROVIDED WITH EC FANS OR VFD FOR VARIABLE AIRFLOW FROM 70%-100%
8 ECONOMIZER TO BE PRE-PIPED INTERNAL TO UNIT FOR FREE COOLING DURING LOW AMBIENT CONDITIONS
9 UNITS TO BE PROVIDED WITH 3 WAY VALVES RATED AT 200 PSI WORKING PRESSURE
10 ALL UNITS SHALL BE PROVIDED WITH EC FANS OR VFD FOR VARIABLE AIRFLOW FROM 70%-100%
11 UNIT TO BE CERTIFIED IN ACCORDANCE WITH THE AHRI 340/BCDM COOLING CERTIFICATION PROGRAM AT AHRI STANDARD 1360 AND ASHRAE 127-2007
12 CAPACITY RATINGS MUST BE NET COOLING CAPACITIES PER ASHRAE 127-2007; GROSS CAPACITIES WILL NOT BE ACCEPTED
13 FRONT ACCESS AND RIGHT SIDE ACCESS UNIT (CRAC-2
14 COMPRESSORS TO BE VARIABLE CAPACITY DIGITAL SCROLL COMPRESSOR - COMPRESSORS WILL PROVIDE VARIABLE CAPACITY CONTROL FROM 20-100% FOR INCREASED ENERGY SAVINGS AND PRECISE CONTROL AT REDUCED CAPACITIES
15 TOP PIPE CONNECTIONS
16 START UP BY LOCAL MANUFACTURERS REPRESENTATIVE
17 INSTALLING CONTRACTOR SHALL SUPPLY EXTERNAL AUXILIARY DRAIN PAN AND NEOPRENE PAD ISOLATORS.
18 UNIT PROVIDED WITH BAS INTERFACE CARD FOR BACNET INTERFACE
19 CONTRACTOR TO INSTALL WATER LINE FOR HUMIDIFIER AND COPPER DRAIN LINE FOR THE CONDENSATE PUMP
20 CONTRACTOR TO FIELD WIRE AND INSTALL LEAK DETECTORS IN AUXILIARY DRAIN PAN AND WIRE BACK TO THE UNIT FOR ALARM AND UNIT SHUTDOWN

ACCESSORIES:
1 UPFLOW UNIT WITH FRONT RETURN GRILLE
2 3 WAY 200 PSI HEAD PRESSURE CONTROL VALVES
3 CONDENSATE PUMP WITH HIGH WATER SAFETY FLOAT
4 LIQUID ECONOMIZER 3 PIPE UNIT
5 COMPRESSOR TO BE VARIABLE CAPACITY DIGITAL SCROLL COMPRESSOR 20%-100% (2)
6 VFD MOTOR TO ALLOW CFM REDUCTION TO 70% FOR ENERGY SAVINGS
7 FOUR YEAR PARTS ONLY EXTENDED COMPRESSOR WARRANTY.
8 DOMAIN ALARM TERMINALS
9 SMOKE DETECTOR
10 BACNET BMS INTERFACE CARD INTERFACE CARD
11 TOP DUCT CONNECTION
12 DISCONNECT SWITCH RATED FOR 65 KAIC SCCR
13 SHUTDOWN TERMINALS
14 ECONOCOIL WITH 3 WAY VALVE (CRAC2) PREPIPED INTERNAL TO UNIT
15 1ST YEAR WARRANTY LABOR BY MANUFACTURER
16 INFRARED PAN HUMIDIFIER WITH AUTO FLUSH CYCLE
17 START UP SUPERVISION BY MANUFACTURERS REPRESENTATIVE
18 INFRARED PAN HUMIDIFIER WITH AUTO FLUSH CYCLE
19 START UP SUPERVISION BY MANUFACTURERS REPRESENTATIVE
20 EC FAN TO ALLOW CFM REDUCTION TO 70% FOR ENERGY SAVINGS
21 FRONT AND RIGHT SIDE ACCESS UNIT (CRAC-2)
22 REDUCED DUCT COLLAR FLANGE CRAC-2
23 COMPRESSOR TO BE VARIABLE CAPACITY DIGITAL SCROLL COMPRESSOR 20%-100% (1)

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

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No.	Date:	Revision:
1	09/17/2018	PER DOB COMMENTS
2	11/07/2018	PER DOB COMMENTS
3	12/21/2018	PER DOB COMMENTS
4	03/04/2019	PER DOB COMMENTS
5	04/12/2019	PER DOB COMMENTS
6	05/10/2019	PER DOB COMMENTS
7	06/21/2019	PER DOB COMMENTS
8	08/02/2019	PER DOB COMMENTS
9	09/06/2019	PER DOB COMMENTS
10	10/04/2019	PER DOB COMMENTS
11	11/14/2019	PER DOB COMMENTS
12	12/20/2019	PER DOB COMMENTS
13	01/24/2020	PER DOB COMMENTS
14	02/14/2020	PER DOB COMMENTS

No. | Date: | Revision:

NB# 121190200

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
MECHANICAL SCHEDULES

SEAL & SIGNATURE:

DATE: 09/17/2018
PROJECT #: 2016-02
DRAWN BY: AJT
CHECKED BY: VJ
DRAWING No.: M-504.00
CODE NO.:
SHEET NO. 14 OF 80

FILED: NEW YORK COUNTY CLERK 02/16/2021 01:36 PM INDEX NO. 160565/2020
NYSCEF DOC. NO. 58 RECEIVED NYSCEF: 02/16/2021

Board of Standards and Appeals

BSA SUBMISSION NOTICE

Date: November

Examiner's Name: _____

BSA Calendar #: 2019-94-A

Electronic Submission: ■ Email ☐ CD

Subject Property/
Address: 36 West 66th Street, a.k.a 50 West 66th Street, New York, New York

Applicant Name Stuart A. Klein, Esq./LandmarkWest!

Submitted by (Full Name): _____

A) The material I am submitting is for a case currently **IN HEARING,** scheduled for December 17, 2016.
The reason I am submitting this material:

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

Brief Description of submitted material: Notice of Submission, Supplemental Statement of Mikhail She

List of items that are being voided/superseded: _____

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

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

Brief Description of submitted material: _____

List of items that are being voided/superseded: _____

MASTER CASE FILE INSTRUCTIONS

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

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SUPPLEMENTAL STATEMENT OF FACTS

BSA Calendar No: 2019-94-A

Premises:	36 West 66th Street, a/k/a 50 West 66th Street, Manhattan Block 1118, Lot 45 ("the Parcel")
Determination Challenged:	Issuance of Permit No. 121190200-01-NB ("the Permit")

Appellant LandMark West! ("LW!") submits this supplemental statement of facts to address the FAR deductions taken on the April 4, 2019 Zoning Diagram (ZD1 form) for the mechanical equipment on the 15th, 17th, 18th and 19th floors.

At the outset, LW! wishes to address the rather peculiar path that the DOB and Developer took with respect to the supplemental submissions. On September 17, 2019, the Board stated that it would be severing and continuing review of the issue of FAR deductions for mechanical equipment areas. To that end, the Board requested additional analysis from the DOB, LW! and Developer according to a particular schedule. The Developer was supposed to have provided all the relevant plans and equipment specifications in time to enable the DOB to produce complete analysis on or before October 16, 2019. Commissioner Scibetta also requested from Developer the mechanical plans for the original building, developed prior to the PAA. These are critical for any sober analysis of the mechanical deductions.[1]

[1] Developer has apparently ignored this request.

Mikhail Sheynker, Esq.
November 6, 2019

Then, it would be LW!'s turn to submit a response to the DOB's analysis by November 6, 2019. Developer specifically requested that it have an opportunity to review LW!'s submission before submitting its own response. Therefore, the Board set November 27 as the deadline for Developer's submission. The continued hearing is currently scheduled for December 17.

On October 16, 2019, the DOB submitted what it purported to be its analysis. It annexed certain mechanical plans, including the composite plans that Developer prepared on the DOB's request and turned over to the DOB on October 11, 2019. At the present time, it is not necessary to flesh out the woeful deficiency of the October 16 submission. Suffice it to say that the DOB submitted a hollow and superficial statement, with no supporting analysis from a single engineer. On top of that, the attached exhibits were quite minimal, as they contained no specifications on the equipment to be used in claimed mechanical spaces. Without such specifications, it is simply not possible to determine that the foot print and service area for the equipment marked on the plans matches the equipment's operational requirements.

Apparently realizing the extent of deficiency of the DOB's October 16th submission, Developer volunteered, out of turn and without BSA's prior permission, a statement with annexed schedules of plans and list of equipment on October 21, 2019. Not surprisingly, the October 21 plans did not completely match the plans submitted by the DOB on October 16. For example, the following additional plans were added: M-307.00, M-316.00, M-319.00, M-320.00, M-321.00. The equipment schedule was completely new and something that LW! had not seen before and was not able to obtain earlier: M-501.00, M-502.00, M-503.00, M-504.00.

Upon receipt of the October 21st submission, the undersigned reached out to the DOB's counsel, Mr. Michael Zoltan, on October 23, 2019 to confirm if the DOB's October 16th analysis

was based on review of the additional drawings disclosed by Developer on October 21. The following day Mr. Zoltan responded:

> The Department's October 16, 2019 analysis was based on a review of all the plans approved prior to permit issuance. The "composite drawings" are based on the approved plans.

Finding this answer to be underwhelming to say the least, the undersigned sent another email on October 24, 2019, asking for clarity and specificity as to the discrepancy between the plans that DOB and submitted separately. This clarification was important simply because at the September 17, 2019, the Board instructed Developer to first provide the DOB with all necessary documentation and for the DOB to then analyze it. If there was something that DOB missed or failed to analyze, it could certainly impact its analysis. LW!'s obligation to respond should be triggered only after the DOB prepares its final, not intermediary, analysis.

Mr. Zoltan did not respond to the October 24, 2019 email. On October 29, 2019, the undersigned emailed Mr. Zoltan yet again, asking for the response. The silence from Mr. Zoltan was denser than the London fog in Conan Doyle's stories. (Relevant emails are annexed hereto as Exhibit A). On November 1, the undersigned reached to the BSA to seek guidance, as LW!'s engineers were simply not certain as to what weight to give to Developer's October 21 submission without confirmation from Mr. Zoltan. (Email of Stuart A. Klein is annexed hereto as Exhibit B).

On November 4, mere two days before the November 6th deadline, and 11 days after the initial request for clarification, Mr. Zoltan submitted a formal response where he addressed the discrepancy and for the first time confirmed that the additional plans were filed and approved by the DOB and that the DOB had them at its disposal prior to submitting its statement on October 16. (Exhibit C). The November 4th statement made no mention of whether these plans were ever

reviewed. Given the history of DOB's delays, obfuscations and incomplete responses, that these plans were overlooked. After all, they were not included in the October 16th exhibits. Otherwise, the DOB should provide greater detail of the review process from any and every engineer who performed such review.

This has left LW! only two days to prepare its response. It would not be beyond the pale to characterize what the DOB and Developer jointly did as sandbagging. Appellant now finds itself responding to an avalanche of half-facts and misleading arguments in two days' time. Nonetheless, the instructions that the undersigned received from the Board is to submit what appellant currently can, and request additional time for a more thorough submission. Annexed to this letter, the Board will find affidavits of Michael Ambrosino and George Janes, with relevant exhibits supporting the fact that the mechanical deductions are simply illusory and solely meant to artificially increase the sellable floor area.

Sadly and fortunately, their detailed analysis exposes Developer's rarely transparent scheme, a scheme that should have been exposed in the first instance had the DOB diligently examined the plans as per its own protocol. They provide a partial analysis – based on the information supplied to date – explaining the extent of unjustified mechanical FAR deductions that the DOB has credited for the floors 15th, 17th, 18th and 19th. Spreading the equipment as thin as possible to take up unnecessary space, Developer is attempting to get the entire area of the four mechanical floors excluded from the FAR calculations.

In order to illustrate this and the amount of equipment, the "footprint" and spatial organization, Mr. Ambrosino color-coded all of the differing components of the MEP system. The attached color-coded Existing Conditions Drawings, D-15, D-17, D-18, and D-19 of each major mechanical floor identifying the area of the equipment, the access/service space required

for each, as well as other uses on the floor and the unassigned or "white space." As designed, the equipment and service area requirements are approximately as follows:

- 15th floor..... 18 %
- 17th floor..... 20 %
- 18th floor..... 27 %
- 19th floor..... 28 %

Via the example of the 17th floor, Mr. Ambrosino shows how the mechanical equipment can be more efficiently positioned without negatively impacting on its operability, exposing substantial amounts of empty space that Developer is simply electing not to use. Such marked inefficiency in the outlay of the equipment appears to be intended to mask the empty space.[2] Mr. Ambrosino identifies a mean 60% deduction that should be made from the claimed deductible floor area. Simply put, most of the area on the subject mechanical floors is empty space. Further analysis is currently being conducted as to the physical dimensions of the scheduled equipment and the possible incongruence between the actual dimensions and the scaled demarcation on the plans corresponding to the equipment.

Mr. Ambrosino is also working on preparing additional efficient arrangement plans for the remaining floors to show just how little space on the mechanical floors is dedicated to the mechanical equipment and the requisite service area. Supplemental affidavits and argument will be submitted as soon as they become available.

Mr. Janes, on his part, analyzes the impact that the improper deductions for unused space and the firefighter access, refuge and storage areas have on the overall FAR calculations on the

[2] As Mr. Ambrosino states in his affidavit, he was not able to review the mechanical equipment outlay for energy efficiency, code conformance or system performance. This is partly because these documents, typically included as part of the DOB filing set, were not provided. LW! requests that the Board compell the DOB and Developer to disclose them for a more thorough review.

ZD1. Further, if Developer cannot show that the mechanical equipment and requisite service areas occupy at least 90% of the floor area, the area occupied by stairs, elevators and other points of access is also not deductible as per the draft Buildings Bulletin 2013-xxx ("the Bulletin"), authored by Thomas Fariello, R.A., to which both experts refer.

While the Bulletin is in a draft form, the DOB examiners routinely follow the instructions it contains for reviewing claims of mechanical equipment FAR deductions as it stands for a collection of the DOB's then-existing and currently continuing policies. If the DOB flippantly disowns the Bulletin, then it should offer any alternative writing that sets forth its relevant policy, especially as the Zoning Resolution is silent on the mechanics of reviewing such FAR deductions. While the DOB represented in the *Skyhouse* that its review of the mechanical equipment deductions is done on a case-by-case basis, its examiners must follow some common criteria and protocol. Otherwise, there will be no rhyme or reason to the DOB's decision making, which is a basic due process requirement applicable to all governmental actions. Therefore, the Bulletin, absent another, *approved* writing, has to be applied here.

To sum up, unlike in the *Skyhouse* case, appellant here has submitted affidavits of professionals that have evaluated whether the, "…[a]mount of floor space used for mechanical equipment in the Proposed Building is excessive or irregular...." (2016-4327-A, page 4). It is evident that aside from height voids, Developer here has floor area voids that it is trying to dress up as necessary for operation of mechanical equipment. It cannot have it both ways. Developer has already abused floor height. Now it is trying to get away with FAR deductions to which it is not entitled.

Mikhail Sheynker, Esq.
November 6, 2019

Accordingly, Landmark West requests that the Board grant it additional time of two weeks to complete its submission in view of the concerted dilatory practices deployed by the DOB and Developer and, in the interim, accept the partial response included herein.

Further, the principal of Developer, Gary Burnett, has on numerous occasions represented that the rationale behind the peculiar arrangement of the mechanical space was motivated by a desire to artificially increase the bulk of the building to generate greater sales. The Board must exercise its subpoena power and have him personally appear to explain these statements.

Dated: Nov 6, 2019
New York, New York

KLEIN SLOWIK PLLC

M. Shey

Mikhail Sheynker, Esq.

Fwd: 36 West 66th Street--Landmark West! BSA Appeal Cal No. 2019-94-A

Mikhail Sheynker

Tue 10/29/2019 1:55 PM

To:Michael Zoltan (Buildings) <MZoltan@buildings.nyc.gov>;

Cc:Stuart A. Klein <SKlein@buildinglawnyc.com>;

Mr. Zoltan, My prior email must've gotten lost; could you please advise.

Sincerely,

Mikhail Sheynker, Esq.

Установить Outlook для iOS

---------- Forwarded message ----------
From: "**Mikhail Sheynker**" <MSheynker@buildinglawnyc.com>
Date: Thu, Oct 24, 2019 at 9:49 AM -0400
Subject: Re: 36 West 66th Street--Landmark West! BSA Appeal Cal No. 2019-94-A
To: "Michael Zoltan (Buildings)" <mzoltan@buildings.nyc.gov>
Cc: "Stuart A. Klein" <SKlein@buildinglawnyc.com>, "Mona Sehgal (Buildings)" <msehgal@buildings.nyc.gov>, "Felicia Miller (Buildings)" <femiller@buildings.nyc.gov>

I'm sorry my question was specific to the October 21 exhibits from the developer. They contain additional, not composite, plans that DOB exhibits do not. Hence my question. Could you please check with your engineer and give me a straight yes or no.

Sincerely,

Mikhail Sheynker, Esq.

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On Thu, Oct 24, 2019 at 9:35 AM -0400, "Michael Zoltan (Buildings)" <MZoltan@buildings.nyc.gov> wrote:

Good morning, Mr. Sheynker,

The Department's October 16, 2019 analysis was based on a review of all the plans approved prior to permit

issuance. The “composite drawings” are based on the approved plans.

Best,

Michael Zoltan
Assistant General Counsel
NYC Department of Buildings
280 Broadway, 7th Floor
New York, NY 10007
(212) 393-2642
mzoltan@buildings.nyc.gov

From: Mikhail Sheynker [mailto:MSheynker@buildinglawnyc.com]
Sent: Wednesday, October 23, 2019 3:13 PM
To: Michael Zoltan (Buildings)
Cc: Stuart A. Klein
Subject: 36 West 66th Street--Landmark West! BSA Appeal Cal No. 2019-94-A

Mr. Zoltan,

Could you please confirm if the DOB's October 16, 2019 analysis was based on the review of the additional drawings and certifications disclosed by Developer as an enclosure to its October 21, 2019 letter.

Sincerely,

Mikhail Sheynker, Esq.

Mikhail Sheynker, Esq.
msheynker@buildinglawnyc.com
90 Broad Street • Suite 602
New York, NY 10004
Direct: (212) 564-7560 ext. 111
Fax: (212) 564-7845
http://www.buildinglawnyc.com

Untitled - Mikhail Sheynker 11/6/19, 4:07 PM

Untitled

Stuart A. Klein

Fri 11/1/2019 1:15 PM

To: Toni Matias (BSA) <tmatias@bsa.nyc.gov>; Mikhail Sheynker <MSheynker@buildinglawnyc.com>; Michael Zoltan (Buildings) <MZoltan@buildings.nyc.gov>;

Cc: SeanKhorsandi LANDMARKWEST! <seankhorsandi@landmarkwest.org>;

Toni: I'm in Europe right on and will not be back until 11/20. Sadly, last week, we received a response from DOB regarding the west 66th street case that is, to be kind, grossly deficient and misleading. I do not think it important to comment on whether this lack of candor was intentional or not. But my associate, Misha, who was to respond in my stead—has repeatedly asked DOB, via email—to clarify certain elements of its response, which simply do not make any sense, is grossly deficient in detail and not responsive to the Board's requests for certain information and comparables.

In the greater context of what dob has done and not done in this case, I must admit i am neither surprised by its lack of clarity. But i am at a loss as to how to put together a response to such a glaringly deficient and irresolute submission.

Stu

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NYC Buildings

Melanie E. La Rocca
Commissioner

Michael J. Zoltan
Assistant General Counsel
mzoltan@buildings.nyc.gov

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November 4, 2019

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

RE: Cal. No. 2019-94-A
Premises: 36 West 66th Street, Manhattan
Block: 1118; Lot: 45

Dear Honorable Members of the Board:

The Department of Buildings (the "Department") respectfully submits this statement to confirm that the additional drawings and clarifications regarding the proposed new building located at 36 West 66th Street New York, New York (the "Proposed Building"), submitted on October 21, 2019 by West 66th Sponsor LLC, (the "Owner") are an accurate representation of Department records. The Department submits that these additional plans supplement the Department's submission dated October 16, 2019 and provide further support for the Department's April 4, 2019 approval of a post-approval amendment application (the "PAA") which changed the scope of permit 121190200-01-NB (the "Permit") authorizing construction of the Proposed Building, and specifically the deduction of mechanical floor area.

I. THE PLANS SUBMITTED AS "SCHEDULE 1" AND "SCHEDULE 3" ARE TRUE COPIES OF APPROVED MECHANICAL PLANS

In the Owner's October 21, 2019 submission, the owner attached drawings depicting the Proposed Building's mechanical piping system (drawing numbers M-307.00, M-316.00, M-319.00, M-320.00, and M.321.00.) These drawings are true copies of plans stamped approved by the Department on April 5, 2019. Additionally, within the "Schedule 1" attachment, the Owner submitted SP/SD-216.00 to replace SP/SD-217.00. While both drawings were approved by the Department, the Owner's description of SP/SD-217.00 as the sprinkler plans for the pool crawl space is correct. SP/SD-216.00 is the proper depiction of the sprinkler/standpipe plans for the full 15th Floor.

Similarly, the Owner submitted the mechanical schedules (M-501.01, M-502.00, M-503.00, and M-504.00) for the mechanical equipment. These schedules provide additional details of the proposed mechanical equipment. They too are true copies of plans stamped approved by the Department on April 5, 2019.

Lastly, in the Owner's letter, the Owner added additional verbal descriptions of the mechanical equipment—supplementing the listed descriptions in the Department's October 16, 2019 letter. The listed items are an accurate representation of the mechanical equipment in the Proposed Building. The Department's October 16, 2019 list was not meant to be exhaustive, but rather illustrative.

II. THE COMPOSITE DRAWINGS OF THE INTERSTITIAL MECHANICAL FLOORS HELP ILLUSTRATE THE COMPLETE LAYOUT OF THE MECHANICAL EQUIPMENT IN THE PROPOSED BUILDING

In the Department's October 16, 2019 submission to the Board, for the sake of clarity, the Department submitted "composite" drawings of the approved mechanical plans. As explained in footnote 6 of that submission, the composite drawings themselves were not approved drawings by the Department but were rather a compilation of approved drawings overlaid for illustrative purposes.

In the Owner's October 21, 2019 letter, the Owner clarified that the composite drawings included architectural plans and did not include all of the mechanical systems from Department approved plans. The Owner attached "Schedule 2" which contains a compilation of approved Department plans depicting mechanical equipment overlaid one over the other with the addition of electrical fixtures shown on Department approved plans.

NYC Buildings

Cal. No. 2019-94-A
Premises: 36 West 66th Street, Manhattan
November 4, 2019

III. CONCLUSION

Based on the foregoing, the Department respectfully requests that the Board affirm the determination to issue the Permit.

Respectfully submitted,

Michael J. Zoltan

cc: Constadino (Gus) Sirakis, P.E., First Deputy Commissioner
Martin Rebholz, R.A., Borough Commissioner, Manhattan
Scott Pavan, R.A., Borough Commissioner, Development HUB
Mona Sehgal, General Counsel
Felicia R. Miller, Deputy General Counsel
Susan Amron, General Counsel, Department of City Planning
Stuart Klein
(On behalf of Landmark West Appellants)
David Karnovsky, Fried, Frank, Harris, Shriver & Jacobson LLP
(On behalf of West 66th Street Sponsor LLC)

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

November 5, 2019

RE: Cal. No. 2019-94-A
50 West 66th Street (AKA 36 West 66th Street), Manhattan
Block: 1118 Lots: 14,45,46,47,48& 52

Report on the Analysis of the Floor Area on 15th, 17th, 18th and 19th Floors
Existing Mechanical, Electrical and Plumbing Equipment

Introduction

My name is Michael Ambrosino, a licensed professional Engineer in the State of New York and a founding partner of Ambrosino, DePinto & Schmieder, DPC, Engineers. My experience spans more than forty years of engineering design and research in institutional, commercial and residential facilities. I have recently retired from the firm I founded and now consult on special projects.

I was actively involved in advancing the HVAC industry through lectures and published papers, and have served on the Board of Governors for the New York Chapter of ASHRAE. As a national lecturer, I have spoken for New York University on "Energy Management in Buildings", for the Association for the Advancement of Medical Instrumentation on "Energy Savings in Hospitals", for ASHRAE on the "Application of Computerized Energy Management Systems", for CBS on "Mechanical System Basics and Optimization," as well as conducting a seminar to architects on HVAC systems, entitled "What is Air Conditioning?"

I have a Bachelor of Science in Mechanical Engineering from The Polytechnic Institute of Brooklyn with Graduate Studies in Energy Policy Issues and Energy Resources and Technology, completed at The Polytechnic Institute of Brooklyn. My affiliations have included: National Society of Professional Engineers, The American Society of Heating, Refrigerating and Air conditioning Engineers, The American Society of Mechanical Engineers, The American Association of Museums and The Architectural League of New York.

I have been retained by Landmark West! to review the plans submitted by the owner as part of BSA Docket # 2019-94-A. My analysis follows:

This report has been compiled from information obtained from the study of the Mechanical, Electrical and Plumbing (MEP) drawings for the above project dated August 17, 2018, on file at the Department of Buildings (DOB).

Mechanical, Electrical & Plumbing (MEP) design is typically based on design principles determined at the start of a project, by the Owner/Developer, the Architect, and Engineer of Record. For 50 West 66th Street, the project team consists of Snohetta, Design Architect and SLCE, Architect of Record, along with ICOR, MEP Engineers for the project. The design criteria can range from most sustainable, least capital cost, and best comfort performance to a host of other criteria, which can vary depending on the size, layout and budget of the project. I am not privy to the original design principles for the HVAC systems for this building nor have I reviewed the filed documents for energy efficiency, code conformance or system performance. This is partly because these documents, typically included as part of the DOB filing set, were not provided. I would like to state for the record that the Engineer of Record, ICOR, is a reputable firm with a portfolio of successful projects. This review and report only focuses on the use of the space on the mechanical floor levels (15,17,18 and 19) in the aforementioned project site.

The reference material that I used includes the 2014 NYC Building and Construction Codes, and various Bulletins including but not limited to NYC Buildings Bulletin 2013-XXX, approved 1/14/2019 (Appendix A) relating to approved with conditions dated 01/14/19 (Control No. 56035). The purpose of this document is to "clarify the extent to which floor space used for mechanical space may be excluded from the sum of a building's zoning for area as defined by Zoning Resolution (ZR) Section 12-10," attached hereto. In summary, this states that ONLY if the mechanical equipment and corresponding service space exceeds 90% of the room area, then can the entire floor area can be deducted. This document provided the criteria for determining floor area deductions, which we have called Method 1.

In order to illustrate this and the amount of equipment, the "footprint" and spatial organization, I color-coded all of the differing components of the MEP system. The attached color-coded Exhibit Drawing Nos. 15, 17, 18, and 19 of each major mechanical floor identifies the area of the equipment, the access/service space required for each, as well as other uses on the floor and the unassigned or " white space." **As designed, the equipment and service area requirements are approximately** as follows (see attached Existing Conditions Drawings for respective calculations):

- 15th floor..... 18 %
- 17th floor..... 20 %
- 18th floor..... 27 %
- 19th floor..... 28 %

These percentages are all well below the threshold of the cited requirements in the DOB Bulletin 2013-XXX, which requires ninety percent (90%) floor coverage with MEP equipment installed for the entire floor to be deducted as a "mechanical floor area deduction." If we use an average of twenty-three percent (23%) for the four mechanical levels cited above, the total deduction for mechanical equipment is reduced from 51,851 sq. ft. to a mere 8,814 sq. ft.

The present design clearly attempts to use up all the available space on each of the four floors: noting that service areas are not overlapped and that there are large expanses of open "white space" with no actual equipment assigned within these areas. For Method 2, I selected one of the floors to determine how the equipment placement could be laid out if the design principle was to

be a more efficient use of the floor area. The 17th floor zoning calculations claim complete use of the spaces for MEP use. I laid out the equipment using a more typical approach of sharing access aisles and service space. As shown on the attached Comparison Diagrams, expressly 17.1 17.2, two of the four major mechanical spaces could be eliminated if a more aggressive design concept and philosophy was followed. The existing design shows overall mechanical rooms of 8,481 sq. ft. of space; the revised design would be 4,122 sq. ft. of overall mechanical space.

Since the space is not all used for MEP and is partly shared with the FDNY, the mechanical deduction for the entire floor, 10,216 sq. ft. would now become 4,122 sq. ft.; a reduction of sixty percent (60%). If this percentage were applied across the four main mechanical floors, the mechanical deduction would be reduced from 51,851 sq. ft. to 24,740 sq. ft.

I believe that the placement and distribution of the mechanical and electrical equipment does not follow the intent of the NYC Zoning Resolution. These calculations, provided herein, speak directly to the misappropriating of deductable space by a factor of at least 50%.

Clearly both the applicant's design layout and our methods of calculation require the BSA to consider the validity the applicant's mechanical deductions.

Sincerely,

Michael Ambrosino, P.E.

AFFIDAVIT OF MICHAEL AMBROSINO

STATE OF NEW YORK)

) SS:

COUNTY OF NEW YORK.)

PASCALE GABBEY
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01GA6374695
Qualified in Bronx County
Commission Expires April 30, 2022

Pascale Gabbey.
11.5.2019.

NYC Buildings

NYC Buildings Department
280 Broadway, New York, NY 10007

Robert D. LiMandri, Commissioner

BUILDINGS BULLETIN 2013-XXX

Zoning Interpretation

Supersedes:

Issuer: Thomas Fariello, R.A.
First Deputy Commissioner

Issuance Date: XXX, 2013

Purpose: This document is to clarify the extent to which floor space used for mechanical equipment may be excluded from the sum of a building's zoning floor area as defined by Zoning Resolution (ZR) Section 12-10.

Related Code Section(s): ZR 12-10 "floor area" (8)
BSA Cal. No. 315-08-A

Subject(s): Zoning, floor area
Zoning, mechanical equipment
Zoning, mechanical deductions

"Floor Area" is defined within Zoning Resolution (ZR) Section 12-10 as "...the sum of the gross area of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings...." The definition also provides items that shall not be included as "floor area." Floor space devoted to mechanical equipment, as specified by ZR 12-10 (8) of "floor area," shall not be included as "floor area."

The purpose of this Bulletin is to clarify what types of equipment qualify as "mechanical equipment" as well as establishing size criteria for "floor area" deduction. In doing so, the Department shall interpret that in order for floor space devoted to mechanical equipment to be excluded from "floor area," such equipment must be necessary for the operation of a building or portion thereof and not only to support a particular type of occupancy or use within the building. Please note that this Bulletin does not address ZR 12-10 (2) of "floor area" related to bulkheads, water tanks and cooling towers.

A. **Limitations on "floor area" deductions**

(1) Floor spaces occupied by the following mechanical equipment may be excluded from "floor area"

a) Heating, ventilation, air conditioning equipment (including, but not limited, to chillers, pumps and heating exchange equipment (HX) except those specified within Part B(1);

b) Boilers and domestic hot water heating equipment;

REVIEWED BY
Azmi Zahed Atkins, RA
Code & Zoning Specialist

APPROVED
WITH CONDITIONS

Building Scope Review
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c) Domestic water pumps and equipment;

d) Emergency generators and related equipment including automatic transfer switches provided such equipment is used in connection with the occupancy, components, equipment or systems specified in BC Chapter 27, whether required or voluntary;

e) Uninterrupted power supply (UPS) system supplying emergency back-up power to essential building systems including fire alarm and egress lighting systems;

f) Fire sprinkler pump and system;

g) Mechanical shafts including enclosure;

h) Plumbing and gas pipe risers and chases including enclosure; *

i) Horizontal piping and ducts lower than 6'-0" above the floor level; *

j) Chimneys and boiler flues;*

k) Electrical service panels, conduits, risers, chases and related equipment;

l) Refuse chutes* (in addition to "refuse disposal room" exclusion where ZR 28-23 is applicable);

m) Refuse compactor rooms; ~~when not located in the cellar~~ **[removed as superfluous]**

n) Tanks including fuel tanks, water storage tanks and storm water retention tanks;

o) Cogeneration equipment; and

p) Elevator machine rooms not above roof in a bulkhead.

*See paragraph 2 below

(2) Floor space directly adjacent to mechanical equipment necessary for the purpose of access and servicing of such equipment (except as otherwise noted in Part C). Such areas shall be determined in accordance with either (a) or (b), unless an asterisk appears after equipment listed above signifying that no adjacent service area can be deducted:

a) 1 : 1 ratio of equipment area-to-adjacent service area; or

b) Manufacturer's recommendation for accessing and servicing area for a particular equipment item or clearance specified by NYC construction and electrical codes.

B. Floor spaces that must be included as "floor area"

The following items are examples of floor spaces that cannot be deducted from "floor area" and is by no means an exhaustive list. ~~Such examples are provided so that~~ similar instances or circumstances of like kind or character are also included in "floor area."

(1) Spaces containing individual radiators, convectors and air conditioning units (including portable, window box, in-wall or packaged terminal air conditioning units);

(2) Rooms and/or spaces containing computer servers and related equipment;

REVIEWED BY
Azmi Zahed-Atkins, RA
Code & Zoning Specialist
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01/14/19
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Control No. 56035

(3) Rooms and/or spaces containing telecommunication equipment except where such equipment only supports a required emergency voice/alarm communication system (i.e. fire command station) pursuant to BC 907.2.12.2; and

(4) Rooms and/or spaces containing cable television / broadband equipment.

C. Criteria for excluding incidental, non-occupied floor space from "floor area" for rooms and floors

Notwithstanding floor space that is identified in Paragraph B, if rooms or portions of an open floor layout meet the criteria set forth below, then such rooms or spaces may be excluded from "floor area including interior walls and exterior walls"

(1) If 90 percent of a room contains floor space that may be excluded by applying Part A(1) and Part A(2) and the remainder of such room is non-occupied, then the entirety of such room, including interior walls, may be excluded from "floor area";

(2) If 90 percent of an open floor layout (i.e. no partitions) contains floor space that may be excluded by applying Part A(1) and Part A(2) and the remainder of such floor is non-occupied, then the entirety of such open floor, including exterior walls, may be excluded from "floor area"; and

(3) When a floor is wholly devoted to mechanical space either by applying C(1) or C(2), then the stairwell and elevator shaft at that floor may also be excluded from "floor area" pursuant to BSA Cal. No. 315-08-A.

REVIEWED BY
Azmi Zahed-Atkins, RA
Code & Zoning Specialist
APPROVED
WITH CONDITIONS
01/14/19
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EXHIBIT DRAWING NO: 15

EXISTING MECHANICAL EQUIPMENT DIAGRAM
15TH FLOOR 11-06-2019

GENERAL NOTES:

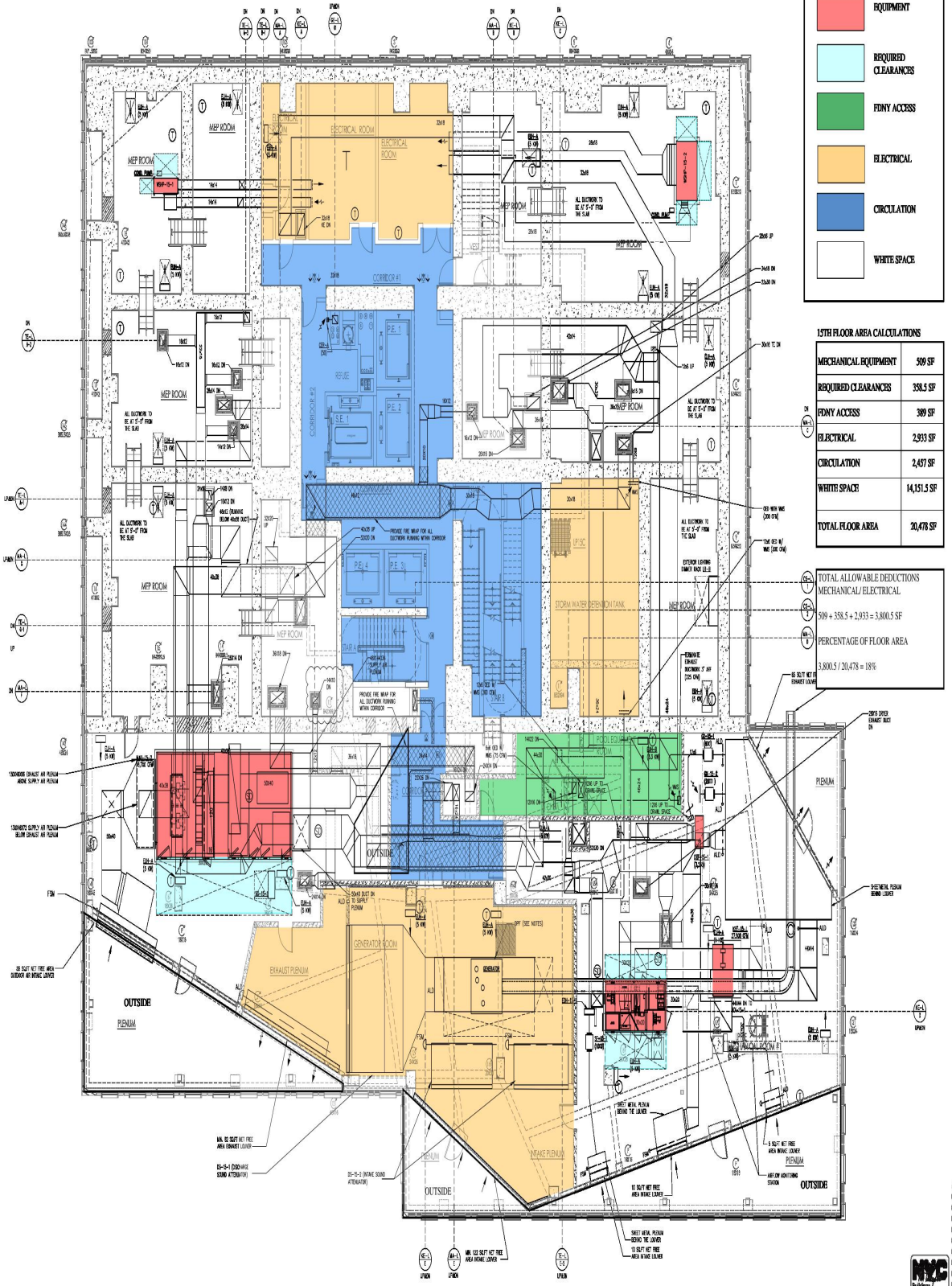
1. ALL DUCTWORK SERVING FANS (EXCEPT DRYER EXHAUST DUCTWORK), AND OR HVAC UNITS ON ROOF OR BOP ARE TO BE ACCESSIBLY LABELED ON THAT FLOOR.
2. PROVIDE 2.5# FIRE WRAP AS INDICATED.
3. MAU-15-1 & MAU-15-2:
   A. OUTSIDE AIR INTAKE DUCT – 10 FEET OF INTERNAL LINING FROM UNIT
   B. 15 FEET INTERNAL LINING ON SUPPLY

DIESEL PARTICULATE FILTER (DPF) NOTES:

(A) 12" DIAMETER X 12" LONG CATALYZED, WALL-FLOW, PASSIVE DIESEL PARTICULATE FILTER ELEMENTS ALL ARRANGED IN A (2) ROW X (4) NOS. ARRAY DESIGNED FOR USE ONLY ON AN ULTRA-ULTRA LOW SULFUR DIESEL (ULSD) GENERATOR PROVIDED BY ALTERNATE POWER GENERATION CONTRACT (NON-WEINSOFT 600-665-7724) RANKING AT FULL LOAD. ENGINE EXHAUST IS DIRECTED ACROSS THESE DPF ELEMENTS WITHIN A CUSTOM BUILT 304 SERIES STAINLESS STEEL HOUSING. THE OVERALL HOUSING SIZE CANNOT EXCEED LARGER THAN 60.00" LONG, 30.00" WIDE, AND 28.00" TALL. THIS HOUSING MUST INCORPORATE AN INTERNALLY INSULATED SILENCER SECTION TO ACHIEVE CRITICAL SPACE SOUND ATTENUATION OF 25~30DBA) AT A BACKPRESSURE NO GREATER THAN 30IN OF THE ENGINE MANUFACTURERS MAXIMUM ALLOWABLE BACKPRESSURE.

THE CATALYZED DPF ELEMENTS ESSENTIALLY FILTER OUT UNBURNED CARBON PARTICLES OR SOOT, THAT OCCURS IN THE DIESEL ENGINE EXHAUST. EXPERIENCE UNDER SOLID STATE OF CONDITIONS, THE DPFS WILL CAPTURE 85+% OF THESE CARBON PARTICLES, OR A SPECIFIED SIZE, TO THEIR OVERALL CAPACITY. THESE CARBON PARTICLES OR OFTEN CALLED PARTICULATE MATTER (PM), NEED TO BE BURNED FROM THE DPFS. THIS IS ACCOMPLISHED BY THE CATALYZED COATING ON THE DPF ELEMENTS REACHING A "LIGHT OFF" TEMPERATURE, WHICH BY THE CATALYST GAS TEMPERATURE. ONCE THIS LIGHT OFF TEMPERATURE IS ACHIEVED, THE DPF WILL OPERATE IN A CONDITION CALLED CONTINUOUS REGENERATION. CONTINUOUS REGENERATION WILL BURN OFF THE CARBON PARTICLES TRAPPED WITHIN THE DPF ELEMENTS AS LONG AS THE LIGHT OFF TEMPERATURE IS SUSTAINED.

IT IS IMPORTANT THAT THE LIGHT OFF EXHAUST TEMPERATURE IS MET FOR PROPER OPERATION. WHEN LIGHT OFF TEMPERATURE IS NOT MAINTAINED, CARBON PARTICLES WILL BUILD UP IN THE DPF ELEMENTS AND WILL INCREASE BACKPRESSURE IN THE EXHAUST. TO HELP MANAGE THIS, A DIFFERENTIAL PRESSURE SWITCH AND ANNUNCIATING ALARM IS RECOMMENDED TO BE UTILIZED IN A PASSIVE DPF SYSTEM TO ALERT THE OPERATOR, OR TO TRIGGER AN ALARM IF A SPECIFIED LIMIT OF BACK PRESSURE HAS BEEN REACHED. WHEN THAT OCCURS, SUPERVISORY LOAD MUST BE APPLIED TO THE ENGINE IN ORDER TO REACH AND MAINTAIN THE LIGHT OFF TEMPERATURE OF THE DPFS.



LEGEND

- EQUIPMENT
- REQUIRED CLEARANCES
- FDNY ACCESS
- ELECTRICAL
- CIRCULATION
- WHITE SPACE

15TH FLOOR AREA CALCULATIONS

MECHANICAL EQUIPMENT	509 SF
REQUIRED CLEARANCES	358.5 SF
FDNY ACCESS	389 SF
ELECTRICAL	2,933 SF
CIRCULATION	2,457 SF
WHITE SPACE	14,151.5 SF
TOTAL FLOOR AREA	20,478 SF

TOTAL ALLOWABLE DEDUCTIONS
MECHANICAL/ ELECTRICAL

509 + 358.5 + 2,933 = 3,800.5 SF

PERCENTAGE OF FLOOR AREA

3,800.5 / 20,478 = 18%

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

EXECUTIVE ARCHITECT:
SLCEArchitects, LLP

DESIGN ARCHITECT:
SHAMIR SHAH DESIGN

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

FACADE MAINTENANCE:
BOMEL ENGINEERING LLC

ELEVATOR CONSULTANT:
vda

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

POOL CONSULTANT:
TRACE POOL DESIGN

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

AUDIO VISUAL & TELECOMMUNICATIONS:
Cerami

No.	Date	Revision
1	08/17/2018	ISSUED TO DOB
2	09/17/2018	RE-ISSUED TO DOB
3	04/04/2019	PROGRESS SET
4	04/05/2019	RE-ISSUED TO DOB
5	04/15/2019	DOB FILING
6	05/10/2019	PROGRESS SET
7	11/15/2019	DOB FILING
8	11/14/2019	RE-ISSUED TO DOB
9	04/23/2020	DOB FILING
10	05/14/2020	RE-ISSUED TO DOB

JOB NUMBER: NB#121190200

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
15TH FLOOR
MECHANICAL HVAC PLAN

SEAL & SIGNATURE:

DRAWING No.: M-216.00

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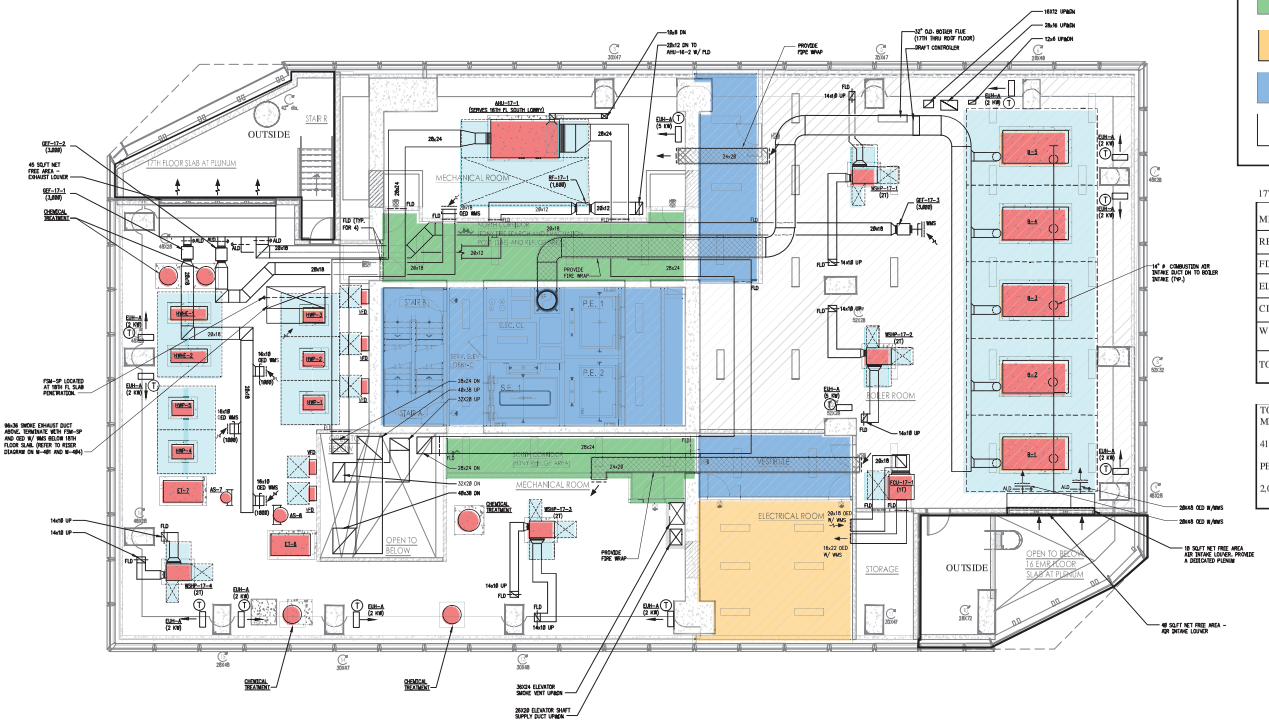
EXHIBIT DRAWING NO: 17

EXISTING MECHANICAL EQUIPMENT DIAGRAM
17TH FLOOR 11-06-2019

GENERAL NOTES:

1. ALL ELECTRONIC SERVING FANS (EXCEPT DRYER EXHAUST ELECTRONIC) AND OR HVAC UNITS ON ROOF OR MER ARE TO BE ACOUSTICALLY LINED ON THAT FLOOR.
2. FURNISH AND INSTALL ALL NEUTRALIZATION UNITS AT BOILER ROOM AND AS REQUIRED BY CODE OR SPECIFICATIONS. PIPING FROM FLUE TO EACH NEUTRALIZATION TANK SHALL BE BY MECHANICAL CONTRACTOR.
3. PROVIDE DRAIN CONNECTION AT THE BOTTOM OF FLUE RISER AS WELL AS DRAIN CONNECTIONS AT EVERY 15 FEET WITH HIGH TEMPERATURE STAINLESS STEEL HOSE PIPE ON THE FLUE'S HORIZONTAL RUN IN BOILER ROOM. CONDENSATE DRAIN PIPE SHALL BE SCHEDULE 80 CPVC. ALL BREACHING CONNECTIONS TO DRAIN SHALL BE PLASTIC HOSE LOOPED TO CREATE TRAP.



LEGEND

- EQUIPMENT
- REQUIRED CLEARANCES
- FDNY ACCESS
- ELECTRICAL
- CIRCULATION
- WHITE SPACE

17TH FLOOR AREA CALCULATIONS

MECHANICAL EQUIPMENT	412.2 SF
REQUIRED CLEARANCES	1,308 SF
FDNY ACCESS	563 SF
ELECTRICAL	372 SF
CIRCULATION	1,171 SF
WHITE SPACE	6,418.8 SF
TOTAL FLOOR AREA	10,216 SF

TOTAL ALLOWABLE DEDUCTIONS
MECHANICAL/ ELECTRICAL

412.2 + 1,308 + 372 = 2,092.2 SF

PERCENTAGE OF FLOOR AREA

2,092.2 / 10,216 = 20%

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

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1	06/17/2020 REVISED TO DOB
2	08/17/2020 DOB COMMENTS
3	09/04/2020 DOB RESPONSE SET
4	10/14/2020 DOB COMMENTS
5	10/21/2020 DOB FILING
6	10/29/2020 DOB RESPONSE SET
7	11/13/2020 DOB FILING
8	11/14/2020 DOB FILING
9	12/23/2020 DOB FILING SET
10	1 DOB - 1 Revision

DOB NUMBER:
NB# 121190200

Scale: 3/16" = 1'-0"

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
17TH FLOOR
MECHANICAL HVAC PLAN

SEAL & SIGNATURE:
Roxane Tartaglia, PA
R. Tartaglia
NYC Department of Buildings
NYC Development Hub

DATE: 06-7-2018
DRAWN BY: RCM
CHECKED BY: RT
DRAWING NO:
M-220.00
SCALE: AS NOTED
PLOTTED: 11/6/2019 11:09:47 AM
PLOT SCALE: 1.0000 CM = 1 UNIT

3328

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GENERAL NOTES:

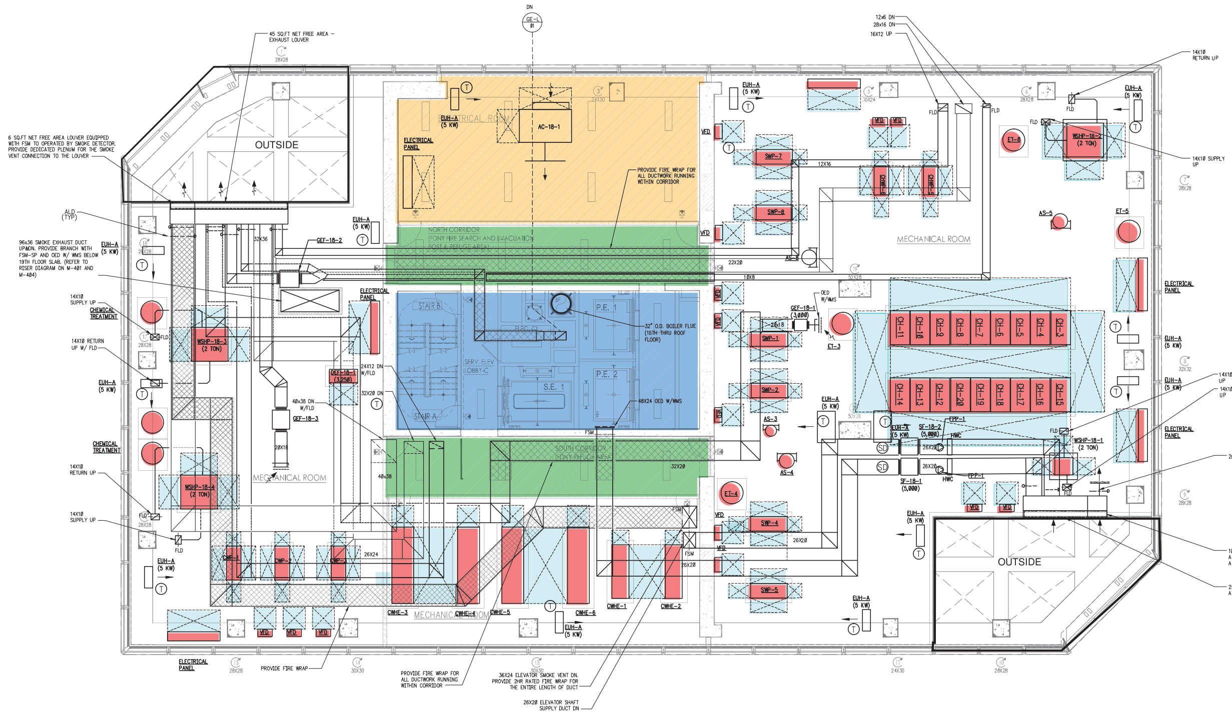
1. ALL DUCTWORK SERVING FANS (EXCEPT DRYER EXHAUST DUCTWORK) AND OR HVAC UNITS ON ROOF OR MER ARE TO BE ACOUSTICALLY LINED ON THAT FLOOR.

EXHIBIT DRAWING NO: 18

EXISTING MECHANICAL EQUIPMENT DIAGRAM
18TH FLOOR 11-06-2019

LEGEND

- EQUIPMENT
- REQUIRED CLEARANCES
- FDNY ACCESS
- ELECTRICAL
- CIRCULATION
- WHITE SPACE



18TH FLOOR AREA CALCULATIONS

MECHANICAL EQUIPMENT	619.6 SF
REQUIRED CLEARANCES	1,351.9 SF
FDNY ACCESS	678 SF
ELECTRICAL	810 SF
CIRCULATION	782 SF
WHITE SPACE	5,998.5 SF
TOTAL FLOOR AREA	10,240 SF

TOTAL ALLOWABLE DEDUCTIONS MECHANICAL/ ELECTRICAL

619.6 + 1,351.9 + 810 = 2,781.5 SF

PERCENTAGE OF FLOOR AREA

2,781.5 / 10,240 = 27%

WEST 66TH STREET
36 WEST 66TH STREET, NEW YORK, NY

OWNER/DEVELOPER:
West 66th Investor, LLC
c/o Paul Hastings, LLP

EXECUTIVE ARCHITECT:
SLCE Architects, LLP

STRUCTURAL ENGINEER:
McNAMARA . SALVIA

MEP ENGINEER:
ICOR CONSULTING ENGINEERS

GEOTECHNICAL ENGINEER:
Langan Engineering

FACADE CONSULTANT:
Heintges & Associates

INTERIOR DESIGNER:
SHAMIR SHAH DESIGN

INTERIOR DESIGNER:
AB CONCEPT

LIGHTING DESIGNER:
FOCUS LIGHTING

LIGHTING DESIGNER:
FILAMENT33 INC

NB#121190200

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK , NEW YORK

DRAWING TITLE:
18TH FLOOR
MECHANICAL HVAC PLAN

DRAWING NO:
M-221.00

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GENERAL NOTES:

1. ALL DUCTWORK SERVING FANS (EXCEPT DRYER EXHAUST DUCTWORK) AND OR HVAC UNITS ON ROOF OR MER ARE TO BE ACOUSTICALLY LINED ON THAT FLOOR.
2. ALL DUCTWORK SHALL BE PROVIDED WITH 2-HR RATED FIRE WRAP.
3. MAU-19-1 & MAU-19-2:
   A. OUTSIDE AIR INTAKE DUCT – PROVIDE 15 FEET OF ACOUSTICAL LINING.
   B. SUPPLY AIR DUCT – PROVIDE 28 FEET OF ACOUSTICAL LINING.

EXHIBIT DRAWING NO: 19

EXISTING MECHANICAL EQUIPMENT DIAGRAM
19TH FLOOR 11-06-2019

LEGEND

- EQUIPMENT
- REQUIRED CLEARANCES
- FDNY ACCESS
- ELECTRICAL/ PLUMBING
- CIRCULATION
- WHITE SPACE

19TH FLOOR AREA CALCULATIONS

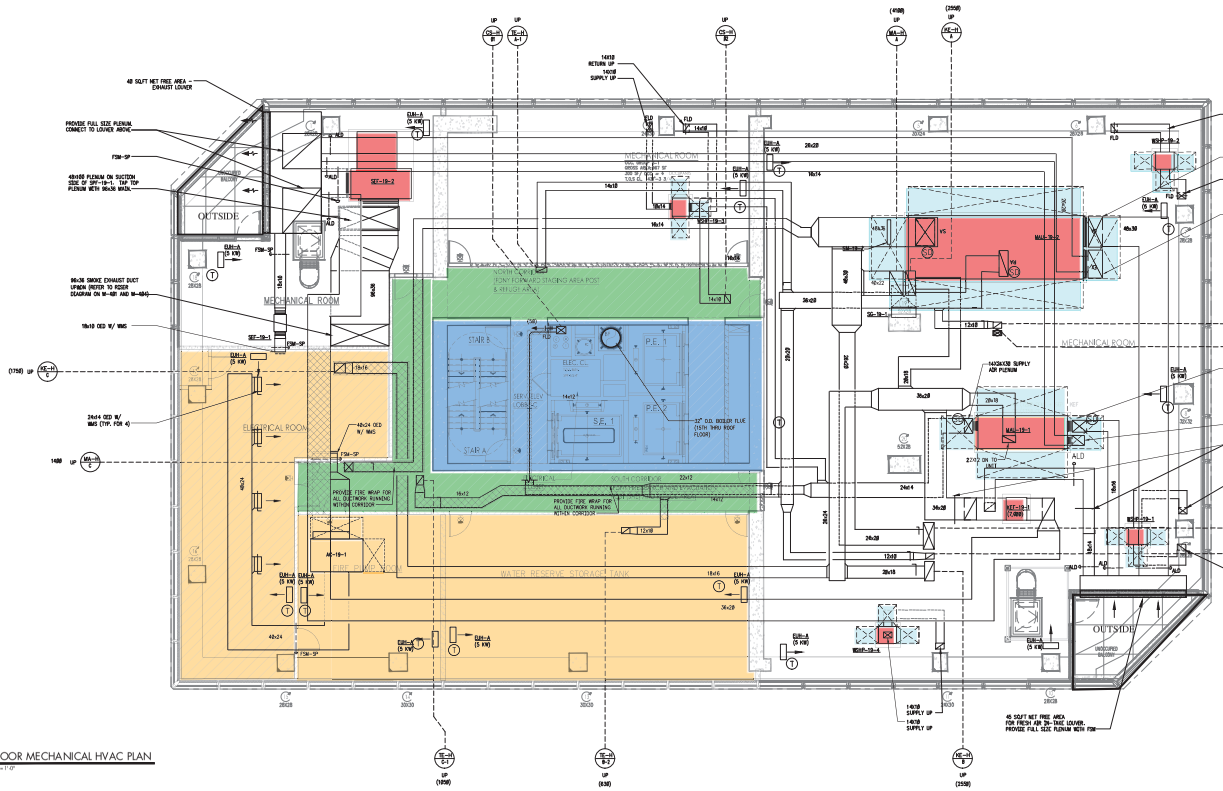
MECHANICAL EQUIPMENT	361 SF
REQUIRED CLEARANCES	365.12 SF
FDNY ACCESS	830.5 SF
ELECTRICAL	903.25 SF
PLUMBING	1,393.13 SF
CIRCULATION	960 SF
WHITE SPACE	6,104 SF
TOTAL FLOOR AREA	10,917 SF

TOTAL ALLOWABLE DEDUCTIONS MECHANICAL/ ELECTRICAL

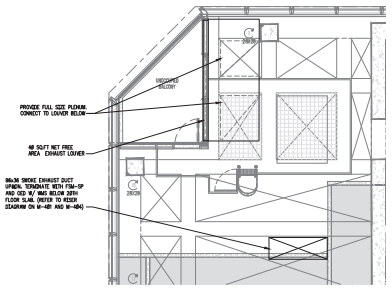
361 + 365.12 + 903.25 + 1,393.13 = 3,022.5 SF

PERCENTAGE OF FLOOR AREA

3,022.5 / 10,917 = 28%



1 19TH FLOOR MECHANICAL HVAC PLAN
SCALE: 3/16" = 1'-0"



2 19TH FLOOR FDNY ACCESS 7 MECHANICAL HVAC PLAN
SCALE: 3/16" = 1'-0"

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Roxsane Tehrigoli, PA
NYC Department HUE

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ELEVATOR CONSULTANT:
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INTERIOR DESIGNER:
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434 FIFTH AVENUE, 8TH FL
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TEL: (212) 370-1776

1	05/12/2020 ISSUED TO DOB
2	06/12/2020 RESPOND TO DOB COMMENTS
3	10/14/2020 RESPOND TO DOB COMMENTS #1
4	10/14/2020 RESPOND TO DOB COMMENTS #2
5	12/21/2020 RESPOND TO DOB COMMENTS #3
6	01/19/2021 RESPOND TO DOB COMMENTS #4
7	01/14/2021 ISSUED TO DOB
8	03/23/2021 ISSUED TO DOB

No. Date Description

NB# 121190200

Scale: 3/16" = 1'-0"

KEY PLAN:

PROJECT:
WEST 66TH STREET
NEW YORK, NEW YORK

DRAWING TITLE:
19TH FLOOR & FDNY ACCESS 7 MECHANICAL HVAC PLAN

SEAL & SIGNATURE

DATE: 05/12/2020
DRAWN BY: RCM
CHECKED BY: RT
DRAWING No.
M-222.00

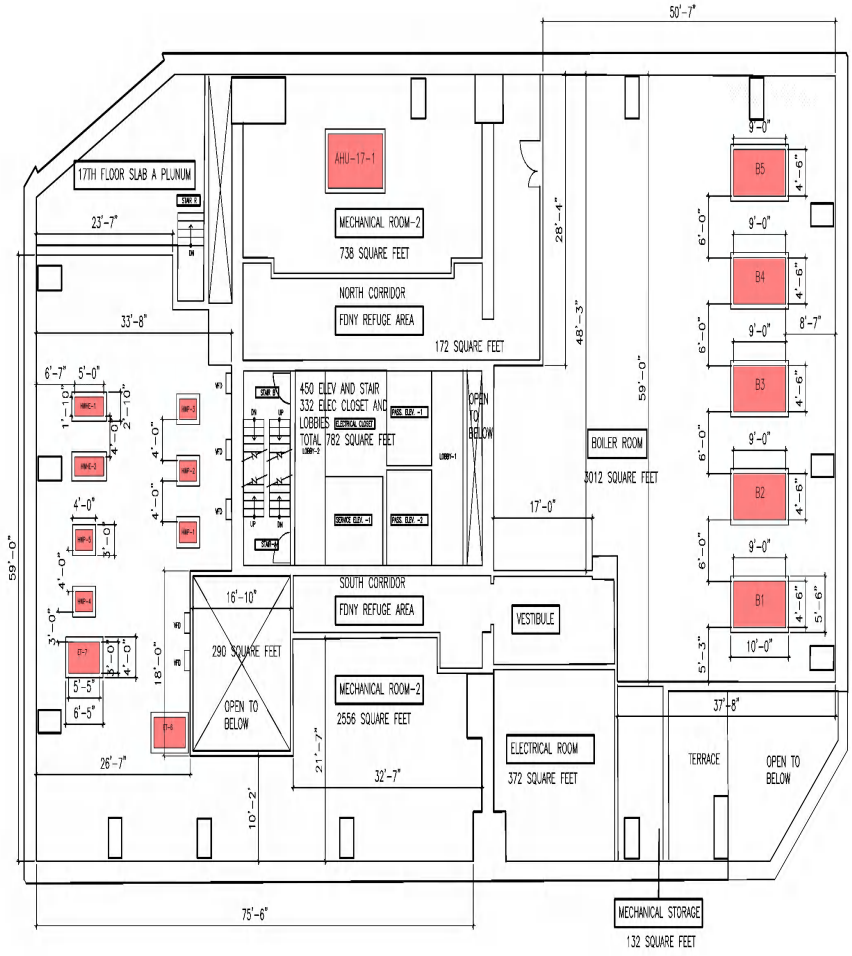
3330

COMPARISON DIAGRAM: 17.1

EXISTING MECHANICAL EQUIPMENT LAYOUT ONLY
17TH FLOOR 11-06-2019

LEGEND

EQUIPMENT



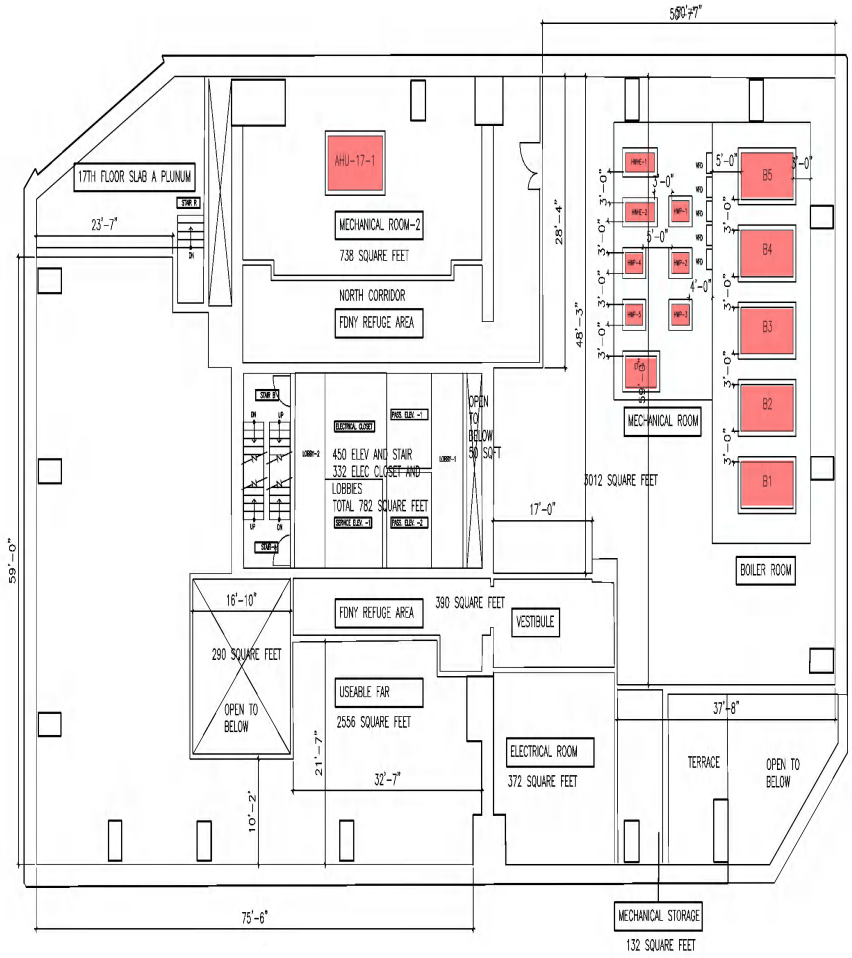
COMPARISON DIAGRAM: 17.2

CONSOLIDATED MECHANICAL EQUIPMENT LAYOUT ONLY

17TH FLOOR 11-06-2019

LEGEND

EQUIPMENT



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

RE: Cal. No. 2019-94-A
Address: 36 West 66th Street, Manhattan
Block 1118; Lot 45

AFFIDAVIT OF GEORGE M. JANES, AICP

State of New York)
) ss:
County of New York)

GEORGE M. JANES, AICP duly sworn, deposes and says:

1. I am an urban planner with 25 years of experience and I am President of George M. Janes & Associates, a planning firm with expertise in zoning, simulation and visualization, and quantitative modeling. The firm serves public, private and non-profit clients, mostly in and around New York City. I work with clients as large as the City of New York and as small as individuals concerned about the impact of zoning or new development on their neighborhoods. Most often, I work with local governments, community boards and community groups, trying to help them understand how new plans or regulations will affect their community. In addition, sometimes I help them shape those plans or regulations to better serve their needs. Before founding the firm in 2008, I spent six years as Executive Director of New York City's Environmental Simulation Center, a

FILED: NEW YORK COUNTY CLERK 02/16/2021 01:36 PM INDEX NO. 160565/2020
2019 94 A 11/07/2019
NYSCEF DOC. NO. 58 RECEIVED NYSCEF: 02/16/2021

pioneer in visualization and simulation for planning and development. I have been a member of the American Institute of Certified Planners for the past 21 years.

2. I am very familiar with the project at 36 West 66th Street, as I was the author of the initial September 9, 2018 Zoning Challenge and have appeared before your Board in previous hearings of this project.

3. While several issues were discussed in the Zoning Challenge and hearings, the issue now before the Board is focused on if the floor space used for mechanical equipment is entirely exempt from Floor Area, as defined in Section 12-10 of the Zoning Resolution and if the standards exempting floor space from Floor Area follow Department of Building (DOB) practice in the accounting of Floor Area. Since the proposed building is very close to its maximum allowable Floor Area, any floor space that was improperly deducted from Floor Area would push the building out of zoning compliance.

4. This affidavit was prepared using the information on the layout of the mechanical floors provided by Michael Ambrosino, PE, in his affidavit on the project.

Floor Area in ZR 12-10

5. "Floor Area" is a defined term in Section 12-10 of the Zoning Resolution (ZR). Floor space used for mechanical equipment is explicitly excluded from Floor Area, in relevant part as: "(8) floor space used for mechanical equipment, . . . "

6. Higher density districts, like those found at West 66th Street, have no limit as to the amount of floor space used for mechanical equipment that can be exempted from Floor Area, nor does the ZR provide instructions as to what constitutes mechanical equipment, if circulation space around mechanical equipment counts as Floor Area, or if it

is likewise exempt, or how to draw the lines for items like mechanical rooms. For example, do walls surrounding mechanical rooms count as Floor Area, like they do elsewhere, or are they exempt like the mechanical equipment they contain? Or is the line drawn in the centerline of a wall separating mechanical room from Floor Area? Simply, the ZR provides surprisingly little guidance as to how to count "floor space used for mechanical equipment." It does, however, provide other relevant information about floor space that should count as Floor Area.

7. The ZR definition of Floor Area starts broadly: " 'Floor area' is the sum of the gross areas of the several floors of a #building# or #buildings#, measured from the exterior faces of exterior walls or from the center lines of walls separating two #buildings#." The ZR continues by listing 15 kinds of floor space that explicitly count as Floor Area. I consider these 15 items as spaces that a reasonable person might assume were exempt from Floor Area, like basements, attics, elevator shafts and stairwells, but which actually do count as Floor Area, according to the ZR. Of particular relevance to the exemption of certain floor space in 36 West 66th Street, among these 15 items explicitly included as Floor Area are, "(k) floor space that is or becomes unused or inaccessible within a #building#;" and "(o) any other floor space not specifically excluded."

8. While floor space used for mechanicals is specifically excluded as Floor Area by the ZR, the ZR neither defines what mechanicals are, nor how the floor space used for mechanicals should be defined and exempted. Instead, the Department of Buildings (DOB) prepared a draft Building Bulletin that directly addresses these issues.

Floor Area in the 2013 Draft Building Bulletin

9. A 2013 draft Building Bulletin (BB) prepared by Thomas Fariello, who at the time was the First Deputy Commissioner, details the DOB's interpretation of these spaces. Indeed, the purpose of the BB specifically states: "This document is to clarify the text to which floor space used for mechanical equipment may be excluded from the sum of a building's zoning floor area as defined by the Zoning Resolution (ZR).[1]

10. BB Part A(1) lists mechanical items that may be exempted from Floor Area. BB Part A(2) identifies as exempt "[f]loor space directly adjacent to mechanical equipment necessary for the purpose of access and servicing of such equipment (except as otherwise noted in Part C.)" The bulletin then goes on to explain that this adjacent space is either equal to the size of the equipment to which it provides access or the manufacturer's recommendation. In addition, the bulletin clarifies that there is no access space for several exempt mechanical items, such as ducts, chutes, flues, and chases, which the DOB had determined not to require circulation or access space.

11. The BB Part C exception to adjacent space referenced in Part A(2) relates to incidental, non-occupied floor space in rooms or floors occupying such equipment and describes a 90% threshold. If at least 90% of the floor space is occupied by mechanical equipment and circulation space, the remaining floor space (up to 10%) may also be deducted.

[1] This BB is a draft and, to the best of my knowledge, was never formally issued. Nevertheless, it details DOB practice regarding these spaces in a formal manner. I do not know why this BB has been left as a draft and I do not believe there is a different, formally issued BB that addresses these issues. Consequently, since the Zoning Resolution is missing so much information about mechanicals, the information in the BB provides standards against which we can evaluate this building. It is also my understanding that the BB reflects Department practice and the ideas therein are essential to consistent enforcement.

12. Finally, BB Part C allows stairs and elevators that serve floors with floor space that is at least 90% mechanical equipment and circulation/access space to be excluded Floor Area, pursuant to BSA Cal. No. 315-08-A.

The Building Deducts Floor Space that Counts as Floor Area

13. As Mr. Ambrosino makes clear in his affidavit, the mechanical floors for 36 West 66th Street have much larger than required access and service areas around the planned mechanical equipment. He finds that mechanical equipment and related service areas range between 18% and 28% of the floor space in the mechanical floors, averaging just 23%. His findings show a vast amount of unused floor space on these floors and that the mechanical equipment and service areas are nowhere near the 90% threshold found in the BB.

14. ZR 12-10 expressly states that floor space that is unused (k), and any other floor space not specifically excluded (o), cannot be excluded from Floor Area. Consequently, this excessive floor space must count as Floor Area.

15. Further, I note that these "mechanical" floors include elements that are expressly *not* for mechanical purposes and should also count as Floor Area. These include the FDNY Forward Staging Area Post & Refuge Area on the 19th floor (M-222), the FDNY Fire Search and Evacuation Post & Refuge Area on the 18th floor (M-221), and the FDNY Refuge Area and a room marked Storage on the 17th floor (M-220).

16. Outside of the mechanical floors, the building plans properly show that the FDNY access and refuge areas count as Floor Area. However, they should also count as

FILED: NEW YORK COUNTY CLERK 02/16/2021 01:36 PM INDEX NO. 160565/2020
2019-94-A 11/07/2019
NYSCEF DOC. NO. 58 RECEIVED NYSCEF: 02/16/2021

Floor Area on mechanical floors as well, since well over 10% of the floor space is "incidental, non-occupied" floor space.

17. With so much floor space on these floors counting as Floor Area, the stairs and the elevators that serve these floors can also no longer be excluded from Floor Area.

The Building is Too Large for its Zoning District

18. The building is proposed to be one square foot less than the maximum allowable floor area for the C4-7 portion of zoning lot, which means that just a single improper deduction of virtually any size will push the building out of compliance with the maximum allowable FAR for the zoning district and make the building too large for its district.

19. As has already been shown, the building takes thousands of square feet of improper deductions from Floor Area and is much larger than the maximum of 12 FAR allowed in the C4-7 zoning district, as described in ZR 35-31.

GEORGE M. JANES, AICP

Sworn to before me this November 6, 2019

NOTARY PUBLIC

MOHAMMED ASHIK
Notary Public - State of New York
NO. 01AS6334832
Qualified in Queens County
My Commission Expires Dec 21, 2019

6

Annexed to Foregoing Document-
Appendix: Petitioner's November 7, 2019 Submission (R. 002513-002516)
[pp. 3339 - 3342]

Board of Standards and Appeals

BSA SUBMISSION NOTICE

Date: 11/7/19 Examiner's Name: Toni Matias

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

Subject Property/
Address: 36 West 66th Street, a.k.a 50 West 66th Street, New York, New York

Applicant Name Stuart A. Klein, Esq./LandmarkWest!

Submitted by (Full Name):

A) The material I am submitting is for a case currently **IN HEARING,** scheduled for December 17, 2019.
The reason I am submitting this material:

- ◯ Response to issues/questions raised by the Board at prior hearing
- ◯ Response to request made by Examiner
- ◉ Other: Letter for Corrected Exhibit Pages

Brief Description of submitted material:

List of items that are being voided/superseded:

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

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

Brief Description of submitted material:

List of items that are being voided/superseded:

MASTER CASE FILE INSTRUCTIONS

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

R. 002513

KLEIN SLOWIK PLLC

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msheynker@buildinglawnyc.com

November 7, 2019

CORRECTED EXHIBIT

BSA Calendar No: 2019-94-A

Premises:	36 West 66th Street, a/k/a 50 West 66th Street, Manhattan Block 1118, Lot 45 ("the Parcel")
Determination Challenged:	Issuance of Permit No. 121190200-01-NB ("the Permit")

Appellant LandMark West! ("LW!") submits this supplemental statement to correct an exhibit annexed to the affidavit of Michael Ambrosino, P.E., which was filed as part of appellant's submission on November 6, 2019. The correction contains the comparison mechanical equipment outlay plans and replaces the last two pages in the prior plan exhibit.

Sincerely,

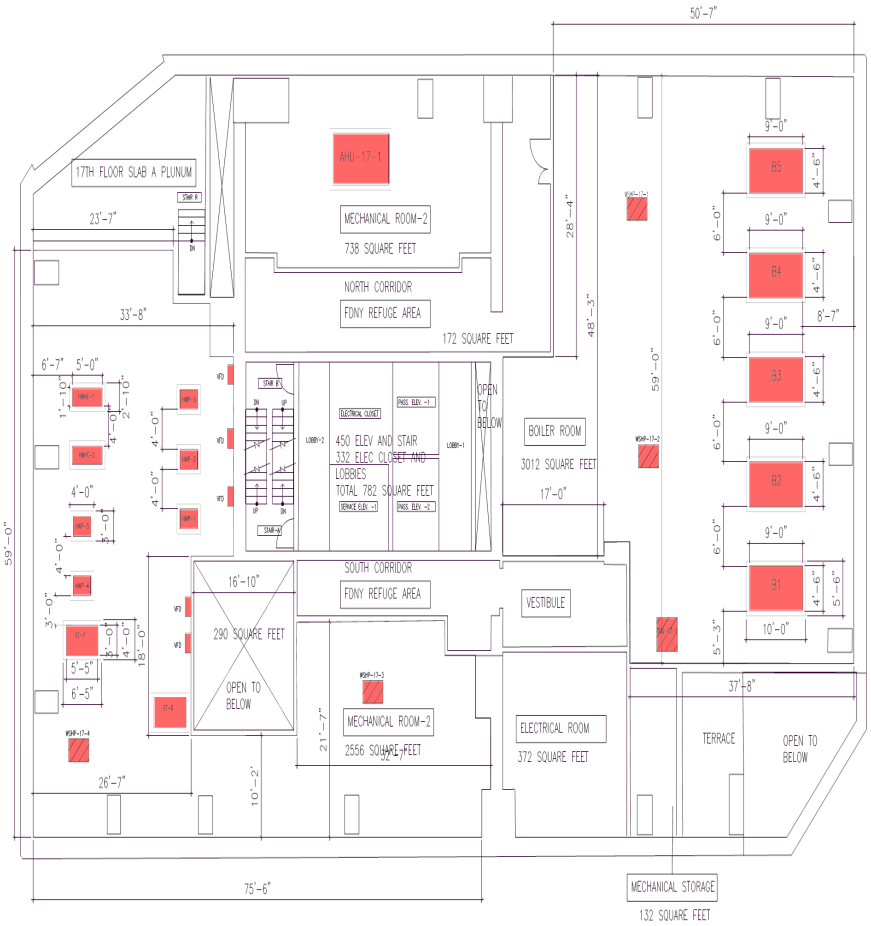
Mikhail Sheynker, Esq.

FILED: NEW YORK COUNTY CLERK 02/16/2021 01:36 PM INDEX NO. 160565/2020
NYSCEF DOC. NO. 59 RECEIVED NYSCEF: 02/16/2021

COMPARISON DIAGRAM: 17.1R

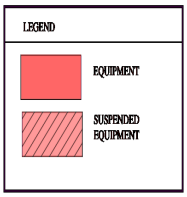
EXISTING MECHANICAL EQUIPMENT LAYOUT ONLY
17TH FLOOR 11-07-2019

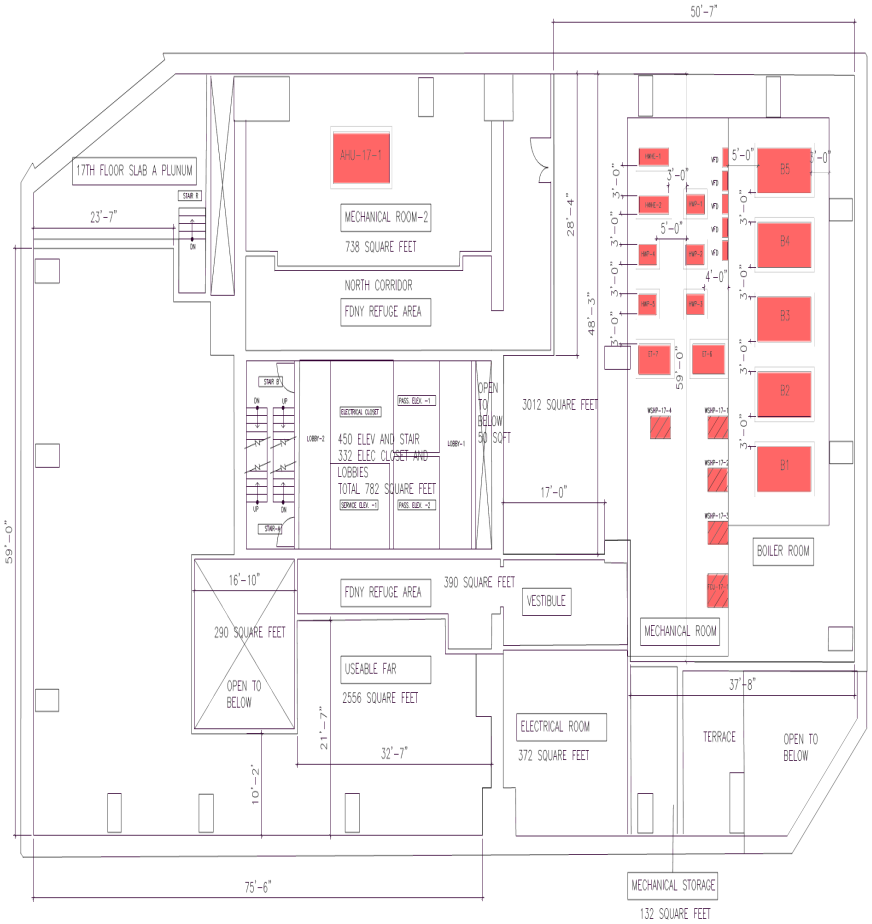
LEGEND
- FLOOR MOUNTED EQUIPMENT
- SUSPENDED EQUIPMENT



COMPARISON DIAGRAM: 17.2R

CONSOLIDATED MECHANICAL EQUIPMENT LAYOUT ONLY
17TH FLOOR 11-07-2019





Annexed to Foregoing Document-
Appendix: DOB's November 4, 2019 Submission (R. 002517-002520)
[pp. 3343 - 3346]

Board of Standards and Appeals

BSA SUBMISSION NOTICE

Date: 11/4/19

Examiner's Name: Toni Matias

BSA Calendar #: 2019-94-A

Electronic Submission: ■ Email ☐ CD

Subject Property/
Address: 36 West 66th Street, M

Applicant Name Klein Slowick, PLLC on behalf of Landmark West!

Submitted by (Full Name): Michael Zoltan, Assistant General Counsel, Department of Buildings

A) The material I am submitting is for a case currently **IN HEARING,** scheduled for 12/17/19.
The reason I am submitting this material:

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

Brief Description of submitted material: Letter statement in response to Owner's October 21, 2019 submission to the Board.

List of items that are being voided/superseded: _____

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

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

Brief Description of submitted material: _____

List of items that are being voided/superseded: _____

MASTER CASE FILE INSTRUCTIONS

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R. 002517

NYC Buildings

Melanie E. La Rocca
Commissioner

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+1 212 566 3843 fax

November 4, 2019

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

RE: Cal. No. 2019-94-A
Premises: 36 West 66th Street, Manhattan
Block: 1118; Lot: 45

Dear Honorable Members of the Board:

The Department of Buildings (the "Department") respectfully submits this statement to confirm that the additional drawings and clarifications regarding the proposed new building located at 36 West 66th Street New York, New York (the "Proposed Building"), submitted on October 21, 2019 by West 66th Sponsor LLC, (the "Owner") are an accurate representation of Department records. The Department submits that these additional plans supplement the Department's submission dated October 16, 2019 and provide further support for the Department's April 4, 2019 approval of a post-approval amendment application (the "PAA") which changed the scope of permit 121190200-01-NB (the "Permit") authorizing construction of the Proposed Building, and specifically the deduction of mechanical floor area.

I. THE PLANS SUBMITTED AS "SCHEDULE 1" AND "SCHEDULE 3" ARE TRUE COPIES OF APPROVED MECHANICAL PLANS

In the Owner's October 21, 2019 submission, the owner attached drawings depicting the Proposed Building's mechanical piping system (drawing numbers M-307.00, M-316.00, M-319.00, M-320.00, and M.321.00.) These drawings are true copies of plans stamped approved by the Department on April 5, 2019. Additionally, within the "Schedule 1" attachment, the Owner submitted SP/SD-216.00 to replace SP/SD-217.00. While both drawings were approved by the Department, the Owner's description of SP/SD-217.00 as the sprinkler plans for the pool crawl space is correct. SP/SD-216.00 is the proper depiction of the sprinkler/standpipe plans for the full 15th Floor.

Similarly, the Owner submitted the mechanical schedules (M-501.01, M-502.00, M-503.00, and M-504.00) for the mechanical equipment. These schedules provide additional details of the proposed mechanical equipment. They too are true copies of plans stamped approved by the Department on April 5, 2019.

Lastly, in the Owner's letter, the Owner added additional verbal descriptions of the mechanical equipment—supplementing the listed descriptions in the Department's October 16, 2019 letter. The listed items are an accurate representation of the mechanical equipment in the Proposed Building. The Department's October 16, 2019 list was not meant to be exhaustive, but rather illustrative.

II. THE COMPOSITE DRAWINGS OF THE INTERSTITIAL MECHANICAL FLOORS HELP ILLUSTRATE THE COMPLETE LAYOUT OF THE MECHANICAL EQUIPMENT IN THE PROPOSED BUILDING

In the Department's October 16, 2019 submission to the Board, for the sake of clarity, the Department submitted "composite" drawings of the approved mechanical plans. As explained in footnote 6 of that submission, the composite drawings themselves were not approved drawings by the Department but were rather a compilation of approved drawings overlaid for illustrative purposes.

In the Owner's October 21, 2019 letter, the Owner clarified that the composite drawings included architectural plans and did not include all of the mechanical systems from Department approved plans. The Owner attached "Schedule 2" which contains a compilation of approved Department plans depicting mechanical equipment overlaid one over the other with the addition of electrical fixtures shown on Department approved plans.

NYC Buildings

Cal. No. 2019-94-A
Premises: 36 West 66th Street, Manhattan
November 4, 2019

III. CONCLUSION

Based on the foregoing, the Department respectfully requests that the Board affirm the determination to issue the Permit.

Respectfully submitted,

Michael J. Zoltan

cc: Constadino (Gus) Sirakis, P.E., First Deputy Commissioner
Martin Rebholz, R.A., Borough Commissioner, Manhattan
Scott Pavan, R.A., Borough Commissioner, Development HUB
Mona Sehgal, General Counsel
Felicia R. Miller, Deputy General Counsel
Susan Amron, General Counsel, Department of City Planning
Stuart Klein
(On behalf of Landmark West Appellants)
David Karnovsky, Fried, Frank, Harris, Shriver & Jacobson LLP
(On behalf of West 66th Street Sponsor LLC)